



**Mwithi (Suing as the Legal Representative of the Estate of Mwithi Peterson
Eston - Deceased) v Nderembu (Enviromental and Land Originating Summons
37 of 2024) [2025] KEELC 3717 (KLR) (30 April 2025) (Judgment)**

Neutral citation: [2025] KEELC 3717 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 37 OF 2024**

AK BOR, J

APRIL 30, 2025

BETWEEN

**FLORA WAITHERA MWITHI (SUING AS THE LEGAL REPRESENTATIVE OF
THE ESTATE OF MWITHI PETERSON ESTON - DECEASED) PLAINTIFF**

AND

IRERI NDEREMBU DEFENDANT

JUDGMENT

1. The issue for determination in this suit is whether the Plaintiff has become entitled by way of adverse possession to 0.60 Ha of land parcel Mbeere/Mbita/4XX6 (the suit land) and whether he should be registered as the absolute proprietor of the land.
2. The court of Appeal set out the ingredients of adverse possession in Mtana Lewa v Kahindi Ngala Mwangandi [2015] KECA 532 (KLR). The Court stated that adverse possession was essentially a situation where a person takes possession of land and 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 twelve (12) years. The essential prerequisites were that the possession of the adverse possessor was neither by force or stealth nor under the licence of the owner. The possession must be adequate in continuity, in publicity and in extent to show that possession is adverse to the title owner.
3. In order to succeed in a claim of adverse possession, one must demonstrate continuous occupation of the subject land for an uninterrupted period of 12 years. This occupation must be non-permissive that is, without the consent of the owner, and must be open, notorious, exclusive, and adverse to the interests of that owner. There must be clear evidence of dispossession of the owner. Additionally, the claim must be brought against the registered owner of the land.



4. In this case, it is not in dispute that the Plaintiff and his family are in possession of the suit land as this was expressly admitted by the Defendant. It is also not in dispute that the Plaintiffs have made developments on the suit land as this too was admitted by the Defendant. He equally admitted that neither lived on the suit land nor had he done anything on the land because the Plaintiffs do not allow him on the land. This court finds that the Plaintiffs are in actual occupation and possession of the suit land. The land is registered in the name of the Defendant and evidence has been adduced to this effect.
5. The other element is whether there has been actual occupation of the land, and whether such occupation has been open, exclusive and continuous. The Defendant did not deny that the late Mwithi Petersons Eston was in actual occupation of the land prior to his death together with his family or that they have developed the land. From the testimonies of Flora Waithera Mwithi, the deceased's wife and Simon Ileri Mwithi, the deceased's son, the family entered the suit land in 1984 following a sale agreement. The Plaintiffs built their home on the land and connected electricity to the land, planted mango trees and continued to develop their portion and have continued to occupy the land since then.
6. According to the late Mwithi Petersons Eston's wife, they had never been evicted from the land which fact was corroborated by Simon Ileri Mwithi. The wife also confirmed that the late Mwithi Eston and their daughter were buried on the suit land, a fact which was not controverted by the Defendant. The Defendant's only contention was that he tried to chase the late Mwithi Eston away when he was subdividing the land without success. He did not tender any evidence to prove this. The Plaintiffs have satisfied the requirement for open, exclusive and continuous occupation.
7. The other element is that the entry should not be permissive and should be hostile. In this case the Plaintiffs claim is that their entry into the land was pursuant to the agreement dated 30/9/1984, entered into between the late Mwithi Eston and the Defendant. Two different copies of the agreement were produced in court by Plaintiff and the Defendant. The agreement produced by the Plaintiff's witness refers to land parcel 2X0 Mbeere/Mbita – Mavuria while in the agreement produced by the Defendant, there is no description of the land being sold.
8. The Defendant contended that the agreement he produced related to dealings between his father and the late Mwithi Petersons Eston concerning an unspecified parcel of land, and that it does not relate to the suit land herein hence the agreement produced by Flora Waithera Mwithi was not genuine. There was also a different account by Flora Waithera Mwithi and Simon Ileri Mwithi on who was the seller of the land, because according to the wife of the late Mwithi Eston, they purchased the suit land from the Defendant's father when the Defendant was a minor at the time. Simon Ileri Mwithi stated that the land was purchased from the Defendant although at the time of the agreement he was also a minor.
9. Despite these discrepancies, it is notable that the agreement was signed by the late Mwithi Eston and the Defendant and witnessed by his father along with other witnesses. This confirms that there was indeed a transaction between the parties and that the Plaintiffs' entry into the land was based on the agreement. The Plaintiff's entry into the land was with the permission of the Defendant's father given that the Defendant was a minor at the time. The Plaintiff's remained in possession of the land even after the Defendant was registered as its proprietor on 4/1/2000. The permission to occupy the land ceased upon the Defendant's registration as the legal owner in 2000. From that point onwards, the Plaintiff's continued occupation of the land became adverse to the Defendant's title. There is no evidence that the Defendant made any attempts to evict the Plaintiffs from the land or to assert his title over the land.
10. Time for purposes of adverse possession began to run on 4/1/2000. The occupation of the suit land by the Plaintiffs became adverse twelve years after that period which is on 4/1/2012. This suit was filed on 10/9/2012 and falls the twelve-year period required by the law. The Plaintiffs have proved that they have become entitled to the suit land through adverse possession.



11. The court grants prayers 1 and 2 sought in the Originating Summons dated 7/9/2012. The Plaintiffs shall have costs of the suit.

DELIVERED VIRTUALLY AT EMBU THIS 30TH DAY OF APRIL 2025.

**K. BOR
JUDGE**

