



**Kiptui v Kibet (Environmental and Land Originating Summons
E023 of 2024) [2025] KEELC 1089 (KLR) (5 March 2025) (Judgment)**

Neutral citation: [2025] KEELC 1089 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E023 OF 2024**

CK NZILI, J

MARCH 5, 2025

BETWEEN

MUSA KIPLAGAT KIPTUI PLAINTIFF

AND

KIPTTEL KIBET DEFENDANT

JUDGMENT

1. The plaintiff took out an Originating Summons dated 13/6/2024, seeking to be declared entitled to a portion measuring 3.5 Ha comprised in parcel No. Kwanza/Namanjalala Block 4/Kapsitwet/352, by virtue of adverse possession.
2. At the trial, the plaintiff relied on a supporting affidavit sworn on 13/6/2024 as his evidence in chief. It was the plaintiff's testimony that he bought the portion from Kabarak Farm in 2002 and was issued with a letter of allotment dated 2/6/2002, and the sale was confirmed by a letter from the seller dated and produced as P. Exhibit 1. Further, the plaintiff averred that he has lived and occupied the suit land since 2002 to date as per photographs produced as P. Exhibit No. 2(a) and (b).
3. The plaintiff also stated that upon conducting an official search, he established that the title deed to the portion under his occupation is registered in the name of the defendant. He produced a copy of the official search as P. Exhibit No. 3. He also produced a caution letter, official search certificate, and area list as P. Exhibit Nos. 4, 5, and 6.
4. By way of written submissions dated 29/2/2025, 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. The plaintiff urges the court to find that he has established the ingredients of adverse possession, through



evidence which has not been challenged by way of pleadings or evidence by the defendant despite service of summons through substituted service as per the affidavit of service dated 17/1/2025.

5. The law governing adverse possession is Sections 7, 13, 17, 37, 38, and 41 of the Limitation of Actions Act, read together with Order 37 of the Civil Procedure Rules and Section 28(h) of the Land Registration Act, 2012. Adverse possession is proved by a claimant through evidence that he has used the land he is claiming nec vi nec clam nec precario. See *Maweu -vs- Liu Ranching & Farming Cooperative Society Ltd* (1985) KLR 430.
6. In *Wambugu -vs- Njuguna* [1983] KLR 172, the court observed that the owner must have lost his right to the land either by being dispossessed of the land or by having discontinued his possession of the land. Dispossession includes the claimant conducting acts inconsistent with the actual owner and enjoyment of the soil for the purpose for which he had intended to use the land.
7. A mere change of ownership of land occupied by another person under adverse possession does not stop the time from running or interrupt it, as held in *Githu -vs- Ndeete* (1984) KLR 776 and in *Paul Kamande Gicheha -vs- Jacob Kinyua Kiragu* [2018] eKLR. Adverse possession runs against the title of a registered proprietor. The land sought for adverse possession must be definite and identifiable. See *Mwangi Gitau -vs- Livingstone Ndete* [1980] eKLR. The acts inconsistent with the owner's use may include fencing off and cultivation on the surface. The registered owner must be aware or have means of knowing actually or constructively that an intruder is in possession or occupation of the land. See *Kimani Ruchine -vs- Swift Rutherford Co. Ltd* (1980) KLR 10.
8. As to adverse possession out of a sale agreement, in *Mbiri Michuki -vs- Samuel Mugo Michuki* [2014] eKLR, the court observed that time for adversity starts running after the payment of the last installment, whereby the purchaser, having paid the purchase price and taken possession, acquires an equitable beneficial interest in the land. See *Benjamin Kamau Murima & Others -vs- Gladys Njeri* C.A No. 213 of 1996. The claimant must show exclusive possession of the land, in the open and as of right without interruption for a period of 12 years. See *Kasuve -vs- Mwaani Investments Ltd & Others* [1984] I KLR 184.
9. From the cited case law, adverse possession is essentially a solution where a person takes possession of land and asserts rights over it, and the person having title to it neglects or omits to take action against such intruder for 12 years, without any force or stealth on the part of the intruder as held in *Mtana Lewa -vs- Kahindi Ngala Mwangandi* (2015) eKLR.
10. The question is whether the plaintiff has proved the ingredients of adverse possession. It is not disputed that entry into the land was out of a sale as per P. Exhibit Nos. (1) and (6). The defendant became the registered owner on 23/8/2002, as per a copy of the green card produced as P. Exhibit No. (3). A caution was registered against the title register on 28/2/2013 by the plaintiff as per P. Exhibit No. (4) and a copy of the search produced as P. Exhibit No. (5), where the plaintiff asserted the purchaser's interest.
11. Therefore, the defendant had knowledge or means of knowing that an intruder was on his land, asserting hostile title to it as of right. The defendant was served with the originating summons and an affidavit of service dated 17/1/2025 filed. This was in line with the ruling dated 7/10/2024. The defendant did not assert the superior right to the land, evict, or drive out the plaintiff from the land since he acquired a title in 2002. The 12 years expired in 2014.
12. I, therefore, find that the plaintiff has proved on a balance of probability that he deserves 3.5 Ha of the land registered in the name of the defendant as LR No. Kwanza/Namanjalala Block 4/Kapsitwet/352. The defendant is directed to execute, deliver, and hand over transfer documents and to sign all consents



in favor of the plaintiff within 2 months from the date hereof, in default of which the Deputy Registrar of this Court shall execute them. The caution placed on the title register shall be vacated to pave the way for the transfer and registration.

13. 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

No appearance by the Defendant

HON. C.K. NZILI

JUDGE, ELC KITALE.

