



**Kamau v Kamiri (Environmental and Land Originating Summons
E014 of 2023) [2025] KEELC 7186 (KLR) (21 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 7186 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E014 OF 2023**

JA MOGENI, J

OCTOBER 21, 2025

IN THE MATTER LIMITATION OF ACTION ACT CAP 22

AND

**IN THE MATTER OF A CLAIM FOR ADVERSE POSSESSION
PERSUANT TO SECTION 38 OF THE LIMITATION OF ACTIONS ACT**

AND

IN THE MATTER OF LAND ACT AND LAND REGISTRATION ACT 2012

BETWEEN

SOLOMON PETER KAMAU PLAINTIFF

AND

KARANJA KAMIRI DEFENDANT

JUDGMENT

1. This application is brought by Solomon Peter Kamau who claims to have acquired title by adverse possession to all the piece of land known as Githunguri/Riuki/T.363 (0.09) Ha. In the application the Applicant seeks for determination of the following questions;
 1. Whether or not the Plaintiff has been in possession of the land for over 12 years?
 2. Whether or not the Plaintiff/Applicant has ever been served with demand to vacate?
 3. Whether or not the Defendant has carried out any activity or development on the land?
 4. Whether or not Plaintiff meets the threshold of adverse possession?
 5. Whether Plaintiff should be granted costs of suit?



2. The Summons are premised on various grounds set out on the face of the Originating Summons and harnessed in the Supporting Affidavit sworn on 25/04/2023 by Solomon Peter Kamau the Plaintiff / Applicant herein. First the Plaintiff claims to be the absolute beneficial owner of Githunguri/Riuki/T.363 (0.09) Ha. Secondly that the Plaintiff who has cultivated and farmed the parcel of land for over 30 years has occupied the parcel and continued in open, continuous, exclusive, uninterrupted adverse occupation and use of the same since 1985. The application is made on the following grounds:-
 1. The Defendant herein is the registered owner of the parcel land known as Githunguri/Riuki/T.363 (0.09) Ha.
 2. The Defendant herein has never taken any steps of visiting, looking and/or entering, nor carrying out any activity on the said parcel of land Githunguri/Riuki/T.363 (0.09) Ha in any way since the Plaintiff stay and occupancy over 30 years ago.
 3. The Defendant herein has never for the last 30 years or so ever made any demand upon the Plaintiff of vacating the said premises or evicting him from the property known as Githunguri/Riuki/T.363 (0.09) Ha, neither restraining him in any way from cultivating, farming and doing any activity on the said parcel of land.
 4. The Defendant's whereabouts is unknown to the Plaintiff and in absence of any claim or action it is presumed they have no interest whatsoever on the parcel of land known as Githunguri/Riuki/T. 363 (0.09) Ha.
 5. The Plaintiff has for over 30 years enjoyed quiet and peaceful possession of this said parcel of land uninterrupted and without any form of disturbance whatsoever.
 6. The Plaintiff is and has always been recognized as the owner of the said parcel of land having partially developed the parcel of the land Githunguri/Riuki/T. 363 (0.09) Ha and also does farming on the said land.
 7. The Defendant stands to suffer no prejudice whatsoever if the said orders are granted.
 8. That in the interests of Natural Justice, fairness and equity the Applicant prays for the said orders.
3. In view of the foregoing the Plaintiff contends that he has become entitled to the parcel of land LR Githunguri/Riuki/T. 363 (0.09) Ha having been in occupation of the same openly, continuously, uninterrupted and exclusively for a period in excess of thirty (30) years.
4. The suit proceeded undefended with evidence of service upon the Defendant duly on record through substituted service. When the matter came up for hearing the Plaintiff testified for the Plaintiff's case as PW1 and he called one witness.
5. PW1 (the Applicant) testified and adopted his witness statement as his evidence in Court. He also adopted the list of documents dated 5/06/2024 as his exhibits 'PW1-4'. It was his testimony that he started staying on the suit property since 1985 and that no one has ever asked him why he is staying there. That he built a stone wall and no one asked him. That part of his exhibits are photographs of the built wall and that the parcel measures 50 by 100 and the value of the land is about Ksh 500,000. It was his prayer that the Court should allow him possess the suit property by adverse possession.
6. He stated that he did not know the owner and that he had never met him and that no one has ever asked him about his settlement on the suit property. That despite putting a fence all around and a gate no one has complained.



7. PW2 - Peter Kariuki Wairimu, testified that he was the area Chief of Ikinu Location within Githunguri. He testified that he resides within Ikinu Location. He stated that he knows PW1 whom he had known for the last 15 years.
8. It was his testimony that he wrote a letter dated 22/04/2023 and that he wanted it produced as exhibit in Court as his evidence. He testified that he was aware about the suit property and that PW1 has been utilizing the parcel of land for more than 30 years and that he had known the suit property as being the home of PW1.
9. He stated that he had not received any report or complaint from the Defendant about the parcel which measures 50 by 100. He estimated the value of the suit property to be Kesh I million plus or minus Kesh 200,000.
10. With that the Applicant closed his case.

Issues for Determination.

11. Having considered the pleadings and evidence tendered by the Applicant, the issues for determination are:
 - i. Whether the Applicant herein has been in open, quiet and uninterrupted occupation and possession of the whole of that land parcel known as Githunguri/Riuki/T. 363 (0.09) Ha for a period of more than 12 years.
 - ii. If the answer to (i) is in the affirmative, has the said open and uninterrupted occupation and possession of the said portion been adverse to the title of the said land parcel No. Githunguri/Riuki/T. 363 (0.09) Ha?
 - iii. Whether the Applicant has acquired the title for the whole of the said land parcel no. Githunguri/Riuki/T. 363 (0.09) Ha under the provisions of the law of Limitations of Actions Act against the registered proprietor?
 - iv. Whether the Respondent can be compelled to transfer the whole of the said land parcel No. Githunguri/Riuki/T. 363 (0.09) Ha to the Applicant herein and in default, whether the Deputy Registrar of this Honourable Court can be authorized to transfer the same to the Applicant on behalf of the said Respondent.
 - v. Who should bear the costs of this suit?

Analysis and Determination.

12. At the close of the Plaintiff's case the Court directed that the Plaintiff files their submissions and a Judgment date was reserved.
13. The Plaintiff submits that his suit was necessitated by the fact that he has carried out farming on the said parcel of land for over 30 years and that no one has ever restrained him. That at no material time in his living on the parcel has anybody emerged claiming ownership of the land nor has he received any notification letter or demand for him to vacate the suit land and neither has anyone taken him to the Chief to complain about his occupying the parcel.
14. That seeing that he is aging and without any form of disturbance or issue he has an interest of seeking to attain ownership of the parcel in order to protect his family over ownership of the property that he has.



15. It was contended that the Plaintiff's occupation of the suit land has been open, continuous with no interruptions whatsoever from the Defendant who is the registered owner over the entire parcel of land. That the Plaintiff's said occupation of the suit land was as of right and not with consent of the Defendant.
16. It is trite law for a party to succeed on a claim for adverse possession such a party must demonstrate the following: -
- a. That they have been in open possession for a period of more than 12 years.
 - b. The occupation and possession must have been continuous and uninterrupted.
 - c. The possession or occupation must have been hostile and/or inconsistent to the owner's interests and/or rights in regard to the use of the land.
17. The Court of Appeal elaborately considered the principles to be considered in cases where parties claim to be entitled to ownership by virtue of adverse possession in the case of *Wambugu vs. Njuguna (1983)* KLR 172 where the Court held: -

“In order to acquire by the Statute Limitations title to land which has a known owner, that owner must have lost his right to the land either by being dispossessed of it or by having discontinued his possession of it. Dispossession of the property that defeats the title are acts which are inconsistent with his enjoyment of the soil for the purpose for which he intended to use it.”

18. The Court in the same case went on to state that two concepts are contemplated by the *Limitation of Actions Act*, Cap 22 Laws of Kenya for a claim in adverse possession to be actualized. These concepts are dispossession and discontinuance of possession.

The Court stated thus: -

“The proper way of assessing proof of adverse possession would then be whether or not the title holder has been dispossessed and has discontinued his possession for the statutory period and not whether or not the claimant has proved that he has been in possession for the requisite number of years.”

19. Asike-Makhandia, JA described adverse possession in *Mtana Lewa v 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, in publicity and in extent to show that possession is adverse to the title owner. This doctrine in Kenya is embodied in Section 7 of the *Limitation of Actions Act*, which is in these terms:-

“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.”



20. Section 7 of the Limitations of Actions Act provides as follows:-
- “(a) An action to recover land 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.”
21. After the expiry of 12 years, a party may approach the High Court under Section 38 of the *Limitation of Actions Act* for a declaration that the property has devolved to him in accordance with the doctrine of adverse possession.
22. Section 38(1) of the Act states 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, 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 a proprietor of the land.”
23. The Court of Appeal in the case of *Chevron (K) Ltd v Harrison Charo Wa Shutu* [2016] eKLR stated as follows:-
- “At the expiration of the twelve-year period the proprietor’s title will be extinguished by operation of the law and section 38 of the Act permits the adverse possessor to apply to the High Court for an order that he be registered as the proprietor of the land. Therefore the critical period for the determination whether possession was adverse is 12 years and the burden is on the person claiming to be entitled to the land by adverse possession to prove, not only the period but also that his possession was without the true owner’s permission, that the owner was dispossessed or discontinued his possession of the land, that the adverse possessor has done acts on the land which are inconsistent with the owner’s enjoyment of the soil for the purpose for which he intended to use it. See *Littledale v Liverpool College* (1900)1 Ch.19, 21.”
24. In the instant case, the Applicant’s uncontroverted evidence is that he has been in open, continuous and uninterrupted possession and occupation of the suit property for more than 30 years which is well above the statutory period of 12 years envisaged in the *Limitation of Actions Act*. He testified that even though the Respondent is the registered owner of the suit property, he has never come to claim the same and he is not known to the Plaintiff. It is therefore evident that the Plaintiff’s occupation of the suit property has been adverse to the Respondent’s title.
25. The certificate of search was produced on the title is dated 29/11/2022 it does show the current status of the ownership as at the time of filing this suit in 2023. The green card produced as evidence is sufficient in the absence of the certificate of title. From the evidence before me, I agree with the Plaintiff that he has been in exclusive, continuous and uninterrupted possession, occupation and open use of the said portion of land for a period in excess of 12 years. I find that the Plaintiff has established that possession of the suit land was continuous and not broken for any temporary purposes or any endeavours to interrupt it for a period of 12 years. He has also established who the current registered proprietor of the suit land is.



26. The Land Registration Act is very clear on issues of ownership of land and Section 24(a) of the Land Registration Act provides as follows:

“Subject to this Act, the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.”

27. In view of the foregoing, I am satisfied that the Applicant has proved his case on a balance of probabilities. Accordingly, I enter Judgment for the Applicant and make the following final orders:

- i. A declaration is hereby issued that the Plaintiff is entitled to be registered forthwith as the owner of the land title number Githunguri/Riuki/T.363.
- ii. The title of Githunguri/Riuki/T.363 (0.09) Ha. has been extinguished by the Plaintiff’s adverse possession and occupancy thereof for a period of more than 12 years in terms of Section 17 and 38 of the Limitation of Actions Act Cap 22.
- iii. The Plaintiff shall now be registered as proprietor of the whole of Githunguri/Riuki/T.363 (0.09) Ha. in place of the Defendant.
- iv. A permanent injunction is hereby issued restraining the Defendant, either by herself, agents, servants and or employees from interfering with the Plaintiff’s peaceful possession and occupation of the said parcel of land Githunguri/Riuki/T.363(0.09) Ha. in any manner whatsoever and/or however.
- v. The Land Registrar within the jurisdiction of the parcel of land Githunguri/Riuki/T.363(0.09) Ha. shall register the Plaintiff as the proprietor of the said suit parcel. In default the Deputy Registrar of the Environment and Land Court in Thika shall execute the transfer instruments and all attendant documents to facilitate the transfer and registration.

It is so ordered.

DATED, SIGNED AND DELIVERED AT THIKA THROUGH MICROSOFT TEAMS ON THIS 21ST DAY OF OCTOBER, 2025.

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MOGENI J

JUDGE

In the presence of:-

Mr. Mwaura for the Plaintiff

Defendant - Absent

Mr. Melita – Court Assistant

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MOGENI J

JUDGE

