



**Njuki v Njoroge (Environment & Land Case 850 of 2007)  
[2024] KEELC 1036 (KLR) (29 February 2024) (Judgment)**

Neutral citation: [2024] KEELC 1036 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 850 OF 2007  
AA OMOLLO, J  
FEBRUARY 29, 2024**

**BETWEEN**

**GEORGE KIMANI NJUKI ..... PLAINTIFF**

**AND**

**HANNAH NJOKI NJOROGE ..... DEFENDANT**

**JUDGMENT**

1. By way of an originating summons dated 1<sup>st</sup> November, 2002, the Plaintiff sued the Defendant seeking to be granted an order:
  - a. Whether or not George Kimani Njuki the Plaintiff is entitled to be registered as the proprietor of one (1) acre out of Dagoretti/Mutuini/268 in place of Hanna Njoki by virtue of section 38 of the *Limitation of Actions Act* on grounds that the Plaintiff has been in continuous open peaceful exclusive uninterrupted possession and use of all that one (1) of land out of Dagoretti/Mutuini/268.
  - b. Which party should costs of the suit.
2. The summons was supported by the grounds listed on its face and the affidavits sworn by the Applicant together with documents annexed to it. In brief, the Applicant deposed that he bought the disputed one (1) acre from the deceased defendant in 1983. He deposed that before the Defendant could transfer the one (1) acre, she was sued by her daughter in-law (Jane) which resulted in the court ordering the 6 ½ acres between Jane 3 acres and 1 ½ acres remained for the Defendant.
3. The Plaintiff deposes that on 4<sup>th</sup> December, 1985 that they jointly applied to the Land Control Board for subdivisions of the suit land into 4 portions which proposed subdivision included the suit one (1) acre. A copy of the said Land Control Board consent was produced in evidence. The Applicant averred that the land was physically subdivided and he was put in possession of the one (1) acre. The Plaintiff stated further that he has been in quiet and peaceful possession of the suit portion from 1983 until 28<sup>th</sup>



- October, 2002 when the Defendant's family accompanied by the local Administration trespassed on to his land and uprooted his fence. This action led to the filing of this suit.
4. Hanna Njoki Njoroge swore a Replying Affidavit dated 9<sup>th</sup> January, 2003 in opposition to the claim. She deposed that Dagoretti/Mutuini/268 had a protracted history dating back to 1958 when she acquired registration into her name. Ms. Njoki stated that the Plaintiff purchased 3 acres from her in 1981 which left a balance of 6 ½ acres of the land. She denied the sale/purchase of the additional one acre. The Defendant averred that she was a stranger to the agreement annexed by the plaintiff as GKN 3 for the sale of the impugned together with the purported sub divisions plan.
  5. According to the Defendant, the Plaintiff purported to get possession of the suit portion one (1) acre in October, 2002 but was stopped by the intervention of the District Officer. She produced Land Control Board consent dated 5<sup>th</sup> November, 2002 which sanctioned who the land was to be transferred to. She concluded by stating that the Plaintiff is not entitled to the reliefs claimed.
  6. The Plaintiff filed a further affidavit sworn on 7<sup>th</sup> February 2003 to contradict the deposition by the Defendant. He deposed that it is the sale of the additional one acre which prompted Jane (daughter in law) to sue the Defendant. That the one acre was sold to him at Kshs 60,000. Subsequent to this sale, the Plaintiff deposes that his share now totalling to 4 acres was demarcated on the ground. He asserts that Mr. Kamau (defendant's son) removed the Plaintiff's fence while Jane (daughter-in-law) removed the structures on the boundary. The Plaintiff annexed proceedings from the elders Tribunal to confirm that the Defendant had sold him land again.
  7. Directions on hearing was given on 24<sup>th</sup> September, 2003 with the Plaintiff giving his evidence on 23<sup>rd</sup> May, 2007. PW said that Hanna Njoki approached him in 1982 with information of selling 3 acres out of the 9 acres in LR Dagoretti/Mutuini/268. He bought 3 acres and his name was included in the title to reflect his 3 acres' interest. He continued that the Defendant again approached him in 1983 to sell him additional one acre, and he paid Kshs 60,000 for it in three instalments.
  8. PW1 avers that the agreement was reduced into writing after he completed payment and they both signed before an advocate. He remembers that a dispute arose between the Defendant and her daughter in law when the daughter in law learnt of the sale of additional one (1) acre.
  9. It is PW's evidence that when purchasing the one acre he called a surveyor who incorporated it with the 3 acres earlier bought. He avers that he uses the one acre for cultivation and has also planted trees on it. That the land was subdivided as agreed and they attended the Dagoretti Land Control Board on 4<sup>th</sup> December, 1985 in the company of Defendant and his son Joseph Kamau Njoroge and the Land Control Board consent was given.
  10. PW posits that there is a Kayapa hedge separating his land from Jane's and that he has planted trees on this edge. She added that the Defendant does not use the disputed one acre. PW1 produced a letter dated 14<sup>th</sup> July, 1988 from the City Council asking them to cancel the previous approval which referred to the 3 acres after they had applied for the new subdivisions. The Plaintiff added that when he purchased the suit portion, neither Jane nor Joseph had built on the land title Mutuini/268. However, they are now settled in their respective portions with the Defendant's house standing on the ½ acre. He said that he has always used the one (1) acre since 1983 and asked the court to grant the reliefs he has sought.
  11. In cross-examination, PW1 said that by 1982, the title was bearing the Defendant's name only. He said there was a sale agreement for the 3 acres. That a Surveyor was called to mark out the land sold but no beacons were put. He was registered as owning 6/19 share in the title LR No 268. That he had misplaced the sale agreement for the one (1) acre. The witness admitted planting a hedge around



- the 3 acres which he said was removed to include the disputed one (1) acre. That he fenced the whole land with poles and planted Kayaplis. That he sought for injunction after the defendant's family threatened his worker and attempted to cut the trees. He denied that Jane had been ploughing the disputed one-acre portion.
12. The plaintiff admitted being summoned by the D. O's Office. That it was after meeting in the DO's Office that the letter dated 24<sup>th</sup> October, 2002 was written (DMFI – 1). He argued that the dispute over the one (1) acre was not taken before the DO but the DO was anxious to implement the court order.
  13. After a lull of over 10 years, the Plaintiff was recalled to the stand on 19<sup>th</sup> December, 2022 to produce additional documents and evidence. The Plaintiff's bundle of documents running to 71 pages was then produced as P.ex 1. He reiterated that there is a road separating this land from Jane's adding added that the subdivision plan at page 17 shows the one acre portion he bought. That his 4 acres is indicated in the letter of consent.
  14. In further cross-examination by Mr. Kihika learned counsel for the Defendant, the Plaintiff said there was an agreement to the 3 acres which agreement appears at number No 4 page 29 on the Defendant's bundle of documents. He asserted that Hanna Njoki did not contest the agreement for the one acre. That he placed the caution dated 25<sup>th</sup> October, 2002 when the deceased and her family lodged a complaint at the D. O's office. That the deceased had obtained Land Control Board consent to transfer the said title which excluded him. The witness was referred to the Land Control Board consent of 4<sup>th</sup> December, 1985 and stated that the subdivision was not completed pursuant to that consent.
  15. He continued in cross-examination that the suit portion was surveyed and everyone knows his boundary. He brought this case because he has been on the land for over 30 years. In re-examination, the Plaintiff said he has never been sued for eviction. That he planted a hedge around the one acre which is still there to date. Further that no one has ever contested the two letters of consent of the Land Control Board. This marked the close of the Plaintiff's case.
  16. Amos Njoroge Kimani gave evidence on behalf of the deceased Defendant. He adopted his witness statement dated 24<sup>th</sup> May, 2023 and the replying affidavit of Hanna Njoki - deceased dated 9<sup>th</sup> January, 2003 as his evidence in support of the defence. He also adopted the statement of Hanna Njoki dated 15<sup>th</sup> March, 2013 together with the witness statement of Jane Wanjugu dated 15<sup>th</sup> March, 2013. The witness produced the documents annexed to the Replying Affidavit as exhibits in support of the defence case.
  17. In the statement of Hanna Njoki, she said of hiving off 3 acres from the suit title and selling it to the Plaintiff in 1981. That Amos Njoroge (this witness) disapproved of the sale and lodged a caution dated 16<sup>th</sup> October, 1981 on the title. That because of the dispute between her and the family, in 1982 she surrendered the original title to the plaintiff without their consent. That Mr. Kimani requested her to accompany him to the Dagoretti Land Control Board which she did. Soon after that, the Plaintiff started construction on his 3 acres portion.
  18. Hanna stated that in October 1982, her family learnt of the matter and caused her to be summoned before the District Officer. After Several meetings, the matter landed in court and in Land case No 29 of 1983, an order was made subdividing the land amongst her family. It was subdivided thus; Jane Kimani 3 acres; Kamau Njoroge 2 acres; Hanna 1 ½ acres.
  19. The deceased posited that the Plaintiff's 5 acre portion was not included in the order and Mr. Kimani fenced off his 3 acres of land. She asserted that all this time, the Plaintiff was still holding the original title to the land. That Mr. Kimani agreed to return the title on condition that she met the cost of survey.



- She decided to bring the matter to a conclusion by inviting the Plaintiff to a meeting with her family but he declined, however he returned the title to her.
20. The Defendant denied any knowledge of the changes the Plaintiff had caused at the Land's Registry by adding his name on the title as holding 6/19 share. She noted that the records at the registry differed with the title the Plaintiff surrendered in this way:
    1. The land certificate showed he owned 4 acres while green card showed he owned 3 acres.
    2. Plaintiff's name on Land Certificate was George Kimani Njuki while the green only had George Kimani.
    3. The land certificate did not bear the Registrar's signature.
    4. Dates on the certificate did not correspond with the green card.
  21. The witness stated that on 25<sup>th</sup> August, 2002, Mr. Kimani trespassed on their 6.5 acres and fenced a portion of it. On 26<sup>th</sup> August, 2002 they reported him to the Chief while some family members proceeded to bring down the fence. When they appeared before the Chief, the Plaintiff claimed he had bought the one acre in 1983 but she denied selling the disputed portion to him. That the matter was escalated to the District Officer and requested Mr. Kimani to sign the application of Land Control Board consent for sub division. Subsequently, this suit was filed.
  22. Miss Jane Wanjugu adopted the statement made by Hanna Njoki – deceased. She added that since the court order of 19<sup>th</sup> March, 1983, she has lived on the land apportioned to her. That she had been in possession even before her husband died and that part of her land consisted of swampy grounds. Mrs. Wanjugu stated that on 25<sup>th</sup> August 2002, Mr. Kimani trespassed on to the swampy area measuring one acre and fenced it off using rough wooden materials. That as a family, they resisted the attempt and brought down the fence.
  23. The DW was cross – examined by Mr. Machira learned counsel for the Plaintiff and she stated of being aware that the Plaintiff's name was entered in the register having purchased 3 acres in 1981 and which he is in possession off. DW admitted that currently the Plaintiff occupies 4 acres but he is supposed to occupy 3 acres. That the one acre disputed is not fenced. That they tried to stop him from interfering but he refused. The witness asserted that the sale agreement dated 15<sup>th</sup> November, 1983 is save. He denied that the Plaintiff has been in occupation since 1984.
  24. Mr. Njoroge further denied that Hanna signed the document at page 8 of the Plaintiff's bundle. He insisted that the one acre was not sold because the District Officer stopped everything. In re-examination, DW stated that his grandmother did not acknowledge selling one acre to the Plaintiff. That the agreement allowed the Plaintiff to demand for specific performance but he did not take that step. That entry on the disputed portion is only from August 2002. This marked the close of the Defendants case.
  25. Parties filed their respective written submissions which I have read and considered. The issue for determination is whether the Plaintiff has demonstrated a case for adverse possession over the impugned one acre. It is established in statute and case law that a right to action accrue on certain terms. Section 13(1) of the *Limitation of Actions Act* states;

“ 13

- (1) A right of action to recover land does not accrue unless the land is in the possession of some person in whose favour the period of



limitation can run (which possession is in this Act referred to as adverse possession), and, where under sections 9, 10, 11 and 12 of this Act a right of action to recover land accrues on a certain date and no person is in adverse possession on that date, a right of action does not accrue unless and until some person takes adverse possession of the land.”

26. In particular, the case of *Wambugu v Njuguna* where it was held thus:

“In order to acquire by the statute of limitations 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 of which he intended to use it.”

And that:

“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 of the requisite number of years.”

27. In this case before court, the parties are aware about the size of land in dispute to be one acre. This is found in the statements of the Plaintiff, Hanna Njoki (deceased) and Jane Wambugu (deceased). The Defendant claims that the trespass on to this portion look place on 25<sup>th</sup> August 2002 and not earlier as alleged by the Plaintiff. This narrows down what I am called to determine whether the time when the plaintiff took possession has condensed into a right by operation of law.
28. To prove that, he took possession in 1984, the Plaintiff produced several documents, inter alia, a sale agreement dated 15<sup>th</sup> November, 1983 executed between him and Hanna Njoki. The Defence witness said that his grandmother did not sign this documents but did nothing to formally challenge the signature as appearing on the said agreement. The Plaintiff also referred to the proceedings before the Provincial Administration where Mrs. Jane Wambugu had sued Hanna Njoki for a stake in this land. Jane stated that she had been chased away by Hanna Njoki – deceased in 1973. One year later, she learnt that Hanna was selling part of the land. She sent elders to ask her to stop but Hanna declined and the sale passed through.
29. The Plaintiff relied on the statement by Jane that “I heard again that Njoki was selling another part of the shamba. I was advised by the Chief to bring the matter to the panel of elders under the District Officer Dagoretti”. The plaintiff had earlier explained that the sale of the one acre had commenced earlier and the agreement was only drawn when he made the payment in full. Mrs Jane Wambugu in her complaint told the elders panel that the sale which had passed through the Land Control Board was for 3 acres.
30. The admission of sale of the 3 acres was not disputed and this is confirmed by the finding of the elders when sharing the remaining 6.5 acres of LR Dagoretti/Mutuini/628 between Jane Kamau and Hanna Njoki. The Plaintiff claims the one acre was to be hived of the 1.5 acres retained by Hanna Njoki. To further support his entitlement of the one acre, the Plaintiff produced the proposed subdivision plans signed by both Hanna-deceased and himself which clearly separated the 4 acres (3 +1) at page 20 of his documents.



31. In the letter of consent dated 4<sup>th</sup> December, 1985 for Dagoretti/Mutuini/268 it consented the subdivision of the suit land in the ratio of 3:2:0.50:4 acres. From the decision of the panel of elders and the Magistrates court, the Defendants family had been given 3 acres to Jane and 2 acres to Kamau. One can thus presume that the 4 acres belonged to the Plaintiff. The defendants did not present any evidence to contradict the validity of this letter of consent. The same applies to the letter of consent dated 8<sup>th</sup> June, 1994 which consented to the subdivision into 3 portions of;
- a. 3 acres; 2 acres; ½ acre.
  - b. 4 acres into 6 portions
32. Thus, on the face of the documents, the Plaintiff has demonstrated his interest on the disputed one acre to has been running from November, 1983 and not October 2002 as alleged by the Defendant. In fact, it appears that it was the action of selling the land again to the Plaintiff which infuriated the daughter in law to sue Hanna Njoki. Mrs. Wanjugu did not attach any document to her statement that showed the one acre formed part of her 3 acres. The documents presented on behalf of the defendant have not contradicted the evidence on the nature of possession as presented by the Plaintiff. I am therefore satisfied that the Plaintiff has proved his case.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 29<sup>TH</sup> DAY OF FEBRUARY, 2024**

**A. OMOLLO**

**JUDGE**

