



**Bwana v Mochama (Environment & Land Case 1 of 2022)  
[2024] KEELC 696 (KLR) (13 February 2024) (Judgment)**

Neutral citation: [2024] KEELC 696 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISII  
ENVIRONMENT & LAND CASE 1 OF 2022**

**M SILA, J**

**FEBRUARY 13, 2024**

**BETWEEN**

**DAVID ONDABU BWANA ..... PLAINTIFF**

**AND**

**NORAH MOCHAMA ..... DEFENDANT**

**JUDGMENT**

(Plaintiff seeking title to the suit land by way of adverse possession; defendant not filing any appearance and not participating in the suit; plaintiff demonstrating that he has been in open, peaceful and continuous possession of a portion measuring 0.1 Ha of the suit land; plaintiff's suit succeeds in respect of this portion of 0.1 Ha)

1. This suit was commenced through an Originating Summons which was filed on 25 February 2022 and amended on 9 August 2023. Principally, the applicant (referred to herein as the plaintiff) seeks orders that it be declared that he has obtained title, through adverse possession, to the land parcel Wanjare/Bokeire/6511, which land is registered in the name of the respondent (referred to herein as the defendant). Despite being served with summons, the defendant did not enter appearance and did not participate in any way in this suit. The pleadings and evidence before this court is therefore only that provided by the plaintiff.
2. From the Originating Summons, the supporting affidavit thereto, and the oral evidence presented by the plaintiff, the plaintiff contends that on 18 December 1989, he entered into a land sale agreement with one Arika Kebaki (deceased), Morande Kebaki (deceased) and Moibaria Ombati (deceased), wherein he purchased a portion of land measuring 102 X 70 feet out of the land parcel Wanjare/Bokeire/1067 for a consideration of Kshs. 7,000/=. This portion was transferred to him and registered as Wanjare/Bokeire/2428. Subsequently, after the death of Ariri Kebaki, on 20 March



1992, his sons sold to him more land measuring 61 X 81 feet, again out of the title Wanjare/Bokeire/1067, to extend what he had bought. He took possession of the land in 1992 and paid off the consideration in instalments. This second portion sold to him is what comprises of the land parcel Wanjare/Bokeire/6511, which is the suit land and which is registered in name of the defendant herein. The plaintiff avers that he has been in uninterrupted and quiet possession of this portion of the suit land since 1992, and does farming in it, thus his prayer for title to the suit land by way of adverse possession. To buttress his case, the plaintiff presented a surveyor's report, dated 19 July 2023, prepared by the County Surveyor, Kisii, to demonstrate his possession of the suit land.

3. As I had earlier mentioned, the defendant did not file anything to oppose the suit of the plaintiff.
4. I have considered the pleadings, the evidence and the submissions of counsel. This is a claim of adverse possession and it is trite that to prove such claim, one needs to demonstrate that he has been in peaceful and open possession of the disputed land for a continuous and uninterrupted period of at least 12 years.
5. In the case herein, I am of the opinion that the plaintiff has indeed proved, on a balance of probabilities, that he has been in quiet, open, and uninterrupted possession of a portion measuring 0.1 Ha of the suit land since the year 1992, which is a period of about 30 years. I have seen the sale agreement of 20 March 1992 which the plaintiff states is the agreement that sold to him the suit land. This agreement has not been disputed by the defendant and I have no reason to doubt it. I have also seen the County Surveyor's report dated 19 July 2023. That report states that the plaintiff utilizes a portion measuring 0.1 Ha out of the suit land which he has fenced off together with his parcel Wanjare/Bokeire/2428 such that on the ground they appear as one parcel of land. The report further details that the entire land parcel Wanjare/Bokeire/2428 is built up with a permanent house whereas the plaintiff utilizes 0.1 Ha of the suit land as a cattle rearing yard. I have seen from the Green Card that the suit land measures 0.2 Ha. It is apparent that what the plaintiff utilizes is half of it, that is 0.1 Ha, and it is this portion that I am ready to declare that he has obtained title to by way of adverse possession.
6. I will therefore enter judgment in favour of the plaintiff for a portion of 0.1 Ha out of the land parcel Wanjare/Bokeire/6511 which portion is outlined in the County Surveyor's report dated 19 July 2023. I declare that the plaintiff has obtained title to this portion of land by dint of adverse possession. I further issue an order of permanent injunction, restraining the defendant from interfering with the possession of the plaintiff, of this portion measuring 0.1 Ha of the suit land. I further order the defendant to cooperate with the plaintiff and execute all requisite documents to transfer this portion of 0.1 Ha to the plaintiff and in default the Deputy Registrar of this court to ensure that these documents are duly executed so that this portion of 0.1 Ha is transferred to the plaintiff.
7. The last order is costs. Given that the defendant did not contest the case, I make no orders as to costs.
8. Judgment accordingly.

**DATED AND DELIVERED THIS 13 DAY OF FEBRUARY 2024**



**JUSTICE MUNYAO SILA**  
**JUDGE, ENVIRONMENT AND LAND COURT**  
**AT KISII**

In the presence of: -

Mr. Marita instructed by M/S Ochoki & Co. Advocates for the Plaintiff

No appearance for the defendant

Court Assistant – Lawrence Chomba

