



**Gatema v Ngari (Environmental and Land Originating Summons
E001 of 2021) [2026] KEELC 960 (KLR) (16 February 2026) (Judgment)**

Neutral citation: [2026] KEELC 960 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E001 OF 2021
AK BOR, J
FEBRUARY 16, 2026**

BETWEEN

MBUI GATEMA PLAINTIFF

AND

SHADRACK NYAGA NGARI ALIAS NYAGA NGARI DEFENDANT

JUDGMENT

1. The Plaintiff instituted this suit vide the originating summons dated 28/1/2021 seeking a declaration that he had become entitled to the land known as Embu/Gangara/322 measuring 7.6 hectares (ha) (the suit land) through adverse possession. In the alternative, he sought a declaration that the Defendant is registered as proprietor of the suit land on behalf of and in trust for him. He sought to be registered as the absolute proprietor of the suit land as well as costs of the suit.
2. In the supporting affidavit, the Plaintiff deponed that he was born on the suit land on or about 1946 and that he has been in occupation of the land since then. He averred that his late father, Gatema Gakingi, lived and was buried on the suit land on or about 1956. That during the 1973 adjudication process, the suit land was allocated to him by his Mbuya clan, while the Defendant, who is the son of his stepbrother Ngari Gitiki, was allocated Embu/Gangara/321. He averred that parcels 321 and 322 were the subject matter in Adjudication Committee Case No. L.C 3/72/73 between the Nditi and Mbuya clans, and were initially awarded to Nditi clan, resulting in cancellation of their registration. That notwithstanding the cancellations, they both continued to occupy the parcels previously allocated to them.
3. Through Objection Case No. 122/77-78, the parcels of land were reinstated to the Mbuya clan, and the Land Adjudication Officer directed that they be registered in his name. However, during reinstatement, a mix up occurred such that he was registered as proprietor of parcel no. 323 instead of 322, while the Defendant was registered as proprietor of parcel no. 322 instead of 321. Despite this



error and the erroneous registration in 1996, he continued his occupation and developed parcel 322, while the Defendant remained on parcel no. 321.

4. He averred that he resides on the suit land with his wife, nine children, and eleven grandchildren and had extensively developed it with 3 acres having mature khat, which is the main source of their livelihood. He added that there are approximately 5,000 assorted trees including grevillea, 'miritu', 'miringa', 'mikwego', several fruit trees, yams, bananas, sugar cane and seasonal crops, on the land.
5. The Plaintiff contended that it was only in 2020 that the Defendant began threatening to evict him from the suit land prompting him to file Siakago MC ELC No. 30 of 2020, which was struck out on 3/12/2020 on a technicality. He asserted that having openly lived and worked on parcel no. 322 for more 12 years from the date of registration of that parcel of land, the Defendant had lost any claim to the land.
6. The Defendant filed a replying affidavit and a further replying affidavit in opposition to the claim. He averred that he is registered as the absolute owner of the suit land and that his was a first registration. He averred that the Plaintiff's suit is premature as he became aware of the existence and his own ownership of the suit land in 2020 when the Plaintiff approached him with a proposal to exchange his land parcel 322 with the Plaintiff's land parcel 321.
7. Prior to that, he did not know that he owned the suit land and could not therefore have exercised his rights to the property or evicted the Plaintiff who was in illegal occupation. He contended that since he became aware of his ownership of the suit land, he had taken all the necessary steps to evict the Plaintiff from the suit land. Further, he contended that he does not own land parcel 321 as the Plaintiff claimed, he did not know its location and does not occupy that land.
8. The Defendant annexed to his replying affidavits copies of the title over parcel no. 322, the notice to vacate dated 27/1/2020, response to the notice dated 11/2/2020 and a copy of the register for parcel 322.
9. The suit proceeded for hearing on 8/12/2022 when the Plaintiff's evidence was taken. During the hearing, the Plaintiff testified that he utilises the suit land, that parcel 322. He stated that the land was allocated to them by their clan on or about 1972 or 1973. That even before then, they lived on the land, even during the clan disputes.
10. On cross-examination, he stated that he has all along lived on parcel 322 while the Defendant lives and cultivates bananas and other crops on parcel 321, which is wrongly registered in the name of Celestino Nyaga. He stated that he was the leader of the clan in all the adjudication cases and that he informed the clan members that a mistake had occurred at the time of registration. He averred that they had agreed with the Defendant to go to the lands office to rectify the mistake but the Defendant later changed his mind. He denied that the Defendant learned of the error in 2020.
11. The Plaintiff produced the green card for land parcel 322, proceedings and award in the Objection cases, the adjudication record for parcel 322, a notice to vacate dated 27/1/2020 and response dated 11/2/2020.
12. The hearing of the suit was adjourned to allow the parties to pursue mediation which did not succeed. When the suit came up for further hearing of the Plaintiff's case on 3/6/2025, both parties sought to adjourn the hearing but the court observed that they had not provided sufficient reasons to have the matter taken out of the cause list. Consequently, the court directed that the suit would be determined based on the pleadings and the evidence already taken. The court directed the parties to file and exchange written submissions. Only the Plaintiff filed his submissions, which the court duly considered.



13. The Plaintiff submitted that the Defendant does not deny that he occupies the suit land. He urged that the Defendant's allegation that he became aware that he owned the suit land in 2020 is far-fetched in light of the fact that the Defendant was registered as the proprietor of the suit property on 2/5/1996. He contended that being the son of the Plaintiff's stepbrother, and having been an adult at the time of the erroneous registration, the Defendant cannot claim to have been unaware of the confusion that arose during the re-allocation of land to the clan members. He submitted that the Defendant was aware that the Plaintiff was occupying the suit land without his licence but did not take any steps to evict him from the land. He urged the court to grant the reliefs he sought.
14. The issue for determination is whether the Plaintiff has established that he is entitled to Embu/Gangara/322 through adverse possession, or in the alternative, whether the Defendant holds the said land in trust for him. The issue in dispute herein is straight forward. The Plaintiff contends that during the land adjudication process in 1972 or thereabout, parcel no. 322 was allocated to him by his Mbuya clan, and that he has occupied and developed the land ever since. That he was born on the land in 1946. He asserted that following several objection proceedings surrounding the suit land and other parcels of land between the Nditi and Mbuya Clans, the suit land was restored to his Mbuya clan. That due to a mix-up at the time during registration, he was registered as the proprietor of parcel no. 323 in error while the Defendant was registered as proprietor of parcel no. 322 the parcel the Plaintiff had all along occupied.
15. He maintained that being his stepbrother's son and therefore a close family member, the Defendant was well aware of that error from the outset. The Plaintiff averred that both parties initially agreed to rectify the registration error at the Lands Office, but the Defendant later changed his mind and instead sought to evict him from the suit land. On the other hand, the Defendant asserted that he was unaware that he owned parcel no. 322 until 2020 when he alleged that the Plaintiff approached him with a proposal to exchange parcels 321 and 322. That prior to that time, he did not know that he owned the suit land. That upon discovering that he owned it, he asserted his rights by issuing a notice to the Plaintiff to vacate the land.
16. However, this court is not persuaded that the Defendant became aware that he owned the suit land in 2020. He was registered as proprietor of parcel no. 322 on 2/5/1996. The court finds it implausible that the Defendant would have been unaware of his proprietorship of the suit land for about 24 years. This demonstrates that the suit land does not belong to him because ownership of land does not occur in a vacuum, it must stem from a traceable legal origin.
17. The Plaintiff's evidence, which was substantially uncontroverted, demonstrates that the Plaintiff has been in open, continuous, and uninterrupted possession of the suit land since 1946 and even when the Defendant was registered as proprietor of the land in 1996. However, the court is not persuaded that the Plaintiff's occupation was adverse to the Defendant's title, given that the Plaintiff's possession of the suit land was based on the genuine belief that he was the rightful owner of the land. The claim for adverse possession of the suit land fails.
18. The evidence adduced strongly supports the Plaintiff's contention that the registration of the Defendant as proprietor of parcel no. 322 resulted from an error during the land adjudication and registration process. In such circumstances, equity would impose a constructive or resulting trust in favour of the Plaintiff, who has all along occupied and developed the suit land believing it to be his.
19. The court finds merit in the Plaintiff's claim. A declaration is issued that Defendant is registered as the proprietor of Embu/Gangara/322 on behalf of and in trust for the Plaintiff. The Plaintiff will be registered as proprietor of Embu/Gangara/322. The Land Registrar is directed to cancel the Defendant's title over Embu/Gangara/322. The Defendant will bear the costs of this suit.



DELIVERED VIRTUALLY AT BUNGOMA THIS 16TH DAY OF FEBRUARY 2026.

K. BOR

JUDGE

In the presence of: -

Court Assistant- Diana Kemboi

No appearance for parties

