



**Ita v Nyaga & 6 others (Environmental and Land Originating Summons
26 of 2020) [2025] KEELC 5990 (KLR) (11 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 5990 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 26 OF 2020
AK BOR, J
SEPTEMBER 11, 2025**

BETWEEN

CHARLES NGARI ITA PLAINTIFF

AND

MURURI NYAGA 1ST DEFENDANT

LYDIA WANJIRU MUGO 2ND DEFENDANT

SUSAN KIURA KATHENDU 3RD DEFENDANT

PHIDES MWENDIA NYAGA 4TH DEFENDANT

PURITY THAARA NYAGA 5TH DEFENDANT

ROSE IRIMA NYAGA 6TH DEFENDANT

DICKSON NJERU NYAGA 7TH DEFENDANT

JUDGMENT

1. Through the Further Amended Originating Summons dated 30/4/2024 the Plaintiff seeks to be declared as entitled to the parcel of land known as Nthawa/Siakago/1120 (suit land) by way of adverse possession. His claim is that the late Njagi Machai, registered as the owner of the suit land, sold the land to him before he died. The 1st Defendant is the wife of the late Njagi Machai and administrator of his estate. The Plaintiff claimed that together with his family, they had occupied the suit the land openly, peacefully, continuously and without interruption for 40 years and that, he had developed it extensively. He averred that the 1st Defendant had not made any attempts to terminate his occupation of the suit land and that he had therefore acquired title to the land by way of adverse possession. His other claim is that that the 1st Defendant filed a succession cause in Siakago and caused the suit land to be shared among the Defendants.



2. The 7th Defendant, Dickson Njeru Nyaga, swore the replying affidavit in response to the suit on behalf of the other Defendants. He deponed that the suit land is registered in the name of the late Njagi Muchai who died on 14/2/1997. That on 4/3/1978, the late Njagi Muchai entered into a sale agreement with the Plaintiff for the sale of the suit land at the agreed consideration of Kshs. 1200/= out of which the Plaintiff only paid Kshs. 700 leaving a balance of Kshs. 500/= which he refused to pay. He averred that the Plaintiff and the late Njagi Muchai obtained Land Control Board (LCB) consent on 3/4/1979 but the transfer was never effected because the Plaintiff refused to clear the balance.
3. He stated that the agreement between the parties was nullified by the District Officer (D.O), Siakago and that the suit land had been divided among the Defendants who are the beneficiaries of the estate of the late Njagi Muchai through Siakago PMC Succession Cause No. 156 of 2018. He denied that the Plaintiff's occupation of the land had been open, peaceful and continuous as he claimed and added that the Plaintiff occupied the land secretly without their knowledge.
4. The suit was set down for hearing on 2/4/2025. During the hearing, the Plaintiff relied on his witness statement where he stated that he entered into a sale agreement with the late Njagi Muchai on 4/3/1978 and bought the suit land for Kshs. 1200/=. He stated that he took possession of the suit land with the full knowledge of the 1st Defendant and had continued to occupy the land for over 40 years with his children. He claimed that he had extensively developed the land by cultivating it, planting mango trees, grevillea trees and miraa; and that he and his son had constructed permanent houses on the land.
5. During cross examination, he claimed that he bought the suit land for Kshs. 4,000/= which he paid all at once. The Plaintiff produced copies of the green card for the suit land, two sale agreements made on 4/3/1978 and on 2/4/1979, letters of administration issued to the 1st Defendant and a certificate of confirmation of grant.
6. The Plaintiff called Boniface Ngari Nduma as witness. He stated that he knew the Plaintiff and the 1st Defendant and that they come from the same locality. That all through his childhood, the Plaintiff and his family were living on the suit land where he has brought up his children who are now adults and married. He added that the Plaintiff had extensively developed the suit land and had constructed permanent houses, connected electricity, and planted mango trees which are now mature, miraa as a cash crop, maize and beans on the land.
7. The 7th Defendant stated in evidence that his late father sold the suit land to the Plaintiff but he did not pay the full purchase price. He maintained that the sale agreement was nullified before the D.O Siakago and that although the Plaintiff was asked to leave the land, he remained on the land rudely until today. They did not sue the Plaintiff. He produced copies of the official search, Njagi Mushaki's death certificate, letter from the Chief listing the dependants, grant of letters of administration issued to the 1st Defendant, confirmed grant, LCB consent dated 3/4/1979, the sale agreements dated 4/3/1978 and 2/4/1979 and the pleadings filed in Siakago ELC Case No. 64 of 2021 and Siakago Miscellaneous Succession Cause No. 9 of 2018.
8. The Defendants called Njeru Mutandike. His stated that he knew the Plaintiff as they come from the same area. He testified that the Plaintiff uses the suit land to date and that the Defendants and their mother live on another piece of land. He maintained that the Plaintiff did not complete payment of the purchase price even though he was not there when the sale agreement was written. He did not know if the agreement was terminated. He confirmed that the Plaintiff had built a permanent house on the suit land, planted miraa and mango trees and that he benefits from the suit land. He added that the Plaintiff was on the suit land before the matter went to the D.O.



9. On being re-examined, Njeru Mutandike told the court that the Plaintiff moved into the suit land during Njagi Muchai's lifetime. He claimed that after he died is when the Plaintiff started claiming he had bought the land. He stated that the Plaintiff was the one that took the late Njagi Muchai to the D.O and that the Plaintiff offered two goats before the D.O, for the land, which Njagi Muchai declined to accept for being too little. He stated that the Plaintiff was told to bring grown goats but he never went back. Njagi Muchai later died.
10. The court directed the parties to file and exchange written submissions. At the time of writing the judgment, none of the parties had filed their submissions. The issue for determination is whether the Plaintiff proved that he had acquired title to Nthawa/Siakago/1120 through adverse possession.
11. For a claim for adverse possession to succeed, the Plaintiff must demonstrate that his occupation of the land has been continuous, open, exclusive, and without the permission of the registered owner for an uninterrupted period of at least 12 years. The burden of proof lies with the Plaintiff. In *Mtana Lewa v Kabindi 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 (12) years. The process springs into action by default or in action of the owner. The essential prerequisites are that possession of the adverse possessor must not be by force, or stealth nor under the license of the owner. It must be adequate in continuity, public and show that possession is adverse to the title owner.
12. In *Wambugu v Njuguna* [1983] KLR 172, the court laid down the guiding principles for determining a claim for adverse possession. The owner must have lost his right to the land either by being dispossessed of it or by having discontinued his possession of it. Further, the court held that the proper way of assessing proof of adverse possession was whether the titleholder had been dispossessed or had discontinued his possession for the statutory period and not whether or not the claimant proved that he had been in possession for the requisite number of years.
13. Similarly in *Samuel Kibamba v, Mary Mbaisi* [2015] KECA 853 (KLR) the court stated that for one to succeed in a claim for adverse possession one must demonstrate that he has occupied the land openly without force, without secrecy, and without license or the permission of the land owner, with the intention to have the land. These elements are contained in the latin phraseology, *nec vi, nec clam, nec precario*. The other requirement is that of *animus possidendi*, or intention to have the land.
14. In this case, it is not in dispute that the Plaintiff is in occupation of the suit land. It is also not in dispute that the Plaintiff entered the suit land after he purchased the land from the late Njagi Mishaki, the registered proprietor of the suit land; vide sale agreements entered into in 1978 and 1979. The agreed purchase price for the suit land was Kshs. 1,200/= and the late Njagi Mishaki acknowledged receipt of Kshs. 1,000/= leaving a balance of Kshs. 200/=. There is no evidence that the balance of Kshs. 200 was paid.
15. While the Plaintiff maintained that he paid the full purchase price, the Defendants denied that the balance was paid. The Defendants claimed that the agreement was nullified before the D.O. Siakago before Njagi Machai died on 14/2/1997. It is also not disputed that the Plaintiff has remained on the land since then and that he has developed the land by building permanent houses and planting various crops and trees.
16. In *Gabriel Mbui vs Mukindia Maranya* (1993) eKLR, the court explained that where adverse possession arose out of a sale of agreement under which the payment of the purchase price by the



adverse possessor was by installments, and the agreement fails, the period of limitation starts to run on the date of the payment of the last installment of the purchase price.

17. The agreement in this case is said to have been terminated before the death of Njagi Machai on 14/2/1997. Time did not start running between 1978 and 1997, as the Plaintiff was in occupation of the suit land with the permission of the registered owner. The Plaintiff's possession of the suit land became adverse upon the termination of the agreement. Assuming that the agreement was terminated before 14/2/1997, then time began running in 1997. By the time this suit was filed on 25/8/2020, the Plaintiff had been in possession of the land for 23 years, which is beyond the required minimum statutory period of 12 years.
18. The Defendants conceded that they did not take any steps to assert ownership of the suit land or to evict the Plaintiff during that period. The Plaintiff's occupation and developments on the land were visible and known to the Defendants. The Plaintiff's possession of the suit land was therefore open, continuous, uninterrupted and adverse to the title of the late Njagi Muchai.
19. The court grants the prayers sought in the Further Amended Originating Summons dated 30/4/2024. The Plaintiff is awarded costs of the suit.

DELIVERED VIRTUALLY AT NAIROBI THIS 11TH DAY OF SEPTEMBER, 2025.

K. BOR

JUDGE

In the presence of: -

Mr. Lugard Mogusu for the Plaintiff

No appearance for the Defendant

