



REPUBLIC OF KENYA



**Nguthi & 28 others v Mungai & 3 others (Environment & Land Case  
120 of 2013) [2022] KEELC 3478 (KLR) (12 May 2022) (Judgment)**

Neutral citation: [2022] KEELC 3478 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 120 OF 2013**

**LN MBUGUA, J**

**MAY 12, 2022**

**BETWEEN**

**JACKSON MUIRURI NGUTHI ..... 1<sup>ST</sup> PLAINTIFF**  
**JOSEPH KIRAI MWARANIA ..... 2<sup>ND</sup> PLAINTIFF**  
**GIDEON MUNDA JASON GWAYI ..... 3<sup>RD</sup> PLAINTIFF**  
**HENRY I. MPAPALEE ..... 4<sup>TH</sup> PLAINTIFF**  
**JOAN WANJIKU KARANJA ..... 5<sup>TH</sup> PLAINTIFF**  
**JOHN ERNEST NGATTI ..... 6<sup>TH</sup> PLAINTIFF**  
**MARTIN KARANJA WAIKWA ..... 7<sup>TH</sup> PLAINTIFF**  
**NICHOLAS ONTITA MOSIGISI ..... 8<sup>TH</sup> PLAINTIFF**  
**RICHARD MOMANYI ..... 9<sup>TH</sup> PLAINTIFF**  
**SIMON MUKUNDI MWANGI ..... 10<sup>TH</sup> PLAINTIFF**  
**RODAR KANDAGOR ..... 11<sup>TH</sup> PLAINTIFF**  
**ANNAH KERUBO OKERIO ..... 12<sup>TH</sup> PLAINTIFF**  
**CRISPINUS ONYANGO KARANI ..... 13<sup>TH</sup> PLAINTIFF**  
**EDWARD ESBON AKASTSA KEYA ..... 14<sup>TH</sup> PLAINTIFF**  
**EVANS OKEMWA NYABUTI ..... 15<sup>TH</sup> PLAINTIFF**  
**GEORGE NJIRU NJOKA ..... 16<sup>TH</sup> PLAINTIFF**  
**ISAAC GEKONGE GESAGE ..... 17<sup>TH</sup> PLAINTIFF**  
**JOSEPH W. KAMAU ..... 18<sup>TH</sup> PLAINTIFF**  
**KARIUKI KIBUI ..... 19<sup>TH</sup> PLAINTIFF**



KINYUA KARIUKI .....	20 <sup>TH</sup> PLAINTIFF
MORGAN MURANDA CHIMI .....	21 <sup>ST</sup> PLAINTIFF
SAMSON MAYUYA AMORO .....	22 <sup>ND</sup> PLAINTIFF
SAMSON NYAKUNDI MACHUKI .....	23 <sup>RD</sup> PLAINTIFF
SAMWEL MOGAKA OSORO .....	24 <sup>TH</sup> PLAINTIFF
KENNETH MICHENI .....	25 <sup>TH</sup> PLAINTIFF
JOHN MUKONYI .....	26 <sup>TH</sup> PLAINTIFF
FRANCIS THIONGO KAMAU .....	27 <sup>TH</sup> PLAINTIFF
GEOFFREY KURIA KAMAU .....	28 <sup>TH</sup> PLAINTIFF
NJOKI KINYENJE .....	29 <sup>TH</sup> PLAINTIFF

**AND**

MOSES NDUNGU MUNGAI .....	1 <sup>ST</sup> DEFENDANT
SIMON NDUNDA METHO .....	2 <sup>ND</sup> DEFENDANT
KASIVA NZOMO NGWALO .....	3 <sup>RD</sup> DEFENDANT
MITA NZOMO NGWALO .....	4 <sup>TH</sup> DEFENDANT

**JUDGMENT**

1. This suit instituted through Originating Summons filed on 24<sup>th</sup> January 2013 seeks proclamation that the Plaintiffs are entitled to ownership and registration of parcels of land on LR No. Mavoko Town/Block 2/9246, LR No. Mavoko Town/Block 2/9247, Mavoko Town Block 2/38 and LR No. Mavoko Town/Block 2/88 by virtue of adverse possession. The Plaintiffs seek determination of the following:
  - i. Whether the Plaintiffs are entitled by virtue of adverse possession to all those parcels of land known as LR No.s Mavoko Town/Block 2/9246, Mavoko Town/Block 2/9247 Mavoko Town Block 2/38 and Mavoko Town/Block 2/88 which are registered in the names of the defendants.
  - ii. Whether the Plaintiffs should be registered as proprietors of all those parcels of land known as LR No.s Mavoko Town/Block 2/9246, Mavoko Town/Block 2/9247, Mavoko Town Block 2/38 and Mavoko Town/Block 2/88 which are registered in the names of the defendants.
  - iii. If answers to (a) and (b) above are in the affirmative, whether the court should make declarations and orders directed to the Lands Registrar Machakos to give effect to the said findings.
  - iv. Whether the Plaintiffs should be paid costs of this suit.
2. The Originating Summon supported by the sworn affidavit of Martin Karanja Waikwa and Evans Okemwa Nyabuti the 7<sup>th</sup> and 15<sup>th</sup> Plaintiffs respectively, is premised on the grounds that the Plaintiffs have been in continuous and uninterrupted use of the suit lands for a period of over seventeen years since 1995 with full knowledge of the Defendants who are the registered owners of the lands.



3. They averred that they bought their parcels of land from Okoa Development Company Ltd, of which the plots were in parcel LR. No. Mavoko Town/Block 2/49, 2/38 and 2/88. That Okoa development company was related to 1<sup>st</sup> defendant in whose name parcel 2/49 was registered . That the said company claimed to have bought the rest of the parcels, 2/38, and 2/88 from the 2<sup>nd</sup> 3<sup>rd</sup> and 4<sup>th</sup> Defendants.
4. The Plaintiffs outlined how LR No. Mavoko Town/Block 2/49 was subdivided into several plots resulting in L.R. No Mavoko Town/Block 2/5459 which was further subdivided into LR No. Mavoko Town/Block 2/9246 and Mavoko Town/Block 2/9247 in current occupation of the Plaintiffs.
5. The 1<sup>st</sup> Defendant in his sworn affidavit dated and filed on 12<sup>th</sup> April 2013 stated that he was the Director of Okoa Development Company Ltd. He affirmed that he purchased LR No.s Mavoko Town/Block 2/9246, Mavoko Town/Block 2/9247 and Mavoko Town/ Block/2/88 from the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants, subdivided and sold them off. He however contended that the Plaintiffs were not in occupation of the aforementioned parcels adding that they were not entitled to the said lands by virtue of adverse possession because they had purchased parcels of land for consideration of value although they still had outstanding balances save for the 11<sup>th</sup> Plaintiff.
6. No pleadings were filed for and on behalf of the rest of the defendants. The 1<sup>st</sup> defendant also did not turn up during the hearing of the case.
7. PW1 Evans Okemwa is the 15<sup>th</sup> plaintiff. He introduced himself as a civil servant working with the Ministry of Education in Kakamega. He relied on the affidavit dated 20<sup>th</sup> December 2012 filed alongside the Originating summons as his evidence. He also produced the documents annexed in the said affidavit as Exhibits 1- 4. He testified that in total, they are 29 plaintiffs. They know each other. That after buying the land from Okoa Development Company, they constructed or fenced their respective plots and took possession. He developed his land in 2001 but had been in possession of the same earlier on.
8. PW2 Martin Karanja is the 7<sup>th</sup> plaintiff. He is a retired police officer and he also adopted their joint affidavit dated 20<sup>th</sup> December 2012 as his evidence. He contends that he had been in quiet occupation of his plot on the suit property from year 2000.
9. It was submitted orally for the plaintiffs that they had established ingredients of adverse possession because the said land was sold to the Plaintiffs by Okoa Development Company which was not the registered owner of the said land and as such the sale could not go through. That the plaintiffs moved into the suit plots in year 1995. That the Plaintiffs have been living in the suit parcels namely; LR No.s Mavoko Town/Block 2/9246, Mavoko Town/Block 2/9247, Mavoko Town/ Block/2/38 and Mavoko Town Block 2/88. Reference was made to the case of Stephen Njoroge Kiboli v David Mwaele Nguli [2019] eKLR in which the learned Judge held:

“...Change of Title of land occupied under adverse possession cannot defeat the overriding interest...”

Analysis and Determination

Whether the Plaintiffs claim for adverse possession is merited is the issue for determination.

11. The Plaintiffs state that they purchased the plots of land from Okoa Development Company and have been in possession of the same dating back to 1995. They claim adverse possession because they have exclusively used the said plots without disturbance.



12. The Plaintiffs produced ownership certificates as evidence of being in legal possession of the said lands. The Court has reviewed the said certificates and notes that the Plaintiffs are in possession of certificates with diverse dates dating from 1995 to 2011.
13. The Plaintiffs adduced Certificates of official search with the following information: The Certificate dated 8<sup>th</sup> January 2009 showed that as of 11<sup>th</sup> June 2003 the proprietor of Mavoko Town Block 2/49 was Moses Ndungu Mungai (1<sup>st</sup> Defendant) which title was closed on 24.6.2003 to give rise to resulting parcels namely 5459 and 5460. Two other searches dated 14<sup>th</sup> January 2009 for Mavoko Town Block 2/5459 showed that the proprietor was Moses Ndungu Mungai as of 24<sup>th</sup> June 2003; and title number Mavoko Town Block 2/5460 as of 26<sup>th</sup> June 2003 was in the name of Relisa Housing Cooperative Society Ltd. The plaintiffs are not claiming this particular parcel of land. (5460).
14. Two searches search dated 14.2.2012 showed that 1<sup>st</sup> defendant was registered as the owner of parcels Block 2/9247 and Block 2/9246 as at 15.10.2008 but there were court orders stopping any dealings in the aforementioned parcels of land.
15. Yet another search certificate is dated 8<sup>th</sup> January 2013 showing that Mavoko Town Block 2/88 was in the name of Kasiva Nzomo Ngwalo (3<sup>rd</sup> defendant) as at 20. 11.1991 and it then went to Mita Nzomo Ngwalo (4<sup>th</sup> Defendant) in February 1992.
16. The search for Mavoko Town Block 2/38 dated 8.1.2013 shows that as of 20<sup>th</sup> November 1991, it was under Simon Ndunda Metho (2<sup>nd</sup> Defendant).
17. It has been held that for a claim of adverse possession to be sustained, the claimant's acts ought to be nec vi, nec clam, nec precario (to mean: neither by force, nor secretly and without permission). The Court of Appeal in *Prisca Narotso Etyanga v James Gitau Gachaiya Suing on behalf of a Legal Representative of Elizabeth Njeri Gitau* [2017] eKLR made reference to *Samuel Kihamba v Mary Mbaisi* [2015] eKLR that;
 

“Strictly, for one to succeed in a claim for adverse possession one must prove and demonstrate that he has occupied the land openly, that is, without force, without secrecy, and without license or permission of the land owner, with the intention to have the land. ... These elements are contained in the Latin phraseology, nec vi, nec clam, nec precario...”
18. The Claimants bought the land from the Okoa development company and took possession thereof before or in year 2000. However, the said company apparently did not own the land. Nevertheless, the defendants were aware of the sale and occupation but did not assert their claim. The 1st Defendant who had even filed an affidavit in opposition to the suit did not bother to defend the suit during the trial hence the contents of his pleadings are of no consequence.
19. The end result is that plaintiff's claim is found to have merits. The plaintiffs have given an account of why they are claiming parcels block2/9246 and Block2/9247. These plots apparently emanated from parcel Block 2/5459 which in turn had emanated from Block 2/49. And as per the search dated 8.1.2009 for this parcel 2/49, 1<sup>st</sup> defendant was registered as the owner on 11.6.2003. As rightly submitted by the plaintiff, any subsequent change of title cannot defeat their claim of adverse possession, see *Stephen Njoroge Kiboli v David Mwaele Nguli* [2019] eKLR (supra).
20. The final orders are given as follows;
  1. It is hereby declared that the Plaintiffs are entitled by virtue of adverse possession to all those parcels of land known as LR No.s Mavoko Town/Block 2/9246, Mavoko Town/Block



2/9247, Mavoko Town Block 2/38 and Mavoko Town/Block 2/88 which are registered in the names of the defendants.

2. An order is hereby issued for the Plaintiffs to be registered as proprietors of all those parcels of land known as LR No.s Mavoko Town/Block 2/9246, Mavoko Town/Block 2/9247, Mavoko Town Block 2/38 and Mavoko Town/Block 2/88 in respect of the various plots which they occupy.
3. The Land Registrar Machakos is directed to give effect to the findings in (2) above.
4. Each party is to bear their own costs of the suit.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 12TH DAY OF MAY, 2022 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

**In the presence of:-**

B.M. Musyoki for the Plaintiffs

Court Assistant: June Nafula

