



**Kanguta v Nkuya (Environmental and Land Originating Summons  
E007 of 2022) [2024] KEELC 13234 (KLR) (14 November 2024) (Judgment)**

Neutral citation: [2024] KEELC 13234 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E007 OF 2022  
LC KOMINGOI, J  
NOVEMBER 14, 2024**

**BETWEEN**

**JONATHAN MAINGI KANGUTA ..... PLAINTIFF**

**AND**

**ANNA NTITAI NKUYA ..... DEFENDANT**

**JUDGMENT**

1. By way of Originating Summons dated 29<sup>th</sup> March 2022 brought under Article 50 and 159(2) of the Constitution; Section 1A, 1B and 3A of the Civil procedure Act; Order 37 Rule 3 of the Civil Procedure Rules; and Section 38 of the Limitation of Actions Act the Plaintiff seeks:
  - i. To be declared by way of adverse possession of over 12 years to 3.24 hectares of land within land parcel Kajiado/Kaputiei Central/2291 registered under the Land Act No. 6 of 2021 and Land Registration Act No. 5 of 2021 situated in Mashuuru Kajiado County, Ilmunkulu village.
  - ii. That the said Plaintiff be registered as the sole proprietor of the parcel of land measuring 3.24 hectares from the original parcel of land registration number Kajiado/Kaputiei Central/2291.
  - iii. That the Defendant be ordered to pay costs of this suit.
2. The Plaintiff in his Supporting Affidavit dated 10<sup>th</sup> March 2022 states that between 17<sup>th</sup> July 2004 and 31<sup>st</sup> October 2007, he got into an agreement with the Defendant to purchase a total of 8 acres of land from her parcel of land known as Kajiado/Kaputiei Central/2291 for a consideration of Kshs. 145,000. The purchase price was paid in full and acknowledged. The breakdown of the transactions is as follows; 17<sup>th</sup> July 2004 he bought 5 acres for Kshs. 85,000; on 21<sup>st</sup> August 2005 he bought 2 ¼ acres for Kshs. 45,000; and on 31<sup>st</sup> October 2007 he bought ¾ acres for Kshs. 15,000.
3. Upon the purchase, the Defendant engaged a surveyor who marked out boundaries of the eight (8) acres of land and the plaintiff has been residing and making use of that land from 2004 to date.



However, the Defendant has never visited the Land Control Board to seek consent to transfer the eight (8) acres of the land to the Plaintiff.

4. Sometime in the year 2020, the Plaintiff claims that he approached the Assistant County Commissioner to request his assistance in getting the Defendant to transfer the land to him, but she refused to heed to the summons. In September 2020 she served the Plaintiff with a notice stopping him from undertaking any development on the land. She also sought that he buys the land at the current market value.
5. Having paid the entire purchase price and put the land to use since the year 2004, the Plaintiff now seeks the reliefs sought in the Originating Summons.
6. The Defendant entered appearance on 24<sup>th</sup> January 2023 but did not file a defence. She also did not participate in these proceedings.
7. The hearing proceeded by way of *viva voce* evidence.

### **Evidence of the Plaintiff**

8. PW1 Jonathan Maingi Kang'uta, the Plaintiff adopted his witness statement as part of his evidence and produced his bundle of documents which was marked as P. Exhibit 1 to 6. He stated that he knew the Defendant because he lived on her land having purchased it as per the sale agreement produced as evidence and that she was also his neighbour. It is his case that, the Defendant had refused to effect the transfer of the land from the year 2004 when he purchased part of it.
9. PW2 Dominic Kaunda Kang'uta the Plaintiff's younger brother adopted his witness statement as his evidence and confirmed that when the Plaintiff purchased the property, he asked him and his other brother to live with him. He indicated that he lived on the suit property from the year 2004 to 2012. He informed the Court that he knew the Defendant who was the Plaintiff's neighbour. He also indicated that the Plaintiff's land was marked with trees all round.
10. This marked the close of the Plaintiff's case.
11. At the close of the oral testimony parties tendered final written submissions.

### **The Plaintiff's Submissions**

12. On whether the Plaintiff had met the criteria for adverse possession, counsel submitted that the Plaintiff had proved her case on a balance of probability as per Sections 107, 108 and 109 of the [Evidence Act](#) and was entitled to the property by way of adverse possession as articulated in Sections 7, 13, 37 and 38 of the [Limitation of Actions Act](#). This is because in the years the Plaintiff had been on the suit property, the Defendant was aware of it and she clearly had not intended to transfer the property to him because she demanded for an additional payment. However, having not asserted her right over her title in 16 years divested the Defendant's rights over the property after 12 years as was held in [Peter Mbiri Michuki v Samuel Mugo Michuki](#) (2014) eKLR.
13. On whether the Plaintiff is entitled to 8 acres of land excised from land Kajiado/Kaputiei central/2291, counsel submitted that the Plaintiff had proved that he had been on the suit property for over 12 years and was thus entitled to registration as the owner with reference to [Stephene Mwangi Gatunge v Edwin Onesmus Wanjau](#) and [Gabriel Mbui v Mukindia Maranya](#) (1993) eKLR.



## Analysis and Determination

14. I have considered the pleadings, the evidence on record, the submissions and the authorities cited. I find that the issues for determination are:
  - i. Whether the Plaintiff has proved his claim for adverse possession;
  - ii. Whether the Plaintiff is entitled to be registered as the owner of 8 acres of land Kajiado/Kaputiei Central/2291;
  - iii. Who should bear costs of this suit?
15. The Plaintiff has stated that he gained entry and possession of the suit property in the year 2004 by way of a sale agreement between him and the Defendant. He produced as exhibits three sale agreements duly executed and witnessed dated 17<sup>th</sup> July 2004, 21<sup>st</sup> August 2005 and 31<sup>st</sup> October 2010. He also stated that he paid the entire purchase price. Upon the purchase of the first property, he took possession and developed it. The other two parcels were purchased while residing on the suit property.
16. It is his case that, the Defendant neglected to effect the transfer and it was only after the Plaintiff sought help in getting her to effect the transfer in the year 2020 that she served him with a notice asking him to stop further developments on the land.
17. He has now approached the court seeking to be registered as the owner of the suit property by way of adverse possession. From the exhibits produced, the Defendant on 5<sup>th</sup> September 2004, confirmed having received the entire purchase price of the five (5) acres of land sold on 17<sup>th</sup> July 2004.
18. Can a purchaser claim adverse possession from the seller? On this issue, Madan, J.A in the Court of Appeal case of *Public Trustee v Wanduru Ndegwa* [1984] KECA 72 (KLR) held: "...A purchaser in possession of the land purchased, after having paid the purchase price, is a person in whose favour the period of limitation can run.." In this same case, Kneller, J.A added that, "...The limitation period will begin to run from the date of the payment of the purchase price in full or last instalment of it..."
19. Therefore, time started to run from the September 2004 when the Defendant acknowledged payment of the entire purchase price for the first five (5) acres of land. By the year 2016, the claim to land had already been extinguished as per Section 7 of the *Limitation of Actions Act* which provides that; "An action may not be brought by any person to recover land 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."
20. In the case of *Peter Mbiru Michuki v. Samuel Mugo Michuki* (2014) eKLR it was held; "time started running adversely in favour of the Plaintiff after he made the final payment of the purchase price in 2007 (see their agreement for sale attached) hence, by 2019 after staying on the Respondent's land for 12 years, he dispossessed the owner, of the 8 acres of land by adverse possession. He is therefore well covered under Section 7 of the *Limitation of Actions Act*."
21. The other two agreements for the year 2005 and 2007 also indicate that the purchase price was paid. As much as the notice dated 3<sup>rd</sup> September 2020 from the Defendant's advocates to the Plaintiff stated that the entire purchase price was not paid, the Defendant did not appear before this court to prosecute her case. Section 109 of the *Evidence Act* provides that; "the burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person, the onus was on the Defendant to disprove with evidence the Plaintiff's allegation."



I find that the Plaintiff has proved that he purchased the suit property from the Defendant.

22. As such, this court is satisfied that the Plaintiff has discharged his evidentiary burden of proof for the claim of adverse possession. Accordingly Judgment is entered for the Plaintiff as against the Defendant as follows;
- a. That the Plaintiff is hereby declared the owner of property Kajiado/Kaputiei Central/ 2291 by way of adverse possession;
  - b. That the Defendant is hereby restrained whether by herself, her servants and/or agents from interfering with the Plaintiff's peaceful possession and occupation of Kajiado/Kaputiei Central/2291;
  - c. Each party shall bear their own costs of the suit.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 14<sup>TH</sup> DAY OF NOVEMBER 2024.**

**L. KOMINGOI**

**JUDGE.**

In The Presence Of:

N/A for the Plaintiff.

N/A for the Defendant.

Court Assistant – Mutisya.

