



**Kipngeno & 2 others v Maldu (Environment & Land Case  
E003 of 2022) [2024] KEELC 659 (KLR) (14 February 2024) (Judgment)**

Neutral citation: [2024] KEELC 659 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS  
ENVIRONMENT & LAND CASE E003 OF 2022**

**EM WASHE, J**

**FEBRUARY 14, 2024**

**IN THE MATTER OF SECTION 7, 37 AND 38 OF THE  
LIMITATION OF ACTIONS ACT, CAP 22 LAWS OF KENYA**

**AND**

**IN THE MATTER OF ORDER 37 RULE 7 (1), (2)  
AND (3) OF THE CIVIL PROCEDURE RULES, 2010**

**AND**

**IN THE MATTER FOR AN ORDER THAT THE PLAINTIFFS HAVE ACQUIRED TITLE  
UNDER THE PROVISIONS OF THE LIMITATION OF ACTIONS ACT, CAP 22 LAWS OF  
KENYA BY WAY OF ADVERSE POSSESSION AND SHOULD BE REGISTERED AS SUCH**

**BETWEEN**

**JOHN KIPNGENO ..... 1<sup>ST</sup> PLAINTIFF**

**KIPLANGAT TISIA ..... 2<sup>ND</sup> PLAINTIFF**

**JULIUS CHEPKWONY ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**SEBOO MALDIU ..... DEFENDANT**

**JUDGMENT**

1. The 1<sup>st</sup> to 3<sup>rd</sup> Plaintiffs (hereinafter referred to as “the Plaintiffs”) have filed an Originating Summons dated 16.06.2022 (hereinafter referred to as “the present O.S”) against the Defendant seeking for the following Orders; -
  - a. That the Plaintiffs John Kipngeno Terer, Kiplangat Tisia and Julius Chepkwony be registered as the proprietors of all that parcel of land known as Transmara/Kimintet “D”/581 in which



they have been in occupation, having acquired ownership and/or title thereto through adverse possession.

- b. That the title of the Defendant with respect to the said land be declared as having been extinguished by operation of law of adverse possession.
  - c. That this Honourable Court be pleased to declare that the Defendant herein is holding the suit land herein in trust for the Plaintiffs herein.
  - d. That this Honourable Court be pleased to compel the Defendant to transfer the whole of the land parcel number Transmara/Kimintet “D”/581 the suit property herein to the Plaintiffs.
  - e. That in the alternative and if the Defendant refuses to sign the Transfer documents, the Court be pleased to allow the Deputy Registrar to sign the same.
  - f. That Costs of this Originating Summons be provided for.
2. The grounds upon which the prayers above are premised are provided in the body of the present O.S as well as the Supporting Affidavit by the 1<sup>st</sup> Plaintiff sworn on the 16.06.2022 and can be summarised as follows; -
- a. The property known as Transmara/kimintet “D”/581 was bought by their father Josea Kiprono Bett in the year 2006 from one Seboo Singh.
  - b. After the acquisition of the property known as Transmara/Kimintet “D”/581 by their father Josea Kiprono Bett, the entire family moved in and occupied the same.
  - c. Unfortunately, the original owner Seboo Signh passed away in the year 2008 before transferring the said property to the Plaintiff’s father Josea Kiprono Bett.
  - d. However, the late Seboo Signh unlawfully and without recognising the Plaintiffs’ father ownership rights transferred the property known as Transmara/kimintet “D”/581 to the Defendant herein in the year 2008.
  - e. The Plaintiffs state that the Defendant has never been in occupation and/or possession at any given time.
  - f. The Plaintiffs pleaded that their occupation on the property known as Transmara/kimintet “D”/581 has been characterised by their homesteads, cultivation and cattle rearing without any interruption.
  - g. Further to that, the Plaintiffs state that when their late Josea Kiprono Bett passed away in the year 2020, he was buried on the property known as Transmara/Kimintet “D”/581 which was known as his parcel of land.
  - h. In essence therefore, the Plaintiffs sought to have the property known as Transmara/Kimintet “D”/581 registered in their names pursuant to a claim of adverse possession against the Defendant.
3. The present O.S was duly served on the Defendant who opposed the same by way of filing a Replying Affidavit sworn on the 26.10.2023.
4. The Respondent opposed the present O.S on the following grounds; -
- a. Indeed, the property known as Transmara/Kimintet “D”/581 belonged to the late Seboo Signh who was the Respondent’s father.



- b. However, before his demise, the late Seboo Signh transferred the property known as Transmara/Kimintet “D”/581 to the Defendant voluntarily and willingly.
  - c. The Defendant disputed that the Plaintiffs late father Josea Kiprono Bett had purchased the property known as LR.No.Transmara/Kimintet “D”/581 from the late Seboo Signh.
  - d. The only thing that the Defendant was aware is that the Plaintiffs have been leasing the land from time to time and was directed by his late father Seboo Signh to allow them to plough on the property known as Transmara/Kimintet “D”/581.
  - e. It is when the Defendant expressed his interest to utilise the property known as Transmara/Kimintet “D”/581 that this present suit was filed.
  - f. The Defendant denied that the Plaintiffs have enjoy uninterrupted possession since 2006 and claimed that such allegations are false, utter lies and misplaced.
  - g. In conclusion therefore, the Defendant sought to have the present O.S dismissed with costs.
5. After the close of pleadings, the present O.S was listed for hearing on the 07.11.2023.

**Plaintiffs’case.**

6. The first witness on behalf of the Plaintiffs was John Kipngeno Terer (PW1).
7. PW 1 introduced himself as a farmer and resident of Kimintet “D”.
8. PW 1 confirmed that he is one of the Plaintiffs in the suit.
9. PW 1 stated that all the Plaintiffs jointly occupy and/or use the property known as Transmara/Kimintet “D”/581.
10. PW 1 informed the Court that the property known as Transmara/Kimintet “D”/581 was purchased in the year 2006 by their late father Josea Kiprono Bett from the Defendant’s father known as Seboo Singh.
11. PW 1 produced a copy of an Agreement For sale dated 13/12/2006 between Josea Kiprono Bett and Seboo Signh as Plaintiff Exhibit 1.
12. PW 1 stated that once the Agreement For Sale was executed and consideration paid, the purchaser Josea Kiprono Bett took over possession and settled his family therein.
13. PW 1 produced two official searches of the property known as Transmara/Kimintet “D”/581 dated 04/11/2004 and 07/04/2005 in the name of Seboo Signh as Plaintiff Exhibit 2 and 3.
14. However, the Defendant’s father known as Seboo Signh did not transfer the property known as Transmara/Kimintet “D”/581 to the Plaintiffs father Josea Kiprono Bett as expected.
15. Instead, the Defendant’s father Seboo Signh unlawfully transferred the property known as Transmara/Kimintet “D”/581 to the Defendant.
16. PW 1 produced another official search of the property known as Transmara/Kimintet “D”/581 in favour of the Defendant dated 14/04/2022 as Plaintiff Exhibit 4.
17. However, the Defendant was not in occupation of the property known as Transmara/kimintet “D”/581 when he was registered as the owner.



18. Similarly, the Defendant has never been in occupation and/or possession of the property known as Transmara/Kimintet “D”/581 since his registration as the owner.
19. According to PW 1, the Plaintiffs have been on the property known as TRansmara/Kimintet “D”/581 for a period of over 15 years.
20. PW 1 confirmed that their occupation as Plaintiffs over the property known as Transmara/Kimintet “D”/581 had been peaceful and without the permission of the Defendant.
21. PW 1 produced various photographs of the developments and/or activities undertaken by the Plaintiffs on the property known as Transmara/Kimintet “D”/581 as Plaintiff Exhibit 5.
22. In the photographs produced, PW 1 also pointed out that the resting place of their father is in the property known as Transmara/Kimintet “D”/581.
23. In concluding his evidence in chief, PW 1 sought for this Court to grant the prayers sought in the present O.S.
24. On cross-examination, PW 1 reiterated that the property known as Transmara/Kimintet “D”/581 had been purchased by their late father Josea Kiprono Bett.
25. PW 1 stated that he was present during the purchase process but was not a witness to the Agreement for Sale.
26. PW 1 further confirmed that after the purchase of the property Transmara/Kimintet “D”/581 in the year 2006, his father Josea Kiprono Bett Together with his family moved from Kilgoris to the said property.
27. PW 1 informed the Court that they were claiming the property known as Transmara/Kimintet “D”/581 on behalf of their deceased father although they did not have any letters of administration.
28. PW 1 denied knowledge of any other Agreement for the use of the property known as Transmara/Kimintet “D”/581 which dealt with leasing.
29. According to PW 1, the issue was that the Defendant’s father Seboo Signh did not transfer the property known as Transmara/Kimintet “D”/581 to their father Josea Kiprono Bett as required before his demise.
30. PW 1 confirmed that the Defendant’s father Seboo Signh passed away in the year 2012.
31. PW 1 reiterated that their occupation on the property known as Transmara/Kimintet “D”/581 was with the consent of the Defendant’s father known as Seboo Signh.
32. On re-examination, PW 1 stated that the Plaintiffs had filed the present O.S in their own capacity as the occupants of the property known as Transmara/Kimintet “D”/581.
33. PW 1 stated that the Defendant became the registered owner in the year 2008.
34. PW 1 further informed the Court that after registration of the Defendant as the owner of the property known as Transmara/Kimintet “D”/581 in 2008, he did not give any permission for the Plaintiffs to occupy the said land.
35. However, the Defendant did not interfere with their occupation and/or use of the property known as Transmara/Kimintet “D”/581 up to date.



36. PW 1 however did not understand why the Defendant's father Seboo Signh refused to transfer the same to their father Josea Kiprono Bett after the Agreement For Sale.
37. Nevertheless, the property known as Transmara/Kimintet "D"/581 has been and is still in occupation of the 3 Plaintiffs, their wives and the wives of the deceased Josea Kiprono Bett.
38. At the end of this re-examination, the Plaintiff closed their case.

### **Defence Case**

39. The Defence witness was Seboo Maldiu (DW1).
40. DW 1 introduced himself as the registered owner of the property known as Transmara/kimintet "D"/581.
41. DW 1 informed the Court that he was not familiar with the Plaintiffs and had only seen PW 1 in the Court premises that morning.
42. DW 1 testified that the property Transmara/kimintet "D"/581 was transferred by his deceased father Seboo Signh in the year 2008.
43. According to DW 1, his deceased father did not mention the existence of any Agreement for Sale as alleged by the Plaintiffs.
44. DW 1 however admitted that at the time of the transfer to his name, the property known as Transmara/Kimintet "D"/581 was under use and occupation of the Plaintiffs father known as Arap Bett.
45. DW 1 stated that in his understanding, the Plaintiffs father was to cultivate on the said property known as Transmara/Kimintet "D"/581 and once he had finished, he was to hand over the same to the Defendant.
46. However, the Defendant's father passed away in the year 2012 before the Plaintiff's father vacated the property known as Transmara/Kimintet "D"/581.
47. DW 1 further informed the Court that in the year 2008, he wanted to take a financial facility with a bank but on inspection of the property known as Transmara/Kimintet "D"/581, it was found to have been occupied by the Plaintiffs father.
48. DW 1 confirmed that as early as 2008, the Plaintiff's father Josea Kiprono Bett placed a caution of the property known as Transmara/Kimintet "D"/581 claiming a purchaser's interest.
49. However, the caution was subsequently removed after a lengthy process at the Lands Department.
50. DW 1 stated that the two fathers that is Josea Kiprono Bett and Seboo Signh never had a disagreement over the property known as Transmara/kimintet "D"/581 although he did not understand the terms of engagement between the two over the said property.
51. DW 1 confirmed that the only time he visited the property known as Transmara/Kimintet "D"/581 was in the year 2008 when he wanted to get a financial facility from the bank.
52. In conclusion therefore, DW 1 sought for this Court to dismiss the present O.S by the Plaintiffs with costs.
53. On cross-examination, DW 1 reiterated that he applied for the financial facility in the year 2008 and 2010.



54. However, the financial facility could not be processed because the property known as Transmara/Kimintet “D”/581 had been occupied by the Plaintiffs family.
55. DW 1 confirmed that since 2008 when he learnt about the Plaintiffs family occupation, he had not taken any steps to enforce his ownership rights.
56. DW 1 could also not state when the purported Lease Agreement between the Plaintiffs father and his father was entered or when it would end.
57. DW 1 however confirmed that the property known as Transmara/Kimintet “D”/581 was in the occupation and possession of the Plaintiffs herein.
58. After the close of this cross-examination, there was no re-examination and the Defence also closed its case.
59. The parties were then directed to prepare and file their submissions in support of their cases.
60. The Plaintiffs filed their submissions on the 23.11.2023 while the Defendant despite numerous mentions to allow him file his submissions, failed to do so.
61. The Honourable Court has indeed perused the pleadings herein, the oral evidence adduced in Court, the exhibits produced and the submissions filed.
62. The issue for determination is whether the Plaintiffs have proved the ingredients of adverse possession against the Defendant.
63. The ingredients of adverse possession were expressly outlined in the case of *Mtana Lewa-versus-Kabindi Ngala Mwagandi* (2015) eKLR, as follows; -

Adverse possession is essentially a situation where a person takes possession of land and asserts rights over it and the person having title to it omits or neglects to act against such person in assertion of his title for a certain period, in Kenya, is twelve (12) years. The process springs into action essentially by default or inaction of the owner. The essential prerequisites being that the possession of the adverse possessor is neither by force or stealth nor under the licence of the owner. It must be adequate in continuity, in publicity and in extent to show that possession is adverse to the title owner.

64. In another case of *Mbira-versus- Gachubi* (2002) 1 EALR 137, the Honourable made the following finding; -

“... a person who seeks to acquire title to land by the method of adverse possession for the applicable statutory period, must prove non permissive or non-consensual actual, open, notorious, exclusive and adverse use by him or those under whom he claims for the statutorily prescribed period without interruption...”

65. The import of the above cited authorities is that for any party to successfully claim adverse possession, he or she must prove the four mandatory ingredients which will be outlined hereinbelow and discussed appropriately.

#### **A. Ingredient 1- Possession.**

66. The first ingredient of adverse possession is whether or not the Claimant is in possession of the property in issue.



67. In this particular case, the Plaintiffs have testified on Oath that they are in occupation of the property known as Transmara/Kimintet “D”/581.
68. The Plaintiffs testified that they have been on the property known as Transmara/kimintet “D”/581 since their deceased father Josea Kiprono Bett moved them into the property from Kilgoris.
69. The Plaintiffs have produced photographs (Plaintiff Exhibit 5) confirming the developments and/or cultivation of the property known as Transmara/kimintet “D”/581.
70. These photographs (Plaintiff Exhibit 5) were never disputed by the Defendant either at cross-examination of the PW 1 or the Defence hearing.
71. Infact, the Defendant during the Defence hearing admitted that the property known as Transmara/kimintet “D”/581 was initially in possession of the Plaintiff’s father before his demise and thereafter taken over by the Plaintiffs herein.
72. The Defendant confirmed that the only time he visited the property known as Transmara/kimintet “D”/581 was when he wanted to secure a financial facility in the year 2008-2010.
73. Clearly therefore, this Court is satisfied that the property known as Transmara/kimintet “D”/581 has been and is in possession and/or occupation by the Plaintiffs herein.

#### **B. Date of Entry and/or Taking Possession.**

74. The second important ingredient in a claim of adverse possession is when the Claimant took possession of the property in issue.
75. In this suit, the Plaintiffs state that they moved into the property known as Transmara/kimintet “D”/581 in the year 2006 with their father Josea Kiprono Bett.
76. By the time the Defendant was registered as the owner of the property known as Transmara/kimintet “D”/581 in the year 2008, they were already in occupation of the said property.
77. The Defendant in his defence also admitted that the Plaintiffs together with their father started occupying the property known as Transmara/kimintet “D”/581 from before 2008.
78. The Defendant in his evidence in chief explained that in the years between 2008 and 2010, he wanted to take a financial facility with the title but upon inspection of the property known as Transmara/kimintet “D”/581, it was found to be in the possession and occupation of the Plaintiffs and their father.
79. Similarly, the Defendant also admitted that the Plaintiffs father placed caution in the year 2008 claiming a purchaser’s interest with the Lands Department.
80. All these facts clearly point to the fact that the Plaintiffs and/or their father entered the property known as Transmara/kimintet “D”/581 at least before the year 2008.
81. Consequently therefore, by the time the Defendant was registered on the title of Transmara/kimintet “D”/581, the Plaintiffs were already in the said property together with their father Josea Kiprono Bett.

#### **C. Nature of the Possession And/or Occupation.**

82. The third ingredient for consideration is the nature of possession and/or occupation that has been asserted by the Plaintiffs.
83. The possession and/or occupation must be one which is open to the owner of the land to the effect that it shows a dispossession of his access and/or occupation of the same land.



84. The Claimant must be in actual possession and use of the said property to make it impossible for the owner of the same land to utilise and/or occupy the same.
85. According to the Plaintiffs herein, their occupation on the property known as Transmara/kimintet “D”/581 is one that is open to the public and dispossess the Defendant of the said property.
85. The Plaintiffs have demonstrated their occupation through the photographs (Plaintiff Exhibit 5) which includes a homestead, cultivation of the land and rearing of cattle.
85. The use of the property by the Plaintiffs herein on the property known as Transmara/kimintet “D”/581 is one that is open to the general public including the Defendant and dispossess his rights on the same.
85. The Defendant’s evidence that a financial institution declined to grant him a financial facility dispute being the registered owner of Transmara/kimintet “D”/581 in the years between 2008 and 2010 confirms that the Defendant was unable to use and/or occupy the property due to the occupation of the Plaintiffs.
85. In other words, the occupation and/or possession by the Plaintiffs on the property known as Transmara/kimintet “D”/581 was one which was open and dispossessed the Defendant of any ownership rights over the same.
85. In essence therefore, this Court is pursued that indeed the Plaintiff’s occupation of the property known as Transmara/kimintet “D”/581 was open and notorious to the Defendant as envisaged in law.

#### **D. Period of Occupation.**

91. The last ingredient is for how long have the Plaintiffs been on the disputed land without any interruption.
92. According Section 7 of the *Limitation of Actions Act*, Cap 22, a person seeking adverse possession must have occupied and/or had possession of the said property for a period of 12 years from the date of entry without any interruption.
93. In this suit, the Plaintiffs stated that they have been in possession of the property known as Transmara/kimintet “D”/581 since 2006.
94. In other words, by the time the Defendant was registered as the owner of the property known as Transmara/kimintet “D”/581 in the year 2008, the Plaintiffs and their father were already on the property.
95. The Plaintiffs testified that their occupation of the property known as Transmara/kimintet “D”/581 has never been interrupted by the Defendant since the year 2008 when he became the registered owner.
96. During the Defendant’s cross-examination, he clearly stated that he has not taken any steps to enforce his ownership rights against the Plaintiffs herein.
97. The Defendant further admitted that indeed all this time since 2008, the Plaintiffs and their father have been in occupation and use of the property known as Transmara/kimintet “D”/581.
98. It is therefore not in doubt that the Plaintiffs and their father have been in the property known as Transmara/kimintet “D”/581 since the year 2008.
99. The period between 2008 and the year 2022 when the present O.S was filed is over the prescribed time of 12 years provided under Section 7 of the *Limitation of Actions Act*, Cap 22.



100. Further to that, the occupation by the Plaintiffs herein has been continuous and without interruption by the Defendant.
101. In effect therefore, the Plaintiffs herein have been in occupation and possession of the property known as Transmara/kimintet “D”/581 for a period of at least 12 years without any interruption by the Defendant.

**Conclusion.**

102. In conclusion therefore, the Court hereby makes the following Orders in determination of the Originating Summons dated 16.06.2024; -
- a. The originating summons dated 16.06.2022 is merited.
  - b. The ownership of the defendant known seboo maldiu over the property known as transmara/kimintet “d”/581 be and is hereby extinguished by way of adverse possession.
  - c. The names of the plaintiffs known as john kipngeno terer, kiplangat, tisia and julius chepkwony be and are hereby declared as the lawful owners of the property known as transmara/kimintet “d”/581.
  - d. The defendant be and is hereby directed be and is hereby directed to execute the appropriate transfer documents in favour of the plaintiffs john kipngeno terer, kiplangat tisia and julius chepkwony as the lawful owners within thirty (30) days from the date of this judgement.
  - e. In the event the defendant shall not comply with the order no. d hereinabove, the deputy registrar, the kilgoris environment & land court is hereby directed to execute all the relevant documents required in effecting this judgement.
  - f. The defendant shall bear the costs of this originating summons.

**DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS ELC COURT ON 14<sup>TH</sup> FEBRUARY 2024.**

**EMMANUEL.M.WASHE**

**JUDGE**

**In the Presence of:**

Court Assistant: Mr. Ngeno

Advocate for the Plaintiffs: Ms. Pion

Advocate for the Defendant: Mr. Moranga

