



Karumbi v M’Ngaruni (Enviromental and Land Originating Summons E004 of 2025) [2025] KEELC 4717 (KLR) (18 June 2025) (Judgment)

Neutral citation: [2025] KEELC 4717 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E004 OF 2025**

JO MBOYA, J

JUNE 18, 2025

BETWEEN

RUFUS KARUMBI PLAINTIFF

AND

STEPHEN KABURIA M’NGARUNI RESPONDENT

JUDGMENT

1. The Plaintiff has approached the court vide Originating Summons [OS] dated 17th March 2025; and wherein the plaintiff has sought the following reliefs:
 - i. Whether Stephen Kaburia M’Ngaruni is the registered owner of parcel of land L.R No. Ntima/Igoki/10221 measuring approximately 0.062 ha or thereabout.
 - ii. Whether the Applicant/claimant herein has been in continuous, open and uninterrupted possession of the whole of land L.R No. Ntima/Igoki/10221 for a period in excess of 12 years.
 - iii. Whether the possession of L.R No. Ntima/Igoki/10221 by the Applicant/claimant amounts to adverse possession.
 - iv. Whether the Respondent’s title to L.R No. Ntima/Igoki/10221 has been extinguished.
 - v. Whether a declaration should issue that the applicant/claimant has become entitled to the whole of the land L.R No. Ntima/Igoki/10221 and an order should issue for the transfer to him.
 - vi. Whether the Applicant/claimant is entitled to costs of these proceedings.
2. The Originating Summons is premised on the various grounds which have been highlighted in the body thereof. In addition, the originating summons is supported by the affidavit sworn by the plaintiff



- on the even date. Suffice it to state that the plaintiff has averred that same entered into a sale agreement with one M'Ngaruni [now deceased] who was the father of the defendant.
3. Additionally, the plaintiff averred that upon entry into and execution of the sale agreement, the deceased [vendor] allowed same to enter upon and take possession of the portion of the suit property measuring 1/8 of an acre. Furthermore, the plaintiff averred that same has remained in continuous, open and uninterrupted occupation of the designated portion of the suit property. To this end, the plaintiff posited that same has therefore acquired adverse possessory [prescriptive] rights to and in respect of the designated portion.
 4. Flowing from the foregoing, the plaintiff implored the court to find and hold that same has satisfied the requisite ingredients underpinning a claim for adverse possession. In this regard, the plaintiff invited the court to declare same as the lawful owner of the portion measuring 1/8 of the suit property.
 5. The originating summons was duly served upon the defendant. However, the defendant neither entered an appearance nor file any response thereto. In this regard, it suffices to observe that the deposition[s] or averments by the plaintiff have remained uncontroverted.
 6. The originating summons came up for directions on 22nd May 2025 whereupon the plaintiff intimated to the court that same was desirous to dispose of the originating summons on the basis of affidavit evidence. To this end, the court proceeded to and issued directions in line with the provisions of Order 37 Rules 16, 17 and 19 of the Civil Procedure Rules, 2010. For good measure, the court directed that the originating summons be disposed of by way of affidavit evidence. Furthermore, the court also circumscribed the timeline for the filing of written submissions.
 7. The Plaintiff duly filed witness submissions dated 29th May 2025 and wherein the plaintiff has highlighted one singular issue, namely; that the plaintiff has since acquired and or accrued adverse possessory rights to and in respect of the suit property. Furthermore, the plaintiff has contended that same entered onto the designated portion of the suit property in the year 1989 and same has remained in occupation thereof to date.
 8. Arising from the foregoing, the plaintiff has posited that his occupation, possession and use of the designated portion of the suit property has been adverse and hostile to the title of the defendant. Consequently, the plaintiff has submitted that same has met the requisite threshold to warrant the grant of the orders sought.
 9. To support the foregoing submission[s], the plaintiff has thereafter cited and referenced various decisions, including *Mbira vs Gachuhi* (2002) EALR 137; *MtanaLewa vs Kahindi Ngala Mwangandi* (2015) eKLR, *Wambugu vs Njuguna* (1983) eKLR and *Mombasa Teachers Cooperative Savings & Credit Ltd vs Robert Muhambi Katana & 15 others* (2018) eKLR.
 10. Having reviewed the originating summons; the Affidavit evidence; and upon consideration of the written submissions filed on behalf of the plaintiff, I come to the conclusion that the determination of the subject dispute turns on two [2] key issues, namely; whether the plaintiff has demonstrated occupation and possession of the designated portion of the suit property; and whether the occupation and possession by the plaintiff [if at all] has been hostile to the title of the defendant or otherwise.
 11. Regarding the first issue, it is instructive to recall that the plaintiff swore and filed an elaborate affidavit wherein same averred that he [plaintiff] entered into a sale agreement with M'Ngaruni [now deceased] who was the father of the defendant. Furthermore, the plaintiff deponed that upon entry into and execution of the sale agreement, the vendor [now deceased] allowed him to enter upon and take possession of the designated portion of the suit property.



12. Moreover, the plaintiff posited that same indeed entered upon and took possession of the designated portion of the suit property. For good measure, it has been posited that the portion under the occupation of the plaintiff herein is identifiable; well defined and delineated on the ground.
13. Furthermore, the plaintiff averred that he proceeded to and constructed various buildings on the designated portion. To this end, the plaintiff referenced the various photographs annexed to the supporting affidavit.
14. It is worthy to recall that the deposition[s] by the plaintiff have not been controverted. In this regard, I encounter no difficulty in finding and holding that the plaintiff has placed before the court plausible, cogent and credible evidence to demonstrate that same has indeed been in occupation of the 1/8 portion of the suit property.
15. Regarding the second issue, namely; whether the plaintiff has met and satisfied the threshold for the grant of the orders of adverse possession or better still, whether the plaintiff has proven that his occupation of the designated portion of the suit property has been hostile to the title of the defendant, it is important to underscore that the plaintiff entered onto the designated portion of the suit property on the basis of a sale agreement. Instructively, the entry onto the suit property was underpinned by a contract.
16. Nevertheless, the plaintiff averred that despite having entered upon the suit property on the basis of the contract, the vendor [now deceased] failed to effect transfer to and in favour of the plaintiff. Furthermore, it is crystal clear that the sale agreement between the plaintiff and the vendor, now deceased, could only subsist for a maximum of six (6) years. Suffice it to state that either party could only seek to enforce the said agreement within 6 years. [See section 4 (1) of the [Limitation of Actions Act](#), Chapter 22, Laws of Kenya]
17. Be that as it may, there is no gainsaying that the six-year duration that regulates contract[s] lapsed without the vendor commencing any suit for breach of the contract or otherwise. Further and in addition, there is no gainsaying that the vendor also did not commence any suit for purposes of recovery of vacant possession.
18. On the contrary, the vendor allowed the plaintiff to remain in occupation long after the sale agreement had lapsed; and been rendered extinct. Suffice it to highlight that upon the lapse of the contract, the plaintiffs' continued occupation and possession of the suit property became adverse [hostile] to the rights and interests of the vendor and or his legal representatives. [See *Sisto Wambugu vs Kamau Njuguna* (1983) eKLR, see also *Mbira vs Gachuhi* (2002) eKLR].
19. Additionally, it is important to point out that the vendor's right to recover the designated portion of the suit property could only be undertaken within 12 years of the entry onto the designated portion of the suit property by the plaintiff. [See Section 7 of the [Limitation of Actions Act](#), Chapter 22, Laws of Kenya].
20. Nevertheless, it is not lost on this court that neither the vendor nor the defendant herein, who became the owner of the suit property after the death of the vendor, filed any proceedings to recover vacant possession. In this respect, the plaintiff remained in occupation of the suit property, albeit without the permission and or consent of the defendants. Simply put, the plaintiffs' continued occupation and possession of the suit property was hostile to the defendant's title.
21. The law as it pertains to adverse possession has since crystallized and has been settled vide a plethora of decisions. Nevertheless, it suffices to reference a few of the said decisions which have highlighted the peremptory ingredients that underpin a claim of adverse possession.



22. In the case of *Mtana Lewa vs Kahindi Ngala Mwangandi* [2015] eKLR, the Court of Appeal [Per Asike-Makhandia, JA] expounded on the doctrine of adverse possession and stated as hereunder;

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, in publicity and in extent to show that possession is adverse to the title owner. This doctrine in Kenya is embodied in Section 7 of the *Limitation of Actions Act*, which is in these terms:-

“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.”

The *Limitation of Actions Act* makes further provision for adverse possession at Section 13 that:

- “(1) A 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 sections 9, 10, 11 and 12 a right of action to recover land accrues on a certain date and no person is in adverse possession 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 afresh right of action does not accrue unless and until some person again takes adverse possession of the land.

23. The ingredients that must be observed and satisfied before a proclamation can be made as pertains to a claim for adverse possession were re-visited by the Court of Appeal in the case of *Richard Wefwafwa Songoi vs Bernard Munyifwa Songoi* [2020] eKLR where the court after reviewing various decision[s] stated thus;

36. For a claim founded on adverse possession to succeed, the person in possession must have a peaceful and uninterrupted user of the land. Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are important factors in a claim for adverse possession.
37. In this appeal, the appellant had the burden to prove not mere possession of the suit property, but possession that was nec vi, nec clam, nec precario. (See *Kimani Ruchine -v- Swift, Rutherfords Co. Ltd.* [1980] KLR 1500 and *Karnataka Board of Wakf -v- Government of India & Others* [2004] 10 SCC 779).
38. In this appeal, the learned judge held that the appellant’s occupation of the suit property was interrupted in 1992 when he filed suit before the Bungoma Principal Magistrate’s Court.
39. In *Wambugu -v- Njuguna*, (1983) KLR 173, this Court held that adverse possession contemplates two concepts: possession and discontinuance of possession. It was further held



that the proper way of assessing proof of adverse possession is whether or not the title holder has been dispossessed or has discontinued his possession for the statutory period, and not whether or not the claimant has proved that he or she has been in possession for the requisite number of years.

40. A person who claims adverse possession must inter alia show:
 - (a) on what date he came into possession.
 - (b) what was the nature of his possession?
 - (c) whether the fact of his possession was known to the other party.
 - (d) for how long his possession has continued and
 - (e) that the possession was open and undisturbed for the requisite 12 years.
24. Bearing in mind the principles highlighted in the decision [supra], I am now well disposed to revert to the instant matter and to discern whether the plaintiff has met and satisfied the laid down conditions. Notably, the plaintiff has averred that same entered onto the designated portion of the suit property in 1989. To this end, there is no gainsaying that the plaintiff's occupation and possession of the designated portion has subsisted for more than the statutory 12 years.
25. Moreover, the plaintiff also averred that even though his initial entry was underpinned by the sale contract, the terms of the contract were not actualized and thereafter the contract lapsed in accordance with the law. Nevertheless, it suffices to underscore that despite the lapse of the contract, the plaintiff remained in occupation of the suit property. Simply put, the continued occupation of the portion of the suit property was premised on trespass and thus same was hostile to the defendant's title.
26. In addition, the plaintiff also tendered evidence to demonstrate that his occupation and use of the suit property has been open and continuous. In this regard, it was the plaintiff's position that the defendant has been aware and knowledgeable of his [plaintiff's occupation] but same had not taken any steps to evict the plaintiff.
27. Finally, it was the plaintiff's evidence that his occupation of the suit property has not been by force. In short, the plaintiff posited that same has been in occupation with sufficient publicity and notoriety.
28. In the premises, I find and hold that the Plaintiff has indeed met and satisfied the requisite ingredients underpinning a claim for adverse possession. For good measure, the plaintiff has satisfied the court that his occupation of the suit property has been non-permissive, non-consensual, open notorious, exclusive and adverse [hostile] to the rights of the defendant herein. [see *Mbira vs Gachuhi* (2002) eKLR].

Final Disposition:

29. Flowing from the analysis captured in the body of the judgment, it must have become evident that the plaintiff has indeed proved his claim to the requisite standard. In any event, it is common ground that the plaintiff's testimony was neither impeached nor controverted.
30. In the premises, the final orders that commend themselves to the court are as hereunder;
 - i. A declaration be and is hereby made that the plaintiff has accrued and or acquired adverse possessory rights to and in respect of the portion measuring 1/8 acres out of L.R No. Ntima/Igoki/10221.



- ii. A declaration be and is hereby made that the defendant's rights to and or interest[s] over the portion measuring 1/8 acres of L.R No. Ntima/Igoki/10221 which is currently occupied by the plaintiff has lapsed by effluxion of time.
- iii. The Defendant be and is hereby ordered to sub-divide the suit property and thereafter excise a portion measuring 1/8 acres being occupied by the plaintiff and thereafter to transfer same to the plaintiff.
- iv. The sub-division of the suit property and the excision of the portion measuring 1/8 thereof shall be undertaken by a surveyor to be appointed by the defendant within 60 days from the date hereof.
- v. In default by the Defendant to retain a surveyor for purposes of sub-division of the suit property in terms of clause [iv] hereof, the Plaintiff shall be at liberty to appoint a surveyor for purposes of undertaking the sub-division of the suit property.
- vi. The conveyance documents pertaining to the sub-division of the suit property; transfer and registration of the portion measuring 1/8 to and in favour of the plaintiff shall be executed and engrossed by the deputy registrar of the court.
- vii. An order of permanent injunction be and is hereby issued restraining the defendant, either by himself, servants and or anyone acting under his instructions, from interfering with the plaintiff's rights to and in respect of the designated portion comprising of the 1/8 piece of land underpinned by the Judgment herein.
- viii. Costs of the suit be and are hereby awarded to the Plaintiff.
- ix. Costs in terms of clause [viii] shall be taxed by the Deputy Registrar of the court.

31. It is so ordered.

DATED, SIGNED AND DELIVERED AT MERU THIS 18TH DAY OF JUNE 2025.

OGUTTU MBOYA, FCI Arb; CPM [MTI-EA].

JUDGE

In the presence of:

Mr Mutuma- Court Assistant.

Mr. Muthamia for the Plaintiff

No appearance for the Defendant.

