



REPUBLIC OF KENYA



KENYA LAW
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**Makokha v Githire (Environment and Land Case 143 of 2022)
[2026] KEELC 562 (KLR) (4 February 2026) (Judgment)**

Neutral citation: [2026] KEELC 562 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND CASE 143 OF 2022**

JA MOGENI, J

FEBRUARY 4, 2026

BETWEEN

JACKLINE TRUPHENA MAKOKHA PLAINTIFF

AND

TOM GITHIRE DEFENDANT

JUDGMENT

1. The Plaintiff commenced this suit vide a Plaint dated 18/11/2022 against the Defendant seeking the following orders:-
 - a. A permanent injunction restraining the Defendant, his agents and/or servants from in any manner trespassing, constructing on, erecting any structures, alienating or in any other manner dealing with the property known as plot number 10 situated in Kamiti Ridge contained in the larger parcel described as LR NO. 7019 (5805/1).
 - b. An Order that the Defendant do remove all structures permanent or otherwise on the said parcel described as plot number 10 Kamiti Ridge.
 - c. General damages for trespass and detainer.
 - d. Costs.
2. The Defendant filed his Defence and Counter Claim dated 15/03/2024 where he denied the allegations in the Plaint and sought for the following orders in his Counterclaim:
 - a. A declaration that the Defendant is the lawful owner of the disputed land under the doctrine of adverse possession.
 - b. The Plaintiff's suit against him be dismissed with costs.



Plaintiff's Case

3. Jacqueline Truphena Makokha testified as PW1 and through her statement dated 18/11/2022 which she adopted as her evidence in chief, stated she is a joint proprietor of plot number 10 Kamiti Ridge (hereinafter 'suit property') with one Rashid Gicheru Abdallah.
4. She testified that the parcel of land which is the suit property was procured through Murarandia Development Company, a land buying Company in July, 1998.
5. She told the Court that the official title document is yet to be issued but that her co-owner and herself hold the relevant Certificate of Ownership. That the said plot number 10 is contained in the larger parcel described as LR No. 7019 (5805/1).
6. She further testified that she entered into a Sale Agreement with the Vendor but she was not able to produce the agreement in Court. She stated that she paid the purchase price and that the reason she has filed the Certificate is to signify that she had finished paying for the purchase price which she paid via cheques but she had not produced copies of the said cheques in Court.
7. It is her testimony that whereas she never occupied the property to date, she came to learn in 2021 that the Defendant one Tom Githire has invaded the suit property and is in the process of erecting a block of flats right inside the parcel of land owned by the Plaintiff.
8. According to the Plaintiff they reported this act of trespass to the Police but she was not able to produce the Police OB to support the claim.
9. Upon re-examination she told the Court that Murarandia Company was a coffee producing Company and once they stopped producing coffee, they sold the land. She told the Court that she knows where her land was located and that she had visited the property. It is her case that the Defendant never approached her to buy her property.
10. With the evidence adduced the Plaintiff closed her case.

Defendant's Case

11. Tom Githire, the Defendant testified as DW1. He told the Court that on 21/12/2007 he entered into a Transfer of land ownership Agreement with one Julia Nyakio Kareithi the Trustee of Yvonne Wawira Kanyi (minor) & Esther Murugi for the purchase of Plot No. 5 in LR 7019 (5805/1) vide Share Certificate Number 307 within Murarandia Development Co. Ltd on a purchase price consideration of Kesh 500,000 on part payments. He also testified that he did due diligence with Julia since she was the Vendor.
12. He testified that on the even date he paid Kesh 200,000 and on 4/03/2008 he completed paying the outstanding balance of Kesh 300,000 as per the transfer documents at page 11 of the trial bundle of the Defendant. The said document shows that the transfer was for a consideration of Kesh 500,000. That a cash payment of Kesh 80,000 was made and final cheque whose number has not been stated and it is worth Kesh 220,000.
13. The transfer is indicated to be from Yvonne Wawira Kanyi who is a minor and Esther Murugi whose trustee is Julia Nyakio Kareithi. The transfer document indicates that the consideration is for Kesh 500,000.



14. In his testimony, DW1 stated that the Vendor pointed out beacons to him and he took possession and occupied the land immediately upto date where he has been in exclusive possession of the land openly and continuously for 15 years.
15. It is the testimony of the Defendant that during the period of open and continuous occupation which amounts to adverse possession he has made substantial improvements to the land including constructing a dwelling. Further the Defendant testified that he did instruct his Lawyers to attempt to settle this matter out of Court.
16. However, the Defendant denied being a trespasser, since he stated that he bought Plot No. 5 where he has lived uninterrupted. He denied that he lives on Plot No. 10. According to the Defendant, he is of the view that albeit occupying the piece of land with the assertion that he purchased it altogether, he stated that he is legally entitled by the law to be declared the owner vide the doctrine of adverse possession.
17. With that the Defendant closed his case.
18. The Court issued directions on filing of written submissions. From the record, the Plaintiff's submissions are dated 12/06/2025 and the Defendant's submissions are dated 3/07/2025.
19. The Plaintiff in summary has submitted that the Defendant claims to have purchased the suit property from one Julia Nyakio Kareithi who is not a party to the suit and she was also not called as a witness. At the same time, she contends that the Defendant failed to discharge any proof of purchase of the suit property.
20. In her submissions, she faults the Share Certificate relied on which belongs to Esther Murugi who claims to own it on behalf of a minor known as Yvonne Wawira Kanyi but there is no trust to support this claim of trusteeship. Infact she submits that Julia Kareithi's name is not even on the Share Certificate for Plot No. 5 and therefore it is not clear how she can sell what she does not own.
21. The Defendant's submissions focused on acquisition of Plot No. 5 by adverse possession as per *Limitation of Actions Act*, Cap 22. It is the Defendant's submission that he entered into a transfer of land ownership agreement with one Julia Nyakio Kareithi for purchase of Plot No. 10.

Analysis and Determination

22. My assessment of the evidence is that the Defendant came into the suit property much later after the Plaintiff had already been allotted the suit property Plot No. 10 by Murarandia Development Co. Ltd. The Defendant simply invaded the land and started construction on a parcel he very well knew did not belong to him. The Defendant had a duty to conduct due diligence before parting with his money which he asserts to be Kesh 500,000 yet the Affidavit filed by Esther Murugi who claims to be his mother states at paragraph 2 thus:
 - “2. That I have sold my Plot No. 5 on LR No. 7019 – 5805/1 Murarandia Development CO. LTD to my son for Kenya Shillings Five Hundred and Fifty only (Kesh 550,000) which he has fully paid. (See Affidavit sworn on 9th May 2012 by one Esther Murugi).”
23. Therefore, I am not sure that the two parties are referring to the same transaction since the Defendant claims to have bought the said plot for Kesh 500,000 which he paid in instalment whereas the Affidavit sworn by Esther Murugi but filed as part of the documents of the Defendant states a figure of Kesh 550,000 and refers to a plot other than Plot No. 10.



24. I cannot fault the Plaintiff for coming to Court seeking the eviction of the Defendant from their land. As I have said, although the Plaintiff only holds the Share Certificate dating back to 1998, she is entitled to protect the interest in the Share Certificate since the Defendant's Share Certificate does not even bear the Vendor he claims to have bought the suit property from.
25. In his submissions, M/s Muthoni Njagi Advocates emphasized that they paid off their purchase price of Plot No. 5 and that they have acquired the suit property by way of adverse possession. I do not agree.
26. Generally, one cannot claim adverse possession and purchase for the same property simultaneously, as these claims are legally contradictory: adverse possession requires hostile, non-permission-based occupation, while a purchase implies a consensual, licensed entry and possession, making them mutually exclusive legal grounds for a claim. However, if one has entered into an agreement to buy land and pay in installments, adverse possession might start after the final payment fails or the contract is breached, allowing the limitation period to run, but not during a valid, ongoing purchase.
27. In the case at hand there is no breach of contract nor failure of payment since the Defendant avers that he paid up in full all the purchase price for suit property. At the same time, he has not claimed any frustration in execution of the contract.
28. The Share Certificate presented by the Plaintiff is not a title deed, it is a document which demonstrates that the holder thereof has an interest in the land in issue. That interest may be emergent, but it is an interest all the same, and the holder of the Share Certificate has every right to protect his interest. (See the case of Nancy Wanjiru Kunyiha (Suing as administrator of the estate of Augustine Kunyiha), Nakuru ELC No. 295 of 2014). The facts may differ since the holder had an Allotment Letter but all the same, they did not have a title deed.
29. From established precedent in our Courts, Share Certificates issued by land-buying companies are recognized as evidence of an allotment that creates an equitable interest in the land. While there are no Title Deeds under the [Land Registration Act](#), they serve as the root of title in the interim.
30. In the case of Suleiman v. Ambani [2014] eKLR, the Court held that a Share Certificate is a valid document of title in the context of land-buying companies, and the holder of such a Certificate has a right to the land as against any person who cannot show a better title.
31. I am persuaded from precedents such as the one I have referred to above to find that since the Plaintiff holds the Certificate and the Defendant holds nothing, the Plaintiff has established a prima facie case of ownership.
32. Again, as stated already the Plaintiff had her Share Certificate in 1998. Now, where two parties have competing equitable interests, the law applies the maxim: Where the equities are equal, the first in time prevails. The first in time rule, qui prior est tempore comes in handy here since the Defendant claims to have bought the suit property in 2007 finalized payment in 2008.
33. Even if the Defendant claimed an equitable interest through a Sale Agreement, the Plaintiff's Share Certificate (presumably issued earlier by the Company) takes precedence.
34. In an Australian landmark case of Abigail v Lapin [1934] AC 491, the Privy Council established that the person who has the prior equitable interest (the first one to get the share/right) should win unless they have done something unconscionable to lose that priority. Here, the Plaintiff's retention of the original Certificate protects their priority.
35. The Defendant's reliance on Munyu Maina v Hiram Gathiha Maina [2013] eKLR is legally misplaced. This is because, in Munyu Maina (supra), the Court of Appeal dealt with a situation where a party had



a registered title and the Court held that one cannot claim the protection of Section 26 of the Land Registration Act if the root of title is challenged.

36. In our case, since neither party has a registered title, we are not arguing about the sanctity of a title deed; we are arguing about the existence of an equitable right. The Plaintiff has a document (the Certificate); the Defendant has a narrative but no documentary link to the defunct Company.
37. Further as already pointed out, the Defendant claims to have bought shares from a third party (Julia Nyakio Kareithi) who supposedly held them for a minor.
38. Now, under the Trusts of Land Act and the Law of Succession Act, any person claiming to act as a Trustee or selling property on behalf of a minor must produce a Trust Deed or Letters of Administration.
39. In the case of *City of London Building Society v Flegg* [1988] AC 54, the Court emphasized that interests must be clearly documented to bind third parties. Without a Certificate in Julia's name or a Trust Deed, she had no bundle of rights to transfer to the Defendant. You cannot give what you do not have as stated in the maxim *Nemo dat quod non habet*.
40. Therefore, I do find that the Plaintiff has on a balance of probability proved that she possesses the primary evidence of allotment (the Share Certificate), which survived the winding up of the Company as a chose in action representing a specific plot of land.
41. On his part the Defendant has failed to establish a paper trail or chain of title linking them to the defunct Murarandia Development Company.
42. So, in a contest between a holder of an original Share Certificate and a party with no documentation from the original Vendor, I am persuaded to protect the Certificate holder to prevent land grabbing and maintain the integrity of land-buying Company records.
43. I am persuaded to find that the Plaintiff holds the overriding equitable interest and the Defendant's claim fails for lack of *Nemo Dat* - the person who sold to them had no interest to pass.
44. Consequently, I hold that the Plaintiff has proved her case and is entitled to the reliefs sought in the Plaint. The import of this finding is that:
 - a. A permanent injunction is hereby issued restraining the Defendant, his agents and/or servants from in any manner trespassing, constructing on, erecting any structures, alienating or in any other manner dealing with the property known as plot number 10 situated in KAMITI RIDGE contained in the larger parcel described as LR No. 7019 (5805/1).
 - b. An Order is hereby issued that the Defendant do remove all structures permanent or otherwise on the said parcel described as plot number 10 KAMITI RIDGE.
 - c. General damages for trespass are hereby issued to the Plaintiff for Kesh 1,000,000 million.
 - d. The costs of this suit are awarded to the Plaintiff.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT THIKA THROUGH MICROSOFT TEAMS ON THIS 4TH DAY OF FEBRUARY, 2026.

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**MOGENI J
JUDGE**



In the presence of:-

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Mr. Melita – Court Assistant

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