



**Kanyoni v Mwangi (Environmental and Land Originating Summons
E039 of 2022) [2025] KEELC 5953 (KLR) (26 August 2025) (Judgment)**

Neutral citation: [2025] KEELC 5953 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E039 OF 2022
CG MBOGO, J
AUGUST 26, 2025**

BETWEEN

GEORGE WACHIRA KANYONI PLAINTIFF

AND

MANASSEH NDUNGU MWANGI DEFENDANT

JUDGMENT

1. Pursuant to Sections 37 and 38 of the Limitations of Actions Act, and Order 37 Rule 7 of the Civil Procedure Rules, the plaintiff filed the originating summons dated 19th August, 2022 seeking the following orders:-
 1. A declaration that the title issued to the defendant over Land Reference Number 15083/17 extinguishes by the plaintiff's adverse possession thereof for a period of more than 12 years in terms of the Limitations of Actions Act.
 2. That the plaintiff has become entitled by adverse possession to all that land measuring approximately 0.2002 Ha on Land Reference Number 15083/17.
 3. An order that the registrar registers the plaintiff as the proprietor of the said land measuring approximately 0.2002 Ha on Land Reference Number 15083/17.
 4. That the Land Registrar be directed that the order herein shall be an instrument of transfer of ownership.
 5. That the Land Registrar to dispense, procure and produce certificates of titles to be issued to the plaintiff.
 6. That pending the determination of the matter, an injunction be issued restraining the defendant whether by her servants, agents, employees or otherwise howsoever from illegally



or otherwise interfering with the plaintiff's quiet possession and enjoyment of the said Land Reference Number 15083/17.

7. That costs of this application be provided for.
2. The application is premised on the grounds that the plaintiff has been in possession of the suit property for over 12 years prior to the filing of these proceedings. The plaintiff filed his affidavit in support of the application sworn on 24th August, 2022. The plaintiff deposed that he has been residing on the property known as LR No. 15083/17 under title number IR. 52914 since the defendant vacated the same on her own volition in 2008. Further, that the property is located in Muthaiga North, and that over the past 14 years, he has enjoyed uninterrupted possession over the land openly and as of right.
3. The plaintiff further deposed that since he took possession, the defendant has never visited the land, and that he is well known to the neighbours and their servants. That since his occupation, he has mowed the lawns, trimmed the fences and kept the property in good shape.
4. The application was further supported by the supplementary affidavit of Kithinji Mark sworn on 11th January, 2023. For purposes of these proceedings, I will refer to the deponent as Mark. Mark deposed that he resides and works as a caretaker and gardener at Parkside Estate off Coffee Garden Drive, and that the plaintiff is well known to him. He deposed that the plaintiff has been in actual occupation and utilization of the property, and that he did not forcefully or fraudulently evict the defendant from the same. Mark further deposed that the whereabouts of the defendant are unknown for a period of over 14 years.
5. This matter proceeded for hearing on 27th March, 2025. The plaintiff, PW1 adopted his affidavit sworn on 24th August, 2022 as his evidence before the court. He also relied on the supplementary affidavit sworn by Mark on 11th January, 2023. He relied on the annexures contained in the affidavits as exhibits which he produced. PW1 testified that he has lived on the suit land openly without secrecy, and that he has occupied the land peacefully and without any force. He testified that his occupation on the land has been without the licence or permission of the owner. It was his testimony that the land is the only home that he has, which he has been in continuous and uninterrupted possession for seventeen (17) years. PW1 informed the court that the defendant has never taken any action to remove him from the land, and that the said defendant became the registered owner of the land way back in 2004.
6. The plaintiff filed his written submissions dated 10th April, 2025 where he raised the issues for determination as whether the plaintiff has acquired the suit property by way of adverse possession and if so, whether he should be registered as the owner thereof in place of the defendant.
7. On this issue, and while relying on the cases of *Salim v Boyd and Another* (1971) EA 550, *Celina Muthoni Kithinji v Safiya Binti Swaleh & 8 others* [2018] eKLR, *Kimani Ruchine & another v Swift Rutherford Co. Ltd & another* (1977) KLR 10, and *Samuel Kihamba v Mary Mbaisi*, KSM CA No. 27 of 2013 the plaintiff submitted that he has been in occupation of the suit property without secrecy, peacefully and without force, without the permission of the owner and with the intention of having it as his own in exclusion of the defendant.
8. The plaintiff submitted that he has established to the required standard of proof, that he has acquired the same by adverse possession and the title held by the defendant has been extinguished by law.
9. I have considered the pleadings, the testimony and the evidence tendered by the plaintiff. I am of the view that the issue for determination is whether the plaintiff is entitled to the orders of adverse possession.



10. The principle of adverse possession is well settled under the *Limitation of Actions Act*. Section 7 of the Act provides; -

“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. Section 13 (1) and (2) of the Act further provides;

“1. A right of action to recover land does not accrue unless the land is in the possession of some person in whose favour the period of limitation can run (which possession is in this Act referred to as adverse possession), and, where under sections 9, 10, 11 and 12 of this Act a right of action to recover land accrues on a certain date and no person is in adverse possession on that date, a right of action does not accrue unless and until some person takes adverse possession of the land.

2. Where a right of action to recover land has accrued and thereafter, before the right is barred, the land ceases to be in adverse possession, the right of action is no longer taken to have accrued, and a fresh right of action does not accrue unless and until some person again takes adverse possession of the land.”

12. To prove a claim of adverse possession, a claimant has to provide sufficient evidence to substantiate his claim. In the case of *Gabriel Mbui vs Mukindia Maranya* [1993] eKLR, it was held:-

“The burden of proving title by adverse possession rests upon the person asserting it. This is to say the burden of proof is upon the person setting up and seeking to prove title by adverse possession (*Mamuji v Dar* [1935] 2 E A CA 111, *Bwana v Ibrahim* (1948) 15 EACA 7; and *Forbes, JA, in Abdulkarim and another v Member for Lands and Mines and another 1* [1958] EA 436). He proves it on the usual standard of proof in civil cases namely, on a balance of probability. What does he prove? He proves three adequacies: continuity, publicity, and extent. For to prove title by adverse possession, it is not sufficient to show that some acts of adverse possession have been committed: the possession must be adequate in continuity, in publicity and in extent, to show that it is adverse to the rightful, paper title owner.”

13. Section 107 of the *Evidence Act* provides:

“Whoever desires any court to give judgment as to any legal right or liability dependant on the existence of facts which he asserts must prove that those facts exist.”

14. Further, Section 109 provides as follows: -

“The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of the fact shall lie on any particular person.”

15. In applying the above provisions of the law and the authority cited, the plaintiff herein contends that he has been in peaceful occupation, without interruption and in the knowledge of the neighbours of the suit property for over a period of 14 years. Upon careful analysis of the annexures and PW1’s testimony,



the plaintiff has not led any evidence as to the nature of his occupation. His entry into the suit property has not been disclosed. His relationship with the defendant has not been disclosed. Equally and more importantly, he contends in his submissions that this is the only land that he possesses which he calls home. He attempts to annex pictures with no evidentiary value as land which is supposedly the suit property.

16. It is not known when, where and who took the said image of the annexure. If at all this is where he lived, there are no structures to substantiate this claim. In my view, the plaintiff has failed to prove that he has acquired adverse possession on the land. I place reliance in Nairobi Civ No. 283 of 1990 Gabriel Mbui v Mukindia Maranya [1993] eKLR, where the court held:

“The adverse character of the possession must be established as a fact. It cannot be assumed as a matter of law from mere exclusive possession even if the mere possession has been for twelve or more years. In addition there must be facts showing a clear intention to hold adversely, and under a claim of right. De facto use, and de facto occupation must be shown”

17. In my view, the plaintiff has not demonstrated that he has acquired prescriptive rights over the property known as LR No. 15083/17 under title number IR. 52914. He has failed to discharge the burden of proof on a balance of probabilities. The originating summons dated 19th August, 2022 is hereby dismissed. I make no orders as to costs. It is so ordered.

Orders accordingly.

DATED, SIGNED & DELIVERED VIRTUALLY

THIS 26TH DAY OF AUGUST, 2025.

HON. MBOGO C.G.

JUDGE

26/08/2025.

In the presence of:

Mr. Benson Agunga - Court assistant

Ms. Karanja holding brief for Mr. Lubulellah for the Plaintiff

4| Page JUDGMENT ELCOS NO. E039 OF 2022 DELIVERED VIRTUALLY ON 26TH AUGUST, 2025.

