

KENYA / JUDGMENT

Kituku v Munyi [2025] KEELC 8542 (KLR)

[2025] KEELC 8542 (KLR)**COURT**

Environment and Land Court

BEFORE

AK Bor

CASE / FILE NUMBEREnviromental and Land Originating Summons E005
of 2022

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Kituku v Munyi (Enviromental and Land Originating Summons E005 of 2022) [2025] KEELC 8542 (KLR) (25 November 2025) (Judgment)

Neutral citation:

[2025] KEELC 8542 (KLR)

Republic of Kenya

In the Environment and Land Court at Embu

Enviromental and Land Originating Summons E005 of 2022

AK Bor, J

November 25, 2025

Between

Albanus Mutunga Kituku

Plaintiff

and

Marclus Njuki Munyi

Defendant

Judgment

1.The Plaintiff instituted this suit vide an originating summons dated 4/2/2022 seeking a declaration that he had become entitled to the whole of the land known as Mbeere/Kiambere/4132 by way of adverse possession. He sought to have the Defendant directed to transfer the suit land to him, failing which the Deputy Registrar or the Executive Officer of this

court is to execute the requisite documents to transfer the suit land to the Plaintiff. The other prayer was for the Land Registrar to dispense with production of the original title deed during registration as well as costs of the suit.

2.The Defendant filed Siakago Misc ELC Application No. 26 of 2021 against the Plaintiff seeking the removal of a caution placed by the Plaintiff against the suit land. The two suits were consolidated by this court on 6/10/2022.

3.The Plaintiff's case is that, on 14/9/2006, he entered into a sale agreement with the Defendant for the purchase of 5 acres out of land parcel Mbeere/Kiambere/4132 and paid the full purchase price but the Defendant reneged and or rescinded the agreement. He averred that he entered the suit land around March 2006 and had developed it for over 14 years by cultivating maize, doing subsistence farming and planting fruit trees such as mangoes and guavas.

4.He averred that the Defendant is aware that he had developed and cultivated the whole land but in September 2021, they received threats of eviction from the Defendant and his father. He asserted that together with his wife, they had been in open use of the suit land in a manner adverse to the registered owner for 13 years and had become entitled to one acre out of the land by way of adverse possession.

5.The Defendant's case is that he entered into a sale agreement with the Plaintiff on 14/9/2006, for the sale of the suit land at the agreed consideration of Kshs. 530,000/= out of which the Plaintiff paid Kshs. 55,000/= on diverse dates leaving a balance of Kshs. 475,000/=. He stated that the Plaintiff failed to pay the balance of the purchase price despite being reminded on several occasions and had therefore breached the agreement.

6.He added that the Plaintiff caused a caution to be registered against the suit land despite being in breach of the agreement. He stated that he permitted the Plaintiff to occupy approximately one acre out of the larger parcel of land by virtue of being a purchaser and that the claim for adverse possession could not be sustained.

7.He claimed that he directed the Plaintiff to leave the land in 2017 which he did and that the Plaintiff has not been on the land as he claimed. He asserted that a title deed was issued to him in 2015 and that the statutory period of 12 years had not elapsed. He also contended that the Plaintiff had not used the land exclusively as there had been interruptions, which led him to give vacant possession. He prayed for the caution on the suit land to be lifted and the Plaintiff's suit be dismissed.

8.During the hearing, the Plaintiff testified that the agreed purchase price for the suit land was Kshs. 9,000/= per acre and that the parties agreed that the Defendant would sell him 4 acres out of the 7 acres, bringing the total purchase price to Kshs. 36,000/=. He paid the Defendant Kshs. 25,000/= and the balance of Kshs. 11,000/= was paid later and that the Defendant acknowledged payment.

9. Around 2007, the Defendant offered to sell him an extra acre at Kshs. 9,000/=. They entered into another agreement and he paid the purchase price. He claimed that the Defendant told him to buy the remaining 2 acres since he was not going to settle on the land, which he did and took possession in 2006.

10. Upon taking possession, he started cultivating the land, grazing cows and goats, planting crops like maize and cow peas, planted trees, dug trenches and put up a structure to shelter from the rain. He fenced the land with plants and thorny branches. He stated that he was using the land and had maize and cow peas growing on the land.

11. He stated that they visited the Land Control Board (LCB) in 2009 but they were turned away because the Defendant's name on the identity card read Mohammed yet the land records reflected a different name. He maintained that he used the land with his family and that the Defendant had never chased him away. The Defendant only sued him in Siakago to remove the caution he had placed on the land. He explained that he placed the caution when he learnt that the Defendant wanted to sell the land to other people.

12. On cross-examination, he clarified that he did not live on the suit land but uses it for cultivation and grazing. He has not built on the suit land, he has a temporary shelter. He denied that the Defendant farmed on the land. The Plaintiff produced an official search for the suit land, photographs of the land, the sale agreements, acknowledgment of payments and a copy of a green card for the suit land.

13. The Plaintiff called three witnesses, Bernard Njue Nyaga, John Mwangi William, the Plaintiff's worker and his wife Gladys Njeri. They testified that the Plaintiff purchased the suit land from the Defendant and that he has been utilizing it to plant green peas, maize and other crops as well as keeping cows and goats since 2006. They maintained that the neighbours know that the land belongs to the Defendant.

14. The Defendant adopted his written statement as his evidence in chief. He maintained that the agreed purchase price for the suit land was Kshs. 530,000/= and that the Plaintiff only paid him Kshs. 55,000/=. He stated that he allowed the Plaintiff to use the land 4 to 5 years after he paid for the land. He denied that they visited the LCB in 2009 because the Plaintiff had not finished paying for the land. He stated that the Plaintiff was tilling part of the land but denied that he was keeping livestock on the land.

15. The Defendant produced copies of the title deed, official search and a copy of a sale agreement. On re-examination, he stated that the Plaintiff has been ploughing the land on and off but that he had stopped him three times in 2010 and 2011.

16. The court directed the parties to file and exchange written submissions. Only the Plaintiff filed his submissions which the court considered. He submitted that he met all the requirements for adverse possession as he has demonstrated that he has cultivated the suit land since 2006, kept livestock to the exclusion of the Defendant and that the Defendant has not entered the land since then. He submitted that his occupation was visible and notorious and added that the

photographic evidence and witness statements confirm active and continuous use of the land through cultivation of food crops like maize and beans and keeping animals.

17. He submitted that he did not face any interference until 2021 when the Defendant orally threatened eviction which he avers cannot suffice without a formal suit for eviction. He averred that time was still running in his favour as the suit filed in Siakago was to remove a caution he had registered against the land. He averred that although the initial possession arose from the 2006 sale agreement, upon receiving full payment, the Defendant's failure to act rendered the Plaintiff's possession adverse. He urged that the suit be allowed.

18. The issues for determination are whether the Plaintiff has proved that he has become entitled to the whole of Mbeere/Kiambere/4132 through adverse possession and whether the court should order removal of the caution registered against the suit land.

19. From the evidence, it is not disputed that the Defendant is the registered proprietor of Mbeere/Kiambere/4132 having been so registered on 16/11/2005 and a title deed issued to him on 1/12/2006. It is also common ground that the Plaintiff entered the suit land pursuant to a sale agreement dated 14/9/2006.

20. The Plaintiff produced the agreement dated 14/9/2006 for the sale of 4 acres of land and another agreement dated 15/7/2007 for the sale of an additional acre for which the Plaintiff paid the Defendant Kshs. 10,000/=. The Plaintiff also produced acknowledgements of payment, showing various payments made to the Defendant between 2006 and 2007 for the portions of land. All the documents are handwritten and not so elegantly drafted. They were not controverted by the Defendant.

21. The Defendant maintained that he only sold 4 acres to the Plaintiff as reflected in the agreement dated 14/9/2006 but claimed that the total purchase price was Kshs. 530,000/=. of which only Kshs. 55,000/= was paid. However, he did not produce any documentary evidence to support that contention. The only written agreement he produced was the agreement dated 14/9/2006 which acknowledged payment of Kshs. 25,000/= leaving a balance of Kshs. 11,000/=. This is consistent with the Plaintiff's version of the transaction. In the circumstances, the court finds the Plaintiff's account more credible, that he purchased and paid for 5 acres of the Defendant's land.

22. The principles governing claims of adverse possession are well established. A claimant must demonstrate open, continuous, peaceful, and exclusive possession of the land in a manner adverse to the title of the registered owner for a period of at least 12 years. See *Wambugu v Njuguna* (1983) KLR 173; *Mtana Lewa v Kahindi Ngala Mwagandi* [2015] eKLR.

23. It is also trite law that where possession is initially through a sale agreement, such possession becomes adverse only upon payment of the full purchase price, or where payment is by instalments, upon payment of the last instalment. In *Gabriel Mbui v Mukindia Maranya* [1993] KEHC 161 (KLR) it was held that where adverse possession arose out of a sale of agreement under which the payment of the purchase price by the adverse possessor was by installments, and the

agreement fails, the period of limitation affords an action for adverse possession only after the last and final payment has been made to complete the agreed purchase price. That the period of limitation started to run on the date of the payment of the last installment of the purchase price.

24. In this case, the uncontroverted evidence from the Plaintiff's witnesses was that the Plaintiff took possession of the land in 2006 and has continuously cultivated and used it since then. The Defendant claimed that he evicted the Plaintiff from the land in 2017 and that the Plaintiff thereafter ceased occupation, but did not tender evidence to support that claim. The Defendant also claimed that he stopped the Plaintiff from ploughing the land between 2010 and 2011, without evidence to substantiate that assertion.

25. On the other hand, the Plaintiff and his witnesses consistently maintained that he has remained in open and continuous occupation of the suit land since 2006, cultivating crops such as green peas and maize, and keeping cows and goats thereon. The court notes that while the Plaintiff's supporting affidavit states that he had become entitled to at least one acre of the land while the summons mentions the entire suit land. The photographs produced by the Plaintiff show a portion of the suit land, with mature trees and largely bare ground.

26. There is no evidence to show that the Defendant attempted to evict the Plaintiff from the suit land. The only evidence is Miscellaneous Application No. 26 of 2021, which the Defendant filed seeking to lift the caution, which the Plaintiff had placed against the suit land. That did not interrupt the Plaintiff's occupation of the land.

27. The court finds that the Plaintiff's possession became adverse to the Defendant's title on or about 31/8/2007 when the last instalment was paid. From 31/8/2007 to 8/2/2022 when this suit was filed adds up to 14 years and 5 months which is beyond the statutory period of 12 years. On the second issue, the Plaintiff registered the caution against the land to protect his interest in the suit land. The caution is to remain in force until registration of the land in his name is completed.

28. The court finds that the Plaintiff has proved that he has acquired ownership of Mbeere/Kiambere/4132 through adverse possession. The Defendant is directed to execute the necessary documents to transfer Mbeere/Kiambere/4132 to the Plaintiff within sixty (60) days of the date of this judgment, failing which the Deputy Registrar of this court will execute the requisite documents on behalf of the Defendant. The Land Registrar, Mbeere, will dispense with the production of the original title deed for purposes of registration of the Plaintiff as proprietor of the of the suit land.

29. The Defendant shall bear the costs of this suit.

DELIVERED VIRTUALLY AT EMBU THIS 25TH DAY OF NOVEMBER 2025. K. BORJUDGE In the presence of: -Mr. Albanus Mutunga Kituku Mr. Marclus Njuki Diana Kemboi- Court Assistant

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Prepared on 29 October 2026 · Esheria