



**Njeru v Njagi (Environmental and Land Originating Summons  
129 of 2017) [2025] KEELC 5769 (KLR) (30 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5769 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT EMBU  
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS 129 OF 2017**

**A KANIARU, J**

**JULY 30, 2025**

**BETWEEN**

**HENRY MUGO NJERU ..... APPLICANT**

**AND**

**NJERU NJAGI ..... RESPONDENT**

**JUDGMENT**

**Pleadings**

1. This suit was initially filed via an originating summons dated 5/9/2016. It was essentially a claim for land parcels No's Evuore/Nguthi/2948, 2949, 2950, 2951, 2952 and 2953 (all said to have been originally one parcel known as Evuore/Nguthi/2232) by way of adverse possession. The plaintiff – Henry Mwao Njeru - who was applicant – desired that ownership of the parcels of land is divested from the defendant – Njeru Njagi – who was respondent and vested in him. Various prayers were made to actualize that desire. More aptly the prayers were as follows:
  - a. That the applicant be declared to have become entitled by adverse possession of over 12 years to all that (sic) parcels of lands Evuore/Nguthi/2948, 2949, 2950, 2951, 2952 and 2953 (which land parcels were formally Evuore/Nguthi/2232 before subdivision).
  - b. That the applicant hereof be registered as sole proprietor of the said land parcels Evuore/Nguthi/2948, 2949, 2950, 2951, 2952 and 2953.
  - c. That the District Land Registrar, Mbeere, register the applicant of (sic) of the said land parcels Evuore/Nguthi/2948, 2949, 2950, 2951, 2952 and 2953.
  - d. That the respondent do pay the cost of the suit.
2. The originating summons came with a supporting affidavit in which the plaintiff deponed, inter alia, that the original land parcel No. 2232 was registered in the name of his father – Njeru Mirigo – in



1970. The plaintiff's father in turn was said to have acquired the land from the plaintiff's grandfather who had bought it way back in 1914. The plaintiff deposed that he and his father lived on the land. The land itself was said to be 32 acres in size and the plaintiff still uses 10 acres for cultivation while he uses the rest for grazing. He said he has lived on it for over 37 years.

3. The land has been the subject of some disputes, particularly from 2002 to 2009. Some of the disputes were said to have been before the now defunct Land Disputes Tribunal. The decisions made by the tribunal are said to be a nullity as they were made without jurisdiction. The plaintiff is said to have contested the decision in court and the court is said to have told him to file a substantive suit to urge for his rights. That is why this suit was filed.
4. Much later, the plaintiff amended the originating summons. He did so vide an amended originating summons dated 23/10/2023 and filed on 30/10/2023. Basically, the amended originating summons retained the prayers that focused on adverse possession. But it also introduced alternative prayers. I think it is necessary to set out all the prayers in the amended originating summons here ad verbum:

Prayer (a): That the applicant be declared to have become entitled by adverse possession of over 12 years to all that (sic) parcel of lands Evurore/Nguthi/2948, 2949, 2950, 2952 and 2953 (which land parcels were formally Evurore/Nguthi/2232 before sub-division).

Prayer (a)(i) or in the alternative a declaration be issued that District Land Dispute Tribunal Award No. 251/1993 dated 18/6/2001 and as adopted by Siakago LDT 34/2002 be declared null and void ab initio for lack of jurisdiction.

- a. (ii) an order directing that Land Registrar to rectify the register by striking out the name of Njeru Njage (defendant hereof) from the land register of Evurore/Nguthi/2232 entered on 19/11/2010 as a consequence of Land Disputes Tribunal award No. 251/1993 dated 18/6/2001 as adopted by Siakago Magistrates Court LDT 34/2002 and restore land parcel Evurore/Nguthi/2232 to the original owner Njeru Muringo and declare that all subsequent dealings, subdivision of Evurore/Nguthi/2232 to wit Evurore/Nguthi/2948, 2949/2950, 2951, 2952, and 2953 as null and void and the Land Registrar to rectify the register accordingly.
  - a. (iii) and/or in the alternative a declaration that the respondent holds land parcels Evurore/Nguthi/2948, 2949, 2950, 2951, 2952 and 2953 (which land parcels were formally Evurore/Nguthi/2232 before subdivision) as trustee for the applicant.
  - b. That the applicant hereof be registered as sole proprietor of the said land parcels Evurore/Nguthi/2948,2949, 2950, 2951, 2952 and 2953.
  - c. That the District Land Registrar, Mbeere do register the applicant of the said land parcels Evurore/Nguthi/2948, 2949, 2950, 2951, 2952 and 2953.
  - d. That the respondent do pay costs of this suit.
5. In addition to the supporting affidavit that came with the earlier originating summons, the amended originating summons has a further back-up in form of a further affidavit sworn by the plaintiff. The further affidavit is dated 13/6/2022 and was initially filed in further support of the earlier originating summons. In it, it is deposed inter alia, that Land Disputes Tribunal Award No. 251/1993 dated



18/6/2001 ordered that land parcel No. Evurore/Nguthi/2232 be transferred to the defendant. That the award was taken to Siakago court and adopted as judgement of the court. The defendant averred that the Lands Disputes Tribunal lacked jurisdiction to order change of ownership. Therefore, the change of ownership that took place and the subsequent subdivisions effected by the defendant were said to be all null and void.

6. The defendant responded to the earlier originating summons vide a replying affidavit dated 22/12/2016. He stated, inter alia, that the plaintiff cannot have an independent claim of his own as the defendant has had disputes with the plaintiff's father and won. The defendant's position is that the plaintiff should not be viewed as separate from, or independent of, the disputes. It was denied also that the plaintiff has had uninterrupted, open, or continuous possession of the land. He cannot therefore claim to be an adverse possessor. Further, the defendant faulted the plaintiff for saying that the ruling by Justice Ong'undi, which he mentions as the basis for filing this case, gave him any green light to do so.
7. There was a further replying affidavit filed on 26/4/2018. By that affidavit, the defendant deposed, inter alia, that the matter before the court now is res judicata as there have been several disputes. He mentioned some of the disputes as CMSCC 251/1993, HCC No. 60/06, Tribunal case No. 22/11 and Tribunal Case No. 34/2002. He then said that in Tribunal case No. 22 of 2011 Njue Mukungu, Njuki Gatema, Munyi Kivuana And Joseph Nyaga Issac were awarded the land. The defendant suggested that these parties should be included in this suit.
8. It was reiterated that adverse possession does not apply as there has been running disputes related to the land for a long time.
9. After the amended originating summons was filed, the defendant also responded to it but the reply filed is not an affidavit. It looks like an unsworn statement and was filed on 9/1/2024.

## Evidence

10. The hearing of the matter started on 23/5/2024. The plaintiff gave his evidence as PW1. He said, inter alia, that he filed this case on behalf of his late father – Njeru Muringo – who was the registered owner of the disputed land sometimes in the past. The defendant is said to have replaced the plaintiff's late father as registered owner on 19/11/2005. He became so via a court order. After becoming the registered owner, the defendant is said to have sub-divided the land into several portions. According to the defendant, the land belongs to his late father. It was said that in order for the defendant to become the registered owner, he sued the plaintiff's father before the area Land Dispute's Tribunal which used to be operational then. The tribunal decided that the land belongs to the defendant. The decision of the tribunal was adopted as judgement of the lower court at Siakago. The defendant extracted an order or decree from the judgement which he then used to become the registered owner.
11. The position of the plaintiff is that the tribunal lacked jurisdiction to make the decision that it rendered to the disputing parties. He further said that his father appealed before the then operational Provincial Appeals Committee but that committee also lacked jurisdiction to make the decision it made. From the Appeals Committee, a further contestation took place at the High Court, Embu, and a ruling delivered by that court is what the plaintiff cites as having given him the go-ahead to file the suit before this court now.
12. This witness was subjected to cross-examination. He is shown saying that his late father was born on the land; that he was not there when the defendant had disputes with his (plaintiff's) father; that the defendant didn't sue the father in 1993; that the plaintiff is the one who appealed to the Provincial Appeals Committee; and that it is the defendant who took the matter to the High Court, Embu, after that.



13. The defendant gave his evidence as DW1. He said he sued the father here in Embu in Civil Suit No. 251 of 1993. That happened way back in 1993 and he did so with three (3) other plaintiffs. The court then referred them to their area D.O. for the matter to be handled there. The defendant said he won the case. Then the record of that case got lost. The plaintiffs father then sued the defendant before the area Land Disputes Tribunal but the tribunal decided in the defendant's favour. The plaintiff appealed the tribunals decision. He filed the appeal before the Provincial Appeals Committee. The Appeals Committee found in his favour. Then the defendant went to the High Court to appeal. A consent compromising the appeal filed in court was then entered. The plaintiff later tried to contest that consent but he was not successful. Then the defendant got the title to the land and he decided to sub-divide it. According to the defendant the plaintiff was giving false testimony here in court.
14. The defendant was cross-examined and in answer to some of the questions posed, he said that the original number of the land was 2232, that the land was registered in the name of the plaintiff's late father on 8/8/1979, that he himself became registered owner on 19/11/2005; that he was not aware that the tribunal had no power to deal with issue of title., and finally that he was not agreeable that ownership reverts to plaintiff's late father or to the plaintiff himself.

### Submissions

15. After hearing, both sides filed written submissions. The plaintiff's submissions are dated 21/10/2024. He submitted, inter alia, that his case is proved to the required standard. It was then pointed out that the plaintiff relies on prayers (a) (i) and (a) (ii) in the amended originating summons "without much reliance in the other prayers ..."
16. According to the plaintiff, his late father – Njeru Muringo – was the first registered owner of the land and this position only changed on 19/11/2005, when the defendant became the registered owner. The registration of the defendant as owner was said to have been done on the strength Mbeere District Land Disputes tribunal award No. 251/93 dated 18/6/2001 which was adopted by the lower court at Siakago in case No. 34 of 2002. The plaintiff then obtained the required grant from succession court specifically to contest in court the defendant's ownership of the land and that is how and why he filed this suit.
17. When the defendant became the registered owner, he later on subdivided the land into parcels No's 2948, 2949, 2950, 2951, 2952 and 2953. The plaintiff wants to recover ownership of the entire land as it originally was, that is, parcel/No. Evurore/Nguthi/2232. In order to achieve that he would wish the court to make a finding that the outcome of the Land Dispute's Tribunal's proceedings, which was the basis for registration of the defendant as owner, was arrived at and/or made without jurisdiction. Once this determination is made the prayers in the amended originating summons that are based on adverse possession and trust become redundant.
18. Lack of jurisdiction is said to arise from the fact that the tribunal had no power to deal with matters involving registered title to land. Section 3 (1) of the then applicable *Land Disputes Tribunal's Act* No. 18 of 1990 was said to only clothe the tribunal with jurisdiction to handle issues to do with division of land, determination of boundary disputes, claim to work or occupy land/or trespass. Ownership, which is what the tribunal addressed, was outside that jurisdiction. The decision was therefore said to be null and void for want of jurisdiction.
19. It was pointed out that the decision of the tribunal went on appeal before Provincial Appeals Committee but the outcome of the appeal was said to be equally a nullity. This is so because the appeal was against a decision that was also a nullity.



20. Further, the outcome of the appeal was itself was said to have been the subject of an appeal before the High Court, Embu. The appeal was allowed and according to the plaintiff, this was done because "... the orders made by the Eastern Province Land Dispute Appeal Committee No. 92/2003 were without jurisdiction..."
21. At the end of the plaintiff's submissions, it becomes clear that the plaintiff would wish to get prayers (a) (i) and (a) (ii) in the amended originating summons or, in the alternative, prayers (b) and (c). He also asks for costs of the suit.
22. The plaintiff placed reliance on several cases including *Njeru Kirumbi – v- Justa Ngai Nyagah & Another*: ELC No. 51/2018, Embu and *Bernard Wachira Mwai – v- Justa Ngai Nyaga*: ELC No. 18 of 2022, Embu.
23. The defendant's submissions were filed on 12/11/2024. The submissions look a bit sketchy. They contain some history and that history itself makes reference to the various disputes and other legal processes relating to the land.

### **Analysis & Disposition**

24. I have considered the case as filed, the evidence, and rival submissions. As initially filed on 28/9/2016, the matter was entirely based on adverse possession. At this time now, adverse possession is no longer being pursued. The matter now is essentially about nullifying the decisions of the Land Disputes Tribunal which led to registration of the defendant as the owner of the land. I am not surprised that adverse possession is no longer the plaintiff's priority in the suit now. The material made available to the court shows that the defendant became registered owner of the land on 19/11/2005. The suit was initially filed on 28/9/2016. Simple calculation would show that the requisite period of twelve (12) years required to prove adverse possession had not yet been attained by the time the plaintiff filed the suit. Further, the matter is shown to have been dogged by various disputes and this easily raises the question as to whether time for adverse possession can really be said to have been running. It seems to me clear that it would have been a tall order in the circumstances to prove adverse possession.
25. The suit also has one serious shortcoming which the plaintiff ought to have addressed. It is necessary to explain first: In the court records, it is clear that there is a decree emanating from Siakago Court which vested ownership of land parcel No. Evurore/Nguthi/2953 in four (4) individuals – Njue Makungu, Njuki Gatema, Munyi Kivuana And Joseph Nyaga Issac. In fact, the defendant even filed an application for joinder of the representatives of these people as the people themselves are all said to be deceased. That decree still remains as it has not been set aside or nullified by any court. The plaintiff wants the entire parcel of land and the entire parcel include parcel No. 2953. In my view, this existing decree needed to be addressed by the plaintiff so that the court does not issue an order that conflicts with another lawful order or decree that is in force. To the extent that this has not been done, then the plaintiff's suit remains one with that shortcoming. It is a serious short coming as the orders as sought in the suit means condemning some people unheard.
26. Then there is the issue of the consent entered into long ago by counsel on both sides. It was a consent relating to an appeal that the defendant had filed in the High Court. It seems to be an appeal that was contesting the outcome of the decision of the Provincial Appeal Committee which had awarded the land to the plaintiff. The consent allowed the appeal. The plaintiff tried to contest the consent later but he was not successful. In essence therefore, the consent still remains in force.
27. The appeal filed by the plaintiff in this matter before the Provincial Appeals Committee was itself a contestation of the defendant's win at the Land Dispute's Tribunal much earlier. The plaintiff won at



the Provincial Appeals Committee and his win or victory at that level is what provoked the filing of an appeal at the High Court by the defendant. Then both the plaintiff's and the defendant's counsel entered a consent before the High Court allowing that appeal. What that meant for defendant is that he had won the appeal and the plaintiff's victory at the Provincial Appeals Committee remained reversed. In another sense however, the same consent meant that the defendant's earlier win at the Land Disputes Tribunal remained intact and/or uncontested. It was on the strength of the earlier tribunal's decision that the defendant became the registered owner. The consent was entered on 30/9/2008. About eight (8) years later, specifically on 28/9/2016, the plaintiff came to court and filed this suit claiming the same land by way of adverse possession.

28. The suit remained as one based on adverse possession for a long time. Then about six (6) years from the time the suit for adverse possession was filed, an application for amendment was brought. The amendment sought targeted the initial Land Disputes Tribunal's decision directly, specifically seeking that the decision be declared null and void. That decision was adopted by the lower court at Siakago as its judgement on 30/4/2002. The plaintiff is challenging it in court over twenty (20) years later.
29. As I pointed out earlier, one of the effects of entering consent before the High Court was that the decision of the Provincial Appeals Committee which was in favour of the plaintiff became nullified while the earlier Land Disputes Tribunal's decision which was in favour of the defendant remained intact and uncontested. The plaintiff tried to challenge the consent but he was not successful and therefore things continued to remain that way. That consent is still a lawful order.
30. The bid by the plaintiff to contest the Land Disputes Tribunal many years later is actually an attempt at a second bite at the cherry. When one considers that there was a consent that had an effect on the decision being challenged now, and when one further considers the long period taken by the plaintiff to mount this challenge, it becomes clear that what the plaintiff is doing is unacceptable.
31. It is unacceptable because the law governing the impugned award provided clear post-award processes which a dissatisfied party could use to seek redress. It is not clear why the plaintiff did not follow the processes. True, he later filed an appeal but he also later entered into a consent allowing that appeal. Many years later, he now comes to court challenging the same award. In *Charles Mwangi Mathenge - v- Joseph Chege Gatua & Another* (Civil Appeal 94 of 2018 [20240 KECA 341 (KLR)] (22<sup>nd</sup> March 2024) (Judgement) the Court of Appeal cited with approval the case of *Catherine C. Kitony - v- Jonathan Muindi Dome & 2 others* [201] eKLR where the court had expressed itself as follows:

“The Land Disputes Tribunal had mechanisms to deal with outcomes such as the one rendered by 2<sup>nd</sup> respondent. The award by 2<sup>nd</sup> respondent ceased to exist upon adoption by the court as its judgement and a decree. The award cannot be challenged by filing a fresh suit as it is trite law that where a statute establishes a dispute resolution mechanism that mechanism must be followed and exhausted, where a party fails to do so he cannot be heard to say that his rights were denied.” (emphasis mine).
32. It is important to appreciate that Charles Mwangi Mathenge's case (supra) had broad similarities to this one. It involved a party who had failed to follow the prescribed post-award mechanism provided by the now repealed Land Disputes Tribunal's Act. The party had chosen instead to file a declaratory suit much later challenging the same award. It can be seen clearly that the Court of Appeal disagreed with his approach. It emphasized the need to follow the laid down mechanisms.
33. In yet another case, this time that of *Florence Nyabuke Machani - v- Mogere Amosi Ombui & 2 others* [2014] eKLR, the court, while expressing disapproval with a belated attempt to challenge the award



of the Land Disputers Tribunal and while also disagreeing with the argument that the award should be set aside on the ground of lack of jurisdiction, expressed itself as follows:

“It is trite law that a valid judgement of a court unless overturned by an appellate court remains a judgement of court and is enforceable, the issue of jurisdiction notwithstanding. The plaintiff had avenues to impugn the award as well as the judgement. He did nothing. As sarcastically put by counsel for the defendant in his submissions, the plaintiff chose to sleep on his rights like the Alaskan fox which went into hibernation and forgot that winter was over. In the meantime, the 1<sup>st</sup> defendant’s rights to the suit premises crystallized. Equity assists the vigilant and not the indolent. The plaintiff has come to court too late in the day and accordingly, the declaratory relief must fail. I doubt that even the remedy of the declaration is available to the plaintiff to impugn a valid court judgement and decree.”

34. It seems to me further that plaintiff’s approach is also unacceptable because of the guileful manner in which he has entirely grafted a new cause of action into an old one. As pointed out earlier, the suit as initially filed was entirely based on adverse possession. Much later however, the plaintiff sought to effect amendments and the court allowed him to do so. At first all appeared to be well because the orders sought to nullify the Land Tribunal’s Award were sought as an alternative to adverse possession. But when the time of taking evidence and filing submissions came, it became clear that the plaintiff had effectively abandoned the issue of adverse possession. Indeed, that issue was not even submitted on. What this meant is that the focus had completely changed from adverse possession to the alternative claim raised during amendment. That alternative claim was in effect no longer alternative in the true sense of the word. It became the main claim for all practical and legal purposes. The law is that generally, amendments that completely change the cause of action are not allowable. When the court allowed the amendment, the understanding was that what was brought as an amendment would be pursued purely as an alternative. It now turns out that through artful scheming and use of legal craft, the plaintiff intended to introduce and pursue an entirely new cause of action while effectively abandoning the initial one. That is why the court finds the approach unacceptable. It becomes difficult to read good faith into the approach. The filing of the suit initially as one based on adverse possession was a tactical blunder. The introduction of the new cause of action in the same suit was a deceptive attempt to cure the blunder.
35. The upshot, in light of the foregoing, is that the plaintiff’s suit is one for dismissal and I hereby dismiss it with costs to the defendant.

**JUDGEMENT DATED, SIGNED AND DELIVERED ONLINE AT KITUI THIS 30<sup>TH</sup> DAY OF JULY, 2025.**

**A. KANIARU**

**JUDGE- ENVIRONMENT & LAND COURT, KITUI**

In the presence of,

Njeru Njagi for Defendant/Respondent - Present

Henry Mugo Njeru for Plaintiff/Applicant – absent

Macharia Muraguri for Plaintiff/Applicant - absent

Court Assistant - Musyoki

