



Chepkwony v Lornho Agri-Business East Africa Ltd & another (Environmental and Land Originating Summons E012 of 2023) [2025] KEELC 3390 (KLR) (24 April 2025) (Judgment)

Neutral citation: [2025] KEELC 3390 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E012 OF 2023**

CK YANO, J

APRIL 24, 2025

BETWEEN

MICHAEL KIPKERING CHEPKWONY APPLICANT

AND

LORNHO AGRI-BUSINESS EAST AFRICA LTD 1ST RESPONDENT

EAST AFRICA TANNING & EXTRACT COMPANY LIMITED (EATEC)

LTD 2ND RESPONDENT

JUDGMENT

1. In the Originating Summons dated 29th May, 2023, the Applicant seeks a determination of the following questions and for issuance of orders that: -
 1. The Applicant, Michael Kipkering Chepkwony has obtained title by way of adverse possession to parcels of land known as Pioneer Ngeria Block 1(EATEC)/90, Pioneer Block 1(EATEC)/91, Pioneer Ngeria Block 1(EATEC)/92, Pioneer Ngeria Block 1(EATEC)/93, Pioneer Ngeria Block 1(EATEC)/94 and Pioneer Ngeria Block 1(EATEC)/95 (Formerly known as K90, K91, K92, K93, K94 and K95) having been on uninterrupted possession of the same since the year 2000.
 2. The 2nd Respondent's title over parcels of land known as Pioneer Ngeria Block 1(eatec)/90, Pioneer Block 1(eatec)/91, Pioneer Ngeria Block 1(eatec)/92, Pioneer Ngeria Block 1(eatec)/93, Pioneer Ngeria Block 1(eatec)/94 And Pioneer Ngeria Block 1(eatec)/95 (Formerly known as K90, K91, K92, K93, K94 and K95) has been extinguished by dint of adverse possession and or the Limitations of Actions Act.
 3. Parcels of land known as Pioneer Ngeria Block 1(eatec)/90, Pioneer Block 1(eatec)/91, Pioneer Ngeria Block 1(eatec)/92, Pioneer Ngeria Block 1(eatec)/93, Pioneer Ngeria Block 1(eatec)/94



And Pioneer Ngeria Block 1(eatec)/95 (Formerly known as K90, K91, K92, K93, K94 and K95) be transferred by the 2nd Respondent to the Applicant.

4. A vesting order do issue vesting Parcels of land known as Pioneer Ngeria Block 1(eatec)/90, Pioneer Block 1(eatec)/91, Pioneer Ngeria Block 1(eatec)/92, Pioneer Ngeria Block 1(eatec)/93, Pioneer Ngeria Block 1(eatec)/94 And Pioneer Ngeria Block 1(eatec)/95 (formerly Known As K90, K91, K92, K93, K94 And K95) To The Applicant Michael Kipkering Chepkwony.
5. The 2nd Respondent be ordered to transfer parcels of land known as Pioneer Ngeria Block 1(eatec)/90, Pioneer Block 1(eatec)/91, Pioneer Ngeria Block 1(eatec)/92, Pioneer Ngeria Block 1(eatec)/93, Pioneer Ngeria Block 1(eatec)/94 And Pioneer Ngeria Block 1(eatec)/95 (Formerly known as K90, K91, K92, K93, K94 and K95) to the Applicant failure to which the Deputy Registrar of this Honourable Court do execute the documents necessary to effect a transfer into the Applicant's name and the Land Registrar Uasin Gishu County do issue a title deed in the name of the applicant Michael Kipkering Chepkwony.
6. The Respondents do pay the costs of the originating summons to the Applicant.
2. The summons is supported by the Applicant's Affidavit of even date. The Applicant's case is that he purchased parcels of land known as Pioneer & Ngeria Block 1(EATEC)/90, 91, 92, 93, 94 and 95 measuring approximately 65.52 Acres (the suit properties) at KShs. 3,096,000/- from the 2nd Respondent, which is a subsidiary of the 1st Respondent. That he paid the consideration in full and took possession in the year 2000 and lived thereon without interruption to date. He deponed that the suit properties were later registered in the 2nd Respondent's name. That in the year 2004, the 1st and 2nd Respondent filed Eldoret CMCC No. 291 of 2004 against him over the suit parcels, which suit was dismissed for want of prosecution on 14th April, 2015.
3. The Applicant deponed that he acquired title to the land in the year 2012 by operation of law through adverse possession having occupied it as a trespasser. He alleged that he has remained in uninterrupted and peaceful possession of the land for over 23 years now. He asked that the Respondents be asked to transfer the suit land to him, failure to which, the Land Registrar, Uasin Gishu County be ordered to transfer the suit land to him.
4. Though duly served with the pleadings herein, the 1st and 2nd Respondents failed to file any response thereto.

Hearing and Evidence;

5. On 17th October, 2024, the Court noted that the Respondents had been served with the Originating Summons. The court directed that the matter would proceed by way of formal proof hearing on 20th February, 2025.
6. The Applicant testified in support of his claim as PW1 and gave a sworn testimony. He adopted his witness statement dated 17th February, 2025, which is a replica of his supporting affidavit, as his evidence-in-chief. He produced the documents in his List of Documents dated 29th May, 2023 being the bundle of receipts as PEXb1, bundle of photographs as PEXB2 and the order dated 14th April, 2015 in Eldoret CMCC No. 291 of 2004 as PEXB3. He testified that he wants the court to order that he be registered as owner of the suit properties.



Submissions:

7. The Applicant was directed to file his final submissions and he complied. In the said submissions dated 25th February, 2025, Counsel for the Applicant set out a summary of the background and facts of the case as pleaded. Counsel submitted that the standard of proof in civil cases is on a balance of probabilities. Citing Sections 107 and 109 of the Evidence Act, Counsel added that the burden of proof lies on the party alleging the existence of particular facts.
8. Counsel then submitted that the Applicant had demonstrated that he had been in open, peaceful, exclusive and uninterrupted occupation of the suit land as a trespasser, in a manner that was adverse to the Respondents' interests. Counsel added that the Applicant possessed the intention/animus possidendi to fully own the suit properties.
9. Counsel further argued that the time for adverse possession starts running when the final instalment of the purchase price is made. Counsel cited Eldoret ELC No. 215 of 2017, Felix Kipchoge Limo vs Robinson Kiplagat Tuwei (2018) eKLR and Public Trustee vs Wanduru (1984) KLR. Counsel submitted that none of the Applicant's evidence has been controverted by the Respondents and thus it stands disproved. Counsel prayed that judgment be entered as prayed with costs to the Applicant.

Analysis and Determination:

10. I have perused the pleadings, considered the testimony and the evidence adduced, as well as the submissions filed herein and I am of the view that the following questions arise for determination;
 - i. Whether the Applicant could claim adverse possession arising from an Agreement for Sale;
 - ii. Whether the Applicant has met the threshold for grant of orders of adverse possession; and
 - iii. Who shall bear the costs?
11. Despite the fact that the suit was undefended, under Sections 107, 108 and 109 of the Evidence Act, the Applicant is still obligated to prove his case to the required standard which is on a balance of probabilities. There are countless authorities on this, one such case being Kirugi & Another vs Kabiya & 3 others (1987) KLR 347, where the Court of Appeal held that:-

“The burden was always on the Plaintiff to prove his case on a balance of probabilities even if the case was heard as formal proof”. Likewise, failure by the Defendant to contest the case does not absolve a plaintiff of the duty to prove the case to the required standard.”
12. Therefore, although the Applicant submitted that his evidence was not controverted, that alone does not automatically mean that he must have his way in Court. He was under a duty to discharge the burden of proof by law placed on him. The law requires that even where the opposing party has made no effort to proffer a defence, the Applicant must still prove his case in court (See Gichinga Kibutha vs Caroline Nduku (2018) eKLR).



a. Whether the Applicant could claim adverse possession arising from an Agreement for Sale;

13. There is the legal framework that supports the acquisition of title through the doctrine of adverse possession. Section 7 of the *Limitation of Actions Act* Cap 22 states as follows:-

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.

14. Section 13(1) of the *Limitation of Actions Act* states;

A right of action to recover land does not accrue unless the land is in the 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.

15. Section 38(1) of the *Limitation of Actions Act* states;

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.

16. The Applicant's claim for adverse possession herein arises from an alleged sale of the suit properties. According to the Applicant, he purchased the suit properties from the 2nd Respondent for a total of KShs. 3,096,000/-. It is the Applicant's case that he paid the purchase price in full and took possession in the year 2000.

17. Ideally, having been allowed possession under a sale, it would mean that his said possession was permissive. Nevertheless, adverse possession can arise out of a sale. In such a case however, the Applicant can only claim that his occupation became adverse if he can prove that the license issued to him allowing him to occupy the land was terminated and/or revoked.

18. Further to that, Courts have held that the purchaser's possession becomes adverse to the vendor once the purchase price is paid in full. Time starts to run from that point, and on completion of the statutory time limit of 12 years, the purchaser would be entitled to become registered as proprietor of the land under adverse possession. In *Gabriel Mbui vs Mukindia Maranya* (1993) eKLR, the court explained 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 instalments, 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. The period of limitation starts to run on the date of the payment of the last instalment of the purchase price (Todd, J, in *Wanyoike v Kahiri* [1979] Kenya LR 236 at 239; also see among others, *Simpson J* (as he then was), in *Hosea v Njiru and others* [1974] E A 526 at 529, 530).”



19. See also the case of *Public Trustee vs Wanduru Ndegwa* (1984) eKLR, where the Court held that:-

“The position of a vendor and a purchaser of registered land is this. The vendor as the registered owner retains the legal estate and becomes the trustee of it for the purchaser when the purchaser pays a deposit for it. The vendor retains a lien on the property for the balance of the purchase money which disappears when it is paid and the purchaser then becomes the sole beneficial owner and the vendor becomes a bare trustee for the purchaser. If the vendor trustee allows the purchaser *cestui qui trust* to remain in possession the latter is in adverse possession because the vendor as the absent registered owner always retains the legal estate and this *prima facie* entitles him to resume possession from the purchaser in possession.

The limitation period will begin to run from the date of the payment of the purchase price in full or last instalment of it. See *Harman J in Bridges v Mees*, [1957] I Ch 475; and *Simpson J (as he then was) in Hosea v Njiru Ors*, [1974] EA 526 (K)...”

20. Notably, in this case, the Applicant has not exhibited a copy of the Agreement by which he purchased the land, and so the court cannot assure itself who the parties therein were, or that the alleged purchase price was what was agreed by the parties.

21. The Applicant has however produced a bundle of receipts and deposit slips as proof of payment of the purchase price. I have taken time to calculate the amount paid by the Applicant, and it comes up to only KShs. 3,067,000/-. I note that there are other sums amounting to KShs. 1,750/- that were deposited on various dates into an account defined in the deposit slips as “Comm. Charge Cash Handling Account”. I see no proof that this money was in any way received by the Respondents herein. But even assuming the said money was paid to the Respondents, it would still not fill the balance that clearly remains unpaid.

22. There is also a receipt dated 8th July, 2002 for KShs. 30,000/- that was paid to the firm of Kibichiy & Company Advocates for legal fees and disbursements. There can be no doubt that this amount was not part of the alleged purchase price.

23. While the Court would like to agree with the Applicant that the full purchase price was paid, from the evidence presented before this court, the amount paid is short by approximately KShs. 30,000/-. For that reason, time could not start to run in favour of the Applicant since he never completed payment for the suit properties as alleged, thus adverse possession could not start to run. Had the Applicant paid the full purchase price as alleged, he would have become a person in whom the period of limitation could run.

b. Whether the Applicant has met the threshold for grant of orders of adverse possession;

24. The doctrine of adverse possession was aptly defined in *Mtana Lewa vs Kahindi Ngala Mwangandi* (2015) eKLR, where the Court of Appeal 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 or 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.”



25. From the definition of adverse possession given above and the provisions of the Limitations of Actions Act, the essential prerequisites of adverse possession are that a party must establish that:-
- a. They have occupied the land openly, without force and to the exclusion of others;
 - b. The occupation was without the consent of the owner; and
 - c. The occupation must be for a continuous and uninterrupted period of at least twelve years.
26. With regards to the openness of possession, I have seen the photographs produced by the Applicant in this suit. They show developments that the Applicant alleges he has undertaken on the land, which developments are quite apparent to all and sundry. In addition, since the Applicant alleges that he gained entry into the land through a purported sale, I can safely conclude that there was no force or stealth in the manner of the Applicant's entry into the suit land.
27. The second requirement that the court needs to determine is whether the Applicant's possession of the suit property was without the consent of the registered owner. The element of non-permissive possession has been fully discussed under the previous head. Since the Applicant never completed payment of the purchase price for the suit properties, the permission to occupy the land never ended and time never started to run for adverse possession as against the registered owner.
28. Lastly, Section 7 of the Limitations of Actions Act requires that the Claimant must have been in occupation of the land for a period of not less than twelve years having dispossessed the owner or there having been discontinuance of possession by the owner. The 12 years are counted from the date that possession becomes adverse to the title and interests of the registered owner. The general rule is that time cannot run in favour of a permitted occupier of land. Time therefore, does not run if an occupier remains in occupation with the permission of the owner.
29. The Applicant has averred that he gained entry into the suit properties in the year 2000 and that as at the time of filing this suit, he had been on the land for over 23 years. It is trite law that adverse possession is claimed against a registered owner of the land, hence the institution of the claim against such registered owner.
30. From the pleadings, it would appear that the registration of the suit land in favour of the 2nd Respondent was done after the year 2000, even though the Applicant was not clear when exactly that happened. Thus indeed, from the year 2000 to the year 2023 when this suit was filed, the Applicant had been in possession for a period of 23 years.
31. This period however must have run continuously for the entire 12 years required by law, and must not have been stopped or interrupted in any way. There are several ways through which time for adverse possession might be stopped or interrupted. *Kuloba J. in Gabriel Mbui vs Mukindia Maranya (1993) eKLR*, explained the instances through which time might be interrupted as follows:-

“ And there are a number of ways in which adverse possession which has begun to grow may be interrupted. Possession may be interrupted

- (a) by the physical entry upon the land by any person claiming the land in opposition to the person in actual possession, with the intention of causing interruption; or
- (b) by the institution of legal proceedings by the rightful owner to assert his right to the land; or



(c) by any acknowledgement made by the person in possession, to any person claiming to be the rightful proprietor, that such claim is admitted or otherwise recognised.”

32. As pleaded by the Applicant, the 1st and 2nd Respondent allegedly sued the Applicant herein vide Eldoret CMCC No. 291 of 2004. Per PEXb3, the suit in the Chief Magistrate’s Court stood pending for a period of 11 years until the same was dismissed for want of prosecution on 14th April, 2015.

33. It is therefore necessary to determine whether time continued to run in favour of the Applicant even during the period the suit was pending in court, to get a clear picture of the period the Applicant was in occupation of the land. I find guidance in the case of Kamunge & 2 others v Waweru & another (Sued as the Administrators of the Estate of Mary Wanja Waweru) (Environment & Land Case E001 of 2020) [2023] KEELC 19009 (KLR), where Angima J. explained as follows:-

“28. The court is, however, persuaded by the decision of the High Court in the Lilian Njeri Muranja Mahinda Case (supra) whereby it was held that a suit which is withdrawn, discontinued or dismissed for want of prosecution cannot stop time from running under the LAA. It was further held that it is only a suit which is prosecuted which can stop time from running under the LAA. Justice L. Onguto held, inter alia, that:

‘For two reasons, I would not uphold that contention. Firstly, it would be stretching the law of limitation for one to argue that once a suit is filed time ceases to run. The only rider to a Plaintiff being allowed to file another suit if the original suit is dismissed for want of prosecution is if the action is still within the limitation period. Certainly, if this were not so then any suit filed would mean time begun to run on the filing of the suit. Effectively, time would never stop. Secondly, I hold the view that merely bringing a suit does not stop statutory periods from running. If the suit is prosecuted of course time stops to run as the action is complete. If the suit is withdrawn or discontinued then, a fortiori, the parties revert to the same position as if the suit had never been filed. The same position would obtain where a suit is dismissed for want of prosecution. That means that time never stops running by the mere filing of the suit. It was counting.’

29. This court also takes the view that a suit which can effectively stop time from running is one which has been or is being prosecuted. A suit which has been discontinued or dismissed for want of prosecution cannot do. By analogy of reasoning, a suit which has been abandoned or which has abated cannot stop time from running. The reason why the filing and prosecution of a suit is deemed to stop the running of the limitation period is because the owner of the land is deemed to have woken up to enforce his proprietary right by seeking recovery of his land. So, if he afterwards withdraws or abandons the suit, he cannot be said to be still enforcing his right of seeking recovery. Similarly, if he dies during the pendency of the suit and his legal representatives neglect to pursue the claim by seeking substitution and revival of the suit then the claim



would simply abate. A claim which has abated cannot seek the enforcement of the rights of the owner.

30. The court is thus of the opinion that the filing of the Nakuru Case which ultimately abated could not stop the running of time under the LAA and it could not be said to have interrupted the Plaintiffs' possession of the claimed portions of land. The court is of the view that upon abatement the parties were simply taken back to the positions they were in before the filing of the suit by the deceased. In the premises, the court finds and holds that the Plaintiffs' claim for adverse possession crystallized in 2016, that is, 12 years after the deceased became the registered owner of the suit property."
34. There are two things that this court must point out. The first is that from the copy of the order annexed hereto, it is not clear what the subject matter CMCC No. 291 of 2004 was about. This court cannot therefore presume that the said suit was automatically filed by the Respondents in a bid to assert their proprietary rights over the suit property.
35. Secondly, even if the suit was filed by the Respondents seeking to enforce their rights over the suit land, the said suit did not proceed to its logical conclusion. It was dismissed for want of prosecution. Going by the above analogy, it would mean that the parties went back to the position prevailing prior to filing of the suit, which is that time never stopped running. For that matter, that suit, even if it was to assert proprietary rights, did not stop time from running. The Applicant has thus satisfied the requirement of time.
36. Be that as it may, Order 37 Rule 7 of the Civil Procedure Rules which sets out the procedure for applying for an order of adverse possession, provides that:-
7. Adverse possession [Order 37, rule 7]
- (1) An application under section 38 of the *Limitation of Actions Act* (Cap. 22) shall be made by originating summons.
- (2) The summons shall be supported by an affidavit to which a certified extract of the title to the land in question has been annexed.
37. Without a doubt, adverse possession is a matter of fact that is observed on the land. It is settled law that claims of adverse possession must be against the registered owner of the suit property and proof of existence of the suit property and its registration must be presented.
38. Since adverse possession runs against a title to land, it is imperative therefore that the court is sure who the owner of the suit property is. Therefore, the Applicant ought to have annexed to the affidavit in support of the summons copies of the certificates of title to the suit properties herein.
39. Although it is not always possible to obtain a copy of the title, in recent times, this requirement has been satisfied by presenting a Certificate of Official Search showing the current registered owner of the property. This was the finding of the Court of Appeal in *Johnson Kinyua vs Simon Gitura Rumuri* (2011) eKLR where it was held thus:-
- "On our part, we have weighed the submissions made on behalf of the parties. Concerning the effect of failure to annex an extract of title we are of the view that nothing turns on this as the disputed land is registered under the Registered *Land Act* and a search certificate under the Registered *Land Act* duly signed by the Registrar constitutes evidence of the entries set out in the certificate..."



In our view reference to certified extracts in Order 37 refers to titles under the other systems of land registration and not to Registered *Land Act* type of registration. Under the latter system of registration, we think a search certificate meets the requirements of the relevant law.”

40. The Applicant himself has deponed that the suit properties were registered in favour of the 2nd Respondent. He did not however present any evidence that the suit lands were ever registered in the name of the 2nd Respondent as alleged. Neither has he shown that the properties are in fact still currently owned by the 2nd Respondent. Neither a Certificate of Title nor a Certificate of Official Search was annexed to the Supporting Affidavit in these summons.
41. As matters stand, the court cannot be sure to begin with, that the land was ever registered in the name of the 2nd Respondent, or at all. And even if it was, there is every possibility that the land might have changed hands and does not currently belong to either the 1st or 2nd Respondents. Without proof that the land indeed belongs to the 2nd Respondent, or the 1st Respondent for that matter, the Court may be issuing orders against a person who no longer has any interest in the suit land, or never had any interest to begin with.
42. That aside, in a claim for adverse possession, the claimant has to meet not one but all the elements of adverse possession. The Applicant has fulfilled the requirements of time as well as open exclusive and uninterrupted possession. However, the claim herein fails for reason that the initial entry into the land was permissive and there is nothing to show that such permission was ever rescinded.
43. It is for the above reasons that I find the Applicant has failed to demonstrate that he is entitled to be declared owner of the suit properties by way of adverse possession.

c. Who shall bear the costs?

44. Costs normally follow the event, and the successful party is always awarded costs. The Applicant herein has not succeeded in his claim. Ideally, the Court would have awarded the Respondents costs of the suit. However, the Respondents never participated in these proceedings, and for that reason, I do not see how the Respondents are entitled to costs. Consequently, this court shall not make any orders as to costs.

Orders:

45. The singular conclusion in the instant case is that the Applicant’s claim that he is entitled to the of suit properties by virtue of the doctrine of adverse possession hereby fail. As a result, the Originating Summons dated 29th May, 2023 is dismissed with no orders as to costs.
46. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT ELDORET ON THIS 24TH DAY OF APRIL, 2025 VIDE MICROSOFT TEAMS.

HON. C. K. YANO

ELC, JUDGE

In the presence of;

Mr. Kipkurui for the Applicant.

No appearance for the Respondents.



Court Assistant - Laban.

