



# THE JUDICIARY



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MURANG'A**  
**ELCLOS NO E002 OF 2024**

CAXTON MUGWE KAMAU..... APPLICANT

VERSUS

GLADYS MUGURE NDUNGU.....1<sup>ST</sup> RESPONDENT

RUTH WANJIKU NJOGU .....2<sup>ND</sup> RESPONDENT

**JUDGMENT**

1) The Plaintiff seeks the following reliefs against the Respondents.

1. **That there be a declaration that the Applicant has acquired land parcel No. Loc. 5/Mariaini/460, suit land, by way of adverse possession.**
2. **An order of injunction restraining the Defendants from interfering with the Applicant's peaceful occupation of the suit land.**
3. **In the alternative, the Applicant be compensated for fair value.**
4. **Costs of the suit.**

2) The Plaintiff's case is as follows. In the year 1966, his father Daniel Kamau Mugwe purchased the suit land from Njogu Mboja. The purchase price was Kshs. 300/= and it was paid in full. Secondly, the Plaintiff's father immediately occupied the suit land and developed it. Thirdly, when the title deeds were issued in the year 1967, the Plaintiff realized that the land was not 1 acre as originally thought but 0.8 acres. Fourthly, in 1985, there was a case before the chief of the area whereby the Plaintiff's father paid Njogu Mboja an ex-gratia payment due to court cases that he had. This payment was not part of the purchase price for the suit land.

3) In support of his case, the Plaintiff filed the following evidence.

- (i) **Supporting affidavit dated 17-1-2024.**

- (ii) Copy of green card for the suit land dated 7-4-2015.**
- (iii) Copy of minutes of a meeting over the suit land presided over by assistant chief Evan Waweru at Kamunyonge on 6-6-1988.**
- (iv) Copy of transaction of the minutes from Kikuyu language to English language.**

- 4) Even though the Respondents were served with the originating summons on 27-8-2024, they did not file any response thereto. The case proceeded exparte.
- 5) At the trial on 2-7-2025, the Plaintiff testified by adopting his affidavit and documents. He said that the Respondents have been asking him to pay Kshs. 2 Million for the land yet the same was bought by his father way back in 1966 for Kshs 300/= and this was the purchase price back then.
- 6) The Plaintiff's counsel filed written submissions dated 9-9-2025 in which he urges that the Plaintiff be declared as the rightful owner of the suit land through the doctrine of adverse possession.
- 7) Having carefully considered all the evidence adduced in this case, and having looked at the pleadings I have find that the following issues arise.
- (i) Whether the Plaintiff is entitled to the suit land through the doctrine of adverse possession.**
  - (ii) Whether the Plaintiff is entitled to the suit land through any other legal doctrine.**
- 8) Regarding the first issue, I find that the Plaintiff has not come out clearly on when the occupation of the suit land by him and his father became hostile to the Respondent's possession. The meeting of 6-6-1988 at the sub-chief's office at Kamunyonge implies that the occupation of the suit land by the Plaintiff's father was with the permission of the registered owner. The pleadings and the evidence do not show when the Plaintiff's father died and even when Njogu Mboja died. From such dates, the court could probably evaluate the period of occupation by the Applicant in his own right as against the Respondents. The pleadings do not explain the exact relationship between the registered owner of the land and

the Respondents. Given the above uncertainties, it is not easy to determine the period of occupation by the Plaintiff that is hostile to the registered owner. In the case of **Jandu vs Kirpal and another [1975]EA**, it was held that a sale agreement implies consent and since adverse possession requires hostile possession, a claimant who entered by virtue of a sale agreement cannot rely on the adverse possession doctrine unless the agreement is invalid.

- 9) As for the second issue, I find that the Plaintiff is entitled to be registered as the owner of the suit through the equitable doctrines of property estopped and constructive trust. These doctrines are anchored on **Article 10(2) (b)** of the Constitution which makes equity a national value and principle of governance which binds all states organs, state officers, public officers and all persons whenever any of them applies or interprets the constitution or any law. They are also anchored in **Section 30(g)** of the **Registered Land Act (Cap 300)** which provided 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.”**

Furthermore, Section **28(b)** of the Land Registration Act recognize trusts including customary trusts as overriding interests.

- 10) In the case of **Willy Kimutai Kitilit vs Michael Kibet Civil Appeal No. 51 of 2015 Eldoret**, the Court of Appeal held that the seller’s act of receiving the full purchase price and placing the buyer in possession created an equitable interest in favour of the buyer, specifically, a constructive trust. The court found that it would be unjust and unequitable to allow the seller to retain the land after benefitting from the sale proceeds while denying the buyer the land.

The facts of the above case are similar to the facts of this case because in this case the registered owner took the full purchase price from the Plaintiff’s father way back in 1966 and put him in possession. He and his heirs in title cannot now turn around and deny the sale and

occupation. The doctrines of constructive trust and equitable estopped apply in this case as they did in the case of **Willy Kitilit (Supra)**.

11) For the above stated reasons, I enter judgment in favour of the Plaintiff and declare that he is entitled to the suit land and that he be registered as the proprietor thereto. If any instruments are required to be executed to have the Plaintiff registered as owner of the suit land, the Deputy Registrar is hereby empowered to execute all such instruments.

Costs to the Plaintiff.

**Dated, signed and Delivered virtually at Murang'a this 16<sup>th</sup> day of December, 2025.**

**M.N. GICHERU  
JUDGE.**

**Delivered online in the presence of; -**  
Court Assistant – Mwangi Njonjo  
Applicant's Counsel – Mr Kimwere  
Respondent's Counsel - None