



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT THIKA**  
**ELCLOS NO. E024 OF 2024**  
**IN THE MATTER OF SECTION 7 AND 38 OF THE LIMITATION**  
**OF ACTIONS ACT CAP 22**  
**AND**  
**IN THE MATTER OF ORDER 37 RULE 7 OF THE CIVIL**  
**PROCEDURE RULES**  
**AND**  
**IN THE MATTER OF CLAIM TO TITLE TO LAND BY ADVERSE**  
**POSSESSION**  
**AND**  
**IN THE MATTER OF SECTION 7(d) OF THE LAND ACT NO. 6**  
**OF 2012**  
**AND**  
**IN THE MATTER OF CLAIM TO TITLE TO LAND BY ADVERSE**  
**POSSESSION**  
**OVER**  
**ALL THAT PARCEL OF LAND KNOWN AS RUIRU EAST BLOCK**  
**5/79**  
**BETWEEN**  
**DANIEL KIHARA MUTUNE.....**  
**.....PLAINTIFF**

## VERSUS

**DAVID MWAURA KARANJA.....**  
**.....DEFENDANT**

### JUDGMENT

- 1) The Plaintiff has moved the Environment and Land Court at Thika by way of Originating Summons (O.S.) under Order 37 Rule 7 of the Civil Procedure Rules and Sections 7 and 38 of the Limitation of Actions Act (Cap 22).
- 2) The suit concerns the parcel of land described as **RUIRU EAST BLOCK 5/79**, measuring approximately **0.0638 Hectares**.
- 3) The Plaintiff seeks several declarations and consequential orders from the Court:
  1. That the Plaintiff Daniel Kihara Mutune be declared to have acquired by adverse possession all that parcel of Land measuring 0.0638 HA known as Title No. RUIRU EAST BLOCK 5/79 which parcel is clearly identifiable on the ground as it is demarcated and fully developed by the Plaintiff.
  2. That the Land Register relating to Land Parcel number RUIRU EAST BLOCK 5/79 be rectified in such a manner as will reflect the Plaintiff herein as the registered owner of the said parcel of Land measuring 0.0638 Hectares or thereabouts.
  3. That this Honorable Court be pleased to restrain the Defendant by an Order of Permanent injunction from

entering, alienating, disposing or in any manner interfering with Plaintiff's exclusive possession, use and occupation of the parcel of land measuring 0.0638 Hectares of thereabouts known as Title Number RUIRU EAST BLOCK 5/79.

4. That such other questions as may be pertinent to the case be determined and appropriate direction and Orders be given.
  5. That the costs of these proceedings be borne by the Defendants
- 4) The application is grounded on the Supporting Affidavit of Daniel Kihara Mutune, asserting that:
- i. He has been in actual, open, physical, continuous, and uninterrupted possession of the land for a period exceeding twelve (12) years.
  - ii. The land is clearly demarcated and fully developed by the Plaintiff.
  - iii. By operation of the Limitation of Actions Act, the Defendant's title and any rights over the suit property have been extinguished due to the Plaintiff's long-term occupation *nec vi, nec clam, nec precario* without force, without secrecy, without permission.
- 5) In the Supporting Affidavit deposed by Daniel Kihara Mutune, he acknowledges that the Defendant, David Mwaura Karanja,

is the registered owner of the suit property, specifically described as **Title Number RUIRU EAST BLOCK 5/79**, having become the proprietor around the year 1998 as evidenced by the Green Card annexed to the Affidavit as **“DKM 1”**.

- 6) The core of the Plaintiff’s claim rests on his entry into and continuous occupation of the suit property since the year 2008. He states that for over twelve (12) years immediately preceding the filing of this suit, he has maintained an actual, open, physical, and uninterrupted possession of the land to the exclusion of the Defendant and any other third parties. During this period, the Plaintiff asserts that he has utilized the land as the sole home for his family and has extensively developed the property by constructing permanent structures, demarcating boundaries, and fencing the land without any interference or questioning from any quarter. He further submits photographs marked as **“DKM 2”** to demonstrate the extent of these developments.
- 7) Consequently, the Plaintiff believes that the Defendant’s interest in the suit property has been extinguished by operation of the Limitation of Actions Act. He contends that because he has exercised all the rights and privileges of ownership for a period exceeding the statutory threshold, he is now entitled to be registered as the absolute proprietor of the land. In light of these facts, the Plaintiff prays that the

Court grant a permanent injunction to restrain the Defendant from alienating or interfering with his exclusive possession and ultimately orders the rectification of the land register to reflect the Plaintiff as the legal owner.

- 8) On 15/10/2025, the Court upon the application made by the Plaintiff, granted him leave to serve the Defendant by substituted service since the Defendant could not be traced. Vide the Standard Newspaper of 13/11/2025 the Applicant served the Defendant. The Court issued directions on formal proof hearing on 18/03/2026.
- 9) At the hearing, the Plaintiff/Applicant adopted his witness statement as evidence in chief and produced his exhibits marked as 1, 2 and 3 in support of his case. He thereafter closed his case.
- 10) The Court directed that the Plaintiff/Applicant files their written submissions which they did dated 23/03/2026.
- 11) The Plaintiff's written submissions, dated 3/12/2024, invite the Honourable Court to find that he has proved his claim for adverse possession over the suit property, **RUIRU EAST BLOCK 5/79**, to the required legal standard. The Plaintiff contends that despite the Defendant, David Mwaura Karanja, being the registered proprietor as evidenced by the Green Card produced as Exhibit 1, the Defendant has failed to enter an appearance or contest the suit notwithstanding service by way of advertisement as ordered by the Court.

The Plaintiff asserts that he entered the property in the year 2008 and has since constructed a dwelling house for his family, maintaining an actual, physical, and open occupation for approximately seventeen years, which significantly exceeds the statutory threshold of twelve years.

- 12) The submissions identify a singular issue for determination; whether the Plaintiff is entitled to the suit property by way of adverse possession. In addressing this, the Plaintiff relies on the definition provided in **Mtana Lewa v. Kahindi Ngala Mwangandi (2015) eKLR**, which describes adverse possession as a situation where a person asserts rights over land while the title holder neglects to take action for a period of twelve years. The Plaintiff further anchors his claim on Sections 7 and 38 of the Limitation of Actions Act (Cap 22). Section 7 provides a twelve-year bar for the recovery of land, while Section 38 empowers a person who has acquired title through adverse possession to apply to the Court for an order to be registered as the proprietor in place of the currently registered owner.
- 13) To demonstrate that the legal threshold has been met, the Plaintiff cites this case which he refers to as a landmark case of **Kimani Ruchine v. Swift Rutherford & Co. Ltd (1980) eKLR**, which establishes that possession must be continuous, uninterrupted, and as of right. The submissions emphasize that the Plaintiff's occupation has been *nec vi*,

*nec clam, nec precario* neither by force, nor by stealth, nor by permission. The Plaintiff notes that his entry was not forceful and that he has had no interaction with the Defendant, whose identity he only discovered through the land registry search. Finally, relying on the principles in **Jonah Muchoki Kariki v. Rahab Wanja Mica (2025) KECA 31 (KLR)**, the Plaintiff submits that his rights as an adverse possessor have fully crystallized. He concludes by praying that the Court allow the Originating Summons and order the cancellation of the Defendant's title and the substitution thereof with the Plaintiff's name.

#### **Analysis and Determination**

14) This matter presents a classic determination of a claim for the acquisition of title to land by way of adverse possession. The Plaintiff, Daniel Kihara Mutune, seeks to displace the registered proprietorship of David Mwaura Karanja over the suit property, Ruiru East Block 5/79, by invoking the statutory limitation period. At the heart of this dispute is the interplay between the indefeasibility of title as protected under the Land Registration Act, 2012, and the extinguishment of such title by operation of the Limitation of Actions Act, Cap 22 of the Laws of Kenya.

15) To evaluate the merits of the Plaintiff's case, one must look to the foundational principles of adverse possession. **Black's Law Dictionary** defines adverse possession as a

method of acquiring title to real property by possession for a statutory period under certain conditions. This is mirrored in Halsbury's Laws of England, which posits that the doctrine is not intended to reward a settler but to penalize an owner who sleeps on their rights. In the Kenyan context, the Court of Appeal in **Mtana Lewa v. Kahindi Ngala Mwangandi [supra]** clarified that:-

***"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."***

- 16) The Court further stated that the process comes into action essentially by default or inaction of the owner.
- 17) The statutory pulse of this claim is found in Section 7 of the Limitation of Actions Act, which provides that;  
***".... an action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him."***
- 18) When this period expires, Section 38 of the same Act allows the possessor to apply to the Environment and Land Court for an order to be registered as the proprietor. The High Court in **Wambugu v. Njuguna [1983] KLR 172**

emphasized that for a claim to succeed, the possession must be *nec vi, nec clam, nec precario*, meaning it must be peaceful, open, and without the owner's permission. The Court held that;

***"The settler must show that he has used the land as of right... possession must be continuous and not broken for any temporary purpose."***

- 19) In analyzing the evidence presented by the Plaintiff, it is observed that he entered the land in 2008, a period now spanning approximately seventeen (17) years. This duration comfortably exceeds the twelve-year threshold required by law. The Plaintiff's testimony, supported by exhibits including photographs of permanent structures and a perimeter fence, establishes a high degree of physical control and transition of the land from a mere occupancy to a developed homestead. As held by the Court of Appeal in **Jonah Muchoki Kariki v. Rahab Wanja Mica [supra]**,

***"The person claiming adverse possession must prove that they have stayed on the land for a continuous period of 12 years... the possession must be adverse, meaning that it is without the leaf or license of the owner."***

- 20) The Plaintiff's uncontroverted evidence suggests that he has occupied the land to the exclusion of the Defendant,

who has remained a paper owner with no physical presence or assertion of rights since the Plaintiff's entry.

21) Furthermore, the Defendant's failure to enter an appearance or contest the suit, despite substituted service via advertisement in the Standard Newspaper, strengthens the Plaintiff's position. In **Kimani Ruchine v. Swift Rutherford & Co. Ltd [supra]**, the Court noted that the burden of proof lies on the Plaintiff to show that his possession was inconsistent with the enjoyment of the land by the owner for the statutory period. By constructing permanent dwellings and housing his family thereon since 2008, the Plaintiff has performed acts of ownership that are fundamentally incompatible with the Defendant's title. The absence of a challenge from the Defendant for over a decade implies an abandonment of the property, allowing the statutory clock to run its full course.

22) The final finding of this Court is that the Plaintiff has successfully discharged both the legal and evidentiary burdens of proof. The evidence demonstrates an actual, visible, and exclusive occupation that has remained uninterrupted for seventeen (17) years. The principles of equity and land law in Kenya dictate that where a registered owner remains dormant while a third party openly invests in and occupies their land for the statutory period, the owner's title is extinguished by operation of law. Consequently, the

Plaintiff's rights have crystallized into a legal entitlement to the land. The Court finds that the Defendant's title to Ruiru East Block 5/79 has been extinguished, and the Plaintiff is entitled to be registered as the absolute proprietor thereof.

23) It is therefore hereby ordered and decreed as follows:

- i. A declaration be and is hereby issued that the Plaintiff, DANIEL KIHARA MUTUNE, has acquired by way of adverse possession all that parcel of land known as TITLE NO. RUIRU EAST BLOCK 5/79, measuring approximately 0.0638 Hectares, having been in actual, open, continuous, and uninterrupted occupation of the same for a period exceeding twelve (12) years.***
- ii. An order be and is hereby issued directed at the Land Registrar, Ruiru, to rectify the Land Register relating to Land Parcel RUIRU EAST BLOCK 5/79 by cancelling the name of the Defendant, DAVID MWAURA KARANJA, and substituting therefor the name of the Plaintiff, DANIEL KIHARA MUTUNE, as the absolute registered owner of the said parcel of land.***
- iii. A permanent injunction be and is hereby issued restraining the Defendant, his agents, servants, and/or any person claiming under***

***him from entering, alienating, disposing of, or in any other manner whatsoever interfering with the Plaintiff's exclusive possession, use, and occupation of the suit property known as RUIRU EAST BLOCK 5/79.***

***iv. The costs of this suit are awarded to the Plaintiff.***

It is so ordered.

**DATED, SIGNED AND DELIVERED AT THIKA THROUGH MICROSOFT TEAMS ON THIS 30<sup>TH</sup> DAY OF APRIL 2026.**

.....  
**MOGENI J  
JUDGE**

**In the presence of:-**

Mr. Wambugu Njogu for the Plaintiff/Applicant  
Defendant/Respondent - Absent  
Mr. Melita - Court Assistant

.....  
**MOGENI J  
JUDGE**