



REPUBLIC OF KENYA



KENYA LAW
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**Ndirangu alias Rose Wanjiru Mugwanja v Njoroge (Environment & Land
Case 62 of 2018) [2022] KEELC 3822 (KLR) (5 May 2022) (Judgment)**

Neutral citation: [2022] KEELC 3822 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU
ENVIRONMENT & LAND CASE 62 OF 2018**

YM ANGIMA, J

MAY 5, 2022

BETWEEN

**ROSE WANJIRU NDIRANGU ALIAS ROSE WANJIRU
MUGWANJA PLAINTIFF**

AND

GRACE WANGARI NJOROGE DEFENDANT

JUDGMENT

A. The Plaintiff's Claim

1. By an originating summons dated 31st October, 2018 grounded upon Section 38 of the *Limitation of Actions Act* (Cap.22), Order 37 Rule 7 of the *Civil Procedure Rules*, 2010 the Plaintiff sought determination of the following questions in relation to the suit property:
 - (a) Whether the Plaintiff has acquired title deed by adverse possession over LR. No. Nyandarua/Oljoro Orok Salient/2630 measuring approximately 2.6 ha.
 - (b) Whether LR. No. Nyandarua/Oljoro Orok Salient/2630 should forthwith be registered in the name of Rose Wanjiru Mugwanja and the Defendant be ordered to sign all the necessary transfer instruments in her favour and in default the Deputy Registrar of the court be authorized to sign the same.
 - (c) Whether the District Land Registrar Nyandarua should dispense with the production of the original title deed for LR.No.Nyandarua/Oljoro Orok Salient/2630 while transferring the land to the Plaintiff.
 - (d) Who should pay the costs of the suit.
2. The summons was supported by an affidavit sworn by the Plaintiff, Rose Wanjiru Ndirangu on 31st October, 2018 together with the exhibits thereto. The Plaintiff contended that although she had been



allocated the suit property by the Settlement Fund Trustees (SFT) in 1987 and took possession thereof, she was unable to obtain a title deed thereto because the Defendant was issued with a title deed thereto in 1996.

3. It was the Plaintiff's case that she was in open, peaceful and uninterrupted possession of the suit property until July 2018 when the Defendant forcibly and violently evicted her caretaker from the property. The Plaintiff contended that during her occupation she had developed the suit property by constructing a house, planting trees and cultivating food crops thereon without interruption from any quarters. It was the Plaintiff's case that she had accordingly acquired adverse possession of the suit property on account of adverse possession under the *Limitation of Actions Act*.

B. The Defendant's Response

4. There was no indication on record of the Defendant having filed a replying affidavit or answer to the originating summons. She, however, filed a statement of defence dated 21st December, 2018 in which she gave her side of the story without expressly controverting the Plaintiff's claim for adverse possession. She stated that she was the registered proprietor of the suit property having acquired it from SFT in 1996 through the influence of the late President Daniel Arap Moi. She further stated that upon its acquisition she went back to Kigumo to take care of her family members and would only occasionally visit the suit land.
5. The Defendant further stated that she first noticed occupation of the suit property by a female stranger in 2016 after which she reported the matter to the police. It was her case that on 25th July, 2018, the Deputy County Commissioner, Nyandarua West directed the Location Chief to evict the occupants of the suit property whereupon she took possession and occupation thereof. She further stated that she had since then been in occupation of the suit property which was registered in her name.

C. Summary of Evidence at the Trial

6. The suit proceeded *via viva voce* evidence whereby the Plaintiff called 4 witnesses whereas the Defendant called one. The Plaintiff adopted the contents of her supporting affidavit sworn on 31st October, 2018 as her evidence-in-chief. She testified that she took possession of the suit property in 1987, constructed a house thereon and put a caretaker (PW4) in possession. It was her evidence that she planted some trees and cultivated crops on the suit property until 2018 when the Defendant forcibly evicted the caretaker and took possession of the suit property without a court order.
7. The rest of the Plaintiff's witness stated that it was the Plaintiff's caretaker who was in possession all along before the eviction of 2018. PW4 was the caretaker whereas PW2 was her daughter. PW3 claimed to have planted some trees on the suit property in 2007 on the instructions of the Plaintiff. PW4 was emphatic that she used to reside on the suit property as the Plaintiff's worker and that she was evicted in 2018 by the Defendant in the company of some unknown people.
8. The Defendant, on the other hand, testified on her own behalf as the sole defence witness. It was her testimony that she was the owner and registered proprietor of the suit property and that she was the one in possession. She adopted the contents of her defence dated 20th December, 2018 as her evidence-in-chief. The Defendant denied having evicted the Plaintiff from the suit property and asserted that she was only 'assisted' by the Deputy County Commissioner and the Chief to recover her land. It was her further evidence that she started noticing construction on the suit property only in 2016 and that the land was not occupied at the time it was given to her in 1996. She produced a copy of her title deed as an exhibit and prayed for dismissal of the suit.



D. The Issues for Determination

9. The court has considered the pleadings, evidence and documents in this matter. The court is of the opinion that the following issues for determination herein:
 - (a) Whether the Plaintiff has proved her claim for adverse possession of the suit property.
 - (b) Who shall bear the costs of the suit.

E. Analysis and Determination

(a) Whether the Plaintiff has proved her claim for adverse possession of the suit property.

10. The court has considered the material and evidence on record on this issue. 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 vs 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...”

11. The court has noted that the Plaintiff’s claim of occupation of the suit property prior to 2018 was not seriously challenged by the Defendant as the trial. In fact, it was the Defendant’s case that it was the Deputy County Commissioner and the Location Chief who assisted her to recover the suit property in July 2018 by evicting the Plaintiff’s agents from the suit property. There is evidence on record to demonstrate that prior to the Plaintiff’s eviction in 2018, the Defendant had never occupied, developed or utilized the suit property at all. The Defendant’s statement of defence and evidence indicated that upon her acquisition of the suit property she went back to Kagumo to take care of her family.
12. The Plaintiff’s evidence that she took possession of the suit property in 1987 and employed a caretaker to work and reside on the suit property was well supported by the evidence on record including that of PW4 who was the caretaker evicted at the instance of the Defendant in 2018. The court is satisfied that the Plaintiff had been in possession of the suit property openly and without the consent of the registered owner for about 30 years prior to her eviction. Consequently, by 2018 the Plaintiff’s claim for adverse possession had already crystallized. The court does not believe the Defendant’s claim that the Plaintiff constructed a house on the suit property in 2014 or thereabouts.
13. It would appear from the material on record that the Defendant was mainly relying on the fact of her registration as a proprietor and holder of a title deed as an answer to the Plaintiff’s claim for adverse possession. That was also apparent during the trial whereby the Defendant severally waived her original title deed as an answer to the suit. It must be remembered that the Defendant’s registration or title deed was not under challenge at all. In fact, by filing the originating summons for adverse possession the Plaintiff was simply acknowledging the Defendant as the registered proprietor but asserting that her right to recovery of the suit property had become statute-barred under the *Limitation of Actions Act* (Cap 22).



14. The court is further of the opinion that the Defendant's forcible entry into the suit property in 2018 with the assistance of the Deputy County Commissioner and the Location Chief did not extinguish the Plaintiff's right to adverse possession. This is so because the eviction was forcible and extra-judicial hence unlawful. It was not sanctioned by any court order and neither was it peaceful. The court is thus of the opinion that the Plaintiff has proved her claim for adverse possession of the suit property as required by law.

(b) Who shall bear costs of the suit

15. 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 finds no good reason why the successful party should not be awarded costs of the suit. Accordingly, the Plaintiff shall be awarded costs of the suit.

F. Conclusion And Disposal

16. The upshot of the foregoing is that the court is satisfied that the plaintiff has proved her claim for adverse possession of the suit property to the required standard. Accordingly, the court makes the following orders for disposal of the suit:

- (a) A declaration be and is hereby made that the Plaintiff, Rose Wanjiru Ndirangu, has acquired the suit property, that is, Title No. Nyandarua/Oljoro orok Salient/2630 measuring 2.6 ha by adverse possession.
- (b) An order be and is hereby made that the Defendant shall transfer the suit property to the Plaintiff forthwith in default of which the Deputy Registrar of the Court is hereby authorized to sign all necessary documents to facilitate transfer thereof to the Plaintiff.
- (c) The District/County Land Registrar, Nyandarua County shall dispense with production of the original title deed for Title No. Nyandarua/Oljoro orok Salient/ 2630 during transfer to the Plaintiff.
- (d) The Plaintiff is hereby awarded costs of the suit to be borne by the Defendant.

JUDGMENT DATED AND SIGNED IN CHAMBERS AT NYAHURURU THIS 5TH DAY OF MAY, 2022 AND DELIVERED VIA MICROSOFT TEAMS PLATFORM.

In the presence of:

Ms. Wanjiru Muriithi for the Plaintiff

No appearance for the Defendant

CA- Carol

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Y. M. ANGIMA

JUDGE

