



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT THIKA**

**ELC OS CASE NO. E025 OF 2023**

**LUCY MUTHONI GITHINJI.....**  
**.....PLAINTIFF**

**VERSUS**

**MWANGI KANYI.....**  
**.....DEFENDANT**

**JUDGMENT**

- 1) Based on the legal provisions of Order 37 of the Civil Procedure Rules 2010, Sections 28(h) of the Land Registration Act 2012, Order 37 Rule 7 of the Civil Procedure Rules and Sections 7, 17, 18, 37, and 38 of the Limitation of Actions Act), the Plaintiff/Applicant has filed an Origination Summons seeking adverse possession and subsequent registration as the proprietor of a parcel of land.
- 2) The Applicant, Lucy Muthoni Githinji claims to have acquired by way of adverse possession the whole of land parcel No. CHANIA/MAKWA/T.346 which land is registered in the name of Mwangi Kanyi and that she is therefore entitled to:
  1. A declaration that the Plaintiff having been in continuous, open and uninterrupted possession of Land Parcel No. CHANIA/MAKWA/T.346 should be and are hereby declared and registered as the sole proprietors

of the suit land in place of the Defendants and the Defendant's title to the suit CHANIA/MAKWA/T.346 be deemed to have been extinguished through adverse possession of the same by the Plaintiff.

2. A declaration that the Defendant should transfer to the Plaintiff the suit land which is occupied by the Plaintiff, within 60 days of the date of this order, failing which the High Court's Deputy Registrar do execute all documents necessary for such transfer the said CHANIA/MAKWA/T.346 to the Plaintiff and any processing costs to be paid by the Plaintiff.
  3. A declaration that an order ought to issue that the Defendant's title to the portion of the suit land described as CHANIA/MAKWA/T.346 be deemed to have extinguished through adverse possession by the Plaintiff and consequently the Plaintiff have become entitled to the same.
  4. A declaration that the Defendant by himself, his servants or agents should be restrained from alienating, selling, disposing of, utilizing, charging, developing or in any way manner derogating from the Plaintiff's claim pending hearing and determination of this suit.
  5. Costs of this suit and any other relief that the Court may deem fit and expedient.
- 3) Having failed to serve the Defendant the Plaintiff made an application for substituted service on 15/01/2024 and the Court on 12/02/2024 issued directions for service vide

substituted service. Finally, the Plaintiff/Applicant served via the Nation Newspaper dated 14/03/2024.

- 4) Formal proof hearing was set for 24/06/2025 and when the parties did not attend Court it was rescheduled for 21/01/2026.
- 5) During the formal proof hearing, the Plaintiff Lucy Muthoni Githinji testified as PW1. She told the Court that she stays in Mang'u and that she is a business lady. She adopted her statement dated 3/08/2023 as her evidence in chief.
- 6) She also averred to have filed a list of documents dated 3/08/2023 which has a copy of the Green Card and photograph marked as **"PW1-Exh 1-2"**.
- 7) It was her testimony that she started living on the suit property from 1960 and that she has continued to live on the land parcel without any interruption from the Defendant or anybody else since the year 1980 to date.
- 8) According to her she has been in exclusive possession and caused substantial development on the land for over 17 years occupation and possession of the parcel of land CHANIA/MAKWA/T.346.
- 9) That her entire family has lived on this land and her children have been born and brought up on the said parcel of land which they always known as their home and they still stay there practicing farming.
- 10) It is her testimony that she has been in exclusive possession of the land openly and as of right without

interruption for a period of more than 12 years and so she says she is entitled to the land through adverse possession.

- 11) She moved to the land so that she could continue farming on the land where her husband was farming. That according to her, the husband owned the land although she had no document to show that he owns the land.
- 12) She told the Court that although she farms on the land, she had no photographs to show that she farms on the land. With that the Plaintiff closed their case.
- 13) On 21/01/2026, the Plaintiff sought 14 days from the Court to file their written submissions. At the time of writing this Judgment the Plaintiff had not filed any submissions. Be as it may the Court has an obligation to write out the Judgment based on the pleadings.

### **Analysis and Determination**

- 14) The Applicant, Lucy Muthoni Githinji, moved this Court by way of an Originating Summons dated 3/08/2023, brought under the provisions of **Section 38 of the Limitation of Actions Act (Chapter 22, Laws of Kenya)** and **Order 37 of the Civil Procedure Rules**. The Applicant seeks a declaration that she has become entitled by way of adverse possession to the land parcel known as **CHANIA/MAKWA/T.346**, the suit property, currently registered in the name of **Mwangi Kanyi**.
- 15) In support of her claim, the Applicant relies on her own testimony (PW1) and a list of documents filed on 3<sup>rd</sup> August 2023. Key among these exhibits are a photograph (**PW1-Exh**

2) and a copy of the Green Card for the suit property (**PW1-Exh 1**), which shows the Respondent, Mwangi Kanyi, was registered as the proprietor on 6<sup>th</sup> January 1957.

16) The Applicant's case is that she has resided on the suit property since 1960 and has been in exclusive, open, and uninterrupted possession since 1980. She further avers that her children were born and raised on the land and that the family has consistently practiced farming thereon for over 17 years of exclusive possession.

17) The Applicant's case, as set out in her testimony (PW1) and Supporting Affidavit, is that she moved onto the suit property in 1960 to continue farming after her husband, who she believes her husband has been farming despite a lack of documentation. She asserts that she has been in exclusive, open, and uninterrupted possession of the land since 1980, a period of over forty years. She contends that her children were born and raised on the property and that they continue to practice farming thereon.

18) Despite service by way of substituted service via the *Daily Nation* Newspaper on 14/03/2024, the Respondent did not enter an appearance or file any replying papers. The matter, therefore, proceeded by way of formal proof.

19) The legal principles governing adverse possession in Kenya are well-settled. For a claim to succeed, the possession must be *nec vi, nec clam, nec precario*, without force, without secrecy, and without permission. The

Applicant must demonstrate a physical entry into the land, an intention to possess *animus possidendi*, and that such possession has been continuous and exclusive for a statutory period of at least twelve (12) years, as provided under Sections 7 and 17 of the Limitation of Actions Act.

20) In the case of **Mtana Lewa v Kahindi Ngala Mwagandi [2015] eKLR**, the Court of Appeal emphasized that:

***"Adverse possession is a fact to be proved by evidence. The person who claims to have acquired title by adverse possession must prove that his possession was peaceable, open and continuous... The possession must be hostile, which means that it must be in denial of the title of the true owner."***

21) Upon a careful evaluation of the evidence presented by PW1, this Court finds the Applicant's claim severely wanting. The Applicant testified that she has caused substantial development and has been farming the land for decades. However, the only documentary evidence produced, marked as **PW1-Exh 2**, is a single photograph of a child standing at a significant distance from a house in the background.

22) In analyzing the evidence, this Court first looks at the Green Card produced by the Applicant. While the Green Card confirms the Respondent has been the registered owner since 1957, its production by the Applicant does little to advance a claim of adverse possession. In fact, it reinforces

the Respondent's root of title. The mere knowledge of who the registered owner is does not translate to an ouster of that owner.

23) This Court finds that the crux of the Applicant's evidence rests on her claim of substantial development and farming. However, the evidence presented is remarkably thin. The photographic evidence provided is a single picture of a child standing at a distance from a house. There is no evidence connecting that specific house to the suit property, nor is there any visual proof of the farming activities alleged. That solitary photograph of a child, where the location and context are indeterminate, cannot constitute proof of substantial development or exclusive possession of a specific land parcel. There is no evidence of tilled land, crops, livestock, or any permanent structures that can be definitively linked to the Applicant's occupation of **CHANIA/MAKWA/T.346**.

24) In the case of **Mwangi Githu v Livingstone Ndeete (1984) KLR 776** which is a landmark case on adverse possession, the Court established that a change of ownership does not interrupt the 12-year period of adverse possession. The Court in this case noted that:

***"The possession must be visible and manifest. The acts of the person in possession must be such as to give the owner the opportunity of knowing that someone is in possession of his land."***

25) A solitary, ambiguous photograph of a child does not meet the standard of visible and manifest possession. Farming is an activity that leaves a physical footprint such as ploughed fields, crops, or irrigation structures. The absence of such evidence, despite the Applicant claiming to have farmed the land for decades, creates a significant gap in the formal proof.

26) In **Sisto Wambugu v Kamau Njuguna [1983] KECA 69 (KLR)** Kneller J. (as he then was) observed:

***"The Limitation of Actions Act is a statute of repose... the person claiming adverse possession must show that the owner has been ousted from possession. It is not enough to show that the claimant has used the land; she must show that her use was inconsistent with the owner's enjoyment of the land."***

27) Furthermore, the Applicant testified that she moved onto the land to continue her husband's farming. This admission contradicts the hostile nature of adverse possession. If she believed her husband has a right to the land since he was farming it, her entry was not necessarily adverse to the Respondent's title but based on a mistaken belief of right. In **Kasuve v Mwaani Investments Ltd & 4 Others [2004] KLR 184**, the Court of Appeal stated:

***"The person claiming under adverse possession must prove that his possession was 'adverse' to***

***that of the true owner... it is the nature of the possession that matters, not the length of it alone."***

28) Furthermore, in **Samuel Miki Waweru v Jane Njeri Richu [2015] eKLR**, the Court held that:

***"The burden of proof is on the person who alleges adverse possession. They must show not only the period of stay but the nature of that stay. Mere occupation is not enough; it must be possession that is adverse to the interests of the title holder."***

29) The Applicant bears the burden of proving that the Respondent's title was extinguished through a continuous 12-year period of hostile occupation. By providing only a Green Card which in fact proves the Respondent's title and a non-descript photograph, the Applicant has failed to provide concrete evidence of the actual physical state of the land or her specific activities on it for a claim of 17 to 40 years of occupation.

30) The dearth of evidence regarding the alleged farming activities no receipts for inputs, no records of harvests, and no photographic evidence of agricultural use leads this Court to conclude that the Applicant has failed to discharge the burden of proof on a balance of probabilities.

31) Therefore, this Court cannot extinguish a person's constitutional right to property as protected under Article 40 of the Constitution based on flimsy and speculative

evidence. The right to property is not to be taken away lightly unless the stringent requirements of the Limitation of Actions Act are met with precision.

32) Thus, this Court finds that the evidence is insufficient to prove the elements of adverse possession. The claim remains a series of bare assertions unsupported by the physical realities one would expect from over forty (40) years of occupation.

33) Consequently, I find that the Applicant has failed to prove that her possession was exclusive, notorious, and adverse to the title of the Respondent. The Originating Summons dated 3/08/2023 is hereby dismissed.

34) As the Respondent did not participate in these proceedings, I make no order as to costs.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT THIKA THROUGH  
MICROSOFT TEAMS ON THIS 5<sup>TH</sup> DAY OF MAY 2026**

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**MOGENI J  
JUDGE**

**In the presence of:-**

Mr. Kereu Benjamin holding brief for Muturi Njoroge for the Plaintiff/Applicant

Respondent - Absent

Mr. Melita - Court Assistant

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**MOGENI J  
JUDGE**