



Moenga v Mwariri (Environmental and Land Originating Summons E048 of 2024) [2025] KEELC 4960 (KLR) (3 July 2025) (Judgment)

Neutral citation: [2025] KEELC 4960 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E048 OF 2024**

CG MBOGO, J

JULY 3, 2025

BETWEEN

OLIVER ONKEO MOENGA PLAINTIFF

AND

CHARLES MUTURI MWARIRI DEFENDANT

JUDGMENT

1. The plaintiff filed the originating summons dated 15th July, 2024, expressed to be brought under Order 37 Rule 7 of the [Civil Procedure Rules](#) and Sections 37 and 38 of the [Limitations of Actions Act](#), Cap 22 seeking the following orders:
 1. That the plaintiff be hereby declared to have acquired rights to the suit land known as Title Number Ruiru/Ruiru East Block 2/ 5525 measuring (0.029) ha as against the defendant by adverse possession.
 2. That a declaration be hereby issued that the defendant's rights over the title of the said land number Ruiru/Ruiru East Block 2/5525 measuring (0.029) ha has been extinguished by the plaintiff's adverse possession and occupancy thereof for a period of more than 12 years in terms of Section 17 and 38 of the [Limitations of Actions Act](#) Cap 22.
 3. That a declaration be hereby issued that the plaintiff has acquired interest to land in Ruiru/Ruiru East Block 2/ 5525 measuring (0.029) ha by virtue of adverse possession thereof for more than 12 years from 28th January, 1998 to date.
 4. That an order be hereby issued compelling the Registrar of Lands, Ruiru Land Registry, to register the plaintiff herein as the proprietor of land title number Ruiru/ Ruiru East Block 2/5525, and issue him with a title deed to that effect.



5. That there be hereby issued an order of permanent injunction restraining the defendant by himself, his servants, agents from interfering and/ or occupying and/ or controlling the land parcel number Ruiru/Ruiru East Block 2/5525.
6. That the costs of this suit be borne by the defendant.
2. The application is premised on the grounds on its face. The application was supported by the affidavit of the plaintiff sworn on even date. He deposed that the title to Ruiru/ Ruiru East Block 2/5270, was issued to the defendant on 18th March, 1993, and that thereafter the suit property Ruiru/ Ruiru East Block 2/5525 which was hived off from the mother title was registered on 28th January, 1998. He deposed that since 28th January 1998, he has been in exclusive occupation of the same after the subdivision, a fact which the defendant must have known.
3. The plaintiff deposed that the defendant gave authority to Charkam Property & Commission Agents Limited to sell the mother title on his behalf and the same was subdivided into 9 plots and he ended up purchasing plot no. 6. He deposed that he entered into a sale agreement with the company, paid the full purchase price of Kshs. 70,000/-, and that he was issued with land certificate no. 421 on 31st August, 1995. He stated that upon subdivision, plot no. 6 was registered in the name of the defendant.
4. The plaintiff deposed that he has since developed the suit property, and has lived on the land together with his family uninterrupted for over 26 years, and that he has been paying all utility bills. He deposed that he emigrated to the United States of America, and lost contacts with the James Kamangu, the managing director of the land selling company. Further, that his neighbours obtained their title as well as the other purchasers except him, and that efforts to trace the company and its details are futile as they cannot be found on the record.
5. The plaintiff averred that he has enjoyed actual, open, notorious and exclusive possession of the suit property from 31st August, 1995, which was the time of the purchase, and that even if he had not purchased the same, he would acquire ownership rights through adverse possession owing to the period that exceeds 12 years.
6. The plaintiff's case proceeded for hearing on 7th April, 2025. The plaintiff, (PW1) informed the court that he resides in the United States of America, having moved there in the year 2003. He relied on his supporting affidavit sworn on 15th July, 2024 as his evidence. He produced the documents contained in the list dated 25th March, 2025 as P. Exhibits numbers 1 to 19 respectively.
7. PW1 testified that he got into possession of the suit property in August 1995, after purchasing it from Charkam Property Limited, and by that time, it was part of undivided property. He informed the court that he has produced the documents pertaining to the purchase of the suit property. It was his testimony that he never dealt with the defendant, but Charkam Properties Limited. He testified that the defendant contracted Charkam Properties to sell the suit property on his behalf. Further, that he paid all the dues, and the fees for the transfer.
8. The plaintiff filed his written submissions dated 11th April, 2025 where he raised five issues for determination as listed below:-
 1. Whether the plaintiff has been in continuous, open, exclusive and uninterrupted possession of land parcel Ruiru/Ruiru East Block 2/5525 for a period exceeding twelve (12) years.
 2. Whether the plaintiff's occupation of the suit property was adverse to the interests of the defendant as the registered proprietor.



3. Whether the plaintiff has acquired title to the suit property by operation of law under the doctrine of adverse possession pursuant to Sections 7, 17 and 38 of the *Limitation of Actions*, Act, Cap 22.
 4. Whether the defendant's title and right to the suit property has been extinguished by the plaintiff's adverse possession.
 5. Whether the plaintiff is entitled to be registered as the proprietor of the suit property and to a permanent injunction restraining the defendant from interfering with the same.
9. On the first issue, the plaintiff submitted that he has demonstrated that he took possession of the suit property on 28th January, 1998, has developed the same and during the entire period of over 26 years, the defendant has taken no steps to assert ownership, evict him or object to his occupation of the land. Reliance was placed in the cases of *Mtana Lewa v Kabindi Ngala Mwangandi* [2015] eKLR, and *Ngundi v Ngundi* (Environment & Land Case E60 of 2020) [2022] KEELC 2349 (KLR).
 10. On the second issue, the plaintiff submitted that from 1998 to date, which is a period of 26 years, he has met the statutory threshold of twelve years provided under Section 7 of the *Act*, and that his occupation and possession of the suit property has crystallized into ownership by operation of the law.
 11. On the third issue, the plaintiff submitted that his occupation was not only open and continuous but unequivocally adverse to the proprietary interest of the defendant. Further, that his conduct in asserting exclusive possession without license or consent, and that in the absence of any challenge by the defendant, he is entitled to acquisition of the title by adverse possession. He relied on the cases of *Kimani Ruchine v Swift Rutherford & Co. Ltd* [1980] KLR 10, and *Gerard Murithi v Wamugunda Muriuki and another* [2010] eKLR.
 12. On the fourth issue, and while relying on the cases of *Chevron (K) Ltd v Harrison Charo wa Shutu* [2016] eKLR, and *Khaliango & another v Osodo* (Environment & Land Case E037 of 2021) [2023] KEELC 21499 (KLR) (15 November 2023), the plaintiff submitted that the defendant's title over the suit property has been conclusively extinguished by operation of the law, and as such, the defendant no longer holds any enforceable interest in the suit property.
 13. On the fifth issue, the plaintiff submitted that he reasonably fears interference from the defendant should this court fail to intervene, and that an order of permanent injunction is necessary to restrain the defendants and his agents from interfering with his quiet possession of the suit property, and frustrating his lawful registration as the proprietor. To buttress on this submission, the plaintiff relied on the case of *Iragu v Kabat* (Environment & Land Case 7 of 2023) [2023] KEELC 22373 (KLR) (14 December 2023).
 14. I have considered the pleadings, the evidence produced and the written submissions filed by the plaintiff. In my view, the issue for determination is whether the plaintiff is entitled to the suit property by the operation of the doctrine of adverse possession.
 15. This application is undefended, and while it may be so, the court has to satisfy itself that indeed the plaintiff has met the threshold for the grant of the orders sought. It appears that the plaintiff is unsettled on the date when he may have acquired possession of the suit property. He provides two dates i.e. 31st August, 1995 and 28th January, 1998 as the period in which he assumed occupation. The former is the date in which he was given a land certificate number, and the latter is the date in which the title for the suit property was registered. However, it is undisputed that the basis of the plaintiff's entry into the suit property was as a result of a sale agreement between himself and Charkam Properties dated 31st August, 1995.



16. The principle of adverse possession is well settled under the *Limitation of Actions Act*. Section 7 of the *Act* provides:-

“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.”

17. Section 13 (1) and (2) of the *Act* further provides;

“1. A right of action to recover land does not accrue unless the land is in the possession of some person in whose favour the period of limitation can run (which possession is in this Act referred to as adverse possession), and, where under sections 9, 10, 11 and 12 of this Act a right of action to recover land accrues on a certain date and no person is in adverse possession on that date, a right of action does not accrue unless and until some person takes adverse possession of the land.

2. Where a right of action to recover land has accrued and thereafter, before the right is barred, the land ceases to be in adverse possession, the right of action is no longer taken to have accrued, and a fresh right of action does not accrue unless and until some person again takes adverse possession of the land.”

18. From the above provision of the law, it is clear that the matter before the court is for adverse possession, where the rights of a registered title to land is extinguished upon lapse of 12 years. To prove a claim of adverse possession, the plaintiff has to provide sufficient evidence to substantiate his claim. In the case of *Gabriel Mbuvi vs Mukindia Maranya* [1993] eKLR, it was held:-

“The burden of proving title by adverse possession rests upon the person asserting it. This is to say the burden of proof is upon the person setting up and seeking to prove title by adverse possession (*Mamuji v Dar* [1935] 2 E A CA 111, *Bwana v Ibrahim* (1948) 15 EACA 7; and Forbes, JA, in *Abdulkarim and another v Member for Lands and Mines and another 1* [1958] EA 436). He proves it on the usual standard of proof in civil cases namely, on a balance of probability. What does he prove? He proves three adequacies: continuity, publicity, and extent. For to prove title by adverse possession, it is not sufficient to show that some acts of adverse possession have been committed: the possession must be adequate in continuity, in publicity and in extent, to show that it is adverse to the rightful, paper title owner.”

19. To start with, there is need to establish when the time started running owing to the two dates suggested by the plaintiff. Section 4 (1)(a) of the *Limitations of Actions Act* provides that:-

“The following actions may not be brought after the end of six years from the date on which the cause of action accrued—

(a) actions founded on contract”

20. The plaintiff entered into a sale agreement with Charkam Properties for the sale of the suit property on 31st August, 1995. By virtue of the above provision of the law, an action for a claim of the suit property could not be brought after six years from this date. This means that the plaintiff lost his claim of ownership if at all he would have sought to enforce terms of the agreement, after this period. But that



was not the case. He testified that he relocated to the United States and efforts to trace the Directors of Charkam Properties proved futile. This is to say, that for a claim of adverse possession to succeed in such instance where the entry was through a sale agreement, time starts running after the end of the six years period from the time the sale agreement was executed i.e. 1st September, 2001. Thus, for Section 7 of the Act to apply, 12 years from 1st September, 2001 would be the ideal time for consideration. In this case, a claim for adverse possession ought to have accrued from 2nd September, 2013, and not 31st August, 1995 or 28th January, 1998 as claimed by the plaintiff.

21. The question then is, has the plaintiff's occupation been continuous, open and uninterrupted from 1st September, 2001 to 2nd September, 2013, and perhaps beyond? In the case of Mtana Lewa v Kabindi Ngala Mwagandi [2015] eKLR, the Court of Appeal stated as follows:-

“In terms of Sections 7,9,13,17,37 and 38 of the title of a registered owner of land will be extinguished and vested in a third party who proves that he has been in possession of the land continuously and uninterrupted for a period of 12 years; that such possession has been open and notorious to the knowledge of the owner; that the possession has been without the permission of the owner; and that the third party has asserted a hostile title and dispossessed the true owner.”

22. The evidence tendered by the plaintiff is uncontroverted, no one has laid claim over the suit property. I am satisfied that his occupation of the suit property has been open, continuous and uninterrupted. The plaintiff has on a balance of probabilities satisfied the court that he is indeed entitled to the orders sought.

23. From the above, this court finds merit in the originating summons dated 15th July, 2024, and it is allowed in the following terms: -

1. The plaintiff is hereby declared to have acquired rights over the land known as Title Number Ruiru/Ruiru Eack Block 2/ 5525 measuring (0.029) ha as against the defendant by virtue of the doctrine of adverse possession.
2. The Registrar of Lands, Ruiru Land Registry, is hereby directed to register the plaintiff herein as the proprietor of land title number Ruiru/ Ruiru East Block 2/5525, and issue him with a title deed to that effect.
3. The suit is undefended, I make no orders as to costs.

Orders accordingly.

DATED, SIGNED & DELIVERED VIRTUALLY

THIS 3RD DAY OF JULY, 2025.

HON. MBOGO C.G.

JUDGE

03/07/2025.

In the presence of:

Mr. Benson Agunga - Court assistant

Ms. Achieng holding brief for Mr. Okonjo for the Plaintiff

JUDGMENT ELCLOS NO. E048 OF 2024 DELIVERED VIRTUALLY ON 3RD JULY, 2025.

