



**Mukuru v Kureiya & 2 others (Environmental and Land Originating  
Summons 5 of 2018) [2025] KEELC 4856 (KLR) (24 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4856 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT CHUKA  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 5 OF 2018**

**BM EBOSO, J**

**JUNE 24, 2025**

**BETWEEN**

**JULIUS MBAKA MUKURU ..... APPELLANT**

**AND**

**NAIVASHA KUREIYA ..... 1<sup>ST</sup> RESPONDENT**

**JANE CIANJOKA GIANCENGU ALIAS JANE CIANJOKA  
MWIANDI ..... 2<sup>ND</sup> RESPONDENT**

**DOROTHY KAGENDO MWIANDI ..... 3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

**Background**

1. This suit was instituted by Julius Mbaka Mukuru through an originating summons dated 9/9/2002. The originating summons was taken out against Naivasha Kureiya on 10/9/2002 in *Nairobi HCCC No 1458 of 2002*. On 20/11/2002, the High Court at Nairobi (Githinji J – as he was then) transferred the case to the High Court at Meru where it was registered as *Meru HCCC No 88 of 2002*. On 5/2/2007, pursuant to the leave granted by the High Court, the plaintiff filed an amended originating summons dated 2/2/2007.
2. Through the amended originating summons, the plaintiff invited the court to determine the following questions:
  1. Whether the applicant herein is entitled to ownership of LR No. Karingani/Ndagani/977 by way of adverse possession.
  2. Whether the Land Registrar, Chuka be ordered by this Honourable Court to delete the name of the Respondents in the register as the owners of LR No. Karingani/Ndagani/977 and in its place register the applicant as the owner thereof.



3. Whether the Land Registrar, Chuka be ordered to issue a certificate of title to the applicant in respect of Karingani/Ndagani/977.
4. Whether the respondents be ordered to pay costs of this application.
3. Hearing of the plaintiff's case commenced at the High Court at Meru before Makau J on 30/4/2012. Following the establishment of the Environment and Land Court, the High Court at Meru (Makau J) transferred the suit to the Environment and Land Court (the ELC) at Meru on 12/5/2014. There is no indication that the case was given an ELC registration number at Meru ELC. The ELC at Meru was seized of the case from May 2014 to 17/9/2014 when the court (PM Njoroge J) transferred the case to Chuka Principal Magistrate Court for hearing and determination. It was registered at Chuka Principal Magistrate Court (Chuka PMC) as Chuka PMCCC No 133 of 2014. Following a formal application dated 27/6/2018, the ELC at Chuka (PM Njoroge J) transferred the case from Chuka PMC to Chuka ELC on 9/7/2018 where it was registered as *Chuka ELC Case No. 5 of 2018*.
4. On 2/10/2018, the court (PM Njoroge J) dismissed the case on the ground that the parties failed to attend court when the case was listed for hearing on 20/9/2018. The plaintiff's subsequent application for the setting aside of the dismissal order was rejected by the court (PM Njoroge J) *vide* a ruling dated 19/12/2018. The ruling attracted *Appeal No 121 of 2019* at the Court of Appeal at Nyeri. The Court of Appeal reinstated the suit through a judgment dated 16/2/2024. When the matter subsequently came up for directions before Yano J on 24/9/2024, the court directed the Deputy Registrar to visit the locus-in-quo (the suit land) and present a formal report to the court. The party who had asked for a locus-in-quo subsequently abandoned the quest after the parties failed to agree on how the expenses of the visit were to be borne.
5. When the case subsequently came up for hearing before Eboso J on 24/2/2025, parties presented and recorded the following consent:
  - “(1) By consent, the proceedings taken by Justice J A Makau on 30/4/2012 and 18/3/2013 be and are hereby adopted by this court as the plaintiff's evidence and the plaintiff's/ applicant's case be marked as closed.
  - (2) The matter shall proceed to defence hearing.”
6. Consequently, the court adopted the above consent in the following terms:

“Through their Advocates, parties have taken into account the fact that the trial proceedings before J A Makau took place during the transition period and have given the court the above consent. The consent is hereby adopted by the court.”
7. On the same day, the defence led evidence by Naivasha Kureiya who testified as DW1 and Dorothy Kagendo Mwiandi who testified as DW2. The defence closed their respective cases on that day. Parties subsequently filed their respective submissions.
8. The suit now falls for determination. The two key issues that fall for determination are:
  - (i) Whether the suit discloses a cause of action against Jane Cianjoka Giancengu and Dorothy Kagendo Mwiandi; and
  - (ii) Whether the plaintiff has satisfied the criteria for acquisition of title to land through the doctrine of adverse possession. I will briefly outline the parties' respective cases and evidence before I analyse and dispose the two issues.



## Plaintiff's Case and Evidence

9. The plaintiff's case is that he acquired title to the suit land through the doctrine of adverse possession. He testified as PW1 and closed his case. His evidence was that he planted coffee on the suit land in 1960. Prior to that, the suit land was vacant. He stated that in 1998, the 1st defendant planted bananas on the suit land which he (the plaintiff) uprooted. He was arrested and charged in a criminal case. He added that in 2001, the 1st defendant uprooted his (the plaintiff's) coffee trees. He complained to the Police who arrested the 1st defendant but released him because he (the 1st defendant) had a title to the suit land.
10. The plaintiff further testified that a search he obtained from the Land Registry revealed that the suit land was registered in the names of Naivasha Kureiya and Mwiandi Muruu. He added that Mwiandi Muruu died in 1995. It was the evidence of the plaintiff that the 1st defendant is his neighbour. Asked to confirm the date when the coffee trees were uprooted, he first said they were uprooted in 2001. During re-examination, he stated that the coffee trees were uprooted in 2008, adding that in 2001 the 1st defendant only cut the coffee trees. The plaintiff further stated that the 1st defendant built a house on the suit land in 2004 while Jane Cianjoka built a house on the suit land in 2005.
11. The plaintiff produced the following exhibits:
  - (i) share certificate No 4929 issued to Mbaka Samuel by Chuka Coffee Growers Co-operative Society;
  - (ii) demand letter dated 19/22/2001;
  - (iii) notice to commence private prosecution;
  - (iv) copy of letter dated 21/8/2008;
  - (v) photographs taken on 26/6/2006 and
  - (vi) official search dated 6/9/2002.
12. During cross-examination by counsel for the 1st defendant, the plaintiff stated that he entered the suit land on 21/1/1960, adding that the 12-year threshold was on 21/1/1972. He did not know the date when the suit land was registered. He stated that at the time of land gathering, land demarcation, land adjudication, and land registration, he was on the suit land, adding that he was an adult but he did not raise any objection during the process of land adjudication. Shown a copy of the land register relating to the suit land, he confirmed that the suit land was registered on 5/7/1976. He further stated that he had not had any property on the suit land "since November 2001." He also confirmed that there were two permanent houses on the suit land which did not belong to him.
13. During cross-examination by counsel for the 2nd defendant, he stated that he wanted the court to return him to the suit land, adding that he was not in possession of the suit land at the time of filing this suit in 2002. He stated that the DCIO was the one who advised him to file this suit. He stated that he sued the 2nd and 3rd defendants because the land register showed that Mwiandi Muruu who died in 1995 was a co-owner of the suit land.
14. The plaintiff testified that at the time of land adjudication in the area, he was an adult working in the Lands Department as a subordinate staff. He added that land could not be registered in the name of a person without evidence of gathering and possession by that person. He stated that there existed a canteen on the suit land which was erected by his brother, James Njoka, adding that the canteen



was being used by the 1st defendant and Jane Cianjoka. It was his evidence that his father's shamba "surrounds" the suit land.

15. Asked whether he knew Patrick Mbaka Mwiandi, he stated that he knew him, adding that he (Patrick) lived on the suit land and owned a stone house which he (Patrick) erected on the suit land in 1995. The plaintiff further confirmed that in 1998, he was charged in *Chuka CMC Criminal Case No 1545 of 1998* on allegations that he had uprooted the 1st defendant's bananas from the suit land. He confirmed that he indeed uprooted the 1st defendant's bananas from the suit land.

### **1st Defendant's Case and Evidence**

16. The 1st defendant opposed the plaintiff's claim through a replying affidavit dated 26/5/2003 in which he deposed that the plaintiff's suit was statute-barred under Section 7 of the *Limitation of Actions Act*. He added that the plaintiff's failure to attach to the originating summons a power of attorney donated by his father or a grant of letters of administration rendered his suit untenable. Lastly, he deposed that the plaintiff's suit was frivolous, vexatious and untenable in law, adding that the plaintiff's claim was incompetent and an abuse of the process of the court.
17. During trial, he adopted the contents of his replying affidavit. He added that the plaintiff did not have any structure or crop on the suit land. He produced the following as exhibits:
  - (i) an extract of the land register (green card);
  - (ii) copy of the title deed for Karingani/Ndagani/977;
  - (iii) copy of an official search for the above parcel; and
  - (iv) copy of a letter dated 13/7/2009.
18. During cross-examination, he stated that it was the plaintiff's father who used to grow coffee on the suit land prior to land adjudication, adding that after land adjunction, the plaintiff's father uprooted his coffee and moved to his land. He could not remember the year when the coffee was planted on the suit land by the plaintiff's father. He added that the plaintiff's father uprooted the coffee when land survey and land adjudication took place. He added that at the time of filing of this case, there was no coffee on the suit land. He added that in 1998, he lodged a complaint to the police against the plaintiff after the plaintiff uprooted his bananas from the suit land. He added that the plaintiff's contention that he planted coffee on the suit land was a lie, adding that the plaintiff had never lived on the suit land. Shown P. Exhibit No1, the 1st defendant stated that it was a share certificate relating to the coffee planted on the land where the plaintiff lived, adding that it did not relate to the suit land. Lastly, he stated that the suit land was registered in 1976.

### **2nd Defendant's Case and Evidence**

19. Jane Cianjoka Giancengu and Dorothy Kagendo Mwiandi were joined to the suit jointly as the 2nd defendant following a ruling rendered on 30/11/2006 by Sitati J. They were sued as the legal representatives of the late Mwiandi Muruu. They subsequently filed a replying affidavit sworn on 18/6/2007 by Dorothy Kagendo Mwiandi. Their case was that the suit land was registered in the names of Naivasha Kureiya and Mwiandi Muruu as proprietors in common in equal shares. It was also their case that no personal representative had been appointed in relation to the estate of the late Mwiandi Muruu but they conceded that both of them were widows of the late Mwiandi Muruu.
20. It was their case that the late Muruu's portion of the suit land was at all material times occupied by one of their sons, Patrick Mbaka Mwiandi, adding that the late Muruu owned a canteen constructed



on the suit land in 1965. They stated that the plaintiff lived on a different parcel of land located about one (1) kilometre away from the suit land. It was also their case that the plaintiff did not have a tenable claim over the suit land.

21. During trial, Dorothy Kagendo Mwiandi testified as DW2. She adopted the contents of her affidavit dated 18/6/2007. Her oral testimony was that when they lived on the suit land in 1975, the plaintiff's father had coffee on an adjacent piece of land, adding that the plaintiff had never owned coffee trees on the suit land.
22. During cross-examination by counsel for the 1st defendant, she stated that she got married to the late Muruu in 1975, adding that the plaintiff never utilized the suit land between 1975 and 2002. She added that the plaintiff did not have a single asset on the suit land.
23. During cross-examination by counsel for the plaintiff, she stated that when she got married to the late Muruu in 1975, the structures that exist on the suit land were already on the land. She emphasized that the late Muruu was utilizing his ½ portion of the suit land all along.

### **Plaintiff's Submissions**

24. The plaintiff filed written submission dated 10/3/2025 through M/s Ochieng Ogutu & Co Advocates. Counsel for the plaintiff identified the following as the two issues that fell for determination in the suit:
  - (i) Whether the plaintiff had proved his claim of adverse possession to the required standard; and
  - (ii) What appropriate orders should be granted, including an order as to costs.
25. Citing the pronouncement of the Court of Appeal in *Mtana Lewa v Kibindi Ngala Mwachandi* (2015) eKLR, counsel submitted that the plaintiff had demonstrated actual, continuous, exclusive, and hostile possession of the suit land for the statutory period of 12 years, adding that the plaintiff's "occupation and use" of the suit land had been open, notorious, and adverse to the rights of the defendants. Counsel argued that the plaintiff testified that he planted coffee trees on the suit land in 1960, adding that the defendants conceded that there were coffee trees on the suit land but claimed that the coffee trees were planted by the plaintiff's father. Counsel argued that the allegation that the coffee trees were planted by the plaintiff's father was an afterthought. Counsel further argued that the plaintiff produced a share certificate showing that he was a member of the Chuka Coffee Growers Co-operative Society Ltd. Counsel urged the court to grant the plaintiff orders of adverse possession and award him costs of the suit.

### **1st Defendant's Submissions**

26. The 1st defendant filed written submissions dated 12/3/2025 through M/s A. G Riungu & Co Advocates. The 1st respondent's counsel submitted that the plaintiff testified in his evidence-in-chief that the 1st defendant uprooted his coffee trees, adding that this was a concession that the plaintiff did not have possession of the suit land. Counsel added that from the evidence of the plaintiff, there was no proof of exclusive, continuous and uninterrupted possession of the suit land by the plaintiff for 12 years. Counsel urged the court to dismiss the suit.

### **2nd Defendant's Submissions**

27. The 2nd defendant filed written submissions dated 21/3/2025 through M/s B. Musili Advocates. Counsel for the 2nd defendant identified the following as the issues that fell for determination in the suit:
  - (i) Whether the applicant could claim adverse possession;



- (ii) Whether the applicant met the threshold for grant of orders of adverse possession; and
  - (iii) Who should bear costs of the suit.
28. Counsel submitted that the applicant having conceded that when he uprooted the 1st defendant's bananas in 1998 he was arrested and charged for malicious damage to property, that part of his testimony showed interruption and absence of continuity that are key elements of adverse possession. Counsel added that from the testimony of the plaintiff, his opportunity to lay a claim of adverse possession lapsed on 21/1/1972 under the Lamination of Actions Act. Counsel added that the two registered proprietors of the suit land laid claim to the suit land during the gathering, verification and adjudication process and passed all the necessary legal parameters after which they were registered as proprietors of the land. Citing the evidence of DW2 to the effect that she lived on the suit land with her husband, the late Mwiandi Muruu from 1975, counsel argued that it had been demonstrated that the plaintiff neither used nor had possession of the suit land. Counsel urged the court to dismiss the plaintiff's claim and award the defendants costs of the suit.

### **Analysis and Determination**

29. The court has considered the originating summons, the responses to the originating summons and the parties' respective evidence and submissions. The court has also considered the relevant legal frameworks, legal principles and jurisprudence. As pointed out in one of the opening paragraphs of this Judgment, the following are the two key issues that fall for determination in the Judgment:
- (i) Whether the suit discloses a cause of action against Jane Cianjoka and Dorothy Kagendo Mwiandi; and
  - (ii) Whether the plaintiff has satisfied the criteria for acquisition of title to land through the doctrine of adverse possession. I will be brief in my sequential analysis and disposal of the two issues.
30. Does the plaintiff's suit disclose a cause of action against Jane Cianjoka Giancengu and Dorothy Kagendo Mwiandi? The duo were brought into this suit through an amendment made to the originating summons on 2/2/2007. They were sued jointly as the 2nd defendant. They were sued as the joint legal representatives of Mwiandi Muruu who was said to have died in 1995.
31. In their response to the suit, the duo filed a replying affidavit sworn on 18/6/2007 by Dorothy Kagendo Mwiandi. Although they conceded that the suit land was registered in the joint names of Naivasha Kureiya and the late Mwiandi Muruu as proprietors in common in equal shares, they were categorical that neither of them had been appointed under the [Law of Succession Act](#) as a personal representative of the late Muruu. The plaintiffs elected to ignore the above critical aspect of their joint defence. Indeed, the plaintiff did not bother to pursue the question of their locus standi. Under Sections 107 and 109 of the [Evidence Act](#), the obligation to demonstrate to the court that the duo were the personal representatives of the estate of the late Muruu was that of the plaintiff. He did not bother to discharge that obligation.
32. Through this suit, the plaintiff, who was not in possession of the suit land at the time of filing suit, sought adverse possession orders against the late Mwiandi Muruu. Under Section 82 of the [Law of Succession Act](#), only the duly appointed personal representatives of the late Mwiandi Muruu had power to sue or be sued on behalf of the estate of the late Mwiandi Muruu. The mere fact that one was a spouse of the deceased did not confer upon him/her the locus standi to be sued as a personal representative of the deceased. Indeed, where a deceased's next of kin elects not to apply for a grant, the law provides a framework for citation and eventual appointment of an adverse claimant as a personal representative.



33. The plaintiff elected to ignore the duo's contention that they were not personal representatives of the deceased. In the absence of proof of this important aspect of the plaintiff's claim, the plaintiff cannot be said to have established a cause of action against the duo. That is the finding of this court on the first issue.
34. Has the plaintiff satisfied the criteria for acquisition of title to land through the doctrine of adverse possession? The court has made a finding to the effect that the plaintiff failed to prove that the two people whom he sued as personal representatives of the late Mwiandi Muruu were indeed Mwiandi Muruu's duly appointed personal representatives. Even if the plaintiff established the essential elements of adverse possession, his claim for orders of adverse possession would fail on the above ground. Did the plaintiff establish the key elements of adverse possession in relation to the suit land?
35. The common law doctrine of adverse possession has statutory underpinnings in Sections 7 and 17 of the *Limitation of Actions Act* which provide as follows:
- “7. 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”
- “17. Subject to section 18 of this Act, at the expiration of the period prescribed by this Act for a person to bring an action to recover land (including a redemption action), the title of that person to the land is extinguished.”
36. Suffice it to also observe that, Section 7(d) of the *Land Act* recognizes prescription as one of the methods through which title to land is acquired. Secondly, the question relating to the constitutionality of the doctrine of adverse possession was examined by the Court of Appeal and was answered in the affirmative in the case of *Mtana Lewa v Kabindi Ngala Mwangandi* [2015] eKLR.
37. The common law doctrine of adverse possession connotes possession which is inconsistent with and in denial of the title of the true owner of land. 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. Thirdly, he must demonstrate that the registered owner had knowledge [or the actual or constructive means of knowing] that the adverse possessor was in possession of the suit property. Fourthly, the possession must be continuous; it must not be broken or interrupted. *In Titus Kigaro Munyi v Peter Mburu Kimani*, CA No 28 Of 2014, the Court of Appeal held that computation of time starts from when there is actual or constructive knowledge by the registered proprietor.
38. The Court of Appeal defined adverse possession in *Mtana Lewa v Kabindi Ngala Mwangandi* [2015] eKLR as follows:
- “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 or under the licence of the owner. It must be adequate in continuity and in extent to show that possession is adverse to the title owner.”



39. The Court of Appeal outlined the following criteria for acquisition of title under the doctrine of adverse possession in *Wilson Kazungu Katana & 101 others v Salim Abdalla Bakshwein & another* [2015] eKLR:

“First, the parcel of land must be registered in the name of a person other than the applicant, the applicant must be in open and exclusive possession of that piece of land in an adverse manner to the title of the owner, lastly, he must have been in that occupation for a period in excess of twelve years having dispossessed the owner or there having been discontinuance of possession by the owner.”

40. The plaintiff brought this suit in 2002. The suit land was the subject of the various processes of land adjudication under the *Land Adjudication Act* in the 1970s. The land adjudication phases culminated in the opening of the land register relating to the suit land on 5/7/1976. The 1st defendant and the late Mwiandi Muruu were adjudicated to be the persons who were in possession of the suit land and who were entitled to be registered as proprietors in common in equal shares of the land. The two were accordingly registered as co-owners of the suit land on 5/7/1976.

41. The plaintiff who claims to have been in adverse possession of the suit land since 1960 did not raise any objection at any of the stages of land adjudication. As a possessor, he never bothered to ventilate the rights of a possessor throughout the process of land adjudication in the section. In his testimony before this court, he stated that he worked in the Department of Lands at the time of land adjudication in the section.

42. It is clear from the foregoing that the plaintiff knew or had a reasonable opportunity to know that he could not be an adverse possessor prior to the commencement and completion of the land adjudication processes. He also knew or had reasonable opportunity to know that the purpose of land adjudication was to identify persons who were in possession of land in the section under adjudication. If the plaintiff was in possession of the suit land from 1960 up to 2008 as alleged, he would not be making a claim as an adverse possession. He would have ventilated his claim as a possessor/occupier during the various phases of land adjudication in the section and he would have been identified and registered as proprietor of the suit land. The fact that he worked in the Department of Lands and he never bothered to assert his rights during the land adjudication exercise is clear indication that he was not in possession of the suit land at the time of land adjudication.

43. The plaintiff contended in his oral evidence that he possessed the suit land as an adverse possessor since 1960, adding that he planted coffee trees on the suit land in 1960. As evidence of his adverse possession of the suit land, he presented a share certificate issued to Mbaka Samuel by Chuka Coffee Growers Co-operative Society Limited. There was, however, no nexus between the share certificate and the suit land. There was also no conclusive evidence that the Mbaka Samuel captured in the share certificate is the plaintiff in this suit (Julius Mbaka Mukuru).

44. Thirdly, the plaintiff contradicted himself on various critical issues. Whereas he contended in the originating summons that he had been in adverse possession of the suit land since 1960, in paragraph 3 of his supporting affidavit, he deposed that the suit land belonged to his father. Clearly, he could not have been an adverse possessor against the defendants in relation to land which he alleges was at the time held by his father.

45. In his oral evidence-in-chief, he stated that the 1st defendant uprooted his coffee trees from the suit land in 2001. During his subsequent evidence, he stated that in 2001, the 1st defendant only cut his coffee trees, adding that the uprooting took place in 2008. He did not, however, present any photographic



evidence of the alleged coffee trees that were cut by the 1st defendant in 2001 and uprooted in 2008 despite this being one of the key elements which he was relying on as evidence of adverse possession.

46. Evidence came from the plaintiff to the effect that he had never had a physical structure of his on the suit land. He also testified during cross-examination that Patrick Mbaka Mwiandi (a son to Mwiandi Muruu) lived on the suit land in a stone house built in 1995. This is clear evidence that someone else had possession of the suit land at all material times.
47. The totality of the above evidence is that the plaintiff did not tender evidence establishing existence of the essential elements of adverse possession. Put differently, the plaintiff did not satisfy the criteria for acquisition of title to land through the doctrine of adverse possession.
48. On costs, no special circumstances have been demonstrated to warrant a departure from the general principle in Section 27 of the Civil Procedure Act. The plaintiff will therefore bear costs of this suit.
49. In the end, the finding of the court on the key question in the amended originating summons dated 2/2/2007 is that the plaintiff/applicant is not entitled to ownership of land parcel number Karingani/Ndagani/977 by way of adverse possession. Consequently, the plaintiff's claim for orders of adverse possession relating to Karingani/Ndagani/977 is rejected and dismissed for lack of merit. The plaintiff shall bear costs of this suit.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT CHUKA THIS 24<sup>TH</sup> DAY OF JUNE, 2025.**

**B M EBOSO [MR]**

**JUDGE**

In the Presence of:

Plaintiff - Absent

Mr. Riungu for the 1st Defendant

Ms. Musili for 2nd and 3rd Defendants

Court Assistant – Mr. Mwangi

