



REPUBLIC OF KENYA



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Njoroge v Ndabi (For and on Behalf of the Estate of Jonah Ndabi) & 3 others (Environment and Land Case 34 of 2019) [2025] KEELC 7414 (KLR) (28 October 2025) (Judgment)

Neutral citation: [2025] KEELC 7414 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND CASE 34 OF 2019
JM ONYANGO, J
OCTOBER 28, 2025
IN THE MATTER OF SECTION 38 OF THE LIMITATION
OF ACTIONS ACT CAP 22 LAWS OF KENYA

BETWEEN

TABITHA NJERI NJOROGE PLAINTIFF

AND

RICHARD WAMWEYA NDABI (FOR AND ON BEHALF OF THE ESTATE OF JONAH NDABI) 1ST DEFENDANT

JOSEPH KARANJA 2ND DEFENDANT

MATHINI NJAU 3RD DEFENDANT

DEDAN MUGO 4TH DEFENDANT

JUDGMENT

1. Before this Court lies a claim seeking relief under the doctrine of adverse possession. The Plaintiff filed a Re-Amended Originating Summons (OS) dated 8th December 2022 seeking the following Orders:
 1. That the Plaintiff Tabitha Njeri Njoroge be declared to be in adverse possession of L.R. No. Ngenda/Karuri/T.349 which is currently registered in the name of Joseph Karanja.
 2. That THE Prohibition Orders registered on L.R NO. Ngenda/Karuri/T.349 by Mathini Njau (Deceased) and Dedan Mugo (Deceased) on 14/4/65 be removed.
 3. That the name of Joseph Karanja (Deceased) be struck off and the Plaintiff Tabitha Njeri Njoroge be registered as the proprietor of L.R NO. Ngenda/Karuri/T.349.
 4. That the costs of this Summons be provided for.



3. The OS was grounded on the supporting affidavit of Tabitha Njeri Njoroge sworn on even date.

Background

4. Essentially, it is the Plaintiff's case that they are entitled to the parcel of land known as L.R NO. Ngenda/Karuri/T.349 (hereinafter the suit property) having been in possession and occupation thereof since the year 2006.
5. The 1st Defendant entered appearance on 1st April 2019.
6. The 2nd, 3rd and 4th Defendants failed to enter appearance prompting the Plaintiff to seek leave to effect service of the Re-Amended Originating Summons by way of substituted service.
7. The Plaintiff effected service by way of an advertisement in the Daily Nation newspaper dated 23rd January 2023 in compliance with the courts Orders issued on 7th December 2022.
8. Despite substituted service having been duly effected, the 2nd, 3rd and 4th Defendants failed to enter appearance or file any response.
9. The hearing proceeded on 16th July 2025, the Court being satisfied that the Defendants had due notice of the proceedings.

Plaintiff's Case

10. Tabitha Njeri Njoroge was sworn in as PW1. She relied on her witness statement as her evidence in Chief.
11. She testified that prior to the year 2006, her husband, the late David Chege Kuria bought the suit property for a consideration of Ksh. 200,000/- from one Jonah Ngabi Wamweya (deceased).
12. She told the court that vide an agreement dated 15th July 2006 (PEX1), the late Jonah Ndabi Wamweya received Ksh. 180,000/- as part of the consideration for the sale of the suit property. She completed paying the Ksh. 20,000/- balance of the purchase price and the same was acknowledged in the agreement dated 21st September 2008 (PEX2).
13. It was PW1's testimony that Jonah Ndabi Wamweya (deceased), who sold the suit property to her and her husband, confirmed buying the land from one Joseph Karanja (deceased) who passed on before effecting the transfer to her husband.
14. PW1 testified that she has stayed on the suit property since 2006 without any interruption. She stated that she uses the suit property for farming.
15. PW1 testified that Jonah Ndabi Wamweya (deceased) passed away before effecting the transfer of the suit property to her. She clarified that Jonah Ndabi Wamweya (deceased) informed her that he needed the court's intervention to effect the transfer and explained that he had filed a suit to obtain title to the suit property.
16. PW1 produced proceedings for Nairobi Civil Suit No. 26 of 1997 (O.S) (PEX3) in which Jonah Ndabi Wamweya (deceased) filed suit in an attempt to obtain title to the suit property. PW1 noted that Jonah Ndabi Wamweya (deceased) passed away before the O.S he had filed was heard on its merits.
17. PW1 testified that the last search she conducted indicated that the suit property was registered in the name of the 1st Defendant and inhibited by the 3rd and 4th Defendants whom she admitted she did not know.



Defendant's Case

18. The 1st Defendant testified as DW1. He stated that he is the son of Jonah Ndabi Wamweya (deceased) and the administrator of his estate.
19. DW1 stated that he is aware that his late father sold the suit property to David Chege (deceased) who was the husband to the Plaintiff. He stated that his late father was paid in full and gave vacant possession of the suit property.
20. DW1 testified that his late father bought the suit property from Joseph Karanja (deceased) but passed away before the suit property was transferred to him.
21. DW1 further testified that he does not know the persons who have placed restrictions on the suit property. He stated that he has no claim to the suit property.

Issues for Determination

22. Having perused the pleadings, the supporting affidavit in support, and the evidence adduced the sole issue that emerges for determination is:

Whether the Plaintiff is entitled to the suit property by way of adverse possession.

Analysis and Determination

23. The doctrine of adverse possession is rooted in the principle that the law aids the vigilant, not the indolent. It rests upon possession that is open, continuous, and hostile to the true owner's title for the period prescribed by statute.
24. The Court's task, therefore, is to ascertain whether the Plaintiff's possession bears the character and duration contemplated by law to extinguish the Defendant's title and confer ownership by operation of time.
25. The doctrine of adverse possession in Kenya finds statutory expression in Section 7 of the *Limitation of Actions Act*, which provides:

“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.”
26. The Act elaborates the doctrine further under Section 13, defining the nature and effect of possession deemed adverse. In substance, it provides that a right of action to recover land does not arise unless the land is in the possession of a person against whom time can run, and that such possession, continuous, exclusive, and without consent, constitutes adverse possession.
27. Section 17 of the *Limitation of Actions Act* further stipulates that upon the lapse of the prescribed twelve-year period within which an action to recover land may be brought, the title of the registered proprietor is by law extinguished.
28. Sections 37 and 38 address land held under registration statutes, stipulating that the registered proprietor's title is not extinguished outright but is held in trust for the person in adverse possession. Such a claimant may, by application to the High Court, seek an order vesting the property in their name.



29. The principles embodied in these provisions have been judicially distilled through a long line of authorities, guiding the Court in determining when possession ripens into ownership by operation of law.
30. The nature and essence of adverse possession were articulated with characteristic clarity by Kuloba J (as he then was) in *Gabriel Mbui v Mukindia Maranya* [1993] eKLR, where the learned Judge observed:

“It is possible to define “adverse possession” more fully, as the nonpermissive physical control over land coupled with the intention of doing so, by a stranger having actual occupation solely on his own behalf or on behalf of some other person, in opposition to, and to the exclusion of all others including the true owner out of possession of that land, the true owner having a right to immediate possession and having clear knowledge of the assertion of exclusive ownership as of right by occupying stranger inconsistent with the true owners enjoyment of the land for the purposes for which the owner intended to use it.”
31. From the above definition, the essential elements emerge with precision. Possession must be non-permissive, actual, and exclusive; it must be exercised openly, continuously, and with the intent to exclude the true owner.
32. Time begins to run only when such possession becomes inconsistent with the owner’s title and the owner is either aware, or ought to be aware, of the occupier’s assertion of ownership.
33. The doctrine therefore rewards long, undisturbed possession that stands in defiance of the registered owner’s inaction, not mere occupation without *animus possidendi*.
34. The jurisprudence has since evolved in its articulation of the doctrine, but the core principles remain intact.
35. In *Mtana Lewa v Kahindi Ngala Mwangandi* [2015] eKLR, the Court of Appeal distilled the essence of adverse possession in terms that continue to guide our courts, stating that:

“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 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.”
36. This articulation underscores that the doctrine is not founded on the owner’s loss, but on the possessor’s long, open, and uninterrupted assertion of dominion in defiance of the registered proprietor’s inaction: a quiet transmutation of possession into ownership through time and conduct recognized by law.
37. It is the Plaintiff’s case that they have been in possession and occupation of the suit property since 2006.
38. It was the Plaintiff’s testimony that since taking possession of the suit property, they have utilized it as farming land and have continuously asserted ownership of the suit land.
39. The 1st Defendant entered appearance but laid no claim to the suit property effectively leaving the Plaintiff’s assertions uncontroverted.



40. The 2nd, 3rd and 4th Defendants though duly served through substituted means, neither entered appearance nor participated in the proceedings.
41. The matter therefore proceeded on the strength of the Plaintiff's unchallenged evidence.
42. The absence of any contestation does not, however, relieve the Plaintiff of the burden of proof. The Court must still be satisfied, on the strength of the evidence presented, that the Plaintiff's occupation meets the legal threshold for adverse possession.
43. The question, therefore, is whether the Plaintiff's possession of the suit property since 2006 was open, continuous, exclusive, and adverse to the title of the registered proprietor within the meaning of the *Limitation of Actions Act* and the governing jurisprudence.
44. The evidence shows that the Plaintiff completed payment for the land in 2008 but no transfer was effected in their favour. From that point, the vendor's obligation to convey the property remained unfulfilled, and the Plaintiff's continued possession, though initially rooted in a sale agreement, became inconsistent with the registered proprietor's title.
45. It is therefore from 2008 that the Plaintiff's occupation assumed an adverse character, as they remained in open, exclusive, and continuous possession without acknowledgment of the registered owner's rights or further consent.
46. Accordingly, by the lapse of twelve years thereafter, the Plaintiff's claim under the doctrine of adverse possession had crystallized in law.
47. Having considered the evidence and the applicable law, the Court is satisfied that the Plaintiff's possession of the suit property, having become adverse from 2008, has endured for well beyond the statutory period of 12 years prescribed under section 7 of the *Limitation of Actions Act*.
48. The Plaintiff's occupation was open, continuous, and exclusive, and no step was taken by the registered proprietor or their successors to recover the land within the limitation period.
49. Accordingly, the title of the registered proprietor stands extinguished by operation of law, and the Plaintiff is entitled to be registered as the owner of the suit property pursuant to sections 37 and 38 of the *Limitation of Actions Act*.
50. The court takes note that the search dated 22nd July 2025 adduced by the Plaintiff reveals that a prohibitory order was placed by the 3rd and 4th Defendants on 14th April 1965.
51. Despite the 3rd and 4th Defendants being duly served, neither entered appearance nor offered any explanation for the said entry. Such a prohibition, while serving to preserve the title pending adjudication, cannot override rights that have matured in law through adverse possession.
52. In the absence of any lawful justification for its continuance, the prohibition stands as an impediment to the realization of the Plaintiff's vested rights and is therefore liable to be removed.
53. In view of the foregoing, the Court finds that the Plaintiff has proved their claim on a balance of probabilities.
54. Accordingly, I enter Judgment for the Plaintiff and make the following orders:
 1. A declaration is hereby issued that the Plaintiff has acquired title to the suit property by adverse possession.



2. The title of the registered proprietor is declared extinguished pursuant to sections 7, 17, and 38 of the *Limitation of Actions Act*.
3. The Land Registrar shall cancel the existing registration and register the Plaintiff as the proprietor of L.R. No. Ngenda/Karuri/T.349 forthwith.
4. The prohibition order registered on L.R. No. Ngenda/Karuri/T.349 by the 3rd and 4th Defendants against the said title is hereby lifted and expunged from the register.
5. There shall be no order as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY, AT THIKA THIS 28TH DAY OF OCTOBER 2025

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J. M. ONYANGO

JUDGE

In the presence of:

No appearance for the Plaintiff

No appearance for the Defendant

Court Assistant: Hinga

