



Ndwiga (Sued as the Administrator of the Estate of Njagi Ndwiga) v Katharane (Environment and Land Appeal E044 of 2024) [2025] KEELC 5901 (KLR) (4 June 2025) (Judgment)

Neutral citation: [2025] KEELC 5901 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT AND LAND APPEAL E044 OF 2024**

AK BOR, J

JUNE 4, 2025

BETWEEN

TARASISIO NDWIGA (SUED AS THE ADMINISTRATOR OF THE ESTATE OF NJAGI NDWIGA) APPELLANT

AND

CROMWELL NDWIGA KATHARANE RESPONDENT

JUDGMENT

1. This appeal arises from the judgement of Hon R. G Mundia, Principal Magistrate, delivered on 29/8/2024 in Embu ELC Case no. E052 of 2022. The respondent filed that suit seeking a declaration that he had become entitled to the land known as Ngandori/Kirigi/5072 through adverse possession. He sought to have the land registrar cancel the title in the name of the late Njagi Ndwiga over the subject land and to be issued a new title to the land as well as costs of the suit.
2. The respondent claimed that the late Njagi Ndwiga, who was the appellant's father, was the registered proprietor of the suit land. He contended that respondent was appointed as the administrator of his estate and became the beneficial owner of the suit land. That by a written agreement dated 20/8/2005, the appellant agreed to sell the land to him for Kshs. 300,000/= which he paid in full and took possession of the land on 26/8/2005. He claimed that he had been in such occupation openly and exclusively of the land for a period of 12 years but that the appellant refused to transfer the land to him in breach of the sale agreement.
3. The appellant denied the existence of any sale agreement while averring that the only agreement he knew of was a lease, and that he lacked capacity to sell the land. He argued that even if a sale agreement existed, it would be unenforceable for being void and time barred. He denied that the respondent paid the purchase price or made any developments on the land, claiming instead that he carried out the developments himself. He challenged the court's jurisdiction to determine a claim for adverse possession.



4. The trial court in its judgment found that it had jurisdiction to hear and determine the suit for adverse possession, since it is duly gazetted and empowered under Section 26(3) and (4) of the *Environment and Land Court Act* and Section 9(a) of the *Magistrates' Courts Act, 2015*. Further, the trial court held that since the respondent had been in possession of the suit land for 17 years it amounted to adverse possession and allowed the suit.
5. The issues for determination are whether the trial court had the jurisdiction to determine a claim for adverse possession and whether the respondent proved the claim for adverse possession.
6. A claim for adverse possession is grounded on Sections 7, 13, and 17 of the *Limitation of Actions Act*, which set out the essential elements that a party must establish and prove in order to succeed in a claim for adverse possession. Section 38 of that *Act* governs claims for adverse possession and provides that a party claiming to have become entitled to land by adverse possession may apply to the High Court to be registered as proprietor in place of the current registered owner.
7. In *Pauline Chemuge Sugawara v Nairuko Ene Mutarakwa Kiruti (sued in her capacity as the Administratrix of the Estate of Mutarakwa Kiruti Lepaso & 3 others* [2022] KEELC 2063 (KLR), the Court of Appeal held that magistrates' courts did not have jurisdiction to hear and determine claims for adverse possession. This court is bound by that decision. The trial court therefore lacked jurisdiction to determine the claim for adverse possession.
8. The appeal has merit. The judgment of the trial court is set aside in its entirety. Each party will bear its costs for the appeal and the suit in the lower court.

DELIVERED VIRTUALLY AT EMBU THIS 4TH DAY OF JUNE 2025.

K. BOR

JUDGE

In the presence of: -

Diana Kemboi- Court Assistant

No appearance for the parties

