



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

ELC LAND CASE NO. E001 OF 2025

(FORMERLY CHUKA CMC E & L CASE NO E039 OF 2023)

CHRISTOPHER

KARIUKI

MUGO.....PLAINTIFF

=VERSUS=

FIDIS IGOKI KIMATHI.....

DEFENDANT

=consolidated with=

CHUKA ELC LAND CASE NO E002 OF 2023

JUDGMENT

Introduction

1. This judgment disposes two consolidated suits. The first suit in time was instituted in the Chief Magistrate Court at Chuka on 16/8/2023 by **Christopher Kariuki Mugo** (*hereinafter referred to as "the plaintiff"*). It was instituted as **Chuka CMC E&L Case No E039 of 2023**. The said suit was subsequently transferred to the Environment and Land Court at Chuka and was registered as **Chuka ELC Land Case No**

E001 of 2025. It is the lead file. Through it, the plaintiff sought an order decreeing eviction of **Fides Igoki Kimathi** from land parcel number **Meru South/Kamwimbi "A"/1943** (*hereinafter referred to as "the suit land."*)

2. The second suit is **Chuka ELC Land (O.S) Case No E002 of 2023.** It was filed by **Fidis Igoki Kimathi** (*referred to in this judgment as "the defendant."*) on 29/11/2023. Through it, the defendant sought adverse possession orders declaring her to have become entitled to 5 acres out of the suit land through adverse possession.
3. On 25/7/2024, this Court (**Yano J**) ordered transfer of **Chuka CMC E&L Case No E039 of 2023** to Chuka Environment and Land Court. Although the physical file was conveyed to the ELC Registry at Chuka, the actual transfer of the case from Chuka Chief Magistrate Court and the registration of the case at Chuka Environment and Land Court did not happen until January 2025 when this Court (**Eboso J**) directed the two Court Registries to complete the transfer process.
4. The key issues that fall for determination in the two consolidated suits are: (i) Whether the defendant (**Fidis Igoki Kimathi** *also known as Fides Igoki Kimathi*) has acquired ownership of five (5) acres out of the suit land through adverse possession; (ii) Whether the defendant is entitled to orders of adverse possession relating to the suit land; (iii) Whether the defendant is a trespasser on the suit land; and (iv) Whether the plaintiff (**Christopher Kariuki Mugo**) is entitled to orders of eviction and general damages

against the defendant. Before I analyse and dispose the issues, I will briefly outline the parties' respective cases.

Plaintiff's Case

5. The case of the plaintiff is contained in the plaint in **Chuka ELCL Case No E001 of 2025**; the reply to defence in the said case; and the response filed in **Chuka ELCL (OS) Case No E002 of 2023**. It is also contained in the evidence tendered during the hearing of the two consolidated suits. In summary, his case is that, he is a resident of Kanyongo village, Kamwimbi Sub-Location, Kamwimbi Location, Igambang'ombe Sub-County in Tharaka Nithi County. The defendant is also a resident of Kanyongo Village. He knows the defendant as a daughter-in-law to **Elias Nkou Ntiba** and a widow of Ntiba's son, the late **Dedan Kimathi**.
6. During land adjudication, the suit land was part of land parcel number **241 Kamwimbi "A" Adjudication Section**. The defendant entered the suit land during land adjudication when she joined the family of the late Ntiba as a wife to Ntiba's son, the late **Dedan Kimathi**. Him (the plaintiff) and the late Ntiba had a protracted ownership dispute relating to the suit land and the dispute was finally disposed through a 2016 award made in an Adjudication Register (AR) Objection which he filed before the Land Adjudication Officer to challenge the Board award which had overturned the Committee's award. Through the A/R Objection award, Ntiba was given one (1) acre out of parcel number **241** and he (the plaintiff) was given the rest of the land. Ntiba's one acre

was demarcated as parcel number **241** while his portion (the plaintiff's portion) measuring 3.18 hectares was initially given parcel number **2119** but the number was changed to **1943**. On finalization of the adjudication exercise in 2016, Ntiba became the registered proprietor of **Meru South/Kamwimbi "A"/241** measuring one (1) acre and he (the plaintiff) became the registered proprietor of **Meru South/Kamwimbi "A"/1943** measuring 3.18 hectares.

- 7.** Subsequent to the 2016 adjudication register objection award, Ntiba and his family (except the defendant) moved and settled on the land he had been awarded. The defendant pleaded with the plaintiff to allow her to stay behind for a while as she prepared to join her father-in-law in the family land. With time, the defendant seemed not ready or willing to move. The plaintiff verbally requested her to move but she did not heed the request. The plaintiff instructed his advocate to write a formal demand letter to the defendant in August 2018. He did another formal demand in July 2022. The defendant ignored the formal demands. The plaintiff decided to lodge a suit in the Chief Magistrate Court seeking eviction orders.
- 8.** In answer to the defendant's defence and to her claim for orders of adverse possession, the plaintiff's case is that the defendant entered the suit land during land adjudication exercise as a daughter-in-law to Ntiba. At that time, him and Ntiba were having a dispute over the suit land. The dispute was heard by various organs established under the Land Adjudication Act. The dispute was disposed in 2016. He states that the defendant was never an adverse possessor

and emphasizes that she entered the suit land as a daughter-in-law to Ntiba. Secondly, the plaintiff states that the adjudication register in **Kamwimbi “A” Adjudication Section** was finalized in 2016 and the suit land was registered in 2017. It is his case that the law of adverse possession did not apply to the suit land prior to 2017 because the suit land was the subject matter of land adjudication. He contends that even if the defendant was to be deemed to have become an adverse possessor in 2017, the 12-year threshold had not lapsed by the time she filed her claim in the Environment and Land Court in 2023.

9. The plaintiff prays that his claim for eviction orders and for general damages be allowed and the defendant’s counterclaim be dismissed.

Defendant’s Case

10. The case of the defendant is that she got married to the late Kimathi in 1995 and found him living on the suit land. She has lived on the suit land since then. When Kimathi died in 2016, he was buried on the suit land. It is her case that having lived on the suit land for a period exceeding 12 years without any objection or permission from the defendant, her title to 5 acres out of the suit land has crystalized under the doctrine of adverse possession. She urges the court to reject the plaintiff’s claim and grant her adverse possession orders.

Analysis and Determination

11. The court has considered the parallel claims and the parties’ respective responses in the two suits. The court has also considered the submissions tendered in the two consolidated

suits. As pointed out in the introduction part of this judgment, the following are the key issues that fall for determination in the two consolidated suits: (i) Whether **Fidis Igoki Kimathi** (the defendant) has acquired ownership of five (5) acres out of **Meru South/Kamwimbi "A"/1943** (*the suit land*) through adverse possession; (ii) Whether the defendant is entitled to orders of adverse possession relating to the suit land; (iii) Whether the defendant is a trespasser on the suit land and; (iv) Whether **Christopher Kariuki Mugo** (*the plaintiff*) is entitled to an order of eviction and an award of general damages against the defendant. I will dispose the four issues sequentially in the above order.

- 12.** In Kenya, the common law doctrine of adverse possession has statutory underpinnings in **Sections 7** and **17** of the **Limitation of Actions Act**. **Section 7** provides as follows:

"An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person"

- 13.** **Section 17** of the Act provides as follows:

"Subject to Section 18 of this Act, at the expiration of the period prescribed by this Act for a person to bring an action to recover land (including a redemption action), the title of that person to the land is extinguished."

- 14. Section 7(d)** of the **Land Act**, similarly, recognizes prescription as one of the methods through which title to land is acquired. It is equally important to note that the question relating to the constitutionality of the doctrine of adverse possession was examined by the Court of Appeal and was answered in the affirmative in the case of ***Mtana Lewa v Kahindi Ngala Mwangandi [2015] eKLR***.
- 15.** The common law doctrine of adverse possession of land connotes possession which is inconsistent with and in denial of the title of the registered owner of the land. To establish adverse possession, the claimant must prove that he has had both the factual possession of the land and the requisite intention to possess the land [*animus possidendi*] for the prescribed statutory period of twelve years preceding the initiation of proceedings for the vesting order. Thirdly, he must demonstrate that the registered proprietor had knowledge [or the actual or constructive means of knowing] that he [the claimant/adverse possessor] was in possession of the land. Further, the possession must be continuous; it must not be broken or interrupted.
- 16.** The Court of Appeal defined adverse possession in ***Mtana Lewa v Kahindi Ngala Mwangandi [2015] eKLR*** as follows:

“adverse possession is essentially a situation where a person takes possession of land and asserts rights over it and the person having title to it omits or neglects to take action against such person in assertion of his title for

a certain period, in Kenya is twelve (12) years. The process springs into action essentially by default or inaction of the owner. The essential prerequisites being that the possession of the adverse possessor is neither by force or stealth or under the license of the owner. It must be adequate in continuity and in extent to show that possession is adverse to the title owner.”

- 17.** The Court of Appeal outlined the following as the essential elements in the acquisition of title to land under the doctrine of adverse possession in ***Wilson Kazungu Katana & 101 others Vs Salim Abdalla Bakshwein & another [2015] eKLR:***

“First, the parcel of land must be registered in the name of a person other than the applicant, the applicant must be in open and exclusive possession of that piece of land in an adverse manner to the title of the owner, lastly, he must have been in that occupation for a period in excess of twelve years having dispossessed the owner or there having been discontinuance of possession by the owner.”

- 18.** On whether the doctrine of adverse possession applies to unadjudicated trust land or land that is still under the process of adjudication, the Court of Appeal outlined the relevant law in ***Thaitumu v Iguathu & 8 others (Civil Appeal 220 of 2019) [2024] KECA 1084 (KLR)*** as follows:

“We hold that, with respect to land that is subject to the adjudication process, time for purposes of adverse possession does not start running until the adjudication process is completed, rights are ascertained, and owners of the said properties are registered.”

- 19.** From the evidence tendered in this dispute, it does emerge that the suit land is located in what was adjudicated as **Kamwimbi “A” Adjudication Section**. Land adjudication in the said Section commenced in or around 1993. The land adjudication register was finalized in 2016 and the suit land was registered on 24/5/2017. Prior to finalization of the adjudication register and prior to opening of the parcel register relating to the suit land on 24/5/2017, the suit land existed as trust land that was subject to ascertainment of individual ownership rights through the land adjudication process. Indeed, evidence tendered indicates that both the plaintiff and the defendant’s father-in-law (Mr. Ntiba) asserted private ownership rights over the suit land, which at that time was part of parcel number **241**. Through the various adjudication organs established under the Land Adjudication Act, the plaintiff was in 2016 adjudicated to be the owner of 3.18 hectares that were subsequently demarcated and eventually registered as parcel number **Meru South/Kamwimbi “A”/1943**. The defendant’s father-in-law got 1 acre which was assigned the initial demarcation number, **241**.
- 20.** Based on the above evidence and on the above prevailing jurisprudence, the 12-year threshold for crystallization of

title under the doctrine of adverse possession would be reckoned from the date when the parcel register was opened in the name of the plaintiff as a culmination of the land adjudication process. From the exhibited certified copy of the land register, that date was **24/5/2017**.

21. If indeed the defendant and her late husband occupied the suit land independent of her father-in-law (Mr. Ntiba), she had the liberty to assert her rights over the suit land through the land adjudication process. The only logical reason why neither her nor her late husband asserted ownership rights over the suit land is that they both knew that they were on the land by dint of the fact that her father-in-law was laying a claim over the land. She was not on the suit land as an independent occupier.

22. The defendant's counterclaim that she was an adverse possessor of the suit land at a time when the suit land was the subject matter of land adjudication smacks of ignorance of the objective of the land adjudication law. The overarching objective of land adjudication law is spelt out in the preamble to the **Land Adjudication Act** which reads as follows:

“An Act of Parliament to provide for the ascertainment and recording of rights and interests in trust land, and for purposes connected therewith and purposes incidental thereto.”

23. It follows from the prevailing jurisprudence and from the evidence on record that the suit land became available for

adverse possession on 24/5/2017. From 24/5/2017 to 29/11/2023 (*the date when the defendant filed **Chuka ELC (OS) No E002 of 2023** seeking adverse possession orders*) is less than 7 years. This is far below the prescribed statutory period of 12 years.

- 24.** Consequently, it is the finding of this court that **Fidis Igoki Kimathi** has not acquired ownership of five (5) acres out of land parcel number **Meru South/Kamwimbi "A"/1943** through adverse possession. It also follows that she is not entitled to the adverse possession orders sought in her originating summons.
- 25.** Is **Fidis (Fides) Igoki Kimathi** a trespasser on land parcel number **Meru South/Kamwimbi "A"/1943**? The court has made a finding to the effect that the defendant has not acquired ownership of 5 acres out of the suit land through adverse possession. The circumstances under which the defendant remained on the suit land when her father-in-law relocated to his one-acre piece of land were explained by the plaintiff. The defendant pleaded that she be allowed some period to prepare to relocate. She subsequently reneged on her promise to peacefully relocate. The first formal letter was written to her on 22/8/2018. It required her to vacate the suit land on expiry of six (6) months from 22/8/2018. The six (6) month period lapsed on 22/2/2019. From that day, the defendant became a trespasser on the suit land. That is the finding of the court.
- 26.** Is the plaintiff entitled to the eviction order and to the relief of general damages for trespass? The plaintiff has

established that he is the legitimate owner of the suit land and that the defendant had no colour of right to be on the land. As a land owner, he was protected by **Article 40** of the **Constitution** and **Sections 24, 25** and **26** of the **Land Registration Act**. Consequently, the court finds that the plaintiff is entitled to an eviction order in terms of prayer (a) of the plaint.

- 27.** Is the plaintiff entitled to general damages? The general principle is that, once trespass is proved, even if the claimant does not lead evidence on quantum of general damages, he will be entitled to nominal damages. The plaintiff testified as **PW1** and called three (3) other witnesses who supported his case. However, no evidence was tendered in relation to the quantum of general damages.
- 28.** In the absence of evidence, the court takes into account the acreage (*3.18 hectares*) and the locality of the suit land (*Igamba ng'ombe*). The court also takes into account the period of trespass (*from February 2019*). Guided by the above factors, the court will award the plaintiff nominal damages in the sum of Kshs 200,000.
- 29.** On costs, the general principle in **Section 27** of the **Civil Procedure Act** is that costs follow the event. No special circumstances have been demonstrated to warrant a departure from the general principle. Consequently, **Fidis Igoki Kimathi** will bear costs in both suits.

Disposal Orders

30. In the end, **Chuka ELC Land Case No E001 of 2025** (formerly **Chuka CMC E & L Case No E039 of 2023**) and **Chuka ELC Land (O.S) Case No E002 of 2023** are disposed as follows:

a) Chuka ELC Land (O.S) Case No E002 of 2023 which was filed by Fidis Igoki Kimathi also known as Fides Igoki Kimathi against Christopher Kariuki Mugo is dismissed for lack of merit.

b) Fidis Igoki Kimathi also known as Fides Igoki Kimathi is hereby decreed to vacate land parcel number Meru South/Kamwimbi "A"/1943 within 60 days from today. In default, she is to be forcibly removed from the said land. The Area OCS shall ensure maintenance of law and order during the forcible removal.

c) Fidis (Fides) Igoki Kimathi is decreed to pay Christopher Kariuki Mugo nominal damages of Kshs 200,000 for trespass.

d) Fidis (Fides) Igoki Kimathi shall bear costs of the two suits.

e) The above nominal damages and costs shall attract interest at court rate from the date of judgment and from the date of taxation respectively.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 25TH DAY OF FEBRUARY, 2026.

B M EBOSO [MR]

ELC JUDGE

In the Presence of:

Mr. I.C Mugo for the Plaintiff in the Lead File

Ms. Chishenga for the Defendant in the Lead File.

Court Assistant - Nelly

ORIGINAL