

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU

ELC OS E006 OF 2024

PETER MBUGUA KIMANI.....1ST

PLAINTIFF

CECILY WAWIRA MBUGUA.....2ND

PLAINTIFF

VERSUS

JOSPHINE WAITHERA MAINA.....1ST

DEFENDANT

OL-KALOU ESTATES LTD.....2ND

DEFENDANT

THE LAND REGISTRAR

NYAHURURU LANDS OFFICE.....3RD

DEFENDANT

JUDGMENT

1. This suit was filed by way of an Originating Summons filed on 14.11.2024 in which the plaintiffs are claiming parcel L.R.NYANDARUA-KALOU SOUTH 1454 (Suit

property) by way of adverse possession. The pleading has a supporting Affidavit sworn by the plaintiffs where they contend that the suit property was part of the estate of the late Fredrick Maina Kamau. A certificate of confirmation of grant for the deceased estate was issued in Kitale H.C SUCC CAUSE NO. 47 OF 2006 initially on 23.11.2011, and rectified on 5.6.2014.

2. The 1st defendant then sold the suit property to the plaintiffs at the sum of Ksh. 1 300 000 although the plaintiffs ended up paying Ksh. 2 100 000. However, when the vendor and purchaser went to lands office at Nyahururu to effect the transfer, they found that the suit parcel was registered in the name of the 2nd defendant. The parties to the agreement agreed that the plaintiffs were to occupy the suit land as from December 2011 where todate they have been occupying the whole suit land which is 4 1/2 acres. The plaintiffs contend that they have built their homes on the suit land where they also do commercial and subsistence farming.

3. This case proceeded as a formal proof as there was no response from the defendants upon service.
4. At the trial, the 1st plaintiff, Peter Mbugua Kimani introduced the 2nd plaintiff as his wife. He adopted the contents of their supporting affidavit and the annexures thereof as their evidence.
5. I have considered the pleadings and the evidence tendered. The issue for determination is whether the plaintiffs are entitled to the suit land by way of adverse possession.
6. The ingredients of adverse possession were discussed by the Court of Appeal in the case of **Mtana Lewa -v- Kahindi Ngala Mwangandi (2005)eKLR** where it was held that:

“Adverse Possession is essentially a situation where a person takes Possession of land, asserts rights over it and the person having title to it omits or neglects to take a action against such person in

assertion of his title for a certain period, in Kenya 12 years.”

4. In Sisto Wambugu v Kamau Njuguna [1983] eKLR, the Court of Appeal stated that;

“... once payment of the last instalment of the purchase price had been effected, the purchaser’s possession became adverse to the vendor and that he henceforth, by occupation for twelve years, was entitled to become registered as proprietor of it.”

7. The plaintiffs have availed documents indicating that the payments for the land were made in year 2011. A green card extract has also been availed indicating that the suit land is registered in the name of the 2nd defendant. The unchallenged evidence of the plaintiffs is that they have been in occupation of the suit land since year 2011 and they have developed the same. In the circumstances, I find that the plaintiffs have proved their case on a balance of probabilities.

8. I therefore enter judgment for the plaintiffs against the defendants in the following terms;

- I. It is hereby declared that the plaintiffs are entitled to parcel L.R.NYANDARUA-KALOU SOUTH 1454 by way of adverse possession.**
- II. The production of the original title of the parcel L.R.NYANDARUA-KALOU SOUTH 1454 is hereby dispensed with in the implementation of this judgment.**
- III. The Deputy Registrar of this court is hereby authorized to execute all necessary documents to facilitate the transfer of the suit land in favour of the plaintiffs as set out in this judgment.**
- IV. Each party to bear their own costs of the suit.**

**DATED, SIGNED AND DELIVERED AT NYAHURURU
THIS 26TH DAY OF MARCH 2026 THROUGH
MICROSOFT TEAMS.**

LUCY N. MBUGUA

JUDGE

In the presence of:

Parties absent

Nancy Mwangi – Court Assistant