



**Mbogo v Mwaniki & 6 others (Environmental and Land Originating Summons
72 of 2017) [2025] KEELC 5888 (KLR) (25 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 5888 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 72 OF 2017**

**AK BOR, J
JUNE 25, 2025**

BETWEEN

EFUREITHI IRIMA MBOGO PLAINTIFF

AND

IBARA MWANIKI 1ST DEFENDANT

PETERSON WAMBUGU 2ND DEFENDANT

MWANGI MUTHINJI ALIAS MOSES MWANGI MUTHINJI .. 3RD DEFENDANT

KAHARERI BURI KARUGU 4TH DEFENDANT

**JOSIAH WAMBUA SILAS ALIAS JOSIAH KINYUA MUCHINA 5TH
DEFENDANT**

**DOUGLAS KIRUNYU MATHANGE ALIAS DOUGLAS KIRUNYU MWANGI
MATHENGE 6TH DEFENDANT**

MOFFAT MURIITHI KANGI 7TH DEFENDANT

JUDGMENT

1. The Plaintiff lodged the Originating Summons dated 11//4/2017 seeking to be declared to have become entitled to ownership of the land known as Mbeere/Kirima/2231 measuring 7.4 hectares (ha) as against the 1st Defendant by virtue of Section 7 of the *Limitation of Actions Act* on the basis that since the 1950's, she and her parents had openly and peacefully occupied that land for more than twelve years. Secondly, she sought to be declared as entitled to ownership of Mbeere / Kirima/5046 measuring approximately 2.43 hectares as against the 2nd Defendant and Mbeere / Kirima/5047 measuring approximately 10.83 ha as against the 3rd to 6th Defendants. She sought to be declared to have become entitled to the parcels of land on the basis that since the 50s she and her



- parents had openly, peacefully and as of right been in occupation of the named parcels of land for a period exceeding 12 years.
2. In the alternative, she sought a declaration that the 1st to 6th Defendants were registered as proprietors of those parcels of land on behalf of and in trust for the Plaintiff. The Plaintiff swore the affidavit in support of the claim.
 3. The Plaintiff amended her claim and through the Amended Originating Summons dated 29/3/2018, she added the 7th Defendant to the suit. She sought to be declared to have become entitled to ownership of Mbeere/Kirima/5047 measuring approximately 10.93 ha as against the 3rd to 7th Defendants, and in the alternative, that the 3rd to 7th Defendants held Mbeere/Kirima/5047 in trust for her.
 4. The Plaintiff swore the supporting affidavits in support of the original summons and the amended one. She exhibited the death certificate for her father, Jeremiah Ngiri Kibati confirming that he died on 8/9/1992, and the grant of letters of administration issued to her with respect to his estate. The grant was issued on 20/6/2013. She also annexed a copy of the green card for parcel number 5047 showing the transactions carried out on the parcel. The register was opened on 24/8/2016 and the 3rd to 6th Defendants were registered as joint proprietors. Ownership of the land changed on 25/5/2017 when the 7th Defendant was registered as its proprietor.
 5. The Plaintiff also attached copies of proceedings in Minister's Appeal Case No. 117 of 2000, Minister's Appeal No. 206 of 1999, Minister's Appeal No. 25 of 2006 and Minister's Appeal No. 20 of 2011. She also exhibited the ruling in Embu JR No. 40 of 2011. She exhibited a letter dated 7/4/2016 vide which the Director of Land Adjudication communicated the decision of the Minister in Appeal No. 20 of 2011 to the effect that parcel number 1100 was awarded to the Plaintiff. Copies of searches done on parcel numbers 2231 and 2232 were also exhibited amongst other documents.
 6. The 7th Defendant swore the Replying Affidavit dated 22/5/2018 opposing the claim. He gave a history of how he bought Mbeere /Kirima/5047 from the 3rd to 6th Defendants. He maintained that he was an innocent purchaser for value and that the Plaintiff's claim against him was not unsustainable. He exhibited copies of the sale agreement dated 18/4/2017 for the sale of parcel number 5047 as well as the consent of the Land Control Board. He also exhibited a copy of his title deed over parcel number 5047 issued on 25/5/2017.
 7. The hearing of the suit proceeded on 13/3/2025. The Plaintiff gave evidence and adopted her witness statement dated 14/2/2023. She told the court that she was the only child and survivor of Jeremiah Ngiri Kibati alias Jeremiah Ngiri who died on 8/9/1992. Her mother predeceased him. That over the years her father physically showed her all his properties including plot No 733 within Kirima Adjudication Section. Further, that her great grandfather Nthiga Mbogo of Kere Clan, purchased Plot No 733 from Murugu son of Kabuthi of Gamumu Clan for valuable consideration. Her father was born in 1915 and brought up on this land. That in 1948, her father converted to Christianity and settled at the ACK Mission at Gachoka where he was being educated by the missionaries. His mother Nugu Kibati was left on the suit land. She stated that she was born in 1953 at Gachoka and that in or about 1957, her family went back to the land and settled on it. In 1961 her father cleared his boundaries which was a requirement since the parcels of land were being demarcated.
 8. That during the land adjudication process within Kirima Adjudication Section in or about 1970, several portions were excised from what was the original parcel no. 733 without the knowledge or consent of her father who had succeeded his father as proprietor of the land. The excised portions included Mbeere/ Kirima/2231 (measuring 7.40 ha) that was registered in the name of the 1st defendant. There was also Mbeere /Kirima/2232 that was registered in the names of the 2nd to



6th defendants. That Mbeere/Kirima/2232 was subdivided into Mbeere/ Kirima/5046, registered in the name of the 2nd Defendant and Mbeere/ Kirima/5047 registered in the names of the 3rd to 6th defendants.

9. Her claim was that after she filed this suit, the 3rd to 6th defendants transferred Mbeere/ Kirima/5047 to the 7th Defendant. It was her evidence that none of the defendants had ever occupied or utilised the land apart from the 7th Defendant who started fencing off Mbeere/ Kirima/ 5047 in December 2017.
10. She was emphatic that up to the time her father died, although the original parcel no. 733 had been fragmented, the original boundaries remained in place. She added that she constantly accompanied her father as he and other members of the clan and neighbours retraced the boundaries of the original plot no 733 in accordance with the Mbeere customs and practice.
11. She stated that all the other fragmented portions out of parcel no. 733 were recovered through several cases that which she enumerated. She averred that through Minister's Appeal Case No. 117 of 2000, parcel numbers Mbeere/ Mbita/2027, 2028, 2029, 2030, 2031 and 2032 that resulted from subdivisions of original plot No 733 were awarded to her father. She elaborated that that appeal gave rise to Embu HC JR Case No. 40 of 2011 which was ruled in her father's favour. Further, that vide Minister's Appeal Case No. 206 of 1999, Mbeere/Kirima/733 that remained after the irregular excisions were carried out on the original parcel number 733 was also awarded to her late father Jeremiah Ngiri. She explained that that award was subsequently set aside in ELC JR No. 32 of 2015. Her appeal to the Court of Appeal was dismissed on a technicality.
12. Further, that Mbeere/Kirima/1100 which was also excised from parcel no. 733 was also the subject of Minister's Land Appeal Cases Numbers 25 of 2006, 20 of 2011 and 56 of 1997 which were all determined in her favour as her father's successor and the parcels of land were awarded to her.
13. That upon her father's demise, she discovered that there two parcels of land, that is Mbeere/ Kirima/2231 and Mbeere/Kirima/2232 which her father had inadvertently left out when he was pursuing the portions mentioned above.

She added that the parcels were subject of Adjudication Case No 297/76 (parcel no. Mbeere/ Kirima/ 2231 and Adjudication Case No 349 of 1977 (parcel no. Mbeere/ Kirima/ 2232) within Kirima Adjudication Section.
14. She urged that it was apparent from the foregoing proceedings referred to and the adjudication records that the two parcels were excised from original plot no. 733. Further, that she knew as a matter of fact that her father was not aware that the two parcels of land had also been excised from the original plot.
15. She emphasised that she was born and brought up on the original plot no. 733 and that she knew its boundaries very well and that the two parcels were within that land and she had all along utilised those parcels as a grazing ground for her livestock. She reiterated that all the parcels that had been excised from parcel number 733 had already been returned and that it was only the two parcels of land that were remaining. She added that the persons registered as proprietors of Mbeere/ Kirima/ 2232 were the respondents in Minister's Land Appeal Case No 206 of 1996 which was determined in her father's favour.
16. She was emphatic that for over twelve years, she and members of her family had been in quiet, peaceful, continuous uninterrupted and exclusive possession of the parcels of land in issue and that she was therefore entitled to the parcels of land by prescription.
17. Moffat Muriithi Kangi, the 7th Defendant, gave evidence and told the court that on 18/4/2017 he received information that there was land for sale around Kirima area and he developed interest to



- purchase it. He visited the land known as Mbeere/ Kirima/5047 measuring approximately 10.92 hectares (ha). He conducted a search which showed that it was registered in the names of the 3rd to 6th Defendants.
18. That he looked for the vendors and after discussion, they entered into a sale agreement on 18/4/2017 at the agreed consideration of Kshs 12,150,000/= which was duly paid and acknowledged by the vendors. He maintained that at the time of the sale, the Plaintiff was not in possession of the suit land. That they went before the Land Control Board (LCB) and obtained consent to transfer the land to him. The transfer was effected and a title was issued to him on 23/5/2017. He claimed that he had been in possession of his parcel of land without any interruption from the Plaintiff or someone else. He urged that the court to dismiss the amended originating summons dated 27/3/2018 with costs.
 19. The court directed parties to file and exchange written submissions which it has considered. The plaintiff submitted that her claim was in relation to Mbeere/ Kirima/4057 (sic) currently registered in the name of the 7th Defendant. When she filed suit on 11/04/2017, Mbeere/ Kirima/ 4057 (sic) which resulted from the subdivision of Mbeere/ Kirima/2232 was registered in the names of the 3rd to 6th Defendants. The 7th Defendant was registered as proprietor of the land on 22/5/2017 while this suit was pending, which is why she amended her claim and added the 7th Defendant as a party to the suit.
 20. The Plaintiff contended that as the only child and the legal representative of the late Jeremiah Ngiri Kibati alias Jeremiah Ngiri, she knew that Mbeere/ Kirima/2232 was hived off Mbeere/ Kirima/733 during adjudication and registered in the names of the 3rd to 6th Defendants on 23/1/2004. That her late father inadvertently failed to claim Mbeere/ Kirima/2232 when he was pursuing Mbeere/ Kirima/733 vide Minister's Appeal Case No 206/1999 together with all the other parcels similarly hived off parcel number 733 including Mbeere/Kirima/1100 vide Minister's Appeal Case No. 20 of 2011 which was heard with Appeal Case No. 25/2006 and Appeal Case No. 56 of 2011 and Mbeere/ Mbita/2032, 2031, 2030, 2029, 2028 and 2027 vide Minister's Appeal Case No 117 of 2000.
 21. She argued that in Minister's Appeal Case No 206/1999, her late father was claiming Mbeere/ Kirima/733 from the 3rd to 6th Defendants who had been awarded the land together with Mbeere/ Kirima/ 2232 during the objection stage. She relied on the objection register for Mbeere/ Kirima/2232, which in her view clearly showed that Mbeere/ Kirima/ 2232 was adjacent to Mbeere/Kirima/733.
 22. The Plaintiff was emphatic that the original boundary for Mbeere/ Kirima/733 before the fragmentations remained intact until she filed this suit. The Plaintiff maintained that she and members of her family had all along been in open and peaceful possession of Mbeere/Kirima/5047, a resultant of Mbeere/ Kirima/2232. She explained that she utilised the land for grazing her livestock and that since her late father's land was over 100 acres, she could not have single handedly farmed on the whole parcel of land but the land had always been in her control.
 23. She pointed out that the 7th Defendant was registered as proprietor of Mbeere/ Kirima/5047 on 20/05/2017 after she had filed this suit. Further, that the 7th Defendant confirmed during cross examination that when he purchased the suit land, he met the 3rd and 6th Defendants who were at the time the registered proprietors of the land at Karatina where their homes are situated. The Plaintiff submitted that none of the 3rd to 6th Defendants were in possession of the suit land when they sold it.
 24. The Plaintiff was emphatic that she was in possession of the suit land, which she argued was an extension of her home situated on the adjacent Mbeere/ Kirima/733. That the 3rd to 6th Defendants were registered as proprietors in common of Mbeere/ Kirima/2232 and on 23/1/2004, and they partitioned it into Mbeere/ Kirima/ 5046 and Mbeere/ Kirima/ 5047 on 24/08/2016 and that on 25/05/2017, they transferred Mbeere/ Kirima/5047 to the 7th Defendant. The Plaintiff submitted that



- during this period she was in possession of the land until December 2017 when the 7th Defendant took possession, which according to her was a period of 13 years and about 10 months.
25. She maintained that by 11/4/2017 when she filed this suit, she had been in possession for 13 years and 3 months from the date of registration of the land. That based on that, the title issued to the 3rd to 6th Defendants had been extinguished when she filed this suit. She urged that the 3rd to 6th Defendants did not have any title to transfer to the 7th Defendant. She contended that the registration of Mbeere/ Kirima/5047 was subject to the rights that she had acquired through prescription as stipulated in Section 28(h) of the *land Registration Act* 2012.
 26. The Plaintiff relied on *Gitonga v Karuri* (2024) KEELC 1591 (KLR) where the court stated that a claim for land could not be brought against another person after a period of 12 years. However, that the court could not just declare one to be an owner of a suit property just because they had been on the suit property for a period of over 12 years. The person claiming must assert such a right. The court cited *Mtana Lewa v Kahindi Ngala Mwangandi* (2015) eKLR, where the court held that adverse possession was 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 twelve years. That the process sprang into action by default or inaction of the owner. The essential prerequisites were 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 was adverse to the title owner.
 27. The court referred to *Wambugu v Njuguna* (1983) KLR 172, where it was held that the proper way of assessing proof of adverse possession was whether or not the title holder had been dispossessed or had discontinued his possession for the statutory period and not whether or not the claimant had proved that he had been in possession of the requisite number of years.
 28. The Plaintiff asserted that her late father Jeremiah Ngiri was born on the suit land in 1918 and although she was born elsewhere in 1953, she settled on the suit land with her parents in 1971 and had been on it until December 2017 when the 7th Defendant forcefully fenced off the land. According to the Plaintiff, her contention was not controverted because the 7th Defendant stated in cross examination that he did not know the history of the land before he purchased it. She added that no evidence was adduced to prove that the 3rd to 6th Defendants were in possession of the suit land before they sold it to the Plaintiff. She concluded that she had satisfied the prerequisites for adverse possession and prayed that her claim be allowed.
 29. The court has considered the pleadings, evidence adduced and the written submissions made by the parties. The issue for determination is whether the Plaintiff has established her claim for adverse possession of Mbeere/Kirima/5047 as against the 7th Defendant and is entitled to the reliefs sought in the Amended Originating Summons dated 27/3/2018. The Plaintiff's advocate informed the court on 4/6/2024 that she would not be substituting the dead Defendants and that she would only pursue the claim against the 7th Defendant.
 30. On the one hand, the Plaintiff's claim is grounded on the claim that her late father inadvertently failed to claim Mbeere/ Kirima/2232 when he was pursuing Mbeere/ Kirima/733 vide Minister's Appeal Case No 206/1999 and all the other parcels similarly hived off parcel number Mbeere/ Kirima/733. The Plaintiff produced documents showing she was the claimant in Minister Land Appeal Case No. 20 of 2011 where she was awarded parcel number 1100. The Plaintiff produced documents showing she was the claimant in Minister Land Appeal Case No. 20 of 2011 where she was awarded parcel number 1100. It is not clear why the Plaintiff did not pursue the claim for Mbeere/ Kirima/2232 which



she claimed was excised from Mbeere/ Kirima/733 until 2017 when she brought this suit. The death certificate which she produced confirms that her father died in 1992.

31. The second limb of the plaintiff's claim is premised on adverse possession. The Plaintiff claimed that she had been utilising the whole land including the portion which the 7th Defendant purchased from the 3rd to 6th Defendants. She explained that that land was adjacent to parcel number 733 which has her homestead. The Plaintiff claimed that she utilised the whole land for grazing her livestock and that since her late father's land was over 100 acres, she could not have single handedly farmed on the whole parcel of land but that the land which the 7th Defendant bought from the 3rd to 6th Defendants had always been in her control. The Plaintiff did not lead evidence to prove her possession of the land and how the land was in her control.
32. It is not clear when she learned that the 1st to 6th Defendants had been registered as proprietors of portions hived off parcel number 733 which she claimed belonged to her father. She contended that her claim for adverse possession for parcel number 5047 had crystallized as against the 3rd to 6th Defendants by the time they sold the land to the 7th Defendant.
33. Sections 7 and 17 of the Limitation of Actions Act envisage that a landowner may not successfully lodge an action to recover land against an adverse possessor twelve years from the date the right accrued as the title of the landowner would be extinguished when the twelve-year period expires.
34. It is not in dispute that the 7th Defendant purchased the suit land from the 3rd to 6th Defendants, who were previously registered as proprietors in common of Mbeere/ Kirima/2232 on 23/1/2004. From the Plaintiff's evidence, Mbeere/ Kirima/2232 was partitioned into Mbeere/ Kirima/5046 and Mbeere/ Kirima/ 5047 on 24/08/2016. On 25/05/2017, the 3rd to 6th Defendants transferred Mbeere/ Kirima/5047 to the 7th Defendant. The 7th Defendant was registered as the proprietor of Mbeere/ Kirima/5047 in 2017 after the Plaintiff had filed this suit against the 1st to 6th Defendants for adverse possession. Without the involvement of the 3rd to 6th Defendants from whom the 7th Defendant purchased parcel number 5047 from, the statutory period for adverse possession cannot be said to have run in favour of the Plaintiff as against the 7th Defendant.
35. The Plaintiff failed to prove her claim against the 7th Defendant on a balance of probabilities. It is dismissed with each party bearing its costs.

DELIVERED VIRTUALLY AT EMBU THIS 25TH DAY OF JUNE 2025.

K. BOR

JUDGE

In the presence of: -

Ms. Rose Njeru for the Plaintiff

Mr. Gilbert Ombachi for the 7th Defendant

