



**Mbaabu v M'Ikiugu (Environment & Land Case E015 of 2021)
[2022] KEELC 14654 (KLR) (9 November 2022) (Judgment)**

Neutral citation: [2022] KEELC 14654 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE E015 OF 2021
CK NZILI, J
NOVEMBER 9, 2022**

BETWEEN

GODFREY MBAABU PLAINTIFF

AND

SILAS KIRIMI M'IKIUGU DEFENDANT

JUDGMENT

1. The plaintiff took out an originating summons dated February 24, 2021 seeking that the court declares him entitled to 0.94 ha of LR No Kiirua/Kiirua-Nkando/1071, measuring approximately 2 ½ acres which is registered in the name of the defendant by virtue of adverse possession.
2. The summons was accompanied by a supporting affidavit sworn on the even date. In the said affidavit the plaintiff avers that the entry into the suit premises was out of a sale agreement dated October 24, 1994. The plaintiff says he made the final payment on June 27, 1995 and took over vacant possession.
3. The defendant was duly served with summons to enter appearance as well as hearing notices but failed to enter appearance, defend the suit or attend the hearing.
4. The plaintiff's testimony is that he bought the suit land on October 24, 1994, cleared the entire purchase price took vacant possession, constructed a permanent house and has been undertaking farming activities on the land. He produced a copy of the sale agreement, acknowledgment of final payment and a copy of register as P Exh 1, 2 & 3 respectively.
5. By written submissions dated November 3, 2022 the plaintiff submitted that possession of the land was given prior to the sale agreement and since the defendant failed to transfer the land for over twelve years his title has been extinguished.
6. Further the plaintiff submitted that his claim and evidence tendered remains unchallenged. Reliance was placed on *Mohammed Maridadi and 2 others v Pritam Singh Panesar [2022] eKLR*, *Charles*



Owuor Abol v Samuel Muthee Gitonga [2020] eKLR and *Benjamin Nyakundi Opande & 35 others v Naomi Wanjiku Mukundi [2021] eKLR*.

7. Adverse possession as defined in section 38 of the *Limitations of Actions Act* order 37 *Civil Procedure Rules*, the *Land Registration* and *Land Act* occurs where a registered owner neglects or omits to remove an intruder into his land who remains therein, without force, openly, in continuity, uninterruptedly and exclusively for a period of 12 years. See *Kimani Ruchine v Swift Rutherford & Co Ltd. [1980] KLR*, see *Mtana Lewa v Kabindi Ngala Mwangandi [2016] eKLR*, *Titus Mutuku Kasuve v Mwaani Investments Limited & 4 others [2004] eKLR* and Benjamin Nyakundi Opande (*supra*).
8. A party basing a claim under adverse possession must prove two key concepts namely; dispossession and discontinuance of possession of the registered owner. See *Peter Mbiru Michuki v Samuel Mugo Michuki [2014] eKLR*. He has to show through tangible and cogent evidence that he has undertaken acts inconsistent with the purpose for which the true owner had intended to use his soil.
9. It is not enough to establish dispossession. There must be evidence that the intruder had both the intention and mind to own the land and acted as if the land belonged to him otherwise known as *animus possidendi*. See *Wilfred Kegonye Babu vs Henry Mose Onuko (2019) eKLR*, Chalres Owuor Oduol (*supra*).
10. Adverse possession cannot take place with the permission, license or authority of the true owner. Where there is permissive entry, time does not run for purposes of adverse possession until the license, permission or lease has expired.
11. Regarding adverse possession based on an aborted sale agreement or void transfer, computation of time starts from the date of the payment of the last installment. See *Wambugu v Njuguna [1983] KLR 172*, *Malcolm Bell v Daniel Toroitich Arap Moi & another [2013] eKLR*, Mohammed Maridadi (*supra*).
12. Applying the foregoing principles to the instant suit, the plaintiff produced a sale agreement and an acknowledgment receipt all which are signed by the defendant relinquishing his rights over the suit land. The copy of records produced as P Exh 3 indicates the defendant became the registered owner of the land on January 28, 2014, by which time the plaintiff had been on the suit land for 20 years.
13. A change of ownership by the registered owner in law does not interrupt the time from running. Adverse possession also binds a successor as well as a predecessor in title of the land in issue. In absence of evidence of re-entry and or re-possession by any order of eviction, my finding is that the possession of the suit land by the plaintiff with effect from October 24, 1994 to the time of filing the suit has been adverse to the rights of the defendant.
14. Consequently, I allow the claim. The defendant shall sign the transfer form in favour of the plaintiff within 2 months from the date hereof. In default the Deputy Registrar of the court to execute the relevant documents in favour of the plaintiff. Costs to the plaintiff.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT

THIS 9TH DAY OF NOVEMBER, 2022

In presence of:

C/A: Kananu

Ringera for plaintiff present

HON C K NZILI

ELC JUDGE

