



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MILIMANI LAW COURTS, NAIROBI
ELCLC APPLICATION NO. E066 OF 2024 (O.S.)

LEONARD MUNYUA MBUGUA
PLAINTIFF/APPLICANT

-VERSUS-

HALIMA ISSA & MOHAMED MBUGUA MUHIA
(Administrators of the
Estate of ISSA MBUGUA SALIM)1ST
DEFENDANTS/RESPONDENTS

KASSIM KARIUKI ISSA2ND
DEFENDANT/RESPONDENT

SALIM ISSA NGANGA (Administrator of the Estate of
HAWA NJERI ISSA)3rd
DEFENDANT/RESPONDENT

JUDGMENT

ORIGINATING SUMMONS

1. The Plaintiff, LEONARD MUNYUA MBUGUA, moved this Honourable Court by way of an Originating Summons dated 5th November 2024 seeking a declaration that he has acquired title by adverse possession over a portion measuring approximately 0.08 Hectares comprised in Land Parcel No. DAGORETTI/RIRUTA/854 (now NAIROBI/BLOCK 66/854), described as PLOT C. He contends that he has been in open, peaceful, exclusive and uninterrupted

occupation of the said portion since 30th November 2001, a period exceeding twelve (12) years.

2. The Plaintiff further seeks orders that he be registered as proprietor of the said portion in place of the Defendants, and that the allocation of the said portion to the 2nd Defendant, KASSIM KARIUKI ISSA, under HC MISC. APP. NO. 15 OF 2007 (Estate of ISSA MBUGUA SALIM) be declared null and void. He also prays for an order directing the Land Registrar, Nairobi, to rectify the register by deleting the names of the purported administrators and substituting his own name as proprietor of the disputed portion.
3. The Originating Summons is brought pursuant to **Sections 7 and 38 of the Limitation of Actions Act (Cap 22), Section 28(h) of the Land Registration Act, 2012, and Order 37 Rules 3, 7 and 8 of the Civil Procedure Rules, 2010**. The Plaintiff avers that by virtue of his continuous possession for a period exceeding the statutory twelve years, the title of the registered proprietors has been extinguished by operation of law, and he has acquired prescriptive rights over the suit property.

REPLYING AFFIDAVIT

4. The 1st Defendant, MOHAMED MBUGUA MUHIA, swore a Replying Affidavit dated 8th March 2025 on his own behalf and on behalf of HALIMA ISSA and the 2nd Defendant, KASSIM KARIUKI ISSA. He depones that the Plaintiff entered the suit property pursuant to a Sale Agreement dated 30th November 2001 allegedly executed between the Plaintiff and the late ABDULRAHAMAN ISSA MBUGUA, and therefore the Plaintiff's entry was not adverse but founded on a contractual arrangement. He contends that a claim based on sale agreement and a claim based on adverse possession are mutually inconsistent and cannot stand together.
5. The Defendants further depose that at the time of the alleged sale, there was a pending Succession Cause No. HCP&A 1746 of 1999 (Estate of HAWA NJERI ISSA), and no confirmed grant had been issued. They assert that the purported vendor had no legal capacity to dispose of any portion of the

estate property prior to confirmation of grant, rendering the transaction contrary to Sections 45, 55 and 82(b)(ii) of the Law of Succession Act. They maintain that any such sale amounted to intermeddling with the estate and was therefore null and void.

6. It is further deponed that the Plaintiff's occupation was not peaceful, uninterrupted or exclusive, as members of the deceased's family lodged objections in the succession proceedings, including an Application dated 5th October 2004, and that there were continuous disputes regarding the Plaintiff's presence on the land. The Defendants contend that such objections and legal proceedings interrupted time from running and therefore the statutory period required under **Section 7 of the Limitation of Actions Act** was never attained.

PLAINTIFF'S SUBMISSIONS

7. The Plaintiff identifies the primary issue for determination as whether he has satisfied the legal threshold for acquisition of title by adverse possession under **Sections 7 and 38 of the Limitation of Actions Act (Cap 22)**. He submits that he entered into possession on 30th November 2001, has remained in open, continuous, exclusive and uninterrupted occupation for over 23 years, and that no lawful eviction proceedings were ever instituted against him. He relies on the principles set out in **Wambugu v Njuguna [1983] KLR172**, where the Court held that adverse possession is established where the true owner has been dispossessed or has discontinued possession for the statutory period. He further relies on **Mtana Lewa v Kahindi Ngala Mwagandi [2015] eKLR**, which defined adverse possession as a situation where a person takes possession of land and asserts rights over it while the registered owner fails to take action for twelve years.
8. The Plaintiff further submits that succession proceedings do not interrupt time for purposes of adverse possession unless they amount to actual assertion of title or eviction proceedings. He relies on **Githu v Ndeete [1984] KLR 776**, where it was held that time ceases to run only when the owner takes effective steps to recover possession. He also cites **Stephen**

Mwangi Gatunge v Edwin Onesmus Wanjau [2022] eKLR, where the Court held that the filing of succession proceedings alone does not interrupt adverse possession unless the registered owner takes concrete steps to evict the claimant. The Plaintiff therefore urges the Court to declare that the registered proprietors' title has been extinguished by operation of law.

DEFENDANTS' SUBMISSIONS

9. The Defendants identify the principal issue for determination as whether the Plaintiff's occupation can legally qualify as adverse possession where his entry onto the land was pursuant to a Sale Agreement dated 30th November 2001. They submit that possession founded on a contractual sale cannot be adverse to the vendor until the agreement is repudiated or rescinded.
10. The Defendants further submit that the alleged sale was void ab initio as it was conducted before confirmation of grant in **Succession Cause No. HCP&A 1746 of 1999 (Estate of HAWA NJERI ISSA)**, contrary to **Sections 45, 55 and 82(b)(ii) of the Law of Succession Act (Cap 160)**. They rely on **Re Estate of Isaac Kaburu Marete**, where the Court held that any disposition of estate property prior to confirmation of grant amounts to intermeddling and is void. The Defendants argue that a void transaction cannot form the foundation of a lawful claim, and that in any event, the succession proceedings and objections filed therein constituted an assertion of title sufficient to interrupt time under **Section 7 of the Limitation of Actions Act**.

Issues for Determination

11. The Court has carefully read and considered the pleadings, the evidence adduced, the submissions and authorities cited by the parties, as well as the relevant provisions of the law. The Court finds that the following issues arise for determination:

a) Whether the Plaintiff acquired a proprietary interest in the suit property by operation of law.

b) Whether the Plaintiff is entitled to the reliefs sought.

Analysis and Determination

Issue (a): Whether the Plaintiff acquired a proprietary interest in the suit property by operation of law.

12. In the present case, it is not disputed that the Plaintiff entered the suit property on 30th November 2001 pursuant to a sale agreement. Entry under a sale agreement is, at its inception, consensual. The question that therefore arises is not the fact of entry, but the legal character of the Plaintiff's continued occupation over time.
13. The evidence before the Court shows that upon entry, the Plaintiff took possession of a defined portion of the suit property, constructed dwelling houses and carried out developments thereon. He has remained in continuous and exclusive occupation of that portion for a period exceeding twenty-three years. While the Defendants challenge the validity of the sale agreement on the ground that the vendor lacked capacity, they do not dispute the Plaintiff's long and uninterrupted physical occupation.
14. Where entry is pursuant to a sale agreement, the law recognises that possession is initially permissive. However, such permission does not subsist indefinitely. Where the sale agreement becomes void, unenforceable, or incapable of completion, and the purchaser remains in possession without renewed consent from the registered proprietor, the character of the occupation must be reassessed.

15. The governing legal test on when possession becomes adverse was more elaborately set out by the Court of Appeal in **Wambugu v Njuguna 1983 KLR 172** where the Court held that: *“In order to acquire by the statute of limitations title to land which has a known owner, that owner must have lost his right to the land either by being dispossessed of it or by having discontinued his possession of it. Dispossession of the proprietor that defeats his title are acts which are inconsistent with his enjoyment of the soil for the purpose of which he intended to use it.”*
16. The Court further clarified that: *“The proper way of assessing proof of adverse possession would then be whether or not the title holder has been dispossessed or has discontinued his possession for the statutory period and not whether or not the claimant has proved that he has been in possession of the requisite number of years.”*
17. Applying this test to the present matter, the focus is not the validity of the sale agreement, but whether the registered proprietors were dispossessed of the portion in dispute or discontinued possession for the statutory period. The evidence shows that from November 2001, the Plaintiff exercised exclusive control over the portion he occupies, while the registered proprietors ceased to exercise possession over that portion.
18. This position is consistent with the reasoning of the Court of Appeal in **Public Trustee v Wanduru 1984 KLR 314** where the Court held that, depending on the circumstances of each case, a purchaser who has taken possession and remained on the land for over twelve years may be deemed to be in adverse possession from the date the sale agreement becomes void. Once the contractual foundation ceases to operate, continued occupation by the purchaser is no longer referable to consent, and time begins to run against the registered owner.

19. In the present case, there is no evidence that the registered proprietors re-entered the land, resumed possession, or instituted recovery proceedings within twelve years from the date the Plaintiff took possession. There is equally no proof of acknowledgment of title by the Plaintiff capable of interrupting time under Sections 23 and 24 of the Limitation of Actions Act. Succession proceedings or internal redistribution of estate property, without effective recovery action, do not amount to dispossession of a person in occupation and therefore do not interrupt the running of time.
20. Whether the vendor had capacity to sell or not therefore does not defeat the Plaintiff's claim. Once the registered proprietors discontinued possession and failed to assert their rights for the statutory period, the Plaintiff's occupation, being open, exclusive and inconsistent with the enjoyment of the land by the registered owners, matured into a proprietary interest by operation of law.
21. Accordingly, the Court is satisfied that the statutory period ran uninterrupted, and by operation of Section 7 of the Limitation of Actions Act, the Defendants' right of action became barred, entitling the Plaintiff to relief under Section 38 of the Act.

Issue (b): Whether the Plaintiff is entitled to the reliefs sought

22. Having found that the Plaintiff acquired a proprietary interest by operation of law upon the lapse of the statutory period, the Court turns to consider whether the reliefs sought ought to issue.
23. Under Section 38 of the Limitation of Actions Act, where a person has become entitled to land by adverse possession, the Court is empowered to order that such person be registered as proprietor in place of the registered owner. The Plaintiff has specifically sought registration of the portion he occupies, described as Plot C, being part of Land Parcel No.

DAGORETTI/RIRUTA/854 (now NAIROBI/BLOCK 66/854).

24. The evidence before the Court establishes that the Plaintiff has been in exclusive occupation of a defined portion of the suit land, which is identifiable on the ground and has been developed by the Plaintiff. There is no evidence that the Defendants are in possession of that portion or that competing rights exist over it.
25. Consequently, the Plaintiff is entitled to an order directing that the suit land be surveyed and subdivided, at his cost, to excise the portion he occupies, and that the said portion be registered in his name. In the event that the Defendants fail or decline to execute the necessary transfer documents, the Deputy Registrar of this Court shall be at liberty to execute the same on their behalf.
26. The Plaintiff has also sought ancillary reliefs aimed at giving effect to the judgment of the Court. Such reliefs are necessary and appropriate to ensure the Plaintiff's quiet enjoyment of the portion he has lawfully acquired and to prevent interference with his possession.
27. Accordingly, the Court finds that the Plaintiff has proved his entitlement to the reliefs sought, and the same shall issue as prayed.

FINAL ORDERS

In the result, and for the reasons set out above, the Court makes the following orders:

- a) A declaration is hereby issued that the Defendants' right to recover the portion of land measuring approximately 0.08 hectares, being part of Land Parcel No. DAGORETTI/RIRUTA/854 (now NAIROBI/BLOCK 66/854)

and described as PLOT C, is extinguished by operation of law pursuant to Section 7 of the Limitation of Actions Act.

- b) A declaration is hereby issued that the Plaintiff, LEONARD MUNYUA MBUGUA, has acquired a proprietary interest over the said portion by adverse possession under Section 38 of the Limitation of Actions Act.
- c) The suit property shall be surveyed and subdivided, at the Plaintiff's cost, so as to excise the portion measuring approximately 0.08 hectares (PLOT C) currently occupied by the Plaintiff.
- d) Upon completion of the subdivision, the said portion shall be registered in the name of the Plaintiff as proprietor.
- e) In default of the Defendants executing the requisite transfer instruments within thirty (30) days of completion of the survey, the Deputy Registrar of this Court is hereby authorised to execute all necessary documents on their behalf to give effect to this judgment.
- f) A permanent injunction is hereby issued restraining the Defendants, their servants, agents, or any persons claiming under them from entering, evicting, alienating, transferring, disposing of, or in any manner interfering with the Plaintiff's quiet possession and enjoyment of PLOT C.
- g) With regard to the issue of the alleged balance of the purchase price, the Court finds that any contractual obligations arising from the sale agreement were overtaken by the operation of the Limitation of Actions Act. The Plaintiff's title having accrued by prescription, no further claim for completion of the sale transaction or recovery of any balance is sustainable in law.

Each party shall bear its own costs of the suit,

It is so ordered!

DATED, SIGNED and DELIVERED virtually at **NAIROBI** on this **13TH** day of **FEBRUARY 2026**.

MOHAMMED N. KULLOW
JUDGE

Judgment delivered in the presence of: -

Ms. Chege..... for 1st Plaintiff/Applicant

Mr. Amutolah..... for Defendant

Philomena W...... Court Assistant

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