



**Kiranga & 2 others v Wamai & another (Environment & Land Case 258 of 2014) [2023] KEELC 20193 (KLR) (28 September 2023) (Judgment)**

Neutral citation: [2023] KEELC 20193 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA  
ENVIRONMENT & LAND CASE 258 OF 2014**

**JM MUTUNGI, J  
SEPTEMBER 28, 2023**

**BETWEEN**

**CHRISTOPHER KARIUKI KIRANGA ..... 1<sup>ST</sup> PLAINTIFF  
JOHN MAINA KIRANGA ..... 2<sup>ND</sup> PLAINTIFF  
PHILIP MWANGI KIRANGA ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**ISAAC MURIUKI WAMAI ..... 1<sup>ST</sup> DEFENDANT  
DANIEL KIRIANYENI ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. The Plaintiffs instituted the instant suit by way of an Originating Summons dated 1<sup>st</sup> April, 1999 filed in Court on 6<sup>th</sup> April 1999. The Plaintiff's prayed for orders: -
  - a. That the Plaintiffs have become entitled by adverse possession of all that parcels of land known as Kiine/Ruiru/1291 and Kiine/Ruiru/1292.
  - b. That the Plaintiffs be registered as proprietors of land parcels Kiine/Ruiru/1292 and Kiine/Ruiru/1291 in place of the Defendants free from any encumbrances.
  - c. An order that the Defendants do transfer land parcels Kiine/Ruiru/1291 and Kiine/Ruiru/1292 to the Plaintiffs herein and in default the Executive Officer of this Honourable Court do execute all the necessary documents to enable the Plaintiffs obtain the title deed for the said parcels of land.
  - d. That the Defendant do pay the costs of this suit and interest thereon at Court rates.
2. The Originating Summons was supported on the supporting affidavit sworn by Christopher Kariuki Kiranga, the 1<sup>st</sup> Plaintiff herein. It is the Plaintiffs claim that they have been in occupation of



parcel Kiine/Ruiru/1291 and Kiine/Ruiru/1292 (originally land parcel Kiine/Ruiru/312) hereinafter referred to as “the suit land” since the 1960’s and that their occupation was continuous and uninterrupted. They contend their occupation and possession was adverse and have thus acquired title to the suit land through the doctrine of adverse possession. The Plaintiffs seek to have the titles to the suit property transferred and registered in their names in place of the Defendants who are presently the registered owners.

3. The Defendants filed a joint Replying Affidavit sworn on 12<sup>th</sup> April, 1999 in opposition to the Originating Summons. The Defendants averred that they were innocent and bonafide purchasers of the suit properties from one Joseph Mwangi Peter and had no notice of the Plaintiffs alleged claim to the suit property.
4. The suit was part heard before Cheron, J on 20/7/2022 when the Plaintiffs presented their evidence and closed their case. The defence case was heard before me on 9/3/2023 when both Defendants testified and closed their case.

### **Evidence by the Parties**

5. The 1<sup>st</sup> Plaintiff Christopher Kariuki Kiranga (PW-1-) testified on his own behalf and on behalf of the 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiffs who are his brothers. He testified that he only came to know the Defendants in the course of the present suit. He relied on the Supporting Affidavit to the Originating Summons and the witness statement dated 12<sup>th</sup> May 2015. Additionally, he relied on the Plaintiff’s bundle of documents as per the list dated 12<sup>th</sup> May 2015 and filed in Court on 14<sup>th</sup> May 2015. The Plaintiff testified that the suit land parcel No. Kiine/Ruiru/312 was registered in the name of Maina Mutugi as borne out by the abstract of title annexed to the Affidavits in support of the Originating Summons which shows he was registered on 16/6/1960. The witness explained he and his brothers entered the land in 1964 and were utilising the land as their own up until about 1994 when one young man known as Joseph Peter Mwangi came and filed Succession in the Magistrate’s Court vide Kerugoya PM Succession Cause No. 369 of 1994. He stated he had not known Joseph Peter Mwangi before he filed the succession proceedings as he never lived on the suit land. He testified that in the Succession Cause, the Letters of Administration to the estate Maina Mutugi (deceased) were issued to Gachui Mutugi who was the deceased mother.
6. The 1<sup>st</sup> Plaintiff stated the said Gachui Mutugi was not living on the suit land and immediately after the Succession case Joseph Mwangi Peter disappeared and that they never knew where he went. He explained that Gachui Mutugi had passed on as at the time he was giving evidence. He stated that the suit land had not been subdivided physically on the ground and that the Defendants have never entered onto the land and had not carried out any developments on the land. It was his evidence that they (the Plaintiffs) had occupied the suit land continuously and without any interruption and that they had become entitled to be declared as the owners of the land by operation of the Law.
7. In Cross-examination the 1<sup>st</sup> Plaintiff explained that the father of Maina Mutugi and their father were brothers meaning Maina Mutugi was their first cousin. He reiterated they entered the suit land in 1964 with the consent of Maina Mutugi. He stated that Maina Mutugi died in 1968 and it was only in 1994 that Joseph Mwangi Peter came and initiated succession proceedings although it was the mother, Gachui Mutugi who was issued with the grant of Letters of Administration. The mother of Joseph Mwangi Peter was pursuant to the grant registered as proprietor of the suit property and she later transferred the land to Joseph Mwangi Peter who proceeded to sell the land to the Defendants herein. The witness explained that he realised the land had been transferred from Gachui Mutugi to Joseph Mwangi Peter and then to the Defendants when he carried out a search at the Lands Office.



8. PW-2- Albert Mwangi Maina testified that he knew the Plaintiffs who were brothers and were his neighbours. He stated that the Plaintiffs live on the suit land and that they have resided thereon for more than 40 years. He stated that he did not know the Defendants and that he had never seen any other people on the suit land. The witness relied on and adopted his witness statement dated 12/5/2015.
9. DW-1- Isaac Muriuki Wamai affirmed he was the 1<sup>st</sup> Defendant and he adopted his witness statement dated 30/9/2015 and bundle of documents as per the list of documents of the same date as evidence in support of the defence case. He testified he bought the suit land in 1996 and as at the time of purchase, the land was vacant. He stated the Plaintiffs came to the land after he had purchased though he could not recall the date. The witness explained that they filed a suit against the Plaintiffs vide Nyeri HCC No. 206 of 1998 for eviction but the suit was not prosecuted and was dismissed for want of Prosecution.
10. The witness in cross examination stated that he was registered as owner of land parcel Kiine/Ruiru/1291 on 5/2/1997. It was his evidence that he bought the land and that he attended the Land Control Board though he could not remember the date. He stated he was not utilising the land in 1996. He affirmed that at the time he inspected the land before purchasing there was coffee and macadamia growing thereon. The witness explained that he filed a suit Civil Suit No. 68 of 1997 where he sought the eviction of the Defendants (Plaintiffs herein) after he found there were people on the suit land. (No particulars of such suit were provided and possibly the witness meant Nyeri HCC No. 206 of 1998). The witness affirmed there was a house on the suit land. He confirmed he bought the land from Joseph Mwangi Peter who had subdivided the land on 21/1/1997 into two portions and that he was registered as owner of one of the portions. He affirmed that he had not been able to take possession of his parcel of land as the Plaintiffs had prevented him from doing so.
11. The 2<sup>nd</sup> Defendant, Daniel Kirianyeni Murimi, testified as DW2. In his testimony he adopted his witness statement dated 12/2/2016 as his evidence. In the witness statement DW-2- stated the original parcel of land Kiine/Ruiru/312 belonged to Maina Mutugi who was the only son of Gachui Mutugi. He averred that when Maina Mutugi died the land devolved to his mother pursuant to Kerugoya SRM Succ Cause No. 369 of 1994 and that the mother transferred the land to Joseph Mwangi Peter who was a son to one of her daughters. He stated that the said Joseph Mwangi Peter sold the land to himself and the 1<sup>st</sup> Defendant. The land was subdivided into land parcel Kiine/Ruiru/1291 and 1292 and the subdivisions were transferred to the 1<sup>st</sup> defendant and to himself respectively. The witness stated that after he took possession of his land he developed the same and that in the land there are macadamia trees, bananas, coffee and other assorted trees. He stated that at some point during his absence the 3<sup>rd</sup> Plaintiff entered the land and built a one roomed house thereon while the 1<sup>st</sup> Plaintiff was picking coffee from the land. The witness stated they filed a suit Nyeri HCC No. 206 of 1998 to have the 3<sup>rd</sup> Plaintiff vacate from the land. The Plaintiffs subsequently filed the present suit claiming adverse possession over the suit land.
12. Under cross-examination the witness stated they initially filed the suit for the 3<sup>rd</sup> Plaintiff to vacate from the land in Kerugoya in May 1997 before it was transferred to Nyeri. He stated there was coffee, macadamia and bananas on the suit property at the time they purchased the land. He stated the Plaintiffs prevented them from accessing the land.

### **Submissions, Analysis and Determination**

13. The parties following closure of the trial filed their final written submissions. The Plaintiffs filed their submissions on 20<sup>th</sup> March, 2023 and the Defendants filed theirs on 9<sup>th</sup> May, 2023. Having reviewed the pleadings and the evidence and having considered the submissions of the parties the following issues emerge for determination: -



- i. Whether the Plaintiffs were at the institution of the suit in occupation of land parcel Kiine/Ruiru/312 (subdivided to create land parcel Kiine/Ruiru/1291 and 1292.
  - ii. Whether the Plaintiffs had been in continuous and uninterrupted occupation and possession of the suit property for a period of 12 years and if so, whether the occupation and possession was adverse.
  - iii. Whether the Defendants were bonafide purchasers of the suit property and if so whether their purchase was subject to the Plaintiffs overriding interest as adverse possessor of the suit property.
  - iv. What reliefs should the Court grant.
14. It is not in dispute that one Maina Mutugi (deceased) was the first registered owner of land parcel Kiine/Ruiru/312. The abstract of title (green card) shows that the deceased was registered as proprietor of the parcel of land on 16/6/1960 and remained so registered until 10/9/1996 when Gachui Mutugi was registered as owner pursuant to Succession Cause No. 396 of 1994 (Kerugoya). On the basis of the Succession Cause instituted at Kerugoya SRM's Court in 1994, it is not disputed that Maina Mutugi died in 1968 and had no family. The Plaintiff's father and his father were brothers. The assertion by the Plaintiffs that they occupied and were utilising the suit land as from 1964 was not rebutted and on the evidence adduced, I am persuaded that indeed the Plaintiffs entered and were using the suit property as from 1964 and that they had developed the land by planting coffee, macadamia, bananas and various other trees. Indeed, the Defendants when they testified admitted that in 1996/97 when they allegedly purchased the land, it had coffee, macadamia, bananas and various trees. Joseph Mwangi Peter who sold the land to the Defendants could not have been the one who had effected the developments. Neither him or his grandmother, Gachui Mutugi could have affected the developments as they were neither residing on and/or utilising the land.
15. The available evidence was to the effect that Joseph Mwangi Peter was a son to one of the sisters of Maina Mutugi and that during the Succession cause, the trial Magistrate found and held that he was not entitled to petition for grant of Letters of Administration to the estate of Maina Mutugi (deceased) under the provisions of Section 39 of the *Law of Succession Act* Cap 160 Laws of Kenya. As the deceased did not have a family his mother who was still alive ranked in priority regarding the persons who would have been entitled to petition for Letters relating to the estate of the deceased. It was on that account that the Succession court directed that the grant be issued to Gachui Mutugi, the deceased mother.
16. Gachui Mutugi as per the record of the Succession Court applied for Confirmation of Grant on 5/8/1996 and the same was issued and on 10/9/1996 had the suit property transferred to her through transmission. In what appears to have been pre-arranged, the said Gachui Mutugi on 18/10/1996 transferred the suit property to Joseph Mwangi Peter for a consideration of Kshs 30,000/- as disclosed in the abstract of title. One is left to ponder how the process of acquiring the Land Control Board consent was facilitated within a matter of days notwithstanding that Land Control Board's Committee meetings usually are monthly. It is indeed instructive that the 2<sup>nd</sup> Defendant had on 24/12/1996 lodged a caution against the title to the suit land claiming a purchaser's interest and the 1<sup>st</sup> Defendant equally claimed to have been a purchaser of the same land. In all probability, the Defendants were the prime movers of the succession proceedings and the consequent transfers and subdivision processes which puts to question their claim of having been innocent purchasers.
17. Gachui Mutugi and Joseph Mwangi Peter in my view were never at any time in occupation of the suit land. Gachui Mutugi was not living on the suit land and Joseph Mwangi Peter equally was not. The mother of Joseph Mwangi Peter was a sister of Maina Mutugi (deceased) and was married. Her son



Joseph Mwangi Peter was living and residing with his mother where she had been married. These facts are evident from the record of the proceedings in the Succession Court exhibited by both the Plaintiffs and the Defendants. It is in the premises, my determination that the Plaintiffs were the persons who were in occupation of and were utilising the suit land. They are the persons who had cultivated the coffee, the macadamia and bananas on the suit land. At the time the Defendants purported to purchase the land, the Plaintiffs were in active occupation and possession of the land.

18. The Plaintiffs were occupying the suit land and were in my view exercising rights of ownership and that explains why they had cultivated crops such as coffee and macadamia which are cash crops and have long life spans. Even if the Plaintiffs may have entered the land with the consent and/or permission of Maina Mutugi (deceased), the registered owner, after his death in 1968 the permission determined and the Plaintiffs occupation and possession became adverse such that unless they would have been beneficiary of the land pursuant to succession, obtained their eviction before the expiry of 12 years from the date of the death of the registered owner, his claim to recover the land from the Plaintiffs would be statute barred.
19. The Plaintiffs in my view and by reason of such occupation and possession acquired overriding interests over the suit land that required no registration in terms of Section 30(f) & (g) of the Registered Land Act, Cap 300 Laws of Kenya (repealed) which provides as follows: -
  30. Unless the contrary is expressed in the register, all registered land shall be subject to such of the following overriding interests as may for the time being subsist and affect the same, without their being noted on the register -
    - (f) rights acquired or in process of being acquired by virtue of any written law relating to the limitation of actions or by prescription;
    - (g) the rights of a person in possession or actual occupation of land to which he is entitled in right only of such possession or occupation, save where inquiry is made of such person and the rights are not disclosed;
20. In the present case there is no doubt that Gachui Mutugi and her son Joseph Mwangi Peter were not occupying the suit land but the Plaintiffs were. Since the registered owner died in 1968 the Plaintiffs remained in occupation and possession of the suit land.
21. The Plaintiffs as at 1994 when Joseph Mwangi Peter petitioned for Grant of Letters of Administration for the Estate of Maina Mutugi to which he was not entitled, the Plaintiffs had acquired overriding interests of occupation and possession of the suit land. The Grant of Letters of Administration and consequent registration of the suit land in the name of Gachui Mutugi and transfer to Joseph Mwangi Peter was made subject to the Plaintiffs overriding interests over the suit property. The registration of the title in the names of Gachui Mutugi, Joseph Mwangi Peter and eventually in the names of the Defendants did not pass any interests in the suit land to them. Once they were registered they were indeed constituted trustees on behalf of the Plaintiffs.
22. The Defendants in their evidence and submissions have argued that they were innocent purchasers of the suit property and that upon registration they became absolute owners and were entitled to enjoy the rights of ownership conferred under Section 24, 25 and 26 of the Land Registration Act, 2012. As observed earlier in this Judgment the Plaintiffs having acquired overriding interests over the suit property, any dealing with the suit property was subject to their unregistered overriding interests and any transfer effected could not pass any interest capable of defeating the Plaintiffs interest of both adverse possession and occupation that had crystalized.



23. I am for my part not persuaded the Defendants were indeed bonafide and innocent purchasers. Did they bother to find out how Gachui Mutugi and Joseph Mwangi Peter acquired title to the suit land? Did they find out who was in occupation and using the land and in what circumstances? In my view if the Defendants carried out appropriate due diligence, they would have discovered the Plaintiffs were infact in occupation and had been utilising the land as their own for all the time. The Defendants infact appear to have spearheaded the succession proceedings, the processing of the titles and the subdivision of the land in the belief that if they got titles, they would perhaps easily get the Plaintiffs to vacate the land. They were wrong because the Plaintiffs had acquired a right and interest that the law recognised.
24. In the premises it is my determination that the Plaintiffs occupation of the suit land was adverse to the interest of the registered owner or the person entitled to be registered as beneficiary of the estate of Maina Mutugi (deceased). The Plaintiffs at least after the expiry of 12 years from the death of Maina Mutugi in 1968 became entitled to be registered as owners of the suit land as their occupation continued as of right without any interruption whatsoever. The transfer effected to the Defendants had no legal effect and did not pass any interest to the Defendants. The title to the land had been acquired by the Plaintiffs by virtue of their adverse possession and occupation. The transfers were subject to the Plaintiffs unregistered interests under paragraphs 30(f) and (g) of the repealed Registered Land Act and now Section 28(h) of the Land Registration Act, 2012.
25. Accordingly, I find and hold that the Plaintiffs suit against the Defendants has been proved on a balance of probabilities and hereby enter Judgment in favour of the Plaintiffs and make the following final orders:
1. That the Plaintiffs have become entitled, by virtue of occupation and adverse possession of all that parcels of land known as Kiine/Ruiru/1291 and Kiine/Ruiru/1292 (originally Kiine/Ruiru/312) to be registered as the owners thereof in place of the Defendants.
  2. That Land Registrar Kirinyaga is hereby directed to cancel the title registered in the names of the Defendants and register the Plaintiffs Christopher Kariuki Kiranga, John Maina Kiranga and Philip Mwangi Kiranga as proprietors in common of land parcels Kiine/Ruiru/1291 and Kiine/Ruiru/1292 in place of the Defendants, Isaac Muriuki Wamai and Daniel Kirianyeni Murimi respectively.
  3. The costs of the suit are awarded to the Plaintiffs.

**JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 28<sup>TH</sup> DAY OF SEPTEMBER 2023.**

**J. M. MUTUGI**

**ELC - JUDGE**

