



**Rimberia v Miriti (Environment & Land Case E2 of 2019)
[2022] KEELC 64 (KLR) (4 May 2022) (Judgment)**

Neutral citation: [2022] KEELC 64 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE E2 OF 2019**

CK NZILI, J

MAY 4, 2022

BETWEEN

GERALD MWITI RIMBERIA PLAINTIFF

AND

ELINA KATHAMBI MIRITI DEFENDANT

JUDGMENT

A. Pleadings

1. By an originating summons dated 17.9.2019 the plaintiff sought the court to find him entitled by way of adverse possession to L.R No. Nyayo/Sirimon Scheme 540 measuring approximately 0.142 ha owned by the defendant.
2. The application was supported by a sworn affidavit of Gerald Mwiti Rimberia on the even date in which he attached a certificate of official search for the suit land, his witness statement and list of documents.
3. The defendant was duly served with the O.S and an affidavit of service filed on 13.4.2021, 9.6.2021, 13.10.2021 and 8.11.2021 respectively hence the hearing proceeded ex parte.

B. Testimony

4. The plaintiff adopted his witness statement dated 17.9.2019 in station that an agreement dated 2.11.2006, the defendant sold to him 1.4 acres of Land Registration No. 540 Nyayo Settlement Scheme for Kshs.180,000/= . He stated he paid the entire sum by April 2007, took vacant possession but the defendant refused to attend the land control board for the requisite consent in order to transfer the portion to him. He maintained he had lived on and extensively developed the suit land together with his family continuously for over 12 years.



5. The plaintiff produced an agreement dated 2.11.2006, acknowledgment receipts dated 30.4.2007, 30.4.2007 and 24.5.2007 and a certificate of official search dated 29.8.2019 as exhibits.

C. Written Submissions

6. By written submissions dated 11.1.2022, the plaintiff isolated two issues for determination namely; whether there was a valid sale agreement and the effects of non-acquisition of land control board consent and secondly, whether adverse possession has been proved.
7. On the first issue, it was submitted Pexh1 was validly executed on 2.11.2006 and vacant possession delivered to the plaintiff.
8. The plaintiff submitted that although the claim could have been brought under the law of contract, a claim of adverse possession was sui generis regardless of whether the requisite land control board consent was sought and or obtained. Reliance was placed on Public *Trustee v Wanduru Ndegwa* (1984) eKLR.
9. The plaintiff submitted in *Gabriel Mbui v Mukindia Maranya* (1993) eKLR, adverse possession was defined as non-permissive physical control over land coupled with the intention of doing so by a stranger having actual occupation solely on his own behalf or on behalf of some other person, in opposition to and in exclusion of all others including the true owner out of possession of that land, the true owner having a clear knowledge of the assertion of exclusive ownership, as of right by the occupying stranger inconsistent with the true owner's enjoyment of the land for the purpose for which the owner intended to use it.
10. The plaintiff submitted through his evidence he had established he was in actual use and possession of the parcel so claimed in a manner satisfying the elements as espoused above which evidence had not been controverted, with effect from 30.4.2007.
11. Reliance was placed on *Felicity Mutete Mutula v James Ndambuki* (2020) eKLR and *Public Trustee vs Wanduru Ndegwa* (*supra*).

D. Determination

12. Having gone through the pleadings, evidence and written submissions, the issues due for my consideration are; -
 - i. If the plaintiff has pleaded and proved adverse possession and
 - ii. If the plaintiff deserves the prayers sought.
13. The plaintiff pleaded he entered the suit premises following a sale agreement dated 2.11.2006 and in which he cleared the final payment on 24.5.2007 but took vacant possession while awaiting the formal transfer to be effected.
14. The plaintiff produced a sale agreement and acknowledgment receipts signed by the defendant. He testified that once he cleared the purchase price, he no longer stayed on the suit land as a licensee or guest of the defendant but as an adverse possessor. Though the plaintiff failed to produce anything to support his assertions of extensive developments on the suit land, I have no doubt in my mind that he has been in occupation and possession of the suit land since 2.11.2006 when vacant possession was handed over to him.



15. In *Richard Wefwafwa Songoi v Ben Munyifwa Songoi* (2020) eKLR the court held adverse possession was a hostile possession by clearly asserting hostile title in denial of the title of the true owner and must start with a wrongful dispossession of the rightful owner.
16. Quoting with approval Alfred Welimo vs Mulaa Sumba Barasa Court of Appeal No. 186 of 2011, the court held adverse possession may not be established merely because the owner had abandoned possession of his land and ceased to use it and that there must be animus possidendi (the intention to possess).
17. In this matter the plaintiff has pleaded and testified that there has been physical, peaceful and uninterrupted use of the land since 24.5.2007, when he cleared the final balance and has lived therein together with his family with full knowledge and approval of the defendant.
18. I find his evidence consistent, truthful and cogent as regards possession and occupation with no resistance at all from the defendant since 2007.
19. In the premises, I find the plaintiff has proved his case to the required standard and proceed to issue an order:-
 1. That the plaintiff has become entitled to 0.742 ha of the defendant's Parcel No. Nyayo/Sirimon/Scheme/540 by virtue of adverse possession.
 2. That the plaintiff be registered as the proprietor of a portion of Parcel No. Nyayo/Sirimon/Scheme/540 measuring approximately 0.742 ha.
 3. The respondent to execute the requisite transfer from and or consent within 60 days from the date hereof failure of which the Deputy Registrar of the court shall execute thereon, in compliance with (1) and (2).
 4. Costs to the plaintiff.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT

THIS 4TH DAY OF MAY, 2022

In presence of:

Karanja for plaintiff

HON. C.K. NZILI

ELC JUDGE

