

REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT NAIROBI

ELC LC NO. E016 OF 2024(OS)

LANCELOT CHRISTISON BENJAMIN SASSOON - 1ST

PLAINTIFF

FIONA MAGDALENE CIERACH SASSOON - 2ND

PLAINTIFF

LEAH ZOSIA SASSOON - 3RD

PLAINTIFF

VS

APOLLO INSURANCE COMPANY LTD -

DEFENDANT

JUDGEMENT

1. The Plaintiffs filed suit vide an originating summons dated the 11/3/2024 seeking the determination of the following questions;
 - a. Whether the Defendant's title of the property known Plot LR No. 194/31 [Originally Number LR No. 194/4/3] measuring 0.5284 hectares situate at 70 Marula Lane in Karen, Nairobi [the "Suit Property"] has been extinguished by adverse possession the same by the Plaintiff who have lived and been in open, quiet, continuously uninterrupted possession adverse to the Defendants for over 28 years since 1995.
 - b. Whether the Plaintiff occupation or possession of the suit property has been on quiet, continuous, uninterrupted and adverse to the Defendant's title to the Property for a period of over 12 years.
 - c. Whether the Plaintiff has acquired title of interest to all the Suit Property measuring 0.5284 acres against the Defendant by way of adverse possession thereof.

- d. Whether the Plaintiffs should be registered as the owner of the Suit Property having acquired the same by adverse possession free of encumbrances and any overriding interests.
 - e. Whether the Defendant, by herself, servants or anyone claiming under her should by order of permanent injunction be restrained from demolishing the structures built on by the Plaintiff, evicting the Plaintiff, re-entering, charging, leasing, selling, disposing off or in any way interfering with the Plaintiff's quiet possession, use and or ownership of the Suit Property.
 - f. Whether the Plaintiffs should be awarded costs of these proceedings
2. The summons is premised on the grounds annexed thereto and the supporting affidavit of the 1st applicant, sworn on the same date. The deponent stated as follows;
- a. The Defendant is the registered owner and proprietor of the property known Plot LR No. 194/31 [Originally Number LR No. 194/4/3] measuring 0.5284 hectares situated at 70 Marula Lane in Karen, Nairobi [Suit Property].
 - b. The 1st, 2nd and 3rd Plaintiffs who are husband, wife and daughter have been quietly, openly, without permission of the Defendant and without force resided on the suit Property without any interruption for over a continuous period of 28 years since 1995 allowing them to have and claim adverse title of the Suit Property.
 - c. The Plaintiff by themselves or through Christ Church Holdings [EA] Ltd have at all material times since 1995 paid Land Rates for Suit Property which are up to date.
 - d. At all material times, the 1st Plaintiff was Directors of Christchurch Holdings [EA] Ltd which Company purchased the Suit Property to from the Defendant in 1995 at Kshs. 2,400,000/= but the Defendant who acknowledged receipt of the said payment on 13/02/1994, failed and neglected to

complete the sale and said Purchaser Company voluntarily would up in the year 2020.

- e. Since the said 1991, the Plaintiffs herein who have no agreement for sale of the suit property or consent from the Defendant to occupy the property have been openly and continuously without any interruption been living in the residential house on the suit property built by or acquired with the suit property by the Defendant without payment or demand of rent from the Defendant to date.
- f. The Plaintiff have thus acquired the suit property with developments thereon which is the residential house by adverse possession by reason of the adverse, open, quiet and uninterrupted possession for over 28 years since 1995.

3. Consequently, the Plaintiffs pray for the following Orders THAT:

- a. A declaration that the Defendant's title of Suit Property be deemed to have been extinguished by adverse possession of the same by the Plaintiff for over 33 years.
- b. A declaration that the Plaintiffs have acquired interest and title to the Suit Property free of any encumbrances by adverse possession against the Defendant.
- c. An Order that the Plaintiff be and is hereby registered as the proprietor/owner of the suit Property and the Deputy Registrar be and is hereby directed to execute all the necessary and requisite instruments to facilitate registration of the Plaintiffs as legal owners of the suit property.
- d. An Order of permanent injunction be and is hereby issued to restrain the Defendant whether by herself, her agents, servants or anyone claiming under the Defendant or her instructions from demolishing any improvements on the suit property by the Plaintiffs, evicting the Plaintiff and their servants on the suit property, re-entering, leasing, selling, disposing off, charging, mortgaging, encumbering or in any way interfering with the Plaintiffs quiet possession, use and or ownership of the Suit Property.

e. Costs of the Suit

4. The Defendant was served severally; however, it failed to enter an appearance or file a defence to the Plaintiffs' claim. The suit of the Plaintiffs against the defendant is therefore uncontested.
5. At the hearing, the evidence of the Plaintiffs was led by Lancelot Christison Benjamin Sassoon, who testified on his behalf and that of the other two co-defendants. He stated that he is the husband and father of the 2nd and 3rd Plaintiffs, respectively.
6. He stated that he has resided on the suit land since 1991, when he was leasing it from the defendant. In 1994, he acquired the property from the defendant through a company called Christ Church Holdings Limited, of which he was a shareholder and director, for the sum of Kshs 2.4 million, an amount audited and acknowledged by the defendant. The transfer of the property was subsequently delayed due to a boundary dispute between the Defendant and a neighbouring property, which was later resolved.
7. Subsequently, the 3rd Plaintiff became ill, leading to the postponement of the scheduled appointment on 7th August 1998 to conclude the matter. Furthermore, the legal representatives of the Defendants, Messrs Rebello & Co., were victims of the bomb blast tragedy on the same date, resulting in the loss of the completion documents during the terrorist incident. The Defendant's advocate did not resume practice thereafter. The legal professionals he subsequently consulted did not help in securing specific performance of the suit land.
8. Advancing to the year 2000, the purchasing entity, Christchurch Holdings E A Ltd, formally changed its name to Cheal Holdings Limited in April of that year. Subsequently, in September 2020, the company was voluntarily dissolved in accordance with the resolutions of its directors and members, as announced in gazette notices Nos. 3681 dated 19 May 2020 and 7079 dated 9 September 2020.
9. All this while, the Plaintiffs have been in occupation of the suit land as tenants until 1994, when he ceased paying the rent. Since then, he has continued to maintain the property and meet its outgoings. The

defence has never interfered with their possession for over three decades.

10. With that the Plaintiffs closed their case.
11. I have considered the written submissions filed by the Plaintiffs, and I shall refer to them in the main judgement.
12. The key issues for determination are;
 - a. Whether the applicants are entitled to title by way of adverse possession
 - b. Costs of the suit
13. Adverse possession represents one of the most longstanding methods of acquiring land titles. During medieval England, as is currently observed in Kenya, this doctrine held significant influence. This is exemplified in the case of *Adnam v Earl of Sandwich* (1877) 2 QB 485.

“The legitimate object of all statutes of limitation is in no doubt to quiet long continued possession, but they all rest upon the broad and intelligible principles that persons, who have at some anterior time been rightfully entitled to land or other property or money, have, by default and neglect on their part to assert their rights, slept upon them for a long time as to render it inequitable that they should be entitled to disturb a lengthened enjoyment or immunity to which they have in some sense been tacit parties “

14. I will lay the statutory foundation of the doctrine of adverse possession in Kenya as founded in the the Limitations of Actions Act Cap 22 and the Registration of Land Act No 6 of 2012.

Section 7 states that

“An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person”

Finally, Section 38(1) and (2) states;

“(1) Where a person claims to have become entitled by Adverse Possession to land registered under any of the Acts

cited in section 37 of this Act, or land comprised in a lease registered under any of those Acts, he may apply to the High Court for an order that he be registered as the proprietor of the land or lease in place of the person then registered as proprietor of the land.

(2) An order made under subsection (1) of this section shall on registration take effect subject to any entry on the register which has not been extinguished under this Act.

15. The doctrine of adverse possession is now settled. In the case of **Mtana Lewa Vs Kahindi Ngala Mwangandi (2005) ECLR** the Court of Appeal held that adverse possession is essentially a situation where a person takes possession of land, asserts rights over it and the person having title omits or neglects to take action against such person in assertion of his title for a certain period which in Kenya is 12 years

16. The Court in the case of **Leonola Nerima Karani v William Wanyama Ndege [2012] ECLR** the Court citing the case of **Wambugu versus Njuguna (1983) CLR 171** distilled the following guiding principles in respect to adverse possession:-

- a. The general principle is that until the contrary is proved possession in law follows the right to possess.
- b. In order to acquire by the statute of limitation 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 for which he intended to use it.
- c. The limitation of Actions Act, in adverse possession contemplates two concepts, disposition and discontinuance of possession. 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 for the requisite number of years.

- d. Where the claimant is in exclusive possession of the land with leave and licence of the appellant in pursuance to a valid sale or agreement, the possession becomes adverse and time begin to run at the time the licence is determined. Prior to the determination of the licence, the occupation is not adverse but with permission. The occupation can only be either with permission or adverse; the two concepts cannot co-exist.
- e. The rule on permissive possession is that possession does not become adverse before the end of the period during which the possessor is permitted to occupy the land.
- f. Adverse possession means that a person is in possession in whose favour time can run...
- g. Where the claimant is a purchaser under a contract of sale of land, it would be unfair to allow time to run in favour of the purchaser pending completion when it is clear that he was only allowed to continue to stay because of the pending purchase because had it not been for the pending purchase, the vendors would have evicted him. The possession can only become adverse once the contract is repudiated...
- h. Where a claimant pleads the right to land under an agreement and in the alternative seeks an order based on subsequent adverse possession, the rule is the claimant's possession is deemed to have become adverse to that of the owner after the payment of the last instalment of the purchase price. The claimant will succeed under adverse possession upon occupation of at least 12 years after such payment.

17. Equally in the case of in **Kimani Ruchine vs Swift Rutherford & Co. Ltd (1980) KLR 10** as per Kneller J. stating:

'...The Plaintiffs have to prove that they have used this land which they claim as of right. Nec vi, Nec Clam, Nec

Precario (no force, secrecy or persuasion) ...show that the company had knowledge of possession or occupation. The possession must be continuous. It must not be broken for any temporary purposes or any endeavors to interrupt it or by way of recurrent consideration.'

18. He who alleges must proof. It is trite that adverse possession is a fact to be observed upon the land and not on the title. The Applicant bears the burden of leading evidence to ascertain adverse possession. This Court agrees with the dicta of the Court in **Gabriel Mbui Vs Mukindia Maranya** when it stated that;

“ the adverse character of possession must be established as a fact. It cannot be assumed as a matter of law from mere exclusive possession even if the mere possession has been for 12 years or more. In addition, there must be facts showing a clear intention to hold adversely and under a claim of right. Defacto use and defacto occupation must be shown.”

19. In this case, the Plaintiffs have presented evidence that, although they resided on the suit land as early as 1991 as rent-paying tenants, they purchased the property in 1994 through a company they owned, with the 1st Plaintiff serving as a director. A 1994 sale agreement has been provided in support of the transaction. Various correspondence between the Defendant and the Plaintiffs' lawyers are based on the one dated 13/2/1995, where the full purchase price was acknowledged by the Defendant's lawyers as holding it in trust for the Defendant pending the completion of the transaction. On 25/1/95, the 1st Plaintiff, in his own handwritten note to the Defendant's lawyers, authorised him to release the funds for the transaction to the Defendant. The Defendant, in a letter dated 28/3/1995, released the conveyance documents duly executed to the Plaintiffs' then advocates.

20. In the case of *Public Trustee - v- Kamau Wanduru*, (1984) KLR 314 at 324, the Court stated that in adverse possession, the title of a registered proprietor is not extinguished but is held by him in trust for the person who, by virtue of the Limitation of Actions Act, has acquired title against the proprietor

21. From the foregoing, it is clear that the Plaintiffs' adverse possession commenced in 1995 when the last purchase price was paid to the Defendant and continued for 12 years, crystallising in 2007 in favour of the Plaintiffs.

22. The Plaintiffs have provided evidence that they have maintained the suit land, modernised the old house, and cared for the gardens, thereby demonstrating animus possidendi—that is, holding the land as of right and not as casual trespassers. Unchallenged evidence also indicates that they paid rates promptly when due. Additionally, evidence was presented that when the defendant was sued for overdue rates, they quickly redirected the lawsuit to the Plaintiffs, clearly acknowledging their divestment of all rights and interests in the suit land.

23. The Court is persuaded that permissive consent to occupy the property ended in 1995 upon the full and final payment of the purchase price, and that the Defendant continued to hold the title in trust for the Plaintiffs, with the interest and rights having been transferred to the Plaintiffs at the conclusion of the sale.

24. On the question of the burden of proof, the Court is persuaded that the Plaintiffs have established adverse possession, having occupied the suit premises openly and continuously for over 12 years without stealth or permission. The rights of the defendants are thus extinguished. Possession is therefore adverse to the rights and interests of the Defendant, and under Section 38(1) of the Limitation of Actions Act, the Plaintiffs are entitled to the land and to be registered as such.

25. Final Orders for Disposal

In the absence of any evidence to the contrary and for the above reasons, I enter judgement in favour of the Plaintiff as follows;

- a. A declaration that the Defendant's title of Suit Property be and is hereby declared to have been extinguished by adverse possession of the same by the Plaintiff for over 33 years.

- b. A declaration that the Plaintiffs have acquired interest and title to the Suit Property free of any encumbrances by adverse possession against the Defendant.
- c. The Land Registrar is ordered to register the Plaintiffs as the proprietors/owners of the suit Property forthwith and the Deputy Registrar be and is hereby directed to execute all the necessary and requisite instruments to facilitate registration of the Plaintiffs as legal owners of the suit property.
- d. An Order of permanent injunction be and is hereby issued to restrain the Defendant whether by herself, her agents, servants or anyone claiming under the Defendant or her instructions from demolishing any improvements on the suit property by the Plaintiffs, evicting the Plaintiff and their servants on the suit property, re-entering, leasing, selling, disposing off, charging, mortgaging, encumbering or in any way interfering with the Plaintiffs quiet possession, use and or ownership of the Suit Property.
- e. Since the matter was undefended, I make no orders as to costs

26. Orders accordingly

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 19TH DAY OF MARCH 2026 VIA MICROSOFT TEAMS.

J. G. KEMEI
JUDGE

Delivered Online in the Presence of:

1. Mr Litoro for the Plaintiffs
2. N/A for the Defendant
3. CA- Ms. Yvette Njoroge