



REPUBLIC OF KENYA



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Christian Community Life Church (Suing through its officials Paul Mwangi (Resident Pastor), Gilbert Kirema (Deputy Bishop), Samuel Kiania (General Secretary), Thomas Mwangangi (National Treasurer) v Mbae & another (Environmental and Land Originating Summons 17 of 2020) [2025] KEELC 740 (KLR) (20 February 2025) (Judgment)

Neutral citation: [2025] KEELC 740 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 17 OF 2020

CK YANO, J

FEBRUARY 20, 2025

BETWEEN

CHRISTIAN COMMUNITY LIFE CHURCH (SUING THROUGH ITS OFFICIALS PAUL MWANGI (RESIDENT PASTOR), GILBERT KIREMA (DEPUTY BISHOP), SAMUEL KIANIA (GENERAL SECRETARY), THOMAS MWANGANGI (NATIONAL TREASURER) PLAINTIFF

AND

EUNICE KINANU MBAE 1ST DEFENDANT

JAMES MWENDA KINYUA SUED AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF EPHRAIM MBAE THURANIRA (DECEASED) 2ND DEFENDANT

JUDGMENT

1. The Plaintiff instituted the instant suit vide an Originating Summons dated 18th June 2020, against the Defendants for a claim of adverse possession over suit parcel No. Ntima/Igoki/5260, seeking the following orders;
 - a. A Declaration that Christian Community Life Church, the Plaintiff herein, has become entitled by way of adverse possession to the whole of land parcel No. Ntima/ Igoki/5260.
 - b. An Order that Christian Community Life Church be registered as the sole proprietor of the whole of land parcel No. Ntima/ Igoki/5260.
 - c. An Order that the Defendants' title to land parcel No. Ntima/ Igoki/5260 has been extinguished by way of adverse possession.



- d. An Order that the defendants herein do execute all the required instruments and/or documents to effectuate the transfer to the plaintiff of the whole of land parcel No. Ntima/Igoki/5260 and in default, this Honourable Court do empower its Deputy Registrar/ Executive Officer to sign or execute the relevant instruments and/or documents of transfer of the suit land to the plaintiff.
- e. This Honourable Court do make further or other orders it deems fit and expedient to meet the ends of justice.
- f. Costs of this suit be borne by the defendants.

Plaintiff's Case:

2. It is the Plaintiff's claim that it has been in open, exclusive and uninterrupted occupation of the suit property for a period of over 12 years. That sometimes around 11/02/2000, the plaintiff purchased the suit land, situated in Gitimbine Area within Meru Municipality, through a public auction conducted by Ndiungi Agencies on behalf of National Bank of Kenya Limited, paid the entire purchase price of Kshs. 230,000/= and thereafter took immediate possession of the entire suit land and has remained in possession to date.
3. It however contends that efforts to have the National Bank of Kenya Limited to transfer the suit land to it have been fruitless hence the instant suit. They maintained that the suit land is registered in the name of Ephraim Mbae Thurania, who is since deceased, and the defendants herein are his legal representatives.
4. It is further the plaintiff's claim that it has greatly developed the suit land; by setting up a huge church and as a result of the said occupation of more than 12 years, they are entitled to the entire suit land by dint of Adverse Possession. They thus urged the court to allow the claim and grant the orders sought.
5. The Plaintiff's case proceeded for hearing and they called 3 witnesses to testify in support of its case. PW1 (Ambrose Iguna) adopted his witness statement dated 15/11/2021 as his evidence in chief. He further denied claim that he was given the suit land by the late Ephraim Mbae as alleged by the defendants but he maintained that the late was his friend. He stated that they got the suit land through a public auction by the National Bank of Kenya Ltd in the year 2000.
6. On cross-examination, he stated that after they finished paying Kshs. 172,500/= on 13/3/2000, they took possession of the land. He conceded that they only a receipt of Kshs. 57,500/= and that the receipt of the remaining amount paid was burnt in the church. He however maintained that they paid the entire amount to the bank.
7. It was further his testimony that the bank has never processed the title in their favor despite following up on the same on several occasion. That the bank only gave them a letter to confirm that the land belonged to the church, the said letters were however not adduced into evidence because they all got burnt. He maintained that despite not having the suit land transferred in the name of the church, they could still use the land. He admitted that the defendant's family went to the land to claim the same but denied that they were asked to vacate the land. He confirmed that when they conducted a search, the same showed that a charge had been registered against the title and a caution pending the hearing of case No. 121 of 2000 filed in the lower. He further stated that they have extensively developed the suit land.
8. Pastor Paul Mwangi testified as PW2; he adopted his witness statement dated 15/11/2021 as his evidence in chief. He also produced the documents on his list of documents as Pexh. 1 – Current



Certificate of Registration, pexh. 2- Initial Certificate of Registration ,3- copy of the Green Card of the suit land,4- a copy of the rectified certificate of confirmation of grant in Succ. Cause No. 661 of 2013 ,5- a copy of the judgment in Civil Appeal No. 91 of 2019 and 9. Documents 6,7 and 8 were marked for identification as PMFI 6,7 and 8 until clearer copies are availed.

9. On cross-examination; he conceded that from a look at the Green Card, entry no. 5 is an inhibition registered until the case is heard and finalized but stated that he was not aware of the said case since they bought the land from National Bank of Kenya Ltd. He maintained that ever since he became a pastor, he has never seen anyone claiming the suit land save for one evening when the 2nd defendant went to claim the land and stated that the land was their family land and that the church was there illegally.
10. He reiterated that they purchased the suit land on 11/2/2000 through a public auction. He also denied there being any meetings by the church to vacate from the land or seeing any letters asking the church to vacate. He was to be recalled to produce the documents that had been marked for identification. However, counsel for the plaintiff informed the court that they had not received clearer copies and thereafter closed their case.
11. Charles Murage as PW3; he adopted his witness statement dated 15/11/2021 as his evidence in chief. On cross-examination; he conceded that even though he had indicated in his witness statement that while applying for water and electricity connection, the bank gave them a copy of title of the land, they did not produce the said documents into evidence. He however maintained that they purchased the land though the title had never been transferred in the name of the church. He denied knowledge of any case filed by Mr. Mbae against the bank vide case no. 121 of 2000 challenging the auction or seeing any member of the Mbae family at the church. The plaintiff thereafter closed his case.

Defendants' Case

12. In response to the averments made by the Plaintiff; the Defendants filed a Replying Affidavit, jointly sworn on 16th October, 2020, generally denying all the claims by the plaintiff. That the plaintiff has never occupied the entire suit land openly, peacefully and uninterrupted for a period of more than 12 years since the year 2000 as alleged.
13. They dismissed the claims of purchase by way of public auction conducted by Ndiungi Agencies Auctioneers on behalf of National Bank of Kenya Limited. It is their contention that the title of the suit land has been charged since the year 2000 to date and thus any claim for adverse possession in respect to the suit land is unlawful.
14. They admitted that the suit land is registered in the name of Ephraim Mbae Thurania but maintained that the same forms part of his estate to be distributed among his beneficiaries. Further, they maintained that their title has not been extinguished by way of adverse possession and urged the court to dismiss the plaintiff's claim.
15. The Defence case proceeded for hearing on 12/11/2024 and called 4 witnesses in support of their case. Eunice Kananu Mbae testified as DW1; she adopted her witness statement as her evidence in chief. She further explained how the church entered their land and the efforts of trying to evict them. That the said land was included in the succession proceedings and the court ordered that the land be divided among the beneficiaries of Mbae, the plaintiff did not get involved in the succession proceedings to a claim the suit parcel.
16. She further stated that she has written 4 letters to the church asking them to vacate the land. That they had given the suit land to PW1 and his wife in the year 2000 to put up a church temporarily, that the church has never paid them any rent. That they wrote letters and even went to the Area Chief who



- accompanied them to the suit land and asked the plaintiff to move out but they have never vacated the suit land.
17. She produced the documents in her list of documents dated 18/1/2024 as exhibits Dexh.1 – 4 and urged the court to dismiss the plaintiff's claim with costs and further issue an order of eviction against them and direct the bank to give them back the title of the land.
 18. On cross-examination; she confirmed that the church is in possession and occupation of the suit land, that the church has been on the land for more than 20 years and have built a permanent storey building. She further stated that they have filed a case in court seeking to evict the plaintiff but that she could not remember the case number but that the same comprised the Succession Cause. She further alleged that the court in the succession cause ordered the plaintiff to vacate from the land though she could not remember.
 19. She maintained that the bank never sold the suit land and that she has never seen any documents showing that the land was sold by public auction. It was also her testimony that in Civil Case No. 121 of 2000, they had sued the church to move out of the suit land but that the plaintiffs have never vacated the land to date.
 20. On re-exam she clarified that the earlier case no. 121 of 2000 was against the bank to stop the land from being sold. That the land is still registered in the name of her late husband and has a charge registered against the title in favor of the bank. That the bank is still holding the title deed. That her family has been asking the plaintiff to vacate the land since the year 2007.
 21. Mary Kageni testified as DW2– she adopted her witness statement dated 18/1/2023 as her evidence in chief. She added that the suit land where the plaintiff church is built was given to them by Mr. Mbae Thurania, that it was agreed that they would build temporary structures and move out after they buy their own land, the plaintiff has however never vacated the land to date.
 22. On cross-examination; she reiterated that the plaintiff was given the suit land by Mr. Mbae in the year 2000. She denied knowledge that the land was bought from the bank by way of public auction. She confirmed that the plaintiff church is still in occupation of the suit land and had built a permanent structure so many years ago.
 23. DW3 James Mwenda – he adopted his witness statement dated 18/1/2023 as his evidence in chief. He further testified that they have tried to evict the plaintiff from the suit land more than 10 times, written letters and even got a grant from the court asking the plaintiff to vacate the land. That case no. 121 of 2000, which was filed by his late father is still pending in court for determination. That the suit parcel forming part of his father's estate is yet to be distributed since the plaintiff has refused to vacate the land despite the grant being confirmed in the year 2018. He denied the allegations that the plaintiff had bought the land through a public auction and maintained that since the year 2000, the land has had disputes to date.
 24. On cross-examination, he reiterated that the land has had disputes throughout though his father had never filed any case against the church nor have they ever filed a case to evict the church from the land. He confirmed that the plaintiff entered the land in the year 2000 and have even built a permanent structure on the land. Further testified that the succession cause was filed 13 years after the plaintiff had entered the suit land.
 25. On re-examination; he clarified that the title of the suit land is still with the bank, that there is an inhibition that was registered against the title of the land in the year 2020 and has never been removed.



26. Masinde Christopher testified as DW4; a Senior Assistant Records Manager at Meru Law Courts. He stated that they have been unable to trace file No. 121 of 2000. He however had a register for the year 2000 and in the particular case; the plaintiff was one Ephraim Mbae Thurairira against the National Bank of Kenya Limited and Ndiungi Agencies Auctioneers as the defendants relating to L.R. No. Ntima/Igoki/5260 and Abothuguchi/Gaitu/928.
27. He stated that he was not able to see the plaint in the case and that he could not ascertain if what is in the register is what was in the plaint, he did not have any copies of the pleadings or even the consent that was filed by the parties or ascertain the missing words from the register. He produced a certified copy of the register as Dexh. 4.
28. On cross-examination, he stated that from the register, the case was settled by consent and confirmed that the Discharge of Charge does not refer to the suit land in the instant case. The defence thereafter closed their case.

Analysis and Determination

29. Having considered and reviewed pleadings filed in court, the respective exhibits and submissions in totality, the issues that arise for determination are as follows: -
 - a. Whether the Plaintiff has proved its claim of Adverse Possession?
 - b. Whether the Plaintiff is entitled to the reliefs sought

I. Whether the Plaintiffs has proved its claim on Adverse Possession

30. The legal framework for adverse possession is provided in sections 7, 13, 17 and 38 (1) and (2) of the *Limitation of Actions Act* as read with section 28 (h) of the *Land Registration Act*.
31. The law on Adverse Possession is now well settled and I do not seek to reinvent the wheel. A party claiming Adverse Possession must prove that his possession of the subject land is peaceful, open and continuous for a statutory period of 12 years and the said possession is adverse with an intention to dispossess the true owner thereof. Makhandia, JA in *Mtana Lewa v Kahindi Ngala Mwangandi* [2015] eKLR in describing the doctrine of adverse possession held as follows: -

“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 owner. The essential prerequisites being that the possession of the adverse possessor is neither by force or stealth or 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. This doctrine in Kenya is embodied in Section 7 of the *Limitation of Actions Act*....”
32. Guided by the Court of Appeal decision above, the elements to be proved in a claim for Adverse possession are; that the land in question must be registered in the name of a person other than the plaintiff, the plaintiff must demonstrate that it took possession of the suit land, asserted its rights over it in an adverse manner and the said title holder did not take any precipitate action against the plaintiff for a period of 12 years, the plaintiff must also demonstrate that his possession and occupation of the suit land was not by force or under the licence of the land owner and that the said possession was open, continuous and uninterrupted period of over 12 years.



33. The plaintiff is also under a duty to establish the date it took possession, the nature of its possession, the duration of possession and whether the said possession was open and uninterrupted for the 12 years' statutory period. See Court of Appeal decision in *Richard Wefwafwa Songoi v Ben Munyifwa Songoi* [2020] eKLR).
34. The first element to be proved is that the suit parcel is registered in the name of a person other than the plaintiff. In the instant case, it is not in dispute that the suit land is registered in the name of the late Ephraim Mbae Thurania. Both parties produced copies of the Green Card as evidence of the same. The registration is therefore not in dispute.
35. The next element and which is at the core of a claim for adverse possession is that of possession/ occupation and use and whether the plaintiff acquired overriding interests capable of registration. As pointed hereinbefore, the onus is on the plaintiff to demonstrate the duration and nature of their possession and whether the same accrued any prescriptive and overriding rights over the suit land, capable of registration.
36. It is the Plaintiff's case that it has been in occupation, possession and use of the suit land since the year 2000; that they purchased the suit land sometimes around 11/2/2000 by way of public auction from Ndiungi Agencies Auctioneers on behalf of National bank of Kenya Ltd; the agreed purchase price was paid and the plaintiff took immediate possession where they have remained to date. It is their contention that efforts to have the bank transfer the title of the suit land to them have bore no fruits hence the instant suit. They however maintained that despite not having the title transferred in their favor, they have been in continuous occupation and have made extensive developments on the land by building permanent storey building.
37. The Defendants disputed the plaintiff's claims and maintained that it is not entitled to the suit land; it was their contention that the suit land was given to the church by their late father Mr. Mbae and it was agreed that the church would use the land temporarily and thereafter vacate after getting an alternative land. They denied claims of the alleged sale by the bank by way of public auction and heavily relied on Meru Case No. 121 of 2000 filed in the Magistrates' Court.
38. From the onset, it is important to point out that the claims in the two cases, that is, the instant suit and the Meru CM Civil Suit No. 121 of 2000 are significantly different. While the claim in this suit is purely on adverse possession from the defence witnesses' testimonies in court, I have gathered that the claim in Case No. 121 of 2000 was with regard to the sale of the suit land by way of public auction by National Bank of Kenya, which held the title of the land as security. At the time of writing this judgment, the status of the said suit no. 121 of 2000 is not clear. DW4, a Senior Management Records Officer at Meru Law Courts confirmed that the file could not be traced and he was not sure of the status of the file. Even though he produced Dexh. 5, he conceded that some information were missing from the said extract of the register and he could not ascertain the determination of the case.
39. Further, I wish to state that what is before this court for determination is a claim on adverse possession and not the legality of the said sale by public auction; whether or not the bank was justified to sell the land, validity thereof is not an issue for determination before this court. Even though the defendants and their witnesses heavily relied on the said case as a basis to dispute the plaintiff's purchase, in my considered view, the said purchase is only proof of the plaintiff's entry into the suit land. All the witnesses who testified; PW1, 2 and 3, DW1,2 and 3, all confirmed that the plaintiff entered the suit parcel sometimes in the year 2000. At the time of filing this suit, the plaintiff had been in occupation of the suit land for over 20 years.



40. The plaintiff averred that they have been occupying and using the suit land openly, peacefully, exclusively and continuously without interruption, they have extensively developed the suit land and put up permanent structures on the land. The plaintiff's possession and use was further buttressed by the testimony of DW1, 2 and 3. DW1.
41. What amounts to dispossession in a claim for adverse possession has been held to be acts done by the adverse possessor which are inconsistent with the true owner's enjoyment of the soil for the purpose for which he intended to use the same. See Court of Appeal decision in *Wilson Kazungu Katana & 101 others v. Salim Abdalla Bakshwein & another* [2015] eKLR).
42. Although the plaintiff did not adduce any bundle of photographs to prove its occupation and use of the land claims, PW1, 2 and 3 in their testimony in court confirmed that they have been using the suit land since the year 2000 and have put up permanent structures. DW1 stated that the plaintiff has been on the suit land for more than 20 years and built permanent storey building, DW2 also stated that the plaintiff entered the land in the year 2000 and had built permanent structure on the land so many years ago. This fact was also reiterated by DW3. There is therefore no contention that the plaintiff has indeed been in occupation and have been using the suit land as claimed.
43. Has the said possession, occupation and use been peaceful, continuous and uninterrupted for a period of 12 years, one may ask. The defendants maintained that they have written several letters to the plaintiff asking them to vacate the suit land, that they even involved the area chief who visited the suit land and asked the plaintiff to vacate. They produced the said letters as Dexh. 1 in support of their claims and argued that the plaintiff was not entitled to the suit land.
44. DW1 and 3 further relied on the Succession Proceedings instituted in respect to the estate of Mr. Mbae and averred that the court granted orders of eviction against the plaintiff and directed that the suit land be distributed among the beneficiaries of the late Mr. Mbae. Are the said letters asking the plaintiff to vacate and the inclusion of the suit land in the estate of Mr. Mbae sufficient interruption of the plaintiff's occupation and use? Did the same stop time from running for purposes of adverse possession? No eviction order was produced in court as evidence.
45. It is well settled that time for adverse possession will only be interrupted either by the title owner's re-entry/ repossession of the land or where there is an order of eviction or suit filed; see Malindi Court of Appeal decision in *Peter Kamau Njau VS Emmanuel Charo Tinga* [2016] eKLR.
46. In the case of *Githu vs Ndeete* [1984] KLR 776 wherein it was held that:

Time ceases to run under the Limitations of Actions act either when the owner takes or asserts his right or when his right is admitted by adverse possessor. Assertion occurs when the owner takes legal proceedings or makes effective entry into land, giving notice to quit cannot be effective assertion of right for the purpose of stopping the running of time under the *Limitation of Actions Act*."
47. In view of the foregoing and guided by the decision above, it is the finding of this court that the same neither interrupted the plaintiff's possession nor stopped time from running for purposes of adverse possession. It has been held that a registered owner must make peaceable and effective entry into the land or sue for recovery, which was not done in the instant case.
48. In the penultimate, the question that begs is whether the existence of the charge registered against a title of the suit land would defeat the plaintiff's claim on adverse possession or stop time from running in favor of the plaintiff. My answer to this is in the negative.



49. In *Benson Mukuwa Wachira v Assumption Sisters of Nairobi Registered Trustees*(2016) eKLR, the Court of Appeal cited with approval the finding by the High Court in *Kipkoech Arap Langat & Another v Kipngeno Arap Laboso, Kericho HCCC No.124 of 2004* (0.S.) where the court stated as follows:

“Where a proprietor charges or mortgages land occupied by a trespasser adversely to the title of the proprietor, regardless of whether the trespasser is aware of such transaction, the act of charging or mortgaging the land does not interrupt time from running in adverse possession. Time for adverse possession continues to run. Such adverse possession is an overriding interest acquired or in the process of being acquired by virtue of Section 38 of the Limitations of Actions Act. It must be noted that where the proprietor transfers land, the act of transfer does not interrupt the running of time in adverse possession. In both cases of transfer and mortgage of land on which a trespasser is in adverse possession, the running of time in adverse possession is not interrupted. As adverse possession is an overriding interest (acquired or in the process of being acquired) under Section 30 (f) of the Registered *Land Act*, Cap 300, the mortgagee or transferee takes subject to such overriding interest.”

50. Thus, it is clear that even though a Charge was registered against the title of the suit land, and which charge still exists to date as evidenced by Pexh. 3, the same does not affect the plaintiff’s interests over the suit parcel acquired by virtue of adverse possession.
51. The combined effect of a claim under adverse possession is to extinguish the title of the late Ephraim Mbae Thurairira in favor of the plaintiff who is in possession of the suit land. In view of the foregoing, I find that the plaintiff has proved its claim on adverse possession to the required threshold and are consequently entitled to the grant of the orders sought.

Costs:

52. Costs generally follow the event. In this case, having held that the Plaintiff has proved its case against the Defendants, I find that they are entitled to costs of the suit.

Conclusion

53. The upshot of the above is that the Plaintiff has proved its claim on adverse possession and I accordingly allow the Originating Summons dated 18th June, 2020 on the following terms;
- i. A Declaration is hereby made that Christian Community Life Church, the Plaintiff herein, is entitled to the whole of land parcel No. Ntima/ Igoki/5260 by way of adverse possession
 - ii. An Order is hereby issued that Christian Community Life Church be registered as the sole proprietor of the whole of land parcel No. Ntima/ Igoki/5260.
 - iii. A Declaration is hereby made that the Defendants’ title to land parcel No. Ntima/ Igoki/5260 has been extinguished.
 - iv. An Order is issued to the defendants herein to execute all the required instruments and/or documents to effectuate the transfer to the plaintiff of the whole of land parcel No. Ntima/ Igoki/5260 and in default, the Deputy Registrar is hereby directed to execute the relevant instruments and/or documents for purposes of transfer of the suit land to the plaintiff.
 - v. Costs of this suit be borne by the defendants.



DATED, SIGNED AND DELIVERED VIRTUALLY AT ELDORET ON 20TH DAY OF FEBRUARY, 2025.

C.K. YANO

JUDGE

In presence of; -

No appearance for the Plaintiff.

No appearance for the Defendants.

Court Assistant – Laban

