



**Gichari & another v Muchiri (Environment & Land Case
E010 of 2023) [2025] KEELC 4293 (KLR) (5 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4293 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENT & LAND CASE E010 OF 2023**

LN GACHERU, J

JUNE 5, 2025

BETWEEN

GRACE WANJIRU GICHARI 1ST PLAINTIFF

PETER MUCHIRI GAKURU 2ND PLAINTIFF

AND

STEPHEN MAINA MUCHIRI DEFENDANT

JUDGMENT

1. The Plaintiffs herein Grace Wanjiru Gichari and Peter Muchiri Gakuru brought this suit against the Defendant Stephen Maina Muchiri vide a Plaint dated 22nd November 2023, wherein they sought for judgement against the Defendant in the following terms; -
 - a. A declaration that the late Joseck Macharia Kimani and Gichari Thuku legally and properly acquired the suit property LR No. Loc.8/Gatara/412 by way of purchase and that the same belongs absolutely to their respective Estates, and should be registered in the joint names of the Plaintiffs.
 - b. In the alternative a declaration that the Defendant's title to LR No. Loc.8/Gatara/412 that is occupied and utilized by the Plaintiffs and their families has been extinguished, and that the Plaintiffs have acquired title to the said property by way of Adverse Possession.
 - c. That the name of the Defendant be cancelled and or deleted from the proprietorship Section of parcel LR No.Loc.8/Gatara/412, and that the property be registered in the joint of the Plaintiffs, with the production of the original title by the Defendant for purposes of the said registration being dispensed with.
 - d. A permanent injunction restraining the defendant by himself, his servants, agents, employees, agents or any party claiming title under him, from trespassing onto, appropriating,



constructing upon, using and or in any other way of interfering with the Plaintiff's and their families' quiet possession and use of the suit property Loc.8/Gatara/412.

- e. Any other relevant order or remedy that the court may deem appropriate and justifiable in the circumstances.
 - f. Costs of the suit.
2. It was the Plaintiffs' claim that the late Daudi Kirunga Muchiri who hailed from Githambo area of Murang'a County was the initial registered owner of two parcels of land being LR. No. Loc.8/Gatara/313 and Loc.8/Gatara/412, which he had acquired during land adjudication and consolidation around 1960-62. However, at the time of the said adjudication Daudi Kirunga Muchiri and his family was domiciled in Nakuru District, having migrated thereon from Murang'a County around 1950.
 3. However, his relative Joseck Macharia Kimani took care and was in possession of the said land, which land belonged Daudi Kirunga Muchiri. The Plaintiffs further averred that in 1972, Daudi Kirunga Muchiri sold land parcel No. Loc.8/Gatara/313 to his cousin Gichari Thuku, and the transfer was effected on 15th November 1972. Further in 1977, Daudi Kirunga Muchiri sold land parcel No. Loc.8/Gatara/412(the suit property) to his two relatives being Joseck Macharia Kimani – 3.9 acres and Gichari Thuku 3 acres vide a sale agreement dated 27th July 1977.
 4. It was the Plaintiffs further averments that the two purchasers Macharia Kimani and Gichari Thuku subdivided the suit property into two portions of 3.9 acres and 3.0 acres and formally took possession of their respective portions from 1977 and they have been using the said portions of their land since then.
 5. Further the Plaintiffs claimed that the vendor Daudi Kirunga Muchiri, died on 6th August 1977, during one of his visits to Murang'a, Githambo area, and he was buried on the parcel of land owned by Gichari Thuku being Loc.8/Gatara/313, but before transferring the suit land to the purchasers.
 6. The Plaintiffs also alleged that the first born son of Daudi Kirunga Muchiri, one John Mwangi Kirunga who lived in Githambo area at that time and who was aware of the sale of the suit property by his father was paid the balance of the purchase price of 200/= which was due to his late father by Gichari Thuku, and the said John Mwangi confirmed that the sale of the suit land was complete. Further that the said John Mwangi filed a Succession Cause at Thika Magistrates Court over the estate of his deceased father Daudi Kirunga Muchiri, but he died before the said Succession Cause was finalized, and thus the suit land was not transferred to the purchasers.
 7. It was further alleged that Joseck Macharia Kimani passed away on 14th March 1988, and the 2nd Plaintiff was appointed the Legal administrator of his estate vide a Grant dated 28th June 2002, and was survived by six children and several grandchildren.
 8. Further, that Gichari Thuku passed away on 11th May 1996 and the 1st Plaintiff was appointed his Legal Representative vide a Grant dated 27th August 2004, and is survived by several children. It was the Plaintiffs further claim that the two purchasers planted tea bushes on the suit property in 1982, and they obtained their growers numbers from Githambo Tea Factory. Further that their families have continued to pick the said tea leaves from the suit land, and have been in possession and use of the suit property for more than 46 years from 1977.
 9. However, in April 2022, the Plaintiffs were summoned to Kahuro Police Station on allegations that they were using the Defendant's land without permission, and were served with Notice to vacate the suit property. It was their claim that the suit property was legally acquired for valuable consideration by Joseck Macharia Kimani and Gichari Thuku by way of purchase, vide the sale agreement dated 27th July 1977, and the acknowledgement of the receipt of the balance of the purchase price dated 10th



- February 1982, and therefore the suit land was not available property for distribution as part of the estate of Daudi Kirunga Muchiri, nor Cecilia Wanjiku Kirunga.
10. The Plaintiffs also averred that after the death of Daudi Kirunga Muchiri, Cecilia Wanjiku Kirunga his wife filed for Letters of Administration and included the suit land as one of the assets for Daudi Kirunga Muchiri available for distribution. Therefore, Cecilia Wanjiku Kirunga acquired the suit property either through fraud or mistake by deliberate concealment of material facts during the Succession Cause, and thus she illegally got registered as the owner of the suit property, which suit land had legally been sold to Joseck Macharia Kimani and Gichari Thuku(now deceased).
 11. The Plaintiffs thus prayed for cancellation of the Certificate of title issued to the Defendant herein in 2022, and a declaration that the said land was legally purchased by the two purchasers(Macharia Kimani a& Gichari Thuku), or has been acquired by the Plaintiffs through adverse possession.
 12. The suit is vehemently opposed by the Defendant herein Stephen Maina Muchiri vide his Statement of Defence dated 4th April 2024. He averred that the suit property was initially owned by his father, the late Daudi Kirunga Muchiri, who died in 1977 at Muranga. He denied that his father was related to Gichari Thuku nor Joseck Macharia Kimani(both deceased).
 13. Further, the Defendant averred that upon the death of his father in mysterious circumstances while he was on a visit to Githambo village Murang'a in 1977, his mother Cecilia Wanjiku Kirunga acquired the suit land through transmission vide Nakuru HCC Succession Cause No. 154 of 1989(Estate of Daudi Kirunga Muchiri(deceased). Further, that upon the demise of his mother Cecilia Wanjiku Kirunga, the Defendant acquired the suit land through transmission vide Nakuru CMCC Succession Cause No. E527 of 2021, and he was issued with the title deed on 17th February 2022.
 14. The Defendant denied that his father sold the suit land to Joseck Macharia Kimani and Gichari Thuku, as alleged by the Plaintiffs and did put them to strict proof thereof.
 15. Further, he claimed if there was any agreement for purchase of the suit land, the same was acquired fraudulently and illegally, and he particularized the said fraud in paragraph 25 of his Defence.
Therefore, the Defendant prayed for dismissal of the Plaintiffs suit with costs to himself.
 16. After the determination of a Preliminary Objection raised by the Defendant and after Pre- trial proceedings, the matter proceeded for hearing via viva voce evidence wherein the Plaintiffs gave evidence for themselves and called two more witnesses. The Defendant gave evidence for himself and did not call any witness.

Plaintiffs' Case

17. PW1 Grace Wanjiru Gichari, the 1st Plaintiff adopted her witness Statement dated 18th November 2023 as her evidence in chief, and further averred that the suit land was allocated to Daudi Kirunga Muchiri in 1960s, but the said Daudi Kirunga Muchiri lived in Nakuru then. However, the said Daudi Kirunga sold the suit land to her husband Gichari Thuku, and Joseck Macharia Kimani in 1977.
18. She also testified that her husband Gichari Thuku and Joseck Macharia Kimani took possession of the suit and continued to use and till it until their demise. Further, that the two purchasers planted tea bushes on the suit land, and that their families have been using the suit land for over 47 years, from the time of the purchase of the suit property. It was her further evidence that her family members who have been using the suit land have been delivering their tea leaves to Githambo Tea factory using their respective tea delivery numbers, and that the Defendant has never used, occupied nor taken possession of the suit land.



19. PW2 Peter Muchiri Gakuru the 2nd Plaintiff who is the legal administrator of the estate of Joseck Kimani Macharia vide a Grant dated 28th June 2002, testified that he was born and brought up at Githambo area, and that his family has been utilizing their portion of the suit land of 3.9 acres from the time of purchase. Further, that their family's portion of land has mature tea bushes and their family of 10 members has been in possession of the said portion of land, and they have been picking tea leaves thereon, and have been delivering the tea proceeds at Githambo Tea factory. It was his further evidence that the family of Joseck Macharia Kimani utilizes 3.9 acres to date and the family of Gichari Thuku utilized 3.0 acres from 1977 to date, and nobody claimed the said land from the two families until 2022, when the Defendant acquired title to it, and 2023, when the Defendant claimed ownership of the suit land, and they were issued with Notices to vacate.
20. PW3 Josphat Kuria Maina from Githambo area testified that he is well aware of the suit property, and he also knows the Plaintiffs herein. Further, he adopted his Witness Statement dated 18th November 2023, as his evidence in chief, and also testified that he was employed by Macharia Kimani in 1973 at Githambo. Further, that on 27th July 1977, Macharia Kimani approached him together with the other employees to be his witnesses in the sale transaction between Macharia Kimani, Gichari Thuku and Daudi Kirunga Muchiri, who was the vendor of the suit land, and Macharia and Gichari were the purchasers.
21. It was his evidence that after the discussion and agreement, he was tasked to write down the sale agreement, which he did as captured in the exhibit produced in court. He testified that the suit land was 6.9 acres owned by Daudi Kirunga Muchiri and the said Daudi sold 3.9 acres to Macharia Kimani and 3.0 acres to Gichari Thuku, for ksh.4500/= and 3600/= respectively.
22. It was his evidence that Macharia Kimani paid Kshs.2600/= on 27th July 1977, and the balance was 1900/= while Gichari Thuku paid 3400/= and the balance was Ksh.200/=. Further that on 28th July 1977, Macharia Kimani paid a further Kshs.1600/=:, and the balance was 300/=:, which was to be paid when the sale was finalized. He also testified that upon the death of Daudi Kirunga Muchiri, on 6th August 1977, his first born son John Mwangi received the balance of ksh 200/=:, from Gichari Thuku and the said receipt was acknowledged by John Mwangi vide an agreement dated 10th February 1982.
23. PW4 Marion Wambui Gachaga also adopted her Witness Statement dated 18th November 2023, as her evidence in chief, and further testified that she is a daughter in law to Joseck Macharia Kimani, since she was married to his son Samuel Gachaga Macharia, and they live in Githambo village.
24. It was her further evidence that she first met Daudi Kirunga Muchiri in 1972, when he visited Githambo area from Nakuru, and during this visit, he sold land parcel No. Loc.8/Matharite/313, to his cousin Gichari Thuku. she also testified that later, the said Daudi Kirunga Muchiri also visited to Githambo again in 1977, from Nakuru and was hosted by Joseck Macharia Kimani at his home, and she was the one doing the hospitality duties. Thereafter, the late Daudi Kirunga Muchiri sold the remaining portion of his land, being Loc 8/ Gatara/412, to Joseck Macharia Kimani and Gichari Thuku.
25. It was her testimony that she was present on 27th and 28th July 1977 when her father in law Joseck Macharia Kimani hosted the late Daudi Kirunga, and the two agreed on the sale and purchase of the suit land wherein Joseck Macharia purchased 3.9 acres and Gichari Thuku purchased 3.0 acres.
26. Further, she testified that the sale agreement was written by Josphat Maina (PW3,) and that later Daudi Kirunga Muchiri, died so soon after the sale transaction, and he was buried at Githambo area. It was her further testimony that the first son of Daudi Kirunga, one John Mwangi Kirunga tried to transfer



the suit land to Joseck Macharia Kimani and Gichari Thuku, by filing a Succession Cause at Thika Law Courts, but the said John Mwangi died before completing the process.

27. Further, that Joseck Macharia and Gichari Thuku planted tea bushes on the suit land in 1982, and their families have been using their respective portion of land to date, and do picks and delivers her tea leaves to Githambo Tea Factory. It was his further testimony that the family of Joseck Macharia Kimani and Gichari Thuku, have owned, occupied and have been in possession and use of their respective portions of the suit land for over 46 years from 1977 to date, and no family member of Daudi Kurunga Muchiri from Nakuru has ever lived on the suit land or has ever claimed the said land.

Defendant's Case

28. DW1 Stephen Maina Muchiri, from Nakuru County adopted his Witness Statement dated 4th April 2024, as his evidence in chief. He also produced his bundle of documents as D.Exhibits 1 – 26.
29. It was his further evidence that the suit land is owned by his late father Daudi Kirunga Muchiri, who died under mysterious circumstances in 1977 at Muranga after he was summoned by Joseck Macharia Kimani and Gichari Thuku to Githambo village through a certain woman. It was his testimony that even after their father died, the two men did not inform the family of Daudi Kirunga Muchiri, who were based in Nakuru about his death, and they hurried planned for his burial the next day.
30. He denied that the two gentlemen(Macharia & Gichari), purchased the suit land from their father, and he confirmed that his mother Cecilia Wanjiku Kirunga, acquired the suit land through transmission vide a Succession Cause No. 154 of 1989, which was filed at Nakuru High Court. He also testified that when his mother died, he also acquired the suit land through transmission, vide Nakuru CMC Succession Cause No. E527 OF 2021. Therefore, it was his testimony that he legally owns the suit land.
31. It was his further testimony that Joseck Macharia Kimani and Gichari Thuku did not purchase the suit land from his father Daudi Kirunga Muchiri. He also denied that the Plaintiffs have not been in possession and use of the suit land. Further, that his brother John Mwangi was in possession and use of the suit land until 2011, when he passed on. The Defendant alleged that the said John Mwangi (deceased) attempted to sell the suit property to the Plaintiffs' forefathers which sale did not go through, and that the said John Mwangi, had no capacity to sell the suit land as their mother Cecilia Wanjiku Kirunga was the legal administrator of their father's estate.
32. It was his further evidence that the Plaintiffs never claimed the suit land during the lifetime of his mother Cecilia Wanjiku Kirunga ,and that if John Mwangi (deceased) received any money for the sale of the suit land, then he did so illegally since he was not the administrator of the estate of their father, and had no capacity to do son. He urged the court to dismiss the Plaintiffs' case.
33. Thereafter, parties filed their respective written submissions.
- The Plaintiffs filed their written submissions dated 14th February 2025, through Kimani, Kiarie & Associates Advocates. After summarizing the evidence adduced by the witnesses, the Plaintiffs set out five issues for determination. They urged the court to allow their claim, and dismiss the Defendant's case.
34. On his part, the Defendant filed his written submissions dated 15th February 2025 through Ouma Munjal & Co. Advocates, and also summarized the evidence adduced by the parties and set also out various issues. The Defendant relied on various decided cases, and urged the court to dismiss the instant suit with costs to himself.



35. The court has carefully considered the available evidence, the exhibits produced, the rival written submissions, the cited authorities and the relevant provisions of law and finds the issues for determination are; -
- i. Whether the Plaintiffs have proved that the late Joseck Macharia Kimani and Gichari Thuku legally purchased the suit property Loc.8/Gatara/412, from the late Daudi Kirunga Muchiri.
 - ii. In the alternative, whether the Plaintiffs have proved on the required standard that they have acquired the suit property Loc 8/ Garara/ 412, by virtue of adverse possession.
 - iii. Are the Plaintiffs legally on the suit property or they are trespassers?
 - iv. Are the Plaintiffs entitled to the Orders sought in their Plaint?
 - v. Who should bear the costs of the suit?

i) whether the Plaintiff have proved that the late Joseck Macharia Kimani and Gichari Thuku legally purchased the suit property, Loc 8/ Gatara/412, from the late Daudi Kirunga Muchiri

36. From the available evidence, the suit property herein is Loc 8/ Gatara/412, which is registered in the name of Stephen Maina Muchiri, the Defendant herein as from 17th February 2022, through transmission. The said registration is under The Land Registration Act of 2012, and by dint of section 24 of the said Act, the Defendant is deemed to the absolute and indefeasible proprietor, with all rights and privileges appurtenant thereto. See section 24(a) of LRA, provides; Subject to this Act—

“a. The registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto;”

37. Further, by dint of section 25 of the same Act, the rights of the Defendant cannot be defeated except as provided by the Act or law. Further, section 26(1)(a&b) of the said Act , provides as follows

“(1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—

- (a)) on the ground of fraud or misrepresentation to which the person is proved to be a party; or
- (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”

38. It is evident that even though the Certificate of registration is a prima facie evidence of the proprietorship and/ or ownership of the property in issue, such registration can be cancelled and / or challenged if the said registration was obtained through fraud, misrepresentation, irregularly, unprocedurally or through corrupt scheme.

39. Further, Section 7 of the Land Act, provides the various methods of acquisition of titles, and transmission is one of them, and it is evident that the Defendant herein acquired this title deed through



transmission, which is one of the methods of acquisition of land. Further, land can be acquired through transfer, after purchase, or prescription, which is by operation of law, which method is also known as adverse possession.

40. From the available evidence, it is evident that the suit land was initially registered in the name of Daudi Kirunga Muchiri, who was the father to the Defendant herein, and who died in 1977, and was buried at Githambo village in Muranga, though he lived with his family in Nakuru, as from the 1950s.
41. Further, it is evident that the suit land was transmitted to Cecilian Wanjiku Kirunga in 1989, vide a Succession Cause No. 154 of 1989, which had been filed in Nakuru High Court. Later, the said Cecilian Wanjiku Muchiri died in 2008, and the Defendant herein filed a Succession Cause No. Nakuru CMC E527 OF 2021, in respect of her estate, and he acquired the suit land Loc 8 Gatara/ 412, through transmission, vide the Certificate of Confirmation of Grant dated 13th October 2021. However, the Plaintiffs have alleged that this suit property was purchased by Joseck Macharia Kimani AND Gichari Thuku in 1977, and was not available for distribution either as part of the estate of Daudi Kirunga Muchiri(deceased) and/ OR Cecilian Wanjiku Kirunga(Deceased), and therefore, the registration of the suit land in favour of the Defendant is illegal, irregular or unprocedural, having been acquired through misrepresentation of material facts or non- disclosure that the suit land had already been sold to third parties.
42. The Plaintiffs claim is based on the allegation that the suit land was purchased by Joseck Macharia Kimani and Gichari Thuku, and therefore, it belongs to their estates and could not be passed over to the defendant through succession. The Plaintiffs also alleged that they have been in occupation and utilisation of the suit land together with other beneficiaries of the two patriarchs since 1977, when the suit land was purchased by the two.
43. The Defendant has denied that his father Daudi Kirunga Muchiri, ever sold the suit land to the two Joseck Machari and Gichari. He also denied that the Joseck and Gichari were related to his father, and that they have been utilising the said land from 1977.
44. The Plaintiffs are the ones who have alleged, and it is trite that he who alleges must prove ,as provided by section 107 of the Evidence Act, which provides;-
 - “(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
 - (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”
45. The Plaintiffs being the ones who have alleged have a duty to call sufficient evidence and prove their case on the required standard of balance of probabilities. See the case of Anne Wambui Nderitu vs Joseph Kiprono Ropkoi & another [2005]1 EA 334, held that;-
 - “As a general proposition under section 107(1) of the Evidence Act, Cap 80, the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. There is however the evidential burden that is case upon any party, the burden of proving any particular fact which he desires the court to believe in its existence which is captured in sections 109 and 112 of the Act.”
46. In support of their claim, the Plaintiffs produced two sale agreements written in Kikuyu language, and which were translated to English, allegedly dated 27th July 1977. As per the said sale agreements, the



- said Daudi Kirunga Muchiri(deceased) is alleged to have sold his land parcel No. 412, of approx. 6.9 acres to Gichari Wa Thuku, and Macharia Wa Kimani, and Gichari was to pay ksh .3600/= whereas Macharia was to pay ksh. 4500/=, as the purchase price.
47. Further, the sale agreement shows that Gichari Thuku paid ksh. 3400/= on 27th July 1977, and the balance was ksh. 200/= , whereas Macharia paid ksh. 2600/=, and the balance was ksh. 1900/=. However, on 28th July 1977, Macharia is alleged to have paid ksh.1600/=:, and therefore, the balance was ksh. 300/= .
48. From the above sale agreement, the sale was not completed on 27th July 1977, and on 28th July 1977, because the full purchase price was not paid. Macharia had a balance of ksh. 300/= and Gichari had a balance of ksh.200/=. It is not clear whether the alleged purchasers(Joseck and Gichari), had taken possession of the suit land, and/ or whether they were in occupation of the said land at the time of purchase.
49. Further, from the available evidence, the alleged vendor Daudi Kirunga Muchiri died on 6th August 1977, which death occurred less than 14 days after the alleged sale transaction. It is clear that at the time of the said death of Daudi Kirunga, the purchasers had not finished paying the purchase price, and this court cannot hold and finds that the said sale transaction was complete, since for a purchaser to claim that he has acquired a purchased land, the full purchase price must have been paid.
50. This court had held and found in the case of Kimani v Njeri & 3 others (Environment & Land Case 10 of 2022) [2023] KEELC 17771 (KLR) (8 June 2023) (Judgment) as follows;
- “There is nowhere in the law that a Sale Agreement can be taken as proof of ownership unless parties have given effect to the intentions contained in the agreement. Example being where the purchaser has paid the consideration, completion documents have been availed and the transfer documents dully executed, the intentions of parties to confer ownership can be inferred. Herein, the Plaintiff failed on a balance of probability to demonstrate his ownership over the suit property.”
51. Equally in this case, the court finds and holds that even if the Plaintiffs produced a sale agreement dated 27th July 1977, that sale agreement was an intention, and did not confer ownership, since the full purchase price was not paid, and the completion documents were never exchanged.
52. The Plaintiffs produced another sale agreement this time between the alleged purchasers and one John Mwangi, the elder son of the late Daudi Kirunga Muchiri. This sale agreement is dated 10th February 1982, which is about 5 years after the death of Daudi Kirunga Muchiri. In this agreement, the said John Mwangi is alleged to have received ksh 200/= as the final payment for the purchase price which was owing from Gichari Thuku. There is no evidence whether Macharia Kimani also paid his balance of ksh. 300/=. What is clear is that at the time of the death of Daudi Kirunga Muchiri, the full purchase price had not been paid.
53. Though John Mwangi, the son of the late Daudi Kirunga was allegedly paid ksh. 200/= on 10th February 1982, there was no evidence that the said John Mwangi, had taken out Letters of Administration over the estate of his father(Daudi Kirunga). Although the Plaintiffs produced a Petition for Letters of Administration over the estate of Daudi Kirunga, by which Petition had been filed by the said John Mwangi, the said Letters were never issued, as it was alleged that John Mwangi died before the process of acquiring the letters of administration could be completed.
54. Therefore, even if the Plaintiffs alleged that they paid the balance of the purchase price to John Mwangi, the son of Daudi Kirunga, he was not the administrator of his father’s estate, and he could not transact



- on behalf of the said estate. This court finds and holds that the Plaintiffs cannot claim that Macharia Kimani and Gichari Thuku paid the balance of the purchase price to John Mwangi, the son of the late Daudi Kirunga, and thus the sale was complete. Furthermore, there was no evidence adduced to show that Macharia Kimani paid his balance of ksh.300/=.
55. Even if John Mwangi received ksh. 200/=, he had no capacity to receive the said money on behalf of the estate of Daudi Kirunga. See the case of in Veronica Njoki Wakagoto (Deceased) (2013)eKLR, where the court held that:
- “The effect of [section 45]...is that the property of a dead person cannot be lawfully dealt with by anybody unless such a person is authorised to do so by the Law. Such authority emanates from a grant of representation and any person who handles estate property without authority is guilty of intermeddling. The law takes a very serious view of intermeddling and makes it a criminal offence.”
56. This sale of the suit land was over an agriculture land, and the requirements of Section 6 of the [Land Control Act](#), were necessary. No evidence was adduced to confirm that the Land Control Board’s Consent was sought and obtained. This section 6(1) of the [Land Control Act](#) provides that certain transactions involving agricultural land within a land control area are void unless the Land Control Board (LCB) grants its consent. This includes the sale, transfer, lease, mortgage, exchange, partition, or other disposal of or dealing with any agricultural land, as well as the sub- division of such land into two or more parcels for separate titles.
57. Without the Land Control Board Consent, the said sale of agricultural land was null and void, and the said transaction cannot be enforced. The alleged purchasers were only entitled for claim of refund of the purchaser price. See the case of Macharia Mwangi Maina & 87 others v Davidson Mwangi Kagiri (2014) eklr, where the Court of Appeal held that: -
- “that the suit property being agricultural land was subject to the [Land Control Act](#), Chapter 302, Laws of Kenya; Section 6 (1) of the said [Land Control Act](#) required the Land Control Board consent to be obtained in respect of the sale transactions; the failure of such consent made the said agreements void and unenforceable against the respondent.”
58. Even if the court is to find that the transaction was valid, the claim is based on a contract for sale of land, and the Vendor died before he could complete the transaction, and or transfer the land to the alleged purchasers. A claim for land cannot be brought after the expiry of 12 years. See 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.”
59. It is evident that Cecilia Wanjiku Muchiri became the legal administrator of the estate of Daudi Kirunga Muchiri, in 1989, vide Succession Cause No 154 of 1989, filed in Nakuru High Court. There is no evidence that the alleged purchasers ever pursued their claim for purchase of the suit land from the estate of Daudi Kirunga Muchiri, during the lifetime of Cecilia Wanjiku Kirunga. Therefore, the claim by the Plaintiffs which is hinged on the sale agreement of 1977, has been caught by limitation of actions, and thus barred.
60. What is not in doubt is that even if the alleged purchasers, Macharia Kimani and Gichari Thuku, had started the process of purchase of the suit land from the Late Daudi Kirunga, the said Daudi died



before the full purchase price was paid, and thus the sale was not complete, and the purchasers never followed up, with his estate to pay the balance of the purchase price.

61. Consequently, this court finds and holds that there is no evidence that the late Joseck Macharia Kimani and the late Gichari Thuku entered into a valid sale transaction with the late Daudi Kirunga Muchiri, and that they legally purchased the suit land from the said Daudi Kirunga Muchiri, since the full purchase price was never paid.
62. The Plaintiffs too have laid a claim over the suit land through prescription, or adverse possession, and therefore the Defendant could not have acquired a good title over the suit land in 2022, because by the time of his registration, the Plaintiffs and the other beneficiaries of Joseck Macharia and Gichari Thuku(their estates) had been in exclusive and continuous possession of the suit land for more than 12 years.
63. As pointed out by the court, Section 7 of the Land Act, identifies prescription as one method of acquiring ownership to land. This suit land was registered in the name of Daudi Kirunga Muchiri in 1960, under the Registered Land Act regime(now repealed). Under the said Act, section 30(g), it provides prescription is one of the overriding interest , which overriding interests can can entitle a person who has been in possession and occupation of a suit land to acquire title to such land. See the case of *Mtana Lewa v Kahindi Ngala Mwangandi* [2015] KECA 532 (KLR)

“It was contended on the strength of section 7(d) of the Land Act, that Parliament had recognized prescription as one of the methods by which title to land may be acquired, and that it had not been suggested by the appellant that the Land Act was unconstitutional.”

64. In Kenya, adverse possession allows a person to claim ownership of land that he/she has occupied without permission from the rightful owner for a period of 12 years. This is governed by the Limitation of Actions Act (Cap 22) Laws of Kenya. The person claiming such ownership must have been in continuous, open, and exclusive possession of the land for that 12-year period. See the case of *Kasuve v Mwaani Investments Ltd & 4 Others* [2004] eKLR 184, where it was held that:

“In order to be entitled to land by adverse possession, the claimant must prove that he has been in exclusive possession of land openly and as of right without interruption for a period of 12 years after dispossession the owner or by discontinuation by the owner of his own violation.”

65. The Plaintiffs have alleged that they have occupied the suit land since 1977, when their Joseck Macharia and Gichari Thuku, their patriarchs purchased the said land from the original owner, Daudi Kirunga Muchiri. The Defendant on his part has denied that the Plaintiffs are in possession and occupation of the suit land, and he denied that they have acquired the said land through prescriptive rights.
66. The suit herein was prompted by the Notice to vacate which was served upon the Plaintiffs by the Defendant’s - R.M. Njiraini upon him obtaining registration of the suit land through transmission. It is evident that said Notice to Vacate was issued upon the Plaintiffs because they are in occupation and possession of the suit land. If they were not in possession, such Notice to vacate could not have been issued to them.
67. The Plaintiffs alleged that Joseck Macharia Kimani and Gichari Thuku upon purchase of the suit land, they took possession of the same, made use of it and planted tea bushes in 1982. Further, they testified that the Plaintiffs and other beneficiaries have been picking tea and delivering it at Githambo Tea Factory. The Plaintiffs gave various delivery numbers as exhibits in court. Though the Defendant denied that the said delivery numbers are related to the suit land, he never produced any delivery



number over the suit land, given that the land in question has tea bushes, which are not over grown, a sign that picking of these tea leaves do occur occasionally.

68. From the photographic evidence produced in court, there is evidence of tea bushes on the suit land, and the Defendant did not claim ownership of the same. There was also no evidence that his mother, the late Cecilia Wanjiku Kirunga, ever visited the suit land, even after she acquired registration and title of the said land through transmission. Therefore, this court would not hesitate to find and hold that the Plaintiffs are in possession, occupation and use of the suit land, where they have planted tea bushes, and they pick the tea leaves from the said tea bushes, and deliver these tea leaves to Githambo Tea Factory.

69. However, occupation alone of this suit land is not sufficient to prove ownership through prescriptive rights. There are certain conditions that a claimant for ownership of land through prescriptive rights need to meet. See the case of in the case *Mbira v. Gachuhi* (2002) 1 EALR 137: where the Court stated as follows;

“... a person who seeks to acquire title to land by the method of adverse possession for the applicable statutory period, must prove non permissive or non-consensual actual, open, notorious, exclusive and adverse use by him or those under whom he claims for the statutorily prescribed period without interruption...”

70. The doctrine of adverse possession in Kenya is founded under *Limitation of Actions Act*, CAP 22 Laws of Kenya. Section 7 of the said Act places a bar on actions to recover land after 12 years from the date on which the right accrued. Further section 13 of the *Limitation of Actions Act*, provides that adverse possession is the exception to this limitation:

- i. A right of action to recover land does not unless the land is in the possession of some person in whose favour the period of limitation can run, where under Sections 9, 10, 11, and 12 a right of action to recover land accrues on a certain date and no person is in adverse on that date, a right of action does not accrue unless and until some person takes adverse possession of the land.
- ii. . 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.
- ii. For the purposes of this section, receipt of rent under a lease by a person wrongfully claiming, in accordance with Section 12(3), the land in reversion is taken to be adverse possession of the land”.

71. In the case of *Wilson Kazungu Katana & 101 others v Salim Abdalla Bakshwein & another* [2015] eKLR, the Court stated as follows:

“From all these provisions, what amounts to adverse possession? 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 in twelve years having dispossessed the owner or there having discontinuance of possession by the owner



72. On the other hand, Section 38 of the said Act allows a claimant to apply to Court for orders of adverse possession and provides that:

“Where a person claims to have become entitled by adverse possession to land registered under any of the Acts cited in section 37 of this Act, or land comprised in a lease registered under any of those Acts, he may apply to the High Court for an order that he be registered as the proprietor of the land or lease in place of the person then registered as proprietor of the land.”

73. The Plaintiffs have laid their claim on the fact that they have been in long and exclusive occupation and possession of the suit land. They claimed that they first entered the suit land through purchase, when Joseck Macharia and Gichari Thuku, purchased the suit land from Daudi Kirunga Muchiri, the original owner. However, this court held that the said transaction was not completed, did not meet the threshold of a legal sale and purchase of land, therefore the sale agreement in issue was not enforceable and could not pass a title to the alleged vendors.

74. After the alleged original purchasers passed on, the Plaintiffs and the other beneficiaries continued to remain on the suit land. However, Cecilia Wanjiku Muchiri acquired title to of suit land in 1989, but did not do anything to regain possession and occupation of the suit land. The *Limitation of Actions Act* bars any action to land after expiry of 12 years. From 1989, twelve years expired in 2001, and there is no evidence that Cecilia Wanjiku Kirunga did anything to take back the suit from the Plaintiffs, after she acquired the registration of the same through transmission.

75. The Court of Appeal in Mombasa, in the case of Mombasa Teachers Co-operative Savings & Credit Society Limited v Robert Muhambi Katana & 15 others [2018] eKLR, held that:-

“Likewise, it is settled that a person seeking to acquire title to land by of adverse possession must prove non permissive or non-consensual, actual open, notorious, exclusive and adverse use/occupation of the land in question for an uninterrupted period of 12 years as espoused in the Latin maxim, nec vi nec clam nec precario. See Jandu vs. Kirplal & Another (1975) EA 225. In other words, a party relying on the doctrine bears the burden of demonstrating that the title holder has lost his/her right to the land either by being dispossessed of it or having discontinued his possession of it for the aforementioned statutory period. See this Court’s decision in Wambugu vs. Njuguna [1983] KLR 173.”

76. It is clear that the Plaintiffs occupation of the suit land was without the permission of the owners. The next issue that the court needs to determine is whether the Plaintiffs possession has been continuous for the requisite period. Section 7 of the *Limitation of Actions Act* sets the time limit for adverse possession at 12 years. This period of 12 years is counted from the date that possession becomes adverse to the title, and interests of the registered owner, the general rule being that time cannot run in favour of a permitted occupier of land.

77. Time herein began to run when Cecilia Wanjiku Kirunga became the registered owner in 1989, and her title became adverse in favour of the Plaintiffs in 2001. Therefore, by the time of her death, her title was already extinguished, and the said land was not available for distribution. Thus the Defendant did not acquire a good title, since the said title had been extinguished in favour of the Plaintiffs by the time he filed the Succession Cause in Nakuru.

78. 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/her title for a period 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 nor under the licence of the owner. It must be adequate in continuity, in publicity and in extent to show that possession is adverse to the title owner. Though Ceciliah Wanjiku Kirunga, was the registered owner of the suit land from 1989, she did not do anything to assert her right.

79. Further, in a claim for adverse possession the person claiming such right needs to demonstrate that his/her occupation of the land has dispossessed the registered owner of the land. The burden of proving this fact lies with the Applicant, and in this case the Plaintiffs herein. Further, there must be facts showing a clear intention to hold adversely, and under a claim of right. In the case of *Gabriel Mbui vs Mukindia Maranya*[1993]eklr the court held that:-

“It is well-known in our law, that the adverse character of the intruder’s possession of another’s land must be proved as a clear fact, and cannot be assumed as a matter of law from mere exclusive possession, no matter how long it is continued. From the clearly proved facts, the Court is to draw legal inferences as to whether there was or there was no adverse possession. The inference one way or the other is a legal one. This means that the acts of possession are factual data from which a legal conclusion may or may not arise as to whether they amount to adverse possession. In the words of Gicheru, JA:

‘In deciding the issue of adverse possession, the primary function of a court is to draw legal inferences from proved facts. Such inferences are clearly matters of law. Thus, whereas possession is a matter of fact, the question whether that possession is adverse or not is matter of legal conclusion to be drawn from the findings of acts’ *Kweyu v Omuto*, CA Civ Appeal 8 of 1990 (as yet unreported).”

80. The Plaintiffs had a duty to prove that their possession and occupation of the land is not only adverse to the rights of the registered owner, but also that their possession and occupation is hostile and to the exclusion of the said owner. Again in the case of *Gabriel Mbui v Mukindia Maranya* [Supra] the Court stated as follows;

“The burden of proving title by adverse possession rests upon the person asserting it. This is to say the burden of proof is upon the person setting up and seeking to prove title by adverse possession (*Mamuji v Dar* [1935] 2 EA CA 111, *Bwana v Ibrahim* (1948) 15 EACA 7; and *Forbes, JA, in Abdulkarim and another v Member for Lands and Mines and another 1* [1958] EA 436). He proves it on the usual standard of proof in civil cases namely, on a balance of probability. What does he prove? He proves three adequacies: continuity, publicity, and extent. For to prove title by adverse possession, it is not sufficient to show that some acts of adverse possession have been committed: the possession must be adequate in continuity, in publicity and in extent, to show that it is adverse to the rightful, paper title owner.”

81. In the case of *James Maina Kinya vs GERAL KWENDAKA* (2018) eKLR, the Court held that:-

“The fact that the Plaintiff has extensively developed the suit property is a demonstration of animus possidendi, (intention to possess) to the exclusion of the defendant. He is also using or occupying the land in contrast to the title (hostile) usage to the right of the title own (Defendant). The open continuous and hostile occupation has not been broken from 1983, a period in excess of 12 years. It has been admitted by the Defendant that the Plaintiff collects rent from the property and has excluded him from possession. This demonstrates exclusive



control of the suit property by the Plaintiff which is an essential ingredient in establishing adverse possession.”

82. The Plaintiffs herein have demonstrated that they have been in exclusive occupation and possession of the suit land for a long time, which possession dispossessed the true owner, and was hostile to her. See the case of Wambugu vs Njuguna[1983] eklr, where the court held;

Adverse possession contemplates two concepts: possession and discontinuance of possession...the proper way of assessing proof of adverse possession would be whether or not the title holder has been dispossessed or has discontinued his possession for the statutory period, and not whether or not the claimant has proved that he or she has been in possession for the requisite number of years”.

Therefore, the Plaintiffs acquired the suit land by prescriptive rights as from 2001, and the suit land was not available for distribution as the property and/ or asset of the estate of Cecilia Wanjiku Kirunga.

83. Though the Defendant is in possession of the of title deed, the same is impeachable, as the suit land has been acquired by the estates of Joseck Macharia Kimani and Gichari Thuku from 2001 through prescriptive rights, and his registration was irregular and thus the same should be cancelled. The law on cancellation of title is hinged on the provisions of Section 80 of the Land Registration Act which provides; -

“Subject to subsection the Court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.”

84. Having found that the Plaintiffs are entitled to the suit land by doctrine of adverse possession, then this court finds and holds that they are legally on the suit land and are entitled to the prayer sought in the alternative prayer. The Defendant got registered as the owner of the suit land, long after the estates of Joseck Macharia and Gichari Thuku had acquired the suit land through adverse possession, as the title for Cecilia Wanjiku Kirunga had been extinguished through prescriptive right, due to long occupation of the Plaintiffs and other beneficiaries of the estates of the two patriarchs.

iii. Who should bear costs of this suit?

85. Ordinarily costs are awarded at the discretion of the court, and are awarded to the successful litigant, unless there are reasons to depart from that norm. This court finds no reasons to depart from such norm, and thus costs of this suit are awarded to the Plaintiffs.

86. Having considered the available evidence, the court finds that the Plaintiffs herein have proved their case on the required standard of balance of probabilities. Consequently, judgement is entered for the Plaintiffs against the Defendant herein in terms of prayers No. 2,3, 4 and 6 of the Plaint dated 22nd November 2023.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAROK THIS 5TH DAY OF JUNE 2025.

L. GACHERU

JUDGE

In the presence of:

Elijah Meyoki – Court Assistant



Mr Gatheru H/B for Mr Kimani for the Plaintiffs.

Mr Ouma for the Defendant.

5th June 2025.

L. GACHERU

JUDGE

