



**Kanjama v Kamau (Environment & Land Case 41 of 2019)  
[2022] KEELC 13586 (KLR) (21 September 2022) (Judgment)**

Neutral citation: [2022] KEELC 13586 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT EMBU  
ENVIRONMENT & LAND CASE 41 OF 2019**

**A KANIARU, J**

**SEPTEMBER 21, 2022**

**IN THE MATTER OF SECTIONS 7,7,38 OF THE LIMITATION OF ACTIONS  
ACT CAP 22 AND ORDER 37 RULES 7 AND 19 OF THE CIVIL PROCEDURE  
RULES AND ALL OTHER ENABLING PROVISIONS OF THE LAW**

**BETWEEN**

**NYAGA KANJAMA ..... PLAINTIFF**

**AND**

**CHARLES KAMAU ..... DEFENDANT**

**JUDGMENT**

**Introduction**

1. The plaintiff instituted this suit by way of originating summons filed on September 11, 2019. Later, with leave of court granted on June 5, 2021 he filed an amended originating summons on June 29, 2021. In the suit the plaintiff is Nyaga Kanjama while the defendant is Charles Kamau.

**Pleadings**

2. The plaintiff has brought this suit seeking declaratory orders that he has become entitled to land parcels Evuvore/Evuvore/106, Evuvore/Evuvore/574, Evuvore/Evuvore/576 and Evuvore/Evuvore/248 by virtue of section 7 of the *Limitation of Actions Act*, having being in open and peaceful occupation of the said parcels for a period exceeding 12 years. In the alternative, he wants a declaration that defendant, who is the registered owner of the suit parcels, is holding the land on his behalf and in trust for him. He further sought to be registered as the absolute proprietor of the suit parcels of land and, finally, he sought to be awarded the cost of suit.
3. The plaintiff stated that in the 60's he worked alongside the defendant at Ruaraka in Nairobi. They had not only been co-workers but also good friends. He claimed to have resigned in the year 1971 and



subsequently set up a shop at Ishiara where he transacted business with the defendant. He deposed also that in the year 1972 he resolved to buy land in Ishiara town but feared being betrayed by the sellers, whom he perceived may fail to transfer the properties to him during adjudication, as he was a mere local resident of Ishiara town. He therefore claimed to have requested the defendant, a police officer at the time, to allow him purchase the properties in his name since he believed the sellers would fear to deceive him.

4. In that year, he purchased land parcel Evuvore/Evuvore/106 from Njeru Njau for value; was granted vacant possession; and he constructed a permanent home where he has been residing with his family and their children to date. He also claims to have put up rental premises on the land and also planted various fruit trees which were now mature. He further states to have bought land parcels Evuvore/Evuvore/248, Evuvore/Evuvore/574 and Evuvore/Evuvore/576 from one Dominic Ngugi (deceased) in the year 1974, which land he paid for in cash and also by giving out goods (a gourd of honey, a blanket and a coat in accordance with the Mbeere customs). He stated to have occupied the land and has been utilizing it together with his family members. It was his case that he grazes his cows on the land; he has several mature mango trees on it; and further that in 2018 he buried one of his daughter on one of the said parcels.
5. With regard to registration of the four parcels of land, he deposed that upon determination of the adjudication process, the said parcels were registered in the name of the defendant on May 7, 1987. He produced copies of green card as evidence of this. He stated also to have last communicated with the defendant over 40 years ago while he was living in Nairobi. He said he was now not aware of the defendant's whereabouts. He claimed to have been in quiet, peaceful, continuous, uninterrupted and exclusive possession of the land for over 12 years and was therefore entitled to the suit properties.
6. The plaintiff sought determination of seven questions to wit; whether he purchased the suit parcels land for valuable consideration; whether he caused the parcels to be registered in the defendant's name to safeguard his interest; whether he has openly lived and worked on the parcels for a period in excess of 12 years from the date of registration and prior to that date; Whether, he was entitled to ownership of the land by way of adverse possession; whether in the alternative, the defendant holds the land in trust for him; whether he should be registered as proprietor of the land; and finally whether he was entitled to the costs of the suit.

## Hearing

7. The defendant was served with summons via substituted service pursuant to court orders issued on October 15, 2019 but he never entered appearance nor filed defence in the matter. The suit therefore proceeded undefended and was set down for hearing on March 8, 2022. The plaintiff gave evidence and called two more witnesses in support of his case. The plaintiff was PW1. His case was that he hailed from Ishiara, Embu County, and he has three parcels of land and a plot in the area. He stated that he could not recall the details of the land parcels as he was illiterate. He also stated to have bought the parcels a long time ago and had occupied the land together with his family members who were adults now and reside there with their children.
8. He testified that he has five buildings on the land and a storey building on the plot. He has mature trees on the land. He has even distributed portions of the land to his children. He also testified that one of his daughter's had died and was buried on the land. He claimed that the defendant had been a clerk during the adjudication. The plaintiff, being illiterate had sought his services to write for him. But the defendant had instead taken advantage of him and registered the suit parcels in his name. According to the plaintiff, the defendant had however not come to interfere with his occupation of the suit parcels and he had tried to trace him but in vain. He stated a desire to now give the land to his children and



had therefore approached the court to help him remove the defendant's details from the register. He further sought for the court to adopt his bundle of documents as evidence in his case.

9. PW2 was one Joel J Ngatiari who also stated to hail from Ishaira. He was a neighbor to the plaintiff and occupied land parcel number Evuvore /Evuvore/ 107 while the plaintiff occupies land parcel Evuvore/ Evuvore/106. He stated that the plaintiff has a land parcel in Ishiara market and others parcels of land far from the one at the market. That they have been neighbors for over 50 years. He testified that the plaintiff lived on suit parcel Evuvore/Evuvore/106 with his two wives and children, which parcel he was said to have purchased from one Richard Njeru Njau, the same person who had sold the land to him.
10. He stated that no person had ever claimed the plaintiff's land, or disturbed him from using or possessing it. He however confirmed not knowing the defendant. He sought for the court to adopt his witness statement as evidence in this case.
11. PW3 was David Kivuti Nyaga, a businessman, and son of the plaintiff. He stated to have been born in 1973 and stated to have been brought up in Ishiara on suit parcel of land Evuvore/Evuvore/106 where his father resided with his two wives. He said he the was son of the second wife and they were 12 children in all but one had died and was buried on the suit parcel of land. He testified that his father had other parcels of land which were adjacent to each other. He too, like the rest of the witnesses, stated that the defendant had never disturbed or interfered with their occupation of the land. He also sought for his statement to be adopted as evidence in court.

### Submissions

12. The plaintiff's counsel sought to file her submissions. The submissions were filed on May 6, 2022. Two issues were identified for determination. The first was whether the plaintiff is entitled to ownership of the suit parcels of land as against the defendant by virtue of adverse possession. On what was adverse possession the plaintiff relied on the definition as stated in the case of *Mtana Lewa vs Kabindi Ngala Mwangangi* Civil Appeal No 56 of 2014 [2015] eKLR. He averred that the plaintiff has been in occupation of the suit parcel of land Evuvore/Evuvore/106 from the year 1972 and land parcels Evuvore/Evuvore/574, Evuvore/Evuvore/576 and Evuvore/Evuvore/248 from the year 1974. He further averred that upon purchase of the respective parcels of land he was granted vacant possession, had developed the parcels by building a permanent house on it, had also built other houses which he had leased to tenants, was grazing livestock on the land, had planted mature trees, and was in occupation together with his wives, children and grandchildren.
13. It was said that at the time of purchase of the land, the properties were still undergoing adjudication and that upon registration the properties were registered in favour of the defendant on May 7, 1984. It was submitted that the plaintiff's witnesses had corroborated the evidence that the plaintiff had been in occupation of the suit land from early 1970's. In support of the case, the plaintiff relied on the provisions of section 7 and section 17 of the *Limitation of Actions Act* and further relied on the case of *Celina Muthoni Kithinji vs Safina Binti Swaleh & 8 others* (2018) eKLR where the court found that the plaintiff had proved their case on a balance of probability because no evidence had been adduced to contradict the plaintiff's averments. The plaintiff emphasized on his uninterrupted, continuous occupation, and possession of the land for a period exceeding twelve years. He averred that the defendant's right to bring an action had become extinguished.
14. The second issue was whether a declaration should be made to the effect that the defendant was registered as owner on behalf of and in trust for the plaintiff. The plaintiff relied on the *Mtana Lewa* case (*supra*) in which the court cited the provisions of section 37 and 38 of the *Limitations of Actions Act* which stipulate that if land is registered under one of the registration acts then the title is not



extinguished but held in trust for the person in adverse possession until he shall have obtained a high court order vesting the land in him. It was therefore argued that the suit properties were held in trust for the plaintiff from the year 1999, which is when the 12 years lapsed, since the defendant's registration as proprietor of the land. The court was urged to allow the plaintiff's claim and to equally award him costs of the suit.

### **Analysis & Decision**

15. I have considered the pleadings, the evidence, and the submissions by the plaintiff. The plaintiff's suit is centered on a claim of adverse possession over suit parcels of land - Evuvore/Evuvore/106, Evuvore/Evuvore/574, Evuvore/Evuvore/576 and Evuvore/Evuvore/248. He claims to have bought the parcels of land but that the parcels had been registered in the defendant's name who was his friend at the time. That however, the defendant could not be traced and that no one has ever interrupted his possession and that of his family on the land. He claimed to have been in open, exclusive and uninterrupted possession of land parcel Evuvore/Evuvore/106 from the year 1972 and had also possessed land parcels Evuvore/Evuvore/574, Evuvore/Evuvore/576 and Evuvore/Evuvore/248 from the year 1974 to date. His prayer is for the court to make a declaration that he had acquired the parcels by way of adverse possession and therefore order registration of the parcels of land in his name.
16. Adverse possession was defined by the Court of Appeal in the case of [\*Mtana Lewa v Kabindi Ngala Mwagandi\*](#) [2015] eKLR where the court stated thus:

“Adverse possession is essentially a situation where a person takes possession of land and asserts rights over it and the person having title to it omits or neglects to take action against such person in assertion of his title for a certain period, in Kenya, is twelve (12) years. The process springs into action essentially by default or inaction of the owner. The essential prerequisites being that the possession of the adverse possessor is neither by force or stealth or under the licence of the owner. It must be adequate in continuity, in publicity and in extent to show that possession is adverse to the title owner”.
17. The law on adverse possession is provided for under various provisions of the [\*Limitations of Action Act\*](#). Section 7 of the [\*Limitation of Actions Act\*](#) provides that

“An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person”.

Section 13 of the [\*Limitation of Actions Act\*](#) further provides that:

“A right of action to recover land does not accrue unless the land is in the possession of some person in whose favor the period of limitation can run (which possession is in this Act referred to as adverse possession) and, where under sections 9, 10, 11 and 12 (of the Act) a right of action to recover land accrues on a certain date and no person is in adverse possession on that date, a right of action does not accrue unless and until some person takes adverse possession of the land”.
18. Further, section 17 of the [\*Limitation of Actions Act\*](#) also provides as follows; Subject to section 18 of this Act, at the expiration of the period prescribed by this Act for a person to bring an action to recover land (including a redemption action), the title of that person to the land is extinguished.



With regard to the above provisions, the Court of Appeal in the case of *Benjamin Kamau Murma & others vs Gladys Njeri*, C A No 213 of 1996 held that:

“The combined effect of the relevant provisions of sections 7, 13 and 17 of the Limitation of Actions Act, chapter 22 of the laws of Kenya is to extinguish the title of the proprietor of land in favour of an adverse possessor of the same at the expiry of 12 years of adverse possession of that land.”

19. Has the plaintiff therefore proven a case of adverse possession? The criteria to be met for a claim on adverse possession, was stated in the case of *Maweu vs Liu Ranching and Farming Cooperative Society* 1985 KLR 430 where the court held;

“Thus, to prove title by adverse possession, it was not sufficient to show that some acts of adverse possession had been committed. It was also to prove that possession claimed was adequate, in continuity, in publicity and in extent and that it was adverse to the registered owner. In law, possession is a matter of fact depending on all circumstances”.

Further, the Court of Appeal in the case of *Samuel Kihamba v Mary Mbaisi* [2015] Kisumu Civil Appeal No 27 of 2013, held 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. There must be an apparent dispossession of the land from the land owner. These elements are contained in the Latin phraseology, *nec vi, nec clam, nec precario*. The additional requirement is that of *animus possidendi*, or intention to have the land”

20. It therefore follows that, the plaintiff must prove that he has been in open, uninterrupted, continuous occupation for a period of 12 years and such occupation must be against the title holder who either omits or neglects to take action against such person in possession. The plaintiff must also prove that the occupation was with the knowledge of the title holder and further that such occupation was without the permission of the title holder unless the period within which such permission is granted expires and the occupier remains in possession for a period exceeding 12 years after such expiry.
21. The facts of the case are that the plaintiff bought Land parcel Evuvore /Evuvore /106 from Njeru Njau in the year 1972, and land parcels Evuvore/Evuvore/574, Evuvore/Evuvore/576 and Evuvore/Evuvore/248 in the year 1974. In his pleadings, he averred that in the 1960's he worked with the defendant at a soap factory in Ruaraka and that later, upon his resignation, he established a shop in Ishiara. It was said that at the time of purchase of the suit parcels, the land was under adjudication and the plaintiff feared that after lapse of the adjudication process, the sellers might fail to transfer the land to him. Since defendant was a police man at the time, he thought people might fear him. They therefore agreed that the land would be registered in the defendant's name. In his testimony however, he stated that the defendant had been a clerk during adjudication and, as such, he had sought the defendant's services to help in writing. He testified that the defendant had instead taken advantage of him and had the suit parcels of land registered in his name.
22. The first element to be proven for a claim on adverse possession to succeed is that the claim is against the registered owner of the land. It is not in dispute that the defendant is indeed the registered owner of the land. However it is worth pointing out that the plaintiff contradicted himself as regards the manner and circumstances in which the defendant got registered as owner of the land. But in my view this is



immaterial as it is not one of the elements for consideration in a claim for adverse possession. What is important is that the person against whom the claim is brought ought to be the registered owner of the land. In this case, the defendant is shown to be the registered owner of the suit parcels of land.

23. The other element is whether the plaintiff has been in open, continuous and uninterrupted possession of the suit parcels of land for a period exceeding twelve years. The plaintiff averred that he had purchased the suit parcels in the year 1972 and also the year 1974. He stated that at the time of purchase, he was granted vacant possession of the land. He averred that he had settled on parcel number Evuvove/Evuvore/106 where he had built a permanent home, several other structures, and resided there with his family and their children. This evidence was corroborated by PW2 who testified that he owned suit parcel Evuvore/Evuvore/107 which is adjacent to that of the plaintiff. That they had been neighbors on that land for over 50 years. PW3, a son to the plaintiff, equally corroborated that evidence. He stated that he was born in the year 1973, had been raised on that parcel of land, and that his father resides there with his two wives.
24. With regard to the other land parcels, the plaintiff stated that he had put up a storey building on one of the plots and had buried his daughter on another parcel of land. He stated that he had cultivated the parcels and had even started distributing portions of the land to his family. PW2 had confirmed that he was aware that the plaintiff had other parcels of land, including a plot in Ishiara market, and other parcels far from the market. PW3 also stated that his father had other parcels of land which were adjacent to each other and which he had occupied and cultivated. PW3 had testified that one of his siblings had died and had been buried on one of the parcels. Apart from the testimonies by the plaintiff's witnesses, there is evidence of photographs produced in support of the case. The photographs show several structures erected on the land and the cultivation on the suit parcels. From the pleadings before the court and the evidence by the plaintiff's witnesses, the plaintiff has indeed been shown to be in open and notorious occupation of the land adverse to that of the registered owner.
25. Has this occupation been continuous for a period of twelve years? The evidence before the court is that the plaintiff entered the suit parcels of land in the year 1972 for one parcel and the year 1974 for the other parcels. PW2 had testified that the plaintiff had been on the land for over 50 years with PW3 stating that he was born on the land in the year 1973. It should be noted however that the registration of the defendant as owner was done in the year 1987. In the case of *Harrison Oyari & 588 others -vs- Mareo Oriambu & 22 others* (2016) eKLR, the court stated that;

“ ... In respect of registered land, adverse possession dates from the granting of the certificate of title, for that is when the title holder is *prima facie* entitled to possession and therefore entitled to take action against any intruder to the land.”
26. Further in the case of *Joseph Macharia Kairu v Kenneth Kimani Muiruri* [2021] eKLR it was stated thus.... “a right of action cannot accrue unless there is somebody against whom it is enforceable.” I find that time for purposes of this suit started to run from the year 1987 when the defendant acquired title to the land until the year 2021 when the suit was filed. That period is around 35 years which period is beyond twelve (12) years.
27. There are several factors that would essentially stop the 12 year period of time from running. An example being the filing of a case by the owner of the land asserting his right over the land. In this case nothing of that sort has been brought to the court's attention. Further the plaintiff's witnesses had testified that the occupation of the suit parcels of land had been uninterrupted and that no one had ever laid claim over the land or disturbed their peaceful occupation of it. I find that the elements that the plaintiff's occupation of the parcels of land has been open, notorious, continuous and uninterrupted for a period of 12 years have been satisfied.



28. Was this occupation with the knowledge and permission of the defendant? The plaintiff had stated that the defendant had only been registered as owner on his behalf and that he himself had taken possession of the land immediately upon purchase. We have already stated that the occupation was open and notorious, hence the defendant must be deemed to have had knowledge of such occupation. With regard to permission, the plaintiff entered the land by way of purchase from the previous owners of the land who are not the defendants herein. Therefore the issue of permission on the part of the defendant does not arise in the circumstances.
29. The facts before the court were not disputed or controverted by any person as the defendant did not enter appearance in the case. In addition, the plaintiff has proven his case and satisfied the elements to warrant grant of the orders for registration of the suit parcels of land in his name.
30. The plaintiff had sought an alternative prayer that the court make a declaration that the defendant is registered as proprietor of the suit parcels of land in trust for and on his behalf. The court in the case of *Gabriel Mbui v Mukindia Maranya* [1993] eKLR Kuloba J held that:
- “The cases lay down that where a plea of adverse possession of land registered under any of the land registration statutes is upheld, the registered proprietor holds the land in trust for the person who had acquired title against the owner, but without prejudice to the estate or interest of any other person interested in the land whose estate or interest is not extinguished by the Limitation of Actions Act. So, at the expiration of the statutory period, the registered owner holds the land in trust for the person who has adverse possession.”
31. The court finds that the defendants holds the title in trust for the respondent from the date the 12 years lapsed since the date of registration of title in the defendant’s name. Accordingly, I find that the plaintiff is entitled to suit parcels of land Evuvore/Evuvore/106, Evuvore/Evuvore/574, Evuvore / Evuvore /576 and Evuvore/Evuvore/248 against the defendant as an adverse possessor and order that the defendant’s name be removed from the register and the plaintiff be registered as owner of Evuvore/ Evuvore/106, Evuvore/Evuvore/574, Evuvore/Evuvore/576 and Evuvore/Evuvore/248. I make no order as to costs.

**JUDGEMENT DATED, SIGNED AND DELIVERED IN OPEN COURT AT EMBU THIS 21<sup>ST</sup> DAY OF SEPTEMBER, 2022.**

In the presence of M/s Mugenya for Rose Njeru for plaintiff and in the absence of the defendant.

Court Assistant: Leadys

**A.K. KANIARU**

**JUDGE**

