



Munyi & 2 others v Mwangi (Environment & Land Case E022 & 26 of 2022 (Consolidated)) [2025] KEELC 1046 (KLR) (6 March 2025) (Judgment)

Neutral citation: [2025] KEELC 1046 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
ENVIRONMENT & LAND CASE E022 & 26 OF 2022 (CONSOLIDATED)**

JM MUTUNGI, J

MARCH 6, 2025

BETWEEN

CHRISTOPHER MUKUNGA MUNYI 1ST PLAINTIFF

JOSPHAT MUTAHI RICHARD 2ND PLAINTIFF

BONFACE MWANGI MIANO 3RD PLAINTIFF

AND

PETERSON KABUITU MWANGI DEFENDANT

JUDGMENT

1. This Judgment relates to Kerugoya ELC No. 22 of 2022 consolidated with Kerugoya ELC No. 26 of 2022. Pursuant to an order of consolidation made on 19th June 2023 it was directed that Kerugoya ELC No. 22 of 2022 would be the lead file.
2. In ELC No. 22 of 2022, the Plaintiff Christopher Mukunga Munyi claims to have purchased a portion 3 acres out of land parcel Kiine/Ruiru/646 pursuant to an agreement made in 1978 with one Kinogu Mukiria (now deceased) who was the registered proprietor. The Plaintiff avers that the deceased son, one Elias Mwangi Kinogu, was appointed as Administrator but he died and was substituted by the Defendant as Administrator of the deceased estate. The Plaintiff in the suit prays for Judgment against the Defendant for orders:-
 - a. Transfer of 3 Acres out of land parcel Kiine/Ruiru/646 by the Defendant as an Administrator of the Deceased's Estate to the Plaintiff.
 - b. In default of such transfer the Honourable Court to authorize it's Executive Officer to execute all necessary transfer forms in favour of the Plaintiff.
 - c. That the costs of such transfer and the entire suit be borne by the Defendant.



- d. Any other relief that this Honourable Court may deem fit to grant.
3. The Defendant vide a statement of defence dated 21st June 2022 denied all the averments pleaded in the Plaintiff's Plaint and contended that the Plaintiff was non suited.
 4. In ELC No. 26 of 2022 (OS) the Plaintiffs as the Administrators of the Estate of Maina Kaburungo (deceased) sued the Defendant as the Administrator of the estate of Kinogu Mukiria claiming under the doctrine of adverse possession. Their claim was that their father had purchased a portion of 3 Acres out of land parcel Kiine/Ruiru/646 from Kinogu Mukiria in 1966, was put into possession and occupation and they have ever since as a family resided on the suit land. It is their claim that they have acquired title to the portion of 3 acres and the deceased estate's title to this land has been extinguished.
 5. The Defendant filed a Replying Affidavit in opposition to the Originating Summons. He contended the suit was filed in abuse of the Court process as issues relating to the estate of the deceased was adjudicated in Nyeri HC Succession Cause No. 174 of 1999 finally and the suit land was reverted to the estate of Kinogu Mukiria (deceased).
 6. The suit was heard on 10th July 2024 and 4 witnesses testified in support of the Plaintiffs case while the Defendant testified as the sole witness for the Defence.
 7. PWI Christopher Mukunga Munyi in his evidence adopted the witness statement he had recorded on 23rd May 2022 and relied on the bundle of documents he had filed. The documents were admitted in evidence as "PEX1-7" as listed. He testified that he had purchased 3 acres out land parcel Kiine/Ruiru/646 from Kinogu Mukiria in 1978. He stated the total consideration for the 3 Acres was Kshs 18,000/- and he paid a deposit of Kshs 7,000/-. It was his evidence that the seller died before the transaction was completed. He stated he had been granted possession and was in occupation of the 3 Acres. The witness explained that after the seller's death, he agreed with the seller's son, Elias Mwangi that he would pay the balance of the purchase price to enable the transaction to be completed, which he paid. PWI and the said Elias Mwangi on 3rd February 1991 signed an agreement whereby the son of the seller acknowledged the balance of the purchase price of Kshs 11,000/- and both agreed to petition for grant of Letters of Administration for the estate of the deceased as per "PEX4".
 8. Both PWI and Elias Mwangi Kinoru Petitioned Grant of Letters vide Nyeri HC Succ Cause No. 174 of 1999 and joint letters of Administration were issued to them but unfortunately Elias Mwangi Kinogu who was the Defendant's father died before the Administration of the estate was completed. The 1st Plaintiff (PW1) as per the consent dated 9th November 2018 ("PEX5") consented to the Defendant being substituted as Administrator in place of his father and fresh joint Letters of Administration were issued to the Defendant and PWI. However, the 1st Plaintiff testified that the Defendant went behind his back and processed a Certificate of Confirmation of grant and carried out distribution of the deceased estate without the involvement of the 1st Plaintiff even though the Defendant was aware the 1st Plaintiff was a beneficiary and was entitled to the 3 Acres he had purchased. PWI objected to the confirmation and mode of distribution of the estate of the deceased arguing that he was by virtue of the agreement of sale entered into in 1978 with the deceased entitled to a portion of 3 Acres out of land parcel No. Kiine/Ruiru/646. Lady Justice F. Muchemi in a considered Judgment in the succession cause held that, the issue raised in the objections related to ownership of the subject land and that the succession Court had no jurisdiction to determine issues of ownership. Accordingly, she struck out the protests by the protestors (who are the present Plaintiffs) and ordered a stay of the succession proceedings pending the filing of the protestors claim in the appropriate Court for determination.
 9. Indeed, that is how the Plaintiffs respective suits came to be instituted before this Court when they were. The 1st Plaintiff in his evidence explained he took possession of the 3 Acres sold to him and that



he has effected developments on the land, built houses and that he and his family reside on the land. He further testified that the 3 Acres of the land that remained were purchased by another buyer, Richard Miano Kaburungo (now deceased). He stated that Miano Kaburungo's sons have instituted the suit on behalf of their deceased father. He testified that the 2nd and 3rd Plaintiffs occupy the portion purchased by their father. PW1 further testified the Defendant does not reside on the suit land and had never resided on the land.

10. In cross examination by Counsel for the 2nd and 3rd Plaintiff, PW1 stated that the 2nd and 3rd Plaintiffs were his neighbours as they occupy the land adjacent to the one that his family occupies. He stated he found the 2nd and 3rd Plaintiffs deceased father on the land. He maintained that it was the late Miano Kaburungo's Children who occupy and reside on the neighbouring land not the family of Kinogu Makiria.
11. Cross-examination by the Defendant the 1st Plaintiff affirmed that he resides on the portion he purchased with some of his children. He asserted that at the time he bought the land in 1978 the seller's family was not living on the land. The 1st Plaintiff admitted that he registered a caution on the title to forestall the land being sold to someone else. The 1st Plaintiff further admitted that he was aware the Defendant had caused the subdivision of the suit land and that subtitles had been issued but he stated the subdivision and issue of subtitles was unlawfully done.
12. The 2nd Plaintiff, Josphat Mutahi Richard in his evidence relied on the Supporting Affidavit dated 8th July 2022 in ELC No. 26 of 2022 sworn in support of Originating summons and the annexures thereof. He testified that his father Miano Kaburungo purchased a portion of 3 acres from land parcel Kiine/Ruiru/646 in 1966 from Kinogu Mukiria for Kshs 4,500/-. The witness explained he was born in 1969 and they were then residing on the suit land. He stated that indeed the land was subdivided into two portions in 1975 being 798 and 799 and that their fathers portion was 799 as attested by the documents marked as annexure "JMR6" in the Supporting Affidavit. The subdivision however was not formalized before the death of Kinogu Mukiria.
13. PW2 affirmed that his father and mother were buried on the suit land when they died. The witness further affirmed that the 1st Plaintiff was their neighbour on the land. He further testified that they objected in the succession case when the Defendant wanted to process succession and distribution of the suit land without their involvement and the succession Court ordered stay of proceedings pending determination of the issue of ownership of the suit land.
14. In Cross-examination the 2nd Plaintiff reiterated that his father had bought 3 acres of the suit land and that they had been in occupation of the land without any interruption and had never been evicted from the land by anybody.
15. The evidence of the 3rd Plaintiff was similar to that of PW2. He however testified that he built his house on the suit land in 1984 which he recently demolished and built a new house where he now resides with his family. In cross examination the witness stated he was born in 1956 and that he attended school whilst they were residing on the portion of 3 acres that his father had purchased out of land parcel Kiine/Ruiru/646. He confirmed that both his father and mother were buried on the suit land when they died. He further stated that they had resided on the suit land continuously and had never been evicted from the land.
16. PW4 Joseph Kangangi Murage, a village elder testified that he had resided in Kiine/Ruiru for over 70 years. He gave evidence that Miano Kaburungo was his neighbor having bought 3 Acres of land from Kinogu Mukiria. It was his further evidence that the family of Kinogu Mukiria had never occupied the



- land that they sold. He confirmed that when Miano Kaburungo died, he was buried on the portion that he had purchased.
17. On cross examination by Mr. Kungu Advocate for 1st Plaintiff, the witness affirmed that Miano Kaburungo's land bordered that of Christopher (1st Plaintiff) who also had bought land from Kinogu Mukiria. Cross examined by the Defendant, the witness reiterated that the families of Miano Kaburungo and Christopher (1st Plaintiff) reside on the land that they purchased from Kinogu Mukiria.
 18. The Defendant, Peterson Kabuitu Mwangi testified that his father had filed succession vide HCC Succ Cause No. 174 of 1999 and that he had obtained confirmation of grant which the Plaintiffs objected to. He disputed that the Plaintiffs resided on the land and denied that the 2nd and 3rd Plaintiffs father, Miano Kaburungo was buried on the disputed land. The Defendant asserted that the land had already been distributed and contended that the Plaintiffs were in trespass.
 19. Under Cross examination by Mr. Kungu Advocate for 1st Plaintiff, the Defendant admitted the 1st Plaintiff vide an agreement in 1978 was to purchase a portion of land parcel Kiine/Ruiru/646. The Defendant also admitted his late father and the 1st Plaintiff entered into an agreement in 1991. The Defendant affirmed that he and the 1st Plaintiff were appointed joint administrators of the estate of his late grandfather. The Defendant alleged he was chased away from the suit land in 2018 by the 1st Plaintiff and further asserted the Plaintiffs were not in occupation of the land.
 20. The Defendant under further cross examination by Counsel for the 2nd and 3rd Plaintiffs stated the suit land belonged to his grandfather. He stated that after distribution of the land he got one (1) acre. He denied any of the Plaintiffs reside on the suit land.
 21. Following the close of the trial the parties filed their final closing submissions to articulate and ventilate their positions. Having reviewed the pleadings and the evidence and further having considered the submissions by the parties, the issues that arise for determination in the suit are as follows:-
 - i. Whether the 1st Plaintiff and the late father of the 2nd and 3rd Plaintiffs separately entered into sale agreements with the late Kinogu Mukiria to purchase portions of land parcel Kiine/Ruiru/646?
 - ii. Whether the Plaintiffs took possession of the land, and if so, whether such possession was adverse to the interest of the registered owner?
 - iii. Whether the title of the registered owner was extinguished by reason of the doctrine of adverse possession in favour of the Plaintiffs and/or in the alternative the doctrine of constructive trust is applicable in favour of the Plaintiff?
 - iv. What reliefs should the Court grant?
 22. Concerning the claim by the 1st Plaintiff, Christopher Mukunga Munyi that he purchased a portion 3 acres out of land parcel Kiine/Ruiru/646 there can be no doubt, as there was a formal written agreement dated 4th May 1978 where the Plaintiff agreed to purchase a portion of 3 Acres out of the said parcel of land. The agreement was exhibited and the total consideration of Kshs 18,000/- was on 3rd February 1991 admitted to have been fully paid by Elias Mwangi (defendant's father) who took over the performance of the agreement from his deceased father (Kinogu Mukiria). The Defendant did not dispute the agreement and/or that his deceased father and the 1st Plaintiff were appointed as joint administrators of the estate of Kinogu Mukiria.



23. It was the 1st Plaintiff's evidence that he was put in possession of the 3 acres that he purchased in 1972 and he had effected developments thereon as itemized in the Valuation Report dated 7th May 2019 exhibited in the 1st Plaintiff's bundle of documents. The original seller Kinogu Mukiria died before the transfer formalities were effected, but significantly the son who was the Defendant's father acknowledged the agreement and was paid the balance of the purchase price of Kshs 11,000/- as per the acknowledgment of receipt dated 3rd February 1991. The 1st Plaintiff's evidence of occupation and possession was corroborated by the evidence of the 2nd and 3rd Plaintiffs and the evidence of PW4, Joseph Kangangi Murage, a village elder whose land neighbours the suit property. PW4's evidence supported the the Plaintiffs evidence that Defendant's family had never occupied and/or utilized the suit property.
24. On the part of the 2nd and 3rd Plaintiffs it was their evidence that their late father, Miano Kaburungo, purchased a portion of 3 Acres out of land parcel Kiine/Ruiru/646 from Kinogu Mukiria (deceased) in 1966 for the consideration of Kshs 4,500/-. It was their evidence that although the deceased had initiated the process of severing the title into two portions being parcels 798 and 799 as annexures "JMR 6" of the Supporting Affidavit to the Originating Summons sworn by Josephat Mutahi Richard attests, the deceased died before the process was completed but the 2nd and 3rd Plaintiffs family remained and continued in occupation and possession. The documents exhibited as "JMR 6" clearly show there was an intention to partition land parcel 646 into two portions and the new parcels were 798 and 799. Kinogu Mukiria is indicated to have been the seller while Miano Kaburungo is indicated to have been the buyer. There is indication from the documents that survey fees was paid. The 2nd and 3rd Plaintiffs in their evidence affirmed that Kinogu Mukiria died in 1989 and that by that time, their family had occupied the land for 14 years and that their father passed away in 1998 and up to that time they had continued to occupy the land without any interruption and when their step mother Esther Gathoni Miano died in 2014 she was buried on the land without any objection or protestation from the Defendant's family.
25. The 1st Plaintiff submits by virtue of the fact that he had openly and without any interruption occupied the portion of 3 acres adversely against the interest of the registered proprietor he has acquired an overriding interest and is entitled to be declared as having acquired title to the land. In support of this submission he places reliance on the Court of Appeal case of Macharia Mwangi Maina & 87 Others –vs- Davison Mwangi Kagiri (2014) eKLR.
26. Equally the 2nd and 3rd Plaintiffs submitted that on the evidence there was clear evidence they had become entitled to be declared the owners of the 3 acres portion of land that their father later purchased by virtue of the doctrine of adverse possession. The 2nd and 3rd Plaintiffs in support of their submission placed reliance on the case of Mtana Lewa –vs- Kahindi Ngala Mwangandi (2015) eKLR, Richard Wefwafwa Songoi –vs- Ben Munyifwa Songoi (2020) eKLR, Wambugu –vs- Njuguna (1983) KLR 173 and Willy Kimutai Kitilit –vs- Michael Kibeti(2018) eKLR.
27. In the Case of Macharia Mwangi Maina & 87 Others –vs- Davidson Mwangi Kagiri (supra) the Court of Appeal held that where a buyer pays the purchase price of land and is in possession, a constructive trust is created where such land is agricultural land and consent of the Land Control Board is not required. The Court in the case stated:-

“ 29. The totality of our re-evaluation of the facts applicable law in this case lead us to conclude that the honourable Judge erred in failing to consider that the Appellants were in possession of the suit property that the Respondent had created a constructive trust in favour of all individuals who had paid the purchase price for respective plots and the Trial Court erred in



failing to note that consent of the Land Control Board is not required where a trust is created over agricultural land. We do find that the possession and occupation by the Appellants of the suit property is an overriding interest attached to the said property -----”.

28. In the later Case of Willy Kimutai Kitilit –vs- Michael Kibet (supra) the Court of Appeal confirmed their holding in the Macharia Mwangi Maina case (supra) that the equitable doctrine of constructive trust and proprietary estoppel was applicable and enforceable to land subject to the Land Control Act. The Court in the Willy Kimutai Case stated at Paragraphs 25 and 26 of the Judgment as follows:-

25 The word equity broadly means a branch of law denoting fundamental principles of justice. It has various meanings according to the context but three definitions from Black’s Law Dictionary, Ninth Edition will suffice for our purpose:

1.
2. The body of principles constituting what is fair and right.
3. The recourse to principles of justice to correct or supplement the law as applied to particular circumstances --
4. The system of law or body of principles originating in the English Court of Chancery and superseding the common and statute law (together called “Law” in the narrower sense) when the two conflict”

Thus, since the current Constitution has by virtue of Article 10(2) (b) elevated equity as a principle of justice to a constitutional principle and requires the courts in exercising judicial authority to protect and promote that principle, amongst others, it follows that the equitable doctrines of constructive trust and proprietary estoppel are applicable to and supersede the Land Control Act where a transaction relating to an interest in land is void and enforceable for lack of consent of the Land Control Board.

26. For the reasons in paragraphs 20, 21, 22, 23, 24 and 25 above, we are in agreement with the Macharia Mwangi Maina decision that the equitable doctrines of constructive trust and proprietary estoppel are applicable and enforceable to land subject to the Land Control Act, though this is subject to the circumstances of the particular case. Upon the application of the equitable doctrines, the Court in its discretion may award damages and where damages are an inadequate remedy grant the equitable remedy of specific performance.

29. . Section 7 and 13 (1) of the Limitation of Actions Act Cap 22 Laws of Kenya embody the doctrine of adverse possession and provide as follows:-

7. 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.

13(1) A right of action to recover land does not accrue unless the land is in the possession of some person in whose favour the period of limitation can run (which possession is in this Act referred to as adverse possession), and, where under sections 9, 10, 11 and 12 of this Act a right of action to recover land accrues on a certain date and no person is in adverse possession on that date, a right of action does not accrue unless and until some person takes adverse possession of the land.



30. The Court of Appeal in the case of *Mtana Lewa –vs- Kahindi Ngala Mwangande* (2015) eKLR explained what would constitute adverse possession thus (as per Asike Makhandia, JA);

“---- 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 in action of the owner. The essential pre requisites being that the possession of the adverse possessor is neither by force or stealth or under licence of the owner. It must be adequate in continuity, in publicity and extent to show that possession is adverse to the title of the owner.”

31. In the present case there is irrefutable evidence that the 1st Plaintiff and the father of the 2nd and 3rd Plaintiffs each entered into an agreement with Kinogu Mukiria (deceased) to purchase a portion of land parcel Kiine/Ruiru/646. For the 1st Plaintiff in 1978 and in regard to the father of the 2nd and 3rd Plaintiffs in 1966. The evidence also points irresistibly to the fact that the 1st Plaintiff and the 2nd and 3rd Plaintiffs father each took occupation and possession of their respective portions. There is evidence that before his death the Defendant’s grandfather who was the registered owner of the land had initiated the process to subdivide the land between 1971 and 1975 but the process was not completed. In 1978 it appears the deceased sold the remaining 3 acres of his land to the 1st Plaintiff before he died in 1980. Although the Defendant’s father in 1991 committed to complete the sale transaction in favour of the 1st Plaintiff, that did not happen. The Defendant’s father petitioned for grant of Letters of Administration vide Nyeri HC Succ Cause No. 174 of 1999 and following the 1st Plaintiff’s objection, Grant of Letters of Administration were jointly issued to the 1st Plaintiff and the Defendant’s father in 2008.
32. In inexplicably, the Certificate of Confirmation of Grant and distribution of the deceased estate were carried out without the participation of the 1st Plaintiff who himself was a joint Administrator. However, following an application for Revocation of Grant dated 2nd October 2017 in the succession cause Hon. Justice J. Ngaah on 22nd June 2018 set aside the grant and cancelled the subdivision and transfers of the subdivisions and ordered the land to be restored to the deceased name. The Judge additionally issued an order of injunction restraining the transfer of the subdivisions or in any manner dealing with the subtitles pending compliance by the Land Registrar with the order of cancellation.
33. The Defendant in his pleadings and evidence had asserted that the suit property had been distributed to the beneficiaries pursuant to the certificate of confirmation of grant. That certificate of confirmation however was revoked and set aside with the result that the property of the deceased remains undistributed. The grant of confirmation of grant in succession case having been set aside and the hearing of the succession cause having been stayed by Hon. Lady Justice F. Muchemi pending determination of ownership of land parcel Kiine/Ruiru/646 before a competent Court with jurisdiction means this Court is properly seized of the matter and is the proper Court to determine ownership of the property in dispute.
34. Having considered and evaluated the evidence I am satisfied the deceased (Defendant’s grandfather) had entered into sale agreement with the 1st Plaintiff (1978) and the 2nd and 3rd Defendant’s father (1966) and that he let them into possession of the portions they were purchasing. The purchasers paid the full purchase price for the portions they were buying. The occupation and possession of the Plaintiffs after payment of the purchase price was as the owners as they treated the land as their own. They constructed homes thereon and resided thereon as the bonafide owners. Indeed the Defendant’s father ratified the sale of the portion of 3 acres to the 1st Plaintiff in 1991 and in 2008 both the Defendant’s father and the 1st Plaintiff were issued joint Letters of Administration with the 1st Plaintiff



for him to protect his interest as purchaser. Had the Defendant's deceased father disputed the Plaintiff's rights to be on the land no doubt he would have sought to have them evicted from the land.

35. PW4 was clear in his evidence that it was the Plaintiffs who were in occupation and possession of the land and that the Defendant's family had never been on the land. It is instructive that the Defendant was the youngest of his siblings and that none of all the other siblings including those who had been included as beneficiaries in the certificate of confirmation of grant set aside had shown any interest in the case. I believe that is because they are aware the Plaintiffs are the persons who are lawfully entitled to the suit land and were in occupation and possession.
36. Be it as it maybe, I am after evaluation of the evidence persuaded that the Plaintiffs have proved their case on a balance of probabilities. The Plaintiffs case succeeds both under the doctrine of adverse possession and under the doctrine of constructive trust. Once the Plaintiffs paid the full purchase price, the registered proprietor continued to hold the suit land under constructive trust in their favour.
37. In the premises I enter Judgment in favour of the Plaintiffs on the following terms:-
 1. That a declaration be and is hereby issued that the registered proprietor's title in regard to land parcel Kiine/Ruiru/646 has become extinguished by virtue of the doctrine of adverse possession.
 2. That the 1st Plaintiff, Christopher Mukunga Munyi has become entitled to be registered as owner of 3 Acres out of land parcel Kiine/Ruiru/646.
 3. The 2nd and 3rd Plaintiffs Josphat Mutahi Richard and Boniface Mwangi Miano being the Administrators of the estate of Miano Kaburungo be registered jointly on behalf of the estate of Miano Kaburungo (deceased) of a portion of 3 acres out of land parcel Kiine/Ruiru/646 on account of having acquired the same through adverse possession.
 4. To effectuate implementation of the orders as per this Judgment the registration of Kinogu Mukiria (deceased) as the owner of land parcel Kiine/Ruiru/646 is ordered to be cancelled.
 5. The Plaintiffs shall bear the costs of the subdivision of land parcel Kiine/Ruiru/646.
 6. Each party to bear their own costs of the suit.

JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 6TH DAY OF MARCH 2025.

J. M. MUTUNGI

ELC - JUDGE

