



REPUBLIC OF KENYA



**Mwangi (Legal Guardian of the Estate of Jerusha Muthoni Mwangi)
v Kamau & another (Environment & Land Case 104 of 2023)
[2023] KEELC 21518 (KLR) (9 November 2023) (Judgment)**

Neutral citation: [2023] KEELC 21518 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA
ENVIRONMENT & LAND CASE 104 OF 2023**

YM ANGIMA, J

NOVEMBER 9, 2023

BETWEEN

**SAMSON MACHARIA MWANGI PLAINTIFF
LEGAL GUARDIAN OF THE ESTATE OF JERUSHA MUTHONI MWANGI**

AND

**BEDAN IKUA KAMAU 1ST DEFENDANT
JOSEPH NJUGUNA KAMAU 2ND DEFENDANT**

JUDGMENT

A. Plaintiff's Claim

1. By a plaint dated 19.05.2020 and amended on 24.02.2022 the Plaintiff sought the following reliefs against the Defendants:
 - a. A declaration that Jerusha Muthoni Mwangi is the rightful and beneficial owner of the suit land by virtue of adverse possession.
 - b. An order of permanent injunction restraining the Defendants herein whether by themselves, their agents, servants from invading, trespassing, transferring, cultivating or interfering with the Jerusha Muthoni Mwangi's quiet possession and use of parcel Nyandarua Kipipiri/ Lereshwa/Block 1 (Malewa Ranch) No 643.
 - c. An order to the Land Registrar – Nyahururu for cancellation of the title issued to the Defendants herein and registration of the Plaintiff as the proprietor of the land.
 - d. Costs of the suit.
 - e. Any other or further relief that the honourable court may deem fit to grant.



2. The Plaintiff pleaded that at all material times she was the beneficial owner of Title No Nyandarua Kipipiri/Lereshwa/Block 1 (Malewa Ranch) No 643 (the suit property) which she was allocated by Malewa Ranching Company Ltd (the company) in 1977. She pleaded that upon allocation she took possession of the suit property and settled thereon. It was contended that she had been in open, peaceful, continuous and exclusive possession of the suit property for a period of 22 years until 2019 when the Defendants demolished her structures on the property.
3. It was the Plaintiff's case that the Defendants were also claiming to be the rightful allottees of the suit property and that when the dispute was reported to the company the company admitted an error of double allocation on its part and resolved to allocate the Defendants an alternative parcel of land. The Plaintiff thus contended that the Defendants had lost their right to recover the suit property hence she had acquired the same through the doctrine of adverse possession.

B. Defendants' Response

4. The Defendants filed a defence dated 25.06.2020 in response to the original plaint. They denied that the Plaintiff was the beneficial owner of the suit property. It was denied that she was allocated the suit property by the company in 1977 or that she had been in quiet, open and peaceful occupation thereof since then. It was pleaded that after the survey of the company land the Plaintiff was allocated Plot No. 597 by the company and she was moved to her rightful place.
5. The Defendants denied knowledge of any company meeting at which the issue of double allocation was admitted by the company or a resolution made to reallocate them alternative land. The Defendants contended that if such meeting ever took place then they were not invited to the meeting or notified of it. The Defendants consequently prayed for dismissal of the Plaintiff's suit with costs. The Defendants' defence to the amended plaint dated 09.03.2022 was to the same effect.

C. Summary of Evidence at the Trial

a. Plaintiff's Evidence

6. At the trial hereof, the Plaintiff called two witnesses and closed her case. The first was her son, Samson Macharia Mwangi, who adopted his witness statement dated 19.05.2020 as his evidence in-chief. His evidence was to the effect that it was the Plaintiff who was allocated the suit property in 1977 and that she and her family resided thereon until 2019 when they were evicted by the Defendants. It was his evidence that when the Plaintiff reported the matter to the company the latter acknowledged that there was an error of double allocation and resolved to allocate the Defendant's father alternative land.
7. The second witness was Raphael Chege Njaga who testified that he was the chairman of the company. He adopted his witness statement dated 19.05.2020 as his evidence in-chief and fully supported the Plaintiff's claim of ownership of the suit property. It was his evidence that the Plaintiff was the first member of the company to be allocated the suit property and that the same land was later on erroneously allocated to the Defendant's father. He stated that the company was still willing to allocate the Defendants alternative land if they accepted the offer.

b. Defendants' Evidence

8. The Defendants called 2 witnesses and closed their case. The first was Joseph Kamau Kimani who stated that he was the secretary of the company and that the Plaintiff was allocated Plot No 597 and not the suit property. It was his testimony that upon survey of the company's land the Defendants' father was allocated the suit property since it was unallocated. It was his evidence that he was not aware



of any company meeting or company resolution at which it was resolved that the Defendants' father be allocated alternative land.

9. The 2nd Defendant testified as the second witness and he adopted the contents of his witness statement dated 25.06.2020 as his evidence in chief. The gist of his evidence was that it was his father who was allocated the suit property and that he was properly issued with a title deed thereto in 2010. He denied that the Plaintiff had occupied or developed the suit property for over 22 years.

D. Directions on Submissions

10. Upon conclusion of the hearing, the parties were given timelines within which to file and exchange their respective submissions. The record shows that the Plaintiff's submissions were filed on 24.08.2023 whereas the Defendants' submissions were filed on 04.10.2023.

E. Issues for Determination

11. The court has considered the pleadings, evidence and documents in this matter. The court is of the opinion that the following are the key issues which arise for determination:
- a. Whether the Plaintiff has demonstrated her claim for adverse possession of the suit property.
 - b. Whether the Plaintiff is entitled to the reliefs sought in the suit.
 - c. Who shall bear costs of the suit.

F. Analysis and Determination

a. Whether the Plaintiff has demonstrated her claim for adverse possession of the suit property

12. The court has considered the material and submissions on record on this issue. Whereas the Plaintiff submitted that she had demonstrated her claim for adverse possession of the suit property, the Defendants contended otherwise. The Defendants contended that there was no evidence of peaceful, exclusive and continuous occupation of the suit property for at least the minimum statutory period required by law.
13. The elements of adverse possession were summarized in the case 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...”
14. 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.”

15. Although the Plaintiff placed great emphasis on the fact that she was the first one to be allocated the suit property and that the Defendants' father was to be allocated alternative land elsewhere, the court shall confine its analysis and determination to the Plaintiff's claim for adverse possession because that was the basis of the suit. The court has noted that the Plaintiff did not produce a copy of the extract of title or copy the land register for the suit property to establish when the suit property was first registered and in whose name it was registered. The copy of the title deed for the suit property on record does not show the history of the land from inception. It only shows that the land register was opened in January, 2010 and a title deed issued to the Defendants' father Kamau Njuguna Kebuki on 15.10.2010.
16. The court takes the view that time for purposes of a claim for adverse possession can only start running once the land in question has a known owner against whom time can run under the *Limitation of Actions Act* (cap.22). The court is of the opinion that in the absence of evidence of earlier registration of the suit property, time could only start running with effect from January, 2010 when the land register was opened. The material on record shows that the Plaintiff's suit for adverse possession was filed on 29.05.2020, that is, about 10 years and 3 months after registration of land. The court is of the opinion that the said period falls short of the statutory minimum of 12 years.
17. As a consequence, the court is of the opinion that the Plaintiff has failed to establish one critical element of adverse possession in terms of the minimum statutory period of 12 years. The court takes the view that the Plaintiff's claim for adverse possession was filed prematurely. In the event, the court finds and holds that the Plaintiff has failed to prove her claim for adverse possession to the required standard.

b. Whether the Plaintiff is entitled to the reliefs sought in the suit

18. It is obvious that all the reliefs sought by the Plaintiff were dependent upon her demonstration of her claim for adverse possession. The court has already found that she has failed to prove her claim for adverse possession to the required standard. It would, therefore, follow that the Plaintiff is not entitled to the reliefs sought in the plaint, or any one of them.

a. Who shall bear costs of the suit

19. Although costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the proviso to section 27 of the *Civil Procedure Act* (Cap 21). A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise. See *Hussein Janmohamed & Sons v Twentsche Overseas Trading Co. Ltd* [1967] EA 287. The court has noted that the parties were not entirely to blame for land dispute. The company contributed substantially to the dispute in apparently making a double allocation. Things were made worse when one official of the company supported the Plaintiff's claim at the trial whereas another official supported the Defendants. In the premises, the court is of the opinion that the appropriate order to make is for each party to bear his own costs.



G. Conclusion and Disposal Order

20. The upshot of the foregoing is that the court finds and holds that the Plaintiff has failed to prove her claim against the Defendants on a balance of probabilities. Consequently, the Plaintiff's suit is hereby dismissed in its entirety. Each party shall bear his own costs.

It is so decided.

**JUDGMENT DATED AND SIGNED AT NYANDARUA THIS 9TH DAY OF NOVEMBER, 2023
AND DELIVERED VIA MICROSOFT TEAMS PLATFORM.**

Y. M. ANGIMA

JUDGE

In the presence of:

N/A for the Plaintiff

Ms. Nyawira Mureithi for the 1st and 2nd Defendants

C/A - Carol

