



**Mbogua v Mwirebua (Sued as the administrator of the Estate of Mwirebua M'Itonga - Deceased)  
(Environmental and Land Originating Summons E012 of 2024 & Environment and Land  
Case E001 of 2025 (Consolidated)) [2026] KEELC 333 (KLR) (26 January 2026) (Judgment)**

Neutral citation: [2026] KEELC 333 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E012 OF 2024  
& ENVIRONMENT AND LAND CASE E001 OF 2025 (CONSOLIDATED)  
JO MBOYA, J  
JANUARY 26, 2026  
AS CONSOLIDATED WITH MERU ELC E001 OF 2025  
[ FORMERLY GITHONGO MCELCE E012 OF 2021]  
IN THE MATTER OF LAND PARCEL ( L R ABOOTHUGUCHI  
/MAKANDUNE/1837 REGISTERED IN THE NAME OF MWIREBUA  
N'ITONGA - DECEASED**

**BETWEEN**

**JAMES MBOGUA ..... PLAINTIFF**

**AND**

**GERALD MUTUGI MWIREBUA (SUED AS THE ADMINISTRATOR OF THE  
ESTATE OF MWIREBUA M'ITONGA - DECEASED) ..... DEFENDANT**

**JUDGMENT**

1. The Plaintiff approached the court vide Origination Summons 12/09/2024 seeking various orders/declarations. The declarations sought vide the Originating Summons are reproduced as hereunder:
  - i. An order of injunction restraining the Defendant by himself, his agents, assigns or anybody acting from his behest from alienating, disposing and/or charging L. R Abothuguchi/Makandune/1837 and in anyway interfere with the applicant's use and occupation of LR Abothuguchi/Makandune/1837 pending the hearing and determination of the suit.
  - ii. The Plaintiff/Applicant has become entitled to LR Abothuchi/Makandune/1837 by adverse possession.



- iii. That the Plaintiff/Applicant be registered the owner of the Abothuguchi/Makandune/1837.
    - iv. The Defendant be ordered to pay costs of the suit.
2. The Originating Summons beforehand is premised on various grounds, whose details have been highlighted at the foot thereof. In particular, the Plaintiff, contends that same entered into and executed a sale agreement between himself and Mwitia Kiambati [now deceased] and wherein the deceased covenanted to sell to the Plaintiff a portion of LR/Abothuguchi/Makandune/1177 [ hereinafter referred to as the original parcel of land]. Additionally, the Plaintiff has posited that he proceeded to and paid the purchase price albeit vide installments. Moreover, the Plaintiff averred that same was allowed to enter onto and take possession of the sold portion of the original parcel of land.
3. Furthermore, the Plaintiff has averred that despite paying the total purchase price to the vendor [ now deceased], the vendor failed to transfer the sold portion of the original parcel of land to him. Nevertheless, it has been contended that despite the failure to effect transfer, the Plaintiff remained in occupation and possession of the suit property. Besides, it has been contended that the Plaintiff has remained in occupation of the said portion, which now comprises of the suit property, todate.
4. Other than the foregoing, the Plaintiff has posited that the vendor [now deceased] proceeded to and sold the same portion of land to Mwirebua M'Itonga [ now deceased] and whose estate is represented by the defendant. Be that as it may, it has been contended by the time the suit property was being sold by the vendor [now deceased], the Plaintiff was already in occupation and thus the subsequent purchaser did not acquire any valid title to the suit property insofar as the vendor's title thereto had lapsed.
5. The Defendant duly entered appearance and filed a replying affidavit sworn on 30/01/2025 and wherein the Defendant has denied the claims by the Plaintiff. In particular, it has been contended that the portion of land being claimed by the Plaintiff was lawfully sold to and transferred in favour of Mwirebua M'Itonga [ now deceased] by Mwitia Kiambati [ now deceased].
6. In addition, it has been contended that upon the transfer and registration of the suit property in the name of Mwirebua M'Itonga, deceased, same took possession of the suit property and erected various structures thereon. Besides, it has been posited that the same Mwirebua M'Itonga leased the suit property to one Augustine Mutua Mburugu. In this regard, it has been contended that the Plaintiff's claim is untenable and thus ought to be dismissed.
7. On the other hand, the Defendant herein also filed Githongo MCELC E012 of 2021 and which was later transferred to this court and renumbered as Meru ELC E001 of 2025. The prayers at the foot of the said suit are as hereunder:
  - i. An order of eviction against the Defendant[ James Mbogua from L.R Abothuguchi/ Makandune/1837 and in default the Defendant to be forcefully evicted from the said land with the assistance of the OCS of HATE police station nearest to the suit land.
  - ii. A permanent injunction be issued restraining the defendant, his assigns, successors in title, children, agents, contractors or any person acting at his behest or directions, from forever entering into, trespassing, remaining or interfering with the use, occupation and enjoyment of LR Abothuguchi/Makandune/1837.
  - iii. Costs of the suit.
8. The Defendant to the said suit [whose is the Plaintiff herein] duly entered appearance and filed a statement of defence. Furthermore, the named Defendant also filed a counter claim and wherein same contended that he had acquired title to the suit property by way of adverse possession.



9. Presumably, the suit at the Githongo law court, which included a claim for Adverse possession, was transferred to this court because the magistrate's court was not seized of the requisite jurisdiction to entertain and adjudicate upon a claim for adverse possession.
10. The plaintiff's case is premised on the evidence of Three [3] witnesses namely: James Mbugua Kairimba, Francis Nguri and Stephen Njuguna Mwangi. Same testified as PW1, PW2 and PW3, respectively.
11. It was the testimony of PW1 [James Mbugua Kairimba] that same is the Plaintiff. The witness averred that by virtue of being the Plaintiff, he is familiar with facts of the case. Furthermore, the witness testified that in respect of this matter, same filed a supporting affidavit sworn on 12/09/2024 and which affidavit the witness sought to adopt and rely on as his evidence in chief.
12. Additionally, the witness adverted to the witness statement dated 12.09.2024; and a further witness statement, which the witness sought to adopt as further evidence in chief. Suffice it to state that the two [2] sets of witness statement were thereafter adopted and constituted as the evidence in chief of the witness.
13. The witness also referenced the list and bundle of documents, containing the sale agreement and various acknowledgments and which documents were produced as exhibits P1 – P16, respectively. Moreover, the witness also referenced copies of the application for Land Control Board Consent and which documents were produced as exhibits P17 and 18, respectively.
14. The witness also alluded to the suit which he had filed at Nkubu Magistrate's court, namely: MCELC 106 of 2015 and thereafter produced before the court the pleadings in respect of the said case. Besides, the witness also referenced the pleadings and documents that were filed in opposition to Githongo MCELC No. 012 of 2021 [ now Meru ELC E001 of 2025].
15. It was the further testimony of the witness that after purchasing the original parcel of land [ now suit property], same entered upon, took possession and fenced the portion in question. Moreover, the witness averred that he has planted trees on the portion of the land. In this regard, the witness reiterated his entitlement to the suit property.
16. On cross examination by learned counsel for the Defendant, the witness averred that he entered onto the portion of land in question because he bought the land. Moreover, the witness averred that it is the owner of the land [ now deceased] who allowed him to enter onto and construct on the land.
17. It was the further testimony of the witness that the purchase of a portion of the original land was reduced into writing. In particular, the witness referenced the sale agreement and various acknowledgments, confirming the payment[s] of the purchase price.
18. Furthermore, the witness averred that there were various acknowledgments and thereafter highlighted the acknowledgements as hereunder:
  - a. Exhibits P16 – Kshs. 16,280/=
  - b. Acknowledgement dated 24.10.1993 – Kshs. 1,000/=
  - c. Acknowledgement dated 06/12/1993 – Kshs. 200/=
  - d. Acknowledgement dated 19/10/1993 – Kshs. 3,000/=
  - e. Acknowledgement dated 16/01/1994 – Kshs. 150/=
  - f. Acknowledgement dated 03/02/1994 – Kshs. 520/=



- g. Acknowledgement dated 07/03/1994 - Kshs. 1,300/=
  - h. Acknowledgement dated 01/08/1994 – Kshs. 3,000/=
  - i. Acknowledgement dated 06/02/1994 – Kshs. 200/=.
  - j. Acknowledgement dated 14/03/1994 – Kshs. 1,150/=
  - k. Acknowledgement dated 10/04/1994 – Kshs. 1,000/=
  - l. Acknowledgement dated 24/04/1994 – Kshs. 200/=
  - m. Acknowledgement dated 05/05/1994 – Kshs. 200/=
  - n. Acknowledgement dated 23/05/1994 – Kshs. 400/=
  - o. Acknowledgement dated 17/07/1994 – Kshs. 1,000/=
  - p. Acknowledgement dated 28/06/1994 – Kshs. 820/=
  - q. Acknowledgement dated 26/07/1995 – Kshs. 850/=
  - r. Acknowledgement dated 06/10/1995 – Kshs. 2,000/=
19. While still under cross examination, the witness averred that the total monies paid at the foot of the various acknowledgements amounts to Kshs. 16,290/=. Furthermore, it was the testimony of the witness that same has brought before the court an acknowledgment showing that he completed the payments on 31/08/1994.
20. Nevertheless, when pressed further the witness averred that the insertion of the year 1994 in the acknowledgement is an error. For good measure, the witness clarified that the final payment[s] were made in the year 1995. It was the further testimony of the witness that he indeed concluded/completed payments of the purchase price.
21. Additionally, it was the testimony of the witness that the original parcel of land was sub-divided on the 11/09/2009, culminating in the creation of LR Abothuguchi/Makandune/1837 and 1838, respectively. Moreover, the witness testified that he had filed a suit before Nkubu Law court, but that the suit [matter] in question was dismissed for want of prosecution.
22. Upon being referred to the pleadings, in respect of Githongo case, namely; MCELC No. E012 of 2021, the witness testified that he was served with the documents on or about March, 2021. Besides, the witness testified that thereafter same entered appearance; filed a statement of defence and counter claim. In addition, the witness averred that he joined Mwitia Kiambati[ now deceased ] as one of the defendants in the counter claim.
23. It was the further testimony of the witness that even though he joined Mwitia Kiambati [deceased] as a party in the counter claim, the said Mwitia Kiambati died before the hearing could commence. In this regard, the witness testified that he was obliged to withdraw the claim against the deceased.
24. On further cross examination, the witness testified that the Defendant herein went to the land with surveyors. However, it was the further testimony of the witness that he did not allow the Defendant to enter on the land or to carry out any survey. Moreover, the witness testified that he has constructed houses on the land.
25. It was the further testimony of the witness, that other than his house, his son [ who is aged 49 years] has also constructed a house on the suit property.



26. The 2<sup>nd</sup> witness who testified on behalf of the Plaintiff is Francis Nguri. Same testified as PW2.
27. It was the testimony of the witness that same resides at/comes from Kiago ward within the county of Meru. Moreover, the witness testified that he is familiar with the Plaintiff's herein. Besides, it was the testimony of the witness that same has since recorded a witness statement dated 12.09.2024 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.
28. Upon being referred to exhibits P1 – P16 [the sale agreements and the various acknowledgments] the witness averred that it is him who recorded /authored the sale agreement between the Plaintiff and Mwitia Kiambati [now deceased].
29. On cross examination by learned counsel for the defendant, the witness confirmed that he is the one who authored/wrote the sale agreement. However, the witness conceded that the sale agreement does not reference the parcel number of the land which was being sold.
30. It was the further testimony of the witness that same only recorded the sale agreement, but did not play any other role in the matter. In particular, the witness averred that he did not author/record the acknowledgments.
31. Other than the foregoing, the witness testified that Mwitia Kiambati [ now deceased] was not conversant with English Language.
32. The 3<sup>rd</sup> witness who testified on behalf of the Plaintiff was Stephen Njunguna Mwangi. Same testified as PW3.
33. It was the testimony of the witness that same is a brother of the Plaintiff. Additionally, the witness averred that his homestead is one kilometer away from the Plaintiff's homestead, which is situated on the suit property. Moreover, the witness averred that he has since recorded a witness statement dated 12/09/2024; and which witness statement the witness sought to adopt and rely on. To this end, the witness statement was adopted and constituted as the evidence in chief of the witness.
34. Regarding the sale agreement dated 24/10/1193; the witness averred that the agreement was between the Plaintiff and Mwitia Kiambati [ now deceased]. In addition, the witness testified that he was a witness to the sale agreement.
35. It was the further testimony of the witness that the other person[witness] who was present at the time the sale agreement was entered into was Francis Nguri. Furthermore, the witness confirmed that Mwitia Kiambati [now Deceased] signed the said agreement.
36. On cross examination by learned counsel, the witness averred that he bought land at Makandune in 1997. Moreover, the witness testified that he thereafter built his homestead on the said land and that he resides thereon todate.
37. While still under cross examination, the witness testified that the Plaintiff resides on the suit land. Moreover, the witness averred that the Plaintiff was the first one to buy land at Makadune area.
38. It was the further testimony of the witness that he was present when the sale agreement was being entered into. Additionally, the witness confirmed that the purchase price was fully paid to the vendor. Nevertheless, the witness clarified that he only got to know of the full payment of the purchase price because he read the acknowledgements.
39. With the foregoing testimony, the plaintiff's case was closed.



40. The Defendant's case is premised on the evidence of two witnesses, namely; Gerald Mutugi Mwirebua and Augustine Mutua Mburugu. Same testified as DW1 and DW2 respectively.
41. It was the testimony of DW1 [ Gerald Mutugi Mwirebua] that same is the Defendant herein. In this regard, the witness averred that same is conversant with the facts of this matter. Moreover, the witness testified that he has since recorded a replying affidavit sworn on 30/01/2025 and which affidavit the witness sought to adopt and rely on as his evidence in chief. Suffice it to state that the replying affidavit was duly adopted and constituted as the evidence in chief of the witness.
42. The witness further referenced the list and bundle of documents dated 06.10.25, containing Thirteen [13] documents and which documents the witness sought to tender and produce before the court. There being no objection to the production of the documents, same were produced and admitted as exhibits D1 – D13 respectively.
43. Other than the foregoing, the witness averred that same has also filed a witness statement dated 06/10.2025 and which statement the witness sought to adopt and rely as his evidence in chief. Instructively, the witness statement dated 06.10.2025 was adopted and constituted as further evidence in chief of the witness.
44. Furthermore, the witness testified that same had also filed a suit at Githongo Law Courts, namely: Githongo MCELC E012 of 2021 [now Meru ELC E001 of 2025]. To this end, the witness referenced the plaint dated the 12/03/2021 and thereafter sought to adopt the contents thereof. In addition, the witness also averred to the witness statement dated 12/03/2021 and thereafter sought to rely on the same as further evidence in chief. For good measure, the witness statement under reference was duly adopted and constituted as further evidence in chief of the witness.
45. On cross examination by learned counsel for the Plaintiff, the witness averred that he only got to know the Plaintiff [ James Mbogua] in 2021. Moreover, the witness testified that he found James Mbogua on the land. The witness further averred that the last time he went to the land was around 2011/2012. Instructively, the witness averred that the land in question is parcel number 1837.
46. It was the further testimony of the witness that the suit property belongs to and is registered in the name of his father, now deceased. Moreover, the witness clarified that his father obtained the certificate of title in the year 2011. Additionally, the witness testified that his father [now deceased] erected three [3] houses on the land. However, the witness clarified that there was no one in occupation of the houses as at 2011.
47. Upon being referred to the sale agreement between the Plaintiff and Mwitia Kiambati [ deceased] the witness averred that the agreement was entered into in 1993. On the other hand, the witness testified that the sale agreement between his father and Mwitia Kiambati was entered into on the 26.01.2009. In this regard, the witness clarified that the sale agreement between the Plaintiff and Mwitia Kiambati was entered into earlier.
48. It was the further testimony of the witness that he found the Plaintiff on the land. Furthermore, the witness averred that when he found the Plaintiff on the land, a dispute arose. Nevertheless, the witness clarified that the Plaintiff is indeed occupying the land.
49. On further cross examination, the witness testified that it is the Plaintiff who is residing on the land. However, the witness posited that he does not know when the Plaintiff entered onto and commenced occupation of the land.



50. Upon being referred to exhibits D11, the witness testified that the document is a copy of the application for land control board consent. In particular, the witness clarified that the applicant in respect of the said application was himself.
51. While still under cross examination, the witness averred that the portion of the land being occupied by the Plaintiff is well demarcated. In particular, the witness confirmed that the houses of the Plaintiff are located at the corner of the land.
52. The 2<sup>nd</sup> witness who testified on behalf of the Defendant was Augustine Mutua Mburugu. Same testified as DW2.
53. It was the testimony of the witness that same is familiar with facts of this case. Furthermore, the witness averred that he has since recorded a witness statement dated 30.01.2025 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.
54. On cross examination by learned counsel for the Plaintiff, the witness testified that the land in question is approximately 6 kilometers from his home. In addition, the witness averred that the land previously belonged to Mwitia Kiambati [ now deceased].
55. While still under cross examination, the witness testified that he used to lease the land from the family of Mwirebua. Moreover, the witness clarified that the family of Mwirebua were not staying/residing on the land. In addition, the witness testified that there are no miraa trees on the land. Further and in any event, the witness added that he was last on the land in 2015. For good measure, the witness averred that he has never gone back to the land.
56. With the foregoing, the defendant's case was closed.
57. Following the conclusion of the hearing, the advocates for the parties sought time to file and exchange written submissions. To this end, the court proceeded to and prescribed the timelines for the filing and exchange of written submissions.
58. The Plaintiff filed written submission dated 10/12/2025; and wherein same has highlighted six [6] key issues for consideration. The issues highlighted by the Plaintiff are namely: Whether the Plaintiff has made out a case to entitle him to registered as the owner of the suit land under the doctrine of adverse possession; What is the effect of the application for consent and the letter of consent produced as exhibits P17 and 18 ; Whether the doctrine of priority has any significance and effect on the subject claim; Whether the title held by the Defendant is a good title; What is the effect inactivity of the Defendant to enforce his rights despite being the registered owner of the title; and [sic] whether the Plaintiff has made out a case for adverse possession.
59. The Defendant filed written submission dated 17/12/2025 and wherein same as highlighted two [2] key issues namely: the Plaintiff has failed to prove and establish the ingredients underpinning the claim of adverse possession; and the Defendant is entitled to vacant possession of the suit property.
60. I have reviewed and considered the pleadings filed by the parties; the evidence tendered [both oral and documentary] and upon consideration of the written submissions on record, I come to the conclusion that three [3] key issues crystalize for determination.
61. The issues are namely: Whether the Plaintiff has established the requisite ingredients underpinning a claim for adverse possession or otherwise; Whether the defendant's suit for recovery of the suit property is statute barred; and what reliefs[ if any] ought to be granted.



62. Regarding the first issue, it is worthy to recall and reiterate that the Plaintiff has approached the court contending that same entered into a land sale/purchase agreement with one Mwitia Kiambati [now deceased]. Further more, the Plaintiff averred that the sale agreement was reduced into writing and same was thereafter executed by both himself and the vendor.
63. It was the further contention by the Plaintiff that following the entry into and execution of the sale agreement, the vendor allowed him [Plaintiff] to enter upon, take possession of and to utilize the portion of the original parcel of land pending formal sub-division and ultimate transfer thereof. In this regard, the Plaintiff posited that he effectively entered on to the land, took possession and proceed to erect his homestead thereon.
64. The fact that the Plaintiff resides or occupies the portion of the original parcel of land [now the suit property] is not in contest. Instructively, the defendant, who testified as DW1, confirms that the Plaintiff is actually occupying the suit property. Additionally, the Defendant reiterates that the portion of the suit property that is occupied by the Plaintiff is well demarcated on the ground.
65. Before venturing forward to interrogate the nature and implications of the plaintiff's occupation of the suit property, it is imperative to reproduce the evidence of DW1 while under cross examination by learned counsel for the plaintiff.
66. The witness stated thus:
- I found the Plaintiff on the land in 2021. I went to the land in 2021, the last time I went to the land was around 2011/2012. The land is parcel number 1837. I do confirm that my father obtained the certificate of title in 2011. I filed the case at Githongo in 2021.
67. Furthermore, the witness testified as hereunder:
- I found the Plaintiff on the land. I do confirm that there was a dispute when I found the Plaintiff on the ground. I do confirm that it is the Plaintiff on the land. The Plaintiff is residing on the land. I found the Plaintiff on the land. I do not know when the Plaintiff entered on the land.
68. The witness further testified and stated as hereunder:
- I do confirm that the Plaintiff is on the land. The portion that is occupied by the Plaintiff is well demarcate. The houses of the Plaintiff are on the top corner of the land.
69. What becomes apparent is that the Defendant is confirming the occupation and possession of the plaintiff. It is also imperative to highlights that the plaintiff's occupation and possession of the suit property is not premised on the permission, consent or authority of the defendant. On the contrary, the Defendant is on record contending that the Plaintiff's occupation is illegal, unlawful and constitutes trespass.
70. Other than the foregoing, it is not lost on me that the Defendant does not appear to appreciate when the Plaintiff entered onto and took possession of the suit property. Firstly, the Defendant averred that the last time he went on the suit property was around 2011/2012. Moreover, the Defendant is on record saying that the only got to know the Plaintiff in 2021.
71. Be that as it may, it is the evidence of the Defendant [DW1] that the portion of the land occupied by the Plaintiff is well demarcated. This means that the portion of land being occupied by the Plaintiff is identifiable on the ground.



72. The fact that the portion of land being occupied by the Plaintiff is demarcated and identifiable on the ground constitute[s] a critical ingredient in discerning whether or not the claim for adverse possession can issue or be granted.

73. The court in the case of *Gatimu Kinguru V Muya Gathangi* High Court Civil Case No 176 Of 1973, cited with approval in *The Case Of Githuu Versus Ndeete* [1980] Eklr stated as hereunder:

“To constitute dispossession, acts must have been done inconsistent with the enjoyment of the soil by the person entitled for the purpose for which he had a right to use it (q). Fencing off is the best evidence of possession of surface land; but cultivation of the surface without fencing off has been held sufficient to prove possession.”

74. Back to the testimony of the Plaintiff. The Plaintiff posits that he entered on the land in the year 1993/1994 shortly after execution the sale agreement. Additionally, the Plaintiff avers that he completed the payments of the purchase price in 1995. Nevertheless, it is the Plaintiff’s case that despite being in occupation of the portion now comprising of the suit property and despite having completed the payment of the purchase price, the vendor [now Deceased], failed to transfer the sold portion of land to him.

75. I beg to state that even though the plaintiff’s initial entry on to the land was based on the sale agreement, his continued occupation of the sold land [now the suit property] became hostile and adverse to the rights of the vendor the moment the vendor failed to transfer the property and in particular, the moment the vendor received the full purchase price.

76. In the case of *Ouko & another (Suing as the Personal Representatives and Administrators of the Estate of Jason Atinda Ouko (Deceased)) v Kageni (Sued as the Personal Representative and Administrator of the Estate of Samuel Muhika Kageni (Deceased))* [2025] KECA 2126 (KLR), the Court of Appeal addressed a similar situation where the claimant was placed on the land in pursuance of sale agreement/contract, which was thereafter not perfected.

77. The court rendered itself thus:

“48. Turning to the question as to whether the respondent proved her claim for adverse possession, we commence by observing that time started running from 19<sup>th</sup> July 1996, when the respondent paid the last instalment. By the time the suit was filed, over twelve years had lapsed. The learned Judge cannot therefore be faulted for concluding that:

“From the evidence adduced by the plaintiff, the last installment of the purchase price was paid on 19<sup>th</sup> July, 1996. From that time up to the date of filing this suit, the Plaintiff has been in occupation of the suit property for 15 years.”

49. In a situation where a claim for adverse position is premised on the existence of a purchase agreement, time only starts running once the contract is repudiated. Thus, in *Sisto Wambugu vs. Kamau Njuguna* [1983] KECA 69 (KLR), it was held that:

“There have been several cases, of which the *Livingstone Ndeete* case is one, in which the claimant of land puts his case in the alternative, that is to say by pleading the agreement under which he



is entered, and then asking for an order based on subsequent adverse possession. For instance in *Hosea vs. Njiru & Others* [1974] EA 526, Simpson J, following *Bridges vs. Mees* [1957] 2 All ER 577, held that once payment of the last instalment of the purchase price had been effected, the purchaser's possession became adverse to the vendor and that he thenceforth, by occupation for twelve years, was entitled to become registered as proprietor of it.”

78. Secondly, it is also important to underscore that Mwitia Kiambati [deceased ] who sold the designated portion of the original land to the Plaintiff did not take out any recovery proceedings against the plaintiff, in accordance with the provisions of Section 7 of The *Limitation Of Actions Act* Chapter 22 Laws Of Kenya.
79. Having failed to institute or commence recovery proceedings within the stipulated 12 years period, the vendor [now deceased] lost his rights or entitlement to and in respect of the designated portion of land [now the suit property].
80. For good measure, the vendor [ now deceased ] had no title or rights capable of being sold to Mwirebua M'Itonga [ now deceased]. Simply put, the sale agreement that was entered into between Mwitia Kiambati and Mwirebua M'Itonga on the 26/01/2009, was an act in vanity, and I dare add, in futility.
81. In the case of *Lewa v Mwangi* [2015] KECA 532 (KLR) the Court of Appeal [per Makhandia JA] highlighted the circumstances under which adverse possession springs forth.
82. The court stated thus:
- “ 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 owner. The essential prerequisites being that the possession of the adverse possessor is neither by force or stealth or under the licence of the owner. It must be adequate in continuity, in publicity and in extent to show that possession is adverse to the title owner.’
83. Finally, it is important to state that by the time the suit property was being sold to Mwirebua M'Itonga [now deceased] in 2009, the vendor's rights stood extinguished.
84. To this end, the transfer and registration of the suit property in favour of the said Mwirebua M'Itonga [ now deceased] did not bestow/ confer any legal rights or interest upon same. Moreover, it is common ground that the mere change of title of land which is under adverse claim does not defeat the accrued adverse possessory rights.
85. In the case of *Mwangi Githu v Livingstone Ndeete* [1980] KECA 35 (KLR) the Court of Appeal considered the legal effect of change of ownership of land which is subject to adverse possession does not defeat the accrued rights.
86. The findings of the court are as hereunder:
- “ Firstly, he submitted that change of ownership interrupts adverse possession, and that accordingly time did not begin to run against the appellant until he was registered as proprietor of the land in 1966. The answer to this submission is that immediately before the appellant became the registered proprietor in 1966 the respondents were in the course



of acquiring rights under section 7 of the *Limitation of Actions Act*, cap 22, and by virtue of section 30 (f) of the Registered *Land Act*, cap 300, those rights are overriding interests. The appellant even as a registered purchaser for value could never be in a better position than his predecessor in title and must take subject to the rights of squatters.”

87. Flowing from the foregoing analyses; and taking into account the circumstances surrounding the plaintiff’s entry onto what now constitutes the suit property, I find and hold that the Plaintiff has proven and established that same is entitled to the suit property on the basis of adverse possession. Simply put, the Plaintiff has met the ingredients, namely; nec vi , nec clam , nec precario.
88. Turning to the second issue, it is important to highlight that the Defendant’s predecessor [ now deceased] is said to have purchased what now constitutes the suit property in the year 2009. By the time the said deceased was entering into the sale agreement, the Plaintiff was already in occupation.
89. Insofar as the Plaintiff was already in occupation, it behooved the deceased to request the seller [ deceased] to remove the person who was in occupation. The defendant’s predecessor did not do so and hence his rights were subject to the overriding interest and in particular, the rights of the person in occupation and possession of the suit property. [ See Section 30g of the Registered *Land Act*, Chapter 300 Law of Kenya, now repealed]. Pertinently, the said provisions have since been re- enacted vide section 28[h] of the *Land Registration Act*, 2012 [2016].
90. In my humble view, the defendant’s suit, namely; Meru ELC E001 of 2025 [formerly Githongo MCELC E012 of 2021] was filed long after the timeline for recovery of the suit property had lapsed. In any event, there is no gainsaying that the transfer and registration of the suit property in favour of Mwirebua M’itonga [now deceased] was subject to the rights of the plaintiff.
91. Consequently, and in the premises, I am afraid that the Defendant herein has neither established nor proven any basis to warrant issuance of the orders of eviction or permanent injunction. In any event, there is not gainsaying that the said orders could only issue to vindicate existing legal rights and interest.
92. However, no such rights or interest exist in favour of the defendant, taking into account the legal implications of Section 7 Of The *Limitation Of Actions Act*, Chapter 22 Laws Of Kenya.
93. Next is the question of reliefs [if any] that ought to be granted. I have indicated that both the Plaintiff and the Defendant have sought reliefs before the court. On one hand, the Plaintiff is seeking to be declared as having acquired title by adverse possession. On the other hand, the Defendant is seeking an order of eviction and permanent injunction against the Plaintiff.
94. While dealing with issue number one, I have found and held that the Plaintiff has established the ingredients underpinning adverse possession. To this end, it then means that the Plaintiff has proven his case as against the defendant. Consequently, I find and hold that the Plaintiff is entitled to the reliefs sought vide the Originating summons.
95. On the contrary, I found and held that the transfer and registration of the suit property in the name of Mwirebua M’Itonga [ now deceased] and by extension in favour of the Defendant was undertaken when the vendor’s rights to the suit property had been extinguished by operation of the law.
96. . In the premises, even though the Defendant holds the certificate of title to and in respect of the suit property, the rights thereunder stood extinguished and hence no lawful rights accrue to the Defendant. In this regard, I am afraid that the Defendant is not entitled to the reliefs sought vide Meru ELC E001 of 2025 [ formerly Githongo MCELC E012 of 2021] .



## SUMMARY OF FINDINGS.

97. While addressing the thematic issues highlighted in the body of the Judgement, I have made various findings. For the sake of brevity, it suffices to provide the summary of the said findings.
98. Same are as hereunder:
- i. The Plaintiff's occupation of the suit property became hostile and adverse to the rights of Mwitia Kiambati [now deceased] upon payment of the full purchase price in 1995.
  - ii. The Vendor's rights to and in respect of the suit property stood extinguished upon lapse of twelve years wef 1995.
  - iii. The Vendor had no legal rights or interest capable of being sold to Mwirebua M'Itonga [ now deceased] as at 20/01/2009.
  - iv. The transfer and registration of the suit property in the name of Mwirebua M'Itonga was subject to the accrued rights by the Plaintiff.
  - v. The Plaintiff acquired and is therefore entitled to the suit property on the basis of adverse possession.
  - vi. The Defendant herein as no legal rights or interest[s] over the suit property.
  - vii. The prayer for eviction has been mounted in vacuum.
  - viii. The prayer for permanent injunction by the Defendant is legally untenable.

## Final Disposition

99. Having addressed the issues herein, I come to the conclusion that the Plaintiff's suit is meritorious. On the contrary, the defendant's case, namely; Meru ELC E001 of 2025, is meritless.
100. In the end, and for the reason[s] 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 and in respect of the suit property, namely; L.R Abothuguchi/Makandune/1837.
  - ii. The Defendant's title to and in respect of L. R Abothuguchi/Makandune/1837 be and is hereby declared to have been extinguished by operation of law.
  - iii. The Defendant's title to and in respect of L/R Abothuguchi/Makandune/1837 be and is hereby cancelled.
  - iv. The Register of Abothuguchi/Makandune/1837 shall be rectified to reflect the name of the Plaintiff as the lawful and legitimate owner of the property.
  - v. The Defendant be and is hereby ordered to execute the requisite instruments of conveyance, namely; the application for Land Control Board Consent, Transfer Form/Instrument and also such other documents to facilitate the effective transfer and registration of the suit property in the name of the Plaintiff and the said instruments to be executed within 30 days from the date hereof.



- vi. In default by the Defendant to comply with [v] above, the Deputy Registrar of the court shall be at liberty to execute the requisite instruments of conveyance to facilitate the transfer and registration of the suit property in the name of the Plaintiff.
  - vii. There be and is hereby issued an order of permanent injunction to restrain and prohibit the Defendant either by himself, agents, servants or any other person claiming under the Defendant from re-entering, remaining on, interfering with or in any other manner whatsoever and howsoever dealing with the suit property.
  - viii. The Plaintiff is awarded costs of the suit vide Meru ELC E012 of 2024 (OS).
  - ix. The Plaintiff is equally awarded costs in respect of Meru ELC E001 of 2025 [ Formerly Githongo MCELC E012 of 2021]
  - x. The Costs in terms of clause [Viii] and [ix] above shall be agreed upon and in default the be taxed by taxing officer in the conventional manner.
101. The Judgment herein relates to Meru ELC E012 of 2024 [OS] and Meru ELC E001 of 2025 [ formerly Githongo MCELC E012 of 2021]. To this end, the two suits are hereby determined in the manner stipulated in terms of preceding paragraph.

102. It is so ordered.

**DATED SIGNED AND DELIVERED AT MERU ON THE 26<sup>TH</sup> DAY OF JANUARY, 2026.**

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

**JUDGE**

In the presence of:

Hussein Court Assistant

Mr. Mokuia for the Plaintiff

Mr. Otieno Opiyo holding brief for Mr. Mwirigi Kaburu for the Defendant.

