



**Kimani v Murei (Environment and Land Appeal E079 of 2024)
[2025] KEELC 6557 (KLR) (30 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6557 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND APPEAL E079 OF 2024
JM ONYANGO, J
SEPTEMBER 30, 2025**

BETWEEN

JOSEPH JOHN KIMANI APPELLANT

AND

ELIJAH NJUGUNA MUREI RESPONDENT

JUDGMENT

1. The genesis of this appeal lies in the Originating Summons instituted by the Respondent against the Appellant in the Chief Magistrate’s court at Gatundu seeking the following orders:
 - a. That the Applicant Elijah Njuguna Murei be declared entitled to registration as the owner of the interest in the suit premises herein subject to payment of stamp duty pursuant to the transfer of land thereof.
 - b. A declaration that Joseph John Kimani is estopped from bringing an action to recover land from Elijah Njuguna Murei after the end of 12 years from the time the said Joseph John Kimani relinquished possession of the land to the Plaintiff herein.
 - c. An order do issue requiring and directing the Land Registrar Gatundu to register the Applicant / Plaintiff as the owner of land parcel No. Ngenda/nyamangara/2687 In Place Of Joseph John Kimani and in place of any other person succeeding the Defendant.
 - d. That the Defendant be ordered to sign all documents necessary to enable the transfer of land parcel number Ngenda/ Nyamangara/2687 to the Plaintiff/ Applicant and in the event the defendant refuses and/or fails to do so, the Executive Officer, Gatundu Magistrate’s court do sign all such documents.
 - e. That the Defendant be ordered to deliver that original Certificate of Title to land parcel number Ngenda/ Nyamangara/2687 to the Land Registrar for cancellation and in the event



that the Certificate of title is not availed, the Registrar to do away with the requirement for production of the said Certificate of Title.

- f. That the costs of this suit be borne by the Defendant.
2. The Originating Summons was based on the Respondent's Supporting affidavit sworn on 15th June 2024 in which he avers that he entered into sale agreement dated 19th April 2011 with the Appellant over a portion of land measuring 1.17 acres which was to be excised from the suit property. The Respondent subsequently took possession of the suit property and he continues to occupy the same with his family todate. It is his contention that the Appellant is barred by the law on Limitation of Actions from laying claim to the suit property. He therefore prays that the suit property be registered in his name.
3. In response to the Originating Summons the Appellant filed a Replying Affidavit sworn on 16th August 2023 in which he denied the Respondent's claim. He admitted that he had sold the suit property to the Respondent but the Respondent had failed to pay the full purchase price.
4. The suit was set down for hearing and both parties testified after which the trial magistrate entered judgment in favour of the Respondent, holding that he had proved that he was entitled to the suit property by virtue of adverse possession. He thus proceeded to allow the Originating Summons as prayed.
5. It is against the said judgment that the Appellant has appealed to this court citing the grounds that the learned Trial Magistrate erred in law and in fact by:
 - i. Finding that time started to run immediately after execution of the sale agreement.
 - ii. Finding that the Respondent did meet the legal threshold for establishing his case on Adverse Possession on a balance of probabilities.
 - iii. Finding in favour of the Respondent on adverse possession and that the Respondent was the owner of the suit property despite the documentary evidence adduced by the appellant.
 - iv. Failing to have due regard and to take into account the various issues raised in the pleadings, witness statements and evidence adduced by the Appellant yet in his judgment he only placed weight on the Respondent's submissions and pleadings.
 - v. Finding the that the Respondent had extensively developed the suit property in the absence of evidence towards the same.
 - vi. Calling out the Appellant for alleged dispossession of other purchasers of other properties yet the said properties were not the subject matter of the suit.
 - vii. Failing to do justice before her based on the pleadings.
6. He urged that court to allow the appeal and set aside the judgment of the trial court.
7. The appeal was canvassed by way of written submissions and both parties complied with the court's directions by filing their submissions.

Appellant's Submissions

8. In his submissions dated 22.4.25 learned counsel for the Appellant faulted the trial Magistrate for arriving at the finding that the Respondent had met the threshold for Adverse Possession yet he did not have the jurisdiction to hear claims of Adverse Possession which are the preserve of the Environment and Land Court. Relying on the case of *The owners of Motor Vessel "Lillian S" v Caltex Oil Kenya*



- Limited (1989) KLR 1*, and *Republic v Karisa Chengo & 2 Others (2017) eKLR*, he submitted that jurisdiction flows from *the Constitution* and statute and that courts cannot exceed the limits set by law, nor can jurisdiction be conferred by the parties through consent or connivance.
9. It was his submission that section 9 of the Magistrates Courts Act does not include Adverse Possession as one of the matters to be determined by the Magistrates' Courts. Further, that section 38 of the *Limitation of Actions Act* provides that where a person claims to be entitled to land by adverse possession, he may apply to the High Court that he be registered as the proprietor of the land in place of the person then registered as the owner of the land.
 10. Counsel also relied on the cases of *Njoki Wainaina v Josephat Thuo & 3 Others; National Land Commission & Another Interested Parties (2021) eKLR* and *Pauline Chemuge Sugawara v Nairuko Ene Mutarakwa Kiruti (Sued in her capacity as the Administratrix of the estate of Mutakakwa Kiruti Lepaso & 3 Others (2024) KECA 1417 (KLR))* where the court held that the Magistrates Courts are not seized with the jurisdiction to adjudicate upon claims founded on Adverse Possession on the face of the explicit provisions of sections 37 and 38 of the *Limitation of Actions Act*.
 11. Counsel submitted that after assuming jurisdiction which it did not have, the court arrived at the wrong decision in holding that the Respondent had proved that he was entitled to the suit property by Adverse Possession. He argued that for one to succeed in a claim for adverse possession he must prove non-permissive or non-consensual, actual, open and exclusive use of the land for the prescribed period of 12 years. See the case of *Celina Muthoni Kithinji v Safiya Swaleh & Others (2018) eKLR*.
 12. It was his further contention that in the instant case, the Respondent entered the suit property with the consent of the Appellant as a purchaser and at no time did he stop claiming the suit property under the sale agreement. He relied on the case of *Gabriel Mbui v Mukindia Maranya (1993) eKLR* where the court held that until the purchaser evinces a clear intention not to rely on the contract but on adverse possession, time does not run. If such repudiation is not shown, the purchaser remains in occupation with the permission of the vendor even if the contract becomes null and void by operation of the law.

Respondent's Submissions

13. In her submissions dated 4th July 2025 filed through the firm of Muigai Kemei & Company Advocates, learned counsel for the Respondent submitted that the court delivered judgment and allowed the prayers sought in the Originating Summons which did not touch on Adverse Possession. She submitted that the first prayer was as follows:

“That the Applicant Elijah Njuguna Murei be declared entitled to registration as the owner of the interest in the suit premises herein subject to payment of Stamp Duty pursuant to transfer of land thereon.”
14. It was counsel's submission that the Applicant sought to discharge his duty as a purchaser of land by paying Stamp Duty in order to be registered as he proprietor thereof and there was no mention of Adverse possession.
15. She contended that the Applicant was relying on prescriptive estoppel and not Adverse Possession and therefore the court was within its jurisdiction to enforce section 7(1) of the *Limitation of Actions Act*. She relied on the case of *Paul Lemaiyan Naitwng v Simon Magare & 4 Others ELC Case No. E004 of 2022* where Justice Washe dealt with the question of computing 12 years under the *Limitation of Actions Act*.



16. Counsel maintained that the suit was based on estoppel and extinction of the Appellant's title. She submitted that the parties are bound by their pleadings. She placed reliance on Civil Appeal No. 48 No. 48 of 2022 Muchiri v Boresha Maisha Self Help Group where the Court held as follows:

“It is by now settled by precedent that parties are bound by their pleadings and that evidence which tends to be at variance with the pleadings is for rejection. Pleadings are the bedrock upon which all proceedings derive from.”

17. It was counsel's contention that the court was clear in its mind that it had jurisdiction over the matter because the suit was based on sections of the law that estopped the Appellant from bringing a claim on land after 12 years and a section that provided that the Appellant's title had been extinguished by the time the suit was filed.

18. Counsel submitted that Elijah Njuguna Murei went before the court asserting that Joseph John Kimani's title to the suit property had been extinguished through lapse of the prescribed time and that Joseph was estopped from laying claim to the suit property whose interest Elijah now held by virtue of having purchased the land from Joseph and thereafter occupied it for 12 years. He urged the court to dismiss the appeal.

Analysis and Determination

19. I have read and considered the Memorandum of Appeal, the proceedings of the lower court and indeed the entire Record of Appeal and in my view the following issues emerge for determination:

- a. Whether the Respondent's claim was for adverse possession.
- b. Whether the trial Magistrate had the jurisdiction to hear and determine a claim for Adverse Possession.
- c. Whether the Trial Magistrate misapplied the facts and the law presented before him.
- d. Whether the appeal should be allowed.

20. It is not in dispute that in her judgment the trial magistrate held that the Respondent had established his claim to the suit property by adverse possession. He placed reliance on the case of James Maina Kanya v Gerald Kwendaka (2018) eKLR for the proposition that to prove title by adverse possession one had to prove that the possession claimed was adequate in continuity, in publicity and in extent and that it was adverse to the registered owner. She further held that the Appellant's interest in the suit property had been extinguished by dint of sections 7, 13 and 17 of the *Limitation of Actions Act*.

21. Learned counsel for the Respondent contends that the Respondent never pleaded adverse possession. From the Originating Summons, it is clear that the Respondent is relying on Sections 7 and 17 of the *Limitation of Actions Act* Cap 22 of the Laws of Kenya.

22. Section 7 provides that no action may be brought for recovery of land after the end of 12 years from the date when the right of action accrued to him.

23. On the other hand, section 17 provides that at the end of the expiration period prescribed by the Act, the title of the person who holds the title to the land is extinguished.

24. The said sections are among the laws that govern suits founded on adverse possession although they must be cited alongside Sections 13, 37 and 38 of the *Limitation of Actions Act*.



25. Section 13 of the *Limitation of Actions Act* further provides that:

- “(1) (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.
- (3) For the purposes of this section, receipt of rent under a lease by a person wrongfully claiming, in accordance with section 12(3), the land in reversion is taken to be adverse possession of the land.”

26. Sections 37 and 38 of the *Limitation of Actions Act* make it clear that where land is registered under one of the applicable registration statutes, title is not extinguished outright. Instead, it is held in trust for the person in adverse possession, who must obtain and register a High Court order vesting the land in him before the law will recognize his ownership.

27. My understanding is that the Respondent purchased a portion of land parcel number Ng'enda Nyambang'ara/2572 measuring $\frac{1}{4}$ of an acre in April 2011 and paid for it. The Appellant subsequently put him in possession but failed to transfer the land to him. It is against this background that the Respondent filed the suit in the lower court claiming that he was entitled to the suit property as he had been in possession thereof for a period of 12 years.

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28. Although it appears to have some elements of adverse possession, strictly speaking the Appellant's suit was not for adverse possession. I am therefore of the considered view that the trial magistrate misapplied the law on adverse possession to the facts presented before him and thus arrived at an erroneous judgment.

29. In his judgment, the trial magistrate extensively adverted to the fact the suit was based on the doctrine of adverse possession which I have already held was erroneous. But even assuming that it was a claim for adverse possession, he failed to recognize the fact that he had no jurisdiction to deal with claims of adverse possession which is the preserve of the Environment and Land Court. See the case of *Pauline Sugawara v Nairuko Ene Kiruti Mutarakwa (Sued as the Administratrix of the estate of Mutarakwa Kiruti Lepaso & 3 Others (2024) KECA 1417 (KLR)*.

30. Based on the foregoing analysis, it is my finding that the appeal has merit and I allow it and make the following final orders:

- a. The judgment in Gatundu CMELC Case No. E016 dated 23rd July 2024 is hereby set aside in its entirety.
- b. The suit is remitted to Gatundu CM's Court for hearing afresh before a Magistrate other than Honourable R. N Ng'ang'a Senior Resident Magistrate.



c. The Costs of the Appeal shall be borne by the Respondent.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 30TH DAY OF SEPTEMBER 2025.

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J. M ONYANGO

JUDGE

In the presence of:

Miss Njoroge for Miss Muigai for the Respondent

Miss Musyoka for the Appellant

Court Assistant: Hinga

