



Waiganjo v County Land Registrar Uasin Gishu County & 3 others (Enviromental and Land Originating Summons 86 of 2018) [2022] KEELC 15195 (KLR) (7 December 2022) (Judgment)

Neutral citation: [2022] KEELC 15195 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

ENVIROMENTAL AND LAND ORIGINATING SUMMONS 86 OF 2018

JM ONYANGO, J

DECEMBER 7, 2022

IN THE MATTER OF ARTICLES 40, 47 AND 50 OF THE CONSTITUTION OF

KENYA 2010

AND

IN THE MATTER OF AN APPLICATION FOR ORDERS UNDER SECTION 37

AND 38 OF THE LIMITATION OF ACTIONS ACT CAP.22 LAWS OF KENYA

AND

IN THE MATTER OF AN APPLICATION FOR ORDERS BASED ON ADVERSE POSSESSION

AND

IN THE MATTER OF THE PARCEL OF LAND KNOWN

AS ELDORET MUNICIPALITY BLOCK 13/239

BETWEEN

DANIEL NDERITU WAIGANJO APPLICANT

AND

COUNTY LAND REGISTRAR UASIN GISHU COUNTY 1ST RESPONDENT

CHIEF LAND REGISTRAR 2ND RESPONDENT

NATIONAL LAND COMMISSION 3RD RESPONDENT

ATTORNEY GENERAL 4TH RESPONDENT

JUDGMENT

1. The applicant instituted this suit by way of an originating summons dated May 31, 2018 seeking a determination of the following questions:



- a. Whether or not the applicant herein is the legal owner of the parcel of land known as Eldoret Municipality/Block13/239 by virtue of adverse possession.
 - b. Whether or not the applicant is actual possession and has been in possession for a period of over 12 years and has the intention to possess the parcel of land known as Eldoret Municipality/Block 13/239.
 - c. Whether the respondents and other third parties were aware of the applicant's entry into the suit land without title.
 - d. Whether the rights and interests of the respondents and third parties in respect of the said parcel number Eldoret Municipality/Block13/239 was extinguished after the expiry of 12 years after the applicant's entry.
 - e. Whether the applicant should be declared the owner of the said parcel of land by way of adverse possession.
 - f. Whether the suit parcel of land should be registered in the applicant's name and a title issued in his name.
 - g. Who should pay the costs of the proceedings herein?
2. The application was supported by the applicant's affidavit sworn on May 31, 2018 in which he alleges that he has been in continuous, peaceful and uninterrupted occupation of the suit property since 2002 with the knowledge of the respondents and other third parties. He further avers that he has made substantial developments thereon. He adds that the respondents' rights were extinguished after the expiry of 12 years and he should therefore be registered as the owner of the suit property.
 3. The application was resisted by Monicah Boor, the County Land Registrar, Uasin-Gishu County through her replying affidavit sworn on December 16, 2021. In the said affidavit, she depones that section 41 of the *Limitations of Actions Act* cap 22 of the laws of Kenya prohibits anyone from claiming adverse possession of land owned by the Government of Kenya or which is otherwise enjoyed by the Government. She contends that the doctrine of adverse possession does not apply to leasehold titles due to the fact that under a leasehold title the Government of Kenya is the head lessor. The allotment and lease to a leaseholder is made under special conditions which include continuous possession and use of the demised premises and once the lease expires without being renewed to the lessee, there is operation of reversion of lease in favour of the Government of Kenya.
 4. She further contends that the suit property was allocated to an individual for a term of 23 years from October 1, 1985 to October 1, 2008 whereupon if the lease was not renewed, it reverted to the Government of Kenya.
 5. The application was further contested by the 3rd respondent through her grounds of opposition dated January 21, 2019. In his grounds of opposition, the 3rd respondent states that the claim for adverse possession under the provisions of sections 37 and 38 of the *Limitations of Actions Act* cap 22 of the laws of Kenya does not apply to un-alienated public land and is subject to the provisions of section 41 of the said Act. She adds that the suit is tainted with non-disclosure of material facts and the applicant does not qualify for the remedies sought.
 6. The court directed that the suit be canvassed by way of written submissions and both parties filed their submissions which I have considered.



Issues for Determination

- i. Whether the applicant is entitled to the interest in the suit property by virtue of adverse possession
- ii. Whether the applicant is entitled to the reliefs sought.

Analysis and Determination

7. The undisputed facts are that land parcel number Eldoret Municipality/Block 13/239 was leased to Dalichand Shamji Shah and Bhupendra Shamji who were issued with a certificate of lease on June 3, 1986 for a term of 23 years. The suit property was subsequently transferred to David Mukamiti Musonye on 10.5.1988 and a certificate of lease was issued to him on May 17, 1988. The said lease was subject to special conditions including reversion of lease to the Government if the same was not renewed in the name of the lease.
8. The plaintiff has been in continuous, uninterrupted and peaceful occupation thereof since then. He contends that he has made substantial developments thereon and he has been paying the land rates in respect thereof. He therefore intends to possess it as his own by virtue of adverse possession.
9. The pertinent question that arises is if one can acquire title to public land by virtue of adverse possession.
10. In the instant case, the term of the lease that started running in 1986 expired in 2009. There is no indication that the same was renewed in the name of David Mukamiti who was the last registered lessee. This means that the lease reverted to the Government of Kenya.
11. Section 38 of the *Limitation of Actions Act* cap 22 of the laws of Kenya provides as follows:
 - "1. Where a person claims to have become entitled by adverse possession to land registered under any of the Acts cited in section 37 of this Act, or land comprised in a lease registered under any of those Acts, he may apply to the High Court for an order that he be registered as the proprietor of the land or lease in place of the person then registered as proprietor of the land.
 2. An order made under subsection (1) of this section shall on registration take effect subject to any entry on the register which has not been extinguished under this Act."
12. It is trite law that the doctrine of adverse possession does not apply to land that belongs to or is otherwise enjoyed by the Government of Kenya.
13. Section 41 of cap 22 provides that:
 - S.41 "Exclusion of public land
This Act does not
 - a. Enable a person to acquire title t or any easement over
 - i. Government land or land otherwise enjoyed by the Government
 - ii. Mines or minerals as defined in the Mining Act cap 306;
 - iii. Mineral oil as defined in the Mineral Oil Act;



- iv. Water vested in the County Council (other than land vested in it by section 120(8) of the Registered Land Act (cap 300) or land vested in the Trustees of the National Parks of Kenya”

14. In the instant case the applicant did not attach copy of the certificate of lease to show that the land is registered in the name of an individual. The fact that the applicant sued the Land Registrar, Uasin Gishu County, the Chief Land Registrar and the National Land Commission as opposed to an individual shows that he acknowledges the fact that the suit land has reverted to the Government of Kenya against which a suit for adverse possession does not lie.
15. In the case of *Ravji Karsan Shanagani v Peter Gakumu* (2019) eKLR the court held thus:
“It is trite law that adverse possession cannot accrue against land that is owned by the Government. The plaintiff contended that he occupied the suit land in 1979 and had since that time effected various developments thereon which demonstrated his occupation and possession was adverse to the rights and interests of the registered owner. Thus even assuming that the plaintiff had during the period 1979 to 1986 occupied and possessed the land under circumstances that could amount to adverse possession, my view is that the plaintiff could not adversely possess the land against the Government such that the Government’s rights and interest over the land could be extinguished . the doctrine of adverse possession is inapplicable where the land is public land or trust land or is owned by the Government. Section 41 of the Limitation of Actions Act excludes public land from application of the Act.”
16. The same position was adopted in *James Maosa Okeno v County Government of Kisii* (2019) eKLR where the court held that:
“The subject property is not community land as averred by the plaintiff. It is public land within the definition of public land under the Constitution. The land is registered und Gusii County Council and was reserved for the specific purposed of Bonyancha Market. The applicant’s occupation of any portion of the land cannot entitle him to claim title by virtue of adverse possession. His occupation if at all, could only have been at the pleasure of the respondent and the respondent was entitled to give him notice to vacate at any time. His possession however long could not operate to extinguish the title to the respondent”
17. I concur with the above decisions and find that the applicant’s claim based on the doctrine of adverse possession cannot succeed as the leasehold interest in the suit property reverted to the Government of Kenya in 2009 and in terms of the provisions of section 41 of the *Limitation of Actions Act*, the same cannot be extinguished.
18. The upshot is that the applicant’s suit lacks merit and it is hereby dismissed with costs to the respondents.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 7TH DAY OF DECEMBER, 2022.

J.M ONYANGO

JUDGE

