



**Wanjohi v Gikore (Sued as the administrators of the Estate of the Late Patrick Gikore Mwitari) (Environmental and Land Originating Summons E005 of 2023) [2025] KEELC 7192 (KLR) (1 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 7192 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU**  
**ENVIROMENTAL AND LAND ORIGINATING SUMMONS E005 OF 2023**  
**LN MBUGUA, J**  
**OCTOBER 1, 2025**

**BETWEEN**

**JAMES MWANGI WANJOHI ..... PLAINTIFF**

**AND**

**ERICK KITHINJI GIKORE (SUED AS THE ADMINISTRATORS OF THE ESTATE OF THE LATE PATRICK GIKORE MWITARI) ..... DEFENDANT**

**JUDGMENT**

1. The plaintiff filed this suit on 31.10.2023 through an Originating Summons claiming entitlement to 5 acres of land out of land parcel no. L.R. Marmanet North Rumuruti Block 2/9 (Ndurumo) by way of adverse possession. He pleaded that on 13.1.1997, he entered into a sale agreement with Patrick Gikore Mwitari in which the latter was the registered owner of the suit land of which, the plaintiff was to purchase 5 acres out of the said land.
2. That Patrick Gikore obtained a consent from the land control board to subdivide the land, and a surveyor subsequently subdivided the suit land to clearly demarcate the 5 acres out of the suit land. The R.I.M was then amended to reflect the subdivision whereby plaintiff's portion was given the number 6234.
3. That the plaintiff then took possession of the 5 n acres and commenced farming activities. He has been in exclusive possession of that land todate without any interruption.
4. That in a strange twist, Patrick Gikore declined to transfer the 5 acres to the plaintiff alleging that the consent to transfer the land was obtained fraudulently and he also threatened to sell the land to a third party. Further, Patrick purported to rescind the sale agreement.
5. This prompted the plaintiff to lodge a caution against the title of the suit land to protect his interest. He also filed a suit in Nakuru HCC NO. 243 of 1998 seeking to protect his interest in the suit land,



- of which he obtained injunctive restraining orders against Patrick Gikore. However, Patrick Gikore passed away on 1.5.1999 and the aforementioned suit subsequently abated.
6. That at the end of 2021, the plaintiff came to learn that the family of the deceased had filed a succession case in Meru in respect of the estate of Patrick Gikore where a confirmed grant had been issued, but the family of the deceased had misled the court on the actual acreage entitlement, prompting him (the plaintiff) to file an application in that succession court for transfer of his rightful portion to him, but in its ruling, the court gave directions that recourse was in a civil suit. Still, the plaintiff lodged a complaint in the criminal arena against the widow of the deceased who was subsequently charged with the offence of perjury in Nyahururu criminal case no. E217 of 2022 and she was convicted.
  7. In opposition to the suit, Joyce Njoki Gikore, the legal representative of the estate of deceased Patrick filed a Replied affidavit dated 27.11.2023 where the claim of the plaintiff is denied. She avers that the sale of the suit land to the plaintiff was rescinded, and the plaintiff vide a letter dated 28.5.1998 was ordered to remove the posts he had erected, which he did. That the plaintiff then opted to go to court in the Nakuru case no 243 of 1998. The case remained alive even after her husband's death. That the plaintiff had left the suit land and there was no evidence of how he returned back to the land. He only re-surfaced after she filed the Meru succession case no 442 of 2004. Adding that the plaintiff did not even prove entry into the suit land.
  8. The defendant pleads that the letter of consent from the Land Control board was obtained fraudulently, thus the mutation forms are disputed and that the RIM does not exist. The defendant further pleads that the plaintiff did not put up a house on the suit land, or even a structure.
  9. On the conviction in the criminal case, the defendant pleaded that she has appealed against the said decision in Nyahururu Criminal Appeal case no. 26 of 2023.
  10. During the trial, the plaintiff, James Mwangi Wanjohi called 4 witnesses to buttress his case where he testified as PW1 James Mwangi Wanjohi. He adopted his witness statement dated 29.4.2024 as his evidence. The contents thereof mirrors his pleadings, adding that he planted trees which are now mature and he has also been leasing the land to one Lucy Wandia, (PW3). Pw1 also produced the 14 documents in his trial bundle as P- Exhibits 1-14.
  11. In cross examination, Pw1 stated that he does not have the sale agreement for the land, but he did purchase the same and took possession and fenced the land and planted trees some within the land, and others along the boundary. The farm is fully utilized through planting of hay. That in year 2012, he leased the land to Pw3 and they have a lease agreement.
  12. Pw1 contends that they had a disagreement in 1998 with the seller, where the D.O wrote to him a letter, telling him to remove posts on the suit land. Pw1 does not know the exact acreage of the whole land, but he knows his portion is 5 acres.
  13. He contends that his portion is now identified as parcel 6234 even though there is no title, and that this number is reflected in the RIM. He avers that not the whole purchase price was paid as balance was to be paid later.
  14. Pw1 reiterated that the defendant was convicted in the criminal case because of quoting less acreage for the plaintiff, but he can see that the defendant appealed against the conviction.
  15. Pw1 avers that the seller of the land could not have rescinded the sale agreement because he (seller) signed the mutation forms giving rise to the subdivision. He avers that the seller started contesting the subdivision after applying for the consent and only at the point of production of the mother title, thus the transfer was not completed.



16. Pw1 further stated that he has been in continuous occupation of the suit land since 1997.
17. In re-examination, Pw1 stated that he knew the boundaries of his land because immediately the surveyor finished his work, he was shown the boundaries. That is when he put up the perimeter fence and also planted trees. He avers that the mutation forms relating to his parcel 6234 were duly registered, thus his 5 acres of land were clearly demarcated and the R.I.M was amended accordingly. The transfer was only derailed because the mother title was not availed.
18. Pw1 reiterated that he has been continuously on that land, of which he has never seen the defendant on that land.
19. PW2 is one Charles Nderitu Muturi an assistant chief. He adopted his witness statement dated 29.4.2024 as his evidence. He states that he has known the plaintiff since 1998 when the former entered the suit land and commenced farming on 5 acres. He even gave the plaintiff tree seedlings to plant in 1999. Pw2's home is not far from plaintiff's land.
20. In cross examination, Pw2 reiterated that he is an assistant chief of the area, even though he has no documents to that effect.
21. PW3 is one Lucy Wandia Njogu and she adopted her witness statement dated 29.4.2024 as her evidence. She avers that in year 2012, She commenced cultivation of the suit land after entering into a lease agreement with the plaintiff. In cross-examination, Pw3 stated that she had not indicated that the lease had an error.
22. PW4 is one Joseph Wanjohi Kariuki who also adopted his witness statement dated 29.4.2024 as his evidence. He introduced himself as a neighbour of the plaintiff, adding that the plaintiff came to that land in 1998.
23. In cross examination, Pw4 stated that his land is not far from the land of the plaintiff, that he even gave him seedlings to plant and he never heard of anyone else coming to that land, save the tenant of the plaintiff, a woman who farms hay on the land.
24. DW1, Joyce Njoki Gikore was the sole witness for her case. She adopted her witness statement dated 21.5.2024 as her evidence. She also produced 7 documents in her trial bundle as Defence Exhibits 1-7. Her evidence mirrors the contents of her pleadings, but avers that the plaintiff indeed purchased a portion of her husband's land vide an agreement of 13.1.1997, but the same was rescinded. She also added that the land has remained bare.
25. In cross examination, Dw1 stated that she stays in Meru at Bibiri location, that is where her home is located and that is where she has been residing on since 1990 when she got married to Patrick Gikore who died on 1.5.1999. She avers that her husband bought the suit land in 1990 and she has the title deed for the land still in her husband's name. The land is guarded by her cousin Titus Munene who had wanted to buy a portion of the suit land. She contended that the whole land is 15 acres.
26. Dw1 disputed the signatures of her husband in the mutation forms and further denies that her husband obtained the consent from the land control board. She avers that in the letter at page 109 of plaintiff's bundle, her husband is saying that plaintiff's occupation of the suit land was illegal. She further states that the plaintiff has put up an illegal caution on her land, and now desires to refund him his money.
27. Dw1 is however not aware of any action taken by her husband against the plaintiff. She has been the administrator of the estate of her husband, but she likewise did not take any action against the plaintiff.



28. Dw1 stated that she does not know any neighbours to the suit land. She contended that plaintiff left the suit land on 15.6.1998 after he was issued with the letter by the DO.
29. She admitted that the Nakuru case abated as her husband was not substituted after his death. She reiterated that even though there were mutation forms as well as the RIM, all that was done fraudulently, thus her husband never divided the suit land into two. However, referred to page 7 of her bundle where there is an affidavit of her husband sworn in the Nakuru case, Dw1 admitted that her husband had applied for the consent.
30. She further stated that in the succession case, she had indicated that she was to own 5 acres of the suit land with the plaintiff.
31. In re-examination, Dw1 reiterated that plaintiff was forced to move after the DOS letter and he never came back. She further stated that she visits the land to monitor the same, adding that there are no trees on that land. She avers that she appealed against the conviction in the criminal case, but the appeal case has not been finalized. She contends that as an administrator of her husband's estate, she never took plaintiff to court because he doesn't interfere with the suit land. According to her, the whole land is 6.08 hectares. She had indicated in the succession case that they jointly own the suit land with the plaintiff because she knew he was an interested purchaser.
32. In his submissions dated 17.4.2025, the plaintiff avers that the parties are in agreement that there was a sale of 5 acres out of the suit land, of which the registered owner has never instituted any legal proceedings to assert his claim. To this end, the case of *Githu v Ndeete* was proffered.
33. It was further submitted that the plaintiff has been in continuous occupation of the suit land to the tune of 5 acres, of which the plaintiff's portion is demarcated in the RIM. This far, the plaintiff relied on the cases of *Peter Mbiri v Samuel Mugo Michuki* (2014) eKLR as well as the case of *Mageta Enterprises Limited v Tilak Company Ltd* (2020) Eklr amongst other decisions.
34. He further contends that in the Meru succession case which had purported to distribute the suit property to the plaintiff and the defendant jointly, the court had stated that;

“This court is further of the opinion that a claim for adverse possession is not inconsistent with proceedings for confirmation of grant in the succession cause. A claim for adverse possession can be an overriding interest within the meaning of Section 28 (h) of the [Land Registration Act](#) 2012 and rights acquired or in the process of acquisition under any law relating to limitation of actions. It is a right which runs with the land and which need not be noted in the land register. Any subsequent owner, including a beneficiary by virtue of success proceedings, takes such land subject to the overriding interest”.
35. The submissions of the defendant are dated 12.5.2025 where she contends that the plaintiff could only be said to have genuine rights in the suit land on the basis of having purchased the same through an agreement, but the plaintiff had averred that his claim of adverse possession was not based on the sale agreement. Thus, plaintiff's entry into defendant's land was not maintained under any claim of right. Further, there is no evidence to indicate that the balance of the purchase price was ever paid. On this point, the case of *Mbui v Mukindia Maranya* (1993) eKLR was relied upon amongst other cases.
36. It was submitted that the plaintiff has not proved exclusive possession of the suit land, he has no permits to cut trees, while the lease agreement with Pw3 shows that it is the plaintiff who was leasing the land. To this end, the case of *Munyaka Kuna Company vs Bernado Vicezo De masi* (The administrator of the estate of Domenico De masi – Deceased) (2018) Eklr was proffered.



37. It is argued that plaintiff's occupation of the suit land was interrupted vide the directive from the DO. dated 28.5.1998 where he was ordered to remove the posts he had erected within 14 days, of which, the plaintiff left the land. That is what prompted the plaintiff to file the case in Nakuru.
38. It is further submitted that the 5 acres claimed by the plaintiff are not identifiable since as per the title and green card, the 6.080 ha of land is intact. In addition, the extract of the title was not attached to the pleadings.

### **Determination**

39. During the trial, the plaintiff filed an application dated 21.3.2025 which was by consent allowed in terms of prayers 3 and 4 that; status quo shall be maintained and the caution registered against the suit title shall not be removed and that the joint administrator of the estate of Patrick Gikore, One Eric Kithinji Gikore was joined in these proceedings as a defendant without re-starting the case.
40. There is no controversy that the plaintiff and the late Patrick Gikore had entered into a land sale agreement on 13.1.1997 in which the latter was selling to the plaintiff 5 acres out of the suit land. The plaintiff contends that the seller obtained consent to subdivide the suit parcel, of which the survey was done and mutations were prepared and registered, he was shown his portion as number 6234 and the R.IM was amended accordingly. Plaintiff avers that he has had possession of the 5 acres from year 1997 to date. Thus, he has met the criteria required in an adverse possession claim.
41. On the other hand, the defendant avers that the sale was rescinded by Patrick as the consent from the land control board was obtained fraudulently. That the plaintiff was given a directive to leave the land by the DO, he left and that is why he filed the Nakuru case. She avers that the plaintiff has not met the threshold of an adverse possessor of 5 acres out of the suit land.
42. The issue falling for determination is whether the plaintiff has proved a claim of adverse possession on the suit land to the tune of 5 acres
43. Adverse possession is the process by which a person can acquire a title to someone else's land by continuously occupying it in a way that is inconsistent with the right of the owner. What the doctrine recognizes (and also Section 37 of the Limitations of Actions Act) is that the registered owner holds the title to the land as "the legal owner" but the occupier is the "cestui que trust" whose legal ownership ripens only upon registration after a court order (See Bridges Vs. Mees [1957] Ch. 475).
44. In *Kimani Ruchine v Swift Rutherford & Co Ltd*, (1980) KLR cited in *Gachuma Gacheru v Maina Kabuchwa* [2016] eKLR, it was stated as follows in respect of a claim of adverse possession.

"The plaintiffs have to prove that they have used this land which they claim, as of right: nec vi, nec clam, nec precario (No force, no secrecy, no permission)".
45. In addition, a claimant of adverse possession must demonstrate that he or she has been in an interrupted occupation of the land in question for a period of 12 years, without permission of the registered owner of the land. See-*Kasuve Vs Mwaani Investments Limited & 4 others* 1 KLR 184,
46. The letter from the DO to the plaintiff dated 28.5.1998 at page 10 of defendant's trial bundle reads as follows;

"The above piece of land belongs to a Mr. Patrick Gikore Mwitari according to members register held in this office.



After hearing from both sides it was noted that you had put up posts in that land without first seeking consent from the family members. The family members of Mr. Gikore are not ready to transfer the same to you legally.

This is therefore to ask you to remove the posts from the forementioned land within 14 days from the date of this letter to enable the owner to develop the same without interference. The transfer can only be done on a willing buyer seller.

Please adhere”.

47. A subsequent letter written by the seller dated 15.6.1998 at page 109 of plaintiff’s bundle reads as follows;

“Let you know that James Mwangi Wanjohi without my express permission has gone ahead and subdivided 15 acres of land into two portions under fake Nos. 3005 and my initial No. 9 and he is claiming ownership of both. I have gone ahead and I have found out that this one new No.’s 3005 belong to a Mr. Ndegwa and he has titles for his and under these No’s 3005/3006 and I can’t understand how James Mwangi Wanjohi did this and under whose instructions. His current occupation of my land is illegal, and I am contemplating taking criminal action against him for trespass with intent to annoy, malicious damage, forgery amongst others.

Let you also know that James Mwangi Wanjohi has put an illegal caution on my title deed at Nanyuki Lands Office claiming that I have sold my land to him. This is a lie. I was in the process of selling 5 (five) acres to him but due to this underground moves, I have now decided to refund his money.....”.

48. During cross examination, Dw1 averred that in the letter of 15.6.1998, her husband was complaining to the DO. What resonates from the above two letters is that by May/June of 1998, the plaintiff was in occupation of the suit property. He was tilling the land without the permission of the registered owner. The plaintiff did not leave the suit land within 14 days of the DO’s letter as alleged by Dw1 since, the seller was still complaining 18 days after the DO’s letter. There is nothing to indicate that after 15.6.1998, the plaintiff ever left the land. Similarly, there is no action which was undertaken by the seller against the plaintiff as contemplated in the letter of 15.6.1998.

49. To this end, Dw1 had stated as follows during cross examination;

“As I stand here, I am not aware of any action taken by my husband against him. I am the administrator of the estate of my husband from year 2004. I didn’t take any action against Mwangi.”

50. The explanation proffered by Dw1 for not taking any action against the plaintiff was that the latter was not interfering with the suit property. However, the allegations and averments made in the two letters of 28.5.1998 and 15.6.1998 are quite serious. Firstly, the family of the defendant was apparently no longer willing to transfer the land to the plaintiff and that the consent to transfer the land, the subsequent subdivision and the tilling of the land by the plaintiff were illegal acts. It is not plausible that with these kind allegations the defendant did not find any reason to assert his title to the suit land.

51. Another point for consideration relates to the succession case. Dw1 admits that she filed the succession case in which herself and the plaintiff were to hold the suit land jointly. Her explanation was that she wanted the land to be held jointly until the plaintiff establishes his interests in the suit land. This is however a clear confirmation that Dw1 was well aware of plaintiff’s interests in the suit land. Thus, her



contention that she took no action against the plaintiff because he was not interfering with her land does not hold.

52. The plaintiff avers that he fenced his portion of the land around 1998. That averment seems to be in tandem with the two letters where the plaintiff was being asked to remove the posts he erected. The plaintiff further states that to date, he is the one in possession of the suit land of which he leased the land to Pw3. He did explain that he was the lessor in the agreement to lease the land to Pw3 from year 2012 of which, Pw3 plants hay, an averment confirmed by a neighbour, Pw4. The area assistant chief, Pw2 as well as the neighbour, Pw4 affirm that the plaintiff went to that land in year 1998. This evidence was not in any way rebutted by Dw1 who stated that she doesn't know the neighbours to her land. She also stated that she would not call Titus Munene, her cousin who apparently guards the suit land as a witness.
53. This far, it is apparent that plaintiff did take up possession of the suit land to the tune of 5 acres. The mutation forms identify the relevant portion as parcel 6234 out of the suit parcel. The consent from the land control board, the mutation forms and the RT.I.M have not been challenged and a claim of fraud has not been proved. If anything, the seller admits at paragraph 4 and 5 of his affidavit at page 7 of defence bundle (also provided by the plaintiff) that he did sell the 5 acres to the plaintiff and he applied for consent to subdivide the land. His apparent subsequent rescission of the sale doesn't appear to have been formalized, it was also unilateral. It gives credence to plaintiff's assertion that his occupation of the land after the letter of 15.6.1998 was without permission of the registered owner of the suit land.
54. I come to the conclusion that the defendant was dispossessed off her land by the plaintiff to the tune of 5 acres from as far back as 1998 and there is no evidence to demonstrate that she re-took possession of the said land to date. To this end, I find that the plaintiff has met the criteria of an adverse possessor as he has proved his claim on a balance of probabilities.
55. On costs, I would ordinarily direct parties in a claim of adverse possession to bear their own costs. Not so in this case as the defendant has certainly not acted in good faith in regard to the claim of the plaintiff. Take for instance the filing of the succession case no 442 of 2004. She apparently indicated that she was to own the 5 acres jointly with the plaintiff. However, that was not the initial agreement between the plaintiff and the deceased, Patrick. What more, Dw1 never disclosed to the plaintiff about the succession case from the time it was filed in year 2004, all the way up to when the grant was confirmed 10 years later on 3.6.2014 (page 33 of plaintiff's bundle) and even thereafter. This is what landed her (Dw1) with a conviction in a criminal case for perjury, for when the plaintiff discovered the facts in the grant, he took action, firstly attempting to have the grant revoked and also reporting the matter to the police.
56. In re Estate of Julius Ndubi Javan (Deceased) [2018] eKLR, Gikonyo J had this to say in regard to the issue of bad faith in succession cases where there was non disclosure of third party claimants.

“Needless to state that, in any judicial proceeding, parties must make full disclosures to the court of all material facts to the case including succession cases. This general rule of law emphasizes utmost good faith (*uberimae fidei*) from parties who take out or are subject of the court proceedings. The said responsibility is part of justice itself. Accordingly, non-disclosure of material facts undermines justice and introduces festering waters into the pure streams of justice; such must, immediately be subjected to serious reverse osmosis to purify the streams of justice, if society is to be accordingly regulated by law”.
57. In conclusion, I hereby enter judgment against the defendants in the following terms;



1. It is hereby declared that the plaintiff is entitled to 5 acres identified in R.I.M AS land parcel Marmanet /North Rumuruti Block 2/6234 ( Ndurumo) by way of adverse possession, which is part of title No. L.R. Marmanet North Rumuruti Block 2/9 (Ndurumo).
11. The defendants are hereby ordered to effect the transfer of parcel Marmanet /North Rumuruti Block 2/6234 (Ndurumo) being 5 acres to the plaintiff within the next 60 days, failure to which the Deputy Registrar of this court is hereby authorized to execute all the necessary documents to facilitate the transfer as set out in this judgment, in which case, the production of the original title of parcel Marmanet /North Rumuruti/ Block 2/9 (Ndurumo) is hereby dispensed with.
111. The defendants are condemned to bear the costs of this suit.

**DATED, SIGNED AND DELIVERED AT NYAHURURU THIS 1<sup>ST</sup> DAY OF OCTOBER 2025 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

In the presence of:

Vanessa CA

Kibet for the plaintiff

M/S Wahome H/B for Mathea for the defendant

