



Gitau (Suing through his attorney David Gitau Burugu) v Githura (Environment & Land Case E031 of 2021) [2023] KEELC 17868 (KLR) (29 May 2023) (Judgment)

Neutral citation: [2023] KEELC 17868 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE E031 OF 2021**

BM EBOSO, J

MAY 29, 2023

BETWEEN

**WILSON BURUGU GITAU (SUING THROUGH HIS ATTORNEY DAVID
GITAU BURUGU) APPLICANT**

AND

MBURU GITHURA RESPONDENT

JUDGMENT

1. On 28/9/2021, the applicant, Wilson Burugu Gitau, took out an originating summons dated 23/9/2021 under, among other provisions of the law, Sections 17, 18, 37 and 38 of the *Limitation of Actions Act*. He invited the court to determine the following questions:
 - i. Whether the applicants is entitled to the ownership of the parcel of land known as Plot Number Limuru/Rironi/T.84 “A” measuring 0.12 acres by virtue of adverse possession of land.
 - ii. Whether the applicant as the occupant of the said parcel of land namely Plot Number Limuru/ Rironi/T.84 “A” measuring 0.12 acres entitled to be duly registered as the proprietor of the same.
 - iii. Whether the applicant is entitled to costs of this application.
2. The original summons was amended on March 1, 2023 to bring on board the applicant’s duly appointed Attorney, Mr David Gitau Burugu. The amendment followed leave granted to the applicant on February 28, 2023.



3. The applicant prayed for judgment for:
 - a. A declaration that the applicant is entitled to the parcel of land known as Plot Number Limuru Rironi/T.84 “A” measuring 0.12 acres by virtue of adverse possession.
 - b. An order directing the Land Registrar, Kiambu, to register the applicant as the proprietor of the parcel of land known as Plot Number Limuru Rironi/T.84 “A” measuring 0.12 acres.
4. The case of the applicant is that he was raised up on, and currently owns, land parcel number Limuru/Rironi T85. Abutting the said parcel of land is land parcel number Limuru/Rironi/T.84 “A” [hereinafter referred to as “the suit property”]. He has been in adverse possession of the suit property since the year 1969. It is his case that the title of the registered proprietor of the suit property, one Mburu Githura [the respondent], has been extinguished by dint of his adverse possession of the said parcel of land. He urges the court to find so and grant him vesting orders.
5. On May 25, 2022 this court granted the applicant leave to effect service of summons on the respondent through a notice in either the Daily Nation or the Standard Newspapers. An affidavit of service sworn by Lucy W Ngigi on June 1, 2022 was subsequently filed indicating that service of summons was effected upon the respondent through a prominent notice published in the Standard Newspaper Edition of June 14, 2022. The respondent did not, however, enter appearance.
6. Consequently, this suit was heard as an undefended cause on March 7,2023. The plaintiff led evidence by David Gitau Burugu [the plaintiff’s attorney]. He adopted the contents of his affidavit dated March 1,2023 and his witness statement dated March 1,2023. He similarly adopted the affidavit of the applicant dated September 23, 2021. In summary, the evidence contained in the two affidavits and in the witness statement is a restatement of the applicant’s case as summarized above. PW1 produced the following 6 documents:
 1. Copy of the Power of Attorney registered on January 9, 2023.
 2. Copy of the Applicant’s National Identity Card
 3. Copy of the Attorney’s National Identity Card
 4. Copy of Certificate of Confirmation of Grant
 5. Copy of Search Certificate
 6. Copy of Survey Report by Arc World Surveys
7. The applicant subsequently filed written submissions dated March 7,2023 through M/s Waithera Ngigi & Company Advocates. Relying on the decision in *Jackson Kabiri Karuru v Mary Njoki Njuguna* [2020] eKLR and *Jennifer Gakui Kroni v Solomon Ndotono & another*[2013] eKLR, counsel urged the court to find that the plaintiff has acquired title to the suit property through adverse possession and grant him vesting orders.
8. I have considered the originating summons, the evidence tendered in support of the originating summons, and the submissions tendered in support of the originating summons. The originating summons is an uncontested cause. Consequently, the only question that falls for determination is whether the applicant has satisfied the criteria upon which the title of a registered proprietor of land is extinguished under Section 17 of the *Limitation of Actions Act*.



9. In *Kimani Ruchine v Swift Rutherford & Co Ltd* [1980] KLR, the court outlined the following essential elements that must be established before an applicant is adjudged to have acquired title through adverse possession:

“the plaintiffs have to prove that they have used this land which they claim, as of right; nec vi nec clam, nec precario so the plaintiffs must show that the company had knowledge (or he means of knowing, actual or constructive) of the possession or occupation. The possession must be continuous. It must not be broken for any temporary purpose or by any endeavour to interrupt it or by any recurrent consideration.”

10. In the present suit, the applicant tendered unconverted evidence indicating that he has been in adverse possession of the suit property since 1969 without any interruption. In the absence of any controverting evidence, the court finds that the plaintiff has satisfied the criteria upon which the title of a registered proprietor of land is extinguished and the criteria upon which an adverse possessor acquires title to land.

11. Consequently, the court finds that the applicant is entitled to ownership of land parcel number Limuru/Rironi/T.84 “A” and that he is entitled to be registered as the proprietor of the said land under Section 38 of the *Limitation of Actions Act*. As a result of the above findings, the court issues the following disposal orders:

- a. A declaration that the applicant is entitled to Parcel Number Limuru Rironi/T.84 “A” measuring 0.12 acres by virtue of adverse possession.
- b. An order directing the Land Registrar, Kiambu, to register the applicant as the proprietor of the land parcel number Limuru Rironi/T.84 “A” measuring 0.12 acres.
- c. There shall be no order as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 29TH DAY OF MAY 2023

B M EBOSO

JUDGE

In the Presence of: -

Mr Jumbale holding brief for M/s Ngigi for the Plaintiff

Court Assistant: Hinga/Osodo

