



**Machari (Sued as the legal representative of the Estate of Agnes Njeri Macharia)
v Kungu & 2 others (Sued in the capacity as the legal representative of the
Estate of Murebu Mwangi Kamotho) (Land Case (Originating Summons)
E023 of 2025) [2026] KEELC 737 (KLR) (16 February 2026) (Ruling)**

Neutral citation: [2026] KEELC 737 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
LAND CASE (ORIGINATING SUMMONS) E023 OF 2025**

MN GICHERU, J

FEBRUARY 16, 2026

BETWEEN

**JACKSON KARIU MACHARI (SUED AS THE LEGAL REPRESENTATIVE OF
THE ESTATE OF AGNES NJERI MACHARIA) APPLICANT**

AND

SUSAN NYAMBURA KUNGU 1ST RESPONDENT

CHARITY WANJIRU NJOKI 2ND RESPONDENT

JULIUS MUTHINJI MWANGI 3RD RESPONDENT

**SUED IN THE CAPACITY AS THE LEGAL REPRESENTATIVE OF THE
ESTATE OF MUREBU MWANGI KAMOTHO**

RULING

1. The Applicant seeks the following reliefs against the Respondents.
 - i. That the Applicant has by way of adverse possession acquired 0.67 acres out of Land Parcel No. Loc.12/Sub-Loc.4/192 and the suitland be registered in the name of Jackson Kariu Macharia.
 - ii. That the Land Registrar Murang'a be ordered to transfer 0.67 acres out of the suitland.
 - iii. That the District Land Surveyor be ordered to survey the suit land and undertake the requisite steps that the land is surveyed and transfer 0.67 acres out of the suit land within 30 days from the date of judgment.



- iv. That the Deputy Registrar of this Court do sign the application for the consent of the Land Control Board, transfer documents and any other applications and documents necessary to facilitate the transfer of 0.67 acres out of the suit land to the Applicant.
 - v. That the Respondents do pay the costs of this suit.
 2. The Plaintiffs' case is as follows. Firstly, he is the son of the late Agnes Njeri Macharia and he was appointed as the legal representative of her estate in Murang'a Succession Cause No. 53 of 2016. Secondly, in the year 1987, his mother leased a portion of the suit land from Murebu Mwangi Kamotho and later on 15-2-1988 the Applicant's mother entered into a sale agreement with the late Murebu Mwangi Kamotho for the purchase of 0.67 acres of the suit land. On 7-8-1988 the purchase price was paid in full to the registered owner and he acknowledged receipt. The Applicant took possession of the suit land immediately after the execution of the sale agreement on 15-2-1988. The Applicant has been in occupation of the suit land and he has developed it substantially. He has been in continuous and uninterrupted possession since then. Thirdly, the land is registered in the name of Murebu Mwangi Kamotho as per the certificate of official search dated 5-5-2025. Finally, the registered owner who has no wife or children disappeared from home on 27-10-2017 and he has never been traced since then. He went missing before he could transfer the 0.67 acres to the Applicant.
 3. In support of his case, the Applicant filed the following evidence.
 - i. Supporting affidavit dated 11-5-2025.
 - ii. Copy of limited grant dated 5-4-2016 issued in Murang'a HCC Succession cause No. 53 of 2016.
 - iii. Copy of certificate of official search dated 5-5-2025.
 - iv. Copy of sale agreement dated 15-2-1988.
 - v. Copy of agreement dated 7-8-1988.
 - vi. Copy of letter by Chief of Iyego location dated 10-2-2025.
 - vii. Four photographs showing a man in a piece of land with sweet potatoes vines, bananas and grevillea trees growing thereon together with two houses on the same land.
 4. In an affidavit of service, the process server, Boniface Ng'ang'a Ngaara states that he served the three Respondents on 16-5-2025 at Mundika village in the preserve of Eliud Mbuthia, a village community policing elder with the originating summons, the supporting affidavit and annexures. The Respondents who are said to be the Children of the brother of the registered owner of the suit land did not file any response to the originating summons. The suit proceeded as undefended.
 5. At the trial on 2-12-2025, the Plaintiff testified by adopting his supporting affidavit and annexures as his evidence.
 6. I have carefully considered the evidence adduced by the Applicant in this case. I find that the following issues arise.
 - i. Whether the Applicant has satisfied the three ingredients of adverse possession.
 - ii. What reliefs is the Plaintiff entitled to.
 7. On the first issues, I find that the Plaintiff has proved all the three ingredients of adverse possession to the required standard. He has proved that he has been on the suit land for more than 12 years since



the late eighties. The occupation has been open and continuous. Ordinarily under Section 8(1) of the Land Control Act, Cap 302 Laws of Kenya, the consent of the Land Control Board must be obtained within six months of the sale agreement. It provides as follows.

“An application for consent in respect of a controlled transaction shall be made in the prescribed form to the appropriate Land Control Board within six months of the making of the agreement for the controlled transaction by any party thereto.”

I find that the occupation of the Applicant or his mother six months after the sale agreement was legally speaking, without permission of the owner. Secondly, I find that the occupation was open and as a matter of right. In other words, the occupation was as that of the owner. Finally, the occupation was without force because the Applicant was never asked to vacate the land by the registered owner. Given the above scenario, I find that Section 7 of the Limitation of Actions Act applies to this case. It provides as follows.

“The action may not be brought by any person to recover land after the end of twelve (12) years from the date on which the right of action accrued.”

In this case since the sale agreement was on 15-2-1988. Six months elapsed on 16-8-1988. From that date until the date of the filing of the suit on 8-5-2025 is almost 37 years.

8. Regarding the second issue, I find that the Applicant is entitled to the 0.67 acres of the suit land that he claims.

Consequently and for the reasons already given I enter judgment for the Applicant against the Respondents under Sections 7,17 and 38 of the Limitation of Actions Act in the following terms

- a. A declaration is hereby made that the Applicant has acquired title to 0.67 acres of L.R. No. 12/Sub-Loc.4/192 by adverse possession pursuant to Sections 7,17 and 38 of the Limitation of Actions Act.
- b. The Respondents' title to the said 0.67 acres of the suit land is hereby declared extinguished.
- c. The Land Registrar Murang'a is directed to cancel the title to the 0.67 acres occupied by the Applicant and register the same in the Applicant's name.
- d. If any instruments are required to partition, transfer and register the 0.67 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.
- e. 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

Plaintiff's Counsel – Mr T.M. Njoroge

