



**Wangai v Mwangi (Environmental and Land Originating Summons
E01 of 2023) [2024] KEELC 5957 (KLR) (20 September 2024) (Judgment)**

Neutral citation: [2024] KEELC 5957 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E01 OF 2023
JO OLOLA, J
SEPTEMBER 20, 2024
IN THE MATTER OF LR. NO.NAROMORU/BLOCK1/RAGATI/T.595
AND
IN THE MATTER OF LIMITATION OF ACTIONS ACT CAP 22 LAWS OF KENYA
BETWEEN
MATHEW KINYUA WANGAI PLAINTIFF
AND
PRISCILLA WAMBUI MWANGI DEFENDANT

JUDGMENT

1. By the Originating Summons dated 26th January 2023, Mathew Kinyua Wangai (the Plaintiff) prays for a declaration that he has acquired title to the parcel of land known as Naromoru/Block 1/Ragati/T.595 by adverse possession. Accordingly, the Plaintiff urges the court to direct that the said parcel of land be forthwith registered in his name.
2. The Originating Summons is supported by a brief affidavit wherein he deposes at the relevant Paragraphs 3 to 9 as follows:-
 - “3. That I have been in exclusive, open, peaceful continues and uninterrupted possession and occupation of the said parcel of land since 2010;
 4. That before I took possession of the said parcel of land it was all bush and as a result it had become a security risk for the neighbours of the adjacent plots;
 5. That I cleared the said parcel of land, fenced it all round with chain link and divided it into two portions;



6. That I use one of the portions to keep goats and sheep and have a shed therein where I lock up the animals at night while I use the other portion to plant maize and other crops;
 7. That I have also planted various types of trees on the said parcel of land;
 8. That in the circumstances the Defendant's title to the said parcel of land has been extinguished by my long use and possession of the said parcel of land since the year 2010; and
 9. That I pray that I be registered as the proprietor of the said parcel of land in place of the Defendant.
3. The Originating Summons were served upon Priscilla Wambui Mwangi (the Defendant) by way of substituted service through the Daily Nation Newspaper published on 6th April 2023. The Defendant did not however enter appearance or file a Statement of Defence and this matter therefore proceeded by way of formal proof.
 4. I have carefully perused and considered the pleadings filed herein, the testimony of the Plaintiff as the sole witness as well as the evidence adduced at the trial. I have similarly perused and considered the submissions and authorities placed before the court by Mr. Mindo, Learned Counsel for the Plaintiff.
 5. By the Originating Summons dated 26th January 2023, the Plaintiff urges the court to declare that he has acquired title to the parcel of land known as Naromoru/Block 1/Ragati/T.595 by way of adverse possession. Consequently, the Plaintiff further urges the court to direct that the said parcel of land be forthwith registered in his name and that the Defendant's name be canceled therefrom.
 6. In respect to a claim based on adverse possession, Section 38 of the *Limitation of Actions Act*, Cap 22 of the Laws of Kenya provides as follows:-
 - “(1). Where a person claims to have become entitled by adverse possession to land registered under any of the Acts cited in Section 37 of this *Act*, or land comprised in a lease registered under any of those Acts, he may apply to the High Court for an order that he be registered as the proprietor of the land or lease in place of the person then registered as proprietor of the land.
 - (2) ...
 7. The procedure for making such a claim in to be found under Order 37 of the *Civil Procedure Rules* which provides as follows:-
 - “(1). An application under Section 38 of the *Limitation of Actions Act* shall be made by an Originating Summons.
 - (2). The Summons shall be supported by an affidavit to which a certified extract of the title to the land in question has been annexed.”
 8. In compliance with those requirements, the Plaintiff has annexed to the supporting Affidavit a Certificate of Official Search issued by the Land Registrar, Nyeri indicating that the suit property was registered in the name of the Defendant on 6th December 2006. It was the Plaintiff's testimony that he entered the suit property in the year 2010 and that he has remained thereon since carrying out various agricultural activities upon the land said to be measuring same 0.1662 Ha.



9. As it turned out, the Defendant did not enter appearance and the Plaintiff's testimony before the court was left unchallenged. As was stated by the Court of Appeal in *Mtana Lewa v Kabindi Ngala Mwagandi* [2015] eKLR:-

“Adverse possession is essentially a situation where a person takes possession of land and asserts right over it and the person having title omits or neglects to take action against such person in assertion of his title for a certain period, in Kenya, twelve (12) years. The process springs into action essentially by default or inactions of the owner. The essential prerequisite being that possession of the adverse possessor is neither by force nor stealth or under the licence of the owner. It must be adequate in continuity, in publicity and in extent to show that possession is adverse to the title owner.”

10. In the matter herein, the Plaintiff has testified that he took possession of the suit property in the year 2010 when it was bushy. He told the court he cleared the land, fenced it with chain links and divided it into two portions. In one of the portions he has built a shed which he uses to keep goats and sheep while on the other portion he has planted maize and other crops. In support of that position the Plaintiff has exhibited photos of the shed and fence that he has put up on the suit property.

11. In the circumstance herein and in the absence of any other evidence to the contrary, I was persuaded that the Plaintiff has proved his case on a balance of probabilities.

12. In the premises the court makes the following orders:-

- a). A declaration is hereby made that the Plaintiff has acquired title by adverse possession to all that parcel of land known as Naromuro/Block 1/Ragati/T. 595 situated in Nyeri County.
- b). An order is hereby issued that the parcel of land known as Naromoru/Block 1/Ragati/T. 595 be forthwith registered in the name of the Plaintiff and the title issued in the Defendant's name be cancelled.
- c). The Deputy Registrar of this court shall execute the requisite transfer documents in the absence of the Defendant.
- d). There shall be no order as to costs.

DATED, SIGNED AND DELIVERED AT NYERI THIS FRIDAY 20TH DAY OF SEPTEMBER, 2024.

In the presence of:

Mr. Duncan Mindo for the Plaintiff.

No appearance for the Defendant.

Court Assistant: Michael.

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J. O. OLOLA

JUDGE

