



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT
MAKUENI
ELC CASE NO. OS E003 OF 2023 (CONSOLIDATED WITH
ELC CASE
NO 20 OF 2023)

MWENDE KITHUKU.....
APPLICANT

VERSUS

FRANCIS MAILU MULANDI
.....RESPONDENT

JUDGMENT

1. The Applicant instituted this suit vide an Originating Summons dated 16th May 2023, seeking the following orders:

a) That the Respondent's title, interest or claim over title Number MBITINI/MUTYAMBUA/658 (hereafter referred to as the suit land) has been extinguished and the legal title shall vest in MWENDE KITHUKU, who has been in adverse possession of the said parcel of land.

b) That the Registrar of Lands and/or Commissioner of Lands be and is hereby ordered to cancel the existing title and to register and issue a new title deed for the said parcel of land being MBITINI/MUTYAMBUA/658 in the name of MWENDE KITHUKU.

c) That the costs of this application be provided for.

2. The Originating Summons is premised on the grounds appearing on its face together with the supporting affidavit of Mwende Kithuku sworn on even date.
3. The Respondent filed a replying affidavit dated 6th June 2022, in opposition to the Originating Summons.
4. The Applicant filed a supplementary affidavit dated 29th September 2023 in response to the replying affidavit. She reiterated the contents of her supporting affidavit and denied the Respondent's allegation.
5. The Respondent/ Plaintiff instituted ELC No. 20 of 2023 vide a Plaint dated 7th June 2023 seeking the following orders:
 - a) ***An order of permanent injunction restraining the Defendants, their agents, servants, employees and or anyone acting on their behalf from trespassing, entering, cultivating, planting, cutting down trees and grass or in any other way from interfering with the Applicant's parcel of land being Mbitini/ Mutyambua/ 658.***
 - b) ***Costs of the suit and interests***
 - c) ***Any other relief this honourable court deems fit to grant.***
6. The Defendants filed a statement of defence dated 15th June 2023 denying the Plaintiff's claim. They argued that the suit herein is inept, incompetent, and an abuse of the court process. They reiterated the position outlined by the 1st Defendant in Makueni OS E003 of 2023.
7. On 22nd April 2024, this suit was consolidated with ELC No. 20 of 2023. OS E003 of 2023 as the lead case, with the evidence from this case adopted as part of the Respondent's defence.

THE APPLICANT'S CASE

8. The Plaintiff Mwende Kithuku testified as PW1 and called one witness in support of her case. She adopted her witness statement dated 28th February 2024 as her evidence in chief. She also produced the documents in her list of even date as PEX 1- 5.

9. PW1 testified that she and her children have been in occupation of the suit property for the last 28 years without any interruption. She further testified that she separated from her husband in 1974. She told the court that she expressed concerns to the authorities regarding the possibility of her estranged husband selling the family land and misappropriating the proceeds. She further testified that in 1975, the Respondent leased a portion of the suit property from her deceased husband and later claimed that he had purchased it. That later in 1977, the Respondent demarcated the suit property and registered it in his name despite opposition from her husband.
10. She went on to state that on 6th November 1982, they filed an objection against the registration of the Respondent as the proprietor of the suit property. However, it was not heard as it never appeared in the objection list of the day. Consequently, the Respondent obtained title to the suit property. She went on to state that the Respondent vacated the suit land in 1995, and she has maintained continuous possession of the land since that time. She further stated that on 3rd February 2022, the Respondent actualized his threats to evict her from the suit property by causing the arrest of her son, the 3rd Defendant herein who was subsequently charged before Makindu law courts with the offence of forcible detainer. She also stated that the Respondent caused the arrest of her son and his wife, who were consequently charged with the offence of forcible detainer, prompting her to file this suit.
11. On cross-examination, she confirmed that she was not present when the sale agreement dated 4th December 1975 was executed and regarded it as fraudulent. She further stated that she refunded the purchase price before her husband passed away. She complained that the Defendant had repeatedly caused her children to be arrested.
12. She explained that her husband had two wives, but the other wife left the matrimonial home. She also mentioned that after reporting to the chief about

her husband's intention to sell the suit land, the purchase price was later refunded at the chief's office.

13. She testified that the traditional oath was not administered because her husband died before the oath could be administered. She further testified that her husband initiated objection proceedings against the Defendant and evicted him from the suit land, but the police later reinstated him.

14. On re-examination, she reiterated her evidence as above.

15. PW2 John Maweu Kithuku adopted his witness statement dated 28th February 2024 as his evidence in chief.

16. He informed the court that PW1 is his mother and that she has been utilising the suit land for over twenty-eight years. He testified that the suit land is ancestral, having belonged to his grandfather. He further testified that the Defendant had leased the land but had recorded himself as the owner during the adjudication process.

17. He went on to state that the Defendant took his father to Sultan Hamud and coerced him into signing the sale agreement. He told the court that the Defendant tried to sell the suit land to Muia Mwavi, but he refused to proceed with the purchase after learning that it was involved in a dispute. He further stated that members of his family had been arrested in connection with the suit land. He maintained that his family had occupied the land for over 28 years.

18. On cross-examination by Ms Mutuku, he testified that his mother began using the land as early as 1975. He further testified that the Defendant had leased the land and contested the sale agreement dated 4th December 1975.

19. He testified that he wrote a letter to the assistant chief dated 21st February, 1975, expressing concerns about his father's drinking habits and emphasizing that his father should not be allowed to sell the property. He referenced the letter dated 11th October, 1995, in which the chief instructed his father to vacate the land, but he did not comply.

20. He confirmed that he has an ongoing case before Makindu Court, which arose after his arrest following his mother's instructions for him to till the suit land.
21. He confirmed that objection proceedings were conducted, and the suit land was awarded to the Defendant because he colluded with the land Adjudication Officer, and they lacked legal representation. He also confirmed that his father did not appeal against the decision of the land adjudication officer, but instead requested the administration of the Kithitu oath, which was not carried out.
22. In re-examination, he reiterated that the suit land is ancestral land belonging to the family and added that his mother is still utilizing the land. He stated that they had written to the chief to prevent his father from disposing of the land. He further stated that he was unaware that the land had been sold to the Defendant.

THE DEFENCE CASE

23. The Defendant called four witnesses in support of its case.

DW1 Musili Kithuku adopted her witness statement dated 17th April 2024 as her evidence in chief. She testified that she was the first wife of Kithuku Musyoki, while the Applicant was the third wife. She further testified that their husband allocated each wife her own parcel of land. She explained to the court that her husband sold the suit land to the Defendant and clarified that the Applicant owned land and had never used the suit land.

24. On cross-examination, she testified that she was the one who advised her husband to sell the land, but left before the sale. She maintained that she was the owner of the suit land at the time it was sold to the Respondent.
25. DW2 Francis Mailu Mulandi (Makena) adopted his witness statement dated 17th April 2024 as his evidence in chief. He also produced the documents

annexed to his replying affidavit as exhibits and the documents in his list dated 17th May 2024 as DEX 1 to 9 in support of his case.

26. He told the court that in 1975, his friend Kithuku Musyoki expressed his intention to sell his land, which was occupied by his wife, Musili. Kithuku. He further testified that Kithuku Musyoki showed him the land, and they agreed on a purchase price of Kshs.2,000/=, with the elders acting as witnesses. He stated that Kithuku Musyoki brought Wambua Ivulila, while he invited Daudi Maithya and the village elder Musumba Mukulito to witness the agreement.

27. He further testified that they measured the land, documented the boundaries, created a map, and after he paid the purchase price, they proceeded to the Assistant Chief's office in Mutimbua, where they explained the agreement to him, and he also signed it.

28. He stated that Kithuku Musyoki affixed his thumbprint to the agreement, and after two weeks, they went to the chief together, reviewed the land, and he also signed the agreement. After purchasing it, Musili left, and he began using the land.

29. He told the court that the suit land borders the Applicant's land.

30. He went on to state that during the demarcation period in 1997, he pointed out his boundary to the demarcation officers in the presence of the Applicant, her husband, and Musili, and the officer recorded his land.

31. He explained that Kithuku sued him before the Land Adjudication Officer, where he admitted selling the land to him, but claimed that the purchase price was Kshs.4,000/= and not Kshs.2,000. He also explained that Kithuku Musyoki failed to present the Kithitu oath despite being given time, and ultimately, the land adjudication officer declared that he was the owner of the land.

32. He testified that in 1996, Kioko Kithuku, the son of Kithuku, uprooted his farm produce, and he was convicted in criminal case No. 1853 of 1996. In

2022, Kioko Kithuku was charged in case No. E192 of 2022 for cutting down his acacia tree, and the case is still pending in court.

33. He informed the court that he obtained his title deed in 2006. However, in 2023, when he went to harvest his mangoes, Mwende and her family objected, claiming that he had no right to the mangoes.

34. The O.C.S. Kithimani Police Station visited the scene and asked Mwende to produce her ownership document, but she had none. He presented his title deed and sale agreement, and the OCS instructed him to tend to the mangoes.

35. In 2023, John Kithuku, Bernard Kioko, and Mrs Kioko Kithuku were arrested and charged for cultivating his land using a tractor, and the case is currently pending in court. He stated that the Applicant has not built any structures nor claimed possession of the land. He also stated that the green card indicates that he is the registered owner of the land and that his livestock continue to graze on it.

36. On cross-examination, he testified that Musili Kithuku was the one cultivating the land at the time of his purchase. He further testified that she was absent when the sale agreement was executed, and that no member of his immediate family was present.

37. He further testified that Kithuku Musyoki admitted to selling the land to him but disputed the purchase price. His sons objected, stating that he did not acquire the land through proper procedures. Additionally, he noted that Kithuku Musyoki did not bring the Kithitu oath.

38. In re-examination, he reiterated his evidence as above. He further testified that the sons of Kithuku did not file an appeal. He maintained that they had not utilised the land in question and that whenever they attempted to access it, he reported these incidents to the police.

39. DW3 Daudi Musau Maitha adopted his witness statement dated 17th April 2024 as his evidence in chief. He testified that he was a neighbour to both parties and confirmed having recorded the sale agreement dated 4th

December 1975 between Kithuku Musyoka and the Defendant in the presence of witnesses.

40. On cross-examination, he confirmed that he recorded the sale agreement between the parties. He explained that Wambua Kulila, a relative of the seller, signed the agreement. He further stated that the land in question was being used by Kithuku's wife, who was present at the time of sale. He confirmed that Kithuku and his wife sold the land for Kshs.2000/=.

41. He added that Kithuku had two wives, and he divided the land, giving each wife her share. He confirmed that the land belonged to Kithuku's second wife. He further testified that the chief and the assistant chief signed the sale agreement.

42. DW4 George Masila Musumba adopted his witness statement dated 17th April 2024 as his evidence in chief.

43. He told the court that he was the chairman of the demarcation committee.

He further testified that the Defendant, his neighbours, and Kithuku, along with his two wives, were present when the land was surveyed. He confirmed that no complaints were raised regarding the suit property, and it was allocated a number.

**THE APPLICANT'S SUBMISSIONS IN OS E003 OF 2023/
DEFENDANT'S IN ELCC 20 OF 2023**

44. The Applicant filed her submissions dated 26th February 2025.

On behalf of the Applicant, Counsel outlined the following issues for the court's determination:

- a. Whether the Plaintiff's alleged sale agreement was valid and conveyed good title and whether he was a bona fide purchaser;*
- b. Whether the Defendant's occupation since 1995 constitutes adverse possession under section 7 of the Limitation of Actions Act (Cap 22 Laws of Kenya); and*

c. *Whether the Plaintiff's application for an injunction meets the threshold set in Giella v Cassman Brown & Co Ltd [1973] EA 358.*

45. Counsel submitted that the alleged sale of the suit property did not comply with the provisions of Section 3(3) of the Law of Contracts Act.

46. Counsel further argued that the absence of immediate family members of the deceased vendor as witnesses to the land sale weakens the Plaintiff's case and makes the agreement less trustworthy. Counsel also pointed out that the refund of Kshs.2,000/= in 1996 suggests that a legal transfer did not take place.

47. It was further submitted that under Section 26 of the Land Registration Act, a title obtained through misrepresentation or fraud is voidable, and therefore the Plaintiff's claim must fail. She cited the decision in the case **of Arthi Highway Developers Limited v West End Butchery Limited & 6 Others [2015] KECA 816 (KLR)** to argue that the Plaintiff has not met the threshold of a bona fide purchaser for value.

48. Counsel submitted that the Respondent was aware of the Plaintiff's continuous occupation and claim over the suit property, yet he continued to assert ownership without any legal justification. Counsel further submitted that there is no evidence that the alleged vendor lawfully transferred ownership to him, as a letter showed that the purchase price of Kshs.2,000/= was refunded in 1996, leading to the conclusion that no legal transfer of the suit land occurred.

49. Counsel cited Section 26 (1) of the Land Registration Act 2012 to argue that any title allegedly acquired by the Respondent was tainted by misrepresentation, noting that the essential formalities for land transfer had not been followed. Counsel also pointed out that the purpose of Section 26 is to maintain the integrity of land ownership by preventing fraudulent or defective transactions from producing valid titles. In the matter at hand, Counsel argued that no valid agreement exists as there is clear evidence of a refund, and therefore, the Plaintiff's claim of ownership is unjustified

50. Counsel maintained that the Applicant's occupation of the suit land since 1995 was open, continuous, and non-permissive for at least twelve years, and therefore, by 2007, she had acquired rights over the property. It was submitted that the Plaintiff's attempt to reclaim possession in 2023 was statute-barred.

51. Counsel submitted that the Plaintiff/Respondent had not established a prima facie case against the Applicant because he lacked a valid sale agreement, had not shown any irreparable harm since he had not been in possession of the suit land for over 28 years, and that the balance of convenience favours her and the Defendants, who have developed and dwelt on the land for decades.

52. In conclusion, Counsel urged to allow the originating summons as prayed and to dismiss the Plaintiffs/Respondent's suit with costs.

**THE PLAINTIFF'S SUBMISSIONS IN ELCC 20 OF 2023/
RESPONDENT IN OS E003 OF 2023.**

53. The Respondent filed his submissions dated 26th February 2025.

54. On behalf of the Respondent, Counsel submitted that the only issue in the originating summons is whether the Applicant has met the criteria for adverse possession. Counsel maintained that the Applicant failed to demonstrate that she had been in open and uninterrupted possession of the suit land for a continuous period of 12 years.

55. Counsel submitted that the criminal cases against the Applicant's sons related to the suit land demonstrate that her possession was not peaceful, and he never permitted anyone to enter the suit property without his consent.

56. Counsel submitted that the Respondent had produced the title deed and sale agreement to demonstrate that he was the registered owner of the suit land; That the Applicant/Respondent lacked proof of ownership, and therefore the court should uphold his title.

57. Counsel relied on the decisions in the cases of ***Richard Wefwafwa Songoi vs Ben Munyifwa Songoi [2020] eKLR*** and ***Joseph Macharia Kairu vs Kenneth Kimani Muiruri [2021] eKLR***. He urged the court to find that the Applicant had failed to prove her claim of adverse possession as required by law, dismiss her originating summons with costs, and allow his case ELC 20 of 2023 as prayed.

ANALYSIS AND DETERMINATION

58. Having considered the pleadings, the evidence on record, and the submissions by the parties, the following issues fall for determination:-

a) Whether the Applicant is entitled to the orders sought in the Originating Summons.

b) Whether the Respondent is entitled to the orders sought in the Plaintiff?

59. The Applicant is seeking an order that she is entitled to the suit property by way of adverse possession. She also sought an order for the Land Registrar to cancel the existing title and issue a new title in her name.

60. The doctrine of adverse possession is embodied in Section 7 of the Limitation of Actions Act, which stipulates that:

“An action may not be brought by any person to recover land after the end of 12 years from the date on which the right of action accrued to him or, if it is first accrued to some person through whom he claims, to that person.”

61. Further, Section 13 provides that: -

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 Section 9, 10, 11 and 12 of this act 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.

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 a fresh right of action does not accrue unless and until some person again takes adverse possession of the land.

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

62. Section 38 gives guidelines on the procedure to be followed by a person claiming adverse possession.

63. The ingredients of the doctrine of adverse possession were discussed in the case of Wambugu Vs Njuguna (1983) KLR 173, where the Court of Appeal held that: -

“Adverse possession contemplates two concepts; Possession and discontinuance of possession. It further held that the proper way of assessing proof of Adverse possession would be 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.”

64. The ingredients were recently discussed by the Court of Appeal in the case of Mtana Lewa Vs Kahindi Ngala Mwangandi (2015) eKLR where it was held that: -

“Adverse possession is essentially a situation where a person takes possession of land, 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 of 12 years. The process springs into action essentially by default or inaction by the owner. The essential

perquisites being that the possession of the adverse possessor is neither by force or stealth or under 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”.

65. It is well settled that a party claiming adverse possession ought to prove that his possession was peaceful, open, and continuous. The possession should not have been obtained through force, in secrecy, or without the authority or permission of the owner.

66. For the Applicant to be entitled to the suit property by way of adverse possession, she must demonstrate that she has been in continuous, uninterrupted occupation for a period of not less than 12 years.

67. In **Mombasa Teachers Co-operative Savings and Credit Society Limited Vs Robert Muhambi Katana & 15 Others [2018] eKLR**, the Court of Appeal stated that: -

“Likewise, it is settled that a person seeking to acquire title to land by adverse possession must prove non-permissive or non-consensual, actual, open, notorious, exclusive and adverse use/occupation of the land in question for an interrupted period of 12 years as espoused in the Latin maxim nec vi nec clam nec precario”.

68. The Applicant produced a certified copy of the green card, which shows that the Respondent is the registered proprietor of the suit property. She contended that she has been in continuous and uninterrupted occupation of the suit property for a period spanning over 12 years.

69. Regarding the nature of occupation or possession, the Applicant testified that she and her children have been in occupation of the suit property for the past 28 years without any interruption from the Respondent.

70. The Respondent, on the other hand, argued that he is the registered owner of the suit property and has maintained possession thereof. He further asserted that whenever the Applicant attempts to enter his land, he takes appropriate action by reporting the matter to the police.

71. The Applicant submitted a letter addressed to the chief of Mutyambua Location, where Kioko Kithuku complained that the Defendant had acquired the land through deception. The letter requested the chief to instruct the Defendant to vacate the disputed property.
72. The dispute also culminated in her son being charged at Makindu Law Courts.
73. They also filed an objection to the Senior Land Adjudication Officer dated 6th November 1982
74. Based on the sequence of events outlined above, the Applicant has clearly not been in continuous possession of the suit property for a period of 12 years without interruption by the Respondent. The evidence presented by both the Applicant and the Respondent indicates that the parties have been asserting their claims of ownership over the suit property at various levels, from the Area Chief and the Land Adjudication Office to the time when this suit was filed.
75. That notwithstanding, Section 37 of the Limitation of Actions Act states that adverse possession can only apply where the land is registered. In my view, adverse possession can only run against the title of a registered proprietor. In the case of **Titus Kigoro Munyi Vs Peter Mburu Kimani (2015) eKLR**, the Court of Appeal held that the limitation period for purposes of adverse possession starts running after the registration of the land in the name of the Respondent. In the Originating Summons, the Applicant is seeking a declaration that she is entitled to the suit property by way of adverse possession. In the matter at hand, the time can be computed from June 2006, when the Respondent was issued with a title for the suit property.
76. Based on the foregoing, I find that the Applicant has not met the threshold for the grant of the orders sought. I find that the Applicant has not proved her case against the Respondent on a balance of probabilities as required by the law.

WHETHER THE RESPONDENT IS ENTITLED TO THE ORDERS SOUGHT IN THE PLAINT

77.The Respondent is seeking a permanent injunction restraining the Applicant from interfering with the suit property.

78.The dispute between the parties herein revolves around the ownership of the suit property. The Respondent's claim is based on the title for the suit property, whereas the Applicant's claim is anchored on the doctrine of adverse possession.

79.The Respondent testified that he purchased the suit property vide a sale agreement dated 4th December 1975. DW3 testified that he was the one who recorded the sale agreement between the parties.

80.The Applicant challenged the sale agreement on the basis that the Defendant coerced Kithuku Musyoki into signing it. They further contended that the purchase price of Kshs.2,000/= was refunded at the Chief's office.

81.This court is called upon to determine whether the sale agreement complied with the provisions set out in Section 3 of the law of contract, which states as follows:-

No suit shall be brought upon a contract for the disposition of an interest in land unless—

(a) The contract upon which the suit is founded—

(i) is in writing;

(ii) is signed by all the parties thereto; and

(b) The signature of each party signing has been attested by a witness who is present when the contract was signed by such party:

82.This provision is echoed in Section 38 of the Land Act, 2012 which stipulates that no interest in land can pass unless there is a valid contract of sale. It provides as follows: -

(1) Other than as provided by this Act or by any other written law, no suit shall be brought upon a contract for the disposition of an interest in land unless—

a. the contract upon which the suit is founded—

(i) Is in writing;

(ii) Is signed by all the parties thereto; and

b. The signature of each party signing has been attested to by a witness who was present when the contract was signed by such party.

83. The sale agreement dated 4th December, 1975 was between Kithuku Musyoki and the Defendant for land located at Ngoto location. The purchase price is listed as Kshs.2,000/=, which was paid. The agreement is witnessed by Menja Musomba and Wambua Suulila and certified by the Assistant Chief on the same date and by the Chief on 19/12/1976.

84. The Applicant testified that the purchase price was refunded at the chief's office. She produced a letter dated 16/4/1996 in which the chief acknowledges receipt of Kshs.2000/=, as a refund for the land transaction between Kithuku Nthusi and the Defendant regarding parcel No. 658 registered in the Defendant's name.

85. The Chief indicated that he has no jurisdiction to deal with the matter.

86. The Respondent testified that Kithuku admitted to selling the suit land, but he complained that the purchase price was Kshs.4000/= and not Kshs.2000/= as indicated in the sale agreement.

87. The record shows that John Kithuku filed an objection to the register. The Respondent produced objection proceedings conducted before the Land Adjudication officer. During these proceedings, Kithuku Musyoki admitted that he had sold the land to the Defendant. However, he stated that the agreed purchase price was Kshs.4000/= and not Kshs.2000/=.

88. In his response during the proceedings, he stated as follows in part:-

“Yes I did sell to you, there my sons who say that they cannot accept the land of their father to go with another person.....I know he bought it, but he should complete what we agreed”.

89. After the hearing of the objection, the Objector requested that an oath be administered by the chief or assistant chief, but the objector did not go for the letter for the oath to be administered, despite being granted time to do so. The objection was dismissed.

90. This contradicts the Applicant's evidence that the objection was not heard because it was not on the list. She did not provide the list for that day to corroborate her evidence.

91. The Applicant claims that the Defendant coerced John Kithuku into signing the sale agreement. It is trite law that he who alleges must prove. Section 107 of the Evidence Act provides as follows:-

Burden of proof

1) Whoever desires any court to give judgment as to any legal or liability dependent on the existence of facts which he asserts must prove those facts exist.

2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person

92. **Black's Law Dictionary** defines coercion as follows:-

“Compulsion, constraint, compelling by force or arms or threats.”

93. The Applicant contended that the agreement was signed fraudulently and through trickery. He asserted that the Defendant took his father to Sultan Hamud, where he was forced to sign the agreement. However, there is no evidence that the sale agreement was signed at Sultan Hamud police station or that Kithuku Musyoki was forced to sign the agreement.

94. The Applicant did not present any evidence regarding her claims of coercion. I find that the sale agreement was valid because it complied with the provisions of Section 3 of the Law of Contract Act. John Kithuku acknowledged having sold the suit property to the Defendant. I find that the

sale agreement satisfies the conditions outlined in Section 3 (3) of the Law of Contracts Act.

95. The Respondent produced a title issued on 29th March 2006 to show that he is the registered owner of the suit property. Section 24(a) of the Land Registration Act provides for the interest conferred by registration. It provides as follows;

Subject to this Act;

1 The registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.

96. Section 25 of the Land Registration Act provides for the rights of a proprietor. It provides as follows:

The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of the court, shall not be liable to be defeated except as provided by this Act and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject;...

97. Section 26 of the Act provides that:-

The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except:-

- a. on the ground of fraud or misrepresentation to which the person is proved to be a party; or***

b. where the certificate of title has been acquired illegally, unprocedurally, or through a corrupt scheme.”

98. These provisions vest in the registered owner of land with rights and privileges and provide for instances when the right can be taken away. The Respondent has demonstrated that he purchased the suit property from John Kithuku. The Applicant did not present any evidence to show that the Plaintiff fraudulently acquired the suit property.

99. From the foregoing, I find that the Respondent has demonstrated to the satisfaction of this court that he is the lawful registered owner of the suit property.

100. Having established that the Plaintiff/Respondent is the registered owner of the suit property, I find that he is entitled to all the rights, interests, and privileges that pertain to it. I also find that the Applicant has not met the threshold for adverse possession. I also find that the Applicant has not proved her case on a balance of probabilities as required by the law.

101. The upshot of the foregoing is that the Origination Summons dated 16th May 2023 is hereby dismissed with costs. I hereby enter judgment for the Plaintiff against the Defendant in the following terms:-

a. An order of permanent injunction be and is hereby issued restraining the Defendants, their agents, servants, employees, and anyone acting on their behalf from trespassing, entering, cultivating, planting, cutting down trees and grass, or in any other way from interfering with the Plaintiff's parcel of land being Mbitini/Mutyambua/658.

b. The Plaintiff is awarded costs of the suit.

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HON. T. MURIGI

JUDGE

**JUDGMENT DATED, SIGNED AND DELIVERED VIA MICROSOFT
TEAMS THIS 30TH DAY OF SEPTEMBER, 2025.**

IN THE PRESENCE OF

Chebii for the Applicant

Ms Mutuku for the Respondent

ORIGINAL