



**M'amakia v Maingi (Environment & Land Case 25 of 2019)  
[2023] KEELC 21509 (KLR) (8 November 2023) (Judgment)**

Neutral citation: [2023] KEELC 21509 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT & LAND CASE 25 OF 2019  
CK NZILI, J  
NOVEMBER 8, 2023**

**BETWEEN**

**ALEXANDER MARETE M'AMAKIA ..... PLAINTIFF**

**AND**

**NCEBERE MAINGI ..... DEFENDANT**

**JUDGMENT**

1. Through an originating summons dated 20.5.2019, the plaintiff seeks the court to declare him entitled to LR No. Nyaki/Kithoka/408 under adverse possession. The originating summons was supported by an affidavit sworn by Alexander Marete M'Amakia on 20.3.2019. The plaintiff avers that his brother M'Mwitari M'Amakia bought twenty acres of land from M'Imanyara Ituriku, paid half of the consideration, took vacant possession of the ten acres, and disposed of seven acres to one M'Ithiri. The plaintiff avers that his brother left him and the entire family occupying the balance of three acres now registered in the defendant's name when he passed on in 2000.
2. The plaintiff avers that he has developed the land with 2000 coffee trees, permanent and semi-permanent houses, stores, toilets, and zero grazing sheds. The plaintiff avers that his late brother registered a caution on the title on 16.5.1973 and that the adjudication officer also identified the boundaries of his land. He attached copies of the official search, green card, caution, legal fees, and summons from the adjudication officers as annexures marked MM "1"- and "5," respectively.
3. Even though service of summons by substituted service as per the daily newspaper of 6.4.2022 was effected, the defendant did not file any response or tender evidence.
4. Alexander Marete M'Amakia testified as PW 1. He adopted both his witness statement and a supporting affidavit. He told the court that he acquired the land through inheritance from his brother Festus Mwilaria, who had bought the land from one M'Turika measuring approximately 3 acres. He testified he lives on the suit land with his nephews and nieces, namely Teresia Kaga, Julia Wanja,



Milly Nyawira, and his grandchildren, who were all born and brought up in the suit land. Regarding developments on the land, PW 1 said there were ten permanent and semi-permanent houses, coffee trees, and banana and gravellia trees developed since 1962, and the defendant has never attempted to evict them from the land. He produced a copy of the official search green card, an advocate's receipt, valuation report, and summons dated 30.1.1965 as P. Exh No's. 1-6, respectively.

5. By written submissions dated 20.9.2023, the plaintiff submitted that he has lived on the suit land since 1961 and has extensively developed the land as per the valuation report. He urged the court to find that his claim for adverse possession has been proved to the required standards. Reliance was placed on *Wilson Njoroge Kamau vs Nganga Muceru Kamau Muranga ELC No. 259 of 2017* OS, Kiambi vs Miriti (2022) KEELC 13299 (KLR) 5<sup>th</sup> October 2022 (Judgment) and Gatimu Kinguru vs Muya Gathanga High Court of Kenya at NRB Civil Case No. 176 of 1973.
6. The concept of adverse possession arises under Sections 7, 13, 17, and 38 of the *Limitation of Actions Act* (Cap 22) laws of Kenya, where a title of the land of another is extinguished in favor of an adverse possessor of the same at the expiry of 12 years of adverse possession of that land. In *Mtana Lewa vs. Kabindi Ngala Mwangadi (2015)* eKLR, the court defined adverse possession as a situation where a person takes possession of land and 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 period of 12 years. The court set the essential pre-requisites as being that the possession of the adverse possessor is neither by force or stealth nor under the owner's license. It must be adequate in continuity in publicity and in extent to show that possession was adverse to the title owner.
7. In *Kasuve vs Mwaani* 1 KLR 184, the court observed that dispossession and discontinuance of possession by the true owner of his own volition must be proved. In *Francis Gacharu Kariri vs Peter Njoroge Mairu C. In No. 293 of 2002*, the court said the possession must not be broken or interrupted to prove adverse possession.
8. In *Munga vs Munge C. An Application 36 of 2020/2023 KECA 75 (KLR) 3<sup>rd</sup> February (2023)* ruling, the court cited with approval *Samuel Miki Waweru vs Jane Njeri Ruchu (2007)* eKLR that a claim for adverse possession may not succeed if possession was with the permission of the owner or in pursuance of an agreement for a sale or lease or otherwise.
9. Applying the preceding case law, the plaintiff has testified that he has lived on the suit land since 1961 and undertaken adverse activities to the true owner's rights as per the valuation report produced as P. Exh No. 5. The land the plaintiff claims is defined in P. Exh No. 2. In my view, the plaintiff has satisfied the ingredients of adverse possession. Consequently, the plaintiff is declared as entitled to LR No. Nyaki/Kithoka/408 under adverse possession. The defendant shall sign the transfer forms within two months from the date hereof, and the court's Deputy Registrar shall execute them in default. Costs to the plaintiff.

Orders accordingly.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 8<sup>TH</sup> DAY OF NOVEMBER 2023**

In presence of

C.A Kananu/Mukami

Plaintiff

**HON. CK NZILI**

**ELC JUDGE**

