



**Manoti v Ouko & 2 others (Enviromental and Land Originating Summons 414 of 2018) [2024] KEELC 13928 (KLR) (17 December 2024) (Judgment)**

Neutral citation: [2024] KEELC 13928 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 414 OF 2018  
LN MBUGUA, J  
DECEMBER 17, 2024**

**BETWEEN**

**HON STEPHEN MANOTI ..... PLAINTIFF**

**AND**

**ROSALYN DORA OUKO ..... 1<sup>ST</sup> DEFENDANT**

**AARON OUKO ..... 2<sup>ND</sup> DEFENDANT**

**DAVID SCOTT ONGOSI ..... 3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

**Pleadings**

1. This suit was commenced vide an Originating Summons dated 24.1.2013 where the plaintiff seeks entitlement to 3 acres of land known as L.R No. 3589/56 (the suit parcel) curved out of a parcel of land Title 3569/6 I.R No. 23229 registered to Jason Atinda Ouko ( deceased) by way of adverse possession.
2. He also seeks to restrain the estate of the deceased from interfering with the suit parcel by way of permanent injunction. Additionally, he seeks compensation by the defendants jointly and severally for interfering with his quiet possession and causing him and his family anguish and emotional distress as well as costs of the suit. He claims that he has had uninterrupted possession of the suit land for a period of over 24 years.
3. The Originating Summons is supported by the plaintiff's supporting affidavit sworn on and 24.1.2013 and his supplementary affidavit sworn on 13.11.2019.
4. The defendants have opposed the suit through the Replying Affidavit sworn by the 2<sup>nd</sup> defendant on 1.10.2019 and his further affidavit sworn on 9.3.2020 where the claim of the plaintiff is disputed.



5. The suit was initially filed in the High Court as HCCC No. 311 of 2011 but was eventually transferred to this court and registered as ELC 414/2018.

### **The Evidence**

6. The plaintiff STEPHEN KENGERE MANOTI testified as the 1<sup>st</sup> witness in his case (PW1). He adopted his sworn affidavits of 24.1.2013 and 13.11.2019 as his evidence in chief along with the 6<sup>th</sup> and 3<sup>rd</sup> annexures respectively. His case is that in the year 1988, he entered into an agreement with deceased (Jason) to purchase 3 acres out of parcel LR No. 3589/6 I.R No. 23229 and he paid the purchase price in full. That his family immediately put up their residential home thereon and have occupied that land for a period of over 20 years without interruption.
7. He contends that on 31.12.1995, the deceased transferred to him the suit parcel LR No. 3589/56 originally No. 3589/6/27 of which stamp duty for his parcel was paid by one Mr. Ochoki on his behalf but unfortunately, the transfer could not be effected owing to many restrictions/caveats entered on the title. And before the deceased could settle the issue on the restrictions/caveats, he passed away.
8. He further contends that there has been unnecessary delay on the part of the administrators of the estate of the deceased in issuing him with title and on 8.11.2011, he received a notice from advocates for the administrators of the estate of the deceased asking him to regularize his position, failure to which he would face eviction.
9. That he complied with the said notice by forwarding his ownership documents to the suit parcel to the estate of the deceased and his advocates but he has never heard from them.
10. PW1 refutes claims that the sale agreement dated 14.7.1988, handwritten note dated 15.12.1991 and transfer dated 31.12.1995 have forged signatures. He reiterates that he paid the full purchase price for the suit parcel being Ksh. 550000/=, of which Ksh. 275 000 was paid directly into the deceased's account, adding that the payment of Ksh. 35,000/= on 15.12.1991, was the final settlement paid in the presence of the 3<sup>rd</sup> defendant together with one Daniel Sindiga as witnesses.
11. PW1 also avers that he paid the deceased Ksh. 240,000/= via a bankers cheque which sum was used to pay rates at Nairobi City County and one of the sons of deceased namely Andrew Ouko was a witness together with Dr. Maranga.
12. He avers that on 4.11.1995, the deceased through his then advocates invited him for a meeting on 25.11.1995 to discuss delay in issuance of titles of which in the said letter, the deceased acknowledged that he is a purchaser and also attributed the delay in issuance of titles to caveats placed by 3<sup>rd</sup> parties on the mother title.
13. In cross-examination, PW1 stated that the sale agreement dated 14.7.1988 between him and the deceased was drafted by vendors advocate, one Maosa and it refers to parcel LR 3589/6 without stroke 56, adding that the vendor allowed him to take possession of the suit land.
14. He avers that the agreement states that the sum of Ksh. 550, 000/= was paid on or before execution. That first, he gave the deceased Ksh.275,000/= adding that the deceased requested him to pay rates. He stated that as per the sale agreement, the balance of Ksh.275,000/= was to be paid upon release of the title documents.
15. Referred to the handwritten note of Ksh. 35,000/= produced as part of his evidence, PW1 stated that the said sum was paid as a final instalment and it covers part of Ksh.275,000/= thus it does not



- contradict the sale agreement on the provision that Ksh.275,000/= was to be paid upon release of title documents.
16. Refereed to the transfer dated 31.12.1995, he stated that it was drafted by the deceased's advocate known as Okubo, that the same is not certified and that consideration is indicted to be Ksh.250,000/= which is a different figure from the consideration indicated on the sale agreement..
  17. PW1 avers that the deceased allowed him to stay on the suit land on the basis of the sale agreement.
  18. In re-examination, PW1 stated that in the sale agreement between him and the deceased, the purchase price is indicated to be Ksh. 550,000 while in the transfer Ksh. 200,000/= is indicted. He explained that since they did not have enough money to pay stamp duty, the figure was adjusted.
  19. He averred that for the application for registration on 29.11.2006, he did lodge documents for transfer but they did not go through because the mother title had a problem adding that apart from the letter dated 8.9.2011 served on him requiring him to vacate the suit land, he has never been served with any other letter since 1988.
  20. The Plaintiff's 2<sup>nd</sup> witness, PW2 was Mr. Thomas Maosa, an advocate. He adopted his witness statement dated 24.5.2023 as his evidence. He contends that pursuant to instructions from the vendor and purchaser regarding a portion of parcel LR 3589/6 measuring 3 acres, he drew a formal sale agreement between the deceased and the plaintiff on 14.6.1998 for a consideration of Ksh.550,000/= . He clarified to the court that he authored the sale agreement on 14.7.1988 using an electric Oliveti typing machine as there were no computers, and that both the vendor and the purchaser executed the agreement.
  21. In cross-examination, PW2 stated that the contents on the sale agreement are a true reflection of what happened on that day, adding that the vendor acknowledged receipt of Ksh. 550,000/= and that paragraph 2 of the agreement reads; purchaser to pay 'rates and service charges'.
  22. In re-examination, PW2 reiterated that the purchase price was Ksh. 550,000/= adding that the mode of payment is tabulated and that Ksh. 275,000/= was to be paid upon release of the title documents by the vendor.
  23. He also averred that at the time of execution of the agreement, the vendor did not hand over any documents to him to pass to the purchaser.
  24. The Plaintiff's 3<sup>rd</sup> witness, PW3 was Daniel Sindiga. He adopted his witness statement dated 6.6.2023 as his evidence in chief. He states that on 15.12.1991, he was present in a meeting where the deceased received Ksh.35 ,000/= from the plaintiff for purchase of land hived from LR 3589/6 and that there were 4 of them in the meeting including David Scott Ongosi (deceased).
  25. He avers that they all witnessed the deceased receiving money and all of them appended their signatures on a piece of paper dated 15.12.1991 in witness of the events that took place.
  26. He confirmed that the signature on the said documents was his and that he saw the other 3 individuals present append their signatures as well.
  27. In cross-examination, PW3 reiterated his evidence in chief, adding that the meeting in context took place at the deceased's house in Karen and that the payment made to the deceased was for a portion of land.



28. The case of defendants was advanced by three witnesses, with the 2<sup>nd</sup> defendant AARON TAFARI OUKO testifying as DW1. He adopted his replying affidavit sworn on 1.10.2019 and a further affidavit sworn on 9.3.2020 together with the annexures thereon as his evidence.
29. He avers that deceased is his father who was the registered owner of the parcel of land known as LR No. 3589/6 measuring approximately 87.5 Acres. He is aware that in 1998, the plaintiff approached the deceased with an intention to purchase a portion of parcel LR No. 3589/6 to the tune of 3 acres of which he agreed to sell him 3 cares at Ksh. 200,000/= per care but the amount was discounted to Ksh. 550,000/= for the 3 acres.
30. That out of the agreed purchase price, the plaintiff paid an initial deposit of Ksh. 50, 000/= on the understanding that the balance would be paid within 30 days of taking possession. Subsequently, the plaintiff took possession of the suit land but he never paid the balance. That since the plaintiff was an influential member of the Kisii community, his father was hesitant to push him out of the suit parcel.
31. That after his father's death in 1996, DW1 tried to pursue payment from the plaintiff and in 2011, they issued a formal communication to all persons who were in occupation of their land seeking proof of purchase and payment.
32. He avers that instead of responding to their request, the plaintiff moved to court and enjoined himself as an interested party in ELC No. 311 of 2011 (O.S) Dr. Charles Maranga v Estate of Jason Atinda purporting to have fully paid the purchase price and even claims that the deceased executed a transfer dated 31.12.1995.
33. He is aware that no formal agreement was executed between the deceased and the plaintiff as the parties had agreed that they would on a later date visit an advocate for purposes of formalizing the transactions, thus the alleged agreement dated 14.7.1988, handwritten document dated 15.2.1991 and transfer dated 31.12.1995 are forgeries.
34. DW1 further contends that the Standard Chartered bank had confirmed that no account belonging to the deceased existed as claimed by the plaintiff that he deposited Ksh. 275,000/= to such an account. To this end, he annexed correspondences dated 23.5.2019 and 8.8.2019 as "ATO-11" in his further affidavit.
35. DW1 also resists the contention that the plaintiff paid a sum of Ksh. 240,000/= to the Nairobi City County on account of rates and on behalf of the deceased.
36. In cross-examination, DW1 stated that he derived the information that the purchase price was initially Ksh.600,000/= but it was discounted to Ksh.550,000/= from personal knowledge of the deceased. He further stated that the balance of Ksh. 500,000/= was not paid but he had no evidence to that end, adding that the signature of the deceased on the sale agreement is fictitious, thus he challenges it on that basis. He also stated that he was not privy to the agreement of 14.7.1998, the transfer of 31.12.1995 and the acknowledgment of 15.12.1991.
37. DW1 also stated that rates were to be paid by the plaintiff, but he does not know whether they had been paid as of 1998. He averred that he knows the specific 3 acres where the plaintiff stays having visited him severally and based on the fact that it is clearly demarcated.
38. He also contended that after their father's demise in 1996, they did not write to the Plaintiff until 8.9.2011 when they demanded that he formalizes his stay or vacates and pays rent.



39. In re-examination, DW1 stated that he knows that the plaintiff had only paid Ksh.50,000/= because his father told him so, adding that the person on the property is the one who pays rates and rent and that he recognizes the plaintiff as a purchaser.
40. DW2 is one Mr. Emanuel Karisa Kenga, a forensic document examiner. His testimony is that on 19.6.2019, he received a letter from Ahmed Nassir advocates requesting him to do an analysis on documents that were copies but legible. That the specimen marked Y1 was a sale agreement dated 14.7.1988, Q1 was a handwritten note dated 15.12.1991 while S1 was a transfer dated 31.12.1995. It was his testimony that he compared the said documents to the known signatures of the deceased which were a claim form dated 4.2.1991 (L1) and a letter dated 22.9.1997 (M1). That after examination, he found no agreement between the questioned signatures on specimen Y1, Q1 and S1 and the known signature adding that he formed an opinion that they were made by different authors. He produced a report dated 26.6.2019 as D. Exhibit 3.
41. In cross-examination, DW2 stated that specimens L1 and M1 were the genuine documents being that L1 contains a signature of the deceased while M1 was from Mr. Scott, he never met the two, Jason and Scott so the executors of the said specimens are unknown to him.
42. He averred that in practice, even one signature would suffice to arrive at an opinion, but the more the signatures the better. He stated that for L1 which is a claim form dated 4.2.1971, was compared to the subject documents drawn between 1988-1995 thus there was a difference of 25 years but time doesn't affect the individual characteristics of signature as peculiar characteristics remain throughout one's life.
43. He stated that signatures can be affected by sickness, old age and intoxication as one can lose stability of the writing. He also pointed out that for the signature of 1995 and 1981, he was not aware of the age of the person executing the said documents.
44. DW3, one Mr. Andrew Otinda Ouko identified himself as a son of the deceased. He adopted his affidavit sworn on 9.3.2020 as his evidence in chief. He refutes claims by the plaintiff that he was a witness together with others when the plaintiff was handling a banker's cheque of Ksh. 240,000/= to the deceased. Adding that his father never involved him in his transactions, more so with the plaintiff.
45. He also avers that on several instances, the plaintiff has reached out to him and his brother seeking that they allow him to pay up the purchase price with a view to amicably settling the matter and in their last engagement, they had agreed that he would formally communicate his proposal to their advocates, but he did not.
46. In cross-examination, DW3 stated that he was not involved in the transactions before court at all. He also stated that the plaintiff is well known to him and that he stays on the suit property.
47. In re-examination, DW3 stated that at the time of the transaction he is accused of witnessing, he was in Saudi Arabia, Jeda. He also stated that the Plaintiff is on the suit land as a purchaser.

## **Submissions**

48. The submissions of the plaintiff are dated 4.9.2024, where it is argued that the plaintiff has met the ingredients of an adverse possessor as outlined in the case of Gabriel Mbui v Mukundia Maranya [1993] eKLR. It is further submitted that since 14.7.1988 when the plaintiff paid the deposit of Ksh. 275,000/= to the deceased, he never demanded for any balance and no one has ever attempted to evict him. Further the parcel he occupies is defined as LR No. 3589/56 where he has built his house.



49. The court is urged to consider decisions in *Rose Waruinu Muthemba v Rosalyne Dola Ouko & 2 Others* [2020] eKLR as well as in ELC No. 418 of 2018 *Fredrick Ayigo Ochoki v Roselyne Dola Ouko and Others* where court awarded claims through adverse possession.
50. The submissions of the defendants are dated 30.9.2024 where they contend the plaintiff is a purchaser and was entitled to take possession of the suit land under a verbal sale agreement, with the consent of the vendor despite not clearing the balance of the purchase price. Thus existence of the consent from the proprietor of the suit property negates the aspect of adverse possession. To this end, the defendants rely on the cases of; *Richard Wefwafwa Songoi v Ben Munyifwa Songoi* [2020] Eklr *Gabriel Mbui v Mukindia Maranya* [1993] eKLR, *Nechesa v Mika (Environment & Land Case 1 of 2020)* [2023] KEELC 22308 (KLR), *Erick Chepkwony Aengwo v Jonathan Rutto Kibeasang* [2013] eKLR among others.
51. It is further submitted that even if it was to be inferred that the plaintiff and the deceased had entered into the sale agreement dated 14.7.1988, the same is full of inconsistencies. It is pointed out that clause 1 (a) of the said agreement and (c) and (d) are inconsistent as far as the manner in which consideration was to be paid to the deceased. It is pointed out that the allegation by PW2 that part of consideration was paid to the deceased's Standard Chartered Bank account is demystified as annexure "ATO 11" shows no account is held by the said bank in favour of the deceased. Further, DW3 has denied being involved in any transactions between the plaintiff and the deceased.
52. The defendants also submit that the plaintiff did not tender evidence of an expert to counter the report filed by DW2 who found that the acknowledgment dated 15.12.1991 was a forgery. To this end, the defendants proffered the case of *Ngugi v Kimunio (Environment & Land Case E006 of 2023)* [2024] KEELC1518 (KLR) (20 March 2024) Judgment.
53. It was also submitted that for a claim of adverse possession to succeed, a claimant is required to produce certified extracts of titles to the land in question. To this end, the defendants put forward the cases of *Wilson Kazungu Katana & 101 Others v Salim Abdalla Bakshwein & Another* [2015] eKLR, *Mwilu v Muyanga & Another (Environment & Land Case E003 OF 2021)* [2023] KEELC 20727 (KLR) (12 October 2023) Judgment) among others.

### **Determination**

54. The provisions of Section 38 (1) of the *Limitation of Actions Act* enables a person claiming land by adverse possession to apply to the court to be declared and be registered as the proprietor of the land, in lieu of the registered proprietor. This is the plaintiff's prayer before this court.
55. The court of appeal stated as follows in *Mate Gitabi v Jane Kabubu Muga Alias Jane Kaburu Muga & 3 Others* [2017] eKLR:

“For one to succeed in a claim for adverse possession one must prove and demonstrate that he has occupied the land openly, that is without secrecy, without force, and without license or permission of the land owner, with the intention to have the land. There must be an apparent dispossession of the land from the land owner. These elements are contained in the Latin maxim *nec vi, nec clam, nec precario*.....”



56. While in *Mtana Lewa –v- Kahindi Ngala Mwangandi- COA MALINDI (2015) eKLR* the court defined the claim of adverse possession as follows.

“Adverse Possession is essentially a situation where a person takes Possession of land, 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 12 years.”

57. There seems to be no controversy that the plaintiff’s entry unto the suit land occurred in year 1988 as a purchaser. Both DW1 and 3, the two sons of the deceased admit that the plaintiff occupies the 3 acres of land, but they claim that the plaintiff never paid for the land save a payment of Ksh.50 000. What emerges from the evidence tendered herein is that plaintiff’s entry into the suit property was with the permission of the registered owner of that land, the deceased Jason.

58. In *Peter Mbiru Michuki v Samuel Mugo Michuki [2014] eKLR*, the court stated that;

“Our reading of the record shows that the plaintiff entered the suit property pursuant to a sale agreement in 1964 as a bona fide purchaser for value. The entry in 1964 was with permission of the Appellant qua vendor. In the case of *Public Trustee v Wanduru, (1984) KLR 314 at 319 Madan, J.A.* stated that adverse possession should be calculated from the date of payment of the purchase price to the full span of twelve years if the purchaser takes possession of the property because from this date, the true owner is dispossessed off possession. 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.”

59. The plaintiff claims that he paid the purchase price, the last payment being made on 15.12.1991. Jason died in 1996 and there is no evidence tendered by any party that he ever demanded any other payments from the plaintiff as from 15.12.1991 to when he died. In the case of *Peter Nyaga Kairu v Esther Wanjiku Njau & 5 Others [2019] eKLR (Mbugua J)*, the court invoked the Latin phrase “*Mortui non mordent*”, which means dead men don’t tell tales, dead men don’t bite in a case where a man was staking a claim of his deceased brothers property long after the death of the brother.

60. Similarly, in the case at hand, Jason never raised any issue with the plaintiff when he lived. The defendants cannot therefore purport to challenge his dealings with the plaintiff, hence their claims that the sale agreement, acknowledgement document and transfer documents are forgeries are hollow.

61. The evidence of DW2, the document examiner is neither here nor three. Firstly, the known signature of the vendor (Jason) is the document marked “L1” at page 16 of defence bundle. It is the one which was being compared with the questioned signatures of the vendor to be found in the sale agreement (Y1), the hand written note of 15.12.1991 (Q1) and transfer of 31.12.1995 (S1). Although DW2 avers that the known signature is marked as H on document L1, that marking cannot be discerned.

62. Similarly, there is no tangible evidence to indicate that the signature on M1 for Scott Ongosi was the known one, seeing that DW2 never met this particular person (Scott). To this end, I find that the evidence of DW2 falls short of the standard required on balance of probability to conclude that the three documents (Y1, Q1 and S1) were forgeries in the aforementioned document, noting that the said document has three signatures. What more the document has a date of 16.4.71 at the top and a stamp of payment of even date. Another date at the middle bears date of 4.2 with the year not discernible. There is no plausible explanation as to how DW2 came up with identification of this document. (L1) as the one containing a known signature. What more, the vendor was long dead by the time this “known” signature was allegedly given to DW2.



63. What is clear beyond peradventure is that the deceased was dispossessed off of his property parcel 3589/6 to the tune of 3 acres by the plaintiff in 1988 and to date, the occupation has remained uninterrupted.
64. I find that plaintiff's possession became adverse to the title holder on 15.12.1991, after the deceased had accepted the last instalment. When computed to the time of filing this suit, a period of 22 years had lapsed. The same was continuous and uninterrupted.
65. On the averment that the plaintiff has not exhibited title to the suit property, I take judicial notice that the mother title L.R 3589/6 consisting of 87.5 acres has been a subject of numerous litigation for instance the cases submitted by the plaintiff; Rose Waruinu Muthemba (Suing on behalf of and as an administrator of the Estate of Louis Juguna Muthemba - Deceased) v Rosalyna Dola Ouko, John Aaron Tafari Ouko, Andrew Atinda Ouko (Sued on their own Behalf and as administrators of the Estate of Jason Atinda Ouko (Deceased) (352 of 2011) [2020] KEELC 2690 (KLR) (Environment and Land) (5 May 2020) (Judgment) as well as Ochoki v Ouko & 2 Others (Environment & Land Case 413 of 2018) [2024] KEELC 641 (KLR) (8 February 2024) (Judgment), where the claimants were asserting their claim on portions of the mother title. It is the same scenario in the case at hand, save that, plaintiff's portion is now identified as L.R.3589/56.
66. In light of the above, I find that plaintiff's claim is merited and I proceed to give the following orders;
- i. It is hereby declared that the plaintiff is entitled to parcel L.R.3589/56 being 3 acres out of land L.R 3569/6 by way of adverse possession.
  - ii. An order is hereby issued directing the Land Registrar to register parcel L.R.3589/56 in the name of STEPHEN KENGERE MANOTI.
  - iii. The plaintiff shall meet the costs incidental to registration of the suit property into his name.
  - iv. Each party is to bear their own costs of the suit.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 17<sup>th</sup> DAY OF DECEMBER 2024 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

In the presence of:

Maina for Plaintiff

Lukoye for Defendant

Court Assistant: Vena

