



REPUBLIC OF KENYA



**KENYA LAW**  
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**Njuguna v Njoroge (Civil Appeal E061 of 2022)  
[2026] KECA 757 (KLR) (24 April 2026) (Judgment)**

Neutral citation: [2026] KECA 757 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CIVIL APPEAL E061 OF 2022  
J MOHAMMED, LK KIMARU & AO MUCHELULE, JJA  
APRIL 24, 2026**

**BETWEEN**

**JOSEPH MUCHIRI NJUGUNA ..... APPELLANT**

**AND**

**MARJORY NJERI NJOROGE ..... RESPONDENT**

*(Being an appeal from the Judgment of the Environment and Land Court of Kenya at Murang'a (Kemei, J.) dated 25th April, 2022, in ELC No. 39 of 2017)*

**JUDGMENT**

1. Marjory Njeri Njoroge, the respondent herein, took out amended Originating Summons dated 15<sup>th</sup> September, 2021, before the Environment and Land Court against the appellant, Joseph Muchiri Njuguna, seeking a declaration that she had acquired prescriptive rights to parcel number L.R. No. Makuyu/Kimorori Block 111/727 (the suit property) by adverse possession. The respondent prayed, inter alia, that the sale and transfer of the suit property to the appellant in the year 2000 be declared invalid; an order directing the cancellation of the appellant's title to the suit property; an order directing the appellant to transfer the suit property to the respondent; and an order restraining the appellant and his agents from interfering in any way with the appellant's possession of the suit property.
2. It was the respondent's case that that sometime in 1980, she bought shares from one Philip Thuca, and became a member of Kagua Farmers' Co-operative Society Limited, which was a land buying company. She averred that she was duly issued with a share certificate. That at the time she became a member, the company was in the process of sub-dividing the mother parcel of land with the intention of allotting the same to its members. That in 1982, she participated in the balloting process and was allotted parcel No. Makuyu/Kimorori/Block 111/728, as she awaited to be issued with a title. That a company guide identified the plot for her on the ground. She immediately took possession. That in 1984, she allowed her sister-in-law to settle on the plot and cultivate the same. In 1988, she was issued with a title to parcel No. Makuyu/Kimorori/Block 111/728.



3. The respondent averred that sometime in 2000, her husband received information that some people had trespassed upon their plot, and were ploughing the same. They were doing so on instructions from the appellant. They informed the area chief.

The appellant was admonished for trespassing. That in 2004, the appellant lodged a claim before the Land Dispute Tribunal (Makuyu Divisional Tribunal Case No. 66 of 2004), claiming ownership of the parcel where the respondent had settled on. The Tribunal directed that a government surveyor visits the scene and determine who owned the parcel in dispute between the two parties. This order was adopted as an order of the court in Thika Chief Magistrate's Court Case No.58 of 2005. That in compliance with the decree, Murang'a District Surveyor visited the parcel in question and determined that: the parcel occupied by the respondent was actually parcel No. Makuyu/Kimorori/Block 111/727 (suit property), whose registered proprietor was the appellant; and that Makuyu/Kimorori/Block 111/728, which was owned by the respondent was occupied by a third party, whose rightful parcel was parcel No. 2095.

4. The respondent asserted that she was surprised that she was in possession of parcel No. 727 (suit property) instead of 728, and that all along she believed that the suit property, which she occupied, was parcel No. 728. It was her contention that she enjoyed uninterrupted possession of the suit property since 1981, and was still in possession when the title to the suit property was issued to one Kariuki Gicheru in 1988, and when the suit property was subsequently transferred to the appellant on 6<sup>th</sup> July, 2000. She urged that as at 30<sup>th</sup> June, 2000, she had been in possession of the suit property for a period of twelve (12) years, hence her claimed interest in the suit property by virtue of the application of the doctrine of adverse possession.
5. The appellant filed an amended response dated 1<sup>st</sup> October, 2021. He stated that the suit property was originally registered in favour of Kagua Farmers' Co-operative Society Limited on 21<sup>st</sup> January, 1975. That the Society allowed members to utilize the land pending issuance of titles to members. That the Society surrendered the mother title to the Government in favour of a sub-division scheme on 30<sup>th</sup> December, 1988. That the suit property was created vide a green card dated 1<sup>st</sup> July, 1988. A title deed was issued in favour of one Kariuki Gicheru. That the said Gicheru had possession of the suit property, until he sold it to the appellant in a sale agreement dated 15<sup>th</sup> January, 2000. A title deed was subsequently issued to the appellant on 6<sup>th</sup> July, 2000. That the appellant took possession of the suit property in May 2000 and was forcibly evicted in 2004 by local authorities on behalf of the respondent. That the appellant lodged a complainant against the appellant (case No. 66 of 2004) before Makuyu Divisional Land Disputes Tribunal.
6. The appellant averred that during the pendency of the case before the tribunal, the respondent constructed a semi- permanent house on the suit property. That the District Land Surveyor visited the suit property on 12<sup>th</sup> October, 2006, and determined that the suit property belonged to the appellant, and that the respondent's land was the adjacent parcel No. Makuyu/Kimorori/Block111/728. That although the respondent was informed of this position, she refused to vacate the suit property. That the appellant lodged a suit, Kandara Civil Case No. 45 of 2011 seeking eviction of the respondent from the suit property. That the said suit was stayed pending hearing and determination of the instant suit before the Environment and Land Court.
7. The case was heard by way of viva voce evidence. After hearing the parties, Kemei J., in a Judgment delivered on 25<sup>th</sup> April, 2022, found that the respondent's claim on the suit property by adverse possession crystallized on 30<sup>th</sup> June, 2000, six days before Kariuki Gicheru transferred the suit property to the appellant. The learned Judge determined that the respondent was entitled to the suit property



by way of adverse possession, and the subsequent sale of the suit property to the appellant was null and void.

8. The appellant, aggrieved by this decision, lodged the instant appeal before us. The gist of his appeal is that he faulted the learned Judge for finding that the respondent had sufficiently established her claim of adverse possession. He was aggrieved with the learned Judge's finding that the respondent's possession of the suit property was open and not shrouded in secrecy. He took issue with learned Judge's position that Kariuki Gicheru did not assert his right to the suit property, and for failing to appreciate that Gicheru was registered as the owner of the suit property in December, 1988. He faulted the learned Judge for determining that the appellant failed to adduce sufficient evidence to establish the respondent's discontinuation of possession of the suit property, and disregarded the fact that the appellant took possession of the suit property from May to September, 2000. He was aggrieved that the learned Judge failed to consider that the respondent was the registered owner of parcel No. Makuyu/Kimorori/Block 111/728, which was adjacent to the suit property. The appellant urged us to set aside the decision of the trial court, and issue eviction orders against the respondent in respect of the suit property.
9. The appeal was canvassed by way of written submissions. The firm of Timothy Njenga & Co. Advocates was on record for the appellant. Counsel for the appellant submitted that the respondent entry into the suit property was permissive, by virtue of the fact that she was a shareholder at Kagaa Farmers' Co-operative Society Limited. She cannot therefore claim that she was an adverse possessor. Counsel urged that the respondent was the registered proprietor of parcel No. Makuyu/Kimorori/Block 111/728, which still exists and is available for her use and occupation. It was counsel's assertion that the evidence on record showed that there was confusion as to the actual positions of the proprietors' parcel on the ground, and that Kariuki Gicheru did assert his rights over the suit property, albeit against the wrong party, one Mburu Mwaura. He pointed out that the mother title held by the Co-operative society was surrendered to the government on 30<sup>th</sup> December 1988, and therefore time did not start running on 1<sup>st</sup> July, 1988, as was determined by the learned Judge. It was his submission that the respondent did not dispossess Kariuki Gicheru of the suit property, as she was not aware that he was the registered proprietor, and therefore her claim of adverse possession cannot stand. He urged that time was interrupted when the appellant took possession of the suit property in May 2000, upon purchase of the same from Gicheru. In the circumstances, the appellant's counsel invited us to allow the appeal as prayed.
10. The firm of Mungai & Gakuru was on record for the respondent.

It was the respondent's submission that the appellant's submissions, filed on 5<sup>th</sup> October, 2023, were filed out of time, and without leave of court, and should therefore be struck out. The respondent stated that both the respondent and Kairuki Gicheru settled on their respective parcels of land in 1982 by permission of the Co-operative society. Gicheru settled on parcel No. 726, though he was the registered owner of parcel No. 727. Counsel urged that permission to occupy, which affects one's claim of adverse possession, can only be given by owner of the property, and that neither Gicheru nor the appellant gave the respondent permission to occupy the suit property. He maintained that by the time the surveyor's report revealed that the respondent was settled on the wrong property, she had been in occupation of the same for a period of over twelve years, and had developed the suit property. Counsel urged that parcel No. 728, which is registered in the names of the respondent, is occupied by a third party, and is not available for use by the respondent. He asserted that the learned trial Judge was correct in holding that Kariuki Gicheru never asserted his right over the suit property, and that the respondent had enjoyed quiet possession of the same since 1982. It was his submission that the



respondent's claim to the suit property by adverse possession had already crystallized by the time the appellant was registered as the proprietor of the suit property on 6<sup>th</sup> July, 2000.

11. This being a first appeal, it is the duty of this Court to analyze and re-assess the evidence on record and reach its own conclusions. This duty was reiterated by this court in *Gitobu Imanyara & 2 others v Attorney General* [2016] eKLR, where the court observed thus;

“An appeal to this Court from a trial by the High Court is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put, they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions, though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowances in this respect.” See *Selle v. Associated Motor Boat Co.* [1968] EA 123”.

12. In the present appeal, the issue for determination is whether the respondent proved her case that she had acquired title to the suit property by adverse possession as to disentitle the appellant of its ownership.
13. For the respondent to succeed in her claim for adverse possession, she was required to establish the following facts as elucidated by this Court in *Mate Gitobu v. Jare Kabubu Muga alias Jane Kaburu Muga & 3 others* [2017] eKLR:

“For one to succeed in a claim for adverse possession, one must prove and demonstrate that he has occupied the land openly, that is without secrecy, without force, and without licence or permission of the land owner with the intention to have the land. There must be an apparent dispossession from the land owner. These elements are contained in the latin maxim *nec vi, nec clam, nec Presario* see also *Kasuve v. Mwaani Investment Ltd & 4 others* [2004] 1KLR where this Court stated as follows:

“In order to be entitled to land by adverse possession, the claimant must prove that she has been in exclusive possession of the land openly and as of right and without interruption for 12 years all that after dispossessing the owner or by discontinuation of possession by the owner on his own volition.” ”

14. The trial court found that the respondent had established to the required standard of proof that she had acquired title in respect of the suit parcel of land by adverse possession. The appellant challenges that finding by the trial court on this appeal by essentially stating that the respondent did not establish to the required standard of proof, that she had disposed the registered owner of the suit parcel of land by adverse possession.
15. Our re-evaluation of the evidence adduced before the trial Court in light of the grounds of appeal and the submission made before us leads us to the following conclusion: the respondent established that she took possession of the suit parcel of land in 1982 with the permission of the land buying cooperative society that she was a member of. She was invited to attend a balloting exercise which resulted in her being allotted the parcel of land which was later, in 1988 registered as parcel No. Makuyu/Kimorori/Block 111/728.
16. As fate would have it, when the respondent was shown the actual position of the land on the ground by the agent of the Land Buying Co-operative Society, instead of being shown land parcel No. Makuyu/Kimorori/Block III/728, she was shown parcel No. Makuyu/Kimorori/Block III/727 later to be registered in the name of one Kairuki Gicheru who subsequently in May, 2000 sold the said parcel of land to the appellant.



17. It is not in dispute that the respondent, after taking possession of the suit parcel of land in 1982, has been in occupation of the same until 1988 when she was issued with the title which she mistakenly assumed was in respect of the suit parcel of land. She subsequently resided on the suit parcel of land until the year 2000 when the appellant, having purchased the suit property from the said Kariuki Gicheru sought to assert proprietorship over the same.
18. It was the appellant's appeal that the respondent's claim to having acquired the suit property by adverse possession had not crystalized, firstly, because she had not been in possession of the suit parcel of land for a period of twelve years, and secondly, that she could not possibly be in adverse possession of the suit parcel of land if she was staying on the same with the permission of, initially of the land buying co-operative society. The respondent countered this argument by stating that she had established her claim to the required standard of proof.
19. Our re-evaluation of the evidence leads us to the same conclusion as was reached by the trial Court: the respondent established to the required standard of proof that she was in occupation of the suit parcel of land from 1982, after she had balloted and was shown the suit parcel of land, albeit the wrong parcel of land, and later from 1988 when the title in respect of the suit parcel of land was issued to one Kairuki Gicheru. The respondent proved that she stayed on the suit parcel of land for a period of over twelve years, openly, notoriously, exclusively and without the permission of the registered owner and with the intention of owning it. Kairuki Gicheru did not, during this period, lay any claim over the suit parcel of land nor did he attempt to take possession of the same from the respondent. We cannot, in the circumstances, fault the trial court for reaching the decision that it did that indeed the respondent had established to the required standard of proof that she acquired title in respect of the suit parcel of land by adverse possession.
20. The appellant faulted the trial court for making a finding of adverse possession yet the respondent was still the registered owner of parcel No. Makuyu/Kimorori/Block III/728. The respondent submitted that the said parcel of land was not available for occupation as it was currently in possession of someone else. The issue before the trial Court was ownership and possession the specific parcel of land and not the neighbouring parcel of land that was allegedly registered in the respondent's name. The trial court had no jurisdiction to delve into the issue of ownership and occupation of parcel No Makuyu/Kimorori/Block III/728 because if it did so it would have meant that it would be condemning a party who was neither an applicant nor the respondent in the suit. We cannot fault the trial court for reaching this determination.
21. It is clear from the foregoing that the appeal cannot be allowed.  
It lacks merit. It is hereby dismissed with costs to the respondent.

**DATED AND DELIVERED AT NYERI THIS 24<sup>TH</sup> DAY OF APRIL, 2026.**

**JAMILA MOHAMMED**

**JUDGE OF APPEAL**

.....

**L. KIMARU**

**JUDGE OF APPEAL**

.....

**A.O. MUCHELULE**



**JUDGE OF APPEAL**

I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**

