



Nyaga & another v GRNG (Sued as Guardian of IMN - Minor) & 6 others (Environment and Land Case 37 of 2019) [2025] KEELC 6010 (KLR) (11 September 2025) (Judgment)

Neutral citation: [2025] KEELC 6010 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT AND LAND CASE 37 OF 2019
AK BOR, J
SEPTEMBER 11, 2025**

BETWEEN

LUCY WANJIRA NYAGA 1ST PLAINTIFF

CHARLES NJUE 2ND PLAINTIFF

AND

GRNG (SUED AS GUARDIAN OF IMN - MINOR) 1ST DEFENDANT

DAVID GICHANGI GATHURI 2ND DEFENDANT

JOE KINGFORD MACHARIA GATHURI 3RD DEFENDANT

CLEMENT DENIS NGARI GATHURI 4TH DEFENDANT

KENNEDY NDWIGA NJAGI 5TH DEFENDANT

JOHN IRERI KINANI 6TH DEFENDANT

LAND REGISTRAR EMBU 7TH DEFENDANT

JUDGMENT

1. The Plaintiffs commenced this suit vide the Amended Originating Summons dated 31/5/2022 seeking to be declared to have acquired title over the land known as Gaturi/Nembure/2900, which had been subdivided into Gaturi/Nembure/16489 to 16493 through adverse possession. Further, they sought a declaration that when Gaturi/Nembure/2900 was subdivided and transferred, the title had been extinguished by operation of law and that the transfer of the resultant subdivisions was invalid. They sought a declaration that the failure by the 1st Defendant to obtain Land Control Board (LCB) consent within three months of the date of the agreement in 1974 rendered the sale null and void. They sought to have this court declare that the transfer of Gaturi/Nembure/16493 to Ian Muthii Njagi, a minor, was a nullity.



2. The other reliefs sought are a declaration that since the suit filed by the 1st Defendant against the 1st Plaintiff being CMCC No. 99 of 2019 was dismissed for want of prosecution, the 1st Defendant is barred from claiming interest in land parcel 2900; an order that the subdivisions that resulted from the subdivision of Gaturi/Nembure/2900 as entered in the green card on 18/6/2019 and 26/6/2019 should be cancelled and revoked by the 7th Defendant; a permanent injunction to restrain the 1st to 6th Defendants from entering, dealing with, leasing, selling, charging, alienating interest, transferring or otherwise interfering with the 1st and 2nd Plaintiffs' peaceful occupation of the suit land; and costs of the suit.
3. The 1st Plaintiff swore the supporting affidavit and averred that she and the 2nd Plaintiff had been in possession of Gaturi/Nembure/2900 since July 1974 pursuant to a sale agreement they entered into with the 1st Defendant. The agreed purchase price was Kshs. 150,000/= and she paid a deposit of Kshs. 3,000/= and took possession of the land. She was unable to pay the balance after taking possession and asserted that because the 1st Defendant failed to obtain the LCB consent within 3 months, the agreement became null and void. That through the letter dated 16/3/1988, which the 1st Defendant wrote to her and her husband, he repudiated the agreement and asked them to vacate the land with effect from 31/12/1988 but they did not move out.
4. She stated that from the time she entered the land in 1974, she had been cultivating it and had developed and fenced it. That over the years, she had planted crops like maize, bananas, avocado, macadamia, grass and trees and that she had also erected farm structures and kept farm animals like cows on the land. She further stated that her sons were born and raised on the suit land between 1976 and 1980 and that some of them have children who know no other home other than the suit land. She added that two of her children were buried on the suit land in 2002 and 2004 and that her mother in law was also buried on the suit land in 1989.
5. She averred that the 1st Defendant disappeared from 1974 when she entered the land and resurfaced in June 1996 to serve her with court papers in CMCC No. 189 of 1996 which sought to evict her from the suit land. The suit was dismissed in 2001 for want of prosecution. She claimed that she met the 1st Defendant on 2/2/2010 when she was summoned to the Chief's Office, where she was coerced to sign documents which were never translated to her nor was a copy given to her. That after that, the 1st Defendant did not interrupt her possession until 4/6/2019 when he served her with an order of injunction restraining her from removing her husband's body from Kyeni hospital for burial. The order was later discharged. She averred that she had been in open, continuous, exclusive and uninterrupted possession of the suit land to date and has utilised it since 2001.
6. She lodged a caution against the land in 2016 but it was removed by the 1st Defendant on 18/6/2019, pursuant to a court order issued in Runyenjes SPM ELC Case No. 55 of 2018. She claimed that she was never served with the pleadings filed in that case and that the order that lifted the caution and subdivided Gaturi/Nembure/2900 was obtained fraudulently through concealment of material facts. She listed particulars of fraud against the 1st Defendant. She added that the register for Gaturi/Nembure/2900 was closed upon subdivision on 26/6/2019 and the resultant sub-divisions were transferred to the 1st to 6th Defendants.
7. The 1st to 6th Defendants opposed the application through the replying affidavit sworn by the 1st Defendant, Geoffrey Reys Njagi. He deponed that it was with permission and consent that he allowed the 1st Plaintiff to take possession of the suit land after she was chased away from her father's home when she became pregnant with her first child while still in school. He explained that the 1st Plaintiff is known to him because she is his former wife's sister, and even though he allowed her to reside on



- the suit land, she remained a stranger because he is the registered proprietor. His view was that the 1st Plaintiff developed the suit land as a reasonable thing to do for someone who had a family and needed to make her home habitable for her family.
8. He asserted that the 1st Plaintiff's first two children were not born on the suit land and that some of them were buried there without his consent or permission. He denied giving the 1st Plaintiff uninterrupted possession and claimed that he sent her demand letters over the land between 1985 and 1988. That when the suit for eviction suit dismissed in 2001, they met again in the Chief's office in 2010 while he was trying to settle the issue out of court through the purchase of the suit land. He claimed that he entered into an agreement vide which the 1st Plaintiff agreed to purchase the suit land at the prevailing market price.
 9. He added that he offered the 1st Plaintiff alternative land in Chuka since he did not want to leave her and her family homeless but she declined. He urged that he held the land in trust for his son since he is still a minor. He was emphatic that the Plaintiffs live on the suit land with his permission and that their claim for adverse possession cannot therefore stand. Further, that he had not slept on his rights as it was evident that he tried to use all means available to him to claim his right as the owner of the suit property.
 10. The hearing of the Plaintiff's case proceeded on 13/2/2023 and the evidence of the defence was taken on 22/4/2024 and 23/4/2024 by Kaniaru J. I took over conduct of this suit on 24/3/2025 and heard the evidence of the last two defence witnesses.
 11. Lucy Wanjira Nyaga, the 1st Plaintiff, testified and told the court that the 1st Defendant gave her permission to enter the land and use it but he was selling it to her. That she paid Kshs. 3,000/= out of the agreed purchase price of Kshs. 150,000/= but the 1st Defendant failed to transfer the land to her. She sued the Land Registrar, because he helped the 1st Defendant remove the caution which she had registered against the suit land.
 12. The 1st Plaintiff produced copies of the pleadings and proceedings in High Court Civil Suit No. 186 of 1996 dismissing the suit for want of prosecution; title deed for Gaturi/Nembure/2900; authority to file suit on behalf of the 2nd Plaintiff; letter dated 14/9/1987 from the 1st Defendant to the 1st Plaintiff and letter dated 16/3/1988 to the 1st Plaintiff. The other documents produced were copies of the death certificate, two burial permits and photographs.
 13. She also tendered in evidence the court order dated 4/6/2019 together with the ruling and order dated 19/6/2019 in Civil Case 99 of 2019, which restrained the officer in charge of Kyeni hospital from releasing the body of her husband and the orders discharging that order. The other documents produced were the search and green card for Gaturi/Nembure/2900 and the plaint and summons to enter appearance in Civil Suit no. 55 of 2018, vide which the 1st Defendant sought to lift the caution. She also tendered copies of the official searches for Gaturi/Nembure/16489 to 16493.
 14. The 2nd Plaintiff, Charles Njue Nyaga gave evidence and told the court that he was the 1st Plaintiff's son and that his mother started living on the suit land in 1974. He stated that he had been on the land since 1978 and uses half of the land. He told the court that the 1st Defendant was not happy that they were living on the land and that he opposed the burial of his father on the land.
 15. The Plaintiffs called Owen Ndwiga Daniel to testify. He stated that he knew the 1st Plaintiff in 1976 and became her pastor. He confirmed to the court that the 1st Plaintiff lives on the suit land but did not know who owned it. He told the court that the 1st Plaintiff has planted crops and trees on the land.
 16. The 1st Defendant confirmed in his evidence that the 2nd Plaintiff is the 1st Plaintiff's son and that he has lived on the suit land since he was born in 1978, but maintained that he only allowed the 1st Plaintiff



- to use the suit land. He later claimed that the 1st Plaintiff was his cousin. He conceded that the 1st Plaintiff's son and mother in law were buried on the suit land but was emphatic that it was without his permission. Further, that the Plaintiff's husband was also buried on the land but without his consent and that his efforts to stop the burial were fruitless.
17. He asserted that the burials were done in secret without his knowledge and claimed that the 1st Plaintiff was using the suit land against his will from 1974 and is still on the land. He filed Civil Suit No. 189 of 1996 seeking to evict the 1st Plaintiff but the suit was dismissed. He wrote the letter dated 16/3/1988 to the 1st Plaintiff demanding that she vacates the suit land but she instead promised to pay him for the land.
 18. The 1st Defendant produced copies of the title for Gatari/Nembure/2900 together with letters dated 5/4/1985, 14/9/1987, 16/3/1988 and 26/10/1988 addressed to the 1st Plaintiff.
 19. The 1st Defendant called his cousin Kiura Wainaina and Njeru Gitararu as a witness. The cousin stated that the 1st Plaintiff and her children live on the suit land with the 1st Defendant's permission. He confirmed that she had developed the suit land, farmed crops and kept some domestic animals. He also confirmed that she had buried her relatives on the suit land. The 1st Defendant told him that the 1st Plaintiff refused to vacate the suit land.
 20. The 1st Defendant called the area Assistant Chief, Patrick Ndwiga Njagi, to give evidence. He told the court that he wrote the agreement dated 1/2/2010 between the 1st Plaintiff and the 1st Defendant vide which the 1st Plaintiff agreed to purchase the suit land at Kshs. 1,750,000/=. He tendered the agreement in evidence. He stated that he wrote the agreement after the parties agreed in the presence of another Assistant Chief known as John Mwaniki Ngari who died. Further, that the parties signed the agreement and wrote their identity card numbers.
 21. The Land Registrar Embu County, Isaac Njuri also gave evidence. From the typed proceedings it would seem that the Land Registrar produced the documents in his list of documents, but those documents are not in the file. He told the court that Gatari/Nembure/2900 was subdivided on 26/6/2019, when the mutation was presented to the lands registry for registration. It was subdivided to create Gatari/Nembure/16489 to 16493. He conceded that minors could be registered as owners of land as long as there was a trustee. He explained that he removed the caution lodged against the suit land pursuant to the court order issued on 28/5/2019.
 22. The court directed parties to file and exchange written submissions, which it has considered. The Plaintiffs submitted that their actions after entering the suit land in 1974 were against the will of the owner and amount to dispossession. They submitted that the sale agreement through which they entered the suit land became void and was terminated by operation of the law 3 months after for want of LCB consent. They also averred that the agreement was a nullity because it was not in writing. They expressed the view that their entry by permission ended three months later and that they continued to assert their rights against the 1st Defendant's title by utilizing the land and even built structures on the land. They maintained that they had developed the land without the permission of the 1st Defendant and that those developments were not hidden even to the 1st Defendant and that in those circumstances, their occupation was open with no secrecy.
 23. The Plaintiffs argued that there was no evidence to prove that the 1st Defendant asserted his rights over the land from 2001 when his claim was dismissed by the court and therefore their possession was exclusive. Further, that by the 1st Defendant demanding that the 1st Plaintiff vacate the land in his letter of 1988, it was clear that she had remained on the land against the 1st Defendant's will. That by the time Civil Case No. 189 of 1996 was filed seeking their eviction from the suit land, 22 years had lapsed,



which was longer than the statutory period of 12 years for a claim for adverse possession. They urged that the 1st Defendant's title over the suit land was extinguished in 1996 in favour of the 1st Plaintiff and 1990 for the 2nd Plaintiff since he was born in 1978, and that any purported sale in 2010 was thus a nullity by virtue of Section 17 of the *Limitation of Actions Act*.

24. They argued that the sale agreement entered into in 2010 was irregular because the 1st Plaintiff is illiterate and no translation was provided to her nor was any consideration given. They averred that the 1st Plaintiff's signature is not witnessed by any party but more significantly at the time of signing the agreement, the Plaintiffs had become adverse possessors.
25. The 1st to 6th Defendants submitted that the Plaintiffs entered the suit land with the 1st Defendant's permission and emphasized that possession founded on permission or license could not amount to adverse possession. They relied on *Gabriel Mbui v Mukindia Maranya* (1993) eKLR. They submitted that when possession is given by the vendor pursuant to a sale, it is by leave and license and such possession is not adverse possession, for then, the owner who has given leave has no cause of action during the time span of his permission or license and the limitation period does not run against him until the license has ended. They contended that time does not begin to run even if a contract becomes null and void by operation of law until the permission granted to occupy the land is expressly revoked.
26. The Defendants urged that during the hearing, the 1st Defendant and his witnesses demonstrated how the Plaintiffs' occupation of the suit land was interrupted through letters to the 1st Plaintiff and through court cases including *Embu SPM Civil Suit No. 189 of 1996*, *Runyenjes SPM Civil Case No. 55 of 2018*, and *Embu CMCC 99 of 2019*. They urged the court to dismiss the suit.
27. The issue for determination is whether the Plaintiffs proved on a balance of probabilities that they have acquired title to the suit land through adverse possession. It is not disputed that *Gaturi/Nembure/2900* was registered in the 1st Defendant's name as the absolute proprietor. It is equally common ground that the 1st Plaintiff entered the suit land in 1974 pursuant to an oral agreement to sell the land and that the Plaintiffs remained in occupation and continuous use of the land since then. The evidence adduced shows that the Plaintiffs have carried out substantial developments on the suit land, including construction, cultivation of various crops, and even burying some of their relatives on the land.
28. In *Samuel Kihamba v, Mary Mbaisi* [2015] KECA 853 (KLR) the court stated that for one to succeed in a claim for adverse possession, he must prove and demonstrate that he has occupied the land openly without force, without secrecy, and without license or permission of the landowner, with the intention to have the land. That there must be an apparent dispossession of the land from the landowner. These elements are captured in the Latin phraseology, *nec vi, nec clam, nec precario*. There must also be *animus possidendi*, or intention to have the land.
29. 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 (12) years. The process springs into action essentially by default or inaction of the owner. The essential prerequisites are that possession of the adverse possessor is neither by force or stealth nor under the license of the owner. It must be adequate in continuity, in publicity and in extent to show that possession is adverse to the title owner."
30. From the evidence adduced by the witnesses called by the parties', it is clear that the Plaintiffs have established possession of the suit land for a long period. What falls for determination, however, is



whether such possession can properly be characterized as adverse to the title of the 1st Defendant so as to meet the legal threshold for a claim of adverse possession.

31. The evidence led by the 1st Plaintiff was that she entered the land in 1974 on the basis of a contract with the 1st Defendant to purchase the land. That she paid a deposit of Kshs. 3,000/= out of the agreed purchase price of Kshs. 150,000/= and was given possession. She argued that the agreement fell through because the 1st Defendant failed to obtain LCB consent within three months of the agreement which meant that the transaction became null and void and her occupation since then became adverse to the 1st Defendant's title. The 1st Defendant contended that the Plaintiffs' occupation of the suit land has always been with his permission, and that even if the sale agreement became null and void by operation of law, time for purposes of adverse possession could not begin to run until such permission was expressly revoked.
32. The 1st Plaintiff admitted that the 1st Defendant permitted her to enter and utilize the land. She remained on the land with the permission of the 1st Defendant, as shown by the various letters in which he required her either to make payment or allow him to sell the land to other willing buyers. That permission was not expressly terminated until 16/3/1988, when she was required to vacate the land by 31/12/1988. From 1988 to 1996, when the 1st Defendant filed suit seeking her eviction, twelve years had not lapsed. Although that suit was subsequently dismissed, it interrupted the 1st Plaintiff's occupation of the land. Its dismissal in 2001 meant that time for adverse possession could only begin to run afresh after that point.
33. The 1st Defendant's testimony was corroborated by the area Chief, that the parties appeared before him on 1/2/2010 and entered into a formal written agreement whereby the 1st Plaintiff agreed to purchase the land at the prevailing market rate of Kshs. 1,750,000/=.
34. The 1st Plaintiff disputed the validity of this agreement, asserting that she was illiterate and on grounds that the contents were never explained to her; her signature was not properly attested; and that no consideration was ever paid. In the court's view, even if such agreement existed, it did not interrupt the Plaintiffs' possession of the suit land, and therefore did not stop time from running for purposes of adverse possession.
35. The critical fact remains that from 2001 when the suit which the Defendant filed in 1996 for the eviction of the Plaintiffs was dismissed, up to 26/8/2019 when the present suit was filed, a continuous period of approximately 18 years had lapsed which meets the statutory period of 12 years for limitation of actions thus satisfying the requirement of time for the doctrine of adverse possession to apply.
36. On 26/6/2019 when the 1st Defendant subdivided Gaturi/Nembure/2900 to create Gaturi/Nembure/16489 to 16493, his title had been extinguished by operation of law and the transfer of the resultant subdivisions was of no legal effect.
37. The court is satisfied that the Plaintiffs have demonstrated that they have become entitled to the suit land by way of adverse possession and grants prayers i, ii, iv, vi, and vii of the Amended Originating Summons dated 31/5/2022. Each party will bear its costs of the suit.

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

K. BOR

JUDGE

In the presence of: -

Mr. Robinson Kigen for the Plaintiff



Mr. Collins Njage for the 1st to 6th Defendants

Mr. Justin Kiongo for the 7th Defendant

