

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT**  
**NYAHURURU**  
**ELC OS NO. E005 OF 2024**

**CHRISTOPHER MURAGE WAHOME.....1<sup>ST</sup>**

**PLAINTIFF**

**JANE WAMBUI MURAGE.....2<sup>ND</sup>**

**PLAINTIFF**

**VERSUS**

**CECILIA NJOKI NGUNJIRI.....DEFENDANT**

**RULING**

**1.** The plaintiffs instituted this suit vide an Originating Summons filed on 7.10.2024 claiming entitlement to the suit property, one acre of Laikipia/Nyahururu/1247 by way of Adverse Possession. The defendant opposed the suit vide her Replying Affidavit dated 3.9.2025 where she contends that she sued the plaintiffs for their eviction in the case Nyahururu ELC no. 330 of 2017 which was later transferred to the Magistrates court and registered as

CMELC No. 214 of 2018 where judgment was delivered in her favour and that the plaintiffs vacated the land. She contends that 12 years have not lapsed from the time the appeal judgment was delivered.

- 2.** The defendant has filed a Preliminary Objection dated 2.9.2025 on the ground that; “12 years have not lapsed since the determination of Nyandarua ELC Appeal No. 15 of 2020 where judgment was delivered on 29.6.2023”. This Preliminary Objection is the subject of this ruling, which was canvassed through written submissions.
- 3.** In her submissions dated 5.11.2025, the defendant reiterates that in the judgment of Nyahururu magistrates court of 28.8.2020, the current plaintiffs were ordered to vacate the land and they did so. Thus time stopped running on account of the voluntary surrender of the suit property. That even assuming that the plaintiffs are in possession which is not the case, 12 years have not lapsed from the time of delivery of the appeal judgment. In support of her case, the defendant relies on the case

of **Francis Muthoga Muhika vs Samuel Karonjo Muriuki Nyandarua ELC No. 33 of 2023 ( OS).**

4. The submissions of the plaintiff are dated 31.10.2025.

They contend that they are able to prosecute this case as the appeal judgment returned the parties to the position they held before the institution of the case CMELC No. 214 of 2018. They deny that time started running after the conclusion of the appeal case. The defendants therefore aver that the Preliminary Objection is not a pure point of law as set out in the case of **Attorney General & Another v Andrew Maina Githinji & Another (2016) KECA 817 ( KLR).**

5. I have considered the pleadings of the parties as well as the rival submissions relating to the Preliminary Objection. In the celebrated case of **MUKISA BISCUIT COMPANY LTD VS WEST END DISTRIBUTORS 1969 E.A 896**, it was stated that;

**“So far as I am aware, a Preliminary Objection consists of a pure point of law which has been pleaded, or which arises by**

**clear implication out of pleadings, and which, if argued as a Preliminary point may dispose of the suit”.**

**6.** There is no controversy that the current defendant had filed a suit against the current 1<sup>st</sup> plaintiff, the same being ELC NO.330 OF 2017 in Nyahururu ELC which suit was transferred to the magistrates court and registered as CM ELC 214 OF 2018 seeking a declaration that the 1<sup>st</sup> plaintiff was a trespasser and should be evicted. The defence of the 1<sup>st</sup> plaintiff was that the claim of the defendant was statute barred and that he had acquired rights over the one acre of land through adverse possession. That in the judgment delivered on 28.8.2020, the claim of the defendant was allowed with an award of damages.

**7.** It is further not disputed that the 1<sup>st</sup> plaintiff lodged an appeal in Nyahururu ELC No. 15 of 2020 in which vide the judgment delivered on 29.6.2023, it overturned the trial court's judgment. Given these facts, is the Preliminary Objection merited?

8. Firstly, I find that the defendant is pegging her claim on the basis that after the judgment of 28.8.2020, the plaintiffs vacated the land hence time stopped running. I find that the question as to when time starts running for purposes of an adverse possession claim is a question of fact and not law. Thus evidence needs to be tendered to support a claim for or against the computation of time. I will say no more on that issue.

9. Secondly, in regard to the Appeal judgment dated 29.6.2023, in ELCA No. 15 of 2020, I make reference to paragraph 30 thereof where it is stated that;

**“The court has already found and held that the trial court erred in law in failing to find that the respondent’s claim for recovery of the suit property was statute-barred under Section 7 of the LAA. It is evident from the material on record and the judgment that the trial court misapprehended the appellant’s defence to the action. The appellant had simply employed the defence**

**of limitation and adverse possession as a shield to the action.**

**There was no counterclaim for him to be registered as proprietor on account of the doctrine of adverse possession under Section 38 of the LAA. A litigant who is sued for recovery of land is at liberty to plead limitation and adverse possession as a defence only without necessarily counterclaiming for his registration as a proprietor”**

**10.** The import of the decision in the above judgment is quite clear, the same did not bar the 1<sup>st</sup> plaintiff from asserting his claim to the suit land. As rightly submitted by the plaintiffs, the Appeal judgment placed the parties in the position they held before the filing of the suit ELC No. 330 of 2017.

**11.** Finally, I find that the 2<sup>nd</sup> plaintiff was not a party to the previous suits, hence her claim is fresh before this court.

**12.** All in all, I find that the Preliminary Objection is not merited, the same is hereby dismissed with costs to the plaintiffs.

**DATED, SIGNED AND DELIVERED AT NYAHURURU  
THIS 4<sup>TH</sup> DAY OF MARCH 2026 THROUGH MICROSOFT  
TEAMS.**

**LUCY N. MBUGUA  
JUDGE**

**In the presence of:**

**Vanessa C/Assistant**

**Wang'onde holding brief for Gakuhi Chege for**

**Plaintiffs**

**Gakenia Gacheru holding brief for Waichungo**

**Martin for Defendant**