

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA

ELCOS NO E003 OF 2025

CHARLES MUNYAKA KAIRU.....1ST
PLAINTIFF

GEORGE KINUTHIA KAIRU.....2ND
PLAINTIFF

VERSUS

KINARI GATUKUI
DEFENDANT

JUDGMENT

In an Originating Summons dated 6/3/2025, the Applicant made the following prayers: -

1. A Declaration be issued that the Applicants are entitled by virtue of the doctrine of adverse possession to be registered as the sole and absolute proprietors of L.R NO NYANDARUA / WANJOHI/276 measuring 2.7. Hectares.
2. An Order that the Applicants be so registered as absolute proprietors of the parcel of land No. NYANDARUA / WANJOHI /276 and the Deputy Registrar of this Honourable Court be authorized to execute and sign all the necessary transfer

documents to facilitate the registration of the Applicants thereof as proprietors.

3. That the costs of the suit be awarded to the Applicants.

The Applicants anchored their suit on the grounds that:

1. Vide an agreement executed in 1966, the Respondent Kimari Gatukui sold the suit land to their late father, Francis Kairu Njau.
2. The Respondent subsequently attended the Land Control Board on 18/2/1988 and consented to the transfer of the land.
3. The Applicant's father and his family immediately took possession of the land in 1966.
4. The Applicants have been on the land in actual, continuous, exclusive and notorious possession since then without any interference whatsoever.
5. They have effected development thereon.
6. On 19/8/1987, the Respondent was registered as the owner of the suit land.

The Applicants are joint Administrators of the Estate Francis Kairu Njau pursuant to a Grant of Letters as Administrators issued in Limuru Senior Principal Magistrate Succession Cause No. 176 of 2018 on 17/6/2019.

The late father of the Respondent appeared before the Settlement Fund Trustees in 1968 for transfer together with the Applicants' father. The Applicants also in their Affidavit in support of the summons deponed on 6/3/2025 that they and their father have repaid the loan to the Trustees in full and were issued with a Discharge of Charge as well as the transfer on 7/2/2018 but on presentation of the Document at the Registry for registration they learnt that the Respondent had preceded them. It is now over 38 years since the Applicant settled on the suit land and there have never been any effort to remove them.

Having failed to trace the Respondent, the Applicant sought and obtained leave from this Court to serve him with summons to enter appearance by substituted service which service was effected on Tuesday, the 18th of November, 2025 in the *Daily Nation* and even then there was no response from the Respondent which necessitated this Court to commence the Hearing of the suit on 9/12/2025.

The first Applicant, Charles Maina Kairu took to the Witness Stand and testified by adopting their joint Affidavit sworn on 6/3/2025 as well as his Statement of even date which Statement is a duplication of the Supporting Affidavit cited above.

He also added that his father bought the land from the Respondent's late father Kimairi Gatukui for Kshs. 6,800/- in 1966.

In support of the case, the 1st Applicant produced the following Documents:

7. The Grant of Letters of Administration from the Senior Principal Magistrate's Court at Limuru in Succession Cause No. 176 of 2018 as proof that both Applicants obtained the representation of their father's Estate, Francis Kairu Njau alias Francis Kairu Njau's Estate on 10/4/2019. His father died at Tharuni on 9/2/2017.
8. Recommendation to transfer the suit land from one Kimani Gatukui of plot No. 276 to Francis Kairu Njau the reason being that the said Gatukui was unable to pay the outstanding loan. The letter is dated 22/7/1966 from the Chief, Wanjohi location to the settlement officer Kipipiri and is copied to the District Officer.
9. The transfer of the land from Kimani Gatukui in favour of Francis Kairu Njau, consideration being Kshs. 6,800/= . The transferor appeared and signed the transfer before the Settlement Officer on 8/3/1968. It is also indicated in the transfer that the letter of allotment was dated 22/7/1968.
10. The transfer executed before the Settlement Officer Wanjohi Settlement Scheme dated 26/10/1968.
11. The letter of Consent dated 18/2/1968 from the Kipipiri Land Control Board referring to the Application for Court dated 25/1/1968 with Kimani Gatukui being the transferor and

Francis Kairu Njau being the Transferee. It indicates the consideration as Kshs. 6,800/=.

12. The Applicants have also attached a copy of Title Abstract for the suit land showing that the land was first registered in the name of Settlement Fund Trustees of P.O Box 30450, Nairobi on 11/4/1986 and then transferred to Kimari Gatukui holder of ID. No. 5165372/68 of Box 300, Oljabet for Kshs. 2,000/-on 19/8/1987 and then a charge was registered in favour of S.F.T. on the same day.
13. The Discharge of Charge dated 7/2/2018 in favour of the Applicants' father, Francis Kairu Njau.
14. Transfer in favour of the late Francis Kairu Njau dated 7/2/2018.
15. Certificate of Confirmation of Grant in respect to the Estate of Francis Kairu Njau showing that the suit land should be shared between his 2 houses equally with the 2nd Applicant holding the 1st house's share on behalf of his siblings and the 1st Applicant to hold the other half on behalf of his siblings from the 2nd house.
16. A letter dated 21/2/2019 from the chief, Wanjohi location confirming that the family of Francis Kairu Njau has been in occupation of the suit land and another one dated 14/11/2024.

17.The repayment schedule of the loan in respect to the suit land from Settlement Fund Trustees dated 30/6/2017.

With the above evidence, it is disgraceful and discomfiting to note that the Respondent still went ahead to obtain the Title Deed to the suit land and nothing short of fraud would have made this a reality.

I therefore find in favour of the Applicants in respect to their prayers in the summons dated 6/3/2025. I also find that this is a suit that ought to have been filed as an ordinary suit seeking the cancellation of the Title Deed under Section 80 of the Land Act and rectification to read the names of both Applicants in equal shares on behalf of their respective houses of the late Francis Kairu Njau who died on 9/2/2017 which I hereby do. And for the benefit of doubt, the suit land i.e. L.R. NO. NYANDARUA/WANJOHI/276 measuring 2.7. Hectares shall be shared equally between the 2 houses with the 2nd Applicant holding the 1st house's share on behalf of his siblings and the 1st Applicant to hold the other half on behalf of his siblings from the 2nd house.

The costs of this suit to the Applicants shall be borne by the Respondent.

Judgment dated, signed and delivered at Nyandarua this 19th Day of February, 2026.

**MUGO KAMAU
JUDGE**

In the Presence of: -

Court Assistant: Samson.

Applicant's Counsel: Mr. Kamanga.

Respondent's Counsel: N/A.