



**Ngugi v Mwangi (Environmental and Land Originating Summons
E010 of 2024) [2025] KEELC 3135 (KLR) (7 April 2025) (Judgment)**

Neutral citation: [2025] KEELC 3135 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E010 OF 2024
MN GICHERU, J
APRIL 7, 2025**

BETWEEN

JOHN KAMANDE NGUGI APPLICANT

AND

JOSEPH KAMANDE MWANGI RESPONDENT

JUDGMENT

1. The Plaintiff seeks the following orders against the Defendant.
 1. That the Applicant has by way of adverse possession, acquired title to one acre out of L.R No. Loc.7/Ichagaki/5151 and the one acre out of the suit land be registered in the name of John Kamande Ngugi.
 2. That the Land Registrar Murang'a be ordered to transfer one acre out of L.R Loc.7/Ichagaki/5151 to the Applicant.
 3. That the Deputy Registrar of this Court do sign application for consent of the land control board, transfer form, documents and any other applications and documents necessary to facilitate the transfer of one acre out of L.R No. Loc.7/Ichagaki/5151 which registering the decree of this court for transfer of one acre.
 4. That the Court be pleased to order the Land Registrar to dispense with the production of the original title deed for L.R. No. Loc. 7/Ichagaki/5151 when registering the decree of this court for transfer of one acre.
 5. That the Court be pleased to order that the OCS – Maragua Police Station do supervise the execution of this decree.
 6. That the Respondent do pay the costs of this suit.



2. The Plaintiff's case is as follows. Firstly, on 9-8-1998 he bought one acre out of the suit land from the Defendant. Secondly, the Defendant put him in possession of the suit land immediately. Thirdly, since the year 2000, the Plaintiff has substantially developed the one acre sold to him by the Defendant. Fourthly, the parties herein were parties in Case No. 32 of 2009 Land Disputes Tribunal case which adopted the award in Maragua Land Disputes Tribunal case No. 56 of 2009 which affirmed the Plaintiff's right to occupy two acres of L.R. No.Loc.7/Ichagaki/745 until the Succession Cause in relation to the estate of Njeri Karanja the registered proprietor of the mother parcel was heard and determined. Fifthly, the Defendant filed a Succession Cause at Nyeri where the Plaintiff's interest in the suit land was not considered. Sixthly, the Plaintiff has been in continuous and uninterrupted possession of the one(1) acre for a period in excess of 12 years. Finally, the original entry to the suit land was lawful and now the Defendants title to the suit land has been extinguished by operation of law.
3. In support of his case, the Plaintiff filed the following evidence.
 - i. Supporting affidavit dated 20-5-2024.
 - ii. Three copies of agreements dated 31-8-1991, 4-12-1999 and 5-10-2000 and their translations.
 - iii. Two photographs
 - iv. Copy of award in Tribunal Case No. 56 of 2009.
 - v. Copies of certificates of death for Wambui Mwangi and Njeri Karanja.
 - vi. Witness statement by the Plaintiff dated 20-5-2024.
 - vii. Copy of notice of motion dated 4-7-2024.
 - viii. Copy of affidavit of service upon the Defendant dated 11-6-2024.
 - ix. Copy of certificate of official search for the suit land dated 30-4-24.
4. The Defendant, though served, did not file a response to the originating summons. No replying affidavit or other material was ever filed in these proceedings by the Defendant.
5. At the trial on 4-2-2025, the Plaintiff testified by adopting his witness statement and documents as his evidence. He added that in ELC Murang'a case No. 9 of 2020, he was awarded one acre of land to be excised from Loc.7/Ichagaki/645 and that the facts of that case are similar to the facts of this case.
6. The Plaintiff's counsel filed written submissions dated 10-2-2025. In the said submissions he urges that the Plaintiff has acquired prescriptive rights over the one(1) acre that he occupies. Counsel adds that though the original entry to the one acre was initially lawful, it has since turned adverse and the Defendant has not filed a suit for eviction. For the above and other reasons, the Plaintiff prays for the orders as above.
7. I have carefully considered all the evidence adduced by the Plaintiff in this case. This evidence is uncontroverted because the Defendant, though served, did not file any reply. I find that the only issue for determination is as follows.
 - i. Whether the facts of this case disclose a case of adverse possession.



The doctrine of adverse possession is provided for under Section 7 of the *Limitation of Actions Act* which states as follows.

“An action may not be brought by any person to recover land after the end of twelve(12) 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.”

8. For an adverse possession suit to succeed the Plaintiff must prove three things. Firstly, the Plaintiff must prove that he has not used force. Secondly, he must prove that the occupation is not secret and thirdly, such occupation has been without the permission of the title holder. There is a Latin Maxim which reads as follows. “Nec vi, nec clam, nec precario” It summarises the ingredients of adverse possession.
9. In this case, there is no doubt that the Plaintiff is in occupation of the suit land. There is his oral evidence in court which is corroborated by photographs. This evidence is not challenged by any pleadings by the Defendant. There is evidence to prove that the original entry was lawful and so there was no force at entry. The first limb of adverse possession is therefore satisfied. The second limb of open occupation has already been satisfied. I find that the final limb of occupation without permission has also been satisfied because the tribunal case is sufficient evidence that the current occupation of the suit land by the Plaintiff is without permission of the Defendant. If occupation was approved by the Defendant, there would have been no tribunal case. I find that the facts of this case are in tandem with the holding in the case on Mtana Lewa vs. Kahindi Ngala Mwangandi 2015 eKLR, where it was held as follows, interalia-

“Adverse possession is 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 a certain period, in Kenya it is twelve(12) years...”

10. In conclusion, I find that the Plaintiff has proved a case for adverse possession on a balance of probabilities. I enter judgment for him against the Defendant as prayed for in the summons as per prayers 1,2,3,4 and 5 of the originating summons dated 20-5-2024.

No order as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 7TH DAY OF APRIL, 2025.

M.N. GICHERU

JUDGE.

Delivered online in the presence of; -

Court Assistant – Mwangi Njonjo

Plaintiff's Counsel – Mr T.M. Njoroge

