



REPUBLIC OF KENYA



KENYA LAW
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**Tanui v Amin (Environment & Land Case 28 of 2021)
[2023] KEELC 20240 (KLR) (27 September 2023) (Judgment)**

Neutral citation: [2023] KEELC 20240 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 28 OF 2021
JM ONYANGO, J
SEPTEMBER 27, 2023**

BETWEEN

WILLIAM KIMEI TANUI PLAINTIFF

AND

KANIKA NITIN AMIN DEFENDANT

JUDGMENT

1. The Plaintiff filed an Originating Summons dated 29th November, 2021 seeking the following reliefs:
 - a. A declaration that the Defendant's right over the whole of that land known as Eldoret Municipality Block 12/31 got extinguished by way of adverse possession upon the expiry of 12 years when the Plaintiff was in possession.
 - b. An order under Section 38 of the *Limitation of Actions Act* Cap 22 of the Laws of Kenya that part of that the parcel of land known as Eldoret Municipality Block 12/31 Eldoret Municipality Block 12/31 measuring approximately 0.0929 hectares be registered in the name of the Plaintiff herein as a proprietor or owner. The Land Registrar Uasin Gishu County to execute all such documents as could facilitate the transfer of the whole of that land parcel known as Eldoret Municipality Block 12/31 Eldoret Municipality Block 12/31.
 - c. Costs of this suit.
 - d. Any other or further order or relief that this honourable court may deem fit to grant.
2. The Originating Summons is based on the Plaintiff's Supporting affidavit sworn on the 29th November, 2021.
3. Despite being served with Summons by way of substituted service, the Defendant neither entered appearance nor filed any response to the Originating Summons and the matter therefore proceeded by way of Formal Proof.



Plaintiff's Case

4. The plaintiff testified as the sole witness for his case. He relied on his supporting affidavit sworn on 29th November, 2021. The plaintiff's case is that he has peacefully, openly and continuously occupied the suit property since 1969. He initially entered the suit property with the permission of the original owner one Patel Dahyabhai in 1969. He fenced the land and started using it for growing subsistence crops. He also sells some building material on it.
5. Patel later moved to Nairobi and the plaintiff lost touch with him. He however continued using the suit property without any interference. Sometime in 2017 he conducted an official search and discovered that the title had changed hands in 1996 and it was now registered in the name of Kanika Nitin Amin, the Defendant herein. He produced a copy of the Certificate of Official Search as Plaintiff's Exhibit 1. Despite the change of ownership, the plaintiff has continued to occupy and use the suit property openly, peacefully and as of right without the registered owner's consent. He therefore prays that he be registered as the owner of the suit property as he has acquired the same by way of adverse possession.
6. After the close of the Plaintiff's case. The Plaintiff's counsel filed his submissions in which he summarized the plaintiff's case and urged the court to find that the Plaintiff had met all the conditions for adverse possession. He relied on the case of *Wilson Kazungu Katana & 101 Others v Salim Abdalla Bakshwein & Another* (2015) eKLR; *Kasuve v Mwaani Investments Limited & 4 Others* 1KLR 184; *Mwinyi Hamisi Ali, A. G & Another* CA No. 125 of 1997 and *Wambugu v Njuguna* (1983) KLR 174.

Analysis And Determination

7. The only issue for determination is whether the plaintiff has met the conditions for adverse possession.
8. The doctrine of adverse possession is contained in sections 7 and 38(1) of the *Limitation of Actions Act* which stipulate as follows:

“7. 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.

38(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.”

9. The requirements of adverse possession were discussed in the Case of *Mtana Lewa v Kabindi Ngala Mwangandi* (2015) eKLR where the Court of Appeal observed that:

“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 or under the licence of the owner. It must be adequate in continuity, in publicity and in extent to show that possession is adverse to the title own”



10. Further, in the case of *Wilson Kazungu Katana & 101 Others v Salim Abdalla Baksbwein & Another* (2015) eKLR the Court of Appeal opined as follows:

“From all these provisions, what amounts to adverse possession” First, the parcel of land must be registered in the name of a person other than the applicant, the applicant must be in open and exclusive possession of that piece of land in an adverse manner to the title of the owner, lastly, he must have been in that occupation for a period in excess of twelve years having dispossessed the owner or there having been discontinuance of possession by the owner”.

11. In the instant case, the plaintiff has proved that the suit property is registered in the name of the Defendant. He has also proved that he has been in exclusive, continuous and uninterrupted possession and use of the suit property for more than 20 years since the defendant was registered as the owner thereof without the defendant’s permission. Further he has carried out acts that are inconsistent with the rights of the registered owner by cultivating the land and selling building materials thereon.

12. Having considered the pleadings, evidence on record, the submissions as well as the relevant law and authorities, I am persuaded that the Plaintiff has satisfied the requirements to adverse possession and he has therefore proved his case on a balance of probabilities.

13. Consequently, I enter judgment for the plaintiff and make the following final orders:

- a. A declaration is hereby issued that the Defendant’s right over the whole of that land known as Eldoret Municipality Block 12/31 was extinguished by way of adverse possession upon the expiry of 12 years when the Plaintiff was in possession.
- b. An order is hereby issued under Section 38 of the *Limitation of Actions Act* Cap 22 of the Laws of Kenya that a portion of the parcel of land known as Eldoret Municipality Block 12/31 measuring approximately 0.0929 hectares be registered in the name of the Plaintiff herein as a proprietor or owner. The Land Registrar Uasin Gishu County is hereby directed to execute all necessary documents to facilitate the transfer of the said land parcel known as Eldoret Municipality Block 12/31 to the name of the Plaintiff.
- c. The costs of this case shall be borne by the Defendant.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 27TH DAY OF SEPTEMBER, 2023.

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J.M ONYANGO

JUDGE

