



**Mwea v Kirocho (Enviromental and Land Originating Summons
E011 of 2023) [2025] KEELC 4332 (KLR) (10 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4332 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E011 OF 2023
MN GICHERU, J
JUNE 10, 2025**

BETWEEN

SIMON NJUGUNA MWEA APPLICANT

AND

L.GITAU KIROCHO RESPONDENT

JUDGMENT

1. In the Originating Summons dated 25-8-2023, the Plaintiff seeks the following orders against the Respondent.
 - i. That he be declared to have acquired title by adverse possession to the suit land known as Mitubiri Wempa Block II (Methi and Swani)1334 by having adverse possession of the said land for 12 years.
 - ii. That the registration of L. Gitau Kirocho as proprietor of the suit land or any other persons deriving title from him be cancelled forthwith and the Land Registrar do rectify the register to enter the name of the Applicant as the registered proprietor of the suit property in place of the Respondent or anyone deriving title from him.
 - iii. That such other orders be made as this court deems fit and just.
 - iv. That the costs of these proceedings be borne by the Respondent.
2. The summons is based on the following grounds. One, in the year 2008, the Applicant entered the suit, cleared the bushes thereon and began to farm with the full knowledge of the Respondent. Two, since the year 2008, the Applicant has settled on the suit land and lived thereon continuously and without any interference from the Respondent and the occupation has been actual, open, physical and uninterrupted. Three, the Applicant has improved the land by planting trees, cultivating and practising other agricultural activities. Four, if the orders sought are not issued, the Plaintiff will be deprived of



the property and his family will be denied a place to live and call home. They will also lose a source of their livelihood.

3. In support of the summons, the Plaintiff filed the following evidence.
 - i. Supporting affidavit dated 25-8-2023.
 - ii. Copy of register for the suit land.
 - iii. 3 coloured photographs showing green maize growing on a parcel of land.
 - iv. Witness statements by the Plaintiff and Mary Wambui Waweru dated 11-12-2024.
4. The Defendant could not be found physically and was served through substituted service. He did not enter appearance or file a defence.
5. At the trial on 17-2-2025 the Plaintiff and his witness testified on oath. They said that the land belonged to the Government of Kenya before it was allocated to the registered owners and Mary Wambui Waweru owns a neighbouring parcel. It is their evidence that the Plaintiff occupied the suit land in the year 2008 and nobody has ever come to ask him to vacate.
6. I have carefully considered the evidence adduced by and on behalf of the Plaintiff. I have also considered the written submissions by learned counsel for the Plaintiff and the law cited therein. The Plaintiff's Counsel has identified one issue as follows.
 - i. Whether the Plaintiff has acquired the suit land by way of adverse possession.

The doctrine of adverse possession is provided for in Section 7 of the [Limitation of Actions Act](#) which states 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.”

In the case of *Mtana Lewa vs. Kahindi Ngala Mwangandi* Civil Appeal No. 56 of 2014 it was held as follows, inter alia,

“ 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 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.”

Under the common law of England, the three ingredients of adverse possession were as follows. “Without permission, without force and as of right.” The Plaintiff's possession must meet all the three ingredients.

In the case of *Gabriel Mbui vs Mukindia Maranya* [1993] eKLR, it was held that for adverse possession to be established, five elements must be proved or established.

They include-

- a. actual possession or occupancy of the land that is,



- b. hostile to the current owner with a right to immediate possession,
- c. possession must be visible, open, notorious, and exclusive,
- d. exercised continuously and uninterrupted for a statutorily defined period (12 years in Kenya),
- e. maintained under some colour of right as against everyone else,
- f. with an evinced unmistakable animus possidendi and
- g. held in good faith without fraud.

7. Applying the above elements to this case, I find that the Plaintiff has proved actual occupation for over 12 years from 11-8-2011 when the land was registered in the name of the Defendant. When the suit was filed on 5-9-2023, it was more than 12 years since the Defendants registration as the proprietor.

Secondly, the Plaintiff's possession is hostile to the Defendant's interests because it is him who is entitled to occupation as per Sections 24 and 25 of the *Land Registration Act*. Thirdly, the Plaintiff's possession is visible, open notorious and exclusive as confirmed by the Plaintiff's witness Mary Wambui Waweru as well as the photographic evidence of the maize crops on the land. Finally, the Plaintiff has occupied the suit land as the owner.

8. For the above reasons, I enter judgment for the Plaintiff against the Respondent in terms of prayers 1 and 2 of the originating summons dated 25-8-2023. There will be no order as to costs.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 10TH DAY OF JUNE, 2025.

M.N. GICHERU

JUDGE.

Delivered online in the presence of; -

Court Assistant – Mwangi Njonjo

Plaintiff's Counsel – Absent

Defendant's Counsel – Absent

