

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT**  
**NYAHURURU**  
**ELC OS NO. E015 OF 2022**

**JEREMIAH ROTHEO.....1<sup>ST</sup>**

**PLAINTIFF**

**PATRICK ITAPARA ELIMO.....2<sup>ND</sup>**

**PLAINTIFF**

**WILSON TANUI BARNO.....3<sup>RD</sup>**  
**PLAINTIFF (Suing on their behalf and on behalf of**  
**the**  
**275 members of ARUMRUM KAMBI YA SIMBA**  
**SELF HELP GROUP**

**VERSUS**

**LAUTI HILL GENERAL STORES ..... 1<sup>ST</sup>**

**DEFENDANT**

**CATHERINE KABUGO WANGAI.....2<sup>ND</sup>**

**DEFENDANT**

**EMMANUEL GAKUO WANGAI.....3<sup>RD</sup>**

**DEFENDANT**

**MIKE MWANIKI WANGAI.....4<sup>TH</sup>**

**DEFENDANT**

**ISAAC KANYI WANGAI.....5<sup>TH</sup>**

**DEFENDANT**

**VICTOR KIPKURUI NGENO.....6<sup>TH</sup>**

**DEFENDANT**

**JOHN KIBE.....7<sup>TH</sup> DEFENDANT**

**ROSE GICUKU MBOGO.....8<sup>TH</sup> DEFENDANT**

**ANNE WAMUYU WANJIRU.....9<sup>TH</sup> DEFENDANT**

**ISAAC MWENDA MEME.....10<sup>TH</sup> DEFENDANT**

**JOHN KABUGI MAINA.....11<sup>TH</sup> DEFENDANT**

**ANDREW KIBOI.....12<sup>TH</sup>**

**DEFENDANT**

**WILLIAM KIPKEMEI KEMBOI.....13<sup>TH</sup>**

**DEFENDANT**

**MILKA CHEBET KIYAI.....14<sup>TH</sup> DEFENDANT**

**CHEBET EUNICE KOECH.....15<sup>TH</sup>**

**DEFENDANT**

**DANSON GATHEMI MUNGAI.....16<sup>TH</sup>**

**DEFENDANT**

**JOSEPH KABIRU KAMATA.....17<sup>TH</sup>**

**DEFENDANT**

**PETER KIPLAGAT CHUMA.....18<sup>TH</sup>**

**DEFENDANT**

**JAMES NJUGUNA.....19<sup>TH</sup> DEFENDANT**

**CHARLES KANGANGA WANGAI.....20<sup>TH</sup>**

**DEFENDANT**

**BETTY CHERONO TONUI.....21<sup>ST</sup>**

**DEFENDANT**

**NORMAN MGK NYAGA.....22<sup>ND</sup>**

**DEFENDANT**

**MARY WANJIKU MWANGI.....23<sup>RD</sup>**

**DEFENDANT**

**PAUL MURIITHI.....24<sup>TH</sup>**

**DEFENDANT**

**ESTHER AKAI ADUNG.....25<sup>TH</sup>**

**DEFENDANT**

**MELZA NYABOKE ONYAMO.....26<sup>TH</sup>**

**DEFENDANT**

**JOSEPH CHEPKURUI CHEPKOROS.....27<sup>TH</sup>**

**DEFENDANT**

**ANN WANJIRU MBUGI NJUGUNA.....28<sup>TH</sup>**

**DEFENDANT**

**BENSON IRUNGU KARIUKI.....29<sup>TH</sup>**

**DEFENDANT**

**HENRY KIPTONY KIPLANGAT.....30<sup>TH</sup>**

**DEFENDANT**

**PETER NGUGI KIMANI.....31<sup>ST</sup>**

**DEFENDANT**

**DICKSON KINYUA.....32<sup>ND</sup>**

**DEFENDANT**

**JANE KAKUVI MWAKA.....33<sup>RD</sup>**

**DEFENDANT**

**SERAH MWIHAKI GAKAMI.....34<sup>TH</sup>**

**DEFENDANT**

**ANN WANJIRU MBUGUA.....35<sup>TH</sup>**

**DEFENDANT**

**BENSON MUTIE MULWA.....36<sup>TH</sup>**

**DEFENDANT**

**ROBERT NDERITU GITONGA.....37<sup>TH</sup>**

**DEFENDANT**

**FAITH CHEBET KOECH.....38<sup>TH</sup>**

**DEFENDANT**

**JOSEPH KIPYATA KORIR.....39<sup>TH</sup>**

**DEFENDANT**

**DANSON GATHEMI MUNGAI.....40<sup>TH</sup>**

**DEFENDANT**

**SERAH NDUTA MBURU.....41<sup>ST</sup>**

**DEFENDANT**

**RUTH WANJIKU KIBIRIU.....42<sup>ND</sup>**

**DEFENDANT**

**JOHN MWANGI THUKU.....43<sup>RD</sup>**

**DEFENDANT**

## **JUDGMENT**

**1.** This suit was filed by way of an Originating Summons dated 13.6.2022 where the plaintiffs are seeking orders of adverse possession. They seek a determination of the following questions;

**“1) Whether the Plaintiffs have acquired title deed by adverse possession over L.R. NO. MARMANET MELWA BLOCK 2/2 (Old number) New numbers L.R. NO. MARMANET MELWA BLOCK 2/2-3-150.**

**2) Whether the subdivisions of L.R. NO. MARMANET MELWA BLOCK 2/2 being parcel No. MARMANET MELWA BLOCK 2/3-150 should be cancelled and reinstated to the old number.**

**3) Whether L.R. NO. MARMANET MELWA BLOCK 2/2 should forthwith be registered in the name of ARUMRUM KAMBI YA SIMBA SELF HELP GROUP and the Defendants be ordered to sign all the necessary transfer instruments in their favour and in default the Deputy Registrar of the court be authorized to sign the same.**

**4) Whether the District Land Registrar Laikipia should dispense with the production of the original title deeds for L.R. NO. MARMANET MELWA BLOCK 2/2-3-150 while transferring the land to the Plaintiffs.**

**5) Who should pay the costs of the suit”.**

- 2.** The defendants opposed the suit vide the Replying Affidavit of Catherine Kebugo Wangai dated 7.10.2025.
- 3.** During the trial, plaintiff's case was advanced by JEREMIAH NANEI ROTHEA, PW1 who is the 1<sup>st</sup> plaintiff, a member and Chairman of their self help group. He adopted their supporting affidavit dated 13.6.2022 as their evidence and he produced the 9 annexures as P-exhibits 1-9. He also referred to a witness statement dated 11.5.2025, however, this document was not identified as a document to be relied on during the pretrial exercise conducted on 25.3.2025. It is also not in the plaintiff's trial bundle.
- 4.** The case of the plaintiffs as contained in their pleading and the supporting affidavit dated 13.6.2022 is that the ArumRum Kambi ya Simba Self Help group (hereinafter, the group) constitutes of 275 households who are squatters on parcel L.R. No. 9327 in Laikipia measuring 129 hectares. He avers that they have been on the suit

land since 1965 and they keep livestock as well as carrying out farming on the said land.

**5.** He avers that the Kambi ya Simba started as a holding ground for livestock on transit for sale and marketing through Livestock Marketing Division (LMD) to Kenya Meat Commission of which most squatters were employees and casual labourers of the LMD.

**6.** He contends that they have carried out developments on the suit land where they have built a nursery school which has over 100 pupils, and there are 5 churches on the said land. That through a meeting held on 28.8.2020, they came to learn that the suit land had been allocated to Lauti General Stores when the latter came to the provincial administration seeking assistance to evict the plaintiffs. They also learnt that the land was assigned a new number L.R.NO. MARMANET MELWA BLOCK 2/2 where a title was issued on 25.6.2020.

**7.** That they filed a case Nyahururu CM MISC ELC E012 OF 2022 seeking orders to compel the Land Registrar to issue them with copies of the green card and the

subdivisions thereof as they heard that subdivision had taken place, yet they were not aware of any subdivision.

**8.** They did get the orders and learnt that indeed parcel Marmanet Melwa Block 2/2 had been subdivided on 6.9.2021 giving rise to parcels Marmanet Melwa Block 2/3-140 in the name of Catherine Kabugo Wangai of which the 2<sup>nd</sup>- 43<sup>rd</sup> defendants are beneficiaries of the aforementioned subdivisions. They pray that the subdivisions be cancelled and the land to revert back to Block 2/2 to be registered in favour of the group so that the plaintiffs can share out the land.

**9.** On cross examination, Pw1 stated that their group was registered in year 2014, but their members had been on the suit land since 1965 and denies that they have been on the suit land for 8 years only. He reiterated that on the land, they have permanent and none permanent structures including a nursery school, adding that they thought the land belongs to the government. That is why they filed a case to compel the Land Registrar to give them a copy of the green card, only to learn that the

land was owned by a private entity. Pw1 also avers that the National Land Commission had visited the suit land.

**10.** The defence case was advanced by three witnesses.

DW1 is EMMANUEL GAKUO WANGAI, he adopted his witness statement dated 8.12.2022 at page 25 of their bundle as his evidence. He also produced the three documents in their Replying Affidavit as P-exhibits 1-3. He avers that his father, Titus Wangai Mwaniki who passed away in year 2016 was the sole proprietor of the business known as Lauti Hill General Stores which was registered in 1989. That his father, through the aforementioned business acquired parcel L.R. Marmanet Melwa Block 2/2 formerly L.R.NO.9327/2 Laikipia District on 11.10.1996.

**11.** That through succession, the suit land came to the beneficiaries and the widow (the 2<sup>nd</sup> defendant) and was then subdivided to other beneficiaries and the purchasers. He avers that the plaintiffs have been encroaching on the suit land since year 2016 and efforts to bar them have been futile. He denies that the

plaintiffs are entitled to the suit land through adverse possession.

**12.** On cross examination, DW1 stated that his father acquired the land in 1965 through due process. He is aware that the land was for stock route, used for movement of animals of which his father who was a civil servant with the ministry of Agriculture was in charge of the operations before the collapse of the Beef Development programme in year 1981. In particular, his father was incharge of Kilimon holding ground which was on the suit land. He avers that the land was surrendered by the Ministry of Livestock to the Ministry of Lands in year 1993, though he does not have the surrender document.

**13.** He avers that in 1981, the suit land was unoccupied, he was 4 years old, but his father shared with him this information. They were residing on the suit land until 1981 when his father was transferred to Nakuru. That in 1996, the family of Adung was in occupation of the suit land approximately 300 acres and that the community

around was also using that land, but it was not occupied by the plaintiffs. He avers that before 2016, there were 3 families occupying the suit land, that is the family of Adung, Chepkoros and Totolas. He last visited the suit land in 2012-2014 and by then the many houses on the land currently were not there.

**14.** DW1 avers that currently, the land is occupied where there are dwelling houses which are quite a number occupied by plaintiffs. There is a nursery school as well as a church. He contends that the National Land Commission (NLC) has been visiting the suit land. He admits that his father's land is known as Kambi ya Sima.

**15.** Dw1 further stated that initially, the suit land had one title Marmanet Melwa Block 2/2, but it has since been subdivided into 140 parcels, of which the subdivision occurred in year 2021-2022 when the land was already occupied. He avers that there are no beacons on the grounds as they encountered hostilities, so the subdivision was only done on paper, thus on the ground the land is intact. Some of the subdivisions have been

transferred to 3<sup>rd</sup> parties, but this was done when the plaintiffs were in occupation. He avers that him and his mother have never attempted to evict the plaintiffs.

**16.** DW2 is one ESTHER AKAI, the 25<sup>th</sup> defendant. She adopted her witness statement dated 8.12.2022 as her evidence. She avers that she started living on the suit land in 1981 when she got married to one Aduor Kamar who was working for Titus Wangai Mwaniki. The suit land was initially a stock route site, temporarily holding livestock for onward transmission to the Kenya Meat Commission at Athi River, but when the Livestock Division was dissolved, the land was acquired by Titus Wangai through 1<sup>st</sup> defendant. Those who were able and interested then paid grazing fee to enable them to feed their cattle. She avers that encroachment occurred in year 2016 after the death of Titus.

**17.** On cross examination, Dw2 reiterated that she started staying on the suit land in 1981 when she got married. That they were three families and they were leasing the land at sh 4 per cow per month, they were paying the

fee to Wangai who was in charge of the land as a manager. She denies that the Turkana Community had been on the suit land since 1965. She avers that about 200 families stay on the suit land including herself, but plaintiffs came to the land in year 2016 and before then, 3 families were on the land along with 50 additional families. DW2 has a title for 14 acres on the suit land, she did not buy the land, she got it as a squatter.

**18.** She denies that there was ever any burning of houses, but a while back, the government did come to tell people to leave. She can't remember when this happened, but her youngest child was 14 years, while her child who is 30 years was born at the time the civil strife occurred which concerned the burning of houses, or he could have been 8 years old. He denies that the people whose houses were burnt are the plaintiffs. She remembers that government people came with the chief to the land.

**19.** She avers that her daughter, Anastacia is a teacher at the nursery school, but she does not know the number of

students. There are two churches. She avers that all the 300 acres of the suit land is utilized.

**20.** DW3 is one JOSEPH CHELAPUL CHEPKOROS, the 27<sup>th</sup> defendant. He adopted his witness statement dated 8.12.2022 as his evidence. He avers that he has inhabited the suit land since year 1981, having gone there as a pastoralist, of which the land was a stock route site. That in year 2006, there were hostilities and insecurity on the suit land, they were forcibly evicted, of which they sought intervention from the Livestock office at Nanyuki and they were advised to go back, and the three families of Adung Kamar and Totona went back. He avers that there were no other families on the suit land. That when the livestock Marketing Division was dissolved, the land was acquired by Titus, and people continued to pay grazing fees. He avers that encroachment started in 2016.

**21.** On cross examination, Dw3 stated that there are very many people at Kambi ya Simba. He entered the suit land in 1981 as he was looking for grazing grass and he

found 3 people, so he became the 4<sup>th</sup> one. He built a house, then people continued coming to that land after 1981 and they also built. Then there was a time in year 2006 when peoples' houses were burnt, about 200 of them including his, so the people left. That the ones on the land only came 6 to 5 years ago. He avers that those 200 or so people whose houses were burnt came to the land in year 2004-2005. That after the burning of the houses, they went to the livestock officer and were told to go back, so they never left. He has no title to the suit land.

**22.** On submissions, the plaintiffs argued that it was not shown that the suit land belonged to the Government of Kenya prior to opening of the green card on **25/6/2020** in the name of the 1<sup>st</sup> defendant. The letter of Allotment issued by the Commissioner of Lands under the repealed Government Lands Act (CAP 280) on the **11/10/1996** is proof that the 1<sup>st</sup> defendant was the registered proprietor of **L.R. NO: 9327 Laikipia District** which was later registered as **L. R. No. Marmanet Melwa 2/2** under

the Land Registration Act and later subdivided into several portions which were transferred to the 2<sup>nd</sup> - 43<sup>rd</sup> defendants.

**23.** The plaintiffs cited the case of *Benson Mukuwa Wachira V The Assumption Sisters of Nairobi Registered Trustees Court of Appeal at Nairobi Civil Appeal No. 121 of 2006*, where the court made reference to the trial courts holding that;

**“I have considered whether the word registered, as used in S.38 of the Limitation of Actions Act (Cap 22) is to be taken literally. Registration of title to land, as I have already noted herein, is the culmination of government processes which ascribe ownership of a parcel of land to a particular individual and those processes may entail allotment, surveying and the registration.”**

**24.** This far, the plaintiffs contended that time started to run from the date the allotment was issued on 11.10.1996.

**25.** It was further submitted that the registration of the Group was just a way of harmonizing the 275 members who are claiming ownership of the suit land. To this end, reliance was made to the case of *Jones Mavuti Kisyula & Others v Harone Gekonge Nyakundi & 11 Others (2018) eKLR* where it was stated that;

**“This suit has not been instituted by the Self Help Group in its name, but rather, by people who represent the members of the group. Whether the three individuals have the authority of the said group to institute the suit can only be determined at trial and not at this stage. Of course, the mere fact that the group was registered recently cannot be used to defeat the plaintiff’s claim, and the claim of the members of the group that they have been occupying the suit land for many years.**

**I say so because people can come together by way of a self help group for the purpose of filing a suit. The date of registration of such a self**

help group cannot be equated with the longevity of the existence of the members of the group. The 6<sup>th</sup> and 9<sup>th</sup> Defendants' claim that the plaint should be struck out because the plaintiff's self help group was registered in the year 2016 cannot therefore hold. It cannot be said that the right of action of the members of the group only accrued from the date the group was registered because, as I have stated above, the self help group in itself does not have the capacity to sue and be sued”

26. It was argued that the family of Dw1 has never been in occupation of the suit land, and that occupation of the suit land by the plaintiffs since year 1965 has not been challenged. Other cases relied upon by the plaintiffs include; **Chevron (K) Ltd - Vs Harrison Charo Wa Shutu COA at Malindi Civil Appeal No: 17 of 2016, Githu Vs Ndeete (1984) KLR 776, Mbaro John Son & Others V Taveta Teachers Investment Ltd Mombasa ELC No: 318 of 2015** and **Mwanzala Nyae**

**Kidung & Others V Athuman M & Others Mombasa  
ELC No: 64 of 2015 (OS).**

**27.** For the defendants, it was submitted that the suit parcel L.R. Marmanet Melwa Block 2/2 formerly L.R.9327 Laikipa District is owned by the 1<sup>st</sup> defendant, and in terms of the holding in the case of **Dr. Joseph Arap Ngok v 8Justice Moijop Ole Keiwua 7 5 Others ( 1997) eklr,** and **Elijah Makeri Nyangw'ara v Stephen Mungai Njuguna & Another ( 2013) eklr,** such title to land is indefeasible and can only be challenged on grounds of fraud or misrepresentation, and no such grounds were proved by the plaintiff. It is further submitted that the group came into existence in year 2014 as is evident from their certificate, that the encroachment commenced in year 2016 and that even the correspondence with the National Land Commission came in 2016, thus the plaintiffs have not met the criteria of adverse possession as set out in the case of **Wambugu v Njuguna (1983) KLR.**

**28.** It is further argued that pursuant to the provisions of Section 47 of the Law of Succession Act, as well as Rule 41 of the Probate and Administration Rules, issues relating to the administration of the estate ought to have been canvassed in the succession proceedings. Thus, any challenge to the distribution of the estate ought to have been lodged in the succession cause and not in collateral proceedings. To this end, the cases of **Samuel Kamau Macharia 7 Another v Kenya Commercial Bank & 2 Others (2012) eKLR** and **Re- Estate of Patrick Mwangi Githinji (Deceased) (2015) eKLR** were cited.

### **DETERMINATION**

**29.** There is no controversy that the suit land is expansive spanning about 129 hectares (318.7 acres) originally identified as **L.R. NO.9327, Laikipia District** in the name of the 1<sup>st</sup> defendant, then it got another number,

**Marmanet Melwa Block 2/2** of which a title was issued to the 2<sup>nd</sup> defendant on 6.9.2020. It is further not in contention that the suit land has since been subdivided into parcels 3-150. The issue falling for determination is whether the plaintiffs have acquired the suit land through the doctrine of adverse possession.

**30.** Adverse possession is the process by which a person can acquire a title to someone else's land by continuously occupying it in a way that is inconsistent with the right of the owner and as provided for under the **Limitation of Actions Act at Section 7.**

**31.** The rationale for the adverse possession doctrine was expounded by the Court of Appeal in the case of **Mtana Lewa v Kahindi Ngala Mwangandi [2015] eKLR** in the following words;

**“The main justification for the law of adverse possession has variously been given as the need to discourage land owners against, as it were, sitting or sleeping on their land-related rights hence the maxim “vigilantibus non**

**dormientibus, jura subveniunt”, an equivalent to the maxim that equity aids the vigilant. Paper owners of land are encouraged to utilize their land or else a squatter would be prepared to make use of it, invoke the equitable defence of laches and the law will protect him. Article 68 of the Constitution of Kenya, envisages that Parliament will revise and rationalise existing land laws by enacting legislation “to provide for any other matter necessary to give effect to the provisions” relating to land, guided by the principles of equitable access to land and security of land rights in terms of Article 60.”**

**Empahsize added.**

**30.** The court in the above case further made reference to the provisions of Article 60 of the Constitution stating that;

**“all land in Kenya belongs to the people of Kenya, whether as a nation, communities or individuals. It also proclaims that land in Kenya**

**shall be held, used and managed in a manner that is equitable, efficient, productive and sustainable. Among the principles of land policy expressly recognised by the Constitution is equitable access to land, security of land rights, sustainable and productive management of land and land resources”.**

**32.** This far, it becomes clear that despite the protection of right to property as envisaged under Article 40 (1) of the Constitution and Section 24 of the Land Registration Act, the defendants cannot advance the doctrine of indefeasibility of the title, when the said title is under challenge through the doctrine of adverse possession.

**33.** What the doctrine recognizes is that the registered owner holds the title to the land as “the legal owner” but for the occupier as the *cestui que trust* whose legal ownership ripens only upon registration after a court order (**See Bridges Vs. Mees [1957] Ch. 475**). For one to succeed in a claim for adverse possession, he must prove the following elements:-

- a) He must have made physical entry and be in actual possession of the land for the statutory period.
- b) The entry and occupation must be with or maintained under some claim or colour of right or title.
- c) The occupation must be non-permissive.
- d) The occupation must evince unmistakable *animus possidendi*, that is occupation with the clear intention of excluding the owner and all other persons and;
- e) The acts of the adverse possessor must be inconsistent with the owner's enjoyment of the soil for the purpose which he intended to use it.

**34.** In the case at hand, there are no doubts that the plaintiffs are in occupation of the suit land. The defendants admit that much. To this end, Dw1 stated as follows during cross examination;

**“On the suit land as at now, one will find dwelling houses there but I can't know the number. The occupants of those houses are the plaintiffs.”**

**35.** Similarly, DW2 admits that there are developments on the suit land including the nursery school where her own daughter Anastacia teaches. As for DW3 he stated that

there are people on the suit land but they came about 6 years ago.

**36.** Thus, the bone of contention relates to when the plaintiffs came to the land. The plaintiffs aver that they were employees of the LMD and have been there since 1965. However, the defendants aver that the plaintiffs came unto the land in year 2016. To start with, DW1 does not have any tangible evidence to disprove the time of occupation of the land by the plaintiffs. After all, he did say that he was 4 years old as at 1981, the year their father was transferred to Nakuru. He was only informed of what happened to the land by his father which amounts to hearsay evidence. He says that he visited the suit land in year 2012-2014 and the many houses which are there were not there. However, he does not explain how the land was being utilized when he visited the land. He also contradicts himself when he stated that;

**“in 1996, the family of the late Adung was in occupation of the suit land. They were utilizing the entire acreage for grazing”.**

He went on to state that;

**“The land is approximately 300 acres. The community around was also using that land”.**

**37.** He denies that the plaintiffs were the once on the land, but he does not explain which is this community that was using the suit land at that time.

**38.** As it were, it has emerged from the evidence of Dw3 that there were people on the land before and after he settled there in 1981. He stated that;

**“I then built a house, the people I found there had houses. After I came there in 1981, people continued coming to that land and they would build”.**

**39.** Similarly, DW2 avers that plaintiffs came in 2016 but before 2016 it is them who were staying on that land, that is the 3 families along with about 50 additional families. There is no explanation as to who the 50 other

families were but the fact remains that there were people on the suit land not just 3 or 4 families.

**40.** Another notable occurrence is the civil strife which according to Dw3 came in year 2006 when houses were burnt and the occupants were about 200 in number. That the occupants however did not leave the land because of the intervention from the livestock officer. The defendants have availed images at pages 19-22 of their bundle to advance a claim that the land was unoccupied going by their submissions. However, not only are those images not discernible, but such images would contradict the evidence that the land was occupied by some communities and even houses were burnt around year 2006.

**41.** Further, I find that the letter from the National land Commission dated 15. 1.2018 does buttress the claim of the plaintiffs that the land was occupied as from year 1965 by the Turkana Community.

**42.** Further the fact that the defendants were unable to undertake subdivision on the ground is a clear

manifestation of animus possidendi; the intention by the plaintiffs to exclude the owner from enjoying the rights relating to the said land.

**43.** An argument has been proffered by the defendants that the self help group was only registered in year 2014 thus the statutory period has not matured. True, but again the plaintiffs have explained at paragraph 4 of their supporting affidavit that the group was formed to *“pave way for registration and subdivision of the suit land among their members”*. Thus, the averment by the defendants that the claim could only run from year 2014 is unfounded.

**44.** In the case of **Simon Kibe Mwangi & 4 others v Thika Garissa Road Developers Ltd & 5 others [2019] eKLR**, a decision upheld by the Court of Appeal, the court allowed the claim of the squatters who identified themselves as Gachagi Land Committee and the court stated thus;

**“Who is in occupation of the suit land? Going by the Thika CMCC suit no 1291 of 2005, the**

**Gachagi group was in control and occupation of the suit land since the prayers therein was for their eviction. After the filing of that suit, there is no evidence to indicate that the Gachagi group ever left the suit land. Further, plaintiffs have availed photographs of the area showing the nature of occupation of the suit land. Plaintiffs have built their dwelling houses thereon. The place has an appearance of a slum settlement. The 1st defendant on the other hand has never taken over possession of the suit premises. In the circumstances, I do find that the Gachagi group is the one in control of the suit premises”.**

**45.** Similarly, the owners of the suit land do not appear to have settled on the said land. In contrast, the plaintiffs are not only in occupation thereof, but they have such developments like schools and churches. This far, I find that on a balance of probability, the plaintiffs have been in occupation of the suit land from as far back as year

1965. By the time this suit was filed in year 2022, the 12 year period had matured in respect of an adverse possession claim.

**46.** A perusal of the green card reveals that the first registration for parcel **Marmamet Melwa Block 2/2** was done on 25.6.2020 in favour of the 1<sup>st</sup> defendant. As it were, all parties agree that this parcel was formerly known as **L.R. 9327- Laikipia District**. Thus, this land already had a land registration number as at the time the allotment letter was issued to the 1<sup>st</sup> defendant on 1.10.1996. The land was already surveyed and delineated and had a title number even if such a title had not been issued. To this end, I am in agreement with the submissions of the plaintiffs that the holding in the case of **Benson Mukuwa Wachira V The Assumption Sisters of Nairobi Registered Trustees Court of Appeal at Nairobi Civil Appeal No. 121 of 2006** is applicable. I also compute the date when time started running as 1.10.1996, the date the allotment was issued.

**47.** Another argument proffered by the defence is that the claim of the plaintiffs ought to have been canvassed in the succession cause. This is however not the legal position as the claim of adverse possession is anchored under the Limitations of Actions Act. In the case of **Joseph Kamau Gichuki (Suing as the administrator of the Estate of Gichuki Chege(Deceased) v James Gatheru Mukora & another [2019]eKLR**, it was stated as follows;

**“ I am in agreement with the plaintiff that as at the time the defendants obtained grant of letters of administration in respect of the estate of Mukaria and purported to transfer the suit property to themselves by transmission, the suit property was not available for distribution amongst the beneficiaries of the estate of Mukaria since Mukaria’s title over the property had been extinguished under section 17 of the Limitation of Actions Act, Chapter 22 Laws of Kenya and the property acquired by the**

**deceased by adverse possession. The registration of the defendants as the owners of the suit property was therefore unlawful”.**

Also see; Phyllis **Wanjiru Kamau v Wilson Gichuhi Gachagwe & 2 others [2019] eKLR.**

**48.** It has emerged that the suit land has since been subdivided into about 140 parcels. This was done when the plaintiffs were in occupation of the suit land. According to Dw1, the land on the ground is intact as beaconing could not happen due to hostilities. Thus, any subsequent owners of the resultant subdivisions were well aware that the land is occupied on the ground and the resultant parcels had no beacons. In the case of **Githu -vs- Ndeete (1984) K.L.R. p. 776 cited in GERALD MURIITHI KAMONDE v WAMUGUNDA MURIUKI & another [2010] eKLR** it was held interalia that:

**“The mere change of ownership of land which is occupied by another person under adverse**

**possession does not interrupt such person's adverse possession"**

**49.** Thus, the subdivisions of parcel **Marmanet Melwa Block 2/2** into several parcels dose not in any way affect the claim of adverse possession in favour of the plaintiffs.

**50.** I come to the conclusion that the plaintiffs have proved their case of adverse possession on a balance of probabilities. I therefore enter judgment for the plaintiffs against the defendants in the following terms;

**1)An order is hereby issued to the effect that the plaintiffs have acquired title to parcel L.R. No. Marmanet Melwa Block 2/2 (old number) where the New numbers are L.R. No. Marmanet Melwa Block 2/3 -150 by way of adverse possession.**

**2)An order is hereby issued for the cancellation of the registration of parcels Marmanet Melwa Block 2/3- 150 (the subdivisions) to pave way for the registration of the entire land back to**

**its old number L.R. No. Marmanet Melwa Block 2/2.**

**3)An order is hereby issued for the registration of parcel L.R. No. Marmanet Melwa Block 2/2 in the name of officials of Arumrum Kambi ya Simba Self Help Group in trust for the members of the group.**

**4)The defendants are hereby ordered to sign all the necessary transfer instruments in favour of the Plaintiff within 60 days and in default the Deputy Registrar of the court is hereby authorized to sign the same.**

**5)An order is hereby issued directing the District Land Registrar Laikipia to dispense with the production of the original title deeds for L.R. No. Marmanet Melwa Block 2/3-150 in the implementation of this judgment.**

**6)Each party is to bear their own costs of the suit.**

**DATED, SIGNED AND DELIVERED AT NYAHURURU  
THIS 6<sup>TH</sup> DAY OF MAY 2026 THROUGH MICROSOFT  
TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

**In the presence of:**

**Bedan - Court Assistant**

**Waichungo for the Plaintiffs**

**Kimaru holding brief for Mwangi for the Defendants**