



Karanja v Mwaniki (Environmental and Land Originating Summons E003 of 2024) [2025] KEELC 5119 (KLR) (9 July 2025) (Judgment)

Neutral citation: [2025] KEELC 5119 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E003 OF 2024**

MAO ODENY, J

JULY 9, 2025

BETWEEN

ROSE NYAMBURA KARANJA PLAINTIFF

AND

ALEXANDER MAINA MWANIKI DEFENDANT

JUDGMENT

1. By Originating Summons dated 30th May, 2024 which was subsequently amended on 19th November, 2024. The Plaintiff sued the Defendant seeking the following orders:
 - a. The Applicant be declared be declared to have become the legal owner entitled by Adverse Possession of over twelve (12) years since 1981 all that parcel of land comprised in Title Number LR No. 194/60 situated in Ndundori, Nakuru.
 - b. The said Applicant be registered as the sole proprietor of the said parcel of land, namely I.R 11421 in place of the above-named Respondent in whose favour the land is currently registered.
 - c. The last original indentures in respect of I.R 11421 which are with the Respondent be dispensed with.
 - d. Costs of this Application be provided for.

Plaintiff's Case

2. PW1 Rose Nyambura Karanja adopted her supporting affidavit and testified that she lives on the suit land in Ndundori, Nakuru County. She produced that title deed as Pex No 1 and stated that she entered into the suit land in 1981 as it was vacant PW1 further testified that she started farming and staying in a house that was on the suit land.



3. It was her evidence that she met the Defendant who had planted grass and would visit part of the suit land but later stopped coming some time in 2024. PW1 went on to testify that she fenced the suit land, planted napier grass and has seven cows. She also stated that it is the Defendant who built the wooden structure house, which she renovated.
4. PW1 testified that she believed that the Defendant was dead but she was not sure and later discovered that the Defendant was at a place called Tumaini and the Originating Summons were taken to him to enter appearance. PW1 prayed that the court grants the orders sought as she has acquired the land by way of adverse possession.

Plaintiff's Submissions

5. Counsel for the Plaintiff filed submissions dated 15th May, 2025. Counsel identified the issues for determination as:
 - a. Whether the Plaintiff has occupied the land without interference from the Defendant for more than 12 years?
 - b. Whether the Plaintiff's possession of the land is adverse?
 - c. Whether the Defendant knew of her adverse possession of the land?
 - d. Whether the Plaintiff is entitled to the orders sought in this suit?
6. Counsel submitted that the Plaintiff occupied the land in 1981 and she has raised all her children in that land to adulthood. Further, that she has been in uninterrupted possession of the suit property for forty- four years as of 2025. It was counsel's submission that whereas the occupation has been open and notorious against the Defendant, it was without his consent and the Defendant never interfered with the Plaintiff's occupation.
7. Counsel relied on Sections 7 and 13 of the *Limitation of Actions Act* (Cap 22) Laws of Kenya and the cases of Mtana Lewa vs Kahindi Ngala Mwangandi [2015] eKLR and Gabriel Mbui vs Mukindia Maraya [1993] eKLR and urged the court to find that the Plaintiff has satisfied all the conditions required of her to assert her rights under the doctrine of adverse possession.

Analysis And Determination

8. The background of this suit is that the Plaintiff filed this Originating summons 30th May 2024. On 30th October 2024 this matter came up for directions and the court noted at paragraph 7 of the Plaintiff's affidavit where she stated that:

“For the entire period for which I have lived upon the land, I have never heard from the Defendant, and I positively believe that he has since died owing to the year in which he is stated to have purchased the suit land as per the annexed title “
9. Counsel had indicated that the Defendant had been served with the Originating Summons but when the court noted that the Plaintiff had indicated that she believed that the Defendant was deceased, as per her own supporting affidavit, counsel amended the Supporting affidavit and crossed the part that indicated that the Defendant was deceased.
10. A process server by the name Benjamin Radiga swore an affidavit that was similar to the one that he had filed in court that he had served the defendant at Tumaini Center where the Defendant purportedly signed the summons. Looking at the two affidavits, it is apparent that the Process server indicated that



the Defendant had appended his signature on the document but the two annexures purportedly signed by the defendant are different.

11. It is important to note that the Plaintiff never swore a fresh supporting affidavit to indicate that she has since discovered that the defendant is alive. It is the same affidavit that was crossed and the date 30th May 2024 was crossed and 19th November 2024 included. It follows that the original supporting affidavit that stated that the defendant is deceased is the one on record.
12. Further, the Plaintiff gave contradictory evidence that the Defendant used to come to the suit land but stopped coming in 2024. The court will therefore not go into the issue whether the Plaintiff has proved that she has acquired the suit land by way of adverse possession as the suit is flawed.
13. This case therefore dismissed with no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 9TH DAY OF JULY 2025.

M. A. ODENY

JUDGE

