



**Muthini v Karanja (Environmental and Land Originating Summons
E019 of 2023) [2025] KEELC 4748 (KLR) (26 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4748 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E019 OF 2023
LN GACHERU, J
JUNE 26, 2025**

BETWEEN

RAEL WAYUA MUTHINI PLAINTIFF

AND

MUCHOKI KARANJA DEFENDANT

JUDGMENT

1. The Plaintiff herein Rael Wayua Muthini, filed this Originating Summons dated 6th December 2023, against the Defendant herein Muchoki Karanja, wherein she sought for the following orders;
 - i. A declaration and order that the Plaintiff has been in adverse possession of the suit premises for the requisite statutory period and has extinguished the title in the suit premises against the Defendant;
 - ii. An order directing the Land Registrar Muranga to forthwith issue the Plaintiff with a title deed to the premises known as Ithanga Phase 11/ Plot No 214, situated within Muranga County, measuring 5.2 acres or thereabout;
 - iii. The court be at liberty to issue any other order as it may deem fit and necessary;
 - iv. Costs of the suit be provided.
2. The said Originating Summons is premised on the various grounds. Among these grounds are; the suit property Ithanga Phase 11/ Plot No214, which measures about 5.2 acres, has been in open, continuous, peaceable and uninterrupted occupation of the Plaintiff sine 1974; further, that the Defendant has always been aware that the Plaintiff and her family have been in occupation of the suit property; as per the Lands records, the Defendant is the owner of the suit land, but the Plaintiff has been in adverse possession to the ownership of the suit land by the Defendant for much longer than the statutory period.



3. This suit is further supported by the Supporting Affidavit of Rael Wayua Muthini, the Plaintiff herein who averred that she is the wife of the late Muthini Mangati, who entered into a sale agreement with the Defendant herein for the purchase of the suit land, Ithanga Phase 11/ Plot No. 214, as is evident from the sale agreement marked as RWM1. She further averred that upon entering into the said sale agreement, the Defendant handed over to her husband the only available ownership document being official receipt No. D625878, as is evident from annexure RWM2.
4. It was her further contention that after the purchase, her husband and her immediate family took possession of the said parcel of land, and they have had exclusive, open, and uninterrupted occupation of the said land up to date. She also claimed that she has since lived on the suit land with her husband and children until 2019, when her husband passed on.
5. The deponent also claimed that she has made various development on the suit property, including building various houses, has planted mango and orange trees, and other ordinary crops, as could be discerned from the letters dated 15th April 2010 and 4th May 2007, marked RWM4(a & b).
6. The deponent attached original copies of various photographs which were taken of the developments on the suit property, which photographs show and confirm the Plaintiff and her family's occupation of the suit land since 1974. She also alleged that the said occupation has been open, exclusive, continuous and uninterrupted. Further, that during that time of occupation, her family has never met nor heard from the Defendant. She urged the court to allow her claim.
7. The Originating Summons is vehemently opposed by the Defendant herein Muchoki Karanja, vide his Replying Affidavit sworn on 9th April 2024, wherein he alleged that the orders sought by the Plaintiff are meant to illegally/ irregularly acquire his property, being Ithanga Phase II Plot No. 214, without any justification or right. He further alleged that he is the legal registered owner of the suit land, which he allegedly acquired in 1969.
8. He also denied ever entering into any sale agreement for the sale of the suit property with the Plaintiff's husband Muthini Mangati, and the purported agreement dated 31st August 1974, was illegal and fraudulent for he never appended his signature on the same.
9. It was his contention that he had constructed a permanent house on the said parcel of land, and he had also carried out development thereon, but the Plaintiff's family encroached on the said parcel of land, and destroyed his house and developments thereon, and also took his important documents including Receipt No.D625878, being one of ownership documents. He denied ever having appeared before the Chief of Ithanga area as alleged in the letter dated 19th May 2005, nor did he surrender the official Receipt No D625878.
10. He also contended that the Plaintiff has been in illegal occupation of this parcel of land, developing the same, while having knowledge that the said land parcel is registered in his name. He also denied that the Plaintiff has been in peaceful and quiet, continuous and uninterrupted possession of the suit land, and that the claim herein is perpetuated by bad faith, ill motive and malice which is meant to deny him his proprietary rights.
11. He also denied that the Chief of Ithanga area ever gave the Plaintiff's husband a letter to go and pay all the necessary fees and due payments, since he is the one who sent money to the late Muthini Mangati to pay the stated amount of money, as Muthini was a matatu operator, and used to go to Thika Town so often. He contended that the relevant offices vide the letter dated 25th March 2024, confirmed that the suit property was his. The said letter was annexure MK1.



12. The Defendant alleged that the Plaintiff only occupies ¼ acre out of the suit land, wherein she has built a temporary house and the rest of the suit land is unoccupied, uncultivated and undeveloped . Therefore, the Plaintiff is not entitled to the suit land by virtue of adverse possession, and thus the Plaintiff and her family should be evicted from thereon, as she does not qualify to acquire the suit land as per the established provisions of law. He claimed that the Plaintiff has encroached/ and or trespassed on the said land, which action is illegal. Ultimately, the Defendant urged the court to dismiss the Plaintiff's claim, and to declare him the owner of the said land.
13. The matter proceeded for trial via viva voce evidence, wherein the Plaintiff gave evidence for herself and called two more witnesses to support her case. The Defendant gave evidence for himself and called no witness.

Plaintiff's Case.

14. PW1; Rael Wayua Muthini, from Ithanga village informed the court that she has lived on the suit land for a long time. She also testified that the suit land is registered in the name of Muchoki Karanja, whom she claimed she has ever met, while in company of one Ndungu, and the said Muchoki Karanja was not in court, but Ndungu was in court.
15. She relied wholly on her Supporting Affidavit dated 6th December 2023, as her evidence in chief. Further, she produced her list of documents as Exhibits 1-8, which she relied upon to support her case.
16. Upon cross examination by counsel for the Defendant, she claimed that she knows the Defendant, and she saw him last when he went to check on the land, wherein he built a house thereon and later left. She also testified that after that, her husband reported the matter to the Chief of the area, although she was not present at the Chief's Office with her husband. She also confirmed that the Defendant (Muchoki Karanja) would visit the suit land and later he built a small house.
17. The Plaintiff further claimed that the house built by the Defendant got dilapidated, and that her husband was a matatu driver, who later became a tailor. It was her evidence that Muchoki Karanja(Defendant) gave the receipt produced as exhibit to her husband. Further, that the said receipt was taken to the lands office for verification. However, the verification process took too long, and her husband went to collect the said receipt, and he showed it to her.
18. It was her further evidence that she has built some houses on the suit land, but she could not tell the acreage of the built up area.
19. PW2: Richard Mbolu Muthini, from Ithanga area adopted his witness statement dated 21st February 2024, as his evidence in chief. It was his evidence that he has never seen Muchoki Karanja, the Defendant herein. He testified that he has never seen anyone claiming the land since his family settled on the suit land. However, he claimed that he met one Ndungu at Thika Lands Office, since the said Ndungu had claimed to be the owner of the suit land. It was his further evidence that the said Ndungu Waitthaka was the person appearing as the Defendant in court.
20. On cross examination, he claimed that he had no relationship with Ndungu Waitthaka.
21. PW3: Joseph Mulwa Mulinge, a peasant farmer from Ithanga area , testified that the Plaintiff herein is his neighbour, and he adopted his Affidavit dated 6th December 2023, as his evidence in chief. He further testified that he has known the Plaintiff from 1969/ 1970, when her family settled on the suit land.
22. On cross examination by counsel for the Defendant, he confirmed that he knew Rael, the Plaintiff herein but he did not know Muchoki Karanja, the Defendant herein and he had never seen him. He



also testified that he has never heard that the suit land belongs to Karanja, but the Plaintiff's family settled on the suit land along time ago.

Defendant's Case.

23. DW1: Muchoki Karanja, who testified as Ndungu Waithaka, Identification Card ID NO 33473387, in the name of Ndungu Waithaka, testified that he is also known as Muchoki Karanja, and he owns the suit land. It was his evidence that he used to live on the suit land being No. 214, but he now lives at Kagurumo area, which is in Loc 6. Further, he testified that when he built on the suit land, and lived there for 2 years, but he was involved in an accident in 1971, and he was thereafter taken to Muranga District Hospital, wherein he was admitted for 9 months.
24. It was his further testimony that when he was discharged from hospital and went back home, he found that his house had been demolished, and since his family lived in Loc 6, Kagurumo, he went to live with his family at the said Kagurumo area in Loc 6. Further, that when he got better, he found that his house had been demolished, and that the late Muthini Mungati, is the one who entered into the suit land, and demolished his house. He denied ever selling this suit land to said Muthini, and that all his documents were destroyed when the house he had built on suit land was demolished.
25. The Defendant also testified that he had asked Muthini to look after his land, and also check on its status at Thika Lands Office. Further, that Muthini failed to return the receipt to him, as he alleged that the said receipt had gotten lost. However, the land was still in his name(Ndungu Waithaka), although he is also known as Muchoki Karanja. The said defence witness(Defendant?) further testified that he did not have any documents to confirm that he is also known as Muchoki Karanja. He produced his list of documents as Exhibit 1 in court.
26. Upon being cross examined by Ms Nyaga, for the Plaintiff, the Defence witness alleged that he is known as Ndungu Waithaka, and also known as Muchoki Karanja, as he has two sets of names. However, he did not have any documents to show that he is also known as Muchoki Karanja. It was his evidence that his brother is known as Julius Kamande Waithaka.
27. Further, he testified that the Plaintiff is known to him, as he found her on his suit land, and that he had built a grass thatched house on the suit land, because he did not have money to build a permanent house. It was his evidence that when he went to Ithanga area and found the Plaintiff on his land, he went to the Lands office wherein the Land Registrar confirmed that the land was in the name of Muchoki Karanja.
28. On further cross examination, he confirmed that he had no evidence to show that he changed his name from Muchoki Karanja to Ndungu Waithaka. He claimed that his father was known as Waithaka Kibarere, and he lived in Kagurumo area. It was his further testimony that the suit land was given to him by the Government, though he did not have a witness or documents to confirm that. Further, he did not have any witness to confirm that he was Muchoki Karanja, nor any documents to show that he owns the land, as the original documents were at home.
29. On re-exam, he testified that the other documents got lost and/ or were taken away by the family of Muthini, when he was knocked down by a Motor vehicle in 1971. He also testified that since 1971, he went back to Ithanga area where the suit land is situated in 2023, and the family of Muthini Mangati, then claimed that the land was theirs.
30. After the viva voce evidence, parties did put in written submissions to support their respective position. The Plaintiff filed her submissions dated 23rd October 2024, through Rumba Kinuthia & Co Advocates, and submitted that she has been in open, continuous, peaceable and uninterrupted



occupation of the suit land since 1974. Further, she reiterated that the Defendant, Muchoki Karanja is the registered owner of the suit property, and the Plaintiff's occupation has been adverse to the ownership of the said property, as per the statutory period.

31. For the above reasons, the Plaintiff submitted on four issues being;
- i. Whether the plaintiff has established that she has acquired title to the suit land by adverse possession;
 - ii. Whether the court should direct the Land Registrar Muranga to forthwith issue the plaintiff with title to the suit property; Ithanga Phase 11/ Plot No 214, situated within Muranga County;
 - iii. Whether the Defendant, Muchoki Karanja and his witness Ndungu Waithaka are one and the same;
 - iv. Who bears costs of the suit.
32. The Plaintiff relied on the provisions of sections 7 and 13 of the Limitation of Actions Act and various decided cases. In her submissions, she outlined the conditions that are to be fulfilled in a case of adverse possession, as set out in the case of Virginia Wanjiku Mwangi vs David Mwangi Jotham Kamau(2013) eklr, where the court set out the five basic conditions to be met to perfect the title by way of adverse possession as follows;
- (a) Open and notorious use of the property. For this condition to be met the adverse party use of the property is so visible and apparent that it gives notice to the legal owner that someone may assert claim. The occupation and use of the property by the adverse party must be of such character that would give notice to a reasonable person that someone would claim. If legal owner has knowledge, this element is met. This condition is further met by fencing, opening or closing gates or an entry to the property, posted signs, crops, buildings, or animals that a diligent owner could be expected to know about.
 - (b) Continuous use of the property – The adverse party must, for statute of limitations purposes, hold that property continuously for the entire limitations period, and use it as a true owner would for that time. This element focuses on adverse possessor's time on the land, not how long true owner has been dispossessed of it and demonstrate continuous possession.
 - (c) Exclusive use of the property – The adverse party holds the land to the exclusion of the true owner. If, for example, the adverse party builds a barn on the owner's property, and the owner then uses the barn, the adverse party cannot claim exclusive use.
 - (d) Actual possession of the property – The adverse party must physically use the land as a property owner would, in accordance with the type of property, location, and uses. Merely walking or hunting on land does not establish actual possession.
 - (e) Non-permissive, hostile or adverse use of the property – The adverse party entered or used the land without permission. The law requires that the adverse party openly claims the land against all possible claims”.
33. It was her further submissions, that from her evidence, it was clear that her late husband, Muthini Mangati, and herself entered unto the suit land during the colonial days, and have lived thereon since then. However, one Muchoki Karanja, the Defendant herein later claimed the land belonged to him, and the said Muchoki Karanja allegedly entered into a sale agreement over the suit land with one Ndungu Waithaka, who built a house thereon, wherein they lived for 3months and later left.



34. Further, she submitted that since Muchoki Karanja left, he never went back to claim the land, but Ndungu Waithaka the person who gave evidence as the Defendant went back and claimed that he owned the suit land. She denied that the person who testified in court was Muchoki Karanja, but Ndungu Waithaka, as per his ID CARD.
35. The Plaintiff further submitted that even if the person who testified in court was Muchoki Karanja, alias Ndungu Waithaka, he testified that he last used the suit land in 1971, and when he got involved in an accident, he stayed away until 2023. Then clearly, the said Muchoki Karanja(Defendant), has not been on the suit land for a period of over 52 years, and thus the Defendant as the registered owner has been dispossessed of the said land by the Plaintiff and her family's continuous and exclusive occupation, use and possession of the suit land.
36. Thus, it was the Plaintiff's submissions that she has fulfilled the conditions for a claim of adverse possession, since her family and herself have been in continuous use of the suit land without the permission of the owner for a period of more than 52 years. Further, that she has been in exclusive use of the suit property for more than 52 years, and that she is in actual possession of the suit land since she resides on it, and cultivates thereon. Therefore, she has acquired the title by adverse possession, by fulfilling all the conditions set out for such claim.
37. On whether the court should direct the Land Registrar, Muranga to issue the Plaintiff with a title deed to the suit land known as Ithanga Phase II/Plot No.214, she submitted that having fulfilled all the conditions for a claim of adverse possession, then the court should direct the Land Registrar Murang'a as above.
38. On whether the Defendant, Muchoki Karanja, and the Ndungu Waithaka are one and the same person, she submitted that the witness who testified in court for the Defendant was Ndungu Waithaka, and he produced his original IDENTIFICATION CARD to that effect, but also asserted that he is Muchoki Karanja. However, the said witness did not have any documents or evidence to prove that he was also known as Muchoki Karanja. Therefore, Muchoki Karanja did not adduce any evidence, and Ndungu Waithaka is not the same as Muchoki Karanja.
39. On who should bear the costs of the suit, it was submitted that costs follow the event as provided by section 27 of the Civil Procedure Act. Reliance was placed in the case of Jasbir Singh Rai & 3 Others vs Tarlochan Singh Rai & 4 others (2014) eklr, where the Supreme Court discussed the issue of costs, and stated that the general rule is that costs follow the event, and court must give reasons whenever it departs from that norm. She urged the court to award her costs of the suit.
40. Ultimately the Plaintiff urged the court to allow her claim.
41. The Defendant also filed his written submissions dated 11th February 2025, through John W. Njogu & Co Advocates, and argued that the suit is premature, an abuse of the court process and should be dismissed. He also submitted that the suit is a non-starter as the same offends the provisions of Order 37 Rule 7(2) of the Civil Procedure Rules, which is mandatory that the Summons should be supported by an Affidavit, to which certified extract of the title of the land in question must be annexed.
42. It was his submissions that no certified extract of the title of the suit land, ITHANGA PHASE 11/PLOT NO 214, was annexed in both Affidavits of the Plaintiff and her witness, Joseph Mulwa. Further, that the documents produced as Exhibits were not among the requirements of Order 37 Rule 7 of Civil Procedure Rules. Further, that since the Plaintiff did not produce the extract of title, it was not possible to confirm that the land was in the name of the Defendant, and should now be registered in the name of the Plaintiff as provided by section 38 of the Limitation of Actions Act.



43. The Defendant further submitted that the Plaintiff did not even produce a search from the Lands Office because the registration process was not over at the lands office. It was his further submissions that the Plaintiff is using the court to by pass the various established ways of acquiring land, like adjudication and purchase.
44. Further, the Defendant submitted that the Plaintiff failed to include the County Settlement Adjudication Office as a party to this suit, although the said office has dealt with the matter severally, and even confirmed vide a letter dated 25th March 2024, that the said land had been allocated to the Defendant herein. Therefore, with failure to include the said office as a party, the court is engaged in an exercise in futility.
45. On the issue of the sale agreement, the Defendant submitted that the same was not finalized at the office of the County Adjudicator and Settlement Officer, and it did not happen. Since the Plaintiff remained on the suit land by virtue of purchase which was not finalized, therefore the issue of adverse possession cannot arise.
46. Further, the Defendant submitted that the Plaintiff has not established the size of the portion of the said land which was allegedly purchased by her husband, since there is no extract of title that was produced nor Survey report to that effect. He also argued that the Plaintiff has not established the agreement price or consideration of the sale, and the said agreement has not been signed by the Defendant.
47. The Defendant further submitted that the Plaintiff has not obtained Letters of Administration as provided by sections 54 and 55 of the Law of Succession Act, Cap 160 Laws of Kenya, and therefore, she has no locus standi to file this suit. Further, that though the Plaintiff disputed that Muchoki Karanja was not Ndungu Waithaka, she did not avail evidence of service of Summons to the said Muchoki Karanja, and/ or that she failed to trace him.
48. Therefore, the Defendant urged the court to find that Muchoki Karanja, was the same as Ndungu Waithaka, who gave evidence in court, and if the court finds not, then the suit should be dismissed for want of service of this Originating Summons.
49. Ultimately, the Defendant urged the court to dismiss this suit for being bad in law, lacks merit, is brought in bad faith and is an abuse of the court process. Reliance was placed on various decided cases being; Abdilahi Salim Badri vs Hemed Mohamaed Mbarak(2022) eklr; Cheromei vs Muigai KEELC 5604 (KLR) ELC NOE005 OF 2023; Gwaya (suing as personal Representatives of the estate of Mwingi Rama Gwaya) vs Kivuli & Another (ELC NO 27 OF 2021) KEELC 4153(KLR)(7th May 2024) jdgt; Samuel Ambasa & 3 Others vs Stella Ingasia (2022) eklr(ELC APPEAL NO 28 OF 2019)(Jdgt).
50. The above are the pleadings for and against this Originating Summons, the evidence adduced in court, the rival written submissions and the authorities relied upon. There is no doubt that at the centre of this dispute is land parcel No Ithanga Phase II/ Plot No 214, situated in Ithanga area, which allegedly measures 5.2 acres, and which is alleged to belong to Muchoki Karanja, the Defendant herein.
51. There is also no doubt that the person who gave evidence as the Defendant is Ndungu Waithaka, who alleged in his testimony in court that he is also known as Muchoki Karanja, and that the suit land belongs to him. The Plaintiff denied that Muchoki Karanja, the Defendant is also known as Ndungu Waithaka, and testified that Ndungu Waithaka was a witness for the said Muchoki Karanja, but not the Defendant himself.
52. With the above background in mind, the court finds the issues for determination are;



- i. Whether the Defendant herein is also known as Ndungu Waithaka, and whether the person who gave evidence for the Defendant was actually the Defendant herein Muchoki Karanja;
- ii. Whether the Plaintiff has established the threshold for a claim of adverse possession;
- iii. Who should bear costs of this suit?

i. Whether the Defendant herein is also known as Ndungu Waithaka, and whether the person who gave evidence for the Defendant was actually the Defendant herein Muchoi Karanja?

53. It is evident that the person who is sued as a Defendant is the one allegedly to have committed a wrong doing, or is responsible for committing the wrong or harm complained about. Ordinarily, the Defendant is identified by the Plaintiff as the person who has committed the wrong doing.
54. In the instant suit, the Plaintiff identified the Defendant herein as Muchoki Karanja, but not as alias Ndungu Waithaka. The person who gave evidence in court identified himself as Ndungu Waithaka, and alleged that he is alias Muchoki Karanja. He produced an identification card in the name of Ndungu Waithaka. The Plaintiff alleged that the witness in court was not Muchoki Karanja, and that the real Muchoki Karanja did not appear in court.
55. Ndungu Waithaka, the witness who gave evidence as the Defendant alleged that he is also known as Muchoki Karanja, the Defendant herein, and that he owns the suit land. Ndungu Waithaka is the one who has alleged, and therefore the onus of prove lies upon him as stipulated by section 107 of the Evidence Act, which states as follows; -
 - “(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
 - (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”
56. From the available evident, is it evident that Ndungu Waithaka is the same as Muchoki Karanja, the Defendant herein? In answering the above question, the court will first determines how a person can prove that he is also known by another name or “alias”.
57. In Kenya, an individual can prove he is known by another name or alias through an Affidavit of discrepancy in names, also known as an Affidavit of proof of names. This legal document, is sworn before a Commissioner for Oaths, and attests to the different names used by the individual and explains the reason for the discrepancy, or whether it is just an “alias” and/ or “aka”
58. The person who gave evidence in court as Ndungu Waithaka and averred that he is also known as Muchoki Karanja needed to avail sufficient evidence to convince this court that he is also known as Muchoki Karanja, who has been sued as the Defendant herein. It was not enough or sufficient to allege that he is also known as Muchoki Karanja, yet his Identification card reads Ndungu Waithaka.
59. Apart from just alleging that he is also known as Muchoki Karanja, the said Ndungu Waithaka needed to avail supporting documentation and maybe independent testimony, which testimony would provide evidence of consistent use of the other name, such as old documents (e.g., school records, work IDs, etc.) or testimonies from individuals who have known him by that name of Muchoki Karanja.
60. The alleged Muchoki Karanja also needed to produce documentation that would show use of both names such as a birth certificate and passport, especially given that he alleges that Muchoki Karanja



is an alias name. Ndungu Waithaka produced his legal document for Identification, which shows that he is only known as Ndungu Waithaka, but not alias Muchoki Karanja. Therefore, there is no sufficient prove to confirm that Ndungu Waithaka, who gave evidence in court , is "also Known As" (AKA) Muchoki Karanja the Defendant herein. The court finds and holds that Muchoki Karanja, the Defendant herein is not Ndungu Waithaka who gave evidence in court.

61. Ndungu Waithaka, who testified in court alleged that he is from Loc 6 at a place called Kagurumo, and has a brother known as Julius Kamande Waithaka, whom he did not call as his witness. Further, the alleged Defendant(Ndungu Waithaka) did not call any of his family members to testify and confirm that indeed Ndungu Waithaka is also known as Muchoki Karanja, and is the Defendant herein who owns the suit land.
62. Having found that there is no evidence to prove that Ndungu Waithaka is also known as Muchoki Karanja, then this court finds and holds that the said Ndungu Waithaka only gave evidence as a Defendant's witness and not as the Defendant himself.

ii) Whether the Plaintiff has established the threshold for a claim of adverse possession;

63. Having found that Ndungu Waithaka is not Muchoki Karanja, this court will now turn to the available evidence by first determining whether Muchoki Karanja was properly served, and whether the Plaintiff has established the threshold for grant of prayers for adverse possession.
64. The court has considered the court's Records and has noted that there is an Affidavit of service sworn by Amos Chege Kanoga, sworn on 20th December 2023, wherein he averred that he served Muchoki Karanja via his telephone number 0720-569-432 through the WhatsApp mobile number. Out of the said service, the Defendant Muchoki Karanja Entered Appearance on 12th April 2024,through John W.Njogu Advocates and filed his Replying Affidavit as Muchoki Karanja, but not alia Ndungu Waithaka. Therefore, it is evident the Muchoki Karanja, was served with Summons to Enter Appearance, wherein he entered appearance, filed a Replying Affidavit, but on the date of hearing, he did not appear in court to give evidence, but one Ndungu Waithaka gave evidence and alleged that he was Muchoki Karanja. There is no doubt about service of Summons to Muchoki Karanja.
65. The next issue is whether the Plaintiff has established that she has been in possession of the suit land exclusively for more than 12 years, so that she can qualify for ownership of the suit land by adverse possession.
66. In Kenya, adverse possession refers to a legal principle that allows a person to claim ownership of land after 12 years of uninterrupted, open, and exclusive use, which legal basis is governed under the Limitations of Actions Act (Cap 22) Laws of Kenya.
67. Further, adverse possession, allows someone to gain ownership of land that he has occupied without the owner's permission for a duration of 12 years, and this process is based on the idea that landowners should be diligent in monitoring their property, and that land not used or maintained should be put to use. In a nutshell, the court can summarize that adverse possession is a mechanism that allows someone to acquire land ownership through continuous, open, and exclusive possession for a prescribed period of 12 years, without the owner's consent and without the owner taking action to reclaim their land.
68. The instant Originating Summons is brought under Section 38 of the *Limitation of Actions Act* Cap 22, which provides as follows:

“Where a person claims to have become entitled by adverse possession to land registered under any of the Acts cited in section 37 of this Act,... he may apply to the High Court for



an order that he be registered as the proprietor of the land or lease in place of the person then registered as proprietor of the land.”

69. The doctrine of adverse possession in Kenya is founded under *Limitation of Actions Act*, wherein section 7 of the said Act places a bar on actions to recover land after 12 years from the date on which the right accrued. It provides as follows;

“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.”

70. Further section 13 of the same Act, provides that adverse possession is the exception to these limitations. It provides as follows:

- 1) The 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 Section 9, 10, 11, and 12 a right of action to recover land accrues on a certain date and no person is in adverse 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), the land in reversion is taken to be adverse possession of the land”.

71. The Plaintiff herein alleges that her husband purchased the suit property on 1974, as per the sale agreement attached, and after the said purchase, her husband and her family has been in exclusive use and possession of the suit land, without any interruption from the Defendant.. It was her evidence that her husband acquired possession of the suit property after purchase of the said land, and he moved into the property, wherein the family has built houses thereon and other developments as per the photographs attached.

72. The Court of Appeal in *Wambugu v Njuguna* (1983) KLR 17,2 held that adverse possession contemplates two concepts: dispossession and discontinuance of possession. Further, the said court held that the proper way of assessing proof of adverse possession would then be whether or not the title holder has been dispossessed of, or has discontinued his possession for the statutory period, and not whether or not the claimant has proved that that he or she has been in possession for the requisite number of years.

73. Further, a person claiming under the doctrine of adverse possession must demonstrate that he has been in actual occupation or possession of another’s land, without the consent of that other, and in such a way that the occupation or possession is open, peaceful and continuous for a period of 12 years and above. The Court of Appeal in the case of *Kweyu Versus Omutut* (1990) eKLR, held as follows on what constitutes adverse possession:

“By adverse possession is meant a possession which is hostile, under a claim or colour of title, actual, open, uninterrupted, notorious, exclusive and continuous. When such possession is continued for the requisite period (12 years), it confers an indefeasible title upon the



possessor. (Colour of title is that which is a title in appearance, but in reality). Adverse possession is made out by the co-existence of two distinct ingredients; the first, such a title as will afford Colour, and, second such possession under it as will be adverse to the right of a true owner. The adverse character of the possession must be proved as a fact; it cannot be assumed as a matter of law from mere exclusive possession, however long continued. And the proof must be clear that the party held under a claim of right and with intent to hold adversely. These terms (“claim or colour of title”) mean nothing more than the intention of the dispossessor to appropriate and use the land as his own to the exclusion of all others irrespective of any semblance or shadow of actual title or right. A mere adverse claim to the land or the period required to form the bar is not sufficient. In other words, adverse possession must rest on de facto use and occupation. To make a possession adverse, there must be an entry under a colour of right claiming title hostile to the true owner and the world, and the entry must be followed by the possession and appropriation of the premises to the occupant’s use done publicly and notoriously.”

74. Though the suit land is not a registered land and does not have a Certificate of title, there is a letter from the Ministry of lands which confirms that the land was allocated to Muchoki Karanja, and also, there is a sale agreement to the effect that the said Muchoki Karanja sold the suit land to one Muthini Mangati, who is the late husband to the Plaintiff. Being the wife to Muthini Mangati, the Plaintiff allegedly entered unto the suit land with her husband in 1974 after the alleged purchase, and has been in occupation of the same since then. She has brought the suit property on her own right as the alleged occupier of the suit land, but not on behalf of the estate of the Muthini Mangati.

75. The Plaintiff and her husband allegedly entered unto the suit land through purchase, and thus had permission to enter into the suit land. Ordinarily a claim of adverse possession cannot succeed where the claimant entered into the suit land with the permission of the owner through purchase. However, once the full purchase price has been paid, or the last instalment of the purchase price is paid and no transfer is done, then time starts to run for the purpose of adverse possession. In the case of Peter Mbiru Michuki vs Samuel Mugo Michuki (2014) eKLR, the Court of Appeal held that:

“Our reading of the record shows that the plaintiff entered the suit property pursuant to a sale agreement in 1964 as a bona fide purchaser for value. The entry in 1964 was with permission of the appellant qua vendor. In the case of Public Trustee -v- Wanduru, (1984) KLR 314 at 319 Madan, J.A. stated that adverse possession should be calculated from the date of payment of the purchase price to the full span of twelve years if the purchaser takes possession of the property because from this date, the true owner is dispossessed off possession. A purchaser in possession of the land purchased, after having paid the purchase price, is a person in whose favour the period of limitation can run.”

76. A right to adverse possession does not accrue automatically, unless the person in whose right has accrued acts. This action is taken by filing a claim to Court as provided by Section 38 of the [Limitation of Actions Act](#). The Plaintiff herein has thus filed this claim to assert her right of ownership of the suit land. In the case of Mtana Lewa v Kahindi Ngala Mwangandi [2015] eKLR the Court declared that:

“Adverse possession is essentially a situation where a person takes possession of land and asserts rights over it and the person having title to it omits or neglects to take action against such person in assertion of his title for a certain period, in Kenya, is twelve (12) years. The process springs into action essentially by default or inaction of the owner. The essential prerequisites being that the possession of the adverse possessor is neither by force or stealth



nor under the licence of the owner. It must be adequate in continuity, in publicity and in extent to show that possession is adverse to the title owner.”

77. For a claim of adverse possession to crystalize, dispossession of the owner of land must be apparent, which position is found in the Latin maxim of *nec vi, nec clam, nec precario*: that is without secrecy, without force and without permission. In the case of *Munyaka Kuna Company Limited -Vs- Bernado Vicezo De Masi (The Administrator of the Estate of Domenico De Masi (Deceased) (2018) eKLR*, the Court declared as follows:

“To establish adverse possession, a litigant must prove that he has both the factual possession of the land and the requisite intention to possess the land (*animus possidendi*). Secondly, one must prove that he has used the suit land without force, without secrecy, and without persuasion (*nec vi nec clam nec precario*), for the prescribed limitation period of twelve years.

Third, he must demonstrate that the registered owner had knowledge (or the actual knowing) that the adverse possessor was in possession of the suit property. Fourth, the possession must be continuous; it must not be broken or interrupted.”

78. In the instant suit, the Plaintiff testified that she has been in possession, use, and exclusive occupation of the suit land since 1974. Her evidence was supported by her two witnesses, and several letters from the chief of the area, which letters show that the Plaintiff and her family has occupied the suit land for long.

79. Further, the photographs attached as annexures to the OS, and later produced as exhibits confirms that there are developments on the suit land, which are not new developments. Though Muchoki Karanja did not appear in court to give his evidence, Ndungu Waithaka gave evidence and told the court that in 1971, when he was involved in an accident, he was taken to hospital where he stayed for 9 months. After the discharge, he went to stay with his family at Kagurumo area in Loc 6. The Defendant did not avail any documentary evidence attached to his Replying Affidavit to the effect that he built any houses on the suit land. There is no evidence that the Defendant has ever lived on the suit land at all.

80. Therefore, from the available evidence herein, the Plaintiff dispossessed the Defendant of the suit land from 1974, when her family entered into the suit land. There is no evidence to prove that the said Muchoki Karanja ever asserted his right over the suit land, and or sought possession of the suit land from the Plaintiff herein and/or her family.

81. The Court of Appeal in the case of *Chevron (K) Ltd v Harrison Charo Wa Shutu [2016] eKLR* stated as follows:

“At the expiration of the twelve-year period the proprietor’s title will be extinguished by operation of the law and section 38 of the Act permits the adverse possessor to apply to the High Court for an order that he be registered as the proprietor of the land. Therefore the critical period for the determination whether possession was adverse is 12 years and the burden is on the person claiming to be entitled to the land by adverse possession to prove, not only the period but also that his possession was without the true owner’s permission, that the owner was dispossessed or discontinued his possession of the land, that the adverse possessor has done acts on the land which are inconsistent with the owner’s enjoyment of the soil for the purpose for which he intended to use it. See *Littledale v Liverpool College (1900)1 Ch.19, 21.*”

82. Having analysed the available evidence as above, the court finds and holds that the Plaintiff herein has established the threshold for grant of prayers sought in a claim of adverse possession.



iii) who should bear the costs of this suit?

83. Ordinarily costs are granted at the discretion of the court, and they follow the event. The Plaintiff herein is the successful litigant and is therefore awarded costs of this suit.
84. Having addressed the issue set out for determination as above, the court finds and holds that the Plaintiff has proved her case on the required standard of balance of probabilities. Consequently judgement is entered for the Plaintiff against the Defendant herein as prayed in Originating Summons dated 6th December 2023, in terms of prayers Nos a, and b with costs being awarded to the Plaintiff herein.

It is so ordered

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAROK THIS 26TH DAY OF JUNE 2025.

L. GACHERU

JUDGE

Delivered online in the presence of

Elijah Meyoki Court Assistant

N/A for the Plaintiff

Mr. Njogu for the Defendant.

L. GACHERU

JUDGE

