



**Muthaka v Munyoro (Enviromental and Land Originating Summons
6 of 2021) [2025] KEELC 196 (KLR) (30 January 2025) (Judgment)**

Neutral citation: [2025] KEELC 196 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 6 OF 2021**

JO OLOLA, J

JANUARY 30, 2025

**IN THE MATTER OF: ACQUISITION OF PLOT NO. 1207
COMPRISED IN THEGENGE UNJIRU/857 BY ADVERSE
POSSESSION**

**IN THE MATTER OF: THE ESTATE OF ANNE NYAMBURA MUNYORO
IN THE MATTER OF: THE LIMITATION OF ACTIONS ACT**

BETWEEN

JOHN KARARU MUTHAKA APPLICANT

AND

SIMON MATHAI MUNYORO RESPONDENT

JUDGMENT

Background;

1. By an Originating Summons dated 31st August, 2021 John Kararu Muthaka (the Plaintiff/Applicant) sought for the determination of the following issues:
 - a. Whether the Applicant should be declared to have become the legal owner entitled by adverse possession of over twelve (12) years since 2005 of Plot No. 1207 comprised in Thegenge/Unjiru/857 situated in Nyeri County.
 - b. Whether the Applicant should be registered as the sole proprietor of the said parcel of land namely Plot No. 1207 comprised in Thegenge/Unjiru /857 in place of Anne Nyambura Munyoro (deceased) in whose favour the land is currently registered;
 - c. Whether the last original title in respect of Plot 1207 comprised in Thegenge/Unjiru/857 which are with the Respondent be dispensed with; and



- d. Whether the Respondent should pay the Costs of this application to the Applicant.
2. The Originating Summons is premised on the grounds that the Applicant has been in open and uninterrupted occupation of the said parcel of land for a period in excess of 16 years and the Respondent and/or the estate of Ann Nyambura Munyoro's interests in respect of the same have been extinguished and the title now rests in the Applicant.
3. Simon Maathai Munyoro (the Defendant/Respondent) is opposed to the claim of adverse possession. In his replying Affidavit sworn on 4th October, 2021, the Respondent avers that his mother Anne Nyambura Munyoro (deceased) is the registered owner of the parcel of land known as Thegenge/Unjiru/857. He avers that following the death of his said mother he did together with his co-Administrator institute Nyeri Chief Magistrate Succession Cause No. 4 of 2019.
4. The Respondent asserts that the said Thegenge/Unjiru/857 has never been sub-divided and that his brother, one Simeon Muthaka Munyoro has been in occupation of the land where he has built a home for his wife and children. The Respondent avers that following the demise of their mother, he agreed with his brother and allowed him to till and harvest coffee thereon. He signed an agreement to that effect with his brother and the same was witnessed by his brother's three sons.

The Applicant's Case

5. The Applicant called two witnesses in support of his claim for adverse possession.
6. PW1- John Kararu Muthaka is the Applicant. He told the court he is a farmer and a cobbler and that the Respondent is his paternal uncle. Relying on the Supporting Affidavit and his statement recorded on 9th September, 2021, PW1 testified that on 25th July, 2005, he purchased the suit property from his uncle who later on signed a letter together with his wife and children consenting to the purchase. He told the court what he purchased was 1/3 of the suit property and that he has been cultivating maize and beans thereon ever since.
7. PW2- Francis Gachenge Kibiru is a retired driver and a cousin to the Applicant. Relying on his recorded statement dated 20th September, 2021, PW2 told the court that he had signed the sale agreement as a witness. He further testified that their uncle had first offered the land to him and that he is the one who approached the Applicant to buy the same. He told the court the Applicant has since 2005 been doing horticultural farming on the land.

The Defence Case

8. On his part, the Defendant called a total of four (4) witnesses.
9. DW1- Simon Maathai Munyoro is the Defendant herein. Adopting the contents of his Replying Affidavit to the Originating Summons, DW1 told the court that he was given Kshs. 150,000/= by the Applicant after which they wrote an agreement. He told the court his brother's children had not built on the land and that it was only his brother (the father of the Plaintiff) who has built on the land.
10. DW1 testified that in accepting the money, he understood that he was renting his coffee to his brother who paid him Kshs. 150,000/=
11. DW2 – Mary Njeri Munyoro is a farmer and the Defendant's Step Mother. Relying on her recorded statement filed herein on 15th June, 2022, DW2 told the court that she was not there and did not hear anything concerning the sale of land between the Applicant and the Respondent. She told the court Ann Nyambura was her co-wife and that Ann's land was sub-divided while her husband was still alive.



12. DW3- Luke Nderitu Mathai is a nurse and a son of the Respondent. Relying on his statement dated 4th October, 2021, he told the court he was not aware of any sale of land by his father to the Applicant.
13. DW4- Joseph Maina Mathai is a farmer, a businessman and a son of the Defendant. He told the court he was young when the alleged sale took place and would not have known about any agreement.

Analysis and Determination

14. I have carefully perused and considered the pleadings filed herein, the testimonies of the witnesses as well as the evidence adduced before the court. I have similarly perused and considered the submissions and authorities placed before me by the Learned Advocates representing the parties herein.
15. By the Originating Summons filed herein, the Plaintiff has urged the court to determine whether or not he has acquired Plot No. 1207 said to be comprised in all that parcel of land known as Thegenge/Unjiru/857 situated in Nyeri County by way of adverse possession.
16. The doctrine of adverse possession in Kenya is founded under the *Limitation of Actions Act*, Cap 22 of the Laws of Kenya. Section 7 of the said Act places a bar on actions to recover land after 12 years from the date on which the right accrued. Section 13 of the said Act provides that adverse possession is the exception to this limitation and provides as follows:
 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 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.
 3. For the purposes of this section, receipt of rent under a lease by a person wrongfully claiming, in accordance with section 12(3) of this Act, the land in reversion is taken to be adverse possession of the land.
17. Section 38 of the said *Limitation of Actions Act* allows a Claimant to apply to the court for orders of adverse possession and provides as follows: -

“Where a person claims to have become entitled by adverse possession to land registered under any of the Acts cited in section 37 of this Act, or land comprised in a lease registered under any of those Acts, he may apply to the High Court for an order that he be registered as the proprietor of the land or lease in place of the person then registered as proprietor of the land.”
18. In the matter herein, the Plaintiff asserts that on 25th July 2005, he did purchase the suit property from the Defendant who is his uncle and that he paid a total sum of Kshs. 150,000/= after which the Defendant granted him vacant possession of the land. It is the Plaintiff’s case that since the said purchase, he has enjoyed an open uninterrupted occupation of the suit property which is registered in the name of the Defendant’s mother the late Anne Nyambura Munyoro.
19. From his response to the claim and testimony before the court, the Defendant did not deny having been away from the land for a considerable period of time. It was however his case that he did not sell



his portion of the land to the Plaintiff. On the contrary, the Defendant told the court that following the death of his mother, he did execute an agreement with his brother Simeon Muthaka Munyoro who is also the Plaintiff's father allowing the said brother to till the land and harvest coffee therefrom. He told the court that his understanding of the agreement was that he had leased his portion of the land to the Plaintiff's father.

20. In support of his claim, the Plaintiff produced a letter of consent dated 19th July, 2005 (P. Exhibit 2) indicating that the Defendant, his wife Rael Njeri Mathai and three of their adult children had given their approval for the sale of land described therein as plot No. 1207.
21. In addition, the Plaintiff has produced a copy of the Sale Agreement dated 25th July, 2005 executed between himself and the Defendant. The said agreement provides in the relevant part as follows:-

“Sale of land agreement: plot No. 1207 Thegenge/unjiru

I Simon Mathai Munyoro have agreed to sell the above named land (at) Kshs. 150,000/= to John Kararu Muthaka. I have received Kshs. 137,000/=, remainder Kshs. 9,000/= to be paid later. Kshs. 4,000/= will be cater for land transfer cost at Land Registry Office Nyeri. Additional Kshs. 1,500/= for his properties in the houses. Total balance to be paid Kshs. 10,500/=.”

22. Contrary to his assertion that he had only rented out the land to the Plaintiff's father, it was evident from a perusal of the letter giving authority to sell the land as well as the Sale Agreement dated 25th July 2005 that the Defendant had indeed sold his portion of land to the Plaintiff.
23. It was also clear from a perusal of the Defendant's testimony before the court that the Defendant had a clear recollection of the sale transaction and that he received money from the Plaintiff. Asked in cross examination about the letter of consent and the sale agreement, the Defendant responded as follows:-

“It is true I was renting my coffee to my brother who was the Plaintiff's father. That was on a year I cannot remember. It could have been 1984. He paid me Kshs. 150,000/= which he sent his son to go get for me. But I think that was for the agreement. Thereafter I have never received any money from my brother.

It is true Rael Mathai is my wife, David Munyoro Mathai is my son and so is Samuel Mathenge. It is true they all allowed me to sell but I have other children who disagreed. I have 13 children. Ten (10) refused the sale but they did not return the money to the Plaintiff.”

24. Arising from the foregoing, it was evident that the Defendant had indeed received the full purchase price for his portion of the suit property. Thereafter, he discontinued his possession of the land and had never returned thereto.
25. The Defendant did not tell the court whether he communicated the objection to the sale by his other children to the Plaintiff. If the Defendant had changed his mind about the transaction, he should have taken immediate steps to re-possess the land for the Plaintiff's possession thereafter could only be considered “hostile” and/or “adverse” to his interest therein.
26. Otherwise in circumstances such as this where the Plaintiff claims adverse possession arising out of an agreement of sale, courts have held that the purchaser's possession becomes adverse to the vendor once the purchase price is paid in full. Time starts to run from that point, and on completion of the statutory time limit of 12 years, the purchaser would be entitled to become registered as the proprietor of the land under adverse possession [See Peter Mbiri Michuki –vs- Samuel Mugo Michuki (2014) eKLR]



27. In the matter herein, it is apparent that the parties herein entered into a Sale Agreement in the year 2005 and the Defendant acknowledges receipt of the full purchase price. I am therefore persuaded that the period of limitation started running from September, 2005, which was the date when the balance of Kshs. 10,500/= was paid to the Defendant. That being the case, as at September, 2021 when the Plaintiff lodged this claim, some 16 years had gone by and the Defendant's interests in the suit land had been extinguished by operation of the law.
28. In the premises, I am persuaded that the Plaintiff has made out a successful claim of adverse possession of the suit property. Accordingly, I hereby make orders as follows:
1. The Plaintiff/Applicant is hereby declared the legal owner entitled by adverse possession to all that portion of land known as Plot No. 1207 comprised in land, parcel No. Thegenge/Unjiru/857 situated in Nyeri County.
 2. The Land Registrar Nyeri County is hereby directed to register the Plaintiff/Applicant as the sole proprietor of the said plot No. 1207 as comprised in all that parcel of land known as Thegenge/Unjiru/857 in place of Ann Nyambura Munyoro.
 3. The Land Registrar Nyeri County is hereby directed to dispense with the production of the original title in respect of the suit property in effecting the registration of the Plaintiff as the sole proprietor of the said plot No. 1207 as comprised in the parcel of land known as Thegenge/Unjiru/857
 4. Each party shall bear their own costs.

**JUDGMENT DELIVERED THROUGH THE MICRO – SOFT TEAMS VIRTUAL MEANS
SIGNED AND DATED AT MOMBASA THIS 30TH DAY OF JANUARY 2025.**

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J.O. OLOLA,

JUDGE

Judgement delivered in the presence of:

- a. Firdaus the Court Assistant.
- b. Mr. Gathiga Mwangi Advocate for the Applicants
- c. Mrs. Machira Advocate for the Respondents

