



Muketha (Suing as a Legal Representative of the Estate of Mariam Nthanga - Deceased) v Manyara & another (Environmental and Land Originating Summons E003 of 2023) [2024] KEELC 6826 (KLR) (17 October 2024) (Judgment)

Neutral citation: [2024] KEELC 6826 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E003 OF 2023
CK YANO, J
OCTOBER 17, 2024

BETWEEN

JOHN MBAYA MUKETHA PLAINTIFF
SUING AS A LEGAL REPRESENTATIVE OF THE ESTATE OF MARIAM
NTHANGA - DECEASED

AND

JAMES KABURU MANYARA 1ST DEFENDANT
M'RIMBERIA M'MANYARAH 2ND DEFENDANT

JUDGMENT

1. The plaintiff instituted the suit vide an originating summons dated 21st February, 2023 claiming to have acquired land parcel LR No. Abothuguchi/Githongo/314 (hereinafter referred to as the suit land) by way of adverse possession. The plaintiff has brought the claim in his capacity as the legal representative of the estate of his grandmother, Mariam Nthanga (deceased) who died in the year 1971.
2. In opposing the plaintiff claim, the defendants filed a replying affidavit dated 3rd October, 2023 sworn by John L. Kaburu Manyara the 1st defendant herein.

Plaintiff's Case

3. The Originating Summons was supported by an affidavit sworn by the plaintiff on 21st February, 2023. He states that he is the son of Elizabeth Mukami (deceased) who died in the year 2010 and grandson to Mariam Nthanga (deceased who died in the year 1971).
4. The plaintiff states that his grandmother bought the suit land from one M'Marete Rwaru (deceased) in the 1950's before developing and settling in the land. That the land is situated at Murinya area of



- Githongo location in Imenti Central Subcounty among the Mbura clan while his grandmother is from Kithirune Murugi among the Nyaga clan in Kithirune location of Imenti central.
5. The plaintiff's case is that during demarcation, his grandmother had the land registered to his brother Imanyara Mbae (deceased) who is the father of the defendants. That the said Imanyara Mbae (deceased) was from Kithirune but later relocated to Ntumburi in Buuri sub county. That the plaintiff's late grandmother planted tea bushes on the suit land in the year 1963 which she sold to Githongo Tea Factory under number 29 Murinya Tea Buying center.
 6. It is the plaintiff's case that his grandmother lived on the suit land all her entire life and when she became feeble due to old age, she left the KTDA Number to the plaintiff's mother who in turn left it to the plaintiff. That when the plaintiff's grandmother died, she was buried on the said land and her daughter and plaintiff's late mother, Elizabeth Mukami, lodged a claim before the Land Disputes Tribunal which ruled in her favour in the year 2000.
 7. The plaintiff states that he has utilized the tea bushes on the suit land since the year 2010 without any disturbance from the defendants. That the defendants and their father have never utilized or used the land. It is the plaintiff's contention that his occupation and user of the suit land is adverse to that of the registered owners. That the occupation and user of the land by the plaintiff's mother and grandmother was adverse to that of the defendants deceased father.
 8. In his supporting affidavit, the plaintiff has annexed copies of a chief's letter, green card, photographs, proceedings and award before the Land Disputes Tribunal.
 9. At the hearing the plaintiff testified as PW 1. He adopted the contents of his supporting affidavit as his evidence -in chief and produced the said annexures as P exhibits 1 – 4 respectively and was cross examined and re-examined.
 10. The plaintiff stated that the suit land belonged to his grandmother who upon her demise left it to his mother and that when his mother died, he took over. The plaintiff stated that his late grandmother bought the land from one M'Marete Rwara(deceased) in the 1950's and used it for subsistence farming and also planted tea bushes which they continued with, even after her demise.
 11. The plaintiff stated that he has been on the suit land from the year 2010 although he used to assist his mother before then. That they have put up a shelter, planted and are picking tea and planted a few avocado trees. The plaintiff avers that he has never been evicted from the land at any time. That their possession and occupation has been continuous from the 1950's and now wants the land transferred to him.
 12. When he was cross examined by Mr. Ringera, learned counsel for the defendants, the plaintiff stated that the land was bought by his grandmother in 1950 when he was a child, having been born in 1948. That he was brought up in Kithirune, not on the suit land. The plaintiff stated that he has not personally lived on the suit land. However, he stated that there is a timber structure on the land which he put up. That his late mother was living on the land, but on a different structure, which is no longer there. The plaintiff stated that he is claiming the land by virtue of being a son of Elizabeth Mukami his mother. The plaintiff testified further that the grant he has is in respect of the estate of Mariam Nthanga his grandmother. That the grant was given to him together with his late sister, Alice Kathura and to date he has no grant from court for the estate of her late grandmother. The plaintiff stated that the case is brought for the benefit of his late grandmother Mariam Nthanga(deceased). That his mother died in 2010 though he did not have the death certificate which he stated was at home. That he had permission of his mother to use the land and that is the basis of his claim.



13. The plaintiff stated that the tea was planted by his grandmother with the help of his mother. That he never planted the tea. The plaintiff stated that he has leased the tea on the land to one Gerald Rwiria who picks and sells the same to the factory. That the tea on the land has a number 2. The plaintiff further stated that he only gets rent of about 60,000/- per year. That his mother lodged Land Disputes Tribunal Case No. 8 of 200 claiming the land. That the LDT Case No. 8 of 2000 was against one Muthuri Imanyara who was not a party to this case. He stated that the case proceeded against the estate of Imanyara Mbae who was the registered owner of the land. That the decree has not been implemented. The plaintiff stated further that there was an appeal which was never heard. That he could not implement the decision because it was against a deceased person and needed a succession.
14. The plaintiff stated that he was aware that subsequently a succession cause No. 640 of 2012 at Meru High Court was filed by the defendants in respect to the estate of their late father. That he was aware that the land was transferred to the defendants pursuant to the said succession cause. The plaintiff stated that he tried to object to the grant, but his application for revocation of grant was dismissed in 2018. Thereafter, he filed this case in 2023 and did not appeal against the orders of the High Court in the succession cause. That the grant issued by the High Court has never been set aside. The Plaintiff stated that his late grandmother and the registered owner of the land, Imanyara Mbae are brother and sister. That his grandmother did not have any dispute with the late Imanyara Mbae.
15. When he was re-examined by Ms Mugo, learned counsel for the plaintiff, the plaintiff stated that he knew that his late grandmother bought the land because they were neighbours. That his grandmother is buried on the suit land. The plaintiff stated that his grandmother caused the land to be registered in the name of her brother because land could not be registered in the name of a woman. That the tribunal ruled that his mother continues using the land.
16. The plaintiff further stated that there was an appeal at Embu but they went there and nobody appeared. That they could not implement the decision of the tribunal because it was in the name of Imanyara. The plaintiff stated that they had agreed that he be included in the Succession Cause, but he was not included, and that is the reason he filed suit.
17. PW 2 was Gerald Mbwiria Kirigia. He stated that he lives in Murinya village Githongo sub location and he is a farmer. PW 2 adopted his statement dated 21st February, 2023 as his evidence in chief. He stated that he knew Mariam from 1958 when he was growing up. That she lived together with her parents. That mariam's father told them that she was at one time married but was divorced. PW 2 further stated that they were living on the land but after demarcation, Mariam bought the land from M'Marete. That in 1962 the Ministry of Agriculture brought them tea and Mariam was one of the people who planted it. He stated that she died in 1970 or 1971 and was buried on the suit land.
18. PW 2 testified further that he knew the plaintiff. That after the demise of the plaintiff's grandmother, Mariam, her daughter Elizabeth Mukami came and took care of the tea and planted some more on the land. PW 2 stated that upon the demise of the plaintiff's mother, her sister one Karutha came and started picking the tea under the name of Elizabeth Mukami. That the plaintiff used to visit the land. That in 2010 the plaintiff and Karutha leased him the tea bushes and he is using it to date.
19. PW 2 testified that it was only a year earlier that the 1st defendant came and chased him and his workers from the land and they reported to the police, but the plaintiff obtained an injunction and so the witness is still on the land.
20. When he was cross examined by Mr. Ringera, PW 2 stated that he had leased the land although in his statement he stated that he works on behalf of the plaintiff.



21. PW 2 stated that his occupation has not been peaceful until the plaintiff got an injunction. He stated that he knows that the land belongs to the plaintiff's family. He stated that there arose a dispute when Mariam died. That the plaintiff's mother came to the suit land some few days before her mother's demise and remained there upon the death of her mother. PW 2 did not remember when the plaintiff's mother passed on. He was also not aware if the plaintiff's grandmother lodged any claim over the land before she died. PW 2 stated that the lease agreement was between him and the plaintiff whom he regarded as the owner of the land.
22. PW 2 was also re-examined by Ms Mugo. He stated that he had not seen the defendants on the suit land and that they lived in Kithirune. That from 2010 when he leased the land no one interfered with him until March 2023. PW 2 stated that Mariam went to the land around 1962 during demarcation and started planting tea. He stated that he was the one still using the land.

Defendant's Case

23. The defendants denied that the suit land belonged to the plaintiff's late grandmother. That the land always belonged to their deceased father who allowed his sister Mariam to occupy and utilize the same to enable her sustain herself following the breakup of her marriage. The defendants stated that their father also put up a living room for his sister on the land and caused tea to be planted thereon for her own benefit. That Mariam lived on the land with the permission of their father and never staked a claim to ownership of the land. The defendants stated further that their family allowed the plaintiff's mother to utilize the land following the break up of her marriage to one M'Muketha. That the occupation of the land by the plaintiff's mother (Elizabeth Mukami) did not confer any ownerships rights over their land.
24. The defendants stated that at the instigation of the plaintiff, Elizabeth Mukami instituted a dispute before the Land Dispute Tribunal against their brother, Japhet Muthuri Imanyara, over the said land. That although the said dispute was determined in favour of the claimant therein their said brother lodged an appeal against the same and the award made in favour of the claimant was set aside principally on the ground that the land was registered in the name of a deceased person and the tribunal had no jurisdiction to entertain the claim. That the award was therefore never implemented.
25. The defendants stated that they later commenced succession cause No. 640 of 2012 in respect of the estate of their father and a grant of letters of administration thereof was issued to them. That the plaintiff unsuccessfully sought revocation of the said grant. That this suit was brought following the plaintiff's failed attempt to have the said grant revoked. The defendants believe that this suit was brought as an afterthought and has no basis at all. That the plaintiff is only out to frustrate their enjoyment of the suit land. The defendants further believed that the plaintiff has no capacity to bring the suit and prayed for it to be struck out.
26. At the hearing the 1st defendant testified as DW 1. He stated that he lives in Ntumburi location. The 1st defendant pointed out that the 2nd defendant is his brother and that the plaintiff is their cousin as he is a son of their aunt.
27. The 1st defendant adopted contents of his replying affidavit dated 3rd October, 2023 as his evidence in chief. He also produced the ruling in succession cause No. 640 of 2012 as D exhibit 1.
28. The 1st defendant denied that the land belongs to the late Mariam Nthanga. That the land belongs to their late father who was a brother to Mariam. That Mariam was only given a portion of the land to stay after her marriage broke down. That the defendants' father was the first person to have the land demarcated in his name and there was no objection filed against him. The 1st defendant further stated



that the late Mariam Nthenga came and stayed at the invitation of their late father. That before her demise, Mariam Nthenga never complained nor laid a claim against their father.

29. The 1st defendant stated that the late Mariam Nthanga was staying with her children until her demise. DW 1 stated that the late Elizabeth Mukami who was the plaintiff's mother was living in Kithirune but when her mother became ill she came and took care of her and used the land. That that was in the 1970's. DW 1 stated that his elder brother planted the tea on the land to assist their aunt. That they live in Nthumbuni location and that when Elizabeth Mukami came to assist her mother, she was living on the land.
30. The 1st defendant pointed out that the late Elizabeth Mukami filed a case against Japeth Muthuri which the witness state he followed until conclusion. That the tribunal's decision was not implemented.
31. The 1st defendant testified that they later filed succession cause in respect of the estate of their late father. That the suit land does not belong to the plaintiff. The 1st defendant stated that the land is now registered in their names after the succession cause. He stated that he was aware that the plaintiff objected to their grant, but was not successful. The 1st defendant further stated that the plaintiff and those who stayed on the land before him were on the land with the permission of their late father. That the plaintiff's case should be dismissed.
32. When he was cross examined by Ms Mugo, the 1st defendant stated that he was born in 1948 and knew Mariam who was her aunt. He could not tell the year Mariam entered the land, though he used to visit her.
33. The 1st defendant stated that he has not lived on the suit land and none of his brothers has lived on the land. That the tea on the land was planted by his brothers who planted about 2600 trees on behalf of Mariam who was their aunt.
34. The 1st defendant further testified that Mariam was picking the tea using her own number. The 1st defendant pointed out that they have not asked the plaintiff to stop using the land. That the plaintiff's mother filed a tribunal case which was never implemented. That John Mbaya was asked to obtain title but he never followed up. The 1st defendant stated that they filed a succession cause in which they did not include the plaintiff in the case. He pointed out that the tea has always been for the benefit of Mariam's family.

Plaintiff's Submissions

35. The plaintiff filed submissions dated 11th March, 2024 through the firm of Gichunge Muthuri & Company advocates who gave brief facts of the case. The plaintiff's counsel identified the issues for determination to be whether the plaintiff has proved his case to the legal standards and what the appropriate orders are.
36. The plaintiff's counsel submitted that the plaintiff will succeed in this suit if he satisfies the legal principles applicable to a claim for adverse possession set out in the case of *Daniel Kimani Ruchine & others vs Swift Rutherford Co. Ltd & another* [1977] eKLR. That the whole suit centers on two questions. Whether the plaintiff was in adverse and exclusive possession of a definite area of land belonging to the defendants and whether the plaintiff proved such adverse possession was for a continuous period of 12 years. It was submitted that the plaintiff has satisfied both conditions. The plaintiff's counsel gave a summary of the testimonies of the witnesses who testified at the hearing and concluded that the suit land has since 1960s been inhabited, farmed for commerce and otherwise appropriated by Mariam Nthanga (deceased) then her daughter Elizabeth Mukami (deceased) and then her son (now the plaintiff) without interference from the defendants or their father, the registered



- owner, Imanyara Mbae (deceased). That this usage is openly contradictory and adverse to the rights of ownership of the registered owner Imanyara Mbae (deceased)
37. Secondly, it was submitted that no instance of dispossession or attempted dispossession from the suit land of Mariam Nthanga (deceased) or her survivors over the last 60 years has been established. That this contradicts the defendants' allegations that their father who was the registered owner allowed the plaintiff to reside on the suit land and thus had knowledge of the presence of and use of the suit land by Mariam Nthanga (deceased) and her survivors. Further, that the suit land has been subject to legal investigation via a Land Dispute Tribunal matter which was determined in favour of Elizabeth Mukami (deceased) being the daughter of Mariam Nthanga (deceased). That all allegations of the said decision being overturned have not been established despite allusions to the same by the defendants, hence the decision and motivating facts and evidence therein are good evidence herein. That the plaintiff alleges adverse possession of the entire suit land and seeks specific orders to transfer the title to the suit land to himself on behalf of the estate of Mariam Nthanga (deceased).
38. It was submitted on behalf of the plaintiff that the claim for adverse possession satisfies the statutory period of 12 years since title to the suit land was issued on 03rd April, 1963 and Mariam Nthanga (deceased) and her daughter Elizabeth Mukami (deceased), and then her son (the plaintiff), have been in exclusive adverse occupation for a period of 60 years as at the date of filing these proceedings on 21st February, 2023. That for purposes of limitation over the suit land, time started to run after issuance of title on 3rd April 1963 and runs through the period Mariam Nthanga (deceased) was in exclusive possession and control to the exclusion of Imanyara Mbae (deceased). It is the plaintiff's submission that pursuant to Sections 17, 37 and 38 of the *Limitation of Actions Act*, the title to the suit land held by the registered owner Imanyara Mbae (deceased) was extinguished 12 years after Mariam Nthanga (deceased) remained in exclusive possession. That as at the year 1975, the registered owner Imanyara Mbae (deceased) had his title over the suit land extinguished by operation of law and he held the title in trust for Mariam Nthanga (deceased) and/or her legal successors. The plaintiff's counsel relied on the case of *Kweyu vs Omutu*, C.A Civ Appeal 8 of 1990 quoted in *Wilson Njoroge Kamau vs Nganga Muceru Kamau* [2020] eKLR.
39. It is submitted that the facts and evidence on record clearly support the plaintiff's case. That the defendants failed to provide evidence to overturn the claim of adverse possession by Mariam Nthanga (deceased) of the suit land and the court is urged to find that the plaintiff's claim is proven and grant the orders sought accordingly.

Defendants' Submissions

40. The defendants filed submissions dated 9th May 2024 through the firm of Gatari Ringera & Company advocates. It is their submissions that the plaintiff has failed to establish his claim against the defendants to the required standards and that the same ought to be dismissed with costs.
41. It is the defendant's submissions that the plaintiff has brought his claim in his capacity as the legal representative of the estate of the late Mariam Nthanga and relies on a limited grant that was issued to him in Githongo Misc. Succession Cause No. 1 of 2019. That the claim was never amended notwithstanding the leave granted to the plaintiff to do so. That the plaintiff's claim therefore remains a claim brought for the benefit of the estate of the late Mariam Nthanga (deceased). That for the plaintiff to succeed in such a claim, it must be established that the deceased had become entitled to be registered as a proprietor of the suit land in place of the registered owner under adverse possession at the time of her death. The defendants pointed out that the said grant was issued to two persons and there is no explanation for the failure by the plaintiff to join his co-administrator as party in these proceedings.



42. The defendants submitted that there is no evidence to justify adverse possession on the part of Mariam Nthanga. That the limited grant relied on shows that the deceased died in 1971. That there is no evidence tendered before court to show that at the time of her death in 1971, the deceased had been in continuous and hostile occupation of the suit land for a period of more than 12 years. That none of the plaintiff's witnesses testified to the effect. That it is to be noticed that the land was first registered in April, 1963, almost 8 years before the death of the deceased. That there is no evidence on when she first settled on the land to enable the court make a finding as to whether she had clocked 12 years of uninterrupted possession of the land before her demise. The defendants urged the court to find that there would be no basis to find that Mariam Nthanga (deceased) had been in possession of the land for over 12 years before her death in 1971.
43. With regard to the plaintiff's reliance on the proceedings in Meru Chief Magistrate's Land Dispute Tribunal case number 52 of 1999, the defendants argued that those proceedings were between one Elizabeth Mukami and members of the family of the defendants. That the claim before the tribunal was contested and although an award was made in favour of the claimant, there is no evidence that the same was confirmed as the law then required. That the explanation by the defendants that the same was successfully challenged on appeal explains the claimant's inability to enforce the same.
44. It is also the defendant's submissions that the proceedings before the tribunal show that the dispute over ownership of the land raged during the entire lifetime of the claimant. That her rights over the land were never successfully determined in her favour in her lifetime and cannot be said to have been in peaceful quiet and uninterrupted possession of the land during her lifetime. That if the plaintiff claims the land through his mother, then he ought to have sued in his capacity as her legal representative and not that of his grandmother.
45. The defendant also argued that the plaintiff also purports to claim the land in his personal capacity. It is their submission that his claim is muddle. That it was not pleaded in the alternative. That the plaintiff has anchored his claim on his grandmother's alleged occupation of the land and the subsequent one by his own mother, he is estopped from claiming that he has obtained title to the same by adverse possession. It was argued that the plaintiff was silent on the date of the death of his mother. That production of the relevant certificate of death would have enabled the court to ascertain such date and the presumed time of his entry on the land. That in view of the said litigation, it is improbable that the plaintiff would have remained in peaceful and quiet possession of the land for a period of over 12 years. That the plaintiff confirmed that his occupation has not been entirely peaceful.
46. The defendants urged the court to find that any alleged occupation of the land by the late Mariam Nthanga (deceased) was terminated by her death in 1971. That action for recovery of the land on behalf of her estate ought to have been mounted within a period of 12 years of her demise. That this suit was brought 50 years later and is a nullity. That equally, the claim on behalf of the estate of Elizabeth Mukami (deceased) ought to have been instituted by her duly appointed legal representative within a similar period which was not done. That indeed the claim does not purport to be brought on behalf of the estate of the late Elizabeth Mukami. That even if it was it would be clearly time barred.
47. The defendants submitted that guided by the established legal principles governing adjudication of claims under adverse possession the court should find that the plaintiff's claim falls far short of the required standards and the same ought to be dismissed with costs.

Analysis and Determination

48. The court has considered the pleadings, the evidence and the submissions filed by the parties to support their respective positions. I have also considered the legal authorities cited. The issues to be determined



are whether the plaintiff had the requisite legal capacity to institute and sustain the suit on behalf of the deceased and whether the plaintiff has proved his claim for adverse possession.

49. I will first deal with the issue whether the plaintiff had the requisite legal capacity to institute and maintain the suit on behalf of the deceased. John Mbaya Muketha, the plaintiff herein, has brought his claim in his capacity as the legal representative of the estate of the late Mariam Nthanga (deceased) who he said was his grandmother. I have perused the documents that were annexed to the affidavit in support of the originating summons and that were produced by the plaintiff as exhibits. The plaintiff produced a chief's letter dated 16th September, 2019, copy of the green card for the suit property, photographs and proceedings and award in Land Disputes Tribunal case No. 52 of 1999 (Meru Chief Magistrate Court) Land Dispute 6/2000) as P exhibits 1-4 respectively. I did not see a grant that was issued to the plaintiff permitting him to represent the estate of the deceased. In the absence of a grant ad litem or a full grant, it is my view that the plaintiff lacked *locus standi* or capacity to bring the suit on behalf of the estate of the deceased. The plaintiff filed the instant suit on behalf of the estate of the deceased and not in his personal capacity. In the absence of a grant of letters of administration, it is my view that the plaintiff did not have the requisite legal capacity and *locus standi* to file and maintain the suit on behalf of the estate of the deceased. In the circumstances, the plaintiff's suit has to fail.
50. Had it been that the plaintiff had the requisite legal capacity to file and maintain the suit, this court would have to deal with the issue as whether the plaintiff has proved his claim for adverse possession and whether he is entitled to the reliefs sought.
51. The plaintiff's claim is for adverse possession. The person alleging a right of title on adverse possession must show by clear and unequivocal evidence that his/her possession was not permissive, open, with the knowledge of the true owner and excluded the true owner from the enjoyment of his property. For one to succeed in a claim of adverse possession, he/she must satisfy the following criteria stated in the case of *Maweu vs Liu Ranching and Farming Cooperative Society* 1985 KLR 430 where the court held-;
- “Thus to prove title by adverse possession, it was not sufficient to show that some acts of adverse possession had been committed. It was also to prove that possession claimed was adequate, in continuity, in publicity and in extent and that it was adverse to the registered owner. In law, possession is a matter of fact depending on all circumstances.”
52. Has the plaintiff proved adverse possession? In the case of *Samuel Miki Waweru vs Jane Njeru Richu* Civil Appeal No. 122 of 2001, the Court of Appeal delivered the following dictum-;
- “... it is trite law a claim of adverse possession cannot succeed if the person asserting the claim is in possession with the permission of the owner of, or in (accordance with) provisions of an agreement of sale or lease or otherwise. Further, as the High court correctly held in *Jandu vs Kirpal* [1975] EA 225 possession does not become adverse before the end of the period for which permission to occupy has been granted.”
53. In the present case, the plaintiff has pleaded that the deceased bought the suit land in the 1950s from one M'marete Rwaru (deceased) but had it registered in her brother's name. From the evidence on record, it is not in dispute that the parties are related. The late Mariam Nthanga (deceased) and the late M'Imanyara Mbae (deceased) who was the registered owner of the suit land before the same was transferred to the defendants herein by transmission in Meru High Court Succession Cause No. 640 of 2012 are a sister and a brother. Therefore, Mariam Nthanga (deceased) was an aunt to the defendants. It was the defendants' case that their late father only allowed his sister to occupy and utilized the suit land to sustain herself following the break up of her marriage.



54. Whereas the plaintiff claimed that the deceased bought the land from M'Marete Rware (deceased) and had it registered in the name of her brother, Imanyara Mbae (deceased) it is not clear to this court when the claim of adverse possession came in. Whichever way I look at the matter, it is clear to me that the deceased entered the land either as a purchaser with the permission of M'Marete Rware (deceased) as the vendor or with the invitation or permission of her deceased brother. It has been held that acts done under license or permitted by or with love of the owner do not amount to adverse possession and do not give the licensee or permitted entrant any title under the limitation statute. See case of *Gabriel Mbui vs Mukindia Maranya* [1993] eKLR. It is also clear that in this case, the plaintiff herein tried unsuccessfully to claim the land through a protest in Meru High Court Succession Cause No. 640 of 2012. In the succession court, the plaintiff was referred to as a "busy body". It is apparent that it was only after he lost in the succession cause that the plaintiff filed this suit. Even before her demise in 1971, Mariam Nthanga (deceased) herself did not deem it fit to bring a case against his late brother. I find it curious that the plaintiff herein now purports to bring the suit after a period of over 50 years after the demise of the deceased.
55. Considering the totality of the evidence availed in this case, I am not satisfied that the plaintiff has proved his case on a balance of probabilities. It is my findings that the plaintiff's suit is without merit. Besides lacking capacity to bring the claim, the plaintiff has failed to bring himself within the limit of the doctrine of adverse possession.
56. In the result, the plaintiff's suit is dismissed. Considering the relationship of the parties, I order that parties bear their own costs.
57. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MERU THIS 17TH DAY OF OCTOBER, 2024

C K YANO

ELC JUDGE

In the Presence of

Court Assistant – Tupet

Ms Mugo for Plaintiff

