



Harun v Muthomi (Sued as the Legal Representative and Administrator of the Estate of Mugambi Mbururu alias Mugambi M'burugu Deceased) (Environmental and Land Originating Summons 41 of 2019) [2025] KEELC 4424 (KLR) (5 June 2025) (Judgment)

Neutral citation: [2025] KEELC 4424 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 41 OF 2019**

JO MBOYA, J

JUNE 5, 2025

BETWEEN

PHARES KINOTI HARUN PLAINTIFF

AND

LEWIS MUTHOMI (SUED AS THE LEGAL REPRESENTATIVE AND ADMINISTRATOR OF THE ESTATE OF MUGAMBI MBURURU ALIAS MUGAMBI M'BURUGU DECEASED) DEFENDANT

JUDGMENT

1. The Plaintiff approached the court vide Originating Summons [OS] dated 1st August 2019; and which summons was subsequently amended resting with the amended Originating Summons dated 4th November 2024. The reliefs sought at the foot of the amended originating summons are as hereunder:
 - i. Whether the Plaintiff has been in open, exclusive, continuous and uninterrupted occupation of the suit land parcel of land No. Nkuene/Nkumari/716 measuring about 0.9 ha for over 43 years?
 - ii. Whether the Plaintiff has become entitled to the suit land by adverse possession?
 - iii. Whether the Register of the suit land parcel of land No. Nkuene/Nkumari/716 measuring about 0.9 ha should be rectified and the Plaintiff registered as the owner thereof?
 - iv. Whether the Deputy Registrar of this Honourable court should be empowered to sign all the necessary documents to transfer the suit land parcel number Nkuene/Nkumari/176 measuring about 0.9 ha in default of the defendant so signing?
 - v. Whether the Defendant should pay the Plaintiff costs hereof.?



2. The amended Originating Summons [OS] is anchored on various grounds which have been highlighted in the body thereof. Furthermore, the amended originating summons is supported by various affidavits, including the affidavit in support of the original originating summons sworn on the 1st of August 2019; and the various witness statements which were filed by the Plaintiff.
3. Pertinently, the deponent of the supporting affidavit avers that same entered into a sale agreement with one Mugambi Mburugu alia Mugambi M'Mburugu [now deceased], whereupon the deceased sold unto him the suit property, namely; L.R Nkuene/Nkumari/716, measuring 0.9 ha [2 acres]. Moreover, the deponent averred that following the entry into and execution of the sale agreement, the vendor [now deceased] allowed same to enter upon and take possession of the suit property. Further and in any event, the deponent avers that same has remained in occupation of the suit property for a duration in excess of 43 years without any interference, interruption and or disturbance by the vendor [now deceased] and his heirs.
4. The original defendant duly entered an appearance and thereafter filed a Replying affidavit sworn on 3rd of September 2019; and wherein the original defendant disputed that the suit property was sold to and in favour of the Plaintiff. Furthermore, the original defendant also disputed the fact that the Plaintiff had entered upon and occupied the suit property. In any event, it was also averred that the Plaintiff's entry onto the suit property constitutes trespass and thus the Plaintiff has no legitimate claim[s] to the suit property.
5. The originating summons came up for directions before Lady Justice L. Mbugua, Judge; whereupon the parties agreed to canvass and dispose of the originating summons by way of oral submissions. Furthermore, the parties also agreed to file written statements and list and bundle of documents.
6. The Plaintiff's case is premised on the evidence of four [4] witnesses, namely: Phares Kinoti Harun, Cyprian Kirimi M'Twamwari, Muriuki Matiri and M'Itonga Ntiba. Same testified as PW 1, PW 2, PW 3 and PW 4 respectively.
7. It was the testimony of PW 1 [Phares Kinoti Harun] that same is the Plaintiff in respect of the instant matter. Furthermore, the witness averred that by virtue of being the Plaintiff same is therefore conversant with the facts of the matter. Additionally, the witness averred that same has since recorded a witness statement in respect of the instant matter and which statement same sought to adopt and rely on as his evidence in chief.
8. On the other hand, the witness averred that same has equally filed a list and bundle of documents dated 23rd day of October 2019; and which documents the Plaintiff sought to tender and produce as exhibits. Save for the chief's letter at page 48 of the Plaintiff's list and bundle of documents, the rest of the documents were produced as Exhibits P1 – P10 respectively.
9. It was the further testimony of the witness that same entered into and executed a sale agreement with Mugambi Mburugu [now deceased]. Furthermore, the witness averred that the sale agreement was prepared by Rimita advocates [later on Justice Rimita]. However, the witness averred that same was unable to procure and obtain a copy of the sale agreement because when he went to the offices of Rimita advocate, he was informed that the advocate had since become a judge [read, Hon. Justice Rimita] and the copy of the sale agreement was not traceable.
10. The witness further testified that upon purchasing the suit property, same entered upon and took possession. Moreover, the witness averred that same commenced to grow maize and beans on the suit property. Nevertheless, the witness averred that the maize and beans were not doing well on the land. In this regard, the witness testified that same decided to give portions of land to Muriuki Mariri and



- M’Itonga Ntiba to enable them to use the land. However, the witness testified that between the year 1999 to 2000 same attended a tree farming course and was taught about the South African Eucalyptus.
11. Furthermore, the witness testified that thereafter same procured assorted seedlings of eucalyptus trees and proceeded to plant the said trees on the said properties. To this end, the witness testified that same has been in occupation of the suit property since the year 1976.
 12. On cross-examination by learned counsel for the defendant, the witness reiterated that same entered into a sale agreement with Mugambi Mburugu [now deceased] in 1976. Moreover, the witness testified that the sale agreement was reduced into writing. Besides, the witness averred that Mugambi Mburugu was willing to transfer the suit property unto him. However, the witness added that Mugambi Mburugu died shortly after entry into and execution of the sale agreement.
 13. While still under cross-examination, the witness testified that even though he [Witness] never got a title over the suit land same stayed peacefully on the land without any interruption.
 14. The witness further testified that same is aware of one Mugaa Mukiruri who testified as DW 1. In particular, the witness averred that the same Mugaa Mukirura was an uncle to Cyrus Mugambi. Nevertheless, it was the further testimony of the witness that the said Mugaa Mukiruru has since passed on [died].
 15. It was the further testimony of the witness that even though that Mugambi Mburugu [now deceased] was willing to transfer the land before he died, however his family changed their mind after he [witness] assisted the family to get documents in the succession case.
 16. It was the further testimony of the witness that the transfer of the suit property did not happen because the seller [Vendor] died barely two months after the sale. Nevertheless, the witness averred that same has been in occupation and possession of the suit property.
 17. The 2nd witness who testified on behalf of the Plaintiff was Cyprian Kirimi M’Twamwari. Same testified as PW 2.
 18. It was the testimony of the witness that same is conversant with the facts of the case. Furthermore, the witness averred that same has since recorded a witness statement in respect of the matter. To this end, the witness averred that his witness statement contains all the facts. In this regard, the witness statement was thereafter adopted and constituted as the evidence in chief of the witness.
 19. On cross-examination by learned counsel for the Defendant, the witness averred that same was familiar with Mugambi Mburugu. However, the witness averred that he cannot remember when Mugambi Mburugu died. However, the witness averred that same is aware that Mugambi Mburugu sold the land to the Plaintiff. Moreover, the witness added that Mugambi Mburugu was paid the sum of Kshs.10,000 only.
 20. While still under cross-examination, the witness averred that the suit property is planted with trees. Furthermore, the witness testified that the trees were planted by himself [the witness herein].
 21. The 3rd witness who testified on behalf of the Plaintiff was Muriuki Matiri. Same testified as PW 3.
 22. It was the testimony of the witness that same is conversant with the facts of the case. Moreover, the witness averred that same has since recorded a witness statement and which witness statement the Witness has sought to adopt and rely on as his evidence in chief. To this end, the witness statement was duly adopted and constituted as evidence in chief of the witness.



23. On cross-examination by learned counsel for the defendant, the witness averred that same is aware that the Plaintiff purchased [bought] the suit property. However, the witness testified that he does not recall the amount of money that was paid to the vendor.
24. While still under cross-examination, the witness averred that he got to know that the land was sold to the plaintiff because he is a neighbour to the suit property. Furthermore, the witness averred that after the Plaintiff bought the suit property same allowed the witness to use a portion of the suit property. In particular, the witness added that he was also tasked to be taking care of the suit property.
25. The 4th witness who testified on behalf of the Plaintiff was M'Itonga Ntiba. The witness testified as PW 4. It was the testimony of the witness that same has since recorded a witness statement and to this end, the witness sought to adopt and rely on the contents of the witness statement. Instructively, the witness statement was thereafter adopted and constituted as the evidence in chief of the witness.
26. On cross-examination by learned counsel for the defendant, the witness averred that same is aware that the Plaintiff bought the suit property from Mugambi Mbururu [now deceased]. Furthermore, the witness added that the land was bought for Kshs.10,000/=Only. Nevertheless, the witness averred that it was the Plaintiff who told him about the purchase price.
27. While still under cross-examination, the witness testified that same is aware that the Plaintiff bought the suit property because the Plaintiff gave him [witness] a portion of the suit property to use. In addition, the witness added that same is aware that the land is planted with trees. Moreover, the witness averred that he is one of the people who assisted the plaintiff in planting the trees.
28. Even though learned counsel for the Plaintiff had intimated that same would be calling one Mr. David K. Mugambi [chief Kigane location], there is no indication that the said witness ever testified. Furthermore, the record of the Court does not reveal that the Plaintiff formally closed his case.
29. Be that as it may, when the matter came up for directions before me, learned counsel for the Plaintiff intimated to the court that the plaintiff had closed his case. Furthermore, the counsel posited that it was the defendant who was to testify but before the defendant testified same [defendant] passed on. [See the proceedings of 29th January 2025].
30. The defendant's case is premised on the evidence of 2 witnesses namely; Lewis Muthomi and Muga Karuru. Same testified as DW 2 and DW 1, respectively.
31. DW 1 [Mugaa Karuru] testified that same is a witness on behalf of the defendant. Furthermore, the witness averred that same is conversant with the facts of the case. In addition, the witness averred that same had also recorded a witness statement dated 23rd October 2019 and which statement the witness sought to adopt as his evidence in chief. To this end, the witness statement dated 23/10/2019 was adopted and constituted as the evidence in chief of the witness.
32. On cross-examination by learned counsel for the Plaintiff, the witness averred that same is familiar with the Plaintiff herein. In particular, the witness averred that the Plaintiff and himself come from the same area. Nevertheless, the witness testified that same is not aware whether the Plaintiff bought the land. Furthermore, the witness stated that he does not know how and when the Plaintiff entered the land.
33. While still under cross-examination, the witness testified that same does not recall when the Plaintiff entered the land. However, it was the testimony of the witness that the plaintiff entered the land not many years ago.
34. It was the further testimony of the witness that same is aware that Mugambi Mburugu started falling sick in the year 1970. Moreover, the witness averred that Mugambi Mburugu had his legs amputated.



35. While still under cross-examination, the witness averred that same is aware that there were trees planted on the suit property. However, he clarified that the trees were planted by him. Nevertheless, it was the testimony of the witness that the suit land is approximately 15 kilometres from his home.
36. While still under cross-examination, the witness testified that even though same [Witness] has spoken about the trees he has not brought any evidence to court pertaining the trees.
37. On the other hand, the witness testified that the Plaintiff entered onto the suit land because Cyrus was disabled.
38. The 2nd witness who testified on behalf of the defendant was Lewis Muthomi. Same testified as DW 2.
39. It was the testimony of witness DW 2 that same is a son of the original defendant [now deceased]. Moreover, the witness averred that upon the death of the defendant same [witness] took out a grant of letters of administration. In this regard, the witness averred that same is therefore the duly constituted legal administrator of the estate of the defendant.
40. It was the further testimony of the witness that by virtue of being a legal representative of the deceased, same is therefore conversant with the facts of the case. Furthermore, the witness added that same has since recorded a witness statement dated 10/2/2025 and which witness statement the witness sought to adopt and rely on as his evidence in chief.
41. To this end, the witness statement under reference was duly constituted and adopted as the evidence in chief of the witness.
42. Additionally, the witness averred that the original defendant had also filed a witness statement dated the 23rd October 2019 and which witness statement the witness sought to tender before the court. Suffice it to state that the witness statement of Cyrus Guantai was thereafter adopted and constituted as further evidence of the witness.
43. Other than the foregoing, the witness referenced the list and bundle of documents dated 23/10/2019 and thereafter sought to tender and produce the documents as his evidence in chief. Thereafter, an objection was taken to the production of document number 1. In this regard, document number 1 was marked for identification as MFI – D1. However, the rest of the documents were produced and admitted as exhibits 2-4, respectively, on behalf of the defendant.
44. On cross-examination by learned counsel for the Plaintiff, the witness averred that he is a son of Cyrus Guantia Mburugu. Furthermore, the witness averred that Mugambi Mburugu was his grandfather. In addition, the witness averred that Mugambi Mburugu died in 1976.
45. While still under cross-examination, the witness testified that the land in question measures 2 acres. Furthermore, the witness averred that it is them [family of Mugambi Mburugu] who are using the suit land. Nevertheless, the witness testified that there are no houses or structures on the suit property.
46. It was the further testimony of the witness that the land in question is more than 15 kilometres away from their home. Besides, the witness averred that the land is planted with trees. In any event, the witness added that the trees were planted by his [witness] father [now deceased]..
47. On further cross-examination, the witness testified that the land in question borders some other pieces of land and there are neighbours to that land. Nevertheless, the witness testified that he does not know the names of the neighbours who surround the suit property.



48. Additionally, the witness testified that same is aware that the Plaintiff herein entered into the land and cut down trees. However, the witness testified that same did not report the incident of cutting down trees to the police.
49. While still under cross-examination, the witness averred that his grandfather had other children. However, the witness proceeded and stated that the other children of his grandfather are not witnesses before the court.
50. Finally, the witness testified that same had seen the letter produced as Exhibit D4. To this end, the witness averred that the letter in question did not address the issue pertaining to the plaintiff moving out/vacating the suit property. However, the witness clarified that the letter under reference speaks to trespass by the Plaintiff.
51. With the foregoing testimony, the defendant's case was closed.
52. Upon the close [conclusion] of the hearing, the advocates for the parties covenanted to file and exchange written submissions. To this end, the court proceeded to and circumscribed the timelines for filing and exchange of the written submissions.
53. The Plaintiff thereafter filed written submissions dated 24/3/2025 and wherein the Plaintiff has highlighted two [2] salient issues namely: whether the plaintiff has been in occupation and possession of the suit property for more than 12 years; and whether the Plaintiff is entitled to the orders sought on the basis of adverse possession.
54. Though learned counsel for the defendant had been given timelines to file and serve Written submission[s] same [learned counsel] failed to abide by the timelines set by the court. Moreover, the court thereafter granted the learned counsel a final opportunity to file and serve written submissions on or before the 7th April 2025. However, learned counsel for the defendant failed to comply. To this end, the window that had been granted to the defendant stood closed and the matter was reserved for judgment.
55. Having reviewed the pleadings; the evidence tendered [both and documentary]; and upon considering the written submissions filed by the Plaintiff, I come to the conclusion that the determination of the instant matter turns on two [2] key issues namely; whether the Plaintiff has proven and or demonstrated, entry upon, occupation and possession of the suit property or otherwise; and whether the occupation/possession [if at all] meets the threshold for declaration of adverse possession or otherwise.
56. Regarding the first issue, it is imperative to recall and reiterate that the plaintiff [who testified as PW 1] averred that same entered into a land sale agreement with Mugambi Mburugu, now deceased in the year 1976. Furthermore, PW 1 averred that the sale agreement was reduced into writing. Nevertheless, it was posited that a copy of the sale agreement could not be procured and produced before the court because the advocate who crafted the sale agreement had left his chambers and became a judge.
57. Be that as it may, the plaintiff called 3 other witnesses who testified and confirmed that same [witnesses] were privy to and knowledgeable of the purchase of the suit property by the plaintiff. In particular, the plaintiff called PW 2 [Cyprian Kirimi M'Twamwari] who confirmed that it is him who assisted Mugambi Mburugu in procuring the buyer of land. Furthermore, PW 2 also confirmed that same witnessed receipt of the payment of the purchase price to Mugambi Mburugu. Furthermore, the witness averred that at the time of the payment/receipt of the purchase price, Mugaa [DW 2] was also present.



58. Additionally, PW 2 also confirmed that upon purchase of the suit property, the plaintiff ventured forward and planted trees on the suit property. To this end, it was the testimony of PW 2 that the trees planted on the suit property belong to the Plaintiff.
59. Other than PW 2, there is also the evidence of PW 3, namely; Muriuki. Same confirmed that the plaintiff bought the suit property. In addition, the witness testified that he knew that the plaintiff bought the property because the plaintiff allowed him [witness] to use a portion of the land. Moreover, the witness averred that same was also tasked with the duty of taking care of the land.
60. The other witness who was called by the plaintiff was M'Itonga Ntiba. The witness averred that same is aware that the plaintiff bought the land in 1976. In addition, the witness averred that after the plaintiff bought the land, the Plaintiff gave him [witness] a portion of the land to use. Besides, the witness testified that it is him who planted the trees on the suit property. However, the witness testified that he could not recall the year when the trees were planted.
61. Suffice it to state that the witnesses namely; PW 2, PW3 & PW4, were elderly persons in their 70's. In particular, PW 2 was aged 74 years old while PW 4 was aged 76 years old. In this regard, the testimony of the said witness cannot be taken lightly.
62. Moreover, it is worthy to underscore that the testimony of the witness[es], including the testimony of the Plaintiff, were not shaken and or controverted. Despite the cross-examination, the witness under reference remained steadfast and consistent.
63. To my mind, the consistency of the witnesses and coupled with their ages, drives me to the conclusion that same testified about the facts which were well known to them. In any event, the said witnesses averred that same were privy to the fact that it is the plaintiff who planted the trees on the suit property. Moreover, the witnesses were clear in their minds as to the person[s] who planted the trees.
64. On the other hand, the defendant's witnesses did not strike me as being credible; honest and consistent. To start with, PW 2 averred that the purchase price was paid to Mugambi Mburugu in the presence of PW 2 and one Mugaa [DW 1]. However, this evidence was never shaken.
65. Additionally, when DW 1 testified same denied knowledge of the sale of the suit property to the Plaintiff. Nevertheless, the denial by DW 1 was never put to PW 2 or at all.
66. Furthermore, it is not lost on me that DW 1 conceded that the plaintiff had entered upon the suit property. However, the witness, in what appears to be a convenient lie; or evasion did not want to reckon the duration of occupation. Simply put, the witness merely said that the Plaintiff entered onto the suit property but he entered not long ago.
67. Other than the foregoing, it is also important to recall that DW 2 [Lewis Muthomi] conceded that the plaintiff had trespassed onto the land. Furthermore, the witness adverted to Exhibit D4 which was testament to the fact that the plaintiff was the one using the property. For good measure, exhibit D4 could not speak to trespass if the plaintiff was not in occupation and possession of the suit property.
68. To my mind, the witnesses called by the defence were neither honest nor truthful. Furthermore, the said witness[es] did not give consistent testimonies. Instructively, the evidence given by both DW 1 and DW 2 are wrought with internal contradictions and discrepancies. In this regard, I hold the humble view that the witnesses were less than candid.
69. Premised on the foregoing, I come to the conclusion that the plaintiff indeed bought/purchased the suit property from Mugambi Mburugu, [now deceased]. In addition, the plaintiff herein entered upon and took possession of the suit property on the basis of the sale agreement/contract.



70. Moreover, evidence abound that the Plaintiff herein thereafter planted eucalyptus trees on the suit property. The planting of the eucalyptus trees denotes occupation, possession and use. These are the important ingredients [pre-requisites] that demonstrate that the plaintiff has been on the suit property.
71. Before concluding on this issue, I wish to cite and reference the decision in Attorney General & another v Hussein & 3 others (Civil Appeal 100 of 2018) [2025] KECA 1022 (KLR) (5 June 2025) (Judgment) the court stated as hereunder;

The Law of Evidence, in all its complex glory, naturally revolves around two cardinal things: facts and proof. It is these two that combine to form evidence, which the court may or may not accept as showing the merit or otherwise of a party's case. Some facts are however more important than others and it is not just expected but demanded that these facts be proved by the party seeking to rely on them. Section 3 (2) & (3) of the *Evidence Act* provides as follows:

2. A fact is proved when, after considering the matters before it, the court either believes it to exist, or considers its existence so probable that a prudent man ought, in the circumstances of the particular case, to act upon the supposition that it exists.3.A fact is disproved when, after considering the matters before it, the court either believes that it does not exist, or considers its nonexistence so probable that a prudent man ought, in the circumstances of the particular case, to act upon the supposition that it does not exist.
40. Section 107 (1) of the *Evidence Act* provides that 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. Sub-Section (2) of the said provision provides that when a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person. In terms of Section 108 of the *Evidence Act*, the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side. The inquiry whether the 1st, 2nd and 3rd respondents discharged this burden leads us to the question whether they satisfactorily explained the root of their title. We have re-evaluated the entire record.

The appellants having alleged fraud, and/or misrepresentation on the part of Liberio Farm Ltd and having asserted that the title was irregularly, the 1st, 2nd and 3rd respondent were obligated to adduce evidence to demonstrate the root of the title, because the title was under attack. We find that there was no effort to explain the process that resulted in the registration of the land in the name of Liberio Farm Ltd.

72. Flowing from the foregoing, my answer to issue number One [1] is to the effect that the plaintiff has placed before the court plausible, cogent and credible evidence to demonstrate the purchase of the suit property and consequential entry thereon. In any event, the defendant herein did not rebut the testimony by the plaintiff and his witnesses. [See the holding in Dr. Samson Gwer & 5 others vs KEMRI [2020] eKLR at paragraphs 49, 50 & 51 thereof, where the supreme court highlighted the need to rebut the evidential burden once same is discharged by the claimant].
73. Regarding the second issue, namely; whether the plaintiff has tendered credible evidence and proven the requisite ingredients underpinning a claim for adverse possession, it is worthy to reiterate that a claimant seeking to procure a proclamation of adverse possession must prove continuous, uninterrupted and peaceful occupation of the suit property for over 12 years. For good measure, the claim for adverse possession is underpinned by the Latin words namely Nec vi, nec clam, nec precario.



74. The ingredients that underpin a claim for adverse possession were also highlighted and elaborated upon in the case of *Mtana Lewa vs Katana Ngala Mwangandi* (2015) eKLR where the Court of Appeal stated thus;

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, in publicity and in extent to show that possession is adverse to the title owner. This doctrine in Kenya is embodied in Section 7 of the *Limitation of Actions Act*, which is in these terms:-

“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.”

The *Limitation of Actions Act* makes further provision for adverse possession at Section 13 that:

“(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 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 afresh 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), the land in reversion is taken to be adverse possession of the land.”

75. The Court of Appeal re-visited the ingredients underpinning acquisition of land vide prescription [adverse possession] in the case of *Richard Wefwafwa Songoi vs Bernard Munyifwa Songoi* (2020) eKLR where the court stated as hereunder;

36. For a claim founded on adverse possession to succeed, the person in possession must have a peaceful and uninterrupted user of the land. Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are important factors in a claim for adverse possession.

37. In this appeal, the appellant had the burden to prove not mere possession of the suit property, but possession that was nec vi, nec clam, nec precario. (See *Kimani Ruchine -v- Swift, Rutherfords Co. Ltd.* [1980] KLR 1500 and *Karnataka Board of Wakf -v- Government of India & Others* [2004] 10 SCC 779).

38. In this appeal, the learned judge held that the appellant’s occupation of the suit property was interrupted in 1992 when he filed suit before the Bungoma Principal Magistrate’s Court.



39. In *Wambugu –v- Njuguna*, (1983) KLR 173, this Court held that adverse possession contemplates two concepts: possession and discontinuance of possession. It was further held that the proper way of assessing proof of adverse possession is 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.
40. A person who claims adverse possession must inter alia show:
- (a) on what date he came into possession.
 - (b) what was the nature of his possession?
 - (c) whether the fact of his possession was known to the other party.
 - (d) for how long his possession has continued and
 - (e) that the possession was open and undisturbed for the requisite 12 years.
76. Bearing in mind the dicta espoused in the decisions [supra], I am now well placed to revert to the subject matter and to discern whether the occupation, possession and use of the suit property by the plaintiff captures [satisfies] the threshold to warrant a proclamation of adverse possession.
77. To start with, there is no gainsaying that the plaintiff has been in exclusive occupation and possession of the suit property. The occupation of the suit property by the Plaintiff is underscored by the fact that the plaintiff was able to plant trees on the entirety of the suit property from the year 1999 henceforth.
78. Moreover, evidence abound to demonstrate that the plaintiff entered onto the suit property in the year 1976. Even though the plaintiff's entry onto the suit property was predicated on the basis of the sale agreement [contract], the contract underpinning the said entry soon lapsed and or stood extinguished by effluxion of time. [See section 4 (1) of the Limitations of Actions Act which prescribes the timeline for filing of suit based on contract. [See also the decision in *Sisto Wambugu vs Kamau Njuguna* (1983) eKLR].
79. Furthermore, the plaintiff and his witnesses testified and confirmed that the occupation and possession has been continuous, uninterrupted and peaceful. For good measure, no evidence was tendered that the plaintiff ever used/deployed force to perpetuate his occupation of the suit property.
80. Other than the foregoing, it is not lost on this court that the defendant did not tender and or adduce any evidence of an endeavor to evict and or remove the plaintiff from the suit property. In any event, there is no gainsaying that the defendants herein and or his predecessors did not file any suit to interrupt the running of time. For good measure, the issuance of a Demand Letter by and of itself does not suffice to interrupt time for acquisition of adverse possession. [see *Njuguna Ndatho vs Masai Itumo* [2002] eKLR.
81. To my mind, the Plaintiff herein has ticked all the boxes as pertains to the ingredients [pre-requisites] required to prove and establish adverse possession. Simply put, the totality of the evidence on record meets the threshold espoused vide the latin words *nec vi nec clam nec precario*.
82. From the foregoing discussion, it has become apparent that the plaintiff herein is entitled to the proclamation pertaining to the acquisition of the suit land vide adverse possession. On the contrary, the defendant's right to recover the suit property stands extinguished vide effluxion of time. [see Sections 7 and 12 of the *Limitation of Actions Act*, Cap 22 Laws of Kenya]. [See also the decision in *Chevron[K] Limited versus Charo* [2015] eklr]



FINAL DISPOSITION:

83. Having appraised and considered the two thematic issues which were highlighted in the body of judgment, it must have become crystal clear that the Plaintiff has placed before the court plausible and credible evidence to prove his claim on account of adverse possession. Simply put, the plaintiff discharged the burden of proof as required of him vide the provisions of Sections 107, 108 and 109 of the *Evidence Act*.
84. Consequently, and in the premises, the final orders that commend themselves to the Court are as hereunder;
- i. A declaration be and is hereby issued that the Plaintiff herein has acquired title to L.R No. Nkuene/NKumari/716 [suit property vide adverse possession.
 - ii. The suit property, namely, Nkuene/Nkumari/716 be and is hereby declared to belong to the Plaintiff.
 - iii. The Register in respect of the suit property, namely L.R No. Nkuene/Nkumari/716 shall be rectified by deleting the name of Mugambi Mburugu or his personal representative [if any] and thereafter substituting therefore the name of the Plaintiff.
 - iv. Furthermore, the County Land Registrar shall proceed to and cancel the certificate of title in the name[s] of Mugambi Mburugu or his Legal Representative.
 - v. The County Land Registrar shall thereafter proceed to and issue a certificate of title to and in favour of the plaintiff, subject to payment of the requisite charges [if any].
 - vi. The County Land Registrar shall dispense with the production and surrender of the original certificate of title to facilitate the implementation and or actualization of the decree of the court.
 - vii. A permanent injunction be and is hereby issued to restrain the defendant, either by himself, agents, servants and or anyone acting on his instructions, from entering upon, remaining on, trespassing onto and in any other way interfering with the Plaintiff's right to and in respect of the suit property.
 - viii. Further and in addition, the Deputy Registrar of this court be and is hereby mandated to execute and engross any instrument[s] of conveyance necessary to enforce and or implement the decree of the court, where appropriate.
 - ix. Costs of the suit be and are hereby awarded to the Plaintiff.
 - x. The costs in terms of clause (ix) shall be agreed upon and in default, be taxed by the Deputy Registrar of the court.

85. It is so ordered.

DATED, SIGNED AND DELIVERED AT MERU THIS 5TH DAY OF JUNE 2025

OGUTTU MBOYA, FCI Arb; CPM [MTI-EA].

JUDGE

In the presence of:

Mr. Mutuma- Court Assistant.



Mr. John Muthomi for the Plaintiff

No appearance for the defendant

