



**Githae v Zablou (Environment & Land Case 8 of 2022)
[2023] KEELC 16391 (KLR) (1 March 2023) (Judgment)**

Neutral citation: [2023] KEELC 16391 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI
ENVIRONMENT & LAND CASE 8 OF 2022**

AK BOR, J

MARCH 1, 2023

BETWEEN

PATRICK NGUMI GITHAE PLAINTIFF

AND

DUNCAN NGURE ZABLON DEFENDANT

(FORMERLY NYERI ELC CASE NO. 549 OF 2014)

JUDGMENT

1. The plaintiff filed Nyeri High Court Civil Case No 179 of 2010 by way of an originating summons, seeking a declaration that he had acquired title by adverse possession to the land known as Nanyuki/Marura/Block 8/63 situated within Laikipia District (“the suit property”). He sought to have the suit property registered in his name and for the defendant to execute the necessary documents to effect the transfer to his name and in default, the Executive Officer of the court was to sign those papers.
2. In the supporting affidavit which he swore on December 16, 2010, the plaintiff averred that the defendant was the registered owner of the suit property, and exhibited a photocopy of the official search showing that a title deed was issued to the defendant on October 19, 2007. Mr Githae deponed that he had lived exclusively on the suit property having bought it from Mariara Farmers’ Cooperative Society Limited. He added that he had constructed a prefabricated house, fenced the land with barbed wire, planted trees and was rearing cows and goats on the land. He stated that his occupation and possession of the land were adverse to the defendant’s title and that he had therefore acquired title to the suit property through adverse possession.
3. Initially, the matter proceeded as an undefended claim and was heard by Justice Ombwayo in the Environment and Land Court (ELC) at Nyeri on 26/2/2013. The court entered judgment in favour of the plaintiff on 28/6/2013. An application dated 28/8/2013 seeking to set aside the judgment was filed, which was allowed by consent and the defendant was directed to file a defence within 15 days.



4. In his reply to the originating summons filed on 7/5/2016, the defendant averred that he was the registered owner of the suit property which he claimed was adjacent to the plaintiff's land being Nanyuki/Marura Block 8/64. He averred that the plaintiff had never set foot on his land let alone develop it. He claimed that he obtained his title in 2007 and had been cultivating the land since he bought it. He termed the plaintiff as a real thief who thought he could easily get another person's land unjustly by misrepresenting facts to the court. He added that there was no way in law that someone could lie to the court and fail to disclose the correct position on the ground so as to take another person's land through fraud.
5. The hearing of this suit commenced on 21/2/2018 before Lady Justice Waithaka at the ELC in Nyeri when the plaintiff gave evidence. He told the court that he was a sawmiller in Nanyuki Marura Block 8/64 which he stated was behind the suit property. That he entered the suit property in 1980 and by the time he filed this suit he had occupied and developed it for 13 years. He stated that he had erected a permanent house on the land, kept livestock and was cultivating it. He claimed that he did not know the defendant who he said had never occupied the suit property. He stated that he obtained the defendant's permission to occupy the land. He went further to explain that he exchanged the suit property with Lawrence Mwongera for another parcel of land which had been given to him by the Cooperative Society because Samuel could not utilise the land since it had a big hole.
6. He explained that the parcels of land initially belonged to Mariara Cooperative Society and that at the time he entered the suit property the land was registered in the name Mariara Cooperative Society and it was registered in the defendant's name in 2007. He urged the court to grant him a title since he was the one who had always occupied the land. He did not know why the society chose not to issue a title deed to him but instead issued it to the defendant. He denied that the defendant was his neighbour and the averments contained in the defendant's replying affidavit that he was his neighbour. He claimed that he had never seen nor met him. He stated that he engaged a caretaker called Mutethia Muthama to take care of the land.
7. On being cross examined, he stated that he had another parcel of land which is no 64 that he bought from Lawrence Mwongera. He did not table any documents showing the exchange of land but produced the ballot for parcel number 1470. That when titles were issued, parcel 1470 became the title deed for parcel 64. When he enquired from the Cooperative Society why parcel no 63 was issued a title for 64, he was not given any explanation which prompted him to report the matter to the police.
8. He told the court that he was claiming the suit property because the land was his and not because he had occupied it for over 12 years. He confirmed that he had a title deed for parcel 64 which was issued to him in 2007. Further, that the only document given to him in the exchange was the ballot card and that that fact could be confirmed by the Cooperative register.
9. He was not aware that his caretaker was evicted from the suit property following a court order issued in PMCC No 5 of 2014. He was not aware of any pleadings and maintained that he entered the suit land in 1989. When he was reexamined, he told the court that at the time he did the exchange with Mr Mwongera the entire parcel of land was still in the name of the Cooperative Society and individual titles had not been issued for any parcel of land. What Mwongera gave him as proof of ownership was the ballot for parcel 1470. That once titles were issued, plot no 1470 became the title for parcel no 64.
10. He told the court he was claiming parcel no 63 but could not remember the ballot number. He emphasized that he not was claiming the land because the title was issued in 2007 but because he had been on the land since 1989. He maintained that his caretaker was still occupying parcel 63 and had not been evicted.



11. The court posed some questions to the witness and he confirmed that there were two parcels on the ground being no 63 and 64. They purchased parcel no 728 from Joyce in 1980 who was a member of Mariara Cooperative Society and they set up a sawmill. Her ballot was cancelled and the plaintiff's business partner's name David Matu Wahome was inserted in her place. He stated that he exchanged parcel no 1470 belonging to Lawrence Mwangera with one of his parcels whose number he could not remember. When title deeds were issued he was issued a title deed in his name for parcel no 64 where the sawmill stood but not for parcel no 1470. Instead, the defendant was issued a title deed for parcel no 63 which was where parcel no 1470 stood.
12. Nyeri ELC Case no 549 of 2014 was transferred to the Nanyuki ELC in February 2022. It is not clear as to when the case number changed from Nyeri High Court Case no 179 of 2010 (OS). This could have happened when the ELC was established. This court took the evidence of the other witnesses.
13. Lawrence Mwangera Ikiara gave evidence. He comes from Nturukuma area of Nanyuki. He was the previous owner of the suit property which was formerly plot no 1470 having exchanged it with the plaintiff's other parcel of land previously known as plot no 1323 in 1987. He stated that the plaintiff had been in possession of the suit property without any interruption from anybody and had been planting maize, beans and potatoes on the land. Further, that the plaintiff had constructed a prefabricated house on the land and fenced the land with barbed wire. In addition, that he had planted trees and was rearing goats and cows on the parcel of land.
14. On being cross examined, he confirmed that he was the original owner of plot no 1470 which he exchanged with the plaintiff. He was not aware of plot no 64. The current number for his land was 1423. He bought plot no 1470 from Mwobobia who is now dead and was the original owner. He was not aware that there were two plots for plot no 1470. Parcel no 1323 was previously owned by the former Provincial Commissioner, Julius Kobia who sold it to the plaintiff. He exchanged parcel no 1470 with the plaintiff for parcel no 1323 which is registered in his name.
15. He claimed that the plaintiff was registered as the owner of parcel no 1470. He was not aware that plot 8/64 came from 1470. He did not know how the plaintiff and James came to be on the land and was not aware about parcel no 64. He confirmed that he knew the defendant who was his in law and who he had heard had land near them. He stated that he transferred the land to the plaintiff in 1997.
16. On re-examination, he stated that when they exchanged the land there was a timber house on the land which was being used by the plaintiff. He had never seen the defendant on the land he gave the plaintiff. He confirmed that there were two parcels of land and the sawmill was not on the land he gave the plaintiff. He maintained that the plaintiff was still in occupation of the land he gave him and the only change he heard of was that there was a court order and the buildings were demolished.
17. Gideon Menye gave evidence and told the court that he came from North Imenti in Meru County. He stated that he was the plaintiff's neighbour in Nanyuki Nturukuma area as the beneficial owner of the land known as Nanyuki/Marura/Block 8/66 (Nturukuma) which was adjacent to the plaintiff's land known as Nanyuki/Marura/Block 8/63 since the early 1980s. He was aware that his younger brother the late Solomon Muthaura was occupying the plaintiff's land as his caretaker and cultivating it while generally taking care of it and that that was without any interruption from anybody. It was within his own knowledge that he was tilling the land exclusively and he had even constructed a prefabricated house, fenced the land with barbed wire, planted trees, reared goats and cows on the land. That he lived there exclusively because he used to visit him regularly. He stated that his brother passed away on 13/9/2020 and was buried on the plaintiff's land on 19/9/2020.



18. He produced copies of the pleadings which the defendant filed in Nanyuki SRMCC no 5 of 2014 against James Maina and Solomon Muthaura including the affidavit of service, the request for judgment and a copy of the judgment delivered on November 24, 2015 *vide* which the court issued an eviction order against the defendant from Nanyuki/Marura/Block 8/63. He also produced the other documents relating to execution of the court order and the certificate of death.
19. On cross examination, he explained that he was the beneficial owner of parcel no66 which he purchased from Daniel Kirema Kimathi (now deceased). Daniel Kimathi had bought the land from Mr M'Mutungi who is also deceased. His land was adjacent to the plaintiffs land.
20. He stated that he gifted parcel no 66 to his late brother and that there was a succession case being Meru High Court Succession Cause no 33 of 1992 and when the matter was concluded his late brother was given a title. The court directed that the registration of Solomon Muthaura as proprietor of Nanyuki/Marura Block8 (Nturukuma)/66 was to be cancelled and the land was to revert back to the name of the deceased M'Mutungi M'noti.
21. Later, he stated that they exchanged the parcel in the 1990s before the land was surveyed and while they were still using the ballot numbers. He claimed that he bought plot 8/63, which is the suit land from Mr Kirema for Kshs 25,000. He did not have the sale agreement. He also stated that he bought plot no 923 which upon survey became Block 8/66. He also told the court plot no 1470 became plot 8/63. He went on to clarify that he bought parcel no 66 and that parcel no 63 belonged to the plaintiff. He stated that the plaintiff had several plots. He did not know whether the plaintiff bought the land but he maintained that he was there physically. He stated that his brother was living on the plaintiff's land being parcel no 63 which according to him was originally no 1470.
22. On being re-examined, he told the court that his brother was the caretaker for the plaintiff for over 20 years and that the plaintiff had been in exclusive possession of the suit property.
23. The defendant gave evidence. He was member no 641 and the registered owner of the suit property, which was allocated to him through the letter dated 9/9/2013. He produced a copy of his title, shares register and the plaint filed in Nyahururu SRMCC no 318 of 2007 by James Maina Kabui against Patrick Ngumi Githae, the plaintiff in this matter. In that suit James Kabui claimed that he was entitled to an acre from Nanyuki/Marura Block 8/64. According to the plaint they were common owners of plot no 1470 Mariara Farmers' Cooperative Society limited.
24. The letter dated 9/9/2013 written by Mariara Farmers' Cooperative Society Limited to the Land Registrar, Laikipia confirmed that parcel no 63 belonged to the defendant and that ballot no 641 showed that he was the original owner and that based on the documents a title was issued to him on October 19, 2007.
25. He stated that the plaintiff was allocated no 1470 which became Nanyuki Block 8/64, and that it was adjacent to his land and equal in size. He relied on the list of members of Nturukuma Farmers' Cooperative Society Limited which showed that parcel no 1470 was registered under the names of James Maina Kabui and Patrick Ngumi Githae, the plaintiff in this case. According to that register, no 1323 belonged to Lawrence Mwongera M'Ikiara. He also produced a copy of the green card for parcel no 64 confirming that the proprietors were the plaintiff and James Kabui.
26. He filed a case against the two illegal occupants being Nanyuki CMCC no 5 of 2014 and obtained eviction orders against them. He produced a copy of the judgment in the suit where he had sued Maina and Solomon Muthaura. In the judgment dated November 24, 2014, the court issued orders for eviction of the defendants from Nanyuki/Marura/Block 8/63 and a permanent injunction to restrain them from dealing with that land.



27. He stated that Solomon Muthaura who was the 2nd defendant in Nanyuki CMCC no 5 of 2015 and who the plaintiff claims was his caretaker had tried to obtain another person's land with the assistance of his brother Gideon Meenye but the transfer of that land was revoked by the High Court in Meru in Succession Cause no 33 of 1992. He produced a copy of the judgment *vide* which the registration of Solomon Muthaura as proprietor of parcel no 66 Nturukuma was canceled and the land was to revert to the name of the late M'Mutungi M'noti.
28. He stated that there was also Nanyuki CMCC no 5 of 2014 in which he had sued James Maina and Solomon Muthaura as well as the administrator of his estate Amos Mugambi.
29. He maintained that the plaintiff had given falsehoods regarding the suit land which he wanted to defraud him of. He pointed out that the plaintiff stated in his evidence in chief that he balloted for parcel no 64 through no 1470 yet at the same time claimed to have balloted for parcel no 63 through no 641.
30. He relied on the defence which the defendant filed on 5/2/2008 in Nyahururu SPMCC no 318 of 2007 where he stated that there was a problem of overlapping of the plot on the ground such that plot no 1470 had been pushed to the side for 728. He added out that what was to be subdivided was plot no 728 and not 1470.
31. The defendant was emphatic that the plaintiff had never occupied his land and that he had his own land adjacent to his. He maintained that the plaintiff was aware of the eviction orders and termed him as an accomplished fraudster who was keen on acquiring other people's properties. He gave a case in point where the plaintiff attempted to show James Maina Kabui alias Duncan Maina his land as land which he was selling to him. He stated that James Maina had been evicted from the land. He stated that his cousin Charles Riungu M'Inoti had been taking care of his land from the time he acquired it up to date and had been farming on the land.
32. On cross examination he confirmed that he obtained eviction orders against Solomon Muthaura. He did not know whether Muthaura was a caretaker on the land but he applied for eviction orders against Muthaura.
33. Charles Riungu M'Itunga gave evidence and told the court that he resided in Nturukuma. He lived on parcel no 73 which neighbours the defendant's land who was his cousin and Patrick Ngumi Githae and Solomon Muthaura. He stated that the defendant owned parcel no 63 while the plaintiff owned no 64. He stated that Solomon Muthaura was claiming the land adjacent to the defendant's land and the plaintiff's land and when he lost the case against the owner of the adjacent land called Muriungi aka Kathikaa, he trespassed on the defendant's land and built a semi-permanent structure on it.
34. At the time the defendant was working in Nairobi as a Lecturer in the Kenya Polytechnic and sent him to issue a demand letter to Solomon Muthaura which he did through Mwenda Mwarania advocates. Solomon Muthaura did not budge and continued living on the land. Another trespasser known as James Maina also took building materials and deposited them on the defendant's land. He built a toilet on the land which he claimed to have bought from the plaintiff.
35. Charles Riungu told the court that from 2005 and even before title deeds were issued he had been cultivating the suit property for the defendant and that Solomon Muthaura had never cultivated any portion of it.
36. He stated that the plaintiff was in actual possession of parcel no 64 and had built houses on it which he occupied to date even though the timber yard had stalled. He claimed that the parcels of land were given to members of Mariara Farmers' Cooperative Society and that his father and the defendant's



- father were member of that Society hence they were allocated the parcels of land which they later got registered in their names.
37. He clarified that the plaintiff had never been a member of Mariara Farmers' Cooperative Society and that he purchased his land from M'Rukaria Kiraga and sold part of it to James Maina. Instead of showing James Maina his share of the land, he directed him to the defendant's land. The defendant filed Nanyuki Civil Case 15 of 2014 and obtained eviction orders.
 38. He stated that Solomon Muthaura's son, Amos Mugambi filed an application in Nanyuki CMCCC no 5 of 2018 seeking to be joined to that case as the administrator of his father's estate but eventually they were evicted from the land. He concluded that the plaintiff had been trying all means to fraudulently acquire the defendant's land including purporting that Solomon Muthaura was a labourer on his land parcel no 63 since 1984. He stated that Solomon Muthaura had never been the plaintiff's employee and that the plaintiff had never set foot on the defendant's land. He clarified that their parcel of land border each other and they were neighbours.
 39. On cross examination, he stated that Solomon Muthaura was living on the defendant's land and that he was evicted from the land after the case was taken to court.
 40. Samuel Mugambi gave evidence. He had resided in Nturukuma for over 30 years and was a neighbor to the plaintiff and defendant. He knew that the plaintiff had a timber yard which had closed down and that he no longer lived there. He also knew that the defendant had been using his land and was cultivating beans, maize nappier grass and trees. His cousin Riungu had been doing the work for him. He had never seen the plaintiff on the defendant's land. He knew that the defendant had given a lady called Pricilla who was Muthaura's mother a place to stay temporarily and she later left but Muthaura refused to vacate the land. He denied that the plaintiff had ever set foot on the defendant's land.
 41. On cross examination, he confirmed that the defendant was ploughing the land even at the time of hearing. He had never seen Solomon Muthaura ploughing that land. He confirmed that the defendant was using the land and that it was his brother Charles Riungu who was using the land because the defendant was working in Nairobi.
 42. Justus Mbaya Mugambi gave evidence. He was the Chairman and committee member of Mariara Farmers' Cooperative Society from 1980 to 1983 and was also reelected from 1999 to 2007. He was the chairman from 2004 to 2007. He knew the defendant's father Zablon M'Tuaruchiu was given land at Marura/641 *vide* a green card and he was member no 117. He transferred the land to his son, the defendant. He stated that the defendant had been using his land from that time to date and had fenced it which he was cultivating through his cousin Charles Riungu.
 43. He knew that the plaintiff was the defendant's neighbour and was aware about his illegal interference with the defendant's land and that he had been summoned and warned against such interference in 2007. He knew that the plaintiff had been trying to steal other people's land even though he had been unsuccessful.
 44. On cross-examination, he stated that Solomon Muthaura was on the land and that is because his mother was on the land. He added that Solomon and the mother were removed from the land. He was categorical that Solomon Muthaura was not the plaintiff's servant. He lived in Meru and confirmed that the land which Mariara owned was above 1000 acres. He would go to the land when the members brought complaints. As chairman he understood the land issue. He confirmed that the plaintiff and the defendant had land adjacent to each other and that he knew their land. He stated that the defendant was ploughing the land and that Riungu was on the land. He denied that either Solomon or the plaintiff were ploughing the land.



45. Upon conclusion of the hearing the court directed parties to file submissions. In the submissions filed on November 29, 2022 the plaintiff relied on his supporting affidavit and what he told the court that Solomon Muthaura who is now deceased was his caretaker on the suit land. He urged that his possession and occupation of the land was without the defendant's consent and was adverse to his title.
46. The plaintiff submitted that the defendant admitted in his evidence that while this suit was pending he filed Nanyuki CMCC no 5 of 2014 against Solomon Muthaura. He contended that summons were not served and that by the time the eviction orders were issued on 7/4/2021, Solomon had died on 13/9/2021. Unfortunately, the death certificate produced in court to show when Solomon Muthaura died is not legible. The plaintiff contended that by seeking to evict Solomon Muthaura when this case was pending the defendant's action smacked of bad faith.
47. The plaintiff relied on what Charles Riungu stated during cross-examination that Solomon Muthaura was living on the land and argued that that confirmed his evidence that Solomon Muthaura was his caretaker on the land. He submitted that the defendant's second and third witnesses contradicted themselves and that their evidence was not credible.
48. He relied on *Ngati Farmers' Co-operative Society Ltd v Ledidi and 15 others* (2009) KLR 331 where the court found that the appellant being the title holder of the suit land had been dispossessed and discontinued of possession of the land for more than the statutory period and that the respondents had proved that their possession amounted to adverse possession. The plaintiff urged that from his evidence which the defendant's witnesses agreed with, he had been in occupation of the suit property exclusively through Solomon Muthaura without the defendant's consent and that he was therefore entitled to the land by adverse possession.
49. In his submissions filed on December 16, 2022 the defendant referred the court to Nyeri ELC no 549 of 2014 and the *ex parte* judgment which was set aside. The defendants pointed out the contradictions in the plaintiff's evidence including where he stated that he entered the land in 1980 yet in the other pleadings he stated that he took possession in 1990. The other contradiction was that he obtained the defendant's permission to occupy the suit land and then he stated that he exchanged the suit property with Lawrence Mwangera. The defendant pointed out that Lawrence Mwangera claimed that he was the previous owner of the suit property which he exchanged with the plaintiff's parcel no 1323 in 1987. That he did not lead evidence to show how Block 8/63 was previously no 1470. He pointed out that the record showed that Lawrence Mwangera's land Block 6/73 was formerly no 1323.
50. Regarding the evidence of Gedion Meenye that Solomon Muthaura lived on the suit property as the caretaker without interruption from anybody and that he used to visit him on the land regularly, he pointed out that there was a contradiction based on the defence which Amos Mugambi filed in Nanyuki CMCC no 5 of 2014 where he stated that Solomon Muthaura acquired a portion of the land in 1980 from the plaintiff in exchange for parcel no 66 which at the time was registered as no 923 Mariara Farmers' Cooperative Society. In his counterclaim, he sought a declaration that through adverse possession, the estate of Solomon Muthaura was entitled to registration as the absolute proprietor of a portion measuring 1 acre of Nanyuki/Marura/Block 8/63, which is the suit property here.
51. The defendant also relied on the letter which Gideon Meenye wrote to the Law Society of Kenya on 23/8/2021 complaining against Mr Kaume Mukira advocate. Mr. Meenye stated in the letter that the dispute was over this suit property which Mr Meenye purchased in 1980 and gifted to his late brother in 1995 and that his brother lived on the land with his family for over 20 years. The letter complained about documents which Mr Koome Mukira had filed in court.



52. The defendant submitted that the plaintiff had his own land and that he had failed to prove the claim for adverse possession of his land. He relied on the decisions in *Ndege Makori v Rose Kebati and Another* [2022] eKLR and *Cosmas Cherono & 2 Others v Veronica Cherono* [2021] eKLR.
53. The issue for determination is whether the plaintiff proved his claim for adverse possession of the suit property on a balance of probabilities and whether he is entitled to be registered as its owner.
54. What the plaintiff needed to prove was that he took possession of the suit property and asserted his right over it and that the defendant neglected to take action against him in ascertaining his title for at least 12 years. The possession must be without the permission of the owner of the land and should not be with secrecy. The possession must be adequate and in continuity, in publicity and to an extent which shows that it is adverse to the owner. The possession must also be actual, exclusive, open and notorious.
55. What emerges from the evidence tendered in this suit is that parcel numbers 63 and 64 are adjacent to each other and that the plaintiff owns parcel 64 where he operated a timber yard. It is also not in dispute that the land was originally owned by Mariara Farmers' Cooperative Society and that titles for parcel numbers 63 and 64 were issued on or about 2007. It is not known when Mariara Farmers' Cooperative Society handed over the land to its members.
56. The plaintiff claims to have been in possession of the suit land from the 1980's yet the defendant was registered as the owner of the suit property in 2007. If he was on the suit land prior to 2007 then he ought to have sued the Mariara Farmers' Cooperative Society in whose name the land was previously registered at the point when he had occupied the land for 12 years.
57. The court is not inclined to believe the plaintiff's claim that he was in possession of the suit property through Solomon Muthaura as his caretaker based on the judgment delivered on 24/11/2015 in Nanyuki CMCCC no 5 of 2014 where the court ordered the eviction of Solomon Muthaura from the suit land. It was not the plaintiff sued in that case. Solomon Muthaura was also sued in Meru High Court Succession Cause no 33 of 1992 over parcel number 66 and the court ordered that his registration as the proprietor of parcel number 66 would be cancelled. That judgment raises doubt that Solomon Muthaura was on parcel number 63 which is the suit property.
58. There are many contradictions in the evidence tendered in support of the plaintiff's claim and how he came to be on the suit property, if at all he was on the land. The evidence which the plaintiff led before Ombwayo J when this case was first heard and which is aptly captured in the judgment delivered on 28/6/2013 was that Lawrence Mwongera sold him parcel number 1470 and he took possession in 1990 and built a house on the land and was carrying out farming activities on it. He stated that the title was issued in the defendant's name but he had never used it. There was no mention of the plaintiff having possession of the land through Solomon Muthaura as his caretaker.
59. The evidence led before this court suggests that the land denoted by number 1470 became parcel 64 but not 63. The judgment delivered in Nanyuki CMCCC no 55 of 2012 in which James Maina Kabui had sued the plaintiff confirmed that parcel number 1470 became parcel number 64, a portion of which James was claiming from the plaintiff. The evidence which the plaintiff tendered in this case created the impression that there was confusion when parcel numbers 63 and 64 were registered and how the registration changed from 1470.
60. The evidence given by the plaintiff's witnesses was contradictory. Gideon Meenye who gave evidence in this court on behalf of the plaintiff wrote in the complaint dated 23/8/2021 to the Law Society of Kenya that he purchased the suit property in the 1980s and that he gifted it to his brother Solomon



Muthaura in 1995. If it were so, then the plaintiff was never on the suit land as he claimed and cannot claim the land through adverse possession.

61. The other suits mentioned in the body of this judgment and the pleadings filed in those cases do not support the assertion by the plaintiff that he exclusively had continuous and uninterrupted possession of the suit property for the requisite period of 12 years.
62. The court is inclined to believe the evidence of Charles Riungu who told the court that he lived on parcel no 73 which neighbours the suit land and that he was farming on the suit land while the defendant was working in Nairobi. His evidence was corroborated by Samuel Mugambi who informed the court that he had resided in Nturukuma for over 30 years and was a neighbor to the plaintiff and defendant.
63. The evidence of Justus Mbaya Mugambi who was the Chairman of Mariara Farmers' Cooperative Society buttressed the defendant's claim to the suit land and cast doubt as to whether the plaintiff occupied the suit land for 12 years.
64. The plaintiff failed to prove when he took possession of the suit property or that he actually had possession of the land.
65. The plaintiff failed to prove his case on a balance of probabilities. The suit is dismissed with costs to the defendant.

DELIVERED VIRTUALLY AT NANYUKI THIS 1ST DAY OF MARCH 2023.

K. BOR

JUDGE

In the presence of: -

Mr. Wahome Gikonyo for the plaintiff

Mr. kaume Mukira for the Defendant

Stella Gakii - Court Assistant

