



**Ingosi v Ambani (Environment & Land Case 109 of 2019)
[2025] KEELC 504 (KLR) (12 February 2025) (Judgment)**

Neutral citation: [2025] KEELC 504 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT & LAND CASE 109 OF 2019
DO OHUNGO, J
FEBRUARY 12, 2025**

BETWEEN

SHADRACK AMARA INGOSI PLAINTIFF

AND

ESTHER SHIMULI AMBANI DEFENDANT

JUDGMENT

1. The Plaintiff/Applicant moved the Court through Originating Summons dated 9th September 2019 wherein he averred that he had become entitled to the parcel of land known as Kakamega/Bumbo/344 (the suit property) by adverse possession. He therefore sought judgment for the following orders:
 - a. A declaration that the Applicant bought whole of land parcel No. Kakamega/Bumbo/344 and took vacant possession on 20th April, 1981 and has been in continuous, peaceful, uninterrupted possession since then to date.
 - b. A declaration that the Respondent's rights and interest in the whole parcel of land parcel No. Kakamega/Bumbo/344 got extinguished by adverse possession upon expiry of twelve (12) years while the Applicant was in actual possession.
 - c. A declaration that the Respondent at the expiry of twelve (12) years held and is holding a portion of land measuring 0.7HA (whole parcel) in trust for the Applicant.
 - d. A declaration that the interests in the aforesaid land vests in the Applicant, to whom it should be transferred and be accordingly registered as sole absolute owner forthwith.
 - e. In order that the Respondent do sign all relevant documents to facilitate the transmission and consequent transfer to the Applicant whole of land parcel No. Kakamega/Bumbo/344 and/or in default the Deputy Registrar of this Honourable Court be authorized to sign such documents on behalf of the Respondent.



- f. An Order that the Respondent be condemned to pay the costs of this suit.
 - g. Such further Orders or relief as this Honourable Court deem fit to grant.
2. Hearing proceeded by way of oral evidence. The Plaintiff adopted his witness statement dated 9th September 2019, his affidavit sworn on 9th September 2019 and his further affidavit sworn on 20th September 2022. He produced copies of the documents listed as item numbers 1 to 5 in the plaintiff's list of documents dated 5th July 2023.
 3. The Plaintiff stated in his witness statement that on 20th April 1981, he purchased the suit property from the Defendant/Respondent's brother one Barnaba Siale Marotse alias Marotse Andrew for KShs 9,000 and that they had a written sale agreement which was witnessed by Lazaro Ambani, Samwel Shemi, John Nandwa, Musa Lyere, Tomasi Mugatia, Jahisi Masiza and Musa Atsangu who was the Secretary. That he paid KShs 2,000 on the date of the agreement and that the balance of KShs 7,000 was paid in instalments. The Plaintiff further stated that he took vacant possession upon payment of the first instalment and lived on the suit property openly, quietly, without interruption and as matter of right, with his children from 1981 to the date of his witness statement.
 4. The Plaintiff also stated that the Defendant was married elsewhere and did not live on the suit property. That the Defendant had never laid claim on the suit property or even sued him for eviction despite filing a succession cause in 2012 and excluding him in the said cause. He added that he filed an objection in the Defendant's Kakamega High Court Succession Cause No. 1349 of 2012, but the Succession Court ordered on 12th May 2016 that the Plaintiff files his claim in this Court since the Succession Court did not have jurisdiction to handle issues of adverse possession and purchaser's interest.
 5. The Plaintiff went on to testify that the Defendant is a sister of Barnabas Siali and that he paid the last instalment of the purchase price on 5th February 1991. That Barnabas passed away on 2nd December 1991 and that he withdrew his objection proceedings on 20th November 2019 after filing this case on 19th September 2019. He also stated that he lodged a caution in which he claimed purchaser's interest.
 6. The Plaintiff's case was then closed.
 7. The Defendant adopted her witness statement dated 10th January 2024. She stated in the statement that she was a sister to Andrew Siali Matotse (deceased) who was not survived by any son or widow and who was the registered proprietor of the suit property. She added that her said brother passed away on 2nd December 1991 and that she petitioned for letters of administration in respect of his estate in Kakamega High Court Succession Cause No. 1349 of 2012. That she was issued with a title deed and that the Plaintiff who is her nephew lodged a caution against the title.
 8. The Defendant went on to testify that she was not aware if the suit property was sold to the Plaintiff and that she used to utilize the suit property, but she faced opposition from the Plaintiff who also opposed her efforts to get title. That after her brother passed away, she learnt that the plaintiff was using the suit property. She also stated that she used the suit property until she started pursuing title through succession proceedings.
 9. The Defence case was thereby closed. The Plaintiff filed written submissions dated 20th February 2024 while the Defendant filed written submissions dated 2nd May 2024.
 10. I have carefully considered the parties' pleadings, evidence and submissions. The issues that arise for determination are whether adverse possession has been established and whether the reliefs sought should issue.



11. The Court of Appeal discussed the law relating to adverse possession in the case of *Richard Wefwafa Songoi v Ben Munyifwa Songoi* [2020] eKLR where it stated that a party claiming adverse possession must assert hostile title in denial of the title of the registered proprietor. The process must start with a wrongful dispossession of the rightful owner and the proper way of assessing proof of adverse possession is whether the title holder has been dispossessed or has discontinued his possession for the statutory period of 12 years, as opposed to whether the claimant has proved that he or she has been in possession for 12 years. The party who claims adverse possession must demonstrate the date he came into possession, the nature of his possession, whether the fact of his possession was known to the registered proprietor and that the possession was open and undisturbed for the requisite 12 years.
12. The Plaintiff's case is that he took possession of the suit property pursuant to a sale transaction. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of the true owner. For a claim of adverse possession to succeed, the claimant must demonstrate that his occupation was without the proprietor's permission. A person who enters another's land and occupies it pursuant to a sale agreement cannot deny that he had the proprietor's permission to remain on the land. Time for purposes of adverse possession cannot run in favour of such a person for as long as his presence on the land is by permission of the proprietor. That said, once a purchaser completes paying the purchase price, his possession and occupation of the purchased property is no longer by permission of the seller. In such a scenario, time for purposes of adverse possession starts to run in favour of the purchaser from the moment of final payment of the purchase price. See *Public Trustee v Wanduru Ndegwa* [1984] eKLR.
13. The Plaintiff's case is that he purchased the suit property on 20th April 1981 pursuant to a written agreement. He produced some document that he claimed to be the agreement. The document is neither in English nor Kiswahili. The Court cannot comprehend it, and it is therefore of no use to the Court.
14. Nevertheless, assuming that the Plaintiff purchased the suit property as he claims, his own evidence is that the purchase price was KShs 9,000 out of which he claims to have paid KShs 2,000 on 20th April 1981 and that he paid the balance of KShs 7,000 in instalments. He did not state when he completed paying the instalments. The date of final payment is important since it is from that date that time for adverse possession would run in the Plaintiff's favour. In the absence of proof of payment of the balance of KShs 7,000, I find that time did not start to run in the Plaintiff's favour. His presence, if any, on the suit property, was with the permission of Barnaba Siale Marotse alias Marotse Andrew the vendor.
15. There is one other aspect of the dispute that is worth noting. The Defendant testified that the Plaintiff is her nephew. The suit property was previously owned by the Defendant's brother who according to the Defendant, was not survived by any son or widow. There is thus a close family relationship between the initial registered proprietor, the Defendant and the Plaintiff.
16. The Court of Appeal had occasion to consider whether adverse possession could apply within families against close relatives in the case of *Samuel Kihamba v Mary Mbaisi* [2015] eKLR. The Court stated:

The suit filed by the respondent against the appellant was founded on adverse possession where the respondent claimed to have acquired adverse rights over the suit land having occupied the same for over twelve years. Could the doctrine of adverse possession apply against the parties to the suit before the learned Judge who were related by being mother and step-son? We think not. We are persuaded by various dicta which we have quoted and relied upon in this judgement and must state that it would create havoc for families and



the society of Kenya generally if the principle of adverse possession applied within families against close relatives.

17. It seems to me that the Plaintiff's claim is a thinly veiled succession dispute. Indeed, the Plaintiff started his claim in the succession court before he ultimately landed in this Court. His claim does not satisfy the ingredients of adverse possession. He has failed to establish adverse possession. He is therefore not entitled to the reliefs sought.
18. In the end, I find no merit in the Plaintiff's case, and I therefore dismiss it. Considering the relationship between the parties, I make no order on costs.

DATED, SIGNED, AND DELIVERED THROUGH MICROSOFT TEAMS, AT NYAMIRA, THIS 12TH DAY OF FEBRUARY 2025.

D. O. OHUNGO

JUDGE

Delivered in the presence of:

No appearance for the Plaintiff

No appearance for the Defendant

Court Assistant: B Kerubo

