



**Manyara (Suing as the administrator and legal representative of Stephen Mutai M'Imanyara - Deceased) v Nkiruta & another (Environmental and Land Originating Summons 34 of 2019) [2024] KEELC 7580 (KLR) (14 November 2024) (Judgment)**

Neutral citation: [2024] KEELC 7580 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 34 OF 2019  
CK YANO, J  
NOVEMBER 14, 2024**

**BETWEEN**

**HONESTY KANYUA MANYARA (SUING AS THE ADMINISTRATOR AND LEGAL REPRESENTATIVE OF STEPHEN MUTAI M'IMANYARA - DECEASED) ..... PLAINTIFF**

**AND**

**JULIUS NYAMU NKIRUTA ..... 1<sup>ST</sup> DEFENDANT  
SALOME KIIJA NKIRUTA ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

**Introduction**

1. This suit was commenced vide the originating summons dated 9<sup>th</sup> July, 2019. When the original plaintiff passed on, she was substituted by her legal representative and the originating summons was amended on 26<sup>th</sup> February, 2024. The summons sought for the determination of the following questions-:
  1. Whether the plaintiff bought 80 acres of the parent land Parcel LR. No. Abothuguchi L-Kijja/112 on 27<sup>th</sup> May, 2005 and whether she was granted vacant possession of the sold 80 acres and whether her occupation became adverse upon the failure to transfer the land?
  2. Whether the plaintiff has occupied 80 acres of the Original Land Parcel LR No. Abothuguchi/L-Kijja/112 now subdivided and registered as land Parcel LR Nos Abothuguchi/L-Kijja 1856, 1858,1859, 1860 and 1861 continuously, openly and unhindered for a period of over 12 years?
  3. Whether the plaintiff's occupation, user and utilization of the 80 acres has been notorious, quiet, open and continuous with the knowledge of the defendant.



4. Whether land parcel L.R No. Abothuguchi/L-Kijja/112 was subdivided into land parcel LR Nos Abothuguchi/L-Kijja/1856, 1858, 1859, 1860 and 1861 among other subdivisions when the plaintiff was in occupation and utilization of the purchased 80 acres.
  5. Whether the plaintiff's occupation of 80 acres in the original land parcel LR No. Abothuguchi/L-Kijja /112 and now Abothuguchi/L-Kijja/1856, 1958, 1859, 1860 and 1861 has been notorious, quiet, open and continuous for a period of over 12 years.
  6. Whether the plaintiff has developed the 80 acres portion of land by planting eucalyptus trees and building temporary structures therein.
  7. Whether plaintiff has acquired the 80 acres and is entitled to the same by way of adverse possession.
2. The plaintiff is seeking for orders that-;
- a. A declaration that the plaintiff is entitled to a portion of land measuring 80 acres comprised of land parcels LR Nos. Abothuguchi/L-Kijja/1856, 1858,1859 1860 and 1861 being subdivisions of the parent land Parcel LR No. Abothuguchi/L-Kijja/112.
  - b. An order that the plaintiff be registered as the sole owner of 80 acres comprised of the new subdivisions LR Nos. Abothuguchi/L-Kijja/1856, 1858,1859 1860 and 1861.
  - c. An order compelling the defendants to execute all the relevant and requisite instruments and/ or documents to effect transfer of 80 acres to the plaintiff and in alternate the Deputy Registrar of this Honourable court to execute on their behalf.
  - d. The Honourable Court to make any other order or better orders it might deem fit and expedient to meet the ends of justice.
  - e. That costs for this suit be borne by the defendants.
3. The summons is supported by the affidavit of Ronald Mutuma Mutai and Norah Ntui Mutai sworn on 26<sup>th</sup> February, 2024. It is the plaintiff's case that she has been in open, exclusive, notorious, continuous and unhindered occupation of the suit land since the year 2005, which is a period of over 14 years, continuously and uninterrupted and has carried out extensive and substantial developments thereon by planting an exotic eucalyptus forest.
4. The defendants filed their responses dated 27<sup>th</sup> January, 2021.

#### **Plaintiff's Case.**

5. It is the plaintiff's case that Honesty Kanyua Manyara (the deceased plaintiff) bought 80 acres out of L.R No. Abothuguchi/L-Kijja from one Josphat Kithure (now deceased) who was entering the agreement on behalf of his siblings and their mother who also witnessed the agreements. The plaintiff annexed a copy of the sale of land agreement marked RMM 1. That the deceased plaintiff immediately took possession of the parcel of land and developed the same by planting a Eucalyptus Forest.
6. The plaintiff avers that the transaction was above board since no one attempted to stop her from developing the land as by the nature of development it was open to all to see. That when she bought the land, it was registered in the name of the seller's and the defendant's father, the late M'Nkiruta M'Aruri (deceased). The plaintiff states that out of the money she paid for the land, the family was able to initiate and complete the succession process and she opted to have her late husband included in the certificate of confirmation of grant in Meru High Court Succession cause No. 26 of 2006.



7. The plaintiff avers that the deceased's stay on the land has been peaceful until the seller died and the defendants and their mother colluded to have the deceased plaintiff's late husband and father to the current plaintiffs removed from the grant and have refused to transfer the land to the deceased plaintiff or her late husband.
8. The plaintiff state that their mother's occupation of the parcel of land has been with the knowledge of the defendants and other family members of the late M'Nkiruta M'Ajuri (deceased). That recently, the defendants have gone ahead and subdivided the 80 acres that the deceased plaintiff occupied and had developed into land parcels Nos LR Nos. Abothuguchi/L-Kijja/1856, 1858,1859 1860 and 1861.
9. The plaintiff avers that since the time their mother bought the land in 2005, she has openly occupied the land continuously without any interruptions for over 12 years period as the defendant have never made any attempt to evict her and her family from the land. They contend that the 1<sup>st</sup> defendant has no justification in failing and refusing to transfer the land since he all along knew of the plaintiff's interest since he was her employee who was taking care of the young seedlings and guarding the forests from unauthorized loggers.
10. The plaintiff's state that their mother's occupation of the land for over 12 years continuously was uninterrupted and is adverse to the defendants title since the same became adverse upon the lapse of 6 months from the date of the agreement. The plaintiff prayed that their late mother be registered as the owner of the suit land parcels.
11. In their supporting affidavit, the plaintiffs have annexed copies of a land sale agreement, a bundle of photographs, Limited Grant of Letters of Administration Ad Litem, certificate of confirmation of a grant and searches.
12. The plaintiffs called one witness Norah Ntui Muai (P.W 1) who adopted and reiterated the averments and facts in their supporting affidavit and produced the above listed documents as P exhibits 1 to 7 respectively. She was cross examined and re-examined.
13. The witness stated that the deceased plaintiff was her mother while the original plaintiff was her father. That it was her late father who had initially brought the suit to court. She made reference to the sale agreement which was produced as P exhibit 1. She stated that the agreement did not state when her mother was to take possession of the land. That clause 5 stated that the purchaser was to assist the vendor to file a succession cause and deduct the expenses from the vendor's account. That clause 6 state that the purchaser would be inserted in the succession cause. P.W 1 stated that her late father, Stephen Mutai M'Manyara (deceased) was included in the succession cause on 17<sup>th</sup> March, 2008 and he was to get 80 acres as stipulated in the sale agreement, but that he did not get title because the original grant was revoked and another one issued on 27<sup>th</sup> March, 2017 and the title went to the defendants. That the plaintiff then filed this case in 2019.
14. 1 maintained that her father entered the land immediately after execution of the sale agreement and planted trees as shown in the photographs produced as P exh 2. P.W 1 denied that her father left the land in 2013. The witness stated that she has never been to the suit land since the demise of her father and is aware that the land has been subdivided into 5 parcels which they are claiming.

#### **Defendants' Case.**

15. It is the defendants' case that the suit is misplaced, misguided, lacks merit and an afterthought. That it is a scheme by the plaintiffs to deny the defendants and their siblings' part of the estate of their deceased father Nkiruta M'Anjuri.



16. The 1<sup>st</sup> defendant stated that in the year 2007, he saw one Mutai, husband to the deceased plaintiff, on their father's land planting trees. That upon inquiring, the deceased stated that he had bought the land from the defendant's brother by the name Josphat Kithure. That together with his siblings, they confronted their brother to know the truth and later asked the late Mutai to vacate from the land so that they could sit down and discuss as a family to deliberate on whether to sell it or not. That before they could agree Josphat Kithure, Dominic Kiogora and Lawrence Mutua passed on.
17. That the 1<sup>st</sup> defendant stated that after about 2 years, he talked with the late Mutai who asked him to be substituted as an administrator in place of Josphat Kithure. That it was then that he learned that Josphat Kithure had filed a succession cause No. 26 of 2006 at the High Court in Meru. That they got furious and asked Mr. Mutai why he had given money to their brother Josphat Kithure while he knew that the land did not belong to him. That after consultation with the beneficiaries, they agreed to sell the land to Mr. Mutai at a price of Kshs. 200,000/= per acre, but the latter refused. The defendants and their siblings applied for the revocation of the grant that had earlier been issued, and after the inhibition was lifted, the distributed to the beneficiaries. That Mr. Mutai was asked to vacate from the land and he obliged and left in December, 2013 and never returned until his demise. He acknowledged that Mr. Mutai had entered the land and planted trees in 2007, but said, that was with the permission of the defendants' brother, Josphat Kithure. The 1<sup>st</sup> defendant stated that he also planted other trees. The defendants stated that they never dealt with the widow of Mutai, the deceased plaintiff. They deny ever seeing her on the land. The defendants state that they are the ones currently using the land together with their sister. That they have even leased some portions to various people.
18. It is the defendants' contention that Mr. Mutai was only on the land from 2007 to 2013 which is a span of 6 years. That the claim for adverse possession does not arise. In his replying affidavit, the 1<sup>st</sup> defendant has annexed copies of a petition for letters of administration in respect of the estate of Nkiruta M'anjuri (deceased), the grant and attendant order lifting the inhibition, and the titles for the suit parcels of land.
19. The defendants called 3 witnesses. D.W 1 was Julius Nyamu Nkiruta, the 1<sup>st</sup> defendant herein who adopted the facts and averments in his replying affidavit dated 27<sup>th</sup> January, 2021 as his evidence in chief. He also produced the annexures thereto as D exhibits 1,2,3 4 (a) (b) and (c) respectively. He was cross examined and re-examined. D.W 1 reiterated the averments in the replying affidavit as outlined hereinabove.
20. Salome Kijja Nkiruta testified as D.W 2 and adopted her replying affidavit dated 27<sup>th</sup> January, 2021 as her evidence in chief. She too was cross examined and re-examined. She is a sister to the defendants. She stated that they use the land and have leased out some portion to other people.
21. D.W 3 was Priscilla Ngugi Muriuki who adopted her replying affidavit dated 27<sup>th</sup> January, 2021 as her evidence in chief. She was cross examined and re-examined. She stated that she is one of the people who have leased part of the suit land since 2013.
22. The plaintiff filed their submissions dated 10<sup>th</sup> July, 2024 through the firm of Gichunge Muthuri & Co. Advocates while the defendants filed theirs dated 13<sup>th</sup> September, 2024 through the firm of Muia Mwanzia & Co. Advocates

### **Plaintiffs' Submissions**

23. The plaintiff submitted that the main issue for determination is whether they have acquired 80 acres out of the original parcel of land No. Abothuguchi/L-Kijja/112 under the doctrine of adverse possession. The plaintiffs relied on Section 7,13,17 and 38 of the Limitations of Actions Act Cap 22. It was submitted that the combined effect of the Section is to extinguish the title of the proprietor



- of the land in favour of the adverse possessor at the expiry of 12 years of occupation of the adverse possession on the suit land. The plaintiff also cited section 28 (h) of the Land Registration Act, 2012 which recognizes overriding interests on land and Section 7 of the Land Act.
24. The plaintiff relied on the cases of *Wambugu v Njuguna* (1983) KLR 173, *Mbira v Gachuhi* (2002)1 EALR 137, *Jandu v Kirplal & Another* (1975) EA 225, *Mtana Lewa v Kahindi Ngala Mwangandi* (2005) eKLR. It is the plaintiff's submission that it is a well settled principle that a party claiming Adverse possession ought to prove that the possession is "nec vi, nec clam, nec precario," that is, peaceful, open and continuous possession and should not have been through force, no secrecy and without the authority or permission of the owner.
  25. The plaintiff submitted that after the parties herein entered into a sale agreement dated 27<sup>th</sup> May, 2005, the seller did not obtain Land Control Board Consent within six (6) months of the making of the agreement as provided under Section 8 of the Land Control Act, CAP 302, Laws of Kenya and therefore the aforesaid agreement became null and void by the operation of the law. The plaintiff relied on Section 6 of the Land Control Act and the case of *Public Trustee and Beatrice Muthoni versus Wanduru Ndegwa* (1984) eKLR and *Samuel Miki Waweru v Jane Njeri Richu* (2007) eKLR.
  26. The plaintiff submitted that adverse possession started running from 27<sup>th</sup> November, 2005 to date. It was submitted that through their evidence and the documents produced before the court by the plaintiff, it is satisfactory that the plaintiffs have been in open, actual, continuous and exclusive occupation and utilization of parcel of land No. Abothuguchi/L-Kiija/112 hence have developed beneficial interest under the doctrine of adverse possession. That the defendants' evidence is inconsistent and dishonest. That the allegations of leasing of the suit land were never proved by a formal lease agreement or at all. The plaintiffs cited Section 107 of the Evidence Act Cap 80 Laws of Kenya and submitted that it is settled law in civil cases that a party who wishes the Court to give a judgment or to declare any legal right dependent on a particular fact or sets of facts, that party has a legal obligation to provide evidence that will best facilitate the proof of the existence of those facts. That the party must present to the court all the evidence reasonably available on a litigated factual issue.
  27. Regarding the question whether the subdivisions made on the parent parcel of land No. Abothuguchi/L-Kiija/112 can affect the time for adverse possession from running, the plaintiff relied on the case of *Grace Torome v Titus M Mbugua & another* [2016] eKLR and submitted that the subdivisions cannot affect the time of adverse possession from running.
  28. It is the plaintiff submission that they have successfully demonstrated to the court that she has been in occupation of the suit land for over 12 years openly, exclusively and continuously and therefore she has developed beneficial interest over the suit land and urged the court to allow the claim as prayed and that the defendants should be condemned to pay costs of the suit.

### **Defendants' Submissions**

29. The defendants summarized the facts and evidence adduced and posed the question whether the facts support a claim for adverse possession. On when time began to run against the defendants, it was submitted that Stephen Mutai Manyara (deceased) was allowed by Josphat Kithure, the seller to be put in the grant in 2008. That this clearly was with the permission of Kithure who later died. That the 1<sup>st</sup> defendant did not agree with him and began the court process of removing him from the grant when he became aware that his brother had succeeded his father's estate and put Stephen Mutai to get 80 acres against their wish.
30. The defendants' counsel referred to paragraph 32 of the 1<sup>st</sup> defendants' replying affidavit in which he states how he was able to move court with his sister to wrestle the estate back from Stephen Mutai. The



defendants referred to the grant dated 27<sup>th</sup> March, 2017 and the order of 21<sup>st</sup> February, 2017 lifting the inhibition to effectuate the grant. It is their submissions that this was court action to assert his title and he succeeded and are now in occupation of the land.

31. The defendant submitted that Stephen Mutai's estate occupation of the land became adverse when he was removed from the grant on 27<sup>th</sup> March, 2017. That this is because one cannot be in adverse possession with the permission of the seller from 2008 to the time immediately before the grant was revoked. Further, that this was because he was a beneficiary to the estate, with permission. That when Stephen Mutai was put in the grant by the seller, it was the seller's permission. It was submitted that the plaintiff cannot argue that Stephen Mutai was in possession yet the estate then had allowed him to get 80 acres, that is why his name was put in the grant. The defendants' submitted that when the name of Stephen Mutai was removed on 27<sup>th</sup> March, 2017 time began to run in a claim for adverse possession. That from the evidence when the 1<sup>st</sup> defendant differed with Stephen Mutai the latter left in 2013 and removed the structure he had built thereon. That the defendants then entered the land planted more trees and the said Stephen Mutai never returned until his death.
32. The defendants submitted that in all forms, the estate of Stephen Mutai Manyara cannot be said to be in adverse possession. That the defendants took action and removed him from the land and has not been on the land continuously for 12 years. The plaintiff filed this suit in 2019, two years after the High Court removed his name from the entitlement of the estate by way of revocation of grant.
33. The defendants submitted that they were registered owners in 2017 and the suit is brought in their personal capacities. That computation of time is therefore two years after the grant was revoked so that the plaintiff's occupation if any was adverse but it was not since he had left. The defendant argued that this is the reason they are not asking for eviction as the plaintiff had complied and left.
34. The defendants submitted that when the owner asserts his right by court action as they did, then the plaintiff cannot be said to be in adverse possession or in peaceful occupation thereof. The defendants submitted that the court dispute interrupted plaintiff's peace as was held by this court in Chuka Elc (OS) Case no. E003 of 2021 Irvine Mwenda Japhet vs Wilberfree Micheni & another.
35. With regard to the sale agreement dated 27<sup>th</sup> May, 2005, it was submitted that the sale agreement does not aid the estate of Stephen Mutai in a claim for adverse possession since the agreement was between Honesty Kanyua Manyara and Josphat Kithure and not Stephen Mutai Manyara. That the rights thereto are not transferable to Stephen Manyara vide the doctrine of privity of contract. That a contract binds only the parties thereto. Further, that the sale was not completed as the balance was to be paid upon transfer. It is submitted that time begins to run after the final instalment which is not the case herein as it is not Honesty Kanyua Manyara who has sued. The defendants relied on the case of Mark Otanga Otiende vs Dennis Oduor Aduol [2021] eKLR and submitted that the plaintiff cannot purport to rely on the sale agreement between different parties. That the suit is not brought on behalf of the purchaser or her estate. The defendants submitted that to argue about the Land Control Board consent in a contract that does not bind is misdirection. That even then, the sale agreement lost its effect when Stephen Mutai was listed as a beneficiary and was given 80 acres by court. That he cannot be in adverse of what he owned from 2008 until the grant was revoked in 2017. That even if the plaintiff argue that the contract became void for want of consent, then it is Honesty Kanyua who should have moved the court for reliefs. That she did not because as the defendants state, she has never been on the land and she did not even know where it was and she was only a proxy and she knew her claim had no chances.



36. The defendants urged the court to dismiss the suit for lacking merit and go further and free the land from the inhibition that were placed at the beginning of the proceedings. That the plaintiff's claim must fail as the ingredients of a claim for adverse possession have not been met.

### **Analysis & Determination**

37. The court has carefully considered the pleadings, the evidence and the submissions filed by the parties to support their respective positions. I have also considered the legal authorities cited by the parties. The issue for determination is whether the plaintiff has proved his claim for adverse possession to the required standards and whether the plaintiff is entitled to the reliefs sought.
38. In deciding whether or not the plaintiff has proved his claim for adverse possession, the plaintiff must prove that he has been in occupation for a period of over twelve (12) years, that such occupation was open, peaceful and continuous without interruption from the registered owner and that such occupation was adverse i.e inconsistent with the right of the registered owner.
39. In *Wambugu – vs- Njuguna* (1983) KLR 173, the Court of Appeal restated the principles of adverse possession and held as follows-;

- “(1) The general principle is that until the contrary is proved, possession in law follows the right to possess.
- 2) In order to acquire by the statute of Limitation title to land which has a known owner, that owner must have lost his right to the land either by being dispossessed of it or by having discontinued his possession of it. Dispossession of the proprietor that defeats his title are acts which are inconsistent with his enjoyment of the soil for the purpose for which he intended to use it. The Respondent could and did not prove that the appellant had either been dispossessed or had discontinued possession of the suit land for a continuous statutory period of twelve years to enable him, the respondent to title to that land by adverse possession.
3. The *Limitation of Actions Act*, on adverse possession contemplates two concepts: dispossession and discontinuance of possession. The proper way of assessing proof of adverse possession would then be whether or not the title holder has been dispossessed or has discontinued his possession for the statutory period and not whether or not the claimant has proved that he has been in possession for the requisite number of years.”

40. In the case of *Mtana Lewa Vs Kahindi Mwangandi* [2015] eKLR the Court of Appeal (Makhandia JA) stated as follows:

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



41. The doctrine of adverse possession is embodied in Section 7 of the *Limitation of Actions Act* which provides-;

“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.”

42. Section 13 of the same Act further makes provisions for adverse possession as follows-;

“(1) A right of action to recover land does not accrue unless the land is in possession of some person in whose favour the period of limitation can run (which possession is in this Act referred to as adverse possession,) and, where under “Section 9, 10, 11 and 12 of this Act a right of action to recover land accrues on a certain date and no person is in adverse possession on that date, a right of action does not accrue unless and until some person takes possession of the land.

2) Where a right of action to recover land has accrued and thereafter, before the right is barred, the land ceases to be in adverse possession, the right of action is no longer taken to have accrued, and a fresh right of action does not accrue unless and until some person again takes adverse possession of the land.”

43. Section 38 (1) of the *Limitation of Actions Act* provides that-;

“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.”

44. Order 37 Rule 7 of the Civil Procedure Rules states that-:

“(1) An application under Section 38 of the *Limitation of Actions Act* shall be made by 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.

(3) The court shall direct on whom and in what manner the summons shall be served.”

45. In the present case, the plaintiff like in all civil cases, has the burden to adduce some credible and believable evidence to prove on a balance of probabilities, that he has acquired the suit property by adverse possession. That his possession of the suit land was as of right and in a manner inconsistent with the rights of the registered owner, that is to say: the occupation has been open, actual, continuous, uninterrupted, peaceful, exclusive and with the knowledge but without the consent or permission of the registered owner for the prescribed period of 12 years. In *Kimani Ruchure vs Swift Rutherfords & Co. Ltd* (1980) KLR 10 Kneller J held that “the Plaintiffs have to prove that they have used the land which they claim as of right: nec vi, nec clam, nec precario (no force, no secrecy, no persuasion)



46. In the case of Gabriel Mbui vs Mukindia Maranya [1993] eKLR adverse possession was defined as-;

“..the non-permissive physical control over land coupled with the intention of doing so, by a stranger having actual occupation solely on his own behalf or on behalf of some other person, in opposition to, and to the exclusion of all others including the true owner out of possession of that land, the true owner having a right to immediate possession and having clear knowledge of the assertion of exclusive ownership as of right by occupying stranger inconsistent with the true owner’s enjoyment of land for purposes for which the owner intended to use it.”

47. For one to succeed in a claim of adverse possession he must satisfy the following criteria stated in the case of Maweu vs. Liu Ranching and Farming Cooperative Society 1985 KLR 430 where the Court held;

“Thus, to prove title by adverse possession, it was not sufficient to show that some acts of adverse possession had been committed. It was also to prove that possession claimed was adequate, in continuity, in publicity and in extent and that it was adverse to the registered owner. In law, possession is a matter of fact depending on all circumstances”.

48. In the case of George Ogake Pius -vs- Esther Nyasani Makori & 2 Others [2018] eKLR, the issue of what constitutes adverse possession was discussed and L. Gacheru J in a persuasive decision held;

“There is no express definition of adverse possession in the *Limitation of Actions Act*. However, Section 13(1) of the Act provides that a right of action in recovery of land does not accrue unless the land is in the possession of some person in whose favour the period of limitation can run (which possession in the Act is referred to as adverse possession). It is evident thereof, that the doctrine of adverse possession is invariably tied to Section 7 of the Act ... which bars an owner of a parcel of land from an action to recover it after the expiry of twelve years. In Black’s Law Dictionary, 10<sup>th</sup> Edition adverse possession is defined as:-

“The enjoyment of real property with a claim of right when that enjoyment is opposed to another person’s claim and is continuous, exclusive, hostile, open and notorious.”

For a claimant to succeed in a claim of adverse possession to land such claimant has to satisfy the following: -

1. The parcel of land must be registered in the name of a person other than the claimant.
2. The claimant must be in open and exclusive possession of that parcel of land in an adverse manner to the title of the real owner.
3. The claimant must have been in that occupation/possession for a period in excess of twelve years having dispossessed the owner or there having been discontinuance of possession by the owner.”

49. From the original summons dated and filed on 9<sup>th</sup> July, 2019, Honesty Kanyua Manyara (suing as the administrator and legal representative of her late husband, Stephen Mutai M’Imanyara) sued the defendants. The plaintiff is claiming to be entitled to a portion of land measuring 80 acres out of LR Nos. Abothuguchi/L-Kijja/1856,1858, 1859, 1860 and 1861 being subdivisions of the parcel of Land



LR No. Abothuguchi/L-Kiija/112. Honesty Kanyua Manyara (deceased) passed on on 26<sup>th</sup> October, 2022 when the suit was pending and was substituted by her daughter and son, Norah Ntui Mutai and Ronald Mutuma Mutai. Stephen Mutai Manyara died earlier on 11<sup>th</sup> January 2018.

50. It is the plaintiff's evidence that on 27<sup>th</sup> May 2005 their mother, Honesty Kanyua Manyara (deceased) bought the suit property from one Josphat Kithure (now deceased) who was entering the agreement on behalf of his siblings and their mother. That Honesty Kanyua Manyara (deceased) immediately took possession of the land upon execution of the agreement and developed it by planting trees. That Honesty Kanyua Manyara (deceased) bought the land when it was registered in the name of the Late M'Nkiruta M'Ajuri (deceased) who was the father to Josphat Kithure (the seller) and the defendants herein. From the material on record, it is evident that the sale agreement between Josphat Kithure (deceased) and Honesty Kanyua Manyara (deceased) was executed before succession proceedings had been initiated in respect to the estate of the deceased registered owner (M'Nkiruta M'Araru). According to the plaintiff's evidence, part of the consideration paid was meant to facilitate the initiation and completion of the succession process and include the purchaser's name as a beneficiary for the 80 acres.
51. It is the plaintiff's evidence that Honesty Kanyua Manyara (deceased) opted to have her husband, the late Stephen Mutai Manyara, included in the certificate of confirmation of grant issued to Josphat Kithure in Meru High court succession Cause No. 26 of 2006 on 17<sup>th</sup> March 2008.
52. The 1<sup>st</sup> defendant testified that in the year 2007, he saw Stephen Mutai Manyara (deceased) on their father's land planting trees and upon inquiring what he was up to the deceased informed the 1<sup>st</sup> defendant that he had bought the land from Josphat Kithure who was still alive then. That perplexed the 1<sup>st</sup> defendant and his siblings confronted their brother. They also cautioned Stephen Mutai Manyara against dealing any further with Josphat Kithure, including paying him any more money until the issue was resolved. Josphat Kithure died soon after. His other siblings, Dominic Kiogora, and Lawrence Mutua also passed on. That left the defendant herein.
53. The 1<sup>st</sup> defendant stated that Stephen Mutai Manyara later reached out to him and requested him (1<sup>st</sup> defendant) to have his name substituted with that of his late brother, Josphat Kithure in the court record. It was then that the 1<sup>st</sup> defendant became aware that his late brother, Josphat Kithure had filed a succession cause No. 26 of 2006 presumably without their knowledge. The 1<sup>st</sup> defendant stated that after consulting a lawyer and the other beneficiaries they agreed to sell Stephen Mutai Manyara the land at Kshs. 200,000/= per acre, but the latter refused. This prompted the defendants herein to make an application for revocation of the grant that was issued to Josphat Kithure. The earlier grant was eventually revoked and a new one issued to the defendants herein on 27<sup>th</sup> March 2017 in which the name of Stephen Mutai Manyara was deleted. In the first grant, Stephen Mutai Manyara was among the heirs and was to get 80 acres.
54. From the evidence on record and as outlined hereinabove, it is clear that even if Honesty Kanyua Manyara (deceased) or her husband, Stephen Mutai Manyara (deceased) entered the land in or about the year 2005 as alleged, the same was with the permission of Josphat Kithure who purported to sell land that was in fact not his. The land was by then still in the name of M'Nkiruta M'Anjuri (deceased) and no grant had been issued to Josphat Kithure as at that time of the sale agreement. Indeed, the actions between Josphat Kithure and Honesty Kanyua Manyara, in my view, amounted to intermeddling with the property of a deceased person which is prohibited under Section 45 of the *Law of Succession Act*.
55. It is also evident from the evidence on record that Stephen Mutai Manyara was listed as a beneficiary of 80 acres of the suit property and remained so from 17<sup>th</sup> March 2008 until 27<sup>th</sup> March 2017 when his name was removed from the grant. Technically speaking, he was literally the owner of the property



within that duration and he could not have been in adverse possession of “his own land”. This suit has been brought on behalf of his estate. Therefore, that period, in my view, cannot count while computing the number of years the plaintiff was in “adverse” possession of the suit property. In addition, it is also evident that the deceased left the land in the year 2013 when he was asked to do so by the 1<sup>st</sup> defendant. The period from 2005 upto 2013 is only 8 years and does not meet the span of 12 years required for a claim for adverse possession. Adverse possession dictates that as a requirement, one cannot assert a claim for adverse possession before the expiry of 12 years which is not the case herein.

56. As already stated, the suit was filed on behalf of the estate of Stephen Mutai Manyara (deceased). Therefore, even if the plaintiff was to rely on the sale agreement dated 27<sup>th</sup> May 2005, the same does not aid the plaintiff’s claim for adverse possession since the agreement was between Josphat Kithure and Honesty Kanyua Manyara. Stephen Mutai Manyara was not a party to that agreement. Moreover, the agreement shows that the sale was not completed as the balance was to be paid upon transfer. Time can only start running for purposes of adverse possession after the final payment. This is not the case herein. The plaintiff cannot even argue that time started to run when the Land Control Board consent was not obtained since the contract does not bind him. There was also the High Court Succession cause No. 26 of 2006 which was filed and was still ongoing upto the year 2017 when the name of the plaintiff as removed as a beneficiary. It is clear that the plaintiff did not have peaceful occupation of the suit land.
57. Therefore, considering the totality of the evidence availed in this case, and applying the legal principles as outlined above, I am not satisfied that the plaintiff has proved his case on a balance of probabilities. It is my finding that in many aspects, the plaintiff has failed to bring himself within the limits of the doctrine of adverse possession.
58. Consequently, the plaintiff’s claim is without merit and the same is dismissed with costs.
59. Orders accordingly.

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

In the Presence of;

Court assistant – Tupet

Mrs. Mugo for plaintiff

Mrs. Muia for defendants

**C.K YANO**

**ELC JUDGE**

