



REPUBLIC OF KENYA



**Mugo v Ndwiga (Enviromental and Land Originating Summons  
130 of 2017) [2026] KEELC 2659 (KLR) (28 April 2026) (Judgment)**

Neutral citation: [2026] KEELC 2659 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT EMBU  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 130 OF 2017**

**A KANIARU, J**

**APRIL 28, 2026**

**BETWEEN**

**JOSEPH NJUE MUGO ..... PLAINTIFF**

**AND**

**MARGERIE MARIKU NDWIGA ..... DEFENDANT**

**JUDGMENT**

1. The plaintiff - Joseph Njue Mugo – Filed This Suit Against The Defendant – Margery Marigu Ndwiga (now deceased and substituted with Celeste Philip Ndwiga) – via an originating summons dated 25/7/2017 and filed on 1/8/2017. The dispute between the two parties relates to parcel No. GATURI/KEVOTE/T.78 registered in the name of the defendant but claimed by the plaintiff by way of adverse possession.
2. The originating summons was expressed to be brought under Order 37 Rule 7 of the Civil Procedure Rules, Sections 37 and 38 of the Limitations of Actions Act and all the enabling provisions of the law. The following orders are sought:
  1. A declaration that the plaintiff is entitled to be registered as the owner of the whole of land No. Gaturi/Kevote/T.78 which he has been in adverse possession since the year 2001 to date for a period exceeding 12 years immediately preceding the presentation of this suit and which he has used openly and continuously as of right and in adverse possession without any interruption from the Defendant in the above title and that the Defendant’s title to the said parcel of land has been extinguished in favour of the plaintiff under Sections 37 and 38 of the *Limitation of Actions Act* Laws of Kenya.
  2. An order that the defendant being the registered proprietor of parcel of land No. Gaturi/ Kevote/T.78 do transfer that parcel of land to the plaintiff and in default the Deputy Registrar



of this Honourable court be authorized to sign and/or execute all the necessary documents to effect the transfer of the same.

3. An order of costs.
3. The application came with a supporting affidavit in which the plaintiff states, inter alia, that he and his late parents have been in occupation and possession of the land since 1970; that he built on the land in the year 2001 and has been living there with his family and also cultivating; that the occupation has been continuous and uninterrupted from 2001 to date; and that the defendant's title is extinguished through adverse possession.
4. The defendant's response came via a replying affidavit dated 23/10/2017 filed in court on the same date. In the response, the defendant stated, inter alia, that she became registered owner of the land on 12/11/1964 and was issued with a title deed on 29/6/1993; that she lived in a place called Ena which is now where the land is and that the land had been vacant until year 2017 when she noticed that someone had constructed a temporary structure; that upon enquiring, she got to know that it is the plaintiff who had done so; that she sent neighbours to tell the plaintiff to remove the structure; and that the plaintiff responded with a demand letter asking that the land be transferred to him.
5. Further, the defendant denied that the plaintiff and his family have been living on the land as alleged. She averred that the plaintiff is a trespasser and should be ordered to vacate the land; that the plaintiff is not entitled to the orders he is seeking; and that the case should be dismissed with costs.
6. On 28/9/2021, the court gave directions that the matter be heard as an ordinary suit before court.
7. The hearing of the matter started on the same day the directions were given. The plaintiff testified as PW1. He told the court that he started using the land in the year 2001; that he also put up a mud-walled house on it that same year; that before then, his own father and grandmother were using the land and they started doing so in 1970; that the defendant has never told him to vacate the land; that he never asked for permission from the defendant to be on the land; that currently he has a permanent house on the land and there are also semi-permanent structures there; and that he would wish to be granted what he has asked for in the originating summons.
8. The plaintiff also adopted his written statement dated 3/8/2018 as his evidence. The plaintiff's statement is in some measure similar to what he told the court. Additionally, he stated that in the year 2010, a congregation called Sisters of Mary Immaculate of Nyeri to which his own Sister – Rosemary Gaturi Mugo – belonged built for him on the land a three-bedroom permanent house and also assisted in taking his children to school.
9. After giving evidence, the plaintiff was subjected to cross-examination. In answer to some of the questions posed to him, he said he knew Celeste, the substituted defendant and that Celeste was the husband of the original deceased defendant – Margery. Celeste was said to live at a place called Kairungu which is not far from the suit land. He also said he was aware that the land was registered in the name of the deceased's defendant; that he didn't know the deceased defendant got title on 26/9/1993; and that he is the one living on the land.
10. PW 2 was Sister Gaudencia Ann Nyaga and she said, inter alia, that she was a nun belonging to congregational Sister of Mary Immaculate of Nyeri. She also said she knew the plaintiff, who was a brother to a fellow nun. She said she didn't know the defendant and added that she could recall year 2007 as that was the year she and her fellow nun went to visit the plaintiff at Kevote, Embu County. She said she found that the plaintiff's family was poor, lived in a mud-walled house that had torn iron sheets; that the plaintiff's family had no food, no clothes, and that the place for sleeping was bad.



11. Further that when PW2 went back to Nyeri, she told her superiors what she had seen; that the superiors ruminated over the matter; sent her and a fellow nun back to the place with some food, clothes and beds to take to the family; that the plaintiff had three children one of whom a girl child, was disabled and was on a wheel chair; that there was a decision to give more help, which included putting up a decent shelter for the family; that the shelter was later put up on the land; further that the plaintiff's two children were enlisted for schooling in some schools in Kirinyaga County; that also PW2's congregation bought a sewing machine for the plaintiff's wife to help her in earning something for the disabled child; that her first visit to the place took place in the year 2007; and finally that the permanent shelter was put up in the year 2010.
12. During cross-examination, PW 2 said that the plaintiff was living on the land; that his parents were living elsewhere; that there was no talk of title deed for the land when she first visited in the year 2007; that they never asked for title deed when they decided to put up a permanent shelter on the land; that the plaintiff told her later the land parcel had number T. 78; and that he also told her another time later that the land was registered in the name of somebody else.
13. The plaintiff's third witness was Paul Njeru Karuraa. He was PW3 in the proceedings. He was an old man and stated his age to be over 90 years. He said that one of the witnesses – ANN NJOKI NJERU – was his daughter. He further stated that the plaintiff's grandmother used to cultivate on the land in 1970's; that the father of the plaintiff also used to do the same; that the plaintiff's grandmother and his father are now deceased and they left the plaintiff on the land; that the plaintiff has his house there; that the defendant has never occupied or used the land; and that it is not true to say that the plaintiff started using the land in the year 2017. Like the other witnesses, this witness adopted his written statement as his evidence. The contents of that statement are broadly similar to what he told the court.
14. This witness was subjected to cross-examination. In answer to some of the questions asked; PW 3 said he couldn't recall when the land adjudication process started in the area; that he couldn't remember very well the number of the land but he knew that the plaintiff's parents were using it; that he knew the defendant but couldn't tell whether he was the registered owner; and that the plaintiff's father was using the land and also living on it.
15. PW 4, Esther Ruguru Mwaniki, was the plaintiff's final witness. She said she lives on land parcel T. 55 and that land parcel T. 78 is on the lower part of her land. She has been living on her land since 1992 and said that the plaintiff's parents were using the suit land and that the plaintiff himself started using it in the year 2001. According to this witness, the plaintiff has been living on the land, has never left it, and lives there even now. This witness also said she does not know the defendant; that the defendant has never used the land; and that it is not true to say that defendant came to the land in the year 2017. This witness also adopted as evidence her written statement dated 25/7/2017. Her written statement is generally similar to her testimony in court.
16. In answer to some questions posed to her during cross-examination, this witness said she does not know the registered owner of the suit land. That she has never asked the plaintiff who the registered owner is; that she does not know the defendant; that it's the plaintiff who has been using the land and his parents were using the land before him; and that the plaintiff told her in 2018 that the land was registered in the name of somebody else.
17. The court started taking defence evidence on 8/2/2024. The first witness – Celeste P. Ndwiga – testified as DW 1 and introduced himself as the husband of the original defendant – Margery Marigu Ndwiga. He also said, inter alia, that he only got to know the plaintiff because of this suit and that he didn't know how the plaintiff got to occupy the suit land as his late wife, the registered owner, had not allowed him. He narrated how he and his late wife got to know the plaintiff was on the land. Their



relatives, he said, gave them that information. They reported the matter to the area chief who in turn referred them to the area Assistant Chief. The Assistant Chief told them that it is the plaintiff who had put up a temporary shelter on the land. That was in the year 2017. Later on the defendant and his late wife received a letter from the plaintiff's counsel informing them that the plaintiff's owned the land and that they should transfer it to him. Thereafter, this case was filed by the plaintiff.

18. This witness adopted his written statement dated 24/1/2024 as his evidence. He also placed reliance on the written statement of his late wife and the documents he had filed in court. The documents were green card of the land (D Exhibit No. 1), Title deed of the land (D Exhibit No. 2), Demand letter from the plaintiff's advocate (D Exhibit No. 4). DW1 said he got to know of the plaintiff's interference with the land in the year 2017 and that it is not true to say that the plaintiff had occupied the land for over 12 years.
19. The plaintiff's counsel cross-examined this witness. In answer to some of the questions asked, he said that it is not true that he was unaware of the plot until this suit started. He said there is a brick house on the land and that he didn't know when it was put up. He further said his relatives used to work on the land; that his wife had never occupied or used the land; and that he has other properties around that area.
20. The second defence witness (DW2) was Zacharia Njeru Mwoga. He said he sold the land to the defendant. The purchase price was 150/= and he sold it in 1964. Zacharia was cross-examined and he said there was a written sale agreement which he didn't have at the time of testifying. He also said he transferred the plot to the deceased defendant and that it was vacant when he sold it.
21. The third witness called by defence was Joseph N. S. Kanake. This witness testified as DW3. He adopted his witness statement dated 31/5/2018 as his evidence. In the statement, he said, inter alia, that he knew the parties in this case; that he knew the suit land and it belonged to KINA clan which allocated it to one Zacharia Njeru Mwoga who in turn sold it to the deceased defendant; that he has been cultivating a neighbouring plot belonging to his brother; and that the suit land was vacant until year 2017 when the plaintiff came and put up a temporary structure on it.
22. DW 3 said he asked the plaintiff why he was doing that and the plaintiff said he owned the land; and that it is not true to say that the plaintiff had occupied the plot for more than 12 years.
23. Upon cross-examination, DW3 reiterated he was cultivating on his brother's plot; that the suit land was vacant until the year 2017, and that prior to the year 2017, the plaintiff was living on his own plot.
24. The final witness on the defence side was DW4 - Anne Njoki Njeru. She said she knew the parties and she also adopted her written statement dated 31/5/2018 as her evidence. In the statement, she said, inter alia that she knows the suit land; that the deceased defendant reported to her in the year 2017 that some people were constructing on the land; that she visited the land and got to know that the plaintiff was the one constructing; and that the plaintiff told her he owned the land. DW4 further stated said that it is not true to say that the plaintiff was in occupation of the plot before year 2017.
25. Counsel for the plaintiff cross-examined this witness. In answer to some of the questions, she said the suit land is a small village plot; that PW3 in this case is her own father; that her father is not a liar; and that it is not true to say that the plaintiff has been on the plot for over 12 years.
26. Both sides filed submissions after hearing. The plaintiff's submissions are dated 14/10/2024. After giving a highlight of the case, the plaintiff submitted, inter alia, that none of the relatives alleged by the defendant to have been using the land was called to give evidence; that the totality of evidence given shows that the defendant has never used or occupied the land; that the defendant filed a counter claim



- asking for eviction; and finally that the plaintiff's case should be allowed. The case of *Restitutar Micere Thati -vs- Wangari Waithanje & 2 others: CA No. 6 of 2018, Nyeri*, was cited and quoted for guidance.
27. The defendant's submissions are dated 15/8/2024. There was an overview of the case that comprised of a look into the pleadings and evidence. The rest of the submissions consisted of a look at the issues for determination and the applicable law.
  28. According to the defendant, the issues are whether the defendant is the registered owner of the land; whether the plaintiff is entitled to the declaratory prayers he is seeking; and whether the plaintiff has illegally trespassed onto the suit land.
  29. On whether the defendant is the registered owner, it was submitted that she is. She is said to have become so after the process of adjudication was completed. She is further said to have demonstrated ownership by making available a copy of title and the green card. The court was urged to treat her as a person entitled to the rights and privileges afforded by Section 24 (a) of the *Land Registration Act*. The court was also urged to treat her title as provided for under Section 26 (1) of the same Act.
  30. There was then issue as to whether the prayers sought should be granted. They shouldn't, it was submitted. The plaintiff was said to have failed to prove that he is an adverse possessor. According to the defendant "This is a case where the plaintiff is clutching on straws to try his luck with the claim of adverse possession with no evidence whatsoever to prove that he has indeed been residing and farming on the said land since 2001." The case of *Ruth Wangari Kanyagia -vs- Josephine Muthoni Kinyanjui [2017] eKLR* was cited and parts of it quoted to show the legal considerations applicable to a claim based on adverse possession. The plaintiff herein was said to have failed to provide evidence to show "that he was indeed in actual possession."
  31. The last issue relates to whether the plaintiff has trespassed onto the land. It was submitted that he has and he did so in the year 2017. The defendant submitted that "...trespass is an intrusion by an individual into the land of another who has legal possession and ownership." The plaintiff is said to have trespassed considering that he has encroached, illegally occupied, and even put up temporary structures on the land. The defendant requested that the plaintiff be evicted from the land.
  32. Further, and while expounding on whether the plaintiff has proved his case, the defendant faulted the plaintiff for not explaining how he entered the land. In the demand letter he sent to the defendant, the plaintiff is said to have intimated that he inherited the land from his late father – Tartisio Mugo Waweru. In his evidence in court he is said to have averred that he entered the land in the year 2001 and build a house on it. He was said to have shown no photographs as proof of what he was saying.
  33. The plaintiff was also said to have lodged a caution on the land register claiming beneficial interest, not as an adverse possessor. According to the defendant, the plaintiff need to mount a strong case for adverse possession, which, it was submitted, he didn't do. The case of *Kweyu -vs- Omutut [1990] KLR 709* was cited and quoted to drive home the point that he plaintiff needed to demonstrate the character of his possession. Additionally, the case of *Richard Wefwafwa Songoi -vs- Ben Munyiewa Songoi [2020] eKLR* was cited to show what a claiming adverse possessor is required to demonstrate in proof of his claim. The plaintiff was said to have gone into occupation without notifying the registered owner and the registered owner was said to have been unaware of the occupation. The defendant added that the plaintiff also did not show when he ceased to become a beneficial owner in order to become an adverse possessor. The court was ultimately urged to dismiss the plaintiff's case.
  34. I have considered the pleadings on record, the evidence proffered by both sides, and the rival submissions. To my mind, the issues in this case relate to the following:
    - a. When did the plaintiff occupy the suit land? Was it in the year 2001 or in the year 2017?



- b. What was the nature of his possession or occupation? Was he an illegal trespasser who should be evicted or was he an adverse possessor who should become the registered owner?
- c. Is the plaintiff entitled to the prayers he is seeking?
- d. Which way for costs?

35. Before addressing these issues, I think it is necessary to say something about the applicable law on adverse possession. Black’s Law Dictionary, 8<sup>th</sup> edition, 2004, at page 59 defines adverse possession thus:

“The use or enjoyment of real property with a claim of right when that use or enjoyment is continuous, exclusive, hostile, open, and notorious.”

36. The statutory endorsement for adverse possession in Kenya is to be found in Sections 7, 13, and 38 of the Limitations of Actions Act (Cap 22) and Section 28 (h) of the *Land Registration Act* (Cap 300). Order 37 of Civil Procedure Rules, 2010, provides the procedural design and/or process for actualizing an adverse possession claim in court. I think it is necessary to set out some of the statutory provisions:

Section 7 of the *Limitation of Actions Act* states as follows:

“(7) 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 or, if it accrued to some person through whom he claims, to that person.

Section 13 (1) and (2) of the same Act provide thus:

“13 (1) A right of action to recover land does not accrue unless the land is in the possession of some person in whose favour the period of limitation can run (which possession is in this Act referred to as adverse possession) and, where under Sections 9, 10, 11, and 12 of this Act a right of action to recover land accrues on a certain date and no person is in adverse possession on that date, a right of action does not accrue unless and until some person takes adverse possession of the land.

(2) Where a right of action to recover land has accrued and thereafter, before the right is barred, the land ceases to be in adverse possession, the right of action is no longer taken to have accrued, and a fresh right of action does not accrue unless and until some person again takes adverse possession of the land.”

Section 38 (1) of the Act directs where a person who claims to be an adverse possessor should go to in order to ventilate or realise his claim. It provides thus:

“38 (1) Where a person claim to have become entitled by adverse possession to land registered under any of the Acts cited in Section 37 of this Act, or land comprised in a lease registered under any of those Acts, he may apply to the High Court for an order that he be registered as the proprietor of the land or lease in place the person then registered as proprietor of the land.”

37. The *Land Registration Act* recognizes adverse possession as an overriding interest. It provides as follows at Section 28 which is the provision that gives various categories of such interests.

“28 (h) rights acquired or in the process of being acquired by virtue of any written law relating to Limitation of Actions or by prescription.”



38. From our courts, there is a plethora of case law not only outlining in various way what adverse possession is but also its proper scope and requirements. One case where adverse possession was defined is *Mtana Lewa –vs- Kahindi Ngala Mwangandi* [2016] KECA 544. In the case, the doctrine of adverse possession was upheld and adverse possession was defined as a legal mechanism where a person other than the registered owner of the land takes possession of it, asserts his rights of ownership, and the true owner fails to take action for a continuous period of twelve (12) years. The case further affirmed that possession must be NEC VI, NEC CLAM, NEC PRECARIO, meaning that possession must be peaceful, open, continuous, without force, stealth, or the owner’s permission.
39. Further, the Court of Appeal stated the requisite threshold to be met in the case of *Wambugu –vs- Njuguna* [1983] 1 KLR 172 (at pages 172 to 173) as follows:

“2 In order to acquire by statute of limitation title to land which has a known owner, that owner must have lost his right to the land either by being dispossessed of it or by having discontinued his possession of it. Dispossession of the proprietor that defeats this title is an act inconsistent with his enjoyment of the soil for the purpose for which the intended to use it...

“3 The *Limitation of Actions Act* on adverse possession contemplates two concepts: dispossession and discontinuance of possession. The proper way of assessing proof of adverse possession would then be whether or not the title holder has been dispossessed or has discontinued his possession for the statutory period and not whether or not the claimant has proved that he has been in possession for the requisite number of years.”

From this, it appears to me clear that two critical tenets, possession and discontinuance of possession, hold the doctrine of adverse possession together.

40. The rationale and requirements for proof of adverse possession were more elaborately fleshed out in the case of *Margaret Wambui Magu –vs- Rachel Njeri Nyawanga*: Nairobi HCC 1509 OF 2002 (O.S) [2005] eKLR as follows:

“The law of adverse possession is founded on a rational principle: he who enters upon a parcel of land, innocently and in the normal course of living, without anybody’s permission, without stealth, and using no violence, is socially recognized as the legitimate and moral possessor of that land, and the public institutions of sanctification and protection should vindicate this moral position and confer overriding rights upon the person in question, where possession has been retained for a certain minimum duration. The legal position created in protection of such a person carries so much moral force, that it will defeat any other claims which appear to be not so well founded and which emerge only from the fact of registration in formal records. Although the title holders, by such formal records, hold a valid position in law, they stand to have their recorded rights taken away and conferred, instead, upon the new moral claimant who had the physical possession of the suit land and who entered thereupon nec vi, nec clam, nec precario – that is, the legitimate claimant who has long use not by violence, nor by stealth, not by entreaty.”

41. From the foregoing, a summation of what adverse possession is in Kenya and the requirement for its proof would be that it is a legal doctrine and/or concept under the *Limitation of Actions Act* (Cap 22) allowing a person to claim legal ownership of land that he has occupied openly, continuously, and without the owner’s permission for at least twelve (12) years. It extinguishes the registered owner right to repossess the land thus making the possessor the legal owner.



42. The possession is required to have several non-renunciatory attributes including non-permitted uninterrupted continuity for a minimum of twelve (12) years. Such possession should additionally be open, notorious, hostile, and exclusive. On the part of the claiming adverse possessor too, there should be animus possidendi (intention to possess).
43. Having stated the applicable law, I wish now to focus on the case under consideration. According to the plaintiff, his parents started using the suit land in 1970. He further said that he put up his own house on it in the year 2001 and in the year 2010, a permanent house was put up for him by well-wishers. The defendant was said to have never used or occupied the suit land and has never tried to remove the plaintiff.
44. The defendant on the other hand has a different narrative. The land, it was said, had all along been used by the defendant's relatives and it was only in the year 2017 that the plaintiff trespassed and build on it.
45. During hearing, each side called four (4) witnesses, with each witness pushing for the position espoused by the party who called them to testify. The plaintiff for instance called Sister Gaundencia (PW 2) and Paul Njeru Karuraa (PW 3) to drive home the point that he has been using the land for a long time and has even constructed on it. The defendant on the other hand called PW 3 – Joseph N. S. Kanake, and DW 4 – Ann Njoki Njeru, to show, inter alia, that the plaintiff's entry into the land did not take place earlier than the year 2017.
46. It is important to realize and appreciate that PW 3 and DW 4 are father and daughter respectively. In his written statement dated 3/8/2018, while referring to DW 4, PW 3 is shown saying:
- “It is not true what the defendant and her witness are saying that the plaintiff started constructing some temporary structures on the suit land in 2017. Indeed, Anne Njoki Njeru who is her witness and our Local Assistant Chief is my daughter and I can't understand why she is denying that the plaintiff has been in the suit land for more than 12 years.”
47. While DW 4 was testifying, she was asked about her father, PW 3, and this is what she said: “PW 3 is my father yes. He is over 90 years old. He is not a liar. Yes, he speaks the truth.” When DW 4 was asked about the plaintiff's occupation of the land, she said it did not take place before year 2017. Her own father, who according to her “is not a liar” and “speaks the truth” said clearly that the plaintiff has been on the land for over 12 years. Given this scenario, who between the two is truthful? PW 3 was an old man aged 90 years at the time of testifying. He didn't seem to the court to have any memory problems and according to DW 4, his own daughter, he is an honest man. When he says that the plaintiff's use and occupation of the land took place before 2017, the court believes him. When DW 4 avers that that use and occupation does not extend to a period earlier than 2017, she contradicts the evidence of a man that she herself has described as truthful. In this regard, it is DW 4 herself who comes across as less than honest. The court itself saw PW 3 while testifying. It has no reason to doubt his evidence. It is actually the evidence of DW 4 that seems to be of doubtful quality. There is a Latin maxim: falsus in uno, fasus in omnibus, which translates to: false in one, false in all. It is a legal principle used to evaluate witness credibility, often highlighting that a proven lie on one point discredits the rest of the witness testimony. DW 4's evidence seems to be in this category.
48. The defendant is on record saying it is his relatives who were using the land before 2017. Indeed, he said it is the relatives who informed him about the plaintiff's alleged encroachment. Curiously though, concrete evidence about the alleged use of the land by relatives was not forthcoming. It is something that the defendant alleged and it remained an allegation throughout the trial. It would have been useful if evidence of one or more of the relatives was made available.



49. Then there was evidence of PW 2 – Sister Gaudencia Ann Nyaga. She said she first visited the plaintiff and his family in the year 2007. She was taken there by the plaintiff’s own Sister – ROSEMARY GATURI MUGO - who is a Catholic Nun. PW 2 saw a dilapidated semi-permanent structure on the land. She was able to appreciate that the defendant’s family was poor and she thereafter initiated plans to try and help. Her efforts later bore fruit and a permanent hoUse was put up on the land in the year 2010. Some of the plaintiff’s children were also helped in schooling and/or education. During cross-examination by the defendant’s counsel, PW 2 maintained this position. She was in fact very clear that “it is not true to say that the plaintiff started living on the land in the year 2017.”
50. When all the evidence is considered, the court is of the considered view that it is the plaintiff’s side that was telling the truth. This essentially means that it is the narrative proffered by the plaintiff’s side that the court will go by. It is common ground that the defendant is the registered owner of the land. The defendant’s side made registration an issue for determination but it seems clear to the court that the plaintiff’s side is not disputing that the defendant is the registered owner. What the plaintiff is saying is that though this is the case, the plaintiff has been on the land for the requisite number of years and has therefore become an adverse possessor.
51. The defendant’s side tried to discredit the plaintiff’s side by pointing out that even the caution lodged by the plaintiff show him as a person having beneficial interest. Such interest, it was pointed out, is inconsistent with being an adverse possessor. To this court, at the time the caution was lodged, it appears legally sound to claim beneficial interest and here is why: The plaintiff traces his adverse possession to the year 2001 when he put up a semi-permanent structure on the land. Given that the period for adverse possession is 12 years, it seems clear that by the year 2013, the plaintiff was already an adverse possessor. From this time therefore, the defendant held the land in trust for the plaintiff, the defendants own title having already been defeated by the plaintiff’s adverse possession. Beneficial interests is usually about trust and a trust in law already seems to have been existing between the plaintiff and the defendant by the year 2017 when the caution was lodged. The defendant could therefore call himself an adverse possessor and/or a person with beneficial interest. Both would be right.
52. Given the evidence on record, the plaintiff’s occupation of the land was not hidden. When he first put up a semi-permanent structure and later a permanent structure, this was obviously not being done by a person who intended to vacate the land. The defendant is said to have been living only about (6) kilometres away. He said he has other properties in the area. To this court, that is not a big distance to convince someone that you are unaware of encroachment or occupation of the land. The fact of occupation and use of the land was known or knowable to the defendant. The fact that the use and occupation of the land by the plaintiff was very visible and obvious makes the court draw the inference that the defendant, who lived not far from it, was well aware of the prevailing state of affairs.
53. The overall position that emerges is that whether one is talking of plaintiff’s parents and/or the plaintiff himself, they all treated the suit land as their own. It appears clear that when the plaintiff decided to build on the land, he did so because according to him, the land was his own. The plaintiff remained on the land without the defendant ejecting him or filing a suit to remove him. This state of affairs continued for more than 12 years. To this court, this was not trespass though it may have started as such. Inaction on the part of the defendant to remove or eject the plaintiff and/or his parents from the land made the whole thing morph into adverse possession. The finding of the court therefore is that the plaintiff is not a trespasser. He is, instead, an adverse possessor.
54. The final issue is whether the plaintiff is entitled to the prayers he is seeking. The answer to this is yes. The plaintiff has already demonstrated that he is an adverse possessor. The court therefore grants him prayers 1 and 2 in his originating summons. When it comes to prayer (3) which is about costs, the court



considers that the defendant has already lost the land. The court is reluctant to add the burden of costs to him. It is therefore ordered that each side should bear its own costs.

**JUDGEMENT DATED, SIGNED AND DELIVERED IN OPEN COURT AT KITUI THIS 28<sup>TH</sup> DAY OF APRIL, 2026 PURSUANT TO NOTICE DATED 21/4/2026.**

**A. KANIARU**

**JUDGE- ENVIRONMENT & LAND COURT, KITUI**

In the presence of,

Court Assistant – Musyoki

Githinji for Njeru Ithiga for defendant

M/s Njage for Kathungu Joe for plaintiff

