



REPUBLIC OF KENYA



**KENYA LAW**  
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**Njagi v Gitau (Environment & Land Case 480 of 2014)  
[2015] KEELC 849 (KLR) (11 March 2015) (Ruling)**

*Stephen Karugo Njagi v Jane Wanjiku Gitau [2015] eKLR*

Neutral citation: [2015] KEELC 849 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT & LAND CASE 480 OF 2014**

**M SILA, J**

**MARCH 11, 2015**

**BETWEEN**

**STEPHEN KARUGO NJAGI ..... PLAINTIFF**

**AND**

**JANE WANJIKU GITAU ..... DEFENDANT**

**RULING**

(Application for injunction; applicant suing for adverse possession; suit filed in 2013; land being registered under SFT up to 2010, period when land under SFT not capable of being computed; period for claim for adverse possession not attained; previous suit by respondent for eviction having succeeded before filing this suit; no quiet possession established; application dismissed with costs).

1. The application before me is that dated 20 November 2013 filed by the plaintiff on 20 November 2014. The application is brought inter alia under the provisions of Order 40 Rule 2. It is an application seeking orders of injunction to restrain the defendant from evicting, trespassing, selling, invading, disposing, transferring or in any manner whatsoever dealing with 2½ acres of land contained in the land parcel Nyandarua/Mawingo/603 (the suit land). The application is supported by the affidavit of the plaintiff and is opposed by the defendant who has filed a replying affidavit.
2. Before I go to the gist of the application, I think it is best that I give a little background to this suit. The suit was instituted on 25 July 2013 by way of Originating Summons taken out pursuant to the provisions of Order 36 Rule 3 of the Civil Procedure Rules. The case of the applicant (whom I will also refer to as the plaintiff) is that he has acquired by way of adverse possession, 2 ½ acres of the suit land. In the supporting affidavit to the Originating Summons (OS), the plaintiff deposed that on 5 February 1987, he purchased 2 acres of the disputed land from the defendant's mother, one Miriam Njeri Njuguna (now deceased) for Kshs. 16,000/= which money he paid in two installments. On 8



March 1996, he entered into a second agreement, now with the defendant, for the sale of ½ acre at a consideration of Kshs. 27,000/= which he also paid in full. It is said that this ½ acre was sold so as to enable the defendant obtain funds to file a succession cause for the estate of her late mother. He took possession of the 2 acres in 1987 and the other ½ acre in 1996, constructed a house, tilled and cultivated the land. It is his case that he has been in quiet uninterrupted possession for a period in excess of 12 years. It is deposed that the land could not be transferred to the plaintiff because it was still held by the Settlement Fund Trustees (SFT) and there were outstanding loans. It is said that when the defendant cleared the loan in the year 2010, she failed to transfer the 2 ½ acres to the plaintiff, but instead, rushed to court and filed the suit Nyahururu SPM Civil Suit No. 201 of 2010 against the applicant. The land is now registered in the name of the defendant. It is averred that this suit proceeded without the applicant filing any defence and interlocutory judgment was entered against her. Her efforts to set aside the judgment came to naught as her advocate did not appear to prosecute the application to set aside the judgment. All the same she has deposed that she has always been in continued occupation of the suit land and thus she is entitled to the same by way of adverse possession.

3. In the supporting affidavit to the subject application, the plaintiff has averred that on 10 November 2011, (probably meant 2014), the defendant came with police officers and some other person and started demolishing her house, cow shed and other structures. It is contended that these actions are meant to defeat her claim herein.
4. In the Replying Affidavit to this application, the defendant has deposed inter alia that the SFT has been the registered owners until 30 March 2010 when the land was transferred to the defendant. It is contended that the period when the SFT were registered as proprietors cannot be computed in favour of the plaintiff to support her claim for adverse possession. It is further contended that the plaintiff only took possession in the year 2009 and that in the year 2010, the respondent filed the suit Nyahururu SPM Civil Case No. 201 of 2010 which was heard and determined in favour of the respondent. It is averred that the said judgment still subsists. It is stated that on 10 June 2014, the Nyahururu Court issued a warrant to give vacant possession and the said warrants were executed on 10 November 2014 by a court bailiff who proceeded to evict the applicant.
5. At the hearing of the application, Ms. Muthoni for the applicant urged me to allow the application whereas Mr. Komu for the respondent was of the opinion that the application ought to be dismissed.
6. I have considered the application. Being an application for injunction, the principles laid down in the case of *Giella v Cassman Brown* (1973) EA 358 do apply. To entitle the applicant to an order of injunction, this court needs to be convinced that a prima facie case with a probability of success has been laid out, and further that irreparable loss may be occasioned to the applicant. If in doubt, the court will decide the matter on a balance of convenience.
7. In assessing whether a prima facie case has been laid out, I inevitably need to make a preliminary assessment of the plaintiff's case. The case, as may be noted, is one for adverse possession. In order to succeed in a claim for adverse possession, one needs to demonstrate quiet, uninterrupted possession for a period of 12 years. This must also be accompanied by the necessary animus possidendi. The case of the plaintiff, is that he took possession of 2 ½ acres of land claimed through purchase, in the years 1987 and 1996. On the face of it, upto 2013 when this case was filed, it would seem that this was a period in excess of 12 years. However, the period when the SFT was registered cannot be computed (see case of *Gitu V Ndungu* (2001) 2 EA 379). The SFT was proprietor of the suit land upto 30 March 2010. Thus time could only start running in favour of the plaintiff from this day, and it will be noted that 12 years could not have lapsed when the suit was filed. It follows that prima facie, the plaintiff has not accumulated the 12 years required to sustain a claim for adverse possession.



8. Moreover, the possession of the plaintiff cannot be said to be quiet. The defendant had filed suit for her eviction in the Magistrate's Court at Nyahururu in Civil Suit No. 201 filed in the year 2010. This suit was filed 3 years before the applicant sought orders of adverse possession. Judgment in the matter was read on 3 December 2010. That judgment has never been set aside. It cannot therefore be said that the plaintiff has had quiet occupation of the suit land. In fact, the eviction that prompted this application was being done in execution of the decree of the suit in the Magistrate's Court.
9. It is my view therefore that the plaintiff has failed to demonstrate to this court a prima facie case with a probability of success. I have no option but to dismiss this application with costs.

It is so ordered.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT NAKURU THIS 11TH DAY OF MARCH 2015.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT AND LAND COURT AT NAKURU**

In the presence of : -

Mbugua & Co adv. for plaintiff

No appearance for M/S Karanja Mbugua & Co adv. for plaintiff

No appearance for M/s Nderitu Komu & Co for defendant

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT AND LAND COURT AT NAKURU**

