



REPUBLIC OF KENYA



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**Abwoya & 2 others v Ookho (Sued as Administrator) (Environment & Land
Case E026 of 2021) [2025] KEELC 3509 (KLR) (5 May 2025) (Judgment)**

Neutral citation: [2025] KEELC 3509 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUSIA
ENVIRONMENT & LAND CASE E026 OF 2021**

**BN OLAO, J
MAY 5, 2025**

BETWEEN

**MARGARET ANYANGO ABWOYA 1ST PLAINTIFF
FREIDERICHS OKWANGO ABWOYA 2ND PLAINTIFF
PETER LEONARD ABWOYA 3RD PLAINTIFF**

AND

PETER ODUOR OOKHO (SUED AS ADMINISTRATOR) DEFENDANT

JUDGMENT

1. Margaret Anyango Abwoya, Freidrachs Okwango Abwoya And Peter Leonard Abwoya (the 1st, 2nd and 3rd Plaintiffs' respectively) moved to this Court vide their Originating Summons dated 10th May 2021 in which they impleaded Peter Oduor Ookho (the Defendant herein and sued as the Administrator to the Estate of Ookho Odhiambo). The Plaintiffs claim to have acquired the whole of the land parcel No Bunyala MudembIXX (the suit land) by way of adverse possession and seek a determination of the following questions:
 - a. Whether the Plaintiffs have been in quiet and notorious possession of the whole of L.R No Bunyalamudembixx for a period exceeding 12 years from 1995.
 - b. Whether the Defendant's title to the whole of L.R NO Bunyalamudembixx became extinguished upon expiry of 12 years in the year 2007 from the time the Plaintiffs went into possession of the said parcel of land in 1995.
 - c. Whether the Plaintiffs should be registered as the owners of L.R NO. Bunyala.mudembixx.
 - d. Who pays the costs of the suit.
2. Arising from the above, the Plaintiffs sought judgment against the Defendant in the following terms:



1. That the Defendant's right over the whole of L.R No Bunyalamudembi/XX got extinguished in 2007 by adverse possession upon expiry of 12 years from the time the Plaintiffs came into possession in 1995.
 2. That the whole of the L.R No Bunyalamudembi/XX be registered in the name of the Plaintiffs.
 3. That the Defendant be ordered to execute all the relevant statutory documents required of him to facilitate the transfer of the whole L.R No Bunyalamudembi/XX to the Plaintiffs and in default, the Deputy Registrar of this Court do execute the same in place of the Defendant.
 4. That the Defendant, his family members, servants or agents and those claiming under or through him be permanently barred or inhibited from disposing off or using or in any way interfering with the Plaintiffs' possession and enjoyment of the said parcel of land.
 5. That the costs of this case be borne by the Defendants.
3. The Originating Summon is supported by the Plaintiffs' separate affidavits all dated 10th May 2021. The 1st Plaintiff is the widow of Benjamin Abwoya Adoli while the 2nd and 3rd Plaintiffs are her sons.
 4. In Her Affidavit, The 1st Plaintiff Has Deposed That Her Late Husband Was From The Babamba Clan But Had Migrated To Namalo With Others To Escape From The 1961 Floods Where He Died. Following His Death, The Plaintiff Returned To Their Original Home At Namalo Following Family Squabbles. The Elders Placed Her And Her Sons Under The Care Of One Margaret Achola Ogema And Since She Had Not Been Inherited As Required By Customs, The Catholic Church Built A House For Her And Her Six Children On The Suit Land Which Was Among The Parcels Of Land Owned By Her Deceased Husband's Family Others Being Land Parcels NO Bunyalamudembi/X2, 1X3 And 2X1. That The Suit Land Was Registered In The Name Of Ookho Odhiambo (now Deceased) By His Brother Afubwa Odinga Who Was Then Working In The Lands Office But The Elders Decided That It Belongs To Her Deceased Husband. That Ookho Odhiambo Resides At Namalo And Has Never Lived On The Suit Land. That She And Her Children Have Been Living On He Suit Land Since 1995 Peacefully, Openly And Without Any Disputes Because The Elders Identified It As The Land Which Belonged To Her Late Husband Before He Moved To Namalo To Seek Shelter. The Community Is Aware That The Suit Land Belongs To Her And Her Children Who Have Nowhere Else To Call Home.
 5. In Their Separate Affidavits Dated 10th May 2021, The 2nd And 3rd Plaintiffs Confirm That They Are Siblings And Children Of The 1st Plaintiff And Benjamin Abwoya Adoli Now Deceased. That Their Deceased Father And Others Had Migrated To Namalo In 1961 To Escape From The Floods And He Died There In 1994. Following The Squabbles Which Ensued After The Demise Of Their Father, Their Mother Returned To Her Original Home At Bukhoba And The Catholic Church Built For Them A House On The Suit Land Where They Have Been Living. And When They Became Of Age, They Also Built Their Homes On The Suit Land Where They Have All Lived With Their Wives And Children Since 2005. That They Have All Lived There Peacefully, Openly And Without Any Disputes And The Community Knows That The Suit Land Belongs To Them Since They Have Nowhere Else To Call Home.
 6. The Plaintiffs filed as their documentary evidence the Green Card to the suit land showing that it has been registered in the name of Ookho Odhiambo Since 2nd October 1985.
 7. The Defendant Filed His Replying Affidavit Dated 13th July 2021 As Well As A Statement Of Even Date. He Also Filed A Statement Of His Witness Almelda Akelo Mabachi Dated 13th July 2021.



8. In His Replying Affidavit, He Described The Originating Summons As A Sham, Scandalous And An Abuse Of The Process Of This Court And Which Should Be Dismissed. He Confirmed That He Is The Son Of The Late Ookho Odhiambo Who Died On 7th September 1981 And Is Also The Administrator Of The Deceased's Estate. He Confirmed Further That The Suit Land Is Registered In The Name Of The Deceased And Denied That It Was So Registered Because The Deceased's Brother The Late Afubwa Odinga Was Working In The Land's Office. He Deposed Further That The Plaintiffs Have Their Own Land At Namalo Where Benjamin Abwoya Adoli The 1st Plaintiff's Late Husband And The 2nd And 3rd Plaintiff's Father And Other Relatives Are Buried. That The Late Benjamin Abwoya Adoli Also Had Land Parcel No Bunyalamudembi94 Which Was Given To Him By His Late Father And The Only Parcel Of Land Belonging To The 1st Plaintiff's Family Is The Parcel No Bunyalamudembi52. He Denied That The Plaintiffs Had Been Placed On The Suit Land By Elders Adding That They Were Only Welcomed For An Over-night Stay After The 1st Plaintiff Had Family Squabbles With Her Brother-in-law One On'ong'o Adoli At Namalo Where She Was Living. They However Over-stayed Their Over-night Invitation At The Home Of The Late Ogema Ogana Knowing That There Was No Surviving Male In That Home. That There Are No Minutes From The Elders Sitting To Support Their Allegations That The Elders Gave Them The Suit Land Nor Any Document To Show That The House In Which The Plaintiffs Live Was Built By The Catholic Church. He Denied That The Plaintiffs Have Been In Quiet And Peaceful Possession Of The Suit Land Adding That The Plaintiffs Have Been Having A Series Of Cases With Him And Almelda Akelo Mabachi The Only Surviving Daughter To The Late Ogema Ogana Regarding The Use Of The Suit Land. That In 2003, The Plaintiffs Barred Almelda Akelo Mabachi From Cultivating The Suit Land And Threatened Her With Pangas If She Ever Stepped On It. That Incident Was Reported To The Area Assistant Chief Who Called A Meeting To Deliberate On The Issue But The Plaintiffs Chased Away The People And Threatened Them With Beating. At One Point, There Was An Understanding With The Local Administration That The Plaintiffs Would Only Use The Land Occupied By Their Homesteads And Leave The Other Portion To Almelda Akelo Mabachi's Children And Grandchildren To Cultivate But The Plaintiffs Reneged On That Understanding. The Plaintiffs First Came To The Suit Land For Temporary Stay And Not To Spend Their Entire Lives Thereon. And Since The Plaintiffs Are Family Of The Said Almelda Akelo Mabachi's Late Nephew, She Can Only Give Them A Portion Of The Suit Land Where Their Homesteads Stand And Leave The Rest To The Defendant's Children And Grandchildren. The Originating Summons Should Therefore Be Dismissed.
9. On Her Part, Almelda Akelo Mabachi Who Is A Daughter To The Late Ogema Ogana And Step-daughter To The Late Margaret Achola Ogema Who Died In 1962 And 1998 Respectively Signed A Statement Dated 13th July 2021 And Confirmed That The Defendant Is The Son To The Late Ookho Odhiambo The Registered Proprietor Of The Suit Land And That The 1st Plaintiff Is The Wife To The Late Benjamin Abwoya Adoli Who Is Her Late Nephew. That The Plaintiffs Have A Portion Of Land At Namalo Where The Late Benjamin Abwoya Adoli, His Mother The Late Appolonia Adoli And His Brother The Late Marshal Ong'onga Adoli Are All Buried. That The Late Benjamin Abwoya Adoli Had A Parcel Of Land Parcel No Bunyalamudembi94 Which Was Given To Him By His Late Father Adoli Parang'a But Which He Sold While Living In Namalo With His Step Father The Late Anderea. She Denied That The Plaintiffs Had Been Given The Suit Land By The Elders. Instead, She Stated That The Plaintiffs Were Allowed To Spend The Night On The Suit Land By Margaret Achola Ogema Following Squabbles With The 1st Plaintiff's Brother-in-law. She Denied That The Suit Land Was Registered In The Name Of The Late Ookho Odhiambo Because His Brother The Late Afubwa Odinga Was Working In The Land's Office. Instead, That When His Step Brother Mbomere Ogema Died, The Household Of The Late Ogema Ogana Was Left Without A Male Heir And Therefore The Chairman Of The Babamba Clan Appointed The Defendant's



Late Father To Inherit And Take Care Of The Household. It Was During That Time That The Suit Land Was Registered In The Name Of The Late Ookho Odhiambo. However, The 1st Plaintiff First Occupied The House Of The Witness's Step Mother Until 1998 When Her Son Constructed For Her A Small Round Thatched House Which She Has Been Occupying Until 2015. She Denied That The Plaintiffs Have Been Occupying A House Built For Them By The Catholic Church. In 2003 When She Went To Cultivate The Suit Land, She Was Barred From Doing So By The Plaintiffs And Reported The Incident To The Area Assistant Chief. When The Area Assistant Chief Called For A Meeting On The Suit Land To Deliberate On The Issue, He And The Village Elders Were Threatened With Severe Beatings If They Ever Stepped On The Suit Land Again And Since Then, There Have Been Disputes Between The Plaintiffs And The Witness Over The Use Of The Suit Land. It Is Not True That The Plaintiffs Have Been In Quiet And Peaceful Possession Of The Suit Land As Alleged. At One Time, There Was An Understanding That The Plaintiffs Can Only Use The Land Occupied By Their Homesteads And Leave The Other Portion For The Witness And Her Children But The Plaintiffs Later Reneged On That Understanding. She Advised The Defendant To File A Succession Case To Have The Suit Land Transferred To Her Grandson. That When The Plaintiffs First Came To The Suit Land, They Only Requested For A Temporary Place To Stay As They Continued To Look For A Place To Go And They Were Not Supposed To Spend Their Entire Life Thereon. And Since The Plaintiffs Are Wife And Children To The Witness's Late Nephew, They Can Only Be Allowed To Utilize The Portion Of The Suit Land Where Their Homesteads Stand And Leave The Rest To The Witness's Children And Grandchildren To Farm. This Suit Should Therefore Be Dismissed.

10. The Defendant Filed The Following As His Documentary Evidence:

1. Copy Of Amended Grant Of Letters Of Administration Issued To The Defendant In Respect To The Estate Of The Late Ookho Odhiambo On 26th January 2021 In Busia Chief Magistrate's Court Succession Cause No 60 Of 2019.
 2. Copy Of Confirmed Grant Issued To The Defendant In Respect To The Estate Of Ookho Odhiambo On 7th July 2021.
 3. Copy of Green Card for the land parcel No Bunyalamudembi/6X.
 4. Copy of Adjudication Record for Mudembi Adjudication Section Parcel No 6X.
 5. Copies of Certificates of Official Search for the land parcels No Bunyalamudembi5X, 2X1 And 1X3.
 6. Copy of a letter dated 2nd November 2018 from the ASsistant Chief Rumbwa Sub-location addressed to the Ocs-port Victoria Police Station reporting a dispute over the land parcel No Bunyala Mudembi/XX.
 7. Copy of a letter dated 24th February 2014 from the Assistant Chief Rumbwa – Sublocation addressed to the 3rd Plaintiff asking him to maintain the status quo on the land parcel No Bunyalamudembi/XX while the dispute is being arbitrated.
 8. Copy of a letter dated 12th July 2021 from the ASsistant Chief Ruambwa Sub-location addressed to whom it may concern reporting difficulties in resolving a land dispute involving the land parcel NO Bunyalabudembi/XX.
11. The hearing commenced on 30th October 2023 when the 1st and 3rd Plaintiff testified. The 2nd Plaintiff testified on 9th July 2024. They all adopted the contents of their supporting affidavits which I have already summarized above. They also produced as their documentary evidence the Green Card to the suit land.



12. The Defendant and his witness Almelda Akelo Mabachi (DW2) testified on 1st October 2024. They too adopted as their testimony the contents of their supporting affidavit and statement which I have already summarized above. The Defendant also produced as his documentary evidence the documents filed as per the list of documents dated 13th July 2021.
13. At the end of the plenary hearing on 6th November 2024, the Court directed that the parties do file and serve their respective submissions on or before 21st January 2025. However, only Mr Juma, instructed by the firm of J. V. Juma & Company Advocates filed the Plaintiff's submission. Mr Otieno instructed by the firm of Odhiambo Benjamin F. O. Advocate for the Defendant did not file his submissions although the record shows that they were served with the submissions by Plaintiffs' counsel on 12th November 2024.
14. I have considered the evidence by the parties and the submissions by Mr Juma counsel for the Plaintiffs.
15. The Plaintiff's claim is that they have acquired the suit land by way of adverse possession having lived thereon since 1995 to date. Section 38(1) of the *Limitation of Actions Act* allows them to approach the Court for such an order. It reads:

“Where a person claims to have become entitled by adverse possession to land registered under any of the Acts cited in section 37, 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. In the case of *Kasuve -v- Mwaani Investments Ltd & Others* 2004 1 KLR 184, the Court had this to say about proof of a claim by way of adverse possession:

“ And in order to be entitled to the land by adverse possession, the claimant must prove that he has been in exclusive possession of the land openly and as of right and without interruption for a period of 12 years after dispossessing the owner or by the discontinuation of possession by the owner on his own volition”.
17. Adverse possession is a fact to be observed upon the land itself – *Maweu -v- Liu Ranching & Farming Co-operative Society Ltd* 1985 Klr 430. And In *The Case Of Kimani Ruchine & Another -v- Swift Rutherford & Company Ltd* 1976 - 80 1 Klr 1500, Kneller J had the following to say on the same issue:

“The Plaintiffs have to prove that they have used this land which they claim as of right; nec vi, nec clam, nec precario (no force, no secrecy, no persuasion)”.
18. It is not in doubt that the suit land has been registered in the name of Ookho Odhiambo since 1985 and that the Defendant is the legal Administrator to his Estate.
19. The Defendant in paragraph 16 of his replying affidavit denied that the Plaintiffs have been in quiet and peaceful occupation of the suit land. This is how he has deposed:

16: “That it is not true that the Applicants have been in quiet and peaceful possession of the suit land parcel No Bunyalamudembi/XX as they alleged in their statements.”

The same was replicated in paragraph 21 of the statement of his witness Almelda Akelo Mabachi (DW1).



20. The Plaintiffs' occupation of the suit land was however conceded by the Defendant and even his witness Almelda Akelo Mabachi (DW1). When he was cross-examined, the Defendant said:

“It is true that the 1st Plaintiff and her family moved into the suit land in 1995. But her land is No Bunyalamudembi/XX”.

21. His witness Almelda Akelo Mabachi who testified as DW1 said:

“The Plaintiffs have never vacated the land since they entered it.”

22. Therefore, the Plaintiffs' occupation and possession of the suit land is not really in dispute. And as was held in *Wambugu -v- Njuguna* 1983 KLR 172, adverse possession is all about dispossessing the title owner of the land in dispute. And although the Plaintiffs are claiming the whole of the suit land by way of adverse possession, I do not think they have established a claim to the whole of the suit land. I shall revert to the later in this judgment.

23. The Defendant and his witness have stated that the Plaintiff's occupation and possession of the suit land has not been peaceful. That is clear from paragraph 16 of the Defendant's after replying affidavit already cited above. And on her part, the Defendants witness Almelda Akelo Mabachi (DW1) stated as follows in paragraph 21 of her statement:

“That since then me and the Applicants have been having one dispute after another over the said suit land parcel in regard to use and ownership hence it is not true that the Applicants have been in quiet and peaceful possession of the suit land parcel No Bunyalamudembi/XX as they alleged in their statements.”

24. In paragraph 19 of her statement Almelda Akelo Mabachi (DW1) said:

“That in 2003, I went to cultivate my late father's land, the suit land parcel No Bunyalamudembi/XX as I used to do when my late step mother was alive but I (sic) barred from cultivating and threatened with pangas by the Applicants if I ever stepped on the suit land parcel.”

25. When she was cross-examined, she said:

“It is true that this dispute started in 2019 when the National Irrigation Board was compensating the land owners for the use of their land for purposes of laying the water pipes.”

26. On his part, the Defendant averred in paragraph 18 of his replying affidavit thus:

18: “That in 2003, the Applicants barred the said Almelda Akelo Mabachi and her children from cultivating the suit land parcel No Bunyalamudembi/XX which she has been farming ever since the late MArgaret Achola Ogema was alive and threatened her with pangas if she ever steps on the suit land.”

27. When he was cross-examined, the Defendant said:

“The 1st Plaintiff came to the land in 1995. It was not until 2014 that the Chief first wrote a letter to her.”

28. Among the documents produced by the Defendant in his case are three (3) copies of letters written by the Assistant Chief Ruambwa sub-location dated 24th February 2014, 2nd November 2018 and 12th



July 2021 over the suit land. The earliest letter was therefore the one dated 24th February 2014 and was addressed to the 3rd Plaintiff asking him to maintain the status quo on the suit land and only develop his designated area pending arbitration by the elders. It is clear from the above that disputes over the suit land started in 2003 when the Plaintiffs barred Almelda Akelo Mabachi (DW1) from cultivating thereon. However, it is worth noting that Almelda Akelo Mabachi (DW1) has never been the registered proprietor of the suit land. The registered proprietor of the suit land, as is clear from the Green Card, has been Ookho Odhiambo since 2nd October 1985 and at no time did he or his legal representative who is the Defendant herein take any action to assert their ownership of the suit land such as seeking their eviction therefrom. Whatever happened between the Plaintiffs and Almelda Akelo Mabachi (DW1) in 2003 was therefore of no consequence because she had no proprietary interest in the same to entitle her to interrupt the Plaintiff's occupation and possession of the suit land. As is clear from the case of *Githu -v- Ndeete* 1984 KLR 776, interruption of time for purposes of adverse possession occurs when the actual owner makes an effective entry into the land in dispute or asserts his right by driving out the intruder or taking legal action. Neither the Defendant nor the late Ookho Odhiambo took any action against the Plaintiffs in that regard and whatever transpired between the Plaintiffs and Almelda Akelo Mabachi (DW1) had no bearing at all on the Plaintiffs' occupation and possession of the suit land.

29. It is also the case of the Defendant that the Plaintiffs entered the suit land with the permission of the late Margaret Achola Ogema. The Defendant has deposed in paragraph 25 of his replying affidavit as follows:

“ That when the Applicant first came to the suit land parcel No Bunyalamudembi/XX they only requested for a temporary place of stay as they continued to look for a place to go and not a place to spent (sic) their entire lives on”.

30. What the Defendant is suggesting by that averment is that the Plaintiffs are only on the suit land with the consent of the owner thereof. It is of course correct that a person who is on the suit land with the consent of the title owner cannot claim it by way of adverse possession – *Mbui -v- Maranya* 1993 eKLR. Adverse possession entails animus possidendi and therefore, other than physical entry, the same must be without the permission of the true owner of the land and exercised under some claim or colour of right. Again as is now already clear, there is no evidence to suggest that the true owner of the suit land Ookho Odhiambo or following his demise, the Defendant as his legal Representative, consented to the entry of the Plaintiffs onto the suit land. The said Margaret Achola Ogema who is alleged to have invited the 1st Plaintiff and her family to the suit land when they left Namalo and were looking for a home was not the registered proprietor of the suit land at any time. Therefore, the fact that she only invited the Plaintiffs for a right on the suit land is of no consequences in so far as the Plaintiffs' claim to the same by way of adverse possession is concerned. The consent or permission which can vitiate a claim to land by way of adverse possession can only be the consent or permission of the title holder of the suit land. The Defendant has not said anything about granting the Plaintiffs any such consent.
31. That the Defendant has been dispossessed of a portion of the suit land is further confirmed by the evidence of the 2nd Plaintiff. He stated in his oral testimony that other than moving onto the suit land in 1995 with his mother the 1st Plaintiff and his brother the 3rd Plaintiff, he also buried his wife thereon in 2014 and his son in 2010. And nobody raised any issues when that was done.
32. There is also a concession and admission on the part of the Defendant regarding the Plaintiffs' occupation and possession of part of the suit land. In paragraph 26 of his replying affidavit, the Defendant has averred as follows:



26: “That by virtue that the Applicants are the family of the said Almelda Akelo Mabachi’s late nephew, she can only give them the portion of land where their homesteads stand, and leave the rest to her children and grandchildren to farm.”

33. On her part, the said Almelda Akelo Mabachi who was the Defendant’s witness added in paragraph 25 of her statement as follows:

25: “That by virtue that the Applicants are wife and children to my late nephew, we can only give them the portion of land where their homestead stands and leave the rest to my children and grand children to farm.”

34. On the basis of those admissions alone, and bearing in mind that the parties are indeed family, this is such a case where this Court can impose a trust which is essentially an equitable remedy. In a case such as this where the Plaintiffs are in occupation and possession of the suit land, the imposition of a trust would not be far fetched because it need not be pleaded. However, I will not take that route today.

35. From the above evidence, however, it is clear to me that the Plaintiffs have proved that they are entitled to orders that they have acquired a portion of the suit land by way of adverse possession. In a claim of land by way of adverse possession, the claimant must be able to identify the land claimed. The Plaintiffs are claiming the whole of the suit land by way of adverse possession. However, it is clear from the evidence that they do not occupy the whole of the suit land. When she was examined by Mr Otieno during the plenary trial, the 1st Plaintiff said:

“The land is 7 acres. I have not measured the portion which we live on and another where we grow rice. The rice is for Josephine Anyango. Imelda is the mother of Josephine. My son Peter Leonard Abwoya also grows rice. But Imelda Is still ploughing her portion to-date. It is not true that I am using the whole land.”

36. On his part, the 3rd Plaintiff said the following in cross-examination:

“It is true that we went to the Chief when we had a dispute over the land. We had a case with our aunty Almelda Akelo. She is the one who took us to the Chief. She wanted us to share the land in dispute. There have been no quarrels. My aunty uses a portion of the land. The portion she uses is 0.6 Hectares so we do not use the whole of the land parcel No Bunyalamudembi/XX. There is also Simon Namayi who uses 0.4 Hectares to grow rice. So 1.0 Hectares out of the land is utilized by other persons. So we do not use the whole land.”

37. It is clear that neither the Plaintiffs nor the Defendant or Imelda Akelo Mabachi know the exact size of the portion of the suit land which any of them occupy and utilize. But the occupation and utilization of a portion of the suit land by the Plaintiffs is not really contested. Indeed it is admitted and the Defendant is willing to have that portion given to the Plaintiffs.

38. I have toyed with the thought of directing the Land Registrar and County Surveyor to visit the suit land for purposes of demarcating it to confirm exactly what portion thereof the Plaintiffs occupy before I make my final orders in this judgement. That will involve this Court issuing post-judgment and enforcement orders which route I am not prepared to take in the circumstances of this case for fear of opening up other disputes. I am persuaded that the best route to take in the circumstances of this case is to make final orders as to what portion of the suit land the Plaintiffs are entitled to going by the evidence before me. The suit land measures 3.0 Hectares which translates to $2.471 \times 3 = 7.413$ acres. There is evidence from the 3rd Plaintiff that 1.0 Hectares is already utilized by persons who are not parties to this suit and it must also be remembered that the Defendant is the registered proprietor of



the suit land. Doing the best I can, I am satisfied that the Plaintiffs are entitled to orders that they have acquired 2 acres out of the suit land by way of adverse possession.

39. On the issue of costs, the parties being family, they shall bear their own costs.
40. Ultimately therefore and having considered the evidence in this case, there shall be judgment for the Plaintiffs against the Defendant in the following terms:
 1. The Plaintiffs have acquired by way of adverse possession a portion of land measuring 2.0 acres out of the land parcel NO Bunyalamudembi63.
 2. The Defendant's interest in the said 2.0 acres out of the land parcel NO Bunyalamudembi/XX has been extinguished by operation of the law.
 3. The Defendant shall within 45 days of delivery of this Judgment deliver to the Land Registrar Busia the original title deed to the land parcel No Bunyalamudembi/XX for cancellation of the register and execute all the relevant documents to facilitate the registration of 2.0 acres in the joint names of the Plaintiffs and 5.4 acres in the name of the Defendant.
 4. In doing so, the Land Registrar and County Surveyor Busia shall as much as possible take into account the portion of the suit land which the Plaintiffs have put up their homesteads and buried their kin.
 5. The parties shall meet their own costs of the survey exercise.
 6. In default of (3) above, the Deputy Registrar shall execute all such documents on behalf of the Defendant.
41. Thereafter, the Defendant, his family, servants, agents or any persons acting through him shall be permanently be enjoined from interfering with the Plaintiffs' occupation and utilization of their 2.0 acres demarcated from the land parcel No Bunyalamudembi/XX and registered in their names.
42. Each party shall meet their own costs of the suit.

BOAZ N. OLAO

JUDGE

