



Maingi & another v Mwangi (Environmental and Land Originating Summons E009 of 2024) [2025] KEELC 6002 (KLR) (11 September 2025) (Judgment)

Neutral citation: [2025] KEELC 6002 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E009 OF 2024
AK BOR, J
SEPTEMBER 11, 2025**

BETWEEN

KABESU MAINGI 1ST PLAINTIFF

DAVID MAINGI MBUU 2ND PLAINTIFF

AND

LINUS MAINA MWANGI DEFENDANT

JUDGMENT

1. The Plaintiffs instituted this suit vide the originating summons dated 11/4/2024 seeking to be declared to have become entitled to the land known as Mbeere/Wachoro/1753, measuring approximately ¼ an acre (the suit land), through adverse possession. They sought to have the registration of the Defendant as proprietor of the suit land, and any other persons deriving title from him cancelled, and that they be registered as proprietors of the suit land. They also sought a permanent injunction to restrain the Defendant from disposing of the suit land, evicting them or dealing with the land in a manner prejudicial to their interest over the land.
2. The 2nd Plaintiff, David Maingi Mbuu, swore the affidavit in support of the originating summons. The Plaintiffs are mother and son. They averred that sometime in 1980, they entered the suit land by clearing bushes before settling and beginning to farm on it. They averred that the 2nd Plaintiff carried out several developments on the suit land since 2008 including planting trees, cultivating and engaging in other agricultural activities. Further, that the Plaintiffs have continually undertaken improvements on the suit land and built a permanent house where they have lived for the longest time.
3. The Plaintiffs claimed that their occupation and use of the suit land has been physical, open, uninterrupted and without interference from the Defendant or anybody else, nor had anyone ever questioned their occupation of the suit land. They asserted that they have become entitled to the



- suit land through adverse possession. They exhibited copies of the green card and photographs of the developments on the suit land.
4. The Defendant filed a replying affidavit in opposition to the suit. He deponed that he was registered as proprietor of the suit land on 20/1/2012 and that a title deed was issued to him on 25/4/2017. The suit land is situate in Mbeere Sub County of Embu County while he resides at Kangema, Murang'a County. He deponed that he has never occupied nor used the suit land despite being the registered proprietor, and that he came to know the actual location the land sometime in 2023 when he found the Plaintiffs illegally and unlawfully occupying the suit land.
 5. He stated that he requested the Plaintiffs to vacate the suit land on various dates in 2023 and issued a notice to vacate in 2024 but they did not vacate the land. He argued that having discovered the Plaintiffs' illegal occupation of the suit land in the year 2023, time for purposes of adverse possession started running from then and as such, the Plaintiffs' suit is premature. He exhibited copies of the green card for the suit land and the notice to vacate dated 23/2/2024.
 6. Parties agreed to have the suit determined through written submissions and the documents filed by parties. The Plaintiffs cited Sections 7, 13, 37 and 38 (1 and 2) of the *Limitation of Actions Act* and submitted that section 28(h) of the *Land Registration Act* recognized overriding interests on land which may be acquired by virtue of any written law relating to the limitation of actions or by way of prescription. It was their submission that by operation of the two statutes, an adverse possessor gains title to land and is entitled to protection of the law over their property. They relied on various case law to demonstrate the elements a court should consider when determining a claim for adverse possession of land.
 7. The Plaintiffs submitted that they entered the suit land in 1980 and their entry was not permissive. They urged that they are required to demonstrate open, continuous and uninterrupted possession of the suit land. They maintained that they had shown exclusive possession to the detriment of the Defendant such that without doubt, joint or common possession did not exist. They urged that they had demonstrated that their claim for adverse possession was merited and should be allowed.
 8. The Defendant submitted that the onus of proof was on the Plaintiffs as required by Sections 107 and 109 of the *Evidence Act*. He set out several cases to demonstrate the elements the court should consider in determining a suit for adverse possession. He submitted that he was registered as the owner of the suit land on 20/1/2012, which means that prior to 2012; the suit land had no known owner upon which time would run for the statutory period of 12 years. He argued that since he has never been in occupation and use of the suit land nor was he aware of its location, the Plaintiffs could not claim that their occupation of the suit land was open, without force, without secrecy, license or permission from the landowner.
 9. Further, the Defendant argued that since he has never been in actual occupation and possession of the suit land, then the Plaintiffs could not say they have dispossessed or discontinued his possession of the land. He added that the Plaintiffs bore the evidentiary burden to prove that he had at one time been in possession of the suit land after which they dispossessed or discontinued his possession. He was emphatic that for purposes of adverse possession, time started running in 2023 when he became aware of the Plaintiffs' occupation of the suit land. He maintained that the Plaintiffs failed to prove the elements of adverse possession and that their suit should therefore be dismissed.
 10. The issue for determination is whether the Plaintiffs have proved on a balance of probabilities that they are entitled to adverse possession of the suit land. The Plaintiffs' evidence that they took possession of the suit land in 1980 was not controverted. The Defendant was registered as proprietor of the land in



2012. According to the green card on record, there is no indication of any prior registration before the Defendant's entry as proprietor.
11. The circumstances under which the Defendant came to be registered as proprietor were not disclosed, whether it was through purchase, inheritance, or any other mode of acquisition. The Defendant admitted that he only became aware of the location of the land in 2023, which is rather peculiar since he claims to have acquired the land in 2012. What this means is that he was registered as the owner of the land in 2012 without knowing the physical location of the land and only went to the land in 2023 and found the Plaintiffs' in occupation.
 12. The Plaintiffs produced photographs showing a permanent house, semi-permanent structures, and mature trees including a mature mango tree on the suit land. Those photographs were not challenged by the Defendant. It is highly improbable that the Defendant would have remained unaware of the conspicuous developments the Plaintiffs made on the land all this while and even at the time the Defendant was registered as proprietor of the land in 2012. Those developments are substantial and visible and demonstrate that the Plaintiffs have lived on the suit land for a long period and invested on the land. The Defendant's argument that he was unaware of the Plaintiffs' occupation is not persuasive.
 13. The Plaintiffs' case is that their occupation of the suit land has been continuous, open, exclusive and adverse to the interests of the Defendant since 1980. The Defendant admitted that he has never occupied or utilized the land. He did not grant the Plaintiffs permission to be on the land and did not interrupt their occupation at any point prior to 2023, when he claimed to have known of the location of the suit land.
 14. A person claiming adverse possession must demonstrate that their possession has been actual, open and notorious. It must be exclusive; continuous and uninterrupted for a period of twelve years, without force, secrecy or permission, and must be adverse to the interests of the true owner. (See *Mtana Lewa v Kahindi Ngala Mwangandi* [2015] KECA 532 (KLR) and *Wambugu v Njuguna* [1983] KLR 172).
 15. The Court of Appeal noted in *Ruth Wangari Kanyagia v Josephine Muthoni Kinyanjui* [2017] KECA 771 (KLR) that an owner would be deemed to be in possession of a property so long as there is no intrusion. That non-use of the property by the owner even for a long time would not affect his title. Rather, that the position will be altered when another person takes possession of the property and asserts a right over it.
 16. The fact that the Defendant stated that he had never taken possession nor utilised the suit land since his registration in 2012 reinforces the Plaintiffs' claim that their occupation has been open, peaceful, continuous, and exclusive. In this court's view, time for purposes of adverse possession against the Defendant started running from 20/1/2012. From 20/1/2012 to 11/4/2024 when this suit was filed is 12 years and 2 months, which falls within the 12-year period prescribed by law.
 17. The Plaintiffs have proved their case on a balance of probabilities. Judgment is entered in favour of the Plaintiffs that they have acquired title over Mbeere/Wachoro/1753 through adverse possession. The registration of the Defendant as proprietor of the suit land is cancelled, and the Land Registrar, Embu County, is directed to forthwith register the Plaintiffs as the joint proprietors of the suit land.
 18. A permanent injunction is issued to restrain the Defendant, his servants, agents, or employees from selling or offering for sale, disposing of or in any way interfering with the Plaintiffs' occupation and use of Mbeere/Wachoro/1753. Each party will bear its costs for the suit.

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

K. BOR



JUDGE

In the presence of: -

Mr. G. Nganga holding brief for Mr. M. Kamau for the Plaintiff

No appearance for the Defendant

