



**Kinyanjui v Kariuki (Environmental and Land Originating Summons
E041 of 2022) [2024] KEELC 13901 (KLR) (16 December 2024) (Order)**

Neutral citation: [2024] KEELC 13901 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E041 OF 2022
BM EBOSO, J
DECEMBER 16, 2024**

BETWEEN

JOHN MURIMI KINYANJUI PLAINTIFF

AND

SIMON NJOROGE KARIUKI DEFENDANT

ORDER

1. On 15122022, the plaintiff took out an originating summons dated 30112022 inviting the court to issue the following verbatim adverse possession orders:
 1. That a declaration be and is hereby issued that the title of the whole of that parcel of land known as KabeteNyathuna1553 situated in Kiambu County be deemed to have been extinguished through adverse possession by the plaintiff.
 2. That a declaration be and is hereby issued that the plaintiff has become entitled to adverse possession to the suit land known as KabeteNyathuna1553 situate in Nyathuna, Kiambu County.
 3. That an order be and is hereby issued directing the defendant to execute all documents and take all necessary steps to effect transfer of parcel known as KabeteNyathuna1553 to the plaintiff and in default whereof, the said documents be executed by the honourable deputy registrar of this honourable court.
 4. That an order be and is hereby issued directing the Land Registrar Kiambu to register John Murimi Kinyanjui as the absolute proprietor of the suit land known as KabeteNyathuna1553.
 5. That costs be in the cause.
2. The originating summons was premised on the ten (10) grounds itemized in the summons. It was anchored on Order 37 rule 7 of the *Civil Procedure Rules*, Section 1A, 1B and 3A of the *Civil Procedure*



Act, Sections 7, 37 and 38 of the *Limitation of Actions Act*; and Section 28 (h) of the *Land Registration Act*. It was supported by John Murimi Kinyanjui’s affidavit sworn on 30/11/2022.

3. On 20/3/2024, this court granted the plaintiff leave to effect service of summons through a prominent notice in either the Daily Nation Newspaper or the Standard Newspaper. An affidavit of service sworn on 22/9/2024 by Meshack Mitau Kimanzi was subsequently filed, indicating that the defendant had been served through a notice published in the Standard Newspaper on 3/18/2024. The defendant neither entered appearance nor filed a response to the originating summons. Consequently, the originating summons was heard as an undefended cause on 24/10/2024. It was canvassed through brief written submissions dated 4/11/2024. It now falls for Judgment.
4. The plaintiff contends that sometime in the year 1990, the defendant and him entered into an agreement for sale of land parcel number KabeteNyathuna1553 [hereinafter referred to as “the suit land”] situated in Kiambu County, at the price of Ksh 160,000. The plaintiff adds that they further entered into another agreement that the defendant would cede part of the suit property to him even as he continued paying the purchase price. It is the plaintiff’s case that he had paid a total of Kshs 147,000 as at 11/9/1991 and that the balance of the purchase price was to be paid at completion. The plaintiff states that he requested for the transfer documents from the defendant to enable him transfer the suit land to himself but the defendant declined and, instead demanded more money, contrary to what had been agreed in the agreement for sale. The plaintiff adds that, as a result of the foregoing, the transfer was never completed.
5. It is the plaintiff’s case that sometime in 1991, after he was unable to trace the defendant, he took possession of the suit land, fenced it and later on planted trees on it. Around September 1991, he registered a caution against the title to the suit land to protect his interest in the land. The plaintiff contends that he has enjoyed quiet and undisturbed possession of the suit land for 31 years and he now intends to further develop it. However, the suit land is still registered in the name of the defendant. The plaintiff urges the court to make a declaration that the suit land be registered in the name of the plaintiff.
6. While preparing to write a judgment in the suit, it has emerged that the plaintiff presented to the court an official search dated 12/9/1991. The official search is now 33 years old. The court does not know if the suit land is still registered in the name of the defendant.
7. The court takes the view that for a complete and effectual determination of the key question in this suit, the plaintiff should present a current certified extract of title or a current official search relating to the title. This view is informed by the provisions of Order 37 rules 7(1) and (2) of the [*Civil Procedure Rules*](#) which provide as follows:
 7.
 - (1) An application under Section 38 of the *Limitation of Actions Act* (Cap. 22) 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.
8. Consequently, the following orders are hereby issued:
 - a. The order reserving a judgment date in this suit is hereby vacated.
 - b. The plaintiff shall file a supplementary affidavit exhibiting a current official search or a current certified copy of the land register relating to the suit land within 30 days.



c. The matter shall be given a mention date for further directions.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 16TH DAY OF
DECEMBER 2024**

B M EBOSO

JUDGE

In the Presence of: -

Mr Kimanzi for the plaintiff

Court Assistant: Melita

