

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT NYERI
ELC. NO. E003 OF 2021 (OS)

WILSON WAMBUGU KARIUKI PLAINTIFF

VERSUS

BERNARD MWANGI MUTURI 1ST DEFENDANT

WACHIRA MUTURI 2ND DEFENDANT

JUDGMENT

Background

1. By the Originating Summons dated 19th May 2021 Wilson Wambugu Kariuki (the Applicant) prays for the following orders against the Respondents:

- a) **That this Honorable Court be pleased to declare that the (Respondents') title to land parcel Aguthi/Gathaithi/166 has become extinguished by operation of the law and the Applicant herein has become entitled to the entire land through adverse possession;**

- b) That the Court be pleased to order that the entire land parcel Aguthi/Gathaithi/166 be registered in the names of Wilson Wambugu Kariuki;**
 - c) That the Respondents do execute all the necessary documents to effectuate the transfer of the entire land known as Aguthi/Gathaithi/166 to the Applicant and in default the Deputy Registrar of this Court be empowered to do so; and**
 - d) That the costs hereof be provided by the Respondents.**
2. The Originating Summons supported by the Applicant's affidavit and is based on the grounds that:
- i) The Applicant has been in an open, peaceful and as of right possession and occupation of the entire parcel of land for over fifty (50) years;**
 - ii) The Applicant's user and possession of the suit land has been open, uninterrupted, exclusive and without force until sometimes in the year 2020 when the Respondents herein illegally and unlawfully entered the land and commenced**

**harassment and purported to evict the Applicant;
and**

**iii) The Applicant has become entitled to ownership
of the said parcel of land through adverse
possession.**

3. Bernard Mwangi Muturi and Wachira Muturi (the 1st and 2nd Respondents) are opposed to the claim. In a Replying Affidavit sworn by the 1st Respondent on their behalf, the Respondents aver that they are the registered proprietors of the suit property which initially belonged to their father.
4. The Respondents aver that following their father's death in 1975, they obtained Letters of Administration and held the land in trust for themselves and their younger siblings. The Respondents further aver that the Applicant was appointed as a caretaker of the land by their late father and that he had been directed not to plant any perennial crops or build any structures thereon.
5. The Respondents state that at some point in time, they moved to Timau where their father had another parcel of land. When recently they got information that the Applicant

was preparing to plant coffee on the suit property they tried to stop him through the Area Chief subsequent to which the Applicant instituted these proceedings.

6. When the matter came up for trial, the Applicant called four (4) witnesses in support of his case. The Respondents on their part called two (2) witnesses.
7. I have carefully perused and considered the pleadings filed, the testimonies of the witnesses and the evidence adduced at the trial.

Analysis and Determination

8. The Applicant herein has asked the Court to declare that he has since acquired all that parcel of land known as Aguthi/Gathaithi/166 and measuring approximately four (4) acres by way of adverse possession. Accordingly, the Applicant urges the Court to determine that the Respondents' rights to the said parcel of land have since been extinguished by operation of the law and that the said parcel of land should be registered in his name.
9. The law on adverse possession is now well settled and the essential requirements that one has to meet in order to

succeed in a matter such as this have been the subject of various judicial pronouncements. As the Court of Appeal stated in ***Wambugu -vs- Njuguna (1983) KLR 178***, adverse possession contemplates two concepts: possession and discontinuance of possession. In that matter, the Court went on to state that the proper way of assessing proof of adverse possession would be whether or not the title holder has been dispossessed or had discontinued his possession for the statutory period and not whether he or she has been in possession for the requisite number of years.

10. In ***Mbira -vs- Gachuhi (2002) EA 137***, it was held 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 statutorily prescribed period without interruption.”

11. Considering the ingredients of adverse possession recently in ***Mtana Lewa -vs- Kahindi Ngala Mwamgandi (2005) eKLR***, the Court of Appeal held thus:

“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.

12. Accordingly, this being a claim for adverse possession, it was incumbent upon the Applicant to demonstrate that he has been in continuous possession of the land for the statutorily prescribed period of 12 years or more; that such possession has been open and notorious to the knowledge of the owner and that he has asserted a hostile title to the owner of the property.
13. In the matter herein, the Applicant asserts that he has had a continuous and uninterrupted possession of the suit property for a period of over 50 years. It is the Applicant’s case that he had purchased the suit property at a consideration of Kshs. 3,200/= from the Respondents’ father one Muturi Kihihu who passed away in the year 1975 before the process of transfer was completed.

14. According to the Respondents however, the Applicant did not purchase the land from their father. It was their case that the Applicant was appointed by their father as a caretaker of the suit property when the family moved to Timau where their father had acquired another parcel of land. It was the Respondent's case that following the death of their father, they had instituted succession proceedings pursuant to which the suit property came to be registered in their joint names and that of their mother - Esther Wangechi on 11th September 1980.
15. The Respondents asserted that the Applicant had been instructed by their father not to plant any perennial crops or build any structures on the land and that in the year 2021 when they got information that the Applicant was preparing to plant coffee on the suit property, they made an attempt to stop him but the Applicant initiated this suit to bar them from taking back the land.
16. From the material placed before the Court, it was more than apparent that the Applicant had had a long and uninterrupted possession of the suit property without the

approval of the Respondents. It was evident from the Respondents' own documents that following the registration of the Respondents together with their mother as the proprietors of the suit property in the year 1980, they had made an unsuccessful attempt to kick out the Applicant from the land.

17. By a letter dated 9th July 1980 addressed to the Applicant and copied to the 1st Respondent, the Respondents' Advocate Messrs A.J. Kariuki & Co. Advocate wrote to the Applicant as follows:

“Aguthi/Gathaithi/166

We act for Bernard Mwangi Muturi, and we have instructions to write to you and ask you not to effect any developments on the above parcel of land and which should remain as it was on 11th June 1980.”

18. One month later on 12th August 1980, the same Advocate wrote to the Applicant as follows:

“RE: AGUTHI/GATHAITHI/166

BERNARD MWANGI GITONGA MUTURI, WILLIAM WACHIRA, ESTHER WANGECHI.

The above named persons are our clients who were declared heirs of the interests of Ritho Kahihu in D.M. Land Succession No. 28 of 1980 and we are instructed to write to you as under:-

That our Clients are the legal proprietors of Aguthi/Gathaithi/166.

That our Clients demand you remove yourself, your family, agents and all your property from the above premises within FOURTEEN (14) days failing which we are authorised to institute legal proceedings against you in trespass with your risk as to costs.”

19. Evidently, the Applicant did not yield to those threats and some 40 years later when the Respondents made another attempt to stop him from using the land, he instituted this suit. Asked in cross examination about the two letters, Stephen Githaiga Muturi (DW1) conceded that the letters were written on the family's instructions and that the letters confirm that the Applicant was in possession of the land in the year 1980. DW1 further conceded that since the letters were written, they had not instituted any legal action to

remove the Applicant from the suit property as they had threatened.

20. In the circumstances herein, it was clear to me that whether or not the Applicant had entered the suit property as a caretaker as purported by the Respondents, his possession of the land after the year 1980 was hostile and adverse to the rights and interests of the registered proprietors who included the Respondents herein and their mother Esther who is said to have passed away in the year 2016.
21. The fact that the Applicant exercised absolute control over the suit property was confirmed and corroborated by his witnesses Mary Wangechi (PW2) Grace Wajiru Mureithi (PW3) and Samuel Muthee Mukinyo (PW4) all who confirmed that they had leased various portions of the land from the Applicant for farming purposes.
22. In the premises, I was persuaded that the Applicant had demonstrated that he had been in continuous use of the suit property for a period exceeding 12 years and that his possession has been open and notorious to the knowledge of

the registered proprietors to whom he had asserted a hostile title.

23. Accordingly, judgment is hereby entered for the Applicant as sought in the prayers (a), (b) and (c) of the Originating Summons dated 19th May 2021. The Applicant shall also have the costs of this suit.

24. It is so ordered.

Judgment dated, signed and delivered in open court and virtually at Mombasa this 24th day of March, 2026.

.....
J.O. OLOLA
JUDGE

In the presence of:

- a) Ms. Firdaus Court Assistant.
- b) Mr. Muhoho Advocate for the Applicant
- c) Mr. Ng'ang'a Advocate for the Respondents