



REPUBLIC OF KENYA



**Mutero v Karanja & another (Environmental and Land Originating Summons
21 of 2023) [2025] KEELC 7386 (KLR) (30 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 7386 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 21 OF 2023**

JA MOGENI, J

OCTOBER 30, 2025

BETWEEN

CICILY MURANGO MUTERO PLAINTIFF

AND

JOHN ALEX MAINA KARANJA 1ST DEFENDANT

EWAMAINA KARANJA 2ND DEFENDANT

JUDGMENT

1. Vide the Originating Summons dated 5/06/2023, Cicily Murango Mutero, the Plaintiff/Applicant claims to be declared as proprietor of 0.101 Ha of land parcel number Kiambaa/Waguthu/1711 situated in Waguthu, Kanunga, Kiambu County by virtue of Adverse possession and sought the Court to determine and order that;
 1. That a declaration that the Plaintiff is entitled to be registered forthwith as the owner of the land title number Kiambaa/Waguthu/1711.
 2. That a Declaration that the title of the said land Kiambaa/Waguthu/1711 (0.101) Ha has been extinguished by the Plaintiff's adverse possession and occupancy thereof for period of more than 12 years in terms of Section 17 and 38 of the Limitations of Actions Act Cap 22.
 3. That a Declaration that the Plaintiff has acquired an interest to land in Kiambaa/Waguthu/1711 (0.101) Ha by virtue of adverse possession thereof for more than 12 years from February 2008.
 4. That the Plaintiff be registered as the proprietor of the whole of Kiambaa/Waguthu/1711 (0.101) Ha in place of the Defendants.
 5. That the Deputy Registrar of the Honorable Environment and Land Court [ELC] Division in Thika Law Courts be directed and/or ordered to execute the transfer instruments and all



attendant documents to facilitate the transfer and registration of the said parcel of land that is Kiambaa/Waguthu/1711 (0.101) Ha in favour of the Plaintiff, in the event of default on the part of the Defendants.

6. That there be an order of permanent injunction restraining the Defendants, either by herself, agents, servants and or employees from interfering with Plaintiff's peaceful possession and occupation of the said parcel of land Kiambaa/Waguthu/1711 (0.101) Ha in any manner whatsoever and/or however.
7. Costs of this Originating Summons be borne by the Defendants.
2. It is the Applicant's claim that despite the Defendants being the registered owners of Kiambaa/Waguthu/1711 (0.101) Ha as evidenced vide the annexure 'CMM1' being a copy of the certified Green Card, that they have never taken any steps of visiting, looking and/or entering nor carrying out any activity on the said parcel since the Plaintiff's stay and occupancy 15 years ago. That she has been in continuous, open and exclusive uninterrupted occupation and possession of the suit property for the last 15 years a period of over 12 years.
3. That the Defendants whereabouts are unknown to the Plaintiff and in their absence and in the absence of any claim or action it is presumed that they have no interest whatsoever on the parcel known as Kiambaa/Waguthu/1711 (0.101) Ha. That as a result of the said occupation, she has acquired proprietary rights over the said portion of land by dint of Adverse Possession.
4. It is the Applicant's further averments that she carried out a history search over the suit property and established that the Defendants attained ownership and were issued with a title deed on 21/03/2001 and which to date reflects their name with no other entry.
5. That despite this from the time she begun farming and cultivating the said land, being 15 years ago, no one has made claim to the said parcel of land. Neither have the Defendants demanded that the Plaintiff vacates the parcel nor objected to her use, cultivation or occupancy on the land.
6. The Plaintiff claims to be grazing domestic animals on the land, cultivating napier grass for her cows, planted maize and beans on the suit property as per annexure 'CMM2' which are photographs showing the farming. At the same time, she claims to have kept her cows and chicken on the said parcel and has constructed a small temporary structure for her farm worker and care-taker as per annexure 'CMM3' which are photographs of the cowshed and chicken house. It is her contention that the neighbours and local administrators know that the said parcel belong to her as per the Chief's Letter produced as annexure 'CMM4'.
7. She avers that her application is merited given the time she has occupied the suit parcel without any interruptions. It is her contention that the area has now developed with water pipes and electricity. The residents are at liberty to connect to the supply lines for their usage but it is difficult for her to do so since she does not possess any documents save for being in occupation of the suit property.
8. Thus, that it is in her interest that the parcel be registered in her name instead of the Defendants to enable her have proper, lawful and legal ownership having been in occupation for 15 years without any interference. That she wishes to carry out better and improved development of the property.
9. It is her averment that the registration will enable her pay rates if at all necessary although she notes that the suit property is a freehold parcel being in the rural area.
10. The suit was undefended. The Defendants were served vide substituted service vide the Nation Newspaper dated 03/08/2023 and an Affidavit of Service sworn by Timothy Mwaura on 21/08/2023 filed in Court. The Defendants did not enter appearance.



11. The matter was listed for formal proof on 23/06/2025 but the Court was not sitting on this date since the Judge was on leave and so a new date was set for 23/07/2025.

Plaintiff's Case

12. The Plaintiff's evidence in the matter was comprised of her sworn testimony, the documents she produced as exhibits 'PWExh 1-4' and the testimony of PW2.
13. The Plaintiff testified that she stays in Kiambaa in Kiambu County and that she is a farmer. She stated that the Defendants are not known to her. That she went to the Chief and sought to know about the suit property and that the Chief guided her to the Surveyor who obtained the Green Card whose copies she has produced in Court as part of her exhibits.
14. She adopted her witness statement dated 5/06/2023 and testified that the suit property measures a quarter of an acre. It was her testimony that she had stayed on the suit property for 17 years. She told the Court that the Chief wrote for her the letter produced as Exhibit 4. It was her evidence that her husband died and left her on the suit property and she asked the Court to grant her the prayers made in the Plaintiff.
15. PW2 - Jane Wangare Nginge testified and stated vide her witness statement dated 27/4/2023 that she knows the Plaintiff because they come from the same village. That she knows the suit land and that the Plaintiff has been in occupation thereof since the year 1980. That the occupation and use has been open, uninterrupted and peaceful. That she has never seen the Defendants on the suit land.
16. PW2 - Jane Wangare Nginge testified and stated vide her witness statement dated 5/06/2023 that she knows the Plaintiff because in 2008 she employed her and that she is her neighbour. She testified that on the suit property there is a mabati structure where the Plaintiff stays and she has stayed on the property for 17 years. She informed the Court that their Chief is known as Peter Mungala.
17. It was her testimony that the husband to the Plaintiff died and he was buried in their homeland in Makueni. She also told the Court that the Plaintiff farms on the suit property and that there are cows and goats.
18. At this point the Counsel for the Plaintiff informed the Court that the Plaintiff had another witness who is the Chief but that he has travelled and therefore he closed the Plaintiff's case and he informed the Court that he will file submissions within three (3) days.
19. The Court directed the Plaintiff to file written submissions which she did dated 24/07/2025. The Plaintiff identified three (3) issues for determination in her submissions, that is:
 - i. Whether or not the Plaintiff has had occupancy for over 12 years?
 - ii. Whether or not the Plaintiff stay has extinguished Defendants' rights and ownership to land?
 - iii. Whether or not the Court should declare Plaintiff owner of subject suit land?
20. It is the Applicant's submissions that she has satisfied the ingredients of adverse possession as was set out in the case *Mtana Lewa vs Kahindi Ngala and Mwanghandi (2015)eKLR*. Further reliance was placed on the Court of Appeal case of *Teachers Cooperatives Savings and Credits Society Limited vs Robert Muhambi Katana & 15 Others (2018) eKLR*. She emphasized the fact that the critical principle in adverse possession is one entering the land owned by another adversely and remaining on it in a continuous, open, exclusive uninterrupted occupation and possession of the land. She reiterated the averments contained in her Supporting Affidavit and urged this Court to grant the Orders sought.



Analysis and Determination

21. What flows from the pleadings and attachments is that the suit property is owned by the Defendants and the title deed was issued according to the entries provided in the Green Card to one Wilfred Koinange Gathoni on 12/11/1998 after the parcel file was opened on 20/02/1998. The next entry is for John Alex Maina whose title was issued on 28/02/2000 and then a third entry for issuance of title was made on 21/03/2001 to the same John Alex Maina Karanja and Ewamaina Karanja. The Green Card copy is a certified copy which was certified by the District Land Registrar of Kiambu on 29/6/2020.
22. This Court has a duty to interrogate and evaluate uncontroverted evidence in order to determine whether the Applicant is entitled to the prayers sought. The Court in the case of Murang'a ELCA No. 16 of 2017:- Gichinga Kibutha v Caroline Nduku [2018] eKLR pronounced itself on uncontroverted evidence and in relation to the strength of such evidence stated as follows: It is not automatic that in instances where the evidence is not controverted, the claimant's claim shall have his way in Court. He must discharge the burden of proof. He must proof his case however much the opponent has not made a presence in the contest.
23. This means that the burden of proof is placed on the person alleging the occurrence of an event and where there is no evidence to challenge the allegations, the standard of proof automatically is higher. Undoubtedly, owing to the nature and extent of orders for adverse possession to wit extinction of right to property, the burden is higher. The burden squarely lies on the Applicant to demonstrate that he has met the requirements for the grant of an order of adverse possession. The Applicant is the one who has alleged and must proof. (See Nairobi CoA App No. 95 of 2014 Ruth Wangari Kanyagia vs Josephine Muthoni Kinyanjui [2017] eKLR)

Issues for Determination

24. From the pleadings filed, the evidence adduced and submissions made, the sole issue that emerges for determination is whether or not the Plaintiff has acquired title to the suit land by adverse possession.

Analysis and Determination

25. The law on adverse possession is provided for under the *Limitation of Actions Act*. Section 7 of the Act provides:
 - “(1) 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. Section 13 “(1) 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 Sections 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.
 - (2) 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.



- (3) 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.”
26. Section 17 extinguishes the rights of a registered owner where there is a successful claim for adverse possession. Section 38 on the other hand provides;
- “(1) 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.”
27. The Court of Appeal in Kisumu Civ App. No. 110 of 2016 *Richard Wefwafwa Songoi v Ben Muniyifwa Songoi* [2020] eKLR opined that a person claiming adverse possession must establish the following:-
- (a) On what date he came into possession.
 - (b) What was the nature of his possession?
 - (c) Whether the fact of his possession was known to the other party.
 - (d) For how long his possession has continued and;
 - (e) That the possession was open and undisturbed for the requisite 12 years.
28. The Applicant contends that she entered into the parcel of land and has been in occupation for a period of over 15 years, which is beyond the statutory claim period. To determine the nature of possession, this Court is guided by the decision in *Kisumu Civil Appeal No. 27 of 2013 Samuel Kihamba v Mary Mbaisi* [2015] eKLR, where the Court held:-
- “Strictly, for one to succeed in a claim for adverse possession one must prove and demonstrate that he has occupied the land openly, that is, without force, without secrecy, and without license or permission of the land owner, with the intention to have the land. There must be an apparent dispossession of the land from the land owner. These elements are contained in the Latin phraseology, *nec vi, nec clam, nec precario*. The additional requirement is that of *animus possidendi*, or intention to have the land.”
29. The key test is that the owner of the land must have been dispossessed or have they discontinued possession of the property. In the case of *Francis Gacharu Kariri v Peter Njoroge Mairu*, Civil Appeal No. 293 of 2002 (UR):
- “... the possession must not be broken, or any endeavours to interrupt it.”
30. The Plaintiff led evidence that at the time of filing suit, she had occupied and possessed the land for 15 years, and that at the time of hearing on 23/07/2025 she was in possession for 17 years uninterrupted. This was corroborated by the evidence of PW2 and the Chief’s letter. Although the Plaintiff has not stated when she entered the land, she has provided the duration she has been on the suit property which is beyond the statutory 12 years required for adverse possession. That the entry was not with the permission of the Defendant. Indeed, her evidence is that the Defendant has not sought to dispossess her of the suit land and neither has she relinquished possession for the past 15 years. The activities on



the land is evidence of her animus possidendi that is to say the use of the land in an inconsistent manner with that of the paper owners, the Defendants.

31. Under our law, the limitations on the bringing of actions for the recovery of land make it possible for title to land to be acquired by adverse possession under certain conditions after the expiry of a certain period of time specified by Statute. When a land owner has been out of possession, and a stranger has been in possession, for a statutory period sufficient to bear the owner's right to re-enter or to recover possession by action, the owner's title, if it is unregistered under any of the land registration statutes is extinguished, but if it is registered title it is not extinguished but the registered proprietor holds it in trust for the person who by virtue of the statute has acquired the title, and the stranger acquires title to the land which is good against all the world including the owner.
32. Basing my mind on the annexed copy of Green Card, it is clear that the owners of the suit property are the Defendants as per the entries made. Adverse possession accrues on land and not title. While the Defendants acquired title, they were not in occupation of their land since acquiring the title.
33. The Court is persuaded by the sentiments of Justice Kuloba J, (as he then was,) in Nairobi Civ No. 283 of 1990 *Gabriel Mbui v Mukindia Maranya* [1993] eKLR, where the Court held:

“The adverse character of the possession must be established as a fact. It cannot be assumed as a matter of law from mere exclusive possession even if the mere possession has been for twelve or more years. In addition, there must be facts showing a clear intention to hold adversely, and under a claim of right. De facto use, and de facto occupation must be shown.”
34. The Defendants certainly being ripped off of their right by dispossession by the Plaintiff who produced evidence raring of domestic animals namely cows and chicken on the suit property, cultivation of the nappier grass and planting of maize and beans. (See annexure ‘CMM2’). This evidence was furnished to the Court and has not been controverted and it is clear that the Applicant is in occupation.
35. In Kisumu Civil Appeal No. 27 of 2013, *Samuel Kihamba vs Mary Mbaisi* (2015) eKLR the Court of Appeal held that:

“Strictly for one to succeed in a claim of adverse possession, one must prove and demonstrate that he has occupied the land openly, that is without force, without secrecy and without license or permission of the land owner with the intention to have the land. There must be an apparent disposition of the owner. These elements are contained in the Latin Phraseology, nec vi, nec clan nec precario. The additional requirement is that of animus possidendi, or intention to have the land.”
36. Also the Court of Appeal of Kenya in the case of *Kasuve vs. Mwaani Investments Ltd & 4 Others* [2004] 1 KLR 184 held that:-

“... and in order to be entitled to land by adverse possession, the claimant must prove that he has been in exclusive possession of the land openly and as of right and without interruption for a period of 12 years either after dispossession of the owner or by the discontinuation of possession by the owner on his own volition.”
37. Guided by the foregoing authorities and on the basis of the evidence placed before Court, the Court finds that the Applicant has met the threshold for obtaining title by adverse possession. The Court further finds that the Defendants who are the registered owners have been dispossessed of the suit land for a period of over 15 years and that by this reason their title has been extinguished by effluxion of time.



38. In conclusion the Court finds that the Plaintiff has proved her case on a balance of probabilities and enters Judgement in her favour for:-
- a. A declaration is made that the Plaintiff is entitled to be registered forthwith as the owner of the land Title Number Kiambaa/Waguthu/1711.
 - b. A Declaration is hereby issued that the Title of the said land Kiambaa/Waguthu/1711 (0.101) Ha has been extinguished by the Plaintiff's adverse possession and occupancy thereof for period of more than 12 years in terms of Section 17 and 38 of the Limitations of Actions Act Cap 22.
 - c. A Declaration is hereby issued that the Plaintiff has acquired an interest to land in Kiambaa/Waguthu/1711 (0.101) Ha by virtue of adverse possession thereof for more than 12 years from February 2008.
 - d. An order is hereby issued that the Plaintiff be registered as the proprietor of the whole of Kiambaa/Waguthu/1711 (0.101) Ha in place of the Defendants.
 - e. An order for transfer of the suit land by the Defendants in favour of the Plaintiff is hereby issued failing which the Deputy Registrar of the Honorable Environment and Land Court [ELC] in Thika Law Courts is directed to execute the transfer instruments and all attendant documents to facilitate the transfer and registration of the said parcel of land that is Kiambaa/Waguthu/1711 in favour of the Plaintiff, in the event of default on the part of the Defendants.
 - f. An order of permanent injunction is hereby issued restraining the Defendants, either by themselves, agents, servants and or employees from interfering with Plaintiff's peaceful possession and occupation of the said parcel of land Kiambaa/Waguthu/1711 (0.101) Ha in any manner whatsoever and/or however.
 - g. Each party to bear their own cost of this Originating Summons.
 - h. Orders Accordingly.

DATED, SIGNED AND DELIVERED AT THIKA THROUGH MICROSOFT TEAMS ON THIS 30TH DAY OF OCTOBER, 2025.

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MOGENI J

JUDGE

In the presence of:-

..... for the Plaintiff

..... for the 1st Defendant

..... for the 2nd Defendant

Mr. Melita – Court Assistant

.....

MOGENI J

JUDGE.

