



Case Number:	Environment and Land Case 212 of 2017(O.S)
Date Delivered:	14 Dec 2017
Case Class:	Civil
Court:	Environment and Land Court at Muranga
Case Action:	Judgment
Judge:	Jemutai Grace Kemei
Citation:	Patrick Lihanda & 2 others v Esther Wairimu Mwangi & another [2017] eKLR
Advocates:	-
Case Summary:	-
Court Division:	Land and Environment
History Magistrates:	-
County:	-
Docket Number:	-
History Docket Number:	-
Case Outcome:	Suit allowed
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
<p>The information contained in the above segment is not part of the judicial opinion delivered by the Court. The metadata has been prepared by Kenya Law as a guide in understanding the subject of the judicial opinion. Kenya Law makes no warranties as to the comprehensiveness or accuracy of the information.</p>	

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MURANG'A

E.L.C NO. 212 OF 2017(O.S)

IN THE MATTER OF SECTIONS 37 AND 38 OF THE LIMITATION OF ACTIONS ACT (CAP 22 LAWS OF KENYA)

AND

IN THE MATTER OF LAND TITLE NO LOC. 3/GACHARAGE/73

BETWEEN

PATRICK LIHANDA (BEING THE GENERAL SUPERINTENDENT

OF THE PENTECOSTAL ASSEMBLIES OF GOD - 1ST APPLICANT

REVEREND STEPHEN N. KARIGU - 2ND APPLICANT

REVEREND JAMES OGENDI - 3RD APPLICANT

**ALL THE ABOVE CONSTITUTING THE BOARD OF TRUSTEES OF THE
PENTECOSTAL ASSEMBLIES OF GOD (Suing Herein For The
Benefit Of PAG Mung'aria Assembly)**

VS

ESTHER WAIRIMU MWANGI - 1ST RESPONDENT

LEAH WANJIKU KARANJA - 2ND RESPONDENT

**(Both Sued In Their Capacity As The Joint Administratrixs Of The Estate Of Robinson Gathuku
Karanja (DECEASED))**

JUDGMENT

1. The Plaintiff, Patrick Lihanda, Reverend Stephen N. Karigu, Reverend James Ogandi all constituted as the Board of Trustees of Pentecostal Assemblies of God filed Originating Summons on the 11.12.15 against the Defendant seeking a declaration that 0.2 acres of LR No. Loc. 3/Gacharage/73 on which Pentecostal Assemblies of God Mungaria Church is built has become extinguished by operation of law and had become entitled to the said 0.2 acres by adverse possession.

2. The Originating Summons is premised on the following grounds;

a. That the Applicants comprising the Board of Trustees of the Church are under the Church Constitution mandated to hold all immovable property and such Church premises put up thereon on behalf of the Church and are therefore the rightful persons to bring this suit.

b. That the members of PAG Mung'aria Assembly for whose benefit this suit is brought by the Applicants herein have been in open, peaceful and continuous possession and occupation of a 0.2 acre portion of land No. Loc.3/Gacharageini/73 for a period of over 22 years.

c. That the said possession, user and occupation of the suit land by PAG Mung'aria Assembly and/or Church as above said has been open, uninterrupted, exclusive and without force to date, 22 years later.

d. That the Applicants have become entitled to ownership of the said parcel of land and developments thereon through adverse possession.

3. In the supporting affidavit sworn by Reverend Stephen N. Karigu on his behalf and that of the other co-Plaintiffs, he deponed that the Defendants are sued as administrators of the estate of one Robinson Gathuku Karanja the registered owner of the suit land. That the deceased sold the suit land to the PAG Mungaria Assembly on 23.9.93 and produced an agreement of sale in support of the averment. That the full purchase price was paid on 15.8.94. That the Church immediately took possession of the 0.2 acres and put up a sanctuary. That the fact of the occupation of the suit land by the Church was open and well known to the deceased Robinson Gathuku Karanja since September 1993. That the Plaintiff has occupied the suit land from 1993 without any interruption. That the Plaintiff has fenced off the 0.2 acres portion and has carried out the developments by constructing a sanctuary semi-permanent out-building comprising of 2 classrooms, kitchen & store and ablution block.

4. It is on record that the Defendants were duly served on the 20/1/16 with the originating summons to enter appearance within 15 days. In default the Plaintiffs moved the Court in accordance with Order 10 Rule 9 of the Civil Procedure Rules and set the matter down for hearing. The Plaintiffs case is therefore undefended.

5. At the formal proof hearing Reverend Njoroge Karigu the 2nd Plaintiff testified on his own behalf and that of the 1st and 3rd Plaintiff. He stated that the Respondents have been sued as the administrators of the estate of the late Robinson Gathuku Karanja (deceased) who was husband to the Defendants. He adduced a copy of the grant of letters of administration issued on 30.7.15 to support his averment. He stated that the suit land was owned by the deceased and he produced a copy of the green card which showed that the deceased was so registered as proprietor on 6.4.1971.

6. He stated that the Plaintiffs have filed the originating summons as officials of the Mungaria Pentecostal Assemblies of God Church as mandated by the Constitution of the Pentecostal Assemblies of God Church Kenya which he adduced in his evidence. Article 7.4 of the said constitution empowers the assembly to purchase property to be registered under the title of Pentecostal Assemblies of God Kenya and interalia Article 19 vests immovable property in Pentecostal Assemblies of God Kenya in the Board of Trustees. The Applicants/Plaintiffs are members of the Board of Trustees of Mungaria Pentecostal Assemblies of God Church and therefore have the locus to so file the originating summons.

7. Further he testified that on 23.9.93 a Sale Agreement was entered between the vendor (deceased Robinson Gathuku Karanja) and Pastor Simon Ngugi Kamau on behalf of Mungaria PAG Assembly for the sale of a portion of 0.2 acres of the suit land @ a price of 120,000/=. Interim a deposit of Kshs. 50,000/= was paid at execution of the agreement and the balance of 70,000/= was paid out 15.8.94 as shown by the signed acknowledgement. At this point the land Loc.3/Gacharageini/73 had been subdivided

but was awaiting transfer on new numbers being obtained.

8. He averred that upon purchase the church took possession of the portion of 0.2 acres of the suit land and built a sanctuary, a semi-permanent outbuilding which comprises two classrooms, Kitchen, Store and ablution block. That the land was also fenced. He produced a valuation report dated 29.7.15 to support his testimony. The valuation of the suit land (0.2) acres stood at Kshs. 4,375,000/= at 29.7.15.

9. They stated that since 1993 to date the Church has occupied the land openly peacefully and carrying out its activities uninterrupted, a period of over 12 years.

10. The issue for determination in this case is whether the Plaintiffs have proved adverse possession. The Plaintiffs have filed a comprehensive written submission which I have carefully considered.

11. Section 7 of the Limitation of Actions Act Cap 22 states as follows;-

“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.”

Section 13(1) states;

“ A right of action to recover land does not accrue unless the land is in the possession of some person in whose favour the period of limitation can run (which possession is in this Act referred to as adverse possession), and, where under sections 9, 10, 11 and 12 of this Act a right of action to recover land accrues on a certain date and no person is in adverse possession on that date, a right of action does not accrue unless and until some person takes adverse possession of the land.”

Section 38 (1) states;

“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.”

It is clear on the face of the record that Church entered onto the land through an agreement of sale between the representatives of the Church and the deceased Robinson Gathuku Karanja in 1993 and were immediately put into possession. Upon taking possession the Church fenced off the land, developed a sanctuary and other ancillary buildings. Evidence has been adduced that the church has been in occupation of the land in a peaceful, open and without force or interruption for over 22 years by the time the suit was filed in 2015 and 16 years before the death of the vendor. During that time the Church has not surrendered its possession nor the vendor retaken possession from the church. There is no evidence that the vendor took any steps to recover the land from the church. The estate of the deceased similarly has not interrupted the peaceful occupation of the church. It is therefore clearly manifest that the church's occupation of the suit land has not been broken at all since they were handed over possession in 1993.

12. The Judicial landscape is abound with many recorded cases on the subject of adverse possession. In the case of **Leonale Ngima Karani vs. William Wanyama Ndege Kisumu CA No 142 of 2007** the Court held that the test is that the adverse possession has neither discontinued possession or had been dispossessed of the land. That the claimant's possession is deemed to have become adverse to that of

the owner after the payment of the last instalment of the purchase price. See the case of the **Public Trustee Vs Kamau Wanduru (1982-1988) Eklr**. In the instant case therefore time started running from 1993 when the Plaintiffs paid the last instalment and were put in possession. It is evident that the church asserted rights to the land inconsistent with the ownership of the registered owner i.e. built worship sanctuary as seen by the pictorials in the valuation report.

In the case of **Githu vs. Ndeete 1984 KLR 776** the Court succinctly held that mere change in ownership does not defeat the right of an adverse possessor who is in the process of acquiring a prescriptive right. In the instant case the deceased owner, and his administrators though held title did so as trustee of the Plaintiff who acquired title on the expiry of 12 years i.e. by 2005 the Plaintiffs had acquired title in the suit land by adverse possession.

13. Section 28h of the Land Registration Act recognizes rights acquired or in the process of being acquired by virtue of any written law relating to limitation of actions or by prescription. These rights include that of adverse possession which is one of the overriding interests that need not be noted on the register though they subsist and affect the title. In this case the right to the title of the Plaintiff though not noted on the register has already accrued to the title.

14. From the foregoing I find and hold that the Plaintiff has proved his case on the basis of adverse possession and I proceed to make Orders as follows; -

a. The Court do and hereby declare that the deceased's and/or his estate's title to a portion of 0.2 acres of land parcel Loc.3/Gacharage/73 on which stands Pentecostal Assemblies of God Mung'aria Church has become extinguished by operation of the law and that the Applicants herein have become entitled to the said 0.2 acres of the said parcel of land through adverse possession.

b. The Court do and hereby Orders that the said portion of 0.2 acres of land No. Loc. 3/Gacharageini/73 on which stands Pentecostal Assemblies of God Mung'aria Church be registered in the names of PATRICK LIHANDA, REVEREND JAMES OGENDI and REVEREND STEPHEN N. KARIGU who make up THE BOARD OF TRUSTEES PENTECOSTAL ASSEMBLIES OF GOD CHURCH OF KENYA.

c. That the Court do and hereby Orders that Respondents and/or any successor in title claiming under and/or through the deceased to be entitled to the said portion of land to execute all the necessary documents to effectuate the transfer of the 0.2 ACRES of all that parcel of land known as LOC.3/GACHARAGE/73 to the said PATRICK LIHANDA, REVEREND JAMES OGENDI and REVEREND STEPHEN N. KIRAGU and in default the Deputy Registrar of this Honourable Court be empowered to do so.

d. The costs of the suit be paid by the Respondents.

DELIVERED, DATED AND SIGNED AT MURANG'A THIS 14TH DAY OF DECEMBER, 2017

J.G. KEMEI

JUDGE



While the design, structure and metadata of the Case Search database are licensed by [Kenya Law](#) under a [Creative Commons Attribution-ShareAlike 4.0 International](#), the texts of the judicial opinions contained in it are in the [public domain](#) and are free from any copyright restrictions. Read our [Privacy Policy](#) | [Disclaimer](#)