



**Marete & 4 others v Murungi; Mukiri & another (Interested Parties) (Environmental and Land Originating Summons E027 of 2025) [2026] KEELC 2796 (KLR) (5 May 2026) (Judgment)**

Neutral citation: [2026] KEELC 2796 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E027 OF 2025**

**JO MBOYA, J**

**MAY 5, 2026**

**BETWEEN**

**ZAVERIO MUTIBI MARETE ..... 1<sup>ST</sup> PLAINTIFF  
RICHARD MWANGI MARETE ..... 2<sup>ND</sup> PLAINTIFF  
SARAFINA KAREGI MARETE ..... 3<sup>RD</sup> PLAINTIFF  
HARON MWONGERA MARETE ..... 4<sup>TH</sup> PLAINTIFF  
WILLIAM MUTHAMIA MARETE ..... 5<sup>TH</sup> PLAINTIFF**

**AND**

**JULIUS KAMUNDI MURUNGI ..... DEFENDANT**

**AND**

**LUCY MUKIRI ..... INTERESTED PARTY  
FETHELE MUTEMBEI ..... INTERESTED PARTY**

**JUDGMENT**

1. Before me is the Originating summons dated 7.10.2025, brought pursuant to the provisions of Sections 7, 17, 37 and 38 of the *Limitation of Actions Act*, Chapter 22, Laws of Kenya; Order 37, Rules 7 and 8 of the Civil Procedure Rules 2010; and all enabling provisions of the law. The reliefs sought vide the originating summons are:
  - i. A declaration that the plaintiffs have acquired title to the respective portions of land previously comprised in title Abothuguchi/L-Kijja/616, now subdivided into parcels Abothuguchi/L-Kijja/3400, 3401 and 3402 through adverse possession having been in continuous, open, exclusive and uninterrupted occupation since 1970 as follows-



Zaverio Mutibi Marete-6 acres

Richard Mwangi Marete-6 acres

Serafina Karegi Marete-3 acres

Haron Mwongera Marete-4 acres

William Muthamia Marete-3 acres

- ii. A declaration that the defendant's and /or interested parties' rights and / or interests over the portions currently occupied by the plaintiffs have been extinguished by operation of the law under Section 7 of the Limitations of Actions Act, Cap 22, Laws of Kenya.
  - iii. An order that the subdivision and transfer of Title No Abothuguchi/L-Kijja/616 into Abothuguchi/L-Kijaa 3400, 3401 and 3402 and the subsequent transfer to third parties, be cancelled and the register be rectified to facilitate the transfer of the plaintiff's respective portions.
  - iv. An order directing the defendants to transfer to the plaintiffs' respective portions as described hereinabove and, in default, the deputy registrar of this honourable court to be empowered to execute all the relevant documents on behalf of the defendant.
  - v. An order of permanent injunction restraining the defendants and/or interested parties, their agents, servants or assigns from entering, interfering with or otherwise disrupting the plaintiff's quiet and peaceful occupation and use of the said parcels.
  - vi. Cost of this suit.
2. The Originating summons is anchored on numerous grounds which have been highlighted in the body thereof. The grounds are: the Plaintiffs are the children of One Marete Rimberia [deceased]; the deceased was in occupation and possession of LR No Abothuguchi/L-Kijja/ 616 [ herein after referred to as the original parcel of land]; the deceased's occupation of the original parcel of land was open, continuous and uninterrupted; the deceased occupied the entire parcel; and the defendant did not take any steps to evict or remove the deceased from the original parcel of land.
  3. Additionally, it has been contended that; the Plaintiffs herein have remained in occupation and possession of the original parcel of land even after the death of their father; the occupation and use of the original parcel of land by the plaintiffs has been open, peaceful and uninterrupted; the defendant has never taken any steps to evict the plaintiffs; and the plaintiffs have therefore acquired adverse possessory rights to and in respect of the original parcel of land [ now sub-divided].
  4. Furthermore, the Plaintiffs have contended that: the Defendant was registered as the owner of the original parcel of land in 1988; despite being registered as the owner of the original parcel of land, the defendant has neither entered upon nor taken possession of the suit property; and the defendant subsequently sub-divided the original parcel of land, leading to the creation of the suit properties. Furthermore, it has been posited that upon subdivision, the defendant transferred two portions to the interested parties.



5. Be that as it may, the Plaintiffs have averred that despite the sub-division of the original parcel of land and the eventual transfer to and registration in the names of the interested parties, neither the interested parties nor the defendant, have ever taken possession of the suit properties.
6. In view of the foregoing, the plaintiffs have contended that the rights and interests of the defendant in respect to the original parcel of land [now subdivided] stand extinguished. Moreover, it has been posited that the interested parties did not acquire any lawful title to or interest[s] over the resultant sub-division.
7. The Origination summons is supported by the affidavit of Haron Mwongera Marete [the 4<sup>th</sup> plaintiff] and a Supplementary affidavit by the same deponent. The affidavit[s] are sworn on 7<sup>th</sup> October, 2025; and 19<sup>th</sup> November, 2025, respectively.
8. Suffice it to state that the contents of the two [2] affidavits reiterate the information alluded to vide the grounds. Moreover, the affidavits have exhibited assorted documents including: Copy of the green card in respect of the original parcel of land; copy of the letter dated 22<sup>nd</sup> September, 2011 by the District Commissioner North Imenti; copy of the proceedings and the award made by the land disputes tribunal; copy of the ruling in respect of Meru LDT case No 46 of 2011; copy of the photographs and an electronic certificate relating to the photographs.
9. The Defendant duly entered appearance and thereafter filed a replying affidavit sworn on the 23<sup>rd</sup> October, 2025, wherein the defendant denied the claims by the Plaintiffs. In particular, the defendant has averred that the original parcel of land belonged to and was registered in the name of M’Mwamba [now deceased]; the original parcel of land was thereafter transferred to and registered in his name; the parcel of land was registered in his name in 1988; that he entered upon and commenced to use the original parcel of land; that he used the original parcel of land up to and including 2022/2023; that the Plaintiff’s trespassed onto the land on or around the year 2023; and that the Plaintiffs have neither acquired nor accrued any rights to the suit property.
10. The Defendant has further averred that on or about 2023, he sub-divided the Original parcel of land into three [3] portions culminating into LR Abothuguchi/L-Kijja/3400, 3401 and 3402, respectively. In addition, it has been posited that the defendant retained one (1) parcel and sold/transferred the latter two in favour of the interested parties.
11. Moreover, the defendant has contended that there have been several cases between the Plaintiffs and himself, including Githongo ELC case No E003 of 2024; Githongo CR E142 of 2025; and Githongo CR E137 of 2025, respectively.
12. Flowing from the foregoing, the Defendant has posited that the Plaintiff’s suit is therefore premature, misconceived and otherwise legally untenable. In addition, it has been posited that the Plaintiff’s suit is a device to deprive the defendant and the interested parties of the suit properties.
13. In the premises, the defendant has invited the court to dismiss the Plaintiffs’ suit and to award costs to the defendant.
14. Although the interested parties were duly served with the originating summons and the consequential documentation, and though the interested parties were represented by counsel [same counsel as the defendant], same neither filed any replying affidavit nor documents.
15. The Originating summons came up for directions on the 20<sup>th</sup> November, 2025, whereupon the advocates for the parties confirmed that they had filed and exchanged their respective pleadings. In addition, the advocates sought directions as pertained to the hearing and disposal of the suit.



16. With the concurrence of the advocates for the parties, the court issued the following directions: the Originating summons and supporting affidavit shall be deemed as the Plaint; the Replying affidavit shall be deemed as the statement of defence; the parties shall be at liberty to file and exchange list and bundle of documents; a list of witnesses, and a witness statement. Moreover, the court also directed that the originating summons shall be heard vide viva voce evidence.
17. The Plaintiff's suit is premised on the evidence of three [3] witnesses. The witnesses are Haron Mwongera Marete, Benjamin Kinoti Rutere, and Everlyne Gakii Mwitii. The witnesses testified as PW1, PW2 and PW3 respectively.
18. It was the testimony of PW1 [Haron Mwongera Marete] that he is the 4<sup>th</sup> Plaintiff in the respect of the instant matter. The witness averred that by virtue of being the 4<sup>th</sup> Plaintiff, he is familiar and conversant with the facts of the case. In addition, the witness testified that he has been granted authority by the rest of the plaintiffs to plead, attend court and adduce evidence on their behalf. To this end, the witness referenced paragraph one of the supporting affidavits as the basis of the authority.
19. Additionally, the witness averred that he has since filed a supporting affidavit sworn on the 7<sup>th</sup> October, 2025 and a supplementary affidavit sworn on 19<sup>th</sup> November, 2025; and which affidavits the witness sought to adopt as his evidence in chief.
20. Furthermore, the witness referenced the originating summons dated 7<sup>th</sup> October, 2025 and thereafter sought to adopt the contents thereof and reliefs thereunder. The witness invited the court to grant the prayers in terms of the originating summons.
21. On cross-examination, the witness testified that his father, Marete Rimberia [Now deceased], was the one who started using the original parcel of land. In particular, the witness averred that his father commenced to use the land in the year 1970. Moreover, the witness testified that when his father died, they continued to use the land and that they are still using the land to date.
22. It was the further testimony of the witness that the land was previously registered in the name of the father of the defendant, but the same was transferred to and registered in the name of the defendant in the year 1988. Nevertheless, the witness posited that even though the original parcel of land is / was registered in the name of the defendant, the defendant has neither entered upon nor used the suit property.
23. On the contrary, the witness averred that it is the plaintiffs who have been using the original parcel of land [now subdivided].
24. While still under cross-examination, the witness testified that the plaintiff's occupation of the suit property is open, continuous and known to various people, including the chief of the area and the assistant chief. In particular, the witness testified that he has tendered a letter by the Assistant Chief, which confirms/verifies that it is the plaintiff's family who have been using the suit property.
25. The witness further testified that though the plaintiffs have been using the suit property, the plaintiffs have not erected any structures thereon. On the contrary, the witness averred that the plaintiffs have only been cultivating the land. In addition, the witness averred that he has tendered evidence in terms of photographs to show the activities undertaken on the suit property.
26. Besides, the witness testified that even though the original parcel of land was sub-divided into three portions and two thereof transferred to the interested parties, neither the interested parties nor the defendant have taken possession of the suit property.



27. The next witness who testified on behalf of the plaintiffs was Benjamin Kinoti Rutere. The witness testified as PW2.
28. It was the testimony of the witness that he [same] hails from Kijaa sub-location. He averred that he is familiar with the facts of the case. In addition, the witness posited that he has since recorded and filed a witness statement dated 19.11.2025. Thereafter, the witness sought to adopt and rely on the witness statement as his evidence in chief.
29. Suffice it to state that the witness statement under reference was duly adopted and constituted as the evidence in chief.
30. On cross-examination, the witness testified that he is familiar with the plaintiffs and the defendants. In particular, the witness averred that his homestead is situated on parcel number 379. Moreover, the witness averred that the parcel of land wherein he resides shares a common boundary with the suit properties.
31. On further cross-examination, the witness testified that the plaintiffs and the defendant are close family members. Moreover, the witness testified that he had alluded to the relationship between the plaintiffs and the defendant in his witness statement.
32. The third witness who testified on behalf of the Plaintiffs was Everlyne Gakii Mwiti. The witness testified as PW3.
33. It was the testimony of the witness that she has since recorded a witness statement dated 19<sup>th</sup> November, 2025 and which statement the witness sought to adopt and rely on as her evidence in chief. Instructively, the witness statement was adopted and constituted evidence in chief of the witness
34. On cross-examination, she testified that she was married in the area [Kijaa sub-location] in 1999. In addition, the witness testified that her husband and herself resided and live on plot Number 717, which falls in the same neighborhood.
35. Furthermore, the witness testified that she has lived/resided in the area for more than 27 years. The witness posited that she is aware of the land in question and that it is the plaintiffs who have been using the land. The witness added that the plaintiffs are still on the land to date.
36. With the foregoing testimony, the Plaintiff's case was closed.
37. The Defendant's case is premised on the evidence of four [4] witnesses. The witnesses are Julius Kamundi Murungi, Doris Kendi, Jackline Nkirote, and Triphosa Karera. The witness testified as DW1, DW2, DW3 and DW4 respectively.
38. It was the testimony of DW1 [Julius Kamundi Murungi] that he is the defendant in respect of the instant matter. The witness averred that by virtue of being the defendant, the same is familiar with the facts of the case.
39. Additionally, the witness testified that he has since filed a replying affidavit sworn on 23<sup>rd</sup> October, 2025; and a further replying affidavit sworn on the 7<sup>th</sup> November, 2025, which the witness sought to adopt as his evidence in chief. They were thereafter adopted and constituted as the evidence in chief of the witness.
40. The witness thereafter referenced the list and bundle of documents dated 26<sup>th</sup> January, 2026 and thereafter sought to adopt and rely on the documents as exhibits. There being no objection to the production of the documents, they were tendered and produced as Dexb 1-Dexb 5, respectively.



41. On cross-examination, the witness testified that he was born in 1973. The witness added that currently he is 53 years old. It was the testimony of the witness that the original parcel of land was previously registered in the name of his father. The witness averred that the original parcel of land was thereafter transferred to and registered in his name in 1980.
42. While still under cross-examination, the witness averred that by the time the original parcel of land was registered in his name, he [Witness] was aged 15 years. The witness averred that upon the registration of the land in his name, he commenced to use the land. In particular, the witness posited that he was using the whole land.
43. While still under cross-examination, the witness testified that he used to lease the land to various people. To this end, the witness testified that he leased the land to Nkitote, Triphosa, and Doris. The witness added that the lessees would use portions of the land.
44. It was the further testimony of the witness that the Plaintiff's herein started to interfere with his usage of the suit land, and as a result, he [witness] lodged a criminal complaint with the police, culminating in the arrest and prosecution of the plaintiffs. To this end, the witness referred to exhibit PEXB 8.
45. It was the testimony of the witness that the criminal case [details in terms of Pexb 8] was subsequently withdrawn/dismissed.
46. The witness further testified that there have been various cases between the Plaintiff's father; the Plaintiffs; and himself. In particular, the witness referenced LDT Case No 46 of 2011 and the various criminal cases.
47. In addition, the witness testified that the plaintiffs herein entered onto and have remained on the land to date. However, the witness averred that he proceeded to and sub-divided the original parcel of land, culminating in the suit properties. The witness further testified that upon the sub-division, he transferred two [2] parcels to the interested parties, and he remained with one parcel.
48. Be that as it may, the witness confirmed that despite the sub-division and transfer of two [2] of the suit properties to the interested parties, it is the Plaintiffs who are using the suit land. In particular, the witness averred that the interested parties are not using the suit land.
49. The next witness was Doris Kendi. She testified as DW2.
50. It was the testimony of the witness that the same has since recorded a witness statement dated 12<sup>th</sup> January, 2026. The witness thereafter sought to adopt and rely on the contents of the witness statement as her evidence in chief. Suffice it to state that the witness statement was duly adopted and constitutes the evidence in chief.
51. On cross-examination, the witness testified that she has been leasing a portion of the original parcel of land from the defendant. In particular, the witness averred that she leased a portion of the land between 2008 and 2023. The witness clarified that she leased a portion of the land for 15 years.
52. While still under cross-examination, the witness testified that even though she leased a portion of the original parcel of land, she has no evidence to show the lease. Moreover, the witness admitted that she also has no evidence to show payment on account of rents.
53. Furthermore, the witness averred that other than herself, there were other lessees who had also leased portions of the original parcel of land from the defendant. To this end, the witness adverted to one Benjamin Kinoti and Triphosa.



54. While still under cross-examination, the witness admitted that the Plaintiffs were using the land. On further cross-examination, the witness beat a hasty retreat and stated that the Plaintiffs were not using the land.
55. The third witness who testified on behalf of the Defendant was Jackline Nkirote. She testified as DW3.
56. It was the testimony of the witness that same has since recorded and filed a witness statement dated 12<sup>th</sup> January, 2026; and which witness statement the witness sought to adopt and rely on as her evidence in chief. Instructively, the witness statement was thereafter adopted and constituted as the evidence in chief of the witness.
57. On cross-examination, the witness testified that she is familiar with the suit property. In addition, the witness averred that she had leased a portion of the suit property. However, the witness conceded that she had no lease agreement before the court.
58. On further cross-examination, the witness stated that she had no evidence that she was paying rent to the defendant. Nevertheless, the witness posited that other than herself, there were other lessees on the land.
59. While still under cross-examination, she stated that she went on the land in August 2023, and found that the Plaintiffs had already taken possession thereof. In particular, the witness clarified that the plaintiffs were using the land openly.
60. The last witness who testified on behalf of the defendant was Triphosa Karera. The witness testified as DW4.
61. It was the testimony of the witness that she was familiar with the dispute before the court. Moreover, the witness referenced the statement dated 12<sup>th</sup> January, 2026 and thereafter sought to adopt the same as her evidence in chief. Instructively, the witness statement was duly adopted and constituted as the evidence in chief of the witness.
62. On cross-examination by learned counsel for the plaintiffs, the witness testified that she had leased a portion of the original parcel of land. In addition, the witness testified that she had leased the portion for three years. However, the witness conceded that she has not tendered a copy of the lease agreement or any evidence of payment pertaining to the lease rental.
63. While still under cross-examination, the witness stated that, other than herself, there were other persons who had also leased a portion of the land. To this end, the witness referenced Doris Kendi [DW2]. It was the further testimony of the witness that she found the Plaintiffs had occupied the portion of land that she had previously leased. The witness added that she was given a different portion by the Defendant.
64. On further cross-examination, the witness testified that she now wishes to aver that she did not see the plaintiffs on the land. In addition, the witness repeated that she has recorded a witness statement and the contents thereof are correct.
65. With the foregoing testimony, the defendant's case was closed.
66. Elsewhere herein before, I had pointed out that the interested parties neither filed any replying affidavit nor witness statement. In addition, it suffices to state that the interested parties did not tender any evidence.
67. Nevertheless, and for the sake of the record, learned counsel for the interested party sought to close the case for the interested parties. To this end, the court proceeded to and made an order to that effect.



68. Following the conclusion of the hearing, the advocates for the Parties sought time to file and exchange written submissions. The court thereafter issued directions pertaining to the filing and exchange of the submissions. The directions were: the Plaintiffs to file and serve written submissions within 14 days from the date of the directions; and the defendant/interested parties to file written submissions within 14 days from the date of service by the Plaintiffs.
69. The Plaintiffs filed written submissions dated 27<sup>th</sup> February, 2026, wherein the Plaintiffs highlighted and canvassed one [1] issue. The issue is whether the plaintiffs have established/ proved the elements underpinning the plea of adverse possession.
70. In particular, learned counsel for the Plaintiffs' proceeded to and submitted that the evidence on record has established open, continuous and uninterrupted possession/use of the original parcel of land [now subdivided]. To this end, learned counsel has contended that the plaintiffs have met the ingredients showing/proving *nec vi, nec clam, nec precario*.
71. To buttress the submission pertaining to proof of the elements underpinning the claim of adverse possession, learned counsel for the Plaintiffs has cited and listed various decisions.
72. The decisions cited are: *Kasuve vs Mwaani Investments Limited & 4 others* 2004 eKLR; *Wambugu vs Njuguna* 1983 eKLR; *Ntanalewa vs Kahindi Ngala Mwangandi* 2015 eKLR, and *Githu Vs Ndeete* 1984 eKLR, respectively.
73. Flowing from the foregoing, learned counsel for the Plaintiffs has implored the court to find and hold that the Plaintiffs have proven/established the claim beforehand. Consequently, the court was invited to grant the reliefs sought *vide* the originating summons.
74. The defendant and the interested parties filed written submissions dated 12<sup>th</sup> March, 2026 and wherein same have canvassed and highlighted one issue. The issue is whether the plaintiffs have established or proven the plea of adverse possession or otherwise.
75. Learned counsel for the defendant/ interested party has, thereafter, contended that the totality of the evidence on record does not show that the plaintiffs have had open, continuous and uninterrupted possession of the suit property. In this regard, it has been submitted that the plaintiffs cannot procure a favorable order.
76. Furthermore, learned counsel for the defendant/ interested parties has submitted that even though the plaintiffs tendered photographs before the court together with an electronic certificate, it was not proven that the photographs tendered were indeed taken from the suit property. To this end, counsel submitted that the photographs therefore do not have any probative value.
77. It was the further submissions of the learned counsel for the defendant that the photographs that were tendered/ produced can only have probative value if the same were authenticated by a surveyor. However, insofar as the photographs were not authenticated by a surveyor, Counsel contended that same cannot be used or relied on to anchor the plea of adverse possession.
78. Other than the foregoing, learned counsel for the defendant has cited various decisions. The decisions are: *Tobias Ogutta Nyatingo vs Sula Owiyo Owiti* 2020 KEELC 696; *Ruth Wangari Kanyagia vs Josephine Muthoni Kinyanjui* 2017 eKLR; *Karan vs Onyango & another* 2024 KEELC and *Maliamu M'Ibiri/Francis M'Imanyara M'ringera* 2011 eKLR.
79. Premised on the foregoing submissions, learned counsel for the defendant/ interested parties has invited the court to find and hold that the Plaintiffs have not proven/established the claim of adverse possession.



80. As a result of the foregoing, the court has been asked to dismiss the suit and award costs to the defendant/ Interested party.
81. Having reviewed the pleadings filed by/on behalf of the parties, the evidence tendered [ both oral and documentary], and upon consideration of written submissions on record, three [3] key issues crystallize for determination.
82. The issues are: Whether the plaintiffs have tendered/adduced evidence to demonstrate open, continuous and uninterrupted possession/ use of the suit property or otherwise; Whether the defendant has ever taken steps to recover the suit properties or otherwise; and What reliefs [remedies] ought to be granted.
83. Regarding the first issue, it is worthy to recall and reiterate that it is the Plaintiffs who approached the court seeking to be declared as having acquired ownership of the suit property by way of adverse possession. To this end, it was incumbent upon the Plaintiffs to tender and place before the court cogent, concrete, compelling and credible evidence to demonstrate open, continuous and uninterrupted possession/use of the suit property.
84. In addition, it was also incumbent upon the plaintiffs to demonstrate that their occupation/possession of the suit property, [if at all] has subsisted for a duration in excess of 12 years. Instructively, the plea of adverse possession can only accrue if the occupation/ possession has met the statutory threshold in terms of Sections 13 and 17 of the Limitation of Action Act, Chapter 12 Laws of Kenya.
85. The elements to be proven by a claimant seeking adverse possession are now well settled. In the case of *Richard Wefwafwa Songoi v Ben Munyifwa Songoi* [2020] KECA 942 (KLR), the Court of Appeal highlighted the elements thus:
  40. A person who claims adverse possession must inter alia show:
    - (a) on what date he came into possession.
    - (b) what was the nature of his possession?
    - (c) whether the fact of his possession was known to the other party.
    - (d) for how long his possession has continued and
    - (e) that the possession was open and undisturbed for the requisite 12 years.
86. Moreover, the ingredients which must be proven before a positive order for adverse possession can issue were also underscored in the case *Lewa v Mwangandi* [2015] KECA 532 (KLR). The Court of Appeal elucidated the position as hereunder-
 

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 or under the licence of the owner. It must be adequate in continuity, in publicity and in extent to show that possession is adverse to the title owner.
87. Bearing in mind the ratio [principles] emanating from the foregoing decisions, it is now appropriate to return to the facts and evidence in the subject matter. PW1 testified that their late father [Marete Rimberia-deceased] entered upon, took possession of and used the suit property from the year 1970's



- up to and including his death. In addition, evidence was tendered to show that in the year 2011, the father of the plaintiffs lodged a complaint with the Land Dispute Tribunal claiming ownership of title to or a portion of the original parcel of land.
88. The dispute before the LTD was heard and determined vide an award rendered on 6<sup>th</sup> September, 2011[See PEXB 2]. Even though the land dispute tribunal rendered an award, the said award was neither adopted nor ratified as a Judgment. For good measure, the attempts by the Plaintiffs to have the award adopted as a judgment by the Chief Magistrate's Court were declined vide ruling rendered on 20<sup>th</sup> March, 2024.
89. Be that as it may, it is important to highlight that by the year 2011, the Plaintiff's father was actually in occupation/ possession of the original parcel of land [now sub-divided]. This much is discernible from the proceedings and the award of the tribunal, which was tendered as an Exhibit before the Court.
90. Additionally, PW1 also testified that even after the death of their father, they [Plaintiffs] have continued to possess and use the entirety of the original parcel of land. In fact, PW1 averred that the defendant, who became the registered owner of the original parcel of land in 1988, has never entered upon nor taken possession of the original parcel of land.'
91. I am aware that the plaintiffs tendered and produced before the court assorted exhibits. Two of the exhibits, which were produced before the court, are paramount. The exhibits include a copy of the letter by the Assistant Chief, Kijia Sub-location, which confirmed that it is the plaintiffs' Family who have been using the original parcel of land [now subdivided]. The contents of the said letter were neither challenged nor impeached.
92. The second set of exhibits which merits due consideration are the bundle of photographs which were tendered before the court and were accompanied by the electronic certificate dated 19.11.2025. The photographs demonstrate the agricultural and related activities undertaken on the suit property.
93. I am aware that learned counsel for the defendant / interested parties has submitted that the bundle of photographs do not have any probative value because they were neither authenticate or vouched for by a surveyor. I must state that the submission by learned counsel is not only curious, but it constitutes a misapprehension of the law as pertains to the probative value of a photograph.
94. Moreover, I wish to remind myself that the bundle of photographs that was tendered by the plaintiffs were duly accompanied by the requisite electronic certificate. To this end, the said photographs are not only admissible but provide a basis upon which this court can form an opinion. [See section 106 B of the *Evidence Act*, Cap 80 Laws of Kenya].
95. It is also instructive to take cognizance of the holding of the Court of Appeal in County Assembly of Kisumu & 2 others v Kisumu County Assembly Service Board & 6 others [2015] KECA 397 (KLR). In particular, paragraphs 65-67 thereof.
96. Other than the contention by Learned counsel for the Defendant / Interested party that the photographs do not have probative value for lack of authentication by a surveyor, I wish to reiterate that the contents of the photographs and what they depict were not challenged. There is no evidence by the defendant to controvert the said photographs. In any event, it is not lost on me that the Defendant and his Witsesse[s] conceded that it is the Plaintiffs, who are on the Land.
97. Worse still, it is important to state that learned counsel for the Defendant/ Interested party did not cross-examine PW1 on the issues pertaining to who took the photographs; where the photographs were taken; and whether the contents of the photographs relate to the activities on the suit property.



Suffice it to state that the probative value of the photographs could only be gone into by way of cross-examination.

98. I must also state that submissions by learned counsel, no matter how ingenious the submissions are, cannot take the place of evidence. Simply put, the contents of the photographs, duly accompanied by an electronic certificate, could only be impeached by evidence or by cross-examination. This was not done.
99. Additionally, and on whether evidence was tendered to demonstrate open, continuous and uninterrupted possession/ use of the suit property, it is important to point out that even the defendant who testified as DW1, and his witnesses confirmed that the plaintiffs are the ones using the suit plots. Notably, DW1 conceded that even though he subdivided the original parcel of land and transferred two portions to the interested parties, neither he [DW1] nor the interested parties are in occupation. On the contrary, the defendant and his witnesses affirmed occupation by the plaintiffs.
100. Finally, there is evidence that the defendant himself lodged a criminal complaint before the police, culminating in the arrest, arraignment and charge of some of the plaintiffs before the Githongo Law court with the offence of forcible entry. [See the chargesheet in respect of MCCR E633 of 2023], which was tendered in evidence.
101. It is also important to underscore that even though the plaintiffs herein were arrested and charged with the offence of forcible entry, the charge was subsequently withdrawn under the provisions of Section 87(a) of the CPC. [See order issued by Court on 28<sup>th</sup> October, 2025].
102. The long and short of the charges that were raised against the plaintiffs is to the effect that the plaintiffs were actually confirmed to be on the suit property. That is my understanding of the offence of forcible entry. Someone is said to have entered onto the property of another without the permission/consent of the owner.
103. Flowing from the various perspectives which I have alluded to, I come to the conclusion that the plaintiffs have adduced cogent and credible evidence showing open, continuous and uninterrupted possession over the suit property. For good measure, the evidence by the plaintiff was duly corroborated by the defendant and his witnesses.
104. Turning to the second issue, it is important to underscore that the owner of land which has been trespassed upon is obligated to take steps and pursue recovery of vacant possession [if at all] within 12 years. This is the import of Section 7 of the *Limitation of Actions Act*, Chapter 22, Laws of Kenya.
105. However, where the land owner or his legal representative [whichever is the case] fails to take appropriate recovery proceedings and 12 years lapse, the rights of the land owner shall stand extinguished.
106. With respect to the instant matter, there is evidence that the plaintiff's father was using the suit property. In addition, there is also evidence that even after the death of the Plaintiff's father, they have remained in possession of the suit property. Instructively, issue number One [1] has addressed occupation and possession of the suit property by the Plaintiffs.
107. The question that concerns me here is whether the defendant took any steps to recover vacant possession. From the evidence, what comes out is that the defendant only mounted a criminal complaint to the police pertaining to forcible entry onto the suit properties by the plaintiffs. The plaintiffs were thereafter charged.



108. Nevertheless, it is not lost on me that by the time the criminal complaint was being lodged and the plaintiffs being arrested and charged, the 12-year duration had long lapsed, and the defendant's right to the suit property stood extinguished.
109. Notwithstanding the foregoing, it is common ground that the running of time for the acquisition of title by way of adverse possession can only be terminated or stopped in accordance with the law. The manner of stopping time is well settled.
110. In the case of *Mwangi Githu v Livingstone Ndeete* [1980] KECA 35 (KLR) , the Court of Appeal dealt with the circumstances under which the running of time can be interrupted.
111. The court stated thus:

Time ceases to run under the *Limitation of Actions Act* 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; see Cheshire's Modern Law of Real Property, 11th edition at p 894. In my view the giving of notice to quit cannot be an effective assertion of right for the purpose of stopping the running of time under the *Limitation of Actions Act*.
112. To my mind, the lodgment of the criminal complaint; the arrest of the Plaintiff; and the preferment of the charge of forcible entry long after the lapse of 12 years did not interrupt the running of time. Simply put, the criminal proceedings were an act in vanity.
113. Before concluding on this issue, I also wish to highlight the fact that even after the filing of the current originating summons, the defendant did not file any counterclaim/ cross suit for purposes of recovery of vacant possession. The bottom line is that the defendant is at peace with the obtaining status, namely; occupation/ possession of the suit property by the Plaintiffs.
114. There is one more sub-issue. The sub issue relates to whether the sub-division of the original parcel of land, the sale of the resultant portions and the ultimate registration of portions thereof in the names of the interested parties conferred any title to the interested parties?
115. It is common ground that the sale and transfer of a parcel of land which is subject to prescription of adverse possessory claims does not defeat or negate the rights which have since been acquired or are in the process of acquisition. [See *Njuguna Ndatho v Maasai Itumo & 2 others* [2002] KECA 324 (KLR).
116. Consequently, my answer to issue two [2] is to the effect that the defendant neither took nor put in place any endeavour to recover vacant possession. The failure by the defendant to commence recovery proceedings in line with section 7 of the *Limitation of Actions Act* extinguished his right to or interest over the suit property.
117. With respect to what reliefs, if any, ought to be granted, I wish to point out that the totality of evidence has proven that the plaintiffs have been in open, continuous and uninterrupted possession of the suit property; the possession/ use has subsisted for a duration in excess of 12 years, and the defendant did not commence recovery proceedings in accordance with the law.
118. Furthermore, the evidence on record demonstrates that in the year 2023, when the defendant purported to sub-divide the original parcel of land and thereafter sold two of the resultant parcels to the interested parties, the defendant's right to the land had already been extinguished.
119. Flowing from the foregoing, it is my finding that the plaintiffs have indeed proved and established their claim, and thus they are entitled to the reliefs sought vide the Originating summons.



120. In a nutshell, I come to the conclusion that the Originating summons is meritorious and that the Plaintiffs are entitled to the reliefs sought.

### **Final Orders**

121. In view of the foregoing, the final orders that commend themselves to the court are:

- i. There be and is hereby issued a declaration that the plaintiffs have acquired title to the respective portions of land previously comprised in title Abothuguchi/L -Kijja/616, now subdivided into parcels Abothuguchi/L-Kijja/3400,3401 and 3402 through adverse possession as hereunder:-  
Zaverio Mutibi Marete-6acres  
Richard Mwangi Marete-6 acres  
Serafina Karegi Marete-3 acres  
Haron Mwongera Marete-4 acres  
William Muthamia Marete-3 acres
- ii. There be and is hereby granted a declaration that the defendant and /or interested parties' rights to and /or interests over the portions currently occupied by the plaintiffs have been extinguished by operation of the law under Section 7 of the Limitations of Actions Act, Cap 22, Laws of Kenya
- iii. There be and is hereby issued an order that the subdivision and transfer of Title No Abothuguchi/L-Kijja/616 into Abothuguchi/L-Kijaa 3400, 3401 and 3402 and the subsequent transfer to third parties, are hereby cancelled and the register is rectified to reinstate LR No No Abothuguchi/L-Kijja/616
- iv. There be and is hereby issued and order directing the defendant to execute the requisite transfer instrument and to transfer to the plaintiffs the portions of the original parcel of land in terms of clause (i) above.
- v. The execution of the transfer instruments and the consequential documents shall be undertaken within 60 days from the date of this judgement.
- vi. In default, by the defendant to execute the requisite transfer instruments and the consequential documents within the prescribed timelines the deputy registrar of this honourable court to be empowered to execute the necessary instrument to facilitate the subdivision of the original parcel of land and the consequential transfer of various portions to the plaintiffs.
- vii. The plaintiffs shall bear the survey fees, the transfer fees, the stamp duty and the registration fees, subject to due advice by the designated officers/government departments.
- viii. There is hereby issued an order of permanent injunction restraining the defendants and/or interested parties, their agents, servants or assigns from entering, interfering with or otherwise disrupting the plaintiff's quiet and peaceful occupation and use of the said parcels.



- ix. Cost of this suit is hereby awarded to the Plaintiffs, and same shall be borne by the defendant.

122. It is so ordered.

**DATED, SIGNED AND DELIVER AT MERU THIS 5<sup>TH</sup> DAY OF MAY, 2026.**

**OGUTTU MBOYA, FCI Arb; CPM [MTI-EA]**

**JUDGE.**

In the Presence of –

Ms Mbumbuya for the plaintiffs

Ms Bundi for the defendants/ interested parties

Court Assistant: Tupet

