



Koigi & another v Muriithi & 5 others (Environmental and Land Originating Summons 2 of 2020) [2025] KEELC 6615 (KLR) (2 October 2025) (Judgment)

Neutral citation: [2025] KEELC 6615 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 2 OF 2020**

**JM MUTUNGI, J
OCTOBER 2, 2025**

BETWEEN

**SAMSON MAINA KOIGI 1ST PLAINTIFF
JULIA WANGARI MBUI 2ND PLAINTIFF**

AND

**JAMLICK MURIITHI 1ST DEFENDANT
PURITY WAWIRA MBUI (SUED AS THE LEGAL REPRESENTATIVE OF THE
ESTATE OF SAMSON KOIGI MBUI OBADIAH) 2ND DEFENDANT
MERCY NJERI MBUI 3RD DEFENDANT
CATHERINE MUTHONI MBUI 4TH DEFENDANT
DAVID CHOMBA MBUI 5TH DEFENDANT
EVERLYN WAIRIMU MBUI 6TH DEFENDANT**

JUDGMENT

1. The 1st and 2nd Plaintiffs instituted the instant suit by way of an Originating Summons dated 20th January, 2019 (should have been 2020) which was subsequently amended in October 2023 date not indicated. By the Amended Originating Summons the Plaintiffs sought the determination of the following questions:-
 1. Whether the Plaintiffs have been in open, continuous, uninterrupted and exclusive occupation, possession and use of the land parcel numbers Baragwe/Raimu/1500 and 1509 since 1998, a period of more than 12 years?
 2. Whether the Plaintiffs have acquired title to land parcel Number by way of adverse possession?



2. The Plaintiffs sought orders that they be registered as owners of land parcels Baragwe/Raimu/1500 and 1509 and that they be awarded the costs of the suit.
3. The Originating Summons was supported on the Affidavit sworn by the 1st Plaintiff dated 24th October 2023 and the documents annexed thereto.
4. The brief facts are that the 1st and 2nd Plaintiffs are son and mother respectively. The Plaintiffs averred that one late Kathece Gatongu was the registered owner of land parcel Baragwe/Raimu/279 and allegedly the 2nd Plaintiff had paid him some money to purchase a portion of 1 ½ Acres but when the land was subdivided, instead of the late Kathece Gatongu transferring the land to the 2nd Plaintiff he transferred the same to the 1st Defendant, who was his son. The portions transferred to the 1st Defendant were land parcels Baragwe/Raimu/1500 and 1509. The Plaintiffs aver that the 1st Defendant never took possession of the land and they claim that in 1998 they (Plaintiffs) entered into possession of the two parcels of land started cultivating and have remained in possession ever since.
5. The Plaintiffs however state the suit land was transferred in the name of Samson Mbui Obadiah Kogi in 2005 as per the abstracts of the title (green card) before being transferred to the 3rd to 7th Defendants (as beneficiaries of the late Samson Mbui Obadiah Kogi) who they joined to the suit vide the Amended Originating Summons. The Plaintiffs nonetheless contend they have remained in uninterrupted possession of the two parcels of land and are entitled to be registered as the owners by virtue of the doctrine of adverse possession.
6. The 2nd Defendant upon being served filed a Replying Affidavit in opposition to the Originating Summons dated 5th February 2020. The 2nd Defendant denied she had been appointed administrator of the estate of Samson Koigi Mbui Obadiah. The 2nd Defendant averred that the Plaintiffs were relatives to the late Samson Koigi Mbui Obadiah who she averred had purchased the land parcels Baragwe/Raimu/1500 and 1509 from the 1st Defendant. She stated the deceased had constructed rental houses on land parcel 1500 and was collecting rent from the tenants. She averred that the 2nd Plaintiff had been engaged by the deceased as a caretaker and that it was only after the deceased died that the Plaintiff started claiming ownership of the land and cultivating thereon.
7. Following the Amendment of the Originating Summons and joinder of the 3rd to the 7th Defendants as parties, the 2nd Defendant swore a Replying Affidavit on her own behalf and on behalf of the 3rd to 7th Defendants dated 2nd February 2024. In the Replying Affidavit she deponed she was the legal representative of the estate of Samson Koigi Mbui Obadiah (deceased). She averred that she and the 3rd to 7th Defendants were the registered proprietors of land parcel Baragwe/Raimu/1500 pursuant to Kerugoya CM Succession Cause No. 391 of 2019. She deponed that their late father had purchased the suit parcels of land in 2005 from the 1st Defendant with whom he litigated in Embu HCCC No. 25 of 2008 where he was decreed as the owner of the land parcels. She further deponed that the 2nd Plaintiff was only a farm caretaker of their deceased father and that it was only after their father died that the 2nd Plaintiff started cultivating on the land and claiming the land belonged to her. The 2nd Defendant asserted the deceased had constructed four (4) rental houses on land parcel 1500 and was collecting rent from the tenants. The Defendants denied the Plaintiffs were entitled to the reliefs they sought.
8. The suit was heard viva voce and the 1st Plaintiff, Samson Maina Koigi testified in support of the Plaintiffs case. In his evidence he affirmed the 2nd Plaintiff was his mother and that the deceased, Samson Mbui Obadiah was his Cousin and that he was an Uncle to the 2nd to 7th Defendants. He stated he did not know the 1st Defendant, Jamleck Muriithi, and that they sued him as he was shown to have been the owner of the land as per the green cards.



9. The 1st Plaintiff testified that his mother purchased a portion of 1 ½ Acres from land parcel number Baragwe/Raimu/279 around 1990 from one Kethece Gatongu (deceased) before the land was subdivided. He stated the agreement for purchase was oral. It was his evidence that after the subdivision of the original land in 1997, they in 1998 entered and started utilising land parcels 1500 and 1509 which were resultant subdivisions. He stated he planted 200 coffee trees on land parcel 1500 which he harvests and sells the coffee privately at home. He acknowledged the late Samson Koigi Mbui had constructed some rental houses on parcel 1509 which he stated were constructed in 2016. He admitted he never objected to the construction of the houses when the deceased was putting them up. He affirmed there were tenants in the rental houses but maintained he continued to be in possession and to utilise land parcel 1500 notwithstanding that he was in October 2019 served a notice to vacate by the 2nd Defendant.
10. The 2nd Defendant, Purity Wawira Mbui (DW1), testified on 11th March 2025 on her own behalf and on behalf of the 3rd to 7th Defendants, her siblings. She adopted her witness statement dated 2nd February 2024 and produced her bundle of documents, namely an authority to plead, a certificate of grant issued in Kerugoya Succession Cause No. 391 of 2019, and photographs of the rental houses erected on the land parcel Baragwi/Raimu/1500.
11. In cross-examination, DW1 stated that their late father, Samson Koigi Mbui Obadiah, purchased parcels Baragwe/Raimu/1500 and 1509 from the 1st Defendant in 2005 and that in 2006 her father constructed rental houses on parcel 1509, which he leased out and from which he collected rent until his death in 2019. She explained that her father also planted and maintained trees on land parcel 1509, which was otherwise not under cultivation.
12. On re-examination, 2nd Defendant clarified that the 2nd Plaintiff was never in occupation of the parcels of land but merely oversaw the land on behalf of her father. She reiterated that parcel 1509 was developed with rental houses, while parcel 1500 remained under trees, with only a small portion of about a quarter acre under cultivation.

Parties Written Submission

13. The Plaintiffs, through their written submissions dated 8th April 2025, argued that they have acquired ownership of parcels Baragwe/Raimu/1500 and 1509 by way of adverse possession. They submitted that they entered the land in 1998, took possession openly, and have remained in continuous and uninterrupted occupation for over twenty-seven years. They asserted that their use has been adverse to the rights of the registered owners, and therefore, their possession had matured into ownership under the *Limitation of Actions Act*.
14. The Plaintiffs acknowledged that land parcel 1509 was developed with rental houses by the late Samson Koigi Mbui, but they maintained that land parcel 1500 had never been built on and had always been under their cultivation. The Plaintiffs submitted that their occupation, having lasted well beyond the statutory twelve years, could not be defeated by subsequent transfers to the Defendants.
15. The Plaintiffs further submitted that their entry onto the land was initially premised on an oral sale agreement with the late Kethece Gatongu, and although the agreement was not in writing, Section 3(7) of the *Law of Contract Act* exempts oral contracts relating to land where there had been part performance. They contended that their long possession and use of the land constituted sufficient part performance to validate the transaction.
16. In support of their position, the Plaintiffs relied on several authorities including:



1. *Mtana Lewa v Kahindi Ngala Mwangandi* (2015) eKLR, where the Court of Appeal clarified the elements of adverse possession;
 2. *Wambugu v Njuguna* (1983) KLR 173 and *Gatimu Kinguru v Muya Gathangi* (1976) KLR 253, on the requirements of open and uninterrupted possession; and
 3. *Jandu v Kirplal & Another* (1975) EA 225, on the principle that possession must be hostile and adverse to the title holder.
17. The Plaintiffs urged the Court to declare that they are entitled to be registered as proprietors of the two parcels of land on account of having adversely possessed the land for the prescribed period.
 18. The 2nd to 7th Defendants, in their written submissions dated 27th May 2025, contended that the Plaintiffs' claim of adverse possession was unfounded and unproven. They argued that the Plaintiffs failed to establish the key elements of adverse possession, namely, exclusive, open, and continuous occupation of the suit parcels for the statutory period of twelve years.
 19. The Defendants submitted that the land in question was purchased by their late father, Samson Koigi Mbui Obadiah, in 2005 from the 1st Defendant, and that he took immediate possession of the same. They asserted that their father developed parcel 1509 by putting up rental houses and a shop, which he let out and from which he collected rent until he died in 2019. They further maintained that parcel 1500 was largely under trees and remained under their father's care.
 20. The Defendants submitted that during their father's lifetime, the Plaintiffs never resided on or cultivated on the suit parcels. They submitted that the Plaintiffs only entered the land after 2019, following their father's death, and therefore any claim of occupation since 1998 was a fabrication. The Defendants refuted the allegation that the 2nd Plaintiff purchased land from the late Kathece Gatongu, or that she was ever in possession, reiterating that she was only engaged as a caretaker by their father.
 21. The Defendants relied on several authorities to support their position, including:
 1. *Samuel Miki Waweru v Jane Njeri Richu* (2007) eKLR, where the Court held that acts of possession by permission or under licence cannot amount to adverse possession;
 2. *Chege & Another v Kamau & Another* (2024) eKLR, affirming the requirement of clear proof of exclusive occupation;
 3. *Methodist Church of Kenya (Mtwapa Branch) v Kenga & Company Advocates* (2023) eKLR; and
 4. *Ondijo v Ochola & 4 Others* (2024) eKLR.
 22. Relying on these authorities, the Defendants submitted that the Plaintiffs had not demonstrated any occupation that could extinguish the title of their late father or of themselves as successors. They therefore urged the Court to dismiss the claim with costs.

Analysis and Determination

23. Having carefully considered the amended Originating Summons, the responses thereto, the oral and documentary evidence, and the rival submissions, the single issue for determination is whether the Plaintiffs have established entitlement to parcels Baragwe/Raimu/1500 and 1509 by way of adverse possession.



24. Section 7 of the *Limitation of Actions Act* provides that no action may be brought to recover land after the expiry of twelve years from the date when the right of action accrued.

Section 13 of the Act of the *Limitation of Actions Act* embodies the doctrine of adverse possession and provides as follows:

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 Section 9, 10, 11, and 12 a right of action to recover land accrues on a certain date and no person is in adverse on that date, a right of action does not accrue unless and until some person takes adverse possession of the land.
2. 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.
3. For the purposes of this section, receipt of rent under a lease by a person wrongfully claiming, in accordance with Section 12(3), the land in reversion is taken to be adverse possession of the land.

25. Section 38(1) of the *Limitation of Actions Act* empowers a claimant to seek registration in place of the title holder upon proof of being an adverse possessor of land for the period prescribed by the law. Section 38(1) 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.

26. The doctrine of adverse possession was aptly defined in *Mtana Lewa vs Kahindi Ngala Mwangandi* (2015) eKLR where the Court of Appeal held that:-

“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, it is twelve (12) years. The process springs into action essentially by default or inaction of the owner. The essential prerequisites are that the possession of the adverse possessor is neither by force of stealth nor 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.”

27. The Court of Appeal in *Mate Gitabi vs Jane Kabubu Muga Alias Jane Kaburu Muga & 3 Others* [2017] eKLR, explained that for adverse possession to arise, the occupation must be open, continuous, exclusive, and hostile to the rights of the true owner, expressed in the Latin maxim *nec vi, nec clam, nec precario* without force, without secrecy, and without permission.

28. The Plaintiffs' case is that they entered the land in 1998 after an oral sale, and that they have cultivated and remained in occupation since then. The Plaintiffs produced the green cards and photographs of the suit land. Their narrative was that their occupation has been adverse for over 27 years.



29. The evidence, adduced at the trial does not support their position. The photographs exhibited show the houses developed by the deceased and the 1st Plaintiff himself admitted that rental houses exist on parcel 1509, that the late Samson Koigi Mbuu constructed. The Plaintiff did not raise any objection when the construction took place. Such acquiescence was inconsistent with exclusive and hostile possession. An adverse possessor who allows the title holder to put up permanent structures and collect rent without resistance cannot be said to have dispossessed the owner. The 1st Plaintiff in his evidence stated the deceased constructed the houses in 2016 though the Defendants stated it was in 2006. Never mind when it was, but the deceased in entering onto the and effecting construction reasserted his ownership rights and the Plaintiffs acquiesced. If there had been any adverse possession before then time stopped running as the deceased regained possession.
30. Further, the Plaintiffs did not present independent proof of their alleged continuous adverse possession from 1998. No receipts, cooperative records, or corroborating testimony was produced. Their evidence stands largely on mere assertions and averments which were denied by the 2nd to 7th Defendants. The Plaintiffs did not even call any neighbour who knew them and was aware of their alleged possession and use of the land as an independent witness to corroborate their evidence of adverse possession. There is no evidence to support their claim of being adverse possessors.
31. By contrast, the Defendants' evidence that their father purchased the land in 2005, litigated over it, constructed rental houses by 2006, planted trees on parcel 1500, and collected rent until his death in 2019, remains largely uncontroverted. That account was supported by the photographs of the rental units and the grant issued in Succession Cause No. 391 of 2019.
32. Another difficulty for the Plaintiffs is that their claim is tied to an alleged oral purchase. As the Courts have held, time and again, where possession follows a sale agreement, time for adverse possession only starts to run upon full payment of the purchase price. The Plaintiffs tendered no proof of consideration, and/or payment of the same. In the premises the Court holds there was no proof of any sale agreement between the 2nd Plaintiff and Kathece Gatongu (deceased) in regard to any land.
33. Taken together, the Plaintiffs have failed to establish that their occupation was adverse in nature, or that it endured exclusively and without interruption for the statutory period. The existence of rental houses on parcel 1509, from which the deceased continued to collect rent until he died in 2019 meant that he had not been dispossessed of his land and the claim of adverse possession must therefore fail. Indeed what appears apparent is that any possession or occupation of the suit property was with the consent and permission of the deceased considering the deceased and the Plaintiffs were close relatives. The Plaintiffs the Court considers were intent on exploiting the situation in the off chance they could get away with it and acquire the land at the expense of the rightful beneficiaries.
34. In the end, the Plaintiffs have not proved that their occupation of parcels Baragwe/Raimu/1500 and 1509 was adverse and I hold and find the Plaintiffs have failed to prove their claim of adverse possession on a balance of probabilities. The suit is accordingly dismissed but considering the relationship of the parties I make no order for costs. Parties shall bear their own costs of the suit.

JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 2ND DAY OF OCTOBER 2025.

J. M. MUTUNGI

ELC - JUDGE

