



**Kinyanjui v Kariuki (Environmental and Land Originating Summons
E041 of 2022) [2025] KEELC 3710 (KLR) (8 May 2025) (Judgment)**

Neutral citation: [2025] KEELC 3710 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E041 OF 2022**

BM EBOSO, J

MAY 8, 2025

BETWEEN

JOHN MURIMI KINYANJUI PLAINTIFF

AND

SIMON NJOROGE KARIUKI DEFENDANT

JUDGMENT

1. The plaintiff initiated this suit through an originating summons dated 30/11/2022. He sought the following adverse possession orders: (i) a declaration that the title of the whole of land parcel number Kabete/Nyathuna/1553 (the suit land), situated in Kiambu County, has been extinguished through adverse possession by the plaintiff; (ii) a declaration that the plaintiff has become entitled to the suit land through adverse possession; (iii) an order directing the defendant to execute all documents and take all necessary steps to effect transfer of the suit land to the plaintiff and, in default, the said documents be executed by the Honourable Deputy Registrar of this Honourable Court; (iv) an order directing the Land Registrar, to register the plaintiff as the absolute proprietor of the suit land; and (v) an order awarding the plaintiff costs of the suit.
2. On 20/3/2024, the court granted the plaintiff leave to effect service of summons through a prominent notice in either The Daily Nation Newspaper or The Standard Newspaper. An affidavit of service sworn on 22/9/2024 by Meshack Mitau Kimanzi was subsequently filed, indicating that the defendant had been served through a notice published in The Standard Newspaper on 31/8/2024. The defendant neither entered appearance nor filed a response to the originating summons. Consequently, the originating summons was heard as an undefended cause on 24/10/2024. It was canvassed through brief written submissions dated 4/11/2024. The suit now falls for determination.
3. The broad question to be answered in this Judgment is whether John Murimi Kinyanjui has satisfied the criteria for acquisition of title to land under the doctrine of adverse possession in relation to land parcel number Kabete/Nyathuna/1553 [referred to in this Judgment as “the suit land”].



4. The plaintiff's case is contained in his supporting affidavit dated 30/11/2022; in the oral testimony tendered during trial; and in his written submissions. In summary, the plaintiff's case is that, in 1990, the defendant and him entered into an agreement for sale of the suit land at a purchase price of Kshs 160,000. The plaintiff adds that they further entered into another agreement to the effect that the defendant would cede part of the suit property to him, even as he continued paying the purchase price. The plaintiff contends that he made payment in instalments and as at 11/9/1991, he had paid a total of Kshs 147,000. The balance of the purchase price was to be paid at completion. The plaintiff states that he requested for transfer documents from the defendant to facilitate transfer of the suit land to him but the defendant declined and instead demanded more money, contrary to what had been agreed in the agreement for sale. The plaintiff adds that as a result of the foregoing, the transfer was never effected.
5. The plaintiff states that sometime in 1991, after he was unable to trace the defendant, he took possession of the suit land, fenced it, and later on planted trees on it. Around September 1991, he registered a caution against the title to the suit land to protect his interest in the land. The plaintiff adds that he has enjoyed quiet and undisturbed possession of the said parcel of land for 31 years, and he now intends to develop it further. The plaintiff urges the court to grant him the adverse possession orders sought in the originating summons.
6. At the hearing, the plaintiff testified as PW1. He adopted the contents of his supporting affidavit as part of his sworn evidence-in-chief. The plaintiff produced: (i) acknowledgement letters evidencing payment; (ii) application for registration of caution; (iii) photographs; (iv) a copy of the certificate of official search.
7. The plaintiff urged the court to register him as proprietor of the suit land. It was his evidence that he purchased the suit land from the defendant in 1990 and paid purchase price but the defendant failed to transfer the suit property to him as agreed. The plaintiff contended that he had been in quiet possession of the suit land from 1991 to date.
8. The court has considered the pleadings and the evidence in this suit. The defendant did not step forward to challenge the claim and the evidence presented by the plaintiff. As observed in the third paragraph of this Judgment, the broad question to be answered in this Judgment is whether the plaintiff 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 underpinnings in Sections 7 and 17 of the *Limitation of Actions Act* which 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”
 - “17. Subject to section 18 of this Act, at the expiration of the period prescribed by this Act for a person to bring an action to recover land (including a redemption action), the title of that person to the land is extinguished.”
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. Secondly, 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 law 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. He must also demonstrate that the registered proprietor had knowledge [or the actual or constructive means of knowing] that he [the 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 plaintiff tendered evidence to the effect that in the year 1990, the defendant and him entered into an agreement for sale/ purchase of Kabete/Nyathuna/1553 at the price of Kshs.160,000. The plaintiff added that they further entered into another agreement providing that the defendant would cede part of the suit property to him as he continued paying the purchase price. The plaintiff stated that he paid a total of Kshs. 147,000 as at 11/9/1991, and that the balance of the purchase price was to be paid at completion. He added that he requested the transfer documents from the defendant to facilitate transfer of the suit land to him but the defendant declined and instead demanded more money contrary to the agreement for sale. The transfer documents were never availed.
15. The plaintiff testified that in 1991, after he was unable to trace the defendant, he took possession of the suit land, fenced it, and later on planted trees on it. The plaintiff contended that he enjoyed quiet and undisturbed possession of the suit land from 1991 to the date of filing this suit (31 years).
16. The plaintiff's evidence was that his occupation was non-permissive, continuous uninterrupted, and unbroken for the necessary statutory period of 12 years.
17. Given the above statutory underpinnings and the evidence presented to the court, the court is satisfied that the plaintiff has proved that he has acquired title to the suit land through adverse possession. Consequently, prayers 1 to 4 of the originating summons are granted.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 8TH DAY OF MAY 2025

B M EBOSO [MR]

JUDGE



In the Presence of
Court Assistant – Doris
Mr. Kimanzi for the Plaintiff

