



**Gicheha v Kochella & 2 others (Environment & Land Case
E017 of 2022) [2023] KEELC 17124 (KLR) (27 April 2023) (Judgment)**

Neutral citation: [2023] KEELC 17124 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E017 OF 2022**

EK WABWOTO, J

APRIL 27, 2023

BETWEEN

ESTHER NJERI GICHEHA PLAINTIFF

AND

GIDEON KOCHELLA 1ST DEFENDANT

TOKITOK COMPANY LIMITED 2ND DEFENDANT

THE LAND REGISTRAR, NAIROBI 3RD DEFENDANT

JUDGMENT

1. The plaintiff filed this suit by an originating summons dated 4/05/2022 claiming ownership of Land Reference Number Nairobi/Block 32 No. 645 by way of adverse possession.
2. The summons are grounded in the supporting affidavit of Njeri Gicheha who stated that she has had peaceful and uninterrupted possession of the land since the year 1991.
3. The defendants were served with the suit documents and the notices for the scheduled dates of pre-trial and hearing, but they failed to defend the suit. The case proceeded as an undefended case.
4. Upon close of the plaintiff's case, the plaintiff filed written submissions dated April 17, 2023 wherein she urged the court to grant her the reliefs sought since the plaintiff had proved her case to the required standard.
5. I have considered the pleadings, the record and the submissions and I find that the issue for determination is whether the plaintiff has met the criteria of an adverse possessor in respect of Land Reference Number Nairobi/Block 32 No. 645 by way of adverse possession.
6. In *Salim v Boyd and another* [1971] E.A 550, it was held that for a claimant of land by adverse possession to succeed, he must prove that he has been in open, continuous and uninterrupted



occupation of the land for a period of 12 years or more. In *Kimani Ruchine & another v Swift, Rutherford Co. Ltd. & another* (1977) KLR 10 Kneller J. stated as follows at page 16:

“The plaintiffs have to prove that they have used this land which they claim as of right, *nec vi, nec clam, nec precario* (no force, no secrecy, no evasion)The possession must be continuous. It must not be broken for any temporary purposes or by any endeavours to interrupt it or by any recurrent consideration.”

7. In *Celina Muthoni Kitthinji v Safiya Binti Swaleh & 8 others* [2018] eKLR, the court explained the conditions to be met for one to prove an entitlement in adverse possession. The court proceeded to quote various authorities which explain the entitlement and I wish to borrow fully from the decision and capture it as hereunder;

“The requirements for Adverse Possession in Kenya has also been set out in the case of *Mbira v Gachubi* (2002) I EALR 137 in which the court held that:

.....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 statutory prescribed period without interruption....”

8. In the case of *Mtana Lewa v Kabindi Ngala Mwangandi*- COA MALINDI (2015) eKLR 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 action against such person in assertion of his title for a certain period, in Kenya 12 years.”

9. A perusal of the record reveals that the 2nd defendant is the registered owner of the suit land and the 1st defendant is its Director. As already stated the defendants never filed a defence, they did not adduce any evidence during trial. In the case of *Shaneebal Limited v County Government of Machakos* (2018) eKLR, the court cited the case of *Janet Kaphiphe Ouma & Anor v Marie Stopes International (Kenya)* Kisumu HCCC No 68 of 2007, and held that:

“In this matter apart from filing its statement of defence, the defendant did not adduce any evidence in support of assertions made therein. The evidence of the 1st plaintiff and that of the witness remain uncontroverted.”

10. In essence the evidence tendered by the plaintiff remained unchallenged.

11. In light of the above I find that plaintiff's claim is merited and I proceed to give the following orders;

- a. It is hereby declared that the plaintiff Esther Njeri Gicheha is entitled to be the registered owner as proprietor of the whole of the Land Reference Number Nairobi/Block32/ Parcel No. 645 by way of adverse possession.
- b. The 2nd defendant shall transfer the suit property to the plaintiff within 30 days from the date of service of a copy of this judgment and a decree extracted therefrom in default of which the Deputy Registrar of this court is authorized to execute all documents necessary to effect the transfer of the suit property to the Plaintiff.
- c. Each party to bear their own costs of the suit.



DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27TH DAY OF APRIL, 2023

E. K. WABWOTO

JUDGE

In the Presence of;-

N/A for the Plaintiff.

N/A for the Defendants.

Court Assistant; Caroline Nafuna.

