



**M'Rugaru v Gichumbi & Mwenda (Sued as the legal administrators of the Estate of Joseph Mwangi Kariuki - Deceased & 5 others (Environmental and Land Originating Summons E016 of 2024) [2026] KEELC 349 (KLR) (29 January 2026) (Judgment)**

Neutral citation: [2026] KEELC 349 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MERU**  
**ENVIROMENTAL AND LAND ORIGINATING SUMMONS E016 OF 2024**  
**JO MBOYA, J**  
**JANUARY 29, 2026**

**BETWEEN**

**KIUNGA M'RUGUARU ..... PLAINTIFF**

**AND**

**JANE WANJIKU GITHUMBI & EDWARD MACHARIA MWENDA (SUED AS THE LEGAL ADMINISTRATORS OF THE ESTATE OF JOSEPH MWANGI KARIUKI - DECEASED ..... 1<sup>ST</sup> DEFENDANT**  
**JANE GATHONI GITHAIGA ..... 2<sup>ND</sup> DEFENDANT**  
**JULIANA NJOKI GITHUMBI ..... 3<sup>RD</sup> DEFENDANT**  
**EDITH MUCUGU WAITHAKA ..... 4<sup>TH</sup> DEFENDANT**  
**CECILIA WANGUI NGUMI ..... 5<sup>TH</sup> DEFENDANT**  
**EDWARD MACHARIA MWENDIA ..... 6<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. What is before me is the Originating Summons dated 26<sup>th</sup> July 2024 brought pursuant to the provisions of section 28[h] of the *Land Registration Act* 2012; Sections 7, 17, 18, 37, and 38 of the Limitations of Act Chapter 22 Laws of Kenya; and Order 37 Rule 7 of the Civil Procedure Rules 2010 and wherein the Plaintiff has sought the following declarations:
  - i. A declaration that the plaintiff has become entitled under section 38 of the Limitations of Actions Act (Cap 22) Laws of Kenya to be registered as the proprietor by adverse possession in lieu of the present registered proprietors all that parcel of land known as Land Reg. No. Abothuguchi/Igane/1095 in which the Plaintiff has been in peaceful, undisturbed,



uninterrupted and continuous occupation, possession, and user for more than 12 years and an order that the Plaintiff be registered as the owner of the said land parcel.

- ii. A declaration that the title of the title [sic] of the said Jane Gathoni Githaiga, Juliana Njoki Githumbi, Edith Mucugu Waithaka, Cecilia Wangui Ngumi, and Edward Macharia Mwenda respectively has become extinguished by the Plaintiff adverse possession thereof for a period of more than 12 years in terms of section 17 and 38 of the *Limitation of Actions Act*.
  - iii. An order that the Defendants do execute a valid transfer instrument for Land Reg. No. Abothuguchi/Igane/1095 and in default the Executive Officer of the Court to be empowered to execute such transfer instrument.
2. The Originating Summons is premised on various grounds which have been enumerated in the body thereof. In particular, the Plaintiff has contended that same entered upon and took possession of the suit property on or about the year 1981; the possession has been open, continuous, and uninterrupted for more than twelve years; the registered owner of the suit property did not take any action to recover vacant possession; the rights of the registered owner have since extinguished; and the Plaintiff has acquired adverse possessory rights to the suit property.
  3. Furthermore, the summons is supported by the affidavit of the Plaintiff sworn on even date and wherein the deponent has reiterated and re-emphasized the grounds adverted to in the body of the summons. The deponent has also annexed assorted documents to the supporting affidavit inter alia a copy of the green card of the suit property and photographs showing assorted activities being undertaken on the suit property.
  4. The Defendants duly entered appearance on 18<sup>th</sup> September 2024 and thereafter filed assorted replying affidavits in opposition to the originating summons.
  5. ;The replying affidavit has jointly been sworn by Jane Wanjiku Githumbi and Edward Macharia Mwenda [the Legal Administrators of the Estate of Joseph Mwangi Kariuki- Deceased].
  6. The Deponents of the Replying Affidavit have averred that the suit property herein arose from or was a subdivision of LR. No. Abothuguchi/Igane/65, which was hitherto registered in the name of Twamwari Kinaru [Deceased]. In addition, it has been posited that Joseph Mwangi Kariuki purchased the suit property during the time when same was working/residing at Meru. Moreover, it has been averred that Joseph Mwangi Kariuki was in possession of the suit property and same cultivated assorted food crops and reared goats thereon.
  7. Additionally, it has been averred that Joseph Mwangi Kariuki retained the Plaintiff herein as a caretaker of the suit property and that by virtue of the Plaintiff being a caretaker of the suit property same [Plaintiff] cannot contend that he has acquired adverse possessory rights to and in respect of the suit property.
  8. The Originating Summons came up for directions on 27<sup>th</sup> February 2025; whereupon the advocates for the parties sought directions pertaining to the hearing and disposal of the Originating Summons. In particular, the advocates proposed to canvass the Originating Summons vide viva voce [Oral Evidence] evidence. Additionally, the parties sought timelines to file and exchange list and bundle of documents, list of witnesses, and witness statements.
  9. The court thereafter proceeded to and issued the following directions: the Originating Summons and the replying affidavit in opposition thereto be and are hereby constituted as the pleadings on behalf of the parties; the parties be and are hereby granted liberty to file and exchange witness statements and bundle of documents; the matter shall proceed vide viva voce evidence.



10. The Plaintiff's case is premised on the evidence of eight witnesses, namely; Kiunga M'Ruguaru, Jenniffer Mubae, Edward Kimathi, Catherine Kamunju, Kennedy Murithi, John Mutingi Kiunga, Godfrey Bundi Makathima, and Peter Mbaya Kiunga.
11. It was the testimony of Kiunga M'Ruguaru [PW1] that same is the Plaintiff in respect of the instant matter. Moreover, the witness averred that by virtue of being the Plaintiff, same is familiar and conversant with the facts of the case. In particular, the witness averred that he has since recorded and filed a supporting affidavit sworn on 26<sup>th</sup> July 2024 and which affidavit the witness sought to adopt and rely on as his evidence in chief. The affidavit under reference was duly adopted and constituted as the evidence in chief of the witness.
12. The witness further referenced the witness statement dated 26<sup>th</sup> July 2024 and further witness statement dated 11<sup>th</sup> February 2025 and thereafter sought to adopt the contents thereof as further evidence in chief. Suffice it to state that the contents of the witness statement were duly adopted and constituted as the evidence in chief of the witness.
13. It was the further testimony of the witness that same has since filed two [2] sets of list and bundle of documents, namely; the list and bundle of documents dated 26<sup>th</sup> July 2024 and 11<sup>th</sup> February 2025. The witness thereafter sought to tender and produce the documents as exhibits before the court.
14. Learned counsel for the Defendants objected to the production of documents number 8,9 and 11 at the foot of the further list of documents dated 11<sup>th</sup> February 2025. The objection in respect of documents number 8 and 9 was conceded. In this regard, the said documents were marked as PMFI 12 and 13 respectively.
15. On the other hand, the documents at the foot of the list and bundle of documents dated 26<sup>th</sup> July 2024 were produced and admitted as exhibits P1 to P4, respectively; the documents at the foot of the further list dated 11<sup>th</sup> February 2025 [save for documents 8 and 9] were produced and admitted as exhibits P5 to P11; and P14-16, respectively.
16. Additionally, the witness referenced the Originating Summons dated 26<sup>th</sup> July 2024 and thereafter sought to adopt and rely on the contents thereof. Moreover, the witness sought the reliefs contained thereunder.
17. On cross examination by learned counsel for the Defendants, the witness averred that the dispute beforehand touches on and concerns parcel number Abuthuguchi/Igane/1095. Furthermore, the witness averred that the subject parcel arose from LR. Number Abuthuguchi/Igane/65. In addition, the witness testified that parcel number Abuthuguchi/Igane/65 belonged to and was registered in the name of Twamwari Kinaro [Deceased].
18. It was the further testimony of the witness that Tamwari Kinaro [now deceased] was his grandfather. Furthermore, the witness averred that Tamwari subdivided his land and thereafter distributed the same to his sons.
19. While still under cross examination, the witness testified that same was conversant with Joseph Mwangi Kariuki. In particular, the witness averred that he knew Joseph Mwangi Kariuki in the year 1981. Besides, the witness added that he came to know Joseph Mwangi when one of his cousins/relatives was selling land to Joseph Mwangi. In particular, the witness clarified that the person who sold land to Joseph Mwangi was Cypriano Mburugu.



20. While still under cross examination, the witness testified that Joseph Mwangi came to the land in question. In addition, the witness averred that Joseph Mwangi used to visit the land. However, the witness clarified that he has never hosted Joseph Mwangi at his home.
21. The witness further testified that he entered upon and took possession of the suit property. Additionally, the witness averred that the suit property was bushy and contained shrubs. The witness thereafter clarified that he cleared the bushes, took possession and commenced to cultivate the suit property.
22. Regarding whether he had been deputized by Joseph Mwangi Kariuki to take care of the land, the witness denied that he was a caretaker of Joseph Mwangi Kariuki.
23. As to whether he has erected or constructed any houses on the suit property, the witness testified that he has not constructed any structure thereon. However, the witness clarified that he has been cultivating the suit property and moreover, the witness averred that he has planted assorted trees and fruit trees on the suit property. To this end, the witness alluded to the photographs tendered before the court and which the witness averred demonstrated the existence of trees on the suit property.
24. While still under cross examination, the witness testified that the suit property is well delineated. In particular, the witness posited that the suit property has a live fence around the same. Moreover, the witness testified that he got to know that the land was transferred and registered in the name of Joseph Mwangi Kariuki.
25. Upon being cross examined on whether he knew that the land had been charged to National Bank of Kenya Limited, the witness averred that he was not aware. Nevertheless, the witness added that he only discovered the charging of the land when he [the witness] went to the land registry.
26. The second witness who testified on behalf of the Plaintiff was Jennifer Mubae. Same testified as PW2.
27. It was the testimony of PW2 that same is familiar with the suit property. In addition, the witness averred that same has since recorded and filed a witness statement dated 26<sup>th</sup> July 2024; and which witness statement the witness sought to adopt and rely as his evidence in chief. Instructively, the witness statement was duly adopted and constituted as the evidence in chief of the witness.
28. On cross examination by learned counsel for the defendants, the witness testified that she is a neighbor of the plaintiff. In addition, PW2 averred that the Plaintiff had given her a portion of the suit land to cultivate. For good measure, the witness clarified that the portion of land was rented unto her.
29. Furthermore, the witness testified that the suit property is registered in the name of the Plaintiff. It was the testimony of the witness that the Plaintiff was registered as the owner during the presidency of Mzee Jomo Kenyatta.
30. On further cross examination, the witness testified that the Plaintiff only uses/cultivates the suit property. However, the witness clarified that the Plaintiff has not erected any house/structures thereon.
31. The third witness who testified on behalf of the Plaintiff was Edward Kimathi. Same testified as PW3.
32. It was the testimony of the witness that he comes from Ntaraguene area. In addition, the witness averred that he is a farmer. Moreover, the witness stated that he has since recorded and filed a witness statement dated 26<sup>th</sup> July 2024 and which witness statement the witness sought to adopt and rely as his evidence in chief. Thereafter, the witness statement was duly adopted and constituted as the evidence in chief of the witness.



33. On cross examination by learned counsel for the defendants, the witness averred that he is a neighbor of the Plaintiff. Additionally, the witness posited that he is the owner of parcel number 12 which borders parcel number 65.
34. While still under cross examination, the witness testified that he has seen the plaintiff working/cultivating the suit land. However, the witness added that the plaintiff has occupied/cultivated the suit land for a long time.
35. The fourth [4<sup>th</sup>] witness who testified on behalf of the Plaintiff was Catherine Kamunju. She testified as PW4.
36. It was the testimony of the witness that same comes from Ntaraguena area and that she is familiar with the facts of the case. Moreover, the witness adverted to the witness statement dated 26<sup>th</sup> July 2024; and which witness statement the witness sought to adopt as her evidence in chief.
37. It is instructive to state that the witness statement under reference was duly adopted and thereafter constituted as the evidence in chief of the witness.
38. On cross examination by learned counsel for the defendants, the witness averred that she is the wife of the Plaintiff. To this end, the witness added that she is therefore conversant with the facts of the case. Moreover, the witness clarified that she is testifying as pertains to parcel number 1095.
39. It was the further testimony of the witness that the Plaintiff has been cultivating the entire of the suit property. In particular, the witness averred that the portion of the suit property being cultivated by the plaintiff measures approximately twenty acres.
40. While still under cross examination, the witness testified that same does not know whether the suit property is registered in the name of Joseph Mwangi Kariuki. Furthermore, the witness averred that she does not know Joseph Mwangi Kariuki.
41. Additionally, the witness testified that Joseph Mwangi has never been to her home. Besides, it was the testimony of the witness that the Plaintiff [her husband] has never been a caretaker of the land in question.
42. The fifth witness who testified on behalf of the Plaintiff was Kennedy Murithi, He testified as PW5.
43. It was the testimony of PW5 that same comes from Ntaraguena area where the suit property is situated. In addition, the witness averred that he is familiar with the facts of the case.
44. Additionally, it was the testimony of the witness that he has since recorded and filed a witness statement dated 26<sup>th</sup> July 2024 and which witness statement the witness sought to adopt and rely on as his evidence in chief. Suffice it to state that the witness statement was duly adopted and constituted as the evidence in chief of the witness.
45. On cross examination by learned counsel for the defendant, the witness averred that the suit property belongs to Paul Kiunga Ruguaru. Furthermore, the witness clarified that he does not know Joseph Mwangi Kariuki.
46. Regarding the contents of paragraph 3 of the witness statement, the witness averred that the contents of the said paragraph are correct. However, the witness reiterated that he does not know Joseph Mwangi.
47. When pressed further, the witness beat a retreat and then stated that the contents of paragraph 3 of the witness statement are not correct. In particular, the witness indicated that he was disowning contents of paragraph 3 of the witness statement.



48. It was the further testimony of the witness that the Plaintiff herein does not reside/live on the suit property. On the contrary, the witness averred that Plaintiff merely cultivates the land in question.
49. The sixth witness who testified on behalf of the Plaintiff is John Mutingi Kiunga. He testified as PW6.
50. It was the testimony of the witness that he comes from Ntaraguena area wherein the suit property is located. To this end, the witness posited that he is therefore conversant with the facts of the case. Additionally, the witness adverted to witness statement dated 26<sup>th</sup> July 2024 and which witness statement, the witness sought to adopt and rely on as the evidence in chief. Suffice it to state that the witness statement was duly adopted and constituted as the evidence in chief of the witness.
51. On cross examination by learned counsel for defendant, the witness averred that his home is approximately 300 meters from the suit property. Moreover, the witness testified that he is conversant with Kennedy Muriithi [PW5].
52. It was the further testimony of the witness that he has recorded a witness statement and wherein he has stated that the suit land belongs to Paul Kiunga. Moreover, the witness averred that the Plaintiff has been cultivating the suit land for more than 20 years.
53. While still under cross examination, the witness reiterated that the Plaintiff is still cultivating the suit property to date. Nevertheless, the witness clarified that the Plaintiff has not constructed any house or structure on the suit property.
54. Regarding one Joseph Mwangi Kariuki, the witness averred that he does not know the said person. Furthermore, the witness clarified that he has never seen the said Joseph Mwangi Kariuki.
55. The next witness who testified on behalf of the Plaintiff was Godfrey Bundi Makathima. He testified as PW7.
56. It was the evidence of the witness that he is the chief of Mwagathia Location. Furthermore, the witness averred that he is familiar with the facts of the case and that same has since recorded and filed a witness statement dated 11<sup>th</sup> March 2025; and which witness statement the witness sought to adopt and rely on as his evidence in chief. The witness statement under reference was thereafter adopted and constituted as the evidence in chief of the witness.
57. On cross examination by learned counsel for the defendant, the witness testified that he is familiar with the suit land. Besides, the witness clarified that he is neither an intended purchaser of land nor in any way interested in the land.
58. It was the further testimony of the witness that he became familiar with the suit property because his grandmother had rented/leased a portion of the suit property from the plaintiff. In addition, the witness testified that he used to accompany his grandmother to the suit property between the year 1995 to 2009.
59. While still under cross examination, the witness testified that the lease in favor of her grandmother lapsed in the year 2003. In addition, the witness testified that he knew the Plaintiff to be the owner of the suit property.
60. On further cross examination, the witness testified that he is privy to a letter that he wrote to Joseph Mwangi Kariuki pertaining to the suit property. In addition, the witness confirmed that the letter under reference was indeed sent/dispatched to Joseph Mwangi Kariuki.



61. However, when the letter tendered before the court was shown to him, the witness admitted/ confirmed that the letter before the court is the original copy. Nevertheless, the witness reiterated that the letter which he wrote was indeed dispatched to Joseph Mwangi Kariuki.
62. The last witness who testified on behalf of Peter Mbaya Kiunga. He testified as PW8.
63. It was the testimony of the witness that same comes from Ntaraguena area where the suit property is located. Furthermore, the witness averred that he is a police officer.
64. Additionally, the witness referenced the witness statement dated 26<sup>th</sup> July 2024 and thereafter sought to adopt and rely on the contents of the said witness statement. Suffice it to state that the witness statement under reference was duly constituted as the evidence in chief of the witness.
65. On cross examination by Learned counsel for defendants, the witness averred that he is conversant with the facts of this case. Moreover, the witness testified that the Plaintiff is his father. Further, the witness testified that the Plaintiff does not reside or live on the suit land. On the contrary, the witness clarified that the Plaintiff resides on Parcel Number 1120 which is about three homesteads away from the suit property.
66. It was the further testimony of the witness that the Plaintiff cultivates the suit land. Moreover, the witness added that the Plaintiff has been cultivating the suit land for a long time.
67. Finally, the witness testified that the suit property is registered in the name of Joseph Mwangi Kariuki. However, it was the testimony of the witness that he does not know how the name of Joseph Mwangi Kariuki was entered onto the record at the land registry.
68. With the foregoing testimony, the Plaintiff's case was closed.
69. The defendants' case is premised on the evidence of two witnesses, namely; Jane Gathoni and Jackson Kariuki Ngumi. Same testified as DW1 and DW2 respectively.
70. It was the testimony of DW1 Jane Gathoni that same is the 1<sup>st</sup> Defendant in respect of the instant matter. In addition, the witness averred that same is one of the administrators of the estate of Joseph Mwangi Kariuki- now deceased. To this end, the witness averred that she is familiar with the facts of the case.
71. It was the further testimony of the witness that in respect of the instant matter, same has since recorded and filed a replying affidavit sworn on the 29<sup>th</sup> September 2024 and which affidavit the witness sought to adopt and rely on as her evidence in chief. The replying affidavit was duly adopted and constituted as the evidence in chief of the witness.
72. Furthermore, the witness averred that same has annexed a copy of the green card in respect of LR. No. Abuthuguchi/Igane/65 to the affidavit and thereafter same sought to tender the said documents as an exhibit before the court. There being no objection to the production of documents, same was admitted and marked as exhibits D1.
73. Additionally, the witness referenced the list and bundle of documents dated 9<sup>th</sup> December 2024 containing one document and thereafter sought to tender and produce the document under reference as an exhibit. Notably, the document [Green Card of the suit property] was duly admitted as exhibit D2.
74. On cross examination by learned counsel for the Plaintiff, the witness testified that same was born in Nyeri County. In addition, the witness averred that same has resided in Nyeri County throughout her life.



75. Regarding the contents of paragraph 7 of the replying affidavit, the witness averred that she has stated that Joseph Mwangi Kariuki was her uncle. Moreover, the witness averred that she has also posited that her uncle [now deceased] bought the suit property from Twamwari Kinaro.
76. While still under cross examination, the witness clarified that even though her uncle bought the land, she [witness] is not privy to the purchase price that was paid. Besides the witness averred that she has not tendered any document to prove that the purchase price was paid.
77. It was the further testimony of the witness that the suit property was transferred and registered in the name of Joseph Mwangi on 30<sup>th</sup> September 1995.
78. The witness further testified that she filed a succession cause to be constituted as the legal administratrix [Representative] of the estate of her uncle. Besides, the witness clarified that her uncle was not married.
79. In addition, the witness testified that Joseph Mwangi Kariuki did not erect or construct any house on the suit property. However, it was the testimony of the witness that her uncle used to cultivate the suit property and to rear goats thereon. Moreover, the witness added that her uncle would sell the produce from her farm at Marimanti Market.
80. On further cross examination, the witness testified that the land in question is located at Abuthuguchi Village. However, the witness posited that she does not know the sub-location where the land is situated. Nevertheless, the witness clarified that the land is in Imenti South Sub-county.
81. It was the further testimony of the witness that the Plaintiff is in occupation of the suit property. Nevertheless, the witness clarified that the Plaintiff was a caretaker of her uncle. In this regard, the witness posited that the Plaintiff was on the suit property with the consent and permission of her uncle [Joseph Mwangi Kariuki].
82. Regarding the contents of paragraph 13 of the Plaintiff's further affidavit sworn on 11<sup>th</sup> February 2025, the witness averred that the Plaintiff has denied that he was a caretaker of Joseph Mwangi Kariuki. Moreover, the witness testified that she has not produced any document to show that the Plaintiff was a caretaker of Joseph Mwangi Kariuki.
83. It was the further testimony of the witness that the land in question is under cultivation. The witness clarified that the crops that are being grown on the suit property belongs to the Plaintiff.
84. The final witness who testified on behalf of the Defendants was Jackson Kiruki Ngumi. Same testified as DW2.
85. It was the testimony of the witness that he is a teacher by profession. Besides, the witness averred that he is conversant and familiar with the facts of this case. To this end, the witness testified that he has since recorded and filed an affidavit sworn on 28<sup>th</sup> September 2024 and which affidavit the witness sought to adopt and rely on as his evidence in chief. At the instance and request of the witness, the affidavit under reference was constituted as the evidence in chief of the witness.
86. Additionally, the witness referenced a copy of the certificate of death in the name of Joseph Mwangi Kariuki and thereafter sought to tender and produce it as an exhibit before the court. There being no objection to the production of the documents, same was tendered and admitted as exhibits D3.
87. On cross examination by learned counsel for the Plaintiff, the witness averred that he does not know how the deceased purchased/acquired the suit property.
88. Furthermore, it was the testimony of the witness that the Plaintiff herein was a caretaker of Joseph Mwangi Kariuki. The witness clarified that the Plaintiff has been on the land since 1981.



89. Regarding the further witness statement filed by the Plaintiff and dated 11<sup>th</sup> February 2025; the witness averred that the Plaintiff has denied having been constituted as a caretaker. Moreover, the witness conceded that he did not file any further affidavit to contest the averments by the Plaintiff.
90. On further cross examination, the witness testified that the suit property is situated at Igane village. However, the witness readily conceded that he is not familiar with the geography of the area.
91. The witness further testified that he met the Plaintiff for the first time in 2016. Moreover, the witness added that the Plaintiff's home is approximately 400 meters away from the suit property.
92. While still under cross examination, the witness testified that the Plaintiff herein used to rent out portions of the land. However, the witness added that the Plaintiff was renting out the land on behalf of Joseph Mwangi Kariuki. In addition, the witness stated that the Plaintiff was a caretaker of Joseph Mwangi Kariuki.
93. Nevertheless, when pressed further on the issue of Plaintiff being a caretaker, the witness admitted that he does not have any document to show that the Plaintiff was a caretaker of Joseph Mwangi.
94. With the foregoing testimony, the Defendants' case was closed.
95. Following the conclusion of the hearing, the advocates for the parties sought time to file and exchange written submissions. To this end, the court issued directions and circumscribed timelines for the filing and exchange of written submissions.
96. The plaintiff filed written submissions dated 8<sup>th</sup> January 2026; and wherein same has highlighted four [4] key issues for consideration. The issues canvassed by the Plaintiff are: the Plaintiff has been in open, continuous, and an uninterrupted possession of the suit property; the possession by the Plaintiff has been hostile and adverse to the rights of Joseph Mwangi Kariuki [Deceased] and by extension the Defendants; the previous owner of the suit property and by extension the Defendants did not take any actions to recover vacant possession; and the Plaintiff has acquired title to the suit property vide adverse possession.
97. The Defendants filed written submissions dated 16<sup>th</sup> January 2026; and wherein same has highlighted three [3] key issues, namely; Whether the Plaintiff has been in open, continuous, and an uninterrupted possession of the suit property for a duration of more than twelve years; Whether the Plaintiff has established the ingredients underpinning a claim for adverse possession or otherwise; and Whether the Defendants' title to the suit property ought to be cancelled in the manner sought or otherwise.
98. Having reviewed the Originating Summons and the Supporting Affidavit thereto; the Replying Affidavit filed in opposition thereto; the evidence tendered [both oral and documentary] and upon consideration of the written submissions filed by the parties, two [2] key issues crystalize for determination.
99. The issues that crystalize for determination are: Whether the Plaintiff has established and proven the requisite ingredients underpinning a claim for adverse possession or otherwise; and what reliefs [if any] ought to be granted.
100. Regarding the first issue, it is common ground that any claimant seeking to accrue a declaration of acquisition of title by way of adverse possession is obligated to demonstrate open, continuous, and an uninterrupted occupation/possession of the designated space. Moreover, the claimant must also establish that his or her occupation/possession has been adverse and hostile to the rights of the registered owner of the designated property.



101. Additionally, the claimant must prove that the occupation and possession has been open and not secretive. The occupation/possession must be notorious and known to the registered owners.
102. In the case of *Njuguna Ndatho v Masai Itumo, Mateo & Nguli Kyalo* (Civil Appeal 231 of 1999) [2002] KECA 161 (KLR) (18 October 2002) (Judgment), the Court of Appeal highlighted the aspect of notoriety and adequate publicity in the following manner:

“For the defence of adverse possession to succeed, the possessor(s) must show that the possession was adequate, continuous and exclusive. In other words, such possession, to be adverse, must be adequate in continuity, in publicity and in extent to show that the possession was adverse to the proprietor. These requirements are fulfilled in relation to the possession of and by the respondents.”
103. Other than the necessity to demonstrate open, continuous, and an uninterrupted occupation, it behoves the claimant to establish that the occupation under reference is non permissive. Simply put, the claimant must demonstrate that his/her occupation is not underpinned by permission, consent, or license by the title holder. For good measure, where the occupation and possession are predicated on permission, then the plea of adverse possession is negated and dissipates.
104. In the case of *Mbira –V- Gachuhi* (2002)1 EALR 137 the court highlighted the legal effect of permission [if any] and stated as hereunder:

“...a person who seeks to acquire title to land by the method of adverse possession for the applicable statutory period must prove non-permissive or non-consensual actual, open, notorious, exclusive and adverse use by him or those under whom he claims for the statutory prescribed period without interruption...”
105. Back to the facts of the instant matter. The Plaintiff tendered evidence to demonstrate that same entered upon, took possession, and has remained in possession of the suit property from the year 1981. Furthermore, the Plaintiff tendered evidence to show that he has continuously cultivated the suit land by growing assorted food crops, fruit trees, and trees. In addition, the Plaintiff also tendered evidence to show that the portion of the suit land [the entire thereof] which is under his position is well delineated by a live fence.
106. The evidence by the Plaintiff relative to occupation, possession, and use of the suit property was corroborated by PW2 [Jennifer Mubae] who testified that the Plaintiff has been in possession of the suit property for a long time. Moreover, PW2 also posited that the Plaintiff once rented out a portion of the suit property unto her for cultivation.
107. It was the testimony of PW7 [Godfrey Bundi Makathima] that same is also privy to the Plaintiff's occupation, possession, and use of the suit property. In particular, PW7 averred that his grandmother rented a portion of the suit property from the Plaintiff. Additionally, the witness [PW7] posited that a portion of the suit property was rented to his grandmother during the year 1995 upto 2009.
108. Other than the testimony by the Plaintiff and his witnesses, the fact that the Plaintiff has been in occupation of the suit property was confirmed by both DW1 and DW2, respectively. In particular, it was the testimony of DW2 that the Plaintiff has been in possession of the suit property since 1981.
109. For clarity and coherence, it is apposite to reproduce the pertinent aspect of the evidence of DW2 while under cross examination by learned counsel for the Plaintiff.



110. The witness stated thus;

“I do confirm that the Plaintiff has been on the land since 1981. I met the Plaintiff for the first time in 2016. The Plaintiff’s home is approximately 400 metres from the land in question. I do confirm that the Plaintiff was on the land. However, the Plaintiff was a caretaker.”

111. Save for the aspect where DW2 posits that the Plaintiff was a caretaker of the suit property on behalf of Joseph Mwangi Kariuki [Deceased] which I shall revert to presently, there is an unequivocal confirmation that the Plaintiff is the one in occupation of the suit property.

112. The evidence of DW1 is equally instructive as pertains to occupation of the Plaintiff. while under cross examination by learned counsel for the Plaintiff, DW1 stated thus;

“Referred to paragraph 25 of the affidavit, the witness states that it is the Plaintiff who is actually on the land. I do confirm that the land is under cultivation. There are maize, beans, and other crops. The crops have been planted by the Plaintiff herein.”

113. From the foregoing, there is no gainsaying that the Plaintiff is indeed in occupation and possession of the suit property. In addition, evidence abound that the Plaintiff has actually been in possession of the suit property from the year 1981 or thereabout[s]. Quite clearly, the duration of possession and use exceeds twelve years.

114. Turning to the circumstances underpinning the Plaintiff’s occupation, it is worthy to underscore that the Plaintiff testified that his entry onto and possession of the suit property has been hostile and adverse to the rights and interests of Joseph Mwangi [now deceased] and by extension the defendants herein. Simply put, it is the Plaintiff’s position that Joseph Mwangi Kariuki neither authorized nor permitted him to enter the suit land.

115. On the contrary, the Defendants have postulated a position that the Plaintiff’s possession of the suit property was/is based on the consent and or permission of James Mwangi Kariuki [now deceased]. To this end, both DW1 and DW2 posited that the Plaintiff was a caretaker of the suit property on behalf of Joseph Mwangi.

116. DW1 is on record stating thus;

“The Plaintiff was a caretaker on behalf of my uncle. Referred to paragraph 25 of the affidavit and the witness states that the Plaintiff is actually on the land. However, the Plaintiff is on the land with the consent/permission of my uncle. Regarding the Plaintiff’s further affidavit sworn on 11<sup>th</sup> February 2025 and in particular paragraph 13; and the witness confirms that the Plaintiff has denied being a caretaker on behalf of Joseph Mwangi.”

117. Nevertheless, and while still under cross examination by learned counsel for the Plaintiff, DW1 stated thus;

“I have not sworn any further/supplementary affidavit to deny the contents of what the Plaintiff has stated. I have no document to show that the Plaintiff was authorized to be the caretaker of my uncle. The Plaintiff was not being paid as a caretaker.”

118. What I hear DW1 to be saying is that the Plaintiff was constituted as a caretaker by Joseph Mwangi Kariuki. However, despite propagating the position that the Plaintiff was a caretaker on behalf of the deceased, the witness does not proffer any evidence to vindicate the said contention.



119. I beg to state that it is the defendants who have brought forth the contention/assertion that the Plaintiff was a caretaker on behalf of Joseph Mwangi Kariuki. In this regard, there is no gainsaying that the Defendants were enjoined to establish/prove the said assertion. Same was to be proven on a balance of probabilities.
120. Have the Defendants proved their assertion? I am afraid that the Defendants have failed to tender or produce any evidence to establish the claim that the Plaintiff was a caretaker.
121. On his part, DW2 also reiterated the contention that the Plaintiff was a caretaker on behalf of his uncle, namely; Joseph Mwangi Kariuki [Deceased]. Where pertinent, DW2 stated thus;
- “I do wish to state that the Plaintiff was a caretaker of my uncle. I do confirm that the Plaintiff has been on the land since 1981. However, I do wish to add that he has been there as a caretaker of the land. I am aware that the Plaintiff has recorded a further statement dated 11<sup>th</sup> February 2025. I can see that the Plaintiff has denied being a caretaker of my uncle. I did not swear any further affidavit to controvert the averment by the Plaintiff.”
122. Elsewhere, DW2 has also stated thus;
- “I do confirm that the plaintiff was a caretaker. I don't have any document to show that the Plaintiff was a caretaker of my uncle.”
123. In my humble view, it behoves the defendants to place before the court some cogent and compelling evidence to establish the assertion that the Plaintiff was a caretaker. Notably, the defendants did not discharge the burden or obligation.
124. In the premises, I am not persuaded that the Plaintiff was a caretaker of Joseph Mwangi Kariuki-deceased. In addition, I am not persuaded that the Plaintiff's possession and use of the suit property was predicated on permission.
125. On the contrary, and considering the nature of activities that the Plaintiff was undertaking on the suit property [including renting same out to third Parties], I am convinced that the Plaintiff's occupation was hostile and adverse to Joseph Mwangi Kariuki and by extension to Defendants.
126. Next is the aspect whether Joseph Mwangi Kariuki- now deceased, ever took any action to recover the suit property. It suffices to state that no evidence was tendered of any action or steps that were taken by Joseph Mwangi to interrupt the Plaintiff's occupation, possession and use of the suit property.
127. It is common ground that the only manner to interrupt occupation which is adverse to the rights of a title holder is by asserting ownership vide re-entry; or by filing a suit to recover vacant possession albeit before expiry of the statutory period. Absent such steps or actions, the rights of the adverse possessor accrue in accordance with provisions of sections 7, 12, 13, and 17 of the Limitations of Actions Act Chapter 22 Laws of Kenya.
128. In the case of Njuguna Ndatho v Masai Itumo, Mateo & Nguli Kyalo (Civil Appeal 231 of 1999) [2002] KECA 161 (KLR) (18 October 2002) (Judgment) the Court of Appeal highlighted the position and stated as hereunder;
- “The position in Kenya as regards when the time would stop running against an adverse possessor has been amply set out. In the case of William Gatuhi Murath e vs. Gakuru Gathimbi (Civil Appeal No. 49 of 1996) (unreported) this Court followed the decision in the case of Joseph Gahumi Kiritu vs. Lawrence Munyambu Kabura (Civil Appeal No. 20



of 1993) (unreported) which reviewed previous judgments of this Court on the issue of time and it was held that the filing of a suit for recovery of land would stop time from running for the purposes of Section 38 of the *Limitation of Actions Act* under which a person may claim to have become entitled to land by adverse possession.”

129. Flowing from the foregoing analysis, I conclude as hereunder:

- i. The Plaintiff has established open, continuous, and an uninterrupted possession of the suit property.
- ii. The possession and use have been for a duration in excess of twelve years.
- iii. The possession was adverse and hostile to the rights of the title holder.
- iv. The possession was non-permissive.
- v. The title holder failed/neglected to take appropriate steps to recover vacant possession.
- vi. The title holders’ rights and interests stand extinguished.

130. I now beg to turn to the second issue, namely; what reliefs, if any, ought to be granted. The Plaintiff herein sought a plethora of declarations at the foot of the Originating Summons dated 26<sup>th</sup> July 2024. In particular, the plaintiff sought a declaration that same has since acquired adverse rights to and in respect of the suit property.

131. While discussing issue number one, I have pointed out that the Plaintiff’s occupation was adverse [hostile] to the rights of the title holder and that by virtue of longevity of occupation, the plaintiff has indeed acquired title to the suit property vide adverse possession.

132. The other relief sought relates to rectification of the register of the suit property by cancelling the names of the defendants and substituting thereof the names of the Plaintiff. No doubt the Plaintiff is entitled to rectification of the register to reflect him as the legitimate owner thereof.

### **Final Disposition.**

133. Flowing from the analysis, whose details are highlighted in the body of the Judgement, there is no gainsaying that the Plaintiff has established his claim to the suit property. Simply put, the Plaintiff’s claim is merited.

134. In the upshot, and for the reasons which have been alluded to; the final orders that commend themselves to the court are as hereunder;

- i. A declaration be and is hereby issued that the Plaintiff has acquired title to the suit property [LR. NO. Abuthuguchi/Igane/1095] by way of Adverse Possession.
- ii. The Defendants’ title to and in respect of Title Number LR. NO. Abuthuguchi/Igane/1095 be and is hereby declared to have been extinguished by operation of the law and in accordance with section 7 of the Limitations of Actions Act Chapter 22 Laws of Kenya.
- iii. The register of LR. Number Abuthuguchi/Igane/1095 be and is hereby ordered to be rectified by cancelling the names of the Defendants and thereafter replacing same with the name of the Plaintiff as the lawful and registered owner thereof.
- iv. The Defendants be and are hereby ordered to execute the requisite instruments of conveyance to facilitate the transfer and registration of the suit property to and in favor of the Plaintiff.



- v. The instruments of conveyance including application for Land Control Board Consent; and the Transfer Instrument shall be executed with forty-five days from the date hereof.
- vi. In default by the Defendants to execute the instruments of conveyance [in terms of the preceding paragraph] the Deputy Registrar of this Court shall be at liberty to execute same in lieu of the Defendants.
- vii. A permanent injunction be and is hereby issued to restrain the Defendants either by themselves, agents, servants, or any other person acting on their behalf from entering upon, trespassing onto, interfering with, or in any other manner dealing with the suit property contrary to the rights and interests of the Plaintiff.
- viii. Costs of the suit be and are hereby awarded to the Plaintiff.
- ix. Costs in terms of the clause (viii) above will be agreed upon and in default shall be taxed in the conventional manner.

135. It is so ordered.

**DATED, SIGNED AND DELIVERED AT MERU THIS 29<sup>TH</sup> DAY OF JANUARY 2026**

**OGUTTU MBOYA, FCI Arb; CPM [MTI-EA].**

**JUDGE**

In the presence of:

Hussein – Court Assistant.

Mr. Mwirigi Kaburu for the Plaintiff.

Mr. Basilio Gitonga for the Defendants.

