



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kinyanjui v Gititu & 10 others (Environment & Land Case  
5 of 2022) [2023] KEELC 19151 (KLR) (28 July 2023) (Judgment)**

Neutral citation: [2023] KEELC 19151 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT & LAND CASE 5 OF 2022**

**A OMBWAYO, J**

**JULY 28, 2023**

**IN THE MATTER OF SECTION 38 OF LIMITATION  
OF ACTIONS ACT CAP 22 LAWS OF KENYA**

**AND**

**IN THE MATTER OF A CLAIM FOR ADVERSE POSSESSION  
IN RESPECT OF NJORO NGATA BLOCK 3/300 (NGECHA 'B')**

**BETWEEN**

**PHILLIP NJOROGI KINYANJUI ..... PLAINTIFF**

**AND**

**MARY WANGUI GITITU ..... 1<sup>ST</sup> DEFENDANT**

**DANIEL KINYANJUI GITITU ..... 2<sup>ND</sup> DEFENDANT**

**SERAH NJERI GITITU ..... 3<sup>RD</sup> DEFENDANT**

**FRANCIS GIKONYO KINYANJUI ..... 4<sup>TH</sup> DEFENDANT**

**ANN WANJIRU MWANGI ..... 5<sup>TH</sup> DEFENDANT**

**BENSON KARIRI ..... 6<sup>TH</sup> DEFENDANT**

**SAMUEL MWANGI PAUL ..... 7<sup>TH</sup> DEFENDANT**

**EVANS MONI GITITU ..... 8<sup>TH</sup> DEFENDANT**

**SERAH NJERI GITITU ..... 9<sup>TH</sup> DEFENDANT**

**GRACE WANGARI GITITU ..... 10<sup>TH</sup> DEFENDANT**

**DISTRICT LAND REGISTRAR ..... 11<sup>TH</sup> DEFENDANT**



## JUDGMENT

1. Philip Njoroge Kinyanjui has come to this court against Marh Wangui Gitutu and others seeking orders that the court determine the following issues:-
  1. Whether the Plaintiff has been in adverse possession of the Defendant's Parcel No. Njoro Ngata Block 3/300 (Ngecha 'B') for a period of over 12 years?
  2. Whether the plaintiff should be registered as Proprietors of parcel No. Njoro Ngata Block 3/300 (Ngecha "B")
  3. Whether the Defendants ought to disinherit the plaintiff from all that parcel of land known as Njoro Ngata Block 3/300 (Ngecha "B") measuring 13 acres.
  4. Whether the Defendants have a right to inherit all that parcel of land known as Njoro Ngata Block 3/300 (Ngecha measuring 13 acres.
  5. Whether the defendants have trespassed upon the Plaintiff's parcel of land being a portion of Njoro Ngata Block 3/300 (Ngecha "B" )
  6. Whether the District Land Registrar, Nakuru should be directed to register the Plaintiffs as the Proprietors of Parcel No. Njoro Ngata Block 3/300 (Ngecha in place of the Defendants.
  7. Whether the Defendant should be restrained by an order of injunction from selling, transferring, entering of in any other manner howsoever interfering with the Plaintiffs peaceful use, occupation and or enjoyment of Parcel No. Njoro Ngata Block 3/300 (Ngecha 'B") both pending the hearing of this suit and after the determination hereof.
2. In the supporting affidavit the plaintiff states that the late Serah Mugure Kariri the original proprietor to Njoro Ngata Block 3/300 (Ngecha 'B) was his paternal auntie. That she was not blessed with any children whatsoever during her lifetime. That the late Serah Mugure Kariri unfortunately passed on in the year 1995.
3. That prior to her demise, the late Serah Mugure Kariri acquired ownership of a parcel of land known as Njoro Ngata Block 3/300 (Ngecha 'B') and a copy of the Title Deed issued to her in the year 1979. That prior to her demise, she and one Paul Gititu Kariri now deceased jointly owned the parcel of land. That with regards to the same, upon her demise, his father one Daniel Kinyanjui Kariri took over the proceedings as the administrator. Unfortunately, his father passed on in the year 2008 without the title having reverted back to Serah Mugure's from Paul Kariri's name.
4. That it would be correct to state that Serah Mugure Kariri had no children of her own at the time of her demise. To that effect she put the plaintiff's father in-charge of her assets and even allocated a portion to his father to till. He stayed on the land until his demise in the year 2008.
5. That the plaintiff started living on the land his father had allocated to him in the year 1995 after Serah's death upon his father's instructions to live on the piece of land. He has lived there since 1995. That he has enjoyed the exclusive ownership, possession and use of the said parcel of land since the early 90's until recently when the defendants/ respondents managed to forcefully gain entry into the said parcel of land and carry out acts of trespass on the basis that their father the late Paul Gititu Kariri was the legitimate owner of the suit property herein.



6. That the said acts of trespass include cutting out of trees planted by the 2<sup>nd</sup> applicant and leasing the property to third parties. Subsequently the defendants intend to have the land subdivided at the end of this month being two days away. That the said actions amounts to trespass to land in a blatant attempt to unlawfully dispose him from what is rightfully his.
7. That he has a reason to believe that the defendants intend to dispose of the land, evict the plaintiff and render him homeless, grabbing what legally and rightfully belongs to his family. That presently, people are still going to the land.
8. That they stand to suffer irreparably should they be forcefully evicted since the suit land herein is what they have called their home. That they use the entire suit land to derive their daily sustenance in terms of cultivating and livestock raring. That neither the deceased nor Defendants has ever been in occupation of possession of the land at any moment in time.
9. That the defendants have lost all rights and interest to the land by operation of statute and they stand to be registered as proprietors thereof in her place.
10. The defendants were served but they neither entered appearance nor filed replying defence.
11. I have considered the evidence on record and do find that the plaintiff has proved his case on a balance of probabilities and do grant orders that the Plaintiff has been in adverse possession of the Defendant's Parcel No. Njoro Ngata Block 3/300 (Ngecha \_'B') for a period of over 12 years and the plaintiff should be registered as Proprietors of parcel No. Njoro Ngata Block 3/300 (Ngecha "B"). The District Land Registrar, Nakuru is hereby directed to register the Plaintiffs as the Proprietors of Parcel No. Njoro Ngata Block 3/300 (Ngecha) in place of the Defendants.

**DATED SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 28<sup>TH</sup> DAY OF JULY 2023.**

**A. O. OBMWAYO**

**JUDGE**

