



REPUBLIC OF KENYA



**Ngahu v Ngahu (Environment and Land Case E012 & E004 of 2025
(Consolidated)) [2025] KEELC 8229 (KLR) (25 November 2025) (Judgment)**

Neutral citation: [2025] KEELC 8229 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENT AND LAND CASE E012 & E004 OF 2025 (CONSOLIDATED)
MN GICHERU, J
NOVEMBER 25, 2025
(AS CONSOLIDATED WITH MURANG'A ELC CASE NO. E004 OF 2025**

BETWEEN

JOSPHAT MAINA NGAHU PLAINTIFF

AND

JOHN MUCHERU NGAHU DEFENDANT

JUDGMENT

[1] The plaintiff seeks the following orders in this suit;

1. A declaration that the title of John Mucheru Ngahu to L.R No. LOC.8 Matharite 98 situated in Muranga County has been extinguished by adverse possession thereof by the plaintiff and now belongs to the plaintiff.
2. A declaration that the plaintiff has acquired title to ½ of L.R No. LOC.8 Matharite 98 by adverse possession thereof for a period of more than 12 years from 1994 or thereabout to date.
3. A declaration that the defendant holds the title to ½ of the suit land in trust for the plaintiff
4. An order to the Land Registrar Murang'a register the said ½ of the suit land in the name of the plaintiff Josphat Maina Ngahu.
5. The defendant to execute all necessary documents to effect registration of the said land parcel in the name of the plaintiff and in case of default on their part, the Deputy Registrar be authorized to execute all necessary documents in place of the defendant.
6. The Land Registrar Murang'a be directed to dispense with the production of the old title deed, pin certificate, national identity card and photographs of the defendant if he fails to submit them to the Land Registrar.



7. The costs of this suit be borne by the defendant.
- (2) The plaintiff's case is as follows: Firstly, in the year 1994, the suit land was advertised for auction by Kenya Commercial Bank. The plaintiff and the defendant who are brothers were interested in the land. They both bought it. It was sold for Kshs.240,000 = plus some auctioneers charges. Each of the parties contributed half of the purchase price. Secondly, the plaintiff trusted the defendant to register the land in their joint names. He had no reason to doubt the defendant who is his elder brother. Secondly, both parties occupied the suit land immediately upon purchase. In the presence of both parties and their wives and other people, the defendant instructed Jackson Migwi Njoroge to subdivide the land into two equal halves running from the lower side to the upper side and Migwi duly complied. At the time of occupation of the suit land, it was covered with tea bushes in the middle part. With the assistance of his wife, the plaintiff planted 10 eucalyptus trees on the upper side bordering the access road. He also planted some grevillea robusta trees and out of the 1500 tea bushes that he had found on the land, he planted about 2000 more. In addition to the plaintiff occupying a half of his said land, he gave his daughter Racheal Nyanjiru about 500 tea bushes on the suit land and she got registered at Kamwiyoni Tea Buying Centre as number GB 360320 since March 2023. Thirdly, the defendant has recently turned against the plaintiff when he caused the plaintiff's son by the name Simon Ngahu to be arrested and charged in a criminal case for sawing timber growing on the suit land to build shelter for the plaintiff's grandchildren. The defendant also sued the plaintiff in Murang'a Chief Magistrate's Case No. E031 of 2024 seeking to evict him from the suit land. Finally, on 2-3-2024 at the home of the parties' stepmother Esther Njeri Ngahu, the plaintiff demanded the subdivision and transfer of his portion of the suit land but the defendant refused and said that he would rather refund the purchase price. The plaintiff rejected the offer and preferred to file this suit because he occupied the suit land on account of his contribution of half of the purchase price and not out of any favour by the defendant.
- (3) In support of his case, the plaintiff filed the following evidence;
- i. Supporting affidavit dated 3-7-2024.
 - ii. Witness statements by the plaintiff, Jackson Migwi Njoroge, Elizabeth Muthoni Maina and Rachael Nyanjiru Maina.
 - iii. Copy of certificate of official search for the suit land dated 27-5-2024.
 - iv. Copy of register for the suit parcel from 11-4-1960 to 13-12-2017.
 - v. Bundle of KTDA advise slips for Josphat M. Ngahu and Rachael Nyanjiru Maina
 - vi. Copy of growers statement from Murata Farmers Sacco Society for Josphat M. Ngahu and Rachael Nyanjiru Maina.
 - vii. Copy of Surveyors Report by Geomatics Services dated 19-6-2024.
- (4) In his replying affidavit dated 24-7-2024, the defendant denies the plaintiff's claim and replies as follows; Firstly, the originating summons is frivolous, vexatious and an abuse of the due process of the law as it does not meet the requisite conditions for adverse possession. Secondly, the defendant is the absolute proprietor of the suit land having bought the same in the year 1994 through a public auction. Upon purchase, the defendant was issued with a title deed on 28-6-1994. He has used the title deed to acquire loans with the Family Bank Ltd. Thirdly, after he was registered as proprietor of the suit land, he allowed the plaintiff who is his younger brother to occupy and use part of the suit land. It is not true to say that he allowed the plaintiff to plant tea bushes, eucalyptus and grevillea tree as alleged and the plaintiff has not planted such trees. Again the plaintiff has never been in actual occupation and use of any part of the suit land and he only sends his agents to harvest tea bushes that the defendant gave



him. Finally, the occupation of the suit land by the plaintiff has been with the defendant's permission and it cannot be correct to say that adverse possession is established when the entry into the suit land was with the defendant's permission.

- (5) In support of his case, the defendant filed the following evidence;
- i. Replying affidavit dated 24-7-2024.
 - ii. Copy of witness statement dated 20-5-2024.
 - iii. Copy of certificate of official search dated 7-5-2024 in respect to the suit land.
 - iv. Copy of title deed for the suit land dated 18-6-1994.
 - v. Copy of letter by Shine Merchants dated 18-5-1994.
 - vi. Copy of transfer by chargee in exercise of power of sale dated 24-5-1994.
 - vii. Copy of letter dated 10-6-1994 by the official receiver issued in winding up Cause No. 31 of 1984.
- (6) At the trial on 23-6-2025 and 22-7-2025 the plaintiff testified and called three witnesses who included his wife, his daughter and Jackson Migwi. They all reiterated the plaintiff's case as outlined herein before. They did not deviate from the pleadings. On the other hand, the defendant testified alone as per his pleadings merely restating what is also outlined herein before.
- (7) Counsel for the parties filed written submissions dated 13-8-2025 and 15-9-2025 respectively. The defendant's counsel did not identify any issues for determination. The plaintiff's counsel identified the following issues;
- i. Whether the plaintiff entered into the suit land in the year 1994.
 - ii. Whether the plaintiff only occupied a quarter of the land which would be 1.1 acres out of 4.4 acres as the defendant claimed in his examination in chief and not the half identified in the surveyor's report.
 - iii. What, in case of the position in (2) above, is the situation of the other 1.1 acres claimed by the plaintiff.
 - iv. What is the effect of the counterclaim for eviction vis avis the allegation of permissive possession.
 - v. Is the plaintiff's claim being one suited for trust and if so, can the same be dealt with under the case of *Odd Jobs Vs Mubia* [1970] KECA 306 (KLR).
 - vi. Should the claim be allowed.
 - vii. Should the counterclaim be allowed.
 - viii. Who should bear the costs of the claim and the counterclaim.
 - ix. What is the legal position and effect of the oral agreement to jointly purchase the land.
- (8) I have carefully considered all the evidence adduced in this case by both sides including the affidavits, witness statements, documents and testimony at the trial. I have also considered the written submissions by both sides and the law cited therein. In addition to the issues identified by the plaintiff's counsel, I find that there is an issue of fact that calls for determination.



1. Who between the plaintiff and the defendant has adduced credible evidence on ownership of the suit land. I identify this issue under Order 15 Rule 2 (c) of the Civil Procedure Rules which provides as follows;
2. “The court may frame the issues from all or any of the following,
(c) the contents of documents produced by either party”

[9] At the centre of this dispute is simply whether the plaintiff paid half of the purchase price or if he was allowed to farm on the suit land by the defendant who is his elder brother.

My finding on this critical issue of fact is that the plaintiff paid half of the purchase price. My reasons for this finding is that I believe his testimony which was credible and consistent. Secondly, his evidence is corroborated sufficiently in all the material particulars by the evidence of his wife and daughter whom I also believed as they were consistent in their testimony and unshaken in cross examination. Moreover, there is the independent evidence by Jackson Migwi Njoroge that immediately upon purchase the plaintiff and the defendant shared the land into two equal halves from the lower side all the way to the upper side. I believe that this is exactly what happened.

I also believe that the plaintiff planted tea bushes and that he and his daughter have been harvesting them and selling to the local tea factory. Maintaining tea on half of the suit land is inconsistent with temporary cultivation rights that the defendant claims to have granted the plaintiff.

The evidence by the defendant stands alone and is not corroborated by any other evidence. It cannot possible be true in the face of the overwhelming evidence of purchase, occupation and use tendered by the plaintiff and his witnesses.

[10] Having found that the plaintiff entered the suit in 1994 and that he occupied half of it as the owner of that half, I find that this determination takes care of the first three (3) issues as identified by the plaintiff’s counsel.

Regarding the fourth issue, I find that the claim for adverse possession cannot succeed simply because the condition of lack of permission from the registered owner is missing. I agree with the defendant’s counsel that as per the case of Samuel Kihamba Vs Mary Mbaisi (2015) eKLR it was held as follows;

Strictly, for one to succeed in a claim for 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....”

[11] There can be no denying that the defendant is the registered owner of the suit land. He has the title deed to show for it. He has the certificate of official search as well as the copy of the register. This ownership is not absolute. It is subject to overriding interests recognized under Section 30 of the Registered *akn ke act 2012 6 Land Act* first and later under Section 28 of the *akn ke act 2012 3 Land Registration Act*. In the repealed Act (Cap 300) the specific provision was Section 30 (g) which provides as follows;

Unless the contrary is expressed in the register, all registered land shall be subject to such of the following overriding interests as may for the time being subsist and affect the same, without their being noted on the register -

- (g) the rights of a person in possession or actual occupation of land to which he is entitled in right only of such possession or occupation, save where inquiry is made of such person and the rights are not disclosed.”



Section 28(b) of the *kenya Land Registration Act* (Article No. 3 of 2012) recognizes trusts including customary trusts as interests that override the register even without such rights being noted on the register.

In this case, those are the rights that the plaintiff has and they are borne out of the half contribution that he made when they bought the suit land at the auction and his immediate occupation of the land from 1994 to date, a period of over 31 years.

In the case of *Kiebia Vs M'lintari* and another Petition No. 10 of 2015, it was held by the Supreme Court of Kenya that the rights of a person in possession of actual occupation are overriding interests and they need not be registered in the register.

[12] Since the plaintiff is a co-owner of the suit land as well as co-occupant, the counter claim by the defendant seeking to evict him has no basis at all.

[13] For the above stated reasons, I find that the plaintiff is entitled to half of the suit land. I order that the defendant subdivides the suit land into two equal halves and transfers to the plaintiff the half that he has occupied and developed since the year 1994. In case the defendant does not cooperate in the subdivision and transfer of half of the suit as stated above, the Deputy Registrar to execute all the necessary instruments to give effect to the subdivision and transfer of half of the suit land to the plaintiff.

[14] Finally on costs, though I strongly feel that the plaintiff should be awarded such costs, to foster harmony between the two brothers, I will order that each party bear its own costs.

Orders accordingly.

JUDGMENT DATED, SIGNED AND DELIVERED THIS 25TH DAY OF NOVEMBER, 2025

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M. N. GICHERU

JUDGE

In the presence of:

Plaintiff's Counsel-Mr. Mbuthia

Defendant's Counsel- Mr. Kirubi

Mohamed Dabar-Court Assistant

ELC Case NO. E012 OF 2025

