



**Gitiro (Sued as the Legal Representative of Thomas Chacha Gitiro (Deceased)) v Seria  
(Sued as the Legal Representative of Seria Boroye Sinda (Deceased)) (Environment  
and Land Case 30 of 2021) [2025] KEELC 5177 (KLR) (8 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5177 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MIGORI  
ENVIRONMENT AND LAND CASE 30 OF 2021**

**FO NYAGAKA, J**

**JULY 8, 2025**

**BETWEEN**

**CHACHA ZACHARY GITIRO ..... PLAINTIFF  
SUED AS THE LEGAL REPRESENTATIVE OF THOMAS CHACHA GITIRO  
(DECEASED)**

**AND**

**SAMUEL WILSON SERIA ..... DEFENDANT  
SUED AS THE LEGAL REPRESENTATIVE OF SERIA BOROYE SINDA  
(DECEASED)**

**JUDGMENT**

1. The Plaintiff commenced this suit vide an Originating Summons dated 8<sup>th</sup> July, 2021. He claimed that he Chacha Zachary Gitiro had acquired seven (7) acres, being a portion of land parcel No. Bukira/Buisaboka/77. He sought the following questions to be settled:
  1. That the rights of the defendant to recover a portion of land parcel number Bukira/Buisaboka/77 measuring 7 acres is barred under the provisions of the *Limitation of Actions Act* and the defendant's title thereto is extinguished on the grounds that the plaintive had been an open, peaceful, quiet, uninterrupted and continuous possession and occupation thereof for a period of more than 18 years hence this Court ought to make a declaration accordingly.
  2. That having been in such occupation and possession of the portion of the suit land in the manner aforesaid the plaintiff's interest in the suit property amounts to an overriding interest as envisaged under the Land Registration. Act and merits registration and the court ought to make a declaration accordingly.



3. That this Court, therefore, upon finding that the title to the defendant over the portion of the suit property measuring 7 acres has been extinguished by fraction of time, does issue an order for the subdivision and transfer of the portion to the plaintiff.
  4. That there be an order of permanent injunction restraining the Plaintiff by himself, his agents, servants, employees, family members and or any person claiming mean under him or acting with his express or implied authority from alienating, transferring and entering, reentering, trespassing onto, disposing of or in any way interfering with the plaintiff's possession and occupation of the portion of the suit property measuring 7 acres.
  5. That in default of the defendant executing the requisite transfer documents and or instruments to effect subdivision and transfer of the portion to the plaintiff, the executive officer of this court be directed to. The quote that documents.
  6. The costs of these proceedings be borne by the defendant.
2. The summons was based on eleven (11) grounds which were that the plaintiff's father acquired the portion initial by way of purchase for value sometime in or about 13th September 1999. It was acquired from the defendant's father, who is since deceased. At the time of the acquisition the defendant's grandfather was the registered proprietor of the parcel of land. The defendant had since taken out letters of administration for the estate of his deceased father. The defendant's father died before the portion was subdivided and transferred to the plaintiff. The plaintiff's father, however, was put in possession of the portion which was clearly demarcated on the ground and later succeeded by the plaintiff, who has maintained such possession and occupation to date. The transaction initially was subject to the provisions of the Land Control Act. The consent of the relevant Land Control Board (LCB) for the subdivision and transfer of the portion was mandatory. The consent was neither applied for nor obtained by the parties prior to the death of the defendant's father. Their possession and occupation by the plaintiff, however, persisted, and the defendant never took any steps to commence any proceedings to terminate it. In the circumstances, such possession and occupation is adverse to the rights and interests of the defendant. The plaintiff, having been in open, uninterrupted and wired continuous occupation of the portion of the suit property for a period of 20 years, had acquired the title by adverse possession and it merits registration.
  3. The originating summons was supported by the Affidavit of Chacha Zachary Gitiro sworn on 18th July 2021. In addition to the facts stated in the eleven grounds in support of the Summons, the deponent annexed a number of documents to support his averments. He annexed as CZG1 a copy of the green card for the land parcel number Bukira/Buisaboka/77 measuring 40.0 hectares originally registered in the name of Seria Boroye. He also annexed as CZG2 a copy of the Grant of Letters of Administration Interstate. Further, he annexed as CZG3 a copy of the Certificate of Confirmation of Grant and CZG4 a copy of the sale agreement dated 13th July 1999. He added that. He paid a sum of Kenya Shillings 105,000/= by way of installments, with the last one being made on 29th November 2000. Lastly, he annexed as CZG 5 a bundle of photographs to show the developments that he had done on the land.
  4. The Respondent denied the claim through a Replying Affidavit which he swore on 4th August 2021. He stated in it that the instant matter was in regard to the estate of Seria Boroye Sinda (deceased) of which he was the Administrator and held a Certificate of Confirmation or Grant issued in Succession Course No 721 of 2014. He annexed as SWS 1 a copy of the Certificate of Confirmation of Grant dated 3rd March 2021. He added that Wilson Syria, the second deceased person, was not an administrator of the Estate and had no capacity to deal in any way any portion of the parcel of land in issue. He stated that such dealings between the second deceased and the third deceased amounted to intermeddling



with the estate of a deceased person contrary to Section 45 of the Law of Succession Act. The occupation by the plaintiff had been met with hostility as evidenced in the Migori High Court ELC No. 3 of 2017; Migori PM Court Criminal Case No. 676 of 2015; Criminal Case No. 795 of 2014; Criminal Case No. 717 of 2014 and Criminal Case No. 475 of 2013. He added that the applicant was not entitled to benefit under the doctrine of adverse possession as alleged.

5. This suit proceeded to hearing. The Plaintiff testified as PW1. He repeated the contents of the Grounds in support of the Originating Summons and adopted the contents of the Affidavit as his evidence in chief. That closed his case and that of the defendant who did not testify.
6. The matter was disposed of by way of written submissions. The Plaintiff filed his written submissions dated 20<sup>th</sup> November, 2024. This Court has given due consideration of the said submissions.
7. The Plaintiff seeks a declaration that he has acquired seven (7) acres of the suit property which in total measures 40.0 Ha by way of adverse possession because he has been possession of the land for over 18 years. He also claims an injunction against the Defendant.
8. The law regarding adverse possession is outlined in the Limitation of Actions Act and the decisions rendered pursuant to the provisions therein in various cases. Thus, Section 7 of the Limitation of Actions Act provides that:

“An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person”.

9. In the case of *Public Trustee v Wanduru Ndegwa* [1984] KECA 72 (KLR) the court held as follows:

“...adverse possession should be calculated from the date of payment of the purchase price to the full span of twelve years if the purchaser takes possession of the property because from this date, the true owner is dispossessed off possession. A purchaser in possession of the land purchased, after having paid the purchase price, is a person in whose favour the period of limitation can run.”
10. It is trite law that in any claim for adverse possession, the claimant is required to annex a copy of the certificate of title, which is necessary in identifying the owner of the property being claimed. Order 37 Rule 7 of the Civil Procedure Rules provides that:-
  1. An application under section 38 of the Limitation of Actions Act (Cap. 22) shall be made by originating summons.
  2. The summons shall be supported by an affidavit to which a certified extract of the title to the land in question has been annexed.
  3. The court shall direct on whom and in what manner the summons shall be served.”
11. In the case of *Abdirashid Adan Hassan v The Estate of W H E Edgley* [2022] eKLR the court held that:

“... the effect under Section 17 of the Limitation of Actions Act would be to extinguish the title, therefore there is need for reference or production of a copy of a title. A claim for adverse possession must be brought against the registered proprietor since it seeks a declaration that the proprietor’s title has been extinguished by prescription. It follows therefore that the proceedings must be in respect of the correct parcel of land and whose ownership is verified by an annexed extract of title in terms of Order 37 rule 7 of the Civil Procedure



Rules. In the instant case, the Applicant only adduced a deed plan as Applicant's Exhibit 2 which is inconclusive proof of ownership of the property. In determining the issue of adverse possession, this Court cannot extinguish an 'non-existence and unknown title.'

12. Further, in the case of *Chevron (K) Ltd v Harrison Charo Wa Shutu* [2016] KECA 248 (KLR), the court held that:

“A claim of adverse possession can only be maintained against a registered owner”

13. It is my opinion that in as much as the Plaintiff stayed on the suit land for over 12 years, it was necessary for her to attach an extract of title in the Defendant's name. The Plaintiff contends that the Defendant did not oppose that the suit land belonged to him. She added that the ruling by the tribunal also confirmed that the suit land belonged to the Defendant. It is this court's view that it is not at all times that the Applicant may obtain the certificate of title and the courts have in the recent times accepted certificates of search or even green cards to the land since they serve the same purpose.

14. In the instant case, the Plaintiff claims to have acquired the portion through the transaction between his father and the Defendant's grandfather vide a sale agreement or transaction entered between 13<sup>th</sup> July 1999 and 29/11/2000. It was his case that the Defendant was aware of the father's and his occupation which were open, uninterrupted and continuous. The Defendant on the other had contended that the transaction between his deceased father and the deceased father of the Plaintiff amounted to intermeddling with the estate of the deceased grandfather. Moreover, that the plaintiff's occupation was not peaceful as there were a number of cases which he listed as Migori High Court ELC No. 3 of 2017; Migori PM Court Criminal Case No. 676 of 2015; Criminal Case No. 795 of 2014; Criminal Case No. 717 of 2014 and Criminal Case No. 475 of 2013.

15. It is a fact that there were two sale agreements dated 13<sup>th</sup> July 1999 and 29<sup>th</sup> November, 2000 between the Defendant's father and Plaintiff's father both deceased. It is also a fact the purchase price was paid in full and received by the Defendant. It is therefore this court's view that the 12-year period of limitation started running from 29<sup>th</sup> November, 2000, and it therefore matured on 29<sup>th</sup> November 2012 being the period from when the purchase price was fully paid and the Plaintiff's father started living on the land without the permission of the Defendant. The issue of intermeddling with the estate of the deceased ought to have been raised before the end of the 12 year period when recovery of the land was permissible. It is too late in the day to raise such a claim by the Defendant. In any event, it has not been proven. Additionally, the cases the Defendant claims that interrupted the peaceful occupation were filed after the defendant's title to the portion (seven acres) of the land had been extinguished. They are of no avail to the Defendant and have in any event not been proved.

16. The upshot is that the Plaintiff has proved his case on a balance of probabilities. Thus, this Court enters judgment in his favour against the defendant as follows:

- a). There be and is hereby issued a declaration that the right of the defendant to recover the portion measuring 7 acres being part of land parcel number Bukira/Buisaboka/77, from the Plaintiff, is time barred by virtue of the provisions of the *Limitation of Actions Act* and the defendant's title thereto is extinguished.
- b). The Plaintiff has acquired by way of adverse the seven (7) acres of the portion of land being part of parcel No. Bukira Buisaboka/77 which he occupies, and his father (deceased) used to occupy before his death and the defendant's title thereto is extinguished.
- c). The portion of land measuring seven (7) acres being part of parcel No. Bukira/Buisaboka/77 which the Plaintiff occupies shall be excised therefrom, and the national Surveyor in charge of



Migori County together with the land registrar as hereby directed to visit the suit land, at the cost of the Plaintiff, survey and curve out the said seven (7) acres or thereabout as occupied by the Plaintiff for purposes of the title thereto being registered in the name of the Plaintiff.

- d) the Defendant shall, within thirty days of the survey and excision of the seven (7) acres or thereabouts of the parcel of land and drawing of the Mutation Forms by the Surveyor sign the requisite instruments of transfer of the parcel of land, in default the Deputy Registrar of this Court to execute the same for that purpose.
- e) That there be and is hereby issued an order of permanent injunction restraining the Defendant by himself, his agents, servants, employees, family members and or any person claiming mean under him or acting with his express or implied authority from alienating, transferring and entering, reentering, trespassing onto, dealing in or disposing of or in any way interfering with the plaintiff's possession and occupation of the portion of the suit property measuring 7 acres.
- f) The costs of this suit be borne by the Defendant.

17. Orders accordingly.

**JUDGMENT DATED, SIGNED AND DELIVERED VIA THE TEAMS PLATFORM THIS 8<sup>TH</sup> DAY OF JULY 2025.**

**HON. IUR NYAGAKA,**

**JUDGE**

In the presence of,

Oseno for S.M. Onyango for the Plaintiff.

No Appearance for Defendant

