



**Silali & another v Nyambati (Environment & Land Case  
6 of 2022) [2023] KEELC 16683 (KLR) (29 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16683 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISII  
ENVIRONMENT & LAND CASE 6 OF 2022**

**M SILA, J**

**MARCH 29, 2023**

**BETWEEN**

**ROSE NYABOKE SILALI ..... 1<sup>ST</sup> PLAINTIFF**

**JANET ALIZA OKELO ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**ROSE KWAMBOKA NYAMBATI ..... DEFENDANT**

**RULING**

1. This suit was commenced through an Originating Summons filed on September 9, 2022. In it, the applicants seek orders, that Rose Nyaboke Silali, the 1<sup>st</sup> applicant, be declared to have acquired title by way of adverse possession to a portion of the land parcel Central Kitutu/Daraja Mbili/4130 and seek that the title of the respondent be cancelled. It is claimed that the applicants have been on the land for more than 31 years and have fully developed it. The supporting affidavit to the Originating Summons is sworn by the 2<sup>nd</sup> applicant, who avers that the 1<sup>st</sup> applicant is her mother, and she deposes that they have been in quiet open occupation of the suit land for more than 29 years. She claimed that the respondent uprooted their napier grass and invited unknown people who have started making permanent structures on the land. There are some three photographs attached to the Originating Summons which are claimed to be of the land.
2. Together with the Originating Summons, the applicants lodged an application dated September 8, 2022 seeking the following substantive orders, which are prayers (4) and (5) in the application, the rest being prayers for interim orders :-
  4. That the honourable court be pleased to issue a prohibitory order prohibiting any other dealings and/or further transactions on land parcel Central Kitutu/Daraja Mbili/4130 pending hearing and determination of the main suit.



5. That pending the hearing and determination of the main suit, there be an order inhibiting registration and or any transactions on all that parcel of land known as parcel No. Central Kitutu/Daraja Mbili/4130.
3. The application is again supported by the affidavit of Janet Aliza Okelo, the 2<sup>nd</sup> applicant, who has more or less reiterated that they have been on the land for a long time and that the respondent has uprooted their napier grass and invited unknown people into the land who have started developing structures.
4. The respondent filed a replying affidavit to oppose the motion. She has averred to be the registered proprietor of the suit land which measures 0.22 Ha. She has annexed a copy of her title deed. She has deposed that the applicants are her neighbours and that they had a boundary dispute which has been determined. She has annexed a surveyor's report dated June 8, 2021. She has deposed that the acreage to her land had erroneously been reduced on the title and was rectified upon resurvey. She asserts that she never sold any part of her land to any person, including the applicants, and that the applicants do not occupy any portion of the land capable of attracting any interest in adverse possession. She contends that the applicants noticed the erroneous acreage recorded in her title and used the same to justify encroachment on the suit land and attempted to sell the same to a third party.
5. The applicants filed a supplementary affidavit where they annexed a sale agreement to demonstrate that they had purchased land in 1991 measuring 0.09 Ha which was not transferred to them as the registered proprietor died. She states that the respondent found them in occupation of this portion.
6. I have considered the application alongside the submissions of counsel.
7. The applicants of course contend that they are in adverse possession of the land titled to the respondent. The respondent opines that what they have is a boundary dispute. I have looked at the surveyor's report dated June 8, 2021. It does demonstrate that the two parties are neighbours and there is a disputed portion measuring 0.09 Ha. In his report, the surveyor was of opinion that what the parties have is not a boundary dispute but a land claim, i.e, who is entitled to ownership of this disputed portion. It is apparent to me that this is what is being claimed in this suit through adverse possession. I think there is sufficient material presented which demonstrates that there is a case to be tried.
8. In my view, it is best that the status quo, before the dispute was even referred to the surveyor, be maintained until the conclusion of this case. That portion of land be used in the manner that it was before the dispute over its ownership emerged. In addition, so as to preserve the title, I do issue an order of prohibition, prohibiting the registration of any dealings in the register of the land parcel Central Kitutu/Daraja Mbili/4130 until the conclusion of this case. There should be no development of any structures by any party within the disputed portion until the court renders its final determination. In essence, what I have ordered is that the status quo ante be maintained until the case is heard and determined.
9. The costs of the application will be costs in the cause.
10. Orders accordingly.

**DATED AND DELIVERED THIS 29 DAY OF MARCH 2023**

**JUSTICE MUNYAO SILA**

**JUDGE, ENVIRONMENT AND LAND COURT AT KISHII**

