



REPUBLIC OF KENYA



**Tek v Kibet (Enviromental and Land Originating Summons
E022 of 2024) [2025] KEELC 1045 (KLR) (5 March 2025) (Judgment)**

Neutral citation: [2025] KEELC 1045 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E022 OF 2024**

CK NZILI, J

MARCH 5, 2025

BETWEEN

ROSEBELLA CHEMUTAI TEK PLAINTIFF

AND

KIPTTEL KIBET DEFENDANT

JUDGMENT

1. The plaintiff took out an Originating Summons dated 13/6/2024. She claims entitlement to 3.3 Ha of land comprising LR No. Kwanza/Namanjalala Block 4/Kapsitwet/353, registered in the name of the defendant by virtue of adverse possession. The defendant was duly served with the originating summons using substituted service as per an affidavit of John Walter Wanyonyi, sworn on 17/1/2025, but failed to respond to or attend the hearing.
2. At the trial, Rosebella Chemutai Tek, the plaintiff, testified as PW1. She relied on her supporting affidavit sworn on 13/6/2024 as her evidence-in-chief. PW1 told the court that she purchased the land from Kabarak Farm Ltd in 2002 as per the area list and on completion of payments; a letter of allotment dated 2/6/2002 was issued to her; took vacant possession and began developing the land. She relied on the letter and photographs as P. Exhibit Nos. 1, 2(a) and (b) and 7.
3. PW1 told the court that in 2012, she commenced the process of acquiring a title deed, only to establish through an official search that the title had been issued to the defendant. She produced a copy of the search and green card as P. Exhibit Nos. 3 and 6. In order to protect her interests, PW1 told the court that she lodged a caution against the title register produced as P. Exhibit No. 5. Further, PW1 stated that the defendant has been aware of her occupation of the land for 22 years as per a letter dated 10/11/2005, produced as P. Exhibit No. 8.
4. The plaintiff relied on 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] 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, and 38 of the *Limitation of Actions Act*, Section 28 (h) of the *Land Registration Act* and Order 37 of the Civil Procedure Rules. Adverse possession arises when an intruder moves into possession of land, and the actual owner omits or neglects to take action to drive out the adverse possessor from the land, who is committing acts inconsistent with the title, openly, notoriously, uninterruptedly and without force for a period of 12 years.
6. To establish adverse possession, a party must prove exclusive dispossession of and discontinuance of possession of the actual owner from the suit land for the period of 12 years as held in Wanyancha Gibiti & Others -vs- Waigoge Nyahiri Sinda [2015] eKLR and Wambugu -vs- Njuguna (1983) KLR 172. As to adverse possession out of a sale agreement, in Isaac Cipriano Shingole -vs- Kipketi Togon [2016] eKLR, the court guided by Samuel Miki Waweru -vs- Jane Njeri Richu [2007] eKLR, observed that where a land control board consent is not obtained on time, the sale agreement becomes void by operation of law, for want of consent and that the continued possession of the land by the purchaser, is an independent possession adverse to the title of the original owner.
7. Time for adverse possession may be interrupted if the valid owner asserts title by taking legal proceedings or making an effective entry to the land to drive out the intruder. See Githu -vs- Ndeete [1984] KLR 776 and Mount Carmel Investments Ltd -vs- Peter Thurlow Ltd & Another [1988] 3 ALL ER 129. In Muthiora -vs- Marion Muthama Kiara (Suing on behalf of the estate of Erastus Muthamia Kiara (Deceased) Civil Appeal 43 of 2017 [2022] KECA 28 [KLR] (4th February 2022) (Judgment), the court observed that specific particulars of adverse possession must be pleaded and proved that the occupation was hostile to the defendant's title; animus possidendi; must be there to dispossess the valid owner, and 12 years must elapse before a notice to vacate is issued or a suit brought for vacant possession by the valid owner.
8. Additionally, in Kasongo & Another -vs- Ocheing & Others (Civil Appeal 123 of 2017 [2022] KECA 145 [KLR] (11th February 2022) (Judgment), the court cited Githu -vs- Ndeete (supra) that, a mere change of ownership of land occupied by an intruder does not interrupt adverse possession. The court said that the continued cultivation of sugarcane on the land after the title deed had been acquired amounted to dispossession.
9. In Chevron (K) Ltd -vs- Harrison Charo Wa Shutu [2016] eKLR, the court held that upon expiration of the 12 years, the proprietor's title is extinguished by operation of Section 38 of the *Limitation of Actions Act* and permits the claimant to apply for an order that he be registered as the owner. The court said that the burden is on the claimant to prove that he has done acts on the land that are inconsistent with the owner's enjoyment of the soil for the purpose for which he intended to use it.
10. Applying the foregoing case law to the instant suit, the plaintiff has produced a letter of allotment coupled with an advocates' letter authorizing her to take possession of the land after completing payment for the same, as she awaited processing of a title deed under her name. The photographs produced show acts of development on the disputed land. Similarly, the plaintiff asserted that when she lodged a caution against the title as a purchaser, the defendant had the means of knowing that there was an intruder on his land undertaking adverse acts, openly, publicly, continuously and uninterruptedly between 2002 and 2014, when the twelve years expired. So the title deed held by the defendant became extinguished by operation of law in 2014.



11. There is no evidence that the defendant took legal action to evict the plaintiff from the land or make an effective entry on the land to assert superior title before the suit was filed on 14/6/2024. Time for adversity, therefore, began running against the defendant in favor of the plaintiff from the date of registration of title on 23/8/2002.
12. The upshot is that the plaintiff has proved her claim on a balance of probabilities. She is hereby declared entitled to the defined land out of the defendant's title by virtue of adverse possession. The defendant is ordered to sign transfer documents in favor of the plaintiff within 2 months, in default of which the Deputy Registrar of this court to do so. Any caution in existence is hereby lifted to pave the way for the transfer and registration in favor of the plaintiff. 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.

