

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT
EMBU
ELC CASE NO. 118 OF 2014

**EUNICE WANJIRU WANJOHI & REGINA WAKURE
KARANJA**

**(Suing as the Legal Representatives of the Estate
of the**

Late KARANJA NJAGI).....
PLAINTIFF

VERSUS

JOEL MBITHI.....
.....DEFENDANT

JUDGMENT

1. The Plaintiffs instituted this suit vide the Amended Plaint dated 10/01/2023 seeking an order requiring the Defendant to remove himself, his family and belongings from the land known as Mbeere/Wachoro/1620 (the suit land) and a declaration that the late Karanja Njagi was the registered owner of the suit land. They sought a permanent injunction to restrain the Defendant, his servants or agents from remaining on or continuing to occupy the suit land and general damages for trespass. In addition, they prayed for costs of the suit and interest at court rates on any

amount awarded that remains unpaid from the date of judgement until the date of full settlement.

2. The Plaintiffs' case is that the late Karanja Njagi was registered as proprietor of the suit land. Currently, Eunice Wanjiru Wanjohi, one of the personal representatives of the estate of the late Karanja Njagi, is registered as the owner of the suit land to hold it in trust for herself and Christina Njoki Ngure, Regina Wakure Karanja and Simon Njogu Karanja. They averred that the Defendant unlawfully and without the registered owner's permission occupied the suit land and had refused to vacate despite repeated requests, notices and demands. They set out the particulars of trespass against the Defendant.
3. The Defendant filed a defence and counterclaim and denied the Plaintiffs' allegations. He averred that he is the legal owner of the suit land, and that he had been in physical occupation of the land since 1992, where he has built a permanent house that he now resides with his family. He contended that he has lived on the land after a meeting he had with the late Karanja Njagi and the area Chief Josphat Mwangi now retired. He clarified that his name is Joel Mbithi Munyao and not David Mbithi. He argued that the Plaintiffs sold the suit land to third parties in total disregard of his occupation which amounts to trespass and that they continue to violate his peaceful and quiet possession of the suit land.
4. He sought a permanent injunction to restrain the Plaintiffs, their servants agents or any person claiming through them, from

trespassing onto or interfering with the suit land; a declaration that he is the legal and registered owner of the suit land through adverse possession and any other relief the court deems fit to grant as well as costs of the suit plus interest.

5. The suit was heard on 18/6/2025. Eunice Wairimu Wanjohi testified and told the court that she is the daughter of the late Karanja Njagi, who was the registered owner of land parcel 1620 at the time of his demise. She stated that on or about January 2011, the Defendant unlawfully trespassed and occupied the suit land without their late father's consent. That their father through his then advocates served the Defendant with a notice to vacate the land on 26/1/2011, which the Defendant ignored.
6. She averred that on or about July 2011, their father wished to sell his land to a third party but since the Defendant was still occupying part of the property, he authorized the third party to use the unoccupied part of the land by carrying out extraction works. As soon as the extraction works began, the Defendant unlawfully entered the said land and threatened the third party, which prompted their father to report the Defendant to the Assistant Chief.
7. On 20/8/2011, the late Karanja entered into an agreement for the sale of the suit land but the transaction was not completed due to the Defendant's unlawful occupation and use of the suit land. She averred that during the Defendant's unlawful occupation, the Defendant had unjustly enriched himself by selling part of the property to unsuspecting buyers. She

contended that the beneficiaries of the late Karanja Njagi desired to conclude the transaction their father entered into and stand to suffer irreparable loss if the prayers sought were not granted.

8. On cross-examination, she confirmed that her father died on 17/3/2017. She denied that the Defendant had been on the suit land since 1992 or that he had raised his children on the land. She emphasised that he entered the land in 2011. She produced copies of the demand letter dated 18/7/2011, sale agreement dated 20/8/2011, death certificate of the late Karanja Njagi, confirmed grant of letters of administration, official search dated 2/10/2020 and the title deed issued on 22/12/2022.
9. Regina Wakure Karanja testified on behalf of the Plaintiffs and more or less adopted Eunice Wanjohi Wairimu's testimony.
10. The Defendant gave evidence. He stated that he had lived on the suit land since 1992. He recalled that in 2005, the late Karanja alleged that the suit land belonged to him and that after a meeting with the area Chief, he **obtained a letter dated 2/8/2005 as proof** that he had been living on the land since 1992 and was the rightful owner. He told the court that he has lived on the suit land with his wife and 7 children, and that his first born son's child who passed away on 15/12/2014 was buried on the suit land.
11. He stated that sometime in 2011, without his knowledge, Karanja sold the property to third parties who wanted to carry out excavation works on the land, which he stopped through a demand letter issued by his advocate. He maintained that he

owned the suit land and the allegations that he trespassed on the suit land were baseless. He tendered in evidence copies of the letter from the Chief dated 2/8/2005 and demand letter dated 14/9/2011.

12. The court directed parties to file and exchange written submissions, which it has considered. The Plaintiffs submitted that they have produced sufficient evidence to show that they are the rightful owners of the suit land. That the Defendant had the onus to show through evidence that he took possession and occupied the suit land against the rightful owner of the land for an uninterrupted period of 12 years, which he failed to do. It was their position that the Defendant neither called any independent witness to corroborate his testimony nor did he tender any evidence documentary or otherwise to prove that his relatives were buried on the suit land. That he did not produce any burial permit or death certificate.
13. They submitted that there was a report made by the Deputy Registrar pursuant to a court appointed site visit that there was no evidence of burial sites on the suit land. This is however misleading as there was no such court appointed visit on record and the court will disregard that. The Plaintiffs submitted that the structure the Defendant conceded to have built on the suit land was erected without the consent of the registered owner and that it was sufficient evidence of trespass. They urged that the prayer for a permanent injunction was merited since they have established that the Defendant lacked a legal basis to use

the land. That having established trespass, they were entitled to general damages for the unauthorized use of the land since the Defendant had benefitted from it.

14. The Defendant submitted that under Section 7 of the Land Act, title to land may be acquired through transmissions and transfers. It was his submission that the title held by the Plaintiffs was not procedurally acquired through transmission. The Defendant maintained that the Plaintiffs' title was obtained unprocedurally as they registered the land in their name without first obtaining a confirmed grant of letters of administration, the Plaintiffs only having obtained a limited grant for purposes of instituting this suit.
15. On the issue of injunction, the Defendant submitted that the Plaintiffs were not entitled to the reliefs sought in the amended plaint. Relying on **Giella v Cassman Brown & Co. Ltd (1973) EA 358**, the Defendant argued that the Plaintiffs had not established a prima facie case with a probability of success, nor had they shown that damages would be an inadequate remedy, or that the balance of convenience lay in their favour. It was further submitted that the Plaintiffs did not establish the ingredients required for an award of damages for trespass as they did not prove that they had a right to immediate and exclusive possession given the defective title.
16. The Defendant submitted that he had been in open and uninterrupted occupation of the suit land since 1992 following a meeting with the late Karanja Njagi and the then area Assistant

Chief. It was his submission that the occupation had exceeded the twelve-year statutory period, and that the Plaintiffs' attempts to recover the property in 2011 were made after the expiry of that period. The Defendant asserted that he had taken actual possession and physical occupation of the land to the exclusion of the Plaintiffs, developed the property by erecting permanent structures, built his matrimonial home, and used part of the property as a family burial site. He urged the court to issue a permanent injunction to protect his property rights under Article 40 of the Constitution of Kenya, 2010, and to declare him the legal owner of the suit land by virtue of adverse possession.

17. The main issues for determination are whether the Plaintiffs have established their claim to the suit land and are entitled to the reliefs sought in the amended plaint, or the Defendant has acquired ownership of the suit land through adverse possession and is entitled to the reliefs he sought in the counterclaim.
18. It is not in dispute that at the time of his demise, the late Karanja Njagi was the registered proprietor of the suit land. The Plaintiffs produced documentary evidence, including an official search, copy of a title deed, and a confirmed grant of letters of administration, demonstrating that the property was transmitted to Eunice Wanjiru Wanjohi, one of the administrators of the deceased's estate to hold in trust for the beneficiaries of the late Karanja's estate.
19. The Defendant, on the other hand, claims that he is the lawful owner of the suit land by virtue of adverse possession. He

claimed that he entered the suit land in 1992 following a meeting with the late Karanja Njagi and the area Assistant Chief, although he neither disclosed the purpose nor the outcome of that meeting. He further claimed that he had built a home on the land, where he resides with his wife and seven children, and that one of his grandchildren was buried there.

20. In support of his case, the Defendant relied on the letter from the Assistant Chief dated 2/8/2005 confirming his occupation of the land, and the demand letter issued by his advocates to Tebere Company Limited, which had allegedly purchased the land from the late Karanja Njagi and sought to undertake excavation works thereon. Beyond these documents, the Defendant did not tender any additional evidence or call independent witnesses to corroborate his claims. The court was also not afforded the opportunity to assess the nature or extent of the developments the Defendant claimed to have made on the suit land, although the Plaintiffs conceded that a structure existed on the land. However, they maintained that it is relatively recent and that the Defendant only entered the property in 2011, not 1992 as he contended. The Defendant did not adduce any evidence to substantiate his claim that his grandchild was buried on the land.
21. For a claim of adverse possession to succeed, the claimant must establish possession that is *nec vi, nec clam, nec precario*, that is without force, secrecy, or permission and such possession must have been open, continuous, exclusive, and adverse to the interests of the registered owner for a period of at least twelve

years. This principle has been affirmed in authorities such as **Mtana Lewa v Kahindi Ngala Mwangandi [2015] KECA 532 (KLR)** and **Wambugu v Njuguna (1983) KLR 172**. Applying these principles to the present case, the Defendant had the burden of demonstrating that his occupation of the suit land was adverse to the title of the late Karanja Njagi and that such occupation was uninterrupted for at least twelve years.

22. The evidence he adduced however falls short of the legal threshold for adverse possession. The Defendant's claim that he entered the suit land in 1992 was not supported by any evidence. The letter from the area Assistant Chief dated 2/8/2005 merely confirmed that he was residing on the suit land at the time but does not state when he entered the suit land or under what circumstances he got into the land. It is not clear whether it was without the late Karanja Njagi's permission. Even if the court were to accept that the Defendant entered the suit land in 2005, by the time [of filing this suit in 2014, the statutory period of 12 years had not lapsed](#).
23. The Defendant failed to prove on a balance of probabilities that he has become entitled to ownership the suit land through adverse possession. The counterclaim fails and is hereby dismissed. The Plaintiffs' proved their claim of trespass on a balance of probabilities.
24. A declaration is made that the late Karanja Njagi was the lawful and registered owner of Mbeere/Wachoro/1620. The Defendant

is directed to vacate and remove himself, his family, and belongings from the suit land within ninety days of the date of this judgment. A permanent injunction is issued to restrain the Defendant, his servants, or agents from remaining on or continuing occupation of the suit land.

25. The Plaintiffs are awarded general damages for trespass of Kshs. 20,000/= and the costs of the suit.

Delivered virtually at Bungoma this 9th day of February 2026.

**K. BOR
JUDGE**

In the presence of: -

Ms. Brenda Machasio for the Plaintiffs

No appearance for the Defendant