



**Muriuki & another v Kariithi (Environment & Land Case
E024 of 2021) [2025] KEELC 4437 (KLR) (12 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4437 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
ENVIRONMENT & LAND CASE E024 OF 2021**

JM MUTUNGI, J

JUNE 12, 2025

BETWEEN

ANDREW MUCHIRI MURIUKI 1ST APPLICANT

CYRUS KARIITHI MURIUKI 2ND APPLICANT

AND

NANCY WAGUAMA KARIITHI RESPONDENT

JUDGMENT

1. The Applicants filed the Originating Summons dated 8th July 2021 seeking for the following substantive orders.
 1. That the Applicants herein be declared to be entitled by way of adverse possession of over 12 years to 4.0 acres out of land comprised in land parcel No. Baragwe/Guama/296 measuring 7.40 acres registered under the Registered Land Act Cap 300 Laws of Kenya (now repealed) situated in Karumandi Location of Kirinyaga East Sub-County of Kirinyaga.
 2. That the Applicants be registered as the joint absolute proprietors of the portion of 4.0 acres to be carved out of the land comprised in land parcel Baragwe/Guama/296 measuring 7.40 acres.
 3. That the costs of this Application be provided for.
2. The Summons are predicated upon the grounds set out on the face of it and on the Supporting Affidavit filed by the 1st Applicant on his behalf and that of the 2nd Applicant. According to the Applicants, the land parcel Baragwe/Guama/296 (the suit land) was originally registered in the name of their Grandfather, Kithuku Ngare, on 20th January 1959. They claim that following the death of their grandfather, the land was transferred to their Cousin, Andrew Muchiri Cyrus, as an inheritance from his father, Cyrus Kareithi Wambugu. After the death of Andrew Muchiri Cyrus, the Respondent, Nancy Waguama Kareithi, allegedly initiated succession proceedings without the



Applicants' knowledge and was on 7th December 2015, registered as the owner of the suit land through transmission.

3. The Applicants assert that the Respondent and her family reside on a different parcel of land, registered in her deceased husband's name, which borders the suit land. They point out that the Respondent has chosen to bury her deceased family members on that separate property. According to the Applicants, on the suit land there is a road known as the Kimunye-Kamugunda earth road, which divides it into two sections; one of 4.0 acres and another of 3.40 acres. They state that they moved onto the 4.0-acre portion in 1995, where they built a homestead that includes four residential houses, a kitchen, a pit latrine, a bathroom, as well as facilities for zero grazing, chicken, and goats.
4. Additionally, the Applicants averred that they had cultivated tea bushes, which they sell to Thumaita Tea Factory, and have also planted coffee stems and delivered coffee to Karumandi Coffee Factory. They averred that they had planted various trees and that they have buried their late brother on this land. The Applicants stated that the Respondent and her family have solely farmed the 3.40-acre portion and that there had been no trespassing or interference with their occupation of the 4.0 acres since they moved in. The Applicants emphasize that they have known no other home other than the 4.0 Acres of the suit land. The Applicants contended they had acquired this land through adverse possession, as they had peacefully openly and exclusively occupied the land without any interruptions. They consequently assert that they have acquired title through adverse possession to the portion of 4.0 Acres and pray that the portion be excised and be registered jointly in their names.
5. In response, the Respondent filed her Replying Affidavit dated 17th August 2021. She averred that the Applicants are the sons of the late Johnson Muriuki Wambugu, who was a brother to her late husband, Cyrus Kariithi Wambugu. The Respondent averred that both her late husband and his late brother owned separate pieces of land. She stated that the late Cyrus Kariithi Wambugu was the registered owner of land parcel Baragwe/Guama/323, measuring 2.71 hectares, while his brother Johnson Muriuki Wambugu, was the registered owner of land parcel Baragwe/Guama/309.
6. The Respondent explained that following the death of Kithuku Ngare, his wife, Warigia Kithuku, decided that land parcel Baragwe/Guama/296 would be inherited by their son, Andrew Muchiri Cyrus(now deceased). This decision was confirmed in 1968 through a succession case at the District Magistrate's Court in Gichugu. She affirmed that nobody objected to the transfer of the suit land to her son who unfortunately passed away on 4th December 1989 before he got married.
7. The Respondent stated that the Applicants and their other siblings were all living on their father's land parcel Baragwe/Guama/309 until their father sold it, leading to their eviction in 2006. She stated that following this eviction, the Applicants approached her late husband, seeking permission to occupy a portion of the suit land, which he subsequently permitted them to do. The Respondent stated her husband, Cyrus Kariithi died in 2008 and that prior to his death, he had instructed her to permit the Applicants and their siblings to continue occupying a portion of the suit land until they acquired their own land elsewhere. In 2015, following succession proceedings the Respondent acquired title to the suit land by way of transmission.
8. The Respondent stated that she had no intention of alienating or subdividing the suit land and has not threatened the Applicants in any way. The Respondent contended that the Applicants' suit is based on bad faith as the doctrine of adverse possession was inapplicable in the circumstances of the instant suit. The Respondent averred that the Applicants previously filed, Kerugoya H.C. Misc. Succession No. 2 of 2019, against her, which was dismissed and the 1st Applicant's Notice of Appeal to the Court of Appeal at Nyeri arising therefrom was struck out. The Respondent prayed for the dismissal of the Applicants' suit with costs.



Evidence Of The Parties

9. The 1st Plaintiff testified as (PW1) and in his evidence stated that he resided and farmed on land parcel Baragwe/Guama/296 (the suit land). He claimed he had resided in the suit land since he was born and that his grandmother showed him where to settle on the said land. He affirmed that the Respondent was his Aunt and resided on land parcel Baragwe/Guama/323. He added that his father(now deceased) had been bequeathed land parcel Baragwe/Guama/309 by his grandfather from which he was evicted through a court order. The Plaintiff confirmed that the suit land was originally registered in the name of their grandfather and, upon his death, it was registered to Andrew Muchiri Cyrus, the Respondent's son who died in 1989 following which the Respondent was registered as the owner of the suit land through transmission.
10. The 1st Plaintiff testified that he had been utilising and cultivating on the suit land since settling on the same. He stated the grandmother had informed him that his grandfather had indicated that the suit land would be shared among his grandchildren named after him. He stated that his brother Richard also resided on the suit land, and that their late brother Chomba died in 2018 and was buried on the suit land. The Plaintiff explained that he and his brother have tea bushes and coffee plants, which they delivered to Thumaita Tea Factory and Karumandi Coffee Factory respectively. The Plaintiff stated that they occupy half of the suit land while the Respondent has planted tea bushes on the other half. The Plaintiff stated that the suit land was demarcated and averred that after their father's death, neighbors and cousins invaded their portion and harvested his mature blue gum and eucalyptus trees.
11. During cross-examination, PW1 stated that he was born in 1968 on land parcel Baragwe/Guama/309, where his family lived. He indicated that he moved permanently to the suit land in 1995/1996, built a house, and planted tea in 1996. He confirmed that both his grandmother and grandfather had died by the time he moved to the suit land. The Plaintiff testified that when his father was evicted from land parcel Baragwe/Guama/309, he allowed him to occupy his house that he (the Plaintiff) had built in the suit land. The Plaintiff admitted that he was unaware how his Uncle was registered as the owner of the suit land and whether his father had given consent. He stated that he was not aware of the succession process that the Respondent undertook. He admitted he filed an application to revoke the grant to the Respondent which was unsuccessful. He stated that he did not know the actual acreage of the portion he and his family occupy of the suit property. He denied he was in occupation as a mere licensee stating that he never entered onto the land with the permission of the Defendant/Respondent.
12. Peter Gichomi Kamau, a neighbour of the parties, testified as PW2 and it was his evidence that the suit land was initially allocated to the Plaintiffs' grandfather. PW2 testified that he used to work as an Agricultural Officer and that in 1995 he was engaged by the Plaintiff and that he measured for the Plaintiff 3000 tea bushes that the Plaintiff planted and has been pruning and picking. The witness affirmed the Plaintiff had built a house on the suit land. He stated the Plaintiffs tea bushes covered about three quarters of an acre.
13. The Defendant, Nancy Waguama Kariithi, testified and additionally called two witnesses to testify in support of the defence case. She confirmed that the Plaintiffs were her nephews and that the suit land was registered in her name. She stated that the Plaintiffs came onto the suit land after their father sold his own land. According to her testimony, her late husband allowed the Plaintiffs to stay on the land because they had nowhere else to go. She explained that the Plaintiffs' father's land was parcel No. 309, while her late husband's land was parcel No. 323. She testified that Githuku Ngare who was her father in law owned land parcel No. Baragwe/Guama/296 and after his death, the land was inherited by his first grandson, Andrew Ngare Cyrus who was her son. She stated that land parcel Baragwe/Guama/296 is approximately 7 acres, and the Plaintiffs occupy about 3 acres of it. The Defendant testified that her



- husband allowed the Plaintiffs to stay on the land until they found alternative housing, and after her husband's death she allowed the Plaintiffs to continue residing on the land and did not demand that they vacate. She explained that there are other siblings of the Plaintiffs who also reside on the suit land but are not parties to this case. She affirmed that a sibling of the Plaintiffs was buried on the suit land.
14. In cross-examination, the Defendant reiterated that the suit land was initially registered in the name of Githuku Ngare and was later inherited by her son, Andrew Muchiri Cyrus, when he was a minor. She affirmed that her said son passed away in 1989 and had not built on the land. She stated that she did not know PW2, and further testified that neither the Plaintiffs' mother nor father was buried on the suit land. Additionally, she confirmed that her husband died before the Plaintiffs' father. The Defendant affirmed that some of her children have planted tea bushes on the suit land, alongside the Plaintiffs. She reiterated that the Plaintiffs entered the land with the permission of her late husband given that her son who was the registered owner had died.
15. Richard Njoka Ngari (DW 2) testified that he was the grandfather of the Plaintiffs and that his parcel of land neighbours the suit land. He testified that his step brother Githuku Ngari, was the original owner of the suit land. He stated that Githuku Ngari had two sons, Cyrus Kariithi Wambugu and Johnson. After Githuku Ngari passed away, his grandson Andrew Muchiri inherited the suit land. DW2 confirmed that the Plaintiffs had entered and settled on the suit land where apart from Planting coffee and tea bushes, the 1st Plaintiff had constructed a permanent house. He affirmed that a public road runs through the suit land separating the two portions and stated that the plaintiffs have never been removed from the land. The witness stated the land was approximately 10 Acres and further explained the Plaintiffs father had his own land which he sold. He stated the Plaintiffs were given a place to live in by Cyrus Kariithi, the Defendant's husband.

Parties Submissions

16. The Plaintiffs filed their written submission dated 10th February 2025 where they framed the issue for determination thus:-
- whether the Plaintiffs have established a prima facie case for granting of a portion of four acres out of L.R Baragwe/Guama/296 and whether they have acquired the same by way of adverse possession and if so,
- whether they should be registered as the owners thereof in place of the Respondent herein.
17. Counsel for the Plaintiffs submitted that the doctrine of adverse possession in Kenya is embodied in Section 7 and Section 13 of the Law of Limitation of Actions Act Cap 22 Laws of Kenya. He observed that Section 38 of the Act provided for the procedure to be followed by a person claiming adverse possession. He relied on the case of Mtana Lewa Versus Kahindi Ngala Mwangandi (2015) eKLR, which was quoted by this Court with approval in the Case of Francis Karani Gatei Versus Peris Wainoi Gatei, ELCC No. 12 of 2019, where the Court defined what constituted adverse possession and the circumstances that give rise to it. The Court held:-
- “ Adverse possession is essentially a situation where a person takes possession of land and asserts right over it and the person having title to it omits or neglect to take action against such persons in accretion 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, in publicity and in extent to show that possession is adverse to the title owner.”



18. Counsel further relied on the case of *Ruth Wangari Kanyagia v Josephine Muthoni Kinyanjui* [2017] eKLR, where the Court held that:

“...it is a well-settled principle that a party claiming adverse possession must prove that his possession is ‘nec vi, nec clam, nec procario’ that it is peaceful, open and continuous. The possession must be adequate in continuity, in publicity, and in extent to show that their possession is adverse to the rightful owner and actual, visible, exclusive, hostile, and continued over the statutory period.”

19. Counsel argued that the Plaintiffs have demonstrated that they moved from their father’s land and settled on the disputed land, which they have developed extensively. Counsel asserted that the Plaintiffs settled on their portion of the contested land in 1995, while the Defendant acquired ownership through succession in 2015, which was Twenty years after the Plaintiffs had already established their presence on the suit land. He argued that, since the Defendant did not evict them, the Plaintiffs’ possession of the land satisfied the necessary criteria for establishing adverse possession.
20. Counsel further argued that despite the Defendant’s assertion that the Plaintiffs entered the suit land with the consent of her late husband, she failed to provide evidence to support this assertion. Counsel contended that the claim of consent was unsubstantiated and that it was contradicted by the testimony of PW2, who testified that the 1st Plaintiff had been on the suit land since 1995, as it was that he measured the tea bushes for the 1st Plaintiff on the said land.
21. The Defendant in her their written submissions dated 12th March 2025 highlighted two key issues for consideration; firstly, whether the Plaintiffs’ case constitutes an abuse of the Court’s process, and secondly, whether the Plaintiffs had successfully established a claim for adverse possession of land parcel Baragwe/Guama/296.
22. Regarding the first issue, Counsel argued that the Plaintiffs had filed a summons for revocation of the grant issued to the Defendant in the High Court, which application was subsequently transferred to the Principal Magistrates Court in Gichugu for hearing and determination. Counsel pointed out that the Plaintiffs initiated the present suit, fully aware that the summons for revocation of the grant issued to the Defendant was still pending before the Court. The Defendant’s Counsel submitted such conduct on the part of the Plaintiffs constituted abuse of the Court process which the Court ought not to condone.
23. In regard to the second issue, Counsel argued that the Plaintiffs had not established a case to warrant the application of adverse possession for several reasons. He pointed out that while the Plaintiffs insisted their portion of the land was four acres, they admitted during the proceedings that they had not measured their section of the suit land, indicating uncertainty about the exact area they occupied. Counsel also highlighted that the Plaintiffs acknowledged they were raised on their father’s land, specifically parcel Baragwe/Guama/309 before his father sold the land resulting in their eviction.
24. The Defendant’s Counsel submitted that the Plaintiffs and their deceased brother Laban Chomba were permitted to occupy the suit land after they had been evicted from their father’s parcel of land. The Plaintiff therefore according to Counsel entered into occupation and possession of the suit land with the permission of the beneficial owner who was the husband of the Defendant and that their possession was not adverse having been consensual.
25. The Defendant’s Counsel in support of his submission that the Plaintiff’s entry onto the suit property was pursuant to permission, referred to the evidence of DW2 who testified that the Plaintiffs were allowed to occupy the suit land by their Uncle Cyrus Kariithi Wambugu. Counsel emphasized that



the Plaintiffs' entry onto the land was permitted due to their close familial relationship with the Defendant's family. Counsel argued that since the Plaintiffs entered the suit land with consent based on reasons of consanguinity, their occupation could not constitute adverse possession and in support of this submission relied on the Case of Mbira v Gachuhi, [2002] EA 132, where Kuloba, J held:

“Accordingly, possession arising from permission or consensual entry by virtue of lineal consanguinity and affinity did not give rise to adverse possession after the statutory period of limitation.”

Analysis And Determination

26. I have reviewed the Originating Summons, the Replying Affidavit, the evidence adduced by both parties, and their written submissions. The primary issue for determination in this case is whether the Plaintiffs have proved their claim of adverse possession of the portion of 4.0 Acres out of land parcel Baragwe/Guama/296 to entitle them to be registered as the owners thereof.
27. The doctrine of adverse possession in Kenya is embodied in Section 7 and Section 13 of the Limitation of Actions Act, CAP 22 Laws of Kenya, which provide as follows:

Section 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.”

Section 13:

“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 sections 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.”

28. Section 38 of the Act provides for the procedure to be followed by a person claiming adverse possession and provides as follows: -

“Where a person claims to have become entitled by adverse possession to land registered under any of the Acts cited in section 37 of this Act, or land comprised in a lease registered under any of those Acts, he may apply to the High Court for an order that he be registered as the proprietor of the land or lease in place of the person then registered as proprietor of the land.(2) An order made under subsection (1) of this section shall on registration take effect subject to any entry on the register which has not been extinguished under this Act.”



29. The Court of Appeal in the Case of, *Mtana Lewa v Kahindi Ngala Mwangandi* [2015] eKLR, considered what the doctrine of adverse possession entailed and the circumstances that would give rise to adverse possession. In the case, the Court stated thus: -

“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, in publicity and in extent to show that possession is adverse to the title owner.”

30. The Court of Appeal further in the Case of *Ruth Wangari Kanyagia v Josephine Muthoni Kinyanjui* [2017] eKLR while acknowledging that adverse possession is a common law principle reiterated the same by citing the India Supreme Court decision in the Case of *Kamataka Board of Wakf v Government of India & Others* [2004] 10 SCC 779 where the Court stated thus: -

“In the eye of the law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner, even for a long time, won't affect his title. But the position will be altered when another person takes possession by clearly asserting title in denial of the title of the true owner. It is a well-settled principle that a party claiming adverse possession must prove that his possession is “nec vi, nec clam, nec precario”, that is, peaceful, open, and continuous. The possession must be adequate in continuity, in publicity, and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile, and continued over the statutory period.”

31. In the decision of the Environment and Land Court at Mombasa in the case of *Celina Muthoni Kithinji v Safiya Binti Swaleh & 8 Others* [2018] eKLR, the decision of the Court of Appeal in *Wambugu v Njuguna* [1983] KLR 173 on what constitutes adverse possession was cited with approval. The requirements for adverse possession were also set out in the Case of *Mbira v Gachuhi* [2002] IEALR 137 where the court held that:

“..... a person who seeks to acquire title to land by the method of adverse possession for the applicable statutory period must prove non-permissive or non-consensual, actual, open, notorious, exclusive and adverse use by him or those under whom he claims for the statutory prescribed period without interruption....”

32. Therefore, a person claiming under the doctrine of adverse possession must demonstrate actual occupation or possession of the land, the occupation or possession must be exclusive and hostile, and must also be open, peaceful, and continuous for a period of 12 years or more.

33. The Court of Appeal in the case of *Kweyu v Omutut* [1990] eKLR observed that:

“By adverse possession, it's meant a hostile possession, under a claim or colour of title, actual, open, uninterrupted, notorious, exclusive and continuous. When such possession is continued for the requisite period (12 years), it confers an indefeasible title upon the possessor. (Colour of title is that which is a title in appearance, but in reality). Adverse possession is made out by the co-existence of two distinct ingredients; the first, such a title as will afford Colour, and, second such possession under it as will be adverse to the right of



a true owner. The adverse character of the possession must be proved as a fact; it cannot be assumed as a matter of law from mere exclusive possession, however long continued. And the proof must be clear that the party held under a claim of right and with intent to hold adversely. These terms (“claim or colour of title”) mean nothing more than the intention of the dispossessor to appropriate and use the land as his own to the exclusion of all others irrespective of any semblance or shadow of actual title or right. A mere adverse claim to the land or the period required to form the bar is not sufficient. In other words, adverse possession must rest on de facto use and occupation. To make a possession adverse, there must be an entry under a colour of right claiming title hostile to the true owner and the world, and the entry must be followed by the possession and appropriation of the premises to the occupant’s use done publicly and notoriously.”

34. In the Case of Gabriel Mbui v Mukindia Maranya [1993] e KLR, Kuloba J elaborately set out the ingredients that must be satisfied by a party who seeks to rely on the doctrine of adverse possession. He stated thus:-

- “ a) The intruder resisting suit or claiming right by adverse possession must make physical entry and be in actual possession or occupancy of the land for the statutory period.
- b) The entry and occupation must be with, or maintained under, some claim or colour of right or title, made in good faith by the stranger seeking to invoke the doctrine of adverse possession as against everyone else.
- c) The occupation of land by the intruder who pleads adverse possession must be a non-permissive use, i.e., without permission from the true owner of the land occupant. (emphasis added)
- d) The non-permissive actual possession hostile to the current owner must be unequivocally exclusive, and with an evinced, unmistakable animus possidendi. That is to say, occupation with the clear intention of excluding the owner as well as other people.
- e) The possession by the person seeking to prove title by adverse possession must be visible, open, and notorious, given reasonable notice to the owner and the community of the exercise of dominion over the land.
- f) The possession must be continuous, uninterrupted, and unbroken for the necessary statutory period.
- g) The rightful owner must know that he is ousted. He must be aware that he had been dispossessed, or he must have parted and intended to part with possession.”

35. In the present case, it is not disputed that the Applicants have been residing on a portion of the contested land. However, there is a dispute regarding when they first entered the land and how they gained access to it, and the extent of their occupation. The Applicants assert that they moved onto the land in 1995, while the Respondent claims that the Applicants did not enter the property until sometime in 2005, after they were evicted from their father’s land.

36. To support their claim, the Applicants called PW2, who testified as the agricultural officer who assessed the tea bushes on the 1st Plaintiff’s land. He produced a verification certificate from the Kenya Tea



Development Authority dated 1995. The Plaintiff also presented a permit to operate a tea nursery, which was dated 30th July 1996. However, these two documents do little to support the Applicants' assertion that they occupied the suit land in 1995. The verification certificate does not specify which land it related to, while the permit was issued for title number Baragwe/Guama 309 in 1996 to the 1st Plaintiff/Applicant which land was owned by his father.

37. The conflicting evidence presented suggests that the Applicant did not enter the suit land in 1995. This Court agrees with the Respondent, who testified that the 1st Plaintiff and his siblings entered the land only after their late father sold his land parcel Baragwe/Guama/309 and was faced with eviction. This was further corroborated by DW2, who testified, "The plaintiffs were given a place to reside on. That was in 2006." Similarly, the abstract of the title for land parcel Baragwe/Guama/309 shows that the caution placed by Justus Murigu Njoka was removed, and the title was closed upon subdivision, with a new title issued on 31st July 2003. There is also an order issued in Milimani Magistrate's Commercial Court Civil Case No. 6383 of 1998 on 27.9.2006 authorizing the Executive Officer to sign all necessary transfer documents to effect the transfer of land parcel Baragwe/Guama/2172 to the purchaser, Daniel Magu Ntaire, on behalf of the defendants. This evidence indicates that by the time the Court at Milimani Commercial Courts was hearing the case and making its determination in 2006, land parcel No. 309 had already been transferred from the Applicant's father's name to Justus Murigu Njoka. In his evidence, the Applicant also admitted that "we were harvesting my father's coffee in parcel 296."
38. Without any evidence to the contrary, this Court is inclined to agree with the Respondent that the Applicants moved onto the suit land after their father sold his land parcel Baragwe/Guama/309 and subsequently forcefully evicted from the land.
39. To establish the nature of possession, the Applicant must demonstrate that he entered the disputed land without the owner's permission, or by force or in secrecy. Additionally, he must show that his possession and use of the land was adverse to the rights and interest of the registered owner. In the instant case the Applicants deny they got permission to enter the property from the Respondent or her late husband. They claim that the entry was approved by their grandmother, who allegedly stated that the land should be occupied by her grandsons who were named after her late husband. The 1st Applicant testified, "My grandmother is the one who showed me where to occupy. She indicated that my grandfather said the land would be shared among the children named after him." However, during cross-examination, he admitted that at the time of moving onto the land, both his grandfather and grandmother were dead and it was thus not possible that the grandmother showed the Applicant the portion to occupy.
40. The Respondent insists that the Applicants were licensees, having been allowed entry by her late husband. She claims that when they were granted access to the suit land, the title was still in the name of her deceased son, Andrew Muchiri Cyrus. Both the 1st Applicant and the Respondent acknowledge that at the time of their entry, the suit land was registered in Andrew Muchiri Cyrus's name. This notwithstanding, it means that at the time of their entry both the Respondent and her late husband were the beneficial owners capable of giving consent to the Applicants. The Respondent's name was entered into the green card on 7th December 2015, and the title was subsequently issued in her name on 13th January 2016. The Respondent noted that she applied for and was granted letters of administration, which allowed the title to be transferred to her. The Applicants acknowledged that they approached the High Court to seek the revocation of the grant issued to the Defendant. The High Court referred the matter to the Lower Court, which heard the succession case. The Applicants do not appear to have pursued the matter before the Gichugu Magistrates Court where it was transferred to.



41. Having considered and evaluated the evidence, I am inclined to accept the evidence of the Defendant and DW2 that indeed the Applicants entered into the suit land with the permission of the Defendant's husband. It is noteworthy that the suit land was registered in the name of his son Andrew Muchiri Cyrus, who died in 1989 without leaving any wife or child. His father by law was his next of kin and in terms of Section 39(1)(a) of the Law of Succession Act, Cap 160 Laws of Kenya ranked in priority as the person entitled to inherit the land that was held by his deceased son. Section 39(1) of the Law of Succession Act provides as follows:-
- (1) Where an intestate has left no surviving spouse or children, the net intestate estate shall devolve upon the kindred of the intestate in the following order of priority—
 - (a) father; or if dead
 - (b) mother; or if dead
 - (c) brothers and sisters, and any child or children of deceased brothers and sisters, in equal shares; or if none
 - (d) half-brothers and half-sisters and any child or children of deceased half-brothers and half-sisters, in equal shares; or if none
 - (e) the relatives who are in the nearest degree of consanguinity up to and including the sixth degree, in equal shares.
42. The Defendant's husband had the ostensible right and authority as the next of kin of his deceased son and to whom the land devolved upon his son's death, to permit the Applicants to enter into and utilise the suit land. Following the death of her husband in 2008, without effecting the succession in respect of the suit property, the Defendant was the next in line in priority to inherit the land of her son and she filed succession proceedings pursuant to which she was issued a grant and the land was transmitted to her as the beneficiary and she was registered as the owner on 7th December 2015 and issued on title deed on 13th January 2016.
43. In the premises it is my finding and determination that the Plaintiffs/Applicants possession and occupation of a portion of land parcel Baragwe/Guama/296 did not constitute adverse possession as the entry onto the land was with the permission of the owner. The entry occupation and possession having been through permission it matters not that the Applicants have been in possession for over 12 years; the doctrine of adverse possession would not be applicable in such situations.
44. Before I conclude this Judgment it is worthwhile to note that the Defendant during her testimony indicated she had no desire of seeking the eviction of the Plaintiffs who it is admitted have settled and even constructed permanent houses on the land. To forestall the occurrence of future disputes either from the parties and/or their dependants, I would implore the parties to consider engaging in Alternative Dispute Resolution (ADR) such as Mediation, Conciliation or Arbitration to reach some sort of settlement since it is certain the dispute between the parties and/or amongst their kin touching on this land is bound to recur. The Constitution Article 159(2)(c) and Section 20 Environment and Land Court Act, 2011 enjoins the Court to encourage and promote ADR and hopefully the parties will try the option to resolve the matter among themselves.
45. Be it as it maybe on the evidence I am not satisfied that the Plaintiffs/applicants proved their case on a balance of probabilities. I accordingly dismiss the Plaintiffs suit.
46. In regard to costs I take cognisance that the parties are family and live together on the same land. In exercise of my discretion I order that each party bear their own costs of the suit.



**JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 12TH DAY
OF JUNE 2025.**

J. M. MUTUNGI

ELC - JUDGE

