



**Njache v Lotapash (Environment & Land Case 326 of 2017)  
[2025] KEELC 726 (KLR) (11 February 2025) (Judgment)**

Neutral citation: [2025] KEELC 726 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU  
ENVIRONMENT & LAND CASE 326 OF 2017**

**AK BOR, J**

**FEBRUARY 11, 2025**

**BETWEEN**

**HUMPHREY MBUGUA NJACHE ..... PLAINTIFF**

**AND**

**SITONIK OLE LOTAPASH ..... DEFENDANT**

**JUDGMENT**

1. The Plaintiff filed suit on 4/3/2014 claiming that the title over parcel number Laikipia/Marmanet/4563 (‘the suit property’) registered in the Defendant’s name, Sitonik Ole Lotapash had been extinguished and that he ought to be declared to have acquired title over this land by virtue of adverse possession having been in peaceful, open uninterrupted an exclusive possession of the land for a period exceeding 13 years.
2. The Plaintiff sought to be registered as the proprietor of the suit property on the basis that he had acquired title by virtue of adverse possession since 10/7/2003. Further, he sought to have the Defendant directed to apply for Land Control Board consent and to execute the relevant transfer documents within 7 days of the date of judgment failing which the Registrar of the court would execute the documents to effect the transfer. The Plaintiff also sought to have the Defendant ordered to return the original title deed over the Suit property to the Land Registrar, Laikipia for cancellation and issuance of a title in favour of the Plaintiff and in default, he production of the original title to be dispensed with.
3. The Originating Summons was supported by the Plaintiff’s affidavit, in which he deponed that he entered into an agreement with Olekis Ole Katero for the purchase of 15 acres from the land known as Laikipia/Marmanet/226B. In that agreement Olekis Ole Katero described himself as administrator of the Estate of Saina Wanja Mari even though the Plaintiff believed that Katero was never the administrator of Saina Wanja Mari. He deponed that the sale agreement was void ab initio for lack of capacity on the part of the seller. He deponed that he paid Olekis Ole Katero the purchase price



- of Kshs. 1,200,000/= and that he acknowledged receipt. He relied on the acknowledgements dated 28/8/2006 for Kshs. 465,000/= and 1/1/2009 for 45,000/=. He added that those payments alongside the sale agreement were void in law pursuant to the Land Control Act and the fact that the seller was not the Legal Administrator of the deceased Saina.
4. The Plaintiff deponed that he took possession of the suit land and started using it as the owner while awaiting transfer of the land for which no specific date had been agreed upon. Olekis Ole Katero died on 10/2/2010 and left him in possession of the 15 acres which had not been transferred to him. Unknown to the Plaintiff, the Defendant caused the original title to be surveyed in October 2015 to create parcel number 4563 which he occupied and parcel numbers 4564 and 4565. When he learned what the Defendant had done, the Plaintiff lodged a caution against the suit property to protect his interest.
  5. He averred that he had been in peaceful occupation and uninterrupted possession of the suit property for 13 years since 10/7/2003 up to the time of filing suit. Neither Olekis Ole Katero nor the Defendant had taken legal proceedings to evict him from the land. The Plaintiff averred that he had invested heavily on the land and had been farming on it during the entire period of his occupation. He added that the trees which he planted when he took possession of the land were mature and were awaiting harvesting. He urged that the Defendant's title had been extinguished and he was entitled to registration as proprietor of the land.
  6. He exhibited copies of the sale agreement dated 10/7/2003, the white card showing that Lucy Wanja Kahaheri was registered as proprietor of the suit property on 16/10/2015 while the Defendant was registered as the proprietor on 13/11/2015. The caution placed by the Plaintiff is registered as entry number 4 against the title. He also produced a copy of the mutation form confirming that the suit land was surveyed and subdivided into three portions on 15/10/2015, with the owner of the land shown as Lucy Wanja Kahareri. He also exhibited the acknowledgments of payments signed by Olekis Ole Katero.
  7. In his replying affidavit filed in court 5/6/2023, the Defendant denied the Plaintiff's claim and deponed that he acquired title over the suit property from Lucy Wanja Kahaheri on 13/11/2015. He relied on the green card. He averred that at the time he acquired the land up to the time he swore the affidavit the Plaintiff had not been living or utilizing the land as he claimed. He deponed that the caution which the Plaintiff had placed over his land was removed by the Land Registrar following a hearing which was done in the Nanyuki Lands Registry.
  8. That upon the withdrawal of the caution he subdivided the land into two portions being parcel numbers 4909 and 4910. He added that when the hearing on the caution was going on, the Plaintiff did not disclose that he had filed this suit. The Defendant averred that he acquired the land on 13/11/2015 when the Plaintiff was not living on it and that he had never lived on the land as he claimed.
  9. The Defendant explained that Olekis Ole Katero was his father and that he did not own the suit property. He maintained that his rights over the land could not be extinguished by virtue of adverse possession because he had not allowed the Plaintiff to be in open uninterrupted and exclusive possession of the land for a period exceeding 12 years. The Defendant exhibited a copy of the green card for the suit property and the letter dated 10/8/2018 inviting the Plaintiff to a hearing on the removal of the caution. He also produced a copy of the search dated 14/12/2018 showing he was the registered owner and a handwritten note from the Chief of Siron Location dated 28/9/2022 and the hand written notes of a meeting held on 28/9/2022.
  10. The matter proceeded for hearing on 3/10/2024 when both the Plaintiff and the Defendant gave evidence. The Plaintiff told the court that in 2003 he was looking for land to purchase around Siron



area in Laikipia. He was taken to Olekis Ole Katero who was willing to sell the land known as Laikipia Marmanet 226B, which was his inheritance from his late mother Saina Wanja Mari. He explained the process through which he bought the land from Olekis Ole Katero and how the sale agreement was drawn. He paid Kshs. 400,000/= to Mr. Olekis Ole Katero as they had agreed and the second instalment of Kshs. 420,000/= was paid in cash in August 2006. Ole Katero died in February 2010 but his attempts to get Lucy Wanja Kahaheri to transfer his portion did not yield fruit.

11. He stated in his evidence that they found that Lucy Wanja Kahaheri, a niece of Saina Wanja Mari had fraudulently obtained a title deed over the whole piece of land using forged succession documents and disregarded Mr. Ole Katero. Nixon Ndabash the son of Olekis Ole Katero had promised the Plaintiff that he would transfer the land to him but he died before doing that. The Plaintiff learned in February 2016 that the Defendant had been registered as the owner of whole portion of land and was not willing to transfer the Plaintiff's portion.
12. The Defendant went to the land on which the Plaintiff had planted wheat seedlings and replanted maize forcing the Plaintiff to place a caution against the land and to institute this suit against him. The Plaintiff explained that he received threats while ploughing his piece of land from the Defendant and the local Chief who were sending armed administration police officers to chase him out of the land. He maintained that the Defendant never disrupted his occupation of the suit property after he entered into an agreement with the Defendant's late father Ole Katero and that the Defendant only interfered with his quiet possession of the suit property in 2016 after his rights for adverse possession had ripened.
13. The Plaintiff stated that when he filed this suit in 2017 he had been removed from the suit property by the Defendant at gun point. He was removed from the land in 2016. He told the court that he got into the suit property on 10/7/2003 with the consent of Ole Katero. He maintained that Ole Katero was the only son of Saina Wanja Mari. He referred to the copy of the green card for the suit land where entry number 2 bearing the name Saina Wanja had been crossed out. He stated that he had been ploughing the land and had fenced it. He had also dug a borehole on the land.
14. The Defendant relied on his replying affidavit. He averred that he acquired the suit property from Lucy Wanja Kahareri on 13/11/2015. That at the time he acquired the land the Plaintiff was not living on the land or utilising it. The Plaintiff placed a caution on his land on 15/2/2016 and on its removal, he subdivided the land to create parcel numbers 4909 and 4910. He denied that the Plaintiff had lived on the land for 10 years while acknowledging that he only acquired the land in 2015. He denied that his father had ever owned the land. He was emphatic that the Plaintiff had not acquired rights over the suit property through adverse possession.
15. He produced a copy of the green card for the suit property, the letter dated 10/8/2018 on the caution hearing, search dated 14/12/2018 and a hand written letter from the Chief dated 28/9/2022 together with handwritten minutes of a meeting held on 22/9/2022. The court notes that the Plaintiff did not participate in that meeting. He also produced photographs showing growing crops and some structures.
16. On cross examination, the Defendant admitted that he was Ole Katero's son. He did not know Saina Wanja but only knew Saina Lucy. He told the court that he bought the suit property from his aunty, Saina Lucy. He did not bring the agreement or documents as evidence of the transaction to court. He entered into an agreement with his aunty in 2015 and claimed that there was nobody on the suit property at the time. He did not have the documents to show how parcel number 226 was subdivided to create the suit property and the other two portions. He stated that he bought the suit property for Kshs. 4,000,000/= but did not tender evidence of payment of the purchase price.



17. Upon conclusion of the hearing, the court directed parties to file and exchange written submissions. The Plaintiff submitted that he entered the suit property on 10/7/2003 and had been in continuous occupation until 2016 when the Defendant forcefully removed him from the land. From the time he took possession of the land, he cultivated various cash crops on the land and eked a livelihood from the land. He pointed out that the court had previously given a judgment in his favour on 19/12/2019 but the decree was set aside by consent of the parties.
18. The Plaintiff submitted that he had been in open, continuous and exclusive occupation of the suit property for a period exceeding 13 years. He submitted that he had openly carried out his business on the suit land by cultivating it. He relied on *Samuel Kihamba v. Mary Mbaisi* [2015] eKLR on the need to prove that one had occupied the land openly without force or without secrecy and without the permission of the land owner with the intention to have the land so as to succeed in a claim for adverse possession.
19. The Plaintiff pointed out the inconsistency in the Defendant's evidence, he stated that he purchased the suit property from his aunt yet his aunt got registered as the owner of the suit property in unclear circumstances. The Plaintiff maintained that the Defendant had not challenged his open, continuous and exclusive possession of the land for the period set out in the statute and added that by the time the Defendant claims to have purchased the suit property his claim for adverse possession had ripened. He urged the court to award him the costs of the suit.
20. The Defendant submitted that the doctrine of adverse possession which the Plaintiff relied on was founded under the Limitations of Actions Act. He relied on decisions of the court on the point that in order to acquire title to land which had a known owner through the statute of limitations, it must be shown that the owner had lost his right to the land by being dispossessed of it or by having discontinued dispossession of it. In that case, the court observed that the proper way of assessing proof of adverse possession would be whether or not the title holder had been dispossessed or had discontinued his possession for the statutory period and not whether or not the claimant had proved that he had been in possession for the requisite number of years.
21. The Defendant also relied on *Gabriel Mbui v. Mikinda Maranya* [1993] eKLR where the court observed that time begun to run when some person was in adverse possession of the land. The court observed that possession was a matter of fact and that some degree of physical occupation for the requisite period was required. The Defendant urged the court to dismiss the suit and maintained that the Plaintiff had not met the ingredients for his claim for adverse possession to succeed.
22. The issue for determination is whether the Plaintiff has established his claim for adverse possession of the suit property. The question is, did the Plaintiff prove that he had been in open, continuous and exclusive possession of the suit property for over 12 years? The Plaintiff's claim is that he entered the suit property in 2003 when he was granted possession by Olekis Ole Katero who he had entered into a contract with even though he challenges the capacity of Ole Katero to have entered into the agreement since in that agreement Olekis Ole Katero described himself as administrator of the Estate of Saina Wanja Mari but the Plaintiff did not believe that he was the administrator.
23. He claimed that he was granted possession by Ole Katero and had been in occupation of the land from 2003 until 2016 when he was forcefully evicted by the Defendant who claims to have purchased the land from his aunty, Saina Lucy. He admitted that he was the son of Ole Katero, who the Plaintiff claims sold the suit property to him. The Defendant did not adduce any evidence to prove that he purchased the suit property from his aunty, Saina Lucy. The Defendant claimed that there was nobody on the suit property at the time he bought it from his aunt in 2015. The Plaintiff claimed that he was forcefully removed by the Defendant from the suit property in 2016. The



24. The Plaintiff's evidence was that he received threats from the Defendant while ploughing his piece of land and that the local Chief sent armed administration police officers to chase him out of the land. This evidence confirms that by the time the land was subdivided in 2015 to create the suit property and the other two portions, the Plaintiff was on the land and the Defendant had to evict him. The suit property cannot have been vacant as the Defendant would want the court to believe.
25. Ole Katero died in 2010 after receiving payments for land from the Plaintiff but before he had transferred the land to him. The court is satisfied that the Plaintiff entered the suit land in 2003 and remained on it until 2016 when he was evicted by the Defendant.
26. Parcel number 226 was subdivided in 2015 to create parcel numbers 4563, 4564 and 4565. The subdivision was done at the instance of Lucy Wanja Kahareri. The green card for the suit property, being number 4563, was opened in Lucy's name on 16/10/2015. She transferred it to the Defendant on 13/11/2015.
27. Looking at the copy of the white card for parcel number 226, it is unclear how Lucy Wanja Kahareri got to be registered as the owner of the land on 7/9/2004. Entry number 2 had the name Saina Wanja which was crossed out and the name Lucy Wanja Kahareri was registered as entry number 3. This lends credence to the Plaintiff's claim that the land initially belonged to Saina Wanja who is mentioned in the sale agreement between the Plaintiff and Olekis Ole Katero.
28. The Defendant did not lead evidence to show how ownership of the land moved from Saina Wanja to Lucy Wanja Kahareri and what the connection between Saina Wanja and Lucy Wanja Kahareri was. If the land belonged to Saina Wanja who had died, then Lucy Wanja Kahareri ought to have taken out letters of administration for the administration of the Estate of Saina Wanja. She could not have had the land transferred to her name through the ordinary transfer as indicated on the green card.
29. The Plaintiff has proved his claim on a balance of probabilities. The court grants prayers a, b, c and d of the Originating Summons dated 10/3/2017. The Plaintiff is awarded the costs of the suit.

**DELIVERED VIRTUALLY AT EMBU THIS 11<sup>TH</sup> DAY OF FEBRUARY 2025.**

**K. BOR**

**JUDGE**

In the presence of: -

Mr. Kinyanjui Kimani for the Plaintiff

Mr. Kabira Kioni for the Defendant

