



**Njoroge v Halima (Environment & Land Case E002 of 2022)  
[2023] KEELC 17107 (KLR) (27 April 2023) (Judgment)**

Neutral citation: [2023] KEELC 17107 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT & LAND CASE E002 OF 2022**

**A OMBWAYO, J  
APRIL 27, 2023**

**BETWEEN**

**CICILIA WAIRIMU NJOROGE ..... PLAINTIFF**

**AND**

**CHEROTICH HALIMA ..... DEFENDANT**

**JUDGMENT**

**Brief facts**

1. The Plaintiff filed the originating summons herein against the Defendants on 15/02/2022 under Sections 37 and 38 of the *Limitation of Actions Act* and Rule 7 of the *Civil Procedure Rules* 2010 claiming to be in adverse possession of Dundori Muguathi Block 2/365 the suit property herein. She prays for the following orders:
  1. A declaration that the Plaintiff is entitled to be registered forthwith as the owner of Dundori Muguathi Block 2/365 which the Plaintiff has been in adverse possession for more than twelve (12) years immediately preceding the presentation of this suit and on which they have lived openly and continuously as of right and in adverse possession and without any interruption from the Defendant or her predecessors or agents or servants in the above title and that the Defendant title Dundori Muguathi Block 2/365 has been extinguished in favour of the Plaintiff under Section 37 and 38 of the *Limitation of Actions Act* Chapter 22 of the laws of Kenya.
  2. That the Defendant do transfer Dundori Muguathi Block 2/365 to the Plaintiff and in default the Deputy Registrar of the court be authorized to do and or sign all documents to effect transfer of Dundori Muguathi Block 2/365 to the Plaintiff herein.
  3. That the restriction registered against the title on 2nd October, 2001 be removed by this court.



4. That costs of this suit be provided for.
2. The application is based on grounds that the Plaintiff has since been in continuous, uninterrupted and open occupation of the suit land for more than twelve (12) years. The Plaintiff has developed residential houses and the rest of the land is used for agricultural purposes.
3. The application was supported by the affidavit of Cicilia Wairimu Njoroge the Plaintiff herein.
4. She states that she has been residing in the suit property since 1982 to date. She further states that she has been using the land openly and continuously without any interruption for agricultural purposes.
5. She states that the suit land is her property and that the Defendant's title document has no legal effect. She adds that she has been in exclusive use and control of the suit property and that the Defendant has not used any part of the land for more than 35 years.
6. She urges the court to remove the restriction placed against the title on 2<sup>nd</sup> October, 2001 and allow transfer of the land to herself. She states that Peter Kipkoech Meli who was an original shareholder of the share giving rise to the suit land confirmed her occupation for more than 12 years prior to filing this suit.

### **Response**

7. The Defendant did not file any response to the application despite service by way of substitution in the newspaper as ordered by this court on 16<sup>th</sup> March, 2023.

### **Submissions**

8. The Plaintiff filed her submissions dated 28<sup>th</sup> March, 2023 on 29<sup>th</sup> March, 2023. She gave a brief background of the case and submitted that the first question for consideration is whether the Plaintiff herein has established a prima facie case for the court to grant the orders sought.
9. She relied on Section 7 and 38 (1) and (2) of the Limitation of Actions Act and the Court of Appeal case of *Kasuve v Mwaani Investments Limited & 4 Others* 1 KLR 184 among other cases. The Plaintiff submitted that she has been on the suit land since 1982 to date and she has never been dispossessed of the suit land.
10. The Plaintiff submitted that the photographs attached show that she has been on the suit land and using it in a manner that a reasonable person would conclude that she is the owner of the suit land. She added that the Defendant was issued with the title deed of the suit property on 4<sup>th</sup> September, 1997 but she never entered the property or dispossess the Plaintiff of the land. She submitted that she has proved her case on a balance of probabilities as she has shown that she has been in continuous and uninterrupted occupation of the suit land for more than 12 years thus entitled to the orders sought.
11. The Plaintiff relied on Section 27 of the Civil Procedure Act and urged the court to award her costs of the suit.

### **Analysis and Determination**

12. 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.
13. 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.

14. 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.”

15. 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.
16. 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.
17. In the instant case, I do find that the Plaintiff has proved on a balance of probabilities that she was in possession of the suit properties from the year 1982 to date without any interruption which is a period of about 40 years.
18. The Plaintiff’s application remains uncontroverted and from the evidence of the annexed photograph, the Plaintiff has since erected a dwelling house on the suit land and has remained in possession.
19. In view of the foregoing, I do find that the Plaintiff has proved her case on a balance of probabilities and I do grant orders that:
20. The Plaintiff now has overriding interest under section 28(h) and (j) of *Land Registration Act*, 2012 (Cap 284) Laws of Kenya the of the land parcel Dundori Muguathi Block 2/365 which she occupies. The Plaintiff is in adverse possession of the parcel of land known as Dundori Muguathi Block 2/365. This court does hereby vest the suit land Dundori Muguathi Block 2/365 to the Plaintiff. The Deputy Registrar is hereby directed to sign all documents to transfer the rights and interests to the Plaintiff upon Dundori Muguathi Block 2/365. Each party shall bear its own costs. It is so ordered.

**JUDGMENT DATED, SIGNED AND DELIVERED VIA EMAIL ON THIS 27<sup>TH</sup> DAY OF APRIL 2023**

**A.O. OMBWAYO**

**JUDGE**

