



**Ngirigaca & 5 others v Njega & 5 others (Environment & Land Case  
16 of 2021) [2024] KEELC 6314 (KLR) (30 September 2024) (Ruling)**

Neutral citation: [2024] KEELC 6314 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA  
ENVIRONMENT & LAND CASE 16 OF 2021  
JM MUTUNGI, J  
SEPTEMBER 30, 2024**

**BETWEEN**

**CHARITY WAMBARA NGIRIGACA ..... 1<sup>ST</sup> PLAINTIFF  
ANN WAMBUI NGIGACA ..... 2<sup>ND</sup> PLAINTIFF  
BEATRICE WANJIKU NGIRIGACA ..... 3<sup>RD</sup> PLAINTIFF  
JUDY WANGUI NGIRIGACA ..... 4<sup>TH</sup> PLAINTIFF  
ANTHONY MUTHEE NGIRIGACA ..... 5<sup>TH</sup> PLAINTIFF  
EDWARD BUNDI NGIRIGACA ..... 6<sup>TH</sup> PLAINTIFF**

**AND**

**ROSE WANJIRU NJEGA ..... 1<sup>ST</sup> DEFENDANT  
ANNE WANJIKU MBUGI ..... 2<sup>ND</sup> DEFENDANT  
BOARD OF MANAGEMENT RWAMBITI SECONDARY SCHOOL .... 3<sup>RD</sup>  
DEFENDANT  
JAMES MWAI PAUL NGANABA ..... 4<sup>TH</sup> DEFENDANT  
WAHOME JOHN NN ..... 5<sup>TH</sup> DEFENDANT  
JOHN SAMUEL NGIRIGACA ..... 6<sup>TH</sup> DEFENDANT**

**RULING**

1. This ruling emanates from the parties' differing opinions on adopting the Surveyor's report concerning Baragwe/Raimu/1004, 1005, 1006, 1008, 1028, 1073 and 1105 (the suit property). On 15<sup>th</sup> February 2024, the Court instructed the parties to submit written comments or observations on whether the Court should adopt the Land Registrar's and Surveyor report.



2. Before proceeding, let me provide some background information. The Plaintiffs initiated this suit by filing an Originating Summons dated 30<sup>th</sup> April 2021. The Plaintiffs seek permanent injunction orders restraining the defendants, their employees, or assigns from encroaching, trespassing, committing acts of wastage, and interfering with the Plaintiffs' use and occupation of the property in question. Additionally, the Plaintiffs seek orders declaring that the Plaintiffs' adverse possession has extinguished the Defendant's title to the property and that they be declared as the rightful owners of the property. The Plaintiff's pray that the Defendants' title be canceled and the Plaintiffs be registered as the official owners of the property. Lastly, the Plaintiff pray for an order for the Deputy Registrar and/or the executive officer of the court to execute the necessary documents to comply with the aforementioned orders.
3. The Originating Summons was grounded on the attached joint Affidavit of Charity Wambara Ngirigaca and Anthony Muthike Ngirigaca, the 1<sup>st</sup> and 5<sup>th</sup> Plaintiffs, dated 30<sup>th</sup> April, 2021. They averred that the 1<sup>st</sup> Plaintiff and her late husband, Julius Ngirigaca Gaku, moved into the property in question over Twenty years ago where on they established their matrimonial home and raised all their children, the 2<sup>nd</sup> to 5<sup>th</sup> Plaintiffs. The deponents stated that once the 2<sup>nd</sup> to 6<sup>th</sup> Plaintiffs reached adulthood, they also made homes and raised their children on the suit property. The deponents further averred that the Defendants had never set foot on the property to claim ownership and that they themselves had been in continuous and, exclusive possession of the property for over twelve years.
4. The 2<sup>nd</sup> Defendant filed a Replying Affidavit in opposition stating that she was the registered proprietor of Baragw/Raimu/ 1028, 1073, and 1106. She stated that she had purchased the parcels from the Plaintiff's father, Julius Ngirigaca. She claimed to be a purchaser for value without notice and had obtained certificates of title to her parcels of land before the Plaintiffs' father passed on. She further contended that the Plaintiffs could not claim adverse possession over her land, as she had been in possession of the land since purchasing the parcels of land in 1991 and 1992. The 1<sup>st</sup> Defendant averred that the Plaintiffs had their own parcel of land where they resided. She also emphasized that the Plaintiffs took photos of her developed parcel of land and claimed the developments were effected by them and were on their land. She prayed for the dismissal of the Plaintiffs' suit.
5. The 5<sup>th</sup> Defendant in his Replying Affidavit dated 12<sup>th</sup> July 2021. stated that he acquired his plot of land, Baragwe/Raimu/1005, in 1992 from Eunice Wanjiru Ngari, who had bought the land from Julius Ngirigaca. He stated that he bought the land with the consent of the first Plaintiff and took immediate possession. Since then, stated he had been in continuous and uninterrupted possession of the land and has made significant developments on it. He averred that the Plaintiffs have been residing and developing land parcel Baragwe/Raimu/1107, which is registered in the name of Charity Wambara Ngirigacha and her late husband Julius Ngirigacha Gaku. He stated that he has been in possession of the land, having fenced his portion in 1992 and planted gravelia robusta trees along some of the boundaries. In the plot he stated he had constructed a four roomed semi-permanent house and that he has mature coffee trees that he harvests. He asserted the Plaintiffs case is based on false holds and ought to be dismissed.
6. The 1<sup>st</sup> Defendant filed her Replying Affidavit on 16th July 2021 and averred that she was the registered proprietor of parcel Number Baragwe/Raimu/1008, having purchased the same from Julius Ngirigacha Gaku in October 1990. She stated that the property was transferred to her name on 30<sup>th</sup> October 1990, and she took vacant possession of the same after the transfer. She asserted that she had been utilizing and cultivating the land since taking possession and disputed the Plaintiffs' claims of occupation and use of her land. She asserted that she legitimately obtained an indefeasible title to the land and without any fraudulent or corrupt activities. She maintained that the Plaintiffs did not bury



- their father/husband in her portion of land and that the 1<sup>st</sup> Plaintiff's matrimonial property is not located there. She urged the Court to conduct a site visit to verify the developments she has made and asked for the dismissal of the Originating Summons with costs.
7. On 14<sup>th</sup> November 2022, owing to the varying assertions on occupancy of the suit land, the Court issued directions that the Land Registrar and the County Surveyor to conduct a ground inspection of the property in question to determine the occupancy of each portion of land on the ground. In compliance with this directive, the Land Registrar and the County Surveyor submitted a joint report dated 28<sup>th</sup> June 2022 (ought to have been 28<sup>th</sup> June 2023). As the parties had divergent views on whether or not the report should be adopted involved parties to file their written comments/observations by the Court for implementation, the Court invited the parties to make submissions on the issue. The Plaintiffs did not file their written comments/submissions. The 1<sup>st</sup> and 4<sup>th</sup> Defendants filed their comments/submissions dated 8<sup>th</sup> March 2024 and 19<sup>th</sup> March 2024, respectively.
  8. The 1<sup>st</sup> Defendant submitted that the report conformed to the evidence that she had given in her Replying Affidavit. She also submitted that she fully associated herself with the findings of the report and called upon the Court to adopt the report. On the other hand, the 4<sup>th</sup> Defendant similarly submitted that they were in agreement with the report and called upon the Court to adopt the said report as a of this Court.
  9. The only issue to be determined is whether the Surveyor's reports determine the issues in controversy and whether the said reports ought to be adopted as an order of the Court.
  10. For purposes of clarity, I will reproduce the various reliefs, which the Plaintiffs sought in the Originating Summons dated 30<sup>th</sup> April, 2021 and filed in Court on 13<sup>th</sup> May, 2021.
    1. That a permanent injunction be issued restraining the Defendants, their agents, employees, servants, assignees or anybody else claiming through them from entering, trespassing, encroaching, committing acts of wastage, evicting the Plaintiffs or interfering in any other way with the Plaintiffs' use and occupation of land parcel number Baragwe/Raimu/1004, 1005, 1006, 1008, 1028, 1073 and 1105 or any part thereof.
    2. That the Defendants' titles to the land parcels number Baragwe/Raimu/1004,1005,1006,1008,1028,1073 and 1105 be deemed to have been extinguished by the Plaintiffs' adverse possession and the Plaintiffs be declared to have become entitled to the ownership of the whole of land parcels number Baragwe/Raimu/1004, 1005, 1006, 1008, 1028, 1073 and 1105 by way of adverse possession.
    3. That the Defendants' title deeds to land parcels number Baragwe/Raimu/1004, 1005, 1006, 1008, 1028, 1073 and 1105 and the Defendants' registration as the owners thereof be cancelled and the Plaintiffs be registered as the proprietors of land parcels number Baragwe/Raimu/1004, 1005, 1006, 1008, 1028, 1073 and 1105.
    4. That the aforesaid orders be served upon the Land Registrar, Kirinyaga for compliance and where need be, the Executive Officer of this Honourable Court be ordered to execute all the necessary documents and the Lands Registrar be ordered to dispense with the documents necessary for the execution or in compliance with the aforesaid orders.
  11. The Plaintiffs claim as headlined in the Originating Summons was predicated under Section 38 of the [Limitation of Actions Act](#) and Order 37 of the Civil Procedure Rules which anchor the doctrine of adverse possession. Under the doctrine of adverse possession if a person adversely possesses a registered proprietor's parcel of land openly for a continuous and uninterrupted period of 12 years, the title of



the registered proprietor is deemed to be extinguished and the adverse possessor on application to the Court is entitled to be registered as the owner of such land.

12. In the present suit, the County Surveyor and Registrar provided a comprehensive and elaborate breakdown concerning the ownership of the contested land parcels which the Plaintiffs have claimed through adverse possession. The report by the Officers disclosed that the parcel known as Baragwe/Raimu/1006 is held by the 6<sup>th</sup> Defendant, who has owned it for 31 years. This parcel is distinguished by its six permanent stone buildings, a garage, an elevated water storage tank, surrounding perimeter walls, and hedge fencing. Moreover, it is cultivated with subsistent crops and is home to a diverse range of trees. Regarding the parcel identified as Baragwe/Raimu/1005, the report indicated it was owned by the 5<sup>th</sup> Defendant since 1992. This land has a hedge fence, a permanent stone residence, a cow shed, a semi-permanent house, a water tank, facilities for storing animal feed, along with coffee bushes and a diverse assortment of trees. The parcel marked as Baragwe/Raimu/1004 as per the report is owned by the 4<sup>th</sup> Defendant, who has been in possession of it for 26 years. This particular parcel hosts a semi-permanent structure, a latrine, and a variety of trees, indicating its use and habitation. As for Baragwe/Raimu/1008, it is reported to belong to the 1<sup>st</sup> Defendant, who has been in possession of the land for over thirty-two years and has planted bananas on it. Regarding Baragwe/Raimu/1028, 1073, and 1106, they are reported to belong to the 2<sup>nd</sup> Defendant, who has been in possession of the land for over thirty-one years. It is stated that the 2<sup>nd</sup> Defendant has constructed two semi-permanent houses and planted coffee bushes and a variety of indigenous trees.
13. As per the report some of the Defendants purchased their land from the Plaintiff's husband and father, while others acquired the land from third parties. The Land Registrar and the Surveyor as per the report made a physical inspection of the disputed parcels of land in the presence of all the parties. The issue of occupation and possession of the land was all that was disputed. The report in my view is factual and the Surveyor has by way of an illustrated sketch plan indicated all the contested parcels of land and by whom the same are occupied.
14. The order of reference to the Land Registrar and the County Surveyor was inter alia in the following terms:-
  1. That the Land Registrar and the County Surveyor to hereby visit land parcels BARAGWE/RAIMA/1004, 1006, 1005, 1008, 1028, 1073, 1106, 1105, and 1107 and carry out ground inspection and identify who occupies what portion on the ground.
  2. That the Land Registrar to notify all the parties on the date appointed for the visit and inspection for the parties to be present.
  3. That the Land Registrar and County Surveyor to hereby prepare an indexed plan designating who is in occupation of the specified parcels of land and file a report within 120 days from today (14.11.2022).
15. The Land Registrar and the Surveyor complied with and implemented the said order of reference. A site inspection was conducted by the Officials on 15<sup>th</sup> February, 2023 in the presence of all the parties. The Officers in the report indicate they inspected the parcels of land together with their owners. They indicated only Number Baragwe/Raimu/1105 that could not be located on the ground. The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 6<sup>th</sup> Plaintiffs were present and must have indicated to the Officers the land they were in occupation of other than land parcel Baragwe/Raimu/1107 which the report indicated belonged to Charity Wambara Ngrigaca, wife to the late Julius Ngrigaca, all the other parcels of land, save for parcel 1105 were said to belong to the Defendants who had developed the same and were in possession thereof.



16. The only contested issue in this matter is possession of land parcels Baragwe/Raimu/1004, 1005, 1006, 1008, 1028 and 1073. The Land Registrar's and Surveyor's report in my view conclusively deals with the issue of possession and I entertain no doubt that, the Plaintiffs cannot controvert the report presented to Court. The Plaintiffs though being the opportunity to make their comments/ observations on the report, failed to do so.
17. The 1<sup>st</sup> and 4<sup>th</sup> Defendants filed their comments in support of the report and sought its adoption. As I observed earlier in this ruling the Plaintiffs case was predicated on their ability to prove they had been in adverse possession of the Defendants parcels of land for a continuous and uninterrupted period of not less than 12 years before the filing of the suit. In the face of the report filed by the Land Registrar and the County Surveyor, I am satisfied there is a complete rebuttal of the allegations of adverse possession by the Plaintiffs. Taking the report as part of the evidence in this matter, as I must it is my view that the Plaintiffs case is incapable of being resuscitated by any means. The Land Registrar and the Surveyor being neutral and having no interest in the case, had no reason to give a false report and it is my view the report they prepared renders a mortal blow to the Plaintiffs case rendering it unnecessary to continue entertaining the suit, when the result is as clear as daylight.
18. Courts should never act in vain and valuable time ought not to be expended on matters that in the first place should never have come to Court. The report by the Land Registrar and the Surveyor has detailed the developments the Defendants have each carried out over a span of over three decades some of which include permanent stone houses, mature cash crops and trees. How then could the Plaintiffs be in adverse possession of such lands? Either the Plaintiffs do not understand what the concept of adverse possession entails and/or are just witch hunters.
19. I am persuaded the Plaintiffs suit on the face of the Land Registrar's and Surveyors report discloses no cause of action against the Defendants and/order the Originating Summons struck out in its entirety. I however order that the costs of the struck out suit shall borne by each party.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 30TH DAY OF SEPTEMBER 2024.**

**J. M. MUTUNGI**

**ELC - JUDGE**

