



Njagi v County Government of Kirinyaga (Environment and Land Case E002 of 2023) [2024] KEELC 4753 (KLR) (13 June 2024) (Judgment)

Neutral citation: [2024] KEELC 4753 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
ENVIRONMENT AND LAND CASE E002 OF 2023**

JM MUTUNGI, J

JUNE 13, 2024

BETWEEN

ROSE WANJA NJAGI PLAINTIFF

AND

THE COUNTY GOVERNMENT OF KIRINYAGA DEFENDANT

JUDGMENT

1. The Plaintiff instituted the present suit by way of an Originating Summons dated 10th July 2023. The Plaintiff averred that she had purchased from one Silas Njeru Mwinga way back in 1979 a portion of land parcel Mwea/Tebere/B/127 measuring 4.2 Acres that the Kirinyaga County Council had compensated the said Silas Njeru Mwinga with following surrender of his farm for the development of Kerugoya Boys Secondary School. The said Silas Njeru Mwinga on 23rd April 1979 wrote to the Clerk, Kirinyaga County Council authorizing the County Council to transfer the portion of land to Rose Wanja Njagi. The Plaintiff averred that she and her family resided on the land and have been utilizing the same since 1979 without any interruption from anybody.
2. The Plaintiff states that notwithstanding the express authority to the County Council to process the title in favour of the Plaintiff, the Defendant failed to do so and the land parcel was on 21/2/2006 registered in the name of Kirinyaga County Council. The Plaintiff in the premises seeks to be declared as the lawful owner of LR No. Title Mwea/Tebere/B/1776 by virtue of having adversely occupied and possessed the land for a period in excess of 12 years.
3. The Defendant, the County Government of Kirinyaga, was served with the pleadings in the suit as per the Affidavit of Service dated 8th September 2023 filed in Court on 11th September 2020. The Defendant did not enter any appearance and even though the County Attorney appeared on the virtual platform on 22nd November 2023 when the matter had been fixed for mention for directions and requested to be granted time to respond to the matter, no response was filed by the Defendant by the 14th February, 2024 when the matter was fixed for mention for further directions.



4. As there was no opposition to the Originating Summons, the Court directed that the same be disposed on the basis of the Affidavit evidence and submissions and consequently directed the Plaintiff to file her written submissions, which she did on 23rd February 2024.
5. In the instant matter the evidence as tendered by the Plaintiff is not controverted. The Plaintiff has furnished evidence that the County Council of Kirinyaga was the registered owner of land parcel Mwea/Tebere/B/127 measuring 80 Acres which had been reserved for Kiarukungu village as per the abstract of title issued on 10th February 2023. This title as per the abstract of title was closed on subdivision on 21/2/2023 and new subtitles Nos. 1773 to 1779 created. It is the Plaintiff's case that one Silas Njeru Mwinga was given by the County Council a portion of 4.8 Acres out of the original land as compensation for a portion of his farm which was taken by the County Council for the development of Kirinyaga Boys Secondary School. The Plaintiff purchased the land from Silas Njeru Mwinga whereupon the latter authorized the County Council to process the title in the name of Rose Wanja Njagi which apparently did not happen as the portion's title LR No. Mwea/Tebere/B/1776 was registered in the name of Kirinyaga County Council on 21/2/2006 as per the copy of Certificate of official search dated 14th June 2023 exhibited by the Plaintiff. In the letter dated 23rd April, 1979 addressed to the Clerk of the Council, Kirinyaga County Council, Silas Njeru Mwinga wrote as follows:-

Re: Transfer of Ownership of Farm No. Mwea/tebere B/127 At Kiaru Kungu Village –
Temporary Farm No. 5.

I wish to inform you that I have sold the above piece of land comprising of 4.8 Acres to Rose Wanja Njagi and that I would be grateful if you could arrange for the title deed to be issued in her name.

The land was given to me as compensation for the portion of my farm which was taken over by the Kirinyaga Boys Secondary School.

Yours faithfully.

Silas Njeru Mwinga.

6. The letter was unequivocal in directing the County Council to have the title of the resultant subdivision issued to the Plaintiff. The Plaintiff took possession and has been living on the suit land. In the absence of any rebuttal of the Plaintiff's evidence, the Court has to accept and treat the Plaintiff's evidence as truthful.
7. Having carefully reviewed and considered the evidence I accept as a proven fact that indeed the Kirinyaga County Council compensated Silas Njagi Mwinga for the portion of his land taken for the development/expansion of Kirinyaga Boys Secondary School, with a portion of land that was to be hived out of LR. No. Mwea/Tebere/B/127. The portion after the subdivision became LR. No. Mwea/Tebere/B/1776 and that is the portion the Plaintiff acquired and has been occupying and utilizing since 1979 when she purchased the same.
8. The Plaintiff has predicated his claim on the doctrine of adverse possession on the basis that she has been in occupation and possession for over a period of 12 years. I am mindful that by virtue of Section 41(a)(i) & (v) of the *Limitation Actions Act*, Cap 22 Laws of Kenya, the doctrine of adverse possession which is anchored under Sections 7, 13 and 38 of the *Act* would not be applicable to land owned by the Government, and the County Government is a level of Government.

Section 41(a)(i) & (v) provides as follows:-



41. This *Act* does not –
- (a) enable a person to acquire any title to, or any easement over-
 - (i) Government land or land otherwise enjoyed by the Government;
 - (v) Land vested in the County Council (other than land vested in it by Section 120(8) of the Registered *Land Act* (Cap 300).
9. However notwithstanding that the doctrine of adverse possession would be inapplicable in the instant case and circumstances, I am persuaded equitable principles would be applicable. The Kirinyaga County Council ought to have done what it was expected to do and should have done, which was to honour its part of the bargain and transfer the land it had compensated Silas Njagi Mwinga to him and/or to his nominee. When the subdivision of land title LR Mwea/Teber/B/127 was effected, the County Council held LR No. Mwea/Teber/B/1776 in trust for Silas Njagi Mwinga and/or his Nominee. In view of the fact that Silas Njagi Mwinga had notified the Council that the Plaintiff was his nominee, the County Council ought to have processed and issued the title in favour of the Plaintiff.
10. In the premises therefore I am satisfied the Plaintiff has proved her case on a balance of probabilities and I enter Judgment in her favour and make the following final orders:-
1. That the Plaintiff is declared to be entitled to be registered as the owner of land title LR No. Mwea/Teber/B/1776.
 2. The Land Registrar Kirinyaga County is directed to cancel the registration of Kirinyaga County Council as the owner of Title No. Mwea/Teber/B/1776 and in place thereof to register Rose Wanja Njagi as the owner thereof.
 3. There will be no order for costs.

JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 13TH DAY OF JUNE 2024.

J. M. MUTUNGI

ELC - JUDGE

