



Kiarie v Kangethe (Environmental and Land Originating Summons E026 of 2024) [2025] KEELC 7739 (KLR) (11 November 2025) (Judgment)

Neutral citation: [2025] KEELC 7739 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E026 OF 2024**

MN GICHERU, J

NOVEMBER 11, 2025

**IN THE MATTER OF LIMITATION OF ACTIONS ACT CAP 22
AND IN THE MATTER OF A CLAIM FOR ADVERSE POSSESSION PURSUANT
TO SECTIONS 7, 37 AND 38 OF LIMITATIONS OF ACTIONS ACT**

AND

IN THE MATTER OF LAND PARCEL NO. LOC.5/KAGUMOINI/633

BETWEEN

PETER NJOGU BENSON KIARIE PLAINTIFF

AND

HENRY NDUNG’U KANGETHE DEFENDANT

JUDGMENT

1. In the originating summons dated 19-12-2024, the Plaintiff seeks the following orders against the Defendant.
 1. A declaration that the Defendant’s rights to recover 0.3 acres being part of L.R. No. Loc. 5/ Kagumoini/633 is barred under the *Limitation of Actions Act* and his title thereto extinguished on the grounds that the Plaintiff herein has openly, peacefully and continuously been in occupation and possession of the aforesaid portion of land for a period exceeding 12 years.
 2. A declaration that the Plaintiff has acquired title over a portion measuring 0.3 acres of the suit land by way of adverse possession.
 3. That the said 0.3 acres be excised out of the suit land and be registered in the name of the Plaintiff.
 4. That the Plaintiff be issued with a title deed to the 0.3 acres to be excised out of the suit land.



5. That the production of the original title to the suit land, a duly executed transfer of land, land control board consent to subdivided and transfer, pass size photographs, copy of national ID card and P.I.N. certificate in respect of the Plaintiff and the Defendant and the spousal consent be dispensed with at the time of registration of the Plaintiff as the proprietor.
 6. In the alternative and without prejudice to the foregoing , a declaration be made that the Defendant holds the 0.3 acres out of the suit land in trust and for the benefit of the Plaintiff and said trust be and is hereby terminated by registering the Plaintiff as the absolute proprietor thereof.
 7. The District Land Surveyor Murang'a do excise 0.3 acres out of the suit land with or without the Defendant's attendance.
 8. The Officer Commanding Police Station, Gaichanjiru do provide security during the survey and subdivision excise.
2. The Plaintiff's case is as follows. The suit land is registered in the name of the Defendant and he holds it in trust for his brothers whose names are Mukinya Kang'ethe, Waweru Kangethe and Ndung'u Kangethe by dint of a customary trust. Secondly, on 25-10-2005, the Defendant's brother John Waweru Kangethe, now deceased, sold a portion of the suit land measuring 0.3 acres to the Plaintiff which was due to him. Three, the total purchase price was Kshs. 75,000/= which the Plaintiff paid in full to John Waweru Kangethe. Since then, the Plaintiff has been in occupation of the suit land with the knowledge of the Defendant. He carries out farming activities on the 0.3 acres. It is for reasons that the Plaintiff seeks for the orders in paragraph [1] above.
 3. In support of his case, the Plaintiff filed the following evidence.
 - a. Supporting affidavit dated 19-12-2024.
 - b. Copy of certificate of official search for the suit land dated 14-3-2024.
 - c. Copy of sale agreement between the Plaintiff and John Waweru Kangethe dated 25-10-2005.
 - d. Copy of bank statement dated 19-11-2005 for account No. 9913328, Equity Bank Limited.
 - e. Copy of recent No. 5799003 dated 13-12-2018.
 - f. Witness statements by the Plaintiff and Francis Kamocha Waweru dated 19-12-2024.
 - g. Copy of demand letter dated 25-2-2020 issued to the Defendant by the Plaintiff's advocate.
 4. Even though the Defendant was duly served with the originating summons on 10-4-2025 at the office of the Chief at Kagumoini, he did not file any response to the summons. The suit therefore proceeded as undefended.
 5. At the trial on 17-6-2025, the Plaintiff testified on oath and called a witness named Francis Kamocha Waweru. They both restated the case as per the pleadings.
 6. I have carefully considered the evidence adduced by the Plaintiff in this case bearing in mind that he has to prove the following. Firstly, he has to prove that he has been in actual, open and continuous possession of the suit land. Secondly, such possession must have been without the permission or consent of the Defendant. Thirdly, such possession must be adverse to the interest of the registered owner. Finally, the occupation must have been for a period of at least twelve (12) years as per Sections 7 and 38 of the *Limitation of Actions Act*.



7. The only issue for determination in this case whether the Plaintiff has established a case for adverse possession as per the above stated criteria. The above principles have been affirmed in numerous Court decisions the latest of which is the Court of Appeal case in Mtana Lewa vs. Kahindi Ngala Mwangandi Civil Appeal No. 56 of 2014 [2015]eKLR. The Court of Appeal held 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, which in Kenya, is twelve (12) years. The process springs into action essentially by default or inaction of the owner. The essential prerequisites being that the possession of the adverse possessor is neither by force or stealth nor 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.”

8. I find that the Plaintiff has proved his case against the Defendant for the following reasons. Firstly, the Plaintiff has proved that he entered the suit land on 25-10-2005. This suit was filed on 23-12-2024, which was more than the 12 years required by Section 7 of the Law of Limitation of Actions Act which provides as follows.

“An action may not be brought by any person to recover land after the end of twelve (12) years from the date on which the right of action accrued to him or, if it first accrued to some person through who he claims, to that person.”

9. The Plaintiff’s evidence which is corroborated by that of his witness named Francis Kamocha Waweru is uncontroverted because the Defendant, though served did not defend the suit.

10. Secondly, there is no evidence that the Plaintiff was authorized by the Defendant to enter and occupy the land. Instead, it is proved that it is the Defendant’s brother John Waweru Kangethe who authorized the Plaintiff to enter the land because he himself was by law entitled to the land.

11. Thirdly, there is evidence in form of the certificate of official search to prove that it is the Defendant who is the registered owner of land which measures 1.3 acres and the Plaintiff claims 0.3 acres thereof.

12. For the above stated reasons, I find that the Plaintiff has proved his claim against the Defendant for a claim of adverse possession of 0.3 acres of L.R. No. Loc.5/Kagumoini/633. Since I find the eight prayers in the originating summons superfluous and repetitive, I paraphrase the orders to issue as follows.

- a. A declaration is hereby issued that the Plaintiff is entitled to 0.3 acres of L.R. No. Loc.5/Kagumoini/633 through the doctrine of adverse possession.
- b. The District Land Registrar Murang’a together with the officer in charge of the survey office to execute this order by excising the said 0.3 acres from the suit land and registering it in the name of the Plaintiff.
- c. In case the Defendant does not cooperate in ensuring compliance with the above order, the Deputy Registrar is hereby authorized to execute all necessary documents and instruments to give effect to the decree herein.
- d. The Officer Commanding Police Station of the area where the land is situated to provide security as and when necessary.

It is so ordered.



DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 11TH DAY OF NOVEMBER, 2025.

M.N. GICHERU JUDGE.

Delivered online in the presence of; -

Court Assistant – Mwangi Njonjo

Plaintiff's Counsel – Mr Gitonga

