



Mugo & another v Waweru (Sued as Legal Representative of the Estate of Daniel Waweru Muchichu) (Environment and Land Case E006 of 2022) [2025] KEELC 5910 (KLR) (3 July 2025) (Judgment)

Neutral citation: [2025] KEELC 5910 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT AND LAND CASE E006 OF 2022**

**AK BOR, J
JULY 3, 2025**

BETWEEN

GICHOVI MUGO 1ST PLAINTIFF

JOHN NJAGI MUGO 2ND PLAINTIFF

AND

EZBON MUCHICHU WAWERU (SUED AS LEGAL REPRESENTATIVE OF THE ESTATE OF DANIEL WAWERU MUCHICHU) DEFENDANT

JUDGMENT

1. The plaintiffs instituted this suit seeking to be declared to have become entitled to land parcel Kagaari/Weru/536 (the suit land) through adverse possession. The suit land is currently registered in the name of the defendant's father, Daniel Waweru Muchichu (deceased). The Plaintiffs' claim is that 1990, they occupied the suit land and began cultivating it and that they have been in occupation without any interruption to date.
2. That at the time they occupied the land, they believed that it still belonged to their late father Mugo Kothumba, the first registered owner of the land as shown on the green card. They claimed that they did not know how the defendant came to be registered as the owner of the land yet they do not know him nor have they ever seen him. They averred that they cultivate suit land and that neither the defendant nor his late father had been in occupation of the land. That added that they had extensively developed the suit land by planting different types of indigenous trees, Napier grass, mango and banana trees, miraa stems and that they also cultivate food crops on the land.
3. The defendant is the administrator of the estate of the late Daniel Waweru (the late Daniel Waweru) and his claim is that the late Daniel Waweru purchased the suit land from one Mugo Kathumba and that a transfer was effected in his favour on 5/2/1972. That the late Daniel Waweru took possession



- at that time and that his family is still in possession. He claimed that during the period of possession, the late Daniel Waweru extensively developed the suit land and to date no other person other than his family were in possession. Further, that the late Daniel Waweru had on several occasions charged the suit land to several financial institutions.
4. He denied the plaintiffs' alleged possession and averred that there was a time when they unlawfully attempted to interfere with the defendant's possession through trespass, but that they were repulsed when a report was made at the Runyenjes Police Station on 21/10/2020. That since then, there had been no other attempts to interfere with the suit land. That his being in possession was demonstrated through the crop husbandry that has been carried out and is being carried out on the suit land without interruption from anyone. He urged that the plaintiffs had not shown that they were entitled to the reliefs they seek.
 5. The hearing of the suit proceeded on 5/5/2025. The 1st Plaintiff testified and adopted his witness statement which contains the averments made in the originating summons. He produced photographs of some land with different varieties of trees. On cross examination, he stated that he had been on the suit land, which measures 11.5 acres since 1990. He did not know that there was a boundary dispute over the land. He described the actual location of the land, that it neighboured a church. He maintained that the mango tree in the photographs was planted by his father in the 1980s and claimed that a tractor dug out the miraa trees on the land. They filed ELC Case No. 37 of 2020 and withdrew it. He denied that he had ever been called to the Runyenjes Police Station. He had seen the green card indicating that the suit land was issued as security but he maintained that that was not true.
 6. The defendant testified and relied on his replying affidavit filed in court. He told the court that they had been in occupation of the suit land and that the Plaintiffs chased away the Defendant's workers from the suit land in October 2020. He maintained that the Plaintiffs entered the suit land in 2020. He told the court that they plant maize and beans on the land. He added that there are three mango trees which they found on the land but that there was no miraa on the suit land.
 7. Upon conclusion of the hearing, the court directed parties to file and exchange written submissions. Only the Plaintiffs furnished the court a copy of their submissions, which the court considered. The Plaintiffs submitted that they had proved that they had been in adverse possession of the suit land and that they were entitled to registration as proprietors of the land. The issue for determination is whether the plaintiffs have demonstrated that they have acquired title to the suit land through adverse possession.
 8. Section 7 of the *Limitation of Actions Act* provides that one may not bring a claim to recover land after 12 years have lapsed from the date when their right to do so first arose. Section 13 (1) of that Act provides that the right of action to recover land does not accrue unless the land is in the possession of some person in whose favour the period of limitation can run.
 9. In *Mtana Lewa v Kahindi Ngala Mwangandi* [2015] KECA 532 (KLR) the court 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 twelve years. The essential prerequisites are that possession of the adverse possessor is neither by force nor stealth nor under the license of the owner. That possession must be adequate in continuity, in publicity and in extent to show that possession is adverse to the land owner.
 10. In *Wambugu vs Njuguna* [1983] KLR 172, the court held that the proper way of assessing proof of adverse possession was whether or not the title holder had been dispossessed or had discontinued his possession for the statutory period and not whether or not the claimant had proved that he had been in possession of the requisite number of years.



11. To succeed in a claim for adverse possession, one must prove use and occupation or in other words, possession of the land, with the knowledge of the owner. Such use and occupation must not be broken or interrupted for a period of twelve years and the possession must be open and notorious with the intention to defeat the registered owner's title to the land.
12. The registered proprietor of the suit land in this case is the late Daniel Waweru Muchichu, and the defendant was sued in his capacity as the administrator of his estate. Both parties produced copies of the green card which shows that Daniel Waweru Muchichu was registered as proprietor of the land on 5/2/1972. This proves the first element is proved.
13. On the question whether the plaintiffs' occupation and use of the suit land amounts to adverse possession against the interests of the late Daniel Waweru Muchichu and his estate. For possession to be adverse, it must begin with dispossession or discontinuation of possession of the true owner. The plaintiffs claimed that they entered the suit land in 1990, under the mistaken belief that it still belonged to their father, Mugo Kothumba, the original registered owner. In these circumstances, it cannot be construed that their occupation of the suit land if at all it happened, was in denial of, or hostile to, the title of the registered owner since they claim they were even unaware of his ownership at the time. Their possession, therefore, lacked the requisite element of animus possidendi to dispossess the true owner.
14. For a claim based on adverse possession to succeed, mere possession is not sufficient. Rather, the possession must be nec vi, nec clam, nec precario peaceful, open, and without the permission of the owner and must be exclusive and adverse to the interests of the true owner. The plaintiffs produced photographs showing cultivated land, with what appears to be recently harvested crops, Napier grass, and a few banana plants. The defendant also produced photographs of maize crops claiming that they were grown by his family. Both parties claim to have been cultivating the land. The plaintiffs' failed to prove that their possession of the suit land was continuous, peaceful, and exclusive for the prescribed period.
15. This court is not satisfied on a balance of probabilities that the plaintiffs have proved their claim. The plaintiffs' suit is dismissed with costs to the defendant.

DELIVERED VIRTUALLY AT EMBU THIS 3RD DAY OF JULY 2025.

K. BOR

JUDGE

In the presence of: -

Mr. B. Kereu holding brief for Mr. M. Njoroge for the Defendant

Both Plaintiffs, Gichovi Mugo & John Njagi Mugo

