



REPUBLIC OF KENYA



Njuguna & 31 others v Karanja & another (Environment & Land Case E 9 of 2021) [2022] KEELC 13643 (KLR) (24 October 2022) (Judgment)

Neutral citation: [2022] KEELC 13643 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE E 9 OF 2021
FM NJOROGE, J
OCTOBER 24, 2022**

BETWEEN

- ZACKARIA KIMANI NJUGUNA 1ST PLAINTIFF
JULIUS NJUGUNA 2ND PLAINTIFF
PETER MUCHIRI MUIRURI 3RD PLAINTIFF
GEORGE K. RUNO 4TH PLAINTIFF
GODWIN KAMAU GITAU 5TH PLAINTIFF
ZABLON KARANJA MBUGUA 6TH PLAINTIFF
ANNE WANJIRU KINANI 7TH PLAINTIFF
VIRGINIA WAIRIMU MAINA 8TH PLAINTIFF
FRANCIS NDUNGU KIHUGA 9TH PLAINTIFF
COSMAS NDUNGU NJOROGE 10TH PLAINTIFF
JACQUELINE NJAMBI WAWERU 11TH PLAINTIFF
JOSEPH MATU MAINA 12TH PLAINTIFF
PAULINE WANJIRU NDUURU 13TH PLAINTIFF
PAUL MUGO NGIGE 14TH PLAINTIFF
JACINTA WAMBUI NG'ANG'A 15TH PLAINTIFF
JUDDY MUTHONI NG'ANG'A 16TH PLAINTIFF
EUNICE WANJIKU GITHUKU 17TH PLAINTIFF
JOHN NDEGWA KIMANI 18TH PLAINTIFF
PETER GITUNDU MUHUNGURA 19TH PLAINTIFF



GRACE WANGUI KIMANI (JOINTLY 20TH PLAINTIFF
 JOHN KAMAU NDUNGU SUING AS THE LEGAL ADMINISTRATOR OF THE
 ESTATE OF JOSEPH NDUNGU KAMAU(DECEASED) 21ST PLAINTIFF
 RAPHAEL MUROKI MWAURA 22ND PLAINTIFF
 LAWRENCE THUKU 23RD PLAINTIFF
 NANCY WANJIRU NGIGI 24TH PLAINTIFF
 ROSE WAMBUI MAINA 25TH PLAINTIFF
 EUNICE WAIHIGA KIHU 26TH PLAINTIFF
 GACHIE MUIRURI 27TH PLAINTIFF
 JOSEPH MULONZI MUINDI 28TH PLAINTIFF
 KEZIAH WAMBUI MWANIKI 29TH PLAINTIFF
 ELIUD MWANGI KURIA 30TH PLAINTIFF
 GEOFFREY KAMAU MUIRURI 31ST PLAINTIFF
 HENRY NGESA AWANGE 32ND PLAINTIFF

AND

MARGARET NJOKI KARANJA 1ST DEFENDANT
 AGATHA NJAMBI KARIUKI 2ND DEFENDANT

JUDGMENT

1. In the present suit commenced by way of an originating summons dated 10/5/2021 the 32 plaintiffs have sued the 2 defendants for determination as to whether they have acquired title to the plots that they occupy by way of adverse possession.
2. The plots were sold to the plaintiffs long ago. The plaintiffs claim to have purchased plots excised from Land reference number 1556/125 through individual sale agreements with each plot being assigned a specific number. All the transactions occurred between 2007 and November 2008, and they were undertaken on behalf of the defendants by their agents, Kenka Agencies, and the plaintiffs took possession of their respective plots on the dates of their respective agreements, having fully paid the consideration, and have remained thereon enjoying quiet possession and they have also undertaken major developments thereon including their own homes or rental houses. They have resided on the plots for more than 12 years. Though the land was assigned agricultural use, the defendants never obtained consent of the land control board within 6 months as required by law. The sale agreements were therefore invalidated by that omission. The defendants on 17/6/2016 submitted for registration a survey plan which was approved leading to the acquisition of new numbers for the individual plots. However, they have failed to transfer the lands to the plaintiffs and have instead transferred costs of the subdivision process to the plaintiffs as well as made other unreasonable demands.



The Response

3. The defendants appear to have been served with the originating summons on May 22, 2021. This is as per the affidavit of service dated May 10, 2022 sworn by one Jacob Obulemire. However, they failed to file appearance of defence to the suit and it proceeded *ex parte*.

Evidence of the plaintiffs.

4. The plaintiffs called one witness who testified on their behalf in the matter on 22/6/2022. This was Zackariah Kimani Njuguna, the 1st plaintiff. He testified that he knows all the other plaintiffs and that they had granted him authority to represent them in the case. He adopted his own statement and stated that the members know one another and assist one another in times of distress. He produces a copy of the certificate of title for plot number 1556/125. He purchased his plot in 2008 and built a house and settled thereon. His residence is connected to public utilities of electricity and water. He averred that the plaintiffs had fulfilled their obligations to the defendants through the latter's agents. However, they have never been issued with title to the plots that they are in possession of. No action has ever been taken to evict them also. The defendants are aware that the plaintiffs live in their plots on the land. PW1 normally sees the sellers within the vicinity as they visit their other land situate near his dwelling. The defendants have never prevented the plaintiffs from construction on the plots. According to him, his plot on the survey plan he produced is plot no 708. That map is registered with the survey department. The plaintiffs pray for titles to the plots that they hold.

Submissions

5. The parties did not file any submissions in the matter.

Analysis And Determination

6. The plaintiffs aver that they have acquired title to the suit premises by way of adverse possession. They aver that they have been in possession of the plots which have been identified by their respective numbers. These plots arose from the subdivision of plot number 1556/125 which belonged to the defendants. The defendants never transferred the titles to the plaintiffs hence the suit. A dispute appears to have arisen from the defendants' alleged demand for costs associated with subdivision of the main parcel from the plaintiffs. It is stated that 12 years have lapsed since the agreements between the plaintiff and the defendants became void and that the defendants have been in physical occupation of the suit plots without any interruption to date, though it is acknowledged that the defendants have recently made threats to evict them. I have examined the bundle of documents filed by the plaintiffs in detail and found that they have exhibited their respective transactional documents.
7. The defendants have not opposed the originating summons despite service on them as per the affidavit of service dated 10/5/2022 sworn by one Jacob Obulemire, a process server.
8. The plaintiffs produced a Certificate of Title for Plot No 1556/125 which shows that it was registered in the names of Margaret Njoki Karanja and Agatha Njambi Kariuki the defendants herein for a leasehold term of 999 years with effect from January 1920.
9. As pointed out before, the plaintiffs are alleging that the plots they seek to be allocated arose from the subdivision of plot number 1556/125. In support of their claims they produced maps as P Exh 9(a) and 9(b).



10. Exh 9(a) is a map showing subdivisions No 726 – 779 with the original number indicated as 1556/670/57-110 while P Exh 9(b) is a map for parcel No LR No 1556/671-725 with the original No. indicated as 1556/670/2-56.
11. The law on Adverse possession is well settled and the Court of Appeal in the case of Wambugu v Njuguna [1983] KLR 173 held that Adverse possession contemplates two concepts which are possession and discontinuance of possession. The court further held that the proper way of assessing proof of adverse possession would be whether or not the title holder has been dispossessed or has continued his dispossession for the statutory period and not whether or not the claimant has proved that he or she has been in Possession for the requisite number of years.
12. The court in the case of Mbira v Gachuhi [2002] IEALR 137 set out the requirements for adverse possession as follows:

“...a person who seeks to acquire title to land by the method of adverse possession for the applicable statutory period, must prove non-permissive or non-consensual actual, open, notorious, exclusive and adverse use by him or those under whom he claims for the statutory prescribed period without interruption...”
13. The Court of Appeal in the case of Mtana Lewa v Kahindi Ngala Mwangandi [2005] eKLR as follows:

“Adverse Possession is essentially a situation where a person takes Possession of land, 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 12 years.”
14. Further, Madan, JA in the case of Public Trustee v Wanduru Ndegwa [1984] eKLR held as follows:

“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 under section 10(1) of the English Limitation Act, 1939 (closely akin to our section 7) as against the vendor: Bridges v Mees (1957) 1 Ch 475 at 484; referred to with approval by this court in Mwangi Githu v Livingstone Ndeti and others, CA No 24 of 1979 (unreported).”
15. I am persuaded on a balance of probabilities that the parcels of land that the plaintiffs are seeking to be granted title over by the court are as a result of subdivision of the main plot number LR No 1556/125 and that the defendants were the owners of that main plot before its subdivision. The plaintiffs have also established on a balance of probabilities that they have had possession of the suit lands, and that they have dispossessed the defendants of those lands, for a period exceeding 12 years nec per vim, nec clam nec precario. I have noted the photographs of the plaintiffs’ permanent residential dwellings in this unopposed case. The manner in which the plaintiffs have put the land to use is proof of animus possidendi.
16. On the other hand, the defendants have not opposed the plaintiffs’ claims despite service of process upon them. Consequently, I find that the plaintiffs have proved their claim in adverse possession on a balance of probabilities and I give judgment in their favor against the defendants and I issue the following final orders:
 - a. The plaintiffs listed herein below have established that they have acquired title by way of adverse possession in respect of the plots listed against their names:
 - i. Zackaria Kimani Njuguna- LR No 1556/708



- ii. Julius Njuguna – LR No 1556/746
- iii. Peter Muchiri Muiruri - LR No 1556/739
- iv. George K Runo - LR No 1556/716
- v. Godwin Kamau Gitau – LR No 1556/709
- vi. Zablon Karanja Mbugua – LR No 1556/735
- vii. Anne Wanjiru Kinani – LR No 1556/727
- viii. Virginia Wairimu Maina – LR No 1556/742 & 1556/741
- ix. Francis Ndungu Kihuga – LR No 1556/760
- x. Cosmas Ndungu Njoroge – LR No 1556/729
- xi. Jacqueline Njambi Waweru – LR No 1556/725 & 1556/724
- xii. Joseph Matu Maina – LR No 1556/733
- xiii. Pauline Wanjiru Nduuru – LR No 1556/744
- xiv. Paul Mugo Ngige – LR No 1556/730
- xv. Jacinta Wambui Ng'ang'a – LR No.1556/747
- xvi. Juddy Muthoni Ng'ang'a – LR Nos 1556/737 & 1556/738
- xvii. Eunice Wanjiku Githuku – LR No 1556/763 & 1556/762
- xviii. John Ndegwa Kimani – LR No 1556/723
- xix. Peter Gitundu Muhungura – LR Nos 1556/683, 692, 681, 680, 679, 678 & 677
- xx. Joel Kimani Kamau And Grace Wangui Kimani (jointly) – LR No 1556/749
- xxi. John Kamau Ndungu suing as the legal administrator of the estate of Joseph Ndung'u Kamau (deceased) – LR No 1556/753
- xxii. Raphael Muroki Mwaura – LR No 1556/731
- xxiii. Lawrence Thuku – LR No 1556/757
- xxiv. Nancy Wanjiru Ngigi – LR No.1556/756
- xxv. Rose Wambui Maina – LR No 1556/732
- xxvi. Eunice Waihiga Kihu – LR No 1556/740
- xxvii. Gachie Muiruri – LR No 1556/705
- xxviii. Joseph Mulonzi Muindi – LR No 1556/707 & 1556/706
- xxix. Keziah Wambui Mwaniki – LR No 1556/734 & 1556/751
- xxx. Eliud Mwangi Kuria – LR No 1556/779
- xxxi. Goffrey Kamau Muiruri – LR No.1556/736
- xxxii. Henry Ngesa Awange – LR No 1556/759



- b. The defendants shall within 60 days of this judgment execute all documents requisite for transfer of the titles to the suit lands to the plaintiffs listed herein below in respect of the parcels listed opposite their names:
- i. Zackaria Kimani Njuguna- LR No 1556/708
 - ii. Julius Njuguna – LR No 1556/746
 - iii. Peter Muchiri Muiruri - LR No 1556/739
 - iv. George K. Runo - LR No 1556/716
 - v. Godwin Kamau Gitau – LR No 1556/709
 - vi. Zablon Karanja Mbugua – LR No.1556/735
 - vii. Anne Wanjiru Kinani – LR No 1556/727
 - viii. Virginia Wairimu Maina – LR No 1556/742 & 1556/741
 - ix. Francis Ndungu Kihuga – LR No 1556/760
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 - xiii. Pauline Wanjiru Nduuru – LR No 1556/744
 - xiv. Paul Mugo Ngige – LR No 1556/730
 - xv. Jacinta Wambui Ng'ang'a – LR No 1556/747
 - xvi. Juddy Muthoni Ng'ang'a – LR Nos 1556/737 & 1556/738
 - xvii. Eunice Wanjiku Githuku – LR No 1556/763 & 1556/762
 - xviii. John Ndegwa Kimani – LR No 1556/723
 - xix. Peter Gitundu Muhungura – LR Nos 1556/683, 692, 681, 680, 679, 678 & 677
 - xx. Joel Kimani Kamau And Grace Wangui Kimani (jointly) – LR No 1556/749
 - xxi. John Kamau Ndungu suing as the legal administrator of the estate of Joseph Ndung'u Kamau (deceased) – LR No 1556/753
 - xxii. Raphael Muroki Mwaura – LR No 1556/731
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 - xxiv. Nancy Wanjiru Ngigi – LR No 1556/756
 - xxv. Rose Wambui Maina – LR No 1556/732
 - xxvi. Eunice Waihiga Kihu – LR No 1556/740
 - xxvii. Gachie Muiruri – LR No 1556/705
 - xxviii. Joseph Mulonzi Muindi – LR No.1556/707 & 1556/706



xxix. Keziah Wambui Mwaniki – LR No 1556/734 & 1556/751

xxx. Eliud Mwangi Kuria – LR No 1556/779

xxxi. Goffrey Kamau Muiruri – LR No 1556/736

xxxii. Henry Ngesa Awange – LR No 1556/759

- c. If the defendants do not comply with order no (b) herein above the Deputy Registrar of this court shall execute all documents necessary to effectively transfer the suit properties in accordance with the claim of each plaintiff as set out in this suit.
- d. An order of permanent injunction is hereby issued restraining the defendants or their agents or any person claiming under them from interfering with the plaintiff's use and occupation of the suit properties or their title in any way.
- e. Each party shall bear their own costs of the suit.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAKURU VIA ELECTRONIC MAIL ON THIS 24TH DAY OF OCTOBER, 2022.

A photograph of a handwritten signature in blue ink on a light-colored background. The signature is cursive and appears to read 'Mwangi Njoro'.

**MWANGI NJOROGE
JUDGE, ELC, NAKURU**

