



**Kahura v Mbugua (Environmental and Land Originating Summons  
16 of 2021) [2025] KEELC 350 (KLR) (31 January 2025) (Judgment)**

Neutral citation: [2025] KEELC 350 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS 16 OF 2021**

**BM EBOSO, J  
JANUARY 31, 2025**

**BETWEEN**

**ELIJAH WAWERU KAHURA ..... PLAINTIFF**

**AND**

**GATHITA MBUGUA ..... DEFENDANT**

**JUDGMENT**

1. The plaintiff/applicant initiated this suit on behalf of the estate of Kahura Waitati alias Kahura Waweru through an originating summons dated 1/4/2021. Through the Originating Summons, he invited the Court to determine the following seven(7) verbatim questions:
  1. Upon whom and in what manner shall this summons be served?
  2. Has the plaintiff acquired title to the parcel of land known as title number Limuru/Ngecha/586 by reason of adverse possession thereof since the year 1967?
  3. Was the defendant's title to the said parcel of land known as title number Limuru/Ngecha/586 extinguished upon expiry of a period of twelve (12) years since the plaintiff took possession thereof in the year 1967?
  4. Does the defendant hold title of the said parcel of land in trust thereof for the plaintiff?
  5. Is the plaintiff entitled to an order of this Honourable Court that he be registered as the proprietor of the said parcel of land known as title number Limuru/Ngecha/586?
  6. Who, as between the defendant whose title was extinguished and a person authorized by this Honourable Court, should execute the transfer and in what form, if any is necessary, of the said parcel of land known as title number Limuru/Ngecha 586, to effectuate the registration of the plaintiff as the proprietor thereof.



7. Who shall bear the costs of this Originating Summons?
2. Subsequent to initiating the suit, the plaintiff brought an application dated 7/7/2021 seeking leave to serve the originating summons on the defendant through a notice to be published in a local daily newspaper. The plea was granted by the Deputy Registrar of this Court on 20/12/2021. The plaintiff subsequently published a notice at page 41 of the Standard Newspaper edition of 14/3/2022.
3. On 6/3/2023, the Court [Eboso J] was dissatisfied with the level of prominence of the notice that had been published and directed the plaintiff to serve the summons together with a hearing notice by publishing a prominent notice in the newspaper. A prominent notice was subsequently published at page 25 of the Standard Newspaper edition of 23/2/2024. The defendant neither entered appearance nor filed a defence. Consequently, the originating summons was heard as an undefended cause on 10/12/2024.
4. The broad question to be answered in this Judgment is whether the estate of the late Kahura Waitati alias Kahura Waweru has satisfied the criteria for acquisition of title to land under the doctrine of adverse possession in relation to land parcel number Limuru/Ngecha/586 [the suit land] measuring approximately 2.2 acres.
5. The plaintiff's case is contained in his supporting affidavit dated 1/4/2021; in the oral testimonies tendered during trial; and in his written submissions. In summary, the plaintiff's case is that he is the administrator of the estate of the late Kahura Waitati alias Kahura Waweru [the deceased]. He brought this case on behalf of the said estate. He contends that the deceased purchased the suit land from the defendant in 1967 through an agreement written in Kikuyu language, dated 19/9/1967. The deceased paid the defendant full purchase price of Kshs 4,500, took possession of the land, and settled his family of two wives on the land in 1967. He developed the land. The deceased's three sons have similarly settled on the land.
6. The plaintiff adds that upon selling the land to the deceased, the defendant relocated to an unknown location in the Rift Valley without processing the relevant documents necessary for conveyance of the land into the name of the deceased, including the requisite consent of the Land Control Board. He contends that the deceased who died in March 2020 had continuous, open, exclusive, undisturbed and uninterrupted occupation, use and enjoyment of the suit land from 1967 and his estate has continued to enjoy similar elements since then.
7. At the hearing, the plaintiff testified as PW3. He also led evidence by the Area Chief, Leah Wanjiru Ngiya, who testified as PW1 and supported the estate's case. Lucy Njambi Kahura, the deceased's widow testified as PW2. She too supported the estate's case.
8. The court has considered the pleadings and the evidence in this suit. The defendant did not step forward to challenge the evidence presented by the estate. As observed in the opening paragraphs in this Judgment, the key broad question to be answered in this Judgment is whether the estate of Kahura Waitati alias Kahura Waweru has satisfied the criteria for acquisition of title to land through the doctrine of adverse possession.
9. The common law doctrine of adverse possession has statutory underpinning in Section 7 of the [Limitation of Actions Act](#) which provides 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”



10. Suffice it to also observe that Section 7(d) of the [Land Act](#) recognizes prescription as one of the methods through which title to land is acquired. It is also important to observe that the question relating to the constitutionality of the doctrine of adverse possession was examined by the Court of Appeal and was answered in the affirmative in the case of *Mtana Lewa Vs Kahindi Ngala Mwangandi* [2015] eKLR
11. The common doctrine of adverse possession of land connotes possession which is inconsistent with and in denial of the title of the registered owner of the land. To establish adverse possession, the claimant must prove that he has had both the factual possession of the land and the requisite intention to possess the land [*animus possidendi*] for the prescribed and uninterrupted limitation period of twelve years preceding the initiation of proceedings for the vesting order. Thirdly, he must demonstrate that the registered proprietor had knowledge [or the actual or constructive means of knowing] that he [claimant/adverse possessor] was in possession of the land. Further, possession must be continuous; it must not be broken or interrupted.
12. The Court of Appeal defined adverse possession in *Mtana Lewa Vs Kahindi Ngala Mwangandi* [2015] eKLR as follows:

“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 is twelve (12) years. The process springs into action essentially by default or inaction of the owner. The essential prerequisites being that the possession of the adverse possessor is neither by force or stealth or under the licence of the owner. It must be adequate in continuity and in extent to show that possession is adverse to the title owner.”
13. The Court of Appeal outlined the following criteria for acquisition of title under the doctrine of adverse possession in *Wilson Kazungu Katana & 101 others Vs Salim Abdalla Bakshwein & another* [2015] eKLR:

“First, the parcel of land must be registered in the name of a person other than the applicant, the applicant must be in open and exclusive possession of that piece of land in an adverse manner to the title of the owner, lastly, he must have been in that occupation for a period in excess of twelve years having dispossessed the owner or there having been discontinuance of possession by the owner.”
14. In the present suit, the estate of the deceased initially entered the suit land as a purchaser who had paid full purchase price and had taken vacant possession pursuant to the purchase. The vendor who was the registered proprietor did not, however, formally convey the land to the deceased. Reasonable time lapsed without the vendor conveying the land to the deceased. The deceased had uninterrupted, peaceful and undisturbed possession and occupation from 1967 to March 2020 when he died. His estate has continued to possess the land with all the elements of an adverse possessor.
15. Given the above statutory underpinnings, and the evidence presented, the court makes the following findings and orders on the questions in the originating summons dated 1/4/2021:
  - a. The late Kahura Waitati alias Kahura Waweru whose estate is the plaintiff in this suit acquired title to land parcel number Limuru/Ngecha/586 by reason of adverse possession of the land upon expiry of 12 years reckoned from the end of 1967.
  - b. The defendant’s title to the said land stood extinguished upon expiry of 12 years reckoned from 1/1/1968



- c. The defendant holds title to the said land constructively in trust for the estate of the late Kahura Waitati alias Kahura Waweru
  - d. The administrator of the estate of the late Kahura Waitati alias Kahura Waweru is entitled to be registered as proprietor of the said parcel of land and to hold the same in trust for the beneficiaries of the said estate.
  - e. The Deputy Registrar of this court is hereby authorized and decreed to execute all documents necessary for registering the land in the name of the plaintiff/administrator of the estate.
  - f. This being an adverse possession decree, the requirement for consent of the Land Control Board and the requirement for production of the original title and the transferor's identification and Kenya Revenue Authority documents are hereby waived but the decree holder shall pay to the Government of Kenya the statutory stamp duty and the statutory transfer fees.
  - g. This being an undefended cause, there shall be no award of costs.
16. It is hereby ordered and decreed as above.
17. Lastly, it is clarified that the date for delivery of this Judgment was reserved while the Presiding Judge was still stationed at Thika ELC. Effective from 13th January, 2025, the Judge was transferred to Meru ELC and Chuka ELC. It is for this reason that this ruling is being rendered virtually at Meru ELC. The relevant original court file shall be returned to Thika ELC forthwith and the Court Registry at Thika ELC shall upload the ruling onto the CTS immediately.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MERU THIS 31ST DAY OF JANUARY, 2025.**

**B M EBOSO [MR]**

**JUDGE**

In the presence of

Mr. Wachira for the Plaintiff

Court Assistant – Tupet

