



**Mwangi & 3 others v Wangu (Environment & Land Case
E016 of 2022) [2024] KEELC 4574 (KLR) (6 June 2024) (Judgment)**

Neutral citation: [2024] KEELC 4574 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE E016 OF 2022**

JG KEMEI, J

JUNE 6, 2024

BETWEEN

**PAUL KAHARA MWANGI 1ST APPLICANT
BONIFACE MUGENDI 2ND APPLICANT
WILLIAM KANGETHE 3RD APPLICANT
JOHN NDUNGU 4TH APPLICANT**

AND

AGNES WANGU MWANGI ALIAS AGNES WANGU NDUNGU . RESPONDENT

JUDGMENT

1. Vide Originating Summons filed on 12/5/2022 the Plaintiffs filed suit under Order 37 rule 3, 7 of the Civil Procedure Rules, Section 3A of [Civil Procedure Act](#) and all other enabling provisions of the law and sought the following orders:-
 - a. That A Declaration Do Issue That Parcel Of Land Ruiru/ruiru East/block 2/797 (now Closed On Sub-divisions) And Its Sub Divisions Among Them Land Parcel Nos. Ruiru/ruiru East Block 2/40191, Ruiru/ruiru East Block 2/40192, Ruiru/ruiru East Block 2/40199 And Ruiru/ruiru East Block 2/40198 Be Declared To Be Registered And Held In Trust By Wangu Mwangi Alias Agnes Wangu Ndungu for the Applicants having acquired them by way of adverse possession.
 - b. That As A Consequence Land Parcel Nos. Ruiru/ruiru East Block 2/40191 Be Declared To Be Owned By John Ndung'u Karuga, Parcel Of Land Ruiru/ruiru East Block 2/40192 Be Declared To Be Owned By William Kangethe Ndungu, Parcel Of Land Ruiru/ruiru East Block 2/40199 Be Declared To Be Owned By Paul Kahara Mwangi And Ruiru/ruiru East Block 2/40198 Be Declared To Be Owned By Boniface Mugendi Njeru And The Registrar For



Lands Ruiru does effect Transfers forthwith from the Respondent to the Applicants without requiring the Original Title thereto.

2. The application is premised on the annexed grounds and the Supporting Affidavit of the Applicants jointly sworn on 11/5/2022.
3. The Applicants deposed that they are the beneficial owners of the suit lands. That the Respondent owned the mother title being Parcel Ruiru/Ruiru East/Block 2/797. That the Respondents nominee namely Robert Mureithi (Mureithi) sold to the Applicants the suit lands through Share Certificates exhibited and marked "PBWJ2". That upon purchase of the suit lands in 2007 they embarked on developing the parcels by installing utilities and building their homes thereon. That they were introduced to the Respondent by his nominee, Robert Mureithi. Further that they have lived with the Respondent harmoniously and held several meetings to discuss the processing of titles. That the Respondent also sold and to other purchasers in the neighbourhood. That the Respondent has not attempted to resell the lands from them however on 18/3/2022 the Respondent through a letter dated 18/3/2022 demanded that they vacate the land after a period of 15 years forcing them to file the instant suit.
4. Denying the Plaintiffs' claim the Defendant filed Replying Affidavit on 13/6/2022 and contended that she is the legal owner of the suit lands as well as the mother title; Robert Mureithi was never her agent/nominee: Applicants were conned by the said Mureithi and should blame themselves for getting themselves in an illegal transaction yet they were aware that the land belonged to the Defendant; the Plaintiffs rebutted her offer to them to purchase the land in 2019 despite several meetings to resolve the stalemate; some of the purchasers took up the offer but the Plaintiffs were adamant in their resistance to re-purchase the land.
5. That the other reason why she did not evict the Plaintiffs from the land was the existence of the case in Thika CMCC No. 676 of 1993 where she had been sued with others over the land and where there was a restriction over any dealings on the land pending its determination. That despite the Plaintiffs having been informed by the Defendant of the existence of the case and the restriction thereon, they went ahead to purchase the land in 2007/2008.
6. That the Plaintiffs have come to Court with unclean hands as they were aware that they purchased the land from a stranger. That she confronted Mureithi who threatened her life forcing her to report the matter to the Police. That the said Mureithi later went underground to evade Police arrest.
7. In her Further Affidavit sworn on 30/7/2022 the Defendant stated that she does not know the Companies namely; Kagethu Investments and Y-Line Investments. That she was threatened by Robert Mureithi through text messages vide 0729993717 and 0725786631 which she reported to the Police. See annexures AWM 1 a & b copies of OB extract and phone records. That the Plaintiffs are illegally on the land and urged the Court to order their eviction., That the Plaintiffs are aware that they were duped by a fraudster to purchase the land and are now seeking disguised orders of adverse possession as a means to defraud her of her land.
8. PW1 – Paul Kihara Mwangi testified on his behalf and that of his co-Plaintiffs and stated that he and his co-Plaintiffs purchased land from the Defendant's Agent one Robert Mureithi in 2007 – 2009 and were put in possession. He relied on his witness statement dated 15/3/2023 as his evidence in chief and produced documents contained in the List of Documents dated 10/3/2023 in support of his claim.
9. In cross examination he stated that he purchased a portion (plot) out of Ruiru/Ruiru East/Block 2/797 from Kigethu Investments in 2009 whose Director was Mureithi and where he was issued with a copy of title No. Ruiru/Ruiru East/Block 2/797 in the name of the Defendant.



10. That he did not carry out any search on the land nor the Company. That they have been on the land with the knowledge of the Defendant. That the Defendant was introduced to them in 2014. That he paid the Defendant's Agent on behalf of the Defendant. That the Defendant's Agent asked them to wait for titles, a promise that was also made by Defendant in person in 2014. That he lives on the land where he has constructed a house as shown on the pictures annexed in the List of Documents before the Court.
11. That in all the years he has occupied the land the Defendant has not evicted them.
12. PW2 – William Kangethe testified and repeated the evidence of PW1 save to add that he has met the Defendant severally over the land matter even when Mureithi, her agent was still alive. That the Defendant was aware that they were on the land and went ahead to subdivide the land. That though the Defendant has never evicted them she has demanded more money from him in exchange of title. That he purchased the land from Defendant's Agent and paid fully for the land thereafter took possession and developed the land.
13. The Defendant testified and stated that she is the owner of parcel Ruiru/Ruiru East/Block 2/797 and its subdivisions. She relied on her witness statement on page 9 – 11 of the trial bundle and produced documents in support of his defence marked as DEX No. 1 – 7.
14. In her further evidence in chief she stated that she does not know Kigethu Investments Co. nor Robert Mureithi. That she did not instruct him to sell the land and when she discovered she reported the matter to the Police but was threatened by the said Robert. That she met the Applicants in 2014 and informed them of the case subsisting on the land. That she offered to sell the land to them but they have been adamant to take up the offer.
15. She admitted that though the Parcel Ruiru/Ruiru East/Block 2/797 has been subdivided nothing changed on the ground with respect to the boundaries of the lands. That she got to know the Plaintiffs were in occupation since 2009 and took steps to demand that they vacate in 2022.
16. Parties filed written submissions which I have read and considered.
17. The key issue for determination is whether the Plaintiffs have proven title by adverse possession.
18. The case of the Plaintiffs is that they entered the land through purchase from the Defendant's Agent namely Mureithi in 2007, 2008 and 2009 and paid the purchase price in full. That they have developed the land and settled on the same save for titles that they have not been issued hence the suit.
19. The Defendant refutes selling the land to the Plaintiffs directly or through the said Mureithi and denies knowing Mureithi; receiving any money from the Plaintiffs through Mureithi at all. She admits that she was aware that the Plaintiffs were in occupation of the land but did not remove them because of the existence of a Court case involving the suit land. She terms the Plaintiffs as trespassers who were conned by Mureithi and urged the Court to dismiss the Originating Summons with costs.
20. It is not in dispute that she was the registered owner of the mother title Parcel Ruiru/Ruiru East/Block 2/797 registered in her name on 11/8/1999. It is also not in dispute that she is the registered owner of the resultant subdivisions being the suit land registered on 4/10/2021.



21. Section 7 of the *Limitation of Actions Act* states as follows:-

“An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.”

22. From the provisions of the Act, it follows that the period permitted in Kenya is 12 years for adverse possession to crystallise.

23. It is not in dispute that the Plaintiffs entered the land in 2007, 2008 and 2009. It has been admitted by the Defendant that she had knowledge of their occupation since 2009.

24. Through case law over time Kenyan Courts have distilled the necessary ingredients that one must prove to a successful plea of adverse possession. I am guided by the case of *Leonola Nerima Karani Vs. William Wanyama Ndege*[2012]eKLR where the Court stated as follows:-

“The appellant having used adverse possession as the vehicle chosen to champion her rights of entitlement to the suit portion, all the appellant was obligated to demonstrate to the trial court then and to this appellate court now is that there is existence of possession, existence of a right to so possess, and existence of loss of possession and right to so possess by the owner or a subsequent title holder in her favour. See the case of *Wambugu versus Njuguna* (1983) KLR 171 wherein this court laid down the following guiding principles:-

- (1) The general principle is that until the contrary is proved possession in law follows the right to possess.
- (2) In order to acquire by the statute of limitation title to land which has a known owner, that owner must have lost his right to the land either by being dispossessed of it or by having discontinued his possession of it. Dispossession of the proprietor that defeats his title are acts which are inconsistent with his enjoyment of the soil for the purpose for which he intended to use it.
- (3) The *limitation of Actions Act*, in adverse possession contemplates two concepts, disposition and discontinuance of possession. The proper way of assessing proof of adverse possession would then be whether or not the title holder has been dispossessed or has discontinued his possession for the statutory period and not whether or not the claimant has proved that he has been in possession for the requisite number of years.
- (4) Where the claimant is in exclusive possession of the land with leave and licence of the appellant in pursuance to a valid sale or agreement, the possession becomes adverse and time begin to run at the time the licence is determined. Prior to the determination of the licence, the occupation is not adverse but with permission. The occupation can only be either with permission or adverse; the two concepts cannot co-exist.
- (5) The rule on permissive possession is that possession does not become adverse before the end of the period during which the possessor is permitted to occupy the land.



(6) Adverse possession means that a person is in possession in whose favour time can run”

25. In the case of *Mtana Lewa Vs. Kahindi Ngala Mwangandi* (2005)eKLR the Court stated:-

“ Adverse possession is essentially a situation where a person takes possession of land, asserts rights over it and the person having title to it omits or neglects to take an action against such person in assertion of his title for a certain period, in Kenya 12 years.”

26. In this case it is admitted by the Defendant that she was aware that the Plaintiffs were in occupation since 2009. She led evidence that she could not evict them because of the existing case *Thika CMCC No. 676 of 1993*. She also stated that she advised the Plaintiffs verbally that they should either pay more money as they were trespassers on the land or vacate the land. In *Thika CMCC No. 676 of 1993* case, it shows that the Defendant was sued as the 6th Defendant. There is no evidence that she was advocating a right to title in the said suit. The Court finds that this case did not stop time from running.

27. Further having found that the Plaintiffs occupation of the land was open and with the knowledge of the Defendant, there is no evidence that the Defendant removed the Plaintiffs or retook possession of the land. Evidence on record point to a state of affairs where the Plaintiffs activities on the land were adverse to that of the Defendant that is to say constructed houses and utilised the land in a manner inconsistent to that of the Defendant. The Court finds that the Plaintiffs have demonstrated *vide* their *animus possidendi* that their occupation was notorious and adverse to the interests of the Defendant.

28. The Court finds that the Defendant acquiesced to the occupation of the Plaintiffs and did nothing to dispossess them and take back possession of the land. It is not plausible that the Defendant did not know the Agent. There is no evidence that she reported the Agent to the Police or that any action was taken against him. The letter from Safaricom does not link the number stated therein to the said Mureithi and no Occurrence Book (OB) was annexed to show that she took any action against Mureithi as claimed by the Defendant.

29. The totality of the evidence therefore shows that the Plaintiffs entered into the land as purchasers and or trespassers in 2009 and have occupied the land to date for an unbroken period of 13 years prior to filing suit. The period being over 12 years the Court finds that adverse has been proven to be sufficient, notoriously, publicly and exclusively.

30. In the end I grant Judgment in favour of the Plaintiffs as follows:-

- a. That A Declaration Be And Is Hereby Issued That Parcel Of Land Ruiru/ruiru East/block 2/797 (now Closed On Sub-divisions) And Its Sub Divisions Among Them Ruiru/ruiru East Block 2/40191, Ruiru/ruiru East Block 2/40192, Ruiru/ruiru East Block 2/40199 And Ruiru/ruiru East Block 2/40198 Be Declared To Be Registered And Held In Trust By Wangu Mwangi Alias Agnes Wangu Ndungu for the Applicants having acquired them by way of adverse possession.
- b. That As A Consequence Land Parcel Ruiru/ruiru East Block 2/40191 Be Declared To Be Owned By John Ndung’u Karuga, Parcel Of Land Ruiru/ruiru East Block 2/40192 Be Declared To Be Owned By William Kangethe Ndungu, Parcel Of Land Ruiru/ruiru East Block 2/40199 Be Declared To Be Owned By Paul Kahara Mwangi And Ruiru/ruiru East Block 2/40198 Be Declared To Be Owned By Boniface Mugendi Njeru and the Registrar for Lands Ruiru to effect Transfers forthwith from the Respondent to the Applicants without requiring the Original Title thereto.



c. In default, the Deputy Registrar to execute all the transfers / necessary documents to effectuate the orders.

31. Costs shall be in favour of the Plaintiffs.

32. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 6TH DAY OF JUNE, 2024
VIA MICROSOFT TEAMS.**

J G KEMEI

JUDGE

Delivered online in the presence of;

Kimani for 1st, 2nd, 3rd and 4th Applicants

Ms. Musyoka for Respondent

Court Assistants – Phyllis & Oliver

