



Wamae v Mwangi (Sued as Administrator of the Estate of Mwangi Maingi – Deceased) (Environmental and Land Originating Summons 12 of 2022) [2026] KEELC 537 (KLR) (9 February 2026) (Judgment)

Neutral citation: [2026] KEELC 537 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 12 OF 2022**

MAO ODENY, J

FEBRUARY 9, 2026

IN THE MATTER OF LAND PARCEL NO. LR NO. 9727/64

AND

**IN THE MATTER OF SECTION 38 OF THE LIMITATIONS
OF ACTIONS ACT, CHAPTER 22 LAWS OF KENYA**

BETWEEN

GRACE WANJIRU WAMAE PLAINTIFF

AND

**SIMON THAIRU MWANGI (SUED AS ADMINISTRATOR OF THE ESTATE OF
MWANGI MAINGI – DECEASED) DEFENDANT**

JUDGMENT

1. By an Originating Summons dated 22nd July, 2022, the Plaintiff herein sued the Defendant seeking the following orders:
 1. That the plaintiff be declared to have become entitled by virtue of adverse possession of over twelve (12) years of parcel of land measuring 1.5166Ha or thereabout being a portion of land parcel No. LR No. 9727/64 registered under the Registration of Titles Act (Chapter 281) Laws of Kenya (now Repealed) in the name of Mwangi Maingi (Deceased).
 2. That the plaintiff be registered as sole proprietor of the said parcel of land measuring 1.5166Ha or thereabout being a portion of land known as LR No. 9727/64 in place of Mwangi Maingi (Deceased) in whose favour the said piece of land is registered.



3. That in the alternative, a declaration of trust that the Defendant holds a portion of land measuring 1.5166Ha in LR No. 9727/64 in trust for the Plaintiff.
4. That the Defendant be directed to undertake survey and subdivide in order to excise the said portion measuring 1/5166Ha from LR No. 9727/64 and ensure its subsequent registration and execute all necessary documents to facilitate the transfer of ownership to the Plaintiff within One Hundred & Eighty (180) days from the date of the order and in default, the Deputy Registrar of this honourable court be directed to execute such necessary documents in his place.
5. That the Deputy Registrar be empowered to sign any documents that the Defendant may refuse to sign.
6. That the cost of this application be met by the Defendant.

Plaintiff's Case

2. PW1 Grace Wanjiru Wamae, adopted her witness statement dated 26th February 2025, as her evidence in chief and produced a list of documents dated 2nd February 2025 as Pex No. 1 to 10.
3. PW stated that she sued the Defendant in his capacity as the Administrator of the estate of the late Mwangi Maingi, having been appointed on 13th June 2019 in Nakuru High Court Succession Cause No. 551 of 2015 Estate of the late Mwangi Maingi (deceased). PW1 further stated that at the time of his death, the late Mwangi Maingi was the registered proprietor of parcel No. LR 9727 and held the title in trust for the benefit of himself, his brother, and sister, namely, Nahashon Maigwa (deceased) and Esther Wangare Ng'an'ga (deceased).
4. It was PW1's testimony that the suit parcel of land was later shared among the deceased and his siblings whereby the deceased and his brother were each allocated parcels measuring 6.5 acres and their sister was allocated 2 acres.
5. PW1 testified that on 23rd October 2007, and 29th October 2007, she purchased parcels measuring 0.8Ha and 0.7166Ha from Esther Wangare N'gan'ga and Nahashon Maigwa (deceased respectively and the deceased was party to the agreements, and fully participated in the transactions as the registered proprietor.
6. According to PW1, the deceased undertook to carry out the survey and subdivision of the suit parcel with a view to excising PW1's parcels and subsequent registration and transfer. She stated that she has been in occupation of the suit parcels continuously, uninterrupted for a period of over 12 years. She also testified that neither the defendant nor any of the beneficiaries have taken any legal action to evict her.
7. It was PW1's evidence that she was compensated in 2021, for the damage caused by water that spilled from a dam located in a neighboring land owned by Agriflora Kenya Limited as the owner of 1.5166 Ha.

Analysis And Determination

8. The Defendant never filed any documents and therefore this matter proceeded ex-parte. Counsel for the Defendant appeared virtually and confirmed that they were ready to proceed but never showed up during the hearing in open court. Counsel later made an application to set the orders closing the Defendant's case and sought leave to file and serve documents and comply with Order 11 within 7 days.



9. The application was heard and the court vide ruling dated 29th October 2025, granted the Defendant leave to file a Replying affidavit and documents within 14 days and pay thrown away costs of Kshs. 20,000/-
10. This matter was fixed for hearing on 18th December 2025, when counsel for the plaintiff informed the court that Mrs. Ndeda, counsel for the Defendant had reached out and told him that they will not be filing any documents, therefore counsel can proceed and take a judgment date.
11. The issue for determination is whether the plaintiff has proved that she has acquired the suit land by way of adverse possession. In the case of Wambugu –v- Njuguna, (1983) KLR 173, the Court of Appeal held that adverse possession contemplates two concepts: possession and discontinuance of possession. It was further held that the proper way of assessing proof of adverse possession is whether the titleholder has been dispossessed or has discontinued his possession for the statutory period, and not whether or not the claimant has proved that he or she has been in possession for the requisite number of years.
12. The Plaintiff stated that she has been in possession of the suit parcels of land for over a period of 12 years and neither the Defendant nor the beneficiaries of the deceased estate have taken any steps to evict her from the suit land.
13. Similarly, in the case of Mbira v Gachuhi (2002) IEALR 137 the court stated that:

“.....a person who seeks to acquire title to land by the method of Adverse Possession for 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 prescribed period without interruption....”
14. The Plaintiff gave evidence on how she came into possession of the suit land and how her occupation has been continuous and uninterrupted for over a period of 12 years. The Defendant has not rebutted this evidence.
15. The Supreme Court of India held in the case of Karnataka Board of Wakf –vs- Government of India & Others [2004] 10 SCC 779, thus:

“In the eye of the law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won’t affect his title. But the position will be altered when another person takes possession by clearly asserting title in denial of the title of the true owner. It is a well settled principle that a party claiming adverse possession must prove that his possession is “nec vi, nec clam, nec precario”, that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period.”
16. The Plaintiff has proved that her possession is “nec vi, nec clam, nec precario”, that is, peaceful, open and continuous. Her possession is adequate in continuity, in publicity and adverse to the true owner.
17. I find that the plaintiff has proved that she is entitled to the orders sought and make the following specific orders:
 - a. That the plaintiff is hereby declared to be entitled by virtue of adverse possession of parcel of land measuring 1.5166Ha or thereabout being a portion of land parcel No. LR No. 9727/64



registered under the Registration of Titles Act (Chapter 281) Laws of Kenya (now Repealed) in the name of Mwangi Maingi (Deceased).

- b. That an order is hereby made that the plaintiff be registered as sole proprietor of the said parcel of land measuring 1.5166Ha or thereabout being a portion of land known as LR No. 9727/64 in place of Mwangi Mainti (Deceased) in whose favour the said piece of land is registered.
- c. That the Defendant is hereby directed to undertake survey and subdivide the suit land in order to excise the said portion measuring 1/5166Ha from LR No. 9727/64 and ensure its subsequent registration and execute all necessary documents to facilitate the transfer of ownership to the Plaintiff within One Hundred & Eighty (180) days from the date of the order and in default, the Deputy Registrar of this honourable court to execute such necessary documents in his place.
- d. Costs to the Plaintiff.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 9TH DAY OF FEBRUARY 2026.

M. A. ODENY

JUDGE

