



REPUBLIC OF KENYA



**Njomo & 2 others v Kamau & 2 others (Environment and Land Case E011 of 2025) [2026] KEELC 202 (KLR) (27 January 2026) (Judgment)**

Neutral citation: [2026] KEELC 202 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MURANGA  
ENVIRONMENT AND LAND CASE E011 OF 2025**

**MN GICHERU, J  
JANUARY 27, 2026**

**BETWEEN**

**SAMUEL NGIERA NJOMO ..... 1<sup>ST</sup> APPLICANT  
PETER MAINA KARIUKI ..... 2<sup>ND</sup> APPLICANT  
HANNAH NYAMBURA NJOMO ..... 3<sup>RD</sup> APPLICANT**

**AND**

**JULIUS CHACHA KAMAU ..... 1<sup>ST</sup> RESPONDENT  
JOSEPH MAINA KARIUKI ..... 2<sup>ND</sup> RESPONDENT  
JOHN GATUNE MWANGI ..... 3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

1. In the Originating Summons dated 11-3-2025, the Applicants seek the following orders.
  - i. A declaration that the Applicants have acquired 1½ acres of L.R. Loc. 13/Gitugi/1358 which they have occupied for a period of more than 12 years in terms of sections 17 and 38 of the [Limitation of Actions Act](#).
  - iii. That the Court issues an order directing the Defendants to execute all documents and take all necessary steps to effect a transfer of 1 ½ acres of the suit land and in default, the said documents to be executed by the Deputy Registrar of this Court.
  - v. That the costs of this suit be borne by the Respondents.
2. The Applicants' case is as follows.

In the beginning, there were three brothers Kamau Karengeri, Kariuki Karengeri and Mbirwa Karengeri. Their original home was at Gaturi but they left for fear of witchcraft and settled in Gitugi



area where they were welcomed by Mzee Maina of the Irungu clan. Eventually Kariuki Karengeri and Mbirua Karengeri left Gitugi for the Rift valley and Ngutu in Mathioya. Only Kamau Karengeri remained at Gitugi where he was given land by Mzee Maina son of Irungu. Kamau Karengeri became assimilated in the family of mzee Maina son of Irungu through a traditional ceremony that involved the slaughter of several goats and consumption of traditional liquor. Mzee Maina son of Irungu gave Kamau Karengeri land. Kamau Karengeri married two wives who begat only daughters. During the state of Emergency in Kenya, he was joined by Maina Kamau who was a son of his brother, Kariuki Karengeri, who had migrated to the Rift Valley. Since Kamau Karengeri did not have a son, he adopted Maina Kamau as his son. Maina Kamau and another nephew of Kamau Karengeri by the name of Kamwaro Mbirwa inherited Kamau Karengeri. Kamwaro Mbirwa was the son of Mbirwa Karengeri, the other brother of Kamau Karengeri. Maina Kamau married Hannah Nyambura Njomo the third Applicant who is the mother to the 1<sup>st</sup> and 2<sup>nd</sup> Applicants in this case.

3. The Applicants have lived on the suit land since the year 1991 occupying 1 ½ acres thereof. They have built houses on the land and they farm thereon. Maina Kamau alias Maina Kariuki, the father of the 1<sup>st</sup> and 2<sup>nd</sup> Applicants and the husband to the third Applicant is buried on this 1 ½ acres of the suit land. Also buried on the same land is Beatrice Wanjiku Mwangi who is the wife of the 1<sup>st</sup> and 2<sup>nd</sup> Applicant's brother. Everything was alright until the death of Kamau Karengeri. After his death the Defendants started threatening to evict the Applicants. This intended eviction was halted by the High Court on 6-4-2018.
4. The Respondents got registered as the owners of the suit land through succession cause No. 652 of 2014 and failed to include the Applicants as the beneficiaries of the estate of Kamau Karengeri despite their father Maina Kariuki being included in the Chief's letter dated 19-5-2008. In the said Chief's letter, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents were not listed as beneficiaries but under unclear circumstances they became beneficiaries in the succession cause.
5. In support of their case, the Applicants filed the following evidence.
  - i. Affidavit by the 2<sup>nd</sup> Applicant dated 11-3-2025.
  - ii. Photographs of houses and crops on a parcel of land.
  - iii. Copy of burial permit for Beatrice Wanjiku Mwangi dated 24-1-2014.
  - iv. Copy of burial permit for Kariuki Maina dated 4-2-2012.
  - v. Copy of notice to vacate the suit land dated 9-3-2018 issued by the Respondents' counsel to the Applicants.
  - vi. Copy of order issued on 6-4-2018 restraining the Respondents from evicting the Applicants from the suit land.
  - vii. Copy of a letter by the Chief of Gitugi location which is faded and whose particulars are not clear.
  - viii. Joint witness statement by Benson Maina Muriithi, Wilson Kariuki Gichure, Alice Wamuyu Mwangi and Harrison Kirira Kariuki.
6. The summons is opposed by the Respondents on the following grounds. Firstly, the suit land was originally owned by Kamau Karengeri who is their grandfather. Secondly, a grant of letters of administration was issued to the 1<sup>st</sup> Respondent on 5-7-2016 in High Court Succession Cause No. 652 of 2014 at Murang'a. The same grant was confirmed on 14-7-2017. The suit land was inherited by the three Respondents. The said suit land no longer exists as it was subdivided into two portions.



Thirdly, the orders sought by the Applicants cannot be granted because the Respondents are no longer the registered owners of the land. Fourthly, the adverse possession claim by the Applicants is not merited and the same has been interrupted. Fifthly, the Respondents filed Murang'a ELC case No E009/2023 seeking orders of eviction of the 3<sup>rd</sup> Applicant and her agents from the suit land. Sixthly, on 8-8-2024, the 3<sup>rd</sup> Applicant was committed to civil jail for breach of an order of injunction by burying the remains of Julius Mwangi Njomo on the suit land contrary to court orders. In 2018, occupation was again interrupted when the Applicants were issued with the notice to vacate dated 9-3-2018. Further to this, the Applicants have not demonstrated how they have been in occupation of 1 ½ acres of the suit land and to what extent each one of them has occupied and for how long. Finally, the Applicants are contradicting themselves by claiming as dependants of the estate of the deceased as well as adverse possessors. If they were dependants of the estate of the deceased, they would have claimed L.R. Loc.13/Gitugi/786 which was inherited by Peter Kariuki Kuria for the above and other reasons, the Respondents pray for the dismissal of the originating summons.

7. In opposing the originating summons, the Respondents filed the following evidence.
  - i. Replying affidavit dated 24-4-2025.
  - ii. Copies of grant and certificate of confirmation of grant in Murang'a High Court Succession Cause No. 654/2014.
  - iii. Copy of register for L.R. No. Loc.13/Gitugi/1358 for the period 2-7-1963 to 16-1-2024.
  - iv. Copy of pleadings in Murang'a CM's Court Cause No. E009/2023.
  - v. Orders dated 9-2-2023 and 16-3-2023 issued in case No. E009/2023 (supra).
8. At the trial on 5-11-2025 the Applicants called two witnesses who included Wilson Kariuki Gichure and Peter Maina Kariuki while the Respondents called Julius Chacha Kamau. Neither side deviated from their pleaded case as already summarized in paragraphs 2,3,4,5,6 and 7 of this judgment.
9. Counsel for the parties filed submissions dated 20-11-2025. While the Applicants' counsel identified one issue for determination, the Respondents' counsel did not identify any issues but seemed to be in agreement with the Applicants' counsel in that single issue because she challenged one of the ingredients therein.

The issue for determination according to the Applicants' counsel is simply,

**Whether the Applicants have been in open, exclusive, continuous and uninterrupted occupation of the suit land for more than 12 years.**

10. While the Respondents' counsel does not dispute that the Applicants have been on the suit land for over 12 years, her main point is that for a claim for adverse possession to succeed, the Applicants must prove that their occupation of the land that they claim was without the permission of the land owner. In, this case the Applicants' claim is defeated by the fact that the person through whom the Applicants claim namely, Maina Kamau also called Joseph Maina Karuki, was a caretaker for Kamau Karengeri. Counsel urges that because the occupation was with the permission of the registered owner, then one of the key ingredients of the doctrine of adverse possession is unproved yet all the three ingredients must exist together for such a claim to succeed.
11. I have carefully considered the originating summons in its entirety including the affidavits by the parties, the witness statements, the documents and the testimony at the trial. I have also considered the written submissions by learned counsel for the parties, the issues raised herein as well as the case law. I find that the following issues arise.



- i. Whether it was proved that Maina Kamau also known as Joseph Maina Kariuki was a caretaker for the original owner of the suit land, Kamau Karengeri.
  - ii. Whether the Applicants have been in open, exclusive, continuous and uninterrupted occupation of the suit land for more than 12 years.
  - iii. Whether the Applicants are entitled to the suit land through any other lawfully recognized method.
12. On the first issue, I find no evidence at all that the late Maina Kamau also known as Joseph Maina Kariuki was ever a caretaker of the late Kamau Karengeri as relates to the suit land. The evidence in the statement by the Applicants' witnesses dated 19-4-2023 instead states that the late Maina Kamau took care of his Kamau Karengeri and not the land.

The statement reads in part.

“ After discussion with his uncle Kamau Karengeri welcomed Maina Kamau to look after his cows, sheep and also to farm the land. He Maina Kamau being the caretaker of his uncle was appreciated by Ndaewa Chege (in law of Wakarengeri) because he had no interest with the land.

Later on, Kamwaro Mbirwa returned back to his uncle and that is when Kamau Karengeri equally subdivided his land among Kamwaro Mbirwa and Maina Kamau.”

The last sentence above is clear evidence that Maina Kamau was given land by Kamau Karengeri because of taking care of him. Earlier in the witness statement, it is explained that since Kamau Karengeri did not have any sons, he was living alone and he was advancing in age. This is because all his daughters had been married. One of the daughters Damaris Wairimu married to Ndaewa Chege called her father to her homestead to take care of him. It is then that Maina kmaau came back from the Rift valley and filled in the gap by taking care of Kamau Karengeri. It should not be forgotten that Maina Kamau's father Kariuki Karengeri was a brother to Kamau Karengeri. Maina Kamau was therefore not a stranger to Kamau Karengeri but a son of his brother. The narrative of a mere caretaker is therefore not accurate.

13. There is uncontroverted evidence that the Applicants have been in occupation of 1 ½ acres of the suit land since 1991. The notice to vacate issued to the Applicants by the Respondents is dated 9-3-2018. The copy of register shows that the Respondents became registered as owners of the suit land on 26-2-18. By then, the Applicants had been on the suit land for 27 years.

It is my finding that the original entry of the Applicants to the suit land was with the consent of the original occupiers of the land. This is especially so because Maina Kamau also known as Joseph Maina Kariuki is said to be buried on the land. His burial was in February 2012. There was no objection to his burial on the suit land like was the case with the burial of Beatrice Wanjiku Mwangi in early 2014. It is not clear to me when the Respondents started opposing the Applicants occupation of the suit land. It is also not clear when Kamau Karengeri died though it was suggested by the Respondents' counsel, while cross-examining Peter Maina Kariuki on 5-11-2025, that he died in 1967. If Kamau Karengeri died in the year 1967, then it would mean that his permission to Kamau Maina to occupy the land was terminated when he died. Any occupation thereafter was without permission because the Respondents in their filed evidence said nothing about when they came up with the idea that Maina Kamau was a mere caretaker of the land and not a beneficiary of the estate of the deceased Kamau Karengeri.



14. Having found that the late Kamau Karengeri died before 1991 and that his permission given to Kamau Maina to occupy part of the suit land terminated with his death, then the subsequent occupation of the land by Kamau Maina and his family which includes the Applicants was without permission.
15. As correctly submitted by both sides, there are three ingredients to the doctrine of adverse. They were well summarized in the case of Mbira vs Gachuhi [2002] E.A 137 as follows.

“...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 statutorily prescribed period without interruption...”

I find that all the three ingredients exist in this case for the following reasons. Firstly, there is uncontroverted evidence that the Applicants have been on the suit land since the year 1991. The person through whom they claim was on the land even before it was registered in the name of Kamau Karengeri. The Applicants have filed evidence of old and rusted buildings on the suit land as well as evidence of crops on the land. The Applicants occupation of the part of the suit land has been open. This is why they buried Kamau Maina, their patriarch on the land. The Respondents have not filed any evidence to controvert this evidence. Upto the 2018, the Applicants occupation of suit was without force. Given the above circumstances, I find that the Applicants are entitled to the suit land by way of adverse possession pursuant to Sections 7,13 and 38 of the Limitation of Actions Act.

16. Coming now to the final issue, it is my finding that the Applicants are also entitled to the suit land Section 28(b) of the Land Registration Act (Act No.3 of 2012). It provides as follows.

“Unless the contrary is expressed in the register, all registered shall be subject to the following overriding interests as may for the time being subsist and effect the same, without their being noted on the register-

(b) trusts including customary trusts”.

Section 30(g) of the Registered Land act (Cap 300 now repealed) also provided that the rights of a person in possession on actual occupation of land were overriding interests and need not be noted on the register.

It is my finding that when Kamau Karengeri put Kamau Maina on the suit land and allowed him to occupy it, he created a trust which is recognized by both sections 30(g) of the Registered Land Act (Cap 300 now repealed) and Section 28(b) of the Land Registration Act.

In the case of Isack M’Inganga Kieba Vs. Isaya Theuri M’Lintari and another, the supreme Court of Kenya held that trusts as interests that override the register.

In this case, the Applicants have explained in detail the relationship between Kamau Karengeri and Kamau Maina which was that of a man and his nephew. Also explained is the crucial role that Kamau Maina played in taking care of Kamau Karengeri in his old age.

17. For the above stated reasons, I find merit in the Applicant’s originating summons dated 11-3-2025 which I allow in terms of prayers 1,3 and 5.

For the avoidance of doubt, the 1 ½ acres of what used to be Loc. 13/Gitugi/1358 occupied by the Respondents to be carved out of the said parcel and to be registered in the names of the Applicants. If



there is any person registered as the owner of the said 1½ acres, such registration is to be cancelled in so as far as it covers the land occupied by the Applicants.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 27<sup>TH</sup> DAY OF JANUARY, 2026.**

**M.N. GICHERU JUDGE.**

Delivered online in the presence of; -

Court Assistant – Jackline

Plaintiffs' Counsel – Mr Tumuti

Defendants' Counsel - Miss Kimani

