



**Mayiani v Ndisi (Enviromental and Land Originating Summons
E017 of 2022) [2024] KEELC 441 (KLR) (1 February 2024) (Judgment)**

Neutral citation: [2024] KEELC 441 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E017 OF 2022
LC KOMINGOI, J
FEBRUARY 1, 2024**

BETWEEN

RITAH SINTEI MAYIANI PLAINTIFF

AND

DAMERALL ROY NDISI DEFENDANT

JUDGMENT

1. By the Originating Summons 16th November 2022, the Plaintiff seeks the following orders:
 - i. The Plaintiff be declared the legal owner entitled by adverse possession of over twelve (12) years since 2006 all that parcel of land comprised it Title No. Kajiado/Kimana- Tikondo/931 situated in Oloitoktok.
 - ii. The Plaintiff be registered as the sole proprietor of the parcel of land namely, Title No. Kajiado/Kimana- Tikondo/931 in place of the Defendant in whose favour the land is currently registered.
 - iii. The Deputy Registrar of the Honourable Court do execute all necessary instruments and documents to effect transfer of parcel of land comprised in Title No. Kajiado/Kimana-Tikondo/931.
 - iv. Costs of this application be provided for.
2. In her Supporting Affidavit she averred that she has been in continuous uninterrupted possession, paying utility bills and developing land Title No. Kajiado/Kimana- Tikondo/931 (suit property) registered in the Defendant's name since 2006. During this time, the Defendant had never visited the land nor attempted to evict her from it. As such, the Defendant's proprietary interest had been extinguished and she was thus entitled to be registered as the owner.
3. The Defendant did not enter appearance despite being served by substituted service.



Evidence of the Plaintiff

4. PW1 Ritah Sintei Mayiani adopted her Affidavit dated 16th November 2022 as her evidence in chief and the produced annexures as exhibits in this case.

She told the court that she grew upon the suit property. She further stated that she has been in open, continuous and uninterrupted use and possession of the same. She produced photographs to confirm the developments on the land.

5. At the close of the oral testimony the plaintiff tendered final written submissions.

The Plaintiff's Submissions

6. Counsel submitted that as per Sections 7, 13, 17 and 38 of the *Limitation of Actions Act* together with Section 28(h) of the *Land Registration Act*, the Plaintiff was entitled to be declared owner of the suit property through adverse possession since she had openly, without force and without permission been on the suit property for over 12 years citing the Court of Appeal case of *Samuel Kihamba v Mary Mbaisi* [2015] eKLR.

Analysis and Determination

7. I have considered the pleadings, evidence on record, the written submissions and the authorities cited. The issues for determination are:

- i. Whether the Plaintiff is entitled to be declared the proprietor of parcel of land Kajiado/ Kimana- Tikondo/931 by virtue of adverse possession.
- ii. Who should bear costs of this suit?

8. The Applicant claims that she has been on the suit property since 2006 and has never seen the owner of the property. She states that she has lived openly on the land, cultivating it, developing it and even leased off part of it to other people. As such, she is entitled to the order of adverse possession having satisfied the ingredients.

9. It is not in dispute that a person can acquire land in Kenya through the doctrine of adverse possession as elucidated by the following provisions:

10. Section 7 of the *Limitation of Actions Act* provides that;

“An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.”

11. Section 13 of the *Limitation of Actions Act*, provides that;

“(1) A right of action to recover land does not accrue unless the land is in the possession of some person in whose favour the period of limitation can run (which possession is in this Act referred to as adverse possession), and, where under sections 9, 10, 11 and 12 of this Act a right of action to recover land accrues on a certain date and no person is in adverse possession on that date, a right of action does not accrue unless and until some person takes adverse possession of the land.



1. Where a right of action to recover land has accrued and thereafter, before the right is barred, the land ceases to be in adverse possession, the right of action is no longer taken to have accrued, and a fresh right of action does not accrue unless and until some person again takes adverse possession of the land.
 2. For the purposes of this section, receipt of rent under a lease by a person wrongfully claiming, in accordance with section 12(3) of this Act, the land in reversion is taken to be adverse possession of the land.”
12. Section 38 (1) of the [Limitation of Actions Act](#) provides that;

“(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.”
13. The Plaintiff’s evidence has not been controverted. She states that she has been on the suit property since the year 2006. She has annexed an extract of the title to the suit property which confirms the defendant is the registered owner.
14. In the case of *Wambugu v Njuguna* (1983) KLR 172 the court stated as follows;

“First in order to acquire by the Statute of Limitations title to land which has a known owner; that owner must have lost his right to the land either by being dispossessed of it or by having discontinued his possession of it. Dispossession of the proprietor that defeats his title entails acts which are inconsistent with his enjoyment of the soil and for the purpose for which he intended to use it. The [Limitation of Actions Act](#) (Cap 22) on adverse possession contemplates two concepts; dispossession and discontinuance of possession. The proper way of assessing proof of adverse possession would then be whether or not the title holder has been dispossessed or has discontinued his possession for the statutory period and not whether or not the claimant has proved that he has been in possession for the requisite number of years.”
15. I also rely on the case of *Samuel Kibamba v Mary Mbaisi* (2015) eKLR to find that the plaintiff has proved her case on a balance of probabilities and that she is entitled to be registered as the owner of the suit property.
16. Accordingly, judgement is entered in favour of the plaintiff as follows;
 - a. That the Plaintiff is declared to be the legal owner of Land Parcel No. Kajiado/Kimana-Tikondo/931 by way of Adverse Possession.
 - b. That the Plaintiff is entitled to be registered as the proprietor of Land Parcel Number Kajiado/Kimana-Tikondo/931 in place of the Defendant.
 - c. That the Deputy Registrar of this Honourable Court do execute the necessary documents to effect such registration.
 - d. That the Plaintiff do bear own costs.



DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 1ST DAY OF FEBRUARY 2024.

L. KOMINGOI

JUDGE.

IN THE PRESENCE OF:

Mr. Chacha for Mr. Pareno for the Plaintiff.

N/A for the defendant.

Court Assistant – Mutisya.

