



THE JUDICIARY



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANG'A
ELCLOS E009 OF 2024

MOSES MWANGI GITAU.....APPLICANT
VERSUS

PETER KARANJA MWANGI1ST RESPONDENT
JOHN KANYUTU MWANGI2ND RESPONDENT

JUDGMENT

- 1) In the Originating Summons dated 20-5-2024, the Applicant seeks the following reliefs against the two(2) Respondents.
 - (i) That the Applicant has by way of adverse possession acquired title of 0.6 acres out of L.R. No. Loc.7/Ichagaki/5151, suit land, being a resultant of L.R. No. 7/Ichagaki/645 and 0.6 acres out of the suit land be registered in the name of the Applicant.
 - (ii) That the Land Registrar Murang'a be ordered to transfer 0.6 acres out of the suit land to the Applicant.
 - (iii) That the Deputy Registrar of this Court to sign application for Land Control Board, transfer documents and any other applications and documents necessary to facilitate transfer of 0.6 acres out of the suit land to the Applicant.
 - (iv) That the Court to order the Land Registrar to dispense with the production of the original title deed for the suit land when registering the decree of this Court for the transfer of the 0.6 acres.
 - (v) That the OCS Maragua Police Station to supervise the execution of the decree.
 - (vi) That the Respondents do pay the costs of the suit.

2) The Plaintiff's case is as follows. Firstly, on 5-2-1998 he bought 0.6 acres out of L.R. No.Loc.7/Ichagaki/645 from Lydia Wanjiku Mwangi who owned part of the land which measured 10.1 acres. The total purchase price was Kshs. 60,000/=. He paid the full purchase price to the seller. Secondly, Lydia Wanjiku Mwangi did not own the entire 10.1 acres. She was expecting to be given a share of the land by Njeri Karanja who is deceased. Vide Murang'a Land Disputes Tribunal Case No. 34 of 1998, Lydia Wanjiku Mwangi was awarded 3.0 acres of the L.R. No. Loc.7/Ichagaki/645. Others who got 3 acres were Mary Wambui Mwangi and Monica Njeri Mwangi while John Kamande Ngugi got 1.0 acres. This award of the Land Disputes Tribunal was upheld by the Appeals Committee vide a decision dated 13-10-1999. Thirdly, the Applicant occupied the suit land upon payment of the first installment and has been in occupation of the 0.6 acres of the suit land since then. Fourthly, the Respondents filed a Succession Cause at Nyeri in which they failed to disclose to the Court that the Applicant was in occupation of 0.6 acres that he bought from Lydia Wanjiku Karanja yet the Applicant has trees and food crops on the land.

3) In support of the case, the Applicant filed the following evidence.

- (i) Supporting affidavit dated 20-5-2024.**
- (ii) Copy of agreement for sale of the suit land.**
- (iii) Copy of the award in Tribunal case No. 34 of 1998.**
- (iv) Copy of judgment in Appeal No. Maragua 22/99.**
- (v) Copy of certificate of official search for the suit land dated 30-4-2024.**
- (vi) Copy of certificate of death for Njeri Karanja.**
- (vii) Copy of witness statement by the Applicant dated 20-5-2024.**
- (viii) Coloured photographs**
- (ix) Other relevant documents**

4) The Respondents, though served with the originating summons, the supporting affidavit and annexures on 4-6-2024 at Kanyai village in Ichagaki did not file any response to the Originating Summons. Their counsel on record did not file any defence despite promising to do so. He caused the case to be adjourned on 15-5-2025 promising to file his response but never did so. He again caused the case to be adjourned on 23/7/2025 and without showing any remorse wished to adjourn the case again on 2-12-2025 which application was not allowed.

5) At the trial on 2-12-2025, the Plaintiff testified by adopting his evidence on record and reiterating what is stated in paragraph [2] of this judgment. The Plaintiff's counsel was to file written submissions but I do not see any on record.

6) I have carefully considered all the evidence by the Plaintiff in this case and I find that the following issues arise.

(i) **Whether the Plaintiff has satisfied the three ingredients of adverse possession.**

(ii) **Whether the Plaintiff paid the agreed amount of Kshs 60,000/=.**

(iii) **Whether the Plaintiff is entitled to 0.6 acres or less.**

7) On the first issue, the applicable law is Section 7 of the Limitation of Actions Act which provides as follows.

“ An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued.”

In this case, I find that the Applicant has been in occupation of the suit land since the date of the sale agreement which was 5-2-1998. At that time, the Applicant's occupation was with the permission of the seller, Lydiah Wanjiku Mwangi but since her death on a date which is not disclosed , the Respondents did not want him on the land and that is when time started running. Since the Nyeri Succession Cause was filed in Nyeri before Murang'a High Court was established in 2012, it then means that the period the filing of the Nyeri Succession Cause and this suit is more than 12 years. Filing the Nyeri suit without involving the Applicant is a clear indication that the Respondents did not want the Applicant on the land. By virtue of **Section 17 of the Limitation of Actions Act**, the Respondents title, if they be the heirs of Lydiah Wanjiku Mwangi, became extinguished.

I find that the Applicant has been in actual, open and exclusive possession of 0.6 acres of the suit land. I also find that the possession of the land by the Applicant was adverse possession and inconsistent with the rights of the registered owner.

- 8) Regarding the second issue, I find that there is no proof that the Applicant paid the purchase price in full. According to the sale agreement of 5-2-1998, Kshs. 5000/= was to be paid after subdivision and Kshs. 5000/= was to be paid on transfer. There is no evidence that there was payment of this amount of Kshs. 10,000/= since there was no subdivision or transfer of the land as agreed. It is my finding that the Applicant only Kshs. 50,000/= out of the agreed Kshs. 60,000/= purchase price. Accordingly on the third issue, I find that the Applicant is not entitled to the 0.6 acres that he seeks but only 0.5 acres which is commensurate with the amount paid in 1998.
- 9) Consequently and for the reasons given I enter judgment for the Applicant against the Respondents as follows.
1. **A declaration is hereby made that the Applicant has acquired title to 0.5 acres of L.R. No. Loc.7/Ichagaki/5151 by adverse possession pursuant to Sections 7, 17 and 38 of the Limitation of Actions Act.**
 2. **The Respondents' title to the said 0.5 acres of Loc. 7/Ichagaki/5151 is hereby declared extinguished.**
 3. **The Land Registrar Murang'a is directed to cancel the title to the 0.5 acres occupied by the Applicant and register the same in the Applicant's name.**
 4. **If any instruments are required to partition, transfer and register the 0.5 acres awarded to the Applicant, the Deputy Registrar of this Court is authorized to execute such instruments to give effect to the judgment and decree herein.**
 5. **Costs of the suit to the Applicant.**

It is so ordered.

Dated, signed and Delivered virtually at Murang'a this 16th day of February, 2026.

**M.N. GICHERU
JUDGE.**

Delivered online in the presence of: -

Court Assistant – Mwangi Njonjo
Applicants’ Counsel – Mr T.M. Njoroge
Respondent’s Counsel – Mr Okebiro