



REPUBLIC OF KENYA



KENYA LAW
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**Ayoko v Nyandiga & another (Environmental and Land Originating Summons
10 of 2012) [2025] KEELC 5293 (KLR) (30 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 5293 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MIGORI
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 10 OF 2012**

MN KULLOW, J

JUNE 30, 2025

IN THE MATTER OF LAND REGISTRATION ACT 2012

AND

IN THE MATTER OF LAND ACT

AND

IN THE MATTER OF LAND PARCEL NO. NORTH

SAKWA/KAKMASIA/337 NOW NORTH

SAKWA/KAKMASIA/702

AND

IN THE MATTER OF S. 38 OF THE LIMITATION OF ACTIONS

ACT CAP 22 LAWS OF KENYA

**IN THE MATTER OF AN APPLICATION FOR THE
DECLARATION OF ACQUISITION BY ADVERSE POSSESSION
OF PROTION MEARING 0.08HA OF LAND PARCEL NUMBER**

NORTH SAKWA/KAKMASIA/337 NOW NORTH

SAKWA/KAKMASIA/702

BETWEEN

JOSHUA ODONDI AYOKO PLAINTIFF

AND

LEONARD OTIENO NYANDIGA 1ST DEFENDANT

TYSON OTIENO OCHIENG 2ND DEFENDANT



JUDGMENT

1. The Plaintiff herein commenced this suit by way of amended Originating Summons dated 31st May 2023 against the Defendants seeking the following orders:-
 1. That this Honourable court do declare the Plaintiff's to have acquired by adverse possession a portion measuring 0.08 Ha of parcel of land registered as L.R No. North Sakwa/Kakmasia/337 now North Sakwa/Kakmasia/702.
 2. That this Honourable court do order cost of the application.
2. The originating summons is premised on the grounds on its face and further on the Plaintiff's supporting affidavit sworn on 31st May 2023, where the Plaintiff avers that the Defendant herein is the registered owner of the suit land and that sometime in the year 1995 he purchased a portion of the land L.R No. North Sakwa/Kakmasia/337 now North Sakwa/Kakmasia/702 measuring approximately 0.08Ha for agreed consideration of Kshs. 32,000/- and upon payment of the consideration he was put into possession by the Defendant.
3. The Plaintiff further contends that the he has been in continues and open possession of the suit property without interruption for over 30 years and that his entry into the property was without force and secrecy and he has extensively developed the same by building permanent structures in the suit property.
4. However, on or about the 15th may 2025 he contends that the Defendant took some people to the suit property and has been threatening and intimidating him and his family.
5. The Plaintiff content that owing to his occupation and use of the suit land for over 12 years he has acquired prescriptive and adverse rights over the suit land and the Defendant rights over the same has since been extinguished and he thus urge the court to allow his claim on adverse possession and rectification of the register thereof.
6. Even though the Defendant was served he never entered appearance nor filed a Replying affidavit and the court having satisfied itself proceeded to hear the matter on the 31st October 2023, where the Plaintiff herein testified as PW1. It was his testimony that the Plaintiff had lived on the suit land for over 30 years, planted trees on the land and developed it by putting up a permanent structure.
7. In support of his case the Plaintiff/Plaintiff produced the following document as the Plaintiff's exhibits:-
 - i. PEX1 A copy of Sale Agreement
 - ii. PEX2 Duly filled transfer forms
 - iii. PEX3 a bundle of photos showing the plaintiff's house and trees on the suit propertyAnd he prayed the court to grant him the prayers sought.
8. I have reviewed the pleadings herein, the respective exhibits and parties' rival submissions in totality and it is my considered opinion that the following issues arise for determination: -
 - a. Whether the Plaintiffs have sufficiently proved their claim on Adverse Possession.
 - b. Whether the Plaintiffs are entitled to the reliefs sought.



- c. Whether the Plaintiffs have sufficiently proved their claim on Adverse Possession Claim of Adverse Possession.
9. Sections 7,13, 17 and 38 (1) and (2) of the Limitation of Actions Act and Section 28 (h) of the Land Registration Act provides the statutory framework for the doctrine of adverse possession.
10. Makhandia, JA in *Mtana Lewa v Kahindi Ngala Mwangandi* [2015] eKLR in describing the doctrine of adverse possession held 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 take action against such person in assertion of his title for a certain period, in Kenya, it 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 or 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. This doctrine in Kenya is embodied in Section 7 of the Limitation of Actions Act.....”
11. The requirements for a claim of adverse possession are now well settled; The land in question must be registered in the name of a person other than the Plaintiff, the Plaintiff must demonstrate that he took possession of the parcel of land, asserted his rights over it in an adverse manner to the title of the land owner and the said title holder did not take any precipitate action against the said Plaintiff for a period of 12 years. Lastly, he must then demonstrate that his possession and occupation of the said land was not by force or under the licence of the land owner and that the said possession was open, in continuity for an uninterrupted period of over 12 years.
12. With regards to the possession; the claimant must also establish the date he took possession, the nature of his possession, the duration of his possession and whether the same was open and uninterrupted for the 12 years’ statutory period. See Court of Appeal decision in *Richard Wefwafwa Songoi v Ben Muniyifwa Songoi* [2020] eKLR)
13. Since the Plaintiff has demonstrated that he took possession of the suit land and he has been in active possession of the same for the period of 12 years and the Defendant neither testified nor filed any defence I find the Plaintiff’s evidence as not controverted and I therefore I find that the Plaintiff has satisfactory proven his claim of adverse possession and I accordingly allow the Amended Originating Summons dated 31st May 2023 on the following terms:
- i. A declaration be and is hereby made that the Plaintiff has acquired by adverse possession a portion of measuring 0.08HA of L.R NO. North Sakwa/Kakmasia/337 now North Sakwa/Kakmasia/702.
 - ii. Consequently, it is hereby ordered that the portion measuring 0.08HA that the Plaintiff has been in possession be registered in the Plaintiff’s name within 90 days from the date of this judgement.
 - iii. Since the suit was not defended, I will not make any orders on costs.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON 30TH DAY OF JUNE, 2025.

MOHAMMED N. KULLOW

JUDGE



Ruling delivered in the presence of: -

N/A for the Plaintiff

N/A for the Defendants

Philomena W. Court Assistant

