



**Chege (Suing as Legal Representative of Murera 900 Self-Help Group)
v Kiratu & another (Environment and Planning Originating Summons
E001 of 2023) [2025] KEELC 5770 (KLR) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5770 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND PLANNING ORIGINATING SUMMONS E001 OF 2023
JM ONYANGO, J
JULY 31, 2025**

BETWEEN

**JAMES IRUNGU CHEGE (SUING AS LEGAL REPRESENTATIVE OF MURERA
900 SELF-HELP GROUP) PLAINTIFF**

AND

NYAMBURA KIRATU 1ST DEFENDANT

THE LAND REGISTRAR THIKA 2ND DEFENDANT

JUDGMENT

1. The Plaintiff (Applicant) filed suit by way of Originating Summons dated 6th June 2023 seeking the following reliefs: -
 - i. That the Plaintiff's members be declared to have acquired title by adverse possession to the 28 plots subdivided from the suit premises known as Land Reference Number Ruiru East Block 2/897 and Land Reference Number Ruiru East Block 2/900.
 - ii. That an order do issue registering the Plaintiff's members as the proprietors of the said 28 plots subdivided from parcels of land Ruiru East Block 2/897 and Land Reference Number Ruiru East Block 2/900 in place of the 1st Defendant and/or successors in title thereof and the 2nd Defendant be directed to effect the registration of the said order.
 - iii. That the costs of the Originating Summons be borne by each party.
2. Despite being served with the Originating Summons by way of substituted service through a Daily Nation Newspaper advertisement of 31st January 2024, the Respondents did not enter appearance or file a Defence. The matter was subsequently set down for hearing.



3. The Plaintiff testified as PW1. He adopted his Supporting Affidavit sworn on 6th June, 2023 as his evidence in chief. He told the court that he was the chairman of the entity known as Murera 900 which is a self-help group established to help its members in towns.
4. It was the Plaintiff's testimony that, as individual members of Murera 900, they purchased plots measuring 40 by 60 feet on Land Parcel Numbers Ruiru East Block 2/897 and Ruiru East Block 2/900 (hereinafter both referred to as "the suit land") from an entity known as Kamuingi Kuhotana Investments, over the period between 1985 and 2010. He stated that despite multiple attempts, their efforts to secure title deeds proved unsuccessful. Consequently, the group formalized itself into a self-help organization for the purpose of collectively pursuing the issuance of title documents.
5. According to the Plaintiff, upon purchasing the suit land, members were issued share certificates and took possession of their respective portions of land, where they proceeded to construct houses. He stated that they have occupied the said land peacefully and continuously for periods ranging from 15 to 29 years, without interruption.
6. He further testified that when the group conducted an official land search, they discovered that the suit land was registered in the name of one Nyambura Kiratu (the 1st Defendant) as of 6th October 1988. The Plaintiff claimed that 1st Defendant had no known connection to Kamuingi Kuhotana Investments, the entity from whom they had purchased the land. He added that their efforts to trace the 1st Defendant were unsuccessful and that, as a result, they obtained a court order permitting substituted service of court documents via publication in the Daily Nation newspaper.
7. The Plaintiff therefore prayed that members of Murera 900 be declared the rightful owners of Land Parcel Numbers Ruiru East Block 2/897 and Ruiru East Block 2/900. He further indicated their intention to engage a licensed land surveyor to prepare a report showing the specific area occupied by each group member.
8. Justus Kumunga Kiambati, testified as PW2. He identified himself as a licensed private surveyor based in Thika Town and working with the firm Geodetic Land Surveyors. PW2 confirmed that he prepared a report dated 26th February 2025 concerning the suit land, Land Parcel Numbers Ruiru East Block 2/897 and Ruiru East Block 2/900.
9. He stated that he visited the suit land on 26th February 2025, where he conducted a physical survey. His findings indicated that each parcel had been subdivided into 14 individual plots, each measuring 40 by 65 feet (equivalent to 240 square meters), making a total of 28 occupied plots across the two parcels.
10. He testified that of the 28 plots, 12 plots on Land Parcel Number Ruiru East Block 2/897 were developed and while 10 plots on Land Parcel Number Ruiru East Block 2/900 were already developed. The survey report he presented identified the specific plot allocations: plots numbered 1 to 14 were situated on Land Parcel Number Ruiru East Block 2/900, while plots numbered 15 to 28 were located on Land Parcel Number Ruiru East Block 2/897.
11. The Plaintiff filed written submissions dated 27th May 2025, through the firm of Mburu Machua & Company Advocates.

Plaintiff's Submissions

12. Counsel for the Plaintiff identified the following issue for determination: whether the Plaintiff and its members are entitled to the two suit properties, Land Reference Number Ruiru East Block 2/897 and Land Reference Number Ruiru East Block 2/900 by way of adverse possession.



13. The Plaintiff's counsel submitted that the central issue for determination was whether it and its members were entitled to Land Parcel Numbers Ruiru East Block 2/897 and Ruiru East Block 2/900 by way of adverse possession.
14. Counsel argued that, in line with established jurisprudence, including *Titus Mutuku Kasuve vs Mwaani Investments Limited & 4 others* [2004] eKLR; *Mtana Lewa vs Kahindi Ngala Mwangandi* [2015] eKLR; *Kweyu vs Omuto* [1990] eKLR; and *Gabriel Mbui vs Mukindia Manyara* [1993] eKLR, a person claiming adverse possession must prove that they have been in exclusive, open, and uninterrupted possession of land for a continuous period of 12 years, either by dispossessing the owner or by the owner's voluntary discontinuation of possession.
15. Counsel referred to Sections 38(1) and (2) of the Limitations of Actions Act (Cap 22), which permits a person to apply to the High Court for registration as proprietor after 12 years of adverse possession. She emphasized that the Plaintiff had been in continuous, peaceful, open, and uninterrupted occupation of the suit land since 1995. A surveyor's report was produced in evidence showing that the land had been subdivided into 28 distinct portions, each occupied by members of the Plaintiff society. Reliance was placed on the case of *Wambugu vs Njuguna* [1983] KLR 173 and *Mbira vs Gachuhi* (2002) 1 EALR 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...”
16. Further reliance was placed on *Jandu vs Kirpal & Another* [1975] EA 225, where it was held that mere acts of adverse possession are not sufficient unless they are adequate in continuity, publicity, and extent to demonstrate adverse occupation. The Court of Appeal's decision in *Mtana Lewa vs Kahindi Ngala Mwangandi* [2005] eKLR was also cited for the proposition that adverse possession arises where a person takes possession of land, asserts rights over it, and the registered proprietor does not assert their own rights for the prescribed statutory period.
17. Counsel further submitted that the Plaintiff's members had been residing on the suit land “*nec vi, nec clam, nec precario*” (without force, secrecy, or permission) for over 12 years. It was argued that the Plaintiff had met the threshold for the grant of the orders sought.
18. The Plaintiff also produced a certified official search showing that the land was registered in the name of the 1st Defendant, as well as a surveyor's report to support its claim. Counsel added that no evidence had been produced by the Defendants to prove the contrary.
19. In conclusion, counsel submitted that the Plaintiff had met the threshold for adverse possession and had proved its case on a balance of probabilities. Consequently, counsel prayed that the Court grants the orders sought in the Originating Summons dated 6th June 2023.

Analysis and Determination

20. 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.
21. The law pertaining to adverse possession is contained in Section 7 and 38(1) of the *Limitation of Actions Act* which provides as follows:



22. 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.”

23. 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.”

24. The Plaintiff contended that members of Murera-900 Self-Help group purchased 28 distinct plots of land located on the suit land from a company known as Kamuingi Kuhotana Investments. He added that the members were issued with share certificates by Kamuingi Kuhotana Investments and they immediately took possession of their respective portions of land, where they proceeded to construct houses. He stated that they have occupied the said land peacefully and continuously for periods ranging from 15 to 29 years, without interruption.

25. He further testified that when the group conducted an official land search, they discovered that the suit land was registered in the name of the 1st Defendant as of 6th October 1988. The Plaintiff claimed that 1st Defendant had no known connection to Kamuingi Kuhotana Investments, the entity from whom they had purchased the land.

26. The Plaintiff produced copies of plot allocation certificate issued to the members of the Self Help Group by Kamuingi Kuhotana Investments, official searches and the proprietorship section of the titles to the suit land depicting the 1st Defendant as the registered proprietor, certificate of registration of Murera 900 Self Help Group, particulars of the 28 members of the Self-Help Group, copies of identification documents of the members and survey report by Geodetic Land Surveyors and GIS Consultants on the survey conducted on the suit land.

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

28. Accordingly, I enter judgment for the Plaintiff and make the following final orders:

- a. A declaration is hereby issued that members of Murera-900 Self Help Group have been in peaceful and continuous occupation of Land Parcel Numbers Ruiru East Block 2/897 and Ruiru East Block 2/900, for a period in excess of 12 years and have therefore acquired title over the same by way of adverse possession.
- b. An order is hereby issued directing the Land Registrar Ruiru to cancel the 1st Defendant’s title over Land Parcel Numbers Ruiru East Block 2/897 and Ruiru East Block 2/900 and in lieu thereof register the same in the names of the Members of Murera- 900 Self Help Group in



accordance with the survey report by Geodetic Land Surveyors dated 11th March 2025, and issue them with the relevant titles.

- c. The 1st Defendant shall bear the costs of this suit.

DATED, SIGNED AND DELIVERED THIS 31ST DAY OF JULY 2025.

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J. M ONYANGO

JUDGE

In the presence of:

Miss Ndavuta for Mr. Machua for the Plaintiff

No appearance for the Defendant

Court Assistant: Hinga

