



**Ol Jogi Limited v Al Nathir Investments Limited (Environmental and Land Originating Summons E001 of 2024) [2024] KEELC 13581 (KLR) (6 November 2024) (Judgment)**

Neutral citation: [2024] KEELC 13581 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E001 OF 2024  
AK BOR, J  
NOVEMBER 6, 2024  
IN THE MATTER OF THE LIMITATION OF ACTIONS ACT, CAP 22 LAWS OF KENYA  
AND  
IN THE MATTER OF ADVERSE POSSESSION CLAIM  
OF PARCEL NO. 1149 (GRANT NO. I.R 80609)**

**BETWEEN**

**OL JOGI LIMITED ..... PLAINTIFF**

**AND**

**AL NATHIR INVESTMENTS LIMITED ..... DEFENDANT**

**JUDGMENT**

1. The Plaintiff filed the Originating Summons dated 18/3/2024 seeking a declaration that it had acquired title over land reference number (L.R No.) 11949 (Grant No. IR 80609) (the suit property) by way of adverse possession in terms of Section 17 and 38 of the Limitations of Actions Act. Further, it sought to have the Defendant execute all the relevant documents necessary to transfer and register the suit property in the Plaintiff's name and in default the Deputy Registrar of this court to do so after expiry of a defined period. Lastly, it sought to have the Land Registrar, Nanyuki register the Plaintiff as the owner of the suit property in place of the Defendant or any person or entity succeeding the Defendant.
2. The application was supported by the affidavit of Alec Wildenstein, a director of the Plaintiff who deponed that the Plaintiff and Defendant executed a letter dated 24/8/1997 detailing the terms and conditions of the sale of the suit property to the Plaintiff. As stated in the letter, the Plaintiff agreed to purchase the suit property for Kshs. 500,000/= and paid that amount vide cheque numbers 000496 and 000600 dated 25/8/1997. On execution of the letter, the Defendant handed over the original letter



- of allotment dated 9/6/1997 from the Ministry of Lands together with the title to the suit property to the Plaintiff.
3. The Plaintiff claimed that it took possession of the suit property on 25/8/1997 upon payment of the purchase price and that it had been in continuous, open and uninterrupted possession of the suit property and continued to use it as an integral part of the Ol Jogi Wildlife Conservancy for rhinoceros and other endangered wildlife. It averred that for 26 years the Defendant had failed to execute the transfer documents in its favour and the attempts by the Plaintiff's lawyers to have the Defendant sign the transfer had not been successful. Mr. Wildenstein deponed to the procedures and relevant payments that would be necessary before the land can be transferred to the Plaintiff and added that time for purposes of adverse possession started running on 25/8/1997 when the Plaintiff paid the purchase price and took actual possession of the suit property.
  4. Wycliffe Ihonga deponed in the affidavit of service that he effected service of the Originating Summons upon the Defendant through Ochanda Onguru Advocates who were registered as the secretaries of the Defendant in June 2024. The same process server effected service on the Defendant through its postal address as well as the directors' postal addresses in Wajir.
  5. This matter was heard on 16/9/2024 when Alec Wildenstein gave evidence. He adopted his supporting affidavit which he swore on 18/3/2024 and produced the annexures to the affidavit in support of the Plaintiff's claim including the letter dated 24/8/1997 together with copies of the title deed and letter of allotment dated 9/6/1997.
  6. Mr. Wildenstein told the court that the Plaintiff took possession of the suit property in 1997 and had remained in possession to date. He elaborated that the suit land was in the middle of Ol Jogi Conservancy within Laikipia County and that it is a wildlife conservancy where rhinoceros' conservation amongst other animals takes place. He referred the court to the copy of the title and explained that the land surrounding the suit property was owned by the Plaintiff and that the suit property could only be accessed through the adjoining land being L.R No. 10689 and 11950.
  7. Upon conclusion of the hearing, the court directed the Plaintiff to file submissions. The Plaintiff filed its submissions giving the background to the case. It cited several decisions from the Court of Appeal and the Environment and Land Court on the ingredients an applicant must prove to establish a claim of adverse possession under Sections 7, 13, 17 and 38 (1) of the *Limitation of Actions Act*. An applicant has to show that he had been in exclusive possession of the land openly and as of right without interruption for twelve years after dispossessing the owner.
  8. The Plaintiff relied on *Stephen Mwangi Gatunge v Edwin Onesmus Wanjau* (Suing in her capacity as the administrator of the estates of Kimingi Wairera (Deceased) and of Mwangi Kimingi (Deceased) [2022] eKLR where the Court of Appeal stated that where a claiming party entered the land pursuant to a sale agreement, the statutory period would start running upon payment of the full purchase price. The Plaintiff submitted that it paid the full purchase price on 25/8/1997 and took possession of the suit property which it had had exclusive and interrupted possession of from that day. The Plaintiff cited several other decisions in support of its claim that it was entitled to adverse possession of the suit property.
  9. The other issue which the Plaintiff took up was that it was immaterial to the claim for adverse possession whether the Defendant had been traced. Further, that the court had held that the provisions of the *Land Control Act* requiring one to obtain the consent of the Land Control Board did not apply to a claim to title by operation of law such as adverse possession.



10. The issue for consideration is whether the Plaintiff has established its claim of adverse possession to the suit property. The Plaintiff's claim is that it purchased the suit property from the Defendant on 25/8/1997 and paid the purchase price to the Defendant who failed to execute the necessary documents to transfer the suit property to the Plaintiff. It was the Plaintiff's evidence that it had been in actual and exclusive possession of the suit property since 1997 and that it was using the land as a conservancy for rhinoceros and other species of animals. The Defendant did not file any documents despite service being effected upon it.
11. The court is satisfied that the Plaintiff has proved its case on a balance of probabilities. The Plaintiff's claim is allowed in the following terms:
  - i. A declaration is issued that the Plaintiff has acquired title over L.R No. 11949 (Grant No. IR 80609) by adverse possession as against the Defendant.
  - ii. The Defendant is to execute all the relevant documents necessary to transfer L.R No. 11949 (Grant No. IR 80609) to the Plaintiff's name within 30 days of the date of this judgment failing which the Deputy Registrar of this court will execute the relevant documents to effect a transfer of the land to the Plaintiff.
  - iii. The Land Registrar, Nanyuki is to register the Plaintiff as the proprietor of L.R No. 11949 (Grant No. IR 80609) in place of the Defendant.
  - iv. The Plaintiff will bear its costs for the suit.

**DELIVERED VIRTUALLY AT NANYUKI THIS 6<sup>TH</sup> DAY OF NOVEMBER 2024.**

**K. BOR**

**JUDGE**

In the presence of: -

Mr. Samson Muchiri for the Plaintiff

Court Assistant- Diana Kemboi

No appearance for the Defendant

