



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ELC SUIT NO. E011 OF 2023 (O.S)

**JAMES NDIRITU GITAHU & 13
OTHERS.....APPLICANTS**

VERSUS

GACENGECHI KUNG’U KARUMBA

Alias **GACENGECHI KUNG’U WA KARUMBA.....1ST
RESPONDENT**

**MAISHA INVESTMENTS AND PROPERTY AGENTS.....2ND
RESPONDENT**

JUDGMENT

1) Discussing the concept of adverse possession, the Court of Appeal in **Mtana Lewa vs Kahindi Ngala Mwangandi [2015] eKLR** stated thus:

“Adverse possession is essentially a situation where a person takes possession of land, 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 12 years.”

2) Vide an Originating Summons dated 16/12/2023, the Applicants seek the following reliefs:

1. That the Applicants have jointly and severally acquired the suit land **TITLE NO. RUIRU KIU BLOCK 2/3896** through Adverse Possession.
 2. That the Title deed issued to and/or in possession of GACENGECHI KUNG'U KARUMBA ALIAS GACENGECHI KUNG'U WA KARUMBA in respect of TITLE NO. RUIRU KIU BLOCK 2/3896 (suit land) has been extinguished by the Applicants' claim for Adverse Possession and the same be cancelled.
 3. An order that the Land Registrar Ruiru do register the Applicants as the absolute proprietors of the Suitland TITLE NO. RUIRU KIU BLOCK 2/3896 having acquired the same through Adverse Possession.
 4. The Land Registrar Ruiru do dispense with the production of the title to the suitland during registration of the Applicants.
 5. The costs of the suit shall be in favor of the Applicants.
- 3) Despite service through advertisement in the Standard Newspaper on 18/08/2023 after this Court had granted leave, the Respondents did not enter an appearance nor mount a Defence. Consequently, the matter proceeded to a hearing through formal proof on 28/05/2025.
- 4) The Applicant, James Nderitu Gitahi who sued in a representative capacity and testified as PW1 and as the sole witness, told the Court that he had consent/authority from the other Applicants to testify on their behalf. He adopted his

Affidavit, which he deposed on 16/01/2023. He also produced the attached documents listed in his Affidavit as evidence.

- 5) He told the Court that he is a mechanic and that he was a complainant with 14 others. That whereas three Applicants including himself, namely Daniel Njuguna Muiruri and Esther had written and filed their witness statements and were included on the list of witnesses, their evidence was a replica of that of PW1- James Ndiritu Gitahi and therefore it was prudent that only one person testifies.
- 6) He testified that himself and fellow Applicants occupy land TITLE No. RUIRU KIU BLOCK 2/3896 the suit land. That they assumed possession of the suit land as purchasers for value and they were issued with certificate of ownership by the 2nd Defendant. The land is registered in the name of the 1st Respondent as shown in the copy of records. He testified that they have occupied the land peacefully, notoriously, and quietly without any interruptions since the year 2005.
- 7) That they have occupied the whole land measuring 0.5000 Ha and have constructed permanent structures which they reside in. Also, he testified that they practice farming and other related activities as owners. That some have constructed rental houses as shown in the photographs attached.
- 8) He further stated that neighbors know each other and none of the Defendants has ever interrupted the Applicants

possession, use and/or occupation of the suit land. That the possession, use and occupation of the suit land has been open and notorious as owners for over 12 years. Thus, they claim to have acquired the land by adverse possession.

9) He has lived, possessed, and occupied the suit property owned by the Respondents for over 20 years since 2000 before the land fell under the Settlement Fund Trustees (SFT) program. The area administrator confirms this and states that the registered owner, the Respondents, cannot be found. The Applicant further attached pictures to show the settlement and development on the ground, emphasizing his possession's substantial and long-standing nature.

10) The Applicants filed their written submissions dated 24/09/2025 with only one issue for determination being: Whether Applicants are entitled to ownership of Title No. RUIRU KIU BLOCK 2/3896 **“the suit land”** by adverse possession?

11) The Applicants in their submissions seek a declaration of ownership for the suit land, **Title No. Ruiru Kiu Block 2/3896**, through the doctrine of adverse possession. They assert that they have maintained open, peaceful, and uninterrupted occupation of the property since the year 2005, exceeding the statutory 12-year threshold.

12) In a summary, the Applicants acknowledge the burden of proof as stipulated under Section 107 of the Evidence Act (CAP 80), which mandates that any party asserting facts to

support a legal right must prove those facts exist. To this end, they provided evidence of physical occupation, including the construction of permanent dwelling houses and active farming.

13) They submit that they initially entered the land through a purchase agreement with the 2nd Respondent. However, they argue that because this transaction failed to meet the formal requirements of Section 3(3) of the Law of Contract and lacked the mandatory Land Control Board consent required under Section 6(1) of the Land Control Act, the sale became void by operation of law. Relying on the precedent in **Samuel Miki Waweru v Jane Njeri Richu [2007] eKLR**, the Applicants submit that when such a transaction becomes void, any continued possession while not illegal becomes adverse to the registered owner from that moment.

14) According to the Applicants, the legal foundation for their claim rests on Sections 7 and 13 of the Limitation of Actions Act. Section 7 bars any action to recover land after 12 years from the date the right of action accrued, while Section 13 clarifies that such a right only accrues when the land is in adverse possession by another party. The Applicants argue that their occupation meets the four essential ingredients of adverse possession as enumerated by Ombwayo J. in **Tabitha Waitherero Kimani v Joshua Ng'ang'a [2017] eKLR**:

1. Open and Notorious Use: Visible enough to give a diligent owner notice.
 2. Continuous Use: Holding the property for the entire limitation period without long gaps.
 3. Exclusive Use: Holding the land to the exclusion of the true owner.
 4. Actual Possession: Physically using the land as a true owner would.
- 15) They have further supported this position by referring to the case of **Titus Mutuku Kasuve v Mwaani Investments Limited & 4 Others [2004] eKLR**, which emphasizes that the claimant must prove exclusive possession as of right and without interruption. The Applicants contend that their acts of development specifically fencing and building align with the description of possession found in **Teresa Wachuka Gachira v Joseph Mwangi Gachira [2009] eKLR**.
- 16) Furthermore, they submit that their occupation highlight the principle of *nec vi, nec clam, nec precario* meaning no force, no secrecy, no permission, as established in **Kimani Ruchire v Swift Rutherfords & Co. Ltd [1980] KLR** and approved in **Francis Gicharu Kariri -v- Peter Njoroge Mairu, Civil Appeal No. 293 of 2002 (Nairobi)**. The Applicants assert that their occupation was not hidden and that the owner had the means of knowing about it. Finally, citing **Teresia Matoke Anyoka & Another v**

Daniel Nyaburi & 2 Others [2021] eKLR, they argue that establishing homes and cultivating the land clearly demonstrates *animus possidendi* the specific intention to possess the property to the exclusion of the Respondents.

- 17) Given that the Respondents have not filed a Defense or challenged the evidence despite being served, the Applicants pray that the Court finds them entitled to the suit land by way of adverse possession.
- 18) The issues that fall for determination are:
- i. *Whether the Applicants have established the legal requirements for adverse possession under the Limitation of Actions Act.*
 - ii. *Whether a claim for adverse possession can be sustained where the initial entry into the land was based on a void contract of sale from a party who was not the registered owner.*
 - iii. *Whether the registered owner's title to **Title No. Ruiru Kiu Block 2/3896** has been extinguished by the Applicants' occupation.*
- 19) The Applicants' case is anchored on the doctrine of adverse possession, which the **Court of Appeal** in **Mtana Lewa v. Kahindi Ngala Mwangandi [2015] eKLR** defined as a situation where a person takes possession of land and asserts rights over it while the titled owner neglects to take action for a statutory period of 12 years. In this instance, the Applicants admit they entered the suit land in 2005 as

purchasers for value. Crucially, they purchased the land from the 2nd Defendant, whereas the land is registered in the name of the 1st Defendant.

- 20) The legal complexity arises from the fact that the sale was technically void for lack of Land Control Board Consent and failure to meet the requirements of the **Law of Contract**. However, Kenyan jurisprudence suggests that even a failed or void transaction can set the clock for adverse possession. The **Supreme Court of Kenya** in **Isack M’Inanga Kiebia v. Isaack Mbui [2018] eKLR** affirmed that the Limitation of Actions Act is designed to protect the rights of those in long-term occupation against owners who sleep on their rights. The Court noted that once the 12-year period lapses, the title of the registered owner is extinguished by operation of law.
- 21) Furthermore, regarding the nature of the Applicants' entry through the 2nd Defendant, the **Court of Appeal** in **Samuel Miki Waweru v. Jane Njeri Richu [2007] eKLR** held that where a purchaser is in possession under a void contract, that possession becomes adverse from the moment the transaction becomes void. Since the 1st Defendant, the registered owner and the 2nd Defendant the purported seller both failed to defend the suit despite substituted service via newspaper advertisement, the evidence of the Applicants remains unchallenged.

- 22) The **Environment and Land Court (ELC)** in **Wanjohi & 2 Others v. Gichaba [2020] eKLR** noted that in cases of formal proof where Defendants fail to appear, the Court must still satisfy itself that the ingredients of *nec vi, nec clam, nec precario* meaning no force, no secrecy, no permission are met. The Applicants have demonstrated actual possession through the construction of permanent structures and farming since 2005. This notorious use satisfies the requirement that the possession must be visible enough to give a diligent owner notice. As the Court of Appeal held in **Francis Gicharu Kariri v. Peter Njoroge Mairu, [supra]** the possession must be continuous and exclusive. By living on the land, constructing rental houses, and engaging in farming for over 18 years without interruption from the 1st Defendant, the Applicants have effectively dispossessed the registered owner.
- 23) Consequently, the Applicants have successfully proven on a balance of probabilities that they have occupied the suit land for a period exceeding 12 years in a manner that is adverse to the 1st Defendant's title.

Final Orders

- i) A declaration is hereby issued that the Applicants have jointly and severally acquired the suit land TITLE NO. RUIRU KIU BLOCK 2/3896 through adverse possession.***

- ii) It is hereby ordered that the Title Deed issued to and/or in possession of Gacengechi Kung'u Karumba alias Gacengechi Kung'u Wa Karumba in respect of TITLE NO. RUIRU KIU BLOCK 2/3896 is extinguished and the same is hereby cancelled.***
- iii) The Land Registrar, Ruiru, is hereby directed to register the Applicants as the absolute proprietors of the suit land TITLE NO. RUIRU KIU BLOCK 2/3896.***
- iv) An Order is hereby issued directing the Land Registrar, Ruiru, to dispense with the production of the original Title Deed during the registration of the Applicants.***
- v) The costs of this suit are awarded to the Applicants.***

It is so ordered.

DATED SIGNED AND DELIVERED VIRTUALLY AT THIKA VIA VIDEOLINK THIS 28TH DAY OF APRIL, 2026.

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**MOGENI J
JUDGE**

In the presence of:-

Mr. Njiraini for the 1st – 6th Applicants

1st Respondent - Absent

2nd Respondent - Absent

Mr. Melita - Court Assistant

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**MOGENI J
JUDGE**

ORIGINAL