



**Konga v Ringine & 2 others (Environment & Land Case 12 of 2016)  
[2023] KEELC 771 (KLR) (15 February 2023) (Judgment)**

Neutral citation: [2023] KEELC 771 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT & LAND CASE 12 OF 2016  
CK NZILI, J  
FEBRUARY 15, 2023**

**BETWEEN**

**JOHN KINOTI KONGA ..... PLAINTIFF**

**AND**

**JOSEPH MARANGU RINGINE ..... 1<sup>ST</sup> DEFENDANT**

**KINOTI FESTUS MURITHI ..... 2<sup>ND</sup> DEFENDANT**

**TERESIAH GAKII (ADMINISTRATOR OF THE ESTATE OF RINGINE  
MUTHURI – DECEASED) ..... 3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

1. The plaintiff by an amended originating summons dated October 30, 2020 asked the court to declare him entitled to 0.45 acres of land out of LR No Ntima/Ntakira/6430, and 0.60 acres out of LR No Ntima/Ntakira/6431 whose mother title was LR No Ntima/Ntakira/1679 by virtue of adverse possession. The originating summons was supported by an affidavit of John Kinoti Konga in which he averred that the mother title was initially registered under the name of the late Ringine Muthuri until October 26, 2018 when it was subdivided into the aforesaid subdivisions and registered in the names of the 3<sup>rd</sup> and 2<sup>nd</sup> defendants as joint administrators of the estate of the deceased. The plaintiff attached copies of the search certificate, the register and a limited letter of grant as JK1 (a), (b) and (c) and 2 respectively. Further the plaintiff averred that in 1969 his late father Francis M'Ikunyua M'Riria bought a portion of the mother title measuring 0.45 acres and cleared the entire purchase price on August 20, 1973. It was averred that in 1995, the plaintiff took vacant possession of the portion and embarked on permanent developments for his home where he has been living as shown in the annexed photographs marked JKK '3'.
2. The plaintiff averred that while aware of this occupation and developments, the 1<sup>st</sup> & 2<sup>nd</sup> defendants subdivided the Suit land into the aforesaid subdivisions and transferred LR No Ntima 6430 to the 3<sup>rd</sup>



- defendant but retained LR No 6431. He attached copies of the green card as annexure marked JK 4 (a) & (b). Additionally, the plaintiff filed a list of witness's statements and documents dated March 23, 2016.
3. Through a defence to the amended plaint and a counterclaim dated December 16, 2020 and a replying affidavit dated May 16, 2016, the 1<sup>st</sup> & 2<sup>nd</sup> defendants denied the contents of the amended originating summons. In particular the 3<sup>rd</sup> defendant averred that he was a bonafide purchaser and registered owner from the 1<sup>st</sup> & 2<sup>nd</sup> defendants for a valuable consideration of the LR No Ntima/Ntakira/6430. The 3<sup>rd</sup> defendant therefore counterclaimed for a declaration that he was the absolute owner thereof to the exclusion of the plaintiff in the main suit.
  4. In the replying affidavit dated May 16, 2016, the 1<sup>st</sup> defendant for himself and on behalf of the 2<sup>nd</sup> defendant averred that there was no such sale of a portion of the initial parcel of land by his late father to the plaintiff's late father as alleged or at all, otherwise the said purchaser would have lodged a suit during the lifetime of his late father or perhaps attached documents to that effect including a consent from the land control board, on time.
  5. The 1<sup>st</sup> & 2<sup>nd</sup> defendants averred that the plaintiff and his deceased father were mere licensees and that the doctrine of adverse possession was inapplicable in the circumstances. They averred further that if that was so, the plaintiff would have included the suit land as forming part of the assets of his late father. Similarly, the 1<sup>st</sup> and 2<sup>nd</sup> defendants averred that the said claim could not hold water since the plaintiff's other brothers and sisters were not staking such a claim.
  6. It was the 1<sup>st</sup> and 2<sup>nd</sup> defendants defense that the party's lands only happened to boarder each other and the plaintiff merely took advantage of their absence, encroached and or trespassed into their portion which was a pure boundary dispute easily resolvable by the land registrar. Further, the 1<sup>st</sup> and 2<sup>nd</sup> defendants averred that the plaintiff had made several attempts to stake a claim on LR No 1679 by filing Misc Succession Cause No 75/2015, as well as a protest to Succession Cause No 22 of 2015 hence this was yet another fishing expedition even when he knew well that they have been farming, utilizing and harvesting farm produce as per attached photographs and a letter from Kianjuri Farmers' Cooperative society. They termed any alleged occupation thereof to have been forceful and not open. The defence was accompanied by a list of witness statements and documents dated July 1, 2019 and a further list of statements and documents dated May 20, 2021.
  7. By a reply to defence, and defendant to counterclaim dated January 21, 2021, the plaintiff averred that the defences had raised no triable issues; that at the time the 3<sup>rd</sup> defendant allegedly bought the land from the 1<sup>st</sup> & 2<sup>nd</sup> defendants, their proprietary interest had extinguished by virtue of adverse possession hence they could not have passed a clean title to him therefore, the prayers sought were untenable, it was bad in law and the counterclaim was unsustainable .
  8. At trial, the plaintiff as PW 1 adopted his witness statement dated March 23, 2016 and the supporting affidavit sworn on October 30, 2020 as his evidence in chief essentially repeating the contents of his pleadings aforementioned. He produced a copy of the register for LR No Ntima/Ntakira 1679 as P Exh No (1), a grant of letters of administration as P Exh No (2) and a bundle of 7 photographs as P Exh 3 (a) – (f) respectively.
  9. In cross examination, PW 1 admitted that the suit land initially belonged to the late M'Toringine M'Muthuri which was affected by the construction of the Nkubu -Meru tarmac road spitting the land into two portions one of the portions being the subject matter herein where his developments are alleged to have trespassed into.



10. PW 1 further said that it was possible that his structures had spread across the suit land. He admitted that his late father had lodged a caution over the title in 1980 and that village elders had also intervened on the matter. Similarly, PW 1 acknowledged that his late mother had also reported to the district officer of the area over the issue in 2015. Further, PW 1 said that the defendant's late father moved out of the area many years ago and settled at Giaki area while the witness was young.
11. PW 1 insisted that his claim was over the portion he has developed which is approximately 0.45 acres. PW 1 admitted lodging a citation against the 1<sup>st</sup> and 2<sup>nd</sup> defendants based on purchaser's rights as well as a protest letter in the succession proceedings. PW 1 refuted the suggestion that he was not in occupation given he was the one picking coffee therefrom to deliver to the nearby coffee factory. PW 1 said that the 3<sup>rd</sup> defendant knew there was a pending dispute at the time he bought the land on December 16, 2018. Similarly, PW 1 told the court that neither the defendant's late father nor the 3<sup>rd</sup> defendant had given him a notice to vacate the land or stopped him from utilizing the land since 1995.
12. PW 2, an uncle to the plaintiff told the court that this deceased brother bought some land from the defendant's late father, took vacant possession, erected permanent buildings and has been utilizing the land including harvesting coffee through the plaintiff PW 3 was Festus Murithi Rwito. His testimony was that he was one of the witnesses to the sale agreement dated January 30, 1973 following which the plaintiff's late father, took vacant possession and later on the plaintiff occupied the land. He confirmed that the plaintiff's late mother was buried on the disputed land.
13. Joseph Marangu Rume as DW 1 adopted his witness statement dated July 1, 2009. He produced the pleadings in Succession Case No 75 of 2015 as D Exh No (1), a protest letter to the Succession Cause as D Exh No (2), a copy of the confirmed grant as D Exh No (3), a copy of the green card as D Exh No (4), a letter dated May 12, 2016 from the farmers union as D Exh No (5) and a bundle of photographs as D Exh No 6 (a) – (b) showing developments on the suit land by his late father. DW 1 admitted that the plaintiff has encroached on the land by erecting a house therein. He stated the deputy county commissioners' offices had handled the boundary dispute where the plaintiff was unable at the time to produce any alleged agreement of sale.
14. DW 1 admitted that he sold and transferred the land to the 3<sup>rd</sup> defendant in 2014. Similarly, DW 1 said that the plaintiff had over the years taken advantage of their absence to encroach on the land to an extent of erecting a dwelling house therein despite verbal warnings or notices told to vacate the land. He acknowledged that his late father moved out of the suit premises in 1973 but clarified that his late father never mentioned to them about the alleged sale of the land to the plaintiff's late father
15. Teresia Gakii was DW 2, a sister to the defendant. She confirmed that she was the owner of Parcel No 6431 which was initially part of LR No 1679. She admitted that the plaintiff had encroached on the suit land which she was utilizing prior to its sale and transfer to the 3<sup>rd</sup> defendant as per D Exh No (5). Further, DW 2 told the court that after the 3<sup>rd</sup> defendant bought the land, she continued to harvest the farm produce under his permission. DW 2 said that they moved to Giaki area in 1973 where they have been living up to present times, hence the reason they had no developments on the suit land. She also admitted the existence of the plaintiff's house and the burial site of his late mother on the suitland. Her testimony was that there was no report made to the police or a notice issued to the plaintiff to vacate or cease his acts of encroachment DW 2 admitted that the sale agreement with the 3<sup>rd</sup> defendant was silent on the status of the suit land at the time of the sale or that the 3<sup>rd</sup> defendant was going to take vacant possession DW 2 however clarified that the 3<sup>rd</sup> defendant took vacant possession of the encroached portion after the sale.



16. DW 3 & 4 were Francis Kiriungi and Festus Kinoti Murithi the 3<sup>rd</sup> defendant. DW4 produced a sale agreement dated December 4, 2014 as D Exh No 7 and photographs as D Exh No 8, (9), (a), (b) and (c). His testimony was that DW 2 approached him to dispose of the suit land in order to assist a sick relative. He testified that after conducting an official search, he established that the land was in the name of the late M'Ringine M'Muthuri. DW 4 told the court that after the succession cause was finalized the transfer was effected and thereafter he took vacant possession. He confirmed that the plaintiff was his neighbor whose house had encroached on the suit land. He denied that the plaintiff cattle shed, burial site and the son's house were on his land. DW 4 also confirmed that he had authorized DW 2 to continue harvesting the fruit trees on his land. He insisted that the sale agreement was legal even though there was discrepancy on the land size.
17. DW 4 admitted that the sale agreement was silent on the developments on the suit land at the time since he did not know the extent of the land and its boundaries. DW 4 could also not ascertain for how long the plaintiff's house has been in existence though he had been told that it was erected around 2012. He estimated the extent of the encroachment to be 4 meters or thereabout. DW 4 said that at the time he bought the land, no one had disclosed to him of any pending dispute over the land.
18. At the close of the defence, parties were directed to file and exchange written submissions by February 9, 2023. The plaintiff submitted that he had produced strong and believable evidence that the defendant's family moved out of the suit land in 1973 and their late father sold the portion left on the right side of the main road as one faces Nkubu town to his late father for Kshs 600/= which he cleared on August 20, 1973 and excluded the registered owner from the land.
19. Therefore, the plaintiff submitted that he dispossessed the registered owner and who also discontinued possession of the land, whose subsequent subdivisions and transfers to the defendants did not defeat his claim on adverse possession. Reliance was placed on [\*Walter Kipchirchir Koech vs Tapnyobii w/o Melil and another \(2021\) eKLR\*](#) where the court cited with approval [\*Public Trustee vs Wanduru Ndegwa \(1984\) eKLR\*](#).
20. On the aspect of trespass, the plaintiff submitted that no evidence was tendered by the defendants on a notice to vacate the land or an eviction order sought and or obtained against him. The plaintiff urged the court to find the admission by the defendants of the existence of the house and burial site for her late mother on the land as acts inconsistent with the defendant's title. Reliance was placed on [\*Paul Kamande Gicheha vs Jacob Kinyua Kiragu \(2018\) eKLR\*](#) & [\*Joseph Gachumi Kiritu vs Lawrence Munyambu Kabura Civil Appeal No 20 of 1993\*](#).
21. Concerning the purchase of the suit land by the 3<sup>rd</sup> defendant, the plaintiff submitted the sale agreement occurred before the vendors 1<sup>st</sup> & 2<sup>nd</sup> defendants had sought for and obtained letters of administration hence rendering the sale illegal and contrary to Section 82 of the [\*Law of Succession Act\*](#). Reliance was placed on in [\*Re estate of Isaac Kaburu Marete \(deceased\) 2017 \(eKLR\)\*](#).
22. The court has gone through the pleadings, evidence tendered, written submissions and the law. The issues calling for the court's determination are: -
  - i. If the plaintiff has proved the ingredients of adverse possession.
  - ii. If the sale and transfer of the suit property by the 1<sup>st</sup> and 2<sup>nd</sup> defendants to the 3<sup>rd</sup> defendant offended the doctrine of Lis pendens.
  - iii. If the sale and transfer of the suitland offended the [\*Land Control Act\*](#), the [\*Law of Succession Act\*](#) and or was subject to any overriding right held by the plaintiff.



- iv. If the 3<sup>rd</sup> defendant pleaded and has proved that he was an innocent purchaser for value without notice.
  - v. If the plaintiff and the 3<sup>rd</sup> defendant are entitled to their respective reliefs as pleaded.
23. The primary pleadings in this suit are the amended originating summons dated October 30, 2020, the replying affidavit sworn by the 1<sup>st</sup> defendant on behalf of the 2<sup>nd</sup> defendant dated May 16, 2016, the 3<sup>rd</sup> defendant's defense and counterclaim dated December 14, 2020 and the reply to defence and defence to counterclaim dated January 21, 2021.
  24. The plaintiffs claim is based on both an aborted sale of the land and on adverse possession. In support of the two claims the plaintiff pleaded and testified that his deceased father bought the suit land from the 1<sup>st</sup> and 2<sup>nd</sup> defendants' late father in 1969, cleared the balance in 1972 and took vacant possession till he died in 2001, which property shared a common boundary with their land. The plaintiff called witnesses among them one Rwito who was a party to the sale agreement.
  25. Further the plaintiff pleaded that he took vacant possession in 1995, erected a permanent house therein and embarked on extensive developments including farming activities. He produced P Exh No 2 a grant of letters of administration issued to the 1<sup>st</sup> & 2<sup>nd</sup> defendants on July 14, 2015 and a copy of records for LR No 1679 in the name of the late Ringine Muthuri whose entry No 2 clearly indicated that his late father had lodged a caution on January 29, 1980 claiming a purchaser's right.
  26. On the other hand, the 1<sup>st</sup> and 2<sup>nd</sup> defendants in the replying affidavit dated May 16, 2016 denied the alleged sale agreement but admitted the trespass to the land by the plaintiff. They termed the plaintiff as a mere licensee and the claim as a mere boundary dispute. Further, the 1<sup>st</sup> & 2<sup>nd</sup> defendants stated that the plaintiff was on a fishing expedition since he had also objected to the succession proceedings and filed a citation against them. Similarly, they categorically stated that they were the ones harvesting the coffee and other crops as per the receipts from the nearby coffee factory dated May 12, 2016.
  27. In an application dated August 16, 2020, the plaintiff swore an affidavit on August 10, 2020 stating that the 1<sup>st</sup> and 2<sup>nd</sup> defendant's registration number 5 had during the pendency of the suit been subdivided. LR 1679 into 6430 and 6431 and transferred LR No 6430 to the 3<sup>rd</sup> defendant. In a defence and counterclaim dated December 14, 2020, the defendants denied the contents of the amended plaint. On his part the 3<sup>rd</sup> defendant at paragraph 4 of the defence and counterclaim stated that he was a registered owner of LR No 6430 having purchased it from the 1<sup>st</sup> and 2<sup>nd</sup> defendants for a valuable consideration. In a counterclaim dated December 14, 2020, the 3<sup>rd</sup> defendant averred that his title was indefeasible and should be declared as an absolute owner to the exclusion of the defendant in the counterclaim.
  28. In support of the defence and counterclaim, the defendants produced pleadings in the citation proceedings No 75 of 2015 by the plaintiff as D Exh No (10) in which he had given particulars of his occupation and developments therein, a protest by the 1<sup>st</sup> and 2<sup>nd</sup> defendant as D Exh No (1) in Meru HCC No 22 of 2015, a confirmation of grant dated February 8, 2018 as D Exh No (3) and a copy of record for LR No 1679 as D Exh No (4).
  29. From the evidence tendered, there can be no doubt that as at the filing of this suit, the 1<sup>st</sup> and 2<sup>nd</sup> defendants did not have a confirmed grant but a letter of grant. D Exh (4) at entry No 3 indicated that the caution by the plaintiff's late father was entered on January 29, 1980. The same was removed on April 3, 2018 to pave way for entry No 4 where the 1<sup>st</sup> & 2<sup>nd</sup> defendants became registered owners to the land. A title deed was thereafter issued on April 25, 2018 and the register closed for subdivisions.



30. As at April 3, 2018, the 1<sup>st</sup> & 2<sup>nd</sup> defendants were already possessed with a confirmed grant of letters of administration. What is not clear is whether the plaintiff herein on behalf of the estate of his deceased father was given any notification before the caution was removed on April 3, 2018 in line with Section 83 (3) of the [Land Registration Act](#). At the time, the plaintiff was already in possession of a limited grant for the estate of Kiunga Riria. The defendants failed to bring any evidence to show that the said caution was lawfully removed to pave way for the issuance of their tilted deed. In absence of such a notice, my finding is that the caution was irregularly lifted without notification to the cautioner, the plaintiff.
31. Coming to the sale agreement dated December 4, 2014, as indicated above, the confirmation of grant for the estate of the late Ringine Muthuri was made on February 8, 2018. So as at the time the 1<sup>st</sup> & 2<sup>nd</sup> defendants purported to enter into the said transaction, they had no capacity to sign D Exh No 7 without a confirmed grant. Therefore, the said sale agreement was null and void in line with Sections 54 and 82 of the [Law of Succession Act](#). See [Morris Mwiti Mburugu vs Denis Kimathi Mburugu \(2016\) eKLR](#).
32. The 3<sup>rd</sup> defendant has pleaded that he was a bonafide purchaser for value and was not aware of the plaintiff's alleged overriding interests on the suit land. As indicated above, D Exh No 1 and D Exh No (4) are clear that the plaintiff's late father had lodged a caution as early as January 29, 1980. It cannot therefore be true that the 1<sup>st</sup> and 2<sup>nd</sup> defendants were not aware of the plaintiff's claim. Similarly, if at all the 3<sup>rd</sup> defendant conducted an official search, obviously he must have seen the history of the records and a recent lifting of a caution. The 3<sup>rd</sup> defendant failed to attach and produce the transfer forms, the land control board application for consent, the letter of consent and the documents used to transfer the land. As at the time the entries were made in April 2018, this suit was still pending.
33. In the case of [Dhanjal Investments Ltd vs Shabaha Investments Ltd \(Civil Appeal No 80 of 2019\) \(2022\) KECA 366 \(KLR\) February 18, 2022 \(Judgment\)](#), the court discussed the application of the doctrine of lis pendens whose meaning is that nothing new must be introduced while a litigation is pending. The court stated that the doctrine entails that a property which is subject matter to a litigation shall not be transferred during the pendency of the suit without the court's authority or consent.
34. The court cited with approval [Mawji vs USIU and another \(1976\) KLR 185](#), that the doctrine of lis pendens was necessary of the final adjudication of the matters before court and in general interests of public policy, good and effective administration of justice.
35. In this suit, the 1<sup>st</sup> and 2<sup>nd</sup> defendants were already aware of the plaintiff's claim as early as 1980 and the pendency of this suit as at April 25, 2016. The law firm which prepared D Exh No 7 was the same law firm representing the defendants in this suit. It cannot therefore be true that the 3<sup>rd</sup> defendant was not aware of the plaintiff's claim who had not only registered a caution to the title but also had raised objections at the probate court on top of being in full occupation of the suit land.
36. To that extent and given that the 3<sup>rd</sup> defendant has admitted that he hails from the same locality as the plaintiff, it is inconceivable and unbelievable that he would not have been aware of the plaintiff's occupation and developmental rights over the suit property.
37. To that extent therefore, my finding is that the sale, transfer and registration of the suit land in the name of the 3<sup>rd</sup> defendant was subject to the occupation rights of the plaintiff.
38. On whether the plaintiff has proved any purchaser's and or adverse possession rights, he pleaded and called evidence that his late father bought the suit premises in 1969, cleared the balance in 1973, took vacant possession and stayed on the land up to 2007. On his part the plaintiff pleaded that he moved into the suit premises in 1995 and made extensive developments therein as per the photographs



produced before this court. His evidence was that he has been in occupation without force, notoriously, openly, uninterruptedly and with animus possidendi.

39. The plaintiff further produced a copy of the records which has a clear assertion of a purchaser's rights meaning that the previous owner and current registered owners knew of the possession and occupation with the intention of owning it. Further, the plaintiff's witnesses corroborated his evidence that the previous owner moved out of the land in 1973 and hence he had exclusively been utilizing the land with no notice to vacate or an eviction order.
40. In the case of Walter Kipchirchir Koech (supra) the court cited with approval *Benjamin Kamau Murima & others vs Gladys Njeri CA No 213 of 1996* where the court held thus:

' The combined effect of the relevant provision of Sections 7, 13 & 17 of the *Limitation of Actions Act* (Cap 22 Laws of Kenya) is to extinguish the title of the proprietor of land in favour of an adverse possession of the same on the expiry of 12 years of adverse possession of the land to prove that they have used this land which they claim as or right; nec vi nec clam nec precario (no force, no secrecy, no evasion). So, the applicants must show that the company had knowledge (or means of knowing, actual or constructive) of the possession or occupation. The possession must be continuous. It must not be broken for any temporary purpose or by an endeavor to interrupt it or by any recurrent consideration'.

As to some of the elements constituting possession, in *Kimani Ruchine & another vs Swift Rutherford & Co Ltd & another (1980) KLR 10*, the court held that if it is about cultivation, the evidence of the same must be definite in terms of the area and the time. The applicant had produced photographs over the land claimed be to 2 ½ acres.

41. Concerning a permissive entry on account of an aborted sale agreement, the court in *Public Trustees vs Wanduru Ndegwa (1984) eKLR*, held that the *Land Control Act* was irrelevant to a claim based on adverse possession and that time started running the day the appellant took vacant possession upon clearance of the purchase price hence discontinuing the possession of the registered owner.
42. In Paul Kamande Gicheha (supra), the court cited *Githu vs Ndeete (1984) KLR 776*, that a mere change of ownership of land which was occupied by another person under adverse possession did not interrupt such person's adverse possession. Similarly, the court cited with approval *Titus Kigoro Munyi vs Peter Mburu Kimani (2015) eKLR* that any man who buys land knowing who was in possession risks his title. Further, in *Githu vs Ndeete (supra)* the court held that time ceases to run after the owner takes or asserts his right or when his right was admitted by the adverse possessor. The court indicated that assertion included the taking of legal proceedings or the making of an effective entry into the land and that giving a notice to quit would not amount to effective assertion for the purposes of stopping time from running.
43. Applying the foregoing binding case law to this suit, the plaintiff pleaded and testified that he had been in actual, open and exclusive possession and occupation of the portion of the suitland measuring 0.45 acre since 1973 when his late father cleared the purchase price and took vacant possession. The 1<sup>st</sup> & 2<sup>nd</sup> defendants admitted that their late father moved out of the area and migrated to Giaki area in 1973. The plaintiff produced evidence that his late father in 1980 asserted a purchaser's right by lodging a caution against LR No 1679, which subsisted until the pendency of this suit.
44. The caution was not removed until this suit was lodged in 2016 and after the confirmation of grant in February 2018. The plaintiff continued to assert his intention to possess and own the property even in the probate court. Similarly, the plaintiff has through photographic evidence shown that he has



- undertaken various permanent developments on the land since 1995 which are in conflict with and adverse to the right of the true owner.
45. The defendants have also admitted the occupation and developments therein. No evidence was tendered that defendants either made an effective entry to repossess the land or sued for eviction orders against the plaintiff. Further there was no evidence tendered that the 1<sup>st</sup> and 2<sup>nd</sup> defendants gave notice to the plaintiff to cease any action of trespass to the suit land.
  46. On the contrary the plaintiff continued asserting his ownership and possession rights with the full knowledge of 1<sup>st</sup> & 2<sup>nd</sup> defendants and the predecessors in title. The 3<sup>rd</sup> defendant also made an admission that he comes from the locality and was aware of the plaintiff's occupation of the suit land though no disclosure was made of the pending complaint prior to the sale agreement made on 2014.
  47. In the case of *MWK vs SKK & 5 others (2018) eKLR* the court cited with approval *Richard Oduol Opole vs Commissioner of land & 2 others (2015) eKLR*, where the court held that where there was a tainted and an irregular procedure leading to the registration of title, one could not be a bonafide purchaser for value without notice. Similarly, the court cited with approval *Lawrence Mukiri vs Ag & others (2013) eKLR* and *Katende vs Haridar & Co Ltd (2008) 2 EA 173*. On the principles applicable to a bonafide purchaser for value without notice.
  48. In this suit the 3<sup>rd</sup> defendant pleaded that he held an indefeasible title to the land. A clear pleading by the plaintiff was made that the sale, transfer and registration occurred during the pendency of the suit and more importantly while the defendants knew that the plaintiff was in occupation of the land raising overriding interests over the suit land.
  49. In this suit, the plaintiff has maintained his late father bought the land in 1969 and took vacant possession. At the time, the law of contract only required a memorandum or note followed by the taking of vacant possession. Therefore, the fact that the plaintiff sale agreement was never produced before court did not in any way diminish the probative value of the plaintiff's claim based on a sale agreement. A witness to the sale agreement in 1965 also testified before the court.
  50. In *Gabriel Mbui vs Mukindia Maranya (1993) eKLR*, Kuloba J as he then was held that tacking was allowed provided that there was sufficient nexus between the successor and the predecessor in title. The plaintiff testified that he buried his late mother on the suit land in 2014 with no opposition to this from the defendants. That occurred at the time the 3<sup>rd</sup> defendant is alleged to have bought the land. Therefore, the intention by the plaintiff to hold the land adversely and under a claim as of right was so manifest that the sale could only be subject to the plaintiff's already accrued adverse possession going by the period from 1973 by his late father and his formal entry in 1995, when he erected permanent buildings on the suit premises. See *Wesonga Kyeyu vs Kyeyu Omuto CA civil Appeal No 8 of 1990*.
  51. The 1<sup>st</sup> and 2<sup>nd</sup> defendants went against the law of succession to purport to sell and transfer the land to the 3<sup>rd</sup> defendant. Without a confirmed grant such a transaction cannot be protected by this court. See *Morris Mwit Mburugu vs Dennis Kimanthi (supra)*. In *Likuyi vs Shisikani (2014) eKLR*, the seller had died leaving the buyer in occupation. The family of the seller processed the probate documents without involving the buyer. The court found adverse possession applicable. In *Macharia Mwangi Maina & 87 others vs Davidson Mwangi Kagiri (2014) eKLR*, the court held that the purchasers who had been put into possession by the respondents were protected under the doctrine of constructive trust.
  52. In this suit, the plaintiff has proved all the hallmarks of the adverse possession. The 3<sup>rd</sup> defendant unfortunately has not dislodged that fact of possession and dispossession of the predecessors in title and so are the 1<sup>st</sup> & 2<sup>nd</sup> defendants.



53. The upshot is the suit is allowed with costs. The counterclaim is dismissed with costs. The 3<sup>rd</sup> defendant shall execute the transfer forms in favour of the plaintiff within 2 months from the date hereof in default the Deputy Registrar of the court to execute the same.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT THIS 15<sup>TH</sup> DAY OF FEBRUARY, 2023**

In presence of:

C/A: Kananu

Mwirigi Kaburu for plaintiff

Mr. Muriuki for defendants

**HON. C.K. NZILI**

**ELC JUDGE**

