



**Ngatia v Kaguru (Environment and Land Case Civil Suit
345 of 2008) [2024] KEELC 5300 (KLR) (11 July 2024) (Judgment)**

Neutral citation: [2024] KEELC 5300 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE CIVIL SUIT 345 OF 2008**

LN MBUGUA, J

JULY 11, 2024

BETWEEN

JANE NJOKI NGATIA PLAINTIFF

AND

SIMON KINYANJUI KAGURU DEFENDANT

JUDGMENT

1. The Plaintiff commenced this suit vide a plaint dated 22.7.2008. She contends that she is the registered proprietor of LR No. Dagoretti/Kangemi/1067 situated at Dagoretti Kangemi. It is her case that about the year 2000, the Defendant unlawfully trespassed onto her parcel of land and committed acts of waste thereon in that he unlawfully erected temporary and permanent structures without her consent.
2. She seeks judgment against the Defendant for;
 - a. An order of eviction of the Defendant and all thoseV claiming under him from LR No. Dagoretti/Kangemi/1067.
 - b. An order of demolition of all the illegal structures on LR No. Dagoretti/Kangemi/1067.
 - c. An order of permanent injunction restraining the Defendant and all those claiming under him from ever entering LR No. Dagoretti/Riruta/1067.
 - d. General damages.
 - e. Costs and interest at court rates.
3. The Plaintiff's case is opposed by the Defendant vide his defence and counterclaim dated 20.9.2010. He denies allegations levelled against him by the Plaintiff and contends that he purchased the suit parcel in 1987 from one Michael Kubiu, which land was hived off from LR Dagoretti/Kangemi.675.



4. He avers that even though he was not issued with a title deed upon purchase of the suit parcel, he took possession the same year he purchased it and erected the buildings that stand therein and has been in continued uninterrupted possession as owner for a period exceeding 12 years.
5. He counterclaims for the following orders;
 - a. The Plaintiff's suit be dismissed with costs.
 - b. Declaration that the Defendant has acquired ownership of the suit land by adverse possession and that the Plaintiff's title has been extinguished.
 - c. That the Plaintiff's name be cancelled and removed from the proprietorship register in Lands office, Nairobi and the Defendant's name be substituted therefore and he be issued with a title deed in his name for LR Dagoretti/Riruta/1067.
 - d. That the Plaintiff be ordered to pay the costs of the counterclaim.
 - e. Any further or other order this court may deem just to grant.

Case for the Plaintiff

6. The Plaintiff, (PW1) testified as the sole witness in her case. She adopted her witness statement dated 24.1.2012 as her evidence and she also produced 6 documents contained in her bundle of documents dated 21.6.2019 as P. Exhibit 1-6.
7. In her witness statement, she reiterates that she is the registered proprietor of the suit parcel, having purchased it from the vendor, Kioi Gichamba in May 1997. That on 20.5.1997, the vendor (Kioi Gichamba) applied to the Dagoretti Land Control Board for the consent to transfer, which consent was granted by the board sitting at Waithaka on 2.7.1997 and the suit parcel was subsequently transferred to her on 18.2.1998.
8. She also states that in the year 2000, the Defendant trespassed onto the suit parcel without her authority claiming that he had purchased the same from one Michael Kibiu whom she does not know. She denies that the Defendant acquired the suit parcel by adverse possession as she has always demanded that he should vacate.
9. In cross-examination, PW1 stated that she visited the suit parcel in 1997 as she intended to purchase it and as at 1998, there were no structures. The encroachment started after she had purchased that land.
10. She does not know the family of Michael Kibiu whom the Defendant claims to have purchased the land from. She also did not interact with the family of Kioi Gichamba, save Kioi, and similarly, she didn't interact with neighbors of Kioi.
11. Further, she did not know that the suit parcel was hived from parcel 665, and that she did not have to find out how Kioi Gichamba got the suit land. At the moment, she is not aware that the suit property is developed.
12. In re-examination, she stated that Kioi Gichamba had a title for parcel 1067 and the same was confirmed by a search, and that this is the land which Kioi Gichambi transferred to her.

Case for the Defendant

13. The Defendant testified as DW1, the sole witness in his case. He adopted his witness statement dated 5.4.2022 as his evidence. He produced 5 documents in his bundle dated 25.4.2022 as D. Exhibit 1-5 and photographs contained in the same bundle as D. Exhibit 6.



14. His case is that in the year 1987, he met one Michael Kubiou and David Kioi who are brothers and who proposed to sell to him a portion of land in Dagoretti/Kangemi/675 whose title was in Kubiou's name. He visited the site and also conducted a search which confirmed that the parcel was registered in one of the brothers, namely Mr. Kubiou.
15. That subsequently, the brothers agreed to sell to him a portion of the parcel at ksh. 40,000/= . They then proceeded to Charles Mureithi Advocate who was in custody of the original title and he drew the sale agreement to the transaction. He then paid a purchase price of ksh. 20,000/= upon signing the agreement and the balance was to be paid in installments which he paid in full.
16. That upon clearing the balance, he started building on the area he was shown when an official subdivision had not been done. He states that after the parcel was surveyed, he realized that his house which was supposed to be on portion No. H2/1060-C had encroached on Muigai's portion No. H2/1060-D, so he demolished it and built on his portion No. H2/1060-C.
17. That in 1988, he built 7 permanent rental rooms which he rented at ksh.300/= per room and in 1995, he put up 12 more semi-permanent units renting at ksh.800/= each per month and continued to develop the parcel such that by the year 2001, he had 26 units.
18. He stated that the suit parcel measures 72 feet by 150 feet and he uses half of it for farming. That in 2014, he leased part of the farm measuring 20 feet by 40 feet to a church group and in 2016, he put up housing units on the remaining space.
19. DW1 also states that in 2017, he demolished the houses he had built in 2001 and built 7 permanent units and 7 semi-permanent units, while in 2020, he demolished the older houses and built 28 semi-permanent houses, 2 storey buildings, a perimeter fence and a gate such that the suit parcel now contains 65 units and a church in total.
20. He states that his advocate who was following up on the title passed away before he could complete the transaction and that he was in custody of all the original documents which he has not managed to access because the office of that advocate was closed after his demise.
21. He states that he is well known to the family that sold the suit parcel to him as well as the neighbors as he has had possession of that land for all these years.
22. In cross – examination, DW1 stated that he did not have a copy of title /search to show that Michael Kibiou was the registered owner of the suit parcel. He further stated that in the sale agreement between him and Michael Kibiou dated 6.7.1997, Michael's ID No. is not indicated and that he died in 1991 and all those who witnessed the transaction died save for 1 witness who is alive. That additionally, at the time of purchase, they did not go to the land control board and subdivision was not done.
23. He stated that he bought the suit parcel from David Kibiou but the land belonged to his brother Michael but Michael and David approached him accompanied by Kioi.
24. DW1 also stated that he is not familiar with land sale process and he is not aware that a land sale agreement becomes invalid if there is no consent of land control board in 6 months. He reiterated that he built on the suit parcel in 1988.
25. In re-examination, DW1 stated that Michael and Kioi are brothers and that the sale agreement is signed by Michael but Kioi was the one who was receiving purchase money paid in installments. He reiterated that title 675 was in the name of Michael so kioi got his parcel from that land as he was family.



26. He further stated that he learnt about this case in 2008 but he entered the suit parcel in 1987, has never left and still occupies that land.
27. He also stated that he never got any injunctions barring him from building on the suit land and that in the photos produced, David Kioi appears there and he even helped him at his construction.

Submissions

28. The Plaintiff filed submissions dated 19.12.2023. It is argued that since the Plaintiff has demonstrated that she purchased the suit parcel from its previous registered owner Kioi Gichamba and the said evidence was not challenged, she has proven the root of her title, thus her title is verifiable under section 24 of the [Land Registration Act](#).
29. It is submitted that ownership can only be defeated by invocation of the provisions of Section 26 (1) of the [Act](#) and no evidence was led that could defeat her title in terms of the law.
30. It is also argued that since no land board consent was produced by the Defendant, the sale agreement purportedly made on 6.7.1987 is void by operation of the law.
31. It is the Plaintiff's submission that the Defendant did not demonstrate that he conducted due diligence as there could not have been a valid search for Plot C as the same was not registered.
32. The Plaintiff also submits that though the Defendant alleges that he entered the suit property in 1987, he apparently entered the wrong parcel (D), but later demolished his house and moved to plot D. That there is no tangible evidence as to when the defendant moved to Plot C.
33. It is argued that the sale agreement dated 6.7.1987 is silent on the Defendant's date of entry and even if it assumed that he entered in the year 2000, the suit was filed in 2008 thus the prospective period for adverse possession has not been achieved.
34. On his part, the Defendant filed submissions dated 26.1.2024. It is argued that by the time the Plaintiff was acquiring the suit property as per her title dated 18.2.1997, the Defendant was already in possession and the Plaintiff never got rid of him.
35. It is argued that it is highly probable that by the time the mother title was subdivided in 1993, the Defendant had finished paying the purchase price such that adverse possession started running after he had paid the last installment. To this end, the case of [Mageta Eneterprises Ltd v Tilak Company Ltd](#) [2020] eKLR is relied upon.
36. The case of [Stephen Njoroge Kiboli v David Mwaele Nguli](#) [2019] eKLR, [William Oduory Mukangah v Michael Radido Aywak; George Obuya Ndambuki & another \(Interested Parties\)](#) [2019] eKLR as well as the case of [Regina Wanjiru Mwago & another v Lucy Wairimu Gichubi & 2 others](#) [2019] eKLR are cited to submit that the Defendant ceased to have permission to possess the suit property in 1993 when the suit land acquired registration status, thus his possession became adverse as against the registered owners in continued succession.
37. It is submitted that by the time the Plaintiff lodged this suit on 22.7.2008, more than 12 years of the Defendant being in possession had lapsed, thus he is entitled to be registered as proprietor of the suit parcel, to this end, the case of [Ibrahim Wachira Karaguri v Mary Mwihaki Simon & another](#) [2020] eKLR and [James Maina Kinya v Gerald Kwendaka](#) [2018] eKLR are relied upon.



Determination

38. The undisputed facts herein are that the suit land known as Dagoretti / Kangemi / 1067 is registered in the name of the Plaintiff (see title in plaintiff's bundle) and is occupied by the Defendant. The plaintiff is asserting her rights as the registered proprietor of the suit land, while the defendant is asserting his claim based on the doctrine of adverse possession.
39. Adverse possession is a prescriptive right which is an overriding interests provided for under Section 28 (h) of the *Land Registration Act* in the following terms;

“Unless the contrary is expressed in the register, all registered land shall be subject to the following overriding interests as may for the time being subsist and affect the same, without their being noted on the register — rights acquired or in process of being acquired by virtue of any written law relating to the limitation of actions or by prescription.”
40. The question therefore falling for determination is whether plaintiff's title has been extinguished through the doctrine of adverse possession in favour of the defendant. If not, is the plaintiff entitled to an order of eviction of the defendant.
41. The plaintiff claims that defendant entered the suit property in the year 2000, hence the 12 years period had not matured by the time this suit was filed. However, no cogent evidence was adduced to indicate that defendant's entry was in year 2000.
42. On the other hand, the Defendant produced a sale agreement dated 6.7.1987 which evidences that he purchased Plot C hived from Dagoretti/Kangemi/675 from Michael Kibui who is said to have been a brother of Kioi Gichamba. The defendant has also given a consistent account that by the time of purchase, the land was not subdivided, but he eventually settled on parcel C and commenced the building of rental structure's in 1988.
43. The nature and extent of defendant's occupation of the suit land is captured in minute details in paragraph 7 to the end of his witness statement. What emerges from the contents in the said paragraphs is that defendant has been carrying out developments on the suit property from 1988 all the way upto year 2020. He also produced photographs showing that the suit parcel is fenced with developments. The land in question happens to be LR No. Dagoretti/Kangemi/1067, and I have no doubts that the said parcel was hived from Dagoretti/Kangemi/675.
44. The Plaintiff was unable to prove that she has ever taken possession of the suit property. On the other hand, the Defendant's evidence is consistent that he entered the suit land in 1987. This entry was however through a licence, (the sale agreement).
45. The evidence of the defendant is that he had paid the entire purchase price by 1993 and that he has never been evicted by anyone from the suit parcel.
46. In *Wambugu vs Njuguna* (1983) KLR 172 the Court stated that where the claimant is in exclusive possession of the land with leave and license of the appellant in pursuance to a valid agreement, the possession becomes adverse and time begins to run at the time the license is determined.



47. Similarly, in *Peter Mbiri Michuki v Samuel Mugo Michuki* [2014] eKLR, the Court of Appeal cited the case of *Public Trustee v Wanduru*, (1984) KLR 314 at 319, where Madan, JA had this to say on the subject matter;

“Adverse possession should be calculated from the date of payment of the purchase price to the full span of twelve years if the purchaser takes possession of the property because from this date, the true owner is dispossessed off possession. A purchaser in possession of the land purchased, after having paid the purchase price, is a person in whose favour the period of limitation can run.”

48. And so it is in the instant case that by the time this suit was filed in 2008, the defendant had been on the suit land for 15 years from the time he paid the last installment in 1993, even though he had occupied that land for 21 years in total. To this end, I am in agreement with the Defendant’s assertion that plaintiff’s claim to the suit parcel is ousted by the law, of which the provisions of Section 7 of the *Limitation of Actions Act* stipulates 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.”

49. In *Cathy Alucia Jebor Kiplagat v Vincent Komen Krelkut* [2018] eKLR, the court stated as follows on a claim of adverse possession;

“..the process springs into action essentially by default or inaction of the owner. The essential prerequisites being that the possession of the adverse possessor is neither by force or stealth or under the license of the owner. It must be adequate in continuity, in publicity and in extent to show that possession is adverse to the title owner”.

50. The circumstances of this case clearly indicate that the defendant has met all the prerequisites of an adverse possessor, and that there was inaction on the part of the true owners of the land who are the plaintiff and the previous owners. I therefore find that Plaintiffs case has no merits while the defendant’s counterclaim succeeds.

51. Final orders;

1. Plaintiff’s suit is hereby dismissed.
2. The defendants counterclaim is hereby allowed, whereby
 - a. a declaration is made to the effect that the defendant has acquired parcel LR Dagoretti / Riruta/1067 by way of adverse possession.
 - b) An order is hereby issued for cancelation of plaintiff’s name in the title deed LR Dagoretti/Riruta/1067 and instead, the defendant is to be registered as the owner of the said title.
3. As to costs, each party is to bear their own costs of the suit.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 11TH DAY OF JULY, 2024 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA



JUDGE

In the presence of:-

Michelle Wachechi holding brief for Mwangi Chege for Plaintiff

Kamotho Njomo for Defendant

Court assistant: Eddel

