

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MIGORI**  
**ELC (OS) NO. E041 OF 2021**

**JAMES HARMON OKECH.....1<sup>st</sup>**  
**PLAINTIFF**

**JANE GATI RIOBA.....2<sup>nd</sup>**  
**PLAINTIFF -VERSUS-**

**CHARLES GIBITI MANGITI.....**  
**.....DEFENDANT**

**JUDGEMENT**

**A. INTRODUCTION**

1. The plaintiffs herein, James Harmon Okech and Jane Gati Rioba, commenced this suit by way of Originating Summons dated 10<sup>th</sup> September 2021 and supported by the affidavit of the 1<sup>st</sup> plaintiff sworn on the same date. The summons was brought pursuant to Order 37 Rule 7 of the Civil Procedure Rules, Section 38 of the Limitation of Actions Act (Cap 22) and Articles 40 and 60 of the Constitution of Kenya 2010.
2. The plaintiffs sought, inter alia, a declaration that they had acquired title to land parcels L R Nos. Bugumbe/Mabera/1292 and 1293 (originally LR No. Bugumbe/Mabera/202) through

adverse possession, having allegedly been in open, peaceful, continuous, and uninterrupted occupation thereof for more than twelve (12) years. They further prayed for an order directing the Land Registrar, Kuria West, to register them as proprietors of the said parcels in place of the defendant, and for a permanent injunction restraining the defendant, his servants or agents from interfering with their occupation and use of the land.

3. In support of their claim, the plaintiffs averred that the suit property originally belonged to their late father, Rioba Marama (also known as James Rioba), who they claimed was the original owner before it was transferred to the defendant's family. They alleged that their father was buried on the suit land in 1990, and that they have since continued to reside on and cultivate the same openly and without interruption. The plaintiffs annexed to their supporting affidavit photographs, a copy of the green card, and a death certificate of the late Rioba Marama, among other documents, in support of their claim.
4. In response, the defendant Charles Gibiti Mangiti filed a Replying Affidavit sworn on 29<sup>th</sup> March 2022, vehemently opposing the claim. He deposed that he is the registered proprietor of the suit parcels, having inherited the same from his late father, Samwel Mangiti Kegocha, through a lawful

process of succession. The defendant denied that the plaintiffs or their family had ever occupied, resided on, or developed the property, maintaining that the land has always been in the occupation and cultivation of his family.

5. The defendant further filed witness statements from Benson Nyamoganga Marwa (village elder) and Maurice Matinyi Maroa (the Area Chief), both dated 29<sup>th</sup> March 2022, confirming that the land has at all times been in possession of the defendant's family and that the plaintiffs are not residents of the area. They also stated that they were not aware of any burial of the plaintiffs' father on the land as alleged.
6. Upon compliance with pre-trial directions under Order 11 of the Civil Procedure Rules, the matter was set down for hearing, during which both parties testified and called their respective witnesses.

#### B. Hearing

1. The matter came up for hearing before this Court on 7<sup>th</sup> June 2023, with both parties present. The 1<sup>st</sup> plaintiff, testified on his own behalf and adopted his supporting affidavit as part of his evidence in chief. Under cross-examination by the defendant, he confirmed that his father, Rioba Marama also known as James Rioba was the person from whom they claim

to have derived occupation of the suit land. He stated that he had lived on the land since birth, though he was unable to specify for how many years. He admitted that there were other occupants, including churches, but said he did not know their names or those of the neighbouring landowners. He also conceded that he did not know the village elders or any of the community leaders from the area.

2. The defendant, Charles Gibiti Mangiti, likewise testified and adopted his Replying Affidavit as his evidence in chief. During cross-examination by Mr. Abisai, counsel for the plaintiffs, he stated that the suit parcels Bugumbe/Mabera/1292 and 1293 were part of land he lawfully inherited from his late father, Samwel Mangiti Kegocha. He denied that the plaintiffs or their family had ever resided on or cultivated the land. He explained that the houses appearing in the plaintiffs' photographs belonged to Grace Kanini, who was not a party to the present suit, and that her husband, Murimi Rioba, was the son of the original owner, to whom the defendant's family had gifted a small portion. The defendant clarified that he resides at Karimu, approximately one kilometer away from the suit property, and maintained that he had not evicted anyone from the land since the portion given to Grace Kanini was voluntary and limited.

3. The defence also called two witnesses. DW2, Benson Nyamoganga Marwa, a village elder from Bensongo Location, adopted his written statement dated 29<sup>th</sup> March 2022 as his evidence. He confirmed that the suit property has always been occupied and cultivated by the defendant's family and that the plaintiffs are not known residents of the area.
  
4. DW3, Maurice Matinyi alias Oroko Maroa, the Area Chief of Bugumbe West, also testified and adopted his statement filed on 20<sup>th</sup> September 2022. He confirmed that the defendant's family inherited the land from the late Samwel Mangiti Kegocha, and that the defendant had gifted a small portion to Grace Gati Kanini for use. He maintained that the defendant was the rightful owner and occupant of the land. During cross-examination, he reiterated that he had served as chief for seventeen (17) years and knew the defendant's family as long-term residents and cultivators of the land in dispute.

### C. Court Visit to the Suit Property

1. Following the close of the hearing, the defendant filed an application dated 23<sup>rd</sup> June 2023, seeking an order for the Court to visit the suit property for the purpose of establishing and confirming the actual occupants and users of Land Reference Nos. Bugumbe/Mabera/1292 and

Bugumbe/Mabera/1293, the parcels forming the subject of this dispute. The application was not opposed by the plaintiffs.

2. Upon consideration, the Court allowed the application and fixed the scene visit for 15<sup>th</sup> November 2023. On the appointed date, the Court, in the presence of the plaintiffs, the defendant, and family representatives, visited the site.
3. During the scene visit, the Court observed that the defendant was cultivating sweet potatoes and other crops on the larger portion of the land. The plaintiffs pointed out an old homestead, which they alleged belonged to their late father, Rioba Marama, together with a small house and kitchen structure said to have been used by the deceased's widow. The Court further observed that a small section measuring approximately 0.9 acres was under maize cultivation.

#### D. Submissions

1. The plaintiffs, through their counsel Ms. Abisai & Co. Advocates, filed their written submissions dated 3<sup>rd</sup> July 2023. Counsel reiterated that the plaintiffs had been in open, peaceful, and uninterrupted possession of the suit property for a period exceeding twelve (12) years and had therefore

acquired ownership by adverse possession pursuant to Sections 7, 13, 17, and 38 of the Limitation of Actions Act. Counsel argued that the plaintiffs' occupation began during the lifetime of their late father, Rioba Marama, and had continued without interruption since his death in 1990.

2. It was submitted that the subdivision of the original parcel LR No. Bugumbe/Mabera/202 into LR Nos. 1292 and 1293 did not extinguish the plaintiffs' rights already accrued in law. Reliance was placed on the decisions in Mtana Lewa v Kahindi Ngala Mwangandi [2015] eKLR and Kasuve -Vs- Mwaani Investment Ltd & 4 Others [2004] 1 KLR 184, to emphasize that adverse possession is established through open, exclusive, and continuous occupation inconsistent with the rights of the true owner.
3. The defendant, appearing in person, filed his submissions dated 10<sup>th</sup> July 2023 in which he maintained that the plaintiffs had failed to prove actual occupation or possession of the suit land for any period, let alone the statutory twelve years required under the Limitation of Actions Act. He submitted that he had been in exclusive and visible possession of the land since inheriting it from his late father, Samwel Mangiti Kegocha, and that the plaintiffs' claim was an afterthought intended to unjustly deprive him of his inheritance.

4. The defendant further submitted that no credible evidence had been adduced to show that the plaintiffs or their father was ever buried or resident on the land. He relied on Hellen Wangari Wangechi-vs- Carumera Muthoni and Gilbert Kimutai Koech -Vs- Wilson Kipngeno, to argue that possession must be adverse, exclusive, and without the consent of the true owner.

#### E. Issues for Determination

1. Having carefully considered the pleadings, the affidavit evidence, and the submissions on record, the Court finds that the matter raises a single substantive issue for determination, namely:

a) Whether the plaintiffs have established ownership of L R Nos.

Bugumbe/Mabera/1292 and 1293 by way of adverse possession;

b) Whether the plaintiffs are entitled to be registered as proprietors of the said parcels; and

c) Who should bear the costs of the suit.

#### F. Analysis and Determination

ISSUE 1: Whether the plaintiffs have established ownership of LR Nos. Bugumbe/Mabera/1292 and 1293 by way of adverse possession;

1. Section 38(1) of the Limitation of Actions Act allows a person to move to this Court for an order that he be registered as the proprietor of land or a lease in place of the person registered as proprietor thereof. In KASUVE.V. MWAANI INVESTMENTS LTD & OTHERS 2004 1 KLR 184, the Court of Appeal set out what a person claiming to be entitled to land by way of adverse possession must prove and said: -

“In order to be entitled to land by adverse possession, the claimant must prove that he has been in exclusive possession of land openly and as of right and without interruption for a period of 12 years either after dispossessing the owner or by discontinuation of possession by the owner on his own volition.”

2. It is now well settled that the combined effect of the relevant provisions of Section 6, 13 and 17 of the Limitation of Actions Act is to extinguish the title of the proprietor of land in favour of an adverse possessor of the same at the expiry of 12 years of the adverse possession - BENJAMIN KAMAU & OTHERS -Vs- GLADYS NJERI C.A CIVIL APPEAL NO 2136 OF 1996.

3. Similarly, the new land laws promulgated after the 2010 Constitution recognize the doctrine of adverse possession. Section 28 (h) of the Land Registration Act 2012 identifies some of the overriding interests in land as: -

“rights acquired or in the process of being acquired by virtue of any written law relating to the limitation of actions or by prescription.”

4. Section 7 of the Land Act 2012 provides that: -

“Title to land may be acquired through -

(a) - (c)

(d) prescription”

23. A person claiming land by way of adverse possession must prove that his occupation of the land in dispute is not by force, secrecy or persuasion - (nec vi nec clam nec precario) - KIMANI RUCHINE & ANOTHER -Vs- SWIFT RUTHERFORD & CO LTD 1980 KLR 10. It must be open, peaceful continuous, un - interrupted and with the knowledge of the owner.

24. In a recent exposition of the doctrine of adverse possession, the Court of Appeal in MTANA LEWA -Vs- KAHINDI NGALA MWAGANDI C.A CIVIL APPEAL NO 56 OF 2014 [2015 eKLR], described it as follows: -

“Adverse possession is essentially 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 certain period. In Kenya, it is twelve (12) years. The process springs into action essentially by default or in - action of the owner. The essential pre - requisites being that the possession of the adverse possessor is neither by force or stealth or under the licence of the owner. It must be adequate in continuity, in publicity and in extent to show that possession is adverse to the title owner.”

25. Having considered the facts of the court do find that the Applicant has proved his case on balance of probabilities. I allow the Originating Summons dated 10<sup>th</sup> September 2021 in the following terms;

1) That the Defendant \* to recover a portion measuring 2.6 Ha in L.

R. No. Bugumbe/Mabera/1292 and L R No. Bugumbe/Mabera/202 have been extinguished.

2) That the Plaintiffs are entitled to be registered as owners of the portion that they have acquired by way of adverse possession.

- 3) The Defendant to transfer a portion measuring 2.6 Ha of L. R. No. Bugumbe/Mabera/202 to the Plaintiffs.
- 4) That a permanent injunction is hereby issued restraining the Defendant from entering and trespassing in the portion of L. R. No. Bugumbe/Mabera/1292 and 1293 that has been acquired by the Plaintiff by way of adverse possession.

It is so ordered.

**DATED, SIGNED and DELIVERED** virtually at **NAIROBI** on this **31<sup>st</sup>** day of **October, 2025**.

**MOHAMMED N. KULLOW**  
**JUDGE**

Judgement delivered in the presence of: -

..... for the Applicant  
..... for the Respondent  
Philomena W. Court Assistant