

**REPUBLIC OF KENYA**

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

**ELCOS NO 048 OF 2023**

**MARGARET WANGUI WAKABA.....1<sup>ST</sup> PLAINTIFF**

**NANCY WANGUI WAKABA.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**ELIZABETH NDUTA MUNORU.....1<sup>ST</sup>**

**DEFENDANT**

**HANNAH NYOKJABI NGOYO.....2<sup>ND</sup>**

**DEFENDANT**

**JUDGMENT:**

In an Originating Summons dated 26/9/2022, the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs, the legal representatives of the Estate of Wakaba Nderi presented the following issues for determination:-

1. Whether the late Wakaba Nderi bought 3 Acres of land L.R No. NYANDARUA SOUTH KINANGOP/781 from Leah Wangari Nding'uri.
2. Whether Leah Wangui Nding'uri sold the 3 Acre portion to the late Wakaba Nderi.
3. Whether the 3 Acre portion forms part of the Estate of Leah Wangui Nding'uri (Deceased)
4. Whether a Declaration should issue that the land known as L.R NYANDARUA SOUTH KINANGOP/7594 in the name of

Wakaba Nderi confers legal and indefeasible proprietary interest to his Estate.

5. Whether Leah Wangui Nding'uri and the Respondents' Titles to the suit land has been extinguished through the doctrine of adverse possession.
6. Whether the Respondents, their agents, servants and/or employees should be permanently restrained from trespassing, taking possession and/or interfering with the Plaintiffs' possession and occupation of their land known as NYANDARUA SOUTH KINANGOP/7594.
7. Costs of the suit.

The grounds upon which the summons is based are that the late Wakaba Nderi was the husband to the 1<sup>st</sup> Plaintiff and father to the 2<sup>nd</sup> Plaintiff and that he bought a 3 Acre portion of land from Leah Wangui Nding'uri of which the said Plaintiffs have been in possession and occupation for a period of over 45 years peacefully since 1976, openly and continuously.

Leah Wangui Nding'uri had even obtained consent of the Land Control Board to sub-divide the 3 Acre portion to transfer the same to Wakaba Nderi but she died before effecting transfer.

The Plaintiffs have cultivated the said land, put up homes thereon and other business premises on the property without disturbance and that the two have a Title to the land which has never been revoked, but the Defendants have obtained a grant and purported to share the land known as NYANDARUA SOUTH KINANGOP/781

which has already been sub-divided to the Plaintiffs and other purchasers. And that the Defendant's actions amount to abuse of the process of the Court to dispossess the Plaintiffs the 2 Acre portion of land that was lawfully bought from their (Defendants') mother, Leah Wangui Nding'uri (Deceased).

In the Affidavit in support of the summons sworn by the 2<sup>nd</sup> Plaintiff, Nancy Wangui Wakaba on 26/9/2022 the said 2<sup>nd</sup> Plaintiff repeats the contents on the face of the summons and in addition depones that the Defendants are the respective daughters of Leah Wangui Nding'uri who died on 30/4/1986 and who was the registered owner of L.R No. NYANDARUA SOUTH KINANGOP/78. The late Nding'uri sold part of her land to Wakaba Nderi. Having applied and obtained Consent to sub-divide the said land in order to excise 3 Acres therefrom to the Plaintiffs' father, Nding'uri died before transferring the land to the father to the Plaintiffs.

Her husband then and after much persuasions agreed to petition for letter of Administration in respect to her Estate but the purchasers were erroneously shown as sons to the Deceased and Wakaba Nderi Muchiri got a Title Deed to L.R. No. NYANDARUA SOUTH KINANGOP /7594 measuring 1.215 Hectares i.e. 3 Acres on 22/2/2007. As a result, the children of the Deceased successfully applied for the revocation of the said Consent which was according to the Court to be applied for afresh, taking into consideration the interest of all the purchasers of the land. But the Defendants did not heed to this.

In the Replying Affidavit of Hannah Nyokabi Ngoyo, the 2<sup>nd</sup> Defendant sworn on 8/1/2023, the said Defendant depones that the parcel of land L.R No. NYANDARUA SOUTH KINANGOP/781 belonged to their late mother, Leah Wangui Nding'uri who died in 1986. It measured 12.3 Hectares and was allocated to her through the Settlement Fund Trustees, but she died after paying the loan in respect to the land and having executed a charge on 27/7/2952. Wakaba Nderi Muchiri and John Ndung'u Gichuki petitioned for letters of Administration in respect to the late Nding'uri and presented themselves as her sons in Nairobi Succession cause No. 701 of 1998.

The Grant was issued to her on 9/6/1998 but was revoked vide a Court order on 19/5/2020 and Nding'uri Murika, Elizabeth Nduta Munoru and Hannah Nyokabi Ngoyo were appointed by the Court as the Administrators in place of the two. As at the time of the revocation, the land parcel Title No. 781 had already been subdivided.

The Plaintiffs' Title was then cancelled vide a Court order and thereafter a confirmation of the Grant in respect to the late Leah Wangui Nding'uri was ordered by the Court. She depones that the registration of the suit land 781 to the names John Ndun'gu Gichuki and Wakaba Nderi Muchiri on 21/12/2006 was overturned by the Court and that therefore this suit is premature because the full administration of the Grant of the Estate of Leah Wangui Nding'uri is not yet complete. The parcel of land is not yet in the name of the Defendants nor their deceased mother but still in the

name of Settlement Fund Trustees and the doctrine of adverse possession is therefore inapplicable. She also says and rightly so that the sale agreements attached to the summons are not legible and not

translated and therefore not of any value in the case.

Finally, she depones that the suit is brought against the two in their personal capacities and not as the personal representatives of the Estate.

In addition the Defendants also filed joint Grounds of opposition to the Originating Summons dated 8/1/2023 where they state that the summons is an abuse of the process of the Court and is grossly incompetent and bad in law and that the same should be dismissed with costs to the Defendants. They further said that the doctrine of adverse possession is not applicable because the land is still registered in the name of the Government, Settlement Fund Trustees and that the time for adverse possession has not started running since the land is still in the name of Settlement Fund Trustees and that the suit is defective by virtue of the Plaintiffs suing the Defendants in their own private capacities and not in their capacity as personal representatives of their late mother.

Further, since the Title is in the name of the father to the Deceased since 22/2/2007, the Plaintiff's cannot apply for adverse possession against the person whose Estate they are legal representatives of.

The hearing of the suit commenced on 27/1/2026 when Nancy Wangui Wakaba, the 2<sup>nd</sup> Plaintiff, took to the witness stand. She repeated the contents her Affidavit sworn on 26/9/2022 and the same facts in her statement of 11/11/2025 which I have already reproduced above. She said that they have lived on the 3-Acre parcel of land L.R NYANDARUA SOUTH KINANGOP/7594 since 1986 which her father completed paying the same year and was issued with a Title Deed but which was later revoked. She pleaded with the Court that although her father had erred but since he had already purchased the land in full, the land be declared theirs. She then produced the following documents to support their case.

1. Letter of authority dated 11/10/2024 to act for herself and her co-plaintiff, Margaret Wangui Wakaba.
2. Certificate of death in respect to Leah Wangui Nding'uri.
3. Letter from the sub county Land Adjudication & Settlement Officer, Nyandarua South dated 16/2/2022 addressed to Kituo cha sheria.
4. Ruling dated 19/5/2020 from High Court of Kenya, Nyahururu by Lady Justice R.P.V Wendoh.
5. Title Deed in respect of NYANDARUA SOUTH KINANGOP/7594 given on 22/2/2007 in favour of Wakaba Nderi Muchiri of ID. No. 4665059, a sub-division of NYANDARUA SOUTH KINANGOP/781.

On cross-examination by Mr Mwariri for the Defendants, Ms. Wakaba told the Court that they were seeking for orders for the land as purchasers and also under adverse possession. She said

she has never seen any Title Deed in the name of Leah Wangui Nding'uri and that it is true the land has been in the name of Settlement Fund Trustees. The sub-division was carried out in 2006. She admitted that her father lied that he was the son of Leah Wangui Nding'uri and that that is how he got the Title over No. 7594. Also, in High Court Succession Cause No. 8 of 2018, Nyahururu in the Estate of Leah Wangui Nding'uri, the Court held that there was no sale of NYANDARUA SOUTH KINANGOP/7594. This land reverted to 781 in the name of Settlement Fund Trustees.

On re-examination by Mr Gathumbi, Nancy told the Court that in 1991 the land had not been sub-divided.

After the close of the Plaintiffs' case, Hannah Nyokabi Ngoyo gave evidence by adopting her statement in form of Affidavit sworn on 28/3/2025 as her evidence in chief which Affidavit was in response to the Amended Originating Summons. In the Amended Originating Summons, the Defendants had now been sued as the Administrators of the Estate of Leah Wangui Nding'uri. She deponed that the suit land NYANDARUA SOUTH KINANGOP/781 was allocated to her late mother, Leah Wangui Nding'uri though by the time she died in 1986, she had not been given Title Deed to the land. The same measured 12.3 Hectares. She had executed a charge against the land on 27/7/1982 and later paid up the loan and the charge was discharged. She as well said that the illegal Grant given to John Ndung'u Gichuki and father to the Plaintiffs was through fraud and misrepresentation that they were sons of

Leah and the same were revoked by the Court. The land had by now been sub-divided and a Title Deed NYANDARUA SOUTH KINANGOP /7594 issued which was not revoked despite the orders of the Court.

Her father Nding'uri Mwikia then died on 13/10/2008. She also said that in order to conceal their action, the late Wakaba and John Ndun'gu subdivided the parcels of land and that they cannot therefore seek remedy while their hands are stained and that they cannot found their claim on both adverse possession as well as purchase.

She then produced the following documents: -

1. Copy of Grant.
2. Death Certificate.
3. Sale agreements dated 23/2/1986, 10/8/1986 and 11/3/1996.
4. Copy of Title.
5. Copy of Certificate of Confirmation of Grant.
6. Search certificates.
7. Photographs.

On cross-examination by Mr. Gathumbi for the Plaintiffs, Hannah said she does not know whether her mother had sold the land or any part thereof to anybody. She never told her and there was nobody on the land. She said that the Succession cause had not been concluded and the position is that the Plaintiffs have objected to the Administrations of the Estate. Her father who died in mysterious circumstances through arson on the suit land was buried on the suit land.

On re-examination, Hannah said all the 9 daughters of Leah Wangui Nding'uri had consented to the distribution of the Estate of Nding'uri. And this rested the case.

I asked the parties herein to file written submissions after which I retired to write the Judgment that follows: -

Adverse possession is an attack on the proprietor's Title. The adverse possessor is urging the Court that the Respondent's Title ought to be defeated. It has been extinguished by virtue of the former having lost his Title. Section 7 (d) of the Land Act, No. 6 of 2012 provides that Title may be acquired by prescription. Section 38 of the Limitation of Actions Act provides that where a person claims to have been entitled to adverse possession to land he must apply to the Court for an order that he be registered as the new proprietor of the land in place of the registered owner. This suggests that the person to be dislodged must have been registered as the proprietor of the land. In other words, he must have had a Title Deed which is now being removed from his legs as a rag and placed below another's (adverse possessor's) legs.

Under Order 37 Rule 7 (2) of the Civil Procedure Rules,

“..... The summons shall be supported by an Affidavit to which a certified extract to the land in question has been annexed.....”

This is one of the protections of the rights of the Title holder and the law sets specific rules that ensure due process before Title can be lost to a third party. Therefore, in a case such as this one,

time starts to run when the true owner who is being dislodged acquires a Title Deed to the land.

In **Teresa Wachuka Gachira v Joseph Mwangi Gachira, Civil Appeal No.325 of 2003**, the Court emphasized the importance of following the prescribed procedure in adverse possession claims.

“..... Because a claim based on adverse possession is anchored on the fact that the suit property belongs to a registered owner, that evidence, in the form of a copy of the document of Title must be exhibited. Failure to do this has been found in a long line of cases to be fatal because it is only through such exhibit that the existence and ownership of the suit property can be ascertained by the court. See *Kyeyu v Omuto*, Civil Appeal No. 8 of 1990. See also the present position in *Johnson Kinyua v Simon Gitura* Civil Appeal No.265 of 2005, where this Court found that the existence and proprietorship of land can be proved either by an extract copy of Title or certificate of official search. The registered owner or any person who may have an interest in

the property the subject of the summons must be served with it.....

The Appellant also took issue with the Respondent's Summons on grounds of its technical competence, in particular the lack of a certified extract of the Title as required by Order 37 Rule 7(2).....”

Adverse possession entails loss of title to private property without any compensation and since these matters have to be established to the satisfaction of the court, and that in arriving at its Decision the court must hear and consider the evidence of both the claimant and the registered owner of the property, acquisition of property by the claimant through adverse possession and the concomitant loss of Title thereto by the registered owner, is not arbitrary.

Section 7 of the Limitation of Actions Act is a classical limitation of actions provision, which prohibits actions for recovery of land after 12 years from the date when the cause of action accrued. The provision reads as follows:

“.....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 first accrued to some person through whom he claims, to that person.....”

Section 17 of the Act further provides that upon the expiry of the period (12 years) prescribed by the Act for a person to bring an action to recover land, the Title of that person to the land stands extinguished.

Section 38 (1) of the Limitation of Actions Act is a concomitant provision to the other three sections and enables a person who claims to have become entitled to land by adverse possession, (i.e. by being in open, peaceful and as of right, occupation of land for at least 12 years) to apply to the Court to be declared and registered as the proprietor of the land, in lieu of the registered proprietor. That provision reads:

“.....Where a person claims to have become entitled by adverse possession to land registered under any of the Acts cited in section 37, or land comprised in a lease

registered under any of those Acts, he may apply to the Court for an order that he be registered as the proprietor of the land or lease in place of the person then registered as proprietor of the land.....”

In **Benjamin Kamau Murma & Others V. Gladys Njeri, CA NO. 213 of 1996**, the Court stated as follows regarding the above provisions:

“.....The combined effect of the relevant provisions of Sections 7, 13 and 17 of the Limitation of Actions Act, Chapter 22 of the Laws of Kenya is to extinguish the Title of the proprietor of land in favour of an adverse possessor of the same at the expiry of 12 years of adverse possession of that land.....,,transferring Title in accordance with principles similar to adverse possession in common-law systems, and that such transfer is effected without the payment of compensation to the original owner.....”

As regards the extreme nature and consequences of adverse possession (extinction of the land owner’s Title to land) and the

question whether less restrictive means of achieving the same result are available, that ultimate unpleasant result is preceded by clear opportunity offered to the land owner, over a period of time that is not by any means short, to take steps to protect or save his property.

To date, the Defendants are yet to get the Title Deed to the suit land which is still registered in the name of Settlement Fund Trustees, the Government. Time does not run against the crown (state) and therefore the Plaintiffs have not met the threshold of time of 12 years.

The other issue is whether the Plaintiffs' father had bought the suit land from the late Leah Wangui Nding'uri. Unfortunately, the late Wakaba Nderi and John Ndun'gu Gichuki moved the Court and lied that they were sons of the late Leah Wangui Nding'uri and were able to obtain a Grant and the suit land 781 was then sub-divided and the late Wakaba Nderi was able to get his share of what he says he had bought - 3 Acres out of 781. They should have issued a citation instead to the genuine beneficiaries of the Estate of Leah Wangui Nding'uri (deceased). This was the lawful way to go about it. If after the taking out of a citation, the citees were still adamant on taking out a Grant, then they would have moved in and taken out the Grant as creditors to the Estate.

Still the High Court in Nyahururu gave them the best advise that they wait until the beneficiaries of the Estate take out the letters

of Administration so that they can put up a claim in the Succession cause. Another breather or safety valve. But just like their father, the Plaintiffs are very impatient and this Court can only sympathize with them. They also have another avenue of sitting down with the Defendants and the beneficiaries of the Estate of Leah Nding'uri and plead for what they believe their father had bought from the Estate.

And Hannah, in her 2 Affidavits has said as much. She is only enthralled by their impatience. In the High Court of Kenya at Nyahururu Succession Cause No. 8 of 2018, the Plaintiffs were advised as follows: -

“ .....The Respondents (who included the Plaintiffs' late father Wakaba Nderi Muchiri) having brought themselves within the Law of Succession Act, this Court has jurisdiction to order the cancellation of the said Titles (including 7594) so that the land can revert back to the Deceased's (Leah Wangui's) name and that will enable the Applicants to comply with the Court order of 29/4/2022, appointing them as Administrators of the Deceased's Estate and requiring them to show the totality of the Deceased's Estate. It is only after the Administrators have finished administering the Estate that the Respondents can file suit in the ELC to pursue their rights.....”

As I have said above I do pity the Plaintiffs who fear they may end up losing what they have called home for over 45 years yet it is

quite clear that the Appellants' father had bought the parcel of land from Leah Wangui Nding'uri. But I wish this matter was sorted out of Court so that the parties forget what had happened in the succession Court earlier, forgive one another and let bygones be bygones. It is still not too late. But as things stand now, I have been properly guided by my sister lady Justice R.P.V. Wendoh to hold my horses until the Succession Cause is finalized. And in so doing, I dismiss this suit but make no orders as to costs.

**Judgment read and delivered at Nyandarua this 7th Day of May 2026.**

**MUGO KAMAU**  
**JUDGE**

**In the Presence of: -**

**Court Assistant: Samson.**

**Plaintiff's Counsel: Mr. Gathumbi & Ms. Bundi.**

**Defendant's Counsel: N/A.**