



Njeru (Suing as the Administrator of the Estate of Stephen Mwaniki Njeru alias Stephen M Njeru (Deceased)) v Nyaga & 2 others (Environmental and Land Originating Summons 14 of 2023) [2025] KEELC 5731 (KLR) (30 July 2025) (Judgment)

Neutral citation: [2025] KEELC 5731 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 14 OF 2023**

**A KANIARU, J
JULY 30, 2025**

BETWEEN

**EUDIAH THAARA NJERU APPLICANT
SUING AS THE ADMINISTRATOR OF THE ESTATE OF STEPHEN MWANIKI
NJERU ALIAS STEPHEN M NJERU (DECEASED)**

AND

**UTENZIA KARIMI NYAGA 1ST RESPONDENT
DORAS WANYAGA MBUGI 2ND RESPONDENT
NANCY CIAINA NYAGA 3RD RESPONDENT**

JUDGMENT

1. The dispute in this matter relates to land parcels No's. Evurore/Nguthi/5128, 5129, and 5130 which the plaintiff – Eudia Thaara Njeru – is claiming as a disseisor and of which the defendants – Utenzia Karimi Nyaga, Doras Wanyaga Mbugi, and Nancy Ciaina Nyaga – are the registered owners. The three parcels of land [“disputed land” hereafter] are parts of an original larger parcel – Evurore/Nguthi/1277 - which has since been sub-divided into seven [7] portions, the disputed land included.
2. To actualize her claim, the plaintiff filed an originating summons dated 19.5.2023 inviting the court, inter alia, to determine whether the estate of her late husband – Stephen Mwaniki Njeru alias Stephen. M Njeru - has been in open, continuous, and exclusive possession of the disputed land; whether that same estate has become entitled to ownership of the disputed land under the doctrine of adverse possession; whether the said estate has been on the disputed land without permission of the defendants or permission of previous owner; whether the estate of the late Stephen Mwaniki Njeru being represented by the plaintiff has by dint of open, quiet, exclusive, uninterrupted and notorious possession become owners through adverse possession; whether the Deputy Registrar/



Executive Officer of this court should be authorized or empowered to execute or sign on the necessary documents to facilitate transfer of the disputed land to the plaintiff; and finally whether the plaintiff is entitled to cost of the suit.

3. The plaintiff expects that the determination will be in her favour and for that reason is seeking the following reliefs.
 - a. That the estate of Stephen Mwaniki Njeru alias Stephen M. Njeru – deceased, is and has been in occupation of land parcels No’s Evurore/Nguthi/5128, 5129 and 5130 herein after referred to as “subject matter” for a period in excess of 12 years.
 - b. A declaration that the estate of Stephen Mwaniki Njeru alias Stephen M. Njeru has acquired entitlement and ownership of the land parcels No’s Evurore/Nguthi/5128, 5129 and 5130.
 - c. That the estate of Stephen Mwaniki Njeru alias Stephen M. Njeru, deceased, is entitled to land parcels No’s Evurore/Nguthi/5128, 5129 and 5130 respectively by way of adverse possession as is envisioned by Section 17 of *Limitation of Actions Act* and other provisions of law.
 - d. Alternatively and without prejudice to the foregoing, that the respondent holds land parcels No’s Evurore/Nguthi/5128, 5129 and 5130 respectively in trust for the estate of Stephen Mwaniki Njeru alias Stephen M. Njeru – deceased.
 - e. An order that the respondents respectively do execute a valid transfer instrument for land parcels No’s Evurore/Nguthi/5128, 5129 and 5130 in favour of the applicant in default the Deputy Registrar of this Honourable court to be empowered to execute such transfer instrument.
 - f. Costs of this suit and any other relief the court may deem fit and expedient.
4. The originating summons came with a supporting affidavit that provides the background and history of the disputed land. From it, it is clear that the disputed land is part of a larger parcel of land - Evurore/Nguthi/1277 then owned by one Njoya Kishindano, now deceased. That land parcel was later sub-divided into seven [7] portions, with the disputed land being among the resultant portions. The plaintiff deposed that she and her late husband – Stephen Mwaniki Njeru alias Stephen M. Njeru, - have always utilized and/or possessed some two acres of the subdivided land and the disputed land owned by the defendants comprises the two acres. The late Njoya Kishindano and the defendants were said to have been aware of the plaintiffs use and possession of the disputed land. It was further deposed that neither the late Njoya Kishindano nor the defendants have ever ejected the plaintiff or filed any suit against her. The plaintiff’s position is that she and/or the estate of her late husband are entitled to the disputed land by way of adverse possession.
5. Each of the defendants responded to the originating summons by way of a replying affidavit. The 1st defendant - Utenzia Karimi Nyaga – filed her replying affidavit on 30/6/2023. She introduced herself as the daughter of the late Njoya Kishindano. She deposed, inter alia, that the late Njoya Kishindano was the registered owner of the original land parcel No. Evurore/Nguthi/1277 and that Geoffrey Kithaka Nyaga, her own brother, who is the son of the late Njoya Kishindano, is the administrator of Kishindano’s estate. She acquired her portion, Parcel No. 5128, through transmission and she was issued with title deed on 14/3/2023. The plaintiff, she said, lives on her father in law’s land Parcel No. Evurore/Nguthi/1275 which is adjacent to land parcel No. 1277. She further deposed that there has been a subsisting boundary dispute which the parties had deliberated on many times and agreed that it would be resolved by the District Land Surveyor. The surveyor was supposed to visit the land at the convenience of the parties. The issue remained unresolved because the plaintiff’s own father-in-



- law was deceased and the 1st defendant's father was also deceased. The estates of the two had no legal representatives.
6. The 2nd defendant's replying affidavit was also filed on 30/6/2025. She stated that she owns land parcel No. Evurore/Nguthi/5129, having purchased it from Mugo Saverio Nyagah. She denied that the plaintiff has been in possession of 2 acres of the original land parcel No. 1277. According to her, the plaintiff is dissatisfied because the plaintiff's husband was her cousin and she, the 2nd defendant, has purchased land belonging to the late Njoya Kishindano.
 7. Nancy Ciaina Nyaga, 3rd defendant, filed her response also on 30/6/2023. She said, inter alia, that she owns land parcel No. Evurore/Nguthi/5130. She denied that the plaintiff has had uninterrupted possession of her land for over 12 years. According to her, the plaintiff is peeved because she [3rd defendant] has managed to buy land from the beneficiaries of the deceased registered owner.
 8. The defendant's response provoked a response from the plaintiff by way of a supplementary affidavit. In the response, she denied that there has been a boundary dispute relating to the disputed land. She reiterated that she and her late husband have been in occupation of the disputed land and that the defendants are aware of this. She denied being jealous of the respondent and she averred that she harbours no hatred. She ultimately asked that the suit be allowed.
 9. The trial of the matter started on 2/5/2024 and the plaintiff was the first to testify. She gave evidence as PW1. She adopted her written statement as evidence and in her oral testimony she produced several exhibits. Among the documents produced as exhibits are a grant from Probate and Administration Court [P exhibit No. 1]. Various copies of searches showing ownership of disputed land [P exhibit No. 2 a, b, and c], copy of green card of the original land parcel No. 1277 [P exhibit No. 3] and various photographs showing disputed land [P exhibit No. 4]. The plaintiff's oral testimony is in general agreement with the supporting affidavit that came with her originating summons and with the supplementary affidavit she filed in response to the replying affidavits filed by the defendants.
 10. The plaintiff's written statement is also the same as the supporting affidavit that came with originating summons. I have highlighted elsewhere the substance of that supporting affidavit and I see no need to be repetitive here.
 11. The plaintiff was cross-examined by the defence and she is shown saying that she knows 1st defendant; the 2nd defendant is her cousin; that her late husband is buried on parcel No. 1275 owned by her father in-law and which borders parcel No. 1277; that there has never been a boundary dispute as alleged by the defendants; that she and 3rd defendant are neighbours and that 3rd defendant does not live on parcel No. 1275; that is not true that the late owner of parcel No. 1277 discovered they had occupied a portion of his land and made an offer to sell to them; and that she has not sued the late Njoya Kishindano or his estate and that she has instead chosen to sue the defendants.
 12. Re-examination followed cross-examination and at this stage, the plaintiff reiterated much of what she had stated in her evidence-in-chief. In some measure also, the re-examination is a patch-up of some of the off hand answers that the plaintiff had given during cross-examination.
 13. The plaintiff's second witness, PW2, was Evanson Njiru Njue. Evanson adopted his written statement as his evidence. In the statement this witness stated, inter alia, that the plaintiff is his cousin in-law as she was married to his cousin, the late Stephen M. Mwaniki. He further said that his late Cousin was using 2 acres of parcel No. 1277 and was doing so even at the time he married the plaintiff. According to this witness, the 2nd defendant – Doras Wanyaga Mbugi – is aware of this state of affairs. This witness also averred that there has never been a boundary disputed as alleged by the defendants. He said the defendants are lying and they are trying to frustrate the plaintiff as she is a widow.



14. PW2 was cross-examined and in answer to some of the questions posed, he said the disputed land belongs to plaintiff's late husband; that he does not know the number of the disputed but he knows the land physically; that the land is approximately two acres and that the plaintiff's late husband is buried where the plaintiff lives.
15. The plaintiff's final witness was Elijah Nyagah Waruhi. He testified as PW2. He adopted his written statement as his evidence. He said he knows the disputed land. It was being used by the plaintiff's father in law. The father in law allegedly "founded those lands" sometimes in 1938 and he later on started living on parcel No. 1275 while using some two [2] acres in parcel No. 1277. This witness averred that when the plaintiff's husband became an adult, he was allowed to start cultivating the two acres in parcel No. 1277. This witness said there has never been a boundary dispute and that he has never seen the late Nyaga Kishindano or his children on the land. The two acres being used by the plaintiff are physically noticeable on the ground and there are no physical boundaries marking what the defendants are said to own.
16. Like the other two witnesses before him, this witness was subjected to cross-examination. Asked whether he knew the number of the land, he said he didn't. Asked if he knew where the plaintiff lived, he said the plaintiff lived where she said she lived.
17. The hearing of the defence case started on 2.10.2024. Utenzia Karimi Nyaga, 1st defendant, was the first to give evidence. She is DW1 in the line-up. She adopted her written statement as evidence. It appears clear that she is the daughter of the late Nyaga Kishindano who, she said, passed on in the year 2014. She also said that the administrator of the estate of the late Nyaga Kishindano is Geoffrey Kithaka Nyagah. She stated that she acquired her land – parcel No. 5128 – through transmission. She also further said that the plaintiff lives on her late father-in-law's land, which is parcel No. 1275. There has been a running boundary dispute and both sides of the dispute had deliberated on it many times. The disputants had agreed that the dispute would be resolved by calling a District Land Surveyor at the convenience of the parties. The matter however remains unresolved for the reason that the original owners of parcel No. 1275 and parcel No. 1277 are deceased and for long, no appointed legal representatives had been appointed. This defendant denied that the plaintiff had uninterrupted occupation of the land.
18. DW1 was cross-examined. Responding to some questions asked, this witness first said the plaintiff is not using the land but at some point she said the plaintiff's late husband was using the land. She also said that some other people were also using her late father's land. Towards the end of cross-examination, this witness also said the plaintiff herself was using parts of the disputed land.
19. Doras Wanyaga Mbugi, 2nd defendant, testified as DW2. Her land, she said, is parcel No. 5129 and it was sold to her by the son of Njoya Kishindano. The son was Saverio Mugo. She said there has been a running boundary dispute relating to land parcels No's. 1275 and 1277. She also talked of a time when the late Njoya Kishindano came to the land and, finding many people using it, he told them the land was his own and anybody wishing to continue utilizing it should buy the portion they were using. This witness seized the opportunity given and bought her portion.
20. This witness made two witness statements and she adopted both as her evidence. The initial statement dated 31.7.2023 is substantially similar to this witness's replying affidavit made in response to the originating summons. Her other or further statement is an extension of the first and in it, she stated that the late Nyaga Kishindano called them to discuss issues touching on parcel No. 1277 and asked them to vacate the portions they were using or buy them. She opted to buy her portion and she didn't have enough money to buy the entire portion. She brought the 3rd defendant on board who also bought a portion. The plaintiff was said not to be occupying the portions that these two purchased.



21. Like the others, this witness was subjected to cross-examination. She is shown saying, inter alia, that the land was sold to her by Saverio Nyagah; that Saverio Nyaga was not the registered owner but his father was; that there has been a subsisting boundary dispute; that the late owner of parcel No. 1277 had given the plaintiff's late husband permission to use the portion he was using. That the boundaries are not yet marked on the ground; and that the plaintiff is using part of the portion meant for this witness.
22. Among the litigating parties, Nancy Ciaina Nyaga was the last to testify and she gave her evidence as DW3. She adopted her written statement as her evidence. In her written statement she said that her land is parcel No. 5130; that the plaintiff has not been in possession of her portion for twelve [12] years; that the plaintiff has not also been in uninterrupted possession of that parcel of land; and that the plaintiff is unhappy that she was able to buy a portion of land from the beneficiaries of the deceased's owner.
23. During cross-examination, the witness stated, inter alia, that sub-division of parcel No. 1277 was done on paper but not on the ground; that the reason for not marking the boundaries physically on the ground is that this suit was instituted before the exercise could be carried out; that she was not aware that the plaintiff's late husband was using a portion of parcel No. 1277; and that the seller of the land pointed out to her the physical position of her land and she therefore knows where it is.
24. The defence called three other witnesses – DW4, DW5 and DW6. Rose Muthoni Mbogo testified as DW4 and adopted her written statement as her evidence. Her portion of land on parcel No. 1277 is said to be 3 acres but she has not yet finished buying it. She said she has lived on that parcel of land for thirty-seven [37] years. This witness said she was already on the land when its owner – Njoya Kishindano – came and said the land was his. Kishindano gave those on the land the option of buying it.
25. Rose said that the plaintiff lives on the land parcel No. 1275 and that there is a boundary land dispute relating to parcels No's 1277 and 1275. In her written statement, Rose said, inter alia; that when the late owner of parcel No. 1277 came to the land, the plaintiff's late husband was among those summoned by him. He gave those on the land the option of purchasing it. The plaintiff is said to be occupying a portion of land parcel No. 1277 but she is on it with the consent of the late owner of parcel No. 1277. The option given to those on the land was to buy the portions they were occupying or vacate. The plaintiff is said to have declined the offer for sale.
26. This witness was cross-examined and in response to some of the questions asked, she said that the plaintiff was using a portion of land parcel No. 1277; that the plaintiff's late husband was using that same portion; that the plaintiff's late husband was given the option of buying the portion he was using; and that his own portion of land borders that of the plaintiff and that there is no boundary between the owners of the two portions.
27. Robert Njue Kathinthi was the 5th witness on the defence side. He testified as DW5 and he adopted his written statement as evidence. In his written statement, he said that he uses a portion of land parcel No. 1277. He does so well aware that the land belongs to the late Njoya Kishindano and that Kishindano gave him the option of buying the portion or vacate the land. He is still buying the portion, he said. The plaintiff's late husband was said to have been aware that his father's land parcel No. 1275 had an unsettled boundary issue with parcel No. 1277 and he was given the option of settling the boundary issue or buy the portion he was using.
28. Robert was cross-examined and it emerged during cross-examination that he is the plaintiff's step-brother. He also said that from the family of the plaintiff's father-in-law, he himself, DW4, and the plaintiff were using portions of parcel No. 1277. He then said that DW2 is part of that same family and she is also using a portion of the land.



29. The final witness, DW6, was Mugo Saverio Nyaga. Like the other witnesses, he adopted his written statement as evidence. He said his deceased father – Njoya Kishindano – had three wives and his own mother was the third one. The father died and his son – Geoffrey Kithaka Nyaga – became his legal representative. Njoya Kishindano is said to have summoned the people who were using parcel No. 1277. Among those summoned were Rose Muthoni Mbogo, Stephen Mwaniki, Njue Kathinithi, and Doras Wanyaga. They were told that they would not be evicted from the land provided each would buy the portion they were using. All are said to have acknowledged that the land belonged to him. Kishindano later passed on and Rose Muthoni and her children agreed to buy the portions they were using. Similarly, Doras Wanyaga and Nancy Ciaina Nyaga agreed to purchase their portions of the land. This witness said it was dishonest on the part of the plaintiff to say she has been occupying the land without the approval of the owner yet her late husband – Stephen Mwaniki – was among those summoned and he didn't claim adverse possession then. He also said that there has been a running boundary dispute relating to the portion occupied by Rose Muthoni and the plaintiff. According to the witness, this matter should be dismissed and the plaintiff should be evicted from the portion she is using if she is not willing to purchase like the rest or as agreed between her late husband and Kishindano.
30. In response to cross-examination, this witness said he is the son of the late owner of parcel No. 1277; that they have never lived on the land as a family; that there were people squatting on the land and the plaintiff's late husband was one of them; that his late father summoned those squatting on the land in the year 2013 and he died in the year 2014; that Geoffrey Kithaka Nyaga is the administrator of the late Kishindano's estate; that there has been a running boundary dispute between the plaintiff and Rose Muthoni; and that parcel No. 1277 is subdivided on paper only and no boundaries have been officially marked on the ground.
31. After hearing, both sides filed written submissions. The plaintiff's submissions are dated 4/10/2024. The submissions start with a highlight of the background to the case, then there is an overview of both the plaintiff's and the defence case and finally there is the legal analysis. The analysis started with citing and quoting the case of Samuel Kihamba v Mary Mbaisi; Civil Appeal No. 27 of 2013, Kisumu which captures the essence of adverse possession and the requirements for its proof. It is captured well in the case that to demonstrate adverse possession, a person needs to prove occupation of the land openly, that is, without force, without secrecy and without licence or permission of the land owner and with intention to own it. It was stated that there has to be an apparent dispossession of the land from the land owner.
32. The plaintiff in this case is said to have taken full control of the portion she is claiming when she got married to her late husband in 1981. She was said to have been cultivating on the land all along. One defence witness – DW6 – was in fact said to have confirmed that plaintiff's occupation of the land. DW4, Rose Muthoni Mbogo, was also said to have confirmed it. That occupation cannot be equated to a boundary dispute, the plaintiff submitted.
33. The court was urged to treat the plaintiff as an adverse possessor as she has never been evicted from the disputed land. It was submitted also that the defendants cannot be heard to say that they only became registered owners recently. The plaintiff submitted that even after the defendants became registered she continued using the disputed land as she had always done. She averred that by the time they became registered owners, she was already an adverse possessor. The case of Githu v Ndetete [1984] KLR 776 quoted in the case of Gichiba v Jacob Kinyua Kiragu [2018] eKLR was proffered to make the point that change of ownership of land which is occupied by another person or person's does not interrupt that person's adverse possession.



34. The defendants' submissions are dated 3.12.2024. According to the defendants, the disputed land has been the subject of a boundary dispute and the copy of green card made available is said to be proof of such dispute. The land became registered in the name of 1st defendant's father in 1998 and the restriction placed on the register was said to have been removed in the year 2023. Parties who lost in High Court Civil Suit No. 165 of 2008 and later in Appeal No. 110 of 2021 are said to have found a new way of claiming the same parcels of land as adverse possessors.
35. The plaintiff was also said to be on the disputed land by consent of the deceased registered owner – Njoya Kishindano. The plaintiff's late husband was given the option of buying the portion he was using. He didn't buy it. The plaintiff has not also bought the land. The plaintiff's husband was permitted to be on the land and as the plaintiff is on the land under the arrangement proposed or offered by the deceased's registered owner to her late husband, she herself is said to be on the land as a licensee. Some proffered cases made available for use, and guidance are those of Samuel Njenga Kimani & 2 others v Jomo Kenyatta University of Agriculture and Technology [JKUAT] ELC No. 226 of 2013 [OS], Nairobi and Serah Wanjiru Mbira v Kanyore Gachuhi HCC No. 2826 of 1997, Nairobi.
36. The defendants also produced some exhibits: They were: Doras Wanyaga Mbugi's title deed for parcel No. 5129 [D Exhibit No. 1], Sale agreement for sale of portions of land to Doras Wanyaga Mbugi and Nancy Ciaina Nyaga [D Exhibit No. 2], Acknowledgment for payment dated 10/2/2023 [D Exhibit No. 3], Acknowledgment for payment dated 10.3.2023 [D Exhibit No. 4] and a copy of title deed for parcel No. 5130 [D Exhibit No. 5].
37. I have considered the pleadings, evidence, and rival submissions. The plaintiff's claim is first and foremost based on adverse possession. But it is also as an alternative based on trust. But the aspect of trust only remained in the pleadings. It was not canvassed through evidence and was not mentioned in the submissions. Basically therefore, the claim properly before court for consideration is one of adverse possession. I think the main issue before me is whether or not the merits of the case have been demonstrated. I will start by considering the applicable law first.
38. In *Richard Wefwafwa Songo v Ben Munifwa Songoi* [2020] eKLR it was held, inter alia, that a person claiming adverse possession must prove:
- a. On what date he went into possession.
 - b. What was the nature of his possession?
 - c. Whether the fact of his possession was known to the other party.
 - d. For how long possession had continued.
 - e. That possession was open and undisturbed for at least 12 years.
39. In *Kweyu v Omutut* [1990] KLR 709, the following quotation appears in the judgement of Gicheru JA [as he then was] as he made reference to K. J. Rumtomji in his seminal work entitled "Law of Limitation and Adverse Possession" Volume II, 5th Edition, at pages 1374 and 1375:

“By adverse possession is meant a possession which is hostile, under a claim or colour of title, actual, open, uninterrupted, notorious, exclusive and continuous. When possession is continued for the requisite period [12 years] it confers an indefeasible title upon the possessor. [Colour of title is that which is title in appearance, but not in reality]. Adverse possession is made out by the co-existence to two distinct ingredients; the first, such title as will afford colour; and, second such possession under it as will be adverse to the right of the true owner. The adverse character of the possession must be proved as a fact; it cannot be



assumed as a matter of law from mere exclusive possession, however long continued. And the proof must be clear that the party held under a claim of right and with intent to hold adversely. These terms [claim or colour of title] mean nothing more than the intention of the disseisor to appropriate and use the land as his own to the exclusion of all others irrespective of any semblance or shadows of actual title or right. A mere adverse claim to the land for the period required to form the bar is not sufficient. In other words, adverse possession must rest on defacto use and occupation. To make a possession adverse, there must be an entry under a colour of right claiming title hostile to the true owner and the world, and the entry must be followed by the possession and appropriation of the premises to the occupant's use, done publicly and notoriously.”

40. The position in Kweyu's case [supra] was espoused later by the Court of Appeal in M'mbaoni M'Thaara v James Mbaka [2017] eKLR. The essential requirements for proof of adverse possession were captured in a less elaborate fashion in the case of Wambugu v Njuguna [1983] KLR 172 where the court held thus:

“In order to acquire by the statute of limitation 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 proprietor that defeats his title are acts which are inconsistent with his enjoyment of the soil for the purpose of which he intended.”

And also that;

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

41. An often over-looked requirement is to be found in the case of Gabriel Mbui v Mukindia Maranya [1993] eKLR where the court observed:

“The rightful owner must know that he is ousted. He must be aware that he has been dispossessed, or he must have parted and intended to part with possession. Just as the adverse possessor cannot succeed if he did not know he was in actual possession of another's land, the owner who had not intended to part with possession or is unconsciously dispossessed, cannot be said to have been evicted or to have quit the land.”

42. The statutory underpinning for adverse possession is to be found in, among other statutes, Registration of [Land Act](#) 2012, and [Limitation of Actions Act](#) [Cap 22]. Section 28 [h] Registration of [Land Act](#), 2012, recognizes adverse possession an overriding interest in land. It is among other interests spelt out in that section. Section 7 of [Limitation of Actions Act](#) states as follows;

“

“7: An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him, if it accrued to some person through whom he claims, to that person.”

Section 13 of the same Act states thus:

“ 13 [1] A right of Action to recover land does not accrue unless the land is in the possession of a 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.”

Finally, there is Section 38 [1] which, inter alia, directs where to file a claim for adverse possession. It states thus:

“ 38 [1] Where a person claims to have become entitled by adverse possession to land registered under any of the Acts cited in Section 37 of this Act, or land comprised in 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 person then registered as proprietor of the land.”

43. A look at the provisions of the Limitations of Actions Act that I have already cited show that after the end of twelve [12] years from the date on which the right of action accrues no action can be brought to recover land and the title of the registered owner stands extinguished [See thereof Sections 7 and 17]. Possession is crucial and the right of action does not accrue unless the land being claimed is in possession of a person in whose favour the period of Limitation can run [See Section 13]. Finally, the right forum to institute a claim by an adverse possessor in order to defeat the title of the registered owner is the High Court, which for this purpose can also be construed to be Environment & Land Court [See Section 38].
44. It is now apropos to consider the matter at hand to establish whether the facts and circumstances surrounding it demonstrate or prove adverse possession. The disputed land comprises of parcels No’s Evurore/Nguthi/5128, Evurore/Nguthi/5129 and Evurore/Nguthi/5130. The court was told during hearing that though parties have titles, no survey on the ground has yet been done. The physical sizes and dimensions of the parcels on the ground is therefore uncertain. The plaintiff said that the parcels of land are where the parcel of land she is claiming is positioned. I think I should hesitate to believe this. With survey not yet done on the ground, it is easy to question how the plaintiff established that the disputed land comprises the three parcels the defendants are said to own. It is also not clear how the plaintiff established that the size of the land she is claiming is two acres. The truth of the matter is that unless and until the survey exercise is carried out, it is difficult to tell whether the physical position and dimensions of the parcel of land the plaintiff is claiming has also the exact position and dimensions of the defendants’ parcels of land.
45. The other problem surrounding the matter has to do with failure to join in the suit the legal representative of the late Njoya Kashindano. The plaintiff chose to sue only the defendants. The defendants only became registered owners in the year 2023 and this is the same year this case was filed. Quite clearly, the period of more than twelve [12] that the plaintiff says she has possessed the land took place during registered ownership of the late Njoya Kishindano. The plaintiff seems to have assumed that it is axiomatic that the court will treat that period as one of adverse possession in her favour. But given the background and history that emerged during taking of evidence, it is clear that the late Njoya Kishindano did not treat any of the people on his land as adverse possessors: Were he alive, I am reasonably sure he would have had something to say about the plaintiff’s claim. In fact it would most likely be appalling or disgusting to him.
46. Records show that the legal representative of the estate of the late Njoya Kishindano is Geoffrey Kithaka Nyaga. He was mentioned during hearing of this matter and his name appears on the copies



of green card made available here. Geoffrey therefore is the only person with the legal mandate and authority to speak on behalf of the late Njoya Kishindano. The omission or failure by the plaintiff to join him in the case was not helpful to her case at all. The court cannot take it for granted that he estate of the late Njoya Kishindano accepts her as adverse possessor. Geoffrey Kithaka, the legal representative, needed to be heard. He is the only one who could authoritatively speak for or on behalf of the late Njoya Kishindano.

47. But there is still another concern and this one relates to the contents or substance of the copies of green cards made available by both sides. The green cards show that the first registered owner was Michael Ndiritu Muriuki and he became such owner on 3/8/1979. But a restriction was placed on the land register by the Chief Land Registrar on 8/2/1982. The reason for the restrictions is clear. There was an appeal pending before the minister. Then on 7/1/1998, the restriction was removed and the late Njoya Kishindano became the registered owner of parcel No. 1277 the same day. But despite this development in favour of Njoya Kishindano, it appears clear that even he himself could not deal with the land as he pleased. The same record shows that there was still an appeal to be heard. Then on 18/5/2005, yet another restriction was placed on the register this time to await the outcome of High Court Civil Suit No. 2509 of 1998 at Nairobi. Other developments still continued to unfold. On 13/2/2023, the restriction was vacated pursuant to a court order made in Embu HCC No. 165 of 2008, which is the same case No. 2509 of 1998 that had been filed in Nairobi. It appears clear that at some point the Nairobi case was transferred to Embu where it became Embu HCC No. 165 of 2008. This paved the way for subdivision of the original land parcel No. 1277 resulting into creation of seven land parcels including the disputed land. Question is: Could Njoya Kishindano be expected to eject alleged trespassers or file suit against them while he himself was still not sure he would emerge the ultimate owner? I say this because it is clear from the records that his ownership of the land continued being under challenge. That ownership was therefore uncertain or, at best, tenuous.
48. Given the above developments, it becomes clear that the most likely thing is that ownership of land was disputed with cases being prosecuted both within and outside the court system. A crucial question arises as to whether the late Njoya Kishindano could be said to be the undisputed owner of the land. He certainly was not. He only seems to have become such owner when all the disputes were settled. At the time the land parcel No. 1277 was still the subject of disputes, was time running in favour of any person squatting on the land? The plaintiff needed to persuade the court that time could still run in her favour.
49. Finally, my considered view is that the broad equity approach to be adopted in this matter is one that would reflect fairness to all those who were on Njoya Kishindano's land. Evidence has it that when Njoya Kishindano came to the land and found people, including the plaintiff, squatting on it, he offered to sell the portions they were occupying to them and made it clear that those who didn't want to take the offer risked eviction. That is said to have happened in the year 2013. Unfortunately, one year later - precisely in 2014 - Njoya Kishindano passed on. It is important to appreciate that all others on the land opted to buy the portions they were using or occupying. At the time of hearing this matter, some - like DW6 - had not yet finished paying for their portions. But the plaintiff opted not to buy. She wants to be treated as an adverse possessor. It seems to me that she wants free land. Why should she get the free land while the others are buying? In my view it would not be fair to treat the plaintiff differently. She squandered the opportunity she was given. Even members of her extended family have come to terms with the fact that they have to buy portions of parcel No. 1277 that they are squatting on. Why should the court agree to be used to treat the plaintiff differently?
50. The upshot, in light of the foregoing, is that I find the merits of the plaintiff's case not sufficiently demonstrated and I hereby dismiss her case with costs to the defendants.



JUDGEMENT DATED, SIGNED AND DELIVERED ONLINE AT KITUI THIS 30TH DAY OF JULY, 2025.

A. KANIARU

JUDGE- ENVIRONMENT & LAND COURT, KITUI

In the presence of,

Kimanzi for applicant

Ms. Ndorongo for defendant – absent

Applicant – absent

Respondent – absent

Court Assistant - Musyoki

