



**Wambaki v Ndungu (The legal representative of the Estate of Ndungu Chege (Deceased)
(Environment & Land Case E028 of 2021) [2023] KEELC 18860 (KLR) (17 July 2023) (Judgment)**

Neutral citation: [2023] KEELC 18860 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENT & LAND CASE E028 OF 2021**

**JG KEMEI, J
JULY 17, 2023**

BETWEEN

REGINA GATETE WAMBAKI PLAINTIFF

AND

**ELIAS CHEGE NDUNGU (THE LEGAL REPRESENTATIVE OF THE ESTATE
OF NDUNGU CHEGE (DECEASED) DEFENDANT**

JUDGMENT

Introduction And Pleadings

1. The Plaintiff filed suit against the Defendant vide an Originating Summons dated the September 22, 2021 and filed on the September 14, 2021 seeking the following orders;
 - a. This Honourable Court be pleased to declare that the Applicant's title to land parcel Ngenda/Mangu/969 has become extinguished by operation of the law and that the Applicant herein has become entitled to the whole parcel of land through adverse possession.
 - b. Land Parcel No Ngenda/Mangu/969 was acquired by Regina Gatete Wambaki on September 9, 1998 by way of adverse possession.
 - c. The whole of land parcel No Ngenda/Mangu/969 be registered in the name of Regina Gatete Wambaki.
 - d. The Respondent do execute all the necessary documents to effectuate the transfer of all that parcel of land known as Ngenda/Mangu/969 to the Applicant and in default the Deputy Registrar of this Honourable Court be empowered to do so.
 - e. The costs hereof be provided for by the Respondent.
2. The Summons are premised on the following grounds;



- a. The Applicant has been in open, peaceful and as of right possession and occupation of land parcel No Ngenda/Mangu/969 for a period of over 50 years.
 - b. The Applicant's user and possession of the suit land has been open, uninterrupted, exclusive and without force to date.
 - c. The Applicant has become entitled to ownership of the said parcel of land through adverse possession.
3. In support of the case the Plaintiff filed an affidavit in support sworn on the September 22, 2021 in which he deponed that she entered the land in 1970 and took possession of the suit land and commenced the cultivation of subsistence crops thereon. Giving the history of the land, she maintained that she is entitled to the suit land by way of adverse possession on account of inter alia exclusive possession without any interruption from the registered owner.
 4. Despite evidence of service of Summons upon the Defendant the Defendant has not rebutted the claim of the Plaintiff.
 5. At the hearing Regina Gatete led evidence in support of her claim and relied on her witness statement dated the September 15, 2022 and the Affidavit in support dated the September 22, 2021 in evidence in chief.
 6. She stated that she entered the suit land in 1970 and has remained there till to date. That around the month of September she was summoned by the Assistant County Commissioner – Kamwangi Village in Gatundu whereupon she sent her daughter because she was unwell. She learned from her daughter that the Defendant had obtained letters of grant of administration in the estate of the Ndungu Chege, deceased. That she has occupied the suit land exclusively with the knowledge of the Defendant and without any interruption from any third party, the Respondent included. In addition, she informed the Court that she entered the suit lands pursuant to a sale agreement between the owner of the land and her late husband.
 7. The Plaintiff filed written submissions on the May 17, 2023 through the law firm of Tony Martin Law LLP.
 8. It was submitted that the applicant had purchased the suit land from the 2nd Respondent in 1970. That the suit land belonged to Wahinya Chege who became registered as owner in 1957. That the Plaintiff occupied the suit land in 1970 which occupation subsists to date. In 1975 the land became registered in the name of Kariuki Kimani and later in 1986 in the name of Ndungu Chege.
 9. The question as to whether the Plaintiff has established a claim in adverse possession was answered in the positive. That the Plaintiff has led uncontroverted evidence that she occupied the suit land in 1970. That the Plaintiff has occupied the land since 2003 without any interruption. That the Respondents have known the fact of the Plaintiffs occupation all the years and did nothing to remove or interfere with the Plaintiff's said occupation. The case of *Githu v Ndeete* (1984) KLR 776 was relied in support of this proposition.
 10. The Plaintiff submitted that she is entitled to the prayers sought as the Defendant failed to counter her claim. The case of *Motex Knitwear Mills Limited v Gopitex Knitwear Mills Limited* Nairobi (Milimani) HCCC No 834 of 2002 was cited in support of the proposition that the Plaintiffs claim is unchallenged. The Court was urged to grant the claim of the Plaintiff given that it is not disputed.



Analysis and determination

11. Having considered the Pleadings, the evidence led during the hearing and the written submissions, the issues for determination are;
 - a. Whether the Plaintiff is entitled to orders of adverse possession.
 - b. Who meets the cost of the suit
12. It is not in dispute that the suit is undefended. That said the Plaintiff retains the onus to proof her case on the standard of probabilities.
13. Before I delve into the substance of the suit, I must address the issue of capacity of the Defendant to be sued. As the suit stands the Defendant has been sued as the legal representative of the estate of Ndungu Chege, deceased. Sadly, the copy of the Letters of Administration were not presented to show that indeed the Defendant is the legal representative of the estate of Ndungu Chege.
14. It is not disputed that according to the certified copy of the green card dated the September 3, 2021, the suit land was registered in the name of Ndungu Chege on the September 8, 1986. It has not been shown that the Defendant is the registered owner of the land; nor the whereabouts of the said Ndungu Chege. If indeed he passed on then the Respondent or the Plaintiff ought to have petitioned for Letters of Administration that would give the Defendant the power to be sued in place of the deceased.
15. Given the above reasons, I find that this suit is incompetently filed before this Court and the same be and is hereby struck out.
16. I make no orders as to costs.
17. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 17TH DAY OF JULY, 2023
VIA MICROSOFT TEAMS.**

J G KEMEI

JUDGE

Delivered online in the presence of;

Eboso HB Kuria for Plaintiff

Respondent – never entered appearance

Court Assistant – Phyllis & Lilian

