

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

ELC CASE NUMBER E025 OF 2023 (O.S)

BETWEEN

JOSEPHINE WAMBUI NJENGA.....

APPLICANT

VERSUS

**XEVOUR REGAN KAMAU MWANGI (*Substituted Defendant
in place of EUNICE MUTHONI GATUGI (Deceased)*)**

.....RESPONDENT

JUDGMENT

1. The Applicant, Josephine Wambui Njenga, commenced this suit by way of an Originating Summons dated 11/1/2023, seeking to be declared the proprietor of the suit parcels Kabare/Nyangati/9490 and 9491 by way of adverse possession. She further prays for cancellation of the Respondent's titles, registration of her name in place of the Respondent, issuance of certificates of title in her favour, and costs of the suit.

2. The Summons were supported by her Supporting Affidavit of even date, wherein the Plaintiff/Applicant deponed that she was suing on behalf of the estate of the late Binjetho Murumia Matu, alias Binjero Murimia Matu, and as a trustee of her siblings. The Plaintiff averred that the two suit parcels were subdivisions from Kabare/Nyangati/4148, originally registered in her late father's name on 18th June 2002.

3. According to the Plaintiff, their problems began when her sister-in-law, Rusalia Wamweru, caused herself to be fraudulently registered as the proprietor of the original parcel of land under unexplained circumstances. She stated that Lusilia thereafter transferred the land to Eunice Muthoni Gaturi (now deceased) on 8th January 2008, notwithstanding that their father was still alive at the time. Later, on 19th January 2019, Eunice caused the land to be subdivided into the present titles Kabare/Nyangati/9490 and 9491, which were registered in her name.

4. The Applicant's position is that the entire family of the late Binjetho Murumia Matu has been in open, continuous, exclusive, and uninterrupted possession and use of the land for well over 12 years. She avers that she and her siblings were all born and brought up on the land, which they have always used jointly. The Applicant claimed that she had the consent of her siblings to seek registration of the suit land in her name on behalf of the entire family.
5. The Applicant further asserts that they only discovered that the land had been registered in the name of Eunice Muthoni on 8th January 2008, but by then, they had already established their possession. According to her, they have extensively developed the property by planting trees and fruit crops. The Applicant contends that the Respondent has never taken possession of the land at any time.
6. The Applicant therefore asserts that the Respondent's title had been extinguished by operation of law, and that she should be declared the lawful proprietor of the suit parcels

by way of adverse possession, to hold in trust for herself and the entire family of the late Binjetho Murumia Matu.

7. The Respondent opposed the Originating Summons through a Replying Affidavit and Counter-claim dated 15th April 2024. She contended that she was the lawful proprietor of the suit land, having purchased it for valuable consideration from Rusalia Wamweru Njoka, who had herself been gifted the property by her father-in-law, the late Binjetho Murumia Matu.

8. The Respondent explained that following the demise of Binjetho Murumia Matu, the Applicant and her siblings challenged Rusalia's ownership before the Mwea Land Disputes Tribunal in Case No. 13 of 2008. The Tribunal ordered cancellation of the title to revert the land to the deceased's name. However, that award was set aside in Kerugoya ELC No. 68 of 2013. The Respondent asserts that since the Tribunal's award was overturned in 2018, the Applicant and her family have refused to grant her vacant

possession of the land and have consistently obstructed her whenever she attempted to cultivate it.

9. According to the Respondent, the Applicant and her siblings have not put up any permanent developments on the property and do not reside there, as they each own separate parcels adjacent to the suit land. The Respondent asserts that the Applicants occupation has not been continuous, peaceful and/or uninterrupted and has been punctuated by repeated disputes and litigation, negating any adverse possession claim.

10. The Respondent further contends that the Applicant lacks the **requisite locus standi to institute the present suit, having filed it in a representative capacity on behalf of the estate of Binjetho Murumia Matu without first obtaining letters of administration. She also** asserts that the Applicant has not tendered any credible evidence of the alleged extensive developments said to have been undertaken on the land. In her view, the issues of fraud and cancellation of her title were directly raised and determined in

Kerugoya ELC No. 68 of 2013, rendering parts of the present claim partially res judicata. The Respondent further points out that the deceased transferred the original parcel of land to Rusalia Wamweru Njoka on 3rd July 2006 and died on 6th August 2008, yet within that period he never instituted any proceedings against Rusalia Wamweru for fraud. She argues that the Applicant's claim that Rusalia Wamweru fraudulently caused the transfer to herself is therefore an afterthought, unsupported by evidence, and incapable of sustaining a valid claim before the Court.

11. The Respondent additionally points out that the Applicant and her siblings were already adults when the land was registered in the name of their late father in 2002, and therefore, their narrative of being raised on the land cannot be true.

12. In her Counterclaim, the Respondent reiterated that she lawfully purchased the land but has never derived any benefit from it and therefore has not realized the value of her investment. The Respondent explained that she caused

the original parcel to be subdivided with the intention of selling the resultant portions, but whenever she takes potential buyers to view the land, the Respondents in the Counter-claim confront them with hostility and chase them away. This conduct, she states, has instilled fear in the prospective purchasers, who thereafter abandon their interest in the property. For these reasons, she prays that the court issue the following reliefs:

1) That the Respondents in the Counter-claim, their servants, agents or anyone claiming through them be evicted from L.R No. Kabare/Nyangati/9490 and 9491.

2) That an order of permanent injunction do issue against the Respondents by themselves, their servants, agents, heirs or legal representatives or anyone claiming through them from entering, remaining on or continuing being in occupation and/or otherwise dealing with or in any way whatsoever from interfering with the Plaintiff's access to, use of and quiet occupation/possession of land parcels L.R No. Kabare/Nyangati/9490 and 9491.

3) That the OCS Wang'uru police station do assist in effecting and supervising enforcement of these orders.

4) Costs of this suit and counter-claim be borne by the Respondents.

13. The Court on 9th May 2024 on the application of the Respondent ordered ELC Case No. E006 of 2024 pending before the Wang'uru Magistrate's Courts to be consolidated with the present suit. In that latter suit, the Respondent, Eunice Muthoni Gatugi (now deceased), had similarly sought the eviction of the Defendants therein from the suit parcels together with a permanent injunction restraining them from any further interference. The consolidation was ordered to enable the two suits, which revolved around the same subject land and parties, to be heard and determined together to avoid a multiplicity of proceedings and conflicting decisions.

14. Following consolidation, the matter proceeded to hearing, and both parties tendered evidence as outlined hereunder.

15. At the hearing on 5th November 2024, the Applicant, Josephine Wambui Njenga (PW1), testified and adopted her witness statement together with the bundle of documents filed on 24th May 2024 as her evidence in the matter.

16. She stated that the suit land was originally registered in her late father's name in 2002. She recalled having sued her brother's wife, Rusalia Wamweru Njoka, before the Mwea Land Disputes Tribunal in 2008, challenging the manner through which Rusalia had obtained title to the land. At that time, her father was still alive but was not a claimant in the Tribunal proceedings, and he never sued Rusalia in relation to the land.

17. On cross-examination, the Plaintiff conceded that she was unaware of the case before the High Court in which the Tribunal's decision was set aside. She affirmed that she

had, however, placed a restriction on the title. The Plaintiff admitted that she instituted the present suit on behalf of her late father's estate but had not obtained any grant of Letters of Administration to formalize her authority.

18. She acknowledged that no permanent structures had been erected on the suit parcels, explaining that the family mainly used the land for gatherings and meetings and sometimes hires it out for functions. The Plaintiff further stated that, to her knowledge, their father had subdivided the land before his death, but she was unaware that parcel Kabare/Nyangati/4148 had been subdivided into the present parcels 9490 and 9491.

19. The Respondent, Eunice Muthoni Gitugi (DW1), also testified on 5th November 2024. She adopted her witness statement dated 28th June 2024 together with the accompanying bundle of documents.

20. In her testimony, she stated that she lawfully purchased the suit land in 2007 after visiting it and

confirming that the seller, Rusalia Wamweru, was residing there at the time. She maintained that, despite being the registered owner, she has never enjoyed possession of the land because the Applicant and her siblings have consistently resisted her entry, insisting that the property belongs to their family.

21. The Respondent further explained that in 2019, she subdivided the original parcel into the two resultant titles, Kabare/Nyangati/9490 and 9491. She stated on the day she went to the land with a surveyor to place the beacons, the Applicant and her siblings were absent, and the exercise proceeded without any obstruction. She admitted that although she did not lodge a report with the police regarding the Applicant's occupation, she had reported the matter to the area Chief.

22. The Respondent confirmed that she had never permitted the Applicant or her siblings to use the suit land. She stated that their continued occupation was without her consent and prevented her from enjoying her rights as the registered proprietor.

23. With the close of the parties' oral testimonies, the Court directed them to file written submissions and both parties complied.

24. The Applicant filed her written submissions dated 24th June 2025. She reiterated that the Respondent has never taken possession of the suit parcels since purchase and that her family has remained in actual occupation of the land as of right. She argued that their possession has been open, continuous, exclusive, and without interruption for a period exceeding twelve years, thereby meeting the threshold for adverse possession under the **Limitation of Actions Act**.

25. The Applicant contended that the occupation has not been by stealth or force, and neither has it been with the Respondent's consent. She stressed that her family has always treated the land as part of their late father's estate and have developed it, including planting trees and fruit crops.

26. In support of her case, the Applicant inter alia relied on the case of **Virginia Wanjiku Mwangi v David Mwangi Jotham Kamau (2013) KEHC 1919 (KLR)**, where the court affirmed that long, uninterrupted occupation without the owner's consent may ripen into ownership by adverse possession.
27. The Respondent filed her written submissions dated 17th June 2025. She argued that the Counterclaim was not opposed by the Applicant and should therefore be allowed as prayed.
28. Counsel submitted that the Applicant's case is premised on adverse possession, yet the parcels Kabare/Nyangati/9490 and 9491 only came into existence on 15th January 2019. It was therefore not legally possible for the Applicant to demonstrate the requisite twelve years of continuous and uninterrupted possession over the specific parcels. Even assuming that the Applicant's family had at some point been on the land, their occupation has

not been peaceful or uninterrupted, given the long history of disputes and litigation. For this proposition, reliance was placed on the case of **Mombasa Teachers Co-operative Savings & Credit Society Limited v Robert Muhambi Katana & 15 Others (2018) eKLR.**

29. The Respondent also submitted that the Applicant lacks locus standi to institute this suit. Having brought it in a representative capacity on behalf of her late father's estate, she was obliged first to obtain grant of letters of administration, which she has not. Further, the Respondent argued the Applicant had not shown any written authority from her siblings authorizing her to litigate on their behalf.

30. On these grounds, the Respondent urged that the Applicant's claim be dismissed and the Respondent's counter-claim be allowed with costs.

31. I have carefully considered the pleadings, affidavits, oral testimonies, documentary evidence, and the written submissions of both parties, together with the authorities

cited. From the totality of the record, the following issues arise for determination.

1) Whether the Applicant has locus standi to institute the present suit.

2) Whether the Applicant and the family of the late Binjetho Murumia Matu have acquired parcels Kabare/Nyangati/9490 and 9491 by way of adverse possession.

3) Whether the Respondent is entitled to the reliefs sought in the Counter-claim, including eviction and permanent injunction.

4) Who should bear the costs of the suit and the Counterclaim?

Whether the Applicant has locus standi to institute the present suit.

32. The question of locus standi is a threshold issue, as it touches on the legal capacity of a party to properly move the Court. It is indeed a jurisdictional issue since without

locus standi or capacity to initiate a suit, such suit if initiated is null and void ab initio and cannot be sustained.

33. **Black's Law Dictionary, 9th Edition**, defines locus standi as **"the right to bring an action or to be heard in a given forum."**

34. In the case of **Law Society of Kenya v Commissioner of Lands & Others, Nakuru HCCC No. 464 of 2000**, the court held that locus standi signifies a right to be heard, and a party must demonstrate sufficient interest to sustain standing before a court of law. Similarly, in the case of **Alfred Njau & Others v City Council of Nairobi (1982) KAR 229**, the Court of Appeal observed that to say a person has no locus standi means that he has no right to appear or be heard in the proceedings.

35. Under **Section 82 of the Law of Succession Act**, only personal representatives duly appointed by a grant of representation may institute proceedings on behalf of the estate of a deceased person. The Applicant in this case

candidly admitted during her testimony that she had not received any grant of Letters of Administration regarding her late father's estate. She nevertheless instituted the present suit on behalf of that estate and purported to act in trust for her siblings without producing any written authority from them.

36. It is evident that the Applicant lacked the requisite capacity to institute this suit. In the absence of locus standi, the court cannot properly entertain the claim, as the Applicant has no standing to advance rights said to belong to the estate of her deceased father.

37. It is worth observing, however, that nothing in law prevents a beneficiary of an estate from mounting a claim for adverse possession in his or her personal capacity, provided the statutory requirements are satisfied. In such a case, the beneficiary would be asserting rights said to have accrued to him or her individually through occupation of the land, rather than purporting to act on behalf of the estate. The court would then be concerned with whether

that particular claimant has demonstrated open, exclusive, and uninterrupted possession of the land for the requisite twelve years. In the present suit, however, the Applicant expressly elected to proceed in a representative capacity on behalf of her late father's estate, without first obtaining letters of administration. It is on that basis that the court finds she lacked the requisite locus standi to file the suit.

38. Ordinarily, a finding that the Applicant lacked locus standi would dispose of the entire suit. However, in order to bring finality to the dispute and because the question of adverse possession was fully argued by the parties, I will, without prejudice to that finding, proceed to consider whether the Applicant and her family could, in any event, have succeeded on the merits.

Whether the Applicant and the family of the late Binjetho Murumia Matu have acquired parcels Kabare/Nyangati/9490 and 9491 by way of adverse possession.

39. The doctrine of adverse possession is anchored in the **Limitation of Actions Act, Cap 22. Section 7** bars actions to recover land after twelve years, while **Section**

38 allows a claimant to move the court to be registered as proprietor in place of the registered owner where the period of Limitation had accrued in favour of a person who was in adverse possession. The Court of Appeal in the case of **Mtana Lewa v Kahindi Ngala Mwangandi (2015) eKLR** described adverse possession as arising where a person takes possession of land, asserts rights over it openly and without the consent of the owner, and the owner fails to take steps to assert his title for a period of twelve years. Possession must therefore be open, continuous, exclusive, and adverse expressed in the Latin maxim *nec vi, nec clam, nec precario* (without force, secrecy, or permission).

40. The Applicant in the instant case affirmed that in 2008 they filed a dispute before the Mwea Land Disputes Tribunal against Rusalia Wamweru Njoka who had been registered as the owner of land parcel Kabare/Nyangati/4148 and a decision was made in their favour. The Respondent however challenged the decision of the Land Disputes Tribunal in Kerugoya ELC No. 68 of

2013. In the case the Respondent sued Lusalia Wamweru and the Applicant and her siblings and prayed for order as follows:-

- 1) A declaration that the reference before the Mwea Land Disputes Tribunal between the 2nd to 11th Defendants (Applicant's siblings) and 1st Defendant (Lusalia Wamweru), the subsequent award and order of the Wang'uru Court adopting the award as Judgment of the Court directing the cancellation of the title land parcel Kabare/Nyangati/4148 in Arbitration case No. 13 of 2008 is irregular, illegal, null and void.**
- 2) An order setting aside the award of Mwea Land Disputes Tribunal and the subsequent order of Wang'uru Court adopting the award as Judgment of the Court in Arbitration case No. 13 of 2008.**
- 3) An order that the restriction lodged against the title of land parcel No. Kabare/Nyangati/4148 be removed.**

41. The Applicant and her siblings filed a Counter claim in the suit and sought orders that:-

(i) The Plaintiff's suit be dismissed with costs to the 2nd to 11th Defendants.

(ii) Reversion of the land title No. Kabare/Nyangati/4148 to the estate of Binjetho Murumia Matu.

42. Hon. Justice B. N. Olao after hearing the case allowed the Respondents case as per prayers 1, 2, and 3 above and dismissed the Counterclaim of the 2nd - 11th Defendants on 2nd February, 2018. Each party was ordered to meet its own costs of the suit.

43. I have made reference to the Tribunal Dispute and the ELC matter heard before Olao, J to illustrate that the Applicant and her family had acknowledged the suit land had been transferred to Lusalia Wamweru and that necessitated them to file the dispute before the Mwea Land Disputes Tribunal. As per the Green Card land parcel

4148 was transferred to Lusalia Wamweru on 3rd July 2006 as Gift and was transferred to the Respondent on 8th January 2008 following purchase. The Applicant placed a restriction against the title on 3rd September, 2007. Consequently, as from the time the Applicants instituted the dispute before the Tribunal at Mwea and the time when ELC No. 68 of 2013 was decided by Olao, J on 2nd February, 2018, the ownership of the suit land was in dispute and no party could be said to have been in adverse possession since the ownership was in contest between the parties in the litigation. The Applicants claim of adverse possession on the basis of the facts and evidence is unsustainable as clearly there was on going litigation relating to the suit land until 2018 when Olao, J delivered his Judgment.

44. Upon evaluation of the evidence I am persuaded the Applicant has not proved her case on a balance of probabilities notwithstanding that she lacked the locus standi to institute the suit on behalf of her deceased father's estate having not obtained grant of Letters of Administration to represent the estate.

45. As regards the Counterclaim by the Respondent I am satisfied the same has been proved on a balance of probabilities. The ownership of the suit land Kabare/Nyangati/4148 was reaffirmed by the Court in Kerugoya ELC No. 68 of 2013. The Respondent is the registered proprietor of the suit land and is entitled to enjoy the rights and interest conferred by such ownership without any interference from the Respondents named in the Counterclaim.

46. Accordingly, the Plaintiff/applicant's suit is hereby dismissed and Judgment is entered in favour of the Applicant/Counter Claimant as prayed in the Counter claim dated 15th April, 2024.

**JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY
AT KERUGOYA THIS 13TH DAY OF NOVEMBER 2025.**

J. M. MUTUNGI

ELC - JUDGE