



**Muchiri (Suing as the Administrator of the Estate of Nelson Muchiri  
Githinji) v Komu (Environmental and Land Originating Summons  
321 of 2019) [2025] KEELC 6027 (KLR) (17 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6027 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS 321 OF 2019**

**CG MBOGO, J**

**SEPTEMBER 17, 2025**

**IN THE MATTER OF AN APPLICATION UNDER  
SECTION 38 OF LIMITATIONS OF ACTIONS CT, CAP 22**

**AND**

**IN THE MATTER OF HALF PORTION OUT OF  
LAND PARCEL NO. DAGORETTI/KANGEMI T. 251**

**BETWEEN**

**EDWARD MUCHIRI (SUING AS THE ADMINISTRATOR OF THE ESTATE OF  
NELSON MUCHIRI GITHINJI) ..... PLAINTIFF**

**AND**

**CHRISTOPHER NJOROGE KOMU ..... DEFENDANT**

**JUDGMENT**

1. Pursuant to Sections 7 and 38 of the *Limitation of Actions Act* and Order 37 Rule 7 of the Civil Procedure Rules, the plaintiff filed the originating summons dated 30<sup>th</sup> September, 2019 seeking the following orders:-
  1. That this honourable court be pleased to order and hereby order that Nelson Muchiri Githinji (deceased) herein has become entitled to ½ portion of the property known as Dagoreti/Kangemi T. 251 by virtue of adverse possession having been in excess of 12 years.
  2. That this honourable court be pleased to order that the Nairobi Land Registrar does register the plaintiff as the legal owner of half portion upon the excision of the said half portion from the said Dagoreti/Kangemi T. 251.



3. That this honourable court be pleased to issue a permanent injunction against the estate of Komo Kiarie (deceased) from interfering, dealing, trespassing, selling, disposing, alienating or interfering in whatsoever manner with the plaintiff's half portion of land to be excised from Dagoretti/Kangemi T. 251.
4. That costs of this suit be borne by the defendant.
2. The originating summons is supported by the affidavit of the plaintiff sworn on even date. The plaintiff deposed that prior to the death of Nelson Muchiri Githinji, the deceased had purchased half a portion of Dagoretti/Kangemi/T. 251, the suit property, from Komu Kiarie (deceased) who was the registered owner of the said property. That upon purchase, the deceased took possession of the said portion where he built his matrimonial home as well as rental houses and to date, the estate of the plaintiff is in possession of the property.
3. The plaintiff further deposed that despite numerous requests to have the portion transferred to Nelson during his lifetime, Komu did not transfer the suit property as at the time of his demise in 1980. He deposed that subsequently upon the demise of Komu, Nelson was engaged in a dispute with the estate of Komu which involved the provincial administration, village elders, and witnesses where it was established that the estate of the plaintiff had purchase half portion of the suit property. Further, he deposed that the late Nelson placed a caution twice on the suit property, and continued to demand from the estate the transfer which efforts were fruitless.
4. The plaintiff further deposed that they discovered that succession proceedings had been filed in Succession Cause No. 1418 of 1992, and that at the time the deceased plaintiff died, the same portion had not been transferred to him. The plaintiff deposed that the late Nelson instituted civil suit no, HCC 1803 of 1995 (OS) but the status of the suit is unknown, and that the file cannot be traced. Further, that the late Nelson is entitled by way of adverse possession to be declared as the legal owner of the half portion having been in occupation for 54 years.
5. The defendant filed his replying affidavit sworn on 15<sup>th</sup> January, 2020 in opposition to the application. The defendant deposed that his late father, Komu Kiarie was illiterate and did not sign any documents, and that the same is fraudulently crafted. He deposed that the late Nelson did not take possession of the portion of the suit property and that it was his mother who was given accommodation as it was common practice when someone was landless. The defendant further deposed that the late Nelson's mother permission to live on the land was on humanitarian grounds, and that no demands were placed on his father before his demise. It was deposed that the dispute was commenced after his father died and the plaintiff does not state why they never claimed the title during his father's lifetime. Further, that the matter filed in HCCC No. 1803 of 1995 was dismissed by the court for want of prosecution on 13<sup>th</sup> November, 2001. It was deposed that the late Nelson is not the plaintiff, and there cannot be any claim for adverse possession taken out by the deceased as he had gone to court and his case was dismissed.
6. The plaintiff filed a further affidavit sworn on 4<sup>th</sup> March, 2020. The plaintiff reiterated the contents of his supporting affidavit and further deposed that the suit in HCC No. 1803 of 1995 was never dismissed and attempts to trace the same at the registry proved futile.
7. This matter proceeded for hearing on 13<sup>th</sup> February, 2025. Edward Githinji Muchiri (PW1) adopted his witness statement dated 30<sup>th</sup> September, 2019 as his evidence in chief. He also produced the P. Exhibits 1 to 21 respectively as evidence. He testified that his late father bought the portion of the suit property from his late great grandfather one Komu Kiarie, and that his late father relocated his grandmother to go and reside on the said portion as they were residing in Mombasa. He testified that his father's brothers, Michael Mbugua Githinji, Joseph Muigua Githinji and John Njenga Githinji also moved to



- reside on the plot. That after his father retired, they moved from Mombasa, and settled on the suit property between the years 1970 and 1972. PW1 testified that his father entered into an agreement with the seller of the property which was in Kikuyu language, and that they have never been issued with a title deed despite his late father's attempt.
8. PW1 further testified that his father approached the area chief who together with his committee resolved that his father had purchased 50 by 100 feet, and that whenever they demanded for a title deed, they were told that their grandmother had been shown a place to reside. He stated that they still reside on the plot, and are in occupation.
  9. On cross-examination, PW1 testified that as per the agreement dated 20<sup>th</sup> November, 1966, the witnesses are his relatives and that his father's name is not in the said agreement. He informed the court that he took long to testify because of the dispute that was before the chief as per the letter dated 23<sup>rd</sup> May, 1995. On being shown the letter dated 4<sup>th</sup> November, 1986, PW1 stated that the sons of the late Komu did not agree with the chief and the elders, and that the chief's decision was not implemented. PW1 could not remember the year when his father died, and that between the year 1966 to 1980, there is no evidence to show that his late father made a claim against the late Komu.
  10. PW1 testified that his father could not file a case against the late Komu since his grandparents used to reside on the said portion, and that his father was related to the late Komu. He agreed that his father filed case no 1803 of 1995, but he does not know if it was dismissed by the court. He stated that as per the order dated 5<sup>th</sup> November, 1999, the same indicates that the case was dismissed. He was also aware that his late father had placed a caution on the property and that the same was removed on 16<sup>th</sup> April, 2018. He maintained that the portion of the suit property was sold to his late father and that the mode of payment is not within the evidence produced. He was aware that the family of the late Komu filed a case over his estate, but he has not found the said beneficiaries of the estate of the late Komu.
  11. On re-examination, PW1 testified that the late Komu died before the fulfilment of what needed to be done before the transfer of land, and that there has never been any case about his father's signature. Further, that he was not aware of the case that his father had filed and neither of its outcome as it never progressed after his father died. He stated that he was not part of the succession cause of the estate of the late Komu and that he does not know the beneficiaries.
  12. Christopher Njoroge Komu (DW1) adopted his witness statement dated 7<sup>th</sup> November, 2022 as his evidence in chief. He also produced D. Exhibits 1 to 6 respectively contained in the list of documents dated 7<sup>th</sup> November, 2022 and 30<sup>th</sup> May, 2023. DW1 testified that the plaintiff's father did not buy land from his late father and that the agreement dated 20<sup>th</sup> November, 1966 does not bear his father's signature. He testified that they also did not agree with the chief decision when the dispute was before him. Further, that from 1966 to 1980, they did not claim the land as against his father, and it was only after his death that the case was brought up.
  13. DW1 further testified that in 1961 the plaintiff's father married his sister, and since he had no land, his father showed his sister a place where they could reside, and thus they entered the land with his father's consent. He further informed the court that he was the defendant in case no. 1803 of 1995, which was dismissed and it was not appealed against.
  14. On cross-examination, DW1 testified that his father agreed to Muchiri's mother to move into the land, and that it was not through force. He stated that he was not aware of the sale agreement of 20<sup>th</sup> November, 1966, and that the same is a fraud. DW1 testified that while fraud is a crime, they have never reported the said crime, they have never filed a case against the plaintiff and neither have they evicted



- them. He agreed that the plaintiff is still on the land, and he if he could recall, the plaintiff moved into the said portion before the year 1970.
15. DW1 testified that his late father died in the year 1980, and that he never asked them to move out. He agreed that the plaintiff's father filed a case against him, and that it was dismissed in the year 2016. He agreed that in the year 2016, the late Nelson was alive when the suit was dismissed. He testified that there are some structures on the land, and that the family of the late Nelson resides in those structures. He testified that he has never filed a case for demolition of the structures because of the case that Nelson filed in 1995. He stated that the court informed them not to send them away as the case was going on. That after the case was dismissed, Edward Muchiri filed another case.
  16. DW1 testified that the plaintiff occupied the land on humanitarian grounds, but he has no evidence to show the same. That while he was aware of a temporary order against eviction, since 1994 he did not make an application for eviction. He testified that he gave the plot to Virginia Njeri who is the daughter of the late Komu. It was his testimony that Tabitha was given the land by Njambi with the permission of the late Komu. Both Tabitha and Njambi's husbands were brothers. He stated that he appeared before the chief who said that the land belongs to the Plaintiff's father. That while he disagreed with the chief, he did not do anything against the said decision.
  17. On re-examination, DW1 testified that under the grant, the portion of the suit property was devolved to Njambi with the permission of his late father.
  18. The plaintiff filed his written submissions dated 20<sup>th</sup> March, 2025 and he raised four issues for determination as listed below:-
    - a. Whether there was a valid sale agreement between the parties.
    - b. Whether the plaintiff has proven his case on a balance of probability.
    - c. Whether the applicant could claim adverse possession arising from an agreement for sale and if he has met the threshold for grant of orders of adverse possession.
    - d. Who shall bear the costs.
  19. On the first issue, the plaintiff submitted that the agreement produced and dated 20<sup>th</sup> November, 1966 was legally valid and enforceable by law. He submitted that the same was executed by both parties, and witnessed by other parties.
  20. On the second issue, and while relying on the cases of Kirugi and Another v Kabiya & 3 others (1987) KLR 347 and James Maina Kinya v Geral Kwendaka [2018] eKLR, the plaintiff submitted that he has proved to this court the existence of the sale agreement and further his occupation has been open, continuous, and exclusive.
  21. On the third issue, the plaintiff submitted that he has demonstrated that his occupation of the land has dispossessed the registered owner of the land who refused to register the plaintiff's father as the registered owner upon fulfilling the conditions of the sale agreement. Further, that their occupation of the portion of the suit property is hostile and to the exclusion of the owner. The plaintiff relied on the cases of Mtana Lewa v Kahindi Ngala Mwangandi [2015] eKLR, Peter Mbiri Michuki v Samuel Mugo Michuki [2014] eKLR, and Public Trustee v Wanduru [1984] KLR 314 at 319.
  22. The defendant filed his written submissions dated 8<sup>th</sup> April, 2025. The defendant submitted that based on the evidence tendered before the court, the agreement dated 20<sup>th</sup> November, 1966 was not signed by the alleged contracting parties. He further submitted that the entry into the suit property by Nelson



- Muchiri was with the permission of Komu Kiarie, and thus the plaintiff has not satisfied the ingredient of adverse possession and the permissive nature of their occupation has not been rebutted.
23. The defendant further submitted that where the claimant's possession is permissive, time does not run in favour of the possessor as his possession is not adverse to the owner's title. Reliance was placed in the case of *Administrator of Kimingi Wariera (deceased) and of Stephen Mwangi Gatunge v Edwin Onesmus Wanjau* [2022] eKLR.
24. The defendant further submitted that the late Komu died in 1980, and that no suit had been filed against him. He submitted that it was not until 1995 when Nelson Muchiri Githinji went to the chief over the same issue. It was submitted that the chief did not have jurisdiction over land that had title and his finding could not be enforced. In conclusion, the defendant submitted that the plaintiff should not be allowed to engage the court on the same issue as it was dismissed.
25. I have considered the pleadings, the evidence produced and the written submissions filed by the parties. I am of the view that the issue for determination is whether the plaintiff is entitled to the orders of adverse possession.
26. The law on adverse possession is provided for under the *Limitation of Actions Act*. Section 7 of the Act provides:-
- “An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.
27. Section 13 of the Act further provides: -
- “(1) A 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 (which possession is in this Act referred to as adverse possession), and, where under sections 9, 10, 11 and 12 of this Act a right of action to recover land accrues on a certain date and no person is in adverse possession on that date, a right of action does not accrue unless and until some person takes adverse possession of the land
- (2) Where a right of action to recover land has accrued and thereafter, before the right is barred, the land ceases to be in adverse possession, the right of action is no longer taken to have accrued, and a fresh right of action does not accrue unless and until some person again takes adverse possession of the land.
- (3) For the purposes of this section, receipt of rent under a lease by a person wrongfully claiming, in accordance with section 12(3) of this Act, the land in reversion is taken to be adverse possession of the land.”
28. It is not in dispute that the entry into the portion of the suit property by the estate of the late Nelson was sometime in the 1960s'. The plaintiff argues that his late father purchased the portion of the suit property from the late Komu Kiarie in the year 1966. He produced a sale agreement written in Kikuyu language and translated. The agreement bears two signatures which the court is unable to discern which belongs to either of the seller and the purchaser. The agreement appears to have been witnessed by relatives of the plaintiff's family. In contending with this agreement, the defendant insisted that his late father did not know how to write and would instead use a thumb print. He argued that the sale agreement is a forgery. However, he did not prove the said forgery. Further, the defendant maintained that the entry into the said portion was permissive as Nelson's mother was landless and the late Komu allowed her and her husband to reside on the said portion. Again, proof of the occupation



- on humanitarian grounds was not proved. However, what is clear and from the testimonies of the witnesses is that the entry into the contested portion was before the year 1970.
29. The question that arises is whether the plaintiff took possession of the suit land by dispossessing the true owner and clearly asserting ownership in denial of the title of the true owner. The other question would be whether possession of the suit land by the plaintiff, if any, was open and peaceful and without secrecy.
30. In *Kisumu Civil Appeal No. 27 of 2013 Samuel Kihamba versus Mary Mbaisi* [2015] eKLR, the court held:-
- “Strictly, for one to succeed in a claim for adverse possession one must prove and demonstrate that he has occupied the land openly, that is, without force, without secrecy, and without license or permission of the land owner, with the intention to have the land. There must be an apparent dispossession of the land from the land owner. These elements are contained in the Latin phraseology, *nec vi, nec clam, nec precario*. The additional requirement is that of *animus possidendi*, or intention to have the land”
31. In deciding whether the occupation was open, continuous and without secrecy, there is need to address the entry into the suit property as argued by the parties herein. If say the entry was through an agreement for sale in the year 1966, an action founded on a contract cannot be brought after the end of six years. See Section 4 (1)(a) of the *Limitation of Actions Act*. In other words, the validity and legality of this contract does not find much expression unless proven otherwise. Equally, and on the other hand, an action to recover land cannot be brought after 12 years-Section 7. Essentially, and going by the provisions of Sections 4 and 7 of the Act, the permissive nature of the plaintiff’s possession and occupation of the portion of the suit property ceased after 12 years from sometime in 1966 which would be in 1978. Any occupation after this period would in my view be termed adverse.
32. In the case of *Maweu v Liu Ranching & Farming Cooperative Society* [1985] KECA 72 (KLR), the Court of Appeal stated:-
- “ Adverse possession is a fact to be observed upon the land.”
33. Also, in the case *Kasuve Vs Mwaani Investments Limited & 4 others* 1 KLR 184, the Court of Appeal restated:-
- “In order to be entitled to land by adverse possession, the claimant must prove that he has been in exclusive possession of the land openly and as of right without interruption for a period of 12 years either after dispossessing the owner or by discontinuation of possession by the owner on his own volition.”
34. Further, in the case of *Wilson Njoroge Kamau v Nganga Muceru Kamau* [2020] eKLR it was held that:-
- “In deciding the issue of adverse possession, the primary function of a court is to draw legal inferences from proved facts. Such inferences are clearly matters of law. Thus, whereas possession is a matter of fact, the question whether that possession is adverse or not is a matter of legal conclusion to be drawn from the findings of facts.”
35. Just to be clear, and while working with the two scenarios in mind of whether there was an agreement and or whether there was permission on humanitarian grounds which would be in essence an ‘oral agreement’, there is need to ascertain the events that took place after the year 1978. To begin with



during this period, it is clear that the plaintiff's occupation of the portion of the suit property was peaceful. The defendant and his late father did not attempt to recover the land. From the record the late Komu died in the year 1980 and later in the year 1987 the deceased Nelson reported a land dispute of ownership claims to the chief. A similar dispute was heard sometime in the year 1995.

36. From 1978, the occupation of the plaintiff in my view was peaceful, open and without interruption. The defendant admitted in evidence that the plaintiff is in occupation and that they dwell therein, a fact confirmed by the photographs supplied to the court. Again, the defendant did not seek to assert ownership of his land and thus the plaintiff dispossessed him of the same. In my view, the interest in the land accrued so much from the year 1978 such that in 1995 the late Nelson being so desirous to be registered as the owner filed the OS in HCC 1803 of 1995. From the record, it appears that this suit was dismissed on 5<sup>th</sup> November, 1999 under Order 16 rule 6 of the Civil Procedure Rules. While bearing this in mind with the fact that the PW1 testified that he did not know the outcome of the suit, I am mindful to note that this decree was extracted on 17<sup>th</sup> June, 2016. By dint of Section 4 (4) of the Act which provides that, "An action may not be brought upon a judgment after the end of twelve years from the date on which the judgment was delivered." The defendant cannot now rely on the said order on the grounds that the case was dismissed. This order was extracted on 17<sup>th</sup> June, 2016, close to 17 years after it was made. It has not been shown that it was ever served upon the plaintiff at any time, and in any case, the same cannot thus be relied upon owing to the limitation of time stipulated above. In sum, the defendant has demonstrated his failure to assert ownership of the portion of the suit property.
37. Arising from the above, and upon the evaluation of the evidence on record, it is my finding that based on a balance of probabilities, the plaintiff has discharged the burden of proof. I find merit in the originating summons dated 30<sup>th</sup> September 2019, and I grant the following orders: -
- i. The estate of Nelson Muchiri Githinji (deceased) has become entitled to ½ portion of the property known as Dagoreti/ Kangemi T. 251 by virtue of adverse possession having been in excess of 12 years.
  - ii. The Land Registrar, Nairobi is hereby directed to register the estate of Nelson Muchiri Githinji (deceased) as the legal owner of half portion upon the excision of the said half portion from the said Dagoreti/Kangemi T. 251.
  - iii. An order of permanent injunction is hereby issued against the estate of Komo Kiarie (deceased) from interfering, dealing, trespassing, selling, disposing, alienating or interfering in whatsoever manner with the plaintiff's half portion of land to be excised from Dagoreti/ Kangemi T. 251.
  - iv. Since the parties are relatives, I make no orders as to costs.

Orders accordingly.

**DATED, SIGNED & DELIVERED VIRTUALLY THIS 17<sup>TH</sup> DAY OF SEPTEMBER, 2025.**

**HON. MBOGO C.G.**

**JUDGE**

**17/09/2025.**

In the presence of:

Mr. Benson Agunga - Court assistant

Mr. Kingara for the Defendant

Ms. Alice Muturi holding brief for Ms. Susan Kagwe for the Plaintiff

