



Kioni v Kimotho & another (Enviromental and Land Originating Summons E002 of 2023) [2026] KEELC 754 (KLR) (12 February 2026) (Judgment)

Neutral citation: [2026] KEELC 754 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E002 OF 2023
JA MOGENI, J
FEBRUARY 12, 2026
IN THE MATTER OF THE LAND ACT NO. 6 OF 2012 AND THE
LAND REGISTRATION ACT NO. 3 OF 2012 LAWS OF KENYA
AND
IN THE MATTER OF KIGANJO/KIAMWANGI/T.131
IN THE MATTER OF THE LIMITATIONS ACT (CAP22) LAWS OF KENYA

BETWEEN

GEORGE KAHUGU KIONI APPLICANT

AND

SAMUEL KARANJA KIMOTHO 1ST RESPONDENT

JOSEPH NDUNGU KIMOTHO 2ND RESPONDENT

JUDGMENT

IN THE MATTER OF THE *LAND ACT* NO. 6 OF 2012 AND THE *LAND REGISTRATION ACT* NO. 3 OF 2012 LAWS OF KENYA

AND

IN THE MATTER OF KIGANJO/KIAMWANGI/T.131

IN THE MATTER OF THE LIMITATIONS ACT (CAP22) LAWS OF KENYA

GEORGE KAHUGU KIONI.....APPLICANT

VERSUS

SAMUEL KARANJA KIMOTHO.....1ST RESPONDENT

JOSEPH NDUNGU KIMOTHO.....2ND RESPONDENT



JUDGMENT

1. The Applicant George Kahugu Kioni in his capacity as Administrator of the Estate of the late Jennifer Gikui Kioni moved this Court by way of an Originating Summons (OS) dated 31/07/2023, seeking a declaration that they have acquired title to the property known as KIGANJO/KIAMWANGI/T.131 (hereinafter "the suit property") by way of adverse possession. The Applicant contends that they have occupied the land for a period exceeding twelve (12) years, openly, peaceably, and as of right, thereby extinguishing the Respondent's title under the Limitations of Actions Act (Cap 22).
2. The OS is anchored on Sections 37 and 38 of the *Limitation of Actions Act* (Cap 22) of the Laws of Kenya and Order XXXVI Rule 3D & 3F of the Civil Procedure Rules. The Applicant seeks the following orders:
 1. THAT the Applicant has for a period in excess of Twelve years been in adverse possession of all that parcel of land comprised in the Title Number KIGANJO/KIAMWANGI/T.131 situate in Kiamwangi, Gatundu and comprising by measurement Naught Decimal Two (0.22) acres or thereabouts, and consequently the 1st and 2nd Respondents' title thereto in respect of the said parcel of land has been extinguished by virtue of Section 17 of the *Limitation of Actions Act* (Cap 22) Laws of Kenya.
 2. THAT the Applicant be registered as the proprietor of the said parcel of land namely LR NO. KIGANJO/KIAMWANGI/T.131 in place of the Respondents in whose favour the land is currently registered.
 3. THAT the Deputy Registrar of this Honorable Court be authorized to sign, execute and/or endorse such papers/documents/instruments as would be necessary to effect the transfer of the property known as KIGANJO/KIAMWANGI/T.131 to the Applicant.
 4. THAT an inhibition order to issue against the Respondents prohibiting any transfer, transmissions, alienations or any disposition of any interest or dealing in any other manner in the land comprised in Title No. KIGANJO/KIAMWANGI/T.131.
 5. That the Respondents pay the costs of this suit.

The Applicant's Case

3. The Applicant's claim is anchored on the fact that he testified in Court on 21/10/2024 that his mother and father, brother and sister-in-law were buried on the suit property this is testament that they reside on the said property. To support this claim, he produced photographs showing the graves of the people mentioned.
4. The Applicant also annexed as annexure 'GKK1' which are copies of photographs of developments together with the burial site. According to the Applicant the parcel of land is their residential home where they have been residing since 1982. The photographs show permanent houses constructed on the suit property which is evidence showing that these houses have served as the Applicant's primary residence for over 41 years without interruption.
5. Perhaps most significantly, the Applicant provided evidence of the graves of their parents located on the suit property. They argue that the burial of family members is the ultimate "act of ownership" and a clear indicator of the intent to occupy the land permanent, animus possidendi.

The Respondent's Opposition



6. Despite being served vide substituted service in the Daily Nation dated 29/08/2024 supported by the Affidavit of Service sworn on 9/12/2024 the Respondents did not file any response. Therefore, the Originating Summons Application for adverse possession is unopposed.

Court's Analysis and Findings

7. The legal doctrine of adverse possession allows a person to claim legal title to land if they have occupied it for a continuous period of at least 12 years under specific conditions that exclude the rights of the registered owner.
8. To succeed in a claim for adverse possession, the Applicant must satisfy the Court on the principle of *Nec vi, Nec clam, Nec precario* meaning they entered the suit property without force, without secrecy and without permission.
9. Under Section 7 of the *Limitation of Actions Act*, no action may be brought by any person to recover land after the expiry of twelve years from the date on which the right of action accrued. The Court finds that the Applicant has lived on the land since 1982 which is well beyond the statutory limit.
10. The ingredients to be proved in a claim for adverse possession are settled both in Statute and case law. In the case of *Mbira Vs Gachuhi (2002) 1EALR 137* it was held that;

“... a person who seeks to acquire title to land by method of adverse possession or 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 statutory period without interruption.”
11. The Court takes judicial notice that burial of family members on the suit property and construction of houses are overt acts of possession. Indeed, the presence of graves carries particular weight.
12. The burial of kin on a piece of land is a profound manifestation of an occupant's belief that the land is their own. It is a permanent and visible assertion of right that any registered owner should have noticed and challenged if they intended to protect their title.
13. At the same time whereas the Applicant annexed a copy of the Green Card which proves the identity of the owner of the suit property, he also buttressed the claim by presenting copies of pictures that provide evidence of physical presence on the suit property.
14. It is therefore obvious that the Applicant has demonstrated a clear intention to exclude the world at large, including the paper owner. The development of a home and the consecration of the land through burials are not the acts of a temporary licensee, but of a person claiming the land as their own. Thus, the doctrine of *animus possidendi* cannot be denied.

Final Orders

15. Having evaluated the evidence, the Court finds that the Applicant has established their case on a balance of probabilities. The Respondents' right to the land has been extinguished by the operation of law.
16. Accordingly, the Court hereby orders:
 - i. That since the Applicant has for a period in excess of Twelve years been in adverse possession of all that parcel of land comprised in the Title Number KIGANJO/KIAMWANGI/T.131 situate in Kiamwangi, Gatundu and comprising by measurement Naught Decimal Two (0.22) acres or



thereabouts, consequently the 1st and 2nd Respondents' title thereto in respect of the said parcel of land has been extinguished by virtue of Section 17 of the Limitation of Actions Act (Cap 22) Laws of Kenya.

- ii. The Court directs that the Applicant be registered as the proprietor of the said parcel of land namely LR No. KIGANJO/KIAMWANGI/T.131 in place of the Respondents in whose favour the land is currently registered.
- iii. The Land Registrar is hereby authorized to sign, execute and/or endorse such papers/documents/instruments as would be necessary to effect the transfer of the property known as KIGANJO/KIAMWANGI/T.131 to the Applicant failure to which the Deputy Registrar of this Honorable Court will execute the necessary papers to facilitate the necessary transfer.
- iv. An inhibition order is hereby issued against the Respondents prohibiting any transfer, transmissions, alienations or any disposition of any interest or dealing in any other manner in the land comprised in Title No. KIGANJO/KIAMWANGI/T.131.
- v. Each party to bear their own costs of this suit.

DATED, SIGNED AND DELIVERED IN THIKA VIA MICROSOFT TEAMS THIS 12TH DAY OF FEBRUARY 2026.

.....

MOGENI J

JUDGE

In the presence of:

.....Applicants1st
Respondent

.....2nd Respondent

Melita.....Court Assistant

.....

MOGENI J

JUDGE

ELCL NO. E002 OF 2023 3 | Page

