



REPUBLIC OF KENYA



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**Ngunguru & another v Njanja (Environment and Land Case
E007 of 2022) [2025] KEELC 5909 (KLR) (18 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 5909 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT AND LAND CASE E007 OF 2022**

**AK BOR, J
JUNE 18, 2025**

BETWEEN

ABISAGI MBANDI NGUNGURU 1ST PLAINTIFF

MBUYA NYAGA 2ND PLAINTIFF

AND

JOHNSON NGARI NJANJA DEFENDANT

JUDGMENT

1. The Plaintiffs filed the originating summons seeking to be declared to have become entitled to the parcels of land known as Embu/Ngangara/4585, 4586, 4587, 4588, 4652, 4653, 4654, 4655, 4656, 4657, 4658 and 4659 (the suit land) which resulted from the subdivision of Embu/Ngangara/2908 by way of adverse possession. In the alternative, they sought a declaration that the Defendant holds the parcels of land in trust for them and for the trust to be terminated by registering them as the absolute proprietors of the suit land.
2. The Plaintiffs are the wives of the late Hezekiah Ngunguru Ngondo (the late Hezekiah). They claimed that the late Hezekiah married the 1st Plaintiff as his first wife in 1948 and the 2nd Plaintiff was married in 1975. That at the time of their respective marriages, they were settled on parcel number 2908 by their late husband where they built their respective homesteads and cultivated and developed the land to date. That they got children who they brought up on the suit land and that some of the children who are all adults have settled on the land.
3. The Defendant on his part maintained that he is the registered owner of the suit land having purchased it from the late Ngunguru Ngondo on 6/10/1990. He claimed that the Plaintiffs were the beneficiaries and owners of Embu/Ngangara/2909 which borders the suit land and that the border is densely covered with trees. He claimed that circa 2010, someone told him that the Plaintiffs had encroached his land near the border and that they had put up temporary structures. He asked them to leave, but



they did not to do, which made him report the matter to the area Chief. The Chief called them to a meeting in September 2011 and told him to remove the structures, but he did not follow through. He stated that he had been clearing and developing the upper part of the land near the main road. In 2021, he subdivided the land into five parts to prepare it for sale.a. The issues for determination are whether the Plaintiffs have acquired title to the suit land through adverse possession and whether the Defendant holds the suit land in trust for the Plaintiffs.

4. Section 7 of the *Limitation of Actions Act* provides that a person cannot bring a claim to recover land after 12 years from the date when their right to do so first arose. Section 13 (1) of the Act provides that a right of action to recover land does not accrue unless the land is in possession of some person in whose favour the period of Limitation can run, which possession is referred to as adverse possession.
5. In *Mtana Lewa v Kahindi Ngala Mwangandi* [2015] KECA 532 (KLR) defined adverse possession as a situation where a person takes possession of land and asserts rights over it and the person having title omits or neglects to take action against such person in assertion of his title for twelve (12) years. The court gave the essential prerequisites as possession of the adverse possessor being neither by force or stealth nor under the license of the owner, must be adequate in continuity, in publicity and in extent to show that possession is adverse to the title owner.
6. *Wambugu v Njuguna* [1983] KLR 172 laid down the guiding principles for determining a claim for adverse possession. These are that the owner must have lost his right to the land either by being dispossessed of it or by having discontinued his possession of it. The court also stated 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 land for a requisite number of years.
7. Similarly in *Samuel Kihamba v Mary Mbaisi* [2015] KECA 853 (KLR) the court stated that for one to succeed in a claim for adverse possession, they must prove and demonstrate that they had occupied the land openly without force, without secrecy, and without license or permission of the land owner, with the intention to have the land. There must be an apparent dispossession of the land from the land owner. These elements are contained in the Latin phraseology, *nec vi, nec clam, nec precario*. The additional requirement is that of *animus possidendi*, or intention to have the land”
8. To succeed in a claim for adverse possession, a person must prove use and occupation, that is possession of the land with the knowledge of the owner and such use and occupation must not be broken or interrupted for a period of twelve years. The possession must also be open and notorious with the intention to defeat the registered owner’s title.
8. In this case, it is common ground that the suit land, now comprising parcels Embu/Ngangara/4585, 4586, 4587, 4588, 4652, 4653, 4654, 4655, 4656, 4657, 4658 and 4659, arose from subdivision of Embu/Ngangara/2908. The suit land is registered in the Defendant’s name. The Plaintiffs produced searches done on the suit land and a copy of the green card for parcel number 2908 which shows that the Defendant is the registered proprietor of the land.
9. The Plaintiffs case is that they were settled on land parcel no. 2908 by their late husband, Hezekiah Ngunguru Ngondo. The 1st Plaintiff testified and told the court that she had lived on the land since 1948, while the 2nd Plaintiff stated that she settled on the land after her marriage in 1975. They testified that they constructed their homes, cultivated the land, raised their families, and buried their husband on the land. Their evidence was corroborated by their neighbors, Chelestino Nyaga Kithumbu and Njuki Ngatunyi who confirmed that the Plaintiffs have occupied the suit land since they were married and have brought up their children there.



10. The witnesses confirmed that the Plaintiffs' husband was buried on the suit land and that his grave was next to the 1st Plaintiff's house. They also confirmed that the Plaintiffs have built their houses on the suit land, farmed, planted trees and maintained the natural vegetation on the land for purposes of grazing their cattle. They denied having any knowledge that the Plaintiffs' late husband sold the land to the Defendant.
11. The Defendant claimed that he purchased the suit land from the Plaintiffs' late husband on 6/10/1990 and that the land was transferred to him on 18/6/1991, and he was issued with a title deed on 6/1/1999. Evidence shows that he was registered as the owner of the land on 2/5/1996. He admitted that he had not used the land since 1996. He claimed that at the time he was purchasing the land there was no building on the land. He also admitted that he only became aware of the Plaintiffs' presence on the land around 2010 when a local resident informed him that there were people who had encroached on his land and built temporary structures on the boundary of land parcel 2908 and 2909.
12. The Defendant claimed that he reported the issue to the area chief in 2011 who summoned them and he informed the Plaintiffs that he was the owner of the land. He did not call any evidence to prove that. It is also evident that the Defendant did not take any other steps to evict the Plaintiffs from the suit land or assert his ownership once he learnt of their presence on the land. He did not file suit. The Plaintiffs' occupation was clearly not secretive or with the permission of the Defendant, it was open and notorious since the Plaintiff's husband was buried on the suit land, a fact corroborated by the Plaintiffs' neighbors.
13. The Plaintiffs' occupation and use of the suit land was further corroborated by the photographs they produced in evidence. The photographs show residential houses on the land, with some portion cultivated and the other areas are bushy with a few animals grazing there. While the land may not appear to be extensively developed with modern infrastructure, there is evidence that there are people who reside and use the land. The Defendant did not deny that the Plaintiffs were living on the suit land. This court is persuaded on a balance of probabilities that the Plaintiffs have been in open use and occupation or possession of the suit land, with the knowledge of the Defendant.
14. The other issue for determination is whether the Plaintiffs' occupation was uninterrupted for a period of 12 years. The Plaintiffs testified that they have been occupation of the suit land since 1948 and 1975 when they got married and were settled on the land by their late husband, Hezekiah Ngunguru. Time for purposes of adverse possession did not start to run until there was a registered proprietor of the suit land.
15. Looking at the green card for parcel number 2908, the Defendant was registered as the proprietor on 2/5/1996, which is when time began to run. From 2/5/1996 to 22/2/2022 when this suit was filed is over 26 years which exceeds the statutory period of 12 years for a claim of adverse possession to succeed. The Plaintiffs have proved the elements of adverse possession on a balance of probability. Having found that the claim for adverse possession has been proved to the required standard, this court need not delve into the alternative claim based on trust.
16. The Plaintiffs have proved their case on a balance of probabilities. The court grants prayers (a), (c), (d), (e) and (f) of the Originating Summons dated 22/2/2022.
17. Each party shall bear their own costs of the suit.

DELIVERED VIRTUALLY AT EMBU THIS 18TH DAY OF JUNE 2025.

K. BOR

JUDGE



In the presence of: -

Ms. Jacklyne Kavunvura for the Plaintiff

Mr. Gitau Kahiga for the Defendant

Diana Kemboi- Court Assistant

