



**Chirchir v Bor (Environment & Land Case 13B of 2021)
[2023] KEELC 16988 (KLR) (27 April 2023) (Judgment)**

Neutral citation: [2023] KEELC 16988 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 13B OF 2021**

A OMBWAYO, J

APRIL 27, 2023

BETWEEN

**JONAH KIPLANGAT CHIRCHIR ALSO KNOWN AS JOHN
CHIRCHIR PLAINTIFF**

AND

MOSES KIPKURUI S. A. BOR DEFENDANT

JUDGMENT

Brief Facts

1. The Plaintiff filed the originating summons herein against the Defendant on 30/08/2018 under Section 37 of the [Limitation of Actions Act](#) and Rule 7 of the [Civil Procedure Rules](#) 2010 claiming to be in adverse possession of L.R No. Lembus/Sigoto Extension/3 the suit property herein. He prays for the court to determine the following:
 1. Whether the Plaintiff/Applicant has become entitled to be registered as the proprietor of all that parcel of land known as L.R. No. Lembus/Sigoro Extension/3 measuring approximately 20 Acres.
 2. Whether the Plaintiff/Applicant should be so registered as the proprietor of all that parcel of land known as L.R. No. Lembus/Sigoro Extension/3 measuring approximately 20 Acres.
 3. Whether the Defendant/Respondent should be ordered to execute the necessary and relevant conveyance document to effect the registration of the Plaintiff Applicant as the proprietor of all that parcel of land known L.R. No. Lembus/Sigoro Extension/3 and on default the Deputy Registrar of this Honourable Court be authorized to execute such document.
 4. Who should pay the costs of this suit?



2. The application was supported by the affidavit of Jonah Kiplagat Chirchir alias John Chirchir the Plaintiff herein. He states that the suit property is registered in the Defendant's name. He further states that the court on February 3, 1994 through HCCC No. 763 of 1992 Nakuru entered judgment in favour of the Defendant towards repossession of the suit land which he occupied and continues to occupy.
3. He states that prior to the said judgment he has been in continuous, open and an interrupted occupation of the suit land since 1976. He adds that it is now over 24 years since the said judgment was delivered and execution of the decree is now time barred and overtaken by events. He states that he be declared entitled to the suit land.
4. In conclusion, he states that it would only be fair that the Defendant either voluntarily signs or be compelled to sign transfer of ownership documents of the suit property.

Response

5. The Defendant did not file any response to the application despite service.

Submissions

6. The Plaintiff filed his submissions dated March 30, 2023 on the same day. He gave a brief background of the case and identified one issue for determination, whether or not the Plaintiff is entitled to be registered as the owner of all that parcel of land known as L.R No. Lembus/Sigoro Extension/3 measuring approximately 20 acres in place of the Defendant.
7. He relied on Section 4(4) of the *Limitation of Actions Act* and the Court of Appeal case of *M'ikiara M'rinkanya & another v Gilbert Kabeere M'mbijiwe*, Civil Appeal No. 124 of 2003 [2007] eKLR. The Plaintiff submitted that the above section applies to all judgments in that judgments must be executed within 12 years. He submitted that the judgment in Nakuru ELC case No. 763 of 1992 was delivered on February 3, 1994 and that the Defendant had up to February 3, 2006 to execute. He added that the Defendant failed to do so within the required time and only filed an application seeking orders of vacant possession in 2019 when the same was dismissed for the reason that it was statute barred.
8. The Plaintiff submitted that by the time the instant suit was filed on August 30, 2018, a period of 24 years had already lapsed since the judgment in Nakuru HCCC No. 763 of 1992 was delivered and 42 years since the Plaintiff occupied the suit property. He further submitted that even after the Defendant filed the suit in 1992, the Plaintiff continued in occupation of the suit property. He submitted that time started running from the time he took occupation in 1976. He argued that even if time stopped running from 1992-2006 when the case was filed as well as the period of execution after judgment, the Defendant had in his favour a judgment which he failed to execute. He added that after the court order became statute barred, he continued to be in occupation of the suit land and has never been evicted since 1976.
9. The Plaintiff submitted that the Defendant despite being served and having entered appearance did not file any response to the contrary. He urged the court to grant him the said prayers since the suit remains unopposed.
10. In conclusion, the Plaintiff submitted that he has proved his case on a balance of probabilities and urged the court to issue a declaration that the Defendant's title to the suit property be extinguished by the Plaintiff's adverse possession. He also urged the court to grant him costs of the suit.



Analysis and Determination

11. The law on Adverse Possession is well settled and the essential requirements that one has to meet in order to succeed in an application for Adverse Possession have been discussed by the courts.
12. In the case of *Wambugu v Njuguna* [1983] KLR 173, the Court of Appeal held that Adverse Possession contemplates two concepts: Possession and discontinuance of Possession. It further held that the proper way of assessing proof of Adverse Possession would 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 or she has been in Possession for the requisite number of years.
13. The ingredients of Adverse Possession were recently discussed by the Court of Appeal in the case of *Mtana Lewa v Kabindi Ngala Mwangandi* [2005] eKLR where it was held that:

“Adverse Possession is essentially a situation where a person takes Possession of land, asserts rights over it and the person having title to it omits or neglects to take a action against such person in assertion of his title for a certain period, in Kenya 12 years.”
14. It is also a well settled principle that a party claiming Adverse Possession ought to prove that this Possession was “nec vi, nec clam, nec precario,” that is, peaceful, open and continuous. The possession should not have been through force, no secrecy and without the authority or permission of the owner.
15. The Plaintiff must show that she has been in continuous possession of the land for 12 years or more and that such possession has been open to the knowledge of the owner and further that she has asserted a hostile title to the owner of the property.
16. In the instant case, I have perused the pleadings and I do find that the Plaintiff has indeed proved on a balance of probabilities since he has been in open and uninterrupted possession of the suit property for a period of over 24 years since judgment was delivered.
17. The Plaintiff’s application remains uncontroverted and from the evidence provided, it is clear that the Defendant has never been interested in the suit property since he never took steps to execute the said judgment.
18. In view of the foregoing, I do find that the Plaintiff has proved his case on a balance of probabilities and I do grant orders that:

The Plaintiff now has overriding interest under section 28(h) and (j) of *Land Registration Act, 2012* (Cap 284) Laws of Kenya of the land parcel L.R No. Lembus/Sigoto Extension/3 which she occupies.
19. The Plaintiff is in adverse possession of the parcel of land known as L.R No. Lembus/Sigoto Extension/3
20. This court does hereby vest the suit land L.R No. Lembus/Sigoto Extension/3 to the Plaintiff.
21. The Defendant is hereby ordered to execute the necessary conveyance documents to effect the registration of the Plaintiff as the proprietor of the suit land. Failure to execute, the Deputy Registrar is at liberty to sign all documents to transfer the rights and interests to the Plaintiff upon L.R No. Lembus/Sigoto Extension/3. Each party shall bear its own costs. It is so ordered.

JUDGMENT DATED, SIGNED AND DELIVERED VIA EMAIL ON THIS 27TH DAY OF APRIL 2023

A.O. OMBWAYO



JUDGE

