



REPUBLIC OF KENYA



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Karanja & 9 others (Suing on Their Behalf and on the Behalf of All Persons with Structures and Developments on Title No. Nairobi Block 72/282) v Kigutha Development Limited; Mugumoini Southlands Kijiji Self Help Group c/o Its Members : Kabiru & 10 others (Interested Parties) (Environment & Land Case 409 of 2010) [2025] KEELC 287 (KLR) (30 January 2025) (Judgment)

Neutral citation: [2025] KEELC 287 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 409 OF 2010
LC KOMINGOI, J
JANUARY 30, 2025

BETWEEN

JOSEPH KARANJA 1ST PLAINTIFF
JOSEPH BORO GATHUKIA 2ND PLAINTIFF
JAMES KASIA MITHUNGA 3RD PLAINTIFF
ESTHER WAIRIMU WAMBUGU 4TH PLAINTIFF
LAURENT GACHERA MWEGA 5TH PLAINTIFF
TOM OBONYO ONYANGO 6TH PLAINTIFF
ALICE MARJORIE YOBERA 7TH PLAINTIFF
VIRGINIA WAMBUI KIBUI 8TH PLAINTIFF
JAMES KIPRONO NGETICH 9TH PLAINTIFF
STEPHEN KIMANI WAWERU 10TH PLAINTIFF
**SUING ON THEIR BEHALF AND ON THE BEHALF OF ALL PERSONS WITH
STRUCTURES AND DEVELOPMENTS ON TITLE NO. NAIROBI BLOCK
72/282**

AND

KIGUTHA DEVELOPMENT LIMITED DEFENDANT

AND

**MUGUMOINI SOUTHLANDS KIJJI SELF HELP GROUP C/O ITS
MEMBERS JOSEPH MATHENGE KABIRU INTERESTED PARTY**
GEOFFREY MBUGUA KARIUKI INTERESTED PARTY



CHRISTOPHER MUGAMBI	INTERESTED PARTY
DAVID WANGIGI MWANGI	INTERESTED PARTY
DAVID GITHUKA	INTERESTED PARTY
JOSPHAT NJERU MATI	INTERESTED PARTY
JOSPHAT KANGETHE	INTERESTED PARTY
GEORGE MAINA THEURI	INTERESTED PARTY
LAURENT GACHERA MWEGA	INTERESTED PARTY
JOSPHAT MUGAMBI IGUNA	INTERESTED PARTY
RICHARD KIARIE MUGAMBI	INTERESTED PARTY

JUDGMENT

1. By way of Originating Summons dated September 3, 2010 brought under Section 37 and 38 of the *Limitation of Actions Act*, Section 3A of the *Civil Procedure Act* and other enabling provisions, the Plaintiffs seek:
 - i. A declaration that the plaintiffs are entitled to be registered forthwith as owners of L.R No. Nairobi/Block 72/282 which the plaintiffs have been in adverse possession since 1975 to date for more than 12 (twelve) years immediately preceding the presentation of this suit and, on which they have lived openly and continuously as of right and in adverse possession and without any interruption from the Defendant or its predecessors in the above title and that the Defendant's title to parcel L.R No. Nairobi/Block 72/282 has been extinguished in favour of the plaintiffs under section 37 and 38 of the *Limitation of Actions Act* Laws of Kenya.
 - ii. An order for permanent injunction be issued restraining the defendant, its employees, servants, agents, or any person claiming through him from evicting the plaintiffs from the parcel of land known as L.R No. Nairobi/Block 72/282 (suit land) or from fencing the suit land or interfering with the plaintiffs possession of the same or alienating transferring, disposing and/or dealing with the suit land in any manner whatsoever.
 - iii. An order for costs and interest thereon of this Suit.
2. The 1st Plaintiff Joseph Karanja Wachira in his Supporting Affidavit dated 3rd September 2010 claims that he together with the other Plaintiffs occupied property Nairobi/Block 72/282 between the year 1975 and 1976, and put up structures thereon. At this time, the property was unoccupied. They resided thereon until sometime in 1995 and 1996 when a group of youthful men approached them and informed them that the Defendant had issued them with an oral notice to vacate the suit land. They continued residing on the land and in the year 2010 they carries out a search and confirmed that the suit land was registered in the Defendant's name. That same year, they were approached by other gentlemen who once again asked them to vacate the property and suggested that the people who had structures on the suit land would be compensated. The Plaintiffs however refused to vacate on grounds that they had acquired proprietary interests of the land by way of adverse possession.
3. The Defendant in the Replying Affidavit dated 3rd April 2019 sworn by Firoz A. G. Nanji contested the Plaintiffs allegations claiming that on 9th June 1977 the Defendant was allotted the suit land by the Commissioner of Lands to develop residential flats and maisonettes in line with the Ngei Estate



Development Plan. He stated that when the development of the property began, the Defendant's surveyors discovered that the Development plan used to allocate this property to the Defendant was different from the adjacent properties. This was brought to the attention of the Commissioner of Lands vide a letter dated 19th January 1978 and on 3rd March 1978 the Commissioner of Lands issued the Defendant with a new allotment letter for new neighbourhood D measuring 4.202 hectares. The Defendant accepted this new allotment subject to the removal of squatters who were on this land as well as delineation of a road connecting Lang'ata to the property. And on this understanding, the Defendant was issued a title deed dated 27th June 1979 for property known as Nairobi/Block 72/282 under a 99 year lease from 1st July 1977.

4. The Defendant then began the process of seeking development approvals such as subdivisions, lighting, water, road works and surface water drainage. However, by this time the Commissioner of Lands had not evicted squatters and in 1986, the Defendant took it upon himself to evict the squatters. He went on to aver that sometime in the year 1988 the development stalled and resumed in 1995 whereby the Defendant once again evicted the squatters. The evictions consequently went on in 2002, 2003 and 2010.
5. Therefore, the Plaintiffs were never in uninterrupted continuous occupation of the suit property for over 12 years as claimed. Adding that they had not proven that their occupation of the suit property had dispossessed the Defendant his land. He added that the Defendant had attempted to settle the matter amicably but the Plaintiffs declined to vacate asking for Kshs. 50,000 per household as compensation translating to Kshs. 200,000,000 for the 4,000 households on the property. Therefore, the Plaintiffs as well as their servants, agents, or nominees should be ordered to vacate the suit property and the suit be dismissed with costs to the Defendant.

Evidence of the Plaintiffs

6. PW1 Joseph Boro Gathuka, the 2nd Plaintiff, adopted his witness statement as part of his evidence in this case. He stated that he together with the other Plaintiffs entered and started residing on the suit property sometime in the 1970. At that time it was vacant and belonged to the County Council of Nairobi. He also stated that sometime in 1986 some houses were demolished but they were never evicted adding that they were also never evicted in 1995, 1996 or 2002. However, some shops which were constructed on the road reserve were demolished. It is his case that they are entitled to registration of the suit property as theirs.
7. On cross examination he stated that he moved into the suit land in the year 1970 after he was advised by his friend. He confirmed that in 1995 they were asked to vacate but they did not. He confirmed that 1996 some houses were demolished with a view to evicting them from the suit property. Some residents were moved to other places such as Kibera and Mathare. However, in 2003 there were no demolitions undertaken or eviction notices issued. He went on to state that Mugumoini Association was founded in 1997 with an aim of getting members titles to the suit property or alternative land to settle on. He confirmed that at one time, they met one of the Defendant's representatives who asked them to get alternative land and gave them Kshs. 20,000 for that purpose, but they neither got a alternative land nor vacated the suit property. He stated that while there were over 20,000 people on the suit property, he was in court on behalf of about 400 people. He went on to state that the Interested parties were no longer residents at the suit property as they have relocated.
8. On re-examination he stated that there are people of the Nubian decent who had also occupied the suit property but were relocated. He reiterated that while the population on the suit land was about 20,000 most of them were tenants of the 400 owners of the structures on the land.



9. PW2 Joseph Karanja Wachira, the 1st Plaintiff adopted his witness statement and supplementary witness statement as part of his evidence. He testified that he started residing on the suit land in 1975 knowing that it was Government land and the Defendant was allotted the land in 1977 while they were already on it. In 1986 some houses in the neighbouring land were demolished and in 1995 there were talks of evictions and that is when the association was formed to fight for the rights of the residents.
10. On cross examination he stated that he had fifteen houses on the suit property which he had leased out. He stated that the suit was brought on behalf of people who had structures on the land pointing out that PW1 had six structures on the land. He confirmed that some houses were demolished in 1986. In 1995 and 1996 there were talks about evictions but they were never evicted. In 2002 some shops which were on the road reserve were demolished and in 2010 they were issued with notices to vacate which resulted to the filing of this suit. He confirmed that the Interested Parties were both owners of structures on the suit property as well as tenants. He also indicated that sometime in the year 1986 there were talks of the residents on the suit property being resettled and at some point in early years, a representative of the Defendant gave them Kshs. 20,000 to look for alternative land which they did not get.
11. On re-examination he stated that they were in Court on behalf of people who had structures on the suit land whom they were aware of and could be identified.

Evidence of the Defendant

12. DW1 Firoz A. G. Nanji, a Director of the Defendant adopted his replying Affidavit as his evidence and produced the documents which were marked as D. Exhibit 1 to 18. He prayed that the Plaintiffs' suit be dismissed and an eviction order issued against them.
13. On cross-examination, he stated that they were allocated the suit property on 9th June 1977 and another allotment dated 19th January 1978 for unsurveyed plots A and D. He stated that when he first visited the suit property there were no people on it. The second time he visited the property was in 1979, when he found a few destitute people on it. Sometime in 1986 the few squatters on the land were evicted with the help of the Provincial Administration and the land remained vacant until sometime between 1990 and 1992 when the squatters moved back to the land. He stated that the intention was to construct houses but this was not possible owing to the presence of the squatters on the land. He stated that they still had plans to develop it. He also stated that the squatters were transient and kept changing and they wanted them evicted from the land.
14. On re-examination he stated that in the year 1986 the squatters were evicted but they went back to the land. In 1995 and 1996 there were other attempts to evict them and in the year 2002 and 2003 eviction notices were issued. However, between the year 2003 and 2010 the Defendant tried to resolve the issue amicably but no settlement was reached.

Evidence of the Interested Parties

15. Geoffrey Mbugua Kariuki a businessman and resident at the suit property testifying on behalf of the interested parties adopted his witness statement. He also adopted the witness statements of the other residents. He stated that he started residing on the suit property in the year 1980 and had never been asked to vacate the suit property.
16. On cross examination he stated that he did not have authority to file the suit because the group was registered on 1st August 2011 after the suit had been filed. He also confirmed that two of the persons on the list of Interested Parties have since passed away and had not been substituted with



their beneficiaries. He confirmed that he together with the other Interested Parties owned structures on the suit property which they had leased out to other people. He confirmed that as much as they heard that they were going to be evicted from the suit property, no actual evictions had taken place. Further that the only demolitions that occurred were of the shops that were on the road reserve. He went on to confirm that the group wanted to buy the suit property from the Defendant and met one of the Directors on 4th May 2017. He also confirmed that the 10th Interested Party was the Defendant's caretaker and had informed them that the land belonged to the Defendant. However, the land was allocated to the Defendant while they were residing on it.

17. At the close of the oral testimonies, parties tendered final written submissions.

The Plaintiff's Submissions

18. They are dated 19th May 2023. Counsel for the Plaintiffs submitted that from the Defendant's evidence, they had been allocated a different piece of land but were re-allocated the suit land subject to removal of the squatters thereon. However, they have never taken possession of the property due to the squatters presence. The Defendant also indicated that they had never filed a suit against the Plaintiffs to obtain possession of the property. Therefore, guided by the case of *Tools and Paints Hardware Ltd vs Ramco Hardware Ltd [2010] eKLR* the Plaintiffs had proved that they were in actual; open and continuous; exclusive; hostile and uninterrupted possession of the suit property for over 12 years. Counsel submitted that it was not in contention that when the Defendant was allocated the suit property in the year 1978, the Plaintiffs were already in possession and have continued occupying the same ever since. Even in the year 1986 when some structures were demolished, they rebuilt and continued residing thereon. Similarly, the Defendant had equally not filed a counterclaim seeking eviction of the Plaintiffs and the period of their presence continued to run and they should thus be granted the prayers sought.
19. Counsel went on to submit that this being a representative suit, it was covered by provisions of Order 1 Rule 8 of the Civil Procedure Rules and should judgement be entered as prayed then Section 34 of the Civil Procedure Rules would be applicable for purposes of execution.

The Defendant's Submissions

20. They are dated 10th July 2023. Counsel for the Defendant submitted that the Commissioner of Lands allotted the suit land to the Defendant in 1977 to develop residential flats and maisonettes in line with the development of the Ngei Estate. However, the Director of Surveys realised that the development plan used to allocate land to the Defendant was different from other adjacent properties and thus allotted a new parcel of land on 3rd March 1978 which the Defendant accepted subject to removal of the squatters from the land. The Commissioner failed to carry out the evictions although the Defendant undertook several activities on the property such as connecting water, electricity, making roads etc. In 1986 the Defendant sought to evict the Plaintiffs to make the property attractive to potential investors. This was done but after a few years they went back and in 1995 the Defendant carried another eviction after it received an offer to sell the land with vacant possession. However, over the years the squatters would always find a way of going back to the suit property and over the years both parties tried arriving at an amicable solution unsuccessfully. He submitted that the Plaintiffs' witnesses had also acknowledged the evictions as well as attempted evictions over the years.
21. Therefore, on whether the Plaintiffs have established their claim for adverse possession against the Defendant, counsel submitted that time could not start running before the land was allocated to a person whom adverse possession is claimed against. In this case, the suit property became registered to the defendant on 27th June 1979 and that is where time started running citing the Court of



Appeal Titus Kigoro Munyi vs Peter Mburu Kmani [2015] adding that the Plaintiffs could not claim occupation of public land citing Mtana Lewa vs Kahindi Ngala Mwangandi [2015] eKLR.

22. On whether the Plaintiffs' possession was quiet, uninterrupted and continuous, counsel submitted that on several occasions in 1986, 1995, 1996, 2002, 2003 and 2010 their occupation was interrupted through evictions or attempted evictions although they kept going back to the suit property. And this was equally acknowledged by the Plaintiffs. Therefore, this possession was neither quiet nor uninterrupted citing Gabriel Mbui vs Mukindia Maranya [1993] eKLR.
23. On whether the Plaintiffs occupation was without Defendant's consent, counsel submitted that a claim for adverse possession could not succeed if the person asserting the claim was in possession with the owner's permissions citing Samuel Miki Waweru vs Jane Njeri Richu [2007] eKLR. Stating that from the year 1996 the Defendant allowed the Plaintiffs to continue residing on the suit property as acknowledged by the Plaintiffs witness statements. The Defendant then tried to have an amicable settlement with the Plaintiffs in 2010 which led to their filing of this suit.
24. On whether the Plaintiffs had met the threshold for a representative suit, counsel submitted that it had not because the Daily Nation Newspaper advertisement dated 18th June 2013 did not meet the requirements of Order 8 Rule 1 of the Civil Procedure Rules or the format espoused in Rose Florence Wanjiru vs Standard Chartered Bank of Kenya Ltd & 2 others [2014] eKLR. Counsel added that it was on record that some of the parties in the suit were no longer residing on the suit property and they could therefore not demonstrate the issue of continuous possession. It was therefore hard for the Court to establish the authenticity of this ownership claim. The court had also not been given evidence of how the suit property would be distributed amongst the alleged squatters and thus any orders issued would not only be amorphous but a breach of peace and the net effect is the squatters should be evicted with costs to the Defendant.

The Interested Parties' submissions

25. They are dated 30th June 2023. Counsel for the Interested Parties submitted that the Plaintiffs were not being honest in their submissions by stating that the Interested Parties never filed a formal application to join the suit while they joined through the Gazette advertisement adding that the Defendant claim on the suit property was time barred.

Analysis and Determination

26. I have considered the pleadings, the evidence on record, the written submissions and the authorities cited and find that the issues for determination are:
 - i. Whether the Plaintiffs have established their claim for adverse possession against the Defendant;
 - ii. Whether the Plaintiffs are entitled to the reliefs sought;
 - iii. Who should bear costs of this suit?
27. The Plaintiffs have approached this Honourable Court seeking to be registered as legal owners of property Nairobi/Block 72/282 registered in the Defendant's name, by dint of adverse possession. They claim that have been residing on the suit property since the 1970s. Section 13(1) of the Limitation of Actions Act provides that: "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)..."



28. In the case of *Kimani Ruchire & Another Vs. Swift Rutherford Co. Limited & Another* (1977) KLR 10 (Kneller J) stated as follows at page 16;

“The Plaintiffs have to prove that they have used the land which they claim as of right, nec vi nec clam, nec precario (no force no secrecy no evasion) The possession must be continuous. It must not be broken for any temporary purposes or by any endeavours to interrupt it or by any recurrent consideration”.

29. Similarly in the case of *Wambugu Vs. Njuguna* (1983) KLR 172 the court stated as follows;

“First 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 entails acts which are inconsistent with his enjoyment of the soil and for the purpose for which he intended to use it. The *Limitation of Actions Act* (Cap 22) on adverse possession contemplates two concepts; dispossession and discontinuance of possession. The proper way of assessing proof of adverse possession would then be whether or not the title holder has been disposes or has discontinued possession for the statutory period and not whether or not the claimant has proved that he has been in possession for the requisite number of years”.

30. It is on record that the Defendant was initially allocated a portion of land which was different from the suit property. However, this was changed when it was discovered that the initial plot was in a different locality and their development plan could not be approved by the Director of Surveys. To remedy this, the Commissioner of Lands, on 3rd March 1978 proposed to allocate the Defendant another parcel of land. By the letter dated 23rd March 1978, the Defendant accepted the new allotment subject to removal of the squatters from the new site. Therefore, it is on record that at the time this land was allocated to the Defendant, the squatters’ presence was evident. I am in agreement with Counsel for the Defendant that time against the Defendant started running when the suit property was registered in their favour which as per evidence adduced was on 27th June 1979.

31. Was this occupation with the Defendant’s permission and known to the Defendant? Yes. When the suit land was allocated to the Defendant, the Defendant acknowledged the squatters presence which was without their permission. In the letter in 1978, the Defendant had asked that the squatters be removed from the land.

32. Was this possession uninterrupted? The Plaintiff annexed a letter dated 24th January 1986 which indicates that on 18th January 1986 their shelters were demolished and they had been promised an alternative settlement which was yet to be done. It is therefore not in contention that in the year 1986, there were attempts to evict the squatters and as such there is evidence of interruption of their possession. The Plaintiffs’ witness statements acknowledged that in 1995 and 1996 they were given eviction notices by some youths although actual demolition never took place. Once again, this shows that their possession was not peaceful and uninterrupted. The Plaintiffs went on to indicate in their witness statements that sometime in 1996 the Defendant visited the suit property and he gave them permission to continue residing on the suit property until further notice. Part of the evidence produced by the Plaintiffs is a letter dated 27th March 2002 from the Commissioner of Lands making reference to the Plaintiffs letter dated 15th May 1999. The Commissioner indicated that parcel Nairobi/Block 72/282 was private property which was not available for allocation to them. In 2003, the Defendant sought the help of the Provincial Commissioner to evict the squatters on the suit property and on 18th



January 2004 the District Officer Kibera Office wrote to the Plaintiffs issuing them with an eviction notice to vacate from the suit property which was private land. Once again, the Commissioner of Lands in his letters dated 30th June 2006 and 12th June 2009 reiterated that the suit property was not available for allocation to the squatters. It is therefore on record that from the year 1996, the Plaintiffs were aware of the prevailing circumstances of their looming eviction from the suit land which belonged to the Defendant. The Court of Appeal in *Wilson Kazungu Katana & 101 others v Salim Abdalla Bakshwein & Ali Abdalla Bakshwein* [2015] KECA 728 (KLR) held: "...the possession must not be broken, or any endeavours to interrupt it." Therefore, as held by the Court of Appeal in *Richard Wefwafwa Songoi v Ben Munyifwa Songoi* [2020] KECA 942 (KLR) it is proper to state that their possession was not peaceful:

"36. For a claim founded on adverse possession to succeed, the person in possession must have a peaceful and uninterrupted user of the land. Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are important factors in a claim for adverse possession."

33. Adverse possession being dispossession of land from its owner, the Court has a duty to ensure that the rightful owner is dispossessed of their land in the clearest of circumstances. I find that this Court is called upon to ensure that all persons should enjoy their fundamental rights and freedoms without breaching the rights of others. This is a case where the Plaintiffs unfortunately want to reap where they did not sow. A case where an owner of the land has been curtailed from utilising it while trying to eject people who have staked claim on his property. While, the same people have now utilized the same property for business ventures. This was confirmed by PW2 and the Interested Parties' witness that they own structures on the suit property which they have leased out to tenants. The Court of Appeal in *Mtana Lewa v Kahindi Ngala Mwangandi* [2015] eKLR held: "... the Constitution further dictates in Article 24 (2) that any statute limiting a right or fundamental freedom should be clear about the right or freedom being curtailed and specifically express such intention as well as the nature and extent of the limitation for it to be valid. For the avoidance of doubt, the framers of the Constitution included a list of rights and freedoms which may not be limited notwithstanding any provisions of the Constitution. These absolute rights are set out in Article 25. It is instructive that the right to property is not one of them. This then leaves the protection of the right to property within the precincts of allowable limitations by the statute..."
34. I agree with the Defendant's submissions that the Defendant attempted to evict the trespassers in 1986, 1995, 2003 and 2008 which the Plaintiffs/Interested Parties admitted but despite these numerous attempts the trespassers, subsequently returned to the land while other defied the instructions to leave.
35. The Defendant even sought the help of the police to assist with the evictions as shown in the letter dated 5th March 2003 addressed to the Provincial Commissioner Nairobi Area.
36. It is on record that the Defendant accommodated the interests of the Plaintiffs/Interested Parties by allowing them to remain on the suit property. There was a further attempted eviction in 2010 but the Plaintiffs and the Interested Parties declined to leave. As recently as when this trial had been concluded, the parties attempted a court of court settlement which never bore fruit. The Plaintiffs and the Interested Parties were allowed to remain on the suit property pending the settlement.
37. In conclusion, I am unable to find that the Defendant had been dispossessed of the suit property. PW1 Joseph Boro Gathukia admitted that the Defendant's representative gave each of them Kshs.20,000/= to facilitate them to look for alternative land but they did not.
38. The Plaintiff and the Interested Parties have failed to prove their case on a balance of probabilities.



39. The suit is hereby dismissed. The Defendant is at liberty to use lawful means to evict the Plaintiffs and Interested Parties. I order each party to bear own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 30TH DAY OF JANUARY 2025.

L. KOMINGOI

JUDGE

In the presence of:

N/A for the Plaintiffs.

N/A for the Defendant.

N/A for the Interested Parties.

Court Assistant – Mutisya.

