



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (MILIMANI LAW COURTS)  
ENVIRONMENTAL & LAND CASE 208 OF 2010**

**GRACE WANJIRU NGUGI .....PLAINTIFF**

**VERSUS**

**MWAURA KINUTHIA.....DEFENDANT**

**JUDGMENT OF THE COURT**

The Plaintiff brought a suit against the Defendants by way of Originating Summons dated 22<sup>nd</sup> June 2009. The Plaintiff is seeking the following substantive orders in the said Originating Summons:

1. That the Plaintiff be declared to have become entitled by way of adverse possession of over twelve years to that piece/parcel of land known as parcel No. Karai/Gikambura/T.545.
2. That the Plaintiff be registered as proprietor of the said parcel of land known as Parcel No. Karai/Gikambura/T.545.
3. That the Honourable court do sign the transfer document in respect of the parcel of Land known as Karai/Gikambura/T.545 (hereinafter referred to as the suit property), in favour of the Plaintiff in the event that the Defendant fails to sign the said transfer forms.

The Plaintiff's claim is that she settled on the suit property in 1960 and has been in continuous occupation and uninterrupted possession of the said parcel of land ever since. Further, that since settling on the parcel of land she has grown crops, erected houses and made improvements thereon amounting to approximately Kshs.200,000/=. The Plaintiff goes on to state that records pertaining to the suit property show that the same is registered in the name of the Defendant, and she has annexed to her supporting affidavit sworn on 22<sup>nd</sup> June 2009 a copy of the Extract of the Title (Green Card) of the suit property issued on 2/10/90 by the Land Registrar Kiambu, which shows that Mwaura Kinuthia was registered as owner of the suit property on 9/9/59 . She has also annexed a copy of Certificate of Official Search showing the same information, and also showing that on 7/7/94 a caution was registered by one Peter Kinuthia Kamunge claiming to be a Licensee.

The Plaintiff's claim is that the title of the Defendant has been extinguished by my continuous and exclusive adverse possession thereof for period of over twelve years, and that she is entitled to be registered as the proprietor of the said suit land in place of Mwaura Kinuthia. Further, that the Land Registrar cannot effect the transfer without a court order hence is in the interest of justice for the orders sought herein be granted

The Defendant was served with the originating summons and there is an affidavit of service to this effect on the court record sworn on 29<sup>th</sup> October 2010 by Peter Ngugi Kinyanjui, a process server of the High

Court. The Defendant did not enter appearance. The Plaintiff also gave and filed a written authority dated 4<sup>th</sup> July 2011 to her son one Humphrey G.M Ngugi to legally represent her, pursuant to orders given by Mbogholi Msagha J. on 30<sup>th</sup> June 2011. The said authority was filed on 7<sup>th</sup> July 2011.

The Plaintiff called two witnesses to testify on her behalf at the hearing of the Originating Summons on 16<sup>th</sup> January 2011. The witnesses both filed written statements and gave oral testimony. The first witness, was Michael Henya Kimani who testified that he resides in Gikambura village in Kikuyu division and that he has have known the Plaintiff for over forty years and all that time the Plaintiff has been living on land parcel No. Karai/Gikambura/T.545. The second witness was David Kamau Kiarie who gave evidence that he is over eighty years old and lives in Gikambura village in Kikuyu Division. He further testified that he is a neighbor of the Plaintiff and her late husband who were living on land parcel No. Karai/Gikambura/T.545. Further, that he had witnessed the Plaintiff developing the said parcel of land including building a house on it, and raising her children on the said piece of land for the past 50 years with no interference from anyone. He also stated that in all these years that I have lived with the Plaintiff as her immediate neighbor, no one ever has claimed ownership of the same piece of land.

Humphrey Muiruri Ngugi, who was given the authority to represent the Plaintiff, filed written submissions dated 19<sup>th</sup> January 2012. He contended therein that the land demarcation in Karai location was done in 1958 and the Government then re-located all the unsettled people in 1960. Further, that his father Josiah Ngugi Warari (Deceased) (the Plaintiff's husband), was among the landless people in the village and thus qualified for relocation, was allocated plot No. Karai/Gikambura T.545 but was not issued with legal documents of ownership. It was also submitted and that the Plaintiff and her family have lived on the said plot to date and have through the years developed the above mentioned plot by *inter alia* constructing permanent buildings and installing water. They now wish to install electricity but cannot be allowed to do so without legal documentation of ownership of the said parcel of land.

I have carefully read and considered the Plaintiff's pleadings and evidence. The Applicant has filed these origination summons under Order XXXVI Rule 3D of the revoked Civil Procedure Rules (Cap 21) (now Order 37 Rule 7 of the 2010 Civil Procedure Rules) and the Limitation of Actions Act (Cap 22). The law on adverse possession is settled. Where a person has been in continuous, uninterrupted occupation or possession of land for a period of 12 years or more he may apply to the High Court to be registered as the proprietor thereof in place of the owner of the suit premises under section 38(1) of the Limitation of Actions Act. The Court of Appeal in **Wambugu v Njuguna (1983) KLR 172** held that adverse possession contemplates two concepts: dispossession and discontinuance of possession. The Court of Appeal further held that the proper way of assessing proof of adverse possession is whether or not the title holder has been dispossessed or has discontinued his possession for the statutory period, and not whether or not the claimant has proved that that he or she has been in possession for the requisite number of years.

The first issue before this court therefore is whether the Applicant has been able to prove on a balance of probabilities that he has dispossessed the 1<sup>st</sup> Respondent for 12 years to be entitled to adverse possession. The Plaintiff has brought evidence to show that she has been in continued and uninterrupted possession of the suit premises from the year 1960, and that the no one has never come to the suit premises to assert their rights to the property. The Plaintiff has also brought bring evidence that the Defendant's was registered as owner of the suit property as 9/9/59. Since the evidence that the Defendant has never been in occupation of the suit property is undisputed, the date of his dispossession is the date the Plaintiff took possession in 1960, the which is the date when the statutory period of 12 years started running for purposes of adverse possession. The Plaintiff has therefore been in uninterrupted possession for over 50 and has met the threshold for adverse possession to attach. She has proved her case for adverse possession.

The second issue this court has to consider the effect of the entry on the register of the suit premises with regard to the caution registered on 7/7/94 by one Peter Kinuthia Kamunge, claiming to be a Licensee. No evidence was brought by the Plaintiffs on this issue, and in the circumstances I am bound to apply section 38(2) of the Limitation of Action Act which subjects any orders of registration upon adverse possession to any entry on the register which has not been extinguished.

Arising from the above-stated reasons, this Court enters judgment for the Plaintiff as follows:

1. The Plaintiff is hereby declared as entitled by way of adverse possession to that piece/parcel of land known as parcel No. Karai/Gikambura/T.545.
2. The Plaintiff be registered as proprietor of the said parcel of land known as Parcel No. Karai/Gikambura/T.545 in place of the Defendant, subject to any existing entries on the register of the said property.
3. The High Court's Deputy Registrar to execute do sign the transfer document and any other necessary forms in respect of the parcel of Land known as Karai/Gikambura/T.545 in favour of the Plaintiff.
4. There will be no order as to costs.

Dated, signed and delivered in open court at Nairobi this \_\_\_\_\_29<sup>th</sup>\_\_\_\_\_ day of\_\_\_\_March\_\_\_\_\_, 2012.

**P. NYAMWEYA**

**JUDGE**