



**Kamau v Nyange & 3 others (Environmental and Land Originating Summons E046 of 2024) [2025] KEELC 5974 (KLR) (2 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 5974 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**  
**ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E046 OF 2024**  
**CG MBOGO, J**  
**SEPTEMBER 2, 2025**  
**IN THE MATTER OF LAND REFERENCE NUMBER 36/III/1146(IR 31725)**

**BETWEEN**

**MARY WAMBUI KAMAU ..... PLAINTIFF**

**AND**

**KITOLO NYANGE ..... 1<sup>ST</sup> DEFENDANT**

**JOEL KILONZO ..... 2<sup>ND</sup> DEFENDANT**

**JULIUS MUTUNGI NGATI ..... 3<sup>RD</sup> DEFENDANT**

**MUTUNDU KIMITHI ..... 4<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. Pursuant to Order 37 of the Civil Procedure Rules, Section 5 of the [Civil Procedure Act](#) and Section 38 of the [Limitation of Actions Act](#), the plaintiff filed the originating summons dated 4<sup>th</sup> July, 2024 seeking a determination of the following questions:-
  1. Whether the plaintiff having been in continuous, open and uninterrupted possession of Land Reference Number 36/ III/ 1146 should be and is hereby declared and registered as the sole proprietor of the suit land in place of the defendants and the defendant's title to the suit Land Reference Number 36/III/1146 be deemed to have been extinguished through adverse possession of the same plaintiff.
  2. Whether the defendants should transfer to the plaintiff the suit land which is occupied by the plaintiff, within 60 days of the date of this order, failing which the high court's deputy registrar do execute all documents necessary for such transfer of the said Land Reference Number 36/ III/ 1146 to the plaintiff and any processing costs to be paid by the plaintiff.



3. Whether an order and declaration ought to issue that the defendant's title to the portion of the suit land described as Land Reference Number 36/ III/ 1146 be deemed to have extinguished through adverse possession by the plaintiff and consequently the plaintiff has become entitled to the same.
  4. Whether the defendants by themselves, their servants or agents should be restrained from alienating, selling, disposing of, utilizing, charging, developing or in any manner using the title for the suit Land Reference Number 36/III/1146 in any manner derogating from the plaintiff's claim pending the hearing and determination of this suit.
  5. Whether the defendants should meet the costs of this suit.
2. The application is supported by the affidavit of the plaintiff sworn on even date. The plaintiff deposed that her late husband PMG Kamau had entered into an agreement for sale dated 28<sup>th</sup> December, 1994 with one James Kiarrii Gitumbi who had purchased the property from the defendants but he was yet to effect transfer to his name. The plaintiff deposed that her husband proceeded to make payment of Kshs.1,200,000/- towards purchase of the suit property and gave her possession which she has developed a commercial property and has managed the same for 29 years.
  3. The plaintiff deposed that together with her family, they have been in exclusive possession, and have caused substantial development on the property including rental units which they have leased out.
  4. The originating summons was canvassed by way of written submissions. The plaintiff filed her written submissions dated 23<sup>rd</sup> April, 2025 where she raised one issue for determination which is whether the application for adverse possession meets the legal threshold for the orders sought.
  5. On this issue, the plaintiff submitted that she has been in open, uninterrupted, and exclusive possession of the suit property for over 30 years. She submitted that her possession commenced through her husband who entered into a sale agreement with the registered proprietor James Gitumbi in 1994. That upon the demise of her husband, she continued to occupy, develop and derive economic benefit from the suit property through leasing out of built structures. She relied on the cases of Wambugu v Njuguna [1983] KLR 173, Mtana Lewa v Kahindi Ngala Mwangandi [2015] eKLR, Kasukuu Mwaani Investments Ltd & 4 Others [2004] 1 KLR 184, Public Trustee v Wanduru Ndegwa [1984] eKLR and Githu v Ndeete [1984] KLR 776.
  6. The plaintiff further urged the court to take cognizance of the case of Kweyu v Omuto [1990] KLR 709, and submitted that the registered owner's rights became extinguished after 12 years of uninterrupted possession pursuant to Section 7 of the Limitations of Actions Act. Further reliance was placed in the cases of Chevron (K) Ltd v Harrison Charo wa Shutu [2016] eKLR and Mbira v Gachuhi [2002] 1EALR 137.
  7. I have considered the pleadings, the evidence tendered and the written submissions as well as the authorities cited. In my view, the issue for determination is whether the plaintiff meets the legal threshold for the grant of the orders sought.
  8. The originating summons is undefended, and while it may be so, the court has to satisfy itself that indeed the plaintiff has met the threshold for the grant of the orders sought. The plaintiff contended that her entry into the suit property, was through purchase, by her late husband from one James Kiarrii Gitumbi who had purchased the land from the defendants. The said agreement was entered into on 28<sup>th</sup> December, 1994 but as per the evidence, it appears that the agreement was entered into in the year 1995. She stated that after purchase of the property, her late husband gave her possession of the same, and she has developed the same through leasing out the property for rent, where she derives an income.



This statement was further contained in the witness statements of Grace Wambui Kariuki and Moses Njoroge. The plaintiff supplied a copy of the marriage certificate, a copy of the title, the agreement, the letters and documentation of rent received from tenants.

9. 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.”

10. 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.”

11. From the above provision of the law, it is clear that the matter before the court is for adverse possession, where the rights of a registered title to land is extinguished upon lapse of 12 years. To prove a claim of adverse possession, the plaintiff 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.”

12. To start with, there is need to establish when the time started running owing to the time of entry suggested by the plaintiff. Section 4 (1)(a) of the Limitations of Actions Act provides that:-

“The following actions may not be brought after the end of six years from the date on which the cause of action accrued—

a. actions founded on contract”



13. The plaintiff's late husband entered into a sale agreement dated 28<sup>th</sup> December, 1995 with James Kiarii Gatumbi who had purchased the same from the defendants. However, she contended that transfer was not effected even after completion of payment of the purchase price. By virtue of the above provision of the law, an action for a claim of the suit property could not be brought after six years from this date. This means that the plaintiff's late husband lost his claim of ownership if at all he would have sought to enforce terms of the agreement, after this period. Thus, for a claim of adverse possession to succeed in such instance where the entry was through a sale agreement, time starts running after the end of the six years period from the time the sale agreement was executed i.e. 29<sup>th</sup> December, 2001. Thus, for Section 7 of the Act to apply, a claim of 12 years after 29<sup>th</sup> December, 2001 would be the ideal time for consideration. In this case, a claim for adverse possession ought to have accrued from 29<sup>th</sup> December, 2013, and not after purchase as claimed by the plaintiff.
14. The question then is, has the plaintiff's occupation been continuous, open and uninterrupted from 29<sup>th</sup> December, 2001 to 29<sup>th</sup> December, 2013? In the case of *Mtana Lewa v Kahindi Ngala Mwangandi* [2015] eKLR, the Court of Appeal stated as follows: -
- “In terms of Sections 7,9,13,17,37 and 38 of the title of a registered owner of land will be extinguished and vested in a third party who proves that he has been in possession of the land continuously and uninterrupted for a period of 12 years; that such possession has been open and notorious to the knowledge of the owner; that the possession has been without the permission of the owner; and that the third party has asserted a hostile title and dispossessed the true owner.”
15. As I place reliance on the above authority, the evidence tendered by the plaintiff is uncontroverted, no one has laid claim over the suit property. I am satisfied that her occupation of the suit property has been open, continuous and uninterrupted. She has demonstrated utilization of the suit property through rental income, and in my view, the plaintiff has on a balance of probabilities satisfied the court that she is indeed entitled to the orders sought.
16. From the above, this court finds merit in the originating summons dated 4<sup>th</sup> July, 2024, and it is allowed in the following terms: -
- i. The plaintiff is declared to have acquired rights over Land Reference Number 36/ III/ 1146 as against the defendants by virtue of the doctrine of adverse possession.
  - ii. The Registrar of Lands is hereby directed to register the plaintiff herein as the proprietor of Land Reference Number 36/III/ 1146, and issue her with a title deed to that effect.
  - iii. The suit is undefended, I make no orders as to costs.
- Orders accordingly.

**DATED, SIGNED & DELIVERED VIRTUALLY THIS 2<sup>ND</sup> DAY OF SEPTEMBER, 2025.**

**HON. MBOGO C.G.**

**JUDGE**

**02/09/2025.**

In the presence of:

Mr. Benson Agung - Court assistant

Mr. Omondi holding brief for Mr. Ikuu for the Plaintiff

