



**Nyoike v Kamori (Environmental and Land Originating Summons
E029 of 2021) [2025] KEELC 5871 (KLR) (3 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5871 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E029 OF 2021**

AK BOR, J

JULY 3, 2025

BETWEEN

SERAH NYOKABI NYOIKE PLAINTIFF

AND

MICHAEL NJERU KAMORI DEFENDANT

JUDGMENT

1. The plaintiff instituted this suit vide an originating summons seeking to be declared to have become entitled to the parcel of land known as Nthawa/Riandu/1194 (the suit land) registered in the defendant's name through adverse possession. She claimed that the suit land originally belonged to the defendant's late father Kamori Njeru, who sold it to her late husband, Francis Nyoike Gathuri sometime in 1983. That upon payment of the agreed purchase price, the defendant's father and her late husband applied to the Land Control Board (LCB) for and obtained consent to transfer suit land. That Kamori Njeru executed the transfer documents in favour of her husband but he died before the land was transferred to him. She averred that they took possession immediately they got the letter of consent on 1/1/1986 and that they had been living on the suit land continuously, exclusively, openly and without force or secrecy since that time.
2. She claimed that it was only on 11/7/2021 that she was called by the area Assistant Chief who informed her that he had been instructed by the defendant's advocate to serve her with a notice to vacate the suit land. She averred that she had made substantial developments on the suit land by planting mature mango trees and other types of trees and had built a permanent house on the suit land. She contended that having been in continuous and uninterrupted occupation of the suit land for 35 years she had become entitled to the suit land through adverse possession.
3. The defendant on his part claimed that he had been utilising the suit land throughout the years since the demise of his father who was the previous registered owner of the land. He claimed that it was his father who planted the mango trees on the suit land and not the plaintiff as she claimed. He maintained



- that the plaintiff had not been on the land for a period exceeding 12 years but for less than two years since the advent of Covid 19 when he was restrained by the lockdown in Nairobi from travelling to visit the land for the two years.
4. He denied that the plaintiff had been in quiet possession since he took steps to evict them from the suit land and that the plaintiff acknowledged his notice to vacate the land by filing this suit. He expressed the view that the letter of consent and application to the LCB were a forgery. He contended that the plaintiff did not have a valid claim to seek to be declared as the owner of the suit land.
 5. On 2/4/2025 parties agreed by consent that the suit would be disposed of through written submissions. The Defendants counsel informed the court on 4/6/2025 that he had not filed his submissions and that he would file them on that day. He urged the court to give a date for the delivery of the judgment. The court had previously given the Defendant time to file his submissions. The Plaintiff filed her written submissions which the court has considered.
 6. The issue for determination is whether the plaintiff has acquired title to the suit land through adverse possession. Adverse possession has been defined in various cases. In *Mtana Lewa v Kahindi Ngala Mwangandi* [2015] KECA 532 (KLR) the court defined adverse possession as a situation where a person takes possession of land and asserts rights over it and the person having title omits or neglects to take action against such person in assertion of his title for twelve years. That the process sprang into action by default or inaction of the owner. The essential prerequisites being that possession of the adverse possessor was neither by force nor stealth nor under the license of the owner. The possession must be adequate in continuity, in publicity and in extent to show that it was adverse to the title owner.
 7. In *Wambugu v Njuguna* [1983] KLR 172, the court laid down the guiding principles for determining a claim for adverse possession where it was held that in order to acquire title to land which has a known owner by the statute of limitations, that owner must have lost his right to the land either by being dispossessed of it or by having discontinued his possession of it. The proper way of assessing proof of adverse possession was 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 proved that he had been in possession for the requisite number of years.
 8. The ingredients for adverse possession were summarised in *Samuel Kihamba v Mary Mbaisi* [2015] KECA 853 (KLR) were that one must prove and demonstrate that with the intention to have the land, he had occupied the land openly without force, without secrecy, and without the permission of the land owner. These elements are captured in the Latin phraseology, nec vi, nec clam, nec precario with the additional requirement of animus possidendi, or the intention to have the land.
 9. Applying those principles to the facts of the present case, it is not in dispute that the defendant is the registered proprietor of land parcel Nthawa/Riandu/1194. The plaintiff asserts that she has been in possession of the land since 1986 when her late husband purchased it from the defendant's late father. She stated that her late husband and the defendant's late father entered into an agreement for the sale of the suit land at the agreed purchase price of Kshs. 54,000/= . That her husband paid an initial deposit of Kshs. 48,500/= and they took possession of the land and that he paid the balance of Kshs. 5500/= gradually.
 10. It was her evidence that the purchaser and the buyer went to the LCB and obtained consent to transfer the land which she produced in evidence. The consent to transfer is dated 1/1/1986. That the parties executed a transfer form for the land which was produced in evidence. The transfer form is dated 22/9/1997 and is duly executed by the seller, Kamori Njeru and the buyer Francis Nyoike Gathuri. It was her testimony that her husband was unable to raise the statutory fees and stamp duty fees necessary to effect the transfer and that he died before the suit land could be transferred to his name.



11. According to the plaintiff, her entry into the land was therefore pursuant to the agreement for sale. In such circumstances, occupation becomes adverse only upon payment of the full purchase price, or where payment is by instalments, upon payment of the last instalment. It was held in *Gabriel Mbui v Mukindia Maranya* [1993] KEHC 161 (KLR) where adverse possession arose out of a sale of agreement under which the payment of the purchase price by the adverse possessor was by installments, and the agreement fails, the period of limitation affords an action for adverse possession only after the last and final payment has been made to complete the agreed purchase price. That the period of limitation started running on the date of the payment of the last installment of the purchase price.
12. The Plaintiff testified that the full purchase price was paid and that the Defendant's late father executed all the necessary transfer documents in favour of her late husband but the transfer was not effected during their lifetime. She produced the acknowledgements for the balance of the purchase price written in the Kikuyu language. The Defendant's advocate objected to the production of the translated documents for want of a certificate of translation. The Plaintiff's counsel agreed that those could be excluded by the court in the determination of the dispute.
13. The Defendant, merely denied that there was a sale. His witnesses maintained that his father never sold the suit land. From the evidence adduced by the Plaintiff, it is not plausible that the sale did not take place. The Plaintiff produced evidence that the transfer process was initiated including obtaining LCB consent and the signed transfer form. She was in possession of the original title deed. She stated that the Defendant only obtained a new title deed after reporting that the original one got lost. The fact that the original title was in the plaintiff's possession further supports her claim that the sale transaction was concluded save for the registration of the transfer.
14. Although the Defendant claimed that the LCB consent and transfer forms were forged, he did not provide any proof to support that allegation. The burden of proof rested on him, and he failed to discharge it. The court is therefore not persuaded by his assertion that the sale never occurred.
15. On whether the Plaintiff had been in open, notorious, and exclusive possession of the suit land without secrecy, the witness statement of Jeremiah Mburu, who testified that he was involved in identifying the land, negotiating the price, and drafting the sale agreement. He confirmed that the Plaintiff had been in occupation of the land since 1986. The Plaintiff also produced a letter from the Chief confirming her occupation since 1986. She testified that she had buried her kin on the land including her daughter who died in 1994, her husband in 2009 and another daughter in 2020. She produced all their death certificates. She produced photographs showing the developments she had made on the land.
16. The defendant merely denied that the plaintiff had been in occupation of the suit land since 1986 and asserted that she only entered the land during the lockdown following the Covid 19 pandemic. He claimed that the plaintiff built the permanent house during that period a fact that even the plaintiff did not deny. He did not address the contention by the plaintiff that she buried her kin on the land. His witnesses focused on denying the sale and the plaintiff's role in planting the mango trees.
17. The photographs produced by the plaintiff show semi-permanent structures on the suit land, one made of mabati and another made of mud. Apart from the mango trees, there are other fruit trees including banana trees, paw paw trees among others. It is improbable that those trees could have matured in 2020 during the pandemic when it is claimed that the plaintiff took possession of the land and when this suit was filed. The defendant claimed to have been utilising the suit land but did not provide any evidence to support this contention.
18. The balance of the purchase price is said to have been paid on 19/1/1997. From that date until 26/7/2021 when this suit was filed, over 24 years had lapsed which is over and above the statutory



threshold of 12 years prescribed by the *Limitation of Actions Act* for a claim of adverse possession to succeed.

19. On a balance of probabilities, the court is persuaded that the plaintiff has been in continuous, open, and exclusive occupation of the suit land for more than 12 years.
20. The court is satisfied that the plaintiff has proved that she has become entitled to land parcel Nthawa/Riandu/1194 through adverse possession and grants the prayers sought in the suit dated 23/7/2021.
21. Since the transaction was not concluded during the lifetime of the parties to the sale transaction, each party will bear its costs.

DELIVERED VIRTUALLY AT EMBU THIS 3RD DAY OF JULY 2025.

K. BOR

JUDGE

In the presence of: -

Ms. M. Ngari holding brief Mr. N. Muriithi for the Plaintiff

No appearance for the Defendant

