

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT
EMBU

ELC CASE NO. 32 OF 2019 (O.S)

JOSEPH MWANGANGI NJERU.....
PLAINTIFF

VERSUS

JOHNSON NGARI IBARA

(Sued as the Personal Representative of the Estate of the

Late **IBARA MWANIKI.....**

DEFENDANT

JUDGMENT

1. Through the Amended Originating Summons dated 7/11/2023, the Plaintiff seeks a declaration that the title held by Ibara Mwaniki over the land known as Mbeere/Kirima/1088 measuring approximately 2.0 hectares (ha) (the suit land) has been extinguished through adverse possession and that the Plaintiff is entitled to be registered as the owner of the suit land in place of the Defendant. He seeks to have the Embu Land Registrar directed to register him as the proprietor of the suit land.
2. The summons was made on the grounds that the Plaintiff took possession of the suit land in 2005 and had continuously occupied it for over 14 years. That he had enjoyed occupation of the suit land with his wife and two children and had planted trees on the suit land, which is his only source of livelihood.

That he built a residential house on the suit land and planted trees for commercial gain.

3. The Plaintiff swore the affidavit in support of the summons, in which he averred that he had occupied the suit land since 2005 and that he did not know the Defendant. He learnt of him when the Defendant started demanding that he vacate the suit land. He stated that neither the Defendant nor his family had ever lived on the suit land. He pointed out that the Defendant is from the Ngugi Clan while he was from the Gekara Clan. He explained that the suit land was initially allocated to the Gekara Clan then to Njeru Kinyore alias John Njeru Kinyore who was the Plaintiff's grandfather. He added that all the land adjacent to the suit land belonged to the Gekara Clan. That he took possession of the suit land believing that it belonged to his grandfather who went missing in 1964. He relied on the copy of the adjudication record, on which the name John Kinyore is crossed out and replaced by Ibara Mwaniki to support his claim.
4. The Plaintiff averred that since taking occupation of the land in 2005, he had developed the land extensively and planted *miraa* from which he earns a living to take care of his family. Sometime in 2019, he received threats from the Defendant and his family, demanding that he vacates the suit land. He instituted this suit when he found out that the suit land, which he all along believed belonged to his grandfather, had been unprocedurally registered in the Defendant's father's name.
5. He went on to explain that sometime in 2022, Njeru Kinyore, a beggar in Mombasa who was homeless, destitute, visually

impaired and using a wheelchair was arrested and on being questioned by the authorities, he told them that he hailed from Embu. He was given the necessary documents and returned to Gachoka Sub-location. He urged the court to register the suit land in his name so that he could have his grandfather, Njeru Kinyore, live with his family because he had no other place to call home.

6. The Plaintiff urged that he had continuously occupied the suit land for 14 years and that the Defendant threatened to evict him through the area Chief on 24/5/2019 and issued summons through the Director of Criminal Investigations (DCI) on 25/6/2019. He exhibited photos of crops and some structures.
7. Johnson Ngari Ibara swore the replying affidavit in opposition to the Originating Summons. He averred that he was the personal representative of the late Ibara Mwaniki who died on 25/7/2005. Ibara Mwaniki was his father. At the time of his death, he was residing on Mbeere/Kirima/2231 and was a neighbour of the Plaintiff's parents. He denied that the Plaintiff entered the suit land in 2005.
8. He pointed out that the Plaintiff's identity card showed that he was born on 4/2/1990, which means he would have been 15 years old in 2005 when he claimed to have occupied the suit land. He contended that as a child under the Children Act, the Plaintiff was not capable of occupying the suit land in his own name and on his own account. Further, that he must have conspired with his parents to appropriate the suit land to alleviate the pressure on their family land.

9. The Defendant stated that the Plaintiff encroached on the suit land on or about February 2014 when he cleared a portion measuring 0.75 ha on which he planted some khat seedlings, maize, green grams and beans during the March/April rains. The Defendant's late brother, Justin Ileri Ibara, confronted the Plaintiff and warned him to cease trespassing on the suit land but he was defiant. He stated that the Plaintiff was a violent person and a village delinquent.
10. According to the Defendant, the mud-plastered house appearing in the Plaintiff's documents was erected on or about December 2016 and was incomplete and uninhabitable. The Defendant wrote the letter dated 23/8/2017 to the local Chief who approached the Plaintiff but the Plaintiff was defiant. The Defendant reported the matter at the Kiritiri Police Station and a requisition to compel attendance was served upon the Plaintiff in May 2019 by the local Chief. When the Plaintiff was interrogated on 24/5/2019, he could not produce any documents of ownership of the suit land. The Defendant visited the suit land on 17/5/2019 with a Nyumba Kumi representative to show him the disputed portion but the Plaintiff refused to discuss the matter.
11. The Defendant maintained that the Plaintiff knew that the suit land belonged to his late father's estate. He attached photographs taken of the suit property showing the Plaintiff's incomplete structures on the land. He expounded that the photos showed the rear side from where the beaten mud was excavated for the construction. The Defendant stated that the Plaintiff resided in a house a few metres away from his

parents' compound on the other side of the common boundary. He emphasised that the Plaintiff did not reside in that house with his family but that he occasionally occupied it as an insidious way of trying to establish possession of the suit land.

12. He pointed out that the photographs which the Plaintiff tendered in evidence showed that the rear entrance had no door and that iron sheets were used to barricade the entrance. The other photographs showed that the front door was deceptively locked but when the Defendant peeped inside through the rear entrance, he noted that there was no furniture or household items inside the house. Further, that there was no toilet on the portion which the Plaintiff had encroached upon and the Plaintiff was using the family toilet in his parents' compound. The portion he occupied was not fenced off. The Defendant explained that the Mikima trees appearing in the photographs produced by Plaintiff sprouted naturally.
13. The Defendant believed that the Plaintiff filed this suit to circumvent the intended action of the police to arraign him before a court of law. He maintained that his late father's estate did not owe the Plaintiff a home and means of livelihood as the Plaintiff contended in the suit.
14. The hearing of the suit commenced on 30/11/2023 before Kaniaru J. The Plaintiff gave evidence and reiterated the averments contained in his supporting affidavit. He stated that in 2019 he received threats from the Defendant and his family demanding that he vacate the suit land. He did not know how

Ibara Mwaniki came to own the suit land since the land had been allocated to his grandfather, John Njeru Kinyore. He asserted that all adjacent parcels of land belonged to the Gekara Clan while the Defendant is from the Ngugi Clan, which does not have land near the suit land.

15. The Defendant produced copies of the certificate of official search for the suit land and register together with letters dated 19/9/2022, 27/9/2022 and 1/8/2022. The letters sought assistance to enable John Njeru Kinyore travel back to Embu from Mombasa.
16. On cross-examination, the Plaintiff conceded that his national identity card showed that he was born on 4/2/1990. He went to Munyori Primary School and finished standard eight in 1995. He stated that he was not very well educated. He maintained that he entered the suit land in 2005 and that the land he is claiming belongs to Njeru Kinyore and he had lived on it for a long time. There were objection proceedings relating to the suit land. His clan lost the case over the suit land. He stated that he was pursuing his father's land in this case. He was summoned by the Chief and went to the DCI offices. The Chief gave him the notice to vacate dated 23/8/2017. The Defendant told him to vacate the suit land many times.
17. He conceded that his father's land bordered the suit land. His father brought him up. His father's land had a title. He claimed that his father was using the portion he is claiming. Gekara Clan lost the objection case in June 1991. He conceded that Njeru Kinyore lost his claim to the land when the clan lost. The house where he was brought up and where he slept is not on

the suit land. He did not know the size of his father's land. He agreed that Mikima trees can grow naturally.

18. On re-examination, he confirmed that the identity card shown to him was his. He was born on his father's land. He stated that he finished class 8 in 1995. He married later and his first born was born in 2005. He brought this case in his own capacity and not as an agent of Njeru Kinyore. He read the decision of the adjudication officer in the objection proceedings and learned that the 1st Defendant's late father was awarded the suit land. He maintained that the land he was claiming belonged to him.
19. John Nthika Munyi, the former Assistant Chief, Kirima Sub-location gave evidence on behalf of the Plaintiff. The Plaintiff is his nephew and was named after him. He told the court that the Kirima sub-location land was adjudicated in 1972. He stated that the suit land was awarded to Njeru Kinyore who occupied it with his mother and sister before adjudication. The suit land bordered parcel number 1083 belonging to Pius Njeru, the Plaintiff's father. Mr. Munyi bought parcel number 1087, which also borders the suit land. To the South of the suit land were parcel numbers 1090 and 2045 that were awarded to members of the Gekara Clan. He argued that Ibara Mwaniki had a number of objection cases lodged against him and that Gekara clan was successful in those cases. In the suit he lodged against Njeru Kinyore, the suit land was awarded to Ibara Mwaniki because at the time, Njeru Kinyore was in Mombasa and his family was no longer living on the suit land.

20. He claimed that when the Plaintiff occupied the suit land in 2005, no one from the Defendant's family tried to interfere with his occupation or use of the suit land. He stated that there were complaints against the suit land by the 1st Defendant in 2018. He contended that the Defendant did not know the exact location of the suit land and only claimed that his father told him prior to his death that he had land in Kirima Sub-location. He confirmed that Njeru Kinyore returned from Mombasa in 2022.
21. On cross-examination, Mr. Munyi stated that in 2000, the Plaintiff was at home and was ploughing land because he had left school. He left school in 1995 at standard 8. The suit land was adjudicated and the process was completed. The process which led to the issuance of the title in the name of Ibara Mwaniki was not challenged. When the land was being adjudicated, they were living on it. He maintained that the Plaintiff did not enter the land by force but that he was shown the land by his father. He claimed that the Plaintiff built two houses on the land in 2005 and that he started planting *miraa* on the suit land in 2006. The first time he saw the Plaintiff's house was around 2015. He maintained that the house was built before 2019. He was not aware that the Plaintiff had been summoned by the Chief.
22. The Defendant gave evidence and reiterated the averments in his replying affidavit. He stated that the Plaintiff encroached on the suit land in February 2014 and constructed a semi-permanent mud plastered house in December 2016. He

produced photographs of the structures erected on the suit land.

23. On cross-examination, he told the court that neither he nor his father had lived on the suit land. His father died in 2005 and lived on parcel number 2231. He was from the Ngugi Clan. He started pursuing the suit land in 2014 when he learned that the Plaintiff had occupied it. He went with somebody from Nyumba Kumi to show them that the Plaintiff had encroached on the suit land forcefully. He maintained that the cancellation of Njeru Kinyore's name was done by the land adjudication officer and that they got their title after following due process.
24. Upon conclusion of the hearing, the court directed parties to file and exchange written submissions. The Plaintiff submitted that he had met the legal threshold and satisfied the requirements under the doctrine of adverse possession. That he started using the land in 2005 after being shown the land by his father and had continued being in use and occupation since then. He argued that by the time the demand letter was issued by the Defendant in 2017, he was in occupation and had constructed a house on the suit land. He relied on the photographs which he tendered in evidence and those produced by the Defendant as proof of his occupation and use of the suit land.
25. He argued that he had occupied the land for 12 years before the Defendant asserted his rights on the land by issuing a demand letter. He maintained that the Defendant or members of his family had never occupied the suit land. He argued that he had been in open, uninterrupted, notorious, exclusive and

continuous occupation of the suit land for 12 years. He relied on **Wilson Kazungu Katana and 101 others v Salim Abdalla Bakhwein and another [2015] eKLR** on what constitutes adverse possession. He argued that he had proved his case on a balance of probabilities.

26. Regarding ELC Case No. 51 of 2019 which was consolidated with this suit and in which the Plaintiff did not file a defence, the Plaintiff argued that the Defendant needed to prove his claim in that suit.
27. The Defendant submitted that parties are bound by their pleadings, and that the Plaintiff's testimony which purports to challenge the validity of the adjudication process and the legality of the title issued to Ibara Mwaniki was not anchored on any material proposition and should be disregarded. Further, that a claim for adverse possession cannot be combined with one for recovery of land since they are thematically antithetical to one another. He relied on **Mawewu v Liu Ranching and Farming Cooperative Society Limited [1985] KLR** on this point.
28. The Defendant pointed out the inconsistencies in the Plaintiff's evidence and that of his witness and argued that the Plaintiff did not enter the suit property in 2005. The Defendant urged the court to disregard the Plaintiff's evidence urging that he was not a credible witness. He pointed out that the Plaintiff did not defend ELC Case No. 51 of 2019.
29. He urged that the Plaintiff failed to prove his claim while the Defendant had proved that he was entitled to an eviction order sought in the plaint dated 6/12/2019, general damages

for trespass and costs of the suit. The Defendant sought general damages of Kshs. 1,500,000/= and relied on **John Maina v Evans Waweru & 2 Others [2025] KLR**.

30. The issue that falls for determination in this case is whether the Plaintiff has proved that he is entitled to adverse possession of the suit land or whether he should be evicted as the Defendant seeks in ELC No. 51 of 2019. It is not in contention that the suit land is registered in the name of Ibara Mwaniki, although the Plaintiff contended that he believed the land belonged to his grandfather, Njeru Kinyore. The Plaintiff relied on the fact of the surrounding land being occupied by his Gekara clan to support his claim to the suit land and the fact that the Defendant is of the Ngugi Clan.
31. In **Mtana Lewa v Kahindi Ngala Mwangandi (2015) eKLR**, the court defined adverse possession as 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 twelve years. The process sprang into action by default or inaction of the owner. The essential prerequisites for adverse possession are that the possession of the adverse possessor is neither by force or stealth nor under the licence of the owner. It must be adequate in continuity, in publicity and in extent to show that possession was adverse to the title owner.
32. In **Wambugu v Njuguna (1983) KLR 172**, it was held that the proper way of assessing proof of adverse possession was whether or not the title holder had been dispossessed or had discontinued his possession for the statutory period and not

whether or not the claimant had proved that he had been in possession of the requisite number of years.

33. The Plaintiff was born on 4/2/1990. He told the court that he went to Munyori Primary School and finished standard eight in 1995. This is not feasible for he would have been 5 years in 1995 and cannot have completed two years in preschool and eight years in primary school as the ordinary course of events dictate in Kenya's education system. By 2005 when he claimed to have entered the suit land, the Plaintiff would have been 15 years and still a minor. It is highly improbable that he entered the suit land then or that he had the means to plant *miraa* on the land on his own initiative.
34. The photographs which the Plaintiff produced in evidence do not establish to any probable degree that he occupied the suit land continuously. The Defendant pointed out that the houses appeared newly built and did not have a door or household items to show that the structures were lived in. The Plaintiff's parents land is adjacent to the suit land. It is likely that the Plaintiff lives on his parents land and has only been utilising a portion of the suit land for farming purposes but not as his residence with a view to founding his claim of adverse possession.
35. The court is inclined to believe the Defendant's assertion that the Plaintiff entered the suit land after 2014. By the time he filed suit in 2019, the statutory period of 12 years had not run to sustain the Plaintiff's claim for adverse possession.
36. The Plaintiff's claim fails. The court allows the counterclaim in terms of prayer (a) of the plaint dated 6/12/2019 in Embu ELC

Case No. 51 of 2019. The court awards the Defendant general damages in the sum of Kshs. 100,000/=.

37. The Defendant is awarded the costs of both suits to be borne by the Plaintiff.

Delivered virtually at Bungoma this 2nd day of February 2026.

**K. BOR
JUDGE**

In the presence of: -

Mr. Ibara Mwaniki- the Defendant

No appearance for the Plaintiff

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