



Kiritu & another (Suing as the Legal Representative of the Estate of Joseph Ngochi Kiriti) v Muhuri (Sued as the Legal Representative of the Estate of Charles Muhuri Mureithi) (Environmental and Land Originating Summons 23 of 2023) [2024] KEELC 672 (KLR) (8 February 2024) (Judgment)

Neutral citation: [2024] KEELC 672 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 23 OF 2023**

YM ANGIMA, J

FEBRUARY 8, 2024

BETWEEN

DANIEL NJUGUNA KIRITU 1ST PLAINTIFF

SALOME WANJIRU NJENGA 2ND PLAINTIFF

**SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF JOSEPH
NGOCHI KIRITI**

AND

CHARITY GATHONI MUHURI DEFENDANT

**SUED AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF CHARLES
MUHURI MUREITHI**

JUDGMENT

1. By an originating summons dated 16.05.2023 grounded upon Section 38 of the [*Limitation of Actions Act*](#) (Cap.22) and Order 37 rule 7 of the *Civil Procedure Rules*, 2010 the Plaintiffs sought determination of the following questions:
 - a. Whether the Plaintiffs have acquired title deed by adverse possession over LR No. Nyandarua/Mawingo Salient/29 measuring approximately 7.6. HA
 - b. Whether LR No. Nyandarua/Mawingo/Salient/29 should forthwith be registered in the name of Daniel Njuguna Kiritu and Salome Wanjiru Njenga legal representative of Joseph Ngochi Kiritu jointly and the Defendant be ordered to sign all the necessary transfer documents in their favour and in default the Honourable Court's Administrator be allowed to do so on her behalf.



- c. Whether the Land Registrar should dispense with the production of the original title deed for LR No. Nyandarua/Mawingo Salient/29 while transferring the land to the Plaintiffs.
 - d. Who should pay the costs of the suit.
2. The said summons was supported by the supporting affidavits of Daniel Njuguna Kiritu and Salome Wanjiru Njenga both sworn on 16.05.2023 and the exhibits thereto. The Plaintiffs pleaded that they had been in continuous, exclusive and uninterrupted possession and occupation of defined portions of the suit property for periods exceeding 12 years. In particular, they contended that they had been in possession of the suit property since 1984.
 3. The 1st Plaintiff pleaded that his late father, Kiritu Ngochi Muhia had bought the suit property from the previous owner Charles Muhuri Mureithi, in 1984 and that he entered the property in his capacity as the son of the late Kiritu. On her part, the 2nd Plaintiff pleaded that she entered the suit property in 1984 by virtue of being the wife of one of the sons of the late Kiritu.
 4. The material on record shows that the Defendant neither entered appearance nor filed an answer to the originating summons despite service. As a consequence, the suit was heard in her absence.
 5. At the trial hereof, the Plaintiffs testified on their own behalf as the only witnesses. They adopted the contents of their respective supporting affidavits as their evidence in-chief and produced the annexures thereto as exhibits. They stated that they had never been evicted from the suit property by the registered owner since 1984 hence they considered that they had acquired the suit property through the doctrine of adverse possession.
 6. The court has noted that the Plaintiffs' evidence was neither challenged nor controverted at the trial since the Defendant did not attend court for hearing. In the premises, the court is inclined to accept the Plaintiffs' evidence on the factual foundation of their claim. The court accepts their evidence that they have been in continuous, exclusive and uninterrupted possession of the suit property from as far back as 1984.
 7. The court is satisfied on the basis of the evidence on record that by the time the Defendant filed Nyahururu CMELC No.179 of 2018 Charity Gathoni Muhuri v Daniel Njuguna Kiritu her action for recovery of the suit property was already statute-barred under the *Limitation of Actions Act* (Cap.22) since the land register for the suit property indicates that the late Charles Muhuri was registered as proprietor on 22.03.1990. The limitation period therefore started running against the owner from that date until 21.03.2002 hence by the time the defendant filed suit in 2017 the action was already time-barred.
 8. In the circumstances, the court is satisfied that the Plaintiffs have satisfied the elements of adverse possession as enunciated in the case of *Kasuve v Mwaani Investments Ltd & 4 Others* [2004] 1KLR 184 as follows:

“...and in order to be entitled to land by adverse possession, the claimant must prove that he has been in exclusive possession of the land openly and as of right and without interruption for a period of 12 years either after dispossession of the owner or by the discontinuation of possession by the owner on his own volition, *Wanja v Sakwa No.2 [1984] KLR 284*. A title by adverse possession can be acquired under the Limitation of Actions Act for part of the land...”

The court takes the view that Plaintiffs are entitled to appropriate remedies to vest the suit property upon them on account of the doctrine of adverse possession.



9. The upshot of the foregoing is that the court is satisfied that the Plaintiffs have proved their claim for adverse possession to the required standard. As a consequence, the court makes the following orders for disposal of the originating summons dated 16.05.2023:
- a. A declaration be and is hereby made that the 1st and 2nd Plaintiffs have acquired title over LR No. Nyandarua/Mawingo Salient/29 measuring approximately 7.6. ha through the doctrine of adverse possession.
 - b. An order be and is hereby made that LR. No. Nyandarua/Mawingo Salient/29 be forthwith registered in the names of Daniel Njuguna Kiritu and Salome Wanjiru Njenga jointly and the Defendant be ordered to sign all the necessary documents to facilitate the transfer in default of which the Deputy Registrar of the court shall do so on her behalf.
 - c. The Land Registrar-Nyandarua County shall dispense with the production of the original title deed for LR No. Nyandarua/Mawingo Salient/29 while transferring the same to the Plaintiffs.
 - d. There shall be no order as to costs.

It is so decided.

**JUDGMENT DATED AND SIGNED AT NYANDARUA THIS 8TH DAY OF FEBRUARY, 2024
AND DELIVERED VIA MICROSOFT TEAMS PLATFORM.**

Y. M. ANGIMA

JUDGE

In the presence of:

Mr. Waichungo for the Plaintiff

N/A for the Defendant

C/A - Carol

