



**Mark v M'mumbuongo & another (Environmental and Land Originating Summons E070 of 2024) [2025] KEELC 7920 (KLR) (13 November 2025) (Judgment)**

Neutral citation: [2025] KEELC 7920 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E070 OF 2024**

**MN KULLOW, J**

**NOVEMBER 13, 2025**

**IN THE MATTER OF: SECTIONS 37 & 38 OF THE LIMITATION  
OF ACTIONS ACT, CHAPTER 22 LAWS OF KENYA**

**IN THE MATTER OF: SECTION 30 OF THE REGISTERED LAND ACT, CAP 300 (AS  
REPEALED BY SECTION 28 OF THE LAND REGISTRATION ACT, NO. 3 OF 2012)**

**IN THE MATTER OF: LAND REFERENCE NUMBER 12672/16, NAIROBI COUNTY**

**BETWEEN**

**KITHINJI MARK ..... PLAINTIFF**

**AND**

**GEOFFREY MAAMBU M'MUMBUONGO ..... 1<sup>ST</sup> DEFENDANT**

**ANNE GATHONI MBAABU ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

**A. Introduction/Back Ground**

1. The Plaintiff instituted this suit by way of Originating Summons dated 14<sup>th</sup> November 2024, seeking the following orders:
  - a. That leave be granted to the Plaintiff/Applicant to serve all court process in this cause upon the Respondents by substituted service through daily newspapers circulating nationwide;
  - b. That a declaration be and is hereby made that the Plaintiff is absolutely entitled by way of adverse possession to all the residual period in the leasehold title for all that property known as Land Reference Number 12672/16, within Nairobi County;



- c. That a declaration be and is hereby made that the Defendants' rights to title in the leasehold property known as L R No. 12672/16 have been extinguished in favour of the Plaintiff under Sections 37 & 38 of the *Limitation of Actions Act*;
  - d. That an order be and is hereby made authorizing the Deputy Registrar of this Court to sign all transfer forms and all such necessary documents to facilitate the registration of the Plaintiff as the sole owner of the residual period in the leasehold title of LR No. 12672/16, Nairobi County; and
  - e. That there be an order as to costs.
2. The application was based on, inter alia, the following grounds: That the Plaintiff and his family have resided on LR No. 12672/16 for over twelve (12) years, without any interference from the Defendants; That the Plaintiff's children have grown up on the property and have known it as their home for over twelve (12) years; and That the Plaintiff has been in exclusive possession, openly and as of right, and without interruption for over twelve (12) years, by the deliberate discontinuation of possession by the Defendants; and in the circumstances he wishes to have his rights registered over the residual leasehold in the suit property.
  3. The Originating Summons was supported by the Supporting Affidavit of Kithinji Mark sworn on 14<sup>th</sup> November 2024, which annexed, among others, a copy of his national identification document and a copy of the title to the suit property. The deponent reiterated the above grounds and, of particular significance, paragraph 7 where he swore as follows: "That the Defendant has never interrupted my exclusive possession of the suit property for over 12 years and neither did she while my grandparents were in occupation; as such, I humbly beseech the Honourable Court to help me be registered as the absolute owner of the residual period of the leasehold title to the suit property."
  4. The matter first came before Hon. Justice O. A. Ang'ote on 22<sup>nd</sup> January 2025, when substituted service was confirmed to have been effected. After two mentions, on 4<sup>th</sup> February 2025 the Court granted leave as sought; thereafter, the Plaintiff filed a Further Affidavit dated 14<sup>th</sup> February 2025, wherein at paragraph 2 he deponed that, upon further diligence, he had conducted an official search confirming that the registered proprietors remained the same.
  5. On 14<sup>th</sup> May 2025, the matter was listed for hearing on 4<sup>th</sup> June 2025. On the hearing date, PW1 (the Plaintiff) testified, adopted his filed documents as evidence-in-chief, and stated, inter alia, that he has lived on the land since February 2011, openly and without interruptions; that his occupation has been peaceful and without force; that he had no permission from the owners; that his intention was to live on and possess the land as his own; that he knows no other home and considers the land his home; that the Defendants moved out and he has never seen them return; and that he is well known to the neighbours around the property.
  6. There being no appearance or defence by the Defendants, the Plaintiff's case was closed. The Court then directed the Plaintiff to file written submissions.

### **Submissions**

7. The Plaintiff through written submissions filed by M/s Karanja & Partners Advocates reiterated his testimony that he has been in open, peaceful, and exclusive possession of the suit property known as Land Reference Number 12672/16 within Nairobi County for over fourteen (14) years. He emphasized that since taking possession in 2011, he has occupied the land continuously, without secrecy, force, or permission from the Defendants, and that neither the Defendants nor their agents have ever interfered with his occupation. The Plaintiff therefore urged that his long, uninterrupted



possession meets the statutory threshold for acquisition of title by adverse possession under Sections 7, 17, and 38 of the *Limitation of Actions Act* (Cap 22, Laws of Kenya).

8. The Plaintiff further submitted that the Defendants, despite being duly served through substituted service, failed to enter appearance, file a defence, or call any witness. As such, his evidence remains unchallenged and uncontroverted, warranting the Court's acceptance on a balance of probabilities. He relied on several authorities emphasizing that where a defendant fails to rebut the plaintiff's case, the court is entitled to accept the uncontroverted evidence as true. These include *Linus Nganga Kiongo & 3 Others -Vs- Town Council of Kikuyu* [2012] eKLR; *Trust Bank Limited -Vs- Paramount Universal Bank Limited & 2 Others* (HCCC No. 1243 of 2001); *Karuru Muniyoro -Vs- Joseph Ndumia Murage & Another* [1988] eKLR; and *Janet Kaphiphe Pumah & Another -Vs- Marie Stopes International (Kenya)* [2007] eKLR. The Plaintiff argued that these decisions affirm that uncontroverted evidence should be deemed credible and sufficient to sustain judgment in favour of the claimant.
9. On the law applicable to adverse possession, the Plaintiff cited the decisions in *Salim -Vs- Boyd & Another* (1970) E.A. 550; *Celina Muthoni Kithinji -Vs- Sofiya Binti Swaleh & 8 Others* [2018] eKLR; *Kimani Ruchine & Another -Vs- Swift Rutherford & Co. Ltd.* (1977) KLR 10; and *Samuel Kihamba -Vs- Mary Mbaisi* [2015] eKLR, to reinforce the principle that possession must be without force, secrecy, or permission. He submitted that his occupation satisfies all these elements and demonstrates (intention to possess).
10. Accordingly, the Plaintiff urged the Court to find that the Defendants' title has been extinguished by operation of law and to order that he be registered as the absolute proprietor of the residual leasehold interest in L R No. 12672/16, Nairobi County, with the Deputy Registrar authorized to execute the requisite transfer documents on their behalf.

#### **B. Issue for Determination:**

11. Having carefully considered the pleadings, the affidavit evidence, and the submissions on record, the Court finds that this matter raises a single substantive issue for determination, namely: Whether the Plaintiff, has acquired title to Land Reference Number 12672/16, Nairobi County, by way of adverse possession.

#### **C. Analysis and Determination**

**Issue: Whether the Plaintiff has acquired title to Land Reference Number 12672/16 by way of adverse possession.**

12. Section 38(1) of the *Limitation of Actions Act* (Cap 22) allows a person who claims to have acquired land by adverse possession to move this Court for an order that he be registered as proprietor of the land in place of the registered owner. In *Kasuve -Vs- Mwaani Investments Ltd. & Others* [2004] 1 KLR 184, the Court of Appeal held that: "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 twelve (12) years, either after dispossessing the owner or by discontinuation of possession by the owner on his own volition."
13. It is now settled that the combined effect of Sections 6, 13, and 17 of the *Limitation of Actions Act* is to extinguish the title of a proprietor of land in favour of an adverse possessor after twelve years of such possession. In *Benjamin Kamau & Others -Vs- Gladys Njeri* [C.A. No. 2136 of 1996], the Court of Appeal held that once the limitation period has lapsed, the title of the registered owner is automatically extinguished by operation of law.



14. The new land laws enacted after the 2010 Constitution similarly recognize adverse possession. Section 28(h) of the [Land Registration Act](#), 2012 provides that rights acquired or in the process of being acquired under the law of limitation or by prescription constitute overriding interests in land, while Section 7(d) of the [Land Act](#), 2012 provides that title may be acquired through prescription.
15. A claimant for adverse possession must demonstrate that his occupation was without force, secrecy, or permission that is, nec vi, nec clam, nec precario as held in *Kimani Ruchine & Another -Vs- Swift Rutherford & Co. Ltd* [1980] KLR 10. Possession must be open, peaceful, continuous, and with the knowledge of the owner.
16. In *Mtana Lewa -Vs- Kahindi Ngala Mwangandi* [2015] eKLR, the Court of Appeal described adverse possession thus: “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. The possession must be adequate in continuity, in publicity and in extent to show that it is adverse to the title owner.”
17. The Plaintiff testified that he entered the suit property in February 2011, asserting that he has since remained in open, peaceful, and exclusive possession. However, in paragraph 7 of his Supporting Affidavit sworn on 14<sup>th</sup> November 2024, he averred that “the Defendant has never interrupted my exclusive possession of the suit property for over twelve (12) years and neither did she while my grandparents were in occupation.” This statement introduces a material inconsistency. It suggests that occupation of the property preceded his entry, and that his possession may have been a continuation of his grandparents’ earlier occupation. Yet, he neither pleaded nor proved that such prior occupation was adverse to the registered owners.
18. That ambiguity strikes at the foundation of the claim, because the law requires a claimant to establish the specific date and circumstances when adverse possession began. As held in *Wambugu -Vs- Njuguna* [1983] KLR 172, time starts to run when the true owner is dispossessed or voluntarily discontinues possession. The Plaintiff did not demonstrate either. If, as he testified, he entered in 2011 following family occupation, his entry was derivative rather than adverse, and time could only begin to run when his occupation became clearly inconsistent with the rights of the registered owners.
19. The Plaintiff further alleged that the Defendants vacated the land in 2008, yet he offered no proof of such abandonment. There are no witness statements, photographs, or correspondence showing that the Defendants left or surrendered possession. Even if they were absent physically, absence alone does not extinguish title; the law demands proof that the owners ceased possession with the intention not to return. In the absence of such evidence, the Court cannot infer discontinuance of possession under Section 7 of the [Limitation of Actions Act](#).
20. Further, although the Plaintiff claims to have fenced, maintained, and treated the land as his home, he did not produce any independent or documentary evidence to corroborate those assertions such as photographs, rates receipts, utility bills, or construction approvals, confirming his occupation since February 2011. Adverse possession is not proved by assertion alone; it must be supported by credible and continuous acts of ownership inconsistent with the title of the registered proprietor. In *Mbira -Vs- Gachuhi* [2002] 1 E.A. 137, the court held that a claimant must show both “actual possession” and “an intention to possess as owner,” which the Plaintiff has failed to do here.
21. It is also noteworthy that, while the Plaintiff’s claim is unchallenged, the absence of a defence does not relieve him of the burden of proof. The law is clear that even unopposed claims must satisfy the legal standard for adverse possession. The Plaintiff’s case, though uncontested, falls short of that



standard; it is marked by ambiguity in commencement, lack of corroboration, and absence of overt acts of ownership.

22. Moreover, the Plaintiff's occupation since 2011 if taken at face value would by the time of filing suit on 14<sup>th</sup> November 2024 amount to approximately thirteen (13) years. However, the statutory period of twelve years must be both continuous and adverse. The Plaintiff did not demonstrate that his possession during that time was exclusive, open, and hostile to the Defendants' ownership. There is no evidence that the Defendants were aware, or that they reasonably ought to have been aware, of his presence on the land. Adverse possession must be notorious and visible see *Gabriel Mbui -Vs- Mukindia Maranya* [1993] eKLR so that the true owner, upon reasonable diligence, would be put on notice that his title is under threat.
23. The Court is guided by established authority that a claimant must strictly prove the cumulative elements of adverse possession—non-permissive, open, notorious, exclusive and continuous occupation for at least twelve years. On the record before me, the Plaintiff's testimony and affidavit are insufficiently detailed and uncorroborated to meet that standard; consequently, the Court cannot conclude that the Defendants' title has been extinguished by operation of the *Limitation of Actions Act*. See *Mbira -Vs- Gachuhi* (2002) 1 EALR 137; *Kweyu -Vs- Omuto* [1990] KLR 709.
24. In the totality of the foregoing, the Court finds that while the Plaintiff might have resided on the suit property since February 2011, his alleged occupation has not been proved to the standard required in law to constitute adverse possession. The evidence on record leaves serious doubt as to the nature, continuity, and exclusivity of such possession. It is uncertain in origin, unsupported by any independent or documentary proof, and unaccompanied by evidence of dispossession or discontinuance of possession by the registered proprietors. Mere residence or maintenance of the property, without clear proof of hostility and continuity, does not meet the threshold of adverse possession under Sections 7, 13, and 38 of the *Limitation of Actions Act*. Accordingly, the Court holds that the Plaintiff has failed to establish, on a balance of probabilities, that he has acquired title to Land Reference Number 12672/16, Nairobi County, by way of adverse possession.

### **Conclusion And Orders**

25. From the analysis above, the Court is not persuaded that the Plaintiff's occupation of Land Reference Number 12672/16, Nairobi County, meets the threshold required to defeat registered ownership. The evidence presented falls short of establishing continuous, exclusive, and hostile possession for the statutory period.
26. The Court therefore finds that the Plaintiff has failed to prove, on a balance of probabilities, that he has acquired title to the suit property by way of adverse possession:
27. Accordingly, judgment is entered as follows
  - a. The Plaintiff's claim for adverse possession of Land Reference Number 12672/16, Nairobi County, is dismissed.
  - b. There shall be no order as to costs

It is so ordered!

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 13<sup>TH</sup> DAY OF NOVEMBER, 2025.**

**MOHAMMED N. KULLOW**



## **JUDGE**

Judgment delivered in the presence of: -

for the Plaintiff

for the 1<sup>st</sup> Defendant

for the 2<sup>nd</sup> Defendant

Philomena W. Court Assistant

