



**Mukuha v Kimura (Environment & Land Case 419 of 2015)
[2023] KEELC 22473 (KLR) (14 December 2023) (Judgment)**

Neutral citation: [2023] KEELC 22473 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 419 OF 2015
LN MBUGUA, J
DECEMBER 14, 2023**

BETWEEN

LYDIAH WAMBUI MUKUHA PLAINTIFF

AND

WAIGANJO KIMURA DEFENDANT

JUDGMENT

1. The Plaintiff commenced this suit vide the Originating Summons dated 18.5.2015 seeking the following orders;
 - a. That the Plaintiff be declared to have become entitled by adverse possession to all that parcel of land known as LR No Githunguri/Kanjai/T.185 situated in Kiambu County within the Republic of Kenya.
 - b. That vesting orders do issue vesting the aforementioned parcel of land to the Plaintiff free from all encumbrances.
 - c. That costs be provided for.
2. The record indicates that the initial court file got lost, but the said file was reconstructed through the court orders of 19.11.2019 with the pleadings provided by the plaintiff.
3. It is therefore not clear whether summons were taken out and served on the Defendant as there is no such copy on record. Be that as it may, after the file was reconstructed, the suit was dismissed on 11.11.2020, but Plaintiff filed an application to have the suit reinstated. Vide a ruling dated 29.9.2021, the suit was reinstated and the plaintiff was directed to effect service of the suit documents via substituted service.
4. Thereafter, as per the proceedings of 28.9.2022, the court was satisfied that service had duly been effected as per the affidavit of service sworn on 16.11.2021 by one Samuel Ng'ang'a to the effect that



the Defendant was served by an advertisement in the Daily Nation newspaper but failed to enter appearance. Thus the matter proceeded by way of a formal proof where the Plaintiff (PW1) testified as the sole witness.

5. The plaintiff adopted her averments set out in her affidavit in support of the Originating Summons as her evidence. She also produced a green card to the suit parcel as well as a copy of the official search.
6. She contends that the suit property was registered in the name of the Defendant, of which the parcel is close to her own parcel of land. That she entered the suit parcel in 1970 when it was vacant and undeveloped upon the request of her father in law, one Kamau Kago. She has been in uninterrupted possession of that land for a period of over 45 years thus she has become entitled by way of adverse possession.
7. The issue for determination is whether the plaintiff is entitled to the suit land by way of adverse possession. The provisions of Section 38 of the *Limitation of Actions Act* provides that:

“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.”

8. The Court of Appeal restated what a Plaintiff in a claim for Adverse Possession has to prove in *Titus Mutuku Kasuve v Mwaani Investments Limited & 4 others* [2004] eKLR as follows;

“And in order to be entitled to the 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 dispossessing the owner or by the discontinuation of possession by the owner on his own volition.....”

9. The Plaintiff led evidence that the suit parcel is registered to Waiganjo Kimura. That she entered the suit parcel in 1970, on permission of one Kamau Kago, her father in law. She was not permitted to enter the suit parcel by the registered owner of the suit parcel, thus her possession is adverse to the rightful owner.
10. Further, the Plaintiff's evidence that she has been in continuous uninterrupted occupation of the suit parcel since 1970 was not controverted.
11. In the circumstances, the Plaintiff has proved her case to the required standards. See *Samuel Kihamba v Mary Mbaisi* [2015] eKLR. Thus judgment is entered for the plaintiff against the defendant in the following terms.
 - a. It is hereby declared that the plaintiff is entitled by adverse possession to all that parcel of land known as LR No Githunguri/Kanjai/T.185 situated in Kiambu County within the Republic of Kenya.
 - b. A vesting order is hereby issued vesting the parcel of land LR No Githunguri/Kanjai/T.185, Kiambu to the Plaintiff.
 - c. No orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 14TH DAY OF DECEMBER, 2023 THROUGH MICROSOFT TEAMS.



LUCY N. MBUGUA

JUDGE

In the presence of:-

M/s Nyambura holding brief for Mbigi for Plaintiff

