



Kuria & 3 others v Nyakinyua Investment Limited & 3 others (Civil Suit E13 of 2022) [2025] KEELC 941 (KLR) (27 February 2025) (Judgment)

Neutral citation: [2025] KEELC 941 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
CIVIL SUIT E13 OF 2022
JM ONYANGO, J
FEBRUARY 27, 2025**

BETWEEN

**SIMON WAWERU KURIA 1ST PLAINTIFF
LOICE WAMBUI KURIA 2ND PLAINTIFF
PENINAHWANJIRU KURIA 3RD PLAINTIFF
ALICE NGENDO KURIA 4TH PLAINTIFF**

AND

**NYAKINYUA INVESTMENT LIMITED 1ST DEFENDANT
LYDIA WANGUI KAMOTHO 2ND DEFENDANT
ABRAHAM MBUGUA MBURU 3RD DEFENDANT
LAND REGISTRAR RUIRU 4TH DEFENDANT**

JUDGMENT

1. The Plaintiffs commenced this suit by way of Originating Summons (O.S) dated 6th April 2022 amended on 16th January 2024 seeking a determination of the following questions:
 - a. Whether a permanent injunction ought to issue restraining the 1st, 2nd and 3rd Defendants either by themselves or any other person claiming under them or their authority from alienating, selling, disposing of, utilizing, developing or in any way or manner dealing with the land and title over all that property known as Ruiru/Ruiru East Block 2/1013 in any manner whatsoever.
 - b. Whether an order and declaration ought to issue that the Plaintiffs having been in continuous, open and uninterrupted possession of Ruiru/Ruiru East Block 2/1013 should be and are



hereby entitled to be registered as proprietors of Ruiru/Ruiru East Block 2/1013 in place of the Defendant.

- c. Whether the Defendant's claim and title to Ruiru/Ruiru East Block 2/1013 should be deemed to have been extinguished by limitation of time through adverse possession of the said title by the Plaintiffs.
 - d. An order that the 4th Defendant revoke the certificate of title for Ruiru/Ruiru East Block 2/1013 issued to the 1st, 2nd and 3rd Defendants within thirty (30) days of the date of such order.
 - e. Whether the 4th Defendant should transfer to the Plaintiffs Ruiru/Ruiru East Block 2/1013 within (30) days of the date of such order.
 - f. Whether upon failure by the 4th Defendant to transfer the title to Ruiru/Ruiru East Block 2/1013 to the Plaintiffs as so ordered, the Deputy Registrar of this court should execute all documents necessary for such transfer to be effected at the lands Registry and any processing costs be met by the Plaintiffs.
 - g. Whether the costs of this suit should be provided for.
 - h. Abandoned on 19th December, 2023.
2. The O.S is supported by the Affidavit of Simon Waweru Kuria, the 1st Plaintiff herein sworn on 12th January 2024. He deponed that his deceased parents (John Kuria Waweru and Margaret Wambui Kuria) resided on Ruiru/Ruiru East Block 2/1013 (hereinafter referred to as "the suit property") as their home. It was his further deposition that him and Loice Wambui Kuria, Peninah Wanjiru Kuria and Alice Ngendo Kuria (the 2nd, 3rd and 4th Plaintiffs) who are his siblings were all born while their parents lived on the suit property in 1975, 1983, 1975 and 1978 respectively. He added that they continued living on the suit property, even upon the death of their parents. It was his contention that him and the 2nd, 3rd and 4th Plaintiffs had lived and exercised proprietary rights over the suit property even though they had not seen the title documents to the same.
 3. The 1st Plaintiff averred that sometime in November 2021, he visited the Survey Office and the Kiambu Lands Office where he discovered that the suit property was registered in the name of the 1st Defendant as the first entry in the Green Card. He further averred that upon conducting an official search, he discovered that the suit property had been transferred and was registered in the name of the 2nd and 3rd Defendants. He deposed that they were neither licensees nor had there been any such understanding between them with either the Defendants or anyone prior to their occupation of the suit property.
 4. It was his contention that they had developed the suit property, lived with their families thereon and raised their children who were born while they occupied the suit property. He added that they had even developed networks with their neighbours. He stated that they have been in open, continuous, active, physical as well as constructive possession of the suit property without any force for the last 39 years. He further stated that despite being aware of their presence on the suit property, the Defendants had never taken any steps to interrupt or disturb their peaceful occupation of the suit property. He urged the court to determine that Section 38 of the Limitations of Actions Act on the doctrine of adverse possession applies in the circumstances of this case. He added that the defendants' claim to the suit property stood extinguished at the lapse of 12 years by virtue of the doctrine of adverse possession.
 5. Annexed to the 1st Plaintiff's Supporting Affidavit is a copy of the proprietorship section of the title deed to the suit property marked 'SWK – 4b.



6. Despite service of the pleadings in this suit, the 1st Defendant neither filed a response nor participated in the suit.
7. On 5th December 2023, upon the court's (Eboso J) realization that the land registry was holding duplicate land registers to the suit property, showing that the 2nd and 3rd Defendants were the registered proprietors, the court directed that they be enjoined in the suit. The court also directed that service be effected upon them by way of substituted service through the newspaper.. Despite being served through the Daily Nation Newspaper of 23rd January 2024, the 2nd, 3rd and 4th Defendants neither entered an appearance nor filed a response to the suit and on 24th July 2024 the court (Eboso J) directed that the suit would proceed by way of viva voce evidence.

Plaintiffs' Evidence

8. On 27th January 2025 the matter came up for formal proof hearing and the 1st Plaintiff, Simon Waweru Kuria, testified as PW1. He testified that he was a driver living in Juja within Kiambu County, and relied on his Supporting Affidavit sworn on 12th January 2024, as his evidence in chief. He stated that the 2nd, 3rd and 4th Plaintiffs were his sisters. It was his testimony that they were claiming the suit property because they had been living on it since 1988. He stated that his late father constructed a house on the suit property in 1988 and that they had been living on the suit property as a family together with the 3rd Defendant since then. He further stated that his father died in 1993 while his mother died in 1998.
9. PW1 testified that nobody had ever laid a claim on the suit property since they started living on it. He stated that other than the house built by his late father he and his sister Peninah Wanjiru Kuria (the 3rd Plaintiff) had also built houses on the suit property which measured approximately one acre. He added that they cultivated a portion of the suit property where they grew subsistence crops.
10. It was his testimony that he conducted an official search in 2014 through which he discovered that the suit property was registered in the name of the 1st Defendant. Later on, after filing this case, he obtained a copy of the Green Card to the suit property through which he discovered that the suit property had been transferred to the 2nd Defendant on 9th November 2015 and later to the 3rd Defendant on 23rd May 2016. He denied that the suit property had ever been subdivided as indicated in the Green Card. He added that the 3rd Defendant had never claimed the suit property from them.
11. He prayed that the 3rd Defendant's title to the suit property be cancelled and that him and the 2nd, 3rd and 4th Plaintiffs be registered as the owners of the suit property by virtue of adverse possession. He produced the documents in his list of documents dated 14th July 2022 and the Supplementary list of documents dated 20th April 2023.
12. After PW1's testimony, the Plaintiffs' case was closed. Counsel for the Plaintiffs filed written submissions dated 17th February 2025.

Analysis and Determination

13. From the pleadings and the evidence adduced, this court frames the following question for determination;



Whether the Plaintiffs have met the threshold for grant of orders of adverse possession

14. The definition of adverse possession was given by the Court of Appeal in *Mtana Lewa vs Kahindi Ngala Mwangandi* (2015) eKLR where Makhandia, JA stated as follows:

“Adverse possession is essentially a situation where a person takes possession of land and asserts rights over it and the person having title to it omits or neglects to take action against such person in assertion of his title for a certain period, in Kenya is twelve (12) years. The process springs into action essentially by default or inaction of the owner. The essential prerequisites being that the possession of the adverse possessor is neither by force of stealth nor under the licence of the owner. It must be adequate in continuity, in publicity and in extent to show that possession is adverse to the title owner.”

15. A claim for adverse possession is founded under the *Limitation of Actions Act*, Cap. 22 Laws of Kenya, which at Section 7 provides as follows;

“7. 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.”

16. Section 13 of the same Act is also of relevance and provides as follows;

“1) A right of action to recover land does not 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 Section 9, 10, 11, and 12 a right of action to recover land accrues on a certain date and no person is in adverse on that date, a right of action does not accrue unless and until some person takes adverse possession of the land.

2) Where a right of action to recover land has accrued and thereafter, before the right is barred, the land ceases to be in adverse possession, the right of action is no longer taken to have accrued, and a fresh right of action does not accrue unless and until some person again takes adverse possession of the land.

3) For the purposes of this section, receipt of rent under a lease by a person wrongfully claiming, in accordance with Section 12(3), the land in reversion is taken to be adverse possession of the land”.

17. Finally, Section 38 of the Act allows a claimant to apply to Court for orders of adverse possession and provides that:

“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.”

18. In order for the Plaintiffs to acquire title to the suit property by way of adverse possession, they must first prove non-permissive or non-consensual actual, open, notorious, exclusive and adverse use of it by them for the statutorily prescribed period of 12 years without interruption. This was the finding



of the Court of Appeal in Mombasa, in the case of Mombasa Teachers Co-operative Savings & Credit Society Limited v Robert Muhambi Katana & 15 others [2018] eKLR, where the court held that:-

- “ 18. Likewise, it is settled that a person seeking to acquire title to land by of adverse possession must prove non permissive or non-consensual, actual open, notorious, exclusive and adverse use/occupation of the land in question for an uninterrupted period of 12 years as espoused in the Latin maxim, nec vi nec clam nec precario. See *Jandu vs. Kirplal & Another* (1975) EA 225. In other words, a party relying on the doctrine bears the burden of demonstrating that the title holder has lost his/her right to the land either by being dispossessed of it or having discontinued his possession of it for the aforementioned statutory period. See this Court’s decision in *Wambugu vs. Njuguna* [1983] KLR 173.”
19. The Plaintiffs have indicated that they had been living on the suit property together with their parents and the 3rd Defendant since 1988. It is not clear whether the 3rd Defendant is their relative or the circumstances under which he was living with them. The Plaintiffs added that even after the death of their father and mother in 1993 and 1998 respectively, they continued residing on the suit property where they had built their homes and were residing with their families.
20. The list of documents dated 14th July 2022 contains a valuation report on the suit property and photographs showing a permanent house and a farm area proving the fact of possession or occupation by the Plaintiffs.
21. A perusal of the documents contained in the supplementary list of documents dated 20th April 2023 shows that there are two parallel registers held by the Ruiru Land Registry relating to the suit property. One of the registers indicates that a title deed was issued to the 1st Defendant on 23rd October 2014 and later a transfer was registered in the name of the 2nd Defendant and a title deed was issued thereof. On 6th January 2016, the title was closed on subdivision and new numbers issued being 19247 – 19262. It is not clear in whose names the new title numbers are registered.
22. The second register indicates that the 1st Defendant was registered as the proprietor of the suit property on 23rd May 2016 and on the same day it was transferred to the 3rd Defendant and a title deed was issued.
23. Even though the 4th Defendant was served with the pleadings in this suit, they never responded or participated in the proceedings. The Land Registrar is best placed to explain the existence of the two registers and their authenticity. The Plaintiff ought to have gone an extra mile to have the Land Registrar Ruiru summoned to attend court so as to shed light on the current ownership of the suit property.
24. Even though the court finds that the Plaintiffs have demonstrated that they have been in open, peaceful and uninterrupted stay on the suit property for a period of more than 12 years, the court is unable to determine who the lawful registered owner of the suit property is based on the evidence tendered by the Plaintiffs. In the circumstances, the court cannot grant the reliefs sought.
25. Consequently, it is my finding that the Plaintiffs have not proved their case on a balance of probabilities. Accordingly, I find that the suit lacks merit and is therefore dismissed. I make no order as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 27TH DAY OF FEBRUARY 2025.

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J. M ONYANGO



JUDGE

In the presence of:

Mr Obado for Ms Morara for the Plaintiff

Court Assistant: Hinga

