



**East Africa Pentecostal Church through the Registered Trustees v Hezekiel (Enviromental and Land Originating Summons E001 of 2023) [2024] KEELC 4589 (KLR) (5 June 2024) (Judgment)**

Neutral citation: [2024] KEELC 4589 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E001 OF 2023**

**CK NZILI, J**

**JUNE 5, 2024**

**BETWEEN**

**EAST AFRICA PENTECOSTAL CHURCH THROUGH THE REGISTERED TRUSTEES ..... PLAINTIFF**

**AND**

**KIRIMI HEZEKIEL ..... DEFENDANT**

**JUDGMENT**

1. The plaintiff took out an originating summons dated 11.7.2023 claiming entitlement of 0.40 acres out of the defendant's LR No. Igoji/Kianjogu/904, by virtue of adverse possession. At the trial, the plaintiff called Douglas Mbae Mwamba, Rev. Duncan Gikunda, pastor Joseph Kinoti Mwamba and Julius Riungu as PW 1 – PW 4, respectively. PW 1, relied on a supporting affidavit to the originating summons sworn on 11.7.2023. He told the court that the defendant sold the church 0.30 acres by an agreement dated 1.1.2005 and later another portion measuring 0.10 of an acre in 2011, next to the original one, making a total of 0.40 acres. He said that the church took vacant possession, developed a church house, pastor living quarters, a kitchen, toilets, planted some trees and connected the premises with electricity from Kenya Power and Lighting Company. PW 1 said that the defendant had assured them but defaulted to transfer the land after obtaining letters of administration.
2. PW 1 produced the two sale agreements certificate of the official search, resolutions to move to court, photographs and certificates of incorporation as P. Exh No. 1-6 (a) & (b), respectively.
3. In cross-examination, all the plaintiff witnesses were emphatic that the plaintiff's church had been on the suit land to the exclusion of the defendant, who had, despite completion of payments to the land, declined to make the transfer of the land to the plaintiff. Though the defendant failed to file any replying affidavit, the court allowed him to cross-examine the plaintiff's witnesses and offer a defence.



4. DW 1 told the court that he sold the land to the plaintiff over ten years ago for Kshs.30,000/=, but was unable to transfer since he was following up the letters of administration so that the land could be registered under his name. In cross-examination, DW 1 told the court that he signed the sale agreement at the office of Kiogora Advocates, but was unaware of another sale agreement made in Nkubu Market. He disputed the signatures appearing therein as his said to have been signed before Nyamweya Musota Advocates. He said that he acquired his title deed in November 2022 but was unable to transfer the land since he was owed a balance of Kshs.12,000/= that was to be cleared after the transfer was affected.
5. At the close of the defence case parties were directed to put in written submissions. The plaintiff relied on written submissions dated 11.3.2024, that the testimony tendered was clear on possession and occupation of the suit land since 2005 to the exclusion of the defendant. Reliance was placed on Section 38 of the *Limitation of Actions Act*, Cap 22, *James Maina Kinga vs Gerald Kwendaka* (2018) eKLR & *Public Trustee vs Wanduru Ndegwa* (1984) eKLR.
6. Adverse possession occurs when a true owner neglects or omits to take action to drive out or assert ownership over an intruder to his land, who undertakes adverse acts to the purpose for which the true owner intended to use the soil for a period of 12 years. See *Mtana Lewa vs Kabindi Ngala Mwangandi* (2016) eKLR, *Maweu vs Lin Ranching & Farming Society* (1985) KLR 430. Adverse possession is established by laying evidence that the possession has been open, exclusive, notorious, without force or stealth, open, continuous and with the knowledge of the true owner. A party must establish dispossession and discontinuance of possession of the true owner. See *Wambugu vs Njuguna* (1983) eKLR.
7. Adverse possession must be without permission of the true owner. See *Samuel Miki Waweru vs Jane Njeru Richu* C.A No. 122 of 2001. For adverse possession arising out of an aborted sale agreement or licence, the time for adverse possession starts to run after the payment of the entire purchase price or when the licence terminates. See *Public Trustee vs Peter Wanduru* (*supra*) and *Michuki vs Michuki* (2014) eKLR.
8. In this suit, the plaintiff has led evidence that entry into the suit land occurred in 2005 on 0.30 acres and later on 0.10 acres out of the defendant's land. Adverse developments were also undertaken on the land inconsistent with the actual owner's intention as per the photographs tendered as evidence. The defendant has not denied the exclusive possession of his land by the plaintiffs. Evidence of any effective entry or notice to evict or assert ownership by the defendant is lacking.
9. My finding is that the plaintiff has satisfied the requirements on adverse possession to be entitled to the reliefs sought. An order is as a result of this issued declaring the plaintiff as the owner of the portion under her possession. The defendant shall, within two months, excise 0.40 acres of his land and transfer the same to the defendant. In default, the Deputy Registrar of this court shall effect the transfers. Costs to the plaintiff.

Orders accordingly.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 5<sup>TH</sup> DAY OF JUNE, 2024**

**HON. C K NZILI**

**JUDGE**

In presence of

CA Kananu



Gikunda Anampiu for the plaintiff

Kirimi in person

