



**Kangangi v Muchira (Environment and Land Appeal E43 of 2023)
[2025] KEELC 3354 (KLR) (24 April 2025) (Judgment)**

Neutral citation: [2025] KEELC 3354 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
ENVIRONMENT AND LAND APPEAL E43 OF 2023**

JM MUTUNGI, J

APRIL 24, 2025

BETWEEN

BERNARD RUITA KANGANGI APPELLANT

AND

AGNES WANJIRU MUCHIRA RESPONDENT

(Being an Appeal from the Judgment and decree of Hon. A.K Ithuku Chief Magistrate in Kerugoya CMELC Case No. E011 of 2021 delivered and dated 30th November 2023)

JUDGMENT

1. This Appeal is against the Judgment delivered by Hon. A.K. Ithuku (C.M.) on 30th November 2023 in Kerugoya CMELC No. E011 of 2021. In the Judgment, the Learned Magistrate ruled in favour of the Respondent (Plaintiff), upholding her claim to the disputed land and dismissing the Appellant's(Defendant's) Counterclaim. Consequently, the Court ordered the Appellant's eviction within sixty (60) days and awarded costs of the suit to the Respondent.
2. The Appellant, who was one of the Defendants in the suit, was dissatisfied with the Learned Trial Magistrate's decision and has appealed to this Court against the Judgment. The Appellant has set out 5 grounds of Appeal in his Memorandum of Appeal dated 19th December 2023 as follows:-
 1. That the Honourable Chief Magistrate erred in law and fact in allowing the Respondent's claim without enough evidence to support the claim.
 2. That the Honourable Learned Chief Magistrate erred in law and fact by granting eviction orders without considering the developments on the suit property by the Appellant.
 3. That the Honourable Learned Chief Magistrate erred in law and fact by granting eviction orders without considering the developments on the suit property by the Appellant.



4. That the Honourable Learned Chief Magistrate erred in law and fact in failing to make a finding that the Appellant had been in possession/occupation since the year 1997 and the possession/occupation had not been interrupted for over 12 years.
5. That the Honourable Learned Chief Magistrate erred in law and fact by not properly considering the evidence on record and the Appellant's written submissions.
3. The Appellant prays that the Judgment and the decree issued on 30th November 2023 be set aside, the Appeal be allowed and a Judgment be entered in favour of the Appellant in the terms of the Counterclaim.

Background

4. The dispute related to land parcels Kabare/Nyangati/1931 and 1932 (the "suit land"). The Respondent averred that he discovered in December 2017 that the Appellant and another individual, Jamleck Njagi, had encroached on the suit land and that she served them with eviction notices, which they ignored, prompting her to file the suit seeking their eviction and a permanent injunction against further interference.
5. The Appellant contended that he purchased Kabare/Nyangati/1931 from the Respondent in May 1998 for Kshs. 75,000/= and took possession of the land immediately, and commenced utilising the same. He averred that the Respondent gave flimsy excuses for not transferring the title to him. He denied ever receiving an eviction notice from the Respondent. The Appellant filed a Counterclaim seeking a declaration that he had acquired the land through adverse possession and that the Respondent's title should be cancelled in his favour.
6. It was the Appellant's case that he purchased the disputed land from the Respondent through her agent, Yaki Associates, took possession of the same and began developing it in 2007 with the Respondent's full knowledge. The Appellant averred that he had been peacefully and continuously occupying the land for over 12 years and hence the Respondent's title had become extinguished such that the Respondent held the title deed for land parcel Kabare/Nyangati/1931 in trust for him. By the Counterclaim the Appellant prayed for orders:
 1. That the 1st Defendant has become legally entitled to land parcel No. Kabare/Nyangati/1931 by way of adverse possession having been in open, continuous and uninterrupted occupation of the said land for a period of over 12 years.
 2. That the Plaintiff's title for Kabare/Nyangati/1931 be cancelled and be registered in the name of the 1st Defendant.
 3. That the Plaintiff to bear the costs of the suit.
 4. Any other relief the Honourable Court deems fit and just to grant.
7. The Respondent filed her reply to the Appellant's Statement of Defence and Counterclaim. The Respondent averred that the Appellant's entry into the suit land was without permission and asserted that the Appellant was not entitled to the remedies he sought in the Counterclaim.
8. The Learned Trial Magistrate heard both the Appellant's and Respondent's case on 5th September 2023. The Respondent testified that she did not authorize her brother to sell the suit land and that she first learnt about the Appellant's occupation of her land in 2017. She asserted that she did not agree to transfer her land to the Appellant and demanded the Appellant vacates from the land. During Cross-examination, the Respondent clarified that she acquired the suit land in 1991 and obtained the title in



2002. She stated that she had been traveling frequently outside of Kenya and when she discovered there were people who had encroached onto her land, she reported the matter to her chief in Kimbimbi. She stated she later learnt that her brother had sold the land to the Appellant and another individual, one Jamleck, without her authorization and she approached auctioneers to evict them as they were intruders.

9. The Appellant testified that he met the Respondent for the first time in 2021. He stated that he previously had only heard about her. He stated that he bought the suit property from the Respondent's brother who at the time of purchase was occupying the land. The Appellant affirmed he entered into a sale agreement with Yaki Associates as the vendors on 30th May, 1998 and that as at the time of the sale he had not carried out any due diligence to establish who the owner of the suit land was. He confirmed the Respondent's brother permitted him to take possession of the land.
10. The Learned Trial Magistrate, after evaluating the evidence and the submissions of the parties determined that the Respondent was the duly registered owner of land parcels Kabare/Nyangati/1931 and 1932 and that the doctrine of adverse possession was inapplicable in the circumstances of the case in favour of the Appellant. The Learned Trial Magistrate ordered the Appellant and all those claiming through him to vacate from the suit land and further issued an order of permanent injunction against the Appellant.
11. The Appeal was argued by the parties by way of written submissions. The Appellant submitted that the Respondent had not disputed that he, the Appellant, had possessed the suit land from 1997 without any interruption for a period in excess of 12 years. Therefore, he claimed entitlement to the property through the doctrine of adverse possession. The Appellant submitted that the respondent's rights over the suit land had become extinguished and, as a result, the Respondent could not legally reclaim the land. The Appellant relied on the case of *Mwangi & Another v. Mwangi* (1986) KLR 328 to support his argument. He asserted that he had proved his claim of adverse possession on a balance of probabilities and urged the Court to allow his Appeal.
12. The Respondent filed her written submissions dated 5th December 2024. She submitted that the Learned Trial Magistrate had rightly determined that she was the registered owner of the disputed land. She contended that the Learned Trial Magistrate rightly deemed the Appellant's sale agreement invalid, a point that the Appellant did not contest in his appeal. Given that the Appellant's case was based on this sale agreement, and since the Appellant did not appeal this finding, the Respondent maintained that the Appeal lacked merit and urged that it be dismissed. The Respondent asserted that the Learned Trial Magistrate correctly held that the doctrine of adverse possession was not applicable on the facts of the case as the Respondent only became aware of the Appellants occupation and possession in 2017 upon which she initiated action to procure the Appellant's eviction from the land. She relied on the case of *M'mbaoni M'Ithara v James Mbaka* (2019) eKLR where the court stated as follows:

Another disturbing angle to this dispute was introduced by the evidence of PW2 who contradicted the appellant by saying that the suit land was sold to the Appellant by the brothers of the father of the Respondent who had died in 1954. That the Respondent was a minor when the land was sold. A further twist to the facts was introduced by PW3 who said indeed the suit lands were sold by the Respondent's mother, Evangeline Ciokatiro and Mbioki Imunde who had inherited the

Respondent's mother. The Respondent refused to transfer the suit lands on obtaining an identification card meaning the Respondent was a minor. No Letters of Administration over the estate of the father of the Respondent were obtained before he could enter a sale agreement. In our considered view this evidence did not point to a valid sale agreement, even if there was and could not have given the colour of right or license to the Appellant with which to claim the suit lands under adverse possession.



If indeed the Respondent was a minor, and there was no evidence to show he was not, the Appellant could not have obtained a colour of right as against the minor; that he could have acquired colour of right through an invalid sale agreement which was entered into with strangers without necessary Letters of Administration.

13. The Respondent further argued that even if the Court were to assume that the agreement presented by the Appellant was valid the Appellant did not demonstrate that he had paid the full purchase price of Kshs 75,000/- as the agreement indicated that only a sum of Kshs 70,000/- had been paid. The Respondent thus submitted the period of adverse possession, where applicable, would only run from the date when the full purchase price is paid. In support of her submission, the Respondent relied on the case of Peter Mbiri Michuki v. Samuel Mugo Michuki (2014) eKLR, where the Court of Appeal cited the case of Public Trustee v. Wanduru (1984), KLR 314 at page 319 where Madan, JA stated thus:

“adverse possession should be calculated from the date of payment of the purchase price to the full span of twelve years if the purchaser takes possession of the property because from this date, the true owner is dispossessed of possession. A purchaser in possession of the land purchased, after having paid the purchase price, is a person in whose favour the period of limitation can run.”

14. The Respondent further submitted she became aware of the Appellant's occupation and possession of the disputed land in 2019 and the requisite 12-year period for the doctrine of adverse possession to apply had not lapsed and was therefore not applicable in the instant case. The Respondent placed reliance on the case of Titus Kigoro Munyi v. Peter Mburu Kimani (2015) eKLR to support her submission. She contended that the Appeal lacked merit and prayed for its dismissal with costs.
15. I have reviewed the Record of Appeal, the evidence before the Lower Court and have considered the submissions of the parties. This Court being an Appellate Court of first instance, is obligated to consider and re-evaluate the evidence and material that was before the Learned Trial Magistrate at the time he made the impugned Judgment to satisfy itself that the Judgment of the Learned Trial Magistrate was justified. This was in keeping with the principle established by the Court of Appeal in the Case of Selle & Another –vs- East African Motor Boat Co. Ltd & Others (1968) EA 123.
16. The issues that arise for determination in this appeal maybe summed up as follows:-
- i. Whether the Learned Trial Magistrate was, having regard to the evidence adduced before him, justified to hold and find that the Respondent was the rightful owner of the suit property and that the Appellant was a trespasser?
 - ii. Whether the Learned Trial Magistrate erred in not holding and finding that the Appellant had acquired the suit land by virtue of the doctrine of adverse possession?
17. There was no dispute that the Respondent was the registered owner of land parcels Kabare/ Nyangati/1931 and 1932. The Respondent exhibited copies of certificate of lease for the two parcels of land issued in her name on 6th September 2002. The Respondent further exhibited copies of certificates of official search dated 14th May 2014 which showed that the Respondent was the registered proprietor. The Learned Trial Magistrate properly and rightly held and found that the Respondent was the registered owner of the parcels of land.
18. On the second issue the Appellant predicated his claim of ownership of land parcel Kabare/ Nyangati/1931 to a sale agreement dated 30th May, 1998 pursuant to which he claimed he entered into possession and developed the land. It was his position that even though the land was not



transferred to him, he had adversely been in possession for a period in excess of 12 years and, hence the Respondent's title had by virtue of the adverse uninterrupted possession for a period of over 12 years, been extinguished and he had become entitled to be registered as owner thereof by virtue of the doctrine of adverse possession.

19. The Respondent denied he had authorised her brother, who the Appellant claimed sold him the land, to sell the land on her behalf. She testified she had not been aware the Appellant was in possession of her land and that she only became aware in 2017 and that she immediately took up the issue with her Chief and later instituted the suit for the eviction of the Appellant and for issue of a permanent injunction.
20. The sale agreement pursuant to which the Appellant entered into possession of the suit land was made between YAKI ASSOCIATES as Vendor and the Appellant as purchaser. Although Yaki Associates executed the agreement dated 30th May 1998 as vendor, no evidence was adduced to show they were the owners of the land and/or that they were acting as agents of the owner. The Appellant in his evidence affirmed at the time he purchased the property he never conducted a search of the property and it is therefore not clear on what basis he entered into the agreement where YAKI Associates was described as the Vendor. The certificate of lease in respect of the suit property indicates that the property was leasehold interest for 99 years from 1st October 1991 and that the Lessor was the Kirinyaga County Council. The Lease was registered in favour of the Respondent on 6th September 2002. The Appellant in his evidence admitted that he had heard about the Respondent but only met her in 2021. The Appellant indicated at the time of purchase, it was the Respondent's brother who was occupying the property.
21. As per the evidence it is clear the Respondent was not aware of the sale agreement that the Appellant had entered into, The Respondent's brother, if at all he was in occupation of the property, could only have been in occupation with the Respondent's permission and that could not extend to authority to dispose the property to anybody. The Respondent has contended she had no knowledge the Appellant was in possession and only discovered the unlawful encroachment and trespass in December, 2017 and consequently the period of adversity could not have been running when she had no knowledge of an adverse possessor on her land. Such period could only commence running in 2017 when she became aware of the adverse possessor.
22. In the case of *Kimani Ruchire –vs- Swift Rutherfords & Co. Ltd* (1980) KLR 10 at Page 16 Kneller J held that in adverse possession:-

“ The Plaintiff must show that the company had knowledge (or the means of knowing actual or constructive) of the possession or occupation...”.
23. The Court of Appeal in the Case of *Titus Kigoro Munyi –vs- Peter Mburu Kimani* (2015) eKLR reiterated that actual or constructive knowledge of adverse possession must be proved. The Court at Paragraph 26 of their Judgment stated:-

“ 26. Guided by the dicta as stated by Kneller J herein above and as adopted by this Court in *Francis Gicheru Kariri –vs- Peter Njoroge Mburu – Civil Appeal No. 293 of 2002* (Nairobi), we are of the considered view that in a claim for adverse possession, actual or constructive knowledge of adverse possession by a third party on the part of the registered proprietor must be proved. The Trial Court established as a fact that actual knowledge on the part of the registered proprietor that the Applicant was in possession of the suit property



was established to exist either from the year 2004 or 2010. We see no reason to interfere with this finding of fact by the trial Court”.

24. In the instant Appeal, there was no evidence that the Respondent was aware and/or had constructive knowledge of the Appellant’s possession of the suit land earlier than 2017 when the Respondent stated she became aware and made a report to the Chief. By his own admission the Appellant admitted that he first saw the Respondent in 2021. The Appellant’s entry onto the land was pursuant to a sale agreement entered with a stranger who was not the owner of the land. The agreement was invalid and could not have given the Appellant any colour of right. See *M’Mbaono M’ithata –vs- James Mbaka* (supra). The Learned Trial Magistrate in his determination was guided by the two authorities I have referred to and entitled to come to the conclusion that he came to, that the doctrine of adverse possession was not applicable in the circumstances and facts of the case. I find no basis to fault the Learned Trial Magistrate.
25. Having held the Respondent was the rightful owner of the suit property and that the doctrine of adverse possession was not applicable, the Learned Trial Magistrate was entitled to order that the Appellant vacates from the suit land and in default to be evicted.
26. The upshot is that the Appeal is without any merit and it is accordingly dismissed with costs to the Respondent.

JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 24TH DAY OF APRIL 2025.

J. M. MUTUNGI

ELC - JUDGE

