



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT BUSIA**

**ELC CASE NO. 24 OF 2020 (O.S)**

**IN THE MATTER OF THE LIMITATIONS OF ACTIONS ACT CAP 22 LAWS OF KENYA**

**IN THE MATTER OF SAMIA/LUANDA-MUDOMA/375**

**IN THE MATTER OF A CLAIM FOR ADVERSE POSSESSION**

**BETWEEN**

**GAO..... APPLICANT**

**= VERSUS =**

**ABSALOM ASUNDA.....RESPONDENT**

**J U D G M E N T**

1. The Applicants commenced these proceedings vide the Originating Summons dated 8<sup>th</sup> July, 2020 and filed on 13<sup>th</sup> July 2020 against the Respondent. The Applicant's claims that he has acquired by way of adverse possession rights over **L.R NO SAMIA/LUANDA-MUDOMA/375** or any other title derived therefrom as on the ground currently registered in the name of ABSALOM ASUNDA. The Applicant posed the following questions for determination:

- a) Whether the Applicant is entitled to the ownership of the parcel of land known as SAMIA/LUANDA-MUDOMA/375 by virtue of adverse possession.**
- b) Whether the Applicant as the occupant of the said parcel of land namely; SAMIA/LUANDA-MUDOMA/375 is entitled to be duly registered as the proprietor of the said parcel of land.**
- c) Whether the Applicant is entitled to costs of this Application.**

2. The Summons was premised on the following grounds:

- i) That the Applicant has been in occupation/possession of the parcel of land known as SAMIA/LUANDA-MUDOMA/375 for over 12 years preceding this application.*
- ii) That the Applicant has duly developed the said parcel of land planting trees, cassava crops, tilled the land, planted maize and other crops for sustaining his family, grazed livestock on the said parcel of land and used the land to host social functions such as funeral and wedding ceremonies.*
- iii) That the Applicant's use of the said suit property has been open and continuous for over 12 years and the said occupation has not been interrupted by the Respondent, his agents/heir, servants or anyone else.*
- iv) That the Applicant has never seen the Respondent and or his agents/relatives on the property known as SAMIA/LUANDA-MUDOMA/375 and neither has the Respondent and or his agents developed the said property in any way for the past 12 years preceding this Application.*
- v) That the Applicant is thus duly and legally entitled to the said parcel of land known as SAMIA/LUANDA-MUDOMA/375 by virtue of adverse possession and should be so registered.*

3. The Originating Summons was supported by an affidavit sworn by the applicant on 8<sup>th</sup> July 2020 together with a witness statement.

Annexed to the affidavit are copies of the applicant's national I.D, photographs of the said crops, copies of application for a postal search, official receipt and certificate of a current official search of the suit properties.

4. The Respondent was served through an advertisement placed in the Daily Nation newspaper on 26<sup>th</sup> November 2020 as was stated in the Affidavit of Service dated 28<sup>th</sup> January and filed in court on 1<sup>st</sup> February 2021. The Respondent was further served with a hearing notice through the local administration of the area where the suit land is located. The Respondent never entered appearance or filed any reply.

5. The hearing began on 9<sup>th</sup> June 2021 with the applicant testifying as the only witness. **PW1**, stated that he comes from Samia and does business in Mombasa. He adopted his witness statement together with the documents filed as his evidence in support of his case. He stated that he was born and raised on the parcel of land SAMIA/LUANDA-MUDOMA/60 which immediately borders the parcel of land known as SAMIA/LUANDA-MUDOMA/375. He stated that ever since he was young, he has never heard nor seen the Respondent on the parcel of land known as SAMIA/LUANDA-MUDOMA/375 over the years. He has asked around the neighbouring villages and actively looked for the Respondent herein but his efforts have been fruitless as nobody has ever seen or heard of the Respondent.

6. The plaintiff asserted that he grazed his livestock on the said parcel of land over the years and held several family functions such as funeral ceremonies, weddings among others. That he has continued to till the said land for food and they have planted several crops such as cassava, maize among others. He added that he conducted a search as the Lands Office, Busia for the suit property in order to cause the registration of the said parcel in his name. The official search showed that the suit parcel of land is currently registered in the name of the Respondent. It is the plaintiff's evidence that his family's occupation of the said parcel of land has been open and continuous for over 12 years and has not been interfered with by the Respondent or any other person. According to the witness, the Respondent has never been desirous of occupying and/or putting the suit property into any use. He prayed that it be declared to have lawfully acquired the ownership of the said property under the doctrine of adverse possession. The documents in his list of were produced as PEX 1-5.

7. The plaintiff filed his submissions on 30<sup>th</sup> June 2021 and submitted that he has been in occupation of the suit land since 1974 making it 47 years and he still remains in possession as at the time of filing the suit. He stated that he openly tilled the land, grazed his livestock and even conducted social ceremonies.

8. It is trite law that for one to sustain a claim for adverse possession, such person needs to demonstrate that he has been in open, quiet and continuous possession of the claimed property for a period in excess of 12 years. Even though the applicant's evidence is uncontroverted, the court still has a duty to analyse the evidence presented before it and make a decision on a balance of probabilities. The applicant has stated that he has been in possession of the suit land since birth which was in 1974. However, time for adverse possession could not start running in 1974 as the applicant was still a minor. He reached the age of majority in 1992 and up until he filed the suit the applicant had been in possession of the suit for 28 years. The pictures annexed to his supporting affidavit and produced as PEX 4 showcase occupation and possession of the suit land. He stated that he began using the land because it neighboured his father's land and as such he did enter the land without the permission of the Respondent.

9. The Respondent never entered appearance to controvert the claim and the evidence adduced in support of the claim. Consequently, I am convinced on a balance of probabilities, that the applicant is entitled to the suit property by way of adverse possession. Judgement is entered in his favour that;

**a) A declaration be and is hereby issued declaring that the applicant has acquired the suit property SAMIA/LUANDA-MUDOMA/375 by way of adverse possession.**

**b) The suit property shall be registered in Applicant's name.**

**c) The Respondent never entered appearance and as such I will make no order as to costs.**

10. Judgment accordingly.

**DATED, SIGNED AND DELIVERED AT BUSIA THIS 18TH DAY OF NOVEMBER 2021.**

**A. OMOLLO**

**JUDGE**