



**Muigai v Kangethi (Environmental and Land Originating Summons  
E038 of 2024) [2025] KEELC 7525 (KLR) (30 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 7525 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**  
**ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E038 OF 2024**  
**MN KULLOW, J**  
**OCTOBER 30, 2025**  
**IN THE MATTER OF THE LIMITATION OF ACTIONS ACT, CAP 22, LAWS**  
**OF KENYA**  
**AND**  
**IN THE MATTER OF LAND REFERENCE NO. RIRUTA/T.291 (NOW NAIROBI**  
**BLOCK 66/7689)**  
**BETWEEN**  
**PETER NYOIKE MUIGAI ..... PLAINTIFF**  
**AND**  
**KINYANJUI KANGETHI ..... DEFENDANT**

**JUDGMENT**

**Background**

1. The Plaintiff, Peter Nyoike Muigai, commenced these proceedings by way of an Originating Summons dated 30<sup>th</sup> May 2024, brought under the provisions of the *Limitation of Actions Act* (Cap. 22, Laws of Kenya). He seeks a declaration that he has acquired title to Land Reference No. Riruta/T.291 (now Nairobi Block 66/7689) by way of adverse possession, and that he be registered as the proprietor thereof in place of the Defendant, Kinyanjui Kang'ethi.
2. In his supporting affidavit, the Plaintiff explained that he was born and raised in the Kawangware area of Nairobi County, where his family had lived and farmed since 1958. According to him, the suit property was an open and unoccupied parcel of land adjacent to their family home. From as early as 1958, his family cultivated the land continuously and without interference. When he became an adult, around 1975, he continued to use and cultivate the land in his own right and has remained in possession ever since.



3. The Plaintiff further averred that his occupation of the property has always been open, peaceful, and continuous, without interruption from anyone claiming a superior title. He stated that in 1999, he put up certain structures on the land, which remain standing to date. Throughout this period, he has neither sought nor received permission from the registered proprietor to occupy or use the land, nor has the Defendant ever objected to his possession.
4. The Plaintiff maintained that his long and uninterrupted possession of the property, spanning several decades, has been adverse to the Defendant's title. He produced various documents and photographs as evidence of his occupation and developments on the land, which were marked as Exhibit PN1 in his affidavit.
5. Due to difficulties in tracing the Defendant for personal service, the Plaintiff filed a Chamber Summons dated 30<sup>th</sup> July 2024 seeking leave to serve the Originating Summons by way of substituted service. The Court duly granted the application, and service was effected through publication in the Daily Nation newspaper on 7<sup>th</sup> November 2024.
6. Despite substituted service, the Defendant did not enter appearance, file a response, or otherwise participate in the proceedings. Consequently, the matter proceeded as unopposed.
7. The suit came up for hearing on 26<sup>th</sup> March 2025, where the Plaintiff relied entirely on his filed pleadings, the supporting affidavit, and the annexed exhibits. He urged the Court to find that his long, open, and uninterrupted possession of the land meets the legal threshold for adverse possession under the Limitation of Actions Act and relevant judicial authorities, and to grant the reliefs sought in the Originating Summons.

### **Submissions**

8. The Plaintiff filed his written submissions dated 5<sup>th</sup> May 2025, in which he reiterated in open, peaceful, and continuous possession of the suit property since 1975, He states that during this time, he has occupied, cultivated, and developed the land without any interruption, objection, or interference from the Defendant. His occupation, he argues, has been adverse to the Defendant's title and satisfies the statutory period required under the law.
9. The Plaintiff further submits that his claim meets the legal conditions for acquisition of land by adverse possession as provided under Sections 7, 13, 17, and 38 of the Limitation of Actions Act, Cap 22, and as articulated in judicial precedents including *Kasuve -Vs- Mwaani Investments Ltd (2004) 1 KLR 184*, *Mtana Lewa -Vs- Kahindi Ngala Mwangandi [2015] eKLR*, and *Kimani Ruchine -Vs- Swift Rutherford & Co. Ltd (1980) KLR 10*. He therefore urges the Court to declare him the lawful owner of Land Reference No. Riruta/T.291 (now Nairobi Block 66/7689) by way of adverse possession and to direct that the property be registered in his name.

### **Issues for Determination**

10. Having carefully considered the pleadings, the affidavit evidence, and the submissions on record, the Court finds that the matter raises a single substantive issue for determination, namely: Whether the Plaintiff has acquired title to Land Reference No. Riruta/T.291 (now Nairobi Block 66/7689) by way of adverse possession.



## Analysis and Determination

### Issue: Whether the Plaintiff has acquired title to Land Reference No. Riruta/T.291 (now Nairobi Block 66/7689) by way of adverse possession.

11. Section 38(1) of the *Limitation of Actions Act* allows a person to move to this Court for an order that he be registered as the proprietor of land or a lease in place of the person registered as proprietor thereof. In *Kasuve -vs- Mwaani Investments Ltd & Others* 2004 1 KLR 184, the Court of Appeal set out what a person claiming to be entitled to land by way of adverse possession must prove and said: -

“In order to be entitled to land by adverse possession, the claimant must prove that he has been in exclusive possession of land openly and as of right and without interruption for a period of 12 years either after dispossessing the owner or by discontinuation of possession by the owner on his own volition.”
12. It is now well settled that the combined effect of the relevant provisions of Section 6, 13 and 17 of the *Limitation of Actions Act* is to extinguish the title of the proprietor of land in favour of an adverse possessor of the same at the expiry of 12 years of the adverse possession – *Benjamin Kamau & Others -vs- Gladys Njeri C.A Civil Appeal No 2136 of 1996*.
13. Similarly, the new land laws promulgated after the 2010 Constitution recognize the doctrine of adverse possession. Section 28 (h) of the *Land Registration Act* 2012 identifies some of the overriding interests in land as: -

“rights acquired or in the process of being acquired by virtue of any written law relating to the limitation of actions or by prescription.”
14. Section 7 of the *Land Act* 2012 provides that: -

“Title to land may be acquired through –

  - (a) –(c)
  - (d) prescription”
15. A person claiming land by way of adverse possession must prove that his occupation of the land in dispute is not by force, secrecy or persuasion – (*nec vi nec clam nec precario*) – *Kimani Ruchine & Another -vs- Swift Rutherford & Co Ltd* 1980 KLR 10. It must be open, peaceful continuous, un – interrupted and with the knowledge of the owner.
16. In a recent exposition of the doctrine of adverse possession, the Court of Appeal in *Mtana Lewa -vs- Kahindi Ngala Mwangandi C.A Civil Appeal No 56 of 2014 [2015 eKLR]*, described it 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, it is twelve (12) years. The process springs into action essentially by default or in – action of the owner. The essential pre – requisites 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.”
17. Applying the above principles to the present case, the Court is satisfied that the Plaintiff has met all the conditions necessary to acquire title by adverse possession. The evidence before the Court shows that he entered into possession of the suit property in 1975 and has remained there openly



and continuously to date, a period far exceeding the statutory twelve years. His occupation has been peaceful, uninterrupted, and accompanied by acts of ownership such as cultivation and the erection of permanent structures.

18. There is no indication that the Plaintiff's entry or continued use of the land was ever by force, secrecy, or permission of the registered proprietor. His possession has therefore been *nec vi, nec clam, nec precario*, as required by law. Further, his occupation was visible and notorious within the locality, thereby putting the registered owner on constructive notice that another person was asserting rights over the land.
19. The Defendant, despite being the registered proprietor, has taken no steps to recover possession or assert his title for nearly five decades. This long period of inaction demonstrates acquiescence and satisfies the principle, articulated in *Mtana Lewa -vs- Kahindi Ngala Mwangandi C.A Civil Appeal No 56 of 2014 [2015 eKLR]*, that adverse possession springs from the owner's neglect to act within the prescribed time.
20. Accordingly, the Plaintiff's occupation meets all the statutory and judicially recognized elements of adverse possession it has been open, continuous, exclusive, and adverse for well over twelve years. The Defendant's title is therefore extinguished by operation of Sections 7, 13, 17, and 38 of the [Limitation of Actions Act](#), and the Plaintiff is entitled to be registered as the lawful proprietor of L.R. No. Riruta/T.291 (now Nairobi Block 66/7689).

#### **Final Orders**

- a. An order is hereby made that the Plaintiff, Peter Nyoike Muigai, is entitled to be registered as the proprietor of Land Reference No. Riruta/T.291 (now Nairobi Block 66/7689) by way of adverse possession.
- b. The rights and interests of the Defendant, Kinyanjui Kang'ethi, in respect of Land Reference No. Riruta/T.291 (now Nairobi Block 66/7689) have been extinguished by effluxion of time in accordance with the provisions of the [Limitation of Actions Act](#), Cap. 22, Laws of Kenya.
- c. The Defendant shall execute all the relevant documents necessary to facilitate the transfer and registration of Land Reference No. Riruta/T.291 (now Nairobi Block 66/7689) in the name of the Plaintiff within thirty (30) days from the date of this judgment.
- d. In default of compliance with Order (c) above, the Deputy Registrar of the Environment and Land Court at Nairobi is authorized to execute all the requisite documents on behalf of the Defendant to give effect to this judgment.
- e. Each party shall bear its own costs.

It is so ordered!

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 30<sup>TH</sup> DAY OF OCTOBER, 2025.**

**MOHAMMED N. KULLOW**

**JUDGE**

Judgment delivered in the presence of: -

Ms. Swaka for Mr. Njenga for the Plaintiff

N/A for the Defendant



Philomena W. Court Assistant

