



**Ampani v Mwangi & 2 others (Environmental and Land Originating Summons E008 of 2023) [2024] KEELC 3729 (KLR) (8 April 2024) (Judgment)**

Neutral citation: [2024] KEELC 3729 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E008 OF 2023**

**EM WASHE, J**

**APRIL 8, 2024**

**IN THE MATTER OF AN APPLICATION FOR ADVERSE  
POSSESSION**

**AND**

**IN THE MATTER OF SECTION 28 (H) OF THE LAND  
REGISTRATION ACT 2012, SECTION 13,37 & 38 OF THE  
LIMITATION OF ACTIONS ACT CAP 22 LAWS OF KENYA &  
SECTION 30 (F) OF THE REGISTERED LAND ACT  
(REPEALED) CAP 300 LAWS OF KENYA**

**AND**

**IN THE MATTER OF PARCEL NUMBER  
TRANSMARA/OLOIBORSOITO/134**

**BETWEEN**

**BETWEEN**

**JAMES LEMISO AMPANI ..... PLAINTIFF**

**AND**

**FRANCIS WAMAHIU MWANGI ..... 1<sup>ST</sup> DEFENDANT**

**DOUGLAS NDERITU NGAHU ..... 2<sup>ND</sup> DEFENDANT**

**MWANGI MBUI ..... 3<sup>RD</sup> DEFENDANT**



## JUDGMENT

1. The Plaintiff herein filed an Originating Summons dated 12.09.2023 (hereinafter referred to as “the present O.S”) against the 1<sup>st</sup> to 3<sup>rd</sup> Defendant seeking for the following Orders; -
  - a. That a declaration that the titles/registration of the said Francis Wamahiu Mwangi, Douglas Nderitu Ngahu and Mwangi Mbui to the freehold interest in the land title Number LR.No.Transmara/Oloiborsoito/134 has been extinguished by the Plaintiff’s adverse possession thereof for a period of more than 12 years in terms of Section 17 and 38 of the *Limitation of Actions Act*.
  - b. That a declaration that the Applicant has acquired the freehold interest in land parcel title number Transmara/Oloiborsoito/134 by his adverse possession thereof for a period of more than 12 years i.e from at least 1973 to date.
  - c. That an Order do issue requiring and directing the Transmara Sub-County Land Registrar to register the Applicant James Lemiso Ampanias the absolute proprietor of the land parcel title Number Transmara/Oloiborsoito/134 in place of Francis Wamahiu Mwangi, Douglas Nderitu Ngahu and Mwangi Mbui and in place of any other persons succeeding the Respondents.
  - d. That this Court be pleased to issue a permanent injunction restraining the Respondents by themselves, agents, employees and/or servants acting at their behest from disposing and/or in any other way interfering with land parcel title number Transmara/Oloiborsoito/134.
  - e. That the costs of this suit be borne by the Respondents.
  - f. That this Court be pleased to make any other order as it may deem fit to meet the end of justice.
2. The Plaintiff’s grounds in support of the above prayers are contained in the body of the present O.S as well as the Supporting Affidavit sworn on the 17.09.2023 and can be summarised as follows; -
  - a. The Plaintiff herein is the one in occupation and use of the entire property known as LR.No.Transmara/Oloiborsoito/134 since way back in the 1960s.
  - b. The Plaintiff’s occupation of the property known as LR.No.Transmara/Oloiborsoito/134 has been open, notorious and uninterrupted for over a period of 12 years.
  - c. The property known as LR.No.Transmara/Oloiborsoito/134 was registered in the name of Francis Wamahui Mwangi, Douglas Nderitu Ngahu and Mwangi Mbui on the 14.08.1981.
  - d. The registered owners known as Francis Wamahui Mwangi, Douglas Nderitu Ngahu and Mwangi Mbui to the property known as LR.No.Transmara/Oloiborsoito/134 have never taken possession of the said property and/or interrupted the Plaintiff’s occupation and use since the date of their registration.
  - e. Consequently therefore, this Honourable Court should make a determination that the ownership of Francis Wamahui Mwangi, Douglas Nderitu Ngahu and Mwangi Mbui over the property known as LR.No.Transmara/Oloiborsoito/134 be extinguished by way of adverse possession forthwith.



- f. Further to that, the Honourable Court do make a declaration that the property known as LR.No.Transmara/Oloiborsoito/134 be registered in the name of the Plaintiff herein as the valid and lawful owner.
3. Upon filing of the present O.S, the Plaintiff also filed another Application dated 04.10.2023 seeking to serve the same by way of substituted service.
4. The Application dated 04.10.2023 was heard 25.10.2023 and this Honourable Court granted leave to the Plaintiff to serve the present O.S through advertisement in one of the daily newspapers with wide coverage.
5. On the 02.11.2023, the Plaintiff's Counsel filed an Affidavit of Service dated 02.11.2024 attaching the Newspaper Advertisement done on the same date to confirm service upon the 1<sup>st</sup> to 3<sup>rd</sup> Defendants.
6. The period of 15 days provided in the newspaper advertisement dated 02.11.2023 expired on the 17.11.2023 without any appearance from either or all the Defendants herein.
7. On the 14.12.2023, the present O.S was listed for pre-trial and certified ready for hearing upon receiving Ground Reports from the Sub-County Land Registrar, Transmara as well as the Sub-county Surveyor, Transmara.

#### **Plaintiff's Case.**

8. The hearing of the present O.S was undertaken on the 23.01.2024.
9. The Plaintiff was the first witness identified as PW 1.
10. The Plaintiff began his testimony by stating that he was a resident of Oloiborsoito.
11. The Plaintiff informed the Honourable Court that he had prepared a comprehensive witness statement dated 12.09.2023 to which he adopted the same as his evidence in chief.
12. The Plaintiff further stated that he was claiming the ownership of the property known as LR.No.Transmara/Oloiborsoito/134 which he is in occupation and has used the same since the 1960s.
13. Unfortunately, this property known as LR.No.Transmara/Oloiborsoito/134 was registered in the name of the 1<sup>st</sup> to 3<sup>rd</sup> Defendant in the year 1981.
14. The Plaintiff then produced a copy of an Official Search of the property known as LR.No.Transmara/Oloiborsoito/134 dated 07.09.2023 to confirm ownership of the 1<sup>st</sup> to 3<sup>rd</sup> Defendant as Plaintiff Exhibit 1.
15. Similarly, the Plaintiff produced a bundle of photographs confirming his occupation and use of the property known as LR.No.Transmara/Oloiborsoito/134 as Plaintiff Exhibit 2.
16. Lastly, the Plaintiff produced a letter dated 07.09.2023 from the area chief of Oloiborsoito Location to confirm that he was the person in occupation of the property known as LR.No.Transmara/Oloiborsoito/134 as his ancestral land as Plaintiff Exhibit 3.
17. The Plaintiff further testified that pursuant to the Honourable Court's directions issued on the 25.10.2023, both the Sub-County Land Registrar Transmara and the Sub-County Land Surveyor Transmara visited the property known as LR.No.Transmara/Oloiborsoito/134 and confirmed the Plaintiff's occupation and use of the same.



18. The Plaintiff therefore produced the Ground Reports filed by the Sub-County Land Registrar, Transmara and Sub-County Land Surveyor, Transmara dated 05.12.2023 and 14.11.2023 respectively as Plaintiff ExhibitS 4 (a) and (b).
19. In conclusion therefore, the Plaintiff sought this Honourable Court to declare the registration of the 1<sup>st</sup> to 3<sup>rd</sup> Defendants as extinguished by way of Adverse possession and the property known as LR.No.Transmara/Oloiborsoito/134 be registered in the name of the Plaintiff forthwith.
20. At the end of this evidence in chief, the Plaintiff closed his case.
21. The Honourable Court directed that the Plaintiff file his final written submissions in support of his claim and of which the same were filed on the 01.02.2024.
22. The Honourable Court has perused the pleadings before it, analysed the evidence adduced in Court and the documentary evidence produced at the hearing.
23. The issue for determination is whether or not the Plaintiff has satisfied the ingredients of a claim for adverse possession.
24. In the case of Civil Application No.110 of 2016 Between Richard Wefwafwa Songoi-versus- Ben Muniyifwa Songoi (2020) eKLR, the Court of Appeal outlined the principles of adverse possession as follows; -
  - a. On what date he came into possession.
  - b. What was the nature of his possession.
  - c. Whether the fact of his possession was known to the other party.
  - d. For how long his possession has continued and
  - e. That the possession was open and undisturbed for the requisite 12 years.
25. In essence therefore, for a claimant of adverse possession to be successful, he or she must prove each and every ingredient outlined hereinabove.

**Ingredient No. 1- On what date he/she came into possession.**

26. The first issue for determination is the date when the Plaintiff came into occupation and use of the property known as LR.No.Transmara/Oloiborsoito/134.
27. According to the Plaintiff's evidence, he started living on the property known as LR.No.Transmara/Oloiborsoito/134 in the 1960s as this was his ancestral land.
28. Similarly, the letter from the area chief produced as Plaintiff's Exhibit 3 further collaborated this fact that the Plaintiff has been in occupation of the property known as LR.No.Transmara/Oloiborsoito/134 since the 1960s as it was their ancestral land.
29. However, the copy of the Official Search produced as Plaintiff's Exhibit 1 confirms that the property known as LR.No.Transmara/Oloiborsoito/134 was first registered in the name of the 1<sup>st</sup> to 3<sup>rd</sup> Defendants on the 14.08.1981.
30. Clearly therefore, before the 14.08.1981, the property known as LR.No.Transmara/Oloiborsoito/134 was community land and by extension Trust Land and as such, time can not start running before 14.08.1981.



31. The only date that the Plaintiff can claim to have taken possession and occupation of the property known as LR.No.Transmara/Oloiborsoito/134 in a manner that was adverse to the 1<sup>st</sup> to 3<sup>rd</sup> Defendants ownership is from 14.08.1981.
32. In essence therefore, this Honourable Court hereby makes a finding that the Plaintiff took possession of the property known as LR.No.Transmara/Oloiborsoito/134 from the 14.08.1981.

**Ingredient B - What was the nature of his possession.**

33. The second issue for determination is the nature of possession enjoyed by the Claimant of adverse possession.
34. The nature of possession must be one that is open and notorious against the registered owner to the extent that it would dislodge and/or dispossess his ability to enjoy his ownership rights.
35. The possession must not only be occupation but must also include the actual use of the property by the claimant to the exclusion of the registered owner.
36. In the present O.S, the Plaintiff produced a bundle of photographs as Plaintiff's Exhibit 2.
37. In this bundle of photographs, the Plaintiff has shown two houses, numerous trees that are grown and animals grazing on the said property known as LR.No.Transmara/Oloiborsoito/134.
38. The Letter from the area chief produced as Plaintiff's Exhibit 3 also reiterated the Plaintiff's testimony that he is the person in occupation and use of the property known as LR.No.Transmara/Oloiborsoito/134.
39. Lastly, the Ground Report from the Sub-County Land Registrar dated 05.12.2023 and produced as Plaintiff Exhibit 4(a) also confirms that the Plaintiff is the one in actual possession and use of the property known as LR.No.Transmara/Oloiborsoito/134 through the developments and activities on it.
40. In essence therefore, the testimony of the Plaintiff and the documentary evidence adduced in Court during the hearing clearly confirms that the Plaintiff is in actual possession and use of the property known as LR.No.Transmara/Oloiborsoito/134 in a manner that is open and notorious to the extent that it dispossesses the 1<sup>st</sup> to 3<sup>rd</sup> Defendants rights over the said property.

**Ingredient No. C - Whether the fact of his possession was known to the other party.**

41. The third issue for determination was whether the claimant's possession on the said property was known to the other party.
42. The 1<sup>st</sup> to 3<sup>rd</sup> Defendants were registered on the property known as LR.No.Transmara/Oloiborsoito/134 on the 14.08.1981.
43. Upon the registration of the 1<sup>st</sup> to 3<sup>rd</sup> Defendants ownership of the property known as LR.No.Transmara/Oloiborsoito/134, the Plaintiff had testified that he was already in possession and use of the same property.
44. The Honourable Court is of the view that the 1<sup>st</sup> to 3<sup>rd</sup> Defendants are under a duty to take possession and/or at least be conversant with the status of their property upon registration.
45. The developments, the trees and the use of the property known as LR.No.Transmara/Oloiborsoito/134 are open and notorious to the general public including the 1<sup>st</sup> to 3<sup>rd</sup> Defendants.



46. In other words, the Plaintiff's actions on the property known as LR.No.Transmara/Oloiborsoito/134 were such that the 1<sup>st</sup> to 3<sup>rd</sup> Defendant had no choice but to be aware of the same keeping in mind that the period between 1981 when they acquired the title up to 2023 when this present O.S was filed is rather a lengthy period of time.

**Ingredient No. D - for how long has possession continued.**

47. The fourth issue for determination is the period of which the Plaintiff has been in occupation of the property being claimed.

48. In the present O. S, this Honourable Court made a finding that the Plaintiff's occupation and use of the property known as LR.No.Transmara/Oloiborsoito/134 commenced on the 14.08.1981 when the same was registered in favour of the 1<sup>st</sup> to 3<sup>rd</sup> Defendants.

49. In essence therefore, the Plaintiff has been in occupation and use of the property known as LR.No.Transmara/Oloiborsoito/134 for a period of 42 years as at the year 2023 when this present O.S was filed.

50. This is clearly much way beyond the mandatory period of 12 years prescribed in the [Limitation of Actions Act](#), Cap 22.

Ingredient No. E- that thepossession wasopen & undisturbed for the requisite 12 years.

51. The last ingredient in a claim of adverse possession is whether or not the claimant's open occupation was ever disturbed and/or interrupted during the period of 12 years prior to filing a claim of adverse possession.

52. In the present O.S, the Plaintiff testified that the 1<sup>st</sup> to 3<sup>rd</sup> Defendants never took possession of the property known as LR.No.Transmara/Oloiborsoito/134 when they were registered on the 14.08.1981.

53. The Plaintiff's evidence is that he has been in occupation and use of the property known as LR.No.Transmara/Oloiborsoito/134 since the 1960s up to date.

54. The area chief through the Plaintiff's Exhibit 3 also confirmed in writing that it is the Plaintiff that has been and is still in occupation of the property known as LR.No.Transmara/Oloiborsoito/134.

55. The Sub-County Land Registrar, Transmara in his Ground Report dated 05.12.2023 produced as Plaintiff Exhibit4(a) expressly stated that the Plaintiff had been in possession and occupation of the property known as LR.No.Transmara/Oloiborsoito/134.

56. There is therefore no evidence that the 1<sup>st</sup> to 3<sup>rd</sup> Defendants have ever attempted to interfere, interrupt and/or dispossess the Plaintiff of the property known as LR.No.Transmara/Oloiborsoito/134 since they were registered as owners on the 14.08.1981.

57. In other words, this Honourable Court is satisfied that the Plaintiff's occupation of the property known as LR.No.Transmara/Oloiborsoito/134 has never been interrupted by the 1<sup>st</sup> to 3<sup>rd</sup> Defendants within the prescribed 12 years from 14.08.1981 or up to the time this present OS was filed in the year 2023.

**Conclusion**

58. In conclusion therefore, this Honourable Court hereby makes the following Orders as appertains the Originating Summons dated 12.09.2024; -



- a. The originating summons dated 12.09.2023 is merited.
- b. A declaration be and is hereby made that the ownership and registration of Francis Wamahiu Mwangi, Douglas Nderitu Ngahu and Mwangi Mbui over the property known as LR.No.Transmara/Oloiborsoito/134 is extinguished by way of adverse possession.
- c. A declaration be and is hereby made that the plaintiff James Lemiso Ampani is the lawful owner of the property known as LR.No.Transmara/Oloiborsoito/134 having acquired the same by way of adverse possession.
- d. An order be and is hereby made directing the sub-county land registrar, Transmara East, West & South to cancel the names of Francis Wamahiu Mwangi, Douglas Nderitu Ngahu and Mwangi Mbui as the registered owners of the property known as LR.No.Transmara/Oloiborsoito/134 and instead record the name of James Lemiso Ampani as the lawful and registered owner of the said property.
- e. A permanent injunction be and is hereby issued restraining the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants by themselves, their agents, employees and/or servants acting at their behest from disposing and/or in any way interfering with the property known as LR.No.Transmara/Oloiborsoito/134.
- f. There will be no orders as to costs.

**DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS ELC COURT ON 8<sup>TH</sup> APRIL 2024.**

**EMMANUEL.M.WASHE**

**JUDGE**

**IN THE PRESENCE OF:**

Court Assistant: Mr. Ngeno

Advocate for the Plaintiff: Mr. Shira

Advocate for the Defendant: N/A

