



REPUBLIC OF KENYA



Mbugua & 2 others v Mbiti & another (Environmental and Land Originating Summons 46 of 2015) [2025] KEELC 5861 (KLR) (21 July 2025) (Judgment)

Neutral citation: [2025] KEELC 5861 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 46 OF 2015**

AK BOR, J

JULY 21, 2025

BETWEEN

JOACHIM NJUGUNA MBUGUA 1ST PLAINTIFF

JOHN NDUNGU MBUGUA 2ND PLAINTIFF

PAUL NJOROGE MBUGUA 3RD PLAINTIFF

AND

FRANCIS KOMO MBITI 1ST DEFENDANT

NANCY NJERI NJUE 2ND DEFENDANT

JUDGMENT

1. Through the amended originating summons dated 6/11/2017, the Plaintiffs seek to be declared to have become entitled to a portion measuring 1.5 acres out of the land known as Nthawa/Gitiburi/1832 (the suit land) through adverse possession. They sought to have the court declare that the 2nd Defendant's title over the suit land had been extinguished and to be registered as the proprietors of 1.5 acres out of the suit land. They also sought to have the 2nd Defendant execute the necessary documents to effect the transfer of a portion of the suit land to their names and the costs of the suit.
2. The Plaintiffs, who are brothers contended that while this matter was pending in court, the 1st Defendant transferred the suit land to the 2nd Defendant. They claimed that they had been in possession of the portion of the suit land since 1985 and had greatly developed it, planted maize and built rental houses on it. That their occupation and possession of the portion of the land has been exclusive, open, continuous and uninterrupted and without any secrecy since 1985 and that they were in possession when they filed suit.
3. The 2nd Defendant swore the replying affidavit in opposition to the Amended Originating Summons in which she averred that she bought the suit land from the 1st Defendant in 1997 and they were registered



- as joint proprietors of the suit land. She denied that the Plaintiffs had been in occupation of the land since 1985. She averred that when she bought the land, the Plaintiffs lived on a neighbouring parcel of land but they were chased away by KTDA who owned the land.
4. That in 2012, she went to clear the land but the Plaintiffs denied her access saying that the land was theirs. She reported the matter to the Chief who asked the Plaintiffs to prove ownership of the land but they did not have any evidence. She averred that the Plaintiffs later planted a few miraa stems and dug a borehole on the land which are the only possessions the Plaintiffs have on the suit land.
 5. She averred that when she bought the suit land, it was an uncleared bush and her attempts to clear the land was met with violence from the Plaintiffs. She denied that the Plaintiff's occupation was peaceful since they have had several cases before the chief and she also filed a suit in Siakago against the 2nd Plaintiff over the land. She was emphatic that the Plaintiffs live on a different parcel of land.
 6. The case was heard on 25/3/2025. Paul Njoroge Mbugua, the 3rd Plaintiff gave evidence. He claimed that his grandmother, Wangui Mungai bought the suit land from Njoka Ndiviro in 1972 but the land was unfortunately not transferred to their grandmother. He stated that their grandmother took possession and stayed on the land with her family including the Plaintiffs' father. It was his evidence that they were born and raised on the suit land and that they had constructed permanent buildings on the land and were cultivating it. Further, that they had planted miraa, paw paws, mangoes and that they grazed animals on the land.
 7. Regarding the court cases, he averred that despite there being various court cases touching on the suit land which ended in 2002, they had not been evicted from the suit land. He maintained that they had been in exclusive possession of the suit land for more than 12 years without the Defendants' permission. He produced copies of the green card and the court order which transferred the suit to the Embu Environment and Land Court for hearing and disposal.
 8. On cross examination he stated that he had built rental houses on the suit land but did not bring photographs to court. That they were using 1.5 acres of the land but his extended family was on 60 acres of what was originally parcel number 1571. He admitted that there were 20 similar cases but only a few were left which they had filed. He claimed that they represented the extended family in the suits. He claimed that they were seeking 1.5 acres and later changed to 3.75 acres of the suit land. He added that he had ploughed 13 acres. He denied that they lived on the land belonging to Kimunye Tea Factory. He stated that the land did not have beacons. He denied that they had chased the 2nd Defendant from the land while insisting that she had never been to the land. He claimed that he was born on the land in 1978.
 9. The 2nd Defendant gave evidence and told the court that she bought the suit land in 1997 and was the registered owner of the land. In 2012 she went to clear her land but was chased away by the Plaintiffs and reported the matter to the Chief and they could not prove ownership of the suit land. She maintained that they lived on a different piece of land and that they uprooted her beacons from the suit land. She produced copies of the title deed for the suit land, pleadings in Siakago SPM MCL & E No. 80 of 2018 and the Power of Attorney which the 1st Plaintiff granted to her dated 20/7/2016 over the suit land.
 10. Upon conclusion of the hearing, the court directed parties to file and exchange written submissions. The Plaintiffs submitted that their claim was grounded on Sections 7, 13 and 17 of the *Limitation of Actions Act* together with Order 37 Rule 7 of the Civil Procedure Rules. They submitted that they had been in continuous, open and exclusive possession of 1.5 acres of the suit land since 1985. They took issue with the transfer of the suit land to the 2nd Defendant during the pendency of this suit. They cited



various decisions in support of their claim and urged the court to find that the Defendants hold the suit land in trust for them

11. The issue for determination is whether the Plaintiffs have acquired title to 1.5 acres out of the suit land through adverse possession. In *Mtana Lewa v Kahindi Ngala Mwangandi* [2015] KECA 532 (KLR) the court defined adverse possession as essentially a situation where a person takes possession of land and asserts rights over it and the person having title omits or neglects to take action against such person in assertion of his title for a 12 years. That the essential prerequisites were that possession of the adverse possessor is neither by force or stealth nor under the license of the owner, and must be adequate in continuity, in publicity and in extent to show that possession is adverse to the title owner.
12. In *Wambugu v Njuguna* [1983] KLR 172, the court laid down the guiding principles for determining a claim for adverse possession and held that in order to acquire by the statute of limitations title to land which has a known owner, that owner must have lost his right to the land either by being dispossessed of it or by having discontinued his possession of it. Dispossession of the proprietor that defeats his title are acts which are inconsistent with his enjoyment of the soil for the purpose of which he intended to use it.
13. Similarly, in *Samuel Kihamba v Mary Mbaisi* [2015] KECA 853 (KLR) the court stated that to succeed in a claim for adverse possession one must prove and demonstrate that he has occupied the land openly, without force, without secrecy, and without license or permission of the land owner, with the intention to have the land.
14. The question for determination is whether the Plaintiffs have met the threshold to be declared entitled to a portion of the suit land measuring 1.5 acres by way of adverse possession. The Plaintiffs needed to demonstrate that their occupation of the suit land has been continuous, open, exclusive, and without the permission of the registered owner for an uninterrupted period of at least 12 years. The burden of proof lies with the Plaintiffs. The Plaintiffs claim to have been in possession of 1.5 acres of the suit land since 1985. They claimed that they had developed the land by planting crops and constructing rental houses. However, these allegations were not supported by any persuasive or additional evidence such as photographs of the developments they claim to have erected on the suit land. The Plaintiffs only relied on the oral testimony of the 3rd Plaintiff. The Plaintiffs did not call any independent witnesses to corroborate their assertions.
15. It was the evidence of the 2nd Defendant that when she bought the suit land in 1997, it was bushy and undeveloped. That she attempted to clear the land in 2012 but was denied access by the Plaintiffs, who claimed that the land belonged to them. She reported the incident to the area Chief and filed a case against the 2nd Plaintiffs in Siakago. She stated that the Plaintiffs previously lived on a neighbouring parcel of land owned by KTDA, from which they were evicted. She produced the plaint filed in Siakago MCL & E Case No. 80 of 2018 *Nancy Njeri Njeru* (suing on her behalf and on behalf of Francis Komo Mbiti) v *John Ndung'u Mbugua* in which she sought eviction orders against the 2nd Plaintiff, who she claimed had illegally invaded the suit land in March 2018, occupied it and planted miraa. From the evidence tendered, it is difficult to ascertain who is in occupation of the suit land.
16. Another inconsistency arises from the Plaintiffs' own account. While they claimed to have been in possession of the suit portion since 1985, they also stated that their grandmother purchased Nthawa/Gitiburi/1571 in 1972. If that is the parcel their grandmother acquired and where they initially lived, it is unclear how they came to occupy Nthawa/Gitiburi/1832, the suit land. The 2nd Defendant's testimony points to the fact that the Plaintiffs' occupation of a portion of the suit land began in 2012, when she attempted to take possession and was denied access.



17. This suit was filed on 29/7/2010, which further contradicts the timelines provided by the parties. It has not been proved on a balance of probabilities that the Plaintiffs are in actual occupation of the suit land and when that occupation began. The Plaintiffs also gave contradictory sizes of the land which they claim to occupy.
18. The Plaintiffs have failed to prove that they have been in open, exclusive, and uninterrupted possession of the suit of land for the requisite statutory period. The suit is dismissed with costs to the Defendants.

DELIVERED VIRTUALLY AT EMBU THIS 21ST DAY OF JULY 2025.

K. BOR

JUDGE

In the presence of: -

Joachim Njuguna Mbugua- 1st Plaintiff

John Ndungu Mbugua – 2nd Plaintiff

Paul Njoroge Mbugua – 3rd Plaintiff

Ms. Muthoni Ndeke for the Defendants

