



**Matheka v Wambugu & another (Legal representatives of the Estate of Samuel Wambugu Ngunyi)
(Environment & Land Case E007 of 2021) [2023] KEELC 17665 (KLR) (22 May 2023) (Judgment)**

Neutral citation: [2023] KEELC 17665 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE E007 OF 2021
MN GICHERU, J
MAY 22, 2023**

BETWEEN

CATHERINE BETTY MATHEKA PLAINTIFF

AND

ILEEN MAITHA WAMBUGU 1ST DEFENDANT

FAITH NJAMBI WAMBUGU 2ND DEFENDANT

**LEGAL REPRESENTATIVES OF THE ESTATE OF SAMUEL WAMBUGU
NGUNYI**

JUDGMENT

1. The Plaintiff seeks the following reliefs against the Defendants.
 - (a) A declaration that the title of Samuel Wambugu Ngunyi to land Parcel No Kajiado/Kaputiei-North/3138 Kajiado County, suit land, has been extinguished by the Plaintiffs adverse possession thereof for a period of more than 12 years in terms of the [Limitation of Actions Act](#).
 - (b) A declaration that the Defendants' title to the suit land has been extinguished by operation of law and that the Plaintiff be registered owner thereof under Section 38 of Cap 22 under the doctrine of adverse possession in place of the Defendant accordingly.
 - (c) An order that the Plaintiff has become entitled by adverse possession to the suit land and registered under the [Land Act](#) in the name of the Defendant.
 - (d) An order that the Land Registrar Kajiado registers the Plaintiff as the absolute proprietor of the suit land in place of the Defendant.
 - (e) An order that the Land Registrar Kajiado be directed that the order herein shall be an instrument of transfer of ownership of the whole suit land from the Defendant to the Plaintiff.



- (f) Costs of be provided for.
2. The Plaintiffs' case is as follows. In the year 1996, the Defendants' father Samuel Wambugu Ngunyi borrowed some money from the Plaintiff's father one Ainsworth Matheka Kioko. Both the borrower and the lender are now deceased.
 3. The Defendants' father never repaid the loan advanced to him by the Plaintiff's father. Instead, the Plaintiff's father occupied the suit land in the year 1999. He fenced the land. In the year 2000, he took the Plaintiff to the land and told her to occupy it. Together with her father, they appointed a caretaker one Richard Macharia who practiced farming on the land.
 4. In the year 2008, the Plaintiff's father passed away. She has all this time continued with occupation of the suit land and build temporary and semi-permanent structures as well as rearing livestock thereon.
 5. A search carried out in the office of Land Registrar Kajiado on 1/12/2020 revealed that the suit land is still registered in the name of the deceased. In succession cause No 2120 of 2005 relating to the estate of Samuel Wambugu Ngunyi, now deceased, the suit land was not included as part of his estate. The Defendants do not recognize the suit land as part of their father's estate. It is for the above stated reasons that the Plaintiff prays for the above orders.
 6. In support of her case, the Plaintiff filed the following evidence.
 - (a) Affidavits by herself and Richard Kanini Macharia dated 8/7/2020.
 - (b) Copy of certificate of official search for the suit land dated 1/12/2020.
 - (c) Copy of certificate of confirmation of grant in Nairobi Succession Cause No 2120 of 2005.
 - (d) Four black and white photographs showing some structures on some land.
 7. The Defendants, though served with the originating summons, the affidavits and the exhibits did not defend the summons. They did not file any replying affidavits. They did not even enter appearance.
 8. At the trial on 7/6/2022, the Plaintiff testified by producing her evidence and asking the court to allow her claim. Counsel for the Plaintiff filed written submissions dated 9th November, 2022 and raised only two issues namely;
 - (i) Whether the Plaintiff has met the threshold for the grant of the orders of adverse possession?
 - (ii) Who should bear the costs for the suit?
 9. I have carefully considered all the evidence adduced in this case by the Plaintiff including the affidavits, exhibits and submissions. I have also borne in mind the burden on the Plaintiff to establish her claim on a balance of probabilities. I find that the Plaintiff has proved that she is entitled to the suit land through adverse possession for the following reasons.
 10. Firstly, the Plaintiff has proved that she has been in continuous occupation of the suit land from the year 2000. This was a period of 20 years at the time of filing of the suit. This is more than the period of twelve (12) years required by Section 7 of the *Limitation of Actions Act*.
 11. Secondly, the occupation by the Plaintiff and her father of the suit land, was with the knowledge of the registered owner and later with the knowledge of his family members who excluded the suit land from the estate of the deceased when they filed succession cause No 2120 of 2005 in Nairobi.
Finally the occupation by the Plaintiff has been open and as of right. The Plaintiff has not only occupied the land but also cultivated on it, grazed livestock thereon and constructed structures.



12. In short, all the ingredients of adverse possession as enunciated in the case of *Mtana Lewa v Kabindi Ngala Mwangadi* [2015] eKLR exist in this case.

For the above stated reasons, I enter judgment for the Plaintiff as prayed for in the originating summons dated 8th July, 2021.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 22ND DAY OF MAY, 2023.

M.N. GICHERU

JUDGE

