



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

CIVIL SUIT NO. 68 OF 2002 (O.S)

**JOHN MARETE ANAMPIU [having substituted the original plaintiff M'ANAMPIU
STANLEY KAREMU ANAMPIU] M'MUKINDIA (DECEASED).....PLAINTIFFS**

VERSUS

FRANCIS M'RINGERA M'RIMBERIA.....1ST DEFENDANT

STANLEY MWENDA BAIKARABA.....2ND DEFENDANT

J U D G M E N T

1. The initial Plaintiff was known as M'Anampiu M'Mukindia. He had allegedly entered into a land Sale Agreement with the initial 1st Defendant Francis M'Ringera M'Rimberia whereby the latter was selling Parcel No. L.R. Nyaki /Chugu/316 to the Plaintiff. The agreement was allegedly made on 31:01:1977.
2. The transaction was not accomplished for want of consent from Land Control Board.
3. The 1st Defendant had then sold the land to Stanley Mwenda Baikaraba, the 2nd Defendant who is now the current title holder of the suit land.
4. The initial plaintiff died on 15.07.04. Vide an order of the court on 29:09:11, Plaintiff was substituted by his sons namely John Marete Anampiu and Stanley Karemu (the current plaintiffs).
5. 1st Defendant also passed on, on 10:04:12 and he was substituted by his wife one Lydia Kagira on 15.05.17.
6. All along, the parties have been represented by advocates. Plaintiff was initially represented by Mwenda Mwarania, Akwalu Associates up to 11:08:15, when Carl Peters Mbaabu & Co Advocate took over the case. Defendants have all along been represented by the firm of Kiogora Arithi & Associates.
7. When the matter came up for hearing on 15:05:17, it was noted by the court that defence had not filed their witness statements and documents. They were given 14 days within which to file all the requisite documents. The matter was then given a mention date on 24:05:2017. On 24/05/2017, defence counsel informed the court that they had lost contact with 2nd defendant, while 1st defendant was apparently dead. Defence also requested for a hearing date. The case proceeded without the evidence of defence.
8. It is noted that on 15:05:2017, the application to substitute 1st defendant (Francis) with Lydia Kagira, his wife was allowed.

Plaintiffs' Case

9. PW1 and 2 are the two Plaintiffs who are sons of deceased M'Anampiu M'Mukindia. They adopted their statements dated 03:06:16 as their evidence. Their evidence is that their father had bought the Suit land at a sum of Sh. 9000 pursuant to which he took possession of the land.

10. The Plaintiffs aver that Francis M'Ringera M'Rimberia had refused to attend the Land Control Board to obtain Consent and hence M'Anampiu had filed a Land Dispute Tribunal Case No. 18 of 1990 claiming for the land and the ruling was in M'Anampiu's favour.

11. Plaintiffs claim that Francis purportedly sold the land to Stanley Mwenda, the 2nd Defendant. However, they are the ones who have been in continuous occupation of the Suitland from the time M'Anampiu took possession of the land.

12. The two Plaintiffs' claim that the estate of their father is now entitled to the Suitland by way of **Adverse Possession**.

13. PW 3 also adopted his statement as his evidence. He further told the Court that he is a brother of Francis M'Ringera (born of same mother and father). He avers that he is even the one who advised Francis to sell the Land to a villager and not an Indian (as Francis had set out to do).

14. PW 4 is a neighbor of Francis M'Ringera. He also adopted his statement as evidence. He is also aware that Francis had sold the land to M'Anampiu, and that he was even present when the Agreement was made.

15. PW4 further told the Court that when Francis sold the Land to someone else, that new buyer did come to fence the land but they chased him away as he was interfering with Anampiu's family.

16. In support of their case, the Plaintiffs' produced the following documents as exhibits.

- 1) The limited grant issued to the two Plaintiff on 30.05.05.
- 2) The land Sale Agreement of 31.01.1977 between M'Ringera M'Rimbera (vendor) and M'Anampiu M'Mukindia as the purchaser.
- 3) Green Card for the Suitland Nyaki/Chugu/316.
- 4) Acknowledge receipt of 31.01.1977, and that of 13.05.1977.
- 5) Application for consent to Land Control Board
- 6) Receipt dated 01:08:1998 FOR Sh. 625.
- 7) Complaint letter of 21:09:1999.
- 8) A letter from D.O Mirigamieru East Division Case No. 2 of 1999.
- 9) Proceedings and verdict in Meru Central L.D.T Case No. 2 of 1999
- 10) Photographs of the Suitland.

Determination

17. I have considered all the evidence tendered herein along with the Submissions. I proceed to frame the issues for determination as follows:-

- i. Non permissive hostile use of the suit land.
- ii. Exclusive use of the suit land.
- iii. Open and continuous and uninterrupted occupation of the suit land for a period of over 12 years.

18. (1) Non permissive, hostile use of the suit land

Defendant submissions on this point is that M'anampiu M'Mukindia and his family's occupation on the Suitland was with the permission of the seller (Francis M'Ringera). However the authority cited by defence, *Gabriel Mbui Vs. Mukindia Mananya (1993) e KLR* recognizes the incubation of a claim of Adverse Possession from a vendor-Purchaser relationship. In that case it was stated that:-

“Normally, a person claiming adverse possession is allowed in possession as a purchaser pending completion of the purchase price, or if he has already paid in full, then pending compliance with the requisite statutory formalities; and he is allowed to stay there because he is a purchaser, and not a mere trespasser. The vendor decides by accident or design to allow matters to drift on without taking steps to evict the purchaser from the land after the contract fails on account of non-completion, late performance, or non-compliance with legal requirements, relying on the belief that the purchaser will get out on his own, or on the hope that it will all turn out right in the end. Both the vendor and the purchaser may be ignorant of the legal consequences. The purchaser believes he is in possession as a purchaser, and wishes to remain there and found his title on contract. When things come to a head, the purchaser says in retrospect, that although he looked and acted like a purchaser in possession, but the vendor did not evict him, and although he did not say he no longer relied on the contract and did not repudiate it, and the vendor was still entitled to look on him as a purchaser and he did not realize it and it might not have suited the purchaser for the vendor to regard him otherwise than as purchaser, the purchaser was in fact a person in adverse possession, quietly picking up the years which are necessary to elapse to bar the owner's title”

19. In the present case, Francis, the vendor had refused to have the consent of Land Control Board. In the circumstances, the contract for the sale of land was not achieved. It follows that M'Anampiu M'Mukindia no longer had the blessings of Francis to stay on the Land as from the time the contract failed. That is why M'Anampiu even resulted to filing the Land Dispute Tribunal Case.

20. Since the agreement was made on 31;01;1977, it follows that after expiry of six months, the period stipulated to get consent from Land Control Board, the original plaintiff no longer had permission to stay on the suit land. Time can therefore be computed as from July 1977.

21. In *Kwenya Vs. Omutata (1990) KLR 709* the Court of Appeal held that:-

“By adverse possession, is meant a possession which is hostile, under a claim on colour of title.....”

22. I find that the occupation of M' Anampiu on the Suit Land was adverse to the title of the owner as the continuous occupation was without permission.

Exclusive use of the property.

23. The Plaintiff's claim is that their father took over the possession of the Suit land from 1977 and that is where they reside. The brother of Francis Miringara M'rimberia, (the original 1st defendant) testified as PW 3. He told the court that: - **“The ones who bought the land started utilizing it immediately they bought it. Anampiu has been on that land since then”.**

The fact that this is evidence emanates from a close family member of Francis gives credence to

Plaintiffs' claim that they have been in occupation of the land since 1977.

24. PW 3 also adds that the person who bought the land (2nd Defendant) has never done anything on that land. PW4 also confirms that it is M'Anampiu who was left on that land. No evidence has been adduced to rebut Plaintiffs claim with regard to the exclusive occupation of the land by the plaintiffs.

25. I am therefore, inclined to believe that Plaintiffs are in exclusive occupation of the Suitland.

26. Open and continuous uninterrupted occupation for period of at least 12 years

The evidence adduced for the Plaintiffs is that their family has been in occupation of the Suitland since 1977 and that there has been no interruption. Plaintiffs submit that the claim of adverse possession is merited and they have cited the case of *Michuki Vs Samuel Mugo Michuki (2014) e KLR and the case of Githu Vs. Ndeete (1984) KLR*. The latter case emphasizes that:-

“the mere change of ownership of land which is occupied by actual person under adverse possession does not interrupt such person’s adverse possession..”

27. The defence on the other hand have again cited the Gabriel Mbui case (Supra) where it was held that **“the possession must be adequate in continuity, in publicity and in extent, to show that it is adverse to the rightful owner, paper title owners”**.

28. I find that no evidence has been adduced to indicate that M'Anampiu's occupation of the suit land was ever interrupted in anyway by the title holder since 1977 to the year 2002(when this case was filed).

29. Photographs have been availed by the Plaintiffs which show that there are houses on the land and cultivation is going on. The occupation has therefore been open continuous and uninterrupted for a period of over 12 years.

30. CONCLUSION:

The final orders of the Court are as follows:-

- 1) It is hereby declared that Plaintiffs, John Marete Anampiu and Stanley Karemu Anampiu have acquired title to the land Nyaki/Chugu/316 by adverse possession.**
- 2) An order is hereby issued for the transfer of the Nyaki/Chugu/316 from Stanley Mwenda Baikaraba (2nd Defendant) to John Marete Anampiu and Stanley Karemu Anampiu (Plaintiffs).**
- 3) An order is hereby issued for the 2nd Defendant to execute all the requisite transfer documents failure to which the Executive Officer of the Court is hereby authorized to Sign all such transfer documents.**
- 4) On costs, blame appears to be upon Francis M'Ringera. He is now dead. It would be rather harsh to burden his estate (particularly his wife) on matters of costs.**
- 5) I therefore, direct that each party bears their own costs of the suit.**

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 24th JANUARY, 2018 IN THE PRESENCE OF:-

Court Assistant: Janet/Galgalo

Rimita H/B for Carl Peter Mbaabu for Plaintiff present

B. Kimathi H/B for Kiogora A. for Defendants

HON. L. N. MBUGUA

ELC JUDGE