



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Muhika v Karonjo (Environment & Land Case 33 of 2023)
[2025] KEELC 3304 (KLR) (8 April 2025) (Judgment)**

Neutral citation: [2025] KEELC 3304 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA
ENVIRONMENT & LAND CASE 33 OF 2023**

JM KAMAU, J

APRIL 8, 2025

BETWEEN

FRANCIS MUTHOGA MUHIKA PLAINTIFF

AND

MARGARET WANGARI KARONJO DEFENDANT

JUDGMENT

1. In the Originating Summons dated 24th June 2020 the Plaintiff prays for Judgment against the Defendant s for the determination of the following:
 1. Whether the Plaintiff has acquired Title Deed by adverse possession over 2 Acres of land which he occupies to be excised from L.R No. Nyandarua/OL Aragwai/994.
 2. Whether 2 Acres of land to be excised from L.R No. Nyandarua/OL Aragwai/994 should forthwith be registered in the name of the Plaintiff and whether the Defendant should be ordered to sign all the necessary transfer documents in favour of the Plaintiff and in default the Executive Officer of the Court to do the same.
 3. Whether the District Land Registrar Nyandarua should dispense with the production of the original title deed for L.R No. Nyandarua/OL Aragwai/994 while transferring the two (2) Acres of land to the Plaintiff.
 4. Who should pay the costs of the suit.
2. Further, the Plaintiff averred that he has been on the 2 Acres of land i.e L. R No. Nyandarua/OL Aragwai/994 which he has occupied and which he believes he has acquired by adverse possession. He prays that the same be transferred to him and in default thereof the Court 's executive officer do transfer it to him.



3. In his Supporting Affidavit sworn on 22nd June 2020, the Plaintiff claims that in 1994, he took possession of the said 2 Acres to be excised from L.R No. Nyandarua/OL Aragwai/305 then registered in the name of Joseph Kariuki Kuria alias Kariuki Kuria Muriithima who is now Deceased. He did purchase the land from Joseph Muna, who had purchased the same from the Deceased. He then constructed a 3 roomed semi-permanent house, dug a pit latrine and erected a perimeter barbed wire fence, a chain link fence next to the road, a live fence and also planted an afro forest covering about ½ an Acre. He also constructed a chicken coup and did general farming on the remaining portion. He as well started a shop business and livestock farming in 1995.
4. He invited his mother Beth Nduta on the land and his brother Paul Kuria and Daniel Mbugua and his sister Rahab Njeri. His brother Paul Kuria died in 2007 and he buried him on the land together with his niece Beth Nduta a year earlier, in 2006. He claims to have acquired the land in full, open, continuous and uninterrupted occupation for a period of 26 years and he believes that he has now acquired adverse possession over the 2 Acre suit property.
5. The Defendant, Joseph Kariuki Kuria, filed suit in 2018 Nyahururu CMCC No. 340 of 208 (in his capacity as the administrator of the Estate of his late father, Joseph Kariuki Kuria). By this time the suit land had already been registered in the Defendant 's name by way of transmission. He has now appointed his wife Margaret Wangari as his attorney.
6. The Court granted default judgement to the Plaintiff on 4th March 2023 after the Defendant failed to file a Defence but which was duly set aside on 9th November 2023 and the Defendant was allowed to defend the suit which was done and where one Margaret Wangari Karonjo through a general power of attorney in respect of Samuel Karonjo Muriuki swore that Samuel Karonjo Muriuki, the Defendant was the administrator of the Estate of Joseph Kariuki Kuria alias Kariuki Kuria Muriithina having been granted letters of administration and a confirmed grant in Nakuru H.C Succession cause NO. 245 of 2014. He was then registered by way of transmission as the proprietor of the suit land- Nyandarua/ Olagwai/994. She says that she got married to Samuel Karonjo Muriuki in 1983 and has lived on the land for over 40 years. She said that the Plaintiff only tried to take possession of the land in September 2018 by trying to bury his late mother Beth Nduta Muriuki but was restrained through a Court order in Nyahururu CM OLK No. 343 of 2018. She also deponed that the seller of the land to the Plaintiff, Joseph Muna is a stranger to the Estate of Joseph Kariuki Kuria administered by Samuel Karonjo Muriuki and that Beth Nduta, Paul Kuria and Daniel Mbugua never lived on the suit land. And that the first 2 were never buried on the said land. She further deponed that the Plaintiff has never lived on the suit land nor his family. She therefore asked the Court to dismiss the suit with costs.
7. The above depositions were adopted by the parties during the hearing of the case as their evidence in chief. The Plaintiff testified and called 2 other witnesses. But the Defendant never called any other witness. After the Plaintiff, Francis Muthuga Muhika gave evidence on 29th January 2025, he was cross examined by Mr. Murimi. He said that although he bought the suit land from Joseph Muna, the same belonged to Joseph Kariuki Kuria and that there was no agreement between him and the owner of the land.
8. The land was excised from Nyandarua/Olaragwai/305 but that the sale agreement did not indicate the parcel number and therefore there was nothing to indicate that the land he bought was Nyandarua/ Olaragwai/994 nor that the photographs he produced in Court related to Nyandarua/ Olaragwai/994. He admitted that he was unable to bury his mother on the suit land in September 2018 because the Court did restrain him from doing so.



9. He also said that he started using the suit land in 1994 with the permission of Joseph Muna Mithui. On re-examination Muhika said that the people they had settled on the suit land were her sisters, brothers and her mother before she died in 2018.
10. PW 2 Joseph Maina Mithui adopted his statement dated 19th June 2023 to the effect that he purchased a portion of land 2 Acres from Kariuki Kuria Muriithinia for Kshs. 30,000/-. He paid a deposit of Kshs. 29,500/- on 10th February 1988 and they drew a sale agreement. They engaged a surveyor who excised the 2 Acres out of Nyandarua/Olaragwa/305. The balance of Kshs. 500/ was paid on 17th April 1988 and the seller acknowledged receipt of the entire purchase price and that the vendor's son, Samuel Karonjo Kariuki knew about the transaction though he was not happy about it. He later in 1994 sold the entire 2 Acres to the Plaintiff and permanently relocated to Muranga and the Plaintiff did take possession the same year. On cross examination by Mr. Murimi the witness said that the seller (to him) was not literate and that he endorsed by his finger. He claimed to have put up a 1 roomed house. He said that he sent his father in law the late Daniel Kamau to take to the Vendor the balance of Kshs. 500/-.
11. PW 3 Evan Rungara Mureithi, the area chief adopted his statement of 19/6/2024 and confirmed that he had visited the suit land which was occupied by the Plaintiff and it has trees with some ready for harvest. He said he was aware of the dispute pitting the 2 parties. On cross examination he said he was the area assistant chief in 2014. He said that the Plaintiff sister told him the trees on the ground were planted by the Plaintiff himself. On re-examination, the witness said that there were other buyers of the larger piece of land Nyandarua/Olaragwa/305.
12. The Plaintiff produced the following documents to buttress his case
 1. Green card of Nyandarua/Olaragwai/305 dated 18th June 2020.
 2. Sale agreement in Kikuyu language dated 3/7/1994 with its English translation.
 3. An acknowledgement of payment of Kshs. 500/- balance of the purchase price in Kikuyu language signed by the vendor Kuria Muriithinia of 17th April 1988 with its English translation.
 4. An acknowledgement of receipt of Kshs. 6,000/- in Kikuyu language by Joseph Muna from Francis Muthoga dated 4th April 1994 with its English translation.
 5. Sale agreement dated 10th February 1988 in kikuyu language between Kariuki Kuria Murithiinia and Joseph Muna Kitui and its English translation.
 6. Photographs of the suit land.
13. Having closed his case, the Plaintiff paved way for the Defendant to testify which she did virtually from the United Kingdom. She relied on the Affidavit in Reply to the Summons sworn on 8th July 2023 and whose contents have been produced earlier in this judgement.
14. This was her evidence in chief. She also produced the documents attached thereto as follows: -
 - a. Copy of general power of attorney donated to her by her husband Samuel Karonjo Muriuki of I.D No. 2956270 and of P.O Box 12325- 20100 Nakuru.
 - b. Copies of Court papers in succession cause No. 245 of 2014, Nakuru in the matter of the Estate of Joseph Kariuki Kuria alias Kariuki Kuria Murithiinia.
 - c. A copy of letter from Chief introducing the beneficiaries of Joseph Kariuki Kuria (Deceased).
 - d. A copy of application for the transfer of transmission of the parcel of land L.R No. Nyandarua/OL Aragwai/994 to Samuel Karonjo Muriuki.



- e. A copy of title deed in respect of L.R No. Nyandarua/OL Aragwai/994 dated 29th July 2015 in the name of Samuel Karonjo Muriuki I.D No. 2956270 of P.O Box 12721- 20100 Nakuru.
- f. A copy of a letter dated 9th August 2023 for Nyahururu ELC Case No. 14 of 2020 in respect of Nyandarua/OL Aragwai/994 from the District Surveyor, Nyahururu South indicating that the surveyors wanted visit the suit land on 31st August 2023 at 10.30 am to infilent a Court order issued at Nyahururu E.L.C Court . the same sought security from the area chief, Murungaru location.
15. On cross examination by Mr. Waichungo, the witness said that there was no one on the suit land and the fence around the land was put up the other day in 2024. There were no graves and no trees on the land. That her father in law only sold 4 Acres to 2 people who already had Titles to their respective portions and he retained 4 ½ Acres to himself.
16. She also said that they instituted a suit in 2018 by Nyahururu CM ELC No. 340 of 2018 to bar the Plaintiff from burying his mother on the land which plea was allowed by the Court.
17. On re-examination by Mr. Murimi, Margaret Karonjo said the land was being occupied by her husband’s kin and that the Plaintiff has never lived there and that the issue in the Nyahururu Chief Magistrate’s Court was on the issue of ownership of the suit land and that the Court restrained the Plaintiff from burying his late mother Beth Nduta on the land.
18. Having heard all the witnesses in this case, it is trite law that to succeed in a case of adverse possession one has to show that he lived on the suit land nec claim, nec pervi and nec precario for a period of over 12 years. He lived on the suit land uninterruptedly, exclusively, without permission or consent and openly.
19. In a case of Adverse Possession, the Adverse Possessor has to prove that he has been in occupation of the suit land which he claims as of right: Nec Vi, nec clam, nec precario (no force, no seeing, no evasion), that the Applicant had knowledge (or the means of knowing, actual or constructive) of the possession or occupation and that the possession must be continuous and uninterrupted.
20. In the instant suit, there is one issue that once decided would dispose of this suit without even going into the other ingredients of Adverse Possession. That is has the Plaintiff lived on the suit land uninterruptedly for a period of over 12 years prior to the filing of this case? This is maturity of the Adverse Possession. Interruption of possession is significant in that it stops time from running under the *Limitation of Actions Act*. In the case of Mwangi Githu vs Livingstone Ndeete [1980] eKLR the court addressed the issue of interruption as follows:
- ".....Time ceases to run under the *Limitation of Actions Act* either when the owner asserts his right or when his right is admitted by the adverse possessor. Assertion of right occurs when the owner takes legal proceedings or makes an effective entry into the land. See Cheshire’s Modern Law of Real Property, 11th Edition at p. 894.....”
21. This position of common law was also espoused in the case of Amos Weru MurigU v. Marata Wangari Kambi and another [NBI H.C.C. Suit No.33 of 2002 (O.S.) where Justice G. B. M. Kariuki (as he then was) had the following to say with regard to Adverse Possession and interruption of time: -
- ".....he (the Respondent’s) bases his claim, inter alia, on section 38 of the *Limitation of Actions Act*, Chapter 22 of the Laws of Kenya which entitles a person to be registered as proprietor instead of the registered proprietor where such person establishes by evidence that he or she has become entitled to be so registered on account of his or her occupation of



the land, openly and continuously and without interruption and with the knowledge of the registered proprietor for a period of 12 years or more adversely to the title of the registered owner. In other words, where a person trespasses on the land of another with the knowledge of the latter who does not assert his right to the title to the land by evicting the trespasser or by suing him or her in court for eviction or ejection but instead lets the trespasser openly occupy the land for a continuous and uninterrupted period of not less than twelve years, the trespasser is entitled to apply under section 38 (supra) to be registered as the proprietor of the land. This is what the doctrine of Adverse Possession means. Where the period of 12 years is not continuous or is interrupted, the period of Adverse Possession is broken and must start all over again.”

22. Earlier, the Court of Appeal in *Gabriel Mbui V Mukindia Maranya* (1993) eKLR held that: -

"..... The possession must be continuous, uninterrupted, unbroken for the necessary statutory period. The possession by the adverse possessor must continue without significant interruption for a solid block of time at least so long as the period of limitation being at the moment 12 years before filing of the suit..... There are a number of ways in which Adverse Possession which has begun to grow may be interrupted. Possession may be interrupted: -

- a) By the physical entry upon the land by any person claiming the land in opposition to the person in actual possession with the intention of causing interruption.
- b) By the institution of legal proceedings by the rightful owner to assert his right to the land; or
- c) By any acknowledgement made by the person in possession, to any person claiming to be the rightful proprietor, that such claim is admitted or otherwise recognized.

23. In light of all these principles it is stated broadly that a person in possession of land is not entitled to the protection of the statute of limitations as against the owner of land where the latter and his predecessors in Title have not been kept dispossessed or have not abandoned possession of the land and the adverse possessor remained in actual possession for the whole statutory period without a break in the block period: *Smith, J, in the Court of Appeal of Eastern Africa in Hassanali Mamuji V Alibhai Ebrahimji Dar & Sons* (1935) 2 EACA 111 at 116.

24. A lot has been said about Nyahururu CMCC ELC Case No. 340 of 2018 but no one attached the Complaint therein. But from Appeal No. ELCA No. E004 of 2020 Nyahururu being an Appeal from Nyahururu CMELC No. 340 of 2018, the learned Judge enumerated the prayers sought in the lower Court according to the Complaint dated 17th September 2018 as follows: -

- a. A permanent injunction restraining the Defendant (Plaintiff herein), his agents, servants, employees, representatives and or anybody claiming through him from burying the body of Beth Nduta Muhika in the Applicant's land parcel No. Nyandaruarua/OL Aragwai/994.
- b. An eviction order against the Defendant (Plaintiff herein)
- c. A declaration that land parcel Nyandarua/OL Aragwai/994 belongs to Samwel Karonjo Muriuki, the registered owner.
- d. Costs and interests of the suit.



25. The Plaintiff therein, according to the Judgement in the Appeal case claimed that the Defendant had encroached on the land belonging to the Donor of the power of Attorney to her i.e L. R No. Nyandarua/OL Aragwai/994 on diverse dates between 2014 and 2018 without any lawful justification or excuse and that they intended to bury their mother on the land. The Defendant in the lower Court pleaded that he had bought the land from Joseph Kariuki Kungu's father in law, one Joseph Muna and that he had taken possession of the suit land in 1994 and developed it extensively in the lifetime of the said father in law who never sought to evict him at any time and that the Defendant herein Samuel Karonjo Muriuki had secretly filed a succession cause in respect of his father's Estate.

26. I have quoted Nyahururu CM ELC No. 340 of 2018 for only one reason. Whether the uninterrupted possession if at all was ever ended. I would agree with the trial magistrate Honourable S. N. Mwangi, S.R.M. where she made the following observations on 14/10/2020:

".....the claim for adverse possession diminishes or is stopped as soon as a suit is filed in Court against a party claiming Defence of adverse possession. In this instant case, the claim for adverse possession evidently was by law stopped on 17th September 2018 when the suit was filed and again it is evident the 1st Defendant ran to the Judge with the Originating Summons on 24th June 2020, almost two (2) years after his claim for adverse possession was stopped by law....."

26. The Defendant herein went to Court to arrest the claim of the recovery of the land because there was a person on his land who intended to claim ownership by way of adverse possession. There was now interruption and an end to adverse possession. The Plaintiff had from 1994 to 17th September 2018, a total of 26 years to claim adverse possession until the death of his mother triggered action from the Defendant which brought his cause of action, which was in fact more than double the 12 years, to an abrupt end. Thereafter, he could not benefit from the doctrine of adverse possession further. The Plaintiff's Suit is therefore dismissed with costs.

JUDGMENT DATED, SIGNED AND DELIVERED AT NYANDARUA THIS 8TH DAY OF APRIL 2025.

MUGO KAMAU

JUDGE

Inpresence of:

C/A: Eric

Plaintiff: Mr. Waichungo

Defendant: Mr. Mwenda h/b for Mr. Murimi

