



Mwangi v Mwangi & 2 others (Environment and Land Miscellaneous Application E014 of 2024) [2025] KEELC 6616 (KLR) (29 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6616 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E014 OF 2024
MN GICHERU, J
SEPTEMBER 29, 2025
IN THE MATTER OF LAND PARCELS NOS. LOC.2/MARIIRA/T.78**

BETWEEN

FRANCIS THURI MWANGI APPLICANT

AND

JANE WARUCU MWANGI 1ST RESPONDENT

DAVID MUKUNA MWANGI (THE REPRESENTATIVE OF JOSEPH MWANGI MAINA - DECEASED) 2ND RESPONDENT

KENYA COMMERCIAL BANK LTD 3RD RESPONDENT

RULING

1. This ruling is on the notice of motion dated 16-8-2024. The motion which is brought under Sections 27, 29 and 30 of the [Limitation of Actions Act](#), the [Law of Contract Act](#) and Section 3A of the [Civil Procedure Act](#) seeks four orders.
 1. That the Applicant be and is hereby granted leave to file the originating summons against the Respondents out of time.
 2. That the attached copy of the originating summons be deemed as filed upon granting the orders and payment of the Court fees.
 3. That this Court do find that the Applicant is entitled to ownership of Land Parcel No. Loc.2/ Mariira/T.78 which he purchased in the year 1987 and took possession immediately he paid the full purchase price to the deceased and the Deputy Registrar of this Court to execute the necessary transfer documents to effect the title ownership.
 4. That the costs of this application be in the cause.



2. The motion is supported by the affidavit of the Applicant dated 16-8-2024 in which he narrates how he bought the suit from the deceased Mwangi Maina alias Joseph Mwangi Maina vide a sale agreement dated 27-1-1987. Secondly, he occupied the land upon purchase. A problem arose in that the transfer documents got lost in the office of an advocate called R.M. Kimani who eventually passed away. Thirdly, the 3rd Respondent, which was the vendor of the suit land to the person who sold to the Applicant became uncooperative and reluctant to assist the Applicant in obtaining the title to the land.
3. The third Respondent filed a notice of preliminary objection dated 3-2-2025 based on the following grounds.
 - a. That the application herein is incurably defective and incompetent to the extent that the Applicant claims adverse possession over the suit land under Order 37 rule 3 of the Civil Procedure Rules whilst maintaining that he also purchased the land.
 - b. That the application does not disclose any cause of action as required under Order 2 rule 15(1) (a) of the Civil Procedure Rules as the Applicant cannot seek adverse possession against the bank which is only a chargee.
 - c. That the suit is statutorily barred as the Applicant brings it after 37 years contrary to Section 4 of the *Limitation of Actions Act* which provides that an action founded on contract must be brought within 6 years.
4. In reply to the preliminary objection, the Applicant filed a reply dated 10-2-2025 in which he avers as follows. One, the application dated 16-8-2024 is based on facts which the Applicant is competent to testify on having bought and occupied the land himself. Two, the cause of action is disclosed by various documents annexed to the affidavit of the Applicant and all that he requires from the bank is to discharge the charge and nothing more. Three, the Applicant is aware that the application is time barred and that is the reason why he came to court vide the application dated 16-8-2024. Finally, all the Respondents should declare their interest in the land failing which they should allow the Applicant to continue and pursue his entitlement.
5. I have carefully considered the application in its entirety including the affidavits, the annexures and the written submissions. This is the first time for me to see an application seeking leave to file an originating summons to be declared as entitled to land by way of adverse possession. By its very nature, a claim for adverse possession cannot be time barred because it is a continuing cause of action.
6. The Applicant has clarified that the only reason that the 3rd Respondent was joined as a party to this case is because of its failure and reluctance to discharge the charge. The moment it discharges the charge, its obligation to the Applicant will have been fulfilled. I find that it is possible for the original entry to land to be lawful but subsequent occupation to be adverse to the interest of the registered owner. I therefore find the first ground in the preliminary objection to be invalid.
7. Regarding the second ground of objection, I find that the 3rd Respondent is a necessary party in this suit because of its alleged failure to discharge the charge thereby delaying the registration of the Applicant as the owner of the suit land.
8. Like I have stated in paragraph (5) above, a claim for adverse possession cannot be time barred because it continues every day that the Applicant occupies the land in question adversely to the title of the registered owner. There is therefore no merit in the third ground of objection.
9. For the above stated reasons, I find that the notice of motion date 16-8-2024 was not necessary in the first place. I also find that prayer 3 thereof cannot be allowed at this interlocutory stage and is part



of what the Applicant is expected to prove in the originating summons itself. I find no merit in the preliminary objection. I direct that the suit proceeds in the normal manner and the Respondents will be given 21 days within which to file their responses to the originating summons.

For the avoidance of doubt, the notice of motion dated 16-8-2024, though superfluous, is allowed in terms of prayers 1 and 2 only. Costs in the cause.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 29TH DAY OF SEPTEMBER, 2025.

M.N. GICHERU

JUDGE

Delivered online in the presence of; -

Court Assistant – Mwangi Njonjo

Applicant's Counsel - Mr. Mwangi

3rd Respondent's Counsel – Miss Sakwa

