



THE JUDICIARY



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANG'A
ELCC E011 OF 2022

JAMES MUNGAI KIMANDO
PETER NGUGI KIMANDO
DANIEL KARIUKI KIMANDO
PRISCILLAH MUTHONI KAMAUPLAINTIFFS
VERSUS
PETER MURIGI NJUGUNADEFENDANT

JUDGMENT

(1) In the Originating Summons dated 24-6-2022, the Plaintiffs seek the following orders against the Respondent.

- a. The Applicants have become entitled by adverse possession to L.R. No. Loc. 14/Naaro/197, suit land.**
- b. The four (4) Applicants be registered commonly as the properties of the suit land in substitution of the Respondent.**
- c. The Chief Land Registrar enter into the said substitution under the Land Registration Act (No 3 of 2012).**
- d. The costs of this application be provided for.**

(2) The Plaintiffs' case is as follows. In the year 1989, they all settled on the suit land which measures 0.24 hectares. Prior to 26-9-2017, the suit land was registered in the name of Njuguna Kinyanjui who died in the year 1989. Since the year 1989, the Plaintiffs have utilized the land in their own right, built dwelling houses and cultivated the remainder of the land. The Defendant/Respondent is unknown to the Plaintiffs and he has never worked on the land. To the best of the Plaintiffs' knowledge, the Defendant lives in Murang'a County. The name of Njuguna Kinyanjui should be cancelled and replaced with the names of the four Plaintiffs.

- (3) In support of the case, the Plaintiffs filed an amended joint supporting affidavit dated 17-8-2023 and a copy of certificate of official search dated 10-11-2025 which shows that Njuguna Kinyanjui was registered as the proprietor of the suit land on 26-8-1965 and the title deed was issued on 25-4-1996.
- (4) The suit proceeded ex parte because the Respondent/Defendant, Peter Murigi Njuguna though served on 12-7-2022 did not file any defence or replying affidavit.
- (5) At the trial on 5-11-2025, the 1st Plaintiff James Mungai Kimando testified by adopting the two affidavits on record dated 24-6-2022 and 17-8-2023 respectively as the Plaintiffs' evidence. The Plaintiffs' counsel did not file any written submissions.
- (6) The only issue for determination is simply whether the Plaintiffs have proved on a balance of probabilities that they are entitled to the suit land by way of adverse possession.
- (7) I have carefully considered the evidence adduced by the Plaintiffs which includes the two affidavits on record and the copy of certificate of official search. I find the case against the Respondent not proved to the required standard of margin of probabilities for the following reasons.
- (8) Firstly, the relationship between the registered owner of the suit land, Njuguna Kinyanjui and the Defendant/Respondent is not explained anywhere in the pleadings or in the evidence on record. The exact relationship between the deceased owner of the suit land and the Defendant ought to have been disclosed. Secondly on this issue, it is trite law that a personal representative of the estate of the deceased cannot sue unless and until they have been issued with a grant. See Section 82 of the Law of Succession Act. Conversely, only lawfully appointed personal representatives of deceased parties can be sued.
- (9) Secondly, the Plaintiffs are not convincing as to how they came to enter the suit land. They have not given any details or content of their occupation of the suit land. In most cases, there is an element of a sale and payment of purchase price by the person seeking to be declared an

adverse possessor. In other cases, the person seeking to be declared an adverse possessor is a caretaker of an owner who disappears without trace.

In this case, there is nothing at all to explain how the occupation started. It would seem that the occupation coincided with the death of the deceased owner. This is because the deceased owner is alleged to have died in 1989 and also in 1990 and the occupation is also said to have occurred in 1989. The question that arises here is whether the occupation occurred with the knowledge of the deceased or the Plaintiffs decided to unlawfully occupy the land of a deceased person.

- (10) The Plaintiffs are not convincing in their evidence about the Respondent. I find contradiction between what is deponed in paragraph 3 of the affidavit of service dated 18-7-2022 and filed in Court on 16-3-2023 and what is deponed in paragraphs 8 of the affidavits sworn by the Plaintiffs on 24-6-2022 and 17-8-2023 respectively.

In paragraph 8 of the Plaintiffs' affidavit it is stated as follows.

8 “ That the Respondent is unknown to us and have (sic) never worked on the land parcel described. To the best of our own language, the Respondent live(sic) in Murang’a County”.

At Paragraph 3 of the affidavit of service, the process server, Peter Ngei Kimatu, had this to say.

3. “ That on the same date at around 2.30pm accompanied by the 1st Plaintiff, we proceeded to Ng’araria location within Kandara sub location in Murang’a County where the Defendant resides and on arrival, the Plaintiff pointed to me the Defendant and I introduced myself...”

In one affidavit the 1st Plaintiff says that Defendant is unknown to him and his Co-Plaintiffs while in the other one, the process server says that the 1st Plaintiff knew the Defendant. Why do the Plaintiffs lack consistency if they are being truthful? This inconsistency only serves to create doubt in their case.

- (11) Fourthly, the Plaintiffs have contradicted themselves on the exact time the registered owner of the suit land died. At paragraph 4 of the joint supporting affidavit, it is deponed as follow.

“...This Njuguna Kinyanjui died sometimes (sic) in 1989.”

At paragraph 9 of the same affidavit it is deponed as follows.

“... the said Njuguna Kinyanjui has been deceased since sometime early year 1990.”

Did he die in the year 1989 or the year 1990?

This inconsistency again raises the question of the credibility of the evidence adduced by the

Plaintiffs.

- (12) Finally, the Plaintiffs have not filed even a single photograph of the developments that they have made on the land or any other such evidence. They have not called any evidence of an independent witness like a neighbour to prove their occupation and how their original entry looked like.

For the above stated reasons, I find that the Plaintiffs’ claim is not proved to the required standard. I dismiss the Plaintiffs’ suit. No order as to costs.

It is so ordered.

Dated, signed and Delivered virtually at Murang’a this 3rd day of February, 2026.

**M.N. GICHERU
JUDGE.**

Delivered online in the presence of; -
Court Assistant – Njonjo
Plaintiffs’ Counsel – Miss Wanjiru h/b