



REPUBLIC OF KENYA



KENYA LAW
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**Mwaura v Murage & another (Environmental and Land Originating Summons
E008 of 2023) [2025] KEELC 576 (KLR) (13 February 2025) (Judgment)**

Neutral citation: [2025] KEELC 576 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E008 OF 2023
JM ONYANGO, J
FEBRUARY 13, 2025**

BETWEEN

BETH WAITHIRA MWAURA PLAINTIFF

AND

JEREMIAH WAHOME MURAGE 1ST DEFENDANT

CHARITY WAMUYU 2ND DEFENDANT

JUDGMENT

1. The Plaintiff initiated this suit through Originating Summons dated 8th March 2023 seeking the following reliefs: -
 - i. That the Plaintiff is entitled to be registered as the proprietor of 8.7 acres in Land Parcel Ndarugu/Gakoe/550 in place of the Defendants on the ground that the Plaintiff has been in open, continuous, peaceful and uninterrupted occupation of the said respective portion of 8.7 acres in land parcel since 1980 that is to say for a period well over forty-three (43) years preceding presentation of this Originating Summons in court.
 - ii. That the title in the name of the Defendants herein, Jeremiah Wahome Murage and Charity Wamuyu in respect of 8.7 acres in Ndarugu/Gakoe/550 be extinguished under the Limitation of Actions Act, CAP 22, Section 17.
 - iii. That the Plaintiff to be declared to be the bonafide and registered owner of 8.7 acres in Ndarugu/Gakoe/550 by way of adverse possession having lived in the said parcel of land for over 43 years without any interruption.
 - iv. That the Land Registrar at Gatundu Lands Registry rectify the register of Land Parcel Ndarugu/Gakoe/550 and register the same in the Plaintiff's name.
 - v. That the cost of this application be provided for.



2. Despite being served with the Originating Summons by way of substituted service through the Daily Nation Newspaper of 7th March 2024, the Defendants neither entered appearance nor filed a Defence. The matter was subsequently set down for hearing by way of formal proof.
3. On 20th January 2025, the Plaintiff testified as PW1. She relied on her supporting affidavit sworn on 23rd March 2022, as her evidence-in-chief. She told the court that Land Parcel Ndarugu/Gakoe/550 (the suit property) was registered in the names of the Defendants. She added that she had never seen the Defendants.
4. The Plaintiff testified that she had been staying on the suit property since birth in 1962. She further testified that she had built a house and planted tea bushes and a variety of trees on the suit property. She added that she got all of her five children while on the suit property. It was her testimony that she discovered the suit property was not registered in her mother's name after her demise on 9th January 2003. The Plaintiff told the court that her mother was buried on the suit property. She stated that she had been in open, continuous occupation of the suit property for over 43 years and that no one had ever asked her to vacate the suit property.
5. She prayed that she be registered as the proprietor of the suit property. She produced the Green Card with respect to the suit property as Plaintiff Exhibit 1.
6. The Plaintiff did not comply with the court's order directing her to file written submissions within 7 days of the hearing of the suit.

Analysis and Determination

7. This court has a duty to interrogate and evaluate uncontroverted evidence in order to determine whether the Plaintiff is entitled to the prayers sought. The court in Murang'a ELCA No. 16 of 2017: Gichinga Kibutha v Caroline Nduku [2018] eKLR pronounced itself on uncontroverted evidence as follows:

“It is not automatic that in instances where the evidence is not controverted, the claimant's claim shall have his way in court. He must discharge the burden of proof. He must proof his case however much the opponent has not made a presence in the contest.”
8. Similarly, the court in Joseph Macharia Kairu v Kenneth Kimani Muiruri [2021] eKLR stated as follows:

“The burden of proof is placed on the person alleging the occurrence of an event and where there is no evidence to challenge the allegations, the standard of proof automatically is higher. Undoubtedly, owing to the nature and extent of orders for adverse possession to wit extinction of right to property, the burden is higher. The burden squarely lies on the Plaintiff to demonstrate that he has met the requirements for the grant of an order of adverse possession. The Plaintiff is the one who has alleged and must proof.”
9. Having considered the pleadings, the Plaintiff's oral and documentary evidence, the only issue for determination is whether she has met the threshold for adverse possession.



10. The law pertaining to adverse possession is contained in Sections 7 and 38(1) of the Limitation of Actions Act which provides as follows:

“Section 7. 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.”

“Section 38(1). 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.”

11. The Court of Appeal has pronounced itself on the above provisions of the law and the doctrine of adverse possession. In the case of *Mtana Lewa vs Kahindi Ngala Mwangandi* (2015) eKLR the court held that:

“Adverse possession is essentially a situation where a person takes possession of land and asserts rights over it and the person having title to it omits or neglects to take action against such person in assertion of his title for a certain period, in Kenya is twelve (12) years. The process springs into action essentially by default or inaction of the owner. The essential prerequisites being that the possession of the adverse possessor is neither by force of stealth nor under the licence of the owner. It must be adequate in continuity, in publicity and in extent to show that possession is adverse to the title owner.”

12. The first threshold that the Plaintiff was required to meet was to prove that the suit property belongs to the Defendants as the registered proprietors. Although the title deed to the suit property was not produced, the certified copy of the Green Card produced shows that the suit property has been registered in the joint names of the Defendants since 10th June 1969 and that a certificate of title was issued thereof on 5th September 1969.
13. The Plaintiff testified that she has been in occupation of the suit property since 1962 when she was born. The Green Card shows that the suit property was originally registered in the name of Ndungu Henry on 27th May 1958. It was later charged to Standard Bank of South Africa on 9th February 1960. Subsequently, Standard Bank LTD was registered as the proprietor on 24th October 1963. On 10th June 1969, the Defendants were registered as proprietors and thereafter a certificate of title was issued on 5th September 1969. A period of 54 years has lapsed between the time the certificate of title to the suit property was issued to the defendants in 1969, to 2023 when this suit was filed. It is not clear why the Plaintiff specified that she had been in occupation of the suit property for over 43 years. It is also not clear why the Plaintiff waited almost 20 years to file this suit despite being aware that the suit property was not registered in her late mother’s name since 2003 when she died. This court notes that the heading section of the Originating Summons refers to Land Parcel Number Kakuzi/Kirimiri Block 9/1011. No explanation was given as to how the said parcel is related to the suit property. The court will assume that the same was a typographical error. This court also notes the discrepancies in the Plaintiff’s averments made in the supporting affidavit sworn on 8th March 2023 where she stated that she entered the suit property sometime in 1980. On the contrary, during her examination-in-chief, the Plaintiff stated that she had been staying on the suit property since 1962 when she was born. Could this be a mix-up?



14. Nonetheless, given that the Plaintiff's evidence that she has been in open, continuous and interrupted occupation of the suit property for more than 12 years has not been controverted. I am satisfied that she has met the threshold for adverse possession and she is therefore entitled to the reliefs sought.
15. Accordingly, I enter judgment for the Plaintiff and make the following final orders:
 - a. A declaration is hereby issued that the Plaintiff has been in peaceful and continuous occupation of Land Parcel Number Ndarugu/Gakoe/550 for a period in excess of 12 years and she has therefore acquired title of the same by way of adverse possession.
 - b. A declaration is hereby issued declaring that the title issued in the name of the Defendants in respect of Land Parcel Number Ndarugu/Gakoe/550 has been extinguished by virtue of the Limitation of Actions Act.
 - c. A declaration is hereby issued that the Plaintiff has been in peaceful and continuous occupation of Land Parcel Number Ndarugu/Gakoe/550 for a period in excess of 12 years and she has therefore acquired title of the same by way of adverse possession.
 - d. An order is hereby issued directing the Land Registrar Gatundu Lands Registry to cancel the Defendants' Certificate of Title issued on 5th September 1969 over Land Parcel Ndarugu/Gakoe/550 and in lieu thereof register the same in the name of the Plaintiff/Plaintiff and issue her with a Certificate of Title.
 - e. I make no order as to costs.

DATED, SIGNED AND DELIVERED AT THIKA THIS 13TH DAY OF FEBRUARY 2025.

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J. M ONYANGO

JUDGE

In the virtual presence of:

Ms Mukwanyaga for Mburu Njoroge for the Plaintiff

No appearance for the Defendant

Court Assistant: Hinga

