



**Zuberi v M’Muguna (Environment & Land Case E004 of 2022)
[2023] KEELC 16285 (KLR) (15 March 2023) (Judgment)**

Neutral citation: [2023] KEELC 16285 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE E004 OF 2022**

**CK YANO, J
MARCH 15, 2023**

BETWEEN

SAINA MARIAM ZUBERI PLAINTIFF

AND

M’MBOGORI M’MUGUNA DEFENDANT

JUDGMENT

1. The plaintiff commenced this suit by way of originating summons dated March 11, 2022 under the provisions of sections 7 and 17 of the [Limitation of Actions Act](#) and invites the court to make a determination of the following questions;
 1. Whether the respondent was on January 8, 1970 registered as the owner of Lr No Ntima/igoki/1160.
 2. Whether the plaintiff possession of Lr No Ntima/itogi/1160 amounted to adverse possession.
 3. Whether the respondent’s right over the land has been extinguished.
 4. Whether a declaration should issue that the plaintiff has become entitled to Lr No Ntima/igoki/1160 and that the suit land should be transferred to her?
 5. Whether the plaintiff is entitled to costs of these proceedings.
2. The originating summons is supported by the affidavit of the plaintiff sworn on March 11, 2022 in which she avers that in the year 1979, she got married to one Zuberi Mohammed who took her to his home in Kambakia village at the land where he was living. That they built and developed their matrimonial home on the said land measuring 0.4 acres or thereabouts and have continued living on the said land with their family and having exclusive possession thereof.



3. The plaintiff avers that her husband died in the year 2013 leaving her on the suit land whose registration number she did not know but she believed was registered in the name of her husband.
4. The plaintiff avers that in or about August 2021, some people claiming to be from the county government of Meru came to her home and served her with a demand notice for payment of land rates in respect of the suit land. A copy of the demand notice has been annexed. The plaintiff states that upon perusing the said demand notice, she realized that the land was referenced as Ntima/Igoki/1160 and the notice was addressed to one Silas Kirai.
5. The plaintiff avers that she does not know the said Silas Kirai and upon visiting the lands registry at Meru to conduct due diligence on the land and purchased a green card for the suit land which revealed that the land was registered in the name of M'mbogori M'muguna, the defendant herein on January 8, 1970. A copy of the green card has been annexed.
6. The plaintiff states that she does not know the defendant herein and that even after she settled on the land with her husband in 1978, the defendant has never stepped on the land at any time and has not sought to claim ownership of the same for a period of over 43 years.
7. It is the plaintiff's contention that she has been in open, continuous and exclusive possession of the suit land for a period in excess of 12 years and therefore has acquired the same by way of adverse possession and the defendant's title has been extinguished. The plaintiff avers that the boundaries and extent of the suit land are clear and that she occupies and lives with her children who are now adults. The plaintiff has annexed photographs showing crops and other developments on the land.
8. Pursuant to leave granted by the court on July 19, 2022, the defendant was served with a copy of the originating summons through substituted service by way of advertisement in the daily nation newspaper on August 13, 2022. The defendant did not enter appearance within the stipulated time or at all and the case proceeded for formal proof hearing wherein the plaintiff gave sworn evidence and relied on the affidavit in support of the summons and produced the annexures as exhibits. The plaintiff urged the court to find that she has acquired the suit land by way of adverse possession.
9. The plaintiff filed written submissions dated November 29, 2022 through the firm of Murango Mwenda & Co Advocates wherein it was submitted that the plaintiff has on a balance of probabilities proved her claim for adverse possession. The plaintiff's counsel cited the provisions of section 7 and 17 of the Limitation of Actions Act and relied on the case of ELC (OS) No E007 of 2021 Silas Kithira v Timothy Mugambi (Chuka).
10. I have considered the evidence on record. The law on adverse possession is well settled. The essential requirements that one has to meet in order to succeed in a claim for adverse possession have been discussed by the courts.
11. In Wambugu v Njuguna (1983) KLR 173, the Court of Appeal held that adverse possession contemplates two concepts. Possession and discontinuance of possession. It was further held that the proper way of assessing proof of adverse possession would be whether or not the title holder has been dispossessed or has discontinued his possession for the statutory period and not whether or not the claimant has proved that he or she has been in possession for the requisite number of years.
12. In the case of Jundu v Kirplal & another (1975) EA 225, it was held:

“... to prove title by adverse possession, it is not sufficient to show that some acts of adverse possession must be adequate in continuity, in publicity and in extent to show that it is adverse to the owner. It must be actual, visible, exclusive, open and notorious.”



13. The ingredients were also recently discussed by the Court of Appeal in the case of *Mtana Lewa v Kabindi Ngala Mwangandi* [2015] eKLR where Makhandia J.A stated as follows:

“Adverse possession is essentially a situation where a person takes possession of land, asserts rights over it and the person having title to it omits or neglects to take action against such person in assertion of his title for a certain period, in Kenya is twelve (12) years”

14. It is also well settled principle that a party claiming adverse possession ought to prove that his or her possession was *nec vi, nec clam, nec precario*; that is peaceful open and continuous. This being a claim for adverse possession, the plaintiff must show that she has been in continuous possession of the suit land for twelve (12) years or more, that such possession has been open and notorious to the knowledge of the owner and that she has asserted a hostile title to the owner of the property.

15. In the instant case it is the plaintiff’s evidence that she has been in occupation of the suit property from the year 1978 when she entered the land and continues to do so, which is a period of over 43 years. Section 7 of the *Limitation of Actions Act* provides that-;

“An action may not be brought by any person to recover land after the end of twelve years from the date which the right of action accrued to him or if it first accrued to some person through whom he claims, to that person.”

16. Further, section 17 of the same Act provides that-;

“subject to section 18 of this Act, at the expiration of the period prescribed by this Act, for a person to bring an action to recover land (including a redemption action) the title of that person to the land is extinguished.”

17. Clearly, going by the above provisions of law, the defendant’s title to the suit land has been extinguished. The plaintiff produced documents showing that the defendant is the registered owner of the suit land. In addition, the plaintiff produced photographs showing structures and other developments undertaken by her over the years. I have no doubt in my mind that such developments must have been undertaken over time and openly. The plaintiff’s evidence is uncontroverted. Considering the evidence availed in this case, and applying the legal principle of adverse possession, it is clear that the plaintiff has proved her case on a balance of probabilities and has brought herself within the limits of the doctrine of adverse possession.

18. In the result, the questions set out in the summons for determination of this case are answered in the affirmative, and judgment is entered for the plaintiff as follows:-

1. The defendant’s right over Lr No Ntima/igoki/1160 has been extinguished.
2. The plaintiff has acquired title over Lr No Ntima/igoki/1160 by way of adverse possession.
3. The plaintiff herein to be registered as proprietor of the suit land.
4. Because the defendant did not participate in the matter, I order that each party bears their own costs.

19. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MERU THIS 15TH DAY OF MARCH 2023.

In the presence of



Court Assistant – Kibagendi
Murango Mwenda for plaintiff
No appearance for defendant

C.K YANO

JUDGE

JUDGMENT

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