



**Muriungi v M’Puria (Environment & Land Case E005 of 2020)  
[2022] KEELC 14659 (KLR) (9 November 2022) (Judgment)**

Neutral citation: [2022] KEELC 14659 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT & LAND CASE E005 OF 2020**

**CK NZILI, J**

**NOVEMBER 9, 2022**

**BETWEEN**

**SIMON MURIUNGI ..... PLAINTIFF**

**AND**

**M’IGWETA M’PURIA ALIAS IGWETA MPURIA ..... DEFENDANT**

**JUDGMENT**

1. The plaintiff took out an originating summons dated 13.11.2020 seeking the court to determine if he has acquired 1.006 ha of the defendant’s LR No. Abothuguchi/L-Kaongo/1396 by virtue of adverse possession.
2. The originating summons is supported by an affidavit sworn by Simon Muriungi on 12.11.2020, in which he has attached a copy of the register, photographs showing some developments on the land and copy of register after subdivision as annexures marked SM01-03 respectively.
3. The defendant was served with the originating summons and an affidavit of service filed on 26.10.2021. Subsequently, he was served with a hearing notice and a mention notice as per affidavits of service filed on 25.1.2022 and 23.6.2022. The court record indicates that the defendant attended court on 4.11.2021 and was given more time to file a reply. He never complied or attended court again.
4. The plaintiff adopted his witness statement dated 12.11.2020 as his evidence in chief stating that by an agreement dated 15.11.1994, he purchased 3 ½ acres which was to be excised from the defendant’s LR No. Abothuguchi/L-Kaongo/481 at Kshs.96,250/=. He testified that he paid the entire sum, took vacant possession and started developing the land.
5. He told the court that a land surveyor visited the land for the subdivision and established that only 2.62 acres out of 3 ½ acres on the ground was available. Thereafter the defendant declined to attend the land control board meeting for a consent to subdivide and transfer the land to him.



6. The plaintiff produced a copy of the agreement as P. Exh (1), copy of the register as P. Exh (2), photographs as P. Exh (3) and lastly a copy of the register for LR No. 481 as P. Exh (4) respectively
7. In the written submissions dated 27.7.2022, the plaintiff submitted that he has been in occupation of LR No. 1396, which is a resultant subdivision of LR No. Abothuguchi/L-Kaongo/481 since taking possession on 15.11.1994 without any interference by the defendant. He urged the court to find that he has proved the ingredients of adverse possession as set out in the Land Act, Land Registration Act and the Limitations of Actions Act.
8. Given that the evidence tendered and which is not challenged by the defendant, the plaintiff urged the court to find that he has discharged the evidentiary burden under Sections 107 – 109 of the Evidence Act. Reliance was placed on KPLC Ltd vs Pamela Awino Ogunyo (2015) eKLR.
9. On the ingredients of adverse possession, the plaintiff submitted his evidence shows that he disposed and discontinued the defendant from the land for over 12 years. Reliance was placed on Wambugu vs Njuguna (1983) KLR 173 Mbira vs Gachubi (2002) 1EA LR 137 Jandu vs Kirplal & another (1975) E.A 225 Mtana Lewa vs Kabindi Ngala Mwangandi (2005) eKLR.
10. A party seeking the court to find him or her entitled to land ownership under adverse possession has to establish and prove two key concepts namely dispossession and discontinuation of the rights of the registered owner.
11. In Sisto Wambugu vs Kamau Njuguna (1983) eKLR the court said possession is a question of fact depending on the particular circumstances of the case. Further the court held that dispossession includes acts inconsistent with the enjoyment of the soil by the registered owner for the purpose of which he intended to use it. The court said that possession must also be without the permission of the registered owner, without force, in open, uninterruptedly and exclusively.
12. As to permissive possession, in Jandu vs Kirplal (1975) E.A 225 the plaintiff had only paid 10% of the purchase price, registered a caveat and claimed that the owner was a trustee for him. The court held that the plaintiff had been put into possession with the consent of the owner and since he had not paid the full purchase price, possession could not be adverse until the end to the period for which permission to occupy had been given or clearance of the entire purchase price.
13. In Watuko vs Busolo & 3 others (civil) Appeal no. 129 of 2017 (2022) KECA 171 (KLR) 18<sup>th</sup> February (2022) Judgment, the court stated that adverse possession commences in a situation where an intruder who is in wrongful occupation and makes a claim of ownership against a right of a true owner by alleging that due to clear and unequivocal evidence, he has been in possession which was not permissible, open, with the knowledge of the true owner and had excluded the true owner from the enjoyment of his property. The court said the onus was on the intruder to prove that the possession was nec vic nec clam, nec precario (no force no secrecy, no evasion, as held in Kimani Ruchine vs Swift Rutherford & Co. Ltd (1980) KLR 10 and Maweu vs Lin Ranching & Farming Coop Society (1985) KLR 430.
14. In this suit, there is no dispute that the possession was permissive in the first instance. The sale agreement produced herein indicates that the full purchase price was paid, the plaintiff took vacant possession immediately and started extensively developing the land, to the exclusion of the registered owner.
15. The testimony of the plaintiff is that he has continued occupying the land to the extent of 2.63 acres uninterruptedly for over 12 years without any resistance or notice to vacate the land by the defendant



or his family. The photographs produced shows that the plaintiff has undertaken acts inconsistent with the rights of the registered owner.

16. Looking at the totality of the evidence tendered and in absence of any challenge either through a defence or contrary evidence, I am inclined to find the claim proved to the required standard.
17. An order be and is hereby granted that the plaintiff is entitled to a portion of LR No. Abothuguchi/L-Kaongo/1396 measuring 2.62 acres which is a subdivision of LR No. Abothuguchi/L-Kaongo/481 by virtue of adverse possession and is entitled to be registered as the true owner.
18. The Deputy Registrar of this court is hereby empowered to sign all the necessary forms to effect the transfer of the suit land to the plaintiff, in default of the defendant so signing within two months' time from the date.

Costs to the plaintiff.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT**

**THIS 9<sup>TH</sup> DAY OF NOVEMBER, 2022**

**In presence of:**

C/A: Kananu

No appearance

**HON. C.K. NZILI**

**ELC JUDGE**

