



REPUBLIC OF KENYA



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**Thegetha & 14 others v Gikonyo (Environment and Land Case
E022 of 2024) [2026] KEELC 578 (KLR) (4 February 2026) (Judgment)**

Neutral citation: [2026] KEELC 578 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND CASE E022 OF 2024**

JA MOGENI & AM COCKAR, JJ

FEBRUARY 4, 2026

**IN THE MATTER OF AN APPLICATION UNDER
SECTION 38 OF THE LIMITATION OF ACTIONS ACT**

AND

**IN THE MATTER OF AN APPLICATION UNDER
SECTION 38 OF THE LIMITATION OF ACTIONS ACT**

AND

**IN THE MATTER OF RUIRU/RUIRU EAST BLOCK
2/4882 (WITH ALL RESULTANT PARCELS THEREFROM)**

BETWEEN

RUTH WANJIRU THEGETHA 1ST PLAINTIFF
EDWARD MACHARIA GICHARU 2ND PLAINTIFF
LOISE WANJIKU NYAMBURA 3RD PLAINTIFF
FAITH WANJIKU WAWERU 4TH PLAINTIFF
ANN SELEMINA IGOKI NJUE 5TH PLAINTIFF
TERESIAH NYAMBURA KIMANI 6TH PLAINTIFF
LUCY NJERI KARIUKI 7TH PLAINTIFF
PETER KIARIE 8TH PLAINTIFF
LISPA NYAMBURA 9TH PLAINTIFF
TABITHA WANJIKU NGUGI 10TH PLAINTIFF
PATRICK KIARIE MUCHAI 11TH PLAINTIFF



JANE WANJIRU NJOROGE 12TH PLAINTIFF
DANIEL KARIUKI KAGIRI 13TH PLAINTIFF
DAN KIAMA GICHOHI 14TH PLAINTIFF
PETER NJONGE 15TH PLAINTIFF

AND

JACINTA WANJIKU GIKONYO DEFENDANT

JUDGMENT

1. This is an Originating Summons brought by 15 Applicants seeking to be declared by the operations of the doctrine of adverse possession to have acquired a parcel of land described as Ruiru/Ruiru East Block 2/4882. An order to issue to the effect that the Land Registrar, Ruiru rectifies the land register to reflect Plaintiffs as the registered owners, an order directing the Land Registrar, Ruiru to issue the title documents individually or communally in favour of Plaintiffs and lastly an order of permanent injunction. Costs to be provided for.
2. The Respondent could not be found for personal service. An application was brought to have the Respondent served by way of an advertisement in the Daily Newspapers of wide circulation. It was allowed on 12/05/2025 and the Respondent was served via substituted service vide a newspaper advertisement in the Standard Newspaper dated 23/05/2025. The matter thereafter proceeded for formal proof Ex-parte.
3. The Applicants claim the land by way of adverse possession. They averred through the evidence of one Ruth Wanjiru Thegetha who filed a Supporting Affidavit and Authority to Swear, Appear, Plead and or Act, on behalf of the 14 Plaintiffs dated 27/11/2024. She testified as PW1 and adopted her witness statement dated on even date. She also produced as exhibits documents marked as 'PW1Exh 1-3'.
4. It was her testimony that they stay about 17 people who brought this matter to Court. It was her testimony that the land is in the name of Jacinta Wanjiru Gikonyo. She testified to have stayed on the suit property since 2009 and that there are those who have been on the suit property since 2002.
5. That no one has ever come to evict them from the suit property. The land is not theirs but that they would like to be given the title. She averred that she entered the suit property because they found it vacant. The Plaintiff produced annexure 'RWT-1' being a copy of the Certificate of Search representing the document of title, annexure 'RWT-2' being the Surveyor's Report of the suit property as at 22/10/2024 and annexure 'RWT-3' being photographs taken at the suit property as at 22/10/2024.
6. PW2 - Edward Macharia Gicharu testified as the 2nd witness and he adopted his witness statement as his evidence in chief. He testified that they were claiming adverse possession and they sought to be granted the suit property because he stated that they had stayed on the land since 2010.
7. That they have never been evicted from the suit property that there are those who have stayed on the property since 2006 or even 2007. According to the witness they authorized Ruth Thegetha to produce exhibits in relation to the suit property in the instant case.
8. According to PW2 he testified that he had constructed a permanent residence on the land but that he not attached a certificate of electronic evidence to the photographs produced in Court. He testified



just having entered the suit property and that he occupied a portion of 40 by 60. That all those settled on the suit property took the same portion of 40 by 60.

9. With this the Counsel for the Plaintiff closed their case.
10. The Court issued directions on filing of the written submissions by the Plaintiffs' Counsel, which were filed dated 17/12/2025.
11. Regarding Ruiru/Ruiru East Block 2/4882 the Plaintiffs (a group of 15 individuals) are arguing that they have legally "extinguished" any other ownership of the land through adverse possession and are asking the Court to register them as the new owners.
12. The core of their claim they submit is that they have met the requirements of Section 7 and 38 of the *Limitation of Actions Act* (Cap 22). They claim to have occupied the land for a continuous, uninterrupted period of more than 12 years in a manner that is open and notorious. That they are not hiding and that they have built houses and live there openly.
13. They further submit that they have been peaceful and so they claim there has been no physical or legal conflict over their stay. Further that their stay has been exclusive and they have demarcated the land among themselves and excluded the Respondent, the registered owner.
14. From the evidence presented, the Plaintiffs provided several forms of evidence to back their claim and PW1 and PW2 testified that they settled on the land around 2009 with some claiming to be there since 2002 because the land appeared vacant.
15. They produced photographs and a Surveyor's Report showing they have built permanent homes and divided the land into 15 distinct plots.
16. They highlight in their submissions that since the land became private property in 1988, neither the Respondent nor any predecessor has ever tried to evict them or interrupt their stay.
17. They argue that because the Respondent was served via (substituted service) and did not file a Defense, then the Respondent has legally admitted to their claim. They claim that their occupation ranges from 14 to 22 years, well beyond the 12-year legal limit required to claim ownership.
18. Citing the case of *Sisto Wambugu v Kamau Njuguna*, [1982-88] 1KAR 217 they argue that the Respondent has discontinued their possession by failing to use or protect the land, allowing the Applicants to dispossess her.
19. The Applicants have thus asked the Court for a Declaration that they are the owners by way of adverse possession.

Analysis and Determination

20. The issue for the determination of this Court is whether adverse possession has attached in favour of the Applicants.
21. This Court has considered the evidence and the submissions therein. What amounts to a claim of adverse possession is an instance where the suit property is registered in the name of a person other than the Applicants, and the Applicants who have been in open and exclusive possession of the suit property in an adverse manner to the title of the owner, for a period of more than twelve years. A claim for adverse possession is anchored on Sections 37 and 38 (1) of the *Limitation of Actions*, which contemplates two concepts dispossession and discontinuance of possession. The procedure for instituting the claim is provided for by Order 37 rule 1 and 7 of the *Civil Procedure Rules*, where the Applicant is required



to file an Originating Summons that must be supported by an Affidavit to which a certified extract of the title to the suit land has to be annexed.

22. The Applicants must establish that the title holder has lost his right to the land either by being disposed of it or having discontinued his possession of it. The Court of Appeal in *Wilson Kazungu Katana & 101 Others vs Salim Abdalla Bakshwein & Another* (2015) eKLR stated that:

“In order to acquire by statute of limitations a title to land which has a known owner, that owner must have lost his right to the land either by being dispossessed of it or by having discontinued his possession of it and that what constitutes dispossession of a proprietor are acts done which are inconsistent with his enjoyment of the soil for the purpose for which he intended to use. A person who occupies another’s person’s land with that person’s consent cannot be said to be in adverse possession as in reality he has not dispossessed the owner of the land and the possession is not illegal. ... In other words his entry must be adverse to the title of the owner of the land. ... Besides adversal entry into the land, the Applicant must also demonstrate exclusive physical possession of the land and manifest unequivocally the intention to dispossess the owner. The occupation must be open, uninterrupted, adverse to the title of the owner, adequate, continuous and exclusive as already stated. The burden of proving all these is on the person asserting adverse possession.”

23. The first issue to consider is how the Applicants came into possession of the suit property, in order to determine whether their possession was adverse to the Respondent’s title. Time for the purpose of adverse possession started running in the Applicants’ favour when they became trespassers and the Respondent did not take any steps to assert their title to the suit property and stop time from running in favour of the Plaintiffs.
24. From the evidence on record, each of the Plaintiffs’ claims to have come into possession differently, the 1st Applicant claims to have been on the suit property in an open manner, without force and lived peacefully for a period exceeding 15 years without any interruption and this applies to the other Plaintiffs.
25. The Plaintiffs produced a Surveyor’s Report prepared by Geoacre Surveys Ltd dated either 21/10/2024 or 23/10/2024. I also note that the Surveyor was instructed the same day he produced the Survey Report on 23/10/2024 by Musa Boaz & Thomas Advocates or he produced the report on 21/10/2024 before he was instructed.
26. At the same time the Surveyor was not called to produce the Survey Report. PW1 chose to produce a report she did not prepare nor did not instruct the Surveyor to prepare.
27. From the survey findings the land seems to have been divided into 17 portions and yet the Plaintiffs in this matter are 15. Further the Surveyor indicates that the subplots have been sold (emphasis mine) to different as listed. From the list two plots seem to be vacant that is plot 8 and plot 11. However, the list provided in the Survey Report show that it is plot 12 that is undeveloped only one subplot the rest are indicated as developed. These glaring contradictions point to a fishing expedition.
28. It follows therefore that the Applicants are claiming the suit property LR Ruiru/Ruiru East Block 2/4882 yet it has been subdivided into 17 plots which are not all adversely possessed but as the Surveyor’s Report indicates the plots have been sold to different people. The Sale Agreements or documents that were used to sell the subplots were not presented before the Court.
29. Now whereas it is in order for the Applicants to seek adverse possession of the 17 plots the Applicants were required to specifically identify their specific portions they lay claim to and limit their claim to



only those specific plots and not the whole suit property. The Plaintiffs failed to prove the location of the distinct portion of the land they were individually claiming out of the 0.4300 Ha of the whole suit property. In *Wilson Kazungu Katana & 101 Others v Salim Abdalla* [2015] KECA 728, the Court of Appeal stated:

“The identification of the land in possession of an adverse possessor is an important and integral part of the process of proving adverse possession. This was so stated by this Court in the case of *Githu v Ndele* (1984) KLR 776. The appellants did not discharge the burden of proving and specifically identifying or even describing the portions, sizes and locations of those in their respective possession from the larger suit premises that they sought to have decreed to them.”

30. It was incumbent upon the Plaintiffs to prove their case against the Defendant with convincing evidence. In the case of *Miller v Minister of Pensions* [1947] 2 All ER 372, Lord Denning stated that:

“Thus, proof on a balance of preponderance or probabilities means a win, however narrow. A draw is not enough. So, in any case in which the tribunal cannot decide one way or the other which evidence to accept, where both parties’ explanations are equally (un)convincing, the party bearing the burden of proof will lose, because the requisite standard will not have been attained.”

31. I will be failing if I do not point out the inconsistency in numbers of the plots where the Applicants claimed they were 15 the Survey Report indicate that they were 17 portions. This points to a lack of specificity as stated in the cases referred to herewith. Adverse possession always requires that the claimant possess a specifically defined, identifiable and measurable piece of land. If 15 people are claiming 17 plots, it creates an ambiguity as to who possesses the other plots. Infact as pointed out the 12th plot is indicated as undeveloped yet it is included in the claim by the 15 Applicants.

32. Further I note that Faith Wanjiku Waweru lays claim to subplots 4, 9 and 10 making it difficult to understand if the Applicants are 15 indeed. Infact some of the Applicants are not listed in the Surveyor’s Report and these are Patrick Kiarie Muchai and Peter Njonge. At the same time, Sarah Wangari is not appearing as one of the Plaintiff/Applicant yet she is listed in the Surveyor’s Report.

33. The situation I am faced with in the instant suit is that of “Catch-All” (Emphasis mine) claims where the Applicants cast the net in the ocean, hoping to catch any plot, rather than clearly defining their exclusive, specific occupation of a particular parcel.

34. As stated above the Surveyor’s Report indicated that subplots have been sold to different people. Now, if subplots were sold, the purchasers are the legitimate owners. An adverse possessor cannot easily claim possession against multiple, independent owners who bought the land legitimately, as the possession is likely not exclusive or uninterrupted.

35. The Applicants must prove they had exclusive, uninterrupted possession of the entire suit land for 12 years. If the original owner (or subsequent buyers) exercised ownership rights such as selling the land this acts as an interruption to the 12-year period.

36. As seen in recent cases, where there is no clear evidence connecting a specific Applicant to a specific subplot, it is not possible to find for adverse possession. If the original owner subdivided the land, this acts as an assertion of title, which can break the continuity of the adverse possession.

37. Therefore, while a group can claim adverse possession, the inconsistency between the 15 Applicants and 17 plots, and the names that are missing and new ones introduced on the Survey Report combined



with the evidence that the plots were sold to others, means the Plaintiffs have failed to prove exclusive, hostile and uninterrupted possession for 12 years over all the suit property.

38. Further in the case of *Mombasa Teachers Co-operative Savings & Credit Society Limited v Robert Muhambi Katana & 15 Others* (2018) eKLR, where the Court enumerated the required elements to prove adverse possession as follows:

“Likewise, it is settled that a person seeking to acquire title to land by of adverse possession must prove non permissive or non-consensual, actual open, notorious, exclusive and adverse use/occupation of the land in question for an uninterrupted period of 12years as espoused in the Latin maxim, *nec vi nec clam nec precario*.”

39. As correctly stated, and cited in *Maina Kinya v Gerald Kwendaka* [2018] eKLR for adverse possession to accrue it has to be shown:

“The law in respect to adverse possession is now settled. For one to succeed in a claim of adverse possession he must satisfy the following criteria stated in the case of *Maweu vs. Liu Ranching and Farming Cooperative Society* 1985 KLR 430 where the Court held;

“Thus, to prove title by adverse possession, it was not sufficient to show that some acts of adverse possession had been committed. It was also to prove that possession claimed was adequate, in continuity, in publicity, and in extent and that it was adverse to the registered owner. In law, possession is a matter of fact depending on all circumstances”.

40. I have considered the pleadings, the evidence and the submissions by Counsel and find that the Plaintiffs have not proved that they have acquired the suit land by way of adverse possession. The case is hereby dismissed with no costs.

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

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MOGENI J

JUDGE

In the presence of:

Mr. Mungai for 1st – 15th Plaintiffs

Defendant - Absent

Melita - Court Assistant

