



**Gicovi v Njeru & another (Environmental and Land Originating Summons
36 of 2019) [2025] KEELC 5989 (KLR) (11 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 5989 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 36 OF 2019**

AK BOR, J

SEPTEMBER 11, 2025

BETWEEN

ESTON MUNYI GICOVI PLAINTIFF

AND

JAMES KINYUA NJERU 1ST DEFENDANT

NAZARIO NJERU KARUGA 2ND DEFENDANT

JUDGMENT

1. The Plaintiff filed the Originating Summons dated 15/8/2019 seeking to be declared to be entitled to 3/8 acre out of the land known as Ngandori/Ngovio/3703 through adverse possession. He sought to have that land sub-divided for the portion measuring 3/8 acres (the suit land) that he occupies and utilizes to be excised and for him to be registered as the proprietor of that portion. He urged the court to dispense with the production of the original title deed over the suit land to the Land Registrar for purposes of subdivision and transfer of the land.
2. The Plaintiff's case is that the suit land, which originally formed part of Ngandori/Ngovio/1542, is owned by the 1st Defendant and is registered in the name of the Defendants' father Njeru Karuga. He averred that on 7/5/1999, he entered into a sale agreement with the 1st Defendant, James Kinyua Njeru, whereby the 1st Defendant sold him the suit portion of land from the 2½ acres he was to inherit from his late father, Njeru Karuga's estate. He avers that he immediately occupied and started utilizing that portion of land. The Defendants filed a succession cause in respect of their late father's estate and the 2nd Defendant was appointed administrator of the Estate. However, the 2nd Defendant failed to include the Plaintiff in the succession cause so that he could obtain his share of the portion of land.
3. Ngandori/Ngovio/1542 was subdivided, and the 1st Defendant's parcel was registered as Ngandori/ Ngovio/3703. The Plaintiff claimed that he had been in open, continuous and exclusive occupation and use of the portion of land since the year 1999, and that he had extensively developed the land



- by planting macadamia trees that are now mature, coffee stems, various tree including grevillea and eucalyptus, bananas, maize, beans and other seasonal crops. He asserted that he has been in full control and possession of the portion of land to the exclusion of the 1st Defendant.
4. The record shows that the Plaintiff was granted leave by the court on 13/2/2020 to effect service of the summons to enter appearance on the 1st Defendant through substituted service in the newspaper because the Plaintiff could not trace him for purposes of effecting personal service. The 1st Defendant did not enter appearance or file a defence in the suit. The name of the 2nd Defendant was struck out of the proceedings on 13/11/2019 upon his application that he owns Ngandori/Ngovio/3705 and the subject matter in this suit is Ngandori/Ngovio/3703.
 5. At the trial, the Plaintiff relied on his affidavit supporting the originating summons as his evidence in chief. He produced copies of the official search for Ngandori/Ngovio/3703, sale agreement dated 7/5/1999, grant of letters of administration for the Estate of the late Njeru Karuga and the confirmed grant, mutation form for Ngandori/Ngovio/1542 and photographs of the developments on the suit land.
 6. The Plaintiff filed written submissions and urged that he had demonstrated that he took possession of the suit land in 1999 pursuant to a sale agreement with the 1st Defendant. That even though the sale did not result in a formal transfer, he occupied and developed the 3/8 acre portion by cultivating crops and planting macadamia, coffee, grevillea, and other trees, showing clear evidence of factual possession. He submitted that that evidence demonstrated that he had been in exclusive possession of the portion of land without interference from the registered proprietor for over two decades. That his possession had not been challenged and that he met the twelve year statutory requirement under Section 38 of the *Limitation of Actions Act*.
 7. The Plaintiff submitted that the 1st Defendant's failure to assert control or possession over that portion of land led to the extinguishment of his title. He submitted that in the application to be removed from the proceedings, the 2nd Defendant s acknowledged that Ngandori/Ngovio/3703 belonged to the 1st Defendant. He maintained that his continued occupation of the land was adverse to the registered owner's title and is recognised as such under the law.
 8. The issue for determination is whether the Plaintiff has acquired title to a portion of 3/8 acres out of land parcel Ngandori/Ngovio/3703 by way of adverse possession.
 9. The law on adverse possession is anchored on Section 38(1) of the *Limitation of Actions Act*, which provides that a person who claims to have become entitled by adverse possession to land may apply to be registered as the proprietor of the land in place of the registered owner. The principles guiding such claims have been settled in various decisions including *Mtana Lewa v Kahindi Ngala Mwangandi* [2015] KECA 532 (KLR), *Wambugu v Njuguna* [1983] KLR 172 and *Samuel Kihamba v Mary Mbaisi* [2015] KECA 853 (KLR). The possession must be open and notorious but not secret, exclusive, continuous and uninterrupted for at least 12 years. It must also be adverse that is, without force, secrecy or the permission of the true owner; and accompanied by *animus possidendi*, the intention to possess.
 10. The Plaintiff's evidence which was not uncontroverted demonstrates that he took possession of the 3/8 acre portion of land in 1999 pursuant to a sale agreement with the 1st Defendant. The Plaintiff produced the sale agreement dated 7/5/1999, which he entered into with James Kinyua Njeru, the 1st Defendant. The agreement is for the sale of 3/8 of an acre out of the 1st Defendant's portion of 2 ½ acres from Ngandori/Ngovio/1542 for the sum of Kshs. 70,000/= . The agreement stated that the 1st Defendant was a beneficiary in the Estate of the late Njeru Karuga who was the registered proprietor



- of parcel number 1542. Both parties signed the agreement and it was witnessed by their respective advocates.
11. The Plaintiff also produced a copy of the certificate of confirmation of grant for the Estate of the late Njeru Karuga issued to the 2nd Defendant. The grant confirmed that the 1st Defendant was to get 2 ½ acres out of land parcel 1542. The Plaintiff produced the mutation form for Ngandori/Ngovio/1542, which shows that that land was subdivided into Ngandori/Ngovio/3703 to 3705. The 2nd Defendant admitted in the application he made to be removed from the proceedings that land parcel Ngandori/Ngovio/3703 belonged to the 1st Defendant.
 12. The Plaintiff produced photographs of the developments on the suit land in support of his assertion that he had extensively developed the land, and had planted various trees and crops. They include macadamia trees that are now mature, coffee stems, grevillea trees, eucalyptus trees, bananas, maize, beans, other seasonal crops and trees. The Plaintiff's actions clearly show that he has treated that portion of land as his own to the exclusion of the 1st Defendant. He also testified that his possession had not been interrupted or disturbed. The 2nd Defendant, whose name was struck out of this suit did not refute the Plaintiff's claim of occupation of the suit land.
 13. The Plaintiff has demonstrated exclusive and uninterrupted possession of the subject portion of land. From 7/5/1999 up to 15/8/2019 when this suit was filed adds up to 20 years, which meets the statutory period of 12 years prescribed by law. The court is satisfied that the Plaintiff has demonstrated that he has become entitled to a portion of 3/8 acres out of Ngandori/Ngovio/3703 by way of adverse possession.
 14. The court grants prayers (a), to (d) of the Originating Summons dated 15/8/2019. The Plaintiff will meet the costs of subdividing Ngandori/Ngovio/3703 for purposes of excising the portion measuring 3/8 acres, which he occupies for purposes of transfer and registration in the Plaintiff's name.
 15. Each party will bear its costs.

DELIVERED VIRTUALLY AT THIS 11TH DAY OF SEPTEMBER 2025.

K. BOR

JUDGE

In the presence of: -

Mr. Fundi Kimanzi for the Plaintiff

No appearance for the Defendant

