



**Iragu v Kabata (Environment and Land Case 7 of 2023)
[2023] KEELC 22373 (KLR) (14 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22373 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA
ENVIRONMENT AND LAND CASE 7 OF 2023**

YM ANGIMA, J

DECEMBER 14, 2023

BETWEEN

SAMUEL NJOROGE IRAGU APPLICANT

AND

AYUB MUTHAMA KABATA RESPONDENT

RULING

A.Applicant's Claim

1. By an originating summons dated 02.05.2023 brought under Sections 7 & 38 of the *Limitation of Actions Act* (Cap.22), Order 37 rule 7(1) & (2), of the *Civil Procedure Rules, 2010* and all other enabling provisions of the law, the Applicant sought the following reliefs:
 - a. A declaration that the Applicant has become entitled to be registered as proprietor of Plot No. 1A and 1B Kagongo Trading Centre (Formerly Plot No. 1 Kagongo Trading Centre) by dint of the doctrine of adverse possession.
 - b. An order that the Deputy Registrar of this honourable court be authorized to execute all necessary documents to facilitate registration of the Applicant as the absolute proprietor of Plot No. 1A and 1B Kagongo Trading Centre (Formerly Plot No. 1 Kagongo Trading Centre).
 - c. Costs of the suit be awarded to the Applicant.
2. The said summons was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by the Applicant on 02.05.2023 and the exhibits thereto. The Applicant pleaded that he had been in open, continuous and exclusive possession of Plot No. 1A and 1B Kagongo Trading Centre (formerly Plot No. 1 Kagongo Trading Centre) for a period exceeding 12 years hence he had acquired adverse possession thereof under the *Limitation of Actions Act* (Cap.22).



3. The Applicant pleaded that he purchased the suit property from the Respondent on 19.01.1999 who was an allottee thereof from the defunct Town Council of Nyandarua (the Council) and paid Kshs.60,000/= for same. It was further pleaded that he took possession of the suit properties in the same year and undertook substantial developments over the years by constructing commercial and residential buildings thereon. It was the Applicant's case that despite numerous requests the Respondent had failed to transfer the suit properties to him.

B. Respondent's Response

4. The material on record shows that the Respondent neither entered appearance nor filed an answer to the originating summons despite service.

C. Applicant's Evidence

5. At the trial hereof, the Applicant testified on his behalf as the sole witness. He adopted the contents of his supporting affidavit sworn on 02.05.2023 as his evidence in-chief as well as his witness statement of the same date. He also produced the annexures to his supporting affidavit as exhibits in support of his claim. The Applicant's evidence was to the effect that he bought the suit properties from the Respondent in 1999 whereupon he took possession and developed them over the years. It was his evidence that he had been in open, continuous and exclusive possession thereof and that the Respondent had made no attempts to evict him over the years.

D. Issues for determination

6. The court is of the opinion that the main issue for determination herein is whether or not the Applicant has demonstrated his claim for adverse possession to the required standard.

E. Analysis and Determination

7. The court has considered the pleadings and evidence on the issue of adverse possession. The elements of adverse possession were summarized in the case of *Kasuve – v- Mwaani Investments Ltd & 4 Others* [2004] 1KLR 184 as follows:

“...and in order to be entitled to land by adverse possession, the claimant must prove that he has been in exclusive possession of the land openly and as of right and without interruption for a period of 12 years either after dispossession of the owner or by the discontinuation of possession by the owner on his own volition, *Wanja v Sakwa* No.2 [1984] KLR 284. A title by adverse possession can be acquired under the *Limitation of Actions Act* for part of the land...”

8. Similarly, in the case of *Chevron (K) Limited – v- Harrison Charo Wa Shutu* [2016] eKLR it was held, inter alia, that:

“At the expiration of the twelve-year period the proprietor's title will be extinguished by operation of the law and section 38 of the Act permits the adverse possessor to apply to the High Court for an order that he be registered as the proprietor of the land. Therefore the critical period for the determination whether possession was adverse is 12 years and the burden is on the person claiming to be entitled to the land by adverse possession to prove, not only the period but also that his possession was without the true owner's permission, that the owner was dispossessed or discontinued his possession of the land, that the adverse possessor has done acts on the land which are inconsistent with the owner's enjoyment of



the soil for the purpose for which he intended to use it. See *Littledale v Liverpool College* (1900)1 Ch.19, 21.”

9. Although the Applicant’s suit was not defended and his evidence at the trial was not challenged or controverted, the court is not satisfied that the Applicant’s evidence and documents have demonstrated his claim for adverse possession. The court is of the opinion that in order for a claim for adverse possession to succeed, the suit property should be registered under any of the applicable land registration systems in Kenya. It must have a known owner against whom the period of limitation can run under the *Limitation of Actions Act* (Cap.22).
10. There is no indication on record to show that the suit properties were ever surveyed and registered at any land registration office known to law. Although the Applicant produced a copy of a letter dated 29.02.1991 from the council which was said to be a letter of allotment, a perusal of the said letter indicates that it was the Respondent who was offering the council his land in Kagongo Trading Centre which offer the council accepted. The letter further granted permission to the Respondent to develop his Plot No. 1. The court is unable to find credible evidence of ownership of the suit properties (if any) by the Respondent which would justify the running of the limitation period against him as an indolent land owner.
11. In the absence of credible evidence of the Respondent’s ownership of the suit properties, the court is unable to find and hold that his title to the properties has been extinguished due to effluxion of time and that the Applicant is entitled to be registered as the owner of the suit properties. The court is thus of the opinion that the Applicant has not proved his claim for adverse possession of the suit properties as there is no evidence of dispossession of the true owner.

F. Conclusion and Disposal Order

12. The upshot of the foregoing is that the court finds and holds that the Applicant has failed to prove his claim for adverse possession against the Respondent to the required standard. As a result, the Applicant’s originating summons 02.05.2023 is hereby dismissed with no orders as to costs.

It is so decided.

**JUDGMENT DATED AND SIGNED AT NYANDARUA THIS 14TH DAY OF DECEMBER, 2023
AND DELIVERED VIA MICROSOFT TEAMS PLATFORM.**

In the presence of:

N/A for the Applicant

N/A for the Respondent

C/A - Carol

Y. M. ANGIMA

JUDGE

