



**M'Amiru v Kirathi (Environment & Land Case E006 of 2023)
[2024] KEELC 4137 (KLR) (8 May 2024) (Judgment)**

Neutral citation: [2024] KEELC 4137 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE E006 OF 2023**

**CK NZILI, J
MAY 8, 2024**

BETWEEN

JACOB KARUMANI M'AMIRU PLAINTIFF

AND

GEDION GITONGA KIRATHI DEFENDANT

JUDGMENT

1. The plaintiff seeks to be declared the owner of L.R No. Njia/Kiegoi/869 (herein after the suitland), by virtue of adverse possession. The facts as pleaded in the originating summons dated 25.3.2023 are that the defendant sold to the plaintiff the said land measuring 0.886 ha on 31.5.1996 and acknowledged receipt of Kshs.220,000/= as the total purchase price.
2. The plaintiff avers that he took exclusive vacant possession after the sale agreement and embarked on developing the land by establishing a tea plantation and planting assorted trees and grass.
3. After the defendant was served with the originating summons, he instructed the firm of M/s Bebo and Mose Advocates. Other than a notice of appointment filed on 10.1.2024, no replying affidavit or defense was filed by the defendant. The court record indicates that the defendant attended court on 18.1.2024 and sought an adjournment since his lawyers were not in court. The court granted the defendant 14 days to file a response and to pay adjournment costs of Kshs.7,000/=, before the hearing date on 15.2.2024.
4. Come 15.2.2024, no response had been filed or served, as well as the adjournment costs. Learned counsel Mr. Ashava, holding brief for the defendant's lawyers, Mr.
5. Nyakwara, sought yet another adjournment on account of sickness.
6. The court declined since both the lawyer and the defendant were absent and had not complied with the earlier orders. The request was declined for the reason that there was no evidence of sickness or an



explanation for why the absence of the defendant in court. The case was allocated a hearing for 10.30 am. No one turned up for the defendant.

7. Jacob Karumani M'Amiru testified as PW 1 and adopted a replying affidavit dated 22.3.2021 and a witness statement dated 23.3.2023. He told the court that he bought L.R No. Njia/Kiegoi/869 measuring 0.886 ha in 1996 from the defendant at Kshs.220,000/=, which he paid in full, took vacant possession and started developing the land. The plaintiff produced a copy of a register extract as P. Exh No. (1) copy of an official search as P. Exh No. (2) a sale agreement dated 10.3.1996 as P. Exh No. (3) a letter from the Kenya Tea Development Authority, a license dated 19.2.1999 as P. exh No. (4), a letter dated 28.1.199 as P. Exh No. (5), photographs as P. Exh No. 6 (a) & (b).
8. PW 1 told the court that he has been on the land since 1996, and has undertaken extensive developments thereon, with nobody attempting to stop or evict him from the land. Further, the plaintiff produced a copy of the register for the land as P.e xh No. (7) and a lease agreement dated 31.5.2008 as P. Exh No. (8).
9. Muthenga Kaindu, a neighbor, testified as PW 2. He adopted his witness statement dated 22.3.2023 as his evidence in chief and confirmed that the plaintiff had been on the suit land for close to 25 years. PW2 said that the plaintiff had been harvesting farm produce from the land and delivering it to the market. She said that it was only recently that the defendant purported to trespass into the land. After the closure of the plaintiff's case, the court directed parties to file written submissions.
10. The plaintiff relied on written submissions dated 8.3.2024. It was submitted that the sale agreement between the parties became null and void for lack of a land control board on 10.9.1996. The plaintiff stayed on the land after that as an adverse possessor in line with Sections 7, 13 & 38 of the Limitation of Actions Act.
11. Relying on Public Trustee vs. Wanduru Ndegwa (1984) eKLR, the plaintiff submitted that after the final installment was paid, his occupation of the land ceased being consensual, and time for adversity started running against the valid owner. The plaintiff also placed on Hosea vs Njiru & others (1974) E.A 526, as cited with approval in Stephen Mwangi Gatunge vs Edwin Onesmus Wanjau ELC No. 7 of 2021 (O.S.).
12. The plaintiff submitted that his possession and occupation of the land was confirmed by PW 2, and thereof, in the absence of any replying affidavit from the defendant, the court should grant him the reliefs he has sought in his pleadings Meru Central Farmers Cooperative Union vs Ruth Igoki Rintari & another (2019) eKLR.
13. The issue calling for my determination is whether the plaintiff has proved the ingredients of adverse possession. Adverse possession occurs when a true owner of a land omits or neglects to drive an intruder out of the land who continues to stay there openly, exclusively, notoriously, and peacefully for a period of 12 years while undertaking acts inconsistent with the purpose for which the true owner intended to use the soil. See Mtana Lewa vs Kaabindi Ngala Mwangandi Kweyu vs Omuto (1990) KLR 709.
14. In Malcolm Bell vs. Daniel Arap Moi & BOM Moi High School Kabarak (2013) eKLR, the Supreme Court of Kenya cited Wambugu vs. Njuguna (1983) KLR 172, Sisto Wambugu vs Kamau Njuguna (1988) KLR 217 and Samuel Miki Waweru vs Njeri Richu Civil Appeal No. 122 of 2001, in the courts held that where a purchaser occupies land which is subject to a sale agreement but with the consent of the vendor time does not start running for purposes of adverse possession until the agreement is terminated.
15. In this suit, the plaintiff has relied on a sale agreement executed in 1996. Further, the plaintiff has relied on a separate agreement dated 31.5.2008, where the defendant sold to him 1000 tea bushes. In the



second agreement, the seller authorized the plaintiff to assume ownership of the tea bushes together with the land he had earlier bought in 1996.

16. Therefore, the time for adversity started from 1.1.2009. Consequently, 12 years expired in January 2021. So, by the time the plaintiff moved to this court, the defendant was holding the land in trust for him. The discontinuance of possession and dispossession of the true owner constitutes adverse possession. See *Wambugu vs Njuguna* (*supra*).
17. The evidence tendered by the plaintiff has all the hallmarks of adverse activities to the defendant's rights. The land demanded by the plaintiff for adversity has been defined. The tea license produced herein shows that it is the plaintiff who has been in exclusive control or use of the 0.886 ha of the suit land.
18. No contrary evidence has been tendered of an acknowledgment of title, entry, and or recovery proceedings of the land by the defendant. See *Ruth Wangari Kanyagia vs Josephine Muthoni Kinyanjui* (2017) eKLR and *Githu vs Ndeete* (1984) KLR 776.
19. The upshot is that I find the plaintiff entitled to the reliefs sought. He is declared entitled to L.R No. Njia/Kiegoi/869 measuring 0.886 ha by virtue of adverse possession. The defendant shall execute the transfer forms in his favor within two months from the date hereof in default, of which the Deputy Registrar of this court shall execute the same.
20. No order as to costs.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 8TH DAY OF MAY, 2024

In presence of

C.A Kananu

Mugo for the plaintiff

HON. C K NZILI

JUDGE

