



**Muiruri v Kuria (Environmental and Land Originating Summons
41 of 2023) [2024] KEELC 4124 (KLR) (9 May 2024) (Judgment)**

Neutral citation: [2024] KEELC 4124 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS 41 OF 2023**

YM ANGIMA, J

MAY 9, 2024

BETWEEN

PETER WANGEREKA MUIRURI APPLICANT

AND

BENJAMIN MAINGI KURIA RESPONDENT

(FORMERLY NYAHURURU ELC(OS) CASE NO. E003 OF 2023)

JUDGMENT

1. Vide an originating summons dated 15.08.2023 grounded upon Sections 7 and 8 of the *Limitation of Actions Act* (Cap.22) and Order 37 rule 7 of the *Civil Procedure Rules*, 2010 and all other enabling provisions of the law the Applicant sought a declaration that he had become entitled to be registered as the absolute owner of Title No. Nyandarua/Kirima/1407 (the suit property) on account of the doctrine of adverse possession. He also sought an order for the Deputy Registrar of the Court to be authorized to execute all necessary documents to facilitate his registration as proprietor of the suit property.
2. The originating summons was based upon the grounds set out on the face of the summons and the contents of the supporting affidavit sworn by the Applicant on 15.08.2023. The Applicant pleaded that sometime in 1995 he purchased the suit property from the Respondent, paid the full purchase price and took possession thereof. It was his case that although the Respondent signed and handed to him all the necessary transfer documents he did not lodge them for registration immediately due to financial constraints. It was his contention that by the time he ultimately lodged his documents he found that the format of the statutory transfer forms had changed and he was unable to trace the Respondent to sign the new forms and provide the additional documents and photographs required by the land registry.



3. The Applicant further pleaded that he had been in continuous, exclusive and uninterrupted possession of the suit property for periods exceeding 12 years and that he had extensively developed the same. He, therefore, contended that he had acquired the suit property under the doctrine of adverse possession.
4. The record shows that owing to the inability of the Applicant to trace the Respondent for personal service, he sought and obtained leave to serve the originating summons through substituted service by advertisement in a newspaper of national circulation. The record shows that the advertisement was published on 08.12.2023 giving the Respondent at least 21 days to enter appearance to the summons. The record shows that the Respondent neither entered appearance nor filed an answer to the petition despite service.
5. When the suit was listed for hearing on 20.02.2024 the Applicant testified on his own behalf as the sole witness. He adopted the contents of his supporting affidavit sworn on 15.08.2023 and his witness statement of even date as his evidence in-chief. He also produced the 5 annexures to his supporting affidavit as exhibits and urged the court to allow his claim for adverse possession as prayed.
6. 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...”
7. 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.”
8. The court has considered the Applicant’s evidence on his claim for adverse possession. The court has also considered his written submissions on the issue. There is no doubt from the material on record that the Applicant acquired the suit property in 1995 from the Respondent who was the registered owner. There is no doubt that he took possession, developed it and settled thereon as evident from the photographs he produced at the trial.
9. The court accepts the Applicant’s evidence that he has been in continuous, exclusive and uninterrupted possession of the suit property since 1995 and that he has utilized the same as his own property. The court accepts that the Applicant has been in possession for a period exceeding 12 years since the Respondent handed possession to him. Since the Respondent did not contest the originating summons, the Applicant’s evidence was neither challenged nor controverted at the trial. The court is



thus satisfied that the Applicant has proved his claim for adverse possession on a balance of probabilities hence he is entitled to the reliefs sought in the summons save for costs. The court is of the view that there should be no order as to costs since the Respondent did not defend the suit.

10. The upshot of the foregoing is that the court finds and holds that the Applicant has proved his claim for adverse possession of the suit property to the required standard. As a consequence, the court makes the following orders for disposal of the originating summons dated 15.08.2023:

- a. A declaration be and is hereby made that the Respondent's right to recover Title No. Nyandarua/Kirima/1407 has been extinguished and that the Applicant, Peter Wangereka Muiruri, has become entitled to be registered as absolute proprietor of Title No. Nyandarua/Kirima/1407 on account of the doctrine of adverse possession.
- b. The Deputy Registrar of the Court is hereby authorized to sign and execute all the necessary forms, documents and instruments to facilitate the registration of the Applicant as the proprietor of Title No. Nyandarua/Kirima/1407.
- c. There shall be no order as to costs.

It is so decided.

JUDGMENT DATED AND SIGNED AT NYANDARUA THIS 9TH DAY OF MAY, 2024 AND DELIVERED VIA MICROSOFT TEAMS PLATFORM.

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Y. M. ANGIMA

JUDGE

In the presence of:

Mr. Nderitu Komu for the Applicant

N/A for the Respondent

C/A - Carol

