



Riverside Zebka Residents' Association v Ndungu & another (Environmental and Land Originating Summons E050 of 2021) [2025] KEELC 18537 (KLR) (19 December 2025) (Judgment)

Neutral citation: [2025] KEELC 18537 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E050 OF 2021
MN KULLOW, J
DECEMBER 19, 2025**

BETWEEN

RIVERSIDE ZEBKA RESIDENTS' ASSOCIATION PLAINTIFF

AND

**MRS. A. W. NDUNGU THE CHAIRLADY OF URUTAGWO MWIRUTI
WOMEN GROUP 1ST DEFENDANT**

**FREDRICK MUNIU GATHIRIMU & PETER NGUGI GATHIRIMU (SUED
AS THE ADMINISTRATORS OF THE ESTATE OF GATHIRIMU MUNIU
DECEASED) 2ND DEFENDANT**

JUDGMENT

Introduction

1. The Plaintiff moved this Court by way of an Originating Summons dated and filed on 8th October 2021, brought pursuant to Sections 37 and 38 of the *Limitation of Actions Act* (Cap 22) Laws of Kenya, Section 28(h) of the *Land Registration Act*, No. 6 of 2012, and Order 36 Rule 3(d) of the Civil Procedure Rules, seeking reliefs relating to Land Reference Number 7340/84 on the basis of alleged adverse possession.
2. In the said Originating Summons, the Plaintiff prayed for the following orders:
 - a. That a declaration that the Plaintiff's members are entitled to be registered forthwith as the owners of LR No. 7340/84 which the Plaintiff's members have been in adverse possession since the year 2007 to date more than twelve (12) years immediately preceding the presentation of this suit and which they have lived openly and continuously as of right in adverse possession and that the 2nd Defendant's title to land parcel number LR No. 7340/84 has been extinguished in favour of the Plaintiff's members under section 37 and 38 of the *Limitation of Actions Act*.



- b. That an Order for permanent injunction be issued restraining the Defendants, their agents, servants, employees or any person claiming through them from evicting the Plaintiff's members, their agents and/or servants from land parcel number LR No. 7340/84 and/or in any other way interfering with the Plaintiff's members quiet possession of the same.
 - c. That the Certificate of Title be issued to the Plaintiff to enable it transfer to its members their respective plots, which have been excised, from land parcel number LR No. 7340/84.
3. The application was premised on the grounds set out on the face of the Originating Summons and was further supported by the affidavits of Josiah Makori Ngoge and William Ntabo Onsongo, the Chairman of the Plaintiff Association. The deponents reiterated that the Plaintiff's members purchased plots purportedly excised from Land Reference Number 7340/84 from the 1st Defendant, paid the requisite consideration, and took possession thereof.
4. They deponed that the Plaintiff's members have remained in open, peaceful, and uninterrupted occupation of the suit property since the year 2007, with the knowledge of the Defendants, and that the land is registered in the name of Gathirimu Muniu (deceased). The Plaintiff maintained that no transfer was effected in their favour and urged the Court to grant the orders sought on the basis of adverse possession.

Response

5. The record shows that the 1st Defendant did not participate in the proceedings at all. Despite being duly served, the 1st Defendant neither entered appearance nor filed any response to the Originating Summons, and did not take part in the hearing of the matter.
6. The application was, however, responded to by the 2nd Defendants through a Replying Affidavit sworn on 5th August 2022 by Peter Ngugi Gathirimu, one of the administrators of the Estate of Gathirimu Muniu (deceased). In the said affidavit, the deponent confirmed that the deceased was the registered proprietor of Land Reference Number 7340/84, and that he was duly authorised to swear the affidavit on behalf of the estate and his co-administrator. He further stated that he had read and understood the Plaintiff's application and supporting affidavits.
7. In substance, the 2nd Defendants deponed that during his lifetime, their deceased father had sold the suit property to Mrs. A. W. Ndungu, who was acting on behalf of Urutagwo Mwiruti Women Group, and that the said group subsequently took possession and sold portions of the land to third parties, including members of the Plaintiff Association, who have been in occupation for over twenty years. The 2nd Defendants expressly stated that the Estate of Gathirimu Muniu has no claim over the suit property, and confirmed that they were not opposed to the Plaintiff's application, urging the Court to allow it as prayed.

Hearing

8. The matter thereafter proceeded for hearing, during which the Plaintiff called two witnesses. PW1 was Elizabeth Achieno Wakho, while PW2 was Jonah Makori. The Defence was represented by Peter Ngugi Gathirimu, one of the 2nd Defendants. Upon the close of the oral hearing, the parties were directed by the Court to file and exchange written submissions.



Issues for Determination

9. The Court has carefully read and considered the pleadings, the evidence adduced, the submissions and authorities cited by the parties, as well as the relevant provisions of the law. The Court finds that the following issues arise for determination:
 - a. Whether the Plaintiff has met the threshold for the grant of orders based on adverse possession.
 - b. Whether the Plaintiff is entitled to the reliefs sought.
 - c. Who should bear the costs of the suit.

Analysis and Determination

Issue (a): Whether the Plaintiff has met the threshold for the grant of orders based on adverse possession

10. The burden of leading the Court to ascertaining whether a claim for adverse possession has been established lies with the Applicant. This Court concurs with the sentiments of Justice Kuloba J. (as he then was) in Nairobi Civil Appeal No. 283 of 1990, *Gabriel Mbui v Mukindia Maranya* [1993] eKLR, where the Court held: “The adverse character of the possession must be established as a fact. It cannot be assumed as a matter of law from mere exclusive possession even if the mere possession has been for twelve or more years. In addition there must be facts showing a clear intention to hold adversely, and under a claim of right. De facto use, and de facto occupation must be shown.”
11. The principle of adverse possession is well settled under the *Limitation of Actions Act*. Section 7 of the said Act places a bar on actions to recover land after twelve (12) years from the date on which the right accrued. Further, Section 13 of the same Act provides that adverse possession is the exception to this limitation: “(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)”
12. Further, Section 38 of the Act provides that: “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... he may apply to the High Court for an order that he be registered as the proprietor...”.
13. The principle of adverse possession was further elaborated in *Wambugu v Njuguna* [1983] KLR 172, where the Court held that: “In order to acquire by the statute of 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.....”
14. And further 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 for the statutory period...”
15. The Court of Appeal in *Mtana Lewa v Kahindi Ngala Mwagandi* [2015] eKLR held: “Adverse possession is essentially a situation where a person takes possession of land and asserts rights over it and the person having title to it omits or neglects to take action...”
16. Finally, in *Mbira v Gachuhi* (2002) 1 EALR 137, the Court stated: “...a person who seeks to acquire title to land by the method of adverse possession... must prove non permissive or non-consensual actual, open, notorious, exclusive and adverse use...”



17. Based on the foregoing principles, this Court now turns to interrogate the evidence on record against the settled legal threshold. The starting point is the manner in which possession of the suit property was taken. The uncontroverted evidence of PW1 Elizabeth Achieno Wakho and PW2 Jonah Makori was that the Plaintiff's members entered the suit land in the year 2007 after purchasing plots purportedly excised from Land Reference Number 7340/84. Upon entry, they took physical possession, settled on the land, and exercised acts of ownership consistent with possession, including occupation and development. This evidence was not displaced by any contrary testimony.
18. On the nature and quality of possession, the Court is satisfied that the occupation by the Plaintiff's members was open, notorious and public, such that it could not escape the notice of the registered owner or those claiming under him. The Plaintiff's members did not occupy the land clandestinely or in secrecy. Their presence on the land was visible and continuous, thereby satisfying the requirement of publicity as set out in *Mtana Lewa v Kahindi Ngala Mwangandi and Mbira v Gachuhi* (Supra).
19. As regards continuity and exclusivity, the evidence shows that from the year 2007 up to the time of filing this suit in 2021, a period exceeding twelve (12) years, the Plaintiff's members remained on the land without interruption. There was no evidence of re-entry, eviction, assertion of ownership, or any attempt by the registered proprietor or the administrators of the estate to recover possession within the statutory period. The possession was therefore continuous and exclusive, as contemplated under *Wambugu v Njuguna* [1983] KLR 172.
20. On whether the possession was permissive, the Court finds no evidence that the Plaintiff's members occupied the land with the consent or licence of the registered owner. Indeed, the 2nd Defendants, through the Replying Affidavit sworn by Peter Ngugi Gathirimu, expressly stated that the estate of Gathirimu Muniu (deceased) has no claim over the suit property, the same having been sold during the lifetime of the deceased. This admission, in the Court's view, reinforces the conclusion that the occupation by the Plaintiff's members was non-consensual vis-à-vis the registered owner, and therefore adverse in law.
21. The Court further finds that the registered owner was effectively dispossessed of the suit property within the meaning of *Wambugu v Njuguna* [1983] KLR 172, The registered proprietor discontinued possession when the Plaintiff's members took occupation, and neither the deceased nor the administrators of the estate exercised any acts of ownership thereafter. Time therefore began to run against the registered proprietor in 2007 and continued to run uninterrupted for over twelve years, thereby extinguishing the title by operation of Section 7 of the *Limitation of Actions Act*. Taking into account the totality of the evidence, the conduct of the parties, and the express position taken by the 2nd Defendants that they do not oppose the Plaintiff's claim, the Court is satisfied that the Plaintiff has demonstrated animus possidendi, that is, an intention to possess the land as of right and to the exclusion of all others.
22. Accordingly, this Court finds that the Plaintiff has proved, on a balance of probabilities, that its members' possession of Land Reference Number 7340/84 was actual, open, continuous, exclusive and adverse for a period exceeding twelve (12) years. The registered owner's title was therefore extinguished by operation of law, and the Plaintiff has met the threshold for the grant of orders based on adverse possession.

Issue (b): Whether the Plaintiff is entitled to the reliefs sought

23. Having found that the Plaintiff has satisfied the legal threshold for the acquisition of title by adverse possession, the Court now turns to consider whether the Plaintiff is entitled to the specific reliefs sought in the Originating Summons.



24. The primary relief sought is a declaration that the Plaintiff's members have acquired ownership of Land Reference Number 7340/84 by adverse possession. Under Section 38 of the *Limitation of Actions Act*, once the Court is satisfied that a claimant has been in adverse possession for the requisite statutory period, it is empowered to issue an order directing that the claimant be registered as proprietor in place of the person previously registered. In light of the Court's finding that the registered owner's title was extinguished by operation of law, the Plaintiff is entitled to the declaratory relief sought.
25. The Plaintiff further sought a permanent injunction restraining the Defendants from evicting or in any manner interfering with the Plaintiff's members' quiet possession of the suit property. The Court finds that such an order is necessary to protect the rights that have accrued to the Plaintiff's members following the extinguishment of the registered owner's title. In the absence of an injunction, the Plaintiff's members would be exposed to the risk of interference despite having acquired proprietary rights through adverse possession.
26. Finally, the Plaintiff sought an order directing that a Certificate of Title be issued to the Plaintiff to enable it transfer the respective excised plots to its members. Having found that the Plaintiff has acquired rights under Section 38 of the *Limitation of Actions Act*, and noting that the 2nd Defendants do not oppose the application and have expressly disclaimed any interest in the suit property, the Court finds no legal impediment to the issuance of such an order.
27. Accordingly, the Court finds that the Plaintiff is entitled to the reliefs sought in the Originating Summons.

Final Orders

28. In the result, and having found merit in the Originating Summons dated 8th October 2021, the Court makes the following orders:
 - a. A declaration is hereby issued that the Plaintiff's members have acquired ownership of Land Reference Number 7340/84 by adverse possession, having been in open, continuous, exclusive and uninterrupted occupation of the said land for a period exceeding twelve (12) years.
 - b. The title of the registered proprietor in respect of Land Reference Number 7340/84 is hereby declared extinguished by operation of Sections 7, 13 and 38 of the *Limitation of Actions Act*.
 - c. An order is hereby issued directing that the Plaintiff be registered as proprietor of Land Reference Number 7340/84, and the relevant Land Registrar is directed to effect registration accordingly.
 - d. A permanent injunction is hereby issued restraining the Defendants, their agents, servants or any person claiming through them from evicting, interfering with, or in any manner disturbing the Plaintiff's members' quiet possession of Land Reference Number 7340/84.
 - e. The Plaintiff shall be at liberty to subdivide and transfer the respective portions of the suit property to its members in accordance with the law.
 - f. Each party shall bear its own costs of the suit.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 19TH DAY OF DECEMBER, 2025.

MOHAMMED N. KULLOW



JUDGE

Judgment in the presence of: -

Nganga H/B for Kimani for the Plaintiff

N/A for the 1st Defendant

N/A for the 2nd Defendant

Philomena W . Court Assistant

