



**Maleche v Manyonge & another (Both Sued as the Administrators of the Estate of the Late John Manyonge Wakoli) (Environment & Land Case E001 of 2023) [2023] KEELC 19922 (KLR) (21 September 2023) (Judgment)**

Neutral citation: [2023] KEELC 19922 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA  
ENVIRONMENT & LAND CASE E001 OF 2023  
EC CHERONO, J  
SEPTEMBER 21, 2023**

**BETWEEN**

**MESHACK S. ACHESA MALECHE ..... APPLICANT**

**AND**

**REBECCA NALIAKA MANYONGE ..... 1<sup>ST</sup> RESPONDENT**

**WYCLIFFE KASEMBELI WAKOLI ..... 2<sup>ND</sup> RESPONDENT**

**BOTH SUED AS THE ADMINISTRATORS OF THE ESTATE OF THE LATE  
JOHN MANYONGE WAKOLI**

**JUDGMENT**

1. The plaintiff/Applicant vide an Originating Summons dated 20<sup>th</sup> January 2023, seeks determination of the following questions;
  1. Whether or not the Applicant has been in open, continuous and uninterrupted occupation and use of land parcel No. Bungoma/Kabisi/546 approximate area 8.1 HA for a period exceeding 12 years
  2. Whether or not the late John Manyonge Wakoli's (deceased) title to that parcel of land known as Bungoma/Kabisi/546 has been extinguished by operation of law.
  3. Whether or not the deceased's land should be transferred by the Respondents all that piece and parcel of land known as Bungoma/Kabisi/546 to the Applicant herein Meshack S. Achesa Maleche
  4. Whether or not the deceased's land was registered in the names of Settlement Scheme Trustee in the year 1972 before the deceased transferred to himself on 10. 2.2006 without the Applicant's knowledge.



5. Whether or not the deceased namely John Manyonge Wakoli's land namely Bungoma/Kabisi/546 was held by Settlement Scheme Trust in the year 1972 before it transferred it to the deceased on 10.2.2006
  6. In default of the Respondents (Administrators of the estate of the late John Manyonge Wakoli) voluntarily transferring all that piece and/or parcel of land known as Bungoma/Kabisi/546 Measuring approximately 8.1 HA to the Applicant herein, whether the court should compel to so transfer or authorize the Deputy Registrar to sign the documents on their behalf.
  7. Whether or not the Applicant has title to all that parcel of land known as Bungoma/Kabisi/546 by way of adverse possession.
2. The said Motion is supported by the affidavit of the applicant sworn the same date and grounds apparent on the face of the said application. After the Court was satisfied that the Defendants/ Respondents were duly served and failed to file any response to the plaintiff's/Applicant's claim, the Court directed that the case proceeds to hearing Ex-parte.

### **Plaintiff's summary of facts**

3. This case came up for hearing on 15/6/2023 and one Elizabeth Naliaka Maleche testified on behalf of the plaintiff. In her testimony, the said Elizabeth Naliaka Maleche stated that she had been authorized by the plaintiff, Meshack S. Achesa Maleche who is also her husband to testify on his behalf. The witness stated that she lives in land parcel No. Bungoma/Kabisi/546 and that she has lived on the suit land from 1973 to date. The witness further stated that her husband gave her a power of Attorney authorising her to testify on his behalf dated 22<sup>nd</sup> March 2023 She produced the same as p- Exhibit 1 in this case. She also referred to a land sale Agreement dated 17/01/1973 contained in the plaintiff's list of documents of which she produced as p-Exhibit 2. The said land sale Agreement is in respect of the suit land parcel No. 546 situated within Naitiri Location in Bungoma District between John Manyonge Wakoli(deceased) and the plaintiff herein. The 3<sup>rd</sup> document is an application for consent to the Secretary, land control Board Bungoma while the 4<sup>th</sup> document is a consent of the control Board Bungoma. The 5<sup>th</sup> document produced by the plaintiff is a letter from the ministry of Land and Settlement dated 29/4/1976. The 6<sup>th</sup> document are photographs of developments constructed on the suit land including crops. The 7<sup>th</sup> exhibit is a copy of Green Card for the suit property. The 8<sup>th</sup> exhibit is a copy of Title Deed in respect of the suit land parcel No. Bungoma/Kabisi/546 registered in the name of John Manyonge Wakoli on 14/02/2006. The 9<sup>th</sup> exhibit is a copy of a certificate of official search in respect of the suit land parcel No. Bungoma/Kabisi/546 while the 10<sup>th</sup> and final document are letters of Administration of the Estate of John Manyonge Wakoli. The testimony by the plaintiff and the documents produced in evidence have not been challenged or controverted.
4. The principles of adverse possession are now settled under *Limitation of Actions Act* Cap. 22 laws of Kenya. Section 7 of the said Act places a bar on actions to recover land after twelve (12) years from the date on which the right accrued. Section 13 of the same Act also provides as follow;
  - (1) A right of action to recover land does not accrue unless the land is in 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 of this Act 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.”

5. Again section 38 of the said Act provides as follows;

- (38) 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.”

6. The plaintiff in this case has produced a sale agreement showing that he bought the suit land parcel No. Bungoma/Kabisi/546 from John Manyonge Wakoli (deceased) on 17/01/1973. The plaintiff in his sworn testimony stated that he has been in continuous possession and occupation of the suit land since then to date. From P-Exhibit no.8, the said John Manyonge Wakoli (deceased) was issued with a Title Deed for the suit land on 14/2/2006.

7. The principle of Adverse possession was discussed in numerous decisions by the Superior Courts. In the case of *Wambugu v Njuguna* (1983) KLR 172, the court held;

In order to acquire by the statute of limitations title to land which has a known owner, that owner must have lost his right to the land either by being disposed of it or by having discontinued his possession of it. Dispossession of the proprietor that defeats his title are acts which are inconsistent with his enjoyment of the soil for the purpose of which he intended to use it.

And that;

The proper way of assessing proof of adverse possession would then be whether or not the title holder has been dispossessed or has discontinued his possession for the statutory period and not whether or not the claimant has proved that he has been in possession of the requisite number of years.”

8. Following the uncontroverted testimony and the production of evidence which is not also challenged, I am satisfied that the plaintiff has proved beyond any shadow of doubt that the title holder of the suit land No. Bungoma/Kabisi/546 has lost his title by having been dispossessed and/or discontinued his possession of it for the statutory period of twelve (12) years. To this end, this Court finds and holds that the plaintiff/applicant has on a balance of probability established that he meets the threshold for the grant of the orders for adverse possession.

9. For the above reasons, the court enters judgment for the plaintiff/applicant against the defendants/ Respondents in the following terms;

1. A declaration that the Title in the name of John Manyonge Wakoli in respect to land parcel No. Bungoma/Kabisi/546 has been extinguished by the plaintiff's/Applicant's Adverse possession thereof for the statutory period of twelve (12) years.



2. That the plaintiff/Applicant, Meshack S. Achesa Maleche has become entitled to be registered as owner of the suit land No. Bungoma/Kabisi/546 in place of the registered owner John Manyonge Wakoli by Adverse possession.
3. An order that the Defendants/Respondents do execute all the statutory documents of transfer in favour of the plaintiff/Applicant failing which the Land Registrar Bungoma District/ County to dispense with the production of the same including the original Title and register the plaintiff/Applicant as absolute proprietor of land parcel No. Bungoma/Kabisi/546 in place of John Manyonge Wakoli(Deceased)
4. The Land Registrar Bungoma is hereby directed that the order herein shall be an instrument of transfer of ownership of the whole suit land No. Bungoma/Kabisi/546 from John Manyonge Wakoli(Deceased) to the Plaintiff/Applicant.
5. The costs of this suit shall be borne by the defendants/Respondents.

**READ, DELIVERED, SIGNED AND DATED IN THE OPEN COURT/VIRTUALLY AT BUNGOMA THIS 21<sup>ST</sup> DAY OF SEPTEMBER, 2023**

**HON E.C CHERONO**

**ELC JUDGE**

