



**Ileri & another (Suing as the Legal Representatives of the Estate of Michael Ileri Ngari - Deceased) v Nguru & another (Environmental and Land Originating Summons E004 of 2020) [2025] KEELC 5890 (KLR) (14 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5890 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT EMBU  
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E004 OF 2020**

**AK BOR, J  
JULY 14, 2025**

**BETWEEN**

**FLORA WANJIRU ILERI ..... 1<sup>ST</sup> PLAINTIFF  
DICKSON MUKUNDI ILERI ..... 2<sup>ND</sup> PLAINTIFF  
SUING AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF MICHAEL  
ILERI NGARI - DECEASED**

**AND**

**MBUGI NGURU ..... 1<sup>ST</sup> DEFENDANT  
JOSEPH NJERU NJERU ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. The Plaintiffs filed the Amended Originating Summons dated 23/11/2022 seeking to be declared to have become entitled to the land known as Evurore/Kathera/1703 measuring approximately 1.0 hectare (the suit land) through adverse possession. The 1<sup>st</sup> Plaintiff is the widow of the late Michael Ileri Ngari (deceased) while the 2<sup>nd</sup> Plaintiff is his son. The Plaintiffs sought an order for the cancellation of the 2<sup>nd</sup> Defendant's title over the suit land and for it to revert to the name of the 1<sup>st</sup> Defendant. Michael Ileri Ngari filed the original claim and upon his demise, the Plaintiffs who are indicated to be his legal representatives substituted him in the suit.
2. The Plaintiffs' case is that the suit land is currently registered in the name of the 2<sup>nd</sup> Defendant Joseph Njeru Njeru. That on or about July 2007, the late Michael Ileri Ngari entered into a sale agreement vide which the 1<sup>st</sup> Defendant sold him the suit land in consideration of Kshs. 60,000/= and that he gave them vacant possession the same year. They claimed that they started utilising the suit land by rearing cattle, goats, sheep, planting crops such as maize, beans, cowpeas, peas, grams, millet and sorghum among others. It was their case that all along the Defendants and their families were aware of their



open, continuous and exclusive occupation of the suit land and that the 2<sup>nd</sup> Defendant, who is the 1<sup>st</sup> Defendant's son in law found them cultivating the suit land.

3. The Plaintiffs' averred that on or about August 2020, Michael Ileri Ngari learnt that the 1<sup>st</sup> Defendant had resold the land to the 2<sup>nd</sup> Defendant and upon confronting the 1<sup>st</sup> Defendant, he demanded to be given more money, a he goat and a coat so that he could transfer the suit land to Michael Ileri Ngari. The 1<sup>st</sup> Plaintiff and the late Michael Ileri Ngari sought the assistance of the area Chief in resolving the dispute without success. They claimed that the 1<sup>st</sup> Defendant hurriedly transferred the suit land to the 2<sup>nd</sup> Defendant in order to defeat justice. Michael Ileri Ngari swore the affidavit in support of the suit on 17/9/2020.
4. In their Replying Affidavit sworn on 1/2/2021, the Defendants averred that the entry of the late Michael Ileri Ngari into the suit land was permissive as it was done with the consent of the 1<sup>st</sup> Defendant. He claimed that he allowed Michael Ileri Ngari to enter the suit land and use part of it to graze his livestock but that he was not to undertake any developments on the land, or cut trees or take any other action on the land.
5. The Defendants deponed that Michael Ileri Ngari proceeded to illegally cut trees and burn charcoal on the suit land contrary to the terms of the oral agreement between him and the 1<sup>st</sup> Defendant following which the 1<sup>st</sup> Defendant demanded through the Chief that he pay for the damage and waste occasioned to the suit land. He exhibited a copy of the Chief's letter dated 15/10/2020 which mentioned that Micahel admitted to have paid Kshs. 5000/= to the 1<sup>st</sup> Defendant for a tree he felled.
6. The Defendants deponed that the agreed purchase price for the suit land was Kshs. 100,000/= and not Kshs. 60,000 as alleged by the Plaintiffs. The 1<sup>st</sup> Defendant acknowledged that he was paid Kshs. 60,000/= by but claimed that Michael Ileri Ngari failed to pay him the balance of Kshs. 40,000/=. That when Michael Ileri Ngari could not pay the full purchase price, he left the suit land in 2008, on orders from the 1<sup>st</sup> Defendant and that he only went back in 2018 to claim the suit land as his. He denied that the Plaintiffs had been in continuous occupation of the suit land for over 12 years.
7. The hearing of the suit proceeded on 19/3/2025. Dickson Mukundi Ileri gave evidence for the Plaintiffs and adopted his witness statement as well as that of Michael Ileri Ngari. He produced copies of the green card, the sale agreements and their translation to English, demand letters and photographs taken of the suit land. On cross examination, he stated that they did not live on the suit land but were farming on it. He did not know if there were any conditions for the sale of the land or that the purchase price was Kshs. 100,000/= and not Kshs. 60,000/=. He stated that no Land Control Board (LCB) consent was not obtained and that no transfer forms were executed.
8. Bernard Mbugi Nguru testified for the defence and adopted his witness statement. He produced copies of the Chief's letter dated 15/10/2020 and a Damage Assessment and Valuation Report dated 5/1/2021 prepared by the Forest Advisory Office as well as title deed issued to the 2<sup>nd</sup> Defendant on 2/9/2020.
9. On cross examination, he conceded that he agreed to sell the suit land to Michael but maintained that the purchase price was Kshs. 100,000/= and not Kshs. 60,000/=. On being shown the sale agreements he responded that they did not show the balance and added that some documents were missing since it was Michael who wrote the agreements. He did not deny being paid Kshs. 60,000/= by Michael. He maintained that he allowed Michael to use the land but not to cut down trees. The trees were cut in 2017 and 2018. His sons chased away Michael from the land in 2018 because he was using the land forcibly. He stated that he gave the land to the 2<sup>nd</sup> Defendant after the Plaintiffs told him they did not want the land. He added that he gave the land to his children after the Plaintiffs refused the land and



that he looked for money and took it to the Chief but the Plaintiffs refused to take the money. He stated that Michael paid him Kshs. 5000/= for the trees leaving a balance of Kshs. 30,000/=.

10. The court directed parties to file and exchange written submissions which it has considered. The Plaintiffs submitted that they entered into the sale agreement and got into the suit land in 2007. They urged that they had been in continuous use of the land until today. They relied on *Gabriel Mbui v Mukindia Maranya* (1993) eKLR in support of the point that where adverse possession arose out of a sale agreement, the period of limitation for adverse possession starts to run after the last and final instalment has been made to complete the agreed purchase price. The Plaintiffs urged that they had been in occupation of the land for 12 years and 2 months. They cited *Mtana Lewa v Kabindi Ngala Mwangandi* (2015) eKLR on the ingredients that constitute adverse possession.
11. The Defendants submitted that the Plaintiffs' occupation of the suit land was with consent. They cited *Gabriel Mbui v Mukindia Maranya* (1993) eKLR and urged that the Plaintiffs' entry and occupation of the land was permissive. They maintained that the Plaintiff did not pay the purchase price in full and that the Plaintiffs' possession could only have become adverse once the purchase price was paid in full. It was their contention that time never started running since the purchase price was not paid in full. They urged that the Plaintiffs failed to prove their case on a balance of probabilities.
12. The issue for determination is whether the Plaintiffs have proved that they have acquired title to the suit land through adverse possession. Section 7 of the *Limitation of Actions Act* provides that a person cannot bring a claim to recover land after 12 years from the date when their right to do so first arose. Section 13 (1) of the same *Act* provides that a right of action to recover land does not accrue unless the land is in possession of some person in whose favour the period of Limitation can run (which possession is referred to as adverse possession).
13. In *Mtana Lewa v Kabindi Ngala Mwangandi* [2015] KECA 532 (KLR) the Court of Appeal defined adverse possession as a situation where a person takes possession of land, and asserts rights over it and the person having title omits or neglects to take action against such person in assertion of his title for 12 years. That the process sprang into action essentially by default or inaction of the owner. The essential prerequisites being that possession of the adverse possessor was neither by force or stealth nor under the license of the owner; and must be adequate in continuity, in publicity and in extent to show that possession is adverse to the title owner.
14. In *Wambugu v Njuguna* [1983] KLR 172, the court laid down the guiding principles for a claim for adverse possession as that the owner must have lost his right to the land either by being dispossessed of it or by having discontinued his possession of it. The dispossession of the proprietor that entails acts which are inconsistent with his enjoyment of the soil for the purpose of which he intended to use it. Further, 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 has been in possession of the requisite number of years.
15. In order to succeed on a claim for adverse possession, one must prove use and occupation or possession of the land with the knowledge of the owner and such use and occupation must not be broken or interrupted for a period of twelve years. The possession must be open and notorious with the intention to defeat the registered owner's title.
16. The green card for the suit land shows that Mbugi Nguru, the 1<sup>st</sup> Defendant was registered as the owner of the suit land on 4/1/1978. The land was transferred to a Bernard Mbugi Nguru on 31/8/2020 and to the 2<sup>nd</sup> Defendant, Joseph Njeru Njeru on 1/9/2020, the current registered proprietor of the land.



17. The Plaintiffs' claim is that they have been in occupation of the land since 2007 when the deceased purchased it from the 1<sup>st</sup> Defendant. They produced acknowledgements of payment for Kshs. 60,000/= from the late Michael to the 1<sup>st</sup> Defendant to show that he paid the agreed purchase price. The acknowledgements are witnessed by a Jackson Njue Ngari and Flora Wanjiru Ireri and signed by all parties. They are written in Kimbeere language but were translated to English.
18. The letter dated 27/8/2020 from the area Chief indicated that he had summoned the parties on 26/8/2020 over the suit parcel of land. The letter indicated that the 1<sup>st</sup> Defendant admitted that he had received Kshs. 60,000/= from the late Michael but that he claimed that he could not transfer the land to the late Michael because of a disagreement among his family members and he wanted to refund the same amount to the the late Michael. The Chief noted that the late Michael wanted the sum of Kshs. 60,000/= to earn interest.
19. The other letter produced by the Defendant from the Chief dated 15/10/2020 addressed to the Defendant's advocates, Agnes Wanjiku Maina & Co. Advocates confirmed that the 1<sup>st</sup> Defendant and the late Michael had a dispute before the Chief on 26/8/2020 over the suit land. The late Michael reported the 1<sup>st</sup> Defendant to the Chief for failure to transfer the suit land to him as per their agreement.
20. The letter stated that the 1<sup>st</sup> Defendant had various reasons why he could not transfer the land. One of the reasons was that his sons and daughters refused to have the land sold at Kshs. 60,000/= citing low price. The other reason was that initially Michael was purchasing 3 acres but after he got the official search, the land was smaller and so Mbugi opted to refund the money paid by Michael. The letter stated that Mbugi claimed that Michael had cut trees on the suit land without his permission and after his admission, he Kshs. 5,000/= to Mbugi for the tree he felled without permission.
21. From the facts of this case, it is not disputed that the 1<sup>st</sup> Defendant sold the suit land to the late Michael and that the agreed purchase price was Kshs. 60,000/= and not Kshs. 100,000/= the 1<sup>st</sup> Defendant claimed. No evidence was tendered to support the assertion that the agreed consideration was Kshs. 100,000/= The 1<sup>st</sup> Defendant admitted that he was paid the sum of Kshs. 60,000/= by the late Michael. It is also evident that the 1<sup>st</sup> Defendant was paid the full purchase price over the land.
22. The Plaintiffs claimed that they had utilised the suit land since 2007 to rear cattle, goats, sheep, planting crops such as maize, beans, cowpeas, peas, grams, millet and sorghum among other crops. They produced photographs to show that they have been utilizing the land. The photographs show a bare piece of land which appears like a crop or vegetation had been recently harvested with a few trees in sight. Those photographs were not contested by the Defendants. The 1<sup>st</sup> Defendant maintained that he only allowed the late Michael to use the suit land but not cut trees. It was his testimony that Michael cut down trees in 2017 and 2018 but he compensated him. He also testified that Michael was chased from the land by his sons Julius Kariuki and Gitonga because he was using the land forcibly and that is why he was chased away.
23. The Plaintiffs produced a notice issued by the 2<sup>nd</sup> Defendant to Michael stating as follows  

“I hereby write this letter to notify you that the parcel of land No. Evurore/Kathure/1703 will be in use from 10<sup>th</sup> Oct 2020. I would therefore wish that you quit the operations on the said parcel by the same date. I look forward to your positive response.”

That notice confirms that indeed the Plaintiffs were in possession or occupation of the suit land as at the time of the notice and that their occupation was open, visible and exclusive, it was not hidden or a secret. There is no evidence that the Plaintiffs were evicted from the suit land and in the absence of



such evidence, this court is persuaded that the Plaintiffs have been in occupation and or possession of the suit land since 2007.

24. Where a claim for adverse possession is founded on a sale agreement, occupation becomes adverse only upon full payment of the purchase price or, where payment is made by instalments, upon payment of the final instalment. (See *Gabriel Mbui v Mukindia Maranya* [1993] KEHC 161 (KLR). The Plaintiffs demonstrated that they took possession of the land in 2007 and made the final payment on 20/4/2008. It is from this date that time began to run for purposes of adverse possession. From 20/4/2008 to 22/9/2020 when this suit was filed is a period of 12 years and 5 months.
25. The court is satisfied that the Plaintiffs have proved all the essential elements of adverse possession. The court grants prayers (a), (b) and (c) of the Amended Originating Summons dated 23/11/2022. The Plaintiffs shall have the costs of the suit.

**DELIVERED VIRTUALLY AT EMBU THIS 14<sup>TH</sup> DAY OF JULY 2025.**

**K. BOR**

**JUDGE**

In the presence of: -

Mr. Dickson Ireri, the 2<sup>nd</sup> Plaintiff

Ms. Agnes Maina for the Defendants

Diana Kemboi- Court Assistant

