



Ngari & another v Mwangi (The legal representative of the Estate of James Mwangi Gatundu – Deceased) (Environmental and Land Originating Summons E013 of 2025) [2026] KEELC 2623 (KLR) (30 April 2026) (Ruling)

Neutral citation: [2026] KEELC 2623 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E013 OF 2025
EC CHERONO, J
APRIL 30, 2026**

BETWEEN

ETHAN EVELUSHYAH NGARIO 1ST PLAINTIFF

EMMANUEL MATI NYAGA 2ND PLAINTIFF

AND

MICHAEL GATUNDU MWANGI (THE LEGAL REPRESENTATIVE OF THE ESTATE OF JAMES MWANGI GATUNDU – DECEASED) DEFENDANT

RULING

A. Introduction

1. This ruling concerns a Preliminary Objection dated 25th June 2025 raised by the Defendant/ Respondent challenging the competence of the Plaintiffs' Originating Summons dated 23rd May 2025. The Plaintiffs seek, inter alia, to be declared entitled to portions measuring 4 acres and 2.5 acres respectively out of land parcel Nthawa/riandu/1029 by way of adverse possession.
2. By consent of counsel, the Preliminary Objection was canvassed by way of written submissions.
3. The Defendant's objection is premised on the single ground that:

The suit land was transferred to a third party through Nairobi High Court Succession Cause No. E349 of 2022, the grant having been confirmed on 9th May 2023.
4. The Defendant contends that the suit property is no longer vested in the estate he represents, but in a third party, namely Gura Holdings Limited, thereby rendering the suit incompetent.



C. Issue for Determination

5. The sole issue for determination is:

Whether the Preliminary Objection raises a pure point of law capable of disposing of the suit.

Legal Analysis And Decision

6. The principles governing preliminary objections are well settled in the locus classicus case of *Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors Ltd*, where the Court held that:

A preliminary objection consists of a pure point of law which is argued on the assumption that all facts pleaded by the other side are correct, and which cannot be raised if any fact has to be ascertained.

7. This position has been consistently reaffirmed in subsequent decisions including *Hassan Ali Joho & Another v Suleiman Said Shabal & 2 Others*.

8. The Defendant's objection is anchored on the allegation that the suit land was transferred to a third party pursuant to a confirmed grant.

9. However, several issues arise:

I. No certified extract of the land register or title deed was annexed to conclusively demonstrate the alleged transfer;

II. The identity and legal interest of the purported third party are not properly established on record;

III. The Plaintiffs contest the said transfer and argue that it must be proved by evidence.

10. The Court notes that the question of whether the suit land was indeed transferred, and if so to whom, is a factual issue requiring evidentiary proof. It is not a matter that can be determined purely on law at the preliminary stage.

11. In this regard, the Court finds that the objection falls outside the parameters set in *Mukisa Biscuits (supra)*.

12. Even assuming, *arguendo*, that the suit land was transferred to a third party, the law is clear that Change of ownership does not interrupt time for purposes of adverse possession.

13. This principle was authoritatively stated in *Githu v Ndeete*, where the Court held that the mere change of ownership of land does not interrupt adverse possession.

14. Similarly, in *Titus Mutuku Kasuve v Mwaani Investments Ltd & 4 Others*, the Court of Appeal affirmed that rights accrued under adverse possession attach to the land and are enforceable against subsequent proprietors.

15. Accordingly, I find that the Plaintiffs' claim, if proved, would bind the current registered proprietor, whether original or subsequent and the alleged transfer, therefore, does not render the suit incompetent. I also that at most, it may necessitate joinder or amendment, not dismissal.

16. It is also this court's finding that the Defendant has not demonstrated that the suit herein is barred by law and that this Court lacks jurisdiction or that the pleadings disclose no reasonable cause of action.



17. Instead, the objection raises contested factual matters and evidentiary issues, which are properly ventilated at trial.
18. In light of the foregoing, this Court finds that the Preliminary Objection as raised does not raise a pure point of law but the same is premised on disputed facts requiring proof and that even if the alleged transfer occurred, it does not defeat a claim for adverse possession.
19. Accordingly, this Court makes the following consequential orders:
 1. The Preliminary Objection dated 25th June 2025 is hereby dismissed;
 2. The matter shall proceed to hearing on merit;
 3. Costs of the Preliminary Objection shall be costs in the cause.

DATED, SIGNED AND DELIVERED AT EMBU THIS 30th DAY OF APRIL 2026.

HON. E.C CHERONO

ELC JUDGE

In the presence of;

1. Mr. Okwaro for the Plaintiff
2. Defendant/Advocate-absent
3. Diana Kemboi C/A

