



REPUBLIC OF KENYA



**Ngare & another v Temut & another (Environment & Land Case
102 of 2019) [2024] KEELC 6958 (KLR) (17 October 2024) (Judgment)**

Neutral citation: [2024] KEELC 6958 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 102 OF 2019
LC KOMINGOI, J
OCTOBER 17, 2024**

BETWEEN

VALERIE MUTHONI NGARE 1ST PLAINTIFF

MARKANTHONY MUIRURI NGARE 2ND PLAINTIFF

AND

YIANKOSO TEMUT 1ST DEFENDANT

KOMEIYIAN YIANKAJO 2ND DEFENDANT

JUDGMENT

1. By the Plaint dated 9th October 2018 the Plaintiffs aver that sometime in the year 2016, the Defendants as well as other persons invaded, encroached and trespassed on land parcels Kajiado/Kaputiei North/3672, 3673, 3674 and 3675. They issued them with an eviction notice dated 20th August 2018 but the Defendants declined to vacate. This matter was reported to the Chief for his intervention, but the Chief indicated that he could not act without a court order. They therefore seek;
 - a. A declaration that the suit properties Kajiado/Kaputiei North/3672, Kajiado/Kaputiei North/3673, Kajiado/Kaputiei North/3674 and Kajiado/Kaputiei North/3675 lawfully belongs to the Plaintiffs.
 - b. A permanent injunction restraining the Defendants by themselves, their families, relations, agents, workers and/or any other person(s) whomsoever, acting on their behalf, from entering, remaining upon or carrying out or continuing to invade, encroach and trespass on the suit properties Kajiado/Kaputiei North/3672, Kajiado/Kaputiei North/3673, Kajiado/Kaputiei North/3674 and Kajiado/Kaputiei North/3675.
 - c. An eviction order to the Defendants, their families, relations, servants and/or agents, requiring them to give vacant possession of the suit properties herein referred to the Applicants.



- d. A mandatory injunction ordering the Defendants to pull down, demolish and/or remove all the structures illegally erected, built and/or constructed by the Defendants on the suit properties hereinabove described, failure to which the Plaintiffs be at liberty to do so at their own expenses and thereafter recover the same from the Defendants.
 - e. Any other or further relief as this Hon. Court may deem fit to grant.
2. The Defendants in their Statement of Defence contested the Plaintiffs claim stating that they moved into the suit properties in 1997 and they have since occupied the properties openly, constructed semi-permanent houses and raised their children thereon. They averred that they filed a claim for adverse possession in ELCOS No. 5 of 2021 against Priscilla Nyawira Waikwa, Joshua Odhiambo Awuor and Thomas Odongo Elijah who are the registered owners of the suit properties. That this suit is statute barred by virtue of Section 10 of the Limitation of Actions Act, and, that the Plaintiffs had no locus standi to institute the suit since they are not the registered owners. The Defendants also denied that they were issued with any notices to vacate. They pray that the suit be dismissed on with costs.

Evidence of the Plaintiffs

3. PW1, Valerie Muthoni Ngare, the 1st Plaintiff adopted her witness statement as her evidence in chief and produced her bundle of documents as evidence which were marked as P. Exhibit 1-16. She stated that the 2nd Plaintiff is her brother and that the suit properties were bequeathed to them by their late mother. She testified that she is familiar with the 1st Defendant who had been occupying the suit premises together with others. They asked them to leave the property and some did but the Defendants refused to vacate. She also stated that there was a suit at the Magistrates court between them and three persons who had erroneously been registered as owners of the suit premises, but this has since been corrected and they were issued with title deeds in their names.
4. On cross examination she stated that although they had only sued two people, there were several of them on the suit property. She confirmed that the 1st Defendant and others had been issued with notices to vacate in 2018. She stated that they were issued with title deeds in the year 2021 during the pendency of this suit following a consent entered in CM ELC 234 of 2018 and that the Defendants were not parties to that suit. She stated that they (Plaintiffs) were not parties to ELCOS E005 of 2021, but became aware later. She admitted that they were issued with title deeds during the pendency of the said suit. She also stated that she was not sure when the Defendants entered the suit properties.
5. On re-examination she stated that in the year 1996 they (Plaintiffs) were in primary school. It was in 2016 when they discovered that there were people on their property and they started the eviction process. She added that the said ELCOS E005 of 2021 was filed during the pendency of this suit.
6. This marked the close of the Plaintiffs' case.

Evidence of the Defendants

7. DW1, Yiankoso Temut the 1st Defendant, adopted his witness statement as his evidence in chief and produced his bundle of documents as exhibits in this case. He stated that the 2nd Defendant was his wife. He also stated that he entered the suit property in the year 1997, constructed a cowshed, planted trees, put up semi-permanent houses and raised his family on the land and prayed to be declared the owner of the property.
8. On cross examination he stated that he was born in 1968 in Isinya where he lived before moving into the suit property. He also stated that the suit property was subdivided into four portions 3672, 3673, 3674 and 3675 although he was not aware on what portion he had settled on. He also confirmed that



when he moved into the land there was pit latrine and that his neighbours knew the owners of the property. He stated that there was no electricity connected to the property, but there was water. He confirmed that he was one of the Plaintiffs in ELCOS E005 of 2021 and one Joseph Seketian was his nephew. He also confirmed that the area Chief asked him to vacate the suit property.

9. This marked the close of the Defendants' case.
10. At the close of the oral testimonies parties tendered final written submissions.

The Plaintiffs' Submissions

11. On whether the Plaintiffs are the registered owners of the suit properties, counsel submitted that the properties were initially registered in the name of Zipporah Agallo Achieng (the Plaintiffs' late mother) and a title deed issued on 19th May 1997. She took possession and fenced off the properties and dug a toilet. In 2015, the late Zipporah put up a caution against the properties after realising that they had been unlawfully registered in the names of other people. Upon her demise, the Plaintiffs were given letters of administration and filed a suit against Priscilla Nyawira Waikwa, Joshua Odhiambo Awuor and Thomas Odongo. A consent judgement was entered in MCELC 234 of 2018 and the suit properties registered in the Plaintiffs names and titles issued on 9th November 2021. As such, they are the legally registered owners of the suit properties as per Section 26 of the [Land Registration Act](#).
12. On whether eviction and permanent injunction orders should be issued against the Defendants, counsel submitted that Section 152A of the [Land Act](#) stipulated that a person shall not unlawfully occupy private, community or public land. Therefore, the Defendants having illegally occupied the suit properties should be compelled to vacate because they had inhibited the Plaintiffs right to their property. Counsel cited [Kenya Power and Lighting Company vs Sheriff Molana Habib](#) [2018] eKLR on issuance of permanent injunction.
13. On the issue of adverse possession, counsel submitted that Section 38(1) of the [Limitation of Actions Act](#) provides that a claim of adverse possession should be brought against the registered owners and the Defendants in the OS E005 of 2021 was not against the registered owners. Adding that the Plaintiffs were issued title to the properties in the year 2021 and thus time started running from that time.
14. Therefore, the Plaintiffs should be granted the prayers sought with costs.

The Defendants' submissions

15. At the time of writing this judgement, Defendants' submissions had not been filed.

Analysis and Determination

16. I have considered the pleadings, the evidence on record, the written submissions and the authorities cited. The issues for determination are:
 - i. Who are the lawful owners of properties Kajiado/Kaputiei North/3672, 3673, 3674 and 3675;
 - ii. Whether the Plaintiffs are entitled to the prayers sought;
 - iii. Who should bear costs of the suit?
17. It is not in dispute that the suit properties are registered in the names of the Plaintiffs. PW1 Valerie Muthoni Ngare, has adduced substantial and credible evidence, including certificates of title and a detailed history of the registration process, affirming their legal ownership. The evidence tendered confirms the origin and acquisition of the title, demonstrating an unbroken history of



proprietorship in favour of the Plaintiffs. The Defendants on the other hand have not presented any evidence to dispute the authenticity or validity of the Plaintiffs' proprietorship. In fact, DW1, during cross-examination, confirmed that he had been made aware by his neighbours that the suit properties rightfully belong to the Plaintiffs. This admission further solidifies the Plaintiffs' ownership, as it acknowledges the Plaintiffs' claim. The Defendants' primary argument revolves around their continued occupation of the properties since 1997, invoking a claim of adverse possession.

18. The defendant's defence is that they have enjoyed peaceful ad quiet occupation for twenty one (21) years. That there is a suit pending being ELCOS E005 of 2021; Yankoso Ole Temut & 4 Others Vs. Priscilla Nyawira Waikwa & 2 Others where the Plaintiffs lay claim to the suit properties by way of adverse possession. I find that the said claim cannot stand since the titles are not in the names of the Plaintiffs.

It is not in dispute that by a consent dated 12th November 2019, the Defendants in MCELC 234 of 2018 who are the same defendants in the ELCOS E005 of 2021 agreed that their names ought to be removed from the land Register. They are no longer the registered owners of the suit properties.

19. By virtue of the said consent judgement parcels; Kajiado/Kaputiei North/3672 and 3673 were registered in the 1st plaintiff's name on 9th November 2021 while Kajiado/Kaputiei North/3674 and 3675 were registered in the name of the 2nd plaintiff.
20. Section 26(1) of the [Land Registration Act](#), 2021 provides that;

“26.

- (1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—
- (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or
- (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”

21. The Defendants have not raised any legitimate challenge to the Plaintiff's titles. They did not raise any counterclaim in this suit. They went ahead to institute ELCOS E005 of 2021 against persons who were no longer the registered owners to the suit properties. The plaintiffs herein are not parties to that suit.
22. The upshot of the matter is that the Plaintiffs have proved their case as against the Defendants on a balance of probabilities. They are the lawful and registered owners of the suit properties.
23. Having found that the Plaintiffs are the lawful owners of the suit properties, the Defendants ought to be restrained from interfering with their occupation of the said properties.
24. Accordingly Judgement is entered in favour of the Plaintiffs as against the Defendants as follows;



- a. That a declaration is hereby issued that the suit properties Kajiado/Kaputiei – North 3672-3675 lawfully belong to the Plaintiffs.
- b. That a permanent injunction is hereby issued restraining the Defendants by themselves, their families, relations, agents, workers and or any other persons acting on their behalf from entering, remaining upon or carrying out or continuing to invade, encroach and trespass on the suit properties Kajiado/Kaputiei North 3672-3675.
- c. That an eviction order is hereby issued to the Defendants, their families, relations, servants and or agents requiring them to give vacant possession of the suit properties within forty five (45) days from the date of this Judgement. In Default the Plaintiffs be at liberty to use lawful means to evict them.
- d. That a mandatory injunction is hereby issued directing the Defendants to pull down, demolish and or remove all the structures illegally evicted, built and or constructed by the Defendants on the suit properties within forty five (45) days from the date of this Judgement. In Default the Plaintiffs be at liberty to do so at the Defendants’ expense.
- e. That costs of this suit shall be borne by the Defendants.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 17TH DAY OF OCTOBER 2024.

L. KOMINGOI

JUDGE.

In the presence of:

Mr. Muriithi for the Plaintiffs.

N/A for the Defendants.

Court Assistant – Mutisya.

