



**Ntarangwi (Suing as the legal representative of the Estate of the Late Robert Ringera M’Kirinya alias Ntarangwi) v M’Tuerandu & 8 others (Environment & Land Case E027 of 2021) [2023] KEELC 18291 (KLR) (21 June 2023) (Judgment)**

Neutral citation: [2023] KEELC 18291 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT & LAND CASE E027 OF 2021**

**CK YANO, J  
JUNE 21, 2023**

**BETWEEN**

**JOSHUA MUTWIRI NTARANGWI (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF THE LATE ROBERT RINGERA M’KIRINYA ALIAS NTARANGWI) ..... PLAINTIFF**

**AND**

**GLADYS NGATHI M’TUERANDU ..... 1<sup>ST</sup> DEFENDANT  
VERONICA NAINI M’TUERANDU (SUED AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF THE LATE MUTUERANDU MURAGA) ..... 2<sup>ND</sup> DEFENDANT  
MUTUMA M’TUERANDU ..... 3<sup>RD</sup> DEFENDANT  
MWENDA M’TUERANDU ..... 4<sup>TH</sup> DEFENDANT  
SABINA KARIMI ..... 5<sup>TH</sup> DEFENDANT  
NJAGI MUTWIRI ..... 6<sup>TH</sup> DEFENDANT  
ELIZABETH GAKANA NJUE ..... 7<sup>TH</sup> DEFENDANT  
DAVID MUTWIRI M’TUERANDU ..... 8<sup>TH</sup> DEFENDANT  
DANIEL MUTHAURA M’ITWERANDU ..... 9<sup>TH</sup> DEFENDANT**

**JUDGMENT**

**Plaintiff’s Case**

1. By an originating summons dated 8<sup>th</sup> November, 2021 and filed in court on even date, the plaintiff is seeking determination of the following questions:-



- i. Has the plaintiff become entitled to title to land parcel Number Kiirua/Ruiri/827 under the doctrine of adverse possession?
  - ii. Has the title of the registered owner of land Parcel No. Kiirua/Ruiri/827 been extinguished?
  - iii. Is the plaintiff entitled to transfer of land parcel number Kiiru/Ruiri/827 for the benefit of the estate and dependents of the late Robert Ringera M’Kirinya alias Ntarangwi?
  - iv. Should the executive officer of this Honourable court be empowered to execute the necessary documents for conveyance of land parcel number Kiirua/Ruiri/827.
  - v. Ought the defendants and their agents or servants to be permanently enjoined from entering land parcel number Kiirua/Ruiri/827 or in any other manner interfering with the plaintiff’s occupation thereof.
  - vi. What is the order as to costs?
2. The summons is supported by the evidence and facts set out in the supporting affidavit of Joshua Mutwiri Ntarangwi, the plaintiff herein sworn on 8<sup>th</sup> February, 2021 and a further affidavit sworn on 10<sup>th</sup> December, 2021.
  3. The plaintiff states that he is the personal representative of the estate of the late Robert Ringera M’kiriinya alias Ntarangwi and has annexed and marked “JMNI” a copy of the grant of letters of administration issued to him. That the 1<sup>st</sup> and 2<sup>nd</sup> defendants are the widows and personal representative of the late Mutwerandu Muraga alias M’Twerando M’Muraa and has annexed and marked ‘JMN 11” a copy of the grant issued in their favour.
  4. The plaintiff avers that the suit relates to land parcel No. Kiirua/Ruiri/827 registered in the name of the late Mutwerandu Muraga alias M’twerando M’muraa and has annexed a copy of the register marked “JMN III.”
  5. The plaintiff states that he knows that his deceased father bought the said land in the early 1970s and has annexed copies of the sale agreements and the transactions thereof marked “JMN IV.”
  6. The plaintiff further states that his father paid the agreed purchase price and took possession of the land and extensively developed the same and that his father continued in open, exclusive and uninterrupted possession of the land.
  7. The plaintiff further avers that unfortunately the registered owner of the land died before transferring title to his father. That his father also died before transfer of the land to his name. That the plaintiff and his siblings continued with the said occupation of the land as they had always done even during their father’s lifetime.
  8. The plaintiff states that he believes that the registered owner’s title to the land has been extinguished and that he is entitled to be registered as the owner thereof on behalf and for the benefit of the estate and dependents of his late father Robert Ringera M’kiriinya alias Ntarangwi.
  9. The plaintiff states that the defendants have started laying a claim to the land and have threatened to effectively prevent them from accessing the same.
  10. The plaintiff further states that in addition to the suit land his father also bought land that is comprised in title number Kiirua/Ruiri/1315 measuring about 6 acres from the deceased which was duly transferred to the plaintiff’s father and which land adjoins the suit land.



11. The plaintiff states that in the year 2004, the 8<sup>th</sup> Defendant purported to bring a claim against them claiming that the plaintiff's family had trespassed on land parcel No. Kiirua/ruiri/1315 and a copy of the claim has been annexed. It is stated that the said claim was abandoned.

### **Defendant's Case**

12. The summons were opposed by the defendants vide the replying affidavits sworn by the 1<sup>st</sup> and 2<sup>nd</sup> defendants on 2<sup>nd</sup> December, 2021. The defendants also filed a statement of defence dated 19<sup>th</sup> April 2022.
13. The defendants who are wives and children of Mutwerandu Muraga (deceased) admit that the deceased is the registered and beneficial owner of land parcel no. KIIRUA/RUIRI/827. They aver that they have always had possession and use of the suit land and are still in occupation and use and state that the plaintiff is not in occupation.
14. The defendants aver that the plaintiff's late father bought land parcel No. Kiirua/Ruiri/1315 which borders the suit land from Mutwerandu Muraga (deceased). That when the plaintiff's late father was taking possession of parcel No. Kiirua/Ruiri/1315, he trespassed on about ¼ acre of the suit land. It is the defendants' contention that the plaintiff has not been in occupation of the suit land and that he intends to use this court to enter the land and perpetuate an illegality by claiming to be entitled to ownership by prescription. The defendants aver that whatever the land the plaintiff's father bought from Mutwerandu Muraga was transferred to him and took possession thereof. The defendants urged the court to dismiss the plaintiff's suit with costs.

### **Plaintiff's Evidence**

15. At the hearing, the plaintiff testified as P.w 1 and called two witnesses in support of his case. The plaintiff relied on the supporting affidavit and further affidavit and adopted his witness statement as his evidence in chief. He also produced copies of the register, land sale agreement, Grant of letters of administration and photographs and claim forms as exhibits and was cross examined and re-examined.
16. It is the plaintiff's evidence that they have been living on the suit land since 1974 and have never surrendered possession. That the defendants invaded the land on 29<sup>th</sup> September, 2021 prompting the institution of this suit. The plaintiff denied utilizing only ¼ of an acre. He stated that the defendants are his neighbours.
17. The plaintiff testified that his father's land is parcel No. 1315 which was registered in his father's name in the 1980's. That the said land was sold and transferred to his father by Mutuerandu Muraga who was the defendants' father. That Parcel No. 1315 is different from the suit land. He did not have an agreement for sale of the land that was transferred. He stated that his father died in the year 2002 while the seller died in December, 1998. He was not aware if his father sued Mutwerandu Muraga before his death.
18. The plaintiff testified that before this matter came to court, the dispute went to the Njuri Ncheke elders who found that the defendants were on their father's land. He stated that his compound is in both parcel No. 827 and 1315.
19. Pw 2 was Simeon Nkunja M'Itwerandu. The court noted that he was present in court when Pw 1 was testifying. He stated that the plaintiff was his neighbor while the 2<sup>nd</sup> defendant is his mother and the other defendants are his siblings. He stated that their father left them with land parcel No. 1566 where they are living. He adopted his witness statement dated 9<sup>th</sup> May 2022 as his evidence in chief and was cross- examined. He states that he knew that the plaintiff's father was always in occupation of the



suit land. In his statement, he further stated that on 29<sup>th</sup> December, 1997 their father called a family meeting in which he informed them that the suit land belonged to the plaintiff's father. He however admitted that the dispute over the suit land was not new.

20. Pw 3 was Douglas Mwiti who stated that he knew the plaintiff but not the defendants. He adopted his witness statement dated 9<sup>th</sup> May 2022 as his evidence in chief and was cross-examined. He testified that in 1974 the plaintiff's father called him as a witness over the booklet produced by the plaintiff as an exhibit and that he witnessed the payment of the balance of kshs. 700/= . He however did not know the parcel number.

### **Defendants' Evidence**

21. The 9<sup>th</sup> defendant testified as DW 1 and adopted his statement dated 19<sup>th</sup> April 2022 as his evidence - in- chief and was cross- examined and re-examined. He stated that the defendants are on the suit land and denied that the plaintiff lives on it, adding that the plaintiff occupies a portion measuring 0.25 acres. He further stated that the plaintiff has fenced his portion where his homestead is. Dw 1 pointed out that there was a complaint they made to the tribunal over the portion the plaintiff had encroached. That his father sold and transferred parcel No. 1315 to the plaintiff's father and therefore the plaintiff has no basis for claiming parcel No. 827.
22. Dw 1 stated that the transfer of Parcel No. 1315 to the plaintiff's father was done in 1981 and wondered why the same was not done for parcel No. 827 which is alleged to have been bought in 1973. Dw 1 further stated that his father died in 1997, but was not aware when the plaintiff's father passed on, though it was before 1997. He further stated that the plaintiff's father never claimed the suit land.
23. When he was cross-examined by Mr. Ringera, learned counsel for the plaintiff, Dw 1 stated that he is 43 years old and that when he was born the plaintiff's father was living on a portion of the land where the plaintiff is, but did not know if the plaintiff's mother was buried thereon, though he said he could see some graves. He stated that he was aware that the plaintiff's grandfather, stepmother and wife were buried thereon. He admitted that they never took any steps to remove the plaintiff's family.
24. Dw 1 however testified that there is a time they went to the tribunal to have the plaintiff removed from the suit portion of land. He denied that his father sold 4 acres to the plaintiff's father. He stated that he is farming on parcel No. 827 and was doing so even before the issuance of a court order herein.
25. Dw 1 testified that Pw 2 who is his brother wanted to be the next of kin but they refused because they had their mother and that made Pw 2 annoyed and testified in favour of the plaintiff. He clarified that the graves he mentioned are on the portion that the plaintiff is occupying and not on parcel No. 827. He referred to a prohibitory order issued in case No. 64 of 1980 and which he stated was still in force.
26. Dw 2 was Francis Manyara who adopted his statement dated 19<sup>th</sup> April 2022 as his evidence-in-chief and was cross-examined and re-examined. He testified that he is the chairman of Njuri Ncheke Ruiru shrine and stated that they wrote a report which he produced as D exhibit. He stated that the defendants are the ones on the suit land and not the plaintiff. That he knew the two families well. According to Dw 2, the suit land belongs to the defendants.
27. Dw 3 was Mohamed Ibrahim who also testified that it is the defendants who are farming the suit land. He stated that he knew the two deceased persons well.
28. Gladys Ngathi M'tuerandu who is the 1<sup>st</sup> defendant testified as Dw 4 and adopted her witness statement dated 19<sup>th</sup> April 2022 as her evidence in chief and was cross examined and re-examined. She stated that the plaintiff was not living on the suit land but only came recently. She however admitted



that Robert Ringera (deceased) lived there and was buried on that land together with other family members.

29. Dw 5 was Veronica Naine who also adopted her witness statement as her evidence-in-chief and was cross-examined and re-examined. She is the last wife of the late Mutwerandu and testified that when she got married, she found the plaintiff's deceased father living on the land together with his family and was buried thereon together with some of his relatives. It was her evidence that her deceased husband used to ask the plaintiff's deceased father to vacate from the land. She also testified that Pw 2 wanted to be given authority to administer the estate of her late husband but they refused and accused him of not telling the court the truth because of that.
30. James Bundi testified as Dw 6 and testified that he is a neighbour of both parties. He adopted his statement dated 19<sup>th</sup> April 2022 as his evidence-in-chief and was cross-examined and re-examined. The court also noted that the witness was present in court when Dw 4 and Dw 3 and Dw 5 were testifying.

### **Plaintiff's Submissions.**

31. In their submissions dated 8<sup>th</sup> December, 2022, counsel for the plaintiff submitted inter alia that there is overwhelming evidence by the plaintiff that he has proved his case as required. That the plaintiff has proved that he has been in open possession of the suit land and that the defendants have not taken any action to dispossess him of the land. That to-date, no succession cause has been filed in respect of the estate of the deceased proprietor of the land and that the defendants have absolutely no right to interfere with the plaintiff's possession of the land. It is the plaintiff's submission that the said possession remains adverse to the estate of the deceased and urged the court to grant the orders sought. The plaintiff's counsel relied on the case of [\*Wilson Njoroge Kamau Vs Nganga Mucheru Kamau\* \[2020\] eKLR](#), [\*Phyllis Wanjiru Kamau Vs Wilson Gichuhi Gachagwe & 2 others\* \[2019\] eKLR](#), [\*Regina Wanjiru Mwago Vs Lucy Wairimu Gichuhi & 2 others\* \[2019\] eKLR](#), [\*Joseph Kamau Gichuki Vs James Gacheru Mukora\* \[2019\] eKLR](#) and [\*Bedan Maina Njoroge Vs Patrick Ngaruiya\* \[2021\] eKLR](#).

### **Defendant's Submissions.**

32. In their submissions dated 25<sup>th</sup> January, 2023, the advocates for the defendants submitted inter alia, that the plaintiff has never had occupation of the suit land and that the photographs produced were taken on land parcel No. Kiirua/Ruiru/1315 and not on the suit land. That the plaintiff is thus perpetuating an illegality by claiming to be entitled to ownership by adverse possession. That it is not enough for the plaintiff to simply state that he has been in open continuous and uninterrupted occupation and ought to prove that he has occupied the land openly and without the permission of the land owners and with the intention to acquire the land. The defendants counsel relied on the case of [\*Mombasa Teachers Co-operative Savings & Credit Society Limited Vs Robert Muhambi Katana & 15 others\* \[2018\] eKLR](#). That the plaintiff's testimony is that his late father purchased the suit land from the late Mutwerandu Muraga in the early 1970's and paid the purchase price, but the seller died before transferring the land. That if that was the case, why then did the plaintiff's father not file suit before he died? It is the defendant's submission that the plaintiff failed to prove his case and urged the court to dismiss it with costs. Counsel for the defendants relied on the case of [\*Richard Wefwafwa Songoi\* \[2020\] eKLR](#) cited in [\*Wambugu Vs Njuguna\* \(1983\) KLR 173](#).

### **Analysis and Determination**

33. This court has carefully considered the pleadings, the evidence and the submissions filed by the parties to support their respective positions. I have also taken into account the legal authorities cited. The



issues for determination are whether the plaintiff has proved his claim for adverse possession to the required standard and whether the plaintiff is entitled to the reliefs sought.

34. In deciding whether or not the plaintiff has proved his claim of adverse possession, the plaintiff must prove that he has been in occupation of a portion of the suit land for a period of over twelve (12) years; that such occupation was open, peaceful and continuous without interruption from the registered owner and that such occupation was adverse i.e inconsistent with the right of the registered owner.

35. In *Wambugu Vs Njuguna* (1983) KLR 173, the Court of Appeal restated the principles for adverse possession and held as follows-;

“ 1. The general principal is that until the contrary is proved, possession in law follows the right to possess.

2. In order to acquire by the statute of Limitations title to land which has a known owner, that owner must have lost his right to the land either by being dispossessed of it or by having discontinued his possession of it. Dispossession of the proprietor that defeats his title are acts which are inconsistent with his enjoyment of the soil for which he intended to use it. The respondent could and did not prove that the appellant had either been dispossessed or had discontinued possession of the suit land for a continuous statutory period of twelve years to enable him, the respondent, to title to that land by adverse possession.

3. The *limitation of Actions Act*, on adverse possession contemplates two concepts: Dispossession and discontinuance of possession. The proper way of assessing proof of adverse possession would then 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 has been in possession for the requisite number of years”

36. In the case of *Mtana Lewa Vs Kabindi Mwangandi* [2015] eKLR, the Court of Appeal ( Makhandia J.A) stated as follows-;

“ Adverse possession is essentially a situation where a person takes possession of land and 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 is twelve (12) years. The process springs into action essentially by default or inaction of the owner. The essential prerequisites being that the possession of the adverse possessor is neither by force or stealth nor under license of the owner. It must be adequate in continuity, in publicity and in extent to show that possession is adverse to the title owner.”

37. The doctrine of adverse possession is embodied in section 7 of the *Limitation of Actions Act* which provides-;

“ An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or if it first accrued to some person through whom he claims, to that person.”



38. Section 13 of the same *Act* further makes provisions for adverse possession as follows;

- “(1) A right of action to recover land does not accrue unless the land is in possession of some person in whose favour the period of limitation can run (which possession is in this Act referred to as adverse possession), and, where under Section 9, 10, 11 and 12 of this Act a right of action to recover land accrues on a certain date and no person is in adverse possession on that date, a right of action does not accrue unless and until some person takes possession of the land.
- 2) Where a right of action to recover land has accrued and thereafter, before the right is barred, the land ceases to be in adverse possession, the right of action is no longer taken to have accrued, and a fresh right of action does not accrue unless and until some person again takes adverse possession of the land.”

39. Section 38(1) of the *Limitation of Actions Act* provides that-;

- “(1) ) Where a person claims to have become entitled by adverse possession to land registered under any of the acts cited in Section 37 of this act, or land comprised in a lease registered under any of those acts, he may apply to the High court for an order that he be registered as the proprietor of the land or lease in place of the person then registered as proprietor of the land.”

40. Order 37 Rule 7 of the Civil Procedure Rules states that

- “(1) An application under Section 38 of the *Limitation of Actions Act* shall be made by originating summons.
- (2) The summons shall be supported by an affidavit to which a certified extract of the title to the land in question has been annexed.
- (3) The court shall direct on whom and in what manner the summons shall be served.”

41. I have looked at the material on record. From the evidence adduced, it is not in dispute that the plaintiff's deceased father purchased land parcel No. Kiirua/Ruiru/1315 from the late Mutwerandu Murage (deceased) and the land was transferred to him and he took possession. That land borders the suit land herein. The defendants allege that while the plaintiff's late father was taking possession of the suit land which was sold and transferred to him, he trespassed on a portion of the suit land. From the evidence on record, it is clear that there were disputes before the tribunal and the Njuri Ncheke elders over the portion that is said had been trespassed on. Going by the threshold set out for adverse possession, it is my view that the plaintiff cannot claim to have had quiet possession when the material on record clearly confirm that there were disputes for trespass.

42. Moreover, the plaintiff in his evidence, especially the affidavit in support of the summons the plaintiff avers that his deceased father bought the suit land from the late Mutwerandu Muraga alias M'Twerando M'Muraa (deceased) and that he took possession. Again, if that were the case, it is apparent that the plaintiff's possession and occupation was with the permission of the registered owner. However, there was no evidence to support the alleged sale. It is also worth noting that the plaintiff's late father never filed any suit during his lifetime claiming the suit land. The question that arises and as rightly submitted by the defendants, one wonders why the plaintiff's father never made



any claim over parcel No. 827 which he is said to have purchased in about the year 1973 yet the sale and transfer of parcel No. 1315 was effected much later in 1981.

43. Based on the threshold set out for adverse possession, I am not convinced that on a balance of probabilities the plaintiff has proved his case. In my view, there appears to be a long outstanding dispute over the boundaries of the suit land No. Kiirua/Ruiriri/1315 which was sold and transferred to the plaintiff's father and parcel No. Kiirua/Ruiriri/827 also registered in the name of the late Mutwerandu Muraga alias M'Twerando M'Muraa. It is a settled principle that a party claiming adverse possession ought to prove that his possession was "nic vic, nec clam, nec precario" that is peaceful, open and continuous. From the material on record, it is clear that in this case, the plaintiff and the defendants are neighbours and share boundaries and have had disputes with one another for a while. Therefore, the claim of adverse possession cannot succeed since the alleged possession and occupation of the suit land has not been peaceful and quiet. It is therefore my finding that the plaintiff has failed to bring himself within the limits of the doctrine of adverse possession.
44. Consequently, it is my finding that the plaintiff's claim is without merit and must fail. The plaintiff's suit is dismissed with costs to the defendants.
45. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT MERU THIS 21<sup>ST</sup> DAY OF JUNE 2023**

In The Presence of

Ringera for plaintiff

Mutuma for defendant

**C.K YANO**

**JUDGE**

