



Lelmengit & another v Kemboi (Enviromental and Land Originating Summons E001 of 2024) [2025] KEELC 4034 (KLR) (20 May 2025) (Judgment)

Neutral citation: [2025] KEELC 4034 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E001 OF 2024
GMA ONGONDO, J
MAY 20, 2025**

BETWEEN

MARK KIMELI LELMENGIT 1ST PLAINTIFF

PAULO KEBENEI 2ND PLAINTIFF

AND

KIPKOSGEI ARAP KEMBOI DEFENDANT

JUDGMENT

1. By an originating summons dated 2nd April 2024, the plaintiffs/Applicants through Kipkosigei Choge and Company Advocates, have sued the defendant for orders;
 - a. That this Hon. Court declares that the proprietor's interest in the whole of parcel Nandi/Kaptildil/11 (The suit land herein) be extinguished.
 - b. That on Declaration of the proprietor's interests as extinguished, his name, successors in title, Administrator or whosoever claiming through him that may be and or may have been registered as the proprietor be removed/deleted from the Register and the Applicants be registered as the proprietors of the whole of the suit land in the present proprietor and /or Administrators and or Successors in title, they having acquired ownership thereof by way of Adverse Possession.
 - c. That the Honourable Court be pleased to order and direct that the suit land be vested on the Applicants.
 - d. That the Defendant/Respondent be ordered to pay costs to the Plaintiff's /Applicants in this case.
2. The originating summons is founded upon the annexed affidavits of the plaintiffs alongside the grounds, inter alia;



- a. The plaintiffs' possession and occupation of the whole of the suit land has been for a period of more than 12 years.
 - b. That their occupation has been continuous, uninterrupted, open and notorious and adverse to the defendant/respondent.
 - c. That the plaintiffs have developed the land and has always used the same as theirs.
3. The Defendant was duly served as disclosed in an affidavit of service sworn on 2nd January 2025 by Mr Kipkosigei Choge learned counsel for the plaintiffs. However, he failed to respond to the suit.
 4. On 19th February 2025, the court directed that the suit be heard by formal way of formal proof
 5. The 1st plaintiff, Mark Kimeli Lelmengit (PW1) born in 1953, relied on his supporting affidavit sworn on 2nd April 2024 herein, his National Identity card number (PExhibits 1), a letter dated 18th March 2024 (PExhibit 2), payment of convenience fee of 18th March 2024 issued by Ardhi Sasa (PExhibit 3) and a copy of the register of the suit land (PExhibit 4) in support of his testimony on 7th April 2025. He stated, inter, alia;

‘.....I have possessed and occupied the suit land since 1977...’

6. The 2nd plaintiff, PAUL KEBENEI (PW2) born in 1959, told the court that he has lived on the suit land since 1977 and that the defendant has not returned to the land since that year. In his evidence, he relied on his affidavit sworn on 2nd April 2024 in support of the originating summons (PExhibit 6), his National Identity Card (PExhibit 5), National Identity Card No. 10454254 of Daudi Kipngetch Karonei (PExhibit 7), National Identity Card Serial number 12108751 of the defendant (PExhibit 8) and original title deed of the suit land (PExhibit 9)
7. In the submissions dated 14th April 2025, learned counsel for the plaintiffs made reference to the originating summons and the unchallenged evidence of the plaintiffs' evidence. That the registration of the suit land is in the name of the defendant and that the testimonies of PW1 and PW2 reveal that they have been on the suit land since 1977 thereby extinguishing the defendant's title to it.
8. To fortify the submissions, counsel relied on, inter alia, *Ahad-vs-CIE* (2019) eKLR, *Gulam Miriam Noordin-vs-Julius Charo Karisa* (2013) eKLR, *Mweu-vs-Kiu Ranching & Farming Cooperative Ltd* (1985) KLR 430, *Wambugu-vs-Njuguna* (1983) eKLR, *Halsbury's Laws of England* 4th Edition Volume 28 at paragraph 768. Further, counsel cited Order 37 Rules 7, 16, 17 and 18 of the Civil Procedure Rules, 2010 and section of the *Limitation of Actions Act* Chapter 22 Laws of Kenya.
9. In the foregone, the issues for determination relate to the orders set out on the face of the originating summons and boil down to elements captured in the case of *Wilson Kazungu Katana and 101 others-vs-Salim Abdalla Bakshwein and another* (2015) eKLR, that adverse possession dictates thus;
 - a. The parcel of land in dispute must be registered in the name of a person other than the applicant,
 - b. The applicant must be in open and exclusive possession of that piece of land in an adverse manner to the title of the owner,
 - c. The applicant must be in that occupation for a period in excess of twelve years having dispossessed the owner or there having been discontinuance of possession by the owner.
10. Moreover, the applicant must show that such possession was without the permission of the owner; see *Richard Wefwafwa Songoi -vs- Ben Munyitwa Songoi* (2020) eKLR.



11. In addition, it is borne in mind that the plaintiffs' claim is over definite portions of land as held in *Muthuita -vs- Wanoë & 2 others* (2008) 1KLR (G&F) 1024.
12. Concerning the first ingredient, the suit land is not registered in name of the plaintiffs. Its registration is in the defendant's name as revealed in PExhibit 4.
13. On the second ingredient, it is trite law that possession can take different forms such as fencing or cultivation of the land in dispute; see *Titus Ong'ang'a Nyachieo -vs- Martin Okioma Nyauma & 3 others* (2017) eKLR.
14. The evidence of PW1 and PW2 show that they are in open, continuous and peaceful possession of the suit land since 1977. Clearly, that is a period in excess of twelve years.
15. As regard the third ingredient, the plaintiffs have been in exclusive occupation of the portion of the suit land and it is inconsistent with the title of the defendant who is the registered owner thereof as noted in the *Halsbury's Laws of England* (supra). Therefore, the defendant has been dispossessed thereby.
16. It is established law that the burden was always on the plaintiff to prove his or her case on the balance of probabilities. That such burden is not lessened even if the case was heard by way of formal proof; see *Kirugi and another-vs-Kabiya and 3 others* (1987) KLR 347.
17. In the instant suit, it is the finding of this court that the plaintiffs' claim for adverse possession over the suit land is steadfast. It has been proved against the defendant on a balance of probability being guided by *Mweu, Wambugu, Kirugi, Katana* cases (supra), among other authoritative pronouncements.
18. Thus, judgment is hereby entered for the plaintiffs against the defendant in terms of the orders sought on the face of the originating summons as stated in paragraph 1 (a) (b) (c) and (d) hereinabove.
19. It is so ordered.

DATED AND DELIVERED AT KAPSABET THIS 20TH DAY OF MAY 2025

G M A ONGONDO

JUDGE

Present;

Mr Sang instructed by Mr Choge learned counsel for the plaintiffs

Mr Walter Kipkorir, court assistant

