

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA

ELCL(OS) NO. E007 OF 2025

VERONICA NYAMANGU KIRUGO.....1st
PLAINTIFF

BENARD GITAU MURIMI.....2nd
PLAINTIFF

-VERSUS-

PERIS WAITHERA WAWERU.....
DEFENDANT

JUDGEMENT

1. Vide an Originating Summons dated 16th September, 2025 brought pursuant to the provisions of Sections 7, 13, and 38 of the Limitation of Actions Act Cap 22 of the Laws of Kenya the Plaintiff herein sought for the following order;
 - i. Declaring that the Plaintiffs herein have acquired an overriding interest over land parcel No. Kijabe/Kijabe Block 1/570 under the Land Registration Act and Sections 37 and 38 of the Limitation of Actions Act.
 - ii. Declaring that the Defendant holds land parcel Kijabe/Kijabe Block 1/570 in trust for the Plaintiffs, and that the Plaintiffs are entitled to have the same transferred and registered in their names.
 - iii. An order directing the Defendant to execute, deliver, and surrender to the Plaintiffs all transfer instruments, the title deed, and all relevant documents to enable the transfer to the Plaintiffs, and in default thereof, the Deputy Registrar of Naivasha shall execute all necessary documents and effect the transfer.

- iv. An injunction do issue restraining the Defendant from any dealings, occupation, and use of land parcel Kijabe/Kijabe Block 1/570.
 - v. The costs of this summons.
 - vi. Such further orders as this Honourable Court may deem fit and just to grant.
2. The Originating Summons is supported by the Supporting Affidavit of equal date sworn by Veronica Nyamangu Kirugo, the 1st Plaintiff herein to the effect that she and their family have lived on, cultivated, and developed the 2.02-hectare suit property in Nakuru County for over 40 years where occupation has been continuous and exclusive. That they have exercised rights of ownership without interruption where their presence is well-known to the community and was not hidden from the legal owner. That they occupied the land without needing permission or using force and have constructed homesteads and carried out extensive agricultural developments (supported by photographic evidence marked VNK-2). That the land is currently registered to the Defendant after it was transferred to her on 5th March 2020, via transmission following the death of her husband who was the original proprietor.
 3. That she was now seeking the Court's intervention to protect their interest in the land, arguing that because they have occupied it for decades as a matter of right, they should not be evicted despite the Defendant holding the official title deed.
 4. In their Replying Affidavit sworn on 12th November 2025, the Defendant deponed that she is the widow of David Waweru John, who was a shareholder of Maai Mahiu Kijabe Longonot Company Limited and was legally allotted the land wherein he had paid registration fees in July 1985 and was issued the original Title Deed on 29th August 1985. Following his death in 2004, she went through a formal succession process in Nakuru High Court Succession No. 14 of 2017, in which the suit land was legally transmitted to her as the beneficiary.

5. She argued that the Plaintiff's occupation has not been peaceful or uninterrupted and cited the 1991 court case in Civil Suit No. 381 of 1991 which had been filed by the Plaintiff's father one Murimi Kirichu (deceased) against her husband regarding this land. The Green Card still shows an order emanating from that old case.
6. That her husband had tried to have the family vacate since 1991, but died before it was resolved. That she had also personally visited the land where she had been met with hostility and threats for which she had involved local administration and the DCI in Naivasha to resolve the dispute. That the occupation was therefore contested.
7. That the Plaintiffs had also previously filed a different case being CMELC No. E056 of 2023 seeking to be declared beneficial owners but withdrew it in September 2025 and subsequently filed the current adverse possession claim after the Land Registrar confirmed the Defendant's title had been legally obtained.
8. That had the Plaintiffs truly believed they had overriding interests in the suit land through adverse possession, they would not have wasted time filing the 2023 case claiming beneficial rights. She concluded by stating that the suit was a misconceived afterthought intended to disinherit her. The Plaintiffs had failed the legal test for adverse possession because their stay was neither peaceful nor without the owner's objection. She sought for the dismissal of the suit with costs.
9. After complying with directions on how to proceed with the hearing of the Originating Summons, the matter proceeded for hearing by way of viva voce evidence, wherein the Plaintiff Veronica Nyamangu Kirugo testified as PW1 to the effect that she was a farmer residing in Mai Mahiu. That the dispute concerned land parcel Kijabe/Kijabe Block 1/570, measuring approximately five acres and situated near the Kirima Schools. She confirmed that although the land was registered in the name of the Defendant, Peris Waithera, she had lived there with her family for the past 40 years. During that period, they used the entire acreage for cattle rearing and cultivation without interruption or complaint from anyone. She further testified that they had never been

summoned by the local chief regarding the land and noted that the second Plaintiff, her husband Bernard, had also never had a legal dispute with the Defendant.

10. In support of her claim, the witness produced a Green Card as Pf exh 1. She pointed out that according to entry 2, David Waweru John was registered as the owner in 1985, a time when her family was already occupying the land, that entry 6 showed the Defendant was registered on 5th March 2020. She stated she was unaware of the relationship between David Waweru John and the Defendant.
11. She also produced a series of photographs as Pf exh 2 (a-h) as evidence of their long-term occupation. These images depicted their house, a cattle boma, cultivated fields, a live fence, and the graves of her parents, who died in 1995 and 2000 respectively. Additionally, she produced a copy of the Defendant's Title Deed as Pf exh 3 and requested the court to grant them the title based on their decades of occupation.
12. Under cross-examination by the Defence Counsel, the witness clarified that Murimi Kirichu was her father-in-law and the father of her husband the second Plaintiff. She admitted that she had never personally filed a fraud case against the Defendant, whom she had never met, and explained that she obtained the Defendant's contact information through an elder who had the title deed.
13. When questioned about the Green Card, the witness acknowledged that entry No. 4, referenced a court order from Case No. 381/1991, but claimed she knew nothing about that case and had never followed up on it. She admitted that she had not sought to cancel the Defendant's title deed through other legal means.
14. She also conceded that she did not have written authority from the wider family to file the suit, nor had she produced Letters of Administration for the estate of Murimi Kirichu. She maintained, however, that she was seeking the land for the entire family because they had lived there for a very long time and considered it to belong to her father-in-law.

15. In re-examination, the witness reiterated that there had never been a direct legal dispute between her and the Defendant prior to the current suit. Regarding the 1991 case mentioned in the Green Card, she stated she was not involved in those proceedings and was unaware they were even taking place. She concluded by stating that she filed the suit on behalf of herself and the other family members, noting that none of Murimi Kirichu's other children had objected to the legal action.

The Plaintiff closed their case.

16. Peris Waithera Waweru, the Defendant, testified that the suit property, Kijabe/Kijabe Block 1/570, originally belonged to her late husband, David Waweru John, who passed away in June 2004. She explained that following his death, she conducted a succession process, and the court registered the estate in her name. She noted that a legal dispute between her husband and a man named Murimi had commenced in 1991. While she did not attend the hearings personally, she was aware of the proceedings and clarified that the case was never finalized, and no final judgment was ever delivered. She produced the proceedings of the 1991 suit as Df exh 1(a) and the Green Card as Def exh 1(b), which showed a court order placed in 1991 and subsequently removed in 2020 when she was registered as the proprietor.

17. The witness testified that she had seen the first Plaintiff, Veronica, at the Chief's office but did not know her personally, nor did she know the second Plaintiff, Bernard. She mentioned a criminal matter where the Plaintiffs had reported her to the CID. She further identified Case No. 56 of 2023, a suit previously filed against her by the Plaintiffs in the Naivasha Magistrate's Court, and produced the pleadings and the withdrawal order from that matter as Df exh 2 and 3.

18. She asserted that the Plaintiffs were staying on the property by force. She stated that her husband's attempt to evict them through the 1991 case was stalled by his illness and subsequent death. That upon obtaining the title deed, she sought assistance from the Chief in Mai

Mahiu to summon the Plaintiffs, who responded by reporting her to the DCI. She produced a letter from the DCI Naivasha dated 7th February 2023 as Df exh 4. She concluded by stating that she is aging and has been disturbed by the Plaintiffs and therefore her request to the court was to assist her in removing the Plaintiffs from her land.

19. Under cross-examination, the witness admitted that neither she nor her late husband had ever lived on the suit property. She acknowledged that Veronica, Bernard, and their family had been the ones in occupation. She confirmed her awareness of the 1991 case but reiterated that she did not involve herself in it at the time, despite knowing that Murimi and his family had refused to vacate.
20. When shown the Plaintiffs' photographs, the witness identified the buildings but claimed that in the 1980s, there were only two round grass-thatched houses built by Murimi. She stated she was unaware of any graves on the land. She also clarified that she had been the Defendant in the previous 2023 suit and that the Chief's letter, though not in the current court file, did exist.
21. In re-examination, the witness clarified that most of the houses seen in the photographs were built after the original legal disputes began. She claimed that when she visited the land with the CID, those specific structures were not present, save for one house. She explained that she had gone to the Chief immediately after the succession cause concluded, and she received the title. Finally, she stated that she had never lived on the land because of threats issued by the Plaintiffs, and that her primary intention since gaining legal title had been to have them removed.

The defence closed its case.

22. Upon the closure of the Defendant's case, the parties filed their respective submissions herein, summarised as under.

Plaintiffs' Written Submissions.

23. The Plaintiffs assert their claim under the Limitation of Actions Act and argue that they have satisfied the established legal criteria for adverse possession by demonstrating that they have had over 40 years of continuous occupation, which was open, notorious, exclusive, and hostile, being inconsistent with the registered owner's title. Reliance was placed on the decision in **Mtana Lewa v Kahindi Ngala Mwagandi** (sic)
24. That the registered owners of the suit land, who were the Defendant and her late husband, effectively abandoned or never took possession of the land. That they had built permanent mud-thatched houses, cultivated the land, and kept livestock for decades. Reliance was on the decision in **Karitu v Mwihiike Farmers Company Limited & 3 others** (sic)
25. It was evident that during cross-examination the Defendant admitted that neither she nor her husband ever lived on or utilised the land, and that the Plaintiffs' families have been on the property for many years. It was also evident that the structures (houses) shown in photographs do exist on the suit land.
26. That Plaintiffs addressed the Defendant's attempts to prove interruption of the 12-year statutory period by stating that the 1991 Court Case did not stop the clock because it did not result in their eviction or a recovery of possession by the owner. Reliance was placed on the decision in **Karima v Kenya Airways Limited** (sic). That even if it were considered an interruption, more than 12 years had passed since that time without effective legal action.
27. They submitted that a change in registration in 2020 also did not wipe the slate clean. Under the law, rights acquired through adverse possession were overriding interests that stay with the land, regardless of who the new owner is. Reliance was placed on the decision in **Ouko & another v Kageni** (sic)
28. They dismissed the Defendant's claims of reporting them to the authorities, being the Police and chief, as bare assertions lacking any documentary evidence or witness corroboration. They asserted that the

Defendant had admitted to being fully aware of their occupation and their claim to the land before she even registered the title in her name.

29. The Plaintiffs thus urged the Court to declare that the Defendant's title has been extinguished, order their registration as the new owners and issue a permanent injunction preventing the Defendant from interfering with the land. They also sought the costs of the suit.

Defendant's submissions

30. The Defendants gave a background of the matter in issue, arguing that the Plaintiffs had failed to meet the legal threshold for adverse possession, which requires 12 years of uninterrupted, open, and "hostile" occupation without the owner's permission. They framed their issue for determination as follows:

- i. Whether the Applicants have acquired the suit parcel of land known as Kijabe/Kijabe block 1/570 by way of adverse possession.
- ii. Who should pay costs?

31. They then proceeded to submit that the Plaintiffs had occupied the suit land because they believed they were the rightful heirs of the late Murimi Kirichu. The Defendant submitted that residing on land as a beneficiary was inconsistent with the doctrine of adverse possession, which required an entry that is hostile to the true owner's title.

32. That the 1st and 2nd Plaintiffs were seeking the land for themselves, excluding other family members/beneficiaries of Murimi Kirichu who also reside on the property.

33. The Defendant contended that the 12-year statutory clock was never allowed to run uninterrupted because a court order of 1991-2020 in a previous suit in No. 381 of 1991 had maintained the *status quo* and was registered against the title for 29 years.

34. That the Plaintiffs had previously filed an ownership case in 2023-2025, being Naivasha CMELC No. E056 of 2025 alleging the Defendant's title was fraudulent, only to withdraw it and file this adverse possession claim. That there had been attempts to evict the

Plaintiffs through the local Chief, which the Plaintiffs allegedly ignored. Reliance was placed on the decision in **Richard Wefwafwa Songoi vs Ben Munyifwa Songoi [2020] eKLR**

35. The Defendant pointed out that the 1st Plaintiff had lied under oath by denying the existence of the 2023 lawsuit, submitting that such a witness could not be trusted by the Court.
36. She submitted that since costs should follow the event, wherein the Plaintiffs had failed to prove their case, they should be ordered to pay the legal costs.
37. In conclusion, the Defendant submitted that because there had been active ownership disputes since 1991 and because the Plaintiffs' occupation was based on a claim of inheritance rather than adverse entry, the legal requirements for adverse possession had not been met and therefore the court ought to dismiss the Originating Summons.

Determination.

38. On analyzing the above evidence, the submissions the authorities cited, and the applicable law, the Plaintiff's case for adverse possession is built on the argument that their family has maintained an unbroken, visible, and exclusive presence on the land for over four decades, effectively extinguishing the Defendant's legal title. The Plaintiffs assert that they have occupied the 5-acre parcel (Kijabe/Kijabe Block 1/570) for over 40 years, during which they have kept cattle and cultivated the entire acreage.
39. As evidence of their hostile and open possession, they produced photographs showing homesteads, a cattle boma, trees they planted, and a live fence surrounding the property and highlighted the presence of their parents' graves, who died in 1995 and 2000, on the property to demonstrate deep-rooted, decades-long settlement.
40. They argued that their occupation meets the legal threshold for adverse possession because they have never left the land since the 1980s, when they were never summoned by the local Chief and were never involved in or aware of the 1991 court case mentioned by the

Defendant. That they had therefore exercised ownership rights publicly and without secrecy, asserting that nobody had attempted to remove/evict them.

41. While the 1st Plaintiff acknowledged that the land was registered to the Defendant in 2020, she argued that the Defendant and her late husband never lived on or utilized it and contended that the transfer of the land to the Defendant in 2020 via succession was done without their involvement or knowledge. She maintained that because their occupation predates the Defendant's 2020 title and even the late David Waweru's 1985 registration, they have acquired an overriding interest that entitles them to the legal title. That the Defendant's rights to the property had been lost through the passage of time, and therefore the court should order that the land be registered in their names as the rightful owners.
42. The Defendant's case is centered on the argument that the Plaintiffs' occupation of the land was never peaceful or uninterrupted, and therefore fails to meet the legal requirements for adverse possession. The Defendant asserts that she is the rightful, registered owner of the property, which was previously registered in the name of her deceased husband, David Waweru John, who obtained a title deed in August 1985 after being legally allotted the land as a shareholder of the Maai Mahiu Kijabe Longonot Company.
43. That the land had subsequently been registered to her vide transmission, pursuant to a legal succession process in court, on 5th March 2020.
44. That Plaintiffs' stay on the land had been a matter of ongoing conflict rather than peaceful coexistence as evidenced in the Civil Suit No. 381 of 1991, which her late husband filed against the Plaintiffs' father, Murimi, to contest the occupation. She argues that this case proves the occupation was actively challenged and interrupted.
45. That her husband had attempted to evict the family until his illness prevented him from continuing the case. After receiving her title in 2020, she continued these efforts by involving the local Chief and the

Directorate of Criminal Investigations (DCI). That is the only reason she does not live on the land was that she had been met with violence and threats from the Plaintiffs.

46. She pointed out that the Plaintiffs had originally filed a different case in 2023 seeking to be declared beneficial owners, only to withdraw the same and file the present suit seeking adverse possession, which was an afterthought once they realised that her title was legally sound.

47. She argued that the extensive developments (houses) seen in the Plaintiffs' photographs were relatively recent and were built after the legal disputes began, rather than being 40-year-old structures. That, based on the Plaintiffs' occupation of the land by force and through hostility, and their previous attempt, together with her husband, to assert their rights through the courts, the Chief, and the police, the Plaintiffs could not claim they had held the land peacefully and without interruption.

48. The court is mindful of the legal attribution to the doctrine of Adverse Possession in Kenya, which is embodied in Section 7 of the Limitation of Actions Act, (Cap 22) in these terms:

49. Section 7 of the Limitation of Actions Act provides 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...”

50. Section 13 of the Limitation of Actions Act further provides that:

A right of action to recover land does not accrue unless the land is in the possession of some person in whose favor 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 the 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.

51. Sections 37 and 38 of the Limitation of Actions Act stipulate that if the land is registered under one of the registration Acts, then the title is not extinguished but held in trust for the person in Adverse Possession until (s)he shall have obtained and registered a High Court Order (read Environment and Land Court Order) vesting the land in him/her.

52. Section 37 of the Limitation of Actions Act *provides that:*

Where a person claims to have become entitled by Adverse Possession to land registered under any of the Acts cited in Section 37, to land or easement 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 of the person then registered as proprietor of the land."

53. In terms of Section 38 of the Limitation of Actions Act, where a person claims to have become entitled by Adverse Possession to land, (s)he must apply to the High (Read Environment and Land) Court for an order that (s)he be registered as the new proprietor of the land in place of the registered owner.

54. As I have indicated herein, the rule in Adverse Possession is that the party claiming must have been in possession for over 12 years. To prove a claim under Adverse Possession, all that the Plaintiffs had to do was to establish that they came into occupation, took exclusive possession, and have lived on the suit property continuously without interruption for a period of over 12 years.

55. According to the Evidence on record, the matters that are not in contention are the identity and description of the suit property as Kijabe/Kijabe Block 1/570, situated in Nakuru County, specifically the

Mai Mahiu/Kirima area and, and measuring approximately 2.02 hectares herein referred to as 5 acres in the witnesses' testimony.

56. There is further no dispute regarding the current registered proprietor being the Defendant, Peris Waithera Waweru who obtained the title on 5th March 2020, through a succession process following the death of her husband, David Waweru John who was the original registered proprietor of the suit land and who was issued the title in 1985 and remained the proprietor until his death in 2004.
57. Both parties do not deny that the Plaintiffs are currently in physical occupation of the land and had been in occupation even during the lifetime of the original proprietor. That they have built houses, keep cattle, and cultivate the land, and neither the Defendant nor her late husband ever lived on or utilized the property personally.
58. Both parties further acknowledge that by filing the current suit, it has not been the first time the parties (or their predecessors) have been in conflict over the land, quoting the existence of Nakuru Civil Suit No. 381 of 1991, involving the predecessors Murimi Kirichu vs. David Waweru, and the filing and subsequent withdrawal of Naivasha Case No. 56 of 2023 by the Plaintiffs. The Parties also acknowledge the deaths of the original parties, in that whereas Murimi died in 1995 and his wife died in 2000, David Waweru died in June 2004.
59. The primary contention in this case is not whether the Plaintiffs are on the land, but rather the legal nature of their stay, whether their occupation was peaceful and uninterrupted, or whether it was by force and constantly challenged.
60. Given the above background, I find the issues for determination as follows;
- i. Whether the Plaintiffs have established the requirements for adverse possession.
 - ii. Whether the 1991 litigation or the change of ownership in 2020 interrupted the limitation period.
61. In **Mtana Lewa v Kahindi Ngala Mwagandi [2015] eKLR**, the Court of Appeal held that:

“Adverse possession is essentially a situation where a person takes possession of land and asserts rights over it and the person having title to it omits or neglects to take action against such person in assertion of his title for a certain period, in Kenya, is twelve (12) years. The process springs into action essentially by default or inaction of the owner. The essential prerequisites being that the possession of the adverse possessor is neither by force or stealth nor under the licence of the owner. It must be adequate in continuity, in publicity and in extent to show that possession is averse to the title owner.”

62. In **Mombasa Teachers Co-operative Savings & Credit Society Limited v Robert Muhambi Katana & 15 others [2018] eKLR**, the Court of Appeal had observed as follows;

“Likewise, it is settled that a person seeking to acquire title to land by way of adverse possession must prove non-permissive or non-consensual, actual open, notorious, exclusive and adverse use/occupation of the land in question for an uninterrupted period of 12 years as espoused in the Latin maxim, nec vi nec clam nec precario.”

63. The main elements of adverse possession that a claimant has to prove include:

- i. actual,
- ii. open,
- iii. exclusive
- iv. and hostile possession of the land claimed.

64. As I have indicated herein, the rule in adverse possession is that the party claiming must have been in possession for over 12 years. To prove a claim under adverse possession, all that the Plaintiff had to do

was establish that they came into occupation, took exclusive possession of the suit land, and have lived on the said property continuously without interruption for a period of over 12 years.

65. In the present case, the evidence before this Court, including photographs of permanent homesteads, cattle bomas, and ancestral graves (Pf exh 2a-h), confirms that the Plaintiffs have occupied the land since the early 1980s. The Defendant herself admitted under cross-examination that neither she nor her late husband ever lived on the land and that the Plaintiffs have been in physical occupation throughout.
66. The Defendant's case is that there had been interruption of the Plaintiffs' occupation and possession of the suit land through the previous attempt by her husband and herself to assert their rights through the courts, the Chief, and the police, that the Plaintiffs had occupied the land by force and through hostility, and therefore they could not claim they had held the land peacefully and without interruption. Secondly, the change of ownership had also interrupted the adverse possession, for which time began to run afresh against her when she registered as proprietor of the land on 5th March 2020.
67. This Court finds this argument legally untenable. The Court of Appeal in the landmark case of **Githu -vs- Ndeete [1984] KLR 776** settled this principle, stating:

"Mr Gaturu attacked this part of the judgment on three grounds. Firstly, he submitted that change of ownership interrupts adverse possession, and that accordingly time did not begin to run against the appellant until he was registered as proprietor of the land in 1966. The answer to this submission is that immediately before the appellant became the registered proprietor in 1966 the respondents were in the course of acquiring rights under section 7 of the Limitation of Actions Act, cap 22, and by virtue of section 30 (f) of the Registered Land Act, cap

300, those rights are overriding interests. The appellant even as a registered purchaser for value could never be in a better position than his predecessor in title and must take subject to the rights of squatters.”

68. The Court of Appeal in this landmark matter had held that a change of ownership of the suit premises does not interrupt the period of adverse possession. The court established that the rights of an adverse possessor relate to the land itself rather than the specific individual who holds the paper title. Therefore, if a person is in adverse possession and the registered owner sells, gifts, or transmits the land (by succession) to a third party, the 12-year limitation period does not reset or stop running. The new owner takes the title subject to the existing and ongoing claim of the person in possession. That is the only way to stop the clock: either a physical re-entry by the owner or the commencement of legal proceedings to recover the land.

69. Based on the evidence presented in the affidavits and the oral testimonies of both parties, there were no legal proceedings concluded against the Plaintiffs. While there were multiple attempts at litigation, none reached a final judgment or resulted in an eviction decree that would have legally stopped the clock.

70. The Court of Appeal in **Ishmael Joram -vs- Ephantaz Murevi Obadiah [2026] KECA 455**, held as follows:

"In our considered view, none of the actions by the appellant

*effectively interrupted the possession of the suit property by the respondent. The verbal warnings, the demand letter and the suit for the cost of damaged trees, cannot be said to have interrupted the use of the land by the respondent. This is what this Court stated on that issue in the case of **Joseph Gachumi Kiritu vs. Lawrence Munyambu Kabura [1996] eKLR:***

“Time which has begun to run under the Act is stopped either when the owner asserts his right or when his right is admitted by the adverse possessor. Assertion of right occurs when the owner takes legal proceedings or makes an effective entry into the land. The old rule was that a mere formal entry was sufficient to vest possession in the true owner and to prevent time from running against him. ...He must therefore make a peaceable and effective entry, or sue for recovery of land.”

71. Since the Civil Suit No. 381 of 1991, which had been filed by the Plaintiff’s father, one Murimi Kirichu (deceased), against the Defendant’s husband regarding this land, did not result in an eviction and the Plaintiffs remained in exclusive possession, the clock for adverse possession continued to run. For litigation to interrupt adverse possession, it must result in an effective eviction decree or a clear determination of rights that is enforceable. A suit filed and then abandoned or left to languish does not stop the clock of limitation.
72. It is also to be noted that the suit was initiated by the Plaintiffs themselves rather than the Defendant, wherein they had sought to be declared legal beneficiaries of the land. However, on 9th September, 2025, the Plaintiffs withdrew this case; therefore, the withdrawal did not decide the matter, nor did it constitute a proceeding to recover the land for the Defendant.
73. The fact that the Defendant reported the Plaintiffs to the Chief and the Directorate of Criminal Investigations (DCI) was an administrative and police action, not legal proceedings for the recovery of land, and therefore this did not stop the limitation period. Only a Civil Suit specifically seeking recovery of possession, or an actual re-entry and physical taking back of the land, could have stopped the clock.
74. The Defendant alleged that the Plaintiffs stayed on the suit land by force. However, legal force is not defined by mere hostility or the owner's dislike of the occupation; possession is peaceful if it is not

maintained by physical violence against the owner's attempt to physically re-enter. The Defendant admitted she never lived on the land and only attempted to involve the Chief and DCI after her 2020 registration, long after the 12-year period had lapsed.

75. Since the rights of the Plaintiffs as persons in adverse possession of land are overriding interests under Section 28 of the Land Registration Act, because their occupation lasted 40 years. Their interest, therefore, became overriding such that when the Defendant was registered in 2020, her title was automatically burdened by the Plaintiffs' matured claim under Section 28, and her legal title therefore became secondary to the Plaintiffs' possessory interest.

76. I thus find that the Plaintiffs have proved, on the balance of probabilities, that they have occupied the suit property for over 40 years. By 1997, 12 years after the late David Waweru's 1985 registration, the title of the original owner had been extinguished by operation of Section 7 of the Limitation of Actions Act. The subsequent transfer to the Defendant in 2020 could not revive a title that had already been lost in law.

77. I therefore hold and find that the Plaintiffs have proved on a balance of probabilities that their right of action as against the Defendant had accrued as at the time of filing this suit for the suit property to be said to have fallen into their possession pursuant to the provisions of Section 38 as read together with Sections 7, 9 and 13 of the Limitation of Actions Act.

78. In the circumstances herein, the Plaintiff's Originating Summons dated 16th September, 2025, succeeds in its entirety in the following terms;

- i. A Declaration is hereby issued that the Plaintiffs have acquired title to land parcel Kijabe/Kijabe Block 1/570 by way of adverse possession.
- ii. A Declaration is hereby issued that the Defendant holds land parcel Kijabe/Kijabe Block 1/570 in trust for the Plaintiffs, and that the Plaintiffs are entitled to

have the same transferred and registered in their names.

- iii. An order is hereby issued directing the Defendant to execute, deliver, and surrender to the Plaintiffs all transfer instruments, the title deed, and all relevant documents to enable the transfer to the Plaintiffs, within 30 days of this judgement and in default thereof, the Deputy Registrar of this court shall execute all necessary documents and effect the transfer.
- iv. An injunction is issued restraining the Defendant from interfering with the suit land being Kijabe/Kijabe Block 1/570.
- v. Each party shall bear its Costs.

It is so directed.

**Dated and delivered via Microsoft Teams at Naivasha this 14th day of May
2026.**

M.C. OUNDO
ENVIRONMENT & LAND COURT- JUDGE