



**Githinji v Gitahi (Environment and Land Case 6 of 2022)  
[2026] KEELC 294 (KLR) (29 January 2026) (Judgment)**

Neutral citation: [2026] KEELC 294 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYERI  
ENVIRONMENT AND LAND CASE 6 OF 2022  
JO OLOLA, J  
JANUARY 29, 2026**

**BETWEEN**

**PETER MURIITHI GITHINJI ..... PLAINTIFF**

**AND**

**LIVINGSTONE GITUKU GITAHI ..... DEFENDANT**

**JUDGMENT**

**Background**

1. By an Originating Summons dated 26<sup>th</sup> April 2022 as filed herein on 28<sup>th</sup> April 2022, Peter Muriithi Githinji (the Plaintiff) prays for orders as follows:
  1. That Peter Muriithi Githinji be declared to have acquired title by adverse possession of the entire suit premises known as Gakawa/Githima Block1/ Burguret/103;
  2. That the registration of Livingstone Gituku Gitahi as proprietor of the parcel of land known as Gakawa/Githima Block 1/Burguret/103 and/or any other person deriving title from him be cancelled forthwith and the Land Registrar, Nyeri Lands Registry do rectify the register and enter the name of the Plaintiff as the registered proprietor of the said property in place of the Defendant or anyone deriving title from the Defendant;
  3. That the costs of these proceedings be borne by the Defendant.
2. The Originating Summons is supported by an affidavit sworn by the Plaintiff and is premised on the ground that since the year 1990, the Plaintiff has been in actual, open, physical and uninterrupted possession of the suit premises and that he has thereby acquired title thereto by adverse possession. It is the Plaintiff's case therefore that any claims to the title by the Defendant or anyone claiming title under him have been extinguished by the Plaintiff's adverse possession thereof.



3. Livingstone Gituku Gitahi (the Defendant) is opposed to the orders sought in the Originating Summons. In a Replying Affidavit sworn on 31<sup>st</sup> May 2022 and filed herein on 6<sup>th</sup> June 2022, the Defendant avers that the orders sought by the Plaintiff are meant to legalize the illegal acts of the Plaintiff and his agents who entered into his land without permission on 9<sup>th</sup> December 2021. The Defendant asserts that the Plaintiff only visited the suit land in the year 2021 in the guise of looking for land which allegedly belonged to his parents.
4. The Defendant denies that the Plaintiff has been in occupation of the suit land for 32 years as purported and avers that the Plaintiff took advantage of his absence to put up a temporary structure on the land.
5. At the trial herein, the Plaintiff called five (5) witnesses in support of his case. The Defendant on the other hand called four (4) witnesses.

### **Analysis and Determination**

6. I have carefully perused and considered the pleadings filed by the parties, the testimonies of the various witnesses as well as the evidence adduced at the trial. I have similarly perused and considered the submissions and authorities placed before me by the Learned Advocates representing the parties.
7. By his suit as filed herein, the Plaintiff has urged the Court to declare that he has acquired title to the parcel of land known as Gakawa/Githima Block 1/Burguret/103 by way of adverse possession. As a result, the Plaintiff has urged the Court to have the registration of the Defendant as proprietor of the land cancelled and to direct the Land Registrar Nyeri to forthwith rectify the register and enter the name of the Plaintiff as the proprietor of the suit land.
8. The basis of those prayers was the Plaintiff's contention that since the year 1990, he has been in actual, open, physical and uninterrupted possession of the suit premises which are registered in the name of the Defendant. It was therefore the Plaintiff's position that any claims to the title by the Defendant had been extinguished by the Plaintiff's adverse possession of the suit property.
9. On his part, the Defendant denies that the Plaintiff has been in occupation of the property for the stated period. According to the Defendant, the Plaintiff and his parents have all along resided in Kirinyaga County and it was only sometime in December 2021 that the Plaintiff took advantage of the Defendant's absence from the property and proceeded to enter the same and to erect a temporary structure thereon.
10. In regard to acquisition of land by way of adverse possession, Section 38 of the *Limitation of Actions Act* provides as follows:
  - “ 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, or land comprised in a 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 the person then registered as proprietor of the land.
  - (2) An order made under subsection (1) of this section shall by registration take effect subject to any entry on the register which has not been extinguished under this Act.”
11. Under Order 37 of the Civil Procedure Rules 2010, an application under Section 38 of the *Limitation of Actions Act* shall be made by way of an Originating Summons supported by an Affidavit to which a certified extract of the title to the land in question has been annexed.



12. Addressing that concept in the case of *Mtana Lewa –vs- Kahindi Ngala Mwangandi* (2015) eKLR, the Court of Appeal held as follows:

“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 against such person in assertion of his title for a certain period, in Kenya is twelve (12) years. The process springs into action essentially by default or inaction of the owners, the essential prerequisite being that the possession of the adverse possessor is neither by force or stealth nor under the license of the owner. It must be adequate in continuity, in publicity and in extent to show that possession is adverse to the title owner.”

13. That was the position taken by the same court in *Mombasa Teachers Co-operative Savings & Credit Society Limited –vs- Robert Muhambi Katana & 15 Others* (2018) eKLR where the Court stated as follows:

“Likewise, it is settled that a person seeking to acquire title to land by way of adverse possession must prove non-permissive or non-consensual, actual, open, notorious, exclusive and adverse use/occupation of the land in question for an uninterrupted period of 12 years as espoused in the Latin maxim, *nec vi nec clam nec precario*.”

14. As to the manner in which he first came to be in the suit property, the Plaintiff avers as follows at paragraph 4 and 5 of the Supporting Affidavit to the Originating Summons sworn on 26<sup>th</sup> April 2022.

“4. That the said parcel of land was from the very onset bought by my deceased brother Gabriel Githinji in the year 1971, on behalf of my mother, when he paid the entrance fee of Kshs. 50.00 and thereafter purchased shares in the same year. Annexed hereto as Exhibit “PMG-2” are copies of the various receipts issued to my deceased brother and mother dating back to the year 1971 to 1988; and

5. That ever since then, my mother occupied the suit land and carried out farming activities till 1990 when she bequeathed the same to me and since then I have been in occupation of the suit property and carried out farming activities and also erected a semi-permanent house thereon. Annexed hereto as exhibit “PMG-3” are photographs of the said house.

15. That was the same position taken by the Plaintiff’s four witnesses, including the Githima Location Area Chief one John Ndirangu Githimei (PW5) who conceded in court that he had only known the Plaintiff in the year 2021, some 1 year before this suit would be filed.

16. Asked about his claim to the land during cross examination the Plaintiff (PW1) who said he left the land in 2011 responded as follows:

“When I was living on the land I was with my family there. I have no documents to show I was there with my family and/or that my children went to school around there.

I have nothing in court to show what use I was making of the land when I lived there.

I am claiming the land because it belonged to my mother. I do not know how it came to be registered in the name of the Defendant.”



17. From the above testimony and that of his witnesses, it was undeniable that the Plaintiff's claim stemmed from an allegation that the suit land belonged to his mother Teresa Wambui Githinji who according to him had acquired the same by virtue of being a shareholder of Burguret Arimi Limited, a land buying company which was then buying and distributing land to its shareholders. The Defendant equally traced his acquisition of the suit property to balloting conducted by the company around the year 1987.
18. In support of his claim to ownership, the Plaintiff produced a clearance certificate issued in favour of his mother by what was referred to as the Burguret Arimi Probe Committee. He also produced a letter by PW5 the Area Chief dated 5<sup>th</sup> July 2021 wherein PW5 states that the Plaintiff's family had approached his office claiming ownership of the suit land and that it belonged to the Plaintiff's mother though it is registered in the Defendant's name.
19. In addition, the Plaintiff has produced a caution he lodged on the title to the land a day after the visit to PW5. At Paragraph 2 to 4 of the statutory declaration sworn on 6<sup>th</sup> July 2021 lodged in support of the caution, the Plaintiff avers as follows:
- “2. That my late mother one Teresia Wambui was the registered owner of Gakawa/ Githima Block 1/Burguret/103 as evidenced by the attached Share Certificate and the receipts;
  3. That we have recently learnt that the said land was fraudulently transferred into the names of the current proprietor; and
  4. That after and during her lifetime, my mother had not transferred the land to any other person.”
20. Arising from the foregoing, it was apparent that even where one was to assume that the Plaintiff was in the year 2021 in occupation of the suit property, his claim thereto was pegged on the allegation that the property belonged to his deceased mother. He has not produced any Grant of Letters of Administration to warrant his claim of the property on behalf of his mother and it was clear to me that he was as at the year 2021 not acting with any requisite intention to dispossess the Defendant of the suit land.
21. As was stated in the case of Haro Yonda Juaje –vs- Sadaka Dzenge Mbauro & Kenya Commercial Bank (2014) eKLR:
- “One cannot succeed in a claim for adverse possession before conceding that indeed the registered proprietor of the land is the true owner of the said land. It does not lie in the mouth of a claimant to aver that the title held by the registered proprietor was fraudulently acquired and then claim the same parcel of land under the doctrine of adverse possession. If the Plaintiff's averment is that the title which was issued to the Defendant was fraudulently acquired, then his cause of action would be for the rectification of title by cancellation pursuant to the provisions of Section 143 of the Registered *Land Act* and not adverse possession. He cannot use the doctrine of adverse possession to go around the decision of the Minister.
- In the application, the appellants sought to lay claim to the suit property on the basis of adverse possession. A claim for adverse possession is inconsistent with the claim for being a beneficiary of the estate of a deceased person. In the original suit, the appellants did not concede that indeed the respondent was the true owner of the suit property.”



22. In the matter herein, it was evident that the Plaintiff was contesting the registration of the Defendant as the proprietor of the suit property. From the material placed before the Court, the Defendant was registered as the proprietor of the suit property way back on 24<sup>th</sup> November 1988 and the Plaintiff's suit had clearly arrived too late in the day.
23. In the premises, I was not persuaded that there was any merit in the Originating Summons dated 26<sup>th</sup> April 2022. The same is dismissed with costs to the Defendant.

**JUDGMENT DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 29<sup>TH</sup> DAY OF JANUARY, 2026**

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**J.O. OLOLA**

**JUDGE**

In the presence of:

Ms. Firdaus Court Assistant.

Mr. Njenga Advocate for the Plaintiffs

Ms. Macharia holding brief for Mr. Muchiri Advocate for the Defendant

