



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC NO. 1 OF 2023

PETER KINUTHIA MWANIKI.....1ST
PLAINTIFF/APPLICANT
PETER NJOGU TURUGA (Suing as the legal representative
Of the estate of Grace Wairimu (Deceased).....2ND
PLAINTIFF/APPLICANT

VERSUS

HUMPHREY GITHAIGA
MUIRU.....DEFENDANT/RESPONDENT

JUDGMENT

1. The Plaintiffs commenced this suit by way of an Originating Summons dated 25th February 2019 seeking the following orders;

1, THAT the Plaintiffs have been in adverse possession of Land Reference Number Limuru/Bibirioni/1602 peacefully, openly, and as of right from January 1986, that is to say, for a

period of over twelve years preceding presentation of this Originating Summons.

2. THAT the title of HUMPREY GITHAIGA MUIRU be declared as having been extinguished in favour of the Plaintiffs under Section 17 of the Limitation of Actions Act.

3. THAT the period of Limitation started running January 1986.

4. THAT the Plaintiffs be registered as proprietors of Land Reference Number Limuru/Bibirioni/1602 under Section 38 of the Limitation of Actions Act, Cap 22, Laws of Kenya, in place of the said late HUMPREY GITHAIGA MUIRU.

2. Though duly served, the Defendant did not file any response to the application. The matter proceeded for formal proof on 7th May 2025.

THE PLAINTIFFS/APPLICANTS CASE

3. PW1 Peter Kinuthia Mwaniki adopted his supporting affidavit, sworn on 25th February 2019, as his evidence in chief. He also

produced the documents annexed to his affidavit in support of their evidence.

4. He informed the court that in January 1986, the 2nd Plaintiff's mother entered the suit property without the consent of Fredrick Mwaniki Muiru, the registered owner of the suit property. He stated that Fredrick Mwaniki Muiru had sold one acre of land belonging to his father to Jacob Muiru Gikanga, who held the said land in trust for his late father and for the 2nd Plaintiff's grandfather.
5. He stated that they occupied the suit property peacefully, continuously, and without interruption ever since.
6. He went on to state that, together with Grace Wairimu Nganga, they filed Civil Suit No. 1308 of 2014 claiming for adverse possession, but the file got lost, and it was not prosecuted.
7. He also stated that they filed an application seeking the revocation of the grant for the suit property, but the same was dismissed on account of jurisdiction.
8. PW2 Peter Njogu Turunga adopted his supporting affidavit as his evidence in chief. He echoed the evidence of PW1.

9. After the close of the hearing, the Plaintiffs filed their submissions dated 13th May 2025, which I have duly considered.

ANALYSIS AND DETERMINATION

10. The Applicants are seeking a declaration that they have acquired the suit property by way of adverse possession.

11. The doctrine of adverse possession is embodied in Section 7 of the Limitation of Actions Act, which stipulates that:

“An action may not be brought by any person to recover land after the end of 12 years from the date on which the right of action accrued to him or, if it is first accrued to some person through whom he claims, to that person.”

12. Further, Section 13 provides that: -

A right of action to recover land does not accrue unless the land is in the possession of some person in whose favour the period of limitation can run (which possession is in this act referred to as adverse possession), and, where under Section 9, 10, 11 and 12 of this act a right of

action to recover land accrues on a certain date and no person is in adverse possession on that date, a right of action does not accrue unless and until some person takes adverse possession of the land.

Where a right of action to recover land has accrued and thereafter, before the right is barred, the land ceases to be in adverse possession, the right of action is no longer taken to have accrued, and a fresh right of action does not accrue unless and until some person again takes adverse possession of the land.

For the purposes of this section, receipt of rent under a lease by a person wrongfully claiming, in accordance with Section 12(3) of this Act, the land in reversion is taken to be adverse possession of the land

13. Section 38 gives guidelines on the procedure to be followed by a person claiming adverse possession.

14. The ingredients of the doctrine of adverse possession were discussed in the case of **Wambugu Vs Njuguna (1983) KLR 173**, where the Court of Appeal held that: -

“Adverse possession contemplates two concepts: Possession and discontinuance of possession. It further held that the proper way of assessing proof of adverse possession would be whether or not the title holder has been dispossessed or has discontinued his possession for the statutory period and not whether or not the claimant has proved that he or she has been in possession for the requisite number of years.”

15. The Court of Appeal discussed the ingredients in the case of **Mtana Lewa Vs Kahindi Ngala Mwangandi (2005) eKLR**, where it was held that: -

“Adverse possession is essentially a situation where a person takes possession of land, 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 of 12 years. The process springs into action essentially by default or inaction by the owner. The essential prerequisites being that the possession of the adverse possessor is neither by force or stealth or under 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.

16. It is well established that a party claiming adverse possession must prove that their possession was peaceful, open, and continuous. The possession should not have been gained through force, secrecy, or without the owner's authority or permission.
17. For the Applicants to be entitled to the suit property by way of adverse possession, they must prove that they have been in continuous, uninterrupted occupation for a period of not less than 12 years.
18. In **Mombasa Teachers Co-operative Savings and Credit Society Limited Vs Robert Muhambi Katana & 15 Others** [2018] eKLR, the Court of Appeal stated that: -

“Likewise, it is settled that a person seeking to acquire title to land by adverse possession must prove non-permissive or non-consensual, actual, open, notorious, exclusive and adverse use/occupation of the land in question for an interrupted period of 12 years as espoused in the Latin maxim nec vi nec clam nec precario.

19. The Applicants insisted that they have occupied the suit property peacefully, openly, and continuously for a period of more than 12 years without any interruption.

20. PW1 produced a copy of the green card, which shows that the suit property was first registered in the name of Jacob Muiru Gikanga, who was issued a title on 2/2/1982. Entry No. 3 indicates that, on 16th December 1985, the land was transferred to Fredrick Mwaniki Muiru as trustee for himself and Nicholas Macharia Muiru. A certificate of title was issued on 17th December 1985. Entry No. 8 shows that Humphrey Githaiga was registered as the proprietor on 23rd July 2002 to hold in trust for himself and other beneficiaries pursuant to Succession Cause No. 2622 of 1999.

21. Regarding the nature of occupation or possession, the Applicants testified that they have been in occupation of the suit property since 1986 without any interruption.
22. The Applicants produced the ruling in Succession Cause No 26822 of 1999. According to the ruling, the deceased died on 29th September 1982, and a grant of letters of administration was made to the Defendant, which was confirmed on 26th November 2001. The Applicants filed an application dated 7th November 2017 seeking to revoke the grant issued in respect of the suit property. They claimed to be beneficiaries of the Estate of Muiro Gikanga, deceased, by virtue of being the grandson and great-grandson.
23. The green card for the suit property shows that on 10th February 1986, a caution was registered against the suit property by John Nyago, a purchaser. On 26th April 1989, a restriction was registered by the Land Registrar pursuant to Succession Cause No. 39 of 1985. Based on the foregoing, it is clear that there were parties asserting their ownership claims over the suit property.

24. Based on the sequence of events outlined above, the Applicants have clearly not been in continuous possession of the suit property for a period of 12 years without interruption by the Respondent. Of importance is whether the Applicants are in possession of the suit property. In the case **of Kasuve v Mwaani Investment Ltd & 4 others**, the court emphasized that mere occupation is insufficient unless it is accompanied by *animus possidendi*. Based on the evidence presented by the Applicants, I find that they did not demonstrate that they have been in possession of the suit property since 1986. The Plaintiffs did not adduce any evidence to prove that they are in possession of the suit property.

25. That notwithstanding, Section 37 of the Limitation of Actions Act states that adverse possession only applies when the land is registered. The Applicants claimed that the limitation period began running in January 1986. In my view, adverse possession can only run against the title of a registered proprietor. In the case of **Titus Kigoro Munyi Vs Peter Mburu Kimani (2015) eKLR**, the Court of Appeal held that

the limitation period for purposes of adverse possession starts running after the registration of the land in the name of the Respondent. In the matter at hand, the time can be computed from 23rd July 2002, when the Defendant was issued a title for the suit property.

26. Based on the foregoing, I find that the Applicants have not met the threshold for the grant of the orders sought.

27. The upshot of the foregoing is that the Originating Summons dated 25th February 2019 is hereby dismissed.

RULING SIGNED, DATED, AND DELIVERED VIA MICROSOFT TEAMS THIS 31ST DAY OF OCTOBER, 2025.

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HON. T. MURIGI
JUDGE

IN THE PRESENCE OF: -

Mary Muigai for the Respondents

Ahmed - Court Assistant