

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

ELCEPOS CASE NO. E007 OF 2024 (O.S)

PETER MIRITI THILANGE
APPLICANT

VERSUS

ELIZABETH OLIVE WANGARI
RESPONDENT

J U D G M E N T

1. The Plaintiff (Applicant) filed suit by way of Originating Summons dated 10th June 2024 seeking the following reliefs: -

- a) *A declaration that the interest of the Respondent has been extinguished in land parcel number MUGUGA/GITARU/536 by the Applicant's adverse possession thereof for a period of more than 12 years in terms of sections 17, 37 and 38 of the Limitation of Actions Act.*
- b) *A declaration that the Applicant has acquired a freehold interest in land parcel number MUGUGA/GITARU/536 by her adverse possession thereof for a period of more than 12 years.*
- c) *An order directing the Land Registrar Kiambu to register the Applicant as the absolute proprietor of land parcel number MUGUGA/GITARU/536 from the Respondent to the Applicant.*

d) The costs of this suit be borne by the Defendant/Respondent.

2. The originating Summons is anchored on the Applicant's Supporting Affidavit sworn on 10th July 2024. In the said affidavit he deposes that he has been in occupation of the suit property and he has been farming openly for a period of 30 years.
3. The Respondent was aware of his presence on the land but she never sent him away. That he has been in open, continuous and uninterrupted possession of the suit property to the knowledge of the Respondent and he has asserted hostile title to the owner of the suit property.
4. The Applicant therefore prays that she be declared to have acquired the suit property through adverse possession.
5. Despite being served with the Originating Summons the Respondent has never entered appearance or filed a Replying Affidavit.
6. The suit was set down for hearing by way of Formal proof when the Applicant testified and closed his case. He relied on his Supporting Affidavit as his evidence in chief. He told the court that he had been living on the suit property since 1995. He stated that he entered the suit property without the Respondent's permission. He constructed a house where he has been living and he also carries out some farming activities.

7. The Applicant produced a copy of his national identity card, a certificate of official search in respect of land parcel number MUGUGA/GITARU/536 and a copy of the green card for the suit property as Applicant's exhibits 1-3.
8. He prayed that he be declared as the owner of the suit property by way of adverse possession.
9. The Applicant's counsel filed his final submissions which I have taken into consideration in arriving at my decision.

Analysis and Determination

10. Having considered the pleadings, the Plaintiff's oral and documentary evidence as well as the submissions filed by the Plaintiff's counsel, the only issue for determination is whether he has met the threshold for adverse possession.
11. The law pertaining to adverse possession is contained in Section 7 and 38(1) of the Limitation of Actions Act which provides as follows:
12. Section 38(1) on the other hand states that:

"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."

13. The courts have put the above provisions of the law and the doctrine of adverse possession into context. In the case of **Celina Muthoni Kithinji** (supra) the court held as follows:

*“The requirements of adverse possession in Kenya have also been set out in the case of **Mbira vs Gachuhi (2002)1EALR 137** in which 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.”

14. In the instant case the Applicant testified that he had been in open, continuous and uninterrupted occupation of the suit property for a period of 30 years to the knowledge of the Respondent. That he has been living on a portion of the suit property and cultivating the remaining portion. She produced a certificate of official search which shows that the Respondent is the registered owner of the suit property.

In the circumstances, I am satisfied that that the Applicant has met the threshold for adverse possession and he is therefore entitled to the reliefs sought.

15. Accordingly, I enter judgment for the Applicant and make the following final orders:

- a) *A declaration is hereby issued that the interest of the Respondent has been extinguished in land parcel number MUGUGA/GITARU/536 by the applicant's adverse possession thereof for a period of more than 12 years in terms of sections 17,37 and 38 of the limitation of Actions Act.*
- b) *A declaration is hereby issued that that the Applicant has acquired a freehold interest in land parcel number MUGUGA/ GITARU/536 by her adverse possession thereof for a period of more than 12 years.*
- c) *An order is hereby issued directing the Land Registrar Kiambu to register the Applicant as the absolute proprietor of land parcel number MUGUGA/GITARU/536 in place of the Respondent.*
- d) *The costs of this suit be borne by the Defendant/Respondent.*

Dated, signed and delivered virtually at Thika this 16th day of October 2025.

.....
J. M ONYANGO
JUDGE

In the presence of:

1. Ms Wanjira for the Applicant
2. No appearance for the Respondent

Court Assistant: Hinga

ORIGINAL