



**Nyaga v Mutungo; Ezekia (Interested Party) (Environment & Land Case 228 of 2014) [2024] KEELC 884 (KLR) (24 January 2024) (Judgment)**

Neutral citation: [2024] KEELC 884 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT EMBU  
ENVIRONMENT & LAND CASE 228 OF 2014  
A KANIARU, J  
JANUARY 24, 2024**

**BETWEEN**

**PHYLIS WAIYUWA NYAGA ..... PLAINTIFF**

**AND**

**STEPHEN NGUNGI MUTUNGO ..... DEFENDANT**

**AND**

**ROBERT NJUE EZEKIA ..... INTERESTED PARTY**

**JUDGMENT**

1. The plaintiff herein- Phylis Wayua Nyaga – filed this case here against the defendant–Stephen Ngungi Mugo–vide an Originating Summons dated 12.3.2014 and filed on 11.8.2014. In the summons she claims land parcel No Evurore/Nguthi/1313 as an adverse possessor. The land is registered in the name of the defendant – Stephen Ngungi Mutungo. Later on, another party – Robert Njue Ezekieah – joined the suit as an interested party. The plaintiff would which the court to order that the defendant transfers the land to her failing which the deputy Registrar of the court be authorized to do so. She also wants costs.
2. The defendant responded to the plaintiff’s suit via a replying affidavit dated 27.8.2014 and filed on 28.8.2024. The replying affidavit is essentially a denial of the plaintiff’s suit and the said denial is essentially based on the fact that there have been several cases running in court in respect of that particular parcel of land and some others and the said suits were said to have the effect of stopping or preventing time for adverse possession from running.
3. The interested party on his part opposed the suit mainly on the ground that neither the plaintiff nor the defendant is entitled to own it. According to him, the suit land belonged to his late father and the plaintiff became owner in an illegal manner while the defendant is claiming what is not, or should not, be hers. Like the defendant, he also mentioned that there have been various disputes relating to the land.



4. The court started hearing the matter on 27.4.2022 and the plaintiff's side called three witnesses. Mainly, the evidence of the plaintiff is that she has been on the land since 1977 and that the defendant has never tried to remove her from the land. She talked of having extensively developed the land. She expressed her position that she is entitled to the land as an adverse possessor and she implored the court to find as such.
5. The defendant on the other hand was the only one to testify. He gave a history of several cases that started way back in 1964 and ended sometimes in 2019. The cases were between his Nditi Clan and the plaintiff's Mukera Clan. The defendant's Nditi clan eventually won and that is how the defendant became the registered owner of the land, thus replacing the plaintiff's father in law who was the previous registered owner.
6. The interested was also the only one to testify when his turn to give evidence came. According to him, the land belonged to his late father and should, by extension, belong to him as the living heir. He gave indications of some of the disputes such as objection No 52 of 1975, Minister's Appeal No 1 of 1976, HCC No 165 of 2008, Embu (which also became an appeal at court of Appeal at Nyeri) and ELC JR 49 of 2014, Embu, which was delivered on 14.2.2019. The dispute pitted Mukera clan (from which the plaintiff and interested party hail) and the defendant Nditi Clan.
7. Hearing over, parties filed submissions. The plaintiff's submissions are dated 8.5.2023. She is clear that she should be declared the owner of the land having lived and used it as her own for over 50 years. She is also clear that the defendant has never tried to evict her. She is also further clear that the interested party has no genuine claim against her.
8. The defendant's submission were filed on 14.6.2023. He largely submitted along the lines of his response to the suit. He is clear that the plaintiff has been on the land but he emphasized that he couldn't evict her as there were court cases going on. He said that the cases ended in 2019. According to him, time was not running when the cases were going on. He asked that the plaintiff's case be dismissed and that he be awarded costs. The cases mentioned by the defendant relating to the land are the same cases mentioned by the interested party.
9. The interested party filed submissions on 3.4.2023. He said, or submitted rather, that he has been living on the land. He said that the land was initially registered in the name of his late father – Ezekiah Maruti. He submitted that he has been living on the land since 1942. The plaintiff was said to have been married to his brother from whom she separated and that she had left the land even when the interested party's brother was still alive. She even got married elsewhere and she only came back after the brother died. She came with another husband and settled on the land. Her suit is said to be malicious. She is said to have brought stranger to the land and is now claiming ownership of the same, while disregarding the other beneficiaries entitled to inherit it.
10. According to the interested party, the court should dismiss the plaintiff's claim. It should also cancel the existing title belonging to the plaintiff and revert back the land to the 1<sup>st</sup> registration which showed his late father as the owner.
11. I have considered the pleadings as filed, the evidence tendered during hearing, and the written rival submissions. It is fairly clear that this is a matter that has had a twirling history involving many suits relating to the disputed land. All suits relates to the issue of ownership. The suits have mainly been between the defendant's, Nditi clan and the Plaintiff's and interested partie's Mukera clan. The plaintiff would wish to be seen as an individual who is claiming ownership as such and not as a member of Mukera clan. But it is clear that her late husband was a member of the clan and, by extension, she too was or is a member.



12. It is clear to me that Mukera clan has been losing in a string of cases and it is not therefore surprising when the plaintiff seems reluctant to be associated with it. But even if the plaintiff would wish not to be seen in that light, it is clear that the land she is claiming was originally clan land claimed by both Nditi and Mukera clans, with Nditi clan, of which the defendant belongs, eventually emerging the winner. In fact the defendant is clear that he was allocated the land by his Nditi clan and he replaced as the owner the plaintiff's father in law, who was a member of Mukera clan. The father in law obviously ceased to become owner of the land when Nditi clan won.
13. The court is satisfied that litigation concerning ownership ended in 2019. That being the position, court takes the view that the plaintiff can not be seen as separate from the other members of Mukera clan. The court is also of the view that when litigation was going on, time was not running for adverse possession. No adverse possession therefore has been demonstrated. This case was filed in the year 2014. The disputes relating to ownership were still going on even in the year 2019. The existence of the disputes obviously stopped time from running. No adverse possession can therefore be proved in the circumstances.
14. The interested party also want to be declared or treated as owner of the suit land. First, his approach to the whole issue was wrong. He should not have joined the suit as an interested party if he was claiming ownership. As an interested party, he is peripheral to the matter, with the primary parties being the plaintiff and the defendant. In *Kariuki Muruatetu & Another v Republic and 5 others*; Sup.ct.Pet. 15 and 16 of 2015 (consolidated); [2016] eKLR, the court was emphatic that the primary or principal parties in a case are those who have sued and those who are sued. Third parties admitted as interested parties may only be remotely or indirectly be affected. Further, in *Mumo Matemau Vs Trusted Society of Human Rights Alliance and 5 others*: Civil Appeal No 290 of 2012, the court was also clear that an interested party can not be heard to seek to strike out or dismiss a suit. The cumulative effect of all these pronouncement is that an interested party only has a limited room to wiggle. It is also significant to note that the interested party is claiming the land said to belong to his deceased father. I see no grant from probate and administration court showing him as the legal representative of his later father.
15. The interested party therefore can not be entertained by this court to urge for dismissal of the case or cancellation of title held by the defendant. His claim is dismissed. Ultimately also, the plaintiff is also found to have failed to prove adverse possession. Her case is therefore also dismissed. Costs to the defendant.

**JUDGEMENT DATED, SIGNED AND DELIVERED IN OPEN COURT AT EMBU THIS DAY OF 24<sup>TH</sup> DAY OF JANUARY, 2024.**

Delivered in the presence of;

Andade for Momanyi for defendant

Ndolo K. for Mogusu for plaintiff

Court Assistant - Leadys

**A. KANIARU**

**JUDGE – ELC, EMBU**

\*\*24.1.2024

