



Mwangi & another (Suing as the personal representatives of the Estate of Paul Mwangi Mwirigi - Deceased) v Karanja (Environment and Land Miscellaneous Case E018 of 2024) [2025] KEELC 5440 (KLR) (21 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5440 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENT AND LAND MISCELLANEOUS CASE E018 OF 2024**

**MN GICHERU, J
JULY 21, 2025**

BETWEEN

BETH WANJIKU MWANGI 1ST APPLICANT

SIMON MAINA MWANGI 2ND APPLICANT

**SUING AS THE PERSONAL REPRESENTATIVES OF THE ESTATE OF PAUL
MWANGI MWIRIGI - DECEASED**

AND

FRANCIS NYOIKE KARANJA RESPONDENT

RULING

1. This ruling is on the notice of motion dated 20-9-2024. The motion which is by the Applicants is brought under Sections 152A,B,E,F and G of the [Land Act](#) and Regulations 65 and 67 of the [Land Regulations 2017](#), Sections 1A, 1B and 3A of the [Civil Procedure Act](#), Order 51 of the [Civil Procedure Rules](#) and all enabling provisions of the law.
2. The motion seeks the following orders.
 2. The court be pleased to order the Respondent, his servants and/or any person or body of persons and/or any other trespassers to be evicted from all that parcel of land known as Loc.4/ Gakui/520 situated in Murang'a County belonging to the estate of Paul Mwangi Mwirigi (Deceased).
 3. That the Applicants be at liberty to appoint a Court bailiff or auctioneer to evict the Respondent, his servants and/or any person or body of persons and/or any other trespassers.
 4. The Court to direct the Officer Commanding Kandara Police Station to provide security to the Applicants while evicting the Respondent and those claiming through him from the suit land.



5. The court be pleased to issue such further orders as it may deem fit, appropriate and expedient to grant in the circumstances of this matter for purposes of compliance and/or other just consideration.
6. The costs of this motion be granted to the Applicants.
3. The motion is based on twelve (12) grounds and it is supported by two affidavits sworn by the second Applicant dated 30-9-2024 and 3-12-2024 respectively. In summary, the Applicants state as follows. One, the Applicants are the personal representatives of the estate of Paul Mwangi Mwirigi(deceased) who is the registered owner of the suit land. The deceased passed away on 16-5-2015 and he did not sell the suit land to the Respondent or anybody else. Two, the Respondent has been in dispute over the ownership of the suit land with the deceased on the basis of adverse possession in the case {{abbr{title Environment and Land Case} ELC}} 555 of 2005 in Nairobi. The Respondent's claim has not been successful. Three, the Applicants issued a notice to vacate the suit land to the Respondent on 23-11-2023 pursuant to Section 152E of the Land Act, but he did not heed. Four, the actions of the Respondent are a violation of, infringement and breach of the Applicant's right to property. Five, the suit land was not listed among the schedule of the assets of the deceased at the time of the confirmation of the grant because of the dismissal of {{abbr{title Environment and Land Case} ELC}} Case No. 555/2005, Nairobi. Finally, the Applicants have suffered and continue to suffer due to the denial of use of their property. For the above and other reasons, they pray that the motion be allowed as drawn.
4. The motion is opposed by the Respondent who has sworn a replying affidavit dated 28-10-24 in which he replies as follows. Firstly, the suit land is not registered in the names of the Applicants and the motion is bad in law, incompetent, fatally defective and an abuse of the court process. Secondly, the proceedings in {{abbr{title Environment and Land Case} ELC}} 555/2005, Nairobi are ongoing and that is the reason why the Court in Succession Cause No. 477 of 2016 declined to include the suit land in the certificate of confirmation. Thirdly, the Applicant has been in peaceful and uninterrupted occupation of the suit and since 1969 and since 1992 when the Applicants allege to have bought the suit land, they have not occupied it. For the above reasons, the Respondent prays for the dismissal of the motion with costs.
5. Counsel for the parties filed written submissions dated 27-5-2025 and 4-6-2025. Only the Applicants' counsel identified two issues for determination as follows.
 - a) Whether the application is merited.
 - b) Who should bear the costs of the application.

The submissions by the Respondent's counsel though not bringing out the issues in a clear cut manner and even failing to respond to the two issues have raised the following issues.

 - i. Whether the Applicants can file an action to recover the land after the expiry of 12 years after it was occupied by the Respondent.
 - ii. Whether the Applicants have capacity to bring this application.
6. I have carefully considered the motion in its entirety including the grounds, affidavits, written submissions and the law cited therein. I make the following findings on the issues starting with the Respondent's issues.
7. A claim for adverse possession is always brought under Order 37 of the Civil Procedure Rules. This motion was brought under Order 51 of the Civil Procedure Rules. The Court cannot therefore make any determination on adverse possession in a motion brought under Order 51 Civil Procedure Rules.



Secondly, on this point, the court does not have sufficient material upon which to make a decision such a substantive claim because the affidavits do not go deep into how the person through whom the Applicants claim obtained registration of land which is occupied by the Respondent and why he himself could not evict them. The Applicants have also not explained how they could buy land which was occupied by the Respondent without first waiting for the seller to evict the Respondent himself. Thirdly, the parties have kept the court in the dark about the proceedings in {{abbr{title Environment and Land Case} ELC}} Case No. 555 of 2005 where they say the dispute is over adverse possession. None of the parties has annexed a copy of the proceedings or judgment in that case.

8. Regarding the Applicants capacity to institute this suit, I find this capacity is not well grounded. There is nothing on record to explain why they have not been registered as the owners of the suit land. The supplementary affidavit sworn by the 2nd Applicant dated 3-12-24 at paragraph 5 talks of the dismissal of {{abbr{title Environment and Land Case} ELC}} 555/2005. Without the judgment or proceedings of that case, it is not easy to tell what the case was all about. It was incumbent upon the Applicants to prove the entire case including their capacity to litigate over the suit land and this lack of clarity does not help them.
9. With all the shortcomings pointed out in paragraph 7 above, the Application by the Applicants cannot be merited. For the above reasons, I dismiss the motion dated 20-9-2024 with costs to the Respondent.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 21ST DAY OF JULY, 2025.

M.N. GICHERU JUDGE.

Delivered online in the presence of ;-

Court Assistant – Mwangi Njonjo

Applicant's counsel – Mr. Ogutu

Respondent's Counsel – Mr. Matoke Dennis.

