



**Nteere v Marangu (Environment & Land Case E003 of 2021)
[2024] KEELC 4446 (KLR) (29 May 2024) (Judgment)**

Neutral citation: [2024] KEELC 4446 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE E003 OF 2021**

CK NZILI, J

MAY 29, 2024

BETWEEN

JANET KATHURE NTEERE PLAINTIFF

AND

DANIEL GIKUNDA MARANGU DEFENDANT

JUDGMENT

1. The plaintiff brought this suit, claiming that she has occupied and developed LR No Kibirichia/Kibirichia/6775 for over 12 years at the exclusion of the registered owner, who is the defendant, and now wants the court to declare that she is entitled to be the owner on account of adverse possession.
2. At the hearing, Janet Kathure Nteere, the plaintiff, testified as PW1 and adopted the supporting affidavit to her originating summons and a witness statement, all dated 24.2.2022, as her evidence in chief. She told the court that she has been in occupation and possession of LR No Kibirichia/Kibirichia/6775, a subdivision of LR No Kibirichia/Kibirichia/3966, where she has made substantial developments, including extensive subsistence farming as per photographs attached to it, with the knowledge of the registered owner. To buttress her claim, PW1 relied on a copy of records, official search, certificate, and photographs as P. Exh No (1), (2), & (3) (a) & (b).
3. In cross-examination, PW1 told the court that other than tilling the land, she has not erected any buildings on the suit land and that her activities therein are within the knowledge of not only the defendant, but his entire family members. Further, PW1 said that initially, she came into her land as a purchaser in 2001 and cleared the final payment in 2003 for half an acre of the land. PW1 said that the transaction was also witnessed by the defendant's wife, Catherine, and her children, Mercy Gacheri and Muriuki.
4. The plaintiff denied the contents of the replying affidavit of Festus Kiambi Marete that there was a sale agreement with her late father in 2005. As to Peter Gatobu Ikunda, her brother, PW1, said that he



was dealing with a completely different transaction from her claim and that the defendant was not a party to it. PW1 said that the issue then was some Kshs 7000/=, following an alleged forest to produce destruction by the defendant. PW1 said that she placed a caution on the land after the defendant failed to transfer the land in 2019. She said that even after prevailing upon her to lift the caution, the defendant reneged on the transfer after they had attended a land control board and instead made a transfer to someone else despite her occupation of the land.

5. Jacob Karani M'Mbui and John Mutwiri testified as PW2 and PW3, adopting their witness statements dated 24.2.2024 as their evidence in chief. PW2 confirmed that there was a sale agreement between the plaintiff and the defendant over LR No 6775, which the plaintiff has been tilling since 1997. PW3 confirmed that they had occasionally been ferrying the plaintiff to and from the suit land, where she has been cultivating various crops. Similarly, PW3 said that he had been taking planting materials to and carrying farm produce belonging to the plaintiff from the suit land.
6. The defendant opposed the plaintiff's claim through a replying affidavit sworn by Daniel Gikunda Marangu on 19.3.2022, terming the claim as lacking merits. He averred that the land LR No 569 initially belonged to his late father Johana M'Marangu M'Mutungi and came to his name after the finalization of Meru H.C Succession Cause No 33 of 2001 as per confirmation grant attached as DGM "1". The defendant stated that the plaintiff was a stranger forcing herself to his land with no color of right by planting crops therein.
7. The defendant averred that out of LR No 569, he acquired 1.10 ha as LR Kibirichia/Kibirichia/3966 on 6.8.2009. He denied any alleged developments on the land by the plaintiff, for he has been in its exclusive control together with his family. The defendant averred that he subdivided his land, which he intended to dispose of in 2013, to Festus Kiambati Marete, but his family declined. He said that he was forced to renege on the sale agreement dated 18.5.2005 and refunded the purchase price as per an agreement dated 26.6.2001 to the purchaser's widow and son. The defendant averred that the plaintiff was a daughter of Festus Kiambati Marete and was making a false claim on his land, yet she has never lived, occupied, or utilized it.
8. At the defense, Daniel Gikunda Marangu testified as DW1 and adopted his replying affidavit alluded to above as his evidence in chief. He said that he had leased the land to a third party who had planted maize therein, and therefore, it was not possible for the plaintiff to have been on the land for over 12 years. DW1 relied on a confirmation letter dated 21.9.2007, a police letter after the plaintiff destroyed his crops, and an agreement for the refund of the money as D. Exh No (1), (2) & MFI D (3). DW1 denied any alleged sale agreement of his land with the plaintiff or the suggestion that P. Exh No 3 (a) & (b) had any relationship with the suit land.
9. In a cross-examination, DW1 acknowledged that the police letter did not refer to the plaintiff. Further, he said that his report to the police was not about trespass but crop destruction, although no action was taken against her. DW1 denied attending the land control board meeting with the plaintiff and refused to transfer the land, for he only went there to subdivide his land.
10. Haron Murithi Gikunda testified as DW2. As a son of the defendant, he told the court that he had leased out some portion of the suit land from his father and only became aware of the plaintiff in 2022, after she trespassed onto his leased land leading to a police report.
11. In cross examination DW2 told the court that he was in school from the year 2000 until 2016. He said that his father attempted to sell the land in 2000 but was forced to refund Kshs 230,000/= to the plaintiff's late father, after which the land was leased out to a third party. He denied the alleged developments on the land by the plaintiff. With the close of the defense case, parties were directed to file written submissions by 20.3.2024.



12. The issue calling for my determination is whether the plaintiff has established a claim for adverse possession to the required standards. Adverse possession arises when a registered owner neglects or omits to eject an intruder to the land who stays there openly, notoriously, uninterruptedly, and commits acts inconsistent with the intended use of the land by the true owner for at least 12 years. See *Mtana Lewa v Kabindi Ngala Mwangandi* (2016) eKLR. Two concepts have to be proved to find adverse possession, namely, dispossession and discontinuance of possession of the true owner. See *Wambugu v Njuguna* (1983) eKLR and *Wanje & others v A.K Saikwa & others* (1984) eKLR. In *Songoi v Songoi* (2020) eKLR, the court observed that adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of the true owner, which starts with a wrongful dispossession of the rightful owner.
13. A person, therefore, seeking adverse possession must show:
 - i. On what date he came into possession?
 - ii. What was the nature of his possession?
 - iii. Whether the fact of his possession is known to the true owner.
 - iv. For how long has his possession continued, and
 - v. That the possession was open and undisputed for the requisite 12 years.
14. As to adverse possession, out of an aborted sale agreement, time for purposes of adverse possession does not start running until full payment of the purchase price. See *Public Trustee v Wanduru Ndegwa* (1984) eKLR. In *Mbui v Maranya* (1993) eKLR, the court observed that adverse possession must be a nonpermissive physical control over land coupled with the intention of doing so by a stranger, having actual occupation solely on his behalf or on behalf of some other person in opposition and to the exclusion of all others including the true owner. The court said that adverse possession is vitiated by its clandestine, violent, or permissible character.
15. Adverse possession is a matter of fact, depending on all the circumstances. In order to prove adverse possession it is not sufficient for a party to show that some act of adverse possession has been committed. A party has to prove that the possession claimed is adequate in continuity in publicity and extent.
16. Applying the forgoing case law, the plaintiff pleaded and testified that she has been cultivating on approximately 0.20 ha of the defendant's land, a subdivision of LR No Kibirichia/Kibirichia/6775, initially stated that she was a neighbor of the defendant. PW2 in his evidence corroborated the plaintiff's evidence that, she has been cultivating food crops on the land. He said that he used to ferry the plaintiff to and from the shamba for over 12 years, including carrying farm inputs and harvest to and from the shamba.
17. In his replying affidavit sworn on 19.3.2022, the defendant, paragraph 6, admitted that the plaintiff has been trying to force herself on his land without any color right and recently tried to plant crops therein on top of his food crops. He said that he reported the incident to the police as per an annexure marked DGM "2" and an OB No 18/14/03/2022 titled trespassing report.
18. A claim for adverse possession must be against a defined title to the land. PW1 produced a copy of the register for LR No Kibirichia/Kibirichia/6775, showing that it was opened in the name of the defendant on 5.10.2021, initially a subdivision of parcel LR No 6081. An official search for LR Kibirichia/Kibirichia/3966 was also produced as an exhibit. It showed that the defendant became a registered owner on 9.7.2009 and acquired a title deed on 6.8.2009. The plaintiff indicates that the date



of entry to the land was in 2009. She says that the defendant has all along been aware of her occupation and development thereon and has never ejected her out of the land or taken any legal proceedings to evict her from the land.

19. Other than tilling the land, the plaintiff said that she has never lived on the land since her homestead was elsewhere. PW1 told the court that the defendant's brother had initially sold some other land to her late father, but the family objected to the sale, leading to a refund of Kshs 230,000/= or thereabout. This fact was confirmed by DW1 and DW2.
20. From the evidence tendered, it is apparent that the parties have known each other since 2002 at the family level, to the extent that the plaintiff's father had transacted on land with the defendants, and which agreement was aborted. PW1, 2 & 3 have confirmed that the plaintiff has been utilizing the suitland with no objection from the defendant. DW1 and D.W. 2 refute these assertions and or evidence by stating that entry into the land has been forceful and violent, with resistance from the defendant.
21. Whereas the defendant has produced an OB report on trespass and made an allegation of crop destruction, he was unable to tell the court why action by way of recovery of damages or eviction orders was not sought against the plaintiff. The defendant admitted that the plaintiff had been forcing herself on the land with no color of right by planting food crops and bananas on the land. The defendant was unable to tell the court whether the plaintiff was a licensed or a permitted tenant of his land.
22. The acts of the plaintiff on the land appear to have been inconsistent with the defendant's use of the land. There is evidence that the defendant became. The registered owner of the land in 2009. Subsequently, he subdivided his land into parcel LR No 6775 which he acquired a title deed in 2021. Between 2009 and 2021, there is no evidence that the defendant made an effective entry into his land, asserted ownership, or drove out the plaintiff from it. Other than making an OB report there is no evidence of the defendant taking legal proceedings against the plaintiff with a view of evicting or ejecting her from his land.
23. Adverse possession involves dispossession and discontinuance of possession of the true owner to the exclusion of all. The possession must be adequate in continuity for 12 years. By the time the defendant obtained title to LR No Kibirichia/Kibirichia/6775, a subdivision of LR No Kibirichia/Kibirichia/3961, twelve years had already elapsed, hence extinguishing the defendant's title in favor of the plaintiff.
24. The plaintiff appears to have been asserting adverse rights to those of the defendants. That the plaintiff having placed a caution on the suit land indicates animus possidendi that she was asserting a hostile title to that held by the defendant. The defendant was also aware that the plaintiff was in exclusive occupation of his land but was negligent or omitted driving her out of his land.
25. From the preceding, I find the claim for 0.20 ha of LR No Kibirichia/Kibirichia/6775 by virtue of adverse possession established to the required standards. The defendant shall sign the transfer forms within two months from the date hereof in default the Deputy Registrar of the court to execute them. Costs to the plaintiff.

Orders accordingly.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 29TH DAY OF MAY, 2024

HON. C K NZILI

JUDGE

In presence of



C.A Kananu
Plaintiff

