



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

Ruto & 6 others v Gianchore Tea Factory & 5 others (Environment and Land Case E005 of 2022) [2025] KEELC 6101 (KLR) (22 September 2025) (Judgment)

Neutral citation: [2025] KEELC 6101 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENT AND LAND CASE E005 OF 2022
MN MWANYALE, J
SEPTEMBER 22, 2025**

BETWEEN

**FRANCIS K RUTO 1ST APPLICANT
JOEL MITEI 2ND APPLICANT
PAUL KIPLANGAT MARITIM 3RD APPLICANT
JOSEPH CHERUIYOT 4TH APPLICANT
PHILIP SEREM 5TH APPLICANT
EZEKIEL KIPSIELE TERER 6TH APPLICANT
SAMUEL KIMUTAI CHUMA 7TH APPLICANT**

AND

**GIANCHORE TEA FACTORY 1ST RESPONDENT
KEBIRIGO TEA FACTORY 2ND RESPONDENT
NYANKOBA TEA FACTORY 3RD RESPONDENT
NYANSIONGO TEA FACTORY 4TH RESPONDENT
SANG'ANYI TEA FACTORY 5TH RESPONDENT
TOMBE TEA FACTORY 6TH RESPONDENT**

JUDGMENT

1. Vide the Originating summons dated 3rd August 2022, Francis K. Rutto, Joel Mitei, Paul Kiplangat Maritim, Joseph Cheruiyot, Philip Serem, Ezekiel Kipsiele Terer and Samuel Kimutai Chuma sued the



6 tea factories namely Gianchore, Kebirigo, Nyankoba, Nyansiongo, Sangany and Tombe tea factories seeking the following reliefs against them

- i. That a declaration that the titles of the said Gianchore, Kebirigo, Nyankoba, Nyansiongo, Sangany and Tombe tea factory in respect of Title numbers Transmara/Moyoi/ 56 and Transmara/Moyoi/ 57 had been extinguished by the Applicants adverse possession thereof for a period of more than 12 years in terms of sections 17 and 38 of limitations of Actions Act.
 - ii. That a declaration that the Applicant has acquired the free hold interest in land parcel title numbers Transmara/Moyoi/ 56 and Transmara/Moyoi/ 57 by his adverse possession thereof for a period of more than 12 years i.e from at least 1989 to date.
 - iii. That an order do issue requiring and directing the Transmara sub-county Land Registrar to register the Applicants Francis K. Ruto, Joel Mitei, Paul Kiplangat Maritim, Joseph Cheruiyot, Philip Serem, Ezekiel Kipsiele Terer and Samuel Kimutai Chuma, as the absolute proprietors of land parcel Title Numbers Transmara/Moyoi/ 56 and Transmara/Moyoi/ 57 in place of Gianchore, Kebirigo, Nyankoba, Nyansiongo, Sangany and Tombe tea factory respectfully and in place of any other persons succeeding the Respondent.
 - iv. That this court be pleased to issue a permanent injunction restraining Respondents by themselves, agents, employees and/or servants acting at their behest from disposing and/or in any other way interfering with land parcel title numbers Transmara/Moyoi/ 56 and Transmara/Moyoi/ 57
 - v. That costs of the suit be borne by the Respondents.
2. No directions were issued, in respect of the O.S, but the parties having opted to proceed by way of vivavoce evidence, it is deemed that the O.S was converted to a plaint, the Replying affidavit to a defence, as was held in the decision in the case of Shedrack Bungei vs. Selina Jerotich (2021) eKLR.
3. Consequently, the Applicants shall now be referred to as the plaintiff and the Respondents shall be referred to as the Defendants.

Plaintiff's case and Evidence

4. It is the plaintiff's case that they jointly purchased the suit property and has been in possession of Transmara/Moyoi/57 living peacefully there on with total control and use thereof; living openly from the 1980's to date, developing the suit properties, and cultivating thereon from 1989, hence have lived thereon for more than 30 years.
5. That the Defendants were registered as owners thereof on 7th June, whereafter a title deed was issued in their favour.
6. It is the plaintiff's further case that they have now acquired rights and interests over the suit property by virtue of the doctrine of adverse possession, and the Respondents have been aware of the existence and possession by the plaintiffs.
7. In support of the above averments the plaintiff called two witnesses.
8. Francis Kipyegon Rutto was the first to testify. He adopted the depositions of his supporting affidavit, dated 03.08.2022 and indicated that he has lived on the property from 1974 and that he and his plaintiffs bought the suit property from Paul Koiatto in 1989 and have been living on the suit property continuously from the said date.
9. The witness identified photographs of houses as belonging to them and being on the suit property.



10. It was the witness's further testimony that when he bought the property it was vacant; he had been indicated in the adjudication register.
11. In support of his case P.W 1 produced copies of official search for Transmara/Moyoi/ 56 and Transmara/Moyoi/ 57 as P.Exhibit 1 and 2 and the copies of the Agreement dated 18.06.1985 and 15.10.1988 as P.Exhibits 3 and 4, while the photographs were marked as PMFI.1.
12. On cross-examination, PW1 indicated that the Defendants had purchased the suit property on 07.06.2013 from P.Exhibit 1 and 2, hence the defendants had been owners for 10 years and 2 months at time of filing suit.
13. The suit property had belonged to Paul Koinyatto who sold to them when it was vacant, and they took possession thereof. That Adjudication of the area had been based on occupation, though he had not applied. The witness did not remember the plot number.
14. The witness on further cross-examination indicated that the acreage he bought was unknown but they had paid 7 cows, and purchaser was Benjamin Chelule, who was his neighbor in parcel number 57. The witness could not recall the author of the Agreement for sale P.Exhibit No. 4.
15. With regard to P.Exhibit 3, the witness stated that the Agreement had been made in 1988m and he was among the purchases having paid Kshs.13,000/= thereof. It was his answer that the adjudication was done when he was in the suit property but was not aware why he missed out.
16. The witness could not remember the name of the group ranch that he belonged to, The purchaser in Agreement P.Exhibit 4 had died but his children were on the suit property, but were not part of the plaintiffs. He conceded that the Agreement did not identify the suit property and that P.Exhibit 3 was an acknowledgment and it had been doctored, that the purchasers in Moyoi/57 were 10 in number but the plaintiffs were 7.
17. He indicated that he had lived on the suit property since 1989 and he was not aware that he registered owner had sold to the plaintiffs.
18. On re-examination, the witness indicated that he was not aware whether Mr. Paul Koinyatto was eventually registered as the owner, as they were never evicted. He stated that individual not members of a group ranch would be allocated.
19. The defendants have not taken possession of suit property, but the plaintiffs were in the suit property rearing cattle.
20. PW2, Francis Kipyegon Rutto testified and adopted his supporting affidavit dated 03.08.2022. It was his further testimony that the photographs of the houses, were a true reflection of the houses belonging to them.
21. On cross-examination the witness stated that they bought the suit property in 1989 from Paul Koinyatto and had lived thereon. On P.Exhibits 1 and 2 the witness stated that the Defendants had bought the suit property on 07.06.2013 and that at the time of filing the case the Defendants had owned the suit property for 10 years and 2 months.
22. The witness stated that adjudication was based on occupation but they had not applied for ownership under adjudication.
23. With the testimony of the two plaintiff's witness, the plaintiff case was closed.



Defence Case and Evidence

24. Vide a joint Replying affidavit, the Defendants filed a Response to the Originating Summons. It was their case that they are the joint registered owners of Transmara/Moyoi/56 and Transmara/Moyoi/57 since 2013 in respect of Transmara/Moyoi/56, they bought the same from Joseph Manina Naikasie, David Manguru Naikasie and Olei Nyeye Ole Tobiko, who had sold the suit property in vacant possession; while Transmara/Moyoi/57 was sold to them by Pal Koinyanto Ole Kimaai who sold it in vacant possession.
25. That at the time of purchase the properties had no structures or was in person in possession of them. In 2014 there were attempts at trespass by unknown person which attempts were thwarted.
26. That having purchased in 2013 and suit filed in 2022, and 12 years period for adverse possession had not crystallized.
27. On behalf of the 6 Defendants, Mr. Tabelius Joel Atutu Mosigisi testified as D.W 1. It was his testimony that he is a Director of the 3rd Defendant, Nyankoba tea factory and had been the chair of the Board of directors from 2021, and was serving a second term. He had initially been elected as a Director in 2008 to 2014. It was his testimony that they had bought Transmara/Moyoi/56 vide an Agreement for sale from the vendors Joseph Manina, Nkaise, David Mangulu Nkasei and Ole Tobiko, before entering the Agreement they had conducted searches over the property. The witness adopted the Replying affidavit as part of his evidence in chief and produce the annextures thereto as D.Exhibits 1 to D.Exhibit 9. In 2017, while attempting to plant blue gum they experienced hostilities.
28. On cross-examination, DW1 stated that they experienced hostilities in both Moyoi/56 and Moyoi/57, they reported to the police but he did not have an O.B number. He also indicated that he had not reported to the police about trespass by the plaintiffs.
29. The witness further stated that they had fenced the properties in 2017 but it was demolished and they did not start any action in Moyoi/56 and Moyoi/57 for 4 years. When they purchased the properties the same were vacant. They had bought from Paul Koiyanto and the plaintiffs were not in occupation. The witness was not aware of a caution registered on D.Exhibit 3. The witness indicated that the searches did not have the caution, he was not aware how it was removed but it must have been removed before the purchase.
30. On re-examination, the witness stated that the caution had been registered by Joseph Kiplagat one of the plaintiffs on 11.06.2014. He reiterated that there was no one occupying the property when he bought. That he received hostilities when he wanted to plant trees.
31. With the testimony of the sole Defence witness, the Defence case was closed.
32. The court had directed filing of a survey report and it further summoned Mr. Paul Koinyanto who had been mention by both the plaintiff and Defendant but none had listed him as their witness so as to testify, as common witnesses.
33. Mr. Tom Chepkwesi, the Land Registrar testified that he had visited on 28.05.2024 and filed a ground report; which he produced as common exhibit 1.
34. On cross-examination by Mr. Kiprotich he indicated that the plaintiffs and the families had built homesteads on the suit property, and had random occupation where they cultivated and reared animals. That the two properties had distinct boundaries, had old homesteads and there was a crowd of about 200 people, but they were no developments by the Respondents.



35. On cross-examination by Mr. Nyambega, the witness stated that he was accompanied by a surveyor Mr. Owour who was transferred. He confined the Defendants as the registered owners. He stated that only the 1st plaintiff was around but none of the 6 defendants were present. The witnesses stated that there was extensive farming on sugarcane and maize on the suit property. The witness did not have an inventory of the persons who were present during the site visit, but the persons present all claimed to be family.
36. The witness indicated that there were semi-permanent houses with iron sheets, but when shown the photographs he conceded that the photographs had grass thatched. He did not know when the other plaintiffs had died.
37. Mr. Paul Koinyatto testified as a common witness 2, it was his testimony that he was the previous registered owner of the suit property. He had given the plaintiffs a chance to purchase the property but them permission to utilize the property and he would evict them but they would return between 1979 and 1990. In 1992, he sold 25 acres to other persons and he transferred the title to the titles. He sold to the Defendants and refunded the plaintiffs their money and evicted them.
38. On cross-examination, the witness indicated that he was a member of the Moyoi Adjudication Section and was allocated by the adjudication committee. He lived on suit property for about 20 years after registration and before adjudication. He had given and before adjudication. He had given the plaintiff a chance to purchase to property and they built grass thatched houses, and they moved out, and they never demolished the grass thatched houses.
39. The witness stated that he would occasionally move out of the suit property as he was a pastoralist. He stated that the plaintiffs would move evict the plaintiffs and that the plaintiffs would not on the suit property when he wrote the Agreement dated 05.04.1979.
40. He recalled that the Agreement dated 05.04.1979 was drafted in Lolgorian by his brother a Mr. Ben Koinyatto.
41. He stated that the plaintiffs would come into his property and he would evict them, he did not give them any particular acres. There was a disagreement with the plaintiffs and he evicted them and refunded them; the agreement was rescinded after he refunded the plaintiffs. The plaintiffs were not in the suit property when he refunded them. He never reported to the police since he would evict them and they would move out.
42. On cross-examination by Mr. Nyambega the witness stated that when he sold the suit property in 2013 the plaintiffs were not on the suit property. He had sold other portions of the property earlier and there was no complaint by the plaintiffs as none of them resided on the suit property. He stated that he had refunded the plaintiffs, their money.
43. The witness stated that the plaintiffs had not been in occupation since he had sold subdivisions of the suit property and there was no complaint. He stated that he got his title in 2001, and up to 2013 when he sold to the Defendants there was no one living on the suit property.
44. Parties were directed to file submissions in respect of their respective cases.

Plaintiff's submissions

45. The plaintiff framed and submitted on 3 issues for determination.



46. Issue number 1, whether the Applicants had proved their claims for Adverse possession. It is the plaintiff's submission that they came into occupation of the suit property in the 1980's after entering into an Agreement for sale with the owners, and hence time stated running from the said dispossession.
47. That the said possession was taken before adjudication and the plaintiffs were not issued with the title instead it was issued to the vendors; nonetheless time began running against the vendors, the Defendants and their predecessors in title and in favour of the plaintiffs from the time they occupied the suit property.
48. In support of this limb of submissions, the plaintiffs place reliance on the decisions in the cases of Wambuu vs. Njuguna, 1983 (eKLR) Peter Mbiru Michuki vs. Mugo Michuki (2014) eKLR, Gulam Miriam Nourdi vs. Julius Charo Karisa (2015) eKLR.
49. On issue number 2, the plaintiffs submit that mere change of ownership does not interrupt possession and having taken possession from the late 1980's their rights to adverse possession had crystallized and the Defendants do not have claim over the suit property.
50. On the strength of the above submission the plaintiffs argued the court to allow their case.

Defendant's Submission

51. It is the Defendant's submission that only two of the 7 plaintiffs testified and their testimonies revealed that they were sporadic trespassers and perpetrators of nuisance and that the evidence presented is not capable of sustaining a claim of adverse possession.
52. It is the Defendants submission placing reliance on the decision in Gitiha vs. the Farmers co-operative society limited, where the court held inter alia, ".....it is trite law that he two alleges must prove guided by Section 107(1) as read with sections 108 and 109 of the *Evidence Act*. The Burden of proving adverse possession is upon the person who alleges that he has acquired title by way of adverse possession. Even when a claimant's evidence is uncontroverted or where the claim is undefended as is this case, a claimant must discharge no burden of proof..." Thus, the plaintiff failed to discharge the burden of proof since the testimonies of the two plaintiffs was made in their personal capacities and not made on behalf of the rest of plaintiffs.
53. The Defendant further submits that the evidence of the Land Registrar as to the death of 3rd to 6th plaintiffs vide the report dated 28th May 2024, and whereas no letters of administration was proved in court costs doubt as to the existence of the said plaintiffs.
54. The Defendants further submitted that the Land Registrar's evidence was at variance with the photographs filed by the plaintiffs. Whereas the photographs showed grass thatched roof top, the Land Registrar indicated that the roof top had iron sheets. He did not take photographs of the houses and the crops on the suit property, no inventory of the persons present during the said site visit; hence the Land Registrar's report and evidence did not aid the plaintiffs case, so submits the Defendants.
55. The Defendant further submit that the plaintiffs case having based the adverse possession on the Agreement for sale was unsustainable and relied on the decision in case of Muchanga Investments Ltd vs. Safaris (unlimited) Africa and 2 Others.
56. The Defendants that the entry was consensual in view of the Agreements of sale executed and hence the elements of adverse possession were not proved.



57. The Defendants further relied on the decision in *Cheromei vs. Muigai (2024)* and *Richard Wefwafwa Songoi vs. Ben Munyifwa Songoi (2020)* eKLR to support their case; and urged the court to dismiss the case.
58. The plaintiffs filed supplementary and/or rebuttal submissions, and submitted that the plaintiffs occupy both Transmara/Moyoi/56 and Transmara/Moyoi/57 from the 1980's.
59. The plaintiff submit that Mr. Paul Koinyattos rescission of the Agreement for sale, was a withdrawal of consent, making the basis of adverse possession.

Issues for Determination

60. In determining this case, the court frames the following as issues for determination
 - i. Whether or not the plaintiffs have proven entitlement to the suit property by adverse possession; in determining this issue the court shall review whether the elements of adverse possession have been met proven?
 - ii. Whether the plaintiff's claim should be upheld, or whether the Defence is successful.
 - iii. What reliefs ought to issue?
 - iv. Who bears the costs of the case?

Analysis and Determination

61. It is common ground from the evidence adduced especially the official searches of Transmara/Moyoi/56 and Transmara/Moyoi/57 as adduced as P.Exhibi 1 and 2 on the side of the side of the plaintiffs and copies of green card adduced as D.Exhibit 5A that the suit properties were registered on 02.03.2001.
62. Prior to the suit properties being registered, the property were public land.
63. Were declared to be an adjudication section under the *Land Adjudication Act*. Having being public land, the same were excepted from the provisions of Limitations of Actions Act for purposes of a claim under Adverse possession under Section 41 of the Limitation of Action.
64. It follows therefrom that time started running for purposes of adverse possession from the date of registration on 02.03.2001 and the right accrued after the statutory period of 12 years on or about the 02.03.2013. The period between 1989 and 2001 is thus immaterial for purposes of adverse possession in this case and time started running in 2001.
65. The recent court of Appeal decision in the case of *Andafu vs. Akhuonya (Civil Appeal 70 of 2019) 2025 KECA 714 KCR* summarized all the elements to prove a claim of adverse possession as espoused by various judicial pronouncement at paragraph 33 and 34 of the said decision, the court held as follows;
 - “ 33; courts on the other hand have judicially developed the elements which must be satisfied before a claimant can succeed in an action for adverse possession, the leading cases from this court in this regard include *Titus Mutuku Kasuve vs. Mwaaani investments Limited and 4 Others 2024 eKLR*, *Titus Kigoro Mungi vs. Peter Mbuni Kimani Civil Appeal No. 28/2014*; *Wambugu vs. Njuguna 1983 KCR 172* and *Karuntuli Ranji M'Mukinya 2013 eKLR*.



- 34; The principles distilled from those cases are that in order to establish a claim of adverse possession, the possession must be;
- a. “Adverse to the interests of the owner meaning that the claimant is in possession as owner in contradistinction to holding in recognition of or subordination to the true owner or to a recognized supervisor claim of another.
 - b. Actual - as opposed to constructive possession where the test is in the degree of actual use and enjoyment of the parcel involved by the claimant or his agent, tenant or license.
 - c. Open and notorious – meaning the possession must be open and conspicuous to the common observer so that the owner or his agent on visiting the land might readily see that the owner’s rights are being invaded. Differently put, the possession must be manifest to the community.
 - d. Without force – meaning that the possession and occupation must have been aliened peacefully not through actual or threatened violence.
 - e. Exclusive – meaning that the possession must be of such exclusive character that it will operate as an outser of the owner of the legal title. Differently put the claimant must demonstrate that she wholly excludes the owner from possession for the required period.
 - f. Continuous and interrupted for the period of 12 years – meaning that the owner did not re-enter the property under circumstances showing her intention to assert dominion against the adverse user for at least twelve years...”

66. The court shall now examine whether the plaintiffs have proven the said elements so as to prove their claim of adverse possession.

67. On open and notorious usage, two of the seven plaintiffs testified as the only witnesses. They did not call a chief, village elder of a neightou to buttress the claim on occupation and notoriety use. The photographs they filed in court were not produced in evidence but only marked for identification and thus did not have any evidential value as was held in case of Kenneth Nyaga Mwise vs. Austin Kiguta and 2 Others; (2015) eKLR where the court held as follows;

“ 18 The mere marking of a document for identification does not disperse with to formal proof hereof. How does a document become part of the evidence. Any document/filed and/or marked for identification by either party, passes through three stages before it is held proved or disproved.

19 The marking of a document is only for purposes of identification and it’s not proof of the documents and document is not proved merely because it has been marked for identification.

20 Once a document has been marked for identification, it must be proved...



..if the document is not marked as an exhibit, it is not part of the record into evidence and not formally produced and proved, the document would only be hearsay, untested and an authenticated account...”

68. With regard to the survey report filed in court, the same did not contain photographs of occupation by the plaintiffs as well as the acreage occupied. The court finds the evidence of the Land Registrar lacks credibility as the said witness stated that the houses on the suit property had iron thatched roof yet the photographs marked for identification had grass thatched roof and in view of that contradiction the evidence of Land Registrar is disregarded.
69. The court thus finds that the plaintiffs failed to prove their occupation of the suit property.
70. As noted above, the plaintiffs did not call any other witness, they thus failed to prove that their occupation of the suit property was in notoriety and publicity.
71. The court thus finds that the two elements of adverse possession of occupation and no notorious usage had not been proven by the plaintiffs.
72. Having not proved the said two elements of adverse possession as required, the court shall not examine whether the other elements of adverse possession have been proven.
73. It thus follows that the plaintiff has not discharged the burden under Section 107 of the *Evidence Act* and in answer to issue number 1, the court finds that the plaintiffs are not entitled to the suit properties by virtue of the doctrine adverse possession.
74. On issue number 2, as to whether the plaintiffs’ claim should be upheld or whether the Defence is successful, the court having found that the plaintiffs did prove the two elements of occupation and notorious usage of the suit property, the plaintiff claim thus fails.
75. It follows that the plaintiffs are not entitled to the reliefs sought in the plaint as they failed to prove the same and their suit is destined as it h does to fail with costs.

Disposition

76. The inevitable conclusion that the court reaches is the plaintiffs having failed to prove they case, the same is hereby dismissed with costs to the Respondents.
77. Judgment accordingly.

DATED AT KILGORIS THIS 22ND DAY OF SEPTEMBER, 2025.

HON. M.N MWANYALE

JUDGE

In the presence of

CA – Emmanuel/Sylvia/Sandra

Mr. Kiprotich for Plaintiffs

Ms. Kwamboka h/b for Ms. Nyaboke for the Defendants

