



REPUBLIC OF KENYA



KENYA LAW
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**Okolla v Odembo (Enviromental and Land Originating Summons
E016 of 2022) [2025] KEELC 1361 (KLR) (20 March 2025) (Judgment)**

Neutral citation: [2025] KEELC 1361 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUSIA
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E016 OF 2022**

BN OLAO, J

MARCH 20, 2025

BETWEEN

GILBERT ODEMBO OKOLLA PLAINTIFF

AND

MICHAEL OJIAMBO ODEMBO DEFENDANT

JUDGMENT

1. To describe Michael Ojiambo Odembo (the Defendant herein) as a greedy man is, in my view, clearly an understatement given the circumstances of this case. I think the words acquisitive, voracious, covetous, ravenous and rapacious can describe him better. How else can you describe a man who, having inherited the wife of another man who also left behind children, proceeds to transfer the deceased's land to himself thereby essentially disinheriting his children. That is what the Defendant in this case did going by the un-controverted evidence by Gilbert, Odembo Okolla (the Plaintiff herein). The Plaintiff (the deceased's son) could not take this lying down and so he moved to this Court seeking redress.
2. By his Originating Summons dated 6th June 2022, the Plaintiff acting in person and citing the provisions of the *Limitation of Actions Act* sought judgment against the Defendant in respect to the land parcel No Samia/Luanda-Mudoma/805, in the following terms:
 1. A declaration that the land parcel No Samia/Luanda-Mudoma/805 being occupied by the Plaintiff and situated in Busia County be deemed to have been extinguished through adverse possession.
 2. The Plaintiff be declared and registered as absolute and indefeasible proprietor of the land parcel No Samia/Luanda-Mudoma/805 measuring 4.0 Hectares belonging to the Defendant.
 3. An order do issue directing the County Land Registrar Busia or such officer as shall be delegated by the County Land Registrar Busia to register the title to the said land in the name of the Plaintiff.



4. That an order of injunction be issued restraining the Defendant either by himself, servants, agents, employees or any other person through him from interfering with the said land.
 5. That an order of inhibition, caution or restriction that may be subsisting in respect to the land parcel No Samia/Luanda-Mudoma/805 be discharged in order to facilitate the implementation of the registration.
 6. Any other relief which this Court may deem fit to grant.
 7. The Defendant do pay the costs of this suit.
3. The Originating Summons is supported by the Plaintiff's affidavit of even date in which he has deposed, inter alia, that he has been living on the land parcel No Samia/Luanda-Mudoma/805 (the suit land) for over 40 years and his relatives and neighbours consider him as the owner thereof. He has even buried some members of his family thereon. The land is however registered in the name of the Defendant. He therefore seeks judgment as per the Originating Summons.
 4. Annexed to the Originating Summons is a copy of the register to the suit.
 5. On 20th February 2025 and with the leave of this Court, the Plaintiff filed the following additional documents:
 1. A copy of a letter dated 17th April 2007 from the Provisional Commissioners Western Province forwarding to the High Court the award at the Provincial Land Dispute Appeals in case NO 57 of 2006.
 2. The proceedings and award in the above appeal.
 3. An order dated 28th September 2006 adopting the award of the proceedings in (i) above as a judgment of the Court.
 4. A letter dated 10th April 2018 from the County Surveyor Busia advising the parties herein and one Sophia Nabwire Okola that the surveyor would be visiting the suit land to implement the order of the Court.
 5. A ruling dated 14th February 2018 by Hon. W. K. Chepseba on costs in Busia Chief Magistrate's Court Land Dispute No 57 of 2006.
 6. A letter dated 3rd February 2009 addressed to the Defendant by the District Officer Funyula Division in respect to the suit land.
 7. Copy of the certificate of death of one Sofia Nabwire Okola.
 8. Copy of a letter dated 3rd October 2018 addressed to the Director Civil Registration Services Nairobi by the Sub-county Civil Registration With Respect To Kainani Okola Odembo (Deceased).
 9. Copy of Identity Card of one Amos Nyegenye Khasaya.
 10. Copy of a letter dated 28th September 2018 from the Office Of Assistant Chief Buloma Sub-location confirming that the deceased Kainani Okola Odembo hailed from that Sub-location.
 11. Copy of the certificate of official search for the suit land.
 12. Copies of text messages sent to the Plaintiff.



6. An affidavit of service by one Sebastian Tikolo dated 25th April 2023 shows that the Defendant was served with the Originating Summons together with other documents on 3rd January 2023. However, from the record, the Defendant did not enter appearance nor file any response to the Originating Summons.
7. The hearing commenced before me on 20th February 2025 but did not proceed much because in the cause of the trial, the Plaintiff sought and was granted leave to file further documents. It therefore continued on 17th March 2025 when the Plaintiff proceeded to file further documents and added that he was born on the suit land in 1964 and has lived thereon peacefully. He adopted as his testimony the contents of his affidavit and produced the documents filed herein as his documentary evidence. As I was curious to know how the Defendants could have been registered as the proprietor of the suit land which the Plaintiff alleged to belong to his father, I put the question to the Plaintiff and he replied thus:

“The Defendant came to the land on the demise of my father. He inherited my mother and took advantage of the fact that I was young and he fraudulently registered himself as the owner of the same.”

It is the above statement which explains my description of the Defendant at the commencement of this judgment.

8. Having moved to this Court by way of his Originating Summons seeking an order that he has acquired the suit land through adverse possession, the Plaintiff was obliged to prove that his occupation thereof has been peaceful, continuous, un-interrupted and without the consent of the Defendant. Further that the occupation has been with the knowledge of the Defendant. The threshold for obtaining orders in adverse possession are now well settled through a legion of cases. They include, among others, Sisto Wambugu -v- Kamau Njuguna 1983 KLR 172, Peter Mbiri Michuki -v- Samuel Mugo Michuki 2014 Eklr Benjamin Kama Murima & Others -v- Gladys Njeri C.a. Civil Appeal No 2136 of 1996 and Mtana Lewa -v- Kahindi Ngala Mwangandi [2005 eKLR]. The Defendant having not defended the Plaintiff's claim, this Court must accept the Plaintiff's un-controverted evidence and determine this case in his favour.
9. Before I do so, however, I notice from the additional documents herein that the suit land has also been the subject of litigation in the then Land Disputes Tribunal at Funyula which had ruled that the suit land be sub-divided into two (2) equal portions of 2.0 acres between one Sophia Nabwire Okola and the Defendant herein. That decision was made in Land Disputes Case No 57 of 2006 which decision was up-held on appeal by the then Provincial Land Disputes Appeal Tribunal Kakamega in its appeal NO 146 of 2006 and adopted as a judgment of the Court. I have considered whether that decision renders this case res judicata and I have made the decision that it does not because the said tribunal had no jurisdiction to order the sub-division of registered land into two portions. A judgment or any order issued by a Court which has no jurisdiction is basically a nullity – Joseph Malakwen Lelei & Another -v- Rift Valley Land Disputes Tribunal C.a. Civil Appeal No 82 of 2006 [2014 eKLR]. Such a judgment or order cannot be invoked to plead res judicata. This suit is therefore not caught up by the doctrine of res judicata. It is properly before this Court.
10. Ultimately therefore and having considered the Plaintiff's un-controverted evidence herein, I am satisfied that he has proved his case. I therefore make the following disposal orders:
 1. The Plaintiff has acquired by way of adverse possession the land parcel No Samia/Luanda-Mudoma/805.



2. The Defendant's title to the said land is extinguished and the same shall be registered in the name of the Plaintiff.
3. The Defendant shall within 14 days of service upon him of this judgment surrender to the Land Registrar Busia the original title deed to the said land and in default, the Land Registrar shall proceed to cancel the same and issue a title deed to the same in the name of the Plaintiff.
4. The Deputy Registrar of this Court shall, upon request, be at liberty to execute any documents in favour of the Defendant to facilitate such registration.
5. Any orders of inhibition, caution or restriction subsisting on the land parcel No Samia/Luanda-Mudoma/805 are hereby lifted.
6. An order of permanent injunction is hereby issued restraining the Defendant whether by himself, his family members, agents, employees or any other persons acting through him from interfering with the Plaintiff's occupation and use of the said parcel of land.
7. No orders as to costs.

BOAZ N. OLAO

JUDGE

20TH MARCH 2025

JUDGMENT DATED, SIGNED AND DELIVERED IN OPEN COURT ON THIS 20TH DAY OF MARCH 2025.

Plaintiff present in person

Defendant - Absent

Right of Appeal

BOAZ N. OLAO

JUDGE

20TH MARCH 2025

