



Kamanu & another v Ngambi (Sued as the Personal Representative of the Estate of Cecilia Wambui Wahome - Deceased) (Environmental and Land Originating Summons 51 & 50 of 2019 (Consolidated)) [2025] KEELC 205 (KLR) (30 January 2025) (Judgment)

Neutral citation: [2025] KEELC 205 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENTAL AND LAND ORIGINATING
SUMMONS 51 & 50 OF 2019 (CONSOLIDATED)**

**EO OBAGA, J
JANUARY 30, 2025**

BETWEEN

STEPHEN MUNGAI KAMANU APPLICANT

AND

AGNES NYAMBURA NGAMBI (SUED AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF CECILIA WAMBUI WAHOME - DECEASED) RESPONDENT

AS CONSOLIDATED WITH

ENVIRONMENTAL AND LAND ORIGINATING SUMMONS 50 OF 2019

BETWEEN

LAWRENCE ISINTA ONGWACHO APPLICANT

AND

AGNES NYAMBURA NGAMBI (SUED AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF CECILIA WAMBUI WAHOME - DECEASED) RESPONDENT

JUDGMENT

1. The Applicants herein filed two separate suits against the Respondent in which they claim that they have acquired portions of land out of LR. No. Eldoret Municipality Block 9 (Border Farm)/2223 measuring 0.2269 hectares by way of adverse possession (suit property). The Applicant in ELC 50 of



- 2019 Lawrence Isinta Ongwacho (Lawrence) is claiming 0.0466 hectares. The Applicant in ELC 51 of 2019 Stephen Mungai Kamanu (Stephen) is claiming 0.048 hectares.
2. On 1st December, 2020, the two suits were consolidated. The Respondent is the daughter and administratrix of the Estate of her late mother Cecilia Wambui Wahome (Deceased) who was the registered owner of LR. No. Eldoret Municipality Block 9/17 (Border Farm)/227 which was subdivided and resulted into the suit property and Eldoret Municipality Block 9 (Border Farm)/2224.
 3. The deceased was registered as owner of Eldoret Municipality Block 9/17 (Border Farm)/227 on 22nd November, 2002. This title was subdivided on 5th September, 2013 and gave rise to the suit property and Eldoret Municipality Block 9 (Border Farm) 2224.
 4. Lawrence testified that he purchased $\frac{1}{8}$ of an acre from the deceased in 1992 and immediately took possession. He built a permanent building and he has been in possession since then. He purchased his plot at Kshs.50,000/=. He paid the deceased Kshs.45,000/= and the balance of Kshs.5,000 was used to pay school fees for the deceased's last born daughter.
 5. On his part, Stephen testified that he purchased a portion measuring 0.048 hactres from the deceased in 1994. He took immediate possession and has since carried out major developments on the land. The deceased did not take him to the Land Control Board and the transaction became null and void after expiry of six months. He has since remained in possession of a distinct portion and that the deceased never made any attempt to evict him.
 6. The Applicants called Roselita Nyawira the last born daughter of the deceased who testified that she is the one who used to stay with the deceased. She testified that she is aware that the Applicants purchased their respective plots from their mother. Lawrence Purchased his in 1992 and Stephen purchased his in 1994. The two are occupying their plots which are developed. She testified that Lawrence paid her mother Kshs.45,000/= and the balance of Kshs.5,000/= was used to clear her fees at Kapsoya.
 7. PW 4 John Kidiavai Manyonyi testified that he lives near where the Applicants have their plots. He stated that Lawrence purchased his plot in 1992 and Stephen purchased his in 1994. He further stated that the two have lived peacefully since they purchased their plots. The two Applicants were teaching in nearby schools.
 8. PW5 Solomon Mwangi Mwaniki testified that he knew the history of the suit property which was a subdivision of Eldoret Municipality Block 9/17 (Border Farm)/227. He stated that Stephen was occupying $\frac{1}{8}$ of an acre. He further stated that the two have since been staying on their portions peacefully. He stated that he knew the deceased in 1989. He testified that Lawrence purchased his plot in 1992 whereas Stephen purchased his in 1994.
 9. The Respondent testified that she is the daughter and administratrix of the Estate of the deceased. She testified that her mother used to cultivate her property which had not been registered in her name. In 2002, she processed and obtained title which was LR. No. Eldoret Municipality Block 9/17 (Border Farm) 227.
 10. The Respondent testified that she was not aware of any sale agreement between her mother and Lawrence and Stephen. She stated that her mother became sick around 2012. In 2013, her mother passed on. It is after the demise of her mother that she noticed that the Applicants and other third parties had invaded her mother's land and put up illegal structures. She wrote notices to the Applicants asking them to vacate.
 11. The Respondent denied that the Applicants were in possession of the suit property since 1992 as the land was by then Government land. She stated that she was residing with her mother on the land before



- subdivision. She stated that the Applicants were brought to her mother by her cousin one Njoroge in 2008 after post election violence and were allowed to put up small businesses on part of their mother's land to augment their salaries as they were teachers. They paid some rent to her mother.
12. The Respondent stated in her statement that the Applicants took advantage of their mother's sickness to subdivide their mother's land without their consent. She alleged that her mother's signature was forged and used to subdivide her property into two portions while she was sick and in hospital.
 13. The parties were directed to file written submissions. The Applicants filed their submissions on 23rd January, 2024. The Respondent filed her submissions on 26th February, 2024. The Applicants submitted that they purchased their respective plots in 1992 and 1994. As at this time, the land had not been registered in the name of the deceased. The deceased became the registered owner on 22nd November, 2002. They therefore submit that the agreements were null and void as the deceased had no capacity to sell land which was not in her name. They therefore submit that for purposes of limitation, time started running in their favour from 22nd November, 2002 and by 22nd November, 2014, they had been in adverse possession for 12 years.
 14. The Applicants further submitted that they have been in occupation of distinct portions which are well defined on the ground. Lawrence is occupying 0.0466 hactres while Stephen is occupying 0.0486 hactres. They submit that the occupation has been peaceful, open and exclusive. They further submit that the subsequent subdivision did not interrupt time from running.
 15. The Applicants relied on the case of Ng'ati Farmers Co-operative Society Limited -Vs- Ledid & 15 others (2009) eKLR. The Applicants also relied on the case of Githu -Vs- Ndeete (1984) KLR page 776 which held that change of ownership of land which is occupied by another person under adverse possession does not interrupt such person's adverse possession.
 16. The Applicants also relied on the case of Kairu -Vs- Gacheru (1988) KLR 297 and Waweru -Vs- Richu (2007) EA 403. On her part, the Respondent submitted that the Applicants were tenants on the suit property. That the deceased had allowed them to put up small structures on the suit property so that she could raise money for medication. She submitted that one of the deceased's daughter namely Anne Wangeci used to issue receipts to the tenants. She submitted that the tenants started putting up buildings upon the demise of the deceased.
 17. The Respondent submitted that the Applicants could not lay claim to the suit property as at 1992 and 1994 as the same was public land and one cannot seek to acquire public land through adverse possession. She relied on the case of Anne Itumbi Kiseli -Vs- James Muriuki Muriithi (2013) eKLR where it was held as follows;
 - “1. The definition of what Government land is for the purpose of computing time in a claim for adverse possession should be considered in the light of *the Constitution*, 2010.
 53. Just like state corporations established under specific Acts of Parliament, the settlement Fund Trustee is in essence a public enterprise.
 54. The classification of land held by state organs, like the Settlement Fund Trustee, as public land is reinstated in Article 62 (i) (b) of *the Constitution* which provides as follows:
 - “Public land is land lawfully held, used or occupied by any state organ....”



18. The Respondent further submitted that the Applicants had not met the threshold for grant of orders of adverse possession. She cited the case of *Wambugu -Vs- Njuguna (1983) KLR 172* where it was held as follows:

“In order to acquire by the statute of limitations title to land which has a known owner, that owner must have lost his right to the land either by being dispossessed of it or by having discontinued his possession of it. Dispossession of the proprietor that defeats his title are acts which are inconsistent with his enjoyment of the soil for the purpose of which he intended to use it.”

And that:

“The proper way of assessing proof of adverse possession would then be whether or not the title holder has been dispossessed or has discontinued his possession for the statutory period and not whether or not the claimant has proved that he has been in possession of the requisite number of years.”

19. Further the Respondent relied on the case of *Mtana Lewa -Vs- Kahindi Ngala Mwangadi (2025) eKLR* where it was held as follows:

“Adverse possession is essentially a situation where a person takes possession of land and asserts rights over it and the person having title to it omits or neglects to take action against such person in assertion of his title for a certain period, in Kenya, is twelve (12) years. The process springs into action essentially by default or inaction of the owner. The essential prerequisites being that the possession of the adverse possessor is neither by force or stealth nor under the licence of the owner. It must be adequate in continuity, in publicity and in extent to show that possession is adverse to the title owner.”

20. Further reliance was put on the case of *Mbira -Vs- Gachuhi (2002) 1 EALR 137* where it was held as follows:

“.....a person who seeks to acquire title to land by the method of adverse possession for the applicable statutory period, must prove non-permissive or non-consensual actual, open, notorious, exclusive and adverse use by him or those under whom he claims for the statutorily prescribed period without interruption....”

21. The Respondent submitted that the deceased was registered as owner of the suit property on 22nd November, 2002. As at 2013, the Applicants were paying rent. They filed this suit in 2019. She therefore submitted that the Applicants had not been in occupation of the suit property for the required statutory period of 12 years. She submitted that the suit was filed prematurely.

22. The Respondent relied on the case of *Samuel Miki Waweru -Vs- Jane Njeri Richu Civil Appeal No. 122 of 2001* (VR) where it was held as follows:

“.....It is trite law a claim of adverse possession cannot succeed if the person asserting the claim is in possession with the permission of the owner of, or in (accordance with) provisions of an agreement of sale or lease or otherwise. Further, as the High Court correctly held in *Jandu -Vs- Kirpal (1975) EA 225* Possession does not become adverse before the end of the period for which permission to occupy has been granted.....”



23. I have carefully considered the evidence of the Applicants and that of the Respondent. I have also considered the submissions by the parties in this case. The only issue for determination is whether the Applicants have met the threshold for grant of reliefs based on adverse possession. In determining this broad issue, the court has to determine whether the Applicants have met all the ingredients which go to establishing adverse possession.
24. Adverse possession can only be brought against a title holder. The same cannot be brought against public land. In the instant case, though the evidence adduced shows that the deceased was on the suit property as early as 1992 or thereabouts, she only became the registered owner on 22nd November, 2002. The evidence of Lawrence is that he purchased a plot measuring $\frac{1}{8}$ of an acre from the deceased on 28th May, 1992. The plot was being sold for Kshs.45,000/= . He paid Kshs.40,000/= to the deceased and the balance of Kshs.5,000/= was used to pay school fees for the daughter of the deceased.
25. The evidence of Stephen is that he purchased $\frac{1}{8}$ of an acre from the deceased in 1994. He stated that the sale agreement got lost. PW3 Roselita Nyawira is daughter of the deceased. She testified that she is aware that both Stephen and Lawrence purchased land from her mother. She testified that the two were not tenants as alleged by the Respondent who is her sister. She further testified that the balance of Kshs.5,000/= which was owed by Lawrence to her mother was used to pay for her school fees.
26. PW4 John Kidiava Manyonyi testified that he was aware that both Lawrence and Stephen purchased land from the deceased. Each of the two occupy $\frac{1}{8}$ of an acre. PW3 Solomon Mwangi Mwaniki testified that he knew the deceased in 1989. He stated that Lawrence bought land from the deceased in 1992 whereas Stephen purchased his in 1994. The two have been in peaceful occupation of their portions measuring $\frac{1}{8}$ of an acre each.
27. The Respondent claimed that Stephen and Lawrence were tenants on the suit property. The Respondent attached two receipts allegedly issued to Lawrence on 12th December, 2012 and 19th April, 2013 for Kshs.500/= each. She also attached two receipts allegedly issued to Stephen on 14th December, 2012 and 14th April, 2013 for Kshs.500/= each. These receipts were contained in the Respondent's further list of documents. They were however not produced in evidence.
28. As at 2012 both Lawrence and Stephen had done extensive developments on their respective portion. It is not possible that they could only be charged rent of Kshs.500. It is clear that these receipts were purposely generated for this case. One could not be charged rent at the same rate for decades.
29. When PW3 Roselita Nyawira was cross examined she stated that in 1990, she was 17 years old. Lawrence paid the balance of Kshs.5,000/= towards payment of Roselita Nyawira's fees. This was after 1992. Time in favour of Lawrence and Stephen began to run on 22nd November, 2002 when the deceased became registered owner of the suit property. This is because time could not start running in favour of Lawrence and Stephen in 1992 and 1994 respectively as the land was government land.
30. For all the time the deceased was alive, she never had any issues with either Lawrence or Stephen. The two were living peacefully until her demise on 6th November, 2013. The Respondent only began to claim that the two had invaded her mother's land after her demise and had started building. She wrote letters to the two on 15th November, 2015 asking them to stop. She also wrote to the County Government of Uasin Gishu on 30th April, 2019 seeking authority to demolish structures put up by the Applicants.
31. During cross examination of the Respondent, she confirmed that her relationship with Roselita Nyawira who is her sister was cordial. She further confirmed that all her other brothers and sisters were not supporting her position. I therefore find that the Applicants having cleared paying for their



respective portions, their stay on the land with knowledge of the deceased was adverse and that they had dispossessed the deceased of the portions occupied by them.

32. The evidence adduced by the Applicants which was also corroborated by their witnesses is that each of the two is occupying $\frac{1}{8}$ of an acre which falls on LR No. Eldoret Municipality/Block 9 (Border Farm)/2223. This was subdivision of LR No. Eldoret Municipality Block 9/17 (Border Farm)/227. The subdivision did not interrupt time from continuing to run just like the case of change of ownership which does not stop time from running.
33. In the case of Wilson Kazungu Katana & 101 others -Vs- Salim Abdalla Bakshwein & another (2015) eKLR it was held as follows:

“The identification of the land in possession of an adverse possessor is an important and integral part of the process of proving adverse possession. This was so stated by this court in the case of Githu -Vs- Ndele (1984) KLR 776. The Appellants did not discharge the burden of proving and specifically identifying or even describing the portions, sizes and locations of those in their respective possession from the larger suit premises that they sought to have decreed to them.”

34. The Applicants have satisfied all the ingredients of adverse possession. They paid for their respective plots in 1992 and 1994 for Lawrence and Stephen respectively. Time for purposes of adverse possession began to run in their favour from 22nd November, 2002 when the deceased became registered as owner of Eldoret Municipality Block 9/17/Border Farm/227 which was later subdivided and became Eldoret Municipality/Block 9 (Border Farm)/2223. The Applicants remained in peaceful possession for a period of over 16 years and 3 months as at the time the suit was filed. Even as at the time the Respondent wrote letters to the Applicants asking them to move out on the 15th November, 2015, the two had been on the land peacefully for a period of 13 years which is more than the statutory period of 12 years required in law. The Applicants had dispossessed the true owner because they were using the land as their own to the exclusion of the true owner who was aware of their presence on the land. The two were not there as tenants as I have pointed out hereinabove. The issue of tenancy was an afterthought.
35. I therefore find that the Applicants have proved their respective claims to the required standards. The Applicants’ respective claims are allowed in terms of the prayers in the amended Originating Summons dated 9th June, 2021.

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HON. E. O. OBAGA

JUDGE

JUDGMENT DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MAKUENI THIS 30TH DAY OF JANUARY, 2025.

In the presence of:

Mr. Wainaina for Mr. Momanyi for Applicants.

Mr. Angu for Respondent.

Court assistant - Steve Musyoki

