



**Kariuki v Waweru (Environmental and Land Originating Summons
E006 of 2024) [2025] KEELC 6736 (KLR) (7 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 6736 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E006 OF 2024**

**MAO ODENY, J
OCTOBER 7, 2025**

BETWEEN

JOHN WAWERU KARIUKI PLAINTIFF

AND

PETER WAWERU DEFENDANT

JUDGMENT

1. The Plaintiff herein sued the Defendant vide Originating Summons dated 8th July, 2024 seeking, the following orders:
 - a. A declaration that the Plaintiff/Applicant is entitled to be registered forthwith as owner of Kihingo/Likia Block 2/176 (Pwani Mutukanio) which the Plaintiff has been in adverse possession for more than twelve (12) years immediately preceding the presentation of this suit and on which he has lived openly and continuously as of right and in adverse possession and without any interruption from the Defendant/Respondent or his predecessors or agents or servants in the above title and that the Defendant's/Respondent's title Kihingo/Likia Block 2/176 (Pwani Mutukanio) has been extinguished in favour of the Plaintiff Applicant under section 37 and 38 of the *Limitation of Actions Act*.
 - b. That the Defendant/Respondent do transfer Kihingo/Likia Block 2/176 (Pwani Mutukanio) to the Plaintiff/Applicant and in default the Deputy Registrar be authorized to do and or sign all documents to effect transfer of Kihingo/Likia Block 2/176 (Pwani Mutukanio).
 - c. That an order for costs of this application.

Plaintiff's Case

2. PW1, John Waweru Kariuki, adopted his supporting affidavit attached to the Originating Summons as his evidence and stated that he has been cultivating the suit land situate in Njoro. It was his evidence



that there is no structure on the suit land but he had constructed one, which he demolished three years ago.

3. PW1 further testified that he bought three shares from Mutukanio Njoro Cooperative Society, where he was given three parcels of land. He further testified that when he went to pick the titles, he found out that the Defendant had taken the title to the suit land, which belonged to him.
4. PW1 informed the court that nobody has come to claim the land from him and does not know the Defendant. PW1 urged the court to grant the orders in the Originating Summons as prayed.
5. The Defendant was served by way of substituted service, but did not file any response to the Originating Summons.

Plaintiff's Submissions

6. Ms. Wangare, counsel for the Plaintiff, filed submissions, dated 9th July, 2025, and submitted that the Plaintiff relied on the Google area map to confirm the ground position of the three parcels of land.
7. It was counsel's submission, that there is no evidence before the court to contradict the position that the Plaintiff has been in possession of the suit land (Kihingo/Likia Block 2/176 (Pwani Mutukanio) together with the other two parcels of land that neighbor the suit land (Kihingo/Likia Block 2/175 (Pwani Mutukanio) and Kihingo/Likia Block 2/177 (Pwani Mutukanio).
8. Counsel submitted, that the Plaintiff has proved his case on a balance of probability, and relied on Section 7, 13 (1) & 38 (1) and (2) of the Limitation of Actions Act and Section 27 of the Civil Procedure Act.
9. Ms. Wangare also relied on the cases of Kasuve v Mwaani Investments Limited & 4 others 1 KLR 184, Kamataka Board of Wakf v Government of India & Others [2004] 10 SCC 779 and Tabitha Waittherero Kimani v Joshua Ng'ang'a [2017] eKLR, and urged the court to grant the orders as prayed together with costs.

Analysis And Determination

10. The issue for determination is whether the Plaintiff has met the threshold for grant of an order of adverse possession. The Plaintiff testified that he is the registered owner of Parcel Nos. Kihingo/Likia Block 2/175 (Pwani Mutukanio) and Kihingo/Likia Block 2/177 (Pwani Mutukanio), and that the suit land parcel No Kihingo/Likia Block 2/176 (Pwani Mutukanio) is between the two parcels of land which, he has cultivated for a period of more than 12 years uninterrupted. PW1 told the court that he took possession of the suit parcel in 1974, and he has remained in exclusive control of the same.
11. PW1 further stated conducted a search and realized that the suit property had been registered in the Defendant's name. He produced a certified copy of the green card, which indicated that a title deed was issued to the Defendant on 3rd February 1997.
12. The principles to be considered in an application for an order of adverse possession are now well settled as set out in several provisions of the Limitation of Actions Act. Section 7 of the said Act places a bar on actions to recover land after 12 years from the date on which the right accrued. Further Section 13 of the same Act provides that adverse possession as the exception to this limitation:

“(1) (1) 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.”

13. In the case of case of *Wanyoike Gathure v. Beverly* [1965] EA 514, 518, 519, per Miles J. where it was held:

“No right of action to recover land accrues unless the lands are in the possession of some person in whose favour the period of limitation can run. The possession is after all adverse possession, so the statute does not begin to operate unless and until the true owner is not in possession of his land. Dispossession and discontinuance must go together; see section 9(1) and 13 of the Limitation of Actions Act. So where the use and enjoyment of the land are possible there can be no dispossession if the registered and rightful owner enjoys it. Also, if enjoyment and use are not possible (e.g. if the area is flooded) then dispossession for that period cannot occur (see generally paragraphs 481 and 482 on pages 251, 252, of 24 Halsbury’s Law of England (3rd Edn).”

14. The Plaintiff testified that the Defendant, the registered owner of the suit parcel in not in possession and that he is the one who has been in possession since 1974. There is no evidence that the defendant is enjoying the use of the land, hence the dispossession.

15. Similarly, in the case of *Mtana Lewa – v- Kabindi Ngala Mwagandi* [2015] eKLR the Court of Appeal defined adverse possession as:

“Adverse possession is essentially a situation where a person takes possession of land and asserts rights over it and the person having title omits or neglects to take action against such person in assertion of his title for a certain period, in Kenya, twelve (12) years. The process springs into action essentially by default or in action of the owner. The essential prerequisites being that possession of the adverse possessor is neither by force or stealth nor under the license of the owner. It must be adequate in continuity, in publicity and in extent to show that possession is adverse to the title owner.”

16. For a claim of adverse possession to succeed, it is important for the Applicant to clearly identify the land and the portions claimed as was held in the case of *Wilson Kazungu Katana & 101 Others v. Salim Abdalla Bakshwein & Another* [2015] eKLR that:

“The identification of the land in possession of an adverse possessor is an important and integral part of the process of proving adverse possession. This was so stated by this Court in the case of *Githu v. Ndete* [1984] KLR 776. The appellants did not discharge the burden of proving and specifically identifying or even describing the portions, sizes and locations of those in their respective possession from the larger suit premises that they sought to have decreed to them.”

17. PW 1 produced copies of RIM and Google map for identification of the suit parcel. The production of a copy of a title is important for verification of the parcel that the Applicant is seeking to be declared to have acquired through adverse possession. It would be an injustice for a court to issue an order of adverse possession on the wrong parcel of land.



18. Similarly, an applicant must identify with precision the location of the parcel of land that he/she is claiming. The Applicant produced a Google map of the area showing the exact location of the parcel of land.
19. Further, possession of a claimant in an adverse possession claim must be continuous and without any interruptions and was held in the case of *Kimani Ruchire v. Swift Rutherfords & Co. Ltd* (1980) KLR 10 at page 16 letter B, where Kneller J. held that:

“The possession must be continuous. It must not be broken for any temporary purposes or any endeavours to interrupt it by way of recurrent consideration.”
20. I have considered the pleadings, the evidence on record, the submissions by counsel, together with the relevant judicial authorities and find that the Plaintiff/Applicant has proved that he has acquired the suit land through the doctrine of adverse possession. I therefore issue the following orders:
 - a. The Plaintiff shall be registered forthwith as owner of Kihingo/Likia Block 2/176 (Pwani Mutukanio) by virtue of adverse possession.
 - b. The Defendant shall transfer Kihingo/Likia Block 2/176 (Pwani Mutukanio) to the Plaintiff within 45 days and in default the Deputy Registrar be authorized to sign all documents to effect transfer of Kihingo/Likia Block 2/176 (Pwani Mutukanio).
 - c. Each party shall bear their own costs.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 7TH DAY OF OCTOBER 2025.

M. A. ODENY

JUDGE

