



**Paul v Igandu (Environment and Land Appeal E003 of 2024)
[2025] KEELC 5865 (KLR) (23 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5865 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT AND LAND APPEAL E003 OF 2024**

**AK BOR, J
JULY 23, 2025**

BETWEEN

JOSEPH MURAGE PAUL APPELLANT

AND

LUCY IGANDU RESPONDENT

JUDGMENT

1. This appeal arises from the judgment of Honourable J.A Otieno, Senior Resident Magistrate [SRM] delivered on 18/1/2024 in Embu CM ELC Case No. 20 of 2019 which the Appellant filed seeking an order requiring the Respondent, her agents or servants to vacate the land known as Ngandori/ Nguvio/2427 [the suit land]. The Appellant claimed to be the registered owner of the suit land which he purchased from the Respondent's deceased husband, Njeru Njiru. He averred that Njeru Njiru owned Ngandori/Nguvio/2388 which he subdivided to create parcel numbers Ngandori/ Nguvio/2427 and Ngandori/Nguvio/2428. That he sold him the suit land and retained parcel 2428 for himself and his family which he claimed the Respondent is entitled to together with her children. He averred that the Respondent who was aware of the sale transaction refused to vacate the suit land despite being issued a notice to vacate.
2. The Respondent filed a defence and counterclaimed cancellation of the subdivision of Ngandori/ Nguvio/2388 and for it to revert to its original state and registration of the land in her name. In the alternative, she sought cancellation of ownership of the resultant Ngandori/Nguvio/2427 and for the land to be registered in her name.
3. It was her case that the Appellant's registration as owner of the suit land was deceitful, she claimed that he tricked her late husband into signing false documents which he did not understand their nature. She averred that the Appellant had not accessed, possessed or occupied the suit land as the Respondent and that her family had been in occupation of the suit land for over 60 years.



4. The Respondent averred that there were no beacons or any indication on the ground that parcel number 2388 was ever subdivided. She contended that together with her late husband, they had developed parcel number 2388 as spouses and established estates of coffee and tea and by dint of these developments, parcel number 2388 became matrimonial property and consequently, her consent, which was not obtained, was necessary before any sale took place. She argued that the sale transaction and purchase by the Appellant was fraudulent, null and void.
5. She pleaded particulars of fraud as: - the Appellant knew that the land was jointly utilised but failed to consult her; there was no ground visit when subdividing parcel no. 2388 and the process of subdivision of parcel no. 2388 was not done practically on the ground but only on paper to conceal the fraudulent process of subdivision and sale from her; her late husband, Njeru Njiru, the purported seller did not disclose the alleged subdivision and sale and she discovered that fact after he was long dead.
6. The Respondent claimed that the doctrine of adverse possession was self-explanatory and unquestionable having been on the land and developed it immensely.
7. The trial court in its judgment found that the Appellant's suit was statute-barred under Section 4[4] of the *Limitation of Actions Act*, having been filed over 12 years after the issuance of a decree on 6/2/2006 in SPM Award No. 11 of 2005 in Tribunal Case No. 26 of 2004, declaring the Appellant the owner of the suit land. The trial court found that the Appellant failed to take steps to enforce the decree and evict the Respondent from the suit land within 12 years hence by the time he filed suit on 14/3/2019, he had been caught up by limitation of time.
8. On the counterclaim, the court found that the crux of the Respondent's counterclaim was adverse possession. The court observed that the Respondent's claim that she had been in continuous occupation of the suit land was supported by the testimonies of Margaret Muthoni Njeru, Njeru Njiru's daughter and James Njeru Nyaga, Margaret Muthoni Njeru's husband. The court noted that the Respondent's claims that Njeru Njiru was buried on the suit land was uncontested which demonstrated how out of touch the Appellant had been with the suit land.
9. The trial court held that the Respondent had proved that her continuous occupation of the suit land remained uninterrupted for 13 years after the court decree of 6/2/2006 and therefore the Respondent had proved her claim for adverse possession. The trial court allowed the Respondent's counterclaim and dismissed the Appellant's suit with costs. That is what led to the appeal before this court.
10. The Appellant filed a memorandum of appeal and set out 6 grounds of appeal. Firstly, that the trial court erred when it found that the Appellant's suit was time barred and thereby occasioned a gross miscarriage of justice. Secondly, that the Learned Magistrate erred by finding that the Respondent's claim was for adverse possession when there was no such claim and prayer in the counterclaim and for concluding that the Respondent had proved a case of adverse possession. The trial court was faulted for granting the Respondent prayers she had not pleaded for. The other point taken up was that the court did not have jurisdiction to hear and determine a claim for adverse possession.
11. The Appellant sought to have the judgment of the trial magistrate varied or set aside and for the Respondent's counterclaim to be dismissed with costs. Parties filed and exchanged written submissions which the court considered.
12. The issue for determination is whether the trial court erred in its findings and whether the appeal has merit. The Appellant's claim before the trial court was that he is the registered proprietor of Ngandori/ Nguvio/2427 which resulted from the subdivision of Ngandori/Nguvio/2388. He claimed that he purchased the suit land from Njeru Njiru, the Respondent's late husband.



13. During the hearing, he produced a sale agreement between him and the said Njeru which was for the purchase of 0.195 ha out of parcel no. 2388. He also produced a title deed for parcel no. 2427 which showed he was the registered owner of the land. He produced copies of the proceedings in Land Tribunal Case No. 26/2004 between him and the Respondent. The Respondent had sued him claiming that her husband had sold the suit land without her knowledge. The Tribunal found that the sale of parcel 2427 was transacted legally by Njeru Njiru the owner of the land and Joseph Murage, the Appellant. The decision of the Tribunal was adopted as a decree of the court on 6/2/2006.
14. The trial court found that the Appellant's failure to execute that decree and evict the Respondent within 12 years of the decree meant that the suit was time barred under section 4[4] of the Limitation of Actions Act, which provides that an action may not be brought upon a judgment after the end of 12 years from the date the judgment was delivered; or where the judgment or a subsequent order directs that any payment of money or the delivery of any property is to be made at a certain date or at recurring periods, the date of the default in making the payment or delivery in question, and no arrears of interest in respect of a judgment debt may be recovered after the expiration of six years from the date on which the interest became due.
15. The suit which led to this appeal was instituted on 14/3/2019, which was more than 13 years after the decree was issued on 6/2/2006. The suit, in essence sought to give effect to that decree by seeking the eviction of the Respondent from the suit land. It was an action brought upon a judgment and was therefore governed by Section 4[4] of the Limitation of Actions Act. In light of this, the trial court cannot be faulted for arriving at the conclusion that the Appellant's suit was statute barred.
16. The trial court found that the Respondent had acquired the suit land by way of adverse possession. The Appellant takes issue with this finding, arguing that the Respondent did not expressly plead or seek orders for adverse possession in her counterclaim. A perusal of the counterclaim shows that the Respondent sought the cancellation of the subdivision of Ngandori/Nguvio/2388 and for the land to revert to its former state. Her claim was premised on allegations of fraud and the assertion that she and her family had exclusively and peacefully occupied the suit land whereas the Appellant had never taken possession of the land. In this context, the trial court was entitled to identify as an issue for determination, the issue of adverse possession.
17. As the Appellant rightly pointed out, the magistrates court lacked the jurisdiction to entertain the claim for adverse possession. See Pauline Chemuge Sugawara v Nairuko Ene Mutarakwa Kiruti [Sued as the Administratrix of the Estate of Mutarakwa Kiruti Lepaso] & 3 others [2022] KEELC 2063 [KLR] where it was held that magistrates' courts do not have jurisdiction to hear and determine claims for adverse possession.
18. The Respondent's counterclaim also included allegations that the subdivision of Ngandori/Nguvio/2388 to create parcel numbers 2427 and 2428 and sale of parcel 2427 to the Appellant was fraudulent. She contended that the Appellant colluded with her late husband and caused the subdivision and registration of the suit land without her knowledge, and that the process was concealed from her.
19. She gave particulars of fraud, including that there was no ground visit for subdivision, that the transaction was carried out in secrecy, and that her consent, as a spouse, was never sought or obtained. The same issues were canvassed before the Land Disputes Tribunal in Case No. 26 of 2004, which determined that the sale was lawful. That decision was adopted as a judgment of the court and has never been set aside. There is no basis to disturb the Tribunal's findings. The Respondent failed to prove her counterclaim before the trial court.



20. The appeal succeeds in part. The judgment of the trial court is set aside to the extent that the court did not have jurisdiction to entertain the claim for adverse possession. The finding by the trial court that the Appellant's suit was time barred under section 4[4] of the *Limitation of Actions Act* is upheld. The Respondents counterclaim is disallowed. Each party will bear its costs for the appeal.

DELIVERED VIRTUALLY AT EMBU THIS 23RD DAY OF JULY 2025.

K. BOR

JUDGE

In the presence of:

Mr. Lugard Mogusu for the Appellant

Ms. Lucy Igandu- the Respondent

Diana Kemboi- Court Assistant

