



**Mureithi v Mbuthia (Environment & Land Case 27 of 2021)  
[2023] KEELC 16511 (KLR) (15 March 2023) (Judgment)**

Neutral citation: [2023] KEELC 16511 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI  
ENVIRONMENT & LAND CASE 27 OF 2021**

**AK BOR, J**

**MARCH 15, 2023**

**BETWEEN**

**IRENE WANGITHI KINYUA MUREITHI ..... PLAINTIFF**

**AND**

**JOSEPH MBUTHIA ..... DEFENDANT**

**JUDGMENT**

1. This dispute revolves around ownership of the land known as Laikipia Tigithi Matanya Block 3/1638 (Matanya Centre) (“the suit property”). The Plaintiff filed Nyeri High Court Civil Suit No. 9 of 2013 on March 20, 2013 seeking the eviction of the defendant from the suit property and an order for vacant possession on the basis that the defendant entered the suit land illegally, fenced it and commenced developments on the land without the plaintiff’s consent. The plaintiff sought a permanent injunction to restrain the defendant from dealing with the suit property.
2. In the defence filed on May 14, 2013, the defendant denied the plaintiff’s claim and gave particulars of fraud on the part of the Plaintiff in obtaining title over the suit land. He averred that he had been in occupation of the suit property since 1990 and that there were criminal and civil cases involving the defendant’s late husband and herself. He counterclaimed for a declaration that the title which the Plaintiff holds over the suit property was invalid and should be cancelled. He urged the court to find that he legally purchased the suit property and that he had been in adverse possession of the land.
3. It would appear from the proceedings that the suit was transferred to the Environment and Land Court and became Nyeri ELC Case No. 251 of 2014. The hearing of this suit commenced on November 6, 2017 when the Plaintiff testified before Lady Justice L. Waithaka. She stated that she inherited the suit property from her late husband, Clement Kinyua Murithi, who died on June 2, 2008. She transferred that land to her name. She claimed that her husband purchased the suit property from Monica Wanjira Murico. Her late husband was registered as the proprietor of the land on August 20, 1999.



4. She stated that they started farming in 2005 but their efforts were interfered by the defendant who would throw stones at them with the sling and use abusive language on their workers. Her husband reported the matter to the village elder, Joseph Kariuki Ndungu who convened a meeting between the assistant chief, the defendant and her late husband. It was resolved at the meeting that an official search would be conducted from the lands office to establish the rightful owner. The search dated February 7, 2007 showed that a title deed was issued to her husband on August 20, 1999. The defendant refused to accept that position.
5. When her husband died on June 2, 2008, she commenced the succession proceedings at the Office of the President, Provincial Administration and obtained grant of letters of administration and on October 21, 2008 the land was registered in her name. She stated that her late husband made attempts to evict the defendant from the suit property and at one point reported the matter to the Chief of Matanya who referred the matter to the police. The police advised them to commence civil proceedings. She told the court that she gave several demands to the defendant to vacate the suit property but he failed to leave the land.
6. She produced a copy of the card showing the proprietorship section of the suit property, a copy of the search done on January 10, 2013, a copy of the title deed issued to her husband on August 20, 1999, the demand letter issued by her lawyers, her husband's letter dated February 7, 2007 addressed to the Chief for Matanya location and the title deed issued in her name on October 22, 2012.
7. She stated that the defendant was occupying the suit property and had built a house on it. Previously, his son had built temporary structures on the land. Her attempts to go and farm on the land had not borne fruit because the defendant would chase her away with a panga. She claimed that her husband used to cultivate the land but after his death, the defendant did not allow her into the land. Her husband complained to the police who charged the Defendant with the offence of forcible detainer in Criminal Case No. 538 of 2007. The case was not concluded because some witnesses including her husband died. There was another criminal case which was withdrawn and the matter was referred to the DCIO for investigations.
8. She stated that when Milca occupied the suit land, she fenced it, planted trees and was cultivating it. When her husband bought the land, he started cultivating it but after that, the defendant chased away their workers. She explained that she had not occupied the land because she feared for her life.
9. Joseph Kariuki Ndungu was called as a witness by the Plaintiff to give evidence. He told the court that he was a farmer and lived in Matanya. He confirmed that the Plaintiff was the wife of the late Clement Murithi and that both the Plaintiff and the Defendant resided in Matanya where he was a village elder between 1999 and 2000.
10. He stated that the defendant had his own land but he heard that he bought additional land later next to his land. He did not know Milka Wanjiru. The late Clement Murithi made a complaint to him in January 2007 and he went to the sub-chief of Ramuria Sub location, Mr. Rukwaru Ndirangu who summoned both parties and requested them to present documents relating to ownership of the dispute land in order to verify the owner. They opted to conduct an official search, which revealed that Clement Murithi was the owner. He summoned the parties and presented the search to them. He asked them to present documents, which Clement Murithi presented but the defendant had no documents. They reached the conclusion that the land belonged to Clement Murithi.
11. The defendant went to report the matter to the Land Disputes Tribunal. From then, the defendant chased the Plaintiff's workers using a sling and stones. The defendant was farming on the land and would lease out sections of it.



12. Since the suit property is in Laikipia County, the suit was transferred from the Nyeri ELC to Nanyuki ELC and was given Nanyuki ELC Case no. 27 of 2021.
13. Charles Nyangicha, the Land Registrar of Laikipia County gave evidence. He produced the register for Matanya Estate Limited and an abstract of title. He confirmed to the court that those were the only documents in their custody relating to the suit land. He told the court that the company sent them the members register to enable them process titles. He confirmed that the area list which should have come from the company was missing and was what have confirmed whether one was a member. An owner of land one had to have a clearance certificate confirming that they had been cleared by the company. By that time the lands office would have had the members' register which they would use to counter check and if satisfied they would issue the title deed to the person.
14. Mr. Nyangicha confirmed that according to their records, member no. 896 was Jackson Nderitu Wanjagi for Plot no. 1638. Milka Wanjiru Muico was not the name of the person who appeared in the members register even though he could not explain the discrepancy as to why the person appearing on the abstract of title was not the one whose name appeared in the register of the land buying company. He did not have the clearing certificate in respect of the suit land. He could not tell who the company issued a clearance certificate to but maintained that Jackson Nderitu Wanjagi should have been registered as its owner in line with the members register. He could not tell whether the subsequent transactions carried out by Milka were illegal.
15. Joseph Mbuthia, the defendant gave evidence. He originally came from Muhoya in Nyeri District but relocated to Naro Moru with his family in 1989 and lived in Tigithi sub location from then on. He told the court that he bought a piece of land from Mary Wangechi Mathiaya measuring 3.2 ha. in 1990. The land was located in Mare area and was known as parcel no. 753 by the land buying company. It was registered as Laikipia/Tigithi Matanya Block 3/1638. He got to know Mary Wangechi Mathiaya because her land bordered his and that was the land which she sold to him. Mary claimed that she bought the land from Matanya Estate Company where she was a shareholder.
16. He told the court that he bought the land for Kshs. 45,000/= which he paid in three installments of 15,000/=, 25,000/= and 5,000/=. They entered into an agreement which was drawn by Mwangi Kariuki Advocate of Nanyuki town on June 22, 1990. He claimed that he took possession of the land immediately after the sale and started to develop it. He planted trees and fenced the land.
17. He went to look for Wangeci to give him the documents relating to the land but could not trace her because she had relocated to an unknown place. He managed to trace Wangeci in 1999 in Nanyuki town and they began the process of getting his title. By then Matanya Estate Company had closed down and was not operating anymore. The company was taken over by the government in 1999 and it started issuing titles to people who had bought land from the company. He told the court that the company was dissolved before a title deed had been issued to him.
18. He claimed that he built a semi-permanent house for his son on the land in 1999 and in 2000 Wangeci gave him the receipts which the company had given her. He went to the lands office in Nanyuki to process the title and discovered that their title had been given to Clement Kinyua. He looked for Clement Kinyua and showed him the sale agreement confirming that he legally bought the land.
19. He reported to matter to the Lamuria Land Disputes Tribunal, where they both attended. He was later summoned to the Tigithi Chief's office where Clement had reported the matter. He was arrested and taken to Matanya police post. He stated that all the receipts which Wangechi had given him were confiscated at the police station and not returned to him. He was taken to court and charged with a criminal offence and was later released on bail. He was discharged when the complainant, Clement



- Kinyua died in 2009. He reported the matter to the Lamuria Land Disputes Tribunal but before the case could be heard the tribunal was abolished. Later on, Clement's wife filed this suit seeking his eviction from the suit property.
20. The Defendant maintained that the suit property belonged to him because he bought it from Mary Wangeci in 1990 who was a shareholder in Matanya Estate Company. He claimed that he had been living on the suit property ever since and did not know how Clement Kinyua acquired title to his land.
  21. He produced a copy of the sale agreement dated June 22, 1990 between him and Mary Wangeci, the affidavit sworn by Mary Wangeci on January 13, 1989 and the summons dated October 19, 2011 issued by the Lamuria Land Disputes Tribunal. He also produced an illegible letter indicating summons and the letter dated March 28, 2007 from the Lamuria Land Disputes Tribunal to the Laikipia land registrar seeking to be supplied photocopies of the green card and official search. He produced the bond together with the letter dated July 13, 2014 confirming that Gerald Mbugi was the owner of plot no. 753 in Matanya Centre. He produced a copy of the letter dated October 4, 2014 written by the Director of Public Prosecutions requesting the OCPP to hand over the matter to the DCIO Laikipia for investigations.
  22. John Murithi Wanjuki gave evidence. He was a farmer and went to live in Matanya in 1983. He was one of the shareholders of Matanya estate. He bought two shares and was allocated land in Mare area measuring 6.4 ha. He had been living there ever since. He knew the Defendant as a farmer who went to the land in 1989. He was also one of the shareholders of Matanya and had his own land which was allocated to him by virtue of his shareholding. Mr. Wanjuki was appointed by the Government in 1990 as a member of the Probe Committee. He stated that Mathaiya went to them requesting to be shown his land. He was told to go to the district surveyor and pay before he could be shown the land. He paid and they took him to the land. The Defendant was present and asked if he could sell the land to him. He agreed to sell the land to him and the following day they went to Nanyuki to sign an agreement before an advocate. The Defendant later told him that they followed all processes and the land was his. He was summoned by the Lamuria District Officer in 2012 but when they went they were told the Tribunal was abolished. He stated that the whole process was done by Mathaiya in the presence of his wife.
  23. The court directed parties to file submissions after the hearing was concluded. The Plaintiff submitted that the defendant had failed to adduce evidence to show that she obtained the suit property through fraudulent means. She maintained that the defendant's allegation that she and her late husband had a criminal case was strange to her. She pointed out that there was no land control board consent relating to the defendant's transaction over the suit land. She urged the court to go by the evidence of her witness Joseph Kariuki Ndungu who was the village elder from 1999 to 2009. She reiterated that Milka Wanjiru Muicho sold the land to her late husband.
  24. She pointed out the discrepancies in the defendant's case including the green card which showed that the government took over the matters concerning the land in 1989 yet the defendant claimed that that happened in 1999. The Plaintiff questioned how the defendant could have bought the land without being given the documents relating to the land until he went looking for the vendor. Further, that the defendant stated he was given receipts by Mary Wangeci Mathiaya in 2000 which would be 10 years after they entered into the sale agreement. She questioned how the defendant could have bought the land in 1990 and erected structures three months later and then later went to Nanyuki to look for Mary Wangeci Mathiaya.
  25. The Plaintiff pointed out that the green card confirmed that the land had changed hands three times. She maintained that the defendant was relying on criminal activities to intimidate anyone who went



- to till the land including the Plaintiff and her workers. She urged the court to grant the reliefs sought in the suit.
26. The defendant submitted that he had been in exclusive use and occupation of the land since purchasing it in 1990 at Kshs. 45,000/=. Further that the original allottee of the land was the vendor's son who was a minor called Gerald Mbugi. That since he did not have capacity to transfer the land, the vendor caused the company records to be changed to her name by swearing an affidavit. Once her name was entered on the company's register, she was able to sell the land to the defendant. He went further to state that attempts to evict him from the land commenced in 2007 but no suit was filed.
  27. He added that he had produced letters from the Laikipia County Government showing who the owner of the plot was. He maintained that he had acquired title to the land through adverse possession by virtue of his stay on the land from 1990. He added that the Plaintiff's claim of ownership had been defeated by his continuous occupation of the suit property.
  28. The defendant reiterated that the County Land Registrar produced a register which showed the original allottee as Jackson Nderitu Wanjagi and not Milka Wanjiru Muicho. He contended that the Plaintiff was unable to show that the seller had any land that he could sell to her husband. The defendant pointed out that the Plaintiff gave the size of the land in her plaint as 0.31 ha, yet the green card showed that the land measured 1.350 ha. In the defendant's view, the Plaintiff must have been referring to another parcel of land and not the land bordering his. He argued that the evidence showed that neither Milka Wanjiru nor the Plaintiff nor her husband had ever set foot on the land. On the contrary he had fenced the land, planted trees and erected a semi-permanent house on the suit property.
  29. He argued that the 12-year period lapsed in 2002 from the time he took possession and that during this time, nobody had interrupted his occupation. He claimed that he became an adverse possessor six months after he was unable to obtain the consent from the land control board. Further, that if there was any interruption, it was after 2007 after the limitation period had ended. He argued that no suit was filed between 1990 and 2002. He relied on a court decision where it was held that a letter from the owner's advocate or the Chief requiring a defendant to vacate land was not sufficient to prove interruption.
  30. The defendant concluded that the suit land was his because the suit seeking to evict him from the land which he occupied since 1990 was filed in 2013.
  31. The main issue for determination in this suit is who between the Plaintiff and the defendant has a superior claim to the suit property. The Plaintiff is registered as the proprietor of the suit property and holds a title over the land which was issued to her October 22, 2012. The land was transferred to her name after the demise of her husband, who was previously registered as the proprietor of the land on August 20, 1999. She claimed that her husband bought the land from Milcah Muicho.
  32. On the other hand, the defendant's counterclaim is that he acquired the suit property through adverse possession since he was in possession from 1990. He pleaded this in addition to the claim that he purchased the suit land from Mary Wangechi in 1990. It is not in dispute that the defendant owns land next to the suit property.
  33. The affidavit which Mary Wangechi swore on January 13, 1989, and which the Defendant produced in court indicated that she was the mother of Gerald Mbugi who was registered under ballot 753 of Matanya Estates Limited and that she wished to have the land registered in her name since her son Gerald was a minor. That seems to be the basis upon which she entered into the sale agreement dated June 22, 1990 with the defendant for the sale of plot number 753. Mary Wangechi was not called to give evidence even though the court notes that her witness statement was filed in court.



34. Ballot number 753 was not produced in court. No evidence was led by the Defendant to show how ballot number 753 came to be parcel number 1638. The letter dated July 13, 2014 written by the County Government of Laikipia indicates that Gerald Mbugi was the owner of plot number 753 Matanya Centre Block 3. His mobile telephone number is given in the letter as 0721 084 409. This raises doubt as to whether Mary Wangechi sold the suit property to the Defendant in 1990 as the Defendant claims. It would also appear that Gerald Mbugi owned plot number 753 and not 1638. The court is inclined to believe that Mary Wangechi neither owned nor transferred the suit property to the Defendant.
35. The Land Registrar tendered in evidence the register of the shareholders of Matanya Estates which showed that plot number 1638, being the suit property in this case, belonged to Jackson Nderitu Wanjage. He explained the process for issuance of titles to shareholders of Matanya Company and confirmed that the register he produced in court was the only one in their records. Under Section 7 of the [Land Registration Act](#), it is the land registrar who is the custodian of all the lands records. The registration of the Plaintiff and her husband previously, afforded them some legal protection under Sections 24, 25 and 26 of the [Land Registration Act](#) unless the title is challenged on the grounds stipulated in Section 26.
36. To succeed on a claim for adverse possession, a claimant must prove that he has been in continuous, uninterrupted and open occupation of the land. His possession of the land must be open and undisturbed for 12 years. The possession should be adequate, continuous, public and adverse to the registered owner.
37. An action to recover land may not be brought under Section 7 of the [Limitation of Actions Act](#) twelve years after the right of action accrued or where it first accrued to another person through whom he claims, to that person. The abstract of title which the Plaintiff tendered in evidence shows that the land was first registered on April 21, 1989 and that the Government of Kenya was the proprietor until July 7, 1998 when it was transferred to Milika Wanjira Muicho. Entry number 4 shows that Kinyuah Clement Murithi was registered as the proprietor of the land on August 20, 1999. The computation of the 12-year period can only be after the registration of a person as proprietor of the land. In any event the defendant could not have sustained a claim for adverse possession of the land while it was Government land based on section 42 of the [Limitation of Actions Act](#).
38. The right of action accrues on the date of dispossession or discontinuance of the dispossession pursuant to Section 9 of the [Limitation of Actions Act](#) and where the person brings an action to recover land of a deceased person under intestacy as was the case here; and the deceased person was in possession on the date of his death and was the least person entitled to the land, the right of action accrues on the date of his death.
39. The evidence tendered in court showed that the Plaintiff's husband was utilising the suit land during his lifetime and after his death the defendant would chase away the Plaintiff's workers from the land. The criminal proceedings commenced against the defendant and his referral of the dispute to the Land Disputes Tribunal certainly confirm that he did not have quiet, continuous and uninterrupted possession of the suit property. It is difficult to establish when the defendant took possession of the suit property. It is highly probable that he did this after the demise of the Plaintiff's husband.
40. The defendant failed to prove that he legally purchased the suit property. He failed to prove on a balance of probabilities that he had been in continuous, uninterrupted and exclusive occupation of the suit property and that he had acquired title over the land by virtue of adverse possession.



41. The defendant's counterclaim is dismissed with costs to the Plaintiff. The defendant is directed to vacate the suit property within 60 days of the date of this judgment failing which he will be evicted. A permanent injunction is issued restraining the defendant from interfering with the Plaintiff's ownership of the suit property or dealing with the suit land. The Plaintiff is awarded the costs of the suit.

Delivered virtually at Nanyuki this 15<sup>th</sup> day of March 2023.

**K. BOR**

**JUDGE**

**In the presence of: -**

Irene Wangithi- the Plaintiff

Mrs. Gichama Maina holding brief for Mr. K. Wachira for the Defendant

Stella Gakii - Court Assistant

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