



**Njiru & another v Mituki (Environmental and Land Originating Summons  
31 of 2019) [2025] KEELC 3659 (KLR) (30 April 2025) (Judgment)**

Neutral citation: [2025] KEELC 3659 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT EMBU  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 31 OF 2019**

**AK BOR, J**

**APRIL 30, 2025**

**BETWEEN**

**NAZARIO NJERU NJIRU ..... 1<sup>ST</sup> PLAINTIFF**

**MBUGI NJERU ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**EUSTACE NJIRU MITUKI ..... DEFENDANT**

**JUDGMENT**

1. The Plaintiffs' claim is that they have lived on the land known as Evurore/Nguthi/79 (the suit land) with their families including their parents since they were born in 1961 and 1954 respectively. They claimed that the suit land was clan land occupied and utilized by their forefathers since the 1800's. According to them, the suit land was customary land and had never been possessed or occupied by anyone else except them and their other family members. They claimed that the Defendant had been registered as proprietor of the suit land in 1979 under unclear circumstances.
2. From the green card of the suit land, the land was first registered in favour of Eustace Mituki, the Defendant on 3/8/1979 and on 22/8/1981 after he changed his name to Eustace Njiru Mituki. A certificate of title was issued to him on 30/11/1981. The Defendant is the current registered owner of the suit land and therefore the element that adverse possession must be claimed against a registered owner of the land has been established.
3. The other element is whether there has been actual occupation of the land, and whether such occupation has been open, exclusive and continuous. The evidence tendered by the Plaintiffs' witnesses was that the 1<sup>st</sup> Plaintiff has been utilizing 4.19 acres of the suit land which is where he lives. The Defendant admitted that the 1<sup>st</sup> Plaintiff lived on the suit land. The 2<sup>nd</sup> Plaintiff was said to utilize only ½ acre of the suit land and had built his home on a separate parcel of land being Evurore/Nguthi/75 which neighbors the suit land.



4. The Plaintiffs averred that their occupation of the suit land had been open and exclusive and that they had never been chased out of the land by anyone until 2013 when they were summoned by the Chief who in the presence of the Defendant told them that they needed to vacate the suit land as the Defendant was the registered owner of the land.
5. The Plaintiffs claim to be utilising the land in various ways including cultivation, grazing and bee keeping and that they have planted indigenous trees and fruit trees which are now mature. They stated that they used to grow tobacco when it was being cultivated in the area and they have started introducing Miguka trees, which are facts that were corroborated by the Plaintiffs' third witness. In support of this, they produced photographs showing the developments on the land. The Defendant's position was that the Plaintiffs are farming on the land forcefully.
6. The issue for determination is whether the Plaintiffs proved that they have become entitled to the whole of the land known as Evurore/Nguthi/79 by way of adverse possession or in the alternative, whether the Defendant is holding the whole of the land in trust for the Plaintiffs.
7. Section 7 of the *Limitation of Actions Act* provides that 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 provides that a right of action to recover land does not accrue unless the land is in possession of some person in whose favour the period of limitation can run.
8. In *Mtana Lewa v Kahindi Ngala Mwangandi* [2015] KECA 532 (KLR), the Court of Appeal defined adverse possession as a situation where a person takes possession of land and asserts rights over it and the person having title omits or neglects to take action against such person in assertion of his title for twelve years. The process springs into action essentially by default or the inaction of the owner. The essential prerequisites being that possession of the adverse possessor is neither by force or stealth nor under the license of the owner. It must be adequate in continuity, publicly and show that possession is adverse to the title owner.
9. The Plaintiffs claimed that they had buried their forefathers, parents and children on the suit land. The Defendant did not deny that the Plaintiffs' parents were buried on the suit land although he stated that they were buried against his will. In this court's view, the issue of exclusive and open occupation is not disputed. The photographs showing the developments on the land were not disputed by the Defendant. There is no evidence that the Plaintiffs' possession has ever been interrupted since 1979 when the Defendant was registered as proprietor except in 2013 when they were summoned to the Chief's office together with the Defendant and ordered to vacate the suit land. Based on the Plaintiffs' testimony and that of their witness, the Plaintiffs have proved the requirement of open, exclusive and continuous occupation of the disputed land.
10. The other element that must be proved in a claim for adverse possession is that the entry should not be permissive and should be hostile. The Defendant confirmed that he was the registered proprietor of the suit land, having been allocated the land in 1979 by the chairman of his clan. He claimed that he granted the Plaintiff's temporary permission four years to occupy the land out of goodwill when they were facing hardship. He stated that that agreement was reached at the Chief's office and that when the Plaintiffs failed to vacate the land, he issued notices and summons to them and that subsequent attempts to access the land were met with hostility and violence. There was no documentary evidence tendered to show the Defendant granted the Plaintiffs temporary permission to remain on the land. It is also not clear in what year or when such permission was granted. The alleged meeting and agreement at the Chief's office was also not substantiated by any evidence. On a balance of probability, the court



finds that the Defendant failed to prove that the Plaintiffs' occupation of the suit land was through his permission.

11. For purposes of computing time, time started to run from 3/8/1979 when the Defendant was registered as proprietor of the suit land as shown in the green card. The occupation of the suit land by the Plaintiffs became adverse twelve years after that period which would be 3/8/1991. The first attempt which the Defendant made to assert his title over the suit land was in 2013 when he summoned the Defendants to the Chief's office and told them to vacate the land. He filed Civil Case No. 274 of 2014 against the 1<sup>st</sup> Plaintiff seeking a permanent injunction to restrain the 1<sup>st</sup> Plaintiff from interfering with his ownership of the suit land. By the time the Defendant took these steps in 2013 and subsequently in 2014, the statutory twelve-year period had long lapsed and the Plaintiffs' occupation had already crystallized into a right by way of adverse possession by that time.
12. The Plaintiffs have proved their case on a balance of probabilities and the court allows their claim. The court directs that the Plaintiffs are to be registered as owners of the land known as Evurore/Nguthi/79 in accordance with the portions they occupy and utilize.
13. The Plaintiffs are awarded costs of the suit.

**DELIVERED VIRTUALLY AT EMBU THIS 30<sup>TH</sup> DAY OF APRIL 2025.**

**K. BOR**

**JUDGE**

In the presence of: -

Ms. Emies Mutegi for the Plaintiffs

Ms. W. Kamochu holding brief for Mr. E. Njiru for the Defendant

Diana Kemboi- Court Assistant

