



**Koima v Hasham Lalji Propertis Limited (Environment & Land Case
32 of 2020) [2022] KEELC 13828 (KLR) (27 October 2022) (Judgment)**

Neutral citation: [2022] KEELC 13828 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 32 OF 2020**

**EO OBAGA, J
OCTOBER 27, 2022**

BETWEEN

CHRISTOPHER KIPLAGAT KOIMA APPLICANT

AND

HASHAM LALJI PROPERTIS LIMITED RESPONDENT

JUDGMENT

1. The Applicant filed an originating summons dated 29th June, 2020 against the Respondent in which he wanted to be declared as having acquired LR No. Eldoret Municipality Block 9/26 (suit property) by way of adverse possession. The suit property was registered in the Respondent's name on 18th November 1992.
2. The Respondent who was served through advertisement in the Star Newspaper neither entered appearance nor filed any replying affidavit in opposition to the Originating summons. The hearing therefore proceeded by way of formal proof.
3. The Applicant testified that in March 2006, he entered into the suit property without the consent of the Respondent and has since remained thereon uninterrupted for a period of over 12 years. He produced photographs which were allegedly taken on the suit property. He therefore prays that he be registered as owner of the suit property.
4. The Applicant called his father as his witness who testified that the Applicant has been residing on the suit property with his family for period of 16 years. He prayed that the court orders that his son be registered as owner of the suit property.
5. I have considered the Applicant's evidence as well as that of his witness. I have also considered the submissions by the Applicant. Though the evidence of the Applicant is not controverted, he was under duty to prove his case to the required standard.



6. There are decisions from the superior courts to the effect that mere occupation by an Applicant on property of a known owner for over 12 years is not enough to have the Applicant registered as owner of the suit property. In *Gabriel Mbui –Vs- Mukindia Muyanya* (1193) eKLR, Justice Kuloba stated as follows:-

“The adverse character of the possession must be established as a fact. It cannot be assumed as a matter of law from a mere exclusive possession even if the mere possession has been for twelve or more years. In addition, there must be facts showing a clear intention to hold adversely, and under a claim of right. De facto use, and de facto occupation must be shown.”

7. In *Kasure –vs- Mwaani Investments Limited & 4 others* IKLR 184, the Court of Appeal stated as follows:-

“In order to be entitled to land by adverse possession, the claimant must prove that he has been in exclusive possession of the land openly and as of right without interruption for a period of 12 years either after dispossessing the owner or by discontinuation of possession by the owner on his own volition.

The Key test is that the owner of the land must have been dispossessed or has discontinued possession of the property”.

8. In *Richard Wefwafwa Songoi –Vs- Ben Munyifwa Songoi* (2020) eKLR the Court of Appeal stated that a person who claims adverse possession must establish the following:-

- a. On what date he came into possession.
- b. What was the nature of his possession?
- c. Whether the fact of his possession was known to the other party.
- d. For how long his possession has continued and,
- e. That the possession was open and undisturbed for the requisite 12 years.

9. In the instant case, the Applicant stated that he entered the suit property in March 2006. He did not state the nature of his possession. He did not also state whether the Respondent knew of his possession. This originating summons was filed on 29th June, 2020. On 10th February 2020, the High Court in Nairobi gave an order appointing a receiver manager to manage the Respondent’s properties in Nairobi, Mombasa, Eldoret and Kitale. The suit property was one of them. Sedco Consultants Limited were appointed as Estate Agents to manage the properties of the Respondent with its sister company.

10. At one stage, the firm of Terer Kibii & Co. Advocates wrote a letter seeking an appointment with the Ethics and Anti-Corruption Commission over invasion of two properties associated with the Respondent. This act was pleaded in Eldoret ELC No 22 of 2019. The Respondent and another sister company had sued Kenya Power for connecting electricity to the invaders of LR. No. 8565/1 and LR 8565/3 each measuring 1293 acres.

11. The beneficiaries of the Respondent are well known and they have numerous cases which are running in various courts including Eldoret ELC. The firm of Terer Kibii are aware of this but despite this knowledge they went ahead to file this suit on behalf of the Applicant and proceeded to advertise in Star Newspaper which is not widely read.



12. The pictures which the Applicant produced show a house which appear to be a caretaker's house and there are warnings against urinating on the suit property. The suit property is well fenced and there are eucalyptus trees around the 5 acre parcel.
13. It is therefore clear that the Applicant wants to have the suit property registered in his name when he has not dispossessed the owner or the owner has not discontinued his possession. From the facts of this case and considering the fact that there are active cases touching on the suit property, the Applicant's claim is fraudulent. The same is hereby dismissed with no order as to costs.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 27TH DAY OF OCTOBER, 2022.

E. O. OBAGA

JUDGE

In the virtual presence of;

Ms. Kinyua for Applicant

Court Assistant -Albert

E. O. OBAGA

JUDGE

27TH OCTOBER, 2022

