



REPUBLIC OF KENYA



KENYA LAW
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**Nduati v Kariuki & 4 others (Environment and Land Case
616 of 2017) [2025] KEELC 7163 (KLR) (22 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7163 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND CASE 616 OF 2017**

**JM ONYANGO, J
OCTOBER 22, 2025**

BETWEEN

JOSEPH NGIGI NDUATI PLAINTIFF

AND

RUTH WARUGURU KARIUKI 1ST DEFENDANT

PETER NGANGA KAMANDE 2ND DEFENDANT

JOSEPH NGUGI KAMANDE 3RD DEFENDANT

LAND REGISTRAR THIKA 4TH DEFENDANT

ATTORNEY GENERAL 5TH DEFENDANT

RULING

1. Coming up for determination in this Ruling is the Notice of Motion application dated 24th September, 2024, seeking the following orders:
 - a. Spent
 - b. That this Honourable court be pleased to grant leave for joinder of: Ruth Waruguru Kariuki, Evanson Muiruri Kariuki, Isaac Karaba Kabui, Andrew Ndung'u Kabui and John Mugo Kabui as Plaintiffs in the suit.
 - c. That this honourable court be pleased to review, set aside or nullify consent orders adopted by this court on 28th July 2022.
 - d. That costs of this application be costs in the cause.
2. The application is based on the grounds set out in the Notice of Motion and in the Supporting Affidavits sworn by the 1st Defendant together with the other proposed Plaintiffs.



3. The Applicants state that the consent which was reached and adopted as an order of the Court on 28th July 2022 is a nullity ab initio on account of a mistake. They assert that they are the legitimate holders of an interest in land parcel Ngenda/Karuri/266 by virtue of adverse possession.
4. It is their position that they were never joined in the suit when the matter was before the Court, and as such, their right to natural justice was denied. They note that Ruth Waruguru Kariuki was joined in the suit as a defendant, although her interest relates to land parcel Ngenda/Karuri/370 and not Ngenda/Karuri/266.
5. The Applicants further indicate that Evanson Muiruri Kariuki was also not included in the proceedings, and consequently, his claim to an interest in Ngenda/Karuri/266 was never heard or determined. They maintain that Isaac Karaba Kabui, Andrew Ndungu Kabui, and John Mugo Kabui have been in open, peaceful, and continuous occupation of Ngenda/Karuri/266 since 1968, thereby acquiring ownership through adverse possession.
6. They explain that Peter Kamande Munyerie has been the registered proprietor of Ngenda/Karuri/266 since 1957, but has in fact occupied Ngenda/Karuri/370 continuously from 1957 to date. As a result, they contend that his title to Ngenda/Karuri/266 was extinguished after twelve years of their effective occupation of the land.
7. The Applicants add that Peter Kamande Munyerie's right to recover Ngenda/Karuri/266 was defeated and/or estopped after the year 1980. They state that they took possession of the land after their late father, Kabui Karaba, purchased it from Joseph Ngigi Nduati around 1968.
8. It is further their position that the late Kabui Karaba, the late Nduati Karuma (father of Joseph Ngigi Nduati), and Wairimu Muigai entered into a contract for the sale of land measuring 5.63 acres. However, due to a mistake, the land was described as Ngenda/Karuri/371 instead of Ngenda/Karuri/266, which was the correct parcel of that size.
9. They also assert that the consent adopted as an order of the Court on 28th July 2022 was reached at the instance of a person who, though purportedly the registered proprietor of Ngenda/Karuri/371, has no interest or claim over Ngenda/Karuri/266 and therefore lacked the capacity to instruct an advocate to act on his behalf regarding the same.
10. The Applicants maintain that unless the present application is allowed, their constitutional and human rights will be violated, and they will suffer irreparable loss and prejudice. They conclude that the Defendants will not suffer any prejudice if the application is allowed.
11. The Plaintiff's advocate Antony Karanja Kang'iri opposes the application through his Replying Affidavit sworn on 17th March 2025. He deposes that he has at all material times had conduct of the matter on behalf of the Plaintiff. He states that he was instructed to file the present suit way back in 2013 by the Plaintiff together with one Kabui Karaba (now deceased), who had purchased the suit property in 1970, although the Plaintiff remained the registered owner throughout.
12. He explains that after consultations, it was agreed that since there was no dispute between the Plaintiff and the late Kabui Karaba and because the Plaintiff was the registered proprietor, the suit would be filed in the Plaintiff's name. He adds that the late Kabui Karaba recorded a witness statement, which was filed in court on 8th August 2018.
13. Mr. Kang'iri further deposes that the matter was later transferred to the Environment and Land Court at Thika upon its establishment in 2017. He states that on 20th December 2020, the matter came up for further hearing, but the parties had by then negotiated and reached a consent in the presence of all litigants, thereby resolving the dispute.



14. He avers that two of the present Applicants, namely Isaac Karaba Kabue and Andrew Ndungu Kabui, have always participated in the matter, as they used to pay legal fees on behalf of their late father, Kabui Karaba, who was the actual purchaser of the property, as well as on behalf of the Plaintiff. He explains that both the Plaintiff and the deceased were advanced in age, being in their 80s and 90s and therefore relied on their sons to manage the litigation.
15. Mr. Kang'iri attaches copies of receipts showing payments made by Isaac Karaba Kabue and a letter authored by Andrew Ndungu Kabui, as evidence of their active involvement in the case.
16. He further explains that after the consent was recorded, a dispute arose between the Plaintiff and the 3rd Defendant regarding the specific portions of land parcel Ngenda/Karuri/266 to be taken by each party, since one side of the property had been subjected to quarrying activities. The Court consequently referred the matter to mediation at Milimani, where the parties reached a further agreement and signed another consent, which was recorded in court.
17. The deponent states that he personally obtained the decree following the mediation and that the Applicants, who were the link between the Plaintiff and his advocates, were the very individuals who personally registered the decree at the Gatundu Land Registry.
18. Mr. Kang'iri expresses his surprise at the Applicants' present change of position, asserting that they are estopped from disowning a consent that they voluntarily implemented for nearly four years. He emphasizes that the Applicants fully participated in the mediation, signed the resulting consent, and oversaw the registration of the decree, and therefore cannot now purport to dispute it.
19. He concludes that the consent was freely entered into by parties who were properly before the Court, that it resolved the dispute amicably, and that the Applicants' current attempt to challenge it is unjustified and contrary to the principles of finality and good faith in litigation.
20. In response to the application, counsel for the 1st Defendant Ms. Anne Wambui Ngugi filed a Replying Affidavit sworn on 10th April, 2025. She deposes that she has conducted the matter on behalf of the Defendants. She states that upon receiving instructions from her client, her firm filed a Statement of Defence and Counterclaim dated 19th April 2013. From the nature of the instructions received, it became necessary to join other interested parties to the proceedings.
21. She explains that an application dated 12th October 2015 was therefore filed seeking to join the 2nd and 3rd Defendants, which application was allowed by a consent filed in court on 6th June 2016.
22. According to her, the dispute before the Court involves three parcels of land, namely: (i) Ngenda/Karuri/370, registered in the names of Joseph Kariuki Muigai and Muiruri Muigai, but occupied by the families of Peter Nganga Kamande and Joseph Ngugi Kamande; (ii) Ngenda/Karuri/371, registered in the names of Joseph Kariuki Muigai (1/16 share) and Joseph Ngugi Nduati (15/16 share), but occupied by the same families; and (iii) Ngenda/Karuri/266, registered in the name of D. Kamande Munyerie (deceased), who was the father of the 2nd Defendant and the grandfather of the 3rd Defendant. She avers that land parcel Ngenda/Karuri/266 was not, at any point, occupied by any of the three families.
23. Ms. Ngugi further explains that the Plaintiff, together with the 1st, 2nd, and 3rd Defendants, all agreed that each party would obtain title deeds for the parcels of land they occupied. It was mutually agreed that the Plaintiff would receive three acres from Ngenda/Karuri/266, while the remainder of that parcel would go to the 2nd and 3rd Defendants, in accordance with a court order issued on 2nd June 2005. She adds that the parties reached this agreement because none of them wished to be displaced from land they had called home for over fifty years.



24. Ms Ngugi contends that the Notice of Motion dated 24th September 2024 is an afterthought and an abuse of the court process, as it seeks to join Ruth Waruguru Kariuki as a Plaintiff, yet she already appears in the proceedings as a Defendant.
25. She maintains that the 1st Defendant was fully aware of the events that transpired in court and that the issues relating to the three parcels of land arose from her own defence and counterclaim.
26. Ms. Ngugi further states that her legal advice to the 1st Defendant was based entirely on the court order dated 2nd June 2005, which was included in the 2nd and 3rd Defendants' filed documents. She asserts that the issue of adverse possession raised in the current application cannot be properly addressed through a review of the consent judgment, but rather should be pursued through a separate and independent suit. In her view, the consent that was recorded in court was rightfully and legally entered into with the full participation and approval of all the parties. She further deposes that the judgment has already been executed, and that the parties now seeking to be joined ought, if aggrieved, to institute a fresh suit rather than attempt to reopen a matter that has been conclusively determined.
27. Ms Jane Wangari Muthoga Advocate, filed a Replying Affidavit sworn on 24th April 2025. She contends that she is an Advocate of the High Court of Kenya, currently practicing under the firm of Wangari & Company Advocates, and that she has been in conduct of the defence in respect of the 2nd and 3rd Defendants in this matter since June 2016, when they were added as parties to the suit.
28. She states that the wife and children of the deceased 2nd Defendant are not within the jurisdiction of the Republic of Kenya. She further indicates that on 20th January 2020, the suit had been scheduled for hearing, but all parties entered into a partial consent which was duly recorded in open court, save for the issue concerning who was to retain the quarry portion of L.R. Ngenda/Karuri/266.
29. She avers that the issue relating to L.R. Ngenda/Karuri/266 had already been adjudicated upon in High Court Civil Case No. 1736 of 1999 (Nairobi). She explains that the remaining issue of the quarry was referred to court-annexed mediation, where the parties personally appeared, entered into a consent, and that the said consent was subsequently adopted as an order of this Honourable Court on 28th July 2021.
30. She contends that the Plaintiff actively participated in these proceedings and that the parties now seeking to be joined as Plaintiffs are persons related either to the Plaintiff or to the 1st Defendant. She maintains that no sufficient or justifiable reason has been provided to warrant reopening the matter. She adds that, since the 2nd Defendant died in 2023, the suit against him has abated.
31. Finally, she confirms the averments made by Anne Wambui Ngugi Advocate and Antony Karanja Kang'iri Advocate in their Affidavits.
32. In response to the Affidavits by the Advocates, the Plaintiff and the 1st Defendant filed a Supplementary Affidavit sworn on 14th May 2025. They assert that the Replying Affidavits sworn by the three advocates on record contain falsehoods, since neither of them participated in any proceedings that led to the alleged consent concerning the three parcels of land forming the subject matter of this suit.
33. They add that the clearest evidence of the falsity of the advocates' averments is the purported consent allegedly bearing their signatures, yet both of them are unable to read, write, or sign any document. They explain that they can only execute documents by way of thumbprint, which is their sole mode of signing. They therefore maintain that the advocates' assertions regarding their participation in the consent proceedings are completely untrue.



Applicants' Submissions

34. The Applicants filed Written Submissions dated 12th August 2025 through the firm of M/s Muigai, Kemei & Associates Advocates. Counsel for the Applicants submitted that this application has been filed by the holders of interest in Land Parcel No. Ngenda/Karuri/266, namely Ruth Waruguru Kariuki, Evanson Muiruri Kariuki, Isaac Karaba Kabui, Andrew Ndung'u Kabui, and John Mugo Kabui. She stated that the Applicants were in actual occupation of the land and that their possession conferred upon them overriding interests superior to those of the registered proprietor.
35. Counsel explained that by the time the present suit was filed in 2017, the late Peter Ng'ang'a Kamande and Joseph Ngugi Kamande, or any other person claiming through them, were legally estopped from asserting any claim over the said parcel due to the Applicants' adverse occupation. She contended that under Sections 7 and 17 of the *Limitation of Actions Act* (Cap 22, Laws of Kenya), the right of action to recover the land had long been extinguished, and consequently, the title held by the late D. Kamande Munyeria had become extinct as early as 1980.
36. It was her submission that the consent orders issued on 28th July 2022 offended the law and were therefore invalid, as they purported to revive extinguished rights and disregard the Applicants' long-standing possession. Counsel argued that the Applicants were not mere trespassers but had entered and occupied the land lawfully. She explained that Ruth Waruguru Kariuki and Evanson Muiruri Kariuki had taken possession of a one-sixth (1/6) portion of the land through an arrangement with Nduati Karuma, the original allottee of the land during consolidation and demarcation in the 1950s, while Evanson claimed through his mother, Ruth. On their part, Isaac Karaba Kabui, Andrew Ndung'u Kabui, and John Mugo Kabui entered the land in 1968 after their late father, Kabui Karaba, purchased five acres from Nduati Karuma pursuant to a sale agreement. Although the transfer was never perfected due to a misdescription of the land, the family had remained in open, continuous, and uninterrupted possession since then.
37. Counsel emphasized that a consent judgment has the nature of a contract; however, the consent adopted by the Court on 28th July 2022 could not stand as a valid contract since it was founded on illegality and mistake. She argued that the persons with the largest proprietary stake in the land were never joined as parties to the suit, which amounted to a violation of the principles of natural justice that no person should be condemned unheard.
38. She further referred to an affidavit sworn by Advocate Antony Karanja Kangiri on 17th March 2025, wherein he acknowledged that Isaac Karaba Kabui and Andrew Ndung'u Kabui had been paying legal fees and giving instructions on behalf of the elderly plaintiffs. Counsel contended that despite this admission, the two individuals were never included as parties, and their proprietary interests were never canvassed before the Court, an omission she described as a grave mistake or deliberate misrepresentation.
39. She went on to submit that Advocate Wambui Ngugi, who purported to act for 1st Defendant, did so without proper authority. She added that the 1st Defendant had sworn affidavits disowning any participation in the proceedings leading to the consent and had even appeared in Court twice seeking an opportunity to be heard. Counsel maintained that Wambui Ngugi Advocate's unwillingness to allow the 1st Defendant to testify or be cross-examined was questionable.
40. Counsel also took issue with Advocate Jane Wangari Muthoga, who had acted for the 2nd Defendant, stating that the said advocate had at first claimed the estate of the late Kamande was yet to be substituted, only later to produce a burial programme confirming that Kamande had died in May 2023.



Counsel argued that by May 2024, any claim by the deceased had abated, yet the advocate appeared intent on frustrating the Applicants' efforts to ventilate their claim before the Court.

41. According to counsel, the three advocates involved in the proceedings that culminated in the impugned consent, Wambui Ngugi, Jane Wangari Muthoga, and Antony Karanja Kangiri, acted in a manner that undermined justice, as they collectively resisted the Applicants' participation and opposed their being heard or cross-examined. She questioned why any honest advocate would oppose the testing of evidence through cross-examination if their intentions were genuine.
42. In conclusion, counsel maintained that the Applicants possessed the true facts concerning the ownership and occupation of L.R. Ngenda/Karuri/266, and that the consent order of 28th July 2022 was contrary to those facts and to the principles of justice. She therefore urged the Court to set aside the consent order and allow the Applicants to prosecute their claim for recognition as the bona fide proprietors of the subject land.

3rd Defendant's Submissions

43. The 3rd Defendant filed Submissions dated 3rd September 2025 through M/s Wangari & Company Advocates. In giving the background of the matter, she stated that the suit property, known as Ngenda/Karuri/266, had, at the time of filing, been registered in the name of one D. Kamande Munyeria (deceased), who was the father of the 3rd Defendant and the grandfather of the 4th Defendant(sic). She explained that the 3rd Defendant had petitioned the High Court of Kenya in Succession Cause No. 914 of 1989, where he was appointed administrator, and a Certificate of Grant was subsequently issued authorizing him to distribute the estate in accordance with the confirmed grant.
44. However, counsel noted that upon commencing subdivision, it was discovered that the parcel of land occupied by the family of the late David Kamande Munyeria was not Ngenda/Karuri/266, but rather L.R. Ngenda/Karuri/370, registered in the names of Joseph Kariuki Muigai and Muiruri Muigai, and L.R. Ngenda/Karuri/371, registered in the names of Joseph Nduati Ngugi (15/16 share) and Joseph Kariuki Muigai (1/16 share). She stated that the families of Joseph Kariuki Muigai and Muiruri Muigai were the ones in occupation and had developed the said parcels, while L.R. Ngenda/Karuri/266 remained unoccupied. According to her, this mix-up was caused by errors during demarcation by surveyors who had incorrectly identified the respective parcels to the registered owners.
45. Counsel added that the 2nd and 3rd Defendants were later joined in the suit in which the Plaintiff was claiming ownership of L.R. Ngenda/Karuri/266 through the 1st Defendant. Upon understanding the history of the dispute, she stated that the parties and their advocates had engaged in discussions and reached a consensus, which culminated in the consent order adopted on 28th July 2022.
46. She faulted the parties now seeking to be joined in the suit for alleging that they were unaware of the existence of the suit. Counsel urged the Court to refer to the verifying affidavit attached to the plaint, the consent executed before the adjudicator, and the witness statements on record, which, in her view, demonstrated that the parties were aware of the proceedings. Counsel emphasized that there had been no appeal filed against the decision in H.C.C. No. 1736 of 1999 (Nairobi) and therefore submitted that the consent recorded on 28th July 2022 was valid and not void as alleged.
47. In conclusion, she maintained that the application was bad in law, misconceived, and an abuse of the court process, and she urged the Court to dismiss it with costs.



Analysis and Determination

48. After a careful consideration of the application, Replying Affidavits and oral submissions by the counsels for the parties, the following issues arise for determination:
- i. Whether the Applicants should be joined as Plaintiffs in the suit.
 - ii. Whether the consent order recorded on 28th July 2022 should be set aside.

On the issue of Joinder

49. The Applicants seek to be joined to this suit as Plaintiffs on the basis that they are bona fide claimants to land parcel Ngenda/Karuri/266, having allegedly acquired ownership through adverse possession. They contend that they were not parties to the original suit, yet the consent recorded on 28th July 2022 directly affects their proprietary rights.
50. The law governing joinder of parties is set out under Order 1 Rule 10(2) of the Civil Procedure Rules, which empowers the Court to add any party whose presence before it is necessary in order to enable the Court to effectually and completely adjudicate upon and settle all questions involved in the suit.
51. In the present case, the record shows that the Applicants have been aware of the proceedings for a considerable period, and some of them, particularly Isaac Karaba Kabue and Andrew Ndung'u Kabui, were actively involved in the management of the suit, payment of legal fees, and even execution of the consent decree. Their participation, as deposed by Mr. Kang'iri Advocate, was not that of strangers but of persons who acted in close association with the Plaintiff and the late Kabui Karaba.
52. The Court also notes that the 1st Defendant, who now seeks to be joined as a Plaintiff, has been a substantive party to the proceedings since inception. It would therefore be both irregular and duplicative for her to simultaneously appear as both Plaintiff and Defendant within the same suit.
53. The application for joinder, therefore, appears to be an attempt to reopen a dispute that has already been conclusively resolved through a consent and subsequent execution of the same. The Court is not persuaded that the Applicants' participation was entirely absent or that their interests cannot be vindicated through separate proceedings, if indeed they hold distinct claims in adverse possession. Accordingly, this Court finds no sufficient justification to allow the joinder sought.

On the issue of Review and Setting Aside of the Consent Order

54. The Applicants further seek to set aside or nullify the consent order recorded and adopted by the Court on 28th July 2022, alleging that it was obtained through mistake and misrepresentation, and that they neither participated in nor authorized its execution.
55. The principles governing the setting aside of a consent judgment are well established. In *Flora N. Wasike vs Destimo Wamboko* [1988] eKLR, the Court of Appeal held that a consent order has a contractual effect and can only be set aside on grounds that would justify the setting aside of a contract, namely, fraud, mistake, or misrepresentation.
56. In the instant case, the Applicants allege that their purported signatures on the consent are forgeries since they cannot read, write, or sign documents. However, no forensic or independent evidence has been tendered to substantiate this claim. The affidavits by the three advocates who participated in the matter uniformly attest that the parties, including the Applicants or their representatives, were present and fully participated in reaching the consent.



- 57. It is further on record that the said consent was acted upon and fully executed, culminating in a decree that was registered at the Gatundu Land Registry. The Applicants’ conduct in implementing the decree for several years before seeking to challenge it weighs heavily against their current position and invokes the doctrine of estoppel.
- 58. Moreover, the Court notes that the Applicants’ claim of ownership by adverse possession is distinct and independent of the original cause of action in this suit. As correctly observed by Ms. Wambui Ngugi Advocate, such a claim can only be ventilated through a separate originating summons under Order 37 Rule 7 of the Civil Procedure Rules, and not by way of review or setting aside a concluded consent order. This Court is therefore satisfied that no sufficient or lawful grounds have been established to warrant interference with the consent judgment of 28th July 2022.
- 59. In light of the foregoing analysis, this Court finds that the Applicants have not demonstrated sufficient cause to warrant their joinder as Plaintiffs in this suit. The Applicants have failed to establish any legal or factual basis for review, setting aside, or nullification of the consent judgment adopted on 28th July 2022; and the issues of adverse possession, if any, can properly to be pursued through a separate suit under the relevant provisions of law.
- 60. Accordingly, the Notice of Motion dated 24th September 2024 is without merit and is hereby dismissed. Each party shall bear their own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 22ND DAY OF OCTOBER 2025.

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J. M ONYANGO

JUDGE

In the presence of:

- 1. Ms Mungai for the Applicants
- 2. Ms Wangare for the 1st and 2nd Defendants
- 3. Ms Mugo for Mr Kang’iri for the Plaintiff

Court Clerk: Hinga

