



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC CASE NO 109 OF 2017

FORMERLY MERU ELC CASE NO. 44 OF 2013

FREDRICK MBUBA ADIEL.....PLAINTIFF

VERSUS

NDURU NJERU.....DEFENDANT

JUDGMENT

1. This suit was filed in court by way of Originating Summons which states:

ORIGINATING SUMMONS

ORDER XXXVI RULE 3D & 3F OF THE CIVIL PROCEDURE RULES

LET NDURU NJERU of P. O. Box 78 Maua within 15 days after the service of this summons upon him enter an appearance to this summons of Fredrick Mbuba Adiel the applicant herein who claims to be and has been in actual possession and occupation of all that which is contained in LR: KARINGANI/NDAGANI/1405 since 1976 to date by adverse possession and has an overriding interest for determination of the following questions:-

1. Whether the respondent is the registered proprietor of all that parcel of land known as LR: KARINGANI/NDAGANI/1405.
2. Whether the respondent has ever lived, cultivated or made use of all that which is contained in LR: KARINGANI/NDAGANI/1405 since 1976.
3. Whether the Applicant is and has been in actual possession of LR: KARINGANI/NDAGANI/1405 since 1976.
4. Whether the respondent has actual knowledge of the applicant's occupation of LR: KARINGANI/NDAGANI/1405.
5. Whether the respondent has ever since 1976 given notice to the applicant to vacate or give possession in any manner in LR:KARINGANI/NDAGANI/1405.
6. Whether the applicant has acquired an overriding interest over and against the respondent's interest on all that which is contained in LR:KARINGANI/NDAGANI/1405.
7. Whether the applicant has acquired absolute title to all that which is contained in

LR:KARINGANI/NDAGANI/1405 measuring approximately 0.61 hectares.

8. Whether the applicant is entitled to be registered as the absolute proprietor of all that which is contained in LR:KARINGANI/NDAGANI/1405 measuring approximately 0.61 Hectares which has been in his actual possession and occupation since 1976 to date.

9. Whether the applicant shall be registered as absolute proprietor of all that parcel of land known as LR:KARINGANI/NDAGANI/1405.

10. Whether the respondent should be ordered to execute all the necessary documents to effect transfer including necessary application for consent and transfer.

11. Whether the applicant is entitled to the costs of this suit.

This summons is supported by the annexed affidavit of FREDRICK MBUBA ADIEL and other reasons and grounds and evidence to be offered at the hearing hereof and the annexed certified copy of the register of parcel of LR:KARINGANI/NDAGANI/1405.

Dated at Chuka this 12th day of June, 2006.

I.C MUGO & CO

ADVOCATES FOR THE APPLICANT

2. The Originating Summons was supported by the affidavit of the applicant which states as follows:-

I, FREDRICK NDUBA ADIEL OF P. O. Box 188 CHUKA in the Republic of Kenya makes oath and states as follows:

1. That I am the applicant herein above named and hence competent to make and swear this oath.
2. That the parcel of land known as LR:KARINGANI/NDAGANI/1405 is registered in the name of NDURU NJERU (Annexed hereto and marked F.N.A. "I" is a copy of green card).
3. That I and my family have been in actual possession of all that which is contained in LR:KARINGANI/NDAGANI/1405 since 1976.
4. That it is within my knowledge and information that the registered proprietor of LR:KARINGANI/NDAGANI/1405 is not and has not been in possession or occupation of LR: KARINGANI/NDAGANI/1405 since 1976.
5. That I wish to aver that the registered proprietor of LR:KARINGANI/NDAGANI/1405 has since 1976 been aware that I was in actual possession of LR:KARINGANI/NDAGANI/1405 without any interruption.
6. That I have been cultivating LR: KARINGANI/NDAGANI/1405 since 1976 and I have made considerable developments therein including three semi-permanent residential houses, 500 coffee plants, 200 banana plants amongst other crops.
7. That my occupation and or use of the land for all that period has been open (sic) continuous without interruption and force or authority of the respondent.
8. That for the entire period I have been in occupation of the said land and which period is in excess of 12 years the respondent has taken no steps to have me evicted from the said land.

9. That all my neighbours and relatives do regard me as the owner of all that which is contained in LR: KARINGANI/NDAGANI/1405.

10. That in view of the foregoing, I do claim title to all that which is contained in LR: KARINGANI/NDAGANI/1405 by nature of adverse possession.

11. That all which is deponed herein is true to the best of my knowledge, belief and information.

3. The defendant filed a replying affidavit which states as follows:

I, NDURU NJERU of P. O. Box 543 CHUKA do make oath and states as follows:

1. That I am the respondent herein and hence competent to swear this affidavit.

2. That I am the sole registered proprietor of all that piece of land known as KARINGANI/NDAGANI/1405.

3. That it's true I gave a small portion of my land in 1996 to the applicant who is my relative to cultivate.

4. That I have occupied the suit land from childhood to date.

5. That I have planted coffee on the aforesaid parcel of land (attached a copy of my share certificate marked NNI).

6. That I have on several occasions requested the applicant through emissaries and the local administration to vacate of (sic) land in vain.

7. That the applicant has not been in quiet and continuous occupation of the suit land as alleged or at all.

8. That the temporary structures put on the suit land by the applicant were put without my consent and we have had several cases over the same before the elders.

9. That I obtained my certificate of title on 22nd May, 2006 and the same is already under caution from my son claiming licenses (sic) interest (attached a copy of certificate of search marked NNII).

10. That the applicant has his own separate parcel of land at Kanwa at Chuka and is only driven by malice to abuse my generosity and take my land.

11. That I have a family with children and sons and apart from a parcel of land I bought at Athi-Maua a very remote area is less than $\frac{3}{4}$ of an acres, I have no other land (sic).

12. That I was given the suit land by my in laws and it would be grossly fair (sic) for the applicant to rely on technicality to take any (sic) land.

13. That in any event I am advised by my counsel on record that adverse possession does not apply at all.

14. That what is deponed herein is true to the best of (sic) knowledge, belief and information.

4. This suit was originally filed in the High Court at Embu in 2006 as Embu HCCC No. 51 of 2006. It was transferred to Meru and became Meru ELC No. 44 of 2013. Eventually it was transferred to Chuka,

where it became ELC NO.109 of 2017.

5. At one point, after all the plaintiff's witnesses had given their evidence at Meru, the file disappeared or in other words could not be traced. The file was reconstructed, whereupon the court ordered the file to be kept under lock and key. The suit was then heard afresh.

6. PW1, the plaintiff told the court that he had testified on 14.5.2015 before the original file went missing. He adopted his witness statement signed on 22.8.2013 as his evidence.

7. He avers that the defendant, his first cousin, approached him in 1976 and informed him that their common clan Itarina Murobo had given him land. He expressed his fear that next to the land lived a witchdoctor and he was afraid that if he moved his family to the land, the witchdoctor called Njoka Nkari would poison his children. The plaintiff told the defendant that he did not fear witches. The defendant offered the land to him and refused to accept any money in return opining that since the clan had given the land to him freely, he would not sell it to him "because he did not buy it." The defendant also refused to reduce their agreement into writing, arguing that when their common clan gave him the land they did not reduce the offer into writing.

8. The plaintiff avers that after the defendant offered him the suit land, very early the next morning the defendant showed him the boundaries of the land, as he could not do it during the day as he feared being bewitched. That same year the plaintiff started working on the land and in 1977, he built a temporary house and moved his family into the land, where he and his family have been living since. In October of the same year he planted coffee in the suit land. He says that the defendant never planted any crops on the land and never built any structure.

9. The plaintiff states that the defendant is his close relative because his father and the defendant's father are step brothers as they share the same father but different mothers.

10. The plaintiff continues to say that at around the time he moved into the suit land, the defendant invited him to visit his land in Tigania (Igembe) where he had established a home. He continues to say that a few years later he went to the defendant's home in Igembe district to ask him to transfer the suit land to him. He claims that the defendant told him that as he was involved in a case with a neighbour, the matter of transferring the suit land to the plaintiff would have to wait.

11. As the plaintiff had a temporary house since 1977, he built a semi permanent house in 1985 and he connected electricity to the house in 1993.

12. In his witness statement, the plaintiff narrates how on many occasions he approached the defendant to transfer the suit land to him but only got false promises. He says that on some of the occasions he would give the defendant not less than 500/= per trip to take care of transport costs but each time the defendant would renege on his promise to go to Chuka to sign the requisite documents.

13. PW1, states that he informed Chief Njagi Ntiba and both of them went to the defendant's home and he promised to go to the chief's office on 10th March, 2006. He did not go to the chief's office as he had promised. The chief invited him to go to Chuka on 16th April, 2006 at 10.00am. Although the family members and elders went to the chief's office, the defendant ignored the chief's summons. After this, the clan elders wrote to the defendant to go to the chief's office on 20th May, 2006 at 10.00am to discuss the transfer of the suit land to the plaintiff. Once again the defendant did not go to the chief's office.

14. The plaintiff avers that at one point, the defendant offered to give him 0.25 of an acre out of the suit land which is 0.6 Hectares (Approximately 1.482 acres) but he declined the offer as he had extensively developed the whole land and also because the original understanding was for him to own the whole of the suit land. He avers that, he had the land cautioned and filed this suit.

15. The plaintiff avers that since 1976, his peaceful occupation of the suit land had never been interfered with or interrupted by the defendant.

16. The plaintiff produced as exhibits the following documents:

1. Minutes of family meetings held on 16th June, 2006 and other dates.
2. Letter by Chief Kiangondu Location to the District Registrar Meru South dated 24th May, 2006.
3. Receipt No.204507 from Coffee Board for sale of seedlings.
4. Receipt No.5305 dated 17th April, 1979 from FREDRICK MBUBA for Kshs.100 being payment of society house.
5. Application for wiring of premises dated 30th March, 1993.
6. Two receipts from KPLC dated 14th March, 1995.
7. Electricity statement
8. Letter to Nduru Njeru by Chief Kiangondu location dated 3rd April, 2006
9. Letter dated 16th April, 2006 by Mbuba M'nandi to Nduru Njeru

17. In cross examination, the plaintiff told the court that the suit land had been given to the defendant by the clan. He also re-stated that when the suit land was offered to him by the defendant, there was no written agreement. He also told Mr Nyauchi, who was cross examining him on behalf of the defendant that there was evidence that the defendant had been invited to a meeting by the clan elders. I do note that the cross-examination took less than 5 minutes and did not in a material way shake the evidence contained in the plaintiff's written statement.

18. PW2 told the court that her name was Cianthuni Njoka and that she knew both the plaintiff and the defendant Nduru Njeru. She said that she had recorded a witness statement on 22.8.2013. She asked the court to adopt that statement as her evidence in this suit.

19. In her witness statement, PW2 states that she is a neighbor of the plaintiff at Kithembeni village and that she settled in the said village in the 1960's.

20. PW2 states that the suit land parcel number KARINGANI/NDAGANI/1405 was given to the defendant by her late husband Njoka Nkari in the early 1970's. She goes on to say that the suit land was sub divided from her late husband's land and given to the defendant who was registered as proprietor.

21. PW2 avers that after the land was given to the defendant, he gave it to his cousin, the plaintiff in 1976. She states that the plaintiff has lived on the land and developed it since 1976.

22. PW2 states that since the land was given to the plaintiff in 1976, the defendant has never occupied it or conducted farming on the suit land. She also states that he has never constructed a house on the land.

23. The cross-examination by the defendant's counsel was very short. She said that she was not aware of any written agreement between the plaintiff and the defendant. She also told the court that the plaintiff had moved into the suit land with the knowledge of the defendant.

24. PW3 told the court that his name was Stanley Njagi Ntiba, the chief of Kiangondu Location where the suit land is situated. He said that the plaintiff was a resident of his location. He told the court that the plaintiff and the defendant were close clan relatives. He asked the court to adopt his witness statement dated 18.6.2015 as his evidence in this suit. He confirmed that he had written a letter dated 3.4.2006 to the defendant summoning him to his office to discuss the suit land with the elders. After the defendant was not cooperative, he wrote a letter to the Land Registrar requesting that the land be cautioned because

the defendant had taken the land's title and could sell it, thereby rendering the plaintiff landless.

25. Pw3 told the court that the plaintiff had put up a semi permanent house on the suit land. He also testified that the plaintiff had coffee, other trees and bananas on the suit land. He also told the court that the plaintiff was also a dairy farmer. He also testified that the plaintiff had connected electricity to his premises.

26. In his witness statement, PW3 states that the plaintiff had reported to him that he had requested his cousin, the defendant, to transfer the suit land to him but the defendant had refused to do so. He continues to say that he called the family and clan elders who requested him as the area chief to go and look for the defendant at Igembe and to request him to come to Chuka to meet the family and the clan elders.

27. He states that he travelled all the way to the defendant's home, in the company of the plaintiff, where they met the defendant and they all agreed that they would meet in his office on 10th March, 2006, together with the clan and family members with a view to settling the dispute pitting the plaintiff against the defendant. He also testifies that in his presence the defendant promised that he would go to Chuka to transfer the land to the plaintiff.

28. PW3 states that on 10th March, 2006, the defendant did not go to the chief's office as promised although the family and clan elders went to the chief's office. The family and clan elders requested him to write an official letter to the defendant and deliver it to him in person. He states that he did not find the defendant at home but gave the letter to his son Mugambi Nduru and asked him to give the letter to his father. He states that even this time the defendant refused to respect the summons and failed to go to Chuka. He explained that it is after this incident that elders themselves wrote a letter to the defendant requesting him to meet them and informing him that that was the final time they were inviting him. The elders instructed the plaintiff to personally deliver the letter to the defendant in person. PW3 states that the defendant came to Chuka on 4th June, 2006 and met the elders but he did not attend the meeting as he had commitments elsewhere.

29. The cross-examination by the defendant's advocate was very short. PW3 told the court that he had no knowledge of any written agreement between the plaintiff and the defendant. He also said that he did not know if the plaintiff moved into the suit land with the permission of the defendant. He also laconically stated that the plaintiff had occupied the suit land in the 1970's.

30. DW1, the defendant gave evidence that he is the registered owner of the suit land. He said that the plaintiff, when he left government service asked him to allow him to use his land. He said that at that time the land had a house and some coffee trees.

31. DW1 told the court that he did not know the year he allowed the plaintiff to move into his land. He also said, without saying when, that he had told the father of the plaintiff to tell him to vacate his land. It was his evidence that the plaintiff's father retorted that he did not want to be in "involved in the stupidity of his son". He also said that he had talked to an unnamed sub chief about this matter. He told the court that the sub chief was now deceased.

32. DW1 testified that the plaintiff had land elsewhere which had been bought by his son for him. At the tail end of his examination-in-chief, DW1 asked the court to adopt his witness statement dated 31st December, 2013 as his evidence in this suit.

33. DW1 produced as exhibit No. 2 a share certificate for an unnamed Coffee Society dated 18th April, 1962. There was also another share certificate for Chuka Coffee Growers Cooperative Society Ltd dated 22nd October, 1962 and finally a share certificate for Chuka Coffee Growers Cooperative Society Ltd dated 6th November, 1963.

34. During cross-examination by the plaintiff's advocate, DW1 told the court that he lived at Maua. He also said that he had about 2 acres of tea bushes at Maua. DW1 told the court that he had allowed the

plaintiff to use his land to give him time to purchase his own piece of land. He told the court that he could not remember when the plaintiff occupied the suit land. DW1 was, however, unequivocal that the plaintiff lived on the suit land. DW1 agreed that the plaintiff had installed electricity in his premises standing on the suit land but said that he did not know when electricity was installed there.

35. Surprisingly, also during cross-examination DW1, told the court that he did not know the registration number of the suit land. He also said that the plaintiff had a house in another piece of land which was constructed by his father.

36. DW1, still in cross-examination told the court that all this time the plaintiff occupied his land, the family had agreed that the plaintiff would be bought land by his son “who was a Judge” and then he would move out of his land.

37. I note that in his witness statement DW1 says that in 1976, he gave a portion of his land to the plaintiff because he had “nowhere to live or cultivate”. He acknowledges attempts to have the dispute resolved by the chief. He, however contradicts himself by stating:” “That the plaintiff has not been in occupation of the suit land”.

38. DW1 in his statement says that the land he bought in Maua is less than ¼ acres in size. And yet he said when being cross-examined that he had about 2 acres of tea bushes on this land. Both positions cannot be correct at the same time. Two acres of tea bushes cannot fit in ¼ acres of land.

39. DW1 in his statement says: “That the land which the plaintiff is claiming was given to me by my in-laws and it would be grossly unfair for the plaintiff to claim the land which is not registered in his name”. And yet during cross-examination DW1 told the court that the suit land was clan land.

40. I note that the defendant’s exhibit 2 was a bundle of share certificates intended to show that he grew coffee on the suit land. The first one is dated 18th April, 1962. The second one is dated 22nd October, 1962. The 3rd one is dated 6th November, 1963. All the certificates except the first one which does not say the society which issued it, are from Chuka Coffee Growers Cooperative Society Limited.

41. These certificates were issued twelve or thirteen years before the defendant became owner of the suit land. He could not have grown coffee on the land before he owned it. I find that the defendant’s exhibit 2 was adduced as evidence in order to mislead the court.

42. DW2, Salesio Muchiri Muriangi, asked the court to adopt his witness statement dated 31.12.2013 as his evidence in this suit. He states that he is a neighbour of the defendant, next to the suit land. And yet the defendant was unequivocal that he lives at Maua. The suit land is in Chuka.

43. DW2, in his witness statement states that he is a peasant farmer who comes from Ndagani within Tharaka Nithi County. He avers that he knows both the plaintiff and the defendant. He laconically states that the suit land belongs to the defendant who is the registered proprietor.

44. DW2 states that the plaintiff had land at Kanwa at Chuka where he has a permanent house built by his son “for him but refused to vacate from the defendant’s land for no apparent reason”. DW2 also states that the defendant has planted coffee on the suit land.

45. During cross examination by the plaintiff’s advocate, DW2 told the court that his son was married to the defendant’s daughter. He told the court that although he knew the suit land well, he could not remember its registration number. He said that the plaintiff stays on the land.

46. DW2 also in cross examination said that the defendant moved to Tigania without saying when. He said that he did not know how big the defendant’s land at Tigania was as he had never visited him there. He also said that he knew that the defendant grew tea on his land at Tigania because the defendant had told him so. He also said that he did not know when the plaintiff was given the suit by the defendant.

47. During further cross examination, DW2 categorically stated that the plaintiff had a house on the suit land. He also said that the plaintiff had stayed on the suit land for many years and had planted tea and many trees on the land.

48. The plaintiff proffered the following authorities in support of the assertions filed by his advocate:

1. EUNICE KARIMI KIBUNJA AND MWIRIGI M'RINGERA KIBUNJA, NYERI CIVIL APPEAL NO. 89 OF 2009

2. RUITA KABUTU VERSUS ANNA WAMBUI ELIZA, KERUGOYA ELC NO. 207 OF 2013

49. The defendant proffered the following authorities in support of the assertions contained in written submissions filed by his advocate.

TITUS KIGORO MUNYI (APPELLANT)

AND

PETER MBURU KIMANI (RESPONDENT) –

NYERI COURT OF APPEAL C.A NO.28 OF 2014.

50. I consider that there is only one issue for determination in this matter. It is whether or not the plaintiff on the evidence tendered and countered by the defendant has or has not established that he is entitled to be the registered owner of the suit land through the doctrine of adverse possession.

51. I have carefully considered the pleadings, the oral evidence, the submissions and the authorities proffered by the parties in support of their assertions.

52. A common thread that runs through the authorities proffered by both the plaintiff and the defendant is that in matters concerning adverse possession, the facts and the circumstances surrounding each case must be considered before a court of law makes a determination as to whether adverse possession has been proved or disproved. I opine that all the three authorities proffered by the parties are good law and authorities in their circumstances and offer good guidance to this court.

53. The circumstances of this suit are rather unique. There is no dispute as to who is in occupation of the suit land. The plaintiff is in occupation. There is no dispute that the plaintiff has been in exclusive and open occupation of the suit land. There is also no dispute that the plaintiff's occupation of the suit land has never been interrupted by the defendant since 1976.

54. The plaintiff's case is that the defendant voluntarily gave the suit land to him to own it permanently in 1976. The plaintiff avers that the suit land was clan land (ancestral land) given to the defendant by their Itarina Murobo Clan. He built a house and moved his family to the land in 1977 and they have lived on the suit land since then. The plaintiff's evidence is that he has extensively developed the suit land by, inter alia, constructing a semi permanent house, installing electricity at the property and planting coffee and other trees.

55. The plaintiff says that he has continuously over a period of time been requesting the defendant to transfer the suit land to him but despite many false promises, the defendant refused to transfer the suit land to him. He involved family and clan members and the chief but the defendant refused to transfer the suit land to him. Hence the filing of this suit.

56. PW3, the chief in charge of the area where the suit land is situated confirmed that the plaintiff had been in occupation of the suit land since 1976. He testified that, in his presence, the defendant had promised to have the suit land transferred to the plaintiff. He also confirmed several unsuccessful attempts, which in the main were rebuffed by the defendant, by the family, clan elders and himself to

resolve the dispute apposite to the suit land.

57. The defendant's evidence was that he had merely allowed the plaintiff to move into his land because he was a landless cousin. He said that at one time he had asked the father of the plaintiff to ask the plaintiff to move out of his land. He also claimed to have sent a deceased sub – chief to tell the plaintiff to move out of the suit land. The defendant also confirmed that the suit land was originally clan land. This contradicts his claim in his witness statement that the suit land had been given to him by his in laws. In his written statement the defendant told the court that the land which had his own home at Igembe was ¼ acres in size. And yet during cross-examination, he said that he had about 2 acres of tea bushes in the suit land.

58. PW2 testified that the suit land was ancestral land and claimed that it had been hived off her husband's land. She supported the plaintiff's ownership of the land and confirmed his uninterrupted and open occupation of the land which she said the defendant had given it to him.

59. It is my finding that the defendant was untruthful on at least two occasions. This being the case, it becomes difficult to know when he told the truth and when he did not. Hence the veracity of his evidence is veritably rendered to be without much integrity.

60. DW2, who is an in law of the defendant as his son is married to the defendant's daughter testified that the suit land was registered in the name of the defendant. Of course, this issue is not in dispute. He confirmed that the plaintiff has been in occupation of the suit land. But a statement he made during cross-examination that the defendant had tea bushes at Igembe where he has a home interests me. This is because he said that he had never visited the defendant's homestead and that he knew he had tea bushes on the land ONLY because the defendant had told him so. This brings him out as a witness ready to testify not what he knew but what he was told by the defendant.

61. I find the evidence tendered by the plaintiff and his 2 witnesses credible. It was in congruence with their witness statements.

62. I find the defendant an untruthful witness. The evidence of DW2, his witness, was not very helpful in a matter involving adverse possession. He confirmed the long occupation by the plaintiff of the suit land. His evidence that the suit land was registered in the name of the defendant was superfluous. There is no dispute on that issue.

63. I observe that mere length of occupation cannot entitle a claimant to a determination that he or she owns land by way of adverse possession. However, the case of ***Kasuve Versus Mwaani Investments & 4 Others [2004] KLR 184*** offers erudite guidance in this area. At page 188, the court says:

“In order to be entitled to land by adverse possession, the claimant must prove that he has been in exclusive possession of land openly and as of right, without interruption for a period of 12 years, either after dispossessing the owner or by discontinuation of possession by the owner on his own volition”.

This opinion was quoted with approval by the Court of Appeal at Nyeri in the case of Eunice Karimi Kibunja (Appellant) AND Mwirigi M'Ringer Kibunja (Respondent), Nyeri Civil Appeal No. 89 of 2009.

64. From the evidence given by the plaintiff, and his witnesses, and supported by the defendant and his witness, it is not controverted that the defendant has been in open and exclusive occupation of the suit land and without interruption for a period of more than 12 years. The issue to be determined is if that occupation was of right. From the evidence proffered to court the plaintiff moved into the suit land with the permission of the plaintiff after the defendant gave him the land in 1976. By moving into the land with an intention to stay there permanently, the plaintiff dispossessed the land from the defendant. As the plaintiff's possession has been exclusive, open, as of right and without interruption since 1976, I find that the plaintiff is entitled to be registered as owner of the suit land.

65. Even if one were to fault the above finding, it is quite clear from the plaintiff's evidence, which I have accepted, that from at least around 1992, the plaintiff has been urging the defendant to transfer the suit land to him. Any claim that he was a licensee of the defendant, is debunked from this time. The time for computation of time for purposes of the required period for adverse possession starts running from then. Indeed the plaintiff's evidence is that some years after 1976 he went to the defendant's home in Igembe and asked him to transfer the suit land to him. He however does not specify the year he did that.

66. This suit was filed in 2006. From 1992 to 2006, a period of 14 years had expired. Whichever way I look at it, whether from 1976 or from 1992, a period of over 12 years had expired.

67. I answer the questions posed in the Originating Summons as follows:

1. The defendant is the registered owner of parcel No. KARINGANI/NDAGANI/1405.
2. The defendant has never lived on, cultivated or made use of land parcel No. KARINGANI/NDAGANI/1405 since 1976.
3. The plaintiff has been in actual possession of land parcel No. KARINGANI/NDAGANI/1405 since 1976.
4. The defendant has all along been in actual knowledge of the plaintiff's occupation of parcel No. KARINGANI/NDAGANI/1405.
5. The defendant has never since 1976 given notice to the plaintiff to vacate parcel No. KARINGANI/NDAGANI/1405.
6. The plaintiff has acquired an overriding interest over and against the defendant's interest in land parcel No. KARINGANI/NDAGANI/1405.
7. Through the doctrine of adverse possession, the plaintiff has acquired absolute title to land parcel No. KARINGANI/NDAGANI/1405 which is approximately 0.61 hectares in size.
8. The plaintiff is entitled to be registered as the absolute owner of and parcel No. KARINGANI/NDAGANI/1405.
9. The plaintiff should be registered as absolute owner of land parcel No. KARINGANI/NDAGANI/1405.
10. There being a court order, I do not find it necessary to answer this question. BUT should it be necessary, the DEPUTY REGISTRAR will sign all documents necessary to effect transfer of the land to the plaintiff.

68. In view of the fact that the parties are close relatives, even though generally costs follow the event, parties should bear own costs.

69. Consequently, judgment is entered for the plaintiff against the defendant in the following terms:

1. The plaintiff is declared to have become entitled by way of adverse possession of over 12 years to all that parcel of land known as KARINGANI/NDAGANI/1405.
2. The plaintiff be registered as the sole proprietor of land parcel No. KARINGANI/NDAGANI/1405.
3. The Land Registrar, Tharaka Nithi County, do register the plaintiff as the sole proprietor of land parcel No. KARINGANI/NDAGANI/1405.

4. Any restriction, caution or orders of inhibition which may have been registered against land parcel NO. KARINGANI/NDAGANI/1405 should be removed forthwith.

5. Should it be necessary for any documents to be signed to effect the registration of the plaintiff as owner of land parcel No. KARINGANI/NDAGANI/1405, the Deputy Registrar of this court is authorized and ordered to sign any such documents.

Delivered in open court at Chuka this **23rd day of October, 2017** in the presence of:

CA: Ndegwa

Njeru Ithiga for Plaintiff

Defendant or Advocate absent

P.M. NJOROGÉ

JUDGE