

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ELC [OS] E007 OF 2025

MARGARET GATIRIA NDEREBA1ST PLAINTIFF
PRISCILLA KABURI2ND PLAINTIFF
CHARITY KAGWIRIA3RD PLAINTIFF
NICHOLAS MWITI4TH PLAINTIFF
AGNES KAGWIRIA5TH PLAINTIFF

VERSUS

DOMINIC KIRAMUNYA KABURUNGADEFENDANT

JUDGEMENT

1. Before me is the Originating Summons dated 25.03.2025 brought pursuant to the provisions of ***Section 38 of the Limitation of Actions Act, Chapter 22 Laws of Kenya; and Articles 10, 24, and 159 of the Constitution 2010***; and wherein the Plaintiffs have sought the determination of various issues. The issues for which the Plaintiffs seek[s] determination are as hereunder:
 - i. *Whether the Applicants and their families have been in open, uninterrupted, open continuous, user exclusive occupation and possession of 3 Acres of L. R KIIRUA/RUIRI/878 for more than 30 years.*
 - ii. *That if the answer to the above is NO, it to the positive, whether the same is adverse possession.*
 - iii. *Whether the Honourable Court should cancel the title registered in the name of DOMINIC KIRAMUYA KABURUNGA and the cause of the same property to be registered in the names of the Applicants and for the 3 Acres in their respective acreage to be excised from L. R. KIIRUA/RUIRI/878.*

- iv. *Whether the applicants are entitled to the a declaration of the ownership of 3 Acres of L. R. NO. KIIRUA/RUIRI/878 and whether the court should declare so.*
 - v. *That costs be provided for.*
2. The Originating Summons is premised on the various grounds enumerated in the body thereof. In particular, the Plaintiffs have posited that one M'Rimberia M'Achui [now deceased], entered into a sale agreement with the defendant; the sale agreement was entered into on the 23/10/1976; the sale agreement related to a portion of the suit property measuring 3 acres; the purchaser [now deceased] paid the purchase price; the purchaser and family entered upon and commenced occupation of the designated portion of the suit property; and the purchaser remained in occupation till his death.
 3. Furthermore, the Plaintiffs contended that despite the death of the purchaser, his wife, namely; Susan Muruga M'Rimberia [now deceased] and the family remained in occupation of the sold portion. Moreover, it has been contended that the family of the original purchaser [now the plaintiffs] have remained in occupation of the 3 acres todate. In addition, it has been posited that the occupation, possession and use of the 3 acre portion of land has been adverse and hostile to the rights and interests of the Defendant.
 4. The Originating Summons is supported by the affidavit sworn by Margret Gateria Ndereba sworn on 25/03/2025 and wherein the deponent has reiterated the grounds at the foot of the originating summons. Additionally, the deponent has annexed assorted documents including copy of the sale agreement dated 23.10.1976 ; copy of the green card of the suit property, copy of proceedings that were undertaken before the land dispute tribunal; copy of the proceedings before the Chief Magistrate's court at Meru and wherein the award of the land dispute tribunal was sought to be adopted.

5. The Defendant duly entered appearance and thereafter filed a replying affidavit sworn on the 24/10/2025 and wherein the deponent [Dominic Kiramunya M’Kaburunga] has acknowledged and confirmed that same duly entered into a sale agreement with one M’Rimberia M’Achuri [now deceased] in the year 1976. Moreover, the deponent has also averred that following the sale of a portion of the suit property to the deceased, the deceased [purchaser] duly entered upon and took occupation of a portion of the sold land. Nevertheless, the deponent has averred that the purchaser and family only took possession of 1 acre.
6. It was the further averment of the Defendant that the Plaintiffs herein have remained in occupation of the 1 acre portion. Moreover, the deponent has averred that same has been willing to subdivide the suit property and to give the 1-acre portion of the suit property to the Plaintiffs.
7. The Originating Summons came up for directions on 27.10.2025 and wherein the advocates for the parties intimated to the court that the Originating Summons should proceed on the basis of viva voce [oral] evidence. Furthermore, the advocates for the parties sought liberty to file and exchange list and bundle of documents; list of witnesses; and witness statements.
8. The court proceeded to and issued directions in the manner sought by the parties. In particular, the court directed that the Originating Summons and the supporting affidavit thereto be deemed as the plaint; the replying affidavit by the Defendant be deemed as the statement of defence. Additionally, the court ordered that the parties shall proceed to file and exchange the list and bundle of documents; the list of witnesses and the witness statements.
9. The Plaintiffs’ case is premised on the evidence of six [6] witnesses, namely: Margaret Gatiria Ndereba; Priscilla Kaburi; Charity Kagwiria; Nicholas Mwiti; Agnes Kagwiria and Joshua Kanini M’nyiroo. Same testified as PW1, PW2, PW3, PW4, PW5 and PW6, respectively.

10. It was the testimony of PW1 [Margaret Gatiria Ndereba] that same is the 1st plaintiff in respect of the instant matter. In addition, the witness averred that by virtue of being the 1st plaintiff, same is familiar and conversant with facts of the case. To this end, the witness referenced the witness statement dated 26.03.2025 and which witness statement the witness sought to adopt and rely on as her evidence in chief. Notably, the witness statement was duly adopted and constituted as the evidence in chief of the witness.
11. The witness further referenced the list and bundle of documents dated 26.03.2025, containing 10 documents and which documents the witness sought to produce before the court as exhibits. There being no objection to the production of the documents, same were produced and admitted as exhibits P1 – P10, respectively.
12. Additionally, the witness adverted to the Originating Summons dated the 26.03.2025 and thereafter sought to adopt and rely on the contents thereof. Furthermore, the witness invited the court to grant the reliefs sought thereunder.
13. On cross examination by learned counsel for the defendant, the witness averred that same is one of the children of M'Rimberia M'Achuri [now deceased]. The witness further averred that the deceased purchased a portion of the suit property measuring 3 acres. Besides, the witness testified that the rest of the Plaintiffs and herself have been in occupation of a portion of the suit property measuring 3 acres.
14. Moreover, the witness averred that the portion of land under the occupation of the Plaintiffs is well delineated and demarcated on the ground. In particular, the witness averred that the portion is clear for everyone to see. In addition, the witness averred that the deceased [M'Rimberia M'Achuri] duly entered into a sale agreement with the defendant. In any event, the witness averred that the sale agreement is one of the documents that has been tendered before the court.

15. While still under cross examination, the witness averred that the portion occupied by the Plaintiffs measures 3 acres. However, the witness conceded that same has neither tendered a copy of the registry index map nor a surveyors' report.
16. It was the further testimony of the witness that the deceased and the wife of the deceased [Susan Muruga Rimberia] had various case[s] with the defendant. In particular, the Witness referenced exhibit P2 relating to a miscellaneous application which sought the adoption of the award of the Land dispute tribunal. Be that as it may, the witness reiterated that the Plaintiffs have been in occupation of the land since 1976.
17. The 2nd witness who testified on behalf of the Plaintiffs is Priscila Kaburi. The witness testified as PW2. It was the testimony of the witness that the same is the 2nd plaintiff in respect of the instant matter. Furthermore, the witness averred that same has since recorded and filed a witness statement. To this end, the witness referenced the statement dated the 26.03.2025 and which statement the witness sought to adopt as her evidence in chief. Suffice it to state that the witness statement was thereafter adopted and constituted as the evidence in chief of the witness.
18. On cross examination by learned counsel for the defendant, the witness averred that same is in occupation of a portion measuring approximately 3 acres. Moreover, the witness clarified that the portion under occupation is discernable on the ground.
19. While still under cross examination, the witness testified that though she claims that the portion under their occupation measures 3 acres, same has not tendered any surveyor's report to confirm as much.
20. The next witness who testified was Charity Kagwiria. She testified as PW3.

21. It was the testimony of the witness that she is the 3rd plaintiff in respect of the instant matter. To this end, the witness averred that same is therefore conversant with the facts of the case. Additionally, the witness adverted to the witness statement dated 26.03.2025 and which statement the witness sought to adopt and rely on as her evidence in chief. Instructively, the witness statement was duly adopted and constituted as the evidence in chief of the witness.

22. On cross examination by learned counsel for the Defendant, the witness averred that the plaintiffs, including herself have been in occupation of the suit property since 1976. Moreover, the witness averred that the Plaintiffs have occupied a portion measuring 3 acres. In addition, the witness clarified that the portion occupied by the Plaintiffs is well demarcated on the ground.

23. The 4th witness who testified on behalf of the Plaintiffs was Nicholas Mwiti. The witness testified as PW4.

24. It was the testimony of the witness that same is equally a plaintiff in this matter. For good measure, the witness posited that same is the 4th Plaintiff. Furthermore, the witness confirmed that he has since recorded and filed a witness statement before the court. To this end, the witness referenced the statement dated 26.03.2025 and thereafter, sought to adopt and rely on same as his evidence in chief.

25. Suffice it to state that the witness statement dated the 26.03.2025, was duly adopted and constituted as the evidence in chief of the witness.

26. On cross examination by the learned counsel for the defendant, the witness testified that he was born on the suit land. Moreover, the witness clarified that he was born in the year 1982. In addition, the witness testified that the Plaintiffs are in occupation of a portion

measuring 3 acres. Besides, the witness testified that the portion under their occupation is well delineated on the ground.

27. Next was Agnes Kagwiria. She testified as PW5.

28. It was the testimony of the witness that same is also a plaintiff in this matter. In particular, the witness posited that she is the 5th Plaintiff. In this regard, the witness averred that same is conversant with the facts of the case. Moreover, the witness alluded to the statement dated the 26.03.2025 and which statement, the witness sought to adopt as her evidence in chief. Suffice it to state that the statement was duly adopted and constituted as the evidence in chief of the witness.

29. On cross examination, by learned counsel for the defendant, the witness averred that she was born in 1997. Additionally, the witness posited that she was born on the suit land.

30. It was the further testimony of the witness that her family are residing on the suit land. Furthermore, the witness added that her family are occupying a portion measuring 3 acres.

31. Next in line was Justus Kanini M’Nyiroo. Same testified as PW6.

32. It was the testimony of the witness that same is familiar with both the Plaintiffs and the Defendant. Moreover, the witness testified that same is a neighbour to the parties herein. In addition, the witness intimated that same has since recorded and filed a witness statement dated 26.03.2025 and which statement the witness sought to adopt as his evidence in chief. Thereafter, the statement was duly adopted and constituted as the evidence in chief of the witness.

33. On cross examination by learned counsel for the defendant, the witness testified that same is the registered owner of plot number 738, while the Defendant is the owner of plot 878. Nevertheless, the witness clarified that the two [2] plots are close and neighbour one another.
34. It was the further testimony of the witness that the Plaintiffs have been on the land for a long time. Moreover, the witness averred that when he [witness] went to live on his land [738], he found the Plaintiffs already in occupation of a portion of the suit property.
35. Regarding whether same was present during the purchase of a portion of the suit property by the deceased, the witness testified that he was not present. Nevertheless, the witness added that he has seen a copy of the sale agreement before the court.
36. As concerns occupation of the suit property by the Plaintiffs, the witness confirmed that indeed the Plaintiffs are in occupation of a portion measuring approximately 3 acres of the suit property. Furthermore, the witness averred that the portion occupied by the Plaintiffs is well demarcated/delineated on the ground.
37. With the foregoing testimony, the Plaintiffs' case was closed.
38. The Defendant's case is premised on the evidence of four [4] witnesses, namely; Dominic Kiramunya Kaburunga; Fredrick Gituma M'Rutere; James Bundi; and Daniel Muthaure, respectively. The witnesses testified as DW1, DW2, DW3 and DW4.
39. It was the testimony of DW1 [Dominic Kiramunya Kaburunga] that same is the Defendant in respect of the instant matter. Furthermore, the witness averred that he has since recorded and filed a witness statement dated the 24.10.2025. The witness thereafter sought to adopt and rely on the witness statement as his evidence in chief. Notably, the statement was duly adopted and constituted as the evidence in chief of the witness.

40. Furthermore, the witness adverted to the list and bundle of documents dated 24.10.2025 and thereafter sought to tender and produced the assorted documents as exhibits. There being no objection to the production of the documents, same were duly produced and admitted as exhibits D1 – D3, respectively.
41. On cross examination by learned counsel for the plaintiffs, the witness averred that same indeed sold a portion of land to M'Rimberia M'Achuri [now deceased]. In addition, the witness confirmed that he sold land to the said deceased in 1976.
42. While still under cross examination, the witness testified that he sold a portion measuring 1 acre only. Moreover, the witness averred that he has brought a copy of the sale agreement before the court. Nevertheless, when pressed further, the witness conceded that the sale agreement has not been brought to court.
43. Upon being referred to exhibit D2, the witness stated that the document relates to a Miscellaneous application that was seeking to adopt the award of the tribunal. Furthermore, the witness posited that the ruling does not indicate that same sold a portion measuring 3 acres to the deceased.
44. Regarding the portion of land being occupied by the plaintiffs, the witness averred that the Plaintiffs are using a portion measuring 1 acre. Nevertheless, the witness testified that he has not brought any surveyor's report to confirm that the Plaintiffs' are occupying one acre.

45. The next witness who testified on behalf of the Defendant was Fredrick Gituma M'Rutere. The witness testified as DW2.
46. It was the testimony of the witness that same is familiar with the parties before the court. Additionally, the witness averred that he is also familiar with the facts pertaining to the dispute.
47. Furthermore, the witness testified that same has since recorded a witness statement in respect of the matter. To this end, the witness referenced the statement dated 24.10.2025 and thereafter sought to adopt same as his evidence in chief. The witness statement was duly adopted as the evidence in chief of the witness.
48. On cross examination by learned counsel for the plaintiffs, the witness testified that the Defendant is the owner of the suit property. Furthermore, the witness averred that the suit property measures 9.9 acres. Besides, the Witness acknowledged that the Plaintiffs are indeed occupying a portion of the suit property.
49. While still under cross examination, the witness averred that the Defendant [his father] sold a portion of the suit property to the plaintiffs. Nevertheless, the witness shortly beat an about turn and contended that he does not know whether the Defendant sold land to the plaintiffs.
50. In another strange twist, the witness testified that he now confirms that his father [defendant] indeed sold the land to the father of the plaintiffs. Moreover, the witness admitted that the Plaintiffs are in occupation of a portion of the suit property. However, the witness posited that the portion occupied by the Plaintiffs on the ground measures 1 acre.
51. While still under cross examination, the witness testified that he has brought before the court a sketch showing the portion of land being

occupied by the plaintiffs. Moreover, the witness testified that a surveyor indeed came onto the land. However, the witness conceded that he has not brought any surveyors' report before the court.

52. Next is James Bundi. He testified as DW3.

53. It was the testimony of the witness that he is familiar with the case. In addition, the witness testified that he has recorded and filed a witness statement dated 24.10.2025 and which statement, the witness sought to adopt and rely on as his evidence in chief. Suffice it to state that the statement was duly adopted as the evidence in chief of the witness.

54. On cross examination by learned counsel for the plaintiffs, the witness averred that the Plaintiffs' have indeed been in occupation of a portion of the suit property for more than 30 years. Nevertheless, the witness averred that he is not aware of the extent/size of the land being occupied by the Plaintiffs.

55. While still under cross examination, the witness testified that he is a neighbor of the Plaintiffs. To this end, the witness averred that he is privy to the Plaintiffs' occupation of a portion of the suit property.

56. The final witness who testified on behalf of the Defendant was Daniel Muthaure. Same testified as DW4.

57. It was the testimony of the witness that same has since recorded and filed a witness statement. To this end, the witness referenced the statement dated the 24.10.2025; and thereafter sought to adopt the witness statement as his evidence in chief. Instructively, the witness statement was duly adopted and constituted as the evidence in chief of the witness.

58. On cross examination by learned counsel for the plaintiffs, the witness acknowledged and confirmed that the Plaintiffs' have been on the land for more than 30 years. However, the witness clarified that he does not know how and in what manner the Plaintiffs entered onto the land.
59. While still under cross examination, the witness averred that the portion of land being occupied by the Plaintiffs measures 1 acre. Be that as it may, the witness conceded that he does not have any surveyor's report to confirm his testimony.
60. With the foregoing testimony, the defendant's case was closed.
61. Following the conclusion of the hearing, the advocates for the parties sought time to file and exchange written submissions. To this end, the court ventured forward and issued directions pertaining to the filing and exchange of written submissions. In addition, the court also circumscribed the timelines for filing and exchange of submissions.
62. The plaintiff filed written submissions dated the 01/12/2025; and wherein the Plaintiffs have highlighted and canvassed one singular issue, namely; Whether the Plaintiffs have acquired adverse possessory rights to and in respect of 3 acres out of L R Kiirua/Ruiri/878 [the suit property] or otherwise.
63. The Defendant filed written submissions dated 22.01.2026 and wherein same has similarly highlighted one singular issue, namely; Whether the plaintiff are entitled to ownership of a portion measuring 3 acres out of L R Kiirua/Ruiri/878 [the suit property].
64. Having reviewed the originating summons; the supporting affidavit thereto; the replying affidavit filed in opposition thereto; the evidence tendered [both oral and documentary]; and upon consideration of the

written submissions filed by/on behalf of the parties, I come to the conclusion that the determination of the subject matter rest[s] [2] on two key issues. The issues are: Whether the Plaintiffs' have tendered and produced evidence to demonstrate occupation/possession of a portion measuring 3 acres of the suit property and if so, whether the occupation has been adverse/hostile to the defendant's interest; and whether the Plaintiffs are entitled to the reliefs sought or otherwise.

65. Before venturing to address the thematic issues highlighted in the preceding paragraph, it is important to underscore that a claimant seeking to partake of a declaration of adverse possession, is obligated to demonstrate open, continuous and uninterrupted occupation of the designated property or a portion thereof. Moreover, where the claim relates to a portion of the property and not the entire thereof, the claimant is enjoined to show that the portion under occupation is identifiable, discernable and well demarcated on the ground.

66. It is also imperative to highlight that adverse possession can be claimed over a portion of the designated property. To this end, the mere fact that the claim relates to a portion of the designated property, does not defeat the claim, provided that the claimant is able to avail evidence vindicating occupation over the identifiable portion.

67. In case of **Mwangi Githu v Livingstone Ndeete [1980] KECA 35 [KLR]** the Court of Appeal stated as hereunder:

“The case of Gatimu Kinguru v Muya Gathangi High Court Civil Case No 176 of 1973, is an example of an adverse possessor obtaining title by adverse possession to an identifiable portion of an owner's land. It is stated in volume 24 of Halsbury's Laws of England, 3rd edition, at page 252:

“To constitute dispossession, acts must have been done inconsistent with the enjoyment of the soil by the person entitled for the purpose for which he had a right to use it (q). Fencing off

is the best evidence of possession of surface land; but cultivation of the surface without fencing off has been held sufficient to prove possession.”

68. Furthermore, the claimant seeking adverse possession is also enjoined to demonstrate that the registered owner of the land [title holder] has been aware of his /her occupation of the land. Notably, the claimant must demonstrate sufficient publicity in terms of occupation and exclusivity in terms of possession.

69. In the case of **Njuguna Ndatho v Masai Itumo, Mateo & Nguli Kyalo [2002] KECA 161 (KLR)** the court of appeal highlighted the ingredients of sufficient publicity; notoriety; and exclusivity in matters of adverse possession.

70. The court stated thus:

“For the defence of adverse possession to succeed, the possessor(s) must show that the possession was adequate, continuous and exclusive. In other words, such possession, to be adverse, must be adequate in continuity, in publicity and in extent to show that the possession was adverse to the proprietor. These requirements are fulfilled in relation to the possession of and by the respondents.”

71. Back to the issue under consideration. The Plaintiffs herein tendered evidence that the Defendant entered into and executed a sale agreement with one M’Rimberia M’Achuri [now deceased] in 1976. In addition, evidence was tendered that the deceased proceeded to and paid the purchase price in terms of the sale agreement. Instructively, the sale agreement was tendered and produced before the court as exhibit P3.

72. It was the further testimony of the Plaintiffs that upon execution of the sale agreement dated the 23.10.1976, the Defendant herein allowed/permitted M'Remberia M'Achuri [deceased] to enter upon and take possession of the portion of suit property. Additionally, it was averred that the sale agreement related to and concerned a portion of 3 acres of the suit property.

73. Furthermore, the Plaintiffs' tendered evidence that the deceased took possession and remained in occupation of the 3 acre portion, which was sold until his death. Besides, the Plaintiffs posited that even after the death of their patriarch, same [plaintiffs] have remained in occupation and possession of the 3-acre portion.

74. It is pertinent to observe that the occupation and possession of a portion of the suit property by the Plaintiffs has been open, continuous and uninterrupted. For good measure, DW1, DW2 , DW3 and DW4, all confirmed the Plaintiffs have been in occupation of a portion of the suit property for more than 30 years. The bottom line is that the occupation and possession of a portion of the suit property by the Plaintiffs has been open and obvious.

75. It is one that is discernable by all and sundry.

76. It is important to highlight that despite being aware of the plaintiffs' occupation of a portion of the suit property, the Defendant has never taken any steps or action to defeat the plaintiffs' occupation. Notably, the Defendant has never filed any proceedings in an endeavor to recover vacant possession. To this end, it is imperative to observe that the failure by the Defendant to commence recovery proceedings vindicates that same has since been dispossessed of the disputed portion of land. **[See the provisions of Section 7 of the Limitations of Actions Act, Chapter 22, Laws of Kenya].**

77. The only dispute that remains relates to whether the portion occupied by the Plaintiffs is 3- acres or 1 acre. It is worthy to recall that whereas the Plaintiffs tendered evidence to show that same have been in occupation of 3 acres, the Defendant is of the contrary opinion. For good measure, the Defendant and witnesses have insisted that the Plaintiffs are in possession of only 1 acre.

78. According to the Defendant [DW1], he only sold 1 acre to M'Rimberia M'Achuri [now deceased]. Furthermore, the witness averred that upon sale of the one acre, the deceased entered upon and took possession of the sold portion of land.

79. Nevertheless, it is not lost on me that when the Defendant [DW1] was cross examined about the sale agreement, he indicated that the sale agreement had been produced by him as an exhibit. However, when pressed further, the witness admitted that he had not produced the sale agreement.

80. Regarding the sale agreement, which was produced as exhibit P3, the witness confirmed that indeed same is the sale agreement that was entered into with M'Remberia M'Achuri. For good measure, the acreage of land which was being sold [and which was indeed sold] is captured/reflected as 3 acres and not 1 acre, as alleged by the defendant.

81. Though the other defence witnesses and namely; DW2 and DW3, indicated that the Plaintiffs are occupying one acre and not three acres, it is imperative to observe that the defence witnesses, including the Defendant himself, were quite evasive. Moreover, the testimony of the Defendant and his witnesses is also full of contradictions and inconsistencies.

82.To my mind, the acreage of land which was sold to M;Rimberia M'Achuri [now deceased] was three acres. In addition, the said portion of land was also confirmed vide a ruling of the Chief Magistrate' Court in respect of LDT Case Number 57 of 2005. [see exhibit P6].

83. Flowing from the foregoing, and taking into account the contents of the sale agreement exhibit P3, the ruling of the Chief Magistrate Court [Exhibit P6] and the totality of the evidence tendered by the plaintiffs, I am convinced that the Plaintiffs are in occupation of a portion measuring 3 acres of the suit property. For good measure, what was sold and thereafter occupied was Three [3] acres.

84. Moreover, evidence abound, that the portion of the land being occupied by the Plaintiffs is well delineated and demarcated on the ground. Notably, this aspect was confirmed even by the Defendant's witnesses.

85.I therefore come to the conclusion that the Plaintiffs herein have not only demonstrated open, continuous and uninterrupted occupation; but same have also established that their occupation has been hostile/adverse to the rights of the defendant. Simply put, the Plaintiffs have proven all the requisite ingredients/elements that underpin a claim of adverse possession.

86.Before concluding on this issue, I beg to reference and highlight the decision in the case of **Richard Wefwafwa Songoi v Ben Munyifwa Songoi [2020] KECA 942 (KLR)** where the Court of Appeal reviewed

the various decisions on the question of adverse possession and thereafter stated as thus:

40. A person who claims adverse possession must inter alia show:

(a) on what date he came into possession.

(b) what was the nature of his possession?

(c) whether the fact of his possession was known to the other party.

(d) for how long his possession has continued and

(e) that the possession was open and undisturbed for the requisite 12 years.

87. Next is the issue of the reliefs [if any] that ought to be granted. The Plaintiffs have tendered evidence and demonstrated that same have been in occupation of a portion measuring 3 acres of the suit property. In this regard, the Plaintiffs have sought to be declared as the owners of the named 3- acre portion.

88. While dealing with issued number one elsewhere herein before, I have pointed out that the Plaintiffs have proved their claim. To this end, there is no gainsaying that the Plaintiffs are indeed entitled to a declaration. Consequently, I hereby return a declaration that the Plaintiffs have acquired adverse possessory rights to the 3 acres portion out of the suit property.

89. Additionally, the Plaintiffs sought a declaration that the defendant's rights to or interest over the 3- acre portion have been extinguished by operation of the law. It is common ground that the Defendant did not

undertake any steps or actions to recover the designated portion of the suit property within the stipulated timelines. Notably, the Defendant ought to have acted [if at all] in line with the provisions of **Sections 7 of the Limitation of Actions Act, Chapter 22 Laws of Kenya.**

90. Having failed to take the requisite steps, I find and hold that the defendant's right to and in respect of the 3 acre portion stands extinguished. [See the holding of the Court of Appeal in the case of **Mtana Lewa Versus Katana Ngala Mwangandi [2015] eKLR**]

91. Finally, the Plaintiffs have sought an order for cancellation of the Defendant's title and thereafter excision of a portion measuring 3 acres; and ultimate issuance of title in the names of the Plaintiffs.

92. I beg to point out that the Plaintiffs' are indeed entitled to an order of rectification of the title of the Defendant and in particular, excision of a portion measuring 3 acres. It is only then that the terms/fruits of the judgment can be actualized.

CONCLUSION:

93. From the foregoing analysis, it must have become apparent that the Plaintiffs have indeed proven and established their claim to a portion of the suit property, measuring 3 acres. Notably, the Plaintiffs have ably established the ingredients, namely; *nec vi; nec clam; nec precario*.

FINAL DISPOSITION.

94. Consequently, and in the premises, the final orders that commend themselves to the court are as hereunder:

- i. A declaration be and is hereby issued that the Plaintiffs have acquired a portion measuring 3 acres out of L R No. Kiirua/Ruiri/878 by way of adverse possession.**

- ii. **A declaration be and is hereby issued that the Defendant's rights to and interest[s] over the portion measuring 3 acres of L R No. Kiirua/Ruiri/878 be and are hereby extinguished.**

- iii. **The Defendant's title to and in respect of L R No. Kiirua/Ruiri/878, shall be rectified by way of excision of a portion measuring 3 acres and which portion shall be transferred to and registered in the names of the Plaintiffs.**

- iv. **The Defendant be and is hereby ordered to proceed and sub divide the suit property into two portions and thereafter to transfer the portion measuring 3 acres [comprising of where the Plaintiffs are occupying] to the Plaintiffs.**

- v. **The sub-division of the suit property in line with clause [iv] above shall be undertaken within 45 days from the date hereof.**

- vi. **In default by the Defendant to undertake the sub-division in terms of clause [iv] and [v] above, the Deputy Registrar of the court shall be empowered to execute the necessary instruments/documents to facilitate the transfer.**

- vii. **There be and is hereby issued an order of permanent injunction to restrain the Defendant either by himself,**

agents, servants, employees and or anyone acting under his instructions from interfering with, trespassing onto, entering on or dealing with the 3 -acre portion belonging to and under the occupation by the Plaintiffs.

viii. Costs of the suit be and are hereby awarded to the Plaintiffs.

ix. Costs in terms of clause [viii] shall be agreed upon and in default, be taxed in the conventional manner.

92. It is so ordered.

DATED SIGNED AND DELIVERED AT MERU ON THE 5TH DAY OF FEBRUARY, 2026.

OGUTTU MBOYA, FCI Arb; CPM [MTI-EA].

JUDGE

In the presence of:

Hussein Court Assistants

Ms. Otieno A for the Plaintiffs

Ms. Mugwe holding brief for Ms. Nyokabi for the Defendant