



REPUBLIC OF KENYA



**Majimbo v Jesang (Environment & Land Case E034 of 2024)
[2025] KEELC 4441 (KLR) (10 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4441 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT & LAND CASE E034 OF 2024**

**CK NZILI, J
JUNE 10, 2025**

BETWEEN

BONNE NICHOLAS MAJIMBO PLAINTIFF

AND

PAULINA JESANG DEFENDANT

JUDGMENT

1. The plaintiff approached this court through a plaint dated 31/5/2024. He seeks:
 - (a) A declaration that he is the rightful owner of Parcel No. Waitaluk/MabondeBlock3/Namgoi/24 situated at Kibagenge village, Kitale, (hereinafter the suit land) by virtue of adverse possession.
 - (b) An order that the suit land be registered under his name as the rightful owner.
2. The suit papers were served in person and by way of substituted service upon the defendant, and an affidavit of service was filed by Jackson Nyongesa Simiyu dated 2/10/2024. The defendant never made an appearance. At the trial, Bonne Majimbo Barasa, the plaintiff, testified as PW1. He relied on a witness statement dated 31/5/2024 as his evidence-in-chief. His testimony was that he bought the land measuring 0.1749 Ha from the defendant by an agreement dated 20/10/2001 for Kshs. 100,000/=, which he paid in cash and took vacant possession of the land.
3. PW1 said that he has been in actual use, occupation, and possession of the suit land for over 22 years in an open, peaceful, continuous, exclusive, and uninterrupted. Further, PW1 said that he has extensively developed the land. After the sale, PW1 said that the defendant relocated to an unknown place and he has been unable to trace her. PW1 relied on a copy of an ID card, a title deed, certificate of official search, sale agreement, bundle of photographs, and witness statement produced as P. Exhibit Nos. 1-8.



4. The plaintiff relied on written submissions dated 11/4/2025. He submitted that the sale agreement was duly executed and was only pending the transfer into his name, having paid for the process. The plaintiff further submitted that despite making full payment to the firm of Wanana Ltd, he was taken round in circles and could not trace the defendant. Again, he submitted that is has been twenty-three years and was seeking damages from the firm of Wanana Ltd for the said period. The plaintiff also submitted that he was to secure and formalize the suit land documents.
5. The issue calling for my determination is whether the plaintiff has established the ingredients of adverse possession to be declared the owner of the parcel No. Waitaluk/Mabonde Block 3/Namgoi/24 measuring 0.1749 Ha.
6. Adverse possession occurs where the registered owner of land omits or neglects to take action against an intruder to his land, who occupies exclusively, enters into the land, dispossesses him, and or discontinues his possession in an open, uninterrupted, notorious, and continuous manner for a period of 12 years committing acts inconsistent to the purpose for which the true owner intended to use the land, and with the sole intention to own the land.
7. In *Gichuhi & 2 Others v Kiago & Another* (Civil Appeal 66 of 2019) [2025] KECA 182 [KLR] (16th February 2025) (Judgment) S Ole Kantai, JW Lessit and A Ali Aroni JJA, the court said that for adverse possession to take place, as stated in *Mbira v Gachubi* [2002] 1 EALR, a claimant must prove non-permission or un-consensual actual, open, notorious, exclusive, and adverse use by him or those under whom he claims for the statutory period without interruption. The court cited *Samuel Muki Waweru v Jane Njeri Richu* (Civil Appeal No. 122 of 2001) that where the entry was out of a sale agreement, possession as held in *Panda v Kirpal & Another* [1975] EA 225, does become adverse until the permission to occupy ends. Further, the court cited *Benjamin Kamau Murima & Another v Gladys Njeri* CA No. 213 of 1990, that the combined effect of Sections 7, 13, and 17 of the *Limitation of Actions Act* is to extinguish the title of a property owner in favor of the adverse possessor of the same upon expiry of 12 years of adverse possession of the land. The court observed that the agreement purportedly allowing the respondent permission to take possession was void, the beneficiaries of the estate knew or ought to have known, but were indolent, the only logical conclusion being that the respondent's entry was illegal, not permissive and adverse to the owner's title.
8. In *Wambugu v Njuguna* [1983] KLR 172, *Sisto Wambugu v Kamau Njuguna* [1982-88] 1 KLR 217 and *Samuel Miki Waweru v Jane Njeri Richu* Civil Appeal No. 122 of 2001, the court held that where a purchaser occupies land which is subject to a sale agreement, but with the consent of the vendor, time does not start running for purpose of adverse possession until the agreement is terminated, and that about a sale agreement, subject to Section 6(1) of the *Land Control Act*, once it becomes void, time begins to run. The court guided by *Mbugua Njuguna v Elijah Mburu Wangoko & Another* CA No. 27 of 2002, observed that where the transaction of sale terminates for lack of a land control board consent, then for purposes of adverse possessory rights, time begins to run the day the claimant is put in possession of the land.
9. Guided by the foregoing binding decisions, the sale agreement putting the plaintiff into possession of the land in issue is dated 20/10/2001. This is the day he paid the total sum. The seller was to process the title through Kanana Commercial Agencies. That was not done within the stipulated period of 6 months for contract transactions. So the agreement became void after 6 months.
10. The photographs produced show adverse acts on the land. There is no evidence of an effective entry to drive out the plaintiff from the land or for the defendant to assert title to the land. The plaintiff as at the filing of the suit, had been on the land continuously and uninterruptedly for over 12 years. From 2002 twelve years expired in 2014. Under Section 38 of the *Limitation of Actions Act*, the title to land held



by the defendant became extinguished by operation of the law. See *Public Trustee v Wanduru Ndegwa* [1984] KECA 72 [KLR], *Peter Mburu Michuki v Samuel Mugo Michuki* [2014] KECA 342 [KLR] and *Mwangi Gichu v Livingstone Ndeete* [1980] KECA 35 [KLR].

11. In my considered view, the plaintiff has satisfied on a balance of probabilities the ingredients of adverse possession. He is therefore declared the owner of the suit land. The same shall be transferred to him by the defendant within 2 months; in default, the Deputy Registrar of the court to sign the transfer form with the Land Registrar in charge of the Registry, directed to dispense with the production of the original title deed during the exercise. The plaintiff shall pay the costs of the transfer and registration.
12. Orders accordingly.

**JUDGMENT DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT
AT KITALE ON THIS 10TH DAY OF JUNE 2025.**

In the presence of:

Court Assistant - Dennis

HON. C.K. NZILI

JUDGE, ELC KITALE.

