



**Muguti v Soreh (Environment & Land Case E001 of 2022)
[2023] KEELC 18101 (KLR) (14 June 2023) (Judgment)**

Neutral citation: [2023] KEELC 18101 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE E001 OF 2022**

CK YANO, J

JUNE 14, 2023

BETWEEN

JAMES MUREGA MUGUTI PLAINTIFF

AND

MOSES ESADIAH SOREH DEFENDANT

JUDGMENT

1. The plaintiff filed an originating summons dated 17th January, 2022 expressed under Section 38 of the *Limitation of Actions Act*, Order 37 Rule 7 of the *Civil Procedure Rules* and Sections 3 and 3A of the *Civil Procedure Act* claiming to be entitled to land parcel No Abothuguchi/Igane/1032 measuring 4.1 hectares by virtue of adverse possession. The plaintiff pleaded that he has been in occupation of the suit land since 1997 which is a period of more than 12 years and therefore the registration of the defendant as owner has been extinguished.
2. The summons is supported by the affidavit of James Murega Muguti the plaintiff herein in which he deposes that the suit land is registered in the name of the defendant who was initially in occupation of the land but sometimes in the year 1995, he left the area and has not returned since. The plaintiff avers that the suit land became bushy after the defendant's departure and the plaintiff occupied it in 1997 cleared the bush and started cultivating it and has since then been in open exclusive and uninterrupted occupation and made substantial developments thereon, including planting trees, nappier grass, bananas, mangoes, avocado, sugarcane and carrying out subsistence farming and generally developed the land. The plaintiff has exhibited a copy of the records which shows that the suit land is registered in the name of the defendant.
3. The plaintiff testified as PW1 and reiterated the contents of the affidavit in support of summons and stated that since 1995, the defendant has never come to ask the plaintiff to vacate from the land. He urged the court to grant him the orders sought in the originating summons.



4. John Gitonga Meeme, a cousin to the plaintiff testified as PW2 while Consolata Mwitiabi Gituma a neighbor was PW3. They adopted their witness statements dated 11th November, 2021 in which they basically supported the plaintiff's evidence that he has been in occupation and use of the suit land since 1997 and that he has several developments and crops thereon.
5. The plaintiff filed written submissions and relied on decided cases wherein he submitted *inter alia*, that he has proved his case and urged the court to allow the same.
6. Despite service of summons on the defendant, he neither entered appearance nor filed any response to the suit and therefore the suit is undefended.
7. Having considered the pleadings, the evidence and the submissions, the issue for determination is whether the plaintiff is entitled to the orders sought.
8. Adverse possession is a common law doctrine under which a person in possession of land owed by someone else may acquire valid title to it. In Kenya, this doctrine is alive in Section 7 and 17 of the *Limitations of Actions Act* which provide as follows-;
 7. 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.
 17. Subject to Section 18 of this Act, at the expiration of the period prescribed by this Act for a person to bring an action to recover land (including a redemption action) the title of that person to the land is extinguished.
9. The period of twelve years starts to run from the moment the trespasser takes adverse possession of the land and the registered proprietor is regarded as having been dispossessed or having discontinued his possession. (See the Court of Appeal case of *Wambugu v Njuguna* (1983) KLR 173).
10. The ingredients were also discussed by the Court of Appeal in the case of *Mtana Lewa v Kabindi Ngala Mwangandi* [2015] eKLR where it was stated;

“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 as assertion of his title for a certain period, in Kenya it's twelve (12) years. The process springs into action essentially by default or in action of the owner. The essential prerequisites being that the possession of the adverse possessor is neither by force or stealth nor under the 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.”
11. Section 38 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.”
12. In the instant case, there is no dispute that land parcel No Abothuguchi/Igane/1032 measuring approximately 4.1 hectares is registered in the name of the defendant herein. A copy of the records of the land was produced as an exhibit. The plaintiff's case is that the defendant left the land in the



year 1995 and the plaintiff began occupying the land in the year 1997 which is a period of over twelve years and that since then the defendant has never taken any step to have the plaintiff vacate from the land. It is the plaintiff's case that his possession and occupation of the suit land was non permissive, open, exclusive and uninterrupted for all that period. Presented before this court is undisputed and undefended evidence by the plaintiff.

13. From the material presented before this court, I find that the plaintiff has on a balance of probabilities proved that he has adversely remained in possession and occupation of the suit land for more than twelve years to the exclusion of the defendant who is the registered owner. The defendant has certainly lost his rights over the property and the plaintiff has now acquired prescriptive rights over the land by way of adverse possession. The evidence tendered by the plaintiff has not been challenged or controverted.
14. The upshot is that I find the originating summons dated 17th January, 2022 has merit and the same is hereby allowed. The plaintiff is entitled to and should be registered as proprietor of the parcel of land known as Abothuguchi/Igane/1032 by adverse possession.
15. Since the suit was not defended, there is no order as to costs.
16. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MERU THIS 14TH DAY OF JUNE 2023

C.K YANO

JUDGE

In the presence of

Court Assistant – V. Kiragu

Muthomi Njeru holding brief for Mutuma for plaintiff- present

No appearance for defendant

