Mwangangi & 7 others v Njagi (Environment and Land Appeal E001 of 2025) [2025] KEELC 6397 (KLR) (25 September 2025) (Judgment)

Neutral citation: [2025] KEELC 6397 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

ENVIRONMENT AND LAND APPEAL E001 OF 2025

BM EBOSO, J

SEPTEMBER 25, 2025

BETWEEN

ANDRIANO MWANGANGI ..... 1ST APPELLANT

PAUL KITHURE MURITHI ..... 2ND APPELLANT

JOHN MUTHOMI MWANGANGI ..... 3RD APPELLANT

CATHERINE KATHURE GITONGA ..... 4TH APPELLANT

PETER KIRIMI MWANGANGI ..... 5TH APPELLANT

MURIUNGI MWANGANGI ..... 6TH APPELLANT

GEORGE MURITHI ..... 7TH APPELLANT

JOHN KIUMA MUGAO ..... 8TH APPELLANT

AND

JACOB KIREMA NJAGI ..... RESPONDENT

(An Appeal against the Judgment of the Principal Magistrate Court at Marimanti (Hon Mbayaki Wafula PM), rendered on 30/1/2025 in Marimanti PMC E & L Case No. E009 of 2021)

JUDGMENT

Introduction

1. This appeal challenges the judgment of the Principal Magistrate

   Court at Marimanti (Hon Wafula Mbayaki, PM), rendered on 30/1/2025 in Marimanti PMC E & L Case No. E009 of 2021. The judgment was uploaded onto the Judiciary's Case Tracking System (CTS) on 19/2/2025. The five key issues that fell for determination in the suit were: (i) Whether the respondent was the legitimate registered proprietor of land parcel number Tharaka Nithi/Chiakariga

"A"/2558 measuring 0.22 hectares; (ii) Whether the respondent's suit was statute-barred under Section 7 of the *Limitation of Actions Act*; (iii) Whether the 1st appellant had acquired ownership of the suit land through adverse possession; (iv) Whether the respondent was entitled to the reliefs that he sought in the plaint; and (v) Whether the appellants were entitled to the reliefs that they sought in their counterclaim. Those are the key issues that, invariably, fall for determination in this first appeal. I will briefly outline the background to the appeal and the parties' respective submissions in the appeal before I analyse and dispose the issues.

Background

2. Through a plaint dated 8/5/2021, the respondent instituted Marimanti PMC E & L Case No. E009 of 2021 against the appellants, seeking: (i) a permanent injunction restraining the appellants against trespassing on, entering onto or in any other way interfering with his right of use, ingress or working on land parcel number Tharaka Nithi/Chiakariga "A"/2558 (hereinafter referred to as "the suit land"); and (ii) costs of the suit.

3. The case of the respondent was that he was the registered proprietor of the suit land. The appellants had colluded to prevent him from accessing the suit land. Whenever he attempted to gain access onto the suit land, the appellants would gather, armed with crude weapons, and threaten to harm him and his workers, thereby preventing him from accessing his land. He had suffered loss and damages as a consequence of the appellants' actions.

4. The appellants filed a joint defence dated 21/6/2021. They amended their pleadings through a joint amended defence and counterclaim dated 19/5/2022. They contested the respondent's claim. Their case was that the 2nd – 8th appellants were members of the family of the 1st appellant. They contended that parcel number Tharaka Nithi/Chiakariga "A"/2558 (the suit land) was part and parcel of parcel number 458 in Chiakariga "A" Adjudication Section (hereinafter referred to as "parcel number 458") and was owned by the 1st appellant, adding that the suit land was illegally hived from parcel number 458 without the 1st appellant's knowledge.

5. The appellants contended that upon learning about the illegality, he filed Meru HC JR Application No 19 of 2012 seeking to reverse the illegality but the illegality was not reversed. Consequently, titles relating to the three parcels that had been illegally hived out of parcel number 458 were processed and issued by the Land Registry in 2017, among them, the respondent's title. It was their case that the respondent did not have a good title to the suit land.

6. By way of counterclaim, the appellants averred that the 1st appellant had acquired title to the suit land through adverse possession, contending that the 1st appellant had been in possession of the suit land since 1992. It was their case in the counterclaim that the respondent's title to the suit land stood extinguished by dint of Section 7 of the *Limitation of Actions Act* because the 1st appellant had been in possession and actual occupation of the suit land for more than 12 years.

7. Through the counterclaim, they prayed for: (i) an order dismissing the respondent's suit; (ii) a declaration that the 1st appellant was the owner of the suit land; or, as an alternative relief, a declaration that the 1st appellant had acquired title to the suit land through adverse possession; (iii) an order directing the Land Registrar to cancel the respondent's title and register the 1st appellant as proprietor of the suit land and issue a fresh title to him; and (iv) costs of the primary suit and the counter claim.

8. Upon conducting trial and receiving submissions, the trial court reached findings that: (i) the respondent had proved his claim; and (ii) the appellants had failed to prove their counterclaim. The trial court allowed the respondent's claim and dismissed the appellants' counterclaim. The court awarded the respondent costs of the suit.

Appeal

9. Aggrieved by the findings and decree of the trial court, the appellant brought this appeal, advancing the following four (4) grounds of appeal;

    1. The Learned Trial Magistrate erred in law and in facts by failing to find that the respondent's suit in the trial court was time-barred and extinguished by virtue of Section 7 of the *Limitation of Actions Act*, Cap 22 Laws of Kenya.

    2. The Learned Trial Magistrate erred in law and in facts by disregarding the very strong evidence adduced in the trial court that the first appellant had been having actual occupation and possession of the suit property since 1992.

    3. The Learned Trial Magistrate erred in law and in facts by failing to find that when a person's title to land is challenged, production of the title alone is not sufficient without showing how the land became registered to him.

    4. That the Learned Magistrate erred in law and in facts by failing to hold in the alternative that the appellants have acquired rights over the suit property pursuant to Section 30 of the Registered *Land Act*.

10. The appellants prayed for: (i) an order allowing the appeal; (ii) an order that the respondent's suit in the trial court was time-barred and extinguished by virtue of Section 7 of the *Limitation of Actions Act*; (iii) an order dismissing the respondent's suit in the trial court; and (iv) an order awarding the appellants costs of this appeal and costs of the suit in the trial court.

Appellants' Submissions

11. The appellants filed written submissions dated 3/7/2025 through M/s Jesse Mwiti Advocates. Counsel for the appellants submitted that the first appellant testified that he was allocated the suit land by the Utonga Clan in 1992 and that is where he had been living with his family. Counsel added that the respondent did not try to evict them from the suit land. Counsel argued that from 1992 to 2021, when the respondent filed the suit, the appellant had occupied the suit property for a period of about 29 years. Counsel argued that the respondent's suit was filed after the appellants had been in possession and occupation of the suit property for a period of over 12 years, hence the suit was not statute-barred under Section 7 of the *Limitation of Actions Act*. Counsel relied on the case of Haron Onyancha v National Police Commission & another (2017)eKLR and Iga v Makerere University (1972)E.A 65. Counsel argued that, in cross-examination, the respondent confirmed that the appellants had been in possession and occupation of the suit property for long and they had denied him access to the suit properties. Counsel relied on the case of Patrick Kirimi M'nganabu v Njeru Muchai(2021)eKLR, which cited the case of Bosire Ogero v Royal Media Services(2015) eKLR and Suleiman Kinyamu Reuben v Andriano Mwangangi & Others.

12. Regarding the root of the respondent's title, counsel argued that the suit property belongs to the appellants because it was allocated to them by the Utonga Clan. Counsel argued that the appellants challenged the respondent's title, adding that production of the title deed as evidence of ownership was not enough proof of ownership because the title had been challenged. Counsel relied on the case of Munyu Maina Hiram v Gathiha Maina(2013)eKLR.

13. Lastly, counsel submitted that all registered land is subject to overriding interests which are recognized by the law, adding that an overriding interest does not require to be noted in the register but is enforceable. Counsel relied on Section 30 of the Registered *Land Act* (repealed). Counsel argued that

the fact that the respondent was the registered proprietor of the suit land did not defeat the appellants' rights over the suit land.

Respondent's Submissions

14. The respondent filed written submissions dated 22/7/2025 though M/s Basilio Gitonga, Muriithi & Associates Advocates. Counsel pointed out that the respondent's claim related to land that was registered on 27/7/2016, adding that the 12 year threshold for the limitation period under Section 12 of the *Limitation of Actions Act* would have to be reckoned from the date of registration. Counsel added that the 1st appellant's testimony related to parcel number 458 as opposed to parcel number 2558, pointing out that the 1st appellant was unable to tell the acreage of his land.

15. On the allegation that the trial court disregarded the evidence of the 1st appellant, counsel argued that the 1st appellant never tendered evidence relating to his occupation of the suit land, adding that where the 1st appellant alluded to occupation, that occupation was in respect of parcel number 458. Counsel emphasized that the suit land was parcel number 2558. Counsel submitted that the appellants did not prove adverse possession.

16. Counsel argued that the trial court properly analysed the evidence that was before it and came to the finding that the appellants did not prove their counterclaim. Counsel faulted the appellants for relying on the repealed Registered *Land Act*, adding that the said statute was inapplicable to the suit land. Counsel urged the court to reject the appeal.

Analysis and Determination

17. I have read and considered the original record of the trial court; the record filed in this appeal; the grounds of appeal; and the parties' respective submissions in the appeal. I have also considered the legal frameworks and the prevailing jurisprudence relevant to the issues that fall for determination in the appeal. As pointed out in the opening paragraph of this Judgement, the following are the five key issues that fall for determination in this first appeal: (i) Whether the respondent is the legitimate registered proprietor of land parcel number Tharaka Nithi/Chiakariga "A"/2558; (ii) Whether the respondent's suit was statute-barred under the *Limitation of Actions Act*; (iii) Whether the 1st appellant had acquired ownership of the suit land through adverse possession; (iv) Whether the respondent is entitled to the reliefs that he sought in the plaint; and (v) Whether the appellants are entitled to the reliefs that they sought in their counterclaim. Before I analyse and dispose the four issues, I will briefly outline the principle that guides this court when exercising appellate jurisdiction.

18. The task of a first appellate court was summarized by the Court of Appeal in the case of Susan Munyi v Keshar Shiani (2013) eKLR as follows:

> " As a first appellate court our duty of course is to approach the whole of the evidence on record from a fresh perspective and with an open mind. We are to analyze, evaluate, assess, weigh, interrogate and scrutinize all of the evidence and arrive at our own independent conclusions."

19. The principle was similarly outlined in Abok James Odera t/a A J Odera & Associates v John Patrick Machira t/a Machira & Co Advocates [2013] eKLR as follows:

> " This being a first appeal, we are reminded of our primary role as a first appellate court, namely, to re-evaluate, re-assess and re-analyse the extracts on the record and then determine

whether the conclusions reached by the learned trial judge are to stand or not and give reasons either way."

20. Is the respondent the legitimate registered proprietor of the suit land? In their joint defence and counterclaim, the appellants challenged the legitimacy of the respondent's title, insisting that the title which the respondent holds relates to land that was illegally hived out of parcel number 458 in Chiakariga "A" Adjudication Section. The 1st appellant repeated the same contention during trial but he did not tender evidence to support the contention. The evidence which the 1st appellant tendered was that he filed a suit in the High Court to challenge the land adjudication decision that awarded the respondent the suit land. The award was, however, not overturned by the High Court. The 1st appellant stated that, as a consequence, the Land Registry issued to the respondent a title relating to the suit land.

21. On his part, the respondent testified in cross-examination that he was allocated the suit land by their Utonga Clan, adding that his registration as proprietor of the suit land was a culmination of the land adjudication process and that there was no pending objection proceedings at the time he was registered as proprietor and issued with a title.

22. It is clear from the evidence on record that the registration of the respondent as proprietor of the suit land was a culmination of the land adjudication and consolidation processes that were carried out within the frameworks of the *Land Adjudication Act* and the *Land Consolidation Act*. The two statutes contained elaborate mechanisms relating to ventilation and determination of disputes relating to land adjudication and consolidation decisions.

23. The 1st appellant was aggrieved by the adjudication decision that awarded the respondent the suit land. He elected to challenge the decision through the judicial review process by filing Meru High Court JR Application Number 19 of 2012. He lost the case. Having lost the case, he elected not to appeal. Consequently, the Land Registrar acted on the final adjudication register by registering the respondent as proprietor of the suit land and issued a title to the respondent. During trial, the appellants did not tender evidence establishing any of the impeachment elements stipulated under Section 26 of the *Land Registration Act*. For the above reasons, it is the finding of this court that the respondent is the legitimate registered proprietor of the suit land, Tharaka Nithi/Chiakariga "A"/2558.

24. The question as to whether the respondent's suit was statute-barred and the question as to whether the 1st respondent has acquired title to the suit land through adverse possession are intertwined. The two issues will be analysed and disposed contemporaneously. I say so because the anchor of adverse possession, both as a cause of action and as a defence, are Sections 7 and 17 of the *Limitation of Actions Act*. These two sections also happen to be the anchor of the general defences of limitation in relation to claims for recovery of land or for trespass to land.

25. It is important to point out at this point that, not too long ago, the Court of Appeal pointed out that Magistrate Courts do not have jurisdiction to entertain claims relating to adverse possession. (See the case of Sugawara v Kiruti (Sued in her capacity as the administratrix of the Estate of Mutarakwa Kiruti Lepaso alias Mutaragwa Kiruti Lepaso alias Mutaragwa Kiroti Leposo and in her own Capacity) & 3 others (Civil Appeal E141 of 2022) [2024] KECA 1417 (KLR) (11 October 2024). What is not clear is what should be expected of a magistrate court when it is confronted with a defence of adverse possession. I will not say more because the question of jurisdiction of the trial court in the above context was not canvassed in the trial court. Neither was it canvassed in this appeal.

26. The common law doctrine of adverse possession has statutory underpinnings in Sections 7 and 17 of the *Limitation of Actions Act* which provide as follows:

> "7. An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person"
>
> 17. Subject to section 18 of this Act, at the expiration of the period prescribed by this Act for a person to bring an action to recover land (including a redemption action), the title of that person to the land is extinguished."

27. The common law doctrine of adverse possession of land connotes possession which is inconsistent with and in denial of the title of the registered owner of the land. To establish adverse possession, the claimant must prove that he has had both the factual possession of the land and the requisite intention to possess the land [animus possidendi] for the prescribed and uninterrupted limitation period of twelve years preceding the initiation of proceedings for the vesting order. He must also demonstrate that the registered proprietor had knowledge [or the actual or constructive means of knowing] that he [the claimant/adverse possessor] was in possession of the land. Further, possession must be continuous; it must not be broken or interrupted.

28. The Court of Appeal defined adverse possession in Mtana Lewa v Kahindi Ngala Mwangandi [2015] eKLR as follows:

> "adverse possession is essentially a situation where a person takes possession of land and 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 is twelve (12) years. The process springs into action essentially by default or inaction of the owner. The essential prerequisites being that the possession of the adverse possessor is neither by force or stealth or under the licence of the owner. It must be adequate in continuity and in extent to show that possession is adverse to the title owner."

29. The Court of Appeal outlined the following criteria for acquisition of title under the doctrine of adverse possession in Wilson Kazungu Katana & 101 others v Salim Abdalla Bakshwein & another [2015] eKLR:

> "First, the parcel of land must be registered in the name of a person other than the applicant, the applicant must be in open and exclusive possession of that piece of land in an adverse manner to the title of the owner, lastly, he must have been in that occupation for a period in excess of twelve years having dispossessed the owner or there having been discontinuance of possession by the owner."

30. The appellants contend that at the time the respondent filed his suit in the trial court, his claim was already statute-barred under Section 7 of the *Limitation of Actions Act*, implying that the 1st appellant's title to the suit land had crystalized under the doctrine of adverse possession. Put differently, they contend that the 1st respondent had already acquired ownership of the suit land through adverse possession.

31. The court has considered the appellants' arguments in the context of the above law and the evidence that was placed before the trial court. First, parcel number 458 Chiakariga "A" Adjudication Section, which the appellants contended was the land out of which the suit land was hived, was expressed

to be a demarcated parcel within a declared land adjudication section. Secondly, there was evidence that the 1st respondent challenged the land adjudication decision that awarded the respondent the suit land. After conclusion of the dispute relating to the award under the land adjudication and consolidation processes, the land register relating to the suit land was opened on 27/7/2016 and the land was registered in the name of the respondent on the same day. On the same day, 27/7/2016, the land register relating to parcel number 458 was, similarly, opened and the said parcel was registered in the name of Mwangangi M'Ngura. Put differently, the two parcels were registered on 27/7/2016 as a culmination of the land adjudication and land consolidation processes.

32. Prior to 27/7/2016, the suit land was not registered and private ownership of the suit land had not been ascertained. Prior to that, the suit land was the subject matter of land adjudication within a declared adjudication section, Chiakariga "A" Adjudication Section. Indeed, the suit land was the subject matter of land adjudication disputes such as the judicial review application that the 1st appellant lodged. Put differently, the suit land was not available for adverse possession prior to 27/7/2016. The land became available for adverse possession after a parcel register was opened by the Land Registrar in the name of the 1st respondent on 27/7/2016.

33. Clearly, the appellants did not fully understand the tenor and import of land adjudication under the *Land Adjudication Act*. The tenor and import of land adjudication is set out in the preamble to the *Land Adjudication Act* which provides as follows:

> " An Act of Parliament to provide for the ascertainment and recording of rights and interests in trust land, and for purposes connected therewith and purposes incidental thereto."

34. Suffice it to state that, prior to conclusion of land adjudication in Chiakariga "A" Adjudication Section, the suit land was communal land (trust land) that belonged to the Utonga Clan. No single member of the clan or any other person could lay a claim of adverse possession to the communal land.

35. The primary suit by the respondent was lodged on 11/5/2021 through a plaint dated 8/5/2021. This was slightly under 5 years subsequent to the registration of the respondent as proprietor of the suit land. The threshold of 12 years under Section 7 of the *Limitation of Actions Act* had not been attained at that point in time. The appellants initiated their counterclaim through the amended defence and counterclaim dated 19/5/2022. The amended defence and counterclaim were filed on 21/7/2022. The 12-year threshold for the defence of limitation had not crystalized.

36. Similarly, the threshold of 12 years for crystallization of title under the doctrine adverse possession had not been met. For avoidance of doubt, computation of time for the purpose of adverse possession would start from the day the parcel register of the adjudicated land (the suit land) was opened. The date was 27/7/2016. Computation of time would stop on the date when the respondent filed the suit in the trial court. That was 11/5/2021. Clearly, that was a period of less than 5 years.

37. For the above reasons, it is the finding of this court that the respondent's suit was not statute-barred. It is also the finding of this court that the 1st appellant did not satisfy the criteria for crystallization of title to land under the doctrine of adverse possession.

38. Having made a finding to the effect that the respondent is the legitimate proprietor of the suit land; that the defence of limitation under Sections 7 and 17 of the *Limitation of Actions Act* had not crystalized; and that the 1st appellant did not satisfy the criteria for crystallization of title under the doctrine of adverse possession, it follows that the respondent is entitled to the permanent injunctive order that he sought against the appellants. It also follows that the appellants' counterclaim fails.

39. On costs, the general principle is that costs follow the event. There are no special circumstances to warrant a departure from the above general principle.

40. In the end, this appeal is rejected and dismissed for lack of merit. The appellants shall bear costs of the appeal.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 25TH DAY OF SEPTEMBER, 2025.

B M EBOSO [MR]

JUDGE

In the Presence of:

Mr. Mwiti for the Appellants

Respondent - Absent

Court Assistant – Mr. Mwangi