



**Waitathu v Muniu (Environmental and Land Originating Summons
E029 of 2022) [2025] KEELC 1255 (KLR) (6 March 2025) (Judgment)**

Neutral citation: [2025] KEELC 1255 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E029 OF 2022**

JM ONYANGO, J

MARCH 6, 2025

BETWEEN

GEOFFREY NJENGA WAITATHU APPLICANT

AND

NAOMI MBAAGE MUNIU RESPONDENT

JUDGMENT

1. There is, in the great annals of property law, a doctrine so audacious in its premise and so formidable in its consequences That it can, in a stroke, transmute the possessor into the proprietor. This is the doctrine of adverse possession, a concept That stands as a testament to the inexorable march of time and the legal system's deference to the diligent over the dormant.
2. Before me is a claim for adverse possession brought by way of Originating Summons dated 2nd September 2022 and orally amended on 6.3.25. The Originating Summons is supported by the affidavit of Geoffrey Njenga Waitathu, the Applicant herein. The Applicant seeks the following Orders:
 1. That a declaration That the title in the name of NAOMI MBAAGE MUNIU and Gibson Kagai Muniuto the land parcel number Limuru/Ngecha/T.116 (suit land) be extinguished by the Applicant's Adverse Possession thereof for a period of more than 12 years in terms of the Limitations of Actions Act. (sic)
 2. That the Applicant has become entitled to Adverse Possession to the suit land Limuru/Ngecha/T.116 and registered under the *Land Act* in the name of the Defendant and GIBSON KAGAI MUNIU
 3. That An order That the Land Registrar Kiambu register the Applicant as absolute proprietor of land parcel Number Limuru/Ngecha/T.116 in place of the Respondent and GIBSON KAGAI MUNIU



4. That the Land Registrar Kiambu be directed That the order herein shall be an instrument of transfer of ownership of the whole suit land from the Respondent and Gibson Kagai Muniuto the Applicant.
5. Costs of the suit.
3. The Originating Summons was premised on the grounds deponed by the Applicant in the affidavit sworn on 2nd September 2022.
Essentially, it is the Applicant's claim That he purchased the parcel of land known as Limuru/Ngecha/T.116 (suit land) from the Respondent's husband for Ksh. 700 vide a sale agreement dated 8th March 1964 but the land was never transferred to him.
4. The Applicant contends That since 1964, he has possessed the suit land as his own, not as a fleeting trespasser but as one who has tilled its soil, nurtured his crops and invested in its development. He asserts That his occupation has been peaceful, uninterrupted, and conducted under the unblinking eye of the Respondent, who, despite full knowledge of his presence, has raised no challenge nor laid any claim against his dominion.
5. The Respondent was served with a summons to enter appearance by way of substituted service through the Daily Nation newspaper. Learned counsel, Ann Ngigi filed an Affidavit of Service sworn on 6th May 2024 affirm That service of summons was effected by way of substituted service on 8th February 2024.
6. The Respondent, whether by indifference or design, has neither entered appearance nor filed a Defence in this matter, leaving the Court with no opposition to consider.
7. Consequently, the case proceeded by way of formal proof on 26th February 2025, where the Applicant standing as PW1, gave viva voce testimony. With unwavering resolve, he recounted his long and unchallenged possession of the suit land and urged the Court to declare That, by the passage of time, ownership had rightfully vested in him through adverse possession. That marked the close of the Plaintiff's case after which learned counsel for the Plaintiff filed her brief submissions dated 28th February 2025.

Issues for Determination

8. Having considered the Originating Summons, the evidence adduced by the Applicant, a singular issue emerges for determination:

i. Whether the Applicant has established a claim for adverse possession

Analysis and Determination

9. The law, ever watchful over the sanctity of property rights, does not lightly divest land from one titleholder to bestow it upon another. Yet, where the rightful owner slumbers in inaction and another steps forth to occupy, cultivate, and claim dominion over the land with the resolute confidence of ownership, the law must take notice.
10. Adverse possession is not a doctrine of stealth but of open, unrelenting assertion; a legal recognition That title cannot forever remain a silent relic in the hands of the idle.
11. It is against this backdrop That the Applicant's claim must be examined, to determine whether he has met the exacting burden required to transform possession into ownership.



12. Despite the claim being uncontroverted, the Applicant has the burden of proving the claim for adverse possession to the required standard. In the case of *S. Maitai & Another v African Safari Club Ltd & Another* [2010] eKLR, the Court held That:

“I have not seen judicial definition of the phrase ‘formal proof’. ‘Formal’ in its ordinary dictionary meaning refers to being ‘methodical’ according to rules of evidence. On the other hand, according to Halsbury’s Laws of England, Vol. 17 Paragraph 260, proof is That which leads to a conviction as to the truth or falsity of alleged facts which are the subject of inquiry. Proof refers to evidence which satisfies the court as to the truth or falsity of a fact. Generally, as we well know, the burden of proof lies on the party who asserts the truth of the issue in dispute. If That party adduces sufficient evidence to raise a presumption That what is claimed is true, the burden passes to the other party who will fail unless sufficient evidence is adduced to rebut the presumption”.

13. I am in congruence with this pronouncement which underscores a fundamental tenet of our legal system: That he who asserts must prove. The Applicant, having invoked the doctrine of adverse possession, bears the solemn duty of demonstrating, with cogent and compelling evidence, That his possession of the suit land meets the strict legal threshold.
14. It is not enough to merely claim occupation; he must establish, to the satisfaction of the Court, That his possession was actual, open, notorious, exclusive, hostile, and unbroken for the statutory period.
15. The Applicant produced an agreement for the sale of the suit land dated 8th March 1964. The terms of the agreement were That Ndaba Kanini sold the suit land to the Applicant for a consideration of Ksh. 700/-. The Applicant further produced a certificate under the Native Land Tenure Rules to establish That the late Ndaba Kanini was registered as the owner of the suit land on 17th May 1957 and therefore had proprietorship by the time the 1964 agreement was executed.
16. The Applicant argues That the late Ndaba Kanini failed to transfer the suit land to his name in violation of the agreement dated 8th March 1964. The Applicant asserts That the late Ndaba Kanini instead transferred the suit land to his wife, (the Respondent herein) and their son, one Gibson Kagai Muniu
17. The Applicant produced a copy of the title to the property. The title was registered on 6th January 1982 in the name of Naomi Mbaage Muniu and Gibson Kagai Muniu
18. The Applicant asserts That he reported the dispute That had crystalized between himself and the late Ndaba Kanini in 1988. To buttress this claim, the Applicant tendered into evidence a copy of the award rendered by the District Officer; an official pronouncement directing That the suit land be transferred to him.
19. From the foregoing, we can establish That entry into the land and possession of the suit land was initially permissive as it resulted from the sale agreement dated 8th March 1964.
20. However, it is important to note That the right to adverse possession does not crystallize on its own accord; it demands assertion by the one in whose favor it has accrued. Mere passage of time, however long, is not enough; action must be taken.



21. 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.”

22. Further section 13 of the same Act, provides That adverse possession is the exception to this limitation:

“(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.
(2)	Where a right of action to recover land has accrued and thereafter, before the right is barred, the land ceases to be in adverse possession, the right of action is no longer taken to have accrued, and a fresh right of action does not accrue unless and until some person again takes adverse possession of the land.

(3)	For the purposes of this section, receipt of rent under a lease by a person wrongfully claiming, in accordance with section 12(3) of this Act, the land in reversion is taken to be adverse possession of the land.”
-----	--

23. However, it is through the invocation of judicial authority, as prescribed under Section 38 of the *Limitation of Actions Act*, That a claimant seeks to transform long-standing possession into lawful ownership. In this regard, the Applicant herein has come before this Court, not merely to claim, but to affirm his right in law.

24. Statute lays the foundation, but it is the steady hand of judicial interpretation That shapes the true contours of adverse possession. It is through the wisdom of precedent That the doctrine finds clarity and direction. In *Gabriel Mbui v. Mukindia Maranya* [1993] eKLR, the Court distilled its essence, defining adverse possession in the following terms:

“...it is possible to define “adverse possession” more fully, as the nonpermissive physical control over land coupled with the intention of doing so, by a stranger having actual occupation solely on his own behalf or on behalf of some other person, in opposition to, and to the exclusion of all others including the true owner out of possession of That land,



the true owner having a right to immediate possession and having clear knowledge of the assertion of exclusive ownership as of right by occupying stranger inconsistent with the true owners enjoyment of the land for the purposes for which the owner intended to use it.”

25. The definition by Kuloba J (as he then was) encapsulates the very essence of adverse possession with unerring clarity and precision. In my view, adverse possession is not merely a question of presence but of possession That is intentional, exclusive, and antagonistic to the rights of the true owner. It requires more than silent occupation; it demands an unequivocal assertion of dominion; possession That is neither clandestine nor permissive, but one That boldly repudiates the owner’s title. Without this fundamental contest between the possessor and the rightful owner, adverse possession cannot take root, for the law does not recognize mere habitation, but the transformation of possession into ownership through resolute and unchallenged assertion.
26. The Applicant claims That in this case time for adverse possession started running in 1964 after execution of the sale agreement between himself and the late Ndaba Kanini.
27. However, it is worth noting That the at the moment, the title to the suit land reflects That the Respondent and one Gibson Kagai Muniu were registered as owners in 1982. In 1988, the Applicant instituted a claim against Ndaba Kanini (deceased) seeking to assert ownership over the suit property. This claim culminated in the District Officer issuing an award in favour of the Applicant on 8th August 1988. Consequently, the statutory period for adverse possession could only start running after 1988; time can only begin to run once the Applicant’s possession is adverse to the rights of the registered owners.
28. Since 1988, the Applicant asserts, his occupation of the suit land has been steadfast and unbroken; marked by continuity, open for all to see, undisturbed by challenge, and carried out with the full knowledge of the Respondent. His possession, he contends, has not been one of mere presence but of adverse dominion, exercised as of right and in defiance of any competing claim.
29. However, for adverse possession to take hold, the land in question must be a tangible reality, not a mere abstraction. It is for this very reason That Rule 7(2) of Order 37 of the Civil Procedure Rules demands That an applicant annex an extract of the title to their claim.
30. The law insists upon certainty, a distinct and identifiable parcel against which possession may be measured. Without this essential anchor, no lawful claim can arise, for adverse possession cannot attach to uncertainty, nor can ownership be usurped where the subject land remains undefined.
31. In the present case the Applicant annexed a copy of the title which indicates That the suit land is registered in the names of Respondent and one Gibson Kagai Muniu The title, however, is silent on whether their ownership is joint or in common.
32. It is not lost to the court That the suit was filed against only one of the title holders the explanation being That Gibson Muniu passed away and could therefore not be sued.
33. On 6.3.25 before the court delivered its judgment learned counsel for the applicant applied to amend the originating summons to reflect the fact That the name Gibson Kagai Muniu appears on the title held by the Defendant. The said application was granted by the court.
34. In view of the foregoing, I am satisfied That the plaintiff has proved his case on a balance of probabilities.
35. Accordingly, I enter judgment for the Plaintiff and make the following final orders:



1. A declaration is hereby issued That the title in the name of Naomi Mbaage Muniu and Gibson Kagai Muniu to the land parcel number Limuru/Ngecha/T.116 (suit land) is hereby extinguished by the Applicant's Adverse Possession thereof for a period of more than 12 years in terms of the Limitations of Actions Act. (sic)
2. The Applicant has become entitled to Adverse Possession to the suit land Limuru/Ngecha/T.116 and registered under the Land Act in the name of the Defendant and Gibson Kagai Muniu
3. An order is hereby issued That the Land Registrar Kiambu register the Applicant as absolute proprietor of land parcel Number Limuru/Ngecha/T.116 in place of the Respondent and Gibson Kagai Muniu
4. The Defendant shall sign the transfer form to facilitate the transfer of the suit property to the Plaintiff within 45 day failing which the Deputy Registrar of this court shall sign the transfer forms in place of the Defendant.
5. The Defendant shall bear the Costs of the suit.

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

.....

J. M ONYANGO

JUDGE

In the presence of:

Ms Muhuhu for the Plaintiff

No appearance for the Defendant.

Court Assistant: Hinga

