



**Mwarania v Mukira (Land Case (Originating Summons) E004 of 2024)  
[2025] KEELC 7140 (KLR) (15 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 7140 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
LAND CASE (ORIGINATING SUMMONS) E004 OF 2024  
BM EBOSO, J  
OCTOBER 15, 2025**

**BETWEEN**

**WILLIAMS MURIITHI MWARANIA ..... PLAINTIFF**

**AND**

**STANLEY K MUKIRA ..... DEFENDANT**

**JUDGMENT**

1. On 7/2/2024, Williams Murithi Mwarania [the plaintiff] took out an originating summons dated 5/2/2024 seeking the following orders against Stanley K. Mukira:
  - (i) a declaration that he has become entitled to land parcel number Kiamuri "A"/186 under the doctrine of adverse possession and he should be registered as proprietor of the said parcel of land; and
  - (ii) an order decreeing the defendant to execute transfer documents conveying the land to him, and in default, the Executive Officer of this court do execute the transfer documents.
2. On 6/3/2024, the plaintiff was granted leave to serve summons and other suit papers on the defendant through a notice in the Daily Nation Newspaper or the East African Standard Newspaper. The plaintiff subsequently filed an affidavit of service sworn by Kaimenyi Kithinji, indicating that service was effected on the defendant vide a notice published in the Standard Newspaper edition of 16/4/2024.
3. On 4/2/2025 and 17/3/2025, the court, once more, directed the plaintiff to serve a hearing notice on the defendant through a prominent notice in either the Daily Nation or the Standard Newspaper. The defendant neither entered appearance nor filed a defence in the suit. He did not attend court during the hearing of the suit. Consequently, the suit was heard as an undefended cause on 15/5/2025. The suit now falls for determination through this judgment.



4. The plaintiff testified as PW1 and led evidence by Edward Njeru Kanyi who testified as PW2. He filed written submissions dated 10/9/2025 through M/s Kaimenyi Kithinji & Co Advocates.
5. In summary, the case of the plaintiff is that the defendant is the registered proprietor of the suit land. He [the plaintiff] has been in open, public, exclusive and uninterrupted adverse possession of the suit land since the year 1990. He has made substantial developments on the land. He cultivates crops such as maize, beans, green grams and bananas on the land. Despite the defendant being aware of his adverse possession of the land, he has never interfered with his occupation and possession of the land. He contends that his title to the suit land has crystallized under the doctrine of adverse possession. The plaintiff's evidence was corroborated by Edward Njeru Kanyi who stated that the plaintiff has been in uninterrupted possession of the suit land since 1990.
6. In the written submissions dated 10/9/2025, counsel for the plaintiff argued that the substantive issue which falls for determination in the suit is whether the plaintiff has acquired title to the suit land through adverse possession. Citing various decided cases, counsel submitted that the plaintiff's evidence of adverse possession of the suit land remained uncontroverted and urged the court to grant him the orders sought in the originating summons. Counsel urged the court to grant the plaintiff costs of the suit.
7. The court has considered the originating summons, the evidence and the submissions tendered by the plaintiff. The originating summons is an undefended cause. As correctly pointed out, the key question that falls for determination in this judgment is whether the plaintiff has acquired ownership of the suit land through adverse possession.
8. The common law doctrine of adverse possession has statutory underpinnings in Sections 7 and 17 of the *Limitation of Actions Act*. Section 7 provides as follows:

“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”
9. Section 17 of the Act provides as follows:

“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.”
10. Suffice it to also observe that, Section 7(d) of the *Land Act* recognizes prescription as one of the methods through which title to land is acquired. It is also important to observe that the question relating to the constitutionality of the doctrine of adverse possession was examined by the Court of Appeal and was answered in the affirmative in the case of *Mtana Lewa Vs Kahindi Ngala Mwagandi* [2015] eKLR.
11. 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. Thirdly, he must 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, the possession must be continuous; it must not be broken or interrupted.



12. The Court of Appeal defined adverse possession in *Mtana Lewa Vs 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.”

13. The Court of Appeal outlined the following criteria for acquisition of title under the doctrine of adverse possession in *Wilson Kazungu Katana & 101 others Vs 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.”

14. The plaintiff pleaded and testified that he has been in open, exclusive and uninterrupted adverse possession of the suit land since the year 1990. His evidence was corroborated by PW2. The plaintiff produced an official search indicating that Stanley K Mukira [defendant] was the registered proprietor of the suit land. The defendant did not enter appearance and did not file a response to the originating summons. The plaintiff’s evidence is uncontroverted. In the above circumstances, the court is satisfied that the plaintiff has proved his case on a balance of probabilities.

15. The plaintiff asked the court to award him costs of the suit. The plaintiff’s case was not contested. By taking out the originating summons, the plaintiff was merely taking the requisite steps towards the vesting of the suit land in his name. Given that the defendant did not step forward to oppose the claim, there is no proper basis for condemning the defendant to bear costs of the originating summons. For this reason, there will be no award of costs.

16. Consequently, judgment is hereby entered for the plaintiff in the following terms:

- a. It is hereby declared that the plaintiff has become entitled to land parcel number Kiamuri “A”/186 measuring approximately 0.6 hectares through adverse possession.
- b. The Deputy Registrar of this court is hereby decreed to execute all documents/instruments necessary for vesting the said land in the name of the plaintiff.

**DATED, SIGNED AND DELIVERED AT MERU THIS 15TH DAY OF OCTOBER, 2025.**

**B.M EBOSO [MR]**

**JUDGE**

