



REPUBLIC OF KENYA



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**Mbogo v Njau & another (Environmental and Land Originating Summons
8 of 2019) [2025] KEELC 5345 (KLR) (17 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5345 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 8 OF 2019**

JM MUTUNGI, J

JULY 17, 2025

BETWEEN

AGNES WANJIRU MBOGO PLAINTIFF

AND

MITARU NJAU 1ST DEFENDANT

LAND REGISTRAR, KIRINYAGA 2ND DEFENDANT

JUDGMENT

1. The Plaintiff instituted the instant suit vide an Originating Summons dated 8th February 2018 and sought the following orders;
 1. A declaration that the Plaintiff/Applicant has become entitled to an absolute title to all that land measuring 6.30 acres known as Mutira/Kangai/262 situate in Kirinyaga County. (Herein called “the suit property”)
 2. The Plaintiff/Applicant be registered as the absolute proprietor of all that land parcel known as Mutira/Kangai/262.
 3. The Land Registrar, Kirinyaga do enter in his/her register the names of the Plaintiff as proprietor of all the land parcel known as Mutira/Kangai/262 under Section 80 of the [Land Registration Act](#), 2012.
 4. The costs of the suit be provided for.
2. The Originating Summons was supported on the Supporting Affidavit sworn by the Plaintiff dated 22nd November 2018. The Plaintiff averred that her late husband Cyrus Mbogo, purchased the suit parcel of land from the 1st Defendant, Mitaru Njau in 1968 and that they took possession and commenced cultivation thereon and effected various developments including construction of both permanent and semi-permanent structures thereon and have engaged in cultivation on the land,



erecting both semi permanent and structures thereon. The Plaintiff averred their occupation and development of the property was done openly and with the 1st Defendant's knowledge; however, the 1st Defendant subsequently declined to complete the transfer to Cyrus Mbogo Thiaka. The Plaintiff explained that in 1975, her husband registered a caution against the title of the suit property to protect his interest. The Plaintiff averred that she has since 1968 continuously inhabited, cultivated, and improved the land in open and quiet possession for over four decades, with the Defendants fully aware of her presence. The Plaintiff emphasized that she has established her matrimonial home on the suit property and has made various development on the land, all done with the implicit knowledge of the 1st Defendant. The Plaintiff asserted that her possession has been characterized by peace, uninterrupted enjoyment, and exclusive use.

3. The suit was undefended and proceeded by way of formal proof hearing, the Defendant having been served and not appeared nor filed any response.
4. The Plaintiff, PW1, testified on 4th March 2025 and relied on her Supporting Affidavit, which was sworn in support of the Originating Summons. She stated that her husband, Cyrus Mbogo, who passed away on 15th June 2018, purchased the suit parcel of land in 1972 when he was working in Mombasa. The Plaintiff stated that her late husband acquired the land before they were married and initially lived on the suit land with his parents. Upon their marriage, the Plaintiff stated she moved onto the land, began farming, and constructed a permanent house. As her matrimonial home and their children also built semi-permanent houses on the property. She further averred that her husband was buried on the suit land when he died.
5. The evidence of the Plaintiff was supported and corroborated by Philip Kamau Njau and Paul Patrick Magu who though not called to testify had recorded witness statements which were on record and the Court reviewed the same. The witnesses were neighbours of the Plaintiff and confirmed that indeed the Plaintiffs had all the years resided on and utilized the suit land as the owners thereof and had built their homes on the land.
6. The Plaintiff filed her written submissions dated 5th May 2025, and it was her submission that she acquired the suit land through adverse possession was therefore entitled to be registered as proprietor of the same. She submitted that she had demonstrated open, continuous, uninterrupted, and exclusive possession of the suit land and as a result the Defendant's title to the land had become extinguished. To support this argument, the Plaintiff placed reliance on the case of Gabriel Mbui v. Mukindia Maranya (1993) KEHC 161 (KLR), where the Court articulated the principles applicable for an Applicant to succeed in a claim of adverse possession. The Court held:-

“ the typical formulation of the classical requirements for adverse possession to be claimed has been, that in order to acquire title to land without buying or paying for it in the traditional sense, or through some other legal disposition such as by inheritance or trust, there must be proved or established the elements of: -

- a. actual possession or occupancy of the land that is.
- b. hostile to the current owner with a right to immediate possession.
- c. which is visible, open, notorious, and exclusive.
- d. exercised continuously and uninterrupted for a statutory defined number of years.
- e. maintain under some colour of right as against everyone else.



- f. with an evinced unmistakable *anumus possidendi*.
 - g. held in good faith, without fraud.
7. To further support the Plaintiff's submissions, Counsel for the Plaintiff cited several other authorities on the application of the adverse possession doctrine: *Haro Yonda Juaje v. Sadaka Dzenzo Mbauro & Another* (2014) KEHC 6665 (KLR), *Mtana Lewa v. Kahindi Ngala Mwagandi* (2015) KECA 535 (KLR), *Sisto Wambugu v. Kamau Njuguna* (1983) KECA 69 (KLR), and *Daniel Kimani Ruchine & Others v. Swift, Rutherford Co. Ltd & Another* (1977) KEHC 30 (KLR). Counsel consequently contended that the Plaintiff had dispossessed the 1st Defendant of his suit land for over fifty years and had therefore acquired the right to the suit property through adverse possession and ought to be declared and registered as owner of the suit property.
8. Regarding the question of adverse possession arising pursuant to purchase, Counsel argued that the period for adverse possession should be calculated from the date the purchase price was paid, continuing for a full span of twelve years. He contended that a purchaser who is in possession of the purchased land and has paid the purchase price is a person for whom the limitation period can run. He relied on the case of *Public Trustee v. Wanduru Ndegwa* (1984) KECA 72 (KLR), to support his submission. In the case the Court held:-

“In this Court the Appellant's first ground of Appeal is that the Learned Judge correctly found that the second Appellant was in continuous, open, exclusive and undisturbed possession of the suit land since March 16, 1967 and that the full purchase price for the land having been paid on the same day. viz, March 16, 1967 the Learned Judge ought to have held that the second Appellant had completed adverse possession of the suit land for over Twelve years before the institution of the suit in April 2, 1979. Of course calculated from the date of payment of the purchase price on March 16, 1967 and on the basis of it, the full span of twelve years' adverse possession and more had already run when the suit was filed on April 2, 1979. The true owner ceased to be in possession on March 16, 1967. His possession was discontinued on that day. Discontinuance of possession if that possession occurs where the person in possession goes out and another person takes possession if that possession is continuous and exclusive (as the Learned Judge found it to be so in this case) 28 Halsbury 4th Edition paragraph 769,. Under Section 9 of the Act, the right of action accrues on the date of dispossession or discontinuance. A purchaser in possession of the land purchased, after having paid the purchase price, is a person in whose favour the period of limitation can run under Section 10 (1) of the English Limitation Act, 1939 (closely akin to our section 7) as against the vendor: *Bridges v Mees* (1957) 1 CH 475 at 484: referred to with approval by this Court in *Mwangi Githu v Livingstone Ndete and Others*, *CA No. 24 of 1979* (Unreported).

9. I have considered the Originating Summons, the evidence adduced, and the Plaintiff's written submissions. The singular issue for determination in this suit is Whether the Plaintiff has established a claim to adverse possession over land parcel Mutira/Kangai/262 by proving actual, open, continuous, exclusive, and hostile possession for at least twelve years.



10. The doctrine of adverse possession in Kenya is founded under the *Limitation of Actions Act*, CAP 22, Laws of Kenya. Section 7 of the *Limitation of Actions Act*, Cap 22 provides that:-

“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 or, if it first accrued to some person through whom he claims, to that person.”

11. The doctrine of adverse possession is premised on the principle that a claimant who has had continuous and uninterrupted possession of the subject land for a period of 12 years or more and that such possession/occupation was hostile and against the interest of the true owner is entitled to apply to be registered as owner of such land as the title of the true registered owner is deemed extinguished by operation of the law. The doctrine of adverse possession was aptly defined in *Mtana Lewa vs Kahindi Ngala Mwangandi* (2015) eKLR where 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 are that the possession of the adverse possessor is neither by force of stealth nor under the owner's license. It must be adequate in continuity, in publicity and in extent to show that possession is adverse to the title owner.”

12. In this case, the Plaintiff contends that her late husband purchased the suit land in question in 1968 and that although he was working in Mombasa at the time, she asserts that both he and his mother took immediate possession of the land. The Plaintiff further additionally stated that after getting married to her deceased husband, she moved onto the property and has lived there for over Forty years, enjoying uninterrupted, exclusive, open, and peaceful possession of the land. She stated that despite the 1st Defendant's refusal to transfer the land to her husband, the Defendant has not taken any action to assert his title or evict her, from the suit land, and she has therefore acquired title to the land by virtue of adverse possession in the circumstances.

13. The Plaintiff's evidence was unchallenged as the Defendants did not enter appearance or file any defense, leaving the Plaintiff's claims uncontroverted. I am persuaded that on the basis of the evidence, the Plaintiff has proved that she and her family have adversely occupied the suit land from the time her late husband entered into the sale agreement that was not completed. The Plaintiff in my view could sustain a claim of adverse possession independent of her late husband as she had all the time been in actual and physical possession of the suit land.

14. The title of the registered owner was extinguished on expiry of 12 years from the time the possession of the Plaintiff's family became adverse which as at the latest can be assumed to have started running from 1975 when the deceased lodged a caution over the land though it could have been earlier. I am therefore satisfied that the Plaintiff has proved her case on a balance of probabilities and is entitled to Judgment in her favour.

15. I accordingly enter Judgment in favour of the Plaintiff as against the Defendants and make the following consequential orders:-

1. A declaration is hereby issued that the Plaintiff has become entitled to be registered as the owner of land parcel Mutira/Kangai/262 measuring 6.30 Acres on account of being in adverse possession for the prescribed period.



2. The Land Registrar, Kirinyaga is ordered to cancel the registration of Mitaru Njau as owner and in place thereof to register Agnes Wanjiru Mbogo, the Plaintiff herein as the owner of land parcel Mutira/Kangai/262.
3. The Deputy Registrar of the Court is authorized to execute any necessary documents in place of the 1st Defendant to facilitate the implementation of this Judgment.
4. There will be no order as to costs.

JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 17TH DAY OF JULY 2025.

J. M MUTUNGI

ELC - JUDGE

