



**Cheburet v Gichuru (Environmental and Land Originating Summons
E024 of 2024) [2025] KEELC 1069 (KLR) (5 March 2025) (Judgment)**

Neutral citation: [2025] KEELC 1069 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E024 OF 2024**

CK NZILI, J

MARCH 5, 2025

BETWEEN

BENARD KEITANY CHEBURET PLAINTIFF

AND

ROBERT GICHURU DEFENDANT

JUDGMENT

1. What is before the court is an Originating Summons dated 13/6/2024 in which the plaintiff, who testified as PW1, prays to be declared as the owner of 3.37 Ha of LR No. Kwanza/Namanjalala Block 4/Kapsitwet/349, registered under the name of the defendant, by virtue of adverse possession. Despite service with the originating summons and evidence by an affidavit of service sworn by John Walter Wanyonyi on 17/1/2025, the defendant did not enter an appearance or attend the hearing.
2. At the trial, the plaintiff relied on his supporting affidavit sworn on 13/6/2024. He told the court that he started residing on the land in 1988, as evidenced by a letter dated 15/10/2015 from the area chief, a letter dated 2/6/2002 from the seller of the land, and photographs produced as P. Exhibit Nos. (1), (2), (3), (6) and (7).
3. The plaintiff told the court that following confirmation that the defendant had become the registered owner on 23/8/2002, he lodged a caution against the title on 16//10/2015 as per a copy of records and an official search produced as P. Exhibit Nos. (4) and (5). The plaintiff told the court that his occupation started upon completion of the payment, which was confirmed by the vendor's advocate letter dated 3/2/2005, while awaiting the process and issuance of a title deed under this name. He produced the letter as P. Exhibit No. (2).
4. The plaintiff relies on written submissions dated 26/2/2025 that he has met the ingredients of adverse possession. Reliance was placed on Sections 7 and 38 of the *Limitation of Actions Act*, Stephen Mwangi Gatunge -vs- Edwin Onesmus Wanjau (Suing in her capacity as the administrator of the estates



- of Kiingi Wairera (deceased) and of Mwangi Kimingi (Deceased) [2022] KEELC 1217 [KLR] and Cheromei -vs- Muigai [2024] KEELC 5604 KLR, and urges the court that she has met the ingredients of adverse possession to be entitled to the reliefs sought.
5. Adverse possession is governed by Sections 7, 13, 17, 18, 37, 38, and 41 of the Limitation of Actions Act, Order 37 of the Civil Procedure Rules, and Section 28(h) of the Land Registration Act, 2012. It is essentially a situation where an intruder takes possession of land and asserts hostile title to that land held by the registered owner, who fails or neglects to take action against such an intruder for a period of 12 years.
 6. In *Mtana Lewa -vs- Kahindi Ngala Mwangandi* (2015) eKLR, the court observed that the process of adverse possession springs into action essentially by default or inaction of the owner and the essential prerequisite being that the possession by the adverse possessor is neither by force nor stealth, nor under the license of the owner, is adequate in continuity, in publicity and in extent to show that the possession is adverse to the title owner.
 7. In *Maweu -vs- Liu Ranching & Farming Cooperative Society Ltd* (1985) KLR 430, the court observed that the key concepts in adverse possession are discontinuance of possession and or dispossession from occupation of the valid owner by the intruder through acts inconsistent with the purpose for which the valid owner intended to use the land, for 12 years. In law, possession, and dispossession are matters of fact that depend on the circumstances of each case. The claimant must lead evidence that the possession has been exclusive, as of right, open, notorious, and without interruption for a period of 12 years, either after the dispossession of the owner or by discontinuance of possession by the owner of his own volition.
 8. As to adverse possession out of a sale, in *Wanyoike -vs- Kahiri* [1979] eKLR, the court observed that the 12 years starts to run on the date of payment of the last installment of the purchase price. In *Wambugu -vs- Njuguna* (1983) eKLR, the court further observed that possession in the case of a sale of land contract becomes adverse once the contract is repudiated.
 9. Additionally, in *Harrison Oyari & Others -vs- Mareo Oriamba & Others* [2016] eKLR, the court observed that in respect of registered land, adverse possession dates from the granting of the certificate of title, for that is when the title holder is prima facie entitled to possession of the land and to take action against any intruder thereof. An applicant/claimant must also establish that he has both actual possession of the land together with the requisite intention to possess it, otherwise known as animus possidendi, which acts are known to or the registered owner, had means of knowing. See *Munyaka Kuna Co. Ltd -vs- Bernado Vicezo De Masi* (The administrator of the estate of Domenico De. Masi (Deceased) [2018] eKLR.
 10. In *Nkoroi -vs- Nyanga & Others Civil Appeal No. E073 of 2022* [2023] KECA 1601 [KLR] 22nd September 2023 (Judgment), the court cited *Mbui -vs- Mukindia* [1993] eKLR and held that adverse possession is a non-permissive physical control over land coupled with the intention of doing so, by a stranger having the sole intention, to exclude all others including the valid owner, through acts inconsistent with the purpose, the actual owner intended to use the land.
 11. In *Kazungu & Another -vs- Omar* (Civil Appeal E042 of 2021 [2024] KECA 412 [KLR] (20th April 2024 (Judgment), the court cited *Ndolo -vs- Kitutu & Others* (Civil Appeal 394 of 2018 [2022] KECA 1289 [KLR] (18th November 2022) (Judgment), that the physical fact of exclusive possession and the animus possidendi to hold as owner, to the exclusion of the actual owner are essential factors to consider. The court said that if the owner of the land loses title by way of adverse possession, it will not matter that a third party obtains title after the period of limitation has run its course, given such a party who has lost its interest has no better title to pass than the one he has lost.



12. Applying the foregoing case law, has the plaintiff met the ingredients of adverse possession? I think he has. There is undisputed evidence that the entry into the land occurred in 1988 after the completion of the purchase price, as evidenced by P. Exhibit Nos. 1, 2, 6 and 7. The land became registered in the name of the defendant on 23/8/2002. Time against the valid owner in favor of the plaintiff for adversity began to run on 23/8/2002. It expired on 23/8/2014. The plaintiff lodged a caution on 16/10/2015 asserting adverse and hostile rights on the land. The defendant had a means of knowing the existence of an intruder both physically on his land and through the copy of records. There is no evidence of an effective entry or assertion of rights to drive out the plaintiff from the land by way of eviction orders or land recovery proceedings with effect from 2002 to the filing of the suit. See *Mukindia -vs- Mutwiri* (Sued as the legal representative of the estate of Fabian Mutwiri Rugiri (Deceased) & Others E&L (OS) E007 of 2033 [2024] KEELC 6344 [KLR] (25th September 2024) (Judgment).
13. The plaintiff has confirmed that he has undertaken inconsistent acts on the land with those of the actual owner. Photographs and a chief's letter have been produced to confirm the plaintiff's acts on the land and occupation. The said acts have not been interrupted or stopped by the valid owner. See *Wambai Gikwa -vs- Paul Kimani Muraba* [2016] eKLR. By not taking action since 2002, after obtaining a title deed and or perhaps driving out the plaintiff out of his land since, the caution was registered in 2015, the rights of the defendant on his land stood extinguished before the filing of the suit.
14. The upshot is that I find the claim proved on a balance of probabilities. It is allowed. The plaintiff is declared owner of 3.37 Ha of LR No. Kwanza/Namanjalala Block 4/Kapsitwet/349, by virtue of adverse possession. The defendant shall transfer the same to the plaintiff within 2 months from the date hereof, in default, the Deputy Registrar of this court to sign the transfer forms. The caution placed on the title is hereby lifted to pave the way for the transfer.
15. Costs to the plaintiff.

JUDGMENT DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 5TH DAY OF MARCH 2025.

In the presence of:

Court Assistant - Chemutai

Keya for the Plaintiff present

Defendant absent

HON. C.K. NZILI

JUDGE, ELC KITALE.

