



REPUBLIC OF KENYA



KENYA LAW
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**Gatirih v Waweru & 4 others (Environment and Land Case
64 of 2017) [2018] KEELC 4921 (KLR) (31 October 2018) (Judgment)**

Muiruri Gatirih v Peter Ndungu Waweru & 4 others [2018] eKLR

Neutral citation: [2018] KEELC 4921 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MURANGA

ENVIRONMENT AND LAND CASE 64 OF 2017

JG KEMEL, J

OCTOBER 31, 2018

BETWEEN

MUIRURI GATIRIHO PLAINTIFF

AND

PETER NDUNGU WAWERU 1ST DEFENDANT

JOSPHAT MUIRURI 2ND DEFENDANT

GEOFFREY KAMAU 3RD DEFENDANT

JOHN WAWERU 4TH DEFENDANT

LUCY WAMAITHA 5TH DEFENDANT

JUDGMENT

1. By an Originating Summons filed on 22/5/2007 the Plaintiff sought the following orders;
 - a) That having been in continuous uninterrupted occupation and possession of the suit land parcel No. Loc.17/Kamahuha/229 for a period in excess of 12 years have acquired the title thereto by adverse possession.
 - b) That the Land Registrar, Muranga be ordered and directed to delete the names of the Defendants and register the name of the Plaintiff in the place thereof.
 - c) That the costs of this suit be met by the Defendant.
2. The Plaintiff claimed that he has been in continuous and uninterrupted possession of the suit land for a period in excess of 12 years. Further he stated that he has over time developed the suit land by building 4 semi-permanent houses and carried out subsistence farming.



3. The Defendants denied the Plaintiff's claim and stated in their statement of defense that they are the legal joint owners of the suit land. They termed the occupation of the Plaintiff as illegal and a trespass on their title. In their counterclaim filed with the defence, they sought for an order of eviction against the Plaintiff on the basis that he is a trespasser on the land.
4. At the hearing of the suit the Plaintiff adopted his written statement and reiterated the contents of his plaint. He stated that he has occupied the suit land since 1961 during the consolidation. That he has built 4 semi-permanent houses and cultivates subsistence crops namely bananas, arrow roots, trees and nappier grass. That the Defendants have never occupied the suit land. The land was owned by Nyamweru Mucwe, deceased. PW2- Simon Mugo Nderi stated that the Plaintiff has resided on the land since 1960. That between 1984-1990 he himself leased the land from the Plaintiff for purposes of cultivation. That he is not aware of any interference of the Plaintiff's occupation by the Defendants. On cross examination he stated that he did not know the family of Nyamweru Mucwe who originally owned the land in 1960s. He informed the Court that he did not know if the Plaintiff bought the suit land or he inherited it. He confessed that he did not know the Defendants either.
5. PW3 – Peter Mbau Muiruri testified and informed the Court that the Plaintiff is his father. That he was born in 1973 on the suit land where he has grown up over the years. He is married and lives on the land with his own family. That the Plaintiff has planted mangoes, avocados, bananas, trees and cultivates subsistence crops on the land. He stated that he is not aware of any claim from the Defendants in respect to the suit land. He testified that the land was inherited by the Plaintiff from Nyamweru Mucwe. He claimed that Nyamweru Mucwe was the Plaintiff's mother. He stated that he did not know Kanuthu Kariuki.
6. DW1 – Josphat Muiruri stated that on 28/3/1961 the suit land was registered in the name of Nyamweru Mucwe and the title was issued on the 3/10/1977. The said Nyamweru Mucwe died in 1965. That her husband Mucwe had died during the second world war and they had one daughter Kanuthu Waweru also known as Kanuthu Mucwe, deceased. It was his evidence that after the demise of Mucwe, the said Nyamweru Mucwe was inherited by Muiruri Gatirho at Maganjo prior to her death in 1965. That upon her demise the estate of the said Nyamweru Mucwe devolved to her daughter Kanuthu Mucwe who had 4 children namely; Peter Ndungu (deceased), Agnes Wanjiru (deceased), Josphat Muiruri (deceased) and Alice Muthoni. That the Defendants are the children of Agnes Wanjiru, deceased. Further he stated that prior to the death of Nyamweru Mucwe she gifted her interest in Loc 17/Kamahuha/229 to the said Agnes Wanjiru, her granddaughter as she was the only unmarried daughter of Kanuthu Kariuki. At that time the Defendants were infants who were raised in an orphanage. He stated that they discovered that the land was gifted to their mother by their great grandmother through an oral will.
7. The witness produced a certificate of confirmation of grant issued on 6/2/2002. Vide the said grant the title Loc 17/Kamahuha/229 was distributed to the Defendants in equal shares. That the Plaintiff has admitted to be the step child of Nyamweru Mucwe and therefore not entitled to title under adverse possession. That his only remedy lies in seeking a revocation of grant issued in Succession Cause No. 282 of 2000.
8. In cross examination by the Plaintiff's counsel the witness stated that the Plaintiff is in occupation of the suit land since 1971 when he was born. He stated that Nyamweru Mucwe was his great grandmother and her grandmother was Kanuthu waweru. He clarified that the Defendants have no relationship with the Plaintiff and that they have never lived on this land.



9. DW2- Mburu Wandangiri stated that the Plaintiff has lived on the suit land since he knew him around 1978 when he moved into the area. He restated the evidence of DW1. He stated that neither the grandmother nor the mother of the Defendants lived on the suit land.
10. Parties filed written submissions which I have read and considered.
11. Having considered the pleadings, the evidence adduced at the hearing and the rival submissions filed by the parties, the following are the issues for determination; Whether the Plaintiff has proved adverse possession; Whether the Plaintiff is a trespasser on the suit land; who pays the costs.
12. Section 7 of the *Limitation of Actions Act* states as follows;

“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.”
13. Section 7 of the *Limitation of Actions Act* states as follows;

“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.”
14. The Court in the case of *Kimani Ruchire vs. Swift Rutherfords & Co. Ltd* (1980) KLR 10 stated;

“....the Plaintiffs have to prove that they have used this land which they claim, as of right, nec vic, nec clam, nec precario.....The possession must be continuous. It must not be broken for any temporary purpose or by any endeavours to interrupt it or by way of recurrent consideration”.
15. In this case the Plaintiff has led evidence to show that he made entry into the land and occupied the same continuously and uninterrupted since 1961. The Defendants have in their Counter-claim stated that the Plaintiff’s entry and/or occupation of the suit land is unauthorized by them or the deceased and sought his eviction. Such an assertion by the Defendants creates a circumstance whereby the nature of occupation described in paragraph 13 above is met. The Plaintiff’s claim for adverse possession is therefore validated. In the Court’s finding the claim of the Plaintiff is merited because he:-
 - (a) since 1961 took possession, occupied and has continuously done so uninterrupted by the Defendants or any person from whom they derive title and the period is in excess of 12 years.
 - (b) The Plaintiff’s occupation and/or possession has always been open to all and sundry and known to the Defendants and/or the person they may derive title from.
 - (c) The Defendants and/or any person from whom they derive title from has not asserted title to the suit land, disposed or sought to dispossess the Plaintiff; and
 - (d) The Plaintiff has not acknowledged the Defendant’s title to the suit land nor handed over possession to the Defendants and/or to the persons they may derive title from.
16. In these circumstances, therefore, the Court finds and holds that adverse possession has satisfactorily been proved.
17. The upshot is that there is judgment for the Plaintiff as prayed in the Plaintiff and the Defendants’ Counter-claim is dismissed with costs.



DELIVERED, DATED AND SIGNED AT MURANG'A THIS 31ST DAY OF OCTOBER 2018.

J G KEMEI

JUDGE

Delivered in open Court in the presence of;

Wambui HB for Kimani for the Plaintiff

Defendants1, 2, 3, 4 - Mbugua HB for Muturi Njoroge for the Defendants

Irene and Njeri, Court Assistants

