



THE JUDICIARY



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT GARISSA
ENVIRONMENT AND LAND DIVISION
ELCLOS NO. E020 OF 2024

MUIRURI KIMANI.....1ST APPLICANT
VERSUS
PETER KARANJA MWANGI.....1ST RESPONDENT
JOHN KANYUTU MWANGI.....2ND RESPONDENT

JUDGMENT

- 1) In his Originating Summons dated 11-9-2024, the Applicant seeks the following orders against the Respondents both jointly and severally.
 - (i) That the Applicant has by way of adverse possession acquired land title of 0.4 acres out of land parcel No. Loc.7/Ichagaki/5151 being a resultant of land parcel No. Loc.7/Ichagaki/645 and the 0.4 acres out of the suitland be registered in the name of Muiruri Kimani.
 - (ii) That the Land Registrar Murang'a be ordered to transfer 0.4 acres out of land parcel No. Loc.7/Ichagaki/5151 to the Applicant.
 - (iii) That the Deputy Registrar of this Court do sign the application for the consent of the Land Control Board, transfer instruments and any other instruments necessary to transfer 0.4 acres of land parcel No. Loc. 7/Ichagaki/5151 to the Applicant.
 - (iv) That the Court be pleased to order the Land Registrar to dispense with the production of the original title deed to land parcel No. Loc.7/Ichagaki/5151 when registering the decree of this court for transfer of 0.4 acres.
 - (v) That the OCS Maragua Police Station to supervise the execution of this decree.
 - (vi) That the Respondents to pay the costs of this suit.
- 2) The Plaintiff's case is as follows. Firstly, on 5-2-1998 he bought 0.4 acres out of land parcel No. Loc.7/Ichagaki/515 from Lydia Wanjiku Mwangi who was the successful party in Murang'a Land Disputes Tribunal Land No. 34 of 1998. The said Lydia Wanjiku

Mwangi put the Plaintiff into immediate vacant possession of the 0.4 acres. Secondly, the total purchase price was Kshs. 40,000/=. The Plaintiff paid Kshs.31000/=. The balance of Kshs 9000/= was to be paid upon transfer. Thirdly, the Defendants appealed against the award in Murang'a Tribunal case No. 34 of 1998 in Appeal case No. 22 of 1999 which was dismissed by the Appeals Committee at Nyeri. Fourthly, Lydia Wanjiku Mwangi is the mother of the Defendants and she died before she could transfer the land that the Plaintiff bought and when Nyeri Succession Cause No. 742 of 2011 was filed at Nyeri, the Defendants did not disclose that the Plaintiff had bought land from the deceased and was in occupation of it. The Plaintiff prays that the Respondents title in respect to the land that Plaintiff bought is extinguished by way of adverse possession.

- 3) In support of the case, the Plaintiff filed the following evidence.
- (i) Supporting affidavit dated 11-9-2024.**
 - (ii) Copy of sale agreement dated 5-2-1998.**
 - (iii) Copies of certificates of official search for the suit land dated 30-4-2024 and 30-11-1999.**
 - (iv) Copy of certificate of death for Njeri Karanja.**
 - (v) Copy of certificate of death for Lydia Wanjiku Mwangi.**
 - (vi) Two(2) photographs of a man in a banana field.**
 - (vii) Copy of order dated 14-7-2000 issued in Land Disputes case No. 34 of 1998 at Murang'a.**
 - (viii) Decision of the Appeals Committee dated 13-10-1990 in Appeal No. Maragua 22/99.**
 - (ix) Copy of Grant of Letters of Administration intestate in Murang'a Succession Cause No. 338 of 1999.**
 - (x) Copy of certificate of confirmation of Grant in respect to L.R. No. Loc.7/Ichagaki/645 in Nyeri Succession Cause No. 742 of 2011.**
 - (xi) Witness statement by the Plaintiff dated 11-9-2024.**
- 4) The Defendant were served with summons and the supporting affidavit and all the evidence on 21-9-2024 as per the affidavit of service sworn by Boniface Ng'ang'a Ngaara dated 23-9-2024. They did not file any response to the summons. The case proceed as undefended.

- 5) At the trial on 2-7-2025, the Plaintiff testified by adopting his filed evidence. Counsel for the Plaintiff filed written submissions dated 4-7-2025 urging that all the ingredients of adverse possession had been proved.
- 6) I have carefully considered all the evidence adduced in this case by the Plaintiff as well as the written submissions by his learned counsel.

The issues for determination are as follows.

(a) Whether the Plaintiff has proved all the three requirements for adverse possession.

(b) Whether the Plaintiff is entitled to the 0.4 acres yet he did not pay the full purchase price.

- 7) On the first issue, I find that the Plaintiff has proved all the three requirements of adverse possession which include occupation for a period exceeding 12 years without force, without permission of the owner and as of right. Even though the Plaintiff entered the suit land in 1998 with the permission of Lydia Wanjiku Mwangi, since her death on 18-10-2023, he has been occupying the land without the permission of the Defendant. The evidence adduced including the photographs shows that the occupation is open and the land has mature banana plants. The occupation is also without force because no evidence has been adduced by the Defendants to prove that they have sought to evict the Plaintiff. The Plaintiff's occupation of the suit land satisfies the threshold set in the case **of Kasuve vs Mwaani Investments Ltd and 4 others [2004] eKLR**, which hold that for the claimant to succeed, he must prove that the possession was *nec vi, nec clam and nec precario*, that is to say, peaceful, open and without permission, and that such possession has been continuous for a period of at least twelve years as requirement as required by Section 7 of the Limitation of Actions Act.

The Plaintiff's evidence is uncontroverted because the Defendants chose not to defend the suit.

Finally, since the Plaintiff did not pay the full purchase price and he only paid Kshs. 31000/= and not the agreed 40,000/-, I find that he is only entitled to land which is commensurate with the amount paid in 1998. To seek to pay the balance of Kshs. 9000/=, about 25 years later when the value of the Kenya Shillings has depreciated is not fair or just.

8) For the above stated reasons, I enter judgment for the Plaintiff against the Defendants as prayed for in term of prayers **1,2,3,4** and **5** of the Originating Summons dated 11-9-2024 but only for **0.31 acres** of the suit land and not the **0.4 acres** claimed.

No orders as to costs.

Dated, signed and Delivered virtually at Murang'a this 9th day of February, 2026

**M.N. GICHERU
JUDGE.**

Delivered online in the presence of :-
Mwangi Njonjo - Court Assistant
Applicant's Counsel – Mr. T.M. Njoroge