



**Gitonga & 4 others v Jediel & another (Environment & Land Case  
2 of 2021) [2024] KEELC 6072 (KLR) (18 September 2024) (Judgment)**

Neutral citation: [2024] KEELC 6072 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT & LAND CASE 2 OF 2021  
CK NZILI, J  
SEPTEMBER 18, 2024**

**BETWEEN**

**JACKSON KIOGORA GITONGA ..... 1<sup>ST</sup> PLAINTIFF  
LAWRENCE MBABU ..... 2<sup>ND</sup> PLAINTIFF  
MARY EUNICE TIRINDI TERSIO ..... 3<sup>RD</sup> PLAINTIFF  
ROSE CIAKUTHII ..... 4<sup>TH</sup> PLAINTIFF  
FRANKLIN MUTEMBEI ..... 5<sup>TH</sup> PLAINTIFF**

**AND**

**JACOB MUTHAMIA JEDIEL ..... 1<sup>ST</sup> DEFENDANT  
JACKSON RUGENDO ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. The plaintiffs came to this court through a plaint dated 3.9.2015, claiming that L.R No. Igoji/Mweru/1527, which initially belonged to the 1<sup>st</sup> defendant, now deceased, was subdivided into L.R No's. Igoji/Mweru/1560, 1562, and 1561 subject to their occupation and possession since 2001.
2. They sought to be declared entitled to the suit parcels of land by virtue of adverse possession. Further and in the alternative, the plaintiffs averred that the subdivision, transfer of the initial land to the resultant subdivisions, and their transfers to the 2<sup>nd</sup> defendant by the 1<sup>st</sup> defendant was fraudulent and was out of collusion to deny them their rightful shares of the suit parcels of land given that the 1<sup>st</sup> defendant sold and received valuable considerations, and put them into possession of the suit parcels of land. The plaintiffs prayed for a declaration that the subdivision of L.R No's. Igoji/Mweru/1527 into L.R No. Igoji/Mweru/1560, 1561, and 1562 were fraudulent; cancellation of the same, registration as bonafide owners, and permanent injunction.



3. The 1<sup>st</sup> defendant opposed the suit with a statement of defense dated 23.1.2016. He denied that the plaintiffs ever occupied the subject land for the alleged 12 years. The 1<sup>st</sup> defendant averred that the 4<sup>th</sup> and 5<sup>th</sup> plaintiffs, a mother and a son, forcefully entered into the suit parcel of land in 2009, whereas the 1<sup>st</sup> plaintiff forcefully entered the land in 2013, claiming to have bought the land from him. He termed the alleged purchase as null and void.
4. The 1<sup>st</sup> defendant averred that he dealt with his land lawfully by subdividing and transferring the same to the rightful buyers, including the 2<sup>nd</sup> defendant, who paid him full consideration. He termed his dealings with the 2<sup>nd</sup> defendant as lawful, procedural and open. Again, the 1<sup>st</sup> defendant termed the plaintiff's claim as unfounded both in facts and in law.
5. Further, the 1<sup>st</sup> defendant averred that the 1<sup>st</sup> plaintiff had started erecting a permanent house to falsify his claim and mislead the court that he had lived on the land for many years.
6. The 1<sup>st</sup> defendant termed the plaintiffs as dishonest people who were not candid and had never stepped into or occupied the subject matter. The 1<sup>st</sup> defendant also averred that the plaintiff's claim was misleading; he had never witnessed any alleged sale agreement with the 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs and denied that the plaintiff's claim was sustainable and contradictory, for a claim of adverse possession could not be founded on a written sale agreements and or alleged fraud.
7. As to the 2<sup>nd</sup> defendant, he opposed the suit through a statement of defense and counterclaim filed on 29.9.2016. The 2<sup>nd</sup> defendant averred and termed the plaintiffs as relent, violent and forceful trespassers to his parcels of land after he purchased and obtained good titles to them. He pleaded that he was an innocent purchaser without notice of the alleged adverse possession claims which he termed as unsustainable in the circumstances. Further, the 2<sup>nd</sup> defendant denied the alleged fraud, for he had exercised due diligence before he purchased the suit land, that was free of any encumbrances. He termed the plaintiff's claims as frivolous, vexatious and bad in law.
8. By way of counterclaim, the 2<sup>nd</sup> defendant averred that the 1<sup>st</sup> defendant, as a registered owner of L.R No's. Igoji/Mweru 1/1560 and 1562, sold to him the two parcels of land on 13.4.2009 and 2.9.2009 following due diligence and confirmation of the valid owner.
9. The 2<sup>nd</sup> defendant termed the 1<sup>st</sup> plaintiff as a trespasser on L.R No. Igoji/Mweru/1560, where he started making illegal construction of permanent, houses while he was already a registered owner, following which he gave a written notice to him to cease his acts of trespass.
10. Additionally, the 2<sup>nd</sup> defendant averred that the 4<sup>th</sup> plaintiff had also trespassed into part of his parcel of land without lawful authority or consent. As to the 2<sup>nd</sup> & 3<sup>rd</sup> plaintiffs, the 2<sup>nd</sup> defendant termed them as strangers to him who had never entered or used his parcels of land at all. On the 5<sup>th</sup> plaintiff, the 2<sup>nd</sup> defendant termed him as the son of the 4<sup>th</sup> plaintiff, who equally had no valid claim on his parcels of land.
11. The 2<sup>nd</sup> defendant averred that after he issued a demand letter the plaintiffs colluded and preferred the suit in an unfounded apprehension of him taking action against the plaintiffs. He sought a permanent injunction barring and restraining the plaintiffs from using, interfering with, or erecting buildings on L.R No's. Igoji/Mweru I/1560 and 1562 and in the alternative order of eviction of the plaintiffs from the illegal trespass into the suit parcels of land.
12. The plaintiffs filed a reply to defence and defence to the counterclaim by the 2<sup>nd</sup> defendant dated 28.10.2015 and 2.6.2016. they averred that they were in adverse possession of the whole of the land



- where they had constructed their homes, hence the 2<sup>nd</sup> defendant could not have been a bonafide purchaser for value without notice, for he was all along aware of their full possession of the land.
13. The 1<sup>st</sup> defendant had any land to sell to the 2<sup>nd</sup> defendant; otherwise, their transaction was fraudulent and dishonest, for they doubted if the 2<sup>nd</sup> defendant paid any money to the 1<sup>st</sup> defendant; otherwise, the two colluded to dispossess them of their land, which they urged the court to cancel the resultant subdivisions and transfers.
  14. The plaintiffs termed the alleged prayer for a mandatory injunction without basis due to their legal occupation of the suit land.
  15. The plaintiffs averred that the 2<sup>nd</sup> defendant did not lawfully obtain the land control board consent for both subdivisions and transfers of the two parcels of land to his Bible Path Ministries; otherwise, any said land control board consents or transfers in existence were fraudulent, clandestinely obtained and in violation of their rights of possession and occupation of the suit land at the time.
  16. The plaintiffs averred that they were entitled to fair administrative action, which included the right to a fair hearing and to written reasons for the action taken in that they were not invited to the land control board meeting that gave out a land control board consent to the 2<sup>nd</sup> defendant hence termed the whole process as illegal, clandestine, secretly done and unlawful.
  17. The plaintiffs denied that the 2<sup>nd</sup> defendant was an innocent purchaser for value, given that they lived on the land and had constructed permanent structures thereon.
  18. Further the plaintiffs denied that there was any visit to subdivide or beacon the two parcels of land; otherwise, the 2<sup>nd</sup> defendant clandestinely undertook the process so as not to alert the plaintiffs of his dark activities and in violation of their constitutional right to land.
  19. Following a ruling dated 18.5.2023, the court declined to have the 1<sup>st</sup> defendant, who had passed on 4.1.2017, substituted with a legal representative for his suit abated through effluxion of time and by operation of law.
  20. Jackson Kiogora Gitonga, the 1<sup>st</sup> plaintiff as PW 1, adopted his witness statement dated 3.9.2015 as his evidence in chief. He told the court that the original owner of L.R Igoji/Mweru/1/1527 was Njanay Ntukirigia, the mother to the 1<sup>st</sup> defendant. PW 1 told the court that he made entry into the land in 2001, a permanent house planted Mukima trees, erected a permanent house and started tilling the land without opposition or objection by the then-registered owner or her children.
  21. PW 1 told the court that after the then-owner passed on, he assisted her successor in title, the late Michael Jediel Kirigia, in seeking and obtaining a grant for letters of administration. PW 1 told the court that the 4<sup>th</sup> & 5<sup>th</sup> plaintiffs were among the occupants of the land who, through the assistance of the catholic church, built a permanent house. Similarly, PW 1 told the court that the 3<sup>rd</sup> plaintiff was also in occupation of a portion of the land and even sold a section of it to the 2<sup>nd</sup> plaintiff.
  22. In addition, PW 1 told the court that most of the plaintiffs had erected permanent buildings on the land, and in the course of their occupation, the 1<sup>st</sup> defendant sought and obtained monies from them as per the sale agreements so as to facilitate the issuance of title deeds to them. PW 1 also stated that they only came to know about the transfers after a letter was served upon them by the 2<sup>nd</sup> defendant's advocates.
  23. Similarly, PW 1 testified that the 2<sup>nd</sup> defendant knew of their occupation of the suit land since he was a bishop with Bible Church Ministry. PW 1 relied on photographs and copies of title deeds for L.R No. Igoji/Mweru I/152 & 912, official search certificates for L.R No. Igoji/Mweru I/1560, 1561 and 1562,



sale agreement between Mary Tirindi, Teresio and Lawrence Murithi Mbaabu, Jacob Muthamia and Jackson Kiogora, letter dated 4.8.2015 and 20.8.2015, sale agreement dated 11.5.2017 as P. Exh No. 1 (a) – (c), 2, 3, 4, 5(a) & (b), 6, 7, 8 & 9 respectively.

24. PW 1 told the court that he bought his portion of land from the 1<sup>st</sup> defendant, a subdivision of L.R No. Igoji/Mweru I/912, currently owned by the 2<sup>nd</sup> defendant as L.R No. Igoji Mweru/1560 measuring approximately 0.12 ha.
25. Additionally, PW 1 told the court that the 2<sup>nd</sup> – 5<sup>th</sup> plaintiffs were all his neighbors occupying L.R No's 1560, 1561 & 1562, which they have extensively developed to the exclusion of the 2<sup>nd</sup> defendant, who has no developments on the said parcels of land. PW 1 also stated that no one has ever evicted him from the suit land since his entry in 2001.
26. Further, PW 1 told the court that he signed a sale agreement with the 1<sup>st</sup> defendant on 22.5.2008 but had initially made entry into the land after paying the first installment of the purchase price, after which the seller vacated the suit land paving the way for the 3<sup>rd</sup> plaintiff to take over the portion then under his occupation. PW 1 clarified that the portion was 40 ft by 100 ft as per P. Exh No. 1 (a) – (c). He however denied making entry after the 2<sup>nd</sup> defendant became the registered owner.
27. PW 1 stated that despite assisting the 1<sup>st</sup> defendant to acquire title to the land from his late mother, he declined to transfer to him. He said that each of the plaintiffs was exclusively occupying a distinct portion.
28. Mary Eunice Kirimi testified as PW 2, and relied on a witness statement dated 11.2.2021, as her evidence in chief. PW 2 told the court that she made entry into a portion of land belonging to the 1<sup>st</sup> defendant in 2001, fenced it, planted trees, and has since been undertaking farming activities thereon to the exclusion of the defendants, who have never attempted to stop or evict her from the said land. PW 2 told the court that both the defendant knew of her occupation and activities therein.
29. PW 2 told the court that she had jointly occupied the land with the 2<sup>nd</sup> plaintiff with the full knowledge of the 2<sup>nd</sup> defendant, who could not, therefore, be an innocent purchaser for value without notice of her occupation otherwise had he visited the land before he allegedly purchased it he would have established her occupation. Again, PW 2 told the court that she was aware that the 1<sup>st</sup> defendant fell sick and left Igoji to join the 2<sup>nd</sup> defendant in Chuka, where he has a church.
30. Similarly, PW 2 told the court that she bought the land from the 1<sup>st</sup> defendant, measuring 70 ft by 253 ft, while the land was undergoing a succession process and gave out the money so as to facilitate the issuance of a title deed. PW 2 added that the 2<sup>nd</sup> defendant knew of her occupation of the suit land, including the existence of their semi-permanent structure on the land, neighbors of the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> & 5<sup>th</sup> plaintiffs. Further, he stated that the 2<sup>nd</sup> defendant should have undertaken due diligence before he bought the land; otherwise, he would have established her existing occupation since 2001 from the 1<sup>st</sup> defendant.
31. Additionally, PW 2 told the court that had the 2<sup>nd</sup> defendant paid a visit to the suit land before he bought it, he would have verified who was in existence on the land; otherwise, he could not describe himself as an innocent purchaser for value without notice. PW 2 told the court that after she purchased the land from the 1<sup>st</sup> defendant in 2001, he fell sick and left the vicinity to join the 2<sup>nd</sup> defendant in his church facility at Chuka and that none of the two disturbed her use and occupation of the suit land including seeking that she vacates the land.



32. Moreover, PW 2 told the court that she was the first occupant of the land among the plaintiffs and was the one who sold a portion of her land to the 2<sup>nd</sup> plaintiff as per a sale agreement dated 27.4.2014, who similarly embarked on developing the same.
33. Rose Ciakuthi Mbuccu testified as PW 3. Relying on a witness statement dated 13.5.2024 as her evidence in chief, she told the court that she bought a portion of land measuring 0.25 acres from the 1<sup>st</sup> defendant, being part of L.R No. Igoji/Meru I/1527 for Kshs.30,000/= as per a sale agreement dated 11.5.2007, whose witnesses were the 1<sup>st</sup> defendant and her son, the 5<sup>th</sup> plaintiff.
34. PW 3 told the court that she has since exclusively lived on the said portion alongside her eight children and the 5<sup>th</sup> plaintiff, where she has erected two semi-permanent houses. PW 3 told the court that it was only after 12 years of occupying the land that the 2<sup>nd</sup> defendant wrote a letter to her to vacate the land.
35. Franklin Mutembei testified as PW 4. While associating his evidence with that of his mother, PW 3, PW 4 told the court that the 1<sup>st</sup> defendant was duly paid the purchase price and allowed them to take vacant possession but unfortunately passed on before he effected the transfer to the names of his mother PW 3. PW 4 confirmed that they had effected enormous developments on the suit land since 2007 to the exclusion of the defendants. He relied on the sale agreement and a chief's letter dated 31.10.2017, as P. Exh No. 8 & 9, respectively.
36. Lawrence Murithi Mbaabu testified as PW 5, relying on a witness statement dated 13.3.2024 as his evidence in chief. He told the court that the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup> & 5<sup>th</sup> plaintiffs were his neighbors, occupying a portion of land initially known as L.R No. Igoji/Mweru I/912 later on subdivided into L.R No's. Igoji/Mweru I/1526 and 1527. PW 5 told the court L.R No. 1527 adjoining L.R No. 1526 from a brother of the 1<sup>st</sup> defendant, which unfortunately was secretly subdivided into L.R No. 1560 – 1462 while still under occupation of all the plaintiffs and transferred to the names of the 2<sup>nd</sup> defendant as of 2015 as per official search certificates produced as P. Exh No. 4 (a) (b) & (c).
37. PW 5 told the court that their development on the suit land has been visible to all and that the 2<sup>nd</sup> defendant has never occupied, developed or utilized the suit lands since 2007. PW 5 told the court that as per P. Exh No. 5 (a), he bought his portion from the 3<sup>rd</sup> plaintiff in 2014 who had initially occupied the land since 2001, which sale agreement was witnessed by the 1<sup>st</sup> defendant.
38. Further, PW 5 stated that he used to be a friend of the 1<sup>st</sup> defendant's late father, who was his villager. He also told the court that after purchasing his portions, he amalgamated the small portion to form 1 acre of land and put up a toilet for there was an old house in the land. He also added that after the suit was filed, discoveries were made that the 1<sup>st</sup> defendant, while aware of the existing sale agreement and occupation of land by the plaintiffs, sold and transferred the same portions to the 2<sup>nd</sup> defendant.
39. Jackson Rugendo Mukembu testified as DW 1. Relying on his witness statement dated 29.9.2016. DW 1 told the court that he bought L.R No. Igoji/Mweru I/1560 and 1561, gave notice to the 4<sup>th</sup> plaintiff to vacate 0.25 acres she was occupying in 2015; otherwise, the rest of the land was being utilized by the 1<sup>st</sup> defendant.
40. DW 1 told the court that he bought L.R No. Igoji/Mweru I/1560 and 1561 gave notice to the 4<sup>th</sup> plaintiff to vacate 0.25 acres she was occupying in 2015; otherwise, the rest of the land was being utilized by the 1<sup>st</sup> defendant. DW 1 told the court that after giving out a notice to vacate to the 4<sup>th</sup> plaintiff, the rest of the plaintiffs wrote a letter to him and eventually filed this suit while he already had the title deed to the suit land. He denied entry into the land that occurred in 2001 as alleged or at all.



41. DW 1 relied on an official search certificate as D. Exh No. (1) (a), (b) & (c), sale agreements dated 3.4.2009 and 2.9.2009 as D. Exh No. 2(a) & (b), and a demand notice dated 4.8.2015 as D. Exh No. (3). He urged the court to dismiss the plaintiff's suit and allow his counterclaim.
42. Further, DW 1 told the court that he bought the suit land while the 4<sup>th</sup> plaintiff was in occupation of a portion measuring 0.25 acres only that the seller had not disclosed the nature and the status of her occupation. DW 1 admitted that by the time he bought the portions, the suit land was in the name of a deceased person, the late M'Ujia Kirigia and that the 1<sup>st</sup> defendant as a beneficiary had not lodged a succession cause.
43. DW 1 stated that he last visited the land in 2015/2016. Similarly, he admitted that he was not in occupation of the land in 2009. DW 1 told the court that as per the title deeds, L.R No. Igoji/Mweru/1/1560 & 1562 were under his name, while L.R No. 1561 was in the name of Bible Paths Ministries, where he is one of the owners of the church.
44. Moreso, DW 1 said that he had not been able to develop the two parcels of land since 2009 and up to 2015 for he was paying the purchase price in installments. He insisted that all the developments on the suit land save those of the 4<sup>th</sup> plaintiff belonged to the 1<sup>st</sup> defendant.
45. However, DW 1 denied that he illegally and unprocedurally bought from the 1<sup>st</sup> defendant the suit land or irregularly acquired the title deed despite pre-existing sale agreements produced as P. Exh No's. (5) (a) & (b).
46. DW 1 told the court that before he bought the land in 2009, he conducted due diligence and established that the land belonged to the seller's late mother. He also told the court that he facilitated the seller to acquire letters of administration for he was unable to do so on his own. He could not confirm if the seller left behind any heirs to his estate. However, DW1 told the court that even if the land had been sold to the plaintiffs as per P. Exh No. (1) (a) & (b), still the seller had no capacity at the time to do so.
47. Further, DW 1 admitted that the 1<sup>st</sup> plaintiff was occupying 0.15 acres out of L.R No. 1560 since 2016/2017. Additionally, D.W. 1 said that the 4<sup>th</sup> plaintiff was occupying 0.25 acres on L.R No. 1562, but after 2015/2016, she started utilizing his entire land.
48. The plaintiffs, relying on written submissions dated 25.7.2024, isolated three issues for the court's determination, namely:
  - i. If their pleadings and evidence make out a case for adverse possession.
  - ii. If the 2<sup>nd</sup> defendant was an innocent purchaser for value without notice.
  - iii. Whether the counterclaim is tenable.
49. On the first issue, the plaintiffs submitted that they had been on the land since 2001; hence, by 2015, twelve years had elapsed while openly developing their respective portions of the defendant's parcels of land.
50. On the second issue, the plaintiffs submitted that the 2<sup>nd</sup> defendant could not fit the description of an innocent purchaser since even if he had perused the title register, he knew all along that the plaintiffs were occupying the land before he bought it and allowed the late Jacob Muthamia to play him out vis a vis the plaintiffs. As such, the plaintiffs submit that the counterclaim cannot stand the test of the law and must fail.
51. The defendants relied on written submissions dated 15.8.2024. On whether the plaintiffs deserved orders of adverse possession. The defendant submitted that as per Section 38 of the [Limitation of](#)



*Actions Act* (Cap 22) and Halsbury's laws of England 4<sup>th</sup> Edition Vol. 28 paragraph 768, time begins to run when the valid owner ceases to be in possession of the land.

52. To this end the 2<sup>nd</sup> defendant submitted that the plaintiffs have failed to prove ingredients of adverse possession as set out in [\*Virginia Wanjiku Mwangi vs David Mwangi, Jotham Ku E & L case No. 86 of 2011.\*](#)
53. The 2<sup>nd</sup> defendant submitted that his title deeds were regularly and procedurally obtained free of any fraud and, hence, were not impeachable under Section 26 of the *Land Registration Act*. Reliance was placed on *Arthi Developers Ltd vs West End Butchery Ltd & others* (2015) eKLR, *Chemei Investments Ltd vs A.G. & another NRB Petition No. 94 of 2005.*
54. Simply, the 2<sup>nd</sup> defendant submitted that the title deeds held by him were protected; hence, there was no need to rectify or cancel it under Sections 80 (1) of the *Land Registration Act*.
55. As to the counterclaim, the 2<sup>nd</sup> defendant submitted that oral and documentary evidence tendered showed that he was the absolute owner of L.R No's. Igoji/Mweru 1/1560 and 1561, hence entitled to legal protection by way of a permanent injunction and eviction. Reliance was placed on *KPLC vs Sherrif Molanana Habib* (2018) eKLR, *Alice Chemutai Too vs Nickson Kipkurui Koriri & others* (2015) eKLR and *Jacob Ernest Amabala Ondidi vs Violet Shikuku* (2021) eKLR.
56. The issues calling for my determination are: whether the plaintiffs have proved entitlement to the suit parcels of land and if the 2<sup>nd</sup> defendant is an innocent purchaser for value without notice.
57. Adverse possession occurs when a valid owner omits or neglects to take action against an intruder to his land for a period of 12 years, who undertakes acts inconsistent with those of the said valid owner and, as a result, discontinues his possession and assumes possession thereof. In *Malakwen vs Kogo* (Civil Appeal 290 of 2019 (2024) KECA KLR (26<sup>th</sup> July 2024) (Judgment), the court cited *Chevron (K) Ltd vs Harrison Charo wa Shutu* (2016) eKLR that under adverse possession, the burden is on the claimant to prove not only the period, but also that his possession was without the true owner's permission, that the owner was disposed or discontinued his possession of the land by acts inconsistent with the actual owner's enjoyment of the soil for the purpose for which he intended to use it.
58. Concerning adverse possession arising out of an aborted sale agreement, time for adversity begins to run after payment of the last installment. See [\*Samuel Miki Waweru vs. Jane Njeri Richu Civil Appeal No. 122 of 2001.\*](#) A claimant on adverse possession must demonstrate that he had animus possidendi to own the land. This position was emphasized by the court in *Thaitumu vs Iguathu & 8 others* (Civil Appeal) 220 of 2019 (2024) KECA 1084(KLR) 19<sup>th</sup> August (2024) Judgment. The court cited with approval *Samuel Kihamba vs Mary Mbaisi* (2015) eKLR on the apparent intention to have the land.
59. Adverse possession similarly occurs where possession is adequate, in continuity, in publicity and extent. Proof of such acts is a matter of fact, depending on all circumstances. See *Maweu vs Lin Ranching & Farming Corporative Society* (1985) KLR 430.
60. In this suit, there is no dispute that the suit parcels of land are titled. P. Exh No. 2 shows that the 1<sup>st</sup> defendant became the owner of L.R No. Igoji/Mweru 1/1527 on 14.5.2014. P. Exh No. 3 shows that L.R No. Igoji/Mweru 1/912 came under the name of Njanay Ntukirigia on 21.7.1997 and was later closed for subdivision on 8.5.2014, after it came to the name of Michael Jediel Kirigia on 23.11.2011. The register L. R No. 1527 was opened on 9.5.2014 in the name of Michael Jediel Kirigia came to the name of Jacob Muthamia Jediel on 14.5.2014 it was closed for subdivision into L.R No's. 1560 – 1562 on 22.10.2014.



61. Eventually, P. Exh No. 4 (a), (b) and (c) show that the 2<sup>nd</sup> defendant became the owner of L.R No. Igoji/Mweru 1/1560 and 1562 on 13.5.2015, while Bible Paths Ministries acquired L.R No. Igoji Mweru 1/1561 on 13.5.2015. Entry into the suit land by the plaintiffs is said to have occurred in 2001.
62. Going by P. Exh No. 5 (a) & (b), the 1<sup>st</sup> defendant was the one disposing of the portions pleaded by the plaintiffs in 2008. He was not the registered owner of the land at the time, going by P. Exh No. 3, the copy of records for L.R No. Igoji/Mweru 1/912.
63. In a replying affidavit witness and statement sworn and dated 23.1.2016, the late Jacob Muthamia Jediel confirmed that he became the owner of L.R No. Igoji/Mweru 1/1527 on 14.5.2014, following the issuance of a probate decree to inherit the suit land from his late mother, Njanay Nkurigia. The 1<sup>st</sup> defendant had, through the sale agreement with the 1<sup>st</sup> plaintiff dated 22.5.2008, admitted that he was a beneficial owner of the estate and was going to cause the subdivisions into three portions and the sale of two parcels thereof to the 2<sup>nd</sup> defendant.
64. In his defense and written witness statement, the 1<sup>st</sup> defendant had termed the claim and occupation of the suit land by the 4<sup>th</sup> plaintiff as forceful with effect from 2009. Similarly, the 1<sup>st</sup> defendant admitted entry into and occupation of the suit land by the 5<sup>th</sup> plaintiff as against his consent, which he had tried to resist through local administration in vain. The 1<sup>st</sup> defendant had denied occupation by the 2<sup>nd</sup> & 3<sup>rd</sup> plaintiffs as alleged or at all.
65. The 1<sup>st</sup> defendant had termed the sale and transfer of L.R No's. 1560 and 1562 to the 2<sup>nd</sup> defendant as lawful and regular. Even though the claim against the 1<sup>st</sup> defendant by the plaintiffs abated, the replying affidavit sworn on 23.1.2016 still stands in line with Section 35 of the *Evidence Act*. The 1<sup>st</sup> defendant had knowledge of the facts but did not dispute during his lifetime, the sale agreement with the plaintiffs and putting them into possession of the respective portions of the suit land before he subdivided L.R No. 912, sold and transferred L.R No's. 1560, 1561 and 1562 to the 2<sup>nd</sup> defendant. See Fleur Investment Ltd. vs P.S. Ministry of Road & another (2021) eKLR.
66. Consequently, my finding is that entry into the suit land by the plaintiffs was permissive and took place during the lifetime of the 1<sup>st</sup> defendant in 2001 – 2008. The 1<sup>st</sup> defendant admitted in his affidavit that the entry by the 1<sup>st</sup> and 5<sup>th</sup> plaintiffs was consensual, but they fell out of the sale agreement. If that is the case, it means that the sale agreement became void or invalid.
67. The plaintiffs' presence on the land was adverse to the rights of the true owner. They were no longer licensees on the land after the fallout. Their presence, though said to have been forceful by the 1<sup>st</sup> defendant, was hostile to his rights. Evidence that the 1<sup>st</sup> defendant took action to evict or assert his superior rights before the sale and transfer in 2015 to the 2<sup>nd</sup> defendant is missing.
68. Assertion of title and an effective entry to drive out an intruder as held in Ndiritu vs Kanugu Sued as the administrator of the Estate of Gerald Kanugu (deceased) ELC Case E029 of 2021 (2024) KELCC 5146 (KLR) 3<sup>rd</sup> July 2024 (Judgment), involves the recovery of possession of the land from the intruder. Instead of evicting the plaintiffs, the 1<sup>st</sup> defendant ignored or acquiesced to their occupation between 2001 and 2015, when he sold and transferred the two parcels of land to the 2<sup>nd</sup> defendant before driving out the plaintiffs from possession.
69. As at the time the 2<sup>nd</sup> defendant came into ownership of the two parcels of land, the plaintiffs had acquired adverse rights to the land against the predecessor and successor in title. Adverse possession goes with the land and is not affected by the change of ownership of the land.



70. Though the plaintiffs' entry into the land was out of a sale agreement, the plaintiffs appear to have continued to occupy the land with the sole intention of owning their respective portions to the exclusion of all others, including the defendants. The defendants were aware of the inconsistent developments on the suit land between 2001 – 2015.
71. Evidence that the defendants have been utilizing the land between 2001 and 2015 is lacking. The 1<sup>st</sup> defendant was estopped in law from denying the existence of a sale agreement with the plaintiffs before he signed a similar sale agreement for the same parcels of land with the 2<sup>nd</sup> defendant before driving out or terminating the previous sale agreements with them. To allow such a scenario would be tantamount to condoning unjust enrichment and enabling a party to benefit out of an illegality. See *Mbui vs Maranya* (1993) eKLR.
72. Even if the 1<sup>st</sup> defendant had differences with the 1<sup>st</sup> & 4<sup>th</sup> plaintiffs, he still had to drive them out of the land before he could purport to sell and transfer the two portions to the 2<sup>nd</sup> defendant. Additionally, the 2<sup>nd</sup> defendant ought to have established whether the suit parcels of land were vacant before he could purchase them so as to enjoy the protection as an innocent purchaser for value without notice. See *Dina Ltd vs County Government of Mombasa & 5 others* (2023) KESC 30 (KLR) Torino & Sirikwa caselaw.
73. In *Muga* (being a legal representative of the estate of Anita Karambu M'Murunga – deceased) vs *Mukiri ELC L.C 323 of 2017* (2023) KELC 1876 & KLR (12<sup>th</sup> July (2023) Judgment, the court cited *Kimani Ruchire & another vs Swift Rutherford co. Ltd* (1976) 80 1 KLR 1560, that dispossession and discontinuance of possession must go together and that acts of possession include fencing or cultivation in a definite manner in an area and on time. The court further observed that interruption of possession occurs through an effective entry to the suit land to assert ownership, acknowledgment of the true owner by the adverse possessor and through an eviction order.
74. A demand letter does amount to an interruption of time from running. The filing of a suit for eviction does not disrupt the time from running. The filing of letters of administration equally by the 1<sup>st</sup> defendant, did not interrupt time for adversity in favor of the plaintiffs.
75. Evidence of any efforts by the 2<sup>nd</sup> defendant to stop the plaintiffs from entering, developing, or continuing to occupy the land after 2001 and 2015 is lacking. The 2<sup>nd</sup> defendant's statement of defense did not plead issues of effective entry, the assertion of title and acknowledgment of ownership of land of the 2<sup>nd</sup> defendant by the plaintiffs.
76. Additionally, the 2<sup>nd</sup> defendant's counterclaim lacked a titular heading. It is not brought against any defendants to the counterclaim. The upshot is that I find that the plaintiff's suit proved on a balance of probability to be entitled to the specific portions of the 2<sup>nd</sup> defendant's land.
77. For the avoidance of doubt, the 2<sup>nd</sup> defendant is hereby directed to hive out the specific portions declared as owned by the plaintiffs under adverse possession out of his L.R No. Igoji/Mweru/1527 prior to the resultant subdivisions.
78. The counterclaim is dismissed with costs.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 18<sup>TH</sup> DAY OF SEPTEMBER, 2024**

In presence of

C.A Kananu



Parties

Mokua for the plaintiffs

Gikunda Anampiu for the defendant

**HON. C K NZILI**

**JUDGE**

