



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

ELCL (OS) CASE NO. E005 OF 2024

KIBUI KANGANGI.....

.....PLAINTIFF

=VERSUS=

PAUL MUGAMBI

MUNGANI.....DEFENDANT

JUDGMENT

Introduction

1. The key issue to be determined in this suit is whether **Kibui Kangangi (the plaintiff)** has acquired ownership of land parcel number **Tharaka/Chiakariga "A"/1419 (the suit land)** through adverse possession. The land measures 4.10 hectares and was registered on **27/7/2016** as a culmination of the statutory land adjudication exercise in **Chiakariga "A" Adjudication Section**.
2. It emerged during trial that parties to this suit laid parallel claims of ownership of the suit land during the adjudication exercise. They ventilated their parallel claims through all levels of dispute resolution under the **Land Adjudication Act**. The final adjudication award was in favour of the

defendant, who was subsequently issued with a title deed on **22/9/2022**. Eight (8) years after the land register was opened and seven (7) years after the plaintiff's appeal to the Minister was disposed, the plaintiff brought this suit seeking adverse possession orders relating to the same suit land. The court is expected to determine if the essential elements of adverse possession have been demonstrated. I will be brief in my analysis and disposal of the key issue in the suit. Before I do so, I will briefly outline the parties' respective cases, evidence and submissions.

Plaintiff's Case, Evidence and Submissions.

- 3.** The plaintiff took out an originating summons dated 24/8/2024, inviting this court to grant him: (i) a declaration that he has acquired ownership of land parcel number **Tharaka/Chiakariga "A"/1419**, measuring 4.10 hectares, through adverse possession; (ii) an order directing the Deputy Registrar of this court to execute all necessary documents transferring the suit land to him; (iii) a permanent injunction restraining the defendant, his family members, agents and servants against entering, occupying or dealing with the suit land; and (iv) an order making provisions for costs of the suit.

- 4.** Vide his supporting affidavit and witness statement, both of which he adopted during trial, the plaintiff contended that he was given the suit land by his clan and he had occupied the land since 1987. He added that he discovered "recently" that the suit land was not registered in his name during land adjudication and that the land was registered in the name of the defendant. He stated that the defendant had never

challenged his occupation of the suit land. It was his case that his title to the suit land had crystalized under the doctrine of adverse possession.

5. During cross-examination, the plaintiff testified that he and the defendant had a land ownership dispute over the suit land in various dispute resolution organs under the Land Adjudication Act, culminating in an appeal which he (the plaintiff) filed before the Minister. It was his evidence that he did not know the outcome of the appeal which he filed before the Minister. Shown the official search which he had produced as one of his exhibits, he stated that the suit land was registered on **27/7/2016** and the title was issued to the defendant on **22/9/2022**.
6. The plaintiff relied on photographs depicting mud walled structures and contended that the mud walled structures belonged to him and his children.
7. In his written submissions dated 16/9/2025, filed through ***M/s Thuranira Atheru & Co Advocates***, the plaintiff identified the following as the issues that fell for determination in the suit: (i) Whether the plaintiff has acquired the suit land through adverse possession; (ii) Whether time started running in 1987; (iii) Whether time stopped running at any point; (v) Whether the plaintiff's occupation of the suit land was with consent or permission of the defendant; and (vi) Whether the plaintiff is entitled to the reliefs sought in the suit.
8. Counsel submitted that the essential elements of adverse possession are: (i) open and notorious use of the property;

(ii) continuous use of the property; (iii) exclusive use of the property; and (iv) actual possession of the property. Counsel argued that the plaintiff had been utilizing the suit land openly, continuously and exclusively for more than 12 years, hence he was entitled to be recognized as the owner of the suit land under the doctrine of adverse possession. Counsel relied on the pronouncement in ***Waitherero Kimani v Joshua Ng'anga (2017) eKLR.***

9. On whether time started running in 1987, counsel submitted that adverse possession accrued to land and not to title to land, adding that time started running when the plaintiff took possession and occupation of the land in 1987. Citing the pronouncement of the Court of Appeal in ***Maweu Liu Ranching & Farming Co-operative Society Ltd, Civil Appeal No 2 of 1983,*** counsel argued that time started running in 1987 when the plaintiff entered the suit land and occupied it openly, exclusively and continuously.
10. On whether time stopped running, counsel submitted that time had never stopped running, adding that ***Marimanti SPMC Case No 3 of 2014*** did not assert any rights of ownership of the suit land by the defendant. Counsel argued that vide the suit in ***Marimanti SPMCC No 3 of 2014,*** the defendant did not seek to evict the plaintiff, hence the rights conferred by the judgment in the said suit did not interfere with the plaintiff's adverse possession of the suit land. Counsel added that by the time the defendant was filing ***Marimanti SPMCC No 3 of 2014,*** the plaintiff had already been in adverse possession of the suit land for a period exceeding 12 years.

11. Counsel argued that the plaintiff's occupation of the suit land was not with the permission of the defendant, adding that the plaintiff was put in occupation and possession of the suit land by the clan in 1987. Counsel submitted that the plaintiff was entitled to the reliefs sought in the originating summons.

Defendant's Case, Evidence and Submissions

12. The defendant opposed the suit through a replying affidavit dated 24/9/2024 and written submissions dated 15/9/2025, filed through **M/s David John Mbaya & Co Advocates**. He testified as DW1 and produced three exhibits.
13. In summary, the defendant's case is that he is the registered proprietor of the suit land. The suit land belonged to his late father. He lived on the suit land prior to being posted to Mombasa as a pastor in the Methodist Church. Before he was registered as proprietor of the suit land in 2016, the suit land underwent the land adjudication processes, including adjudication and determination of ownership disputes/claims at the various levels spelt out in the Land Adjudication Act.
14. The defendant adds that land adjudication exercise in **Chiakariga "A"** commenced in 1994. The plaintiff filed an objection to the award of the Land Adjudication Committee which was in his favour (in the defendant's favour). Upon hearing the objection, the Adjudication Officer rendered an award on the objection in which it was held that the suit land belonged to him (the defendant). Dissatisfied with the award of the Adjudication Officer, the plaintiff filed an appeal to the

Minister. The appeal was determined in 2017 in his favour (in favour of the defendant).

- 15.** The defendant adds that on determination of the plaintiff's objection by the Adjudication Officer, a land register relating to the suit land was opened on 27/7/2016 but a restriction was entered on it because the plaintiff had lodged an appeal to the Minister under **Section 29** of the **Land Adjudication Act**. On disposal of the appeal by the Minister in 2017, the restriction was removed and a title was subsequently issued to him (to the defendant) in September 2022.
- 16.** It is the defendant's case that the plaintiff trespassed on the suit land in the year 2000. At that time, land adjudication exercise was ongoing. When he (the defendant) went to the land in the same year to build, the plaintiff attacked him with arrows and bows and the plaintiff's wife stoned him. He reported the incident to the Police. Upon investigations, the plaintiff and his wife were arraigned in court, prosecuted, convicted and jailed for six months.
- 17.** He adds that in the year 2013, he filed a case in **Meru ELC** seeking a permanent injunction restraining the plaintiff and his agents/servants and kins against entering onto or interfering with his peaceful occupation and utilization of the suit land. Despite being served with court papers, the plaintiff ignored the said suit. The suit was subsequently transferred to Marimanti SPMC, heard and determined as **Marimanti SPMCC No 3 of 2014** (also designated as **Marimanti SPMC E & L Case No 3 of 2014**) . Through the judgment, the plaintiff was restrained against entering or

interfering with his peaceful occupation and utilization of the suit land.

- 18.** In his submissions, the defendant's advocate identified the following as the key issues that fell for determination in the suit: (i) Whether the plaintiff is in adverse possession of the suit land; and (ii) Whether the plaintiff is entitled to the reliefs sought.
- 19.** Counsel submitted that adverse possession is underpinned by **Sections 7, 13, 17** and **38** of the **Limitation of Actions Act**. Counsel observed that to establish adverse possession, a claimant must establish the following: (i) that he is in possession as owner in contradistinction to holding the property in recognition of or subordination to the true owner; (ii) the possession must be open and notorious; (iii) the possession and occupation must be without force; (iv) the possession and occupation must be exclusive; and (v) the possession and occupation must be continuous and uninterrupted.
- 20.** Counsel submitted that in 2013, the defendant filed a suit at **Meru ELC**, which was subsequently transferred to **Marimanti SPMC** and registered as **Marimanti SPMCC/SPMC E & L Case No 3 of 2014**. The key relief sought in the suit was an order stopping the plaintiff from trespassing on the suit land. Judgment and a decree were subsequently issued to that effect. Counsel added that the makeshift structures which the plaintiff erected on the suit land were built irregularly and in contravention of the decree of the court. Counsel contended that the plaintiff's

occupation of the suit land had never been peaceful, adding that the plaintiff had been using arrows and bows to chase the defendant away.

- 21.** Counsel submitted that prior to 2016, the suit land was undergoing land adjudication process, adding that the defendant acquired title to the land in 2016, hence the doctrine of adverse possession became applicable only after registration in 2016. Counsel submitted that the 12-year threshold had not been met at the time the suit was filed. Counsel added that having failed to prove adverse possession, the plaintiff was not entitled to the reliefs sought in the originating summons. Counsel urged the court to dismiss the claim with costs.

Analysis and Determination

- 22.** The court has considered the pleadings, evidence and submissions tendered in this suit. The court has also considered the legal frameworks and the prevailing jurisprudence relevant to the key issue in the suit. As pointed out in the introduction part of this judgment, the key issue to be determined in the judgment is whether the plaintiff has acquired title to the suit land through adverse possession.
- 23.** 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”

24. 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.”

25. It is important 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 equally important to note 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.***

26. 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.

27. 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 license of the owner. It must be adequate in continuity and in extent to show that possession is adverse to the title owner.”

28. The Court of Appeal outlined the following criteria for acquisition of title to land 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.”

- 29.** On whether the doctrine of adverse possession applies to unadjudicated trust land or land that is still under the process of adjudication, the Court of Appeal outlined the relevant law in ***Thaitumu v Iguathu & 8 others (Civil Appeal 220 of 2019) [2024] KECA 1084 (KLR)*** as follows:

“We hold that, with respect to land that is subject to the adjudication process, time for purposes of adverse possession does not start running until the adjudication process is completed, rights are ascertained, and owners of the said properties are registered.”

- 30.** From the totality of the evidence on record, the suit land is located in Chiakariga “A”. Land adjudication process in Chiakariga “A” commenced in or around 1994. Prior to that, the suit land existed as trust land that was subject to ascertainment of individual ownership rights through the land adjudication process. Indeed, the suit land was the subject matter of land adjudication between 1994 and 2017. Upon conclusion of objection proceedings, the adjudication register was forwarded to the Chief Land Registrar and the parcel register relating to the suit land was opened in the name of the defendant on **27/7/2016**. However, because there was a pending appeal to the Minister by the plaintiff, a

restriction was registered against the land register. The defendant testified that the plaintiff's appeal was determined in his favour (in favour of the defendant) in 2017 and the defendant was subsequently issued with a title on 22/9/2022.

- 31.** Based on the above evidence and on the prevailing jurisprudence as outlined above, the 12-year threshold for the purpose of adverse possession would be reckoned from the day the Minister disposed the appeal that challenged the Land Adjudication Officer's decision. Barring any successful judicial review of the Minister's decision by the courts, the Minister's decision marked the end of the adjudication process. That is the day the defendant became the ascertained and registered proprietor of the suit land (*given that a register had already been opened on 27/7/2016 but had been restricted pending disposal of the appeal.*) That is the day when the suit land became available for adverse possession. Prior to that, the suit land was trust land that was not available for adverse possession.
- 32.** If indeed the plaintiff had possession and occupation of the suit land from 1987, the process of land adjudication accorded him a platform to ventilate his claim and procure recording and registration as the legitimate owner of the suit land. His claim was interrogated during the adjudication process and was found baseless by the relevant adjudication organs. To claim that he was an adverse possessor from 1987 and remained an adverse possessor throughout the process of land adjudication is to rubbish the tenor and import of land adjudication. The key objective of land

adjudication is discernible from the preamble to the **Land Adjudication Act** which provides as follows:

“An Act of Parliament to provide for the ascertainment and recording of rights and interests in trust land, and for purposes connected therewith and purposes incidental thereto.”

- 33.** From 2017 (*the year when the appeal to the Minister was disposed*) to the date of filing this suit (24/8/2024) is 7 years. Even if one were to reckon time from the date when the land register was opened (27/7/2016), that would give 8 years. In both scenarios, the 12-year threshold for adverse possession is not met.
- 34.** The foregoing is not the only glaring weakness in the plaintiff’s claim. From the evidence on record, the plaintiff and the defendant have had ownership disputes that have been ventilated through the various adjudicatory levels of the land adjudication process.
- 35.** Secondly, when the plaintiff used violence to keep the defendant away from the suit land in 2000, him and his wife were arrested, prosecuted and jailed for 6 months. Possession through use of violence cannot constitute adverse possession.
- 36.** Lastly, in 2013, the defendant filed a case at the **Meru ELC** seeking a permanent injunction restraining the plaintiff against interfering with his peaceful occupation of the suit land. The suit was transferred to **Marimanti SPMC**, heard

and determined in favour of the defendant in October, 2014. The suit and the decree were a legitimate ventilation of the claim of an occupier of trust land that was still under adjudication. The law envisages that and empowers the adjudication officer to grant consent for such litigation.

- 37.** For the above reasons, the court comes to the finding that the plaintiff has failed to establish the essential elements of adverse possession. He has failed to prove his entitlement to orders of adverse possession.
- 38.** On costs, the general principle is that costs follow the event. No proper grounds have been demonstrated to warrant a departure from the general principle. Consequently, the plaintiff will bear costs of the suit.

Disposal Orders

- 39.** In the end, the plaintiff's claim for orders of adverse possession is rejected. The prayers sought in the originating summons are declined and the suit is dismissed for lack of merit. The plaintiff shall bear costs of the suit.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 28TH DAY OF OCTOBER, 2025.

**B M EBOSO [MR]
ELC JUDGE**

In the Presence of:

Mrs Maheli holding brief for Mr. Mbaya for the Defendant.
Plaintiff – Absent
Court Assistant – Mr. Mwangi

ORIGINAL