



**Theuri v Kariuki (Environment & Land Case E004 of 2024)
[2025] KEELC 4275 (KLR) (5 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4275 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA
ENVIRONMENT & LAND CASE E004 OF 2024**

JM KAMAU, J

JUNE 5, 2025

BETWEEN

KARUGA THEURI PLAINTIFF

AND

JOHANA NGIGI KARIUKI DEFENDANT

JUDGMENT

1. The Plaintiff herein Karuga Theuri filed an Originating Summons on 29/4/2024. The same is dated 3/4/2024 where he asked the Court to grant him orders against the Defendant, Johana Ngigi Kariuki as follows:-
 1. The Applicant be declared to have become the legal owner entitled by adverse possession of over 12 years since the year 1965 of all that parcel of land in a unit from the sub-division of original Title No. Nyandarua/Kipipiri/243.
 2. The Applicant be registered as the sole proprietor of the said parcel of land namely Kipipiri Settlement Scheme/7322 in place of the Defendant, Johana Ngigi Kariuki.
 3. A permanent injunction do issue restraining the Defendant herein, his agents, servants and/or anyone claiming under him from entering, trespassing, cultivating, transferring and/or in any way dealing with the suit land.
 4. The costs of this Application be provided for.
2. The summons was supported by the Affidavit of the Plaintiff Karuga Theuri of even date in which he deponed that his siblings and himself together with their children have been brought up on the suit land which they have developed and have also been cultivating but that the Defendant has now sub-divided the land to create Nyandarua/ Kipipiri/7322 which they have always occupied and whose



- Title the Deponent believes was illegally obtained by the Defendant. The Plaintiff believes that he has acquired the land through adverse possession.
3. The Defendant filed a Replying Affidavit sworn on the 24/6/2024 in which he explained that he is indeed the registered proprietor of the suit property viz. Nyandarua/Kipipiri/243 through succession of the Estate of the late Peter Kariuki Waitathu which was confirmed on 14/2/2023. He further deponed that the Plaintiff's family lives and dwells on Nyandarua/Kipipiri/399 which neighbours the suit land same registered in the name of Meshllam Thuo Mugo, measuring approximately 3.8 Hectares. There is an access road separating the two parcels. He depones that it is the Plaintiff who had trespassed on the public access road and further into the Defendant's parcel of land therein building structures. He averred that one Harun Mugo on behalf of the Plaintiff's family tried unsuccessfully through Engineer SPM ELC suit No. 15 of 2023 to bar the County Government from excavating the public road.
 4. The Defendant attached a Ruling dated 30/6/2023 by Honourable H.O Barasa, S.P.M. He also said that he has already filed a suit i.e. Engineer SPM ELC No e032 of 2023 seeking possession of the material parcel of land wherein the Court directed the Land Registrar to file a Report in Court to assist in determining the case.
 5. He further said that since he acquired Title over the land on 23/11/2021, the statutory period had not expired as at the time of filing the current suit i.e. on 29/4/2024.
 6. The Defendant also says that this is not a good case for adverse possession since the Plaintiff is claiming that the Defendant's Title was obtained illegally and therefore it is not a clean Title. One cannot challenge a Title that is illegal. The case is therefore improper.
 7. When the matter came up for hearing, one Esther Karugi Theuri testified that Kipipiri Settlement Scheme 399 belonged to his late father, Mishran Theuri Mugo. The same measures 8 Acres or thereabout where he lives and that Kipipiri/243 has been sub-divided severally.
 8. He said that he got into the land in 1963 and in 1984 he came to know that it belonged to somebody else. The Title reads Johana Ngigi Kariuki and that he has been on the land quietly with some semi-permanent and mud houses which they have always cultivated and that they still use Plot No. 399 and also part of 243. He then produced the following documents i.e.
 1. A copy of the Original Title Deed for Nyandarua/ Kipipiri / 7322
 2. A copy of the certificate of confirmation of Grant dated 14th February, 2013.
 3. Ruling in Engineer SPM ELC case No. 015 of 2023 dated 30th June, 2023.
 4. Court Order in Engineer SPM ELC case No E03 of 2023.
 5. A Report by the District Land Surveyor dated 9th October, 2024.
 9. He said that he was not a party to the case in Engineer Court between the Defendants and Harun Mugo Theuri. In Cross-examination, Esther Karugi Theuri said that Harun Mugo Theuri who had filed Engineer SPM's ELC case No 015 of 2023 on behalf of her late father Meshllan Theuri Mugo and who had also been sued by the Defendant herein in Engineer SPM ELC case No E032 of 2023 is her brother. She said that her father was buried on Plot No 399 and that he had approached the Defendant with a request that he sells them the land at Kshs 800,000/= but he said he could only sell it at Kshs 1,200,000/=. She also confirmed that Harun Mugo Theuri is the Administrator of the Estate of their late father Meshllan Theuri Mugo.



10. On re-examination, the witness said that the Defendant got the Title Deed fraudulently because she was on the land. she said she filed the case because she was the one on the land.
11. The Defendant relied on his Replying Affidavit whose contents have been highlighted above as his evidence in chief. He also relied on his statement dated 23/9/2024 which is a replica of his Replying Affidavit. He equally produced the following documents: _
 1. A copy of the original Title for Nyandarua/Kipipiri/7322.
 2. A Copy of the certificate of confirmation of Grant in respect to the Estate of the late Peter Kariuki Waitathu, father to the Defendant and confirmed on the 14/2/2013. The same is dated 14/2/2013.
 3. Ruling in Engineer SPMCC ELC case No 015 of 2023 dated 30/6/2023.
 4. Court Order in Engineer SPM ELC case No E032 of 2023.
 5. A Report by the District Land Surveyor dated 9/10/2024.
12. While being cross-examined, the Defendant said that his parcel of land is No. 7322 which was excised from his father's Plot No.243 measuring 27 Acres. He said that they had used the land from time immemorial and the Defendant has never demanded it. He said that he knew they were on his land. He got the Title Deed for 7322 in 2021 and he has never filed any case against the Plaintiff who lives on the land.
13. This is the evidence produced in Court.
14. The Defendant has shown that he filed a suit in Engineer being PMCC ELC case No E032 of 2023 against the brother to the Plaintiff herein, Harun Mugo Theuri the latter being the Administrator of the Estate of the Plaintiff's father Meshallam Theuri Mugo who was the registered proprietor of Nyandarua/Kipipiri/243 out of which Nyandarua/Kipipiri/7322 was hived. There was a suit i.e. Engineer PMCC ELC No. E032 of 2023 where the Defendant herein was given a temporary injunction restraining the Plaintiff's brother and Administrator of the Plaintiff's father's Estate either by himself, his agents, servants and any other person claiming under or through him from dealing with or in any way interfering or trespassing in any way on the Applicant's (now Defendant herein) parcel of land Title No. Nyandarua/Kipipiri/7322 (which the Plaintiff now claims). Any other person claiming under or through Harun Ngigi Theuri must be inclusive of the Plaintiff herein. If there had been adverse possession accrued then this case Engineer PMCC ELC No E032 of 2023 brought the quiet possession to an end and thereby terminating the adverse possession, if any.
15. The Plaintiff has said in no uncertain terms that Harun had filed the above case at Engineer on behalf of the family which included the Plaintiff himself. He also said that the Defendant came to the land in 2023 to claim that the land (7322) was his. In the case of...

.....In a case of Adverse Possession, the Adverse Possessor has to prove that he has been in occupation of the suit land which he claims as of right: Nec Vi, nec clam, nec precario (no force, no seeing, no evasion), that the Applicant had knowledge (or the means of knowing, actual or constructive) of the possession or occupation and that the possession must be continuous and uninterrupted..... In the instant suit, there is one issue that once decided would dispose of this suit without even going into the other ingredients of Adverse Possession. That is has the Plaintiff lived on the suit land uninterruptedly for a period of over 12 years prior to the filing of this case? This is maturity of the Adverse Possession. Interruption of possession is significant in that it stops time from running under



the *Limitation of Actions Act*.the claim for adverse possession diminishes or is stopped as soon as a suit is filed in Court against a party claiming Defence of adverse possession. ”

16. Consequently, this is not a clear case of adverse possession and on a balance of probability the Plaintiff has failed to prove his case and I dismiss it with costs to the Defendant.

JUDGMENT READ AND DELIVERED AT NYANDARUA THIS 5TH DAY OF JUNE, 2025.

MUGO KAMAU

JUDGE

In the presence of:

C/A Samson.

Mr. Kahiga.....for the Plaintiff.

Mr. Mugo.....for the Defendant.

