

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA

ELC CASE NO. 61 OF 2023 (O.S)

IN THE MATTER OF SECTION 38 OF THE LIMITATION OF ACTIONS ACT

AND

IN THE MATTER OF L.R NYANDARUA/URUKU BLOCK 2/1437 (URUKU)

CHARLES MACHARIA APPLICANT

VERSUS

ZAWERIA WANJIRU HUNYUDEFENDANT

AND

**MALATHA NDUTA GICHUKI (*as the legal representative
of the estate of Emilio Gichuki Kagoko*) APPLICANT**

R U L I N G:

In the Application dated 25/9/2025, the Applicant seeks that the court be pleased to review the Judgment delivered on 14/12/2023 and set it aside, in addition to all proceedings and consequential orders. And the Applicant be allowed to be joined in the suit and agitate a cause of action for and on behalf of the Estate of Emilio Gichuki Kagoko (Deceased) to which the Applicant is the legal representative. She states as her grounds of supporting the Application that at the time of his death, the Deceased was in continuous possession and use of L.R. Nyandarua/Uruku Block 2/1437 (Uruku), and had permitted his son, Charles Macharia to occupy the land. This since 1994. The Deceased had therefore

acquired adverse possession of the land by the time of his death which rights she wants to ligate over.

She further says that the Respondent acquired the Suit land by way of transmission and that no prejudice would be occasioned to her if the Application is allowed as she would still have an opportunity to challenge the cause of action of the Estate of Emilio Gichuki Kagoko.

Further in the Supporting Affidavit of Malatha Nduta Gichuki sworn an even date, the Applicant depones that in its award, the Ndaragwa Land Disputes Tribunal awarded the suit land to the late Emilio and that his son was in actual possession of the land. Also, on 14/9/2001 one Peter Mwangi Ngororo had the land registered in his name but which registration did not interfere with Emilio's exclusive use and possession of the land. Finally, she says that the Estate of Emilio Gichuki Kagoko was not involved in the proceedings of the current suit and the Estate ought to have been involved in the determination of the issue of ownership of the land. It was necessary to do so.

In the Defendant's Grounds of Opposition dated 17/11/2025, the said Defendant states that the Application is fatally defective, inept and an abuse of the Court process.

She says the Court is *functus officio* and incapable of granting the Orders sought. The Applicant cannot be joined in a suit that is already concluded. And that the Judgment is already executed and what is pending is only the issue of costs.

Further, the same is an afterthought and misconceived and has not met grounds for review of a judgment.

The Plaintiff never responded.

I allowed the parties to file written submissions which I have considered before retiring to write this Ruling. It is my considered view that the Applicant, who lost the patriarch of the family before the suit for adverse possession was considered ought to be allowed to ventilate that particular claim since the same survives the Deceased and I therefore allow the Applicant's Application dated 25/9/2025 Costs in the cause.

Ruling dated, signed and delivered at Nyandarua this 30th Day of April, 2026.

MUGO KAMAU
JUDGE

In the Presence of: -

Court Assistant:Samson.

Mr. Gakenia.....for the Plaintiff

Ms. Rotich.....for the Defendant