



**Kairu & another v Theuri & 2 others (Civil Appeal E074 of 2022)
[2025] KECA 1564 (KLR) (3 October 2025) (Judgment)**

Neutral citation: [2025] KECA 1564 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPEAL E074 OF 2022
W KARANJA, LK KIMARU & J MOHAMMED, JJA
OCTOBER 3, 2025**

BETWEEN

JANE WANGARI KAIRU 1ST APPELLANT

JOHNSON MACHARIA KAIRU 2ND APPELLANT

AND

BERNARD KARIUKI THEURI 1ST RESPONDENT

ALEX MANGI KARIUKI 2ND RESPONDENT

PAULINE WANJIKU KARIUKI KIGUTA 3RD RESPONDENT

*(Being an appeal from the judgment of the Environment and Land
Court at Nyeri (Olola, J.) dated 20th January, 2022, in ELC
Case No. 618 of 2014 Formerly Nyeri H.C.C.C No. 109 of 2008)*

JUDGMENT

1. The appellants instituted a civil suit against Jane Wachuka Kariuki (original defendant), before the High Court at Nyeri, vide a plaint dated 28th August, 2008, seeking eviction orders against Jane Wachuka and her family, with respect to parcel Aguthi/Muruguru/615 (hereinafter ‘suit property’). The appellants also sought injunctive orders against the said defendant and her agents from interfering in any way with the suit property, an order to remove the caution placed on the suit property by the said defendant, general damages for loss of use of a portion of the suit property, as well as costs of the suit.
2. The appellants, who are mother and son, averred that they became joint registered proprietors of the suit property on 28th June, 2000, having inherited the same from the estate of Kairu Wambugu, late husband to the 1st appellant, and father to 2nd appellant. It was the appellants’ case that the defendant, Jane Wachuka Kariuki, had been cultivating on a portion of the suit property, measuring one (1) acre, under the pretext that she had purchased the said portion from Kairu Wambugu. The appellants



- denied any knowledge of the alleged sale. They averred that the Land Disputes Tribunal, in 2002, made a decision to the effect that the defendant was the rightful owner of the one-acre portion of the suit property that she occupied. That the appellants appealed this decision before the Provincial Land Disputes Appeal Committee, but their appeal was dismissed.
3. The appellants further lodged an appeal before the High Court at Nyeri in Civil Appeal No. 12 of 2003, wherein the High Court allowed the appellants appeal, and set aside the decisions of both the Land Disputes Tribunal, and the Provincial Land Disputes Appeals Committee. The appellants contended that the High Court however did not issue an eviction order as against the defendant, as it was not established that she was a trespasser. It was the appellants' case that the defendant was unlawfully occupying the suit property, and has refused to vacate the same despite several demands by the appellants. They averred that the defendant further placed a caution against the suit property on 13th November, 2000.
 4. Jane Wachuka Kariuki (defendant) filed a statement of defence and counterclaim dated 21st October, 2006. She contended that the transfer of the suit property to the appellants was done in secret to defeat her claim against her portion of the suit property. She averred that she purchased one acre of the suit property from Kairu Wambugu and has been in possession since 1968. That when she purchased the suit property, the 1st appellant was yet to be married to the vendor. That though the transfer was not effected before the deceased's death, the appellants acknowledged the sale and boundaries were marked by a surveyor. She averred that she has since acquired title to the suit property by way of adverse possession. She asserted that the appellants' appeal was allowed by the High Court only on account of the fact that the Land Disputes Tribunal lacked jurisdiction to deal with the issue. In her counterclaim, the defendant urged the court to order that she is entitled to one (1) acre of the suit property, which she purchased for value, and has been in possession of since 1968.
 5. Jane Wachuka Kariuki died on 16th July, 2016, during the pendency of the suit, and was substituted by the respondents herein, in their capacity as the legal administrators of her estate.
The 1st respondent is her husband, and the 2nd and 3rd respondents, her children.
 6. The case was heard by way of viva voce evidence. The 2nd appellant gave evidence on behalf of the appellants. It was his testimony that the suit property was originally registered in his late father's name, Kairu Wambugu. That his father passed away in 1981, and that during his lifetime, he allowed Jane Wachuka (defendant) to cultivate on a portion of the suit property. The 2nd appellant alleged that Jane Wachuka tried to manipulate his mother, the 1st appellant, into adding her as a beneficiary of the estate of his late father, with respect to one-acre of the suit property, on the pretext that she had purchased the said portion. That he filed an objection in the succession cause, and the suit property was transferred to himself and the 1st appellant jointly. That after acquiring title to the suit property, the appellants urged Jane Wachuka to refrain from cultivating the suit property and vacate the same.
 7. It was the appellants' testimony that due to her resistance to vacate the suit property, the appellants lodged a claim before the Land Disputes Tribunal, which decided in favour of Jane Wachuka. This decision was affirmed on appeal by the Provincial Land Dispute Appeals Committee. That they lodged a further appeal before the High Court (HCCA No.12 of 2003), which appeal was allowed, and the decision of the Land Disputes Tribunal was set aside. The appellants averred that the respondents' claim of adverse possession was unfounded, as the appellants asserted their rights over the suit property in 2002, when they lodged the claim before the Tribunal. Upon cross-examination, PW1 admitted that the respondents have been utilizing the suit property since 1968. He averred that the respondents leased the portion of the suit property from his late father.



8. The 1st respondent, Bernard Kariuki Theuri, gave evidence on behalf of the respondents. He stated that Jane Wachuka Kariuki was his wife. It was his evidence that in 1968, the late Kairu Wambugu offered to sell them one-acre portion of his land. They settled on Kshs.50,000 as the purchase price. The 1st respondent averred that he was employed away from home, and so his wife took charge of the transaction. He stated that their portion of the land was demarcated and they took possession in 1968. He averred that they planted trees to mark the boundaries. He testified that they paid the final instalment of Kshs.40,000 in 1970, after which a written agreement of sale was executed by the parties, pending transfer of the portion of the suit property to them.
9. It was the respondents' evidence that Kairu Wambugu married the 1st appellant in 1972, and that they occupied their portion of the suit property, while the respondents occupied their one-acre portion of the suit property. To their surprise, sometime in 2002, after the death of the vendor, the 1st appellant lodged a dispute before the Land Disputes Tribunal, claiming that Jane Wachuka Kariuki had not purchased her portion of the suit property, but rather, had leased their portion of the suit property from her late husband, for a yearly rent of Kshs.100. The appellants were demanding Kshs.400,000 as the new purchase price. However, the Tribunal ruled in favour of his late wife. The 1st respondent averred that his family has been in possession of the suit property since 1968 to date, and that the appellants' actions were geared at unjust enrichment. He urged the court to transfer one-acre of the suit property that they occupy to the respondents jointly.
10. After hearing the parties, Olola, J. dismissed the appellants' suit and found that the respondents were entitled to the one-acre piece of the suit property currently in their possession by dint of adverse possession.
11. Aggrieved by this decision, the appellants lodged an appeal before this Court. In summary, the appellant faulted the learned Judge for failing to find that time stopped running when the appellants lodged a claim before the Land Disputes Tribunal in 2002, up until 2008 when the High Court delivered its decision. The appellants were of the view that the respondents failed to sufficiently prove their claim of adverse possession. They took issue with the finding of the learned Judge that the respondents' possession of the suit property was not consensual, and that a sale agreement existed between the parties with respect to one- acre portion of the suit property.
12. The appeal was canvassed by way of written submissions. learned counsel, Mr. Njuguna for the appellant averred that the appellants became the registered owners of the suit property in 2000, and that they lodged a claim to evict the respondents from the suit property in 2002, before the Land Disputes Tribunal. He asserted that the legal tussle between the two parties subsisted until 2008, when the High Court allowed the appellants' appeal. He opined that the finding by the learned Judge that the respondents were in exclusive possession of the suit property for 32 years, before the appellants asserted their rights was unfounded, as time stopped running in 2002. Counsel urged that the respondents occupied the suit property with the permission of the registered owner, and that their claim of adverse possession cannot stand.
13. In rebuttal, learned counsel, Mr. King'ori for the respondents, averred that the learned Judge relied on the proceedings of previous disputes between the parties, as well as the correspondence between the parties, in which the appellants referred to the existence of an agreement for sale of the suit property. It was his submission that the respondents' possession of the suit property became adverse once the period for applying for the Land Control Board consent lapsed in 1970. He averred that the respondents' rights as adverse possessors crystallized in 1982. Counsel urged that even if the court was to go by the appellants' assertion that the respondents leased the suit property, it was the 2nd appellants' testimony that the respondents did not pay rent since 1981 when his father died. Counsel submitted



that in that case, twelve years lapsed in 1994. Counsel submitted that in both instances, the respondents enjoyed exclusive possession of their portion of the suit property, and had dispossessed the registered owner, for a period of over twelve years.

14. This being a first appeal, our duty was well stated in *Abok James Odera T/A A.J. Odera & Associates v John Patrick Machira T/A Machira & Co. Advocates* [2013] eKLR, where this Court held:

“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-analyze 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.”

15. Guided by the foregoing principles, grounds of appeal, as well as the parties’ submissions, we find that the issue arising for our determination is whether the respondents sufficiently established their claim of adverse possession with respect to one acre of the suit property.

16. A claim for adverse possession is established when a party claiming to have acquired title to a parcel of land by occupying the particular parcel of land for a period of twelve (12) years without the permission of the registered owner and where the owner has made no effort to assert his ownership of the suit parcel of land.

17. The concept of adverse possession was defined by this Court in the case of *Mtana Lewa v Kahindi Ngala Mwangandi Civil Appeal No. 56 of 2014* [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 an assertion of his title for a certain period, in Kenya, is twelve (12) years. The process spring into action essential by default or inaction of the adverse possessor is neither by force or stealth or under the 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.”

18. The Court of Appeal in the case of *Chevron (K) Ltd v Harrison Charo Wa Shutu* [2016] eKLR stated as follows:

“At the expiration of the twelve-year period the proprietor’s title will be extinguished by operation of the law and section 38 of the Act permits the adverse possessor to apply to the High Court for an order that he be registered as the proprietor of the land. Therefore, the critical period for the determination whether possession was adverse is 12 years and the burden is on the person claiming to be entitled to the land by adverse possession was without the true owner’s permission, that the owner was dispossessed or discontinued his possession of the land, that the adverse possessor has done acts on the land which are inconsistent with the owner’s enjoyment of the soil for the purpose for which he intended to use it. See *Littledale v Liverpool College* [1900]. Ch.19,21.”

19. Our re-evaluation of the facts of this case shows the following to be uncontroverted facts: Jane Wachuka (deceased) the wife of the 1st respondent and the mother to the 2nd and 3rd respondents entered into an agreement with Kairu Wambugu the deceased’s husband to the 1st appellant for the purchase of 1 acre portion of land part of parcel No. Aguthi/Muruguru/615 in 1968. The said Jane Wachuka took possession of the suit parcel of land in the same year. This fact was acknowledged by the applicants in their testimony before the trial court. The family of the said Jane Wachuka has been in possession of the said portion of one acre since 1968 todate. It is further uncontested that no dispute in respect of the



suit parcel of land existed during the life time of the Kairu Wambugu. The dispute was commenced by the appellants once they became the registered owners of the suit property on 28th June, 2000 having inherited the same as beneficiaries of the estate of the deceased. It was then that the appellants sought to evict the family of Jane Wachuka from the said portion of one acre which comprises part of the suit parcel of land.

20. According to the appellants, the respondent cannot lay claim on the said portion of the suit parcel of land by adverse possession because when the appellants got registered in the year 2000, any claim that they could have had was extinguished and therefore time started running a fresh from that date. It was the appellants' case that the trial court erred in finding that the respondents had established their case of adverse possession yet in their view, the ownership of the suit parcel of land was contested and could not therefore have been acquired by adverse possession.
21. On their part, the respondents urged the Court to uphold the decision of the trial court and find that they had established their claim of ownership of the said portion of one acre of the suit parcel of land by adverse possession.
22. It was clear to this Court that by the time the appellants were registered as the owners of the suit parcel of land pursuant to succession proceedings in the year 2000, Jane Wachuka had already acquired the suit portion of one acre in respect of the suit parcel of land by adverse possession. As stated earlier in this Judgment, Jane Wachuka and her family have been in occupation of the said one-acre portion of the suit parcel of land from 1968 to date. They have planted trees which demarcate their boundary with that of the appellants. By the time the appellants were registered as the owners of the suit parcel of land in the year 2000, Jane Wachuka and her family had been in possession for a period of 32 years without let or hindrance from the appellants.
23. It was uncontroverted that Jane Wachuka and her family occupy the said portion of the suit parcel of land in an open, continuous and uninterrupted possession from 1968 to the year 2000 when the appellants inherited the suit parcel of land and had themselves registered as the owners therefore. It is instructive that the original owner of the parcel of land Kairu Wambugu, resided peacefully on the suit parcel of land with the family of Jane Wachuka before his death. It was upon his death that the appellants started laying claim on the said portion of the suit parcel of land.
24. We cannot fault the trial court for reaching the verdict that it did.

By the time the appellants were registered as the owners of the suit parcel of land, the family of Jane Wachuka (deceased) now represented by the respondents had already acquired title to the said one-acre portion of the suit parcel of land by adverse possession.
25. The appellants have no legal claim whatsoever in respect of the said one-acre portion of the suit parcel of land currently in possession by the respondents.
26. It is clear from the above reasoning that the appeal lacks merit and it is for dismissal. It is hereby dismissed with costs to the respondents.

DATED AND DELIVERED AT NYERI THIS 3RD DAY OF OCTOBER, 2025.

W. KARANJA

JUDGE OF APPEAL

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JAMILA MOHAMED

JUDGE OF APPEAL



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L. KIMARU

JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

