



**Longolan v Gitonga (Enviromental and Land Originating Summons
E017 of 2022) [2024] KEELC 7329 (KLR) (31 October 2024) (Judgment)**

Neutral citation: [2024] KEELC 7329 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E017 OF 2022**

AK BOR, J

OCTOBER 31, 2024

BETWEEN

AKUDI LUKUYINMOE LONGOLAN APPLICANT

AND

VELONICAH NYAMBURA GITONGA RESPONDENT

JUDGMENT

1. The Applicant filed the Originating Summons dated 20/6/2022 seeking a declaration that she was entitled to be registered as the proprietor of Laikipia/Uaso Narok B/681 measuring 1.08 hectares (the suit property) by virtue of adverse possession. She sought to have the Deputy Registrar of the court execute the necessary documents to facilitate her registration as proprietor of the suit property and for the Respondent to be restrained permanently from remaining, using, possessing, occupying or interfering in any other manner with that parcel of land or portion of it.
2. The application was made on the grounds that the Applicant was allotted plot no. B 80 currently described as Laikipia/Uaso Narok B/80 in the Uaso Narok Settlement Scheme vide the letter of allotment dated 3/7/2001. That the Government Surveyors mistakenly showed her the ground position of Laikipia/Uaso Narok B/681 under the mistaken belief that it was Laikipia/ Uaso Narok B/80. When the register was opened on 20/8/2002, John Gathama Miringu was registered as the proprietor of Laikipia/Uaso Narok B/681 on 22/12/2002.
3. The Applicant claimed that she settled on Laikipia/Uaso Narok B/681 in 2001 and had been in physical possession since then and that in 2010 when her husband Lobul Omekuiya died, he was buried on the suit property. The Respondent filed Nyahururu CM ELC No. E007 of 2021 on 26/1/2021 seeking to evict Mary Akodi from the suit property. From 2001 until 2021, no other suit had been filed to recover possession of the suit property.



4. The Applicant swore the affidavit in support of the Originating Summons and deponed that in 1999, the Settlement Fund Trustees (SFT) invited members of the public who were living in Ol Moran village to apply for allotment of plots in Uaso Narok Settlement Scheme where she was a resident. She submitted her application and vide the letter dated 3/7/2001, she was allocated plot no. 80B measuring one acre. A copy of which she produced. She met the conditions and on 18/1/2003 she was registered as the proprietor of parcel no. B80 and was issued a title which she produced in court.
5. She averred that she took physical possession of the suit property which she was shown by the provincial and district surveyors under the misguided belief that it was parcel no. B80. She produced a copy of the green card for parcel No. B681 showing that John Gathama Miringu was registered as proprietor of this land on 22/12/2002. She averred that she had been in actual continuous, exclusive and notorious use of the suit property since 2001 without any interference from the Respondent.
6. She added that she had caused substantial developments on the suit property and relied on the photographs showing the developments. She averred that in 2010, when her husband unfortunately died in a road accident she buried him in on the suit property and that the Respondent did not object to that. She stated that the Respondent lived in Maina village which was approximately 2 kilometers away and that they had known each other since 2005. She added that the Respondent knew that she had been in exclusive possession and occupation of the suit property since 2001 and that when the Respondent acquired title over the land, she was aware of the Applicant's occupation of the land.
7. She stated that the Respondent filed Nyahururu CMC ELC No. E007 of 2021 against Mary Akodi which was yet to be determined but that prior to that, she had not filed any suit. Mrs. Longolan urged the court that she was entitled to the suit property on the basis of having acquired it through adverse possession. She also attached a copy of a survey plan showing the suit property which the court notes is incomplete.
8. The Respondent filed the response dated 28/11/2022 to the Originating Summons. She referred to the letter of allotment dated 3/7/2000 vide which her then husband John Gathama Miringu was allocated the suit property. She stated that in 2003 the surveyor went to the ground and showed the persons allotted land their respective parcels of land including the parties. They were later informed that there were issues with the parcels of land which should have been 10 in total but were nine and that in 2005, the government surveyor surveyed the land and produced the ten parcels.
9. During the surveying process, the occupants were informed that there were mistakes of the parcels on the ground. John Miringu had been mistakenly shown parcel no. 680 which he had taken possession of and fenced, while the Applicant had been shown the suit property instead of parcel no. 80. She stated that members vacated the erroneously allocated parcels and settled on the correct registered parcels and that the Respondent vacated parcel no. 680 registered in the name of Wanyakairo and went to fence the suit property. The Applicant refused to vacate the suit property prompting John Miringu to escalate the matter to the Chief, the district lands office and the District Officer.
10. When the Respondent separated with her husband, John Mirungu in 2010, he transferred ownership of the suit property to the Respondent and a title was issued in her name on 23/12/2011. The Respondent followed up the matter with the area Chief and the District Officer's office and when she was advised to take possession of parcel no. B80 which was indicated to be vacant, she declined because it was registered in the Applicant's name and according to her it was the Applicant to move to parcel No. B80.



11. She stated that she filed suit in Nyahururu on 21/1/2021. On 25/10/2021, the court directed the County Surveyor to visit the land and identify the two parcels on the ground. That happened on 16/9/2021 and the surveyor prepared a report which was filed in court on 22/12/2021.
12. The Respondent disputed the Applicant's contention that she had been on the suit property without any interference from the Respondent or the previous registered owner. According to the Respondent, there had been interference or interruption from 2005 up to 2020. She averred that she was not aware that the Applicant had buried her late husband on the land and was of the view that those actions were illegal because the Applicant did not have any interest in the suit property. She urged that it was fair for the Applicant to vacate the Respondents land and move to parcel no. B80.
13. The matter proceeded to hearing on 24/7/2024 when the Applicant gave evidence and relied on the averments of her supporting affidavit. She produced the documents attached to her supporting affidavit. On cross-examination, she stated that she was given the suit property by the government and was shown the land in 2001. She maintained that she was on her land which was parcel no. 681 and confirmed that her plot was parcel no. 80 while her neighbour's was parcel no. 681. She stated that she had also buried her grandchildren on the suit property where she lived.
14. The Applicant called Bernard Longeit Louchumi to give evidence. He told the court that he was the elder of Silale and a member of Ol Moran Village. He gave the history of how the parcels of land were allocated to the 35 members from Ol Moran. He told the court that they settled on their parcels of land immediately. In the process of acquiring titles, they noted that the numbers on the title deeds were not corresponding to the areas on the ground because the parcels shown were at Silale but the title deeds were allocated at Chemichemi. He confirmed that the Applicant had been in physical possession of the suit property which was shown to her by the surveyors in July 2001.
15. On cross-examination, He told the court that the Applicant got her land earlier and that Wanyakiro was also shown her land which was on the same line as his. He confirmed that she found the Applicant on the suit property in 2001.
16. The Respondent called Peter Ndirangu Gitonga to give evidence. He told the court that John Gathama Mirungu who was his brother in law, owned a piece of land in Silale Village whose land reference he did not know. That in 2012, after John Mirungu separated with his sister, it was agreed that John would transfer the suit property to the Respondent. During the signing of the transfer forms, he came to learn that the land was Laikipia/Uaso Narok B/681. The transfer was effected at the lands office in favour of the Respondent. On cross-examination he told the court that he knew where the suit property was having visited it on 16/12/2021 when the Magistrate ordered a surveyor to go to the land. He stated that there were houses on the land with some people living on it.
17. David Muthui Gitonga gave evidence for the Respondent and told the court that he was the Respondent's nephew. When the Respondent was summoned to the Chief's office, he was called in as a witness and later went to the suit property when the government surveyor confirmed that the Applicant was occupying the Respondent's land and she was shown her correct parcel on the ground. After the exercise, they went back to the Chief's office where he filled a form confirming that he was a witness to the process when the land owners were shown their respective parcels of land in line with their title deeds and the registry index map (RIM).
18. The Respondent gave evidence and told the court that her former husband was allotted the suit property measuring an acre and the land is currently registered as Laikipia/Uaso Narok B681. The surveyor went to the ground in 2003. She gave evidence along the lines contained in her response. She mentioned the attempts which she had made to have the Applicant move out of her land since 2010



- when she separated with her husband and he transferred the land to her name. She urged the court not to entertain this suit because there was another case pending in the Chief Magistrates court over the same subject matter. She maintained that the Applicant ought to move to her own land which is parcel no. B80.
19. She produced copies of the letter of allocation dated 3/7/2000 setting out the conditions, the title deed dated 17/12/2002 issued to John Miringu and the letter dated 9/6/2005 by the District Land Registrar, Laikipia confirming that according to their records the suit property was registered in the name of John Mirungu and a title deed was issued to him on 17/12/2002. She also produced a copy of the letter dated 23/6/2005 from the District Officer summoning Mary Akodi and John Gathama for a meeting on 28/6/2005. She also produced a copy of the title deed issued in her name on 23/12/2011 for parcel No. 381 as well as the letter dated 19/11/2020 seeking the Assistant County Commissioner's advice. She produced a copy of the order made by the court in Nyahururu CM ELC Case No. E007 of 2021 on 21/10/2021 directing the Laikipia County Surveyor to undertake a site visit to the suit property and file a report in court.
 20. On cross-examination, she stated that her name was Veronicah and that the title was written Velonicalh which still referred to her. She confirmed that when her late husband was shown his land, he was shown parcel no. 680 and not the suit property. In 2005, the surveyor went to parcel no. 680 and informed them that that land belonged to Wakanyairo. They were removed from parcel no. 680 and shown parcel no. 681 where they found the Applicant had built on it and was occupying the land. They reported the matter to the Chief. She confirmed that when John transferred the suit property to her name he knew that Akodi was on the land.
 21. She maintained that the Applicant was also called Mary Akodi. She filed suit in 2021 and explained that she did not have money for litigation. She confirmed that she lived far from the suit property. She maintained that she had all along reported the issue to the Chief and the District Officer. She even tried asking the Applicant to subdivide the suit property but she refused.
 22. The court directed parties to file submissions, which it read and considered. The Applicant submitted that the main issue for determination was whether she had acquired the suit property by virtue of the doctrine of adverse possession. That in the course of settling on the land in 2001, she was shown the suit property on which she settled. She maintained that the Respondent had admitted that she had been on the suit property from 2001 to date even though it was initially registered in the name of John Miringu on 17/12/2002 and was later transferred to the Respondent on 23/12/2011. She submitted that the transfer of the land from John Mirungu to the Respondent did not stop time from running.
 23. She added that the Respondent had admitted that neither she nor her husband had ever taken possession of the suit property despite being aware since 2001 that she was in possession of the land. The Applicant submitted that her possession had been open and notorious without the Respondent's permission and that despite being aware that the Applicant was on the suit property since 2001, the Respondent did not take any action to dispossess her.
 24. She cited Registered Trustee Catholic Diocese of Murang'a v Micere Njau & 3 Others [2022] eKLR and Mombasa Teachers Co-operative Savings and Credit Society Limited v Robert Muhambi Katana & 15 Others [2018] eKLR. She also relied on Githu v Ndeete [1984] eKLR 776 which she claimed the court held that time ceased to run under the *Limitation of Actions Act* when the owner took or asserted his rights or when his right was admitted by the adverse possessor. The Applicant did not furnish copies of those decisions to the court. She concluded that she had demonstrated that she was entitled to be registered as proprietor of the suit property by virtue of adverse possession and urged the court to grant the orders sought in the Originating Summons.



25. On her part, the Respondent set out the facts of the suit including the attempts she and her former husband made to try and have the Applicant move out of the suit property. The Respondent relied on Section 25 of the *Land Registration Act* on the protection afforded to a proprietor of land as well as Article 40 (1) of *the Constitution* which guarantees every person the right to acquire and own property of any description in any part of Kenya. She submitted that she was registered as the proprietor of the suit property and relied on Section 24 of the *Land Registration Act* regarding the interest conferred on her by registration.
26. The Respondent also cited Sections 7 and 13 of the *Limitation of Actions Act* and urged that the procedure for seeking relief in a claim based on adverse possession was provided in Section 38 of the *Limitation of Actions Act* and Order 37 of the *Civil Procedure Act*. The Respondent submitted that the Applicant had the burden to adduce evidence to prove on a balance of probabilities that her possession of the suit land was as of right and inconsistent with the rights of the registered owner. Further, that her occupation must have been open, actual, continuous, uninterrupted, peaceful, exclusive and with the knowledge but without the consent or permission of the registered owner for 12 years.
27. The Respondent maintained that the Applicant had been asked to move out of the suit property on numerous occasions since 2005 when the resurvey was done and that by virtue of this, the Applicant's occupation was not continuous or uninterrupted since there was interruption in 2005. According to the Respondent, time stopped running in 2005 and 2006 when the original owner demanded that she vacates the suit land. In addition, that time stopped running again in 2011 when the Respondent was registered as the absolute owner of the suit property.
28. The Respondent computed time and submitted that from 2001 and 2005 when the Applicant was ordered to vacate the suit property she had been in continuous occupation for 4 years. Between 2006 and 2011 was five years and that between December 2011 when the Respondent was registered as the owner and January 2021 when she filed Nyahururu CM ELC No. E007 of 2021 was 9 years. Based on this computation, the Respondent submitted that the Applicant had not occupied the suit property continuously, uninterrupted and peacefully for twelve years.
29. The Respondent relied on *Richard Wefwafwa Songoi v Ben Munyifwa Songoi* [2020] eKLR where the court found that the fact that the appellant had occupied the suit property for more than twelve years did not prove adverse possession per se because the occupation was constantly under challenge by the Respondent based on the letters written in 1976, 1984 and 1992. The Respondent concluded that the Applicant was not entitled to be registered as the owner of the suit land by the doctrine of adverse possession.
30. The issue for determination is whether the Applicant as proved her claim for adverse possession to the suit property under the law. Both the Applicant and the Respondent's late husband were allocated plots in 2001 or thereabouts. Following the allocation, the Applicant settled on the suit property after being shown the land by government surveyors until 2005 when the parcels of land were resurveyed and it was discovered that the Applicant had been shown parcel number B681 instead of B/80. It also emerged that John Miringu who had been registered as proprietor of the suit property had been mistakenly shown parcel no. 680 which he had taken possession of and fenced. He vacated that land and made various attempts to have the Applicant vacate the suit property before the land was transferred to the Respondent on 23/12/2011.
31. The Respondent contended that the Applicant's occupation of the suit property was interrupted in 2005 and also from 2012 to 2020 when the Respondent followed up the matter with the Chief. From the evidence adduced by both the Applicant and the Respondent, it is evident that the Applicant has



been on the suit property and used it exclusively since 2001. The Respondent filed suit to recover the suit land on 21/1/2021.

32. Section 7 of the *Limitation of Actions Act* stipulates that an action to recover land may not be brought by any person after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person. The Respondent or John Gathama who was initially registered as proprietor of the suit property ought to have filed suit to recover the suit property from the Applicant within twelve years of 2005 after they learned from the resurvey that the Applicant was occupying their land. The Respondent's claim therefore became statute barred in 2017.
33. Section 13 (1) of the *Limitation of Actions Act* stipulates that 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, with the possession termed as adverse possession. The court is satisfied that the Applicant has occupied the suit property since 2001 based on the uncontested fact that she has been on the land and even buried her late husband on the suit property in 2010.
34. Section 37(1) provides that where a person claims to have become entitled by adverse possession to land registered under any of the Acts cited in section 37, to land or easement or land comprised in a lease registered under any of those Acts, 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.
35. The Court of Appeal observed in *Mtana Lewa v Kahindi Ngala Mwangandi* [2015] eKLR, that in terms of Sections 7, 9,13,17,37 and 38 of the title of a registered owner of land will be extinguished and vested in a third party who proves that he has been in possession of the land continuously and uninterrupted for a period of 12 years; that such possession has been open and notorious to the knowledge of the owner; that the possession has been without the permission of the owner; and that the third party has asserted a hostile title and dispossessed the true owner.
36. As the registered proprietor of the suit land, the Respondent's title has been extinguished and vests in the Applicant because the Applicant proved that she has been in possession of the land continuously, openly and with the knowledge of the Respondent since 2001 without the permission of the Respondent or her husband who had been registered as proprietor of the suit land on 17/12/2002.
37. The Applicant has proved on a balance of probabilities that she has been in exclusive, continuous and uninterrupted possession of the suit property for more than twelve years. A declaration is issued that the Applicant is entitled by virtue of adverse possession to be registered as proprietor of Laikipia/Uaso Narok B/681 measuring 1.05 hectares.
38. The Deputy Registrar of this court will execute documents to facilitate the Applicant's registration as proprietor of Laikipia/Uaso Narok B/681.
39. The Respondent is restrained from using or interfering in any manner with the Applicant's possession of Laikipia/Uaso Narok B/681 or any portion of it.
40. Each party will bear its costs.

DELIVERED VIRTUALLY AT NAIROBI THIS 31ST DAY OF OCTOBER 2024.

K. BOR

JUDGE

In the presence of: -



Mr. Nderitu Komu for the Applicant

Ms. Velonicah Nymabura Gitonga

Court Assistant- Vanessa Muiruri

