



**Guyo v Qunche (Environment & Land Case E005 of 2021)
[2023] KEELC 22291 (KLR) (18 December 2023) (Judgment)**

Neutral citation: [2023] KEELC 22291 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ISIOLO
ENVIRONMENT & LAND CASE E005 OF 2021
PM NJOROGE, J
DECEMBER 18, 2023
FORMERLY MERU ELC CASE NO. E016 OF 2021**

BETWEEN

GUYOLE JATTANI GUYO PLAINTIFF

AND

QUNCHE WOGUE QUNCHE DEFENDANT

JUDGMENT

1. The originating summons in this suit states as follows;

Originating Summons

(Under orders 37 rules 7 of the [Civil Procedure Rules](#), section 7, 17, 37 and 38 of [Limitations of Actions Act](#) and any other Enabling Provisions of Law)

Let Qunche Woge Qunche of P.O Box 120-60500, Marsabit in the Republic of Kenya within 15 days after service of these summons inclusive of the date of such service cause an appearance to be entered to these summons which is issued upon the application of Guyole Jattani Guyo of P.O Box 88 Marsabit who claims to have acquired title by adverse possession of that property known as parcel No.Marsabit/Mountian/391 measuring 1.39 hectares by prescription of the following orders:-

1. That the applicant be declared to have acquired title over that Land Parcel No. Marsabit/Mountian/391 by adverse possession.
2. That the Respondent cease to be registered as the proprietor of that parcel of land known as Marsabit/Mountian/391 and instead the Applicant Guyole Jattani Guyo be registered as the proprietor of that Marsabit/Mountian/391 thereof.



3. That the Respondent be permanently restrained from alienating, entering and/or interfering with that land parcel known as title No. Marsabit/Mountian/391.
4. That the Executive Officer be authorized to sign all necessary documents on behalf of the Respondent.
5. That the cost of this application be provided for.

Which application is grounded on the grounds herein, and supported by the affidavit of Guyole Jattani Guyo and other reasons to be adduced at the hearing hereof.

1. That the applicant has occupied and lived on the parcel of land known as Marsabit/Mountian/391 for over 12 years.
2. That the applicant has acquired adverse possession of the said parcel of land known as 0.
3. That the applicant's occupation of the said area has been uninterrupted, quiet and not forceful for over 12 years.
4. That the applicant entered into the land in the year 2001.
5. That the applicant has extensively developed the said land parcel.
6. That the applicant has been in continuous and uninterrupted occupation, possession and use of all land known as Marsabit/Mountian/391.

Dated at Nairobi this 31st day of march, 2021

Nelko Misati & Company

Advocates for the applicant

2. The suit was heard orally.
3. PW1, Guyole Jattani Guyo told the court that he had filed a witness statement dated 25/10/2022. He asked the court to adopt it as his evidence in this suit. He also asked that the documents in his list of documents dated 25/11/2022 be adopted as his exhibits in this suit. He told the court that he knew Sago Mamo Mare, a witness for the Plaintiff but denied that he was his neighbor as alleged in his witness statement. The witness closed his evidence in chief at this point.
4. In his witness statement, the applicant avers that Woge Kuche (deceased) the father of the defendant was previously the registered owner of the suit land though it was subsequently registered in the name of the respondent. He avers that he has been in open, active, exclusive, continuous and notorious occupation of the land since the year 2009 and that he has built his house and has been in occupation thereon. He says the Civil Suit No. 10 of 2017 in Marsabit Principal Magistrates Courts was only a dispute between a portion of land measuring 50x100 feet and did not involve him. He admits that his father was evicted from the land. He claims that having occupied the suit land since 2001 he is entitled to the registration of this land as his own through the doctrine of adverse possession. He says that he is in occupation and possession of the suit land and that the respondent has never occupied the suit land.
5. During Cross examination by the defendant, he told the court that he was not aware that his father had been sued by the defendant in 2017. He told the court that he was not living in Marsabit at the time BUT was leaving in Moyale where he was taking care of his then sick father. He also claimed that he was



- also sick in 2017. He denied having –initially known that his father had been issued with an eviction court following a decision of a Magistrate’s court at Marsabit. He admitted that he had appealed that decision in 2010 but denied knowledge that his case had been dismissed. Further, he denied that he was aware that the defendant had been given vacant possession of the suit land through a court order.
6. During Cross-Examination, the plaintiff gave conflicting evidence. He told the court that he was not aware of the size of the suit property. And yet in prayer 2 in his Originating Summons he asks that the land known as Marsabit/Mountian 391 be registered in his name. He is claiming the whole parcel of land and not a portion of it.
 7. He told the court that though he had described the suit land in his witness statement as No. 335, what he was claiming was No. 391. And yet later on he was unequivocal that the land he was claiming was No. 395. At this juncture, the court noted that PW1 was being evasive.
 8. PW1 told the court that though he was not party to the suit between the defendant and his father, his house on the suit land was also demolished. He said that his house and that of his father were on different portions of the land. Though initially he told the court that his house and his father’s house were demolished during the eviction, during re-examination by Mr. Misati, his advocate, he changed his story and told the court that his house and that of his father were demolished at different times.
 9. PW2, Adan Mohamed Tadiko told the court that he was a resident of Marsabit. He asked the court to adopt his witness statement dated 23/11/2022 as his evidence in this suit. In his statement he says that the suit land was occupied by many Marsabit area residents including Abraham Yattani Guyo, the Plaintiffs’ father who occupied about half an acre of the suit property. He says that during eviction of Abraham Yattani Guyo, the plaintiffs’ father, the plaintiff’s house was not demolished. He avers that at paragraph 11 of his statement that the plaintiff has a house on the suit land and has been residing there with his wife and children.
 10. During Cross examination by the defendant, PW2 told the court that he did not know to whom the suit land is registered. He also told the court that he was aware of a case against the father of the plaintiff but he did not know when exactly the plaintiff’s suit was filed. He muddied his evidence by saying that the suit land was being occupied by a man called Sago as a tenant. Later during cross-examination he changed his story to say that the plaintiff had been evicted from the land though initially he had said that he was living in his house on the suit land with his wife and his children.
 11. DW1, Qunche Woge Qunche asked the court to adopt his witness statement dated 23/8/2022 as his evidence in this suit.
 12. In his statement DW1 avers that he is the registered owner of the suit land. He says that he knows the plaintiff is the son of one Abraham Jattani Guyo who was evicted from the suit land following a court order issued in Marsabit Principal Magistrates Court Suit No. 10 of 2017. He says that it is 2 years since the structures on his land were demolished with the result that the plaintiff, his father and other members of the plaintiffs’ family gave vacant possession of the suit property to him. DW1 asks the court to dismiss the applicants’ case and opines that it has been brought to court in bad faith in a bid to interfere with his enjoyment of quiet possession of his land.
 13. DW2, Shanko Garo Woche asked the court to adopt his witness statement dated 23/8/2022 as his evidence in this suit. He told the court that DW1, the defendant is his neighbour. He says that he witnessed the eviction of the plaintiff from the suit land by a court bailiff. He says that since that eviction, the plaintiff relocated to an unknown place and has never come back to the suit land. He says that he is the caretaker of the suit land.



14. DW3, Sago Mamo Mari, asked the court to adopt his witness statement dated 23/8/2022 as his evidence in this suit. In his statement he avers that the applicant was living on the suit land with his father. He says that on 7th November, 2020 the applicants' structures on the suit land were demolished and the applicant, his father and members of his family gave vacant possession to DW1 and this position has remained so up to now.
15. I have considered the pleadings and the oral evidence proffered by the parties to buttress their diametrically incongruent assertions.
16. I note that the evidence given by the applicant and his witness is riddled with contradictions. It is however clear that the applicants father was living on the suit land with the knowledge and ostensible permission of the defendant's father. The applicant's father was sued by the defendant, DW1, in Marsabit Principal Magistrates Civil Suit No. 10 of 2017. The applicants father lost the suit, was evicted and the defendant was given vacant possession by the court bailiff. I find that the only claim the applicant can stake on the suit land, can only be through his father whose claim was fatality vitiated by his loss of Marsabit Principal Magistrates Suit No. 10 of 2017.
17. The applicants' witness, PW2, avers that the applicant and his father only occupied only about ½ acre of the suit land. The applicant told the court that at crucially material times he was not living on the suit land or in Marsabit and was living at Moyale with his father. He does not tell the court for how long he has been staying or stayed on the suit land. This court cannot, therefore, form a basis for finding that adverse possession had accrued in his favour. It is also quite informative that though the applicant claimed the whole of the suit land, PW2, his witness, avers that the applicant and his father were occupying only about one half acre of the suit land.
18. In terms of Rule 24 of the Civil Procedure Rules, 2010 I frame the only issue for determination in this suit as if or if not the applicant has proved on a balance of probabilities the prayers he seeks in this Originating Summons.
19. On a balance of probability, considering the totality of the evidence proffered by the parties, I find that the defendant is in actual possession of the suit land. Adverse possession must be proved by way of cogent evidence. A claim for adverse possession, if successful, would have the outcome that a registered owner of the claimed land is dispossessed of the claimed land. It is not a claim that a court of law can take casually. In this case, the applicant has dismally failed in his claim that the defendant's land, Marsabit/Mountian/391 should be registered in his name as its new proprietor. Indeed, the applicant has not shown through cogent evidence, on a balance of probabilities, that he has been occupying the suit land uninterrupted and quietly for a period of 12 years to attain the threshold for accrual of adverse possession. The mere claim in his Originating Summons that he entered the land in 2001 without supporting evidence is not enough. Indeed DW1's evidence, even after cross –examination by the applicants' advocate was not in any way impeached. More telling is that the evidence of DW2 and that of DW3, the defendant's two witnesses was not challenged at all. Constructively the applicant has admitted that evidence.
20. In the circumstances, this court issues the following orders:
 - a. Prayers 1, 2, 3 and 4 in this Originating Summons Suit and the entire suit are hereby dismissed.
 - b. Costs shall follow the event and are awarded to the defendant.

DELIVERED IN OPEN COURT AT ISIOLO THIS 18TH DAY OF DECEMBER, 2023

IN THE PRESENCE OF:



Court assistant: Balozi/Rahma

Misati for the Plaintiff

Qunche Woge Qunche for the Defendant.

HON. JUSTICE P.M NJOROGE

JUDGE

