



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kipchirchir v Maitha (Environment & Land Case 26 of 2022)  
[2023] KEELC 21819 (KLR) (22 November 2023) (Judgment)**

Neutral citation: [2023] KEELC 21819 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT & LAND CASE 26 OF 2022  
MAO ODENY, J  
NOVEMBER 22, 2023**

**BETWEEN**

**PHILIP KIPCHIRCHIR ..... PLAINTIFF**

**AND**

**SILAS MAITHA ..... DEFENDANT**

**JUDGMENT**

1. By an Originating Summons dated 31<sup>st</sup> October 2022 the Plaintiff sued the Respondent Seeking the following orders;
  - a. A declaration that the title of Silas Maitha to land parcel number Kilifi/Jimba/443 (suit land) has been extinguished by the plaintiff's adverse possession thereof for a period of more than 12 years in terms of the *Limitations of Actions Act*.
  - b. That the plaintiff has become entitled by adverse possession to the suit land in Kilifi County and registered under the *Land Act* in the name of the defendant.
  - c. An order that the Land Registrar Kilifi register the plaintiff as absolute proprietor of land parcel number Kilifi/Jimba/443 in place of the defendant.
  - d. That the Land Registrar Kilifi be directed that the order herein shall be an instrument of transfer of ownership of the whole suit land from the defendant to the plaintiff.
2. The Originating Summons is premised on the Supporting Affidavit sworn by Philip Kipchirchir the Plaintiff who deponed that he acquired the suit property in 2000 when he purchased an interest in a company known as Granton Business Sa which holds a title over the suit property. He stated that since the year 2000 he has been in continuous possession of the suit property and has been making annual land rate payments to the town council of Malindi.



3. PW1 further stated that through a court process, he gave the suit property to his ex-wife as a settlement of alimony owed to her and there has been no third party claiming ownership of the suit property. He added that his ex-wife attempted to register an injunction over the suit property and was issued with a letter from the Land Registrar Kilifi claiming that the property belongs to one Silas Maitha. He stated that his attempts to carry out a search on the property have not been successful and therefore he is unable to ascertain how the Defendant got the suit property in his name.
4. The Defendant was served vis substituted service but did not file any response therefore the matter proceeded as a formal proof. Counsel for the Plaintiff filed submissions and submitted that the Plaintiff has been the proprietor of the suit property for over twenty one years and has been paying land rent and urged the court to allow the orders as prayed.

### **Analysis And Determination**

5. The issue for determination is whether this is a claim for adverse possession or a pure ownership dispute.
6. The pleadings, the facts and the evidence adduced by the Plaintiff do not support a claim for adverse possession. A claimant in a case of adverse possession must meet the threshold as provided for in the *Limitation of Actions Act* before the court can issue orders that he/she has acquired the suit land by way of adverse possession.
7. The principles of adverse possession was elaborately set out in the case of *Wambugu vs Njuguna* [1983] KLR 172, where the Court held that:

“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 dispossessed 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.”

8. None of the above is the case for the Plaintiff as he stated that he bought the land from Granton Business S A who was the registered owner of the suit land and gave it to his ex-wife as alimony. The question is, who the current owner is or who has an interest in the suit land.
9. The Plaintiff annexed payment of land rates receipts but forgot to produce a very crucial document, which is the title or official search in the Defendant’s name. This is a requirement to enable the court ascertain the registered owner of the suit land. The Plaintiff also annexed the title in Granton Business S A who are not a party to this suit.
10. In the case of *Johana Kipkurui Rotich v Charles Kiagi* [2019] eKLR, the court struck out a suit on adverse possession for lack of annexing a copy of a title or copy of official search or extract of the register and held that:

“The reason why one needs to annex an extract of the title is so that the court is clear on the registration of the land and also clear that the land was not under an entity for which time would not start running such as the Government as I have illustrated above.

6. In our case, the plaintiff has not annexed an extract of the title as required by the rules. He has indeed not even annexed a copy of the title deed, or any other document of title, for the same land. He has annexed nothing to show who the past or the current registered proprietor is. As matters stand, nobody



knows who the registered owner of the land claimed by the plaintiff is, and this court cannot tell whether the plaintiff is entitled to benefit from the running of time on the said title. It is pointless proceeding with such a suit for it is incompetent.”

11. I have considered the pleadings and the evidence, and find that the Plaintiff has not proved that he has acquired the suit land by way of adverse possession. The suit is also incompetent. The same is therefore dismissed.

**DATED, SIGNED AND DELIVERED AT MALINDI THIS 22<sup>ND</sup> DAY OF NOVEMBER 2023.**

**M.A. ODENY**

**JUDGE**

*NB: In view of the Public Order No. 2 of 2021 and subsequent circular dated 28th March, 2021 from the Office of the Chief Justice on the declarations of measures restricting court operations due to the third wave of Covid-19 pandemic this Judgment has been delivered online to the last known email address thereby waiving Order 21 [1] of the Civil Procedure Rules.*

