



**Kahiga v Mwangi (Environmental and Land Originating Summons  
E016 of 2024) [2025] KEELC 4690 (KLR) (23 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4690 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MURANGA  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E016 OF 2024  
MN GICHERU, J  
JUNE 23, 2025**

**BETWEEN**

**FRANCIS NJARAMBA KAHIGA ..... APPLICANT**

**AND**

**PETER KARANJA MWANGI ..... RESPONDENT**

**JUDGMENT**

1. The Plaintiff seeks the following orders against the Defendant.
  1. That the Applicant has by way of adverse possession acquired land title of 0.5 acres out of land parcel Loc.7/Ichagaki/5151 being a resultant of LR No. Loc.7/Ichagaki/645 and the 0.5 acres out of the suit land be registered in the name of Francis Njaramba Kahiga.
  2. That the Land Registrar Murang'a be ordered to transfer 0.5 acres out of Loc.7/Ichagaki/5151 to the Applicant.
  3. That the Deputy Registrar of this Court do sign application for land control board, transfer documents and any other application and documents necessary to facilitate the transfer of 0.5 acres out of Loc.7/Ichagaki/5151 to the Applicant.
  4. That the Court be pleased to order the Land Registrar to dispense with the production of the original title deed of the original No. Loc.7/Ichagaki/5151 when registering the decree of this court for transfer of 0.5 acres.
  5. That the Court be pleased to order that the OCS Maragua Police Station do supervise the execution of the Court orders.
  6. The Respondent to pay the costs of this suit.



2. The grounds for seeking the orders are as follows. Firstly, the Plaintiff bought 0.5 acres out of the suit land from Peter Karanja Mwangi on 18-1-2006. The suit land mutated from Loc.7/Ichagaki/645 which was registered in the name of Njeri Karanja. It was divided into two parcels being Loc.7/Ichagaki/5150 and 5151. Secondly, the Defendant is a son to Lydia Mwangi who is now deceased. Lydia and the Defendant were involved in litigation over the suit land and they were successful in that litigation. The purchase price for the suit land was Kshs. 100,000/=. The Plaintiff paid Kshs. 90,000/= to the Defendant. The balance is Kshs. 10,000/=. Thirdly, the Defendant put the Plaintiff in possession of the suit land in February 2007 and he has since then developed it substantially. The said occupation has been continuous and uninterrupted. For the above stated reasons, he prays for the orders in the summons.
3. In support of the case, the Plaintiff filed the following evidence.
  - i. Supporting affidavit and witness statement both dated 6-8-2024.
  - ii. Copy of sale agreement dated 18-1-2007.
  - iii. Copy of sale agreement dated 20-11-2006.
  - iv. Copy of certificate of death of Lydia Wanjiku Mwangi dated 23-11-2009.
  - v. Copy of certificate of death for Njeri Karanja dated 15-11-1999.
  - vi. Photograph of a man inside a maize plantation.
  - vii. Copy of order dated 5-10-2004 in Land Disputes Tribunal case No. 34 of 1998.
  - viii. Copy of certificate of official search for LR No. Loc.7/Ichagaki/5151.
4. The Defendant, though duly served with the originating summons on 14-8-2024 did not enter appearance or file a defence. The suit proceeded ex parte.
5. The doctrine of adverse possession is provided for under Section 7 of the [Limitation of Actions Act](#) which is 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.”

In the case of [Mtana Lewa v Kabindi Ngala Mwangandi](#), adverse possession was defined 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 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.”

6. Breaking down the doctrine as enunciated above, one discerns the following ingredients.
  - a. possession of the land of another,
  - b. asserting rights over the land,



- c. the registered owner omits or neglects to take action to recover the land,
  - d. the possession is for a period of 12 years or more,
  - e. the possession is neither by force or stealth nor under the licence of the owner.
7. The question to answer is whether the above ingredients exist in this case. There is uncontroverted evidence that the Plaintiff is in possession of the suit land. It is also proved that he has asserted his right over the land by Planting crops like the maize plantation in the photograph produced as an exhibit. Thirdly, the registered owner has neglected to take any action to recover his land because even after he was served with the originating summons, he took no action to defend the land from the Plaintiff's claim. Fourthly, the possession is for a period of 18 years which is six(6) years more than the statutory period in Section 7 of the Limitation of Actions Act. Finally, though the original entry was with the consent of the Defendant, the sale agreement ceased to have any effect when the parties failed to honour it.
8. I would easily order that the Plaintiff sets the entire 0.5 acres. There is only one problem. He has paid only Kshs. 90,000/= out of the purchase price of Kshs. 100,000/=. To order that the Plaintiff pays the balance of Kshs. 10,000/= more than eighteen (18) years later is not fair owing to the appreciation in the value of land since then. It would be unconscionable to order that the Plaintiff continues occupying land that he did not pay for. The best way out, in my view, is to award the Plaintiff land pro rata to the amount already paid as purchase price.

Kshs 90,000

X 0.5 acres = 0.45 acres

Kshs 100,000

Consequently, the Plaintiff is entitled to 0.45 acres of land parcel No. Loc.7/Ichagaki/5151.

9. In conclusion and for the reasons already given, the Plaintiff is entitled to orders, 1,2,3,4 and 5 of the originating summons dated 6-8-2024 but amended to read 0.45 acres in place of 0.5 acres.

No order as to costs.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 23<sup>RD</sup> DAY OF JUNE, 2025.**

**M.N. GICHERU**

**JUDGE.**

Delivered online in the presence of; -

Court Assistant – Mwangi Njonjo

Applicant's Counsel – Mr. Njoroge

Respondent's Counsel – Absent.

