



**Wamai & 2 others v Kamau (Environment & Land Case
176 of 2014) [2024] KEELC 4528 (KLR) (7 June 2024) (Judgment)**

Neutral citation: [2024] KEELC 4528 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT & LAND CASE 176 OF 2014**

JO OLOLA, J

JUNE 7, 2024

BETWEEN

LYDIAH NYAGUTHII WAMAI 1ST PLAINTIFF

JOSEPH WANGAI WAMAI 2ND PLAINTIFF

RUTH WANJIRU WAMAI 3RD PLAINTIFF

AND

MOSES KANYINGI KAMAU DEFENDANT

JUDGMENT

1. By a Plaint dated 16th August 2014 as amended on 25th September 2014 and re-amended on 19th June 2018, Lydiah Nyaguthii Wamai, Joseph Wangai Wamai and Ruth Wanjiru Wamai (the Plaintiffs) pray for Judgment against Moses Kanyingi Kamau (the Defendant) for an order of vacant possession of the suit property known as LR No 12312- Nanyuki.
2. That prayer arises from the Plaintiff's contention that they are the trustees of the entire estate of George Wamai Hinga which estate includes the suit property. It is the Plaintiffs' case that the Defendant has without any legal justification trespassed on the suit property and erected temporary structures thereon. It is their case that all efforts to have the Defendant to vacate the suit property have been fruitless and hence the institution of this case.
3. But in his statement of Defence dated 15th October 2014 as amended on 19th July 2018, the Defendant denies the Plaintiffs' accusations and asserts that he has been in uninterrupted, active use, possession and occupation of the said LR No 12312, Nanyuki since the year 1986 and that as a result, the Plaintiffs' claim is time barred by dint of Sections 4 and 7 of the *Limitation of Actions Act*. It is further the Defendant's case that he has since under the said Act acquired title to the suit property by adverse possession.



The Plaintiffs' case

4. At the trial herein, the three Plaintiffs called one witness who testified in support of their case.
5. PW1- Joseph Wangai Wamai is the 2nd Plaintiff herein. Relying on the statement recorded by his step-mother Lydiah Nyaguthii Wamai (the 1st Plaintiff herein), PW1 told the court that the suit property comprises part of the estate of the late George Wamai Hinga who was his father. PW1 testified that on or around 3rd February 1998, the grant of administration of the estate of the said George Wamai Hinga was issued to the Public Trustee.
6. PW1 told the court that subsequent to the issuance of the grant and upon application by the beneficiaries, the three Plaintiffs herein were appointed as trustees with the mandate to distribute the whole estate. PW1 further told the court that sometime in the year 2014, they went to inspect the suit property whereupon they found some two temporary structures which turned out to have been put thereon by the Defendant.

The Defence Case

7. On his part, the Defendant called two (2) witnesses who gave testimony in support of his case at the trial.
8. DW1- Moses Kanyingi Kamau is the Defendant himself. Relying on his statement filed herein and dated 15th December 2021, DW1 told the court that he purchased the suit property from one Davidson Mwangi Kagiri on 19th December 1986. DW1 further told the court that the vendor had made him to believe that the suit land was co-owned by the vendor together with one George Wamai Hinga.
9. DW1 testified that immediately upon purchase, he settled on the land, built a house as a family residence therein and thereafter planted trees and used the same for commercial and subsistence farming. DW1 further told the court that the Hinga family and the Plaintiffs in particular own and occupy parcels of land within the vicinity of the suit land and that they had always known of his occupation and use of the suit property.
10. DW2- Peter Karume Gatenjwa is a valuer by profession. He told the court that the Defendant had instructed him on 19th November 2021 to undertake a valuation of the suit property. Acting on the said instructions, he proceeded to inspect the property subsequent to which he prepared a Valuation Report dated 9th December 2021 which puts the value of the land at Kshs 8,800,000/=.

Analysis and Determination.

11. I have carefully perused and considered the pleadings filed by the parties herein, the testimonies of the witnesses as well as the evidence placed before the court. I have similarly perused and considered the submissions placed before the court by the Learned Advocates representing the parties herein.
12. By their Complaint as re-amended on 19th June 2018, the three Plaintiffs pray for an order of vacant possession of the suit property known as LR No 12312- Nanyuki. It is the Plaintiffs' case that they are the trustees of the estate of one George Wamai Hinga and that the suit property comprised part of the said estate and that the same ought to have been transferred to the 1st Plaintiff herein as one of the beneficiaries.
13. According to the Plaintiffs, sometime in the year 2014 when they went to inspect the suit property said to be measuring some 5 acres, they discovered that the Defendant had trespassed into the property and



- had put up some two temporary structures. It was the Plaintiffs' case that despite demands made and notice of intention to sue, the Defendant had refused to cease his trespass and/or to vacate the suit land.
14. On his part, the Defendant denied that he had trespassed upon the suit property. On the contrary, the Defendant asserted that he was on the suit property as of right on account of the fact that he had purchased the same from one Davidson Mwangi Kagiri in the year 1986. It was further the Defendant's case that even if the Plaintiffs had any rights over the suit property such rights had been extinguished by dint of Section 4 and 7 of the Limitation of Actions Act and that as a result, the Plaintiffs' claim was time barred.
 15. In support of their case, the Plaintiffs produced two documents. The first is a Certificate of Confirmation of Grant dated 3rd February 1988 (Exhibit 1) while the other is a Court Order issued by the Honourable Justice J. Wakiaga on 21st July 2014, (Exhibit 2) in Nyeri High Court Succession Cause No 30 of 1986 which order allowed the Plaintiffs to be appointed as trustees/arbitrators (sic) of the estate of George Wamai Hinga and gave them the mandate to distribute the estate.
 16. As it were, the reason why the Plaintiffs have produced the Certificate of Confirmation of Grant is the fact that it lists the suit property in the schedule that contains many other properties said to have been owned by the late George Wamai Hinga. There was however no explanation offered by the Plaintiffs as to when and/or how the deceased had acquired the suit property.
 17. While it was common ground that the suit property had no title, I think it was incumbent upon the Plaintiffs to offer some explanation to back up their claim that the suit property was part of the deceased's estate. Indeed there was no explanation offered by the Plaintiffs and this court was left in darkness as to the stage at which the list of assets of the estate were introduced in the said succession proceedings.
 18. It was further not clear to this court whether or not before the list was introduced, proof of ownership of the said properties had been required and demonstrated to the Succession Court. In my considered view, if the suit property were indeed part of the deceased's properties, the Plaintiff should have been in possession of some documentary evidence of such ownership notwithstanding the fact that the property had no title. Otherwise I did not think that the mere listing of the property as part of the estate of the deceased in succession proceedings is of itself proof of ownership.
 19. On the other hand, the Defendant grounds his claim on ownership to the suit land on an agreement dated 19th December 1986 (Dex 1) executed between himself and one Davidson Mwangi Kagiri. While the said Agreement does not mention the parcel of land that the Defendant was purchasing, the receipts issued to him on 19th December 1986, 28th January 1987 and on 26th April 1987 (Dex 2) all show that the purpose of the payments made were "Payment for plot No 12312" which number coincides with that of the suit property herein.
 20. Arising from the foregoing I was not persuaded that the Plaintiffs had made out a case to warrant the eviction of the Defendant from the suit property. Their suit is hereby dismissed with costs to the Defendant.

DATED, SIGNED AND DELIVERED AT NYERI THIS FRIDAY 7TH DAY OF JUNE, 2024.

In the presence of:

Mr. Ng'ang'a for the Plaintiffs.

Mr. Mwangi Kariuki for the Defendant.

Court Assistant: Kendi



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J. O. OLOLA
JUDGE

