



THE JUDICIARY



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANG'A
ELCLOS E015 OF 2024(OS)

JANE WAITHIRA MWANGI
(Suing as the legal representative of the Estate of
MWANGI GITHINJI NOW DECEASED..... APPLICANT
VERSUS

MARY WANGARI GATHERU
(Sued in the capacity as Legal Representative
of the Estate of MILKA GATHONI NDARARESPONDENT

JUDGMENT

1) The Applicant seeks the following reliefs in the originating summons dated 27-7-2024.

1. **That the Applicant has by way of adverse possession acquired 1.5 acres out of L.R No. Loc. 13/Gitugi/2824 and the same to be registered in the name of Jane Waithira Mwangi.**
2. **That the Land Registrar Murang'a be ordered to transfer 1.5 acres out of the suit land to the Applicant.**
3. **That the Deputy Registrar of this Court to sign all the necessary documents and instruments necessary to transfer 1.5 acres out of the suit land to the Applicant.**
4. **That the Respondent do pay the costs of this suit.**

2) The summons is based on seven grounds and is supported by an affidavit sworn by the Applicant dated 27-7-2024. The affidavit has fourteen (14) annexures. The gist of the grounds, the affidavit and the annexures is as follows. Firstly, the Applicant's husband Mwangi Githinji(deceased) bought 1.5 acres out of the suit land from the Respondent under two(2) separate agreements dated 24-6-2009 and 2-9-2010. The two agreements were reduced into writing. The total purchase price was Kshs. 390,000/= . Secondly, the Applicant took possession of the suit land immediately upon purchase and she has developed

it by constructing a permanent house which she occupies together with her family. The said occupation has been continuous and uninterrupted. Thirdly, the original entry into the land was as per the sale agreements and it was therefore lawful. Fourthly, the Respondent filed a succession cause at Murang'a Magistrates' court and the land belonging to her husband was transferred to her. She then subdivided the land into three parcels namely 2824-2826. One of the resultant parcels was sold to a third party. She retains LR. No. Loc. 13/Gitugi/2824 under her name. It measures 0.70 hectares. Finally, the Respondent, despite notice of intention to be sued has failed to comply making the filing of this action necessary.

- 3) In support of the case, the Applicant filed the following evidence.
 - (a) **Supporting affidavit dated 27-7-2024.**
 - (b) **Copy of Limited granted dated 26-10-2023.**
 - (c) **Certificates of official search for land parcels Nos. 472 and 2824.**
 - (d) **Copies of the sale agreements in Kikuyu language dated 24-6-2009, 2-9-2010 together with acknowledgments of receipt of purchase price.**
 - (e) **Copy of green card for L.R. 472.**
 - (f) **8 photographs showing a house and some crops growing on a piece of land.**
- 4) The Respondent though served with the originating summons did not defend it. The case therefore proceed ex-parte.
- 5) At the trial on 10-6-2025, the Applicant testified by adopting her affidavit and documents. The Applicant's counsel filed written submissions dated 19-6-2025.
- 6) I have carefully considered the summons in its entirety including the affidavit, the annexures, the testimony at the trial and the written submissions filed by learned counsel for the Applicant. The evidence adduced by the Applicant is uncontroverted by any evidence from the Respondent. The only question to be answered in this case is whether the Applicant has met the threshold for adverse possession in **Sections 9(1) and 13 of the Limitation of Actions Act**. I find that the Applicant has met the threshold because she has dispossessed the registered owner for a period of exceeding twelve years from the date of the agreements in the years 2009 and 2010 to 1-8-2024 when this suit was filed.

7) For the above stated reasons, I find that the Applicant has proved her case against the Respondent on a balance of probabilities.

Consequently, I enter judgment in favour of the Applicant against the Respondent in terms of **prayers 1,2,3 and 4** of the originating summons dated 27-7-2024.

It is so ordered.

Dated, Signed and Delivered virtually at Murang'a this 30th day of September, 2025.

**M.N. GICHERU
JUDGE.**

Delivered online in the presence of; -
Court Assistant – Mwangi Njonjo
Applicant Counsel – Mr T.M. Njoroge