



REPUBLIC OF KENYA



**Warui v Wanjohi & another (Environment & Land Case E002 of 2022)
[2025] KEELC 847 (KLR) (27 February 2025) (Judgment)**

Neutral citation: [2025] KEELC 847 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT & LAND CASE E002 OF 2022**

JO OLOLA, J

FEBRUARY 27, 2025

**IN THE MATTER OF: APPLICATION BY CHRISTOPHER MUCHOMBA WARUI TO
BE DECLARED ENTITLED TO 1.5 ACRES OUT OF LR. KONYU BARICHO/2388**

BETWEEN

CHRISTOPHER MUCHOMBA WARUI PLAINTIFF

AND

JENNIFER NJERI WANJOHI 1ST DEFENDANT

FRANCIS WACHIRA MAINA 2ND DEFENDANT

JUDGMENT

Background

1. By an Originating Summons dated 25th November 2022, Christopher Muchomba Warui (the Plaintiff) prays for a determination of the following issues:
 - i. Whether the Plaintiff has become entitled to parcel of land measuring 1.5 acres out of LR. No. Konyu/Baricho/2388;
 - ii. Whether the Defendants' title to 1.5 acres out of LR. No. Konyu/Baricho/2388 has been extinguished by the Plaintiff's adverse possession from the time the Plaintiff purchased and took possession;
 - iii. Whether an order should be issued to the Land Registrar, Nyeri County to cancel the name of the 2nd Defendant as the sole proprietor of L.R. No. Konyu/Baricho/2388 and instead have the Plaintiff's share of 1.5 acres portioned and registered in the Plaintiff's name;



- iv. Whether the Acquisition by the 2nd Defendant of L.R. No. Konyu/Baricho/2388 was innocent and without notice that the Plaintiff was in exclusive possession of the parcel of the land; and
 - v. Whether the Plaintiff should be granted costs of this summons.
2. The Originating Summons is supported by two Affidavits sworn by the Plaintiff wherein he asserts that on 8th November, 1995, he did purchase the said portion measuring 1.5 acres from one Abraham Mbuthia Muriithi who was then the registered proprietor of L.R. No. Konyu/Baricho/2388. It is the Plaintiff's case that since the said purchase, he has been in exclusive possession of his portion wherein he plants coffee and food crops.
 3. The Plaintiff asserts that the said Abraham Mbuthia Muriithi passed on before they completed the sale transaction and he was taken by surprise on 20th November, 2022 when he came to learn that the 2nd Defendant was the registered proprietor of L.R. No. Konyu/Baricho/2388.
 4. Jennifer Njeri Wanjohi and Francis Wachira Maina (the 1st and 2nd Defendants respectively) are opposed to the Plaintiff's claim. In her Replying Affidavit sworn on 19th December, 2022, the 1st Defendant avers that she knows the Plaintiff as they have continually engaged in multiple litigations concerning among others, the original suit land known as L.R. No. Konyu/Baricho/154 and the resultant sub-divisions since 1995. She denies that the Plaintiff has been in occupation of the Suitland or any part thereof.
 5. The 1st Defendant avers that she has been in continuous occupation of the land until the time she transferred the same to the 2nd Defendant. The 1st Defendant asserts that the Plaintiff has been in occupation of a different parcel of land that was transferred to himself by the said Abraham Mbuthia.
 6. On his part, the 2nd Defendant avers that he acquired the entire land known as Konyu/Baricho/2388 after entering into a Sale Agreement with the 1st Defendant. The 2nd Defendant avers that prior to the sale transaction he had carried out due diligence on the property and found no adverse claims to the 1st Defendant's title. He asserted that he thereafter inspected the suit land and was satisfied that there were no encumbrances or inhibitions thereon and there were no third parties in occupation of the land.
 7. The 2nd Defendant avers that after the sale transaction, he took physical possession of the suit land, fenced the same and erected a dwelling house thereon. He denies that the Plaintiff occupies any portion of the suit land as alleged or at all.

Analysis and Determination

8. At the trial herein, the Plaintiff testified as the sole witness in his case. The two Defendants equally testified as the sole witnesses in support of their respective cases.
9. I have carefully perused and considered the pleadings filed herein, the testimonies of the witnesses as well as the evidence adduced at the trial. I have similarly perused and considered the submissions and authorities placed before the court by the Learned Advocates representing the parties herein.
10. By this Originating Summons, the Plaintiff urges the court to determine that he has become entitled to a portion of land measuring 1.5 acres which portion is part of the parcel of land known as Konyu/Baricho/2388 registered in the name of the 2nd Defendant, under the doctrine of adverse possession. The Plaintiff also wants the court to determine that the acquisition of the said parcel of land by the 2nd Defendant was not innocent as the 2nd Defendant had notice of the Plaintiff's exclusive possession of the portion measuring 1.5 acres.



11. As was stated in *Kasuve –vs- Mwaani Investment Ltd. & 4 Others* (2004) eKLR.

“...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.”
12. Dealing with a similar matter in *Mtana Lewa –vs- Kahindi Ngala Mwamgandi* (2015) eKLR, the Court of Appeal held thus:

“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 owners, the essential prerequisite being that the possession of the adverse possessor is neither by force or 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.”
13. In support of his case, the Plaintiff told the court that he did purchase the portion of land that he claims on 8th November, 1995 from one Abraham Mbuthia Muriithi who was then the registered proprietor of the parcel of land known as L.R. No. Konyu/Baricho/2388. It was the Plaintiff’s case that from a search he did conduct on 21st December, 2020, the said Abraham was registered as the proprietor of the suit land on 23rd May 1995.
14. The Plaintiff told the court that he took possession of the 1.5 acres after it was surveyed on the ground awaiting completion of the sale transaction. He told the court he had planted 400 coffee plants which were now mature together with other subsistence crops. Unfortunately, according to the Plaintiff, the said Abraham passed away before the sale was completed. He told the court that on 20th November, 2022, he was surprised to learn that the ownership of the land had changed and that the 2nd Respondent had since become the registered proprietor of the said L.R. No. Konyu/Baricho/2388.
15. From the material placed before the court, it was difficult to believe the Plaintiff’s contention that he became surprised in the year 2022 to learn that the ownership of the property had changed hands. By his own admission, some 20 years earlier he was charged with a criminal offence alongside the same Abraham Mbuthia Muriithi in Karatina Resident Magistrates Court Criminal Case No. 61 of 2000, Republic –vs- Abraham Mbuthia Muriithi and Christopher Muchomba Warui.
16. The Proceedings from the said case as produced by the 1st Defendant demonstrate that the two accused persons were charged with various offences among them conspiracy to defraud, forgery, uttering of false documents and obtaining land registration by false pretences in relation to the parcel of land known as Konyu/Baricho/154. From the material placed before the court, it was the sub-division of the said L.R. No. Konyu/Baricho/154 which resulted into L.R. No. Konyu/Baricho/2388 and other parcels of land not being the subject hereof.
17. Acknowledging the existence of the said case, in his Further Affidavit sworn on 13th January, 2023, the Plaintiff avers that in as much as he was charged in the Criminal matter, the court made a finding that if there was any fraud, the Plaintiff was not a party to the same. While it is true that the Plaintiff was not convicted of the offences, a perusal of the said proceedings reveal clearly that the court found that there was fraud involved in the registration and sub-division of the said parcel No. 154 which was at



the time in the name of Abraham's late grandmother one Jedidah Kabecha Mathenge. The court went on to find that Abraham was guilty of the said fraud and proceeded to convict him accordingly.

18. Given those circumstances, I was unable to find any reason why the Plaintiff based much of his case on the alleged sale of the portion of land from someone who had been convicted for obtaining documents in relation to the title fraudulently. Abraham had no valid title to transact with the Plaintiff and he could therefore not transfer any proprietary interest thereon to the Plaintiff.
19. Going by his pleadings as filed before the court, it was evident that the Plaintiff was asserting that the registration of the 1st Defendant as the proprietor of the suit property was fraudulent or suspect. From the material placed before the court however, it was apparent that before they were charged with the Criminal Offence in the year 2000, the 1st Defendant had been registered as the proprietor of the suit property on 18th May, 1998. The Green Card produced in court corroborates this fact.
20. While the Plaintiff contends that a survey was done on the portion of land measuring 1.5 acres before he took possession thereof, there was neither any evidence of the survey nor anything to demonstrate that he had taken possession of that portion and dispossessed the 1st Defendant thereof. In the absence of any survey report, it was difficult to see how the Plaintiff had come to the conclusion that he was in possession of 1.5 acres of the land.
21. In support of his position that he had been in exclusive possession of the land, the Plaintiff produced photos of what he described as about 400 mature coffee trees which he claimed to have planted on the suit land. He did not produce a single document to demonstrate that there was coffee grown on the disputed portion of the land or that the said coffee was ever harvested and taken to any coffee processing factory.
22. In the circumstances herein, there was absolutely no proof that the Plaintiff has been in exclusive possession of the land he claims openly and as of right without interruption from any quarters. On the contrary, the 1st Defendant had demonstrated that she had remained in possession of the land from the time the same was registered in her name in the year 1998 until when she sold the same to the 2nd Defendant on 20th June, 2022. Given the very fact that the Plaintiff's case was that the Defendants had obtained registration as proprietors of the suit property fraudulently, I was unable to see how his claim for adverse possession could be sustained.
23. In the premises, I was not persuaded that the Plaintiff had acquired any portion of the suit property under the doctrine of adverse possession.
24. This suit is accordingly dismissed with costs to the Defendants.

JUDGMENT DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 27TH DAY OF FEBRUARY, 2025

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J.O. OLOLA

JUDGE

In the presence of:

- a. Ms. Firdaus Court Assistant.
- b. No Appearance for the Plaintiff
- c. Mr. Nderi Advocate for the Defendants

