



**Nguru v Karachi & 6 others (Environmental and Land Originating Summons  
30 of 2014) [2026] KEELC 957 (KLR) (4 February 2026) (Judgment)**

Neutral citation: [2026] KEELC 957 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT EMBU  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 30 OF 2014**

**AK BOR, J**

**FEBRUARY 4, 2026**

**BETWEEN**

**NGARI NGURU ..... APPLICANT**

**AND**

**JOSPHAT MACHARIA KARACHI ..... 1<sup>ST</sup> RESPONDENT**

**STEPHEN MUYA CHEGE ..... 2<sup>ND</sup> RESPONDENT**

**SUSAN NYAMBURA MACHARIA ..... 3<sup>RD</sup> RESPONDENT**

**ESTHER MUTHONI MACHARIA ..... 4<sup>TH</sup> RESPONDENT**

**CYRUS KARACHI MACHARIA ..... 5<sup>TH</sup> RESPONDENT**

**HENRY MWANGI NDUNGU ..... 6<sup>TH</sup> RESPONDENT**

**JOSEPH MUIRURI KAMUNDU ..... 7<sup>TH</sup> RESPONDENT**

**JUDGMENT**

1. The Applicant instituted this suit vide the Amended Originating Summons dated 29/9/2011 seeking a declaration that he has become entitled to all the parcels of land known as Nthawa/Riandu/1544, 4079, 4080, 4081, 4082 which originally formed part of Nthawa/Riandu/1207 and 1545 through adverse possession. He sought to be registered as the proprietor of the parcels of land and prayed that the Respondents bear the costs of the suit.
2. The Applicant died on 13/6/2015 in the course of proceedings and was substituted by his wife, Cecily Mwendia Ngari and his brother Njiru Nguru, who are the administrators of his estate.
3. The suit was consolidated with ELC Case No. 222 of 2015 (formerly HCCC No. 19 of 2010)- Esther Muthoni Macharia v Ngari Nguru and Igoki Nguru in which Esther Muthoni Macharia sought the eviction of Ngari Nguru and his mother Igoki Nguru from parcel no. 4080.



4. The Applicant's case is that parcel numbers Nthawa/Riandu/1544, 4079, 4080, 4081 and 4082 originated from land parcel no. Nthawa/Riandu/1207. The 1<sup>st</sup> Respondent subdivided parcel no. Nthawa/Riandu/1207 into Nthawa/Riandu/1544 and 1545 on 28/12/1981. On 14/9/2009, he subdivided Nthawa/Riandu/1545 further into parcel numbers 4079, 4080, 4081 and 4082 and transferred them to the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents who are his family members. He transferred parcel no. 1544 to the 2<sup>nd</sup> Respondent who in turn transferred it to the 6<sup>th</sup> and 7<sup>th</sup> Respondents on 6/7/2009.
5. The Applicant averred that during land demarcation and adjudication, the original land was owned by Nditi Clan under the chairmanship of Nthiga Gicho, and being a member of the clan, the Applicant was allocated the land. He stated that since 1990, he had been in continuous and exclusive occupation, possession and use of the whole land. That he built his houses on the land and lived there with his family. He added that he has greatly developed the land, planted assorted trees, and that he has cultivated it openly and peacefully as ancestral land.
6. He averred that in 2009, the 1<sup>st</sup> Respondent started claiming that the land was his and on visiting the lands office and obtaining certified copies of the register of the suit land, he discovered that the 1<sup>st</sup> Respondent caused himself to be registered as the owner of parcel no. 1207 on 11/1/1978, without his knowledge or notice and that he subsequently alienated the resultant subdivisions of the land as set out above. According to him, the 1<sup>st</sup> Respondent undertook these actions in an attempt to dispose of the suit property to escape liability.
7. He averred that he had occupied the land since birth and that that is where his ancestors lived and were buried. Upon discovering the 1<sup>st</sup> Respondent's actions, the Applicant filed Siakago SPMCC No. 13 of 2009, which he later withdrew on realizing that the proper forum to adjudicate his claim was the High Court. He then filed the present suit. He argued that he had acquired title over the suit land through adverse possession, having been in exclusive, continuous and peaceful possession for a period exceeding 12 years without interruption. He sought to be registered as the proprietor of the parcels of land known as Nthawa/Riandu/1544, 4079, 4080, 4081 and 4082.
8. The 1<sup>st</sup> Respondent, Joseph Macharia Karachi opposed the Applicant's claim through the replying affidavit which he swore on .... He died in the course of the proceedings and by the order made on 15/3/2017, was substituted by the 5<sup>th</sup> Respondent, Cyrus Karachi Macharia who is his son and the administrator of his estate. In his replying affidavit, Joseph Macharia Karachi denied that parcel no. 1207 was owned by the Nditi Clan prior to land adjudication and demarcation as alleged by the Applicant. He stated that he purchased the suit land for valuable consideration vide a sale agreement entered into on 20/2/1972 between him and James Njagi, the previous owner of the land.
9. He averred that pursuant to the sale, he followed the legal process for land adjudication and demarcation and acquired title over the land as a first registration. He subdivided parcel no. 1207 on 28/12/1981 into parcels 1544 and 1545 and transferred parcel 1544 to the 2<sup>nd</sup> Respondent who later disposed of the land to other parties. He stated that upon acquiring the suit land, he took possession and occupation and even charged parcel no. 1545 to Kenya Commercial Bank Limited in 1983.
10. He averred that he fell sick in 1992 and his mobility was curtailed. That he was in and out of hospital for a long period of time, which made it impossible to visit the suit land. It was not until sometime in 2008 that he learnt from his son that the Applicant and his mother Igoki Nguru, had trespassed into a portion of parcel 1545. He reported the trespass to the local administration who ordered them to vacate but they defied the orders. He instituted eviction proceedings against them being Siakago SRMCC No. 14 of 2009- Josphat Macharia Karachi v Ngari Nguru and Igoki Nguru, but the suit was dismissed on a technicality.



11. He denied that the Applicant occupied and used the entire suit land or that he had occupied it in 1990, and stated that the Applicant occupies only a small portion unlawfully and forcefully. Further, he claimed that the Applicant forged a document showing that he registered a caution against the suit land on 15/2/2009 yet no caution ever existed. He maintained that the only lawful encumbrance against the land was the bank charge. He stated that the Applicant withdrew SRMCC No. 13 of 2009 following a preliminary objection he raised and that the Applicant was ordered to pay him costs of Kshs. 43,215/= which remain unpaid. He urged the court not to hear the present suit until the costs were settled but that application was disallowed in a ruling of this court dated 23/3/2010.
12. The 1<sup>st</sup> Respondent maintained that his title had not been extinguished while contending that the Applicant has no lawful claim, and should vacate the land. He clarified that the original parcels 1207, 1544 and 1545 no longer exist and that there is a pending case being HCCC No. 19 of 2010- Esther Muthoni Macharia v Ngari Nguru and Igoki Nguru seeking to evict the Applicant and Igoki Nguru from the portion of the land they occupy, which is parcel no. 4080. He urged that the Applicant's claim is fatally defective, frivolous, vexatious, an abuse of court process, and should be dismissed with costs.
13. The 2<sup>nd</sup> Respondent also opposed the suit through his replying affidavit, in which he deponed that he purchased parcel no. 1544 from the 1<sup>st</sup> Respondent and the land was transferred to him on 26/5/1982. Before the land was transferred to him, he applied to the relevant Land Control Board (LCB) for consent to transfer. He believed that he was a bona fide purchaser for value without notice, and urged that the title to his land had never been challenged for over 26 years.
14. Having sold his proprietary interest in that land to the 6<sup>th</sup> and 7<sup>th</sup> Respondents, he believed that the orders sought against him are not available to the Applicant. He denied that the suit land was clan land or that it was awarded to the Applicant. He further denied that the Applicant occupied parcel no. 1544 since 1990 or at all as alleged and urged that the claim for adverse possession had not been proved.
15. During the hearing, Cecily Mwendia Ngari gave evidence and adopted her written statement and that of the late Ngari Nguru. She explained that between 1971 and 1972, her grandfather, Nthiga Gicho, who was Chairman of the Nditi Clan then, sought to mark the boundary of the land belonging to the clan. The land comprised parcels numbers 620 to 627 and parcel no. 1207, being the numbers allocated during land adjudication. To that end, he engaged Juliano Njeru Mbarire, who was assisted by Dishon Nyaga and Kariuki Erustus, to demarcate the boundary of the entire Nditi Clan land using a tractor. Since he lacked the financial means to pay them, he agreed to compensate them with portions of land. The boundary marked encompassed the whole of the Nditi Clan land, clearly distinguishing it from neighboring clans. She stated that the members of the clan were living on the clan land.
16. In 1990, her grandfather showed her late husband the land he was to own which was parcel no. 1207. She averred that they entered the land with her late husband and started cultivating it. That they planted mango trees, avocado trees, bananas and crops like maize. They connected water and electricity to the land and built a water reservoir. She stated that they have four permanent houses on the land and their people who have died were buried there. She maintained that they have occupied and used the land since 1990 and that the Respondents have never been on the land.
17. In 2009, the 1<sup>st</sup> Respondent visited her while on a wheelchair claiming that he had gone to see his land. She stated that the 1<sup>st</sup> Respondent approached and addressed her late husband and her grandfather, upon which her grandfather questioned him on how he had acquired the land, given that it belonged to the Nditi Clan. In response, the 1<sup>st</sup> Respondent asserted that he had purchased the land from Njage Mwoga in 1972 and he was sent away and asked to bring evidence that the land was his.



18. She testified that her late husband and her grandfather visited the lands office and discovered that the land was registered in the 1<sup>st</sup> Respondent's name on 11/1/1978. He subdivided it and transferred it to the Respondents. Her late husband registered a caution against the land and instituted a suit with her grandfather against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents being Siakago Civil Suit No. 13 of 2009. That suit was withdrawn and filed in this court as the present suit. The 1<sup>st</sup> Respondent filed Siakago Magistrates Court Civil Suit No. 14 of 2009 against her grandfather and her late husband seeking to have them evicted from the suit land.
19. She maintained that up to date, she and her family are on the suit land and that her grandfather and her husband were buried on that land. The 6<sup>th</sup> Respondent once visited the land and was informed that the land was the subject of an active court case and that he could not therefore use it. She contended that the Respondents did not attempt to enter the suit land from 1990 to 2009. She produced the map for parcel no. 1544 and 1545; copies of the register for parcel numbers. 1544, 1545, 4079, 4080, 4081, 4082 and 1207, plaint in Civil Case No. 13 and 14 of 2009 and the Chief's letter.
20. On cross-examination, she stated that her late grandfather lived on a separate parcel of land, that is parcel no. 624 and that he was claiming parcel no. 1207 because he gave it to her late husband. Land adjudication was done between 1971 and 1972 and her late husband was given the suit land through a power of attorney. It was her evidence that the 6<sup>th</sup> Respondent once put up a small house on the suit land which his worker was using around 2010 but he demolished it when he was instructed by the Chief.
21. Njiru Nguru was called to testify as the Applicant's witness. He stated that he belongs to Nditi Clan and that his grandfather, Nthiga Gicho was the Chairman of the clan before land adjudication and registration. The land he lives on belonged to his grandfather, who gave it to his brother, the late Ngari Nguru before demarcation and adjudication. During the land adjudication in 1971-1972, his grandfather hired Juliano Njeru Mbarire, assisted by Dishon Nyaga John and Kariuki Erasto to demarcate the clan land using a tractor and since he did not have money, he agreed to compensate them with land.
22. However, with the connivance of the adjudication officers, the hired persons took advantage of his grandfather's illiteracy and subdivided and registered the entire land block comprising parcels 620-627 and 1207 in the names of strangers leaving his grandfather without land or a burial place. In January 2009, his brother encountered the 1<sup>st</sup> Respondent, Josphat Macharia Karachi, who claimed ownership of the suit land, alleging that he purchased it from James Njagi Mwoga in 1972. He stated that the 1<sup>st</sup> Respondent initially admitted he did not have a sale agreement but later produced one which according to him was forged, as the signature did not match the signature of Njagi Mwoga in the adjudication records when he acquired parcel no. 622.
23. Further, he claimed that the 1<sup>st</sup> Respondent was a public officer in the Ministry of Lands and Settlement and that his witness in the sale agreement was employed by the same Ministry as an executive officer at that time and was signing adjudication records. He averred that his late brother only discovered the 1<sup>st</sup> Respondent's action of registering the suit land in his name and subsequently subdividing and transferring it to other parties in 2009 when he carried out a search at the lands registry.
24. He maintained that his grandfather allocated the suit land to his late brother in 1990 and authorized them to settle on the land with their family members. They have built their homes on the suit land and live there. They had developed the land, planted assorted trees, mangoes, avocados, bananas and paw paws and used the land to graze their cattle as their ancestral land.



25. On cross examination, he stated that the boundaries were demarcated in 1972. He was four years old at the time. He did not have evidence that his grandfather owned the suit land. The sale agreement produced by the 1<sup>st</sup> Respondent showed that he was sold land parcel 622 and not land parcel 1207 by James Njagi Mwoga which is the land that James owned.
26. The 5<sup>th</sup> Respondent testified on behalf of the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents. The 6<sup>th</sup> and 7<sup>th</sup> Respondents did not participate in the proceedings despite being duly served.
27. The 5<sup>th</sup> Respondent relied on his written statement and the replying affidavit sworn by Joseph Macharia Karachi. He is the administrator of the Estate of the late Joseph Macharia Karachi, the 1<sup>st</sup> Respondent. His late father informed him during his lifetime that he purchased Nthawa/Riandu/1207 from James Njagi Mwoga pursuant to a sale agreement dated 20/2/1972. During the demarcation and consolidation of land within Riandu, this land was registered in his father's name as the first registered proprietor. He stated that his father subdivided parcel no. 1207 into parcels 1544 and 1545 out of which he sold parcel number 1544 to the 2<sup>nd</sup> Respondent.
28. After purchasing the land, his father took possession and developed it and even charged it to Kenya Commercial Bank Limited. Over time, his father fell sick and was confined to a wheelchair. Gradually, his limbs stopped functioning and he became paralyzed. His illness took a toll on his family and he eventually died. During his illness, neither he nor his wife could visit the suit land and it is during that absence that his late father learned of the invasion of the land by the Applicant and his mother, Igoki Nguru. These events led to the filing of Siakago PMCC No. 13 of 2009, Thiga Gicho & Ngari Nguru v Josphat Macharia & Stephen Muya Chege and SRMCC No. 14 of 2009, Josphat Macharia Karachi v Igoki Nguru & Ngari Nguru. Both cases were withdrawn for want of jurisdiction.
29. His father subdivided parcel no. 1207 into parcels 4079, 4080, 4081, and 4082 which he transferred to the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents and retained one parcel under his name.
30. Sometime in June 2015, he learnt that Ngari Nguru had died and his wife Cecilly Mwendia and his mother Igoki Nguru intended to inter the body on his father's property. He filed HCCC No. 19 of 2010- Esther Muthoni Macharia v Ngari Nguru & Igoki Nguru and Siakago PMCC No. 38 of 2015 Cyrus Karachi Macharia v Cecilia Mwendia. He obtained court orders barring them from burying him on the suit land, but they went ahead and buried him on part of the disputed property.
31. He denied that the suit land was the property of the Nditi Clan or the late Nthiga Gicho. He also denied that the Applicant had occupied the land for the period he claims. On cross-examination, he confirmed that the sale agreement between his father and James Nyaga showed that he purchased parcel no. 622 Riandu and not 1207. The last time he went to the suit land was in 2015. He noted that a small part of the land was being ploughed and that there was one house on the land. There was nobody on parcel no. 1544.
32. He produced the sale agreement between James Njagi Mwoga and Josphat Macharia Karachi dated 20/2/1972, land certificate for parcel no. 1207, the Riandu land demarcation register in respect of parcel no. 1207, official search for parcel 1207 as at 11/3/2009 and the medical report for Josphat Macharia Karachi dated 2/10/2003.
33. He also produced copies of the consents to transfer in respect of parcel nos. 4079, 4080 and 4081 and their title deeds, death certificate for Josphat Macharia Karachi and the grant of letters of administration in respect of the Estate of Josphat Macharia Karachi. The other documents produced were the plaints in PMCC No. 13 of 2009 and SRMCC No. 14 of 2009, court order dated 10/5/2010



- issued in HCCC No. 19 of 2010 and a plaint in PMCC No. 38 of 2015 and a court order dated 16/6/2015.
34. The 2<sup>nd</sup> Respondent, Stephen Muya Chege gave evidence. He bought parcel no. 1544 from the 1<sup>st</sup> Respondent, and the land was transferred to him on 26/5/1982. He maintained that before the land was transferred to him, he applied to the relevant LCB for consent to transfer and that in the premises, he believed that he was a bona fide purchaser for value without notice. His title was not challenged for over 26 years. He maintained that having sold his interest over the land to the 6<sup>th</sup> and 7<sup>th</sup> Respondents vide the sale agreement dated 17/9/2008, the orders sought against him cannot issue. He urged that the Applicant was not in possession of the land and that he was the one in possession. He urged that the Applicant failed to prove the claim for adverse possession.
  35. On cross examination, he stated that when he purchased the land, there was no dispute over it. The sale agreement got lost. He maintained that his parcel of land had never been occupied by anybody. He did not use the land. He was emphatic that there was nobody on the land when he sold it on 17/9/2008. He produced copies of the certificate of official search dated 4/5/1998 for parcel no. 1544, the application for LCB consent dated 19/5/1980 and sale agreement dated 17/9/2008.
  36. The court directed parties to file and exchange written submissions, which it has considered. The Applicants filed two sets of submissions through the firms of E.N Njue and Company Advocates and Macharia Muraguri Advocates. E.N Njue & Company Advocates submitted that the Applicants proved that the suit land was owned by the Nditi Clan and that the late Ngari Nguru was a member of that clan.
  37. That they also proved that the late Ngari and his family entered and occupied the suit land as early as 1972, together with his mother and siblings, following allocation of the land by their grandfather, the late Nthiga Gicho, who was the chairman of the Nditi Clan. They submitted that the Applicants proved that the alleged sale agreement between the 1<sup>st</sup> Respondent and James Njagi Mwoga for parcel no. 622 was a forgery, which the late James Njagi Mwoga denounced and denied.
  38. They submitted that the 5<sup>th</sup> Respondent admitted that the 1<sup>st</sup> Respondent was an adjudication officer and that all witnesses to the impugned sale agreement were adjudication officers. It was submitted that the land had never been subdivided on the ground and remained intact as one block. They argued that the Respondents' claim is founded on illegal and immoral conduct, contrary to established legal maxims. They urged the court not to assist the Respondents to benefit from such conduct, given that the 1<sup>st</sup> Respondent abused his position as an adjudication officer and unlawfully acquired the suit land.
  39. On adverse possession, they submitted that the late Ngari had openly, continuously, peacefully and uninterruptedly occupied and used parcel no. 1207 measuring approximately 26 acres for a period exceeding 12 years, without the consent of the Respondents, thereby satisfying the principles under Section 7 of the *Limitation of Actions Act* and the doctrine of nec vi, nec clam, nec precario. They submitted that upon expiry of the statutory period, the Respondents became trustees of the Applicants' interest in the land. They relied on *Joseph Kiprotich Cheromei v Gith Muigai* (ELC No. E005 of 2003) on the essential ingredients for adverse possession. The possession must not be by force, secrecy, or licence and must be adequate in continuity.
  40. Macharia Muraguri Advocates submitted that it was uncontroverted that the suit land was under land demarcation and adjudication between 1971 and 1978. The land was originally parcel no. 1207, and was registered under the repealed Registered *Land Act* on 11/1/1978. It was contended that the Applicant's evidence showed continuous occupation of the suit land from 1990 to 2009, a period of 19 years, without interruption. They adverted to the fact that the 1<sup>st</sup> Respondent admitted in his replying



affidavit that he could not visit the suit land between 1992 and 2008 due to illness. That this position was buttressed by the 5<sup>th</sup> Respondent in his testimony covering a period of 16 years during which the Applicant remained in occupation.

41. They submitted that the 2<sup>nd</sup> Respondent testified that he had never occupied, used, or developed the suit land and only transferred his portion in 2009. The 6<sup>th</sup> Respondent did not file a defence and offered no evidence of occupation, while the 7<sup>th</sup> Respondent neither resided on the land nor appeared in court despite being served by substituted means. They submitted that the Applicants' occupation of the suit land from 1990 to 2009 was adverse, open, exclusive, peaceful, uninterrupted, and without the permission of the registered owners, and that it exceeded the statutory period of 12 years.
42. That during this period, the Applicant developed the land extensively by building houses, residing with his family on the land, planting trees and crops, and carrying out daily farming activities. They emphasised that none of the Respondents occupied, used, or possessed the suit land during this time.
43. It was further urged that the Applicants' occupation amounted to dispossession of the Respondents, which in law constitutes adverse possession. They maintained that their adverse possession of the land crystallized by 2009 when the instant suit was filed and that the subsequent transfers to the Respondents did not defeat the Applicant's rights as adverse possession had already passed title to the Applicant. It was submitted that the Applicant had proved, on a balance of probabilities, that he acquired the suit land by way of adverse possession.
44. The 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents submitted that the suit land was lawfully registered in the 1<sup>st</sup> Respondent's name as the first registered proprietor following the land adjudication process, having purchased it from James Njagi Mwoga in 1972 and obtained title in 1979. They argued that the Applicant failed to adduce any evidence to support the assertion that the land belonged to the Nditi Clan or that he was awarded the land during demarcation, and that any such claim ought to have been pursued through the dispute resolution mechanisms provided under the *Land Adjudication Act* during the adjudication process.
45. They further submitted that the Applicant's evidence on occupation was inconsistent and unreliable. That while the Applicant alleged to have been born on the land, evidence from his own witnesses confirmed that he was born in 1978, lived elsewhere in Runyenjes and only migrated to the suit land in 1990. They submitted that land demarcation had been completed by then and that the Applicant could not have been awarded land during adjudication as alleged. They maintained that the Applicant was untruthful regarding the nature and duration of his occupation.
46. On adverse possession, they submitted that the Applicant did not demonstrate when his occupation became adverse to the interests of the registered proprietors. They argued that the Applicant's occupation, if any, was based on an alleged belief that the land belonged to the clan, and therefore lacked animus possidendi. According to them, the Applicant only became aware of the 1<sup>st</sup> Respondent's ownership in 2009, and adverse possession could not have accrued prior to that date. They further submitted that once the 1<sup>st</sup> Respondent discovered the trespass in 2009, he took steps to assert his rights, including commencing litigation, thereby interrupting the running of time.
47. They contended that the Applicant failed to prove exclusive occupation of the entire suit property. They submitted that evidence showed the claimant occupied only a portion of the land, that is parcel no. 4080 owned by the 4<sup>th</sup> Respondent, and that the Applicant did not produce evidence such as photographs to demonstrate occupation of all the parcels claimed. They further argued that the Applicants own admission that he wrote to the 6<sup>th</sup> Respondent demanding that he ceases use of the



- suit land confirms that other parties were in possession of the land, which contradicts the Applicant's claims of exclusive possession.
48. They maintained that the 1<sup>st</sup> Respondent took possession of the land upon purchase and lawfully subdivided and transferred the resultant portions to other Respondents who also took possession. They submitted that the Applicant had failed to meet the legal threshold required to establish adverse possession and remains a trespasser on the suit land. They urged that the suit should be dismissed with costs and for the court to order the Applicant's estate to vacate the land, or in default, they be evicted.
  49. The 2<sup>nd</sup> Respondent submitted that the Applicant never had actual, physical possession or occupation of parcel no. 1544 and that they failed to demonstrate by any tangible evidence that he dispossessed the 2<sup>nd</sup> Respondent of the land for the requisite statutory period of twelve years. He relied on the decisions in *Richard Wefwafwa Songoi versus Ben Munyifwa Songoi (2020) eKLR* and *Sisto Wambugu versus Kamau Njuguna (1983) KECA 69 KLR*. The 2<sup>nd</sup> Respondent contended that adverse possession requires wrongful dispossession of the true owner and discontinuance of possession, not merely long occupation.
  50. He maintained that although he did not cultivate the land, he frequently visited it and never observed any physical invasion, development, cultivation, houses or crops, and that no photographs or other evidence were produced to prove such occupation. He further submitted that evidence by the 5<sup>th</sup> Respondent confirmed that the Applicant only resided and cultivated parcel no. 4080 belonging to the 4<sup>th</sup> Respondent, and that parcel 1544 remained bushy, undeveloped and unfenced. He asserted that the Applicant has never occupied, developed or dispossessed him of parcel no. 1544 for the requisite statutory period.
  51. On the issue of adverse possession, the 2<sup>nd</sup> Respondent submitted that the Applicant admitted occupying the land with the permission of his grandfather, whom he believed to be the owner, and therefore his occupation was permissive and lacked the requisite animus possidendi as prescribed in *Gabriel Mbui versus Mukindia Maranya (1993) eKLR*. That the Applicant's own evidence showed that he only became aware of the registered owners in 2009 after conducting an official search, meaning that any occupation prior to that date could not have been hostile to the rights of the true owner.
  52. They further submitted that they had no knowledge of any occupation by the Applicant and that the Applicant's alleged occupation was neither open, visible nor notorious so as to give notice of dispossession. He maintained that time for adverse possession could only run from 2009 when both parties became aware of each other, and by the time the Originating Summons was filed, twelve years had not elapsed, rendering the claim premature. The 2<sup>nd</sup> Respondent relied on the cases of *Titus Kigoro Munyi v Peter Mburu Kimani (2015) eKLR* and *Wines & Spirits Kenya Ltd v George Mwachiru Mwangi (2018) eKLR* to support the position that for a claim of adverse possession to succeed, it must be proved that the registered owner had knowledge of the occupation.
  53. The 2<sup>nd</sup> Respondent submitted that he sold parcel no. 1544 on 17/9/2008 to the 6<sup>th</sup> and 7<sup>th</sup> Respondents while still in possession and control of the land, demonstrating that he had not been dispossessed. He contended that the Applicant's attempt to claim the original parcel 1207 is misconceived since the title was closed in 1981 when the land was subdivided. He added that the Applicant failed to identify with certainty the specific land he claimed to occupy, contrary to the principles in *Wainaina v Muarai and others (1976) eKLR*. He maintained that the Applicant had not met the legal threshold for adverse possession and prayed that the suit be dismissed with costs.
  54. The issue for determination is whether the Applicant has proved that he has become entitled to the parcels of land known as Nthawa/Riandu/1544, 4079, 4080, 4081, 4082 originally formed part of



- Nthawa/Riandu/1207 through adverse possession. It is not in dispute that all these parcels of land originally formed part of Nthawa/Riandu/1207 before this parcel of land was subdivided.
55. The sale agreement produced by the 1<sup>st</sup> Respondent showed that he purchased parcel no. 622 from James Njagi Mwoga, which is the land that James presumably owned. It was not shown through evidence how the 1<sup>st</sup> Respondent ended up being issued a land certificate for parcel no. 1207 in April 1979. The contention by the Applicant that the 1<sup>st</sup> Respondent worked as an adjudication officer and used his position to acquire parcel number 1207 is not farfetched in light of the facts of this case.
56. Cecily Mwendia Ngari stated in her evidence that in 1990, her grandfather showed her late husband parcel no. 1207 that they were to own and that she entered the land with her late husband then. She mentioned that they planted mango trees, avocado trees, bananas and other crops. It was her evidence that they had established their home on the land and built four permanent houses without the Respondents going to the land. Their continuous occupation of the suit land is buttressed by the fact that they connected water and electricity to the disputed land and built a water reservoir.
57. The evidence adduced confirms that neither Joseph Macharia Karachi nor the subsequent transferees of the subdivided portions of land excised from Nthawa/Riandu/1207 took possession of the land in question. The Applicant urged that the land was only subdivided on paper but not on the ground and that he occupied the land which he sought.
58. The evidence led was that Joseph Macharia Karachi purchased the suit land in 1972. He fell ill and was not able to visit the land from 1992 up to 2009 or so when he attempted to assert his rights over the suit land. The Applicant led evidence to show that he settled on the suit land in 1990 and that he had buried his kin on the land, which he referred to as ancestral land. By the time Joseph Macharia filed Siakago SRMCCC No. 14 of 2009, the Applicant's claim of adverse possession of the land had ripened and the owners' title had been extinguished pursuant to Section 7 of the [Limitation of Actions Act](#).
59. The Plaintiff has proved his claim on a balance of probabilities. The court grants prayers (a) to (c) of the Amended Originating Summons dated 29/9/2011. Each party will bear its own costs.

**DELIVERED VIRTUALLY AT BUNGOMA THIS 4<sup>TH</sup> DAY OF FEBRUARY 2026.**

**K. BOR**

**JUDGE**

**In the presence of: -**

Mr. Macharia Muraguri for the Plaintiff

Ms. Rosemary Chege for the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants

Mr. D. Mutie holding brief for Mr. M. Njagangwa for the 2<sup>nd</sup> Defendant

No appearance for the 6<sup>th</sup> and 7<sup>th</sup> Defendants

