



**Uwezo City Park Self Help Group & 6 others (Suing on Their Behalf and on Behalf of More Than 500 other Members of Uwezo City Park Self Help Group, Nairobi County) v Ahmad (Environmental and Land Originating Summons 347 of 2019) [2024] KEELC 5674 (KLR) (25 July 2024) (Judgment)**

Neutral citation: [2024] KEELC 5674 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 347 OF 2019**

**LN MBUGUA, J  
JULY 25, 2024**

**BETWEEN**

**UWEZO CITY PARK SELF HELP GROUP ..... 1<sup>ST</sup> PLAINTIFF**  
**JUSTUS WAINAINA NJUGUNA ..... 2<sup>ND</sup> PLAINTIFF**  
**COSMUS KUSU NYOIKE ..... 3<sup>RD</sup> PLAINTIFF**  
**LYDIA NYAGUTHI MIANO ..... 4<sup>TH</sup> PLAINTIFF**  
**DANSON NGUMI MWANGI ..... 5<sup>TH</sup> PLAINTIFF**  
**PETER MAINA NDEGWA ..... 6<sup>TH</sup> PLAINTIFF**  
**JACOB WEKESA ..... 7<sup>TH</sup> PLAINTIFF**  
**SUING ON THEIR BEHALF AND ON BEHALF OF MORE THAN 500 OTHER MEMBERS OF UWEZO CITY PARK SELF HELP GROUP, NAIROBI COUNTY**

**AND**

**MOHAMMED ABDULLE AHMAD ..... DEFENDANT**

**JUDGMENT**

1. This suit was filed through an Originating Summons dated 4.11.2019 by the Plaintiffs on behalf of over 500 members of Uwezo City Park self-help group (hereinafter Uwezo Group). They are claiming parcel LR No.209/193 Volume No. N 6 Folio 299/23 File No. 1137-Nairobi measuring approximately 44.13 acres by way of adverse possession and they seek to be registered as the owners thereof.



2. The Originating summons is supported by the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and the 7<sup>th</sup> Plaintiff's supporting affidavits which are all sworn on 4.11.2019. They aver that they have been in continuous uninterrupted occupation of the suit land since 1991.
3. The suit is opposed by the Defendant vide his replying affidavit sworn on 19.6.2020 in which he avers that he acquired the suit property in 1998 and its title was a leasehold which expired in 2002, the same is yet to be renewed.

#### **Case for the Plaintiff**

4. The Plaintiffs called 3 witnesses. Their 1<sup>st</sup> witness Danson Ngumi Mwangi, PW1 was the 5<sup>th</sup> Plaintiff and chairman of Uwezo Group. He adopted his affidavit in support of the Originating summons sworn on 4.11.2019 as his evidence. He produced the 6 annexures to the said affidavit as exhibits of the plaintiffs.
5. In the said affidavit, PW1 avers that he has been staying on the suit land since 1991 where they have built houses, planted trees, established businesses, water points, and have been paying rates to Nairobi County government since 1998.
6. He avers that when they commenced the process of filing the instant suit in October 2019, they heard that the Defendant had hatched a plan to eliminate them from the suit land. That the revelation prompted them to conduct a search which showed that the suit land was transferred to the Defendant in 1998, yet all the years they have stayed on the suit land, no one has ever claimed it.
7. PW1 further contends that the Plaintiffs' occupation, continuous stay, possession and development of the suit land has never been interrupted by the Defendant, thus they have acquired it by adverse possession.
8. In cross-examination, PW1 stated that Uwezo Group is registered and has 15 members, but one of them Lydia Nyaguthii died, so they are now 14. He has no document to show that the said members authorized him to file the suit, and he didn't have their registration documents in court.
9. PW1 also stated that the Plaintiffs have developed the suit land with iron sheet structures as depicted from the photos annexed to his supporting affidavit, and that though he has a house on the suit land, he didn't come from the said house on the day he gave his testimony.
10. He stated that he does not know the Defendant, but he has been on that land for over 12 years without his permission. He did not have a search for the title to the suit land and that he was not aware that its lease had expired.
11. He admits to knowing Stephen Githae (DW2) whom he did second hand clothes business with, but they never opened a carwash business together.
12. In re-examination, PW1 stated that while their houses are made of iron sheets, they still sleep there and even rear goats and have installed water which they pay for to the county government.
13. He also stated that there are trees which he planted on the suit land including fruit trees and that he also has a car wash put up in 1999. He further stated that while the 1<sup>st</sup> Plaintiffs' list of members in the Plaintiffs' bundle has 15 members, there are many other members.
14. The Plaintiffs' 2<sup>nd</sup> witness, PW2 is Cosmus Kusa Nyoike, the 3<sup>rd</sup> Plaintiff. His supporting affidavit filed on 5.11.2019 was adopted as his evidence. His averments mirror those of PW1.



15. In cross-examination, PW2 stated that their entity, Uwezo Group is registered, that members have membership cards, and that they have a certificate of registration though it was not in court. That while 15 members are registered as members of the 1<sup>st</sup> Plaintiff, on the ground there are many people. He stated that he manages the group's affairs which include a car wash, and that they have an office at Portal House, Muindi Bingu Street.
16. He stated that their developments on the suit land are iron sheet structures as depicted in their photographs and that they have planted many trees. He doesn't know the Defendant, they learnt about him when the Plaintiffs' Advocate conducted a search on the suit property but he did not see the said search and that it is not in the Plaintiffs' bundle of documents.
17. In re-examination, PW2 stated that the trees shown in their photographs are just a sample of the many trees planted by the Plaintiffs which could be over 100. He came to know of the Defendant's name in court.
18. The Plaintiffs' 3<sup>rd</sup> witness, PW3 Peter Maina Ndegwa is the 6<sup>th</sup> Plaintiff. His supporting affidavit sworn on 4.11.2019 was adopted as his evidence in chief. He identifies himself as the assistant secretary of their group. The contents of his affidavit are more or less similar to those of the PW1 and PW2.
19. In cross examination, pw3 stated that they did not file their certificate of registration, they have about 150 members but they have no list of the said members. He stated that he lives in Rongai since 2020 but before moving there, he used to stay in an iron sheet house on the suit land and he left his family members there.
20. In re-examination, PW3 stated that he has an iron sheet house on the suit land where his family members stay, so he goes to check on it. He also stated that they have an indenture from the lands office which indicates that the Defendant owns the suit land.

### **Case for the Defendant**

21. The Defendant called 2 witnesses, himself testifying as DW1. He adopted his replying affidavit sworn on 19.6.2020 as his evidence in chief. He produced 4 annexures therein as D. Exhibit 1-4. His case is that in 1998, he acquired the suit property for value from Abdul Hameed Sheik and Sheik Mohamed Bashir and that it was a leasehold which expired in 2002 though he has been in control and management of the said land and has been paying land rates.
22. He avers that he has been unsuccessful in his efforts to renew the lease from the Government of Kenya. He points out that on several occasions, the file relating to the suit land went missing at Ardhi house and as a result, he applied for reconstruction of the register, which application was published in the Kenya Gazette vide Gazette Notice No.7154 Vol. CXV-No. 81.
23. He contends that the plaintiffs do not reside on the suit parcel, that there are no permanent structures on the suit land and that the 5th Plaintiff and one Stephen Githae Chege are on the suit land courtesy of his express permission allowing them to run a car wash business while they secure the land from invaders.
24. It is also DW1'S contention that the suit land has natural grown trees and vegetation since the previous owners had not developed it. He points out that around the year 2016, he appointed the 2<sup>nd</sup> Plaintiff and Stephen Githae Chege who are persons well known to him to be his agents regarding pursuing compensation from the Government of Kenya as it had indicated through KURA that it intended to construct a road cutting through the suit land.



25. He also contends that he has previously entered into agreements with the 2<sup>nd</sup> and 5<sup>th</sup> Plaintiffs and other persons to assist him in fast tracking the process of renewal of the lease on the understanding that if they succeeded, he would give them a portion of the suit land but they did not succeed as the lease is yet to be renewed.
26. In cross-examination, DW1 reiterated that he purchased the suit property in 1998 for ksh.20 million but the sale agreement which was entered into in Tanzania where the vendor had relocated to got burnt in a fire in his office at Garissa lodge but his title was with his lawyers so he has it.
27. He stated that the title to the suit land is an indenture in his name and that from 1998-2002, he was not staying on that land. He bought the land when it was vacant, that though he owns it, he cannot do anything on it until the lease is renewed and he is the one who pays rates to the county government.
28. DW1 also stated that he is the one who allowed the 5<sup>th</sup> Plaintiff and one Chege to put up a carwash on the suit land, but this was done so as to have the land looked after, and in any event, DW1 later chased them away. They however went back to the suit land after the year 2020 and started recruiting people and giving them shares in the 1<sup>st</sup> Plaintiff and that they were taking advantage since they had learnt that his lease had expired.
29. In re-examination, DW1 stated that he learnt about this suit in the Standard Newspaper since the Plaintiffs were alleging that he could not be found. He reiterated that the plaintiffs are rich people who don't stay on the suit land.
30. DW2 was Stephen Githae Chege who adopted his witness statement dated 19.6.2020 as his evidence. He avers that he came to know of the suit property when the registered owner (Defendant) in an oral agreement asked him and the 5<sup>th</sup> Plaintiff to operate car wash business from the suit land as they watched over the land from being trespassed upon.
31. That he knows as a fact that none of the Plaintiffs reside on the suit land and the trees thereon are natural. He is aware that the Defendant's lease to the suit property expired in 2001 and he has severally attempted to renew it without success.
32. That around 2016, the Government of Kenya through Kenya Urban Roads Authority had indicated that it wanted to construct a road passing through the suit land, following which the Defendant appointed him and the 2<sup>nd</sup> Plaintiff as agents to pursue compensation on his behalf, but the same never materialized as the government did not construct the road.
33. He adds that in the Defendant's pursuit to have his title renewed, he contracted him, the 5<sup>th</sup> plaintiff, Samuel Gatembu Mugaa, Beth Wangari Kago and Simon Kariuki Kamitha to assist him in fast tracking the renewal of the lease. Their understanding was that if they succeeded, the Defendant would give them a share of the suit property but that too did not materialize.
34. DW2 also avers that he knows the 2<sup>nd</sup> and 5<sup>th</sup> Plaintiffs at a personal level and that they have never stayed on the suit land. Adding that the 5<sup>th</sup> plaintiff stays in Umoja 1 House no H10. He contends that the 1<sup>st</sup> Plaintiff has been registered by the 2<sup>nd</sup> and 5<sup>th</sup> Plaintiffs for purposes of pursuing this claim which is based on falsehoods.
35. In cross-examination, DW2 stated that he knew the Defendant in the year 2000, the 5<sup>th</sup> Plaintiff from the same year and that he knows the rest of the people who entered into the agreement dated 20.7.2016 (D. Exhibit 3) with the Defendant which was made before ABIB Advocates. The agreement was meant to assist the Defendant to renew his lease.



## Submissions

36. The Plaintiffs did not file any submissions. The defendant's submissions are dated 5.4.2024 where it is argued that the plaintiffs have not met the necessary legal threshold required under Section 37 of the *Limitation of Actions Act* to establish a claim for adverse possession. It is submitted that the Defendant was the owner of the suit property, the claim by the Plaintiffs lacks merit since the evidence in court is that the 5<sup>th</sup> Plaintiff entered the suit land as a result of the permission given by the Defendant before his lease to the property expired.
37. That the Defendant also authorized the 2<sup>nd</sup> and 5<sup>th</sup> Defendants to act for him in renewal of the lease and other matters relating to the suit property thus their involvement and their assertions that they are officials of the 1<sup>st</sup> Plaintiff appears to be a scheme hatched by the 2 using the 1<sup>st</sup> Plaintiff as the vehicle to achieve their goal.
38. It is also argued that the evidence presented indicates that the suit land has only few temporary structures and self-grown shrubs which means no acts have been committed by the Plaintiffs that can be inconsistent with the Defendant's title. It is also the Defendant's submission that there is no evidence of existence of more than 500 Plaintiffs as claimed, and that none of the Plaintiffs resides on the suit property.
39. The cases of Wambugu v Njuguna [1998] KLR 173 and Francis Gitoonga Mcaharia v Muiruri Waithaka, Civil Appeal No. 110 of 1997 are relied upon.

## Determination

40. The issue falling for determination is whether the Plaintiffs have established a claim of adverse possession. They contend that they have become entitled to Land Reference No. 209/193 by adverse possession owing to their long occupation which allegedly commenced in 1991. Section 38 (1) of the *Limitation of Actions Act* enables a person claiming land by adverse possession to apply to the Court to be declared and registered as the proprietor of the land, in lieu of the registered proprietor.
41. In Maweu v Liu Ranching and Farming Cooperative Society 1985 KLR 430 cited in James Maina Kinya v Gerald Kwendaka [2018] eKLR, the Court held that;

“Thus, to prove title by adverse possession, it was not sufficient to show that some acts of adverse possession had been committed. It was also to prove that possession claimed was adequate, in continuity, in publicity and in extent and that it was adverse to the registered owner. In law, possession is a matter of fact depending on all circumstances”.
42. Firstly, while this case is said to have been brought on behalf of 500 members of the 1<sup>st</sup> Plaintiff, there is no evidence of registration of the entity known as Uwezo City Park Self Help Group or that the group consists of 500+ members. There is no evidence to indicate when the entity known as 1<sup>st</sup> plaintiff was formed. Further, the list of its members availed by the plaintiffs contains only 15 people, of which, one of them Lydia Nyaguthii (4<sup>th</sup> plaintiff) is apparently deceased.
43. Secondly, there is no tangible evidence proffered by the plaintiffs to explain how they entered the land. In all the affidavits in support of the Originating summons at paragraph 3, the deponents have simply uttered the year of entry as 1991!



44. The third issue relates to the criteria of exclusive possession of the suit property. In the case of Gabriel Mbui v Mukindia Maranya [1993] eKLR, the court had this to say on the issue;

“The nonpermissive, actual possession hostile to the current owner must be unequivocally exclusive, and with an evinced unmistakable animus possidendi, that is to say, occupation with the clear intention of excluding the owner as well as other people. Exclusive possession means that the exercise of dominion over the land must not be shared with the dispossessed owner, the land being in actual possession with intent to hold solely for the possessor to the exclusion of others. A person in possession of land is not entitled to the protection of the statute of limitations as against the owner of the paper title where the latter and his predecessors in title have not been kept dispossessed or have not abandoned possession of the land for the statutory period and the person claiming the protection of the statute has been in possession with an animus possidendi for the requisite time. It must be shown that the owner has ceased to be in occupation and that the claimant is and has continuously been in occupation. An owner ceases to be in occupation of land by reason of dispossession or discontinuance of possession”.

45. A look at the photographs of the developments claimed to be on the suit land reveals random structures made of iron sheets. For PW1, he stated that on the day he testified, he had not come from his house on the suit land, while pw3 stated that he stays in Rongai. There is no evidence of actual occupation on the suit property that can be construed to be adverse to the title holder, similarly there is no clear demarcation of each claimants plot on the ground. Thus the element of animus possidendi is missing.

46. The fourth point relates to the title. It is trite law that pursuant to the provisions of Section 13 of the *Limitation of Actions Act*, “A right of action to recover land does not accrue unless the land is in the possession of some person in whose favour the period of limitation can run.

47. The indenture dated 20.11.1998 between Abdul Hameed Sheikh and Sheikh Mohamed Bashir and the Defendant indicates that the lease to the suit land was issued to one Helena Elizabeth Bowker for 99 years from 1.1.1902. The said lease therefore expired in 2002. There is no evidence that the said lease was renewed. In paragraph 9 of all the affidavits in support of the originating summons, the deponents identify exhibit 6 as the copy of the official search on the suit property which they got from the land registry. However, the actual document marked as exhibit 6 is certainly not a search. Indeed PW1 admitted that they didn’t have a search.

48. Upon expiry of the lease, the land would revert back to the government. In such a case an order of adverse possession cannot be made against the Government. A claim for adverse possession cannot be made against a person without title to land, and in this case, there is no title proffered in which a claim of adverse possession can be made.

49. On the other hand, the defendant gave a plausible account of how he engaged the 2<sup>nd</sup> plaintiff and DW2 to get compensation for him in case the government built a road, and they were also to assist him in having the lease renewed. That this is when the 2<sup>nd</sup> and 5<sup>th</sup> plaintiff hatched up the idea of taking the land from DW1 when they realized that the latter’s lease had not been renewed. The version of events as narrated by the defence are certainly credible.

50. The upshot of the findings herein is that the plaintiffs are opportunistic persons who have peddled falsehood before this court. Their suit is found to be unmerited and the same is hereby dismissed. The three plaintiffs witnesses (PW1, 2 & 3) who have testified on behalf of unknown persons and without authority from the said unknown persons are hereby condemned to pay the cost of the suit to the defendant.



**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25<sup>TH</sup> DAY OF JULY, 2024 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

**In the presence of:-**

**Ondieki for Plaintiff**

**Ngwara for Defendants**

**Court assistant: Eddel**

