



REPUBLIC OF KENYA



**Karanja v Wachira (Environment & Land Case 26 of 2023)
[2024] KEELC 4703 (KLR) (7 March 2024) (Judgment)**

Neutral citation: [2024] KEELC 4703 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA
ENVIRONMENT & LAND CASE 26 OF 2023**

YM ANGIMA, J

MARCH 7, 2024

BETWEEN

JOSEPH KIARAGANA KARANJA PLAINTIFF

AND

MARY NYAGUTHI WACHIRA DEFENDANT

(Formerly Nyabururu ELCOS No. E009 Of 2023)

JUDGMENT

A. Plaintiff's Claim

1. By an originating summons dated May 9, 2023 expressed to be based upon Sections 1A, 1B & 3A of the [Civil Procedure Act](#), Order 37 rule 7 of the [Civil Procedure Rules](#), 2010 and Section 38 of the [Limitation of Actions Act](#) and all other enabling provisions of the law, the Plaintiff sought the following reliefs:
 - a. Spent;
 - b. Spent;
 - c. Spent;
 - d. That the Plaintiff has become entitled by adverse possession to all that parcel of land known as L.R. No. Nyandarua/Ol Joro Orok West/3558 measuring approximately 0.101 Ha.
 - e. That the Plaintiff be registered as the proprietor of all that parcel of land known as L.R. No. Nyandarua/Ol Joro Orok West/3558 measuring approximately 0.101 Ha in place of the Defendant.
 - f. That this honourable court be pleased to grant an order of permanent injunction restraining the Defendant/respondent either by herself, her agents, servants and/or any person acting at her behest from, entering and trespassing, ploughing, evicting the Plaintiff, disposing of and/



or in any way interfering with the Plaintiff's quiet occupation and enjoyment of all that Land Parcel No. L.R. No. Nyandarua/OlJoro Orok West/3558 measuring approximately 0.101 Ha.

- g. That the O.C.S. Ngano Police Station be directed and/or ordered to enforce, implement and/or otherwise oversee compliance with the orders of this Honourable Court.
 - h. That the costs of this application be provided for.
2. The originating summons was based upon the grounds set out on the face thereof and the contents of the supporting affidavit sworn by the Plaintiff on May 9, 2023 together with the annexures thereto. The Plaintiff pleaded that he had been in open, continuous and exclusive possession and occupation of the suit property for a period exceeding 12 years without any interruption from the Defendant who was the registered owner thereof. He pleaded that he entered the suit property in 2004 pursuant to a sale agreement with the Defendant dated April 11, 2003 and upon payment of the full purchase price. He contended that he developed the suit property by building a dwelling house and settled thereon with his wife and children. It was his contention that he had acquired the suit property through the doctrine of adverse possession.

B. Defendant's Response

3. There is no indication on record of the Defendant having filed a replying affidavit or answer to the originating summons. She, however, filed a witness statement dated June 30, 2023 disputing the Plaintiff's claim for adverse possession and the court shall treat the same as her answer to the summons. The Defendant denied ever selling the suit property to the Plaintiff as alleged or at all and contended that the sale agreement dated April 11, 2003 was a forgery. She denied being party to the sale transaction and stated that, in any event, the parcel number from which the plot was to be excised was not indicated or specified in the purported agreement.
4. The Defendant contended that she had only allowed the Plaintiff to settle on the suit property on humanitarian grounds since he had been chased away from his previous residence. It was her case that she only allowed the Plaintiff to occupy the suit property on temporary basis until he found alternative land of his own. She denied that the Plaintiff had made out a case for adverse possession and contended that the dispute had previously been referred to the Assistant County Commissioner who had ordered the sale agreement to be referred to the Directorate of Criminal Investigation (DCI) for verification. She consequently prayed for dismissal of the Plaintiff's claim for adverse possession.

C. Trial of the Suit

5. When the originating summons came up for directions it was directed that it shall be canvassed through oral and documentary evidence. The parties were granted timelines within which to file and exchange their respective trial bundles in preparation for hearing. The court also directed that the obtaining status quo be maintained pending the hearing and determination of the suit.
6. At the trial hereof, the Plaintiff testified on his own behalf and called one additional witness in support of his claim. He adopted the contents of his supporting affidavit sworn on May 9, 2023 as his evidence in-chief and produced the annexures thereto as exhibits P1 – P11 respectively. The second witness similarly adopted his witness statement dated 26.07.2023 as his evidence in-chief. His evidence was to the effect that he was present when the Plaintiff purchased the suit property from the Defendant and that the Plaintiff had been possession for over 15 years.
7. The Defendant, on the other hand, testified on her own behalf as the sole witness. She adopted the contents of her witness statement dated 30.06.2023 as her evidence in-chief. She denied having sold



the suit property to the Plaintiff and contended that she had only allowed him to settle on the land for a short period of time on humanitarian grounds. It was her evidence that she had never sought the Plaintiff's eviction from the suit property and that she had no problem with his continued occupation as long as he did not obtain a title to the property. She also accused the Plaintiff and his witness of having stolen her national Identity Card in order to grab her property.

D. Directions on Submissions

8. Upon conclusion of the trial, the parties were given timelines within which to file and exchange their respective submissions. The record shows that the Plaintiff's submissions were filed on or about December 11, 2023 but the Defendant's submissions were not on record by the time of preparation of the judgment.

E. Issues for determination

9. The court has considered perused the pleadings, the evidence and documents on record in this matter and is of the opinion that the following are the key issues which arise for determination herein:
 - a. Whether the Plaintiff has proved his claim for adverse possession to the required standard.
 - b. Whether the Plaintiff is entitled to the reliefs sought in the suit.
 - c. Who shall bear costs of the suit.

F. Analysis and Determination

a. Whether the Plaintiff has proved his claim for adverse possession to the required standard

10. The court has considered the material and submissions on record on this issue. The court shall not deal with the validity or genuineness of the sale agreement dated April 11, 2003 since the originating summons is not a claim for enforcement of the agreement. By filing the instant summons, the Plaintiff has implicitly acknowledged that the Defendant is the owner of the suit property. His contention is that she has lost her right to seek recovery of the same due to effluxion of time hence he has acquired the same through the doctrine of adverse possession. As a consequence, nothing would really turn on the validity or otherwise of the disputed sale agreement except, perhaps, giving indication as to when the Plaintiff may have entered the suit property.
11. The elements of adverse possession were summarized in the case of *Kasuve v Mwaani Investments Ltd & 4 Others* [2004] 1KLR 184 as follows:

“...and in order to be entitled to land by adverse possession, the claimant must prove that he has been in exclusive possession of the land openly and as of right and without interruption for a period of 12 years either after dispossession of the owner or by the discontinuation of possession by the owner on his own volition, *Wanja v Sakwa No.2* [1984] KLR 284. A title by adverse possession can be acquired under the *Limitation of Actions Act* for part of the land...”
12. Similarly, in the case of *Chevron (K) Limited v Harrison Charo Wa Shutu* [2016] eKLR it was held, inter alia, that:

“At the expiration of the twelve-year period the proprietor's title will be extinguished by operation of the law and section 38 of the *Act* permits the adverse possessor to apply to the High Court for an order that he be registered as the proprietor of the land. Therefore



the critical period for the determination whether possession was adverse is 12 years and the burden is on the person claiming to be entitled to the land by adverse possession to prove, not only the period but also that his possession was without the true owner's permission, that the owner was dispossessed or discontinued his possession of the land, that the adverse possessor has done acts on the land which are inconsistent with the owner's enjoyment of the soil for the purpose for which he intended to use it. See *Littledale v Liverpool College* (1900)1 Ch.19, 21.”

13. The court has considered the Plaintiff's evidence on when he entered the suit property. The court has also considered the evidence of PW2 who testified that he had known the Plaintiff for a very long period of time and that the Plaintiff had been in possession of the suit property for over 15 years prior to the filing of the instant suit.
14. The Defendant, on the other hand, although claiming that the sale agreement of 2003 was a complete forgery contended that the Plaintiff was on the suit property for a temporary period and on humanitarian grounds. She testified that she could not remember the year when the Plaintiff took possession or for how long he had been in occupation. She acknowledged that the Plaintiff had fenced the land, built a dwelling house and settled thereon. She conceded that the Plaintiff was keeping livestock thereon but she was not sure whether or not he cultivated the land.
15. According to the Defendant, she sub-divided her land solely for the purpose of distributing it to her grandchildren and not because she had sold any portion to the Plaintiff. She did not, however, explain why she would allow a person whom she believed had forged a sale agreement in order to defraud her to continue residing on her land.
16. The court has also considered the Defendant's allegation that the Assistant County Commissioner had referred the sale agreement dated 11.04.2003 to the DCI for verification of the alleged forgery. In a bid to lend credence to that allegation, the Defendant attached a letter dated December 19, 2022 from the Assistant County Commissioner Gathanji Division addressed to the District Land Registrar – Nyandarua County in the following terms:

“Re: Caution – Land Reg. No. Nyandarua/ol

Joro-orok West/3558

The above-named parcel of land is located in Ngano Sub-Location, Ngano Location area of my jurisdiction. It's registered under the name of Mary Nyaguthi Wachira.

Mr. Joseph Kiaragana Karanja of Id. No.(Particulara withheld) had purchased the said parcel in 2003 but Ms. Mary Nyaguthii has declined to sign the transfer documents to facilitate processing of the title deed.

I therefore request caution/restriction against the named parcel until the matter is resolved.

Signed by:

Mark O. Okemwa

Assistant County Commissioner

Gathanji Division”



17. Clearly, that letter does not support the Defendant's contention of referral of the alleged forgery to the DCI for investigation. It was simply a letter requesting for registration of a restriction against the suit property because of the alleged failure by the Defendant to transfer the same to the purchaser. The Defendant was simply not a candid and truthful witness.
18. The court is inclined to believe and accept the Plaintiff's evidence that he has been in occupation of the suit property since 2004 and that he had fenced and developed the same over the years as evidenced by construction of a dwelling house and rearing of livestock. The court accepts the Plaintiff's evidence that he has enjoyed open, continuous and exclusive possession of the suit property for a period exceeding 12 years without any interruption from the Defendant. There was no evidence on record to demonstrate that the Defendant had either made an effective entry into the suit property or filed a suit for recovery thereof.
19. The court does not accept the Defendant's contention that the Plaintiff has been in occupation on a temporary basis for humanitarian reasons. The Defendant did not call any other witness such as a relative or neighbour to corroborate her benevolent gesture of permitting the Plaintiff to occupy her land on humanitarian grounds. The court finds it strange that Plaintiff has been in occupation for nearly 20 years whereas the Defendant claimed to have allowed him to occupy it for a 'short' period of time while he looked for alternative land. A period of 20 years cannot be considered a short period by any standards. The court is thus satisfied that the Plaintiff has proved his claim for adverse possession of the suit property on a balance of probabilities.

b. Whether the Plaintiff is entitled to the reliefs sought in the suit

20. The court has already found and held that the Plaintiff has proved his claim for adverse possession to the required standard. It would, therefore, follow that the Plaintiff is entitled to the reliefs necessary to vest the suit property in him. The court is, however, not inclined to grant the permanent injunction sought since there is no evidence on record to demonstrate that the Defendant has taken any steps or threatened to take any steps to interfere with the Plaintiff's occupation or use of the suit property. On the contrary, the Plaintiff's own supporting affidavit was to the effect that the Defendant has never interfered with his occupation. The Defendant's evidence at the trial was also to the effect that she had lived side by side with the Plaintiff for many years in a peaceful manner.

c. Who shall bear costs of the suit

21. Although costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the proviso to Section 27 of the *Civil Procedure Act* (Cap 21). A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise. See *Hussein Janmohamed & Sons v Twentsche Overseas Trading Co. Ltd* [1967] EA 287. The court finds no good reason why the successful party should not be awarded costs of the suit. As a consequence, the Plaintiff shall be awarded costs of the suit to be borne by the Defendant.

G. Conclusion and Disposal Orders

22. The upshot of the foregoing is that the court finds and holds that the Plaintiff has proved his claim for adverse possession on a balance of probabilities. As a result, the court makes the following orders for disposal of the originating summons dated May 9, 2023:
 - a. A declaration be and is hereby made that the Plaintiff, Joseph Kiaragana Karanja, has become entitled to be registered as proprietor of Title No Nyandarua/OI Joro Orok/3558 on account of the doctrine of adverse possession.



- b. The Land Registrar – Nyandarua County shall cause the Plaintiff, Joseph Kiaragana Karanja, to be registered as proprietor of Title No. Nyandarua/Ol Joro Orok West/3558 in place of Mary Nyaguthi Wachira on account of the doctrine of adverse possession.
- c. The Defendant is hereby directed to sign all forms, documents and instruments to facilitate the transfer of the suit property to the Plaintiff within 21 days from the date hereof in default of which the Deputy Registrar of the court shall do so on her behalf.
- d. The Land Registrar – Nyandarua County shall dispense with the production of the original title deed for the suit property and all documents in the possession, custody and control of the Defendant while transferring the suit property to the Plaintiff.
- e. Any reliefs sought in the originating summons which have not been granted are deemed to have been denied.
- f. The Plaintiff is awarded costs of the suit to be borne by the Defendant.

It is so decided.

JUDGMENT DATED AND SIGNED AT NYANDARUA THIS 7TH DAY OF MARCH, 2024 AND DELIVERED VIA MICROSOFT TEAMS PLATFORM.

In the presence of:

Ms. Njuguna holding brief for Ms. Kimani for the Plaintiff

Defendant – present in person

C/A - Carol

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Y. M. ANGIMA

JUDGE

