



REPUBLIC OF KENYA



**Omuomore v Nyanduru & another (Enviromental and Land Originating
Summons 4 of 2021) [2025] KEELC 5292 (KLR) (30 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 5292 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MIGORI
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 4 OF 2021**

MN KULLOW, J

JUNE 30, 2025

BETWEEN

PRISCA AKEYO OMUOMORE PLAINTIFF

AND

DISMAS OMORO NYANDURU 1ST RESPONDENT

JOSHUA OGINGA ORUKO 2ND RESPONDENT

JUDGMENT

1. The Plaintiff had filed an Application under Order 37 Rule 7 of the Civil procedure Rules as read with section 38 of the *Limitation of Actions Act* Cap 21 Laws of Kenya, and *Land Registration Act* of 2012 seeking the following Orders:-
 1. Whether Prisca Akeyo Omuomore, together with her whole family had acquired by Adverse possession that land known as That this Honourable court do declare the Plaintiff's to have acquired by adverse possession Kanyamkago Kawere II/3211 formally Kanyamkago Kawere II/942 measuring 9 Acres having being in occupation for a period of over 12 years since 1960.
 2. Whether the plaintiff ought to be registered as a proprietor of that piece of land hereinabove stated.
 3. Whether to issue a permanent injunction restraining the respondent from interference with applicant occupation and enjoiment of the 9 Acres.
2. The Application was based on the ground that the Applicant has been in uninterrupted occupation of the suit land for a period of over 12 years.
3. The Plaintiff testified as PW1 and gave testimony to the effect that the Respondent is the registered proprietor of the suit land and whose father was previously registered as proprietor in trust for the family of Opiyo Odongo who is deceased.



4. She stated that the late Opiyo Odongo divided his land amongst his two sons namely Omuomore Opiyo who is here deceased husband and the house of Nyanduru Opiyo who is the father of the 1st Respondent.
5. She avers that the 1st Respondent had sold a portion of his shares of ancestral land to the 2nd Respondent who in turn is erecting a fence that runs through the portion occupied by her family and that despite this the 1st Respondent has refused to excise and subdivide and give her a portion of the land.
6. She further stated that she has been in occupation of the land since 1960 which is well over a period of 12 years and that her occupation has been open, notorious, and uninterrupted with the full knowledge of the respondent and thus confine upon her and her family the right of adverse possession.
7. The application was opposed by the 2nd respondent, who had filed a Replying Affidavit and he stated that the land parcel Kanyamkago Kawere II/942 measuring approximately 17.77 hectares was initially registered in the names of the 1st Respondent and that the applicant was the wife of the late Omuomore Opiyo who owned land parcel Kanyamkago Kawere II/569 which was entirely sold by her late husband to another party, a fact which was known to the applicant herein.
8. To support this the 2nd Respondent had produced the green card to the parcel of land and land sale agreement.
9. I have considered and reviewed the pleadings the testimony of the witnesses and exhibits before this court in totality, and it is my considered view that the issue arising for determination are as follows:-
 - a. Whether the Plaintiff has proved his claim of Adverse Possession?
 - b. Whether the Plaintiff is entitled to the reliefs sought?

i. Whether the Plaintiff has proved his claim of Adverse Possession?

10. The legal framework for adverse possession is provided in Sections 7, 13, 17 and 38 (1) and (2) of the *Limitation of Actions Act* and Section 28 (h) of the *Land Registration Act*.
11. In Malindi App No. 56 of 2014 Mtana Lewa v Kahindi Ngala Mwagandi [2015] eKLR where it held;

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, 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 as to the title owner.
12. Further, in the case Mbira v. Gachuhi (2002) 1 EALR 137: the court stated as follows;

“... 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...”
13. The Court of Appeal in Kisumu Civ App. No. 110 of 2016 Richard Wefwafwa Songoi v Ben Muniyifwa Songoi [2020] eKLR opined that a person claiming adverse possession must establish the following:-



- 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.
14. From the evidence of the Applicant, it is clear that she has been staying on the land exclusively and has made it their abode for a long time a fact which was not challenged by the Respondent and further the Respondent despite the knowledge of occupation of the suit land did not at any one time challenge the applicant's continuous occupation and use of the suit land. It is trite law that a claim of Adverse possession the occupation must be non-permissive and despite the Respondent's testimony that he did not approve of their occupation did not do anything to disrupt the occupation.
15. It is therefore my finding that the applicant has sufficiently demonstrated that she has acquired descriptive and overriding rights over the portion of land measuring 9 Acres by virtue of her occupation since 1960 and that her right are adverse to the respondents rights to the same portion of land and consequently, I find and hold that the Plaintiff/Applicant has proved her claim on adverse possession and I accordingly allow the Originating Summons dated 25th January 2021 on following terms:-
1. A declaration be and hereby issued that the applicant, Prisca amukeyo Omuomere and her family being the house Omuomere Opiyo has acquired title of 9 Acre out of land parcel No. Kanyamkago Kawere II/3211 formally Kanyamkago Kawere II/942 by way of adverse possession owing to her open and uninterrupted occupation of the parcel of the land for a period exceeding 12 years.
 2. A declaration is further issued that the applicant be registered as the owner of the above portion measuring 9 acres having acquired title thereto by way adverse possession.
 3. An order of permanent injunction is hereby issued restraining the respondents and/or his agents from interfering with the applicant's occupation and enjoyment of the said 9 acres.
 4. No orders as to 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

