



**Singa v Njoroge (Environment & Land Case 15 of 2021)  
[2023] KEELC 15771 (KLR) (27 February 2023) (Judgment)**

Neutral citation: [2023] KEELC 15771 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND CASE 15 OF 2021  
JM ONYANGO, J  
FEBRUARY 27, 2023**

**BETWEEN**

**REGINA CHEMUTAI SINGA ..... APPLICANT**

**AND**

**JOSEPH MUIRURI NJOROGE ..... RESPONDENT**

**JUDGMENT**

1. The applicant commenced this suit by way of originating summons dated June 16, 2021 seeking orders that:
  - a. The applicant has obtained title to 4.7 acres being part of land parcel No Eldoret Municipality Lr No 11127/121 Grant No 1R 47195 situated at Chebaun farm plateau by way of adverse possession.
  - b. The respondent is holding the title of land parcel No Eldoret Municipality Lr No 11127/121 Grant No 1R 47195 situated at Chbaun farm plateau in trust for the applicant.
  - c. A portion of land measuring 4.7 acres being part of Eldoret Municipality Lr No 11127/121 Grant No 1R 47195 situated at Chebaun farm plateau currently occupied by the applicant be curved out by the county surveyor, Uasin Gishu County and the applicant be issued with a title.
  - d. Pursuant to (a), (b) and (c) above, the Land Registrar, or the Registrar in charge Uasin Gishu District Land Registry or the Registrar where the register of land is (sic) to delete the name of the respondent is in regard to the portion of land measuring 4.7 acres being part of land parcel No Eldoret Municipality Lr No 11127/121 Grant No 1R 47195 situated at Chebaun farm plateau and in lieu thereof enter the name of the applicant with a title deed thereof or such other number as the Registrar may issue.



- e. Pursuant to (d) above, the Land Registrar Uasin Gishu District Land Registry of the Registrar having custody of the register for parcel number Eldoret Municipality Lr No 11127/121 Grant No 1r 47195 situated at Chebaun Farm Plateau do issue a title deed to the applicant accordingly over the said 4.7 acres
- f. Costs be borne by the respondent.
2. The originating summons is based on the applicant's supporting affidavit sworn on the June 16, 2021. In the said affidavit she depones that in the year 1994, she bought a piece of land measuring 4.7 acres out of land parcel Eldoret Municipality Lr No 11127/121 Grant No 1r 47195 situated at Chebaun farm plateau (hereby referred to as the suit property) from the respondent. At the time of sale, the suit property was registered in the name of the respondent's father, one Njoroge Kaboga (now deceased). She paid the purchase price in full and took possession of the suit property.
  3. She depones that sometime in 2011 the respondent applied for a grant of letters of administration in respect of the estate of his father *vide* Eldoret Hc Succession Cause No 249 of 2011 and he was issued with a grant of letters of administration Intestate and a certificate of confirmation of grant respectively.
  4. The applicant further depones that despite the fact that the respondent has obtained a title to suit property, he has refused and/or neglected to transfer the same to the applicant and is thus holding the same in trust for the applicant who has acquired prescriptive rights by operation of the law.
  5. She depones that she has occupied the suit property openly and without force for the last 27 years and she fears that the respondent may transfer the suit property to a third party and put it out her reach in which event she would suffer irreparable loss.
  6. Despite being served with the originating summons, the respondent neither entered appearance nor filed a replying affidavit. The suit was therefore set down for hearing by way of formal proof.
  7. The applicant testified as PW1. She relied on her witness statement dated June 16, 2021 in which she expounds on the facts contained in her supporting affidavit.
  8. It is her evidence that on December 13, 1994 she entered into a sale agreement with the respondent for the sale of a parcel of land measuring 4.7 acres out of land parcel Eldoret Municipality Lr No 11127/121 Grant No 1r 47195 situated at Chebaun farm plateau at an agree purchase price of 652,500 which she paid in full. She then took possession of the suit property and she has been occupying it peacefully and continuously for the last 27 years without any interruption.
  9. She produced the documents in her List of documents dated June 16, 2021 as plaintiff's exhibits 1-6. The said exhibits include a copy of the sale agreement dated December 13, 1994, acknowledgement of payment dated June 19, 1995, a deposit slip No 10469 issued by Barclays Bank Kenya Limited, a copy of the title Grant No IR 47195 together with the map, a copy of the grant of letters of administration in respect of the estate of Njoroge Kaboka (deceased) and the certificate of confirmation of grant. She stated that even though the respondent was the beneficial owner of the suit property, he had refused or neglected to transfer it to her. She prayed that the title in respect of the suit property measuring 4.7 acres be transferred to her.
  10. After she closed her case learned counsel for the applicant filed his written submissions dated December 15, 2022 which I have considered.

### **Issues for Determination**

11. The applicant's counsel framed the following issues for determination:



- a. Whether the applicant is entitled to obtain title based on the doctrine of adverse possession.
- b. Whether the respondent holds the suit property in trust for the applicant.
- c. Whether the applicant is a beneficial owner and whether she is entitled to obtain title of the suit property.
- d. What are the tenable orders in this instance?

### **Analysis and Determination**

12. It was the applicant's uncontroverted evidence that on December 13, 1994 she purchased a portion of land measuring 4.7 acres out of the parcel of land known as Eldoret Municipality Lr No 11127/121 Grant No 1r 47195 situated at Chebaun farm plateau from the respondent. The applicant produced a copy of the sale agreement and receipts as well as acknowledgement documents to show that she paid the purchase price in full. It was her testimony that she subsequently took possession of the land and has been in open, peaceful and uninterrupted occupation thereof since 1994 to date, a period of more than 12 years and she was therefore entitled to the suit property by way of adverse possession. She further testified that even though the respondent had obtained a grant of letters of administration in respect of the estate of Njoroge Kaboga who was his father and the registered owner of the suit property, he had refused to transfer the said property to her.
13. The law pertaining to adverse possession is now settled. Section 7 and 38(1) of the [Limitation of Actions Act](#) provide as follows:
  - “7. 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.
  - 38(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.”
14. In the case of [Kasuve v Mwaani Investments Limited & 4 Others](#) 1KLR 184 the Court of Appeal held that:
 

“In order to be entitled to land by prove adverse possession, the claimant must prove that he has been in exclusive possession of the land openly, and as of right without interruption for a period of 12 years either after dispossessing the owner or by discontinuation of possession by the owner on his own volition”
15. The court further observed that in order to prove adverse possession one must demonstrate the following:
 

“his entry must be adverse to the title of the owner of the land. It is also possible to enter the land with the consent of the owner, but if the owner at some point terminates the consent and the applicant does not leave but continues to occupy the land and the owner takes no steps to effectuate the termination of the consent for a period of 12 years after the, such applicant would be perfectly entitled to sue on account of adverse possession”



16. In the instant suit the applicant's entry was pursuant to a sale agreement and even though the respondent never transferred the suit property to the applicant, he did not chase her away. In *Public Trustee vs Wanduru Ndegwa* (1984) eKLR, Madan JA stated as follows; -
- “.... 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 of 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 run.
17. In the case of *Edwin Wanjau (suing in his capacity as the administrator of the estate of Kimingi Wariera(Deceased)& Mwangi Kimingi* (2022) eKLR the court held that the applicant who had taken possession of the suit land pursuant to sale agreement and had been in occupation for 15 years was entitled to the suit land by way of adverse possession. It is therefore, my finding that the applicant is entitled to the suit property by way of adverse possession.
18. Even though the suit property is registered in the name of Njoroge Kaboga (Deceased) I note that the defendant has taken out a Grant of Letters of administration in respect of the estate of the deceased. Having entered into a sale agreement with the applicant and received the full purchase price, the respondent created a constructive trust in favour of the applicant. The applicant therefore, acquired a beneficial interest in the suit property.
19. In arriving at this finding I am guided by the case of *Mwangi and Another v Mwangi* [1986] KLR 328 it was held that the rights of a person in possession or occupation of land are equitable rights which are binding on the land and the land is subject to those rights. Similarly in the case of *Ndirangu Kariuki v Wellington Wanjau* (2021) eKLR the court held that by receiving almost the entire purchase price and placing the applicant in possession of the suit land, the respondent had created a constructive trust in favour of the applicant.
20. Furthermore, the Court of Appeal in the case of *Peter Thuo Kairu v Kuria Gacheru* [1988] 2KAR
- “The law relating to prescription affects not only present holders of title but their predecessors in title”.
21. In view of the foregoing, the applicant has proved her case on a balance of probabilities. I therefore enter judgment for the applicant and make the following final orders:
- a. A declaration is hereby issued that the applicant has obtained title to 4.7 acres being part of land parcel No Eldoret Municipality Lr No 11127/121 Grant No 1R 47195 situated at Chebaun Farm Plateau by way of adverse possession.
  - b. A declaration is hereby issued that the Respondent is holding the title of land parcel No Eldoret Municipality Lr No 11127/121 Grant No 1R 47195 situated at Chbaun Farm plateau in trust for the applicant.
  - c. A portion of land measuring 4.7 acres being part of Eldoret Municipality Lr No 11127/121 Grant No. 1.R 47195 situated at Chebaun Farm Plateau currently occupied by the applicant shall be curved out by the County Surveyor, Uasin Gishu County and the applicant shall be issued with a title.
  - d. Pursuant to (a), (b) and (c) above, the Land Registrar in charge of Uasin Gishu District Land Registry or the Registrar where the register of the suit property is shall delete the name of



the Respondent in regard to the portion of land measuring 4.7 acres being part of land parcel No Eldoret Municipality Lr No 11127/121 Grant No. 1R 47195 situated at Chebaun Farm Plateau and in lieu thereof enter the name of the applicant with a title deed thereof or such other number as the Registrar may issue.

- e. Pursuant to (d) above, the Land Registrar Uasin Gishu District Land Registry or the Registrar having custody of the register for parcel number ELdoret Municipality Lr No 11127/121 Grant No 1R 47195 situated at Chebaun Farm Plateau shall issue a title deed to the applicant in respect of the said 4.7 acres.
- f. The costs of the suit shall be borne by the Respondent.

**DATED, SIGNED AND DELIVERED VIA MS TEAMS PLATFORM AT ELDORET THIS 27<sup>TH</sup> DAY OF FEBRUARY 2023.**

**J.M ONYANGO**

**JUDGE.**

In the presence of:

Miss Mutai for the applicant

No appearance for the Respondent

Court Assistant: Mr. Oniala

