



REPUBLIC OF KENYA

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT
THIKA**

ELC CASE NO. 21 (B) OF 2022 (OS) FORMERLY

ELC CASE NO. 74 OF 2018 (OS) LIMURU

**DAVID KIRURI MUMIRA.....
.....APPLICANT**

VERSUS

**SAMUEL KIMANI GITHAE.....
RESPONDENT**

JUDGMENT

- 1) By an Originating Summons dated 28/11/2018, David Kiruri Mumira (hereinafter **“the Applicant”**) prays for orders:
1. THAT DAVID KIRURI MUMIRA who has been in adverse possession of LR NO. NDEIYA/NDUMA/T.507 from 1991 to date be declared the owner thereof and be registered as the absolute proprietor thereof.
 2. THAT SAMUEL KIMANI GITHAE do Transfer LR NO. NDEIYA/NDUMA/T.507 to DAVID KIRURI MUMIRA as the beneficial owner thereof by virtue of being the adverse possessor thereof.
 3. THAT the Executive Officer of this Honorable Court be authorized to execute all requisite documents/papers

on behalf of SAMUEL KIMANI GITHAE to facilitate the transfer of LR NO. NDEIYA/NDUMA/T.507 to the Applicant/Plaintiff.

4. THAT costs of this Application be borne by the Defendant/Respondent.

2) The Originating Summons is supported by an Affidavit sworn by the Applicant and is premised on the grounds:

- i. That the Respondent/Defendant is the registered owner of LR NO. NDEIYA/NDUMA/T.507 as per annexure **DKM:1.**
- ii. THAT on the 15th July 1991 the Defendant/Respondent sold to the Applicant the whole of LR NO. NDEIYA/NDUMA/T.507.
- iii. THAT the Respondent/Defendant has not yet transferred the said parcel of land to the Applicant.
- iv. THAT the Applicant and his family have had exclusive possession and have been in continuous, uninterrupted actual occupation and have had exclusive user of LR NO. NDEIYA/NDUMA/T.507 from 1991 to date. That they have developed the land substantially and have planted very many bluegum trees which are mature.
- v. THAT the Defendant/ Respondent has never challenged the adverse possession and actual occupation and user of the suit property in any Court of law and has never physically interfered with the Applicant's possession or user of the same.

3) Samuel Kimani Githae (the Respondent) was served by way of substituted service through the Daily Nation of 27/02/2025. He did not enter appearance and the matter proceeded by way of formal proof.

The Applicant's Case

4) At the trial herein the Applicant testified as PW1 on 24/02/2026 and also called one other witness. Adopting his witness statement dated 28/11/2018, the Applicant told the Court that he used to work with the Respondent and that he sold to him a plot for Kesh 17,000 measuring quarter an acre on 15/07/1991 and that he had a Sale Agreement. He testified that he had been on the land since 1991. Further that he paid once for the land Kesh 17,000 but when he told the Respondent to transfer the land to him, the Respondent told him to deal with it since he had transferred the suit property to him.

5) In order to pay for the land, he sought a soft loan from KARI but he did not produce the land documents in Court. That he worked with the Respondent at Centre 15 in KARI. He stated that he had served the Respondent many times but he has refused to attend Court.

6) The Plaintiff produced Exhibit 1 and 2 as his evidence in Court which are Sale Agreement and the Search.

7) PW2 - Mary Ngechi Kimani was sworn in English and she told the Court that she is a retired Civil Servant and that the Applicant is her husband. She testified that she knows the

Respondent since she worked with him at KARI. She adopted her witness statement as her evidence in chief.

- 8) She told the Court that she has been using the suit property since 1991. She testified that they only farm on the suit property and that the Respondent has never asked them to leave nor has he evicted them.
- 9) With that the Plaintiff closed his case.
- 10) The Court gave directions on filing of submissions. The Applicant filed their undated submissions which are summarized herebelow.
- 11) This summary outlines the legal submissions regarding the Applicant's claim for ownership of **L.R. No. NDEIYA/NDUMA/T.507** through the doctrine of adverse possession.
- 12) The Applicant submits to have entered into a Sale Agreement with the Respondent on 15/07/1991, for the purchase of the suit property at a consideration of Kshs. 17,000/=. Although the purchase price was paid in full, the Respondent failed to formalize the transfer of the title. Consequently, the Applicant has remained in exclusive, continuous, and uninterrupted occupation of the land for approximately 34 years. During this period, he has significantly developed the property, including the planting of blue gum trees, without any interference or challenge to his possession by the Respondent.

- 13) The submissions rely on the Limitation of Actions Act (Cap 22, Laws of Kenya) to argue that the Respondent's right to recover the land has been extinguished. That Section 7 establishes a 12-year limitation period, after which an action to recover land is barred.
- 14) That Section 13 defines the accrual of a right of action and specifies that time begins to run when a person is in adverse possession of the land.
- 15) And that Section 37 provides the procedural right for a person who has acquired land via adverse possession to apply to the High Court for an order to be registered as the proprietor.
- 16) The Applicant argues that his possession meets the dual requirements of possession and discontinuance of possession by the owner, as established in the landmark case of **Wambugu v. Njuguna (1983) KLR 173**.
- 17) In their submissions the Applicant reference **Mate Gitabi v. Jane Kabubu Muga Alias Jane Kaburu Muga & 3 Others [2017] eKLR**, noting that the Applicant's 34-year occupation has been open, notorious, and exclusive. Furthermore, citing **Samuel Kihamba v. Mary Mbaisi [2015] eKLR**, he has argued that even constructive possession such as exercising control and making improvements like planting trees is sufficient to satisfy the 12-year statutory threshold.

18) The Applicant submits that by operation of law, the Respondent's title was extinguished 12 years after the final payment in 1991. Having satisfied the requirements of the Limitation of Actions Act and the principles set out in **Kasuve v. Mwaani Investments Limited & 4 Others [2004] 1 KLR**, the Applicant seeks a declaration of ownership. He prays for the Court to order his registration as the absolute proprietor of the suit land and to authorize the Court's execution of transfer documents should the Respondent fail to comply.

Analysis and Determination

19) I have carefully perused and considered the Originating Summons, the testimony of PW1 and PW2 as well as the evidence adduced at the trial. This case presents a classic legal challenge at hand which is: can a purchaser of land, who entered the property under a Sale Agreement but never received a formal transfer, claim ownership through adverse possession?

20) In a formal proof for adverse possession, the Court must determine:

- i. Whether the Applicant's possession was adverse or merely permissive through license/contractual.
- ii. Whether the Applicant has been in **exclusive, continuous, and uninterrupted** occupation for a period exceeding **12 years**.

- iii. Whether the limitation period for the Respondent to recover the land has expired under the Limitation of Actions Act.
 - iv. The evidentiary weight of the unwitnessed, translated Sale Agreement under the Evidence Act.
- 21) The biggest hurdle for the Applicant is that he entered the land via a Sale Agreement. Ordinarily, a purchaser enters land with the permission of the vendor. Permission is the antidote to adverse possession.
- 22) However, many judicial decisions through our Courts have established that a purchaser can become an adverse possessor if the following conditions are met:
- a) The full purchase price is paid.
 - b) The vendor fails to transfer the title.
 - c) The purchaser remains in possession for over 12 years after the permission to be on the land has effectively expired or been replaced by an assertion of ownership.
- 23) The Court in the case of **Wanje & Others v A. K. Saikwa & Others [1984] KECA 71 (KLR)** established the principle of *nec vi, nec clam, nec precario*, without force, without secrecy, without permission. The Court of Appeal faulted the High Court Judge and observed that:
- “The learned Judge erred when he arrived at the conclusion that the Defendants did not have a right to occupy the property despite their***

adverse possession of it for a period upwards of 12 years.”

- 24) Additionally, the Court of Appeal in the case of **Samuel Miki Waweru v. Jane Njeri Richu [2015] eKLR** held that a purchaser who has paid the full price but has not obtained a transfer can maintain a claim for adverse possession. At the same time, the Court in **Public Trustee v. Wanduru (1984) KLR 153** held that a person who enters land under a contract of sale which is specifically enforceable becomes an adverse possessor if the vendor fails to execute the transfer and the purchaser remains in possession for the statutory period.
- 25) Under Sections 107 and 108 of the Evidence Act, the legal burden of proof rests squarely on the Applicant. He must prove that the sale occurred and that his subsequent possession has been continuous and exclusive. While the Applicant’s testimony (PW1) and that of his spouse (PW2) provide oral corroboration, the Sale Agreement serves as the foundational documentary evidence to establish the *animus possidendi* which is the intention to possess the land as an owner rather than a mere licensee.
- 26) Because the original agreement was drafted in the Kikuyu language, its transition into the Court record is governed by the principles found in Section 68 of the Evidence Act regarding translations. In formal proof proceedings, where the Respondent is absent, the Court

exercises heightened caution to ensure that the translation correctly reflects the parties' identities, the purchase price of Kesh 17,000, and the specific description of **LR NO. NDEIYA/NDUMA/T.507.**

27) A significant issue arises from the fact that the agreement is unwitnessed. Under Section 3(3) of the Law of Contract Act, any contract for the disposition of an interest in land is strictly required to be in writing, signed by all parties, and attested (witnessed). On its face, this agreement may be defective or technically void as a contract for the sale of land due to the lack of witnesses.

28) However, in the context of an adverse possession claim, the Court does not view the document solely through the lens of contract law. Even if the agreement is unenforceable as a contract, it remains powerful extrinsic evidence to prove:

- i. The date of entry, where it establishes 15/07/1991, as the definitive point when the Applicant's occupation began.*
- ii. The nature of entry since it proves the Applicant entered not as a trespasser, but as a purchaser who had paid the full consideration; and*
- iii. The hostility of possession where once the purchase price was paid and the Respondent failed to effect the transfer, the Applicant's continued stay ceased to be*

permissive under the contract and became adverse to the registered owner's title.

- 29) As established in **Public Trustee v. Wanduru (supra)**, the Court can look past the contractual defects of an agreement to recognize the reality of the claimant's long-term, uninterrupted occupation. The agreement, therefore, serves as the catalyst for the 12-year limitation period under the Limitation of Actions Act, regardless of its lack of witnesses.
- 30) In light of the formal proof proceedings, the evidence presented by the Applicant establishes a compelling and unrebutted case for adverse possession through both testimonial and documentary proof.
- 31) The testimonies of the Applicant (**PW1**) and Mary Ngechi Kimani (**PW2**) were consistent and mutually reinforcing. Both witnesses, formerly colleagues of the Respondent at KARI, provided credible accounts of the land's history. They confirmed an entry date of 15/07/1991, and detailed a continuous, 34-year occupation. Crucially, they testified to substantial land development specifically the planting of now-mature blue-gum trees which serves as a visible, open and notorious assertion of ownership that was never challenged by the Respondent.
- 32) The Sale Agreement Exhibit 1, though translated and unwitnessed, functions as the vital starting point of the parties' legal relationship. Under the Evidence Act, it serves

as foundational proof that the Respondent was aware of the Applicant's entry onto the land and received the full purchase price of Ksh 17,000. This document transforms the Applicant's presence from mere trespassing into a claim of right. Furthermore, the official Title Search, Exhibit 2 confirms that the Respondent remains the registered proprietor, thereby validating that the suit was brought against the correct legal entity and that the limitation period has been running against his title since the early 1990s.

33) Finally, the procedural history of the case strengthens the Applicant's position. Despite being served via substituted service through the *Daily Nation* on 27/02/2025, the Respondent failed to enter an appearance or file a Defense. Consequently, the Applicant's evidence regarding his exclusive, uninterrupted, and hostile possession remains entirely un rebutted. In the absence of any evidence of eviction, license renewal, or physical interference by the Respondent, the Applicant has satisfied the burden of proof required to extinguish the Respondent's title under the Limitation of Actions Act.

Disposal Orders

34) Given the foregoing it is hereby ordered that:

i) That a Declaration is hereby issued that David Kiruri Mumira has been in open, peaceful, continuous, and uninterrupted adverse possession of all that parcel of land known as LR

NO. NDEIYA/NDUMA/T.507 for a period exceeding twelve (12) years, and has thereby acquired prescriptive title to the same under the Limitation of Actions Act (Cap 22).

- ii) That the Applicant, David Kiruri Mumira, is hereby declared the absolute proprietor of LR NO. NDEIYA/NDUMA/T.507 and shall be registered as such in place of the Respondent.**
- iii) That the Land Registrar, Kiambu, is hereby directed to cancel the existing registration of Samuel Kimani Githae in respect of LR NO. NDEIYA/NDUMA/T.507 and to issue a new Certificate of Title/Title Deed in the name of David Kiruri Mumira.**
- iv) That in the event the Respondent, Samuel Kimani Githae, fails, refuses, or neglects to execute the requisite transfer documents within thirty (30) days of this Order, the Honorable Deputy Registrar of this Honorable Court is hereby authorized and empowered to execute all necessary documents, forms, and papers on behalf of the Respondent to facilitate the formal transfer and registration of the suit property to the Applicant.**
- v) That the costs of this suit are awarded to the Applicant, to be borne by the Respondent.**

It is so ordered.

**DATED, SIGNED AND DELIVERED IN THIKA VIA MICROSOFT
TEAMS THIS 24TH DAY OF MARCH 2026.**

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**MOGENI J
JUDGE**

In the presence of:

Mr. Njoroge holding brief for Waweru Nyambura for the Applicant

Respondent - Absent

Mr. Melita - Court Assistant

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**MOGENI J
JUDGE**

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