



**Mwangi v Kinuthia & another (Environment & Land Case
30 of 2023) [2024] KEELC 5156 (KLR) (11 July 2024) (Judgment)**

Neutral citation: [2024] KEELC 5156 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA
ENVIRONMENT & LAND CASE 30 OF 2023**

YM ANGIMA, J

JULY 11, 2024

BETWEEN

DANIEL KAMAU MWANGI APPLICANT

AND

FRANCIS LENNIE GATERI KINUTHIA 1ST RESPONDENT

JOSEPH WAINAINA KINUTHIA 2ND RESPONDENT

JUDGMENT

1. By an originating summons dated 01.12.2022 expressed to be based upon Section 7 of the *Limitation of Actions Act* (Cap. 22), Order 37 rule 7 of the *Civil Procedure Rules*, 2010 and all other enabling provisions of the law, the Applicant sought an order for adverse possession of Title Nos. Nyandarua/Mkungu/2853 – 2860 (the suit properties) measuring about 0.3881 ha which were said to be subdivisions of Title No. Nyandarua/Mkungu/6 (Parcel 6).
2. The originating summons was supported by an affidavit sworn by the Applicant on 01.12.2022 and the annexures thereto. The Applicant pleaded that he had been in open, continuous and uninterrupted possession of the suit properties for a period exceeding the statutory minimum of 12 years and that he had extensively developed the same by planting trees and crops and by putting up temporary structures thereon. He further pleaded that he was born and brought up on the suit properties and that his late father and two deceased siblings were buried thereon.
3. The Applicant further pleaded that he and his late father had been in occupation of the suit properties for over 40 years and that he had constructed several temporary structures thereon and settled there with his wife and children. It was his case that the Respondents who were the administrators of the estate of the registered owner had recently stationed their workers on the suit properties who had started destroying the fence and trees thereon. It was thus the Applicant's case that the Respondents had lost



their right to recover the suit properties and that he was entitled to be registered as owner thereof on account of the doctrine of adverse possession.

4. Although the Respondents did enter appearance to the summons through the firm of P.K. Njuguna & Co. Advocates, they did not file any answer or response thereto.
5. At the trial hereof, the Applicant testified on his own behalf as the sole witness. He adopted the contents of his supporting affidavit as his evidence in-chief. He also produced the annexures to the said affidavit as exhibits and sought the prayers set out in the originating summons. The record shows that neither the Respondents nor their advocate attended court for the hearing. As a result, the Respondents' case was closed without any evidence being tendered on their behalf.
6. Upon conclusion of the hearing the Applicant was granted 14 days to file and serve his written submissions. However, by the time of preparation of the judgment he had not filed any submissions.
7. The court has considered the originating summons and the material on record. The court is of the view that the main question for determination herein is whether or not the Applicant has demonstrated his claim for adverse possession of the suit properties. The ancillary issue is who shall bear the costs of the suit.
8. The court has considered the evidence on record on the first issue. The elements of adverse possession were summarized in the cases 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...”

9. Similarly, in the case of *Chevron (K) Limited v Harrison Charo Wa Shutu* [2016] eKLR it was held, inter alia, that:

“At the expiration of the twelve-year period the proprietor's title will be extinguished by operation of the law and section 38 of the Act permits the adverse possessor to apply to the High Court for an order that he be registered as the proprietor of the land. Therefore the critical period for the determination whether possession was adverse is 12 years and the burden is on the person claiming to be entitled to the land by adverse possession to prove, not only the period but also that his possession was without the true owner's permission, that the owner was dispossessed or discontinued his possession of the land, that the adverse possessor has done acts on the land which are inconsistent with the owner's enjoyment of the soil for the purpose for which he intended to use it. See *Littledale v Liverpool College* (1900)1 Ch.19, 21.”

10. It is evident from the material on record that the Respondents did not file any response to the originating summons. It is also evident that they did not attend court for hearing to either challenge or controvert the factual foundation of the Applicant's claim. The Applicant's evidence on his claim for adverse possession therefore remains unchallenged. The court is inclined to accept the Applicant's evidence that he has been in open, continuous and uninterrupted possession and occupation of the suit properties for a period exceeding 12 years prior to the filing of the originating summons. The court is further satisfied that his activities on the suit properties of building structures and cultivating crops



thereon are inconsistent with the owner's rights and that his occupation has been hostile and without the consent of the owner. In the premises, the court finds and holds that the Applicant has proved his claim against the Respondents to the required standard.

11. On the issue of the costs, the court is aware that the costs are usually at the discretion of the court subject to the general rule that costs shall follow the event as stipulated in the proviso to Section 27 of the *Civil Procedure Act* (Cap.21). In view of the fact that the Respondents did not file any response to the suit and they did not attend court for hearing the court is of the view that each party should bear his own costs.
12. The upshot of the foregoing is that the court finds and holds that the Applicant has proved his claim for adverse possession of the suit properties on a balance of probabilities. As a consequence, the court makes the following orders for disposal of the suit:
 - a. A declaration be and is hereby made that the Applicant, Daniel Kamau Mwangi, has become entitled to be registered as proprietor of Title No. Nyandarua/Mkungi/2854, 2855, 2856, 2857, 2858, 2859 and 2860 under Section 38 of the *Limitation of Actions Act* on account of the doctrine of adverse possession.
 - b. The Respondent shall sign all necessary forms, documents and instruments to facilitate the transfer of the suit properties to the Applicant within 30 days from the date hereof in default of which the Deputy Registrar of the court shall do so on their behalf.
 - c. The Land Registrar – Nyandarua County shall cause the Applicant to be registered as proprietor of the suit properties and shall for that purpose dispense with the production of the original title deeds for the suit properties and all other documents in the possession, custody or control of the Respondents.
 - d. Each party shall bear his own costs of the suit.

It is so decided.

JUDGMENT DATED AND SIGNED AT NYANDARUA THIS 11TH DAY OF JULY, 2024 AND DELIVERED VIA MICROSOFT TEAMS PLATFORM.

In the presence of:

Mrs. Gladys Wanjiru for the Applicant

N/A for the Respondents

C/A - Carol

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Y. M. ANGIMA

JUDGE

