



**Karigi v Munyi (Land Case Appeal E011 of 2025)
[2026] KEELC 2620 (KLR) (30 April 2026) (Judgment)**

Neutral citation: [2026] KEELC 2620 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
LAND CASE APPEAL E011 OF 2025
EC CHERONO, J
APRIL 30, 2026**

BETWEEN

REGINA MUTHONI KARIGI APPELLANT

AND

STELLA WANYAGA MUNYI RESPONDENT

*(Being an appeal from the Judgement of Hon. Robert G. Mundia (PM) delivered on 04/02/2025
in Embu MCELC Case No. E068 of 2023 Stella Wanyaga Munyi v Regina Muthoni Karigi)*

JUDGMENT

1. The Respondent herein was the Plaintiff before the trial court wherein she had sued the Appellant vide a Plaint dated 15/12/2023 seeking inter alia: a declaration that she is the lawful proprietor of land parcel No. Gatari/Weru/3637; a declaration that the Appellant is unlawfully occupying, utilizing and causing wastage and degradation to the said parcel of land and that the unlawful occupation and use of the land by the Appellant is infringing on her constitutional and proprietary rights over the land; she sought the eviction of the Appellant and anybody else occupying and utilizing the land with the Appellants permission, within 30 days of judgement and in the alternative they be forcefully evicted; she further sought a restraining order against the Appellant and anybody else utilizing and occupying the land with the Appellants permission from interfering with the Respondents use, occupation and exercise of her proprietary rights over the land.
2. The Appellant filed a defence and counterclaim dated 18/03/2024 where she averred that she was adopted by one Timotheo Kagiri Lazaro the original owner of land parcel No. Gatari/Githimu/2542 which was later subdivided in the year 2005. She averred that she had settled on the portion known as Gatari/Githimu/3637, the suit land herein, which was registered in the Respondents name on 17/05/1995. She stated that she had been in open, continuous and uninterrupted occupation of the suit land for a cumulative period of 59 years and that she has extensively developed the land. She claimed that she had therefore become entitled to the land by way of adverse possession.



3. The Appellant sought in her counterclaim, a declaration that she has become entitled to be registered as the absolute proprietor of the suit land by virtue of being in occupation of the said land openly, continuously and without interruption for a period of over 12 years; that the Respondents name be cancelled and or removed from the register of the land and be replaced by the Appellants name; that the title deed to the suit land issued to the Respondent be revoked cancelled and or recalled and a new title deed issued to the Appellant; a restraining order against the Respondent, her servants, agents or anybody claiming under her from entering, working on, claiming or in any way interfering with the Appellants use and occupation of the land.
4. When the former suit came up for directions, the parties agreed to proceed with the hearing by way of viva voce evidence.
5. PW1, Stella Wanyaga Munyi adopted her written statement dated 15/12/2023 as her evidence in chief. She testified that the suit land is registered in her name and that she wanted the Appellant to vacate the land as she had no right to be there. She stated that the Appellant occupied the land illegally and started utilizing it and that she could not access the land or use it.
6. On cross examination, she stated that the land in dispute was initially her grandfather's land, the late Timotheo Kagiri and that is where her grandparents used to live. She stated that their house is still there and that they were utilizing the land before they died. She averred that they were living on the land with the Appellant since 1965. She stated that she obtained the title deed to the land in 1995 and that her grandfather passed on in 2003 whereas her grandmother passed on 11/09/2021. She averred that she used to live on the land with her parents but moved out in the year 1982 and never moved back to the land. She stated that she built on another parcel of land where she lives with her mother. She denied interfering with the land. She stated that she has never utilized the land and that she wanted the Appellant evicted so that she could utilize it.
7. On re-examination she stated that they moved out of their grandparents land in the 1980's and that the Appellant was living with her grandmother as a dependant. She produced in evidence the title deed for land parcel 3637, photographs of stumps of fell trees and a demand letter.
8. PW2, Faith Irene Wanjiru Munyi adopted her written statement as her evidence in chief. She stated that she was the Respondents sister. She testified that the Appellant is her grandmother's niece and that she is in occupation of the suit land whereas the Respondent does not utilize the land. She expressed that the land belongs to the Respondent who was given the land by her grandfather and that the Appellant only lived there with their grandparents when they were still alive.
9. On cross examination, she stated that their parents moved out of the land in 1980 and that she found the Appellant living with her grandparents when she was born in 1974. She stated that the Appellant was farming on the land and she has continued to farm whereas the Respondent has never moved back to the land or cultivated it. She stated that only the Appellant cultivates on the land and no one else is allowed to do so.
10. PW3 Juliet Njura Munyi, the Respondents mother adopted her written statement dated 15/12/2023 where she mainly corroborated PW2's testimony.
11. DW1 Regina Muthoni Karigi adopted her written statement dated 18/03/2024. She stated that she was adopted by her aunt and her husband in 1995 when she was 2 years old and that they took her in and lived with her. She stated that her adopted father Timotheo was the registered proprietor of land parcel 2542 which he subdivided and land parcel 3637 was one of the resultant parcels. She stated that the suit land fell on the portion that she has lived on and cultivated since she became an adult and that she has greatly developed it by planting avocado trees, mangoes, macadamia, coffee and other various



- trees. She stated further that her adopted father transferred the suit land to the Respondent but she never interfered with her use and occupation of the land.
12. On cross examination, she stated that the suit land is registered in the Respondents name but she should not be evicted from the land. She averred that it was the Respondents mother who cut down the trees. On re-examination she stated that the Respondent has never taken possession of the land nor has she tried to evict her. She averred that she has never lived on any other land since 1965. She produced in evidence the green card to land parcel 3637 and a mutation form for land parcel 2542.
 13. Upon analyzing and evaluating the evidence adduced, the trial Court found that it was not in dispute that the suit land was registered in the name of the Respondent and that the Appellant being in occupation of the land and not being a licensee authorized by the registered owner, she was therefore in illegal occupation of the said land. The Court further found that pursuant to the case of *Sugawara v Kiruti* (sued in her capacity as the administrator of the estate of Mutarakwa Kiruti Lepas alias Mutaragwa Kiruti Lepas alias Mutaragwa Kiroti Leposo and in her own capacity) & 3 others (Civil Appeal E141 of 2022)(2024)KECA 1417 (KLR), it could not pronounce itself on the issue of adverse possession as it lacked jurisdiction. The Court allowed the Respondents case according to the plaint directing each party to bear their own costs.
 14. The Appellant was aggrieved with the impugned decision and preferred the present Appeal on the following grounds;
 1. That the Learned Magistrate erred in law and fact in disregarding the Appellants claim of adverse possession over land parcel 3637 by holding that the court lacked jurisdiction over the issue of adverse possession when the court was or is a court of competent jurisdiction presided over by a gazetted magistrate to handle Environment and Land Court matters.
 2. That the Learned Magistrate erred in law and fact in failing to find that the Respondent's title to the suit land had been extinguished by effluxion of time in accordance with the *Limitation of Actions Act*.
 3. That the Learned Magistrate erred in law and fact in failing to hold and find that the Appellant had acquired absolute title to the suit land that she has been in occupation of for more than 12 years by way of adverse possession.
 4. That the Learned Magistrate erred in law when he failed to consider all the evidence and submissions for and on behalf of the Appellant in respect of the suit before him.
 15. The Appellant sought to have the judgement of the trial Court set aside and the appeal be allowed with costs.
 16. When the appeal came up for directions, the parties agreed to canvass the appeal by way of written submissions. The Appellants filed submissions dated 01/09/2025 through the firm of Wairimu Rugaita & Company Advocates. They submitted that while it is correct that original jurisdiction to grant orders of adverse possession vests in the ELC Court, once a party raises adverse possession by way of defence or counterclaim, the Magistrates Court is obliged to consider the issue as part of the defence to title. She submitted that section 9(a) of the Magistrates Court Act 2015 grants magistrates jurisdiction to hear and determine disputes relating to occupation title to land and use of land within the pecuniary limits. That the counterclaim for adverse possession being integrally connected to the claim for eviction was squarely within the court's jurisdiction and therefore the court abdicated its duty to resolve the real issues in controversy between the parties.



17. She further submitted that under section 7, 17 and 38 of the *Limitation of Actions Act*, the registered owner's title is extinguished once another party has been in open, continuous and exclusive possession of the land for 12 years adverse to the title of the owner. She contended that she demonstrated that she had been in continuous possession of the suit land for over 28 years whereas the Respondent did not controvert this evidence and therefore the magistrate failing to consider the evidence amounted to a miscarriage of justice.
18. The Respondent filed submissions dated 29/09/2025 through the firm Duncan Muyodi & Company Advocates. She submitted that that Appellant insists that the Magistrates Court has jurisdiction to entertain a claim for adverse possession which claim is without basis in law. She averred that even if the Appellant was in adverse possession of the land, the Respondent had already asserted her title to land by filing a suit for the eviction of the Appellant. She submitted that according to section 24(2) of the *Land Registration Act*, a certificate of title is proof of indefeasible ownership unless fraud, misrepresentation, illegality, lack of proper procedure and a scheme of corruption is shown which was not the case herein.
19. She submitted further that the period when the Appellant lived with her adopted father cannot be considered to be adverse possession and that the magistrate's court was right in finding that it had no jurisdiction to hear a dispute on adverse possession. She maintained that the trial Court rightly found for the Respondent and ordered for the eviction of the Appellant who never challenged the legality of the Respondents title. The Court was urged to dismiss the appeal.
20. The main issue for determination is whether the learned Magistrate erred in law and fact in declining jurisdiction over the Appellant's counterclaim for adverse possession and consequently failing to determine it on its merits.
21. It is not disputed that the Respondent is the registered proprietor of land parcel Gaturi/Githimu/3637. The Respondent filed a suit seeking to evict the Appellant from the suit land among other orders on the grounds that she had no right to be on the land. The Appellant filed a defence and counterclaim claiming that she had acquired title to the land by way adverse possession through long, continuous occupation dating back to 1965. The trial court, relying on the case of *Sugawara v Kiruti* (Sued in her capacity as the administratrix of the Estate of Mutarakwa Kiruti Lepaso alias Mutaragwa Kiruti Lepaso alias Mutaragwa Kiroti Leposo and in her own Capacity) & 3 others [2024] KECA 1417 (KLR) held that it lacked jurisdiction to determine the counterclaim on adverse possession and declined to pronounce itself on its merits.
22. It is now settled law in that subordinate courts lack jurisdiction to entertain and determine claims for adverse possession, which are exclusively within the jurisdiction of the Environment and Land Court. See *Sugawara v Kiruti* (supra) where it was held that in view of the express provisions of section 38 of the *Limitation of Actions Act*, the Magistrates' Courts do not have jurisdiction to determine the claims of adverse possession.
23. In the circumstances, this Court finds that the trial court did not err in declining jurisdiction over the issue of adverse possession.
24. However, the Court is of the view that once the trial court found it had no jurisdiction to decide the counterclaim on adverse possession, it should have stopped there and avoided making further orders of eviction. By directing eviction, the trial court effectively blocked the Appellant from pursuing her claim in the proper court. Such an order unfairly closed the door on the Appellant's right to have her case heard before the Environment and Land Court. The correct approach was to decline jurisdiction and leave the parties to pursue their claims before the competent court.
25. Consequently, the appeal partially succeeds only to the extent that the order of eviction is set aside.



26. Each party shall bear their own costs of the appeal and of the proceedings before the trial court.

SIGNED, READ AND DELIVERED AT EMBU THIS 30TH DAY OF APRIL, 2026.

HON E. C CHERONO

ELC JUDGE, EMBU

In the presence of;

Mr. Okwaro for Respondent

M/S Ombongi H/B Rugaita for Appellant

Diana Kemboi C/A

