



**Ndung'u alias Francis Kabuti Ndung'u v Njuguna & another (Suing as the Registered Trustees of Christian Fellowship Church) Currently Grace Commission Global Church) (Environment and Land Appeal E046 of 2024) [2025] KEELC 7545 (KLR) (4 November 2025) (Judgment)**

Neutral citation: [2025] KEELC 7545 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MURANGA  
ENVIRONMENT AND LAND APPEAL E046 OF 2024  
MN GICHERU, J  
NOVEMBER 4, 2025**

**BETWEEN**

**KABUTI NDUNG'U ALIAS FRANCIS KABUTI NDUNG'U ..... APPELLANT**

**AND**

**FRANCIS KINUTHIA NJUGUNA ..... 1<sup>ST</sup> RESPONDENT**

**PATRICK NGIGI GITHIORA ..... 2<sup>ND</sup> RESPONDENT**

**SUING AS THE REGISTERED TRUSTEES OF CHRISTIAN FELLOWSHIP  
CHURCH) CURRENTLY GRACE COMMISSION GLOBAL CHURCH**

*(An Appeal from the Judgment of the Principal Magistrate at Kandara  
by the Principal Magistrate Hon. M. Mutunga delivered on 6th  
September 2022 in the Principal Court at Kandara MCL & E 4 of 2021)*

**JUDGMENT**

1. On 6-9-2022, the trial Court in Kandara Magistrate's case No. MCL and E 4 of 2021 found that the Respondent was entitled to 0.1 Ha of L.R. No. Loc.4/Ngararia/1934 through the doctrine of adverse possession.
2. Dissatisfied with this decision, the Appellant filed this appeal seeking the following orders.
  - A. That the judgment of Hon. M. Mutunga (PM) delivered on 6-9-2022 be set aside, varied and or reviewed.
  - B. Costs for the appeal.
  - C. That such further orders may be made by this Court as it may deem fit to grant.



3. In total, there are ten (10) grounds for seeking to set aside the judgment and decree of the lower Court. For a reason that will become clear later in this judgment, I will not enumerate the ten (10) grounds.
4. The facts of the case according to the Respondent are as follows.

One, the Appellant is the registered owner of the suit land Loc.4/Ngararia/1934 which measures 0.44 Ha. Two, on 28-11-2008, the Appellant agreed to sell 0.1 Ha. out of the suit to the Respondent at a consideration of Kshs. 50,000/= and an agreement for sale was accordingly executed by the two parties. Three, the Respondent paid the full purchase price and built a church on the 0.1 Ha that they had bought. Four, even after occupying the land from the year 2006 to 2021, the Appellant and his family have interfered with the suit land by attempting to demolish the church building. It is for this reason that they filed the suit in the lower Court because they felt that they were entitled to the suit land by virtue of occupation for a period exceeding 12 years.

5. The facts of the case according to the Appellant are as follows. Firstly, the Respondent did not buy the 0.1 Ha of land that they claim. Instead what they did was rent the land for Kshs.1000/= per month. The Respondent only allowed them to put up temporary structures. In due course, they replaced the temporary structures with iron sheets and a concrete floor. Secondly, four years later in the year 2008, the Respondent asked the Appellant to sell the suit land but the Appellant categorically refused to sell the suit land to them. Thirdly, the Respondent and the local administration comprising the chief attempted to trick the Appellant into signing documents to transfer the land to the Respondent but he refused. In the end, the Respondent filed the lower Court suit and was successful. This appeal seeks to reverse the judgment of the lower Court.
6. The reason why I have not considered the ten grounds of appeal is that it is clear to me that the lower Court had no jurisdiction to entertain a claim for adverse possession. Before the Court of Appeal settled the question of whether the lower Court had jurisdiction in adverse possession cases, the Environment and Land Court was split with one school of thought holding that the lower Court had jurisdiction in such cases and the other school holding there was no such jurisdiction. In the case of Sugawara vs Kiruti: E141/2022 and in a judgment dated 11-10-2024, the Court of Appeal held that by virtue of Section 38 of the Limitation of Actions Act, it is only the High Court that has jurisdiction to determine cases of adverse possession. The Court stated as follows at paragraph 50 of its judgment.

“In the circumstances, in view of the express provisions of Section 38 of the Limitation of Actions Act, as did the Environment and Land Court, we find that magistrates do not have jurisdiction to determine the claims of adverse possession. As a consequence the trial magistrate in the instant case rightly disregarded hearing and determining it...”

7. Like Nyarangi JA said the case of Owners of Motor Vessel “Lilian S” vs Caltex Oil (Kenya) Ltd [1989] KLR,

“Jurisdiction is everything. Without it, a Court has no power to make one more step. Where a Court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A Court of law downs its tools in respect of the matter before it the moment it holds that it is without jurisdiction”

In this case, the lower Court did not have jurisdiction to entertain a claim for adverse possession. On this ground alone, I set aside the judgment of 6-9-2022 delivered by the lower Court.



8. The second reason why I have not considered the ten(10) grounds of appeal is that this suit may still be filed in this Court as it is the one with the original jurisdiction in adverse possession cases. If the Respondents decides to file the case afresh, it will come before me and so that there may be a fair hearing if that eventually materializes, it is only proper that I do not make any determination on the ten grounds now.
9. As for costs, I find that it is only fair that each party bears its own because the Respondent should not be condemned to pay such costs when it is the Court that entertained a suit that it should not have entertained.
10. In conclusion and for the reasons given, I allow the appeal by setting aside the judgment of the lower Court dated 6-9-2022 together with all consequential orders.

Each party to bear its own costs in the lower Court and in this Court too.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 4<sup>TH</sup> DAY OF NOVEMBER, 2025.**

**M.N. GICHERU JUDGE.**

Delivered online in the presence of; -

Court Assistant – Mwangi Njonjo.

Appellant's Counsel – Wanjiru Mwangi.

Respondent's Counsel – Mr. Wachira h/b for Kanyi Kiruchi.

