



**Kioni v Kibe (Environmental and Land Originating Summons
E003 of 2023) [2026] KEELC 783 (KLR) (12 February 2026) (Judgment)**

Neutral citation: [2026] KEELC 783 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E003 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.197

IN THE MATTER OF THE LIMITATIONS ACT (CAP. 22) LAWS OF KENYA

BETWEEN

GEORGE KAHUGU KIONI APPLICANT

AND

NJUGUNA KIBE 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.197 (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.197 situate in Kiamwangi, Gatundu and comprising by measurement Naught Decimal Two Five (0.25) acres



or thereabouts, and consequently the Respondent's 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.197 in place of the Respondent 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.197 to the Applicant.
4. That an inhibition order to issue against the Respondent 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.197.
5. That the Respondent pay the costs of this suit.

The Applicant's Case

3. The Applicant's claim is supported by the Affidavit of George Kahugu Kioni sworn on 31/07/2025 and a Further Affidavit sworn on 26/05/2025. Further the Applicant also corroborated his evidence when he testified in Court during the hearing of the matter on 21/10/2025.
4. He told the Court that the late Jennifer Gikuyo Kioni his mother as late as 1967 had placed a caution over the suit parcel claiming entitlement by virtue of her occupation.
5. He further deposes that the suit parcel forms part together with others their residential home with huge developments on the same and that both their parents are buried there.
6. That whereas they had always known the land to be their home, it was not until his mother died and they commenced succession proceedings and they visited the lands office and obtained the Green Card that they learnt that the Respondent was the registered owner of the suit parcel and that he was issued with a title deed a few years before his mother had place a caution on the land.
7. It is his testimony that he does not know the Respondent as he has not at any time appeared to claim the land which they have occupied peacefully since they were young and still they stay on the suit property.
8. He deposes that he has filed all requisite documents and he seeks the Court orders to assert ownership of Jenifer Gikui Kioni over the suit property and thereby make orders to the effect that the Applicant be registered as the proprietor of Land Parcel No. Kiganjo/Kiamwangi/T.197 situate in Kiamwangi Gatundu.

The Respondent's Opposition

9. 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 Respondent did not file any response. Therefore, the Originating Summons Application for adverse possession is unopposed.

Court's Analysis and Findings

10. 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.



11. 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.
12. The ingredients to be proved in a claim for adverse possession are settled both in Statute and case law. In the case of *Mbira v 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”.
13. Based on the uncontroverted evidence presented by the Applicant, the Court noted that the Applicant proved residence on the property since 1982 totaling approximately 41 years. This significantly exceeds the 12-year statutory threshold.
14. The possession was characterized as *nec vi, nec clam, nec precario* (without force, without secrecy and without permission). At the same time the Applicant produced photographs of development on the land where there are houses constructed and farming as per annexure ‘GKK1’.
15. Despite being served via substituted service the Respondent failed to enter appearance or file a Replying Affidavit.
16. The period prescribed by the *Limitation of Actions Act*, Cap. 22 for one to acquire legal title over land in Kenya by way of adverse possession is twelve (12) years.
17. According to Halbury's Laws of England, 4th Edition, Volume 28, paragraph 768, no right to recover land accrues unless the land is in the possession of some person in whose favour the period of limitation can run. What constitutes such possession is a question of fact and degree. Time begins to run when the true owner ceases to be in possession of his land.
18. To constitute dispossession, the acts must have been done which are inconsistent with the enjoyment of the soil by the person entitled for the purposes for which he had a right to use it, thus the term “adverse”.
19. Section 38(1) of the *Limitation of Actions Act* provides that where a person claims to have become entitled by adverse possession to registered land, he may apply to the High Court for an order that he be registered as the proprietor of the land in place of the person then registered as proprietor of the land.
20. Order 37 Rule 7 of the Civil Procedure Rules, 2010 on the other hand provides that an Application under Section 38 of the *Limitation of Actions Act* shall be made by Originating Summons and the Summons shall be supported by an Affidavit to which a certified extract of the title of the land in question has been annexed.
21. The above provisions lend credence to one conclusion; an order of adverse possession can only be made against a Respondent who is registered as an owner of land. (See *Wasui v Musumba* (2002) KLR 396).
22. It therefore follows that the party claiming for the relief of adverse possession must prove by producing in evidence that the Respondent is the registered proprietor of the suit property.
23. The production of the title or a certified extract of the title, in my view, can either be by way of an Affidavit or during the hearing of the viva voce evidence. What is critical is that at the end of the trial,



the Plaintiff must place before the Court a title document or a certified copy of the extract of the title to prove that the person he has sued is the registered owner.

24. In the instant case the Applicant produced in evidence a certified copy of the Green Card in respect to the suit property which shows that it is registered in the name of the Respondent. This fact has not been denied by the Respondent. Consequently, the failure to annex a certified extract of the Respondent's title on the Supporting Affidavit is not fatal to the Applicant's Originating Summons.
25. When a title deed is not available or has been lost by the owner, the Green Card (the official, historical registry record) is considered the best evidence of who the registered owner is. Thus, an adverse possession claim requires identifying the specific owner whose title is to be extinguished. The Green Card lists the legal proprietor against whom the claim is being made. It shows the history of the land, helping to verify that the claimant's occupation was not based on a lease or formal agreement with the owner. At the same time, it provides the accurate parcel number, size and history of transactions (e.g. transfers, encumbrances).
26. In *Wambugu v Njuguna* (1983) KLR 173, the Court of Appeal held as follows:

“For an order to acquire by the statute of limitations title to land which has a known owner, that owner must have lost his rights to the land either by being dispossessed of it or by having discontinued his possession of it. Dispossession of the proprietor that defeats his title are acts which are inconsistent with his enjoyment of the soil for the purpose of which he intended to use it. The proper way of assessing proof of adverse possession would then be whether or not the title holder has been dispossessed or has discontinued his possession for the statutory period and not whether or not the claimant has proved that he has been in possession of the requisite number of years.”
27. The case of *Mtana Lewa v. Kahindi Ngala Mwangandi* [2015]eKLR establishes the Triple Test on matters of adverse possession which require that one proves Factual Possession, Animus Possidendi and Non-Consensual.
28. The Court takes judicial notice that the triple test has been met since the Applicant proved physical control of the land and this was established by 41 years of residence and permanent buildings.
29. For the second test the Applicant proved this by showing intention to exclude the world at large, including the owner. This is demonstrated by the pictures showing the land has been fenced, building have been put up and the land is being farmed.
30. The last test has been shown through occupation which is without the owner's license/permission and the Respondent's silence and the Applicant's open occupation.
31. Therefore, under Section 17 of the *Limitation of Actions Act*, once the 12-year period lapses, the title of the registered proprietor is extinguished by operation of law.

Final Orders:

32. Given that the suit is unopposed and the Applicant has met the evidentiary threshold for adverse possession, the Court's decision effectively grants the prayers sought.
33. 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.197 situate in Kiamwangi, Gatundu and comprising by measurement Naught Decimal Two Five (0.25)



acres or thereabouts, consequently the Respondent's 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.197 in place of the Respondent 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 LR No. Kiganjo/Kiamwangi/T.197 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 Respondent 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.197.
- v. Each party to bear their own costs of the suit.

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

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**MOGENI J
JUDGE**

In the presence of:

.....ApplicantRespondent

Melita.....Court Assistant

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**MOGENI J
JUDGE**

