



Githuka v Njau (Enviromental and Land Originating Summons E010 of 2023) [2025] KEELC 8130 (KLR) (25 November 2025) (Judgment)

Neutral citation: [2025] KEELC 8130 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E010 OF 2023**

JA MOGENI, J

NOVEMBER 25, 2025

BETWEEN

JAMES KAMAU GITHUKA APPLICANT

AND

NJOROGE NJAU RESPONDENT

JUDGMENT

1. Vide the Originating Summons dated 22/06/2023, James Kamau Githuka, the Plaintiff/Applicant who claims to be entitled to be declared as proprietor of land parcel number Githunguri/Giathieko/141 by virtue of Adverse possession and for Court to determine and order that;
 1. That the Plaintiff (James Kamau Githuka) be declared to have become entitled to land parcel number Githunguri/Giathieko/141 by having had adverse possession of the said land for over 12 years.
 2. That the title to the said land be declared extinguished and/or invalid, null and void and the Land Registrar do rectify the register to enter the name of the Plaintiff as the proprietor of the suit land in place of the Defendant who is currently registered as the proprietor.
 3. That the costs of this application be in the cause.
4. That such further or other orders be made as this Honourable Court deems fit and just.
2. The Originating Summons is supported by the Plaintiff's Supporting Affidavit also dated 22/06/2023 to which are annexed several documents.
3. The basis of the claim is that the Applicant is the Administrator of the Estate of Githuka Kamuiru who was at all times the father of the Plaintiff who is an only child – the Plaintiff annexed a copy of Letters of Administration and marked them as 'JKG 1'.



4. That the deceased purchased land parcel No. Githunguri/Giathieko/141 from the Respondent but the same was not transferred to him and remains registered in the name of the Respondent as evidenced by a copy of the title marked as 'JKG 2'.
5. According to the Plaintiff/Applicant Githuka Kamuiru died and since then the Applicant has been in actual occupation and utilization of Land Parcel No. Githunguri/Giathieko/141 where he has undertaken development on the suit land.
6. The Applicant avers that the occupation on the suit property has been physical, open, uninterrupted and without interference from anyone any person or occupation or ownership of the plot as evidenced by the Assistant Chief's letter marked as 'JKG 3'. It is therefore the contention of the Applicant that he has acquired prescriptive rights over the title to the suit premises by way of adverse possession.
7. The Plaintiff also filed the following documents in support of his claim:-
 - a. A copy of the Letters of Administration.
 - b. A certified copy of the Green Card dated 6/6/2023.
 - c. The Assistant Chief's letter.
 - d. Photographs.
8. The Applicant averred that his occupation of the suit land has been *nec vi nec clam nec precario* for now over 25 years and the Defendant's title to the suit land should now be cancelled and the same be registered in the names of the Plaintiff.
9. The Defendant did not attend Court for trial and therefore the averments contained in the Plaintiff's Supporting Affidavit and statement which he adopted as his evidence together with the evidence of his witness Martin Mburu Waringu (PW 2) were not really challenged. The Plaintiff having entered the suit land in 2005 after his deceased father purchased the land from the Respondent but the same was not transferred to him and remains registered in the name of the Respondent.
10. He however contended that he has been in occupation of the parcel since the demise of his father in 2005. There is nothing to rebut his testimony that his occupation has been exclusive, open, peaceful, continuous and un-interrupted with the knowledge of the Defendant. And since the Plaintiff took possession and occupied the suit property in 2005, it means that by 2017, the Defendant's interests in the land had been extinguished by operation of law. It really did not matter that his father did not have the land transferred the effluxion of time favours his claim in the land for owning the same adversely.
11. Vide an oral application made in Court on 24/06/2024 the Applicant sought leave to serve all Court process in the suit upon the Respondent/Defendant by way of substituted service because, according to the Applicant, the Defendant could not be traced for purposes of service. The Court allowed the oral application as prayed and issued a brief Ruling allowing the substituted service.
12. A copy of the advertisement was attached to the Affidavit of Service sworn 31/07/2024 by David Kihia Muraya the Process Server. The Advertisement was placed in the People Daily of 30/07/2024 where the Defendant was required to appear in Court on 5/08/2024. The Respondent did not respond to the Plaintiff's claim in any way. The matter therefore proceeded to hearing in his absence.



Plaintiff's Case

13. On 09/07/2025 the Plaintiff testified as PW1 and adopted his witness statement as his evidence in chief and produced his List of Documents dated 21/03/2025. It was his testimony that he entered the suit property in 2005, and that it was bought by his father and he entered into it after his father's death.
14. According to the Plaintiff, his father bought the suit property in 1966 by then the Plaintiff was five years old. He told the Court that his father used to till the land and that there is coffee and napier grass planted. He told the Court that he would like to be registered as the proprietor.
15. Further he testified not having listed the suit property on the list for property for succession because there was no documentation to attest to the sale of the suit property. Therefore, he instead chose to come to Court by way of Originating Summons to seek adverse possession.
16. PW2 – Martin Mburu Waringu adopted his witness statement dated 21/03/2025. He told the Court that he knows the Plaintiff and also the suit property. That he was born in Giathieko village and that he was aged 74 years. It was his testimony that the Plaintiff entered the suit property in 2005 and that he has never heard anyone laying claim to the suit property. He testified that the father of the Plaintiff had planted coffee and he also kept cows.
17. With that the Plaintiff/Applicant closed his case.
18. At the close of the evidence, Counsel for the Plaintiff filed written submissions on the case dated 14/10/2025. Counsel relied on the provisions of Section 7, 37 and 38 (1) and (2) of the *Limitation of Actions Act* and also Section 28(h) of the *Land Registration Act*, 2012 where he submits that this Section recognizes overriding interests on land, some of which are rights acquired or in the process of being acquired by virtue of any written law relating to the Limitation of Actions or by prescription. Under Section 7 of the *Land Act*, 2012 prescription is one of the ways of acquisition of land.
19. At same time the Plaintiff in his submissions relied on the cases of Gabriel Mbui v Mukindia Maranya [1993] KEHC 161 (KLR), Haro Yonda Juaje v Sadaka Dzenge Mbauro & Another [2014] KEHC 6665 (KLR), Mtana Lewa v Kahindi Ngala Mwangandi [2015] KECA 532 (KLR), Daniel Kimani Ruchine & Others v Swift, Rutherford Co Ltd & Another [1977] KEHC 30 (KLR) and submits that the Plaintiff has satisfied all the ingredients of adverse possession namely open, continuous, exclusive and notorious use of the property and actual possession of the property.

Issues for Determination

20. From the pleadings filed, the evidence adduced and submissions made, the sole issue that emerges for determination is whether or not the Plaintiff has acquired title to the suit land by adverse possession.

Analysis and Determination

21. Despite the fact that the suit is undefended, the Plaintiff had the burden to prove his claim on a balance of probabilities in accordance with the law as required under Sections 107 (1), 108 and 109 of the *Evidence Act*.
22. In the case of Charter House Bank Limited (Under Statutory Management –vs- Frank N. Kamau [2016] eKLR the Court of Appeal when discussing the burden of proof on the Plaintiff in a situation where the Defendant failed to adduce evidence stated that:-

“We would therefore venture to suggest that before the trial Court can conclude that the Plaintiff's case is not controverted or is proved on a balance of probability by reason of



the Defendant's failure to call evidence, the Court must be satisfied that the Plaintiff has adduced some credible and believable evidence, which can stand in the absence of rebuttal evidence from the Defendant.The Plaintiff must adduce evidence, which in the absence of rebutted evidence by the Defendant convinces the Court that on a balance of probabilities, it proves the claim. Without such evidence, the Plaintiff is not entitled to judgement merely because the Defendant has not testified.”

23. The evidence of the Plaintiff was uncontroverted. The certified copy of the Green Card produced as exhibit shows that the suit land was registered in the name of the Defendant on 27/5/58 upon transfer and title issued. The Plaintiff's case is that he entered the suit land in the year 2005.
24. The basis of the Applicant's entry onto the suit land in the year 2005 is stated as the property having been bought by the father before his demise and the property having been listed as part of the intestate Estate of GITHUKA KAMUIRU (deceased). It is also his testimony and that of his one witness that he has had open, exclusive, peaceful, uninterrupted and actual occupation and use of the suit land since then. The photographs produced as exhibits also show the activities on the suit land.
25. After the expiry of 12 years, a party may approach the High Court under Section 38 of the *Limitation of Actions Act* for a declaration that the property has devolved to him in accordance with the doctrine of adverse possession.
26. It is trite law for a party to succeed on a claim for adverse possession such a party must demonstrate the following: -
 - a. That they have been in open possession for a period of more than 12 years.
 - b. The occupation and possession must have been continuous and uninterrupted.
 - c. The possession or occupation must have been hostile and/or inconsistent to the owner's interests and/or rights in regard to the use of the land.
27. It is therefore trite that the principles to be considered in an application for an order of adverse possession are now well settled as set out in several provisions of the *Limitation of Actions Act*. Section 7 of the said Act places a bar on actions to recover land after 12 years from the date on which the right accrued. Further Section 13 of the same Act provides that adverse possession as the exception to this limitation:
 - “1.
 - (1) A right of action to recover land does not accrue unless the land is in the possession of some person in whose favour the period of limitation can run (which possession is in this Act referred to as adverse possession), and, where under sections 9, 10, 11 and 12 of this Act a right of action to recover land accrues on a certain date and no person is in adverse possession on that date, a right of action does not accrue unless and until some person takes adverse possession of the land.”



28. The Court of Appeal elaborately considered the principles to be considered in cases where parties claim to be entitled to ownership by virtue of adverse possession in the case of *Wambugu –vs- Njuguna* (1983) KLR 172 where the Court held: -

“In order to acquire by the Statute Limitations title to land which has a known owner, that owner must have lost his right to the land either by being dispossessed of it or by having discontinued his possession of it. Dispossession of the property that defeats the title are acts which are inconsistent with his enjoyment of the soil for the purpose for which he intended to use it.”

29. The Court in the same case went on to state that two concepts are contemplated by the *Limitation of Actions Act*, Cap 22 Laws of Kenya for a claim in adverse possession to be actualized. These concepts are dispossession and discontinuance of possession.

The Court stated thus: -

“The proper way of assessing proof of adverse possession would then be whether or not the title holder has been dispossessed and has discontinued his possession for the statutory period and not whether or not the claimant has proved that he has been in possession for the requisite number of years.”

30. The Court of Appeal elaborately considered the principles to be considered in cases where parties claim to be entitled to ownership by virtue of adverse possession in the case of *Wambugu –vs- Njuguna* (1983) KLR 172 where the Court held: -

“In order to acquire by the Statute Limitations title to land which has a known owner, that owner must have lost his right to the land either by being dispossessed of it or by having discontinued his possession of it. Dispossession of the property that defeats the title are acts which are inconsistent with his enjoyment of the soil for the purpose for which he intended to use it.”

31. The Court in the same case went on to state that two concepts are contemplated by the *Limitation of Actions Act*, Cap 22 Laws of Kenya for a claim in adverse possession to be actualized. These concepts are dispossession and discontinuance of possession.

The Court stated thus: -

“The proper way of assessing proof of adverse possession would then be whether or not the title holder has been dispossessed and has discontinued his possession for the statutory period and not whether or not the claimant has proved that he has been in possession for the requisite number of years.”

32. Section 38(1) of the Act states as follows;

“Where a person claims to have become entitled by adverse possession to land registered under any of the Acts cited in section 37, or land comprised in a lease registered under any of those Acts, he may apply to the High Court for an order that he be registered as the proprietor of the land or lease in place of the person then registered as a proprietor of the land.”



33. The Court of Appeal in the case of *Chevron (K) Ltd v Harrison Charo Wa Shutu* [2016] eKLR stated as follows:-
- “At the expiration of the twelve-year period the proprietor’s title will be extinguished by operation of the law and section 38 of the Act permits the adverse possessor to apply to the High Court for an order that he be registered as the proprietor of the land. Therefore the critical period for the determination whether possession was adverse is 12 years and the burden is on the person claiming to be entitled to the land by adverse possession to prove, not only the period but also that his possession was without the true owner’s permission, that the owner was dispossessed or discontinued his possession of the land, that the adverse possessor has done acts on the land which are inconsistent with the owner’s enjoyment of the soil for the purpose for which he intended to use it. See *Littledale v Liverpool College* (1900)1 Ch.19, 21.”
34. In the case of *Mtana Lewa –vs- Kahindi Ngala Mwangandi* [2015] eKLR the Court of Appeal defined adverse possession as:
- “Adverse possession is essentially a situation where a person takes possession of land and asserts rights over it and the person having title omits or neglects to take action against such person in assertion of his title for a certain period, in Kenya, twelve (12) years. The process springs into action essentially by default or in action of the owner. The essential prerequisites being that possession of the adverse possessor is neither by force or stealth nor under the license of the owner. It must be equated in continuity, in publicity and in extent to show that possession is adverse to the owner.”
35. In *Kisumu Civil Appeal No. 27 of 2013, Samuel Kihamba vs Mary Mbaisi* (2015) eKLR the Court of Appeal held that:
- “Strictly for one to succeed in a claim of adverse possession, one must prove and demonstrate that he has occupied the land openly, that is without force, without secrecy and without license or permission of the land owner with the intention to have the land. There must be an apparent disposition of the owner. These elements are contained in the Latin Phraseology, *nec vi, nec clam nec precario*. The additional requirement is that of *animus possidendi*, or intention to have the land.”
36. On the issue of production of the title deed to prove who the owners of the suit property adversely acquired is a Green Card is a crucial piece of documentary evidence, not as proof of title for the claimant, but to establish the identity of the registered proprietor against whom the claim is being made and the history of the land. This is because why a claim of adverse possession does not rely on the claimant having a title document from the outset.
37. Adverse possession is a claim that seeks to extinguish the registered owner’s title by operation of the law after 12 years of uninterrupted, open, and non-permissive possession.
38. The Green Card, as the master record of all transactions and ownership history of a parcel of land maintained by the Ministry of Lands, serves this purpose effectively. It helps the Court identify the true owner and confirms that the claimant’s possession was without their consent.
39. The Green Card also helps to verify the authenticity of any title deed produced, as titles can be forged, but the Green Card data is considered more authoritative.



40. When a title deed is not produced by the registered owner, the Green Card is the best available evidence to establish the root of the title and the current legal status of the land, which is a necessary starting point for an adverse possession claim.
41. Therefore, while the Green Card doesn't provide the claimant's title, it is a vital document in the claimant's evidence bundle to establish the foundational facts necessary for the Court to consider the claim for adverse possession on its merits. Thus, the Green Card produced as evidence is sufficient in the absence of the Certificate of Title.
42. Notably, from the evidence before me, I agree with the Plaintiff that he has been in exclusive, continuous and uninterrupted possession, occupation and open use of the said portion of land for a period in excess of 12 years. I find that the Plaintiff has established that possession of the suit land was continuous and not broken for any temporary purposes or any endeavours to interrupt it for a period of 12 years. He has also established who the current registered proprietor of the suit land is.
43. The *Land Registration Act* is very clear on issues of ownership of land and Section 24(a) of the *Land Registration Act* provides as follows:
- “Subject to this Act, the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.”
44. In view of the foregoing, I am satisfied that the Applicant has proved his case on a balance of probabilities. Accordingly, I enter Judgment for the Applicant and make the following final orders:
- i. A declaration is hereby made that the Plaintiff (James Kamau Githuka) has become entitled to land parcel number Githunguri/Giathieko/141 by having had adverse possession of the said land for over 12 years.
 - ii. A declaration is hereby made that the title to the said land has been extinguished and is invalid, null and void and the Land Registrar is directed to rectify the Register to enter the name of the Plaintiff as the proprietor of the suit land in place of the Defendant who is currently registered as the proprietor.
 - iii. That the costs of this application be in the cause.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 25TH DAY OF NOVEMBER,
2025 VIA MICROSOFT TEAMS.**

.....

MOGENI J

JUDGE

In the presence of:

Mr. Ng'ang'a holding brief for Mr. Mbiyu Kamau for the Applicant

Respondent – Absent

Mr. Melita – Court Assistant

