



Cheruiyot (Suing as the Administrator of the Estate of Taputany Cheptonui Chumo) v Kirui & 2 others (Environmental and Land Originating Summons E002 of 2023) [2025] KEELC 4740 (KLR) (26 June 2025) (Judgment)

Neutral citation: [2025] KEELC 4740 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E002 OF 2023**

LA OMOLLO, J

JUNE 26, 2025

BETWEEN

NEHEMIAH KIPSANG CHERUIYOT (SUING AS THE ADMINISTRATOR OF THE ESTATE OF TAPUTANY CHEPTONUI CHUMO) PLAINTIFF

AND

PAUL KIRUI 1ST DEFENDANT

WESLEY KIRUI 2ND DEFENDANT

PETER KIRUI 3RD DEFENDANT

JUDGMENT

1. The Plaintiff commenced the present proceedings vide the Originating Summons dated 21st February, 2023.
2. The Originating Summons is expressed to be brought under Order 37 Rule 7 of the Civil Procedure Rules and Section 38 of the *Limitation of Actions Act*.
3. The Plaintiff seeks the determination of the following questions;
 - a. Whether the Applicant is entitled to 1 acre of land comprised in the land parcel LR No. Kericho/Kipchimchim/3674 now registered in the name of Kipkurui Arap Sigira (deceased) the father to the Respondents herein, by virtue of the Taputany Cheptonui Chumo's adverse possession of the same in open quiet and peaceful occupation for a period of over 40 years. (sic)
 - b. Whether the Applicant should be registered as the proprietor of the said 1 acre comprised in the land parcel LR No. Kericho/Kipchimchim/3674 to hold in trust for the beneficiaries of the estate of Taputany Cheptonui Chumo in place of the Kipkurui Arap Sigira (deceased) who is the present registered proprietor of the said parcel.



- c. Whether an order do issue directing the Respondents to execute all the necessary transfer documents for effecting transfer of the said 1 acre comprised in the land parcel LR No. Kericho/Kipchimchim/3674 to the Applicant to which the Deputy Registrar of the Honourable Court does execute the same.
 - d. Whether the Respondents should bear the costs of this suit.
4. The application is supported by the affidavit of Nehemiah Kipsang Cheruiyot sworn on 21st February, 2023.

Factual Background.

5. On 10th July, 2023 the Court gave directions that the Originating Summons be heard by way of viva voce evidence. The Originating Summons was deemed as a Plaint while the Supporting Affidavit was deemed as the Plaintiff's Statement.
6. At the time the Court was issuing directions, the Defendants had not filed any responses to the Originating Summons.
7. On 31st October, 2023, the 2nd and 3rd Defendants attended court and informed the court that they had served their response to the Originating summons upon counsel for the Plaintiff. The court directed them to file their written statement of defence within 14 days.
8. In compliance with the said directions, the Defendants filed a Replying affidavit sworn by one Peter Kirui, the 3rd Defendant, on 14th November, 2023. He avers that he has the authority of the 1st and 2nd Defendants to swear the affidavit on their behalf.
9. The Defendants also filed a statement of defence dated 11th December, 2023. It is drawn and filed by all of them. Essentially, they are acting in person.

Applicant's Contention.

10. He contends that he is the administrator of the estate of Taputany Cheptonui Chumo (deceased) and adds that he was issued with Grant of Letters of Administration Ad Litem on 6th December, 2021.
11. He also contends that Charles Kikwai Chumo alias Kikwai arap Chumo (deceased) had beneficial interest in land parcel No. Kericho/Kipchimchim/1090 having bought it from the then registered owner Langok w/o Murgor (deceased) on or about the year 1972.
12. He further contends that after purchase, Charles Kikwai Chumo alias Kikwai arap Chumo (deceased) established his home on the said parcel, cultivated crops, planted trees and built a house.
13. It is his contention that after the demise of Charles Kikwai Chumo alias Kikwai arap Chumo (deceased), they continued to live on the land peacefully with the recognition of the then registered owner who was Langok w/o Murgor (deceased) until her demise on 1st March, 1993.
14. It is also his contention that when Langok w/o Murgor (deceased) passed on, Kipkurui Arap Sigira (deceased) undertook succession proceedings and was appointed the administrator of her estate.
15. It is further his contention that on 7th March, 1995 Kipkurui Arap Sigira (deceased) in his capacity as the administrator of the estate of the deceased caused transmission of the property to himself as required by law.
16. He contends that subsequently, on 16th May, 1995 Kipkurui Arap Sigira subdivided land parcel No. Kericho/Kipchimchim/1090 into land parcel No's Kericho/Kipchimchim/2916-2919.



17. He also contends that on the same day he subdivided land parcel No. Kericho/Kipchimchim/2916 into land parcel No's Kericho/Kipchimchim/3673-3677 and the register for land parcel No. Kericho/Kipchimchim/2916 was closed.
18. He further contends that Kipkurui Arap Sigira (deceased) transferred land parcel No's Kericho/Kipchimchim/3673, 3675, 3676 and 3677 but left land parcel No. Kericho/Kipchimchim/3674 registered in his name. He adds that the said portion measures one acre and they are in occupation of it.
19. It is his contention that when his father Charles Kikwai Chumo alias Kikwai Arap Chumo (deceased) died on 17th February, 1997 his remains were interred on the said portion of land.
20. It is also his contention that when his brother Joseph Kipkemoi Cheruiyot passed on, he was also buried on the suit parcel. He goes on to state that similarly, when his mother Taputany C Chumo died on 5th June, 2017 she was also buried on the said parcel.
21. It is further his contention that despite being in full knowledge of their interest and occupation of the one acre of land parcel No. Kericho/Kipchimchim/3674, Kipkurui Arap Sigira (deceased) refused in his lifetime to transfer the said land to the estate of his late father and when he passed on, the land was still registered in his name.
22. He contends that after the demise of Kipkurui Arap Sigira (deceased) he reached out to his family who include the Defendants to have them take out grant of letters of administration intestate over the estate but they declined to do so.
23. He also contends that he filed citation proceedings against the Defendants and on 13th July, 2022 the Court allowed the citation and granted him leave to file a petition for grant of letters of administration.
24. He further contends that he is advised by his advocates on record that proceeding to file succession proceedings will represent a legal challenge as the basis of their claim is adverse possession which must be adjudicated upon and determined by this Court.
25. It is his contention that he filed an application to have the Defendants herein be appointed as personal representatives of the estate of Kipkurui Arap Sigira (deceased) for purposes of defending the present suit which application was allowed by the Court.
26. It is also his contention that since the suit parcel was acquired, they have been in occupation for a period of forty years and have been cultivating maize, beans, planted eucalyptus trees and have built permanent houses on the land.
27. It is further his contention that he is advised by his advocates on record that the principle of adverse possession applies in their favour as they have been in occupation of land parcel No. Kericho/Kipchimchim/3674 measuring 1 acre openly, quietly and in uninterrupted manner for a period of over forty years.
28. He contends that he was also advised to commence the present proceedings as against the Defendants who are the personal representatives of the estate of the late Kipkurui Arap Sigira.
29. He ends his deposition by stating that their possession and use of the suit parcel has survived all transfers from the original registered owner Langok w/o Murgor to Kipkurui Arap Sigira (deceased).

Defendants' Responses.

30. The Defendants filed a Replying Affidavit sworn by one Peter Kirui, the 3rd Defendant on 14th November, 2023.



31. He deposes that he has the authority of the 1st and 2nd Defendants who are his elder brothers to swear the affidavit on their behalf.
32. He also deposes that the Originating Summons is frivolous, vexatious and an abuse of the Court process and that it has been overtaken by events.
33. He further deposes that the prayers sought in the Originating Summons are ambiguous and meant to create more 'serious' issues.
34. It is his deposition that the Plaintiff's family has not been in occupation of the one acre of the suit parcel as the said land belongs to the family of the Defendants.
35. It is also his deposition that the Defendants distanced themselves from the said parcel of land and moved their residential houses to a neighboring parcel of land and that it is astonishing that the application of this nature has been brought to Court.
36. It is further his deposition that the Plaintiff's prayer and intention to acquire the suit parcel by way of adverse possession is unfounded and does not meet the required threshold.
37. He deposes that he believes that the Plaintiff is merely out to gain where he never invested.
38. He ends his deposition by urging the Court to uphold the rule of law and justice and dismiss the Plaintiff's Originating Summons.
39. The Defendants also filed a Statement of Defence dated 11th December, 2023.
40. They state that there was a long-standing dispute over land parcel No. Kericho/Kipchimchim/2916 which was subdivided and one of the resultant parcels, that is land parcel No. Kericho/Kipchimchim/3673 was registered in the name of Emily Chepkirui Biomndo. Land parcel No. Kericho/Kipchimchim/3674 was registered in the name of Tabutany Chumo, Kericho/Kipchimchim/3675 registered in the name of Kiplangat Sigira, Kericho/Kipchimchim/3676 registered in the name of Kipkirui Sigira and land parcel No. Kericho/Kipchimchim/2916 registered in the name of Kiprotich Tele.
41. The Defendants also state that their deceased father executed the necessary transfer documents for land parcel No. Kericho/Kipchimchim/3674 which could not be effected because the original title deed was missing.
42. The Defendants further state that their late father claimed that the title deed for land parcel No. Kericho/Kipchimchim/3674 was in the possession of Charles Kikwai Chumo (Deceased) and his wife Taputany w/o Chumo the parents of the Plaintiff herein who refused to surrender it for unknown reasons.
43. The Defendants state that the title deed for land parcel No. Kericho/Kipchimchim/2916 went missing and their deceased father followed the requisite procedure and was issued with another title deed. He goes on to state that their deceased father spent kshs. 120,000/= which he needed to be refunded before he could transfer the land.
44. The Defendants also state that the Plaintiff is in occupation of land parcels No. Kericho/Kipchimchim/3673 and 3674 which measure 3 acres and 1 acre respectively.
45. The Defendants further state that had the late Taputany w/o Chumo cleared the debt of Kshs. 120,000/= which amount was spent to get the title deed for land parcel No. Kericho/Kipchimchim/3674, the said parcel would have been transferred to her. He adds that the Defendants



object to any execution of transfer documents until their grievances are addressed and the Plaintiff discloses all the information.

46. The Defendants state that the Plaintiff is in occupation of land parcel No. Kericho/Kipchimchim/3673 which has since been purchased by Emily Chepkirui Biomdo as per the agreement for sale of land dated 5th August, 2000 entered into between Kipkurui Arap Sigira the vendor and Emily Chepkurui Biomdo the purchaser.
47. The Defendants also state that the late Taputany w/o Chumo had a balance of Kshs. 240,000/= which she did not clear before the land could be transferred to her. They add that the circumstances under which the transfer process was transacted was questionable and that it should be scrutinized and the balance paid and/or the land be reverted back.
48. The Defendants also state that the Plaintiff has failed to admit that he owes Kipkurui Sigira (Deceased) Kshs. 360,000/= which sum they claim.
49. The Defendants further state that the Plaintiff has not been in uninterrupted occupation of land parcel No. Kericho/Kipchimchim/3674 as there exists an unresolved land dispute between the Plaintiff and the Defendants parents. They add that this can be seen in the letter written by the District Officer, Ainamoi Division dated 13th February, 2007. This letter is attached to the written statement of defence.
50. The Defendants state that the claim of adverse possession is therefore inapplicable in the present suit and pray that the Plaintiff's suit be dismissed with costs.

Plaintiff's Evidence.

51. Nehemiah Kipsang Cheruiyot testified as PW1.
52. It was his evidence that he filed the present suit on behalf of the estate of Taputany Cheptonui Chumo. He produced a copy of a grant of letters of administration Ad Litem dated 6th December, 2021 as Exhibit P1.
53. It was also his evidence that the Defendants are the children of Kipkurui Sigira (deceased) who was the son of Langok w/o Murgor (deceased).
54. It was further his evidence that he was claiming land parcel No. Kericho/Kipchimchim/3674 which measures one acre.
55. He testified that he is claiming the land because his father Charles Kikwai Chumo (deceased) purchased it in the year 1972 from Langok w/o Murgor (deceased).
56. He also testified that at the time his father was purchasing the land, it was registered as Kericho/Kipchimchim/1090.
57. He further testified that he had a certified copy of the register which shows that on 1st April, 1971 land parcel No. Kericho/Kipchimchim/1090 was registered in the name of Langok w/o Murgor.
58. It was his evidence that he was born in the year 1962 and they started living on the suit parcel in the year 1973. He added that they initially built one house before adding more houses.
59. It was also his evidence that they have continued to live on the said parcel and grow maize, napier grass and trees to mark the boundary of the land.



60. It was further his evidence that Langok w/o Murgor died in the year 1993 and that while she was alive, they did not have any disputes. He produced a copy of the green card as Exhibit P2.
61. He testified that the entry dated 7th March, 1995 shows that the suit parcel was registered in the names of Kipkirui Arap Sigira, Samwel Kipkoech Sowe, Kipterer Arap Sowe and Joel Kiplangat Mitei who were described as personal representatives of her estate.
62. He also testified that the green card shows at Entry No. 6 that on 16th May, 1995 the title was closed upon subdivision. It gave rise to land parcel No's Kericho/Kipchimchim/2916, 2917, 2918 and 2919.
63. He further testified that after subdivision, they remained on land parcel No. Kericho/Kipchimchim/2916 which parcel was on 16th May, 1995 registered in the name of Kipkurui Arap Sigira. He produced a copy of the register for the said parcel as Exhibit P3.
64. It was his evidence that land parcel No. Kericho/Kipchimchim/2916 was closed on subdivision on 21st July, 2000 and it was subdivided into land parcel No's Kericho/Kipchimchim/3673, 3674, 3675, 3676 and 3677.
65. It was also his evidence that Kipkurui Arap Sigira was the father of the Defendants.
66. It was further his evidence that they learnt that their land formed part of Kericho/Kipchimchim/3674. He produced a certified copy of the register for land parcel No. Kericho/Kipchimchim/3674 which shows that the land is registered in the name of Kipkurui A. Sigira as Exhibit P4.
67. He testified that he looked for the Defendants and he filed citation cause No. 19 of 2016 which they did not defend. it was his further testimony that the Court allowed him to file a Succession Cause with regard to the estate and land parcel No. Kericho/Kipchimchim/3674. He added that the order was issued on 7th August, 2022 and he produced it as Exhibit P5.
68. He also testified that he did not file succession proceedings but he subsequently went to Court and was issued with an order dated 1st December, 2022. The said order was marked and produced as Exhibit P6.
69. It was his evidence that in relation to land parcel No. 3674 he seeks the orders as set out in the Originating Summons.
70. The Plaintiff then closed his case.
71. On the same date that the Plaintiff closed his case, i.e 30th October, 2024, the court on perusal of the affidavit of service in respect of service of the hearing notice was persuaded that service had been properly effected upon the Defendants and ordered that the matter proceeds for hearing in their absence.
72. The affidavit of service evidencing service of the hearing notice upon the Defendants is sworn on 15th October, 2024 by Vincent Lelgo.
73. Subsequently directions were issued for submissions.

Issues For Determination.

74. The Plaintiff filed his submissions on 6th December, 2024.
75. In his submissions, he gives a summary of his evidence, the Defendants case and submits on the following issues;



- a. Whether the Plaintiffs (sic) have met the threshold for adverse possession.
 - b. Whether the Plaintiff Should be registered as the proprietor of land parcel LR No. Kericho/Kipchimchim/3674.
76. With regard to the first issue, the Plaintiff relies on Sections 7 & 13 of the *Limitation of Actions Act*, the judicial decisions of Samwel Nyakenogo vs Samwel Orucho Onyaru [2010] JeKLR, Teresa Wachuka Gachira v Joseph Mwangi Gachira [2009] eKLR and submits that after Charles Kikwai Arap Chumo purchased the suit parcel, his family that includes the Plaintiff used the land to cultivate crops, plant trees and built a house.
77. The Plaintiff submits that his family has been in possession of the suit parcel for more than twelve years and explains that they took possession in the year 1972.
78. The Plaintiff submits that he has proved his case on a balance of probability and he has dispossessed the title holder as he has been in possession for a period of over twelve years.
79. The Plaintiff also submits that his possession has been open and peaceful with the recognition of the two registered owners of the suit parcel.
80. The Plaintiff further submits that the Defendants did not adduce any evidence to assert their right to title by entering and evicting him and his family from the suit land.
81. With regard to the second issue, the Plaintiff relies on Section 38 of the *Limitation of Actions Act* and submits that he is legally qualified to be registered as the proprietor of the suit parcel as an administrator of his late mother's estate.
82. He concludes his submissions by urging the Court to grant the prayers sought in the Originating Summons.

Analysis And Determination.

83. After considering the pleadings, submissions, and the testimony of the Plaintiff, the issues that arise for determination are as follows;
- a. Whether the Plaintiff has acquired land parcel No. Kericho/Kipchimchim/3674 by way of adverse possession.
 - b. Who should bear costs of the suit.

A. Whether the Plaintiff has acquired land parcel No. Kericho/Kipchimchim/3674 by way of adverse possession.

84. It is the Plaintiff's case that he is the legal representative of the estate of his late mother Taputany Cheptonui Chumo (deceased).
85. It is also his case that his late father one Charles Kikwai Chumo alias Kikwai arap Chumo (deceased) in the year 1972 purchased a portion of land parcel No. Kericho/Kipchimchim/1090 from one Langok w/o Murgor and he immediately took possession and that they lived peacefully on the suit parcel.
86. It is further his case that Langok w/o Murgor died in the year 1993 and Kipkurui Arap Sigira (deceased) took out letters of administration for her estate.
87. It is also his case that Land Parcel No. Kericho/Kipchimchim/1090 was subdivided into land parcel No's Kericho/Kipchimchim/2916, 2917, 2918 and 2919.



88. It is the Plaintiff's case that Kipkurui Arap Sigira (deceased) subdivided land parcel No. Kericho/Kipchimchim/2916 into land parcel No's Kericho/Kipchimchim/3673, 3674, 3675, 3676 and 3677.
89. It is also the Plaintiff's case that the portion of land his deceased father purchased was registered as land parcel No. Kericho/Kipchimchim/3674 and that it measures one acre. It is his case that said parcel was registered in the name of Kipkurui Arap Sigira (deceased) and despite following up with him, he (Kipkurui Arap Sigira (deceased) refused to transfer the said parcel to his name.
90. In support of his case the Plaintiff produced a copy of Limited grant of letters of administration ad litem issued in Kericho CM Ad Litem No. E177 of 2021 in the matter of the Estate of the late Taputany C. Chumo alias Tabantany Cheptonui Chumo – Deceased as Exhibit P1. It was issued to Nehemiah Kipsang Cheruiyot on 6th December, 2021.
91. The Plaintiff also produced a copy of the green card for land parcel No. Kericho/Kipchimchim/1090 as Exhibit P2. Entry No. 1 is dated 1st April, 1971 when Langok w/o Murgor was registered as the owner. Entry No. 2 is dated 15th February, 1974 while Entry No. 3 is dated 15th March, 1993. At Entry No. 3 a restriction was registered. Entry No. 4 is dated 7th March, 1995 when Kipkirui Arap Sigira, Samwel Kipkoech Sowe, Kipterer Arap Sowe and Joel Kiplangat Sowe were registered as owners. Entry No. 5 is dated 7th March, 1995 when a title deed was issued. Entry No. 6 is dated 16th May, 1995 when the title deed was closed upon partition into land parcel No's 2916, 2917, 2918 and 2919.
92. A copy of the green card for land parcel No. Kericho/Kipchimchim/2916 was produced as Exhibit P3. Entry No. 1 is dated 16th May, 1995. It shows that Kipkirui Sigira was registered as the owner. Entry No. 2 is dated 16th May, 1995 when the title deed was issued. Entry No. 3 is dated 21st July, 2000 when the title deed was closed on subdivision into land parcel No's 3673, 3674, 3675 and 3676.
93. A copy of the green card for land parcel No. Kericho/Kipchimchim/3674 was produced as Exhibit P4. Entry No. 1 is dated 21st July, 2000 and shows that Kipkurui A. Sigira is the registered owner.
94. A copy of a Court order issued in Kericho Citation Cause No. 19 of 2016 in the matter of the estate of Kipkurui A. Sigira alias Kipkurui Arap Sigira (deceased) was produced as Exhibit P5. The Citor is Nehemiah Kipsang Cheruiyot while the Citees are Paul Kirui, David Mosoin, Wesley Kirui and Peter Kirui. The order was issued on 7th September, 2022 and it is as follows;
- “ 1. That the Citor Nehemiah Kipsang Cheruiyot is hereby been granted leave to administer the said estate known as land parcel LR. No. Kericho/Kipchimchim/3674.
 2. That the Citoris (sic) hereby been granted leave to file succession proceedings in regards to the said estate known as land parcel LR No. Kericho/Kipchimchim/3674.”
95. The Plaintiff also produced a copy of an order issued on 1st December, 2022 in Kericho CM Citation Cause No. 19 of 2016 as Exhibit P6. The order issued is as follows;
- “That an order be and is hereby issued appointing the Respondents to be the personal representatives of the estate of Kipkirui Arap Sigira (Deceased) limited for purposes of defending a pending suit to be filed by the Applicant for the registration and transfer of the land parcel the land parcel (sic) LR No. Kericho/Kipchimchim/3674.
 2. That the costs of the application be borne by the estate.”



96. As afore stated, the Defendants filed a Statement of Defence dated 11th day of December, 2023 but they did not attend Court on the date set down for hearing.
97. From reading the Defendants' statement of defence and Replying affidavit, the fact of sale of the suit parcel by Langok w/o Murgor (deceased) to Charles Kikwai Chumo alias Kikwai arap Chumo (deceased) is not in dispute.
98. The Defendants also confirm that the Plaintiff is in occupation of land parcels No's Kericho/Kipchimchim/3673 and 3674 which measure 3 acres and 1 acre respectively.
99. The Defendants further state at Paragraph 6 of the Statement of Defence that the late Taputany w/o Chumo did not clear a debt of Kshs. 120,000/= which amount was to be spent to get the title deed for land parcel No. Kericho/Kipchimchim/3674. They state that had she done so, the suit parcel would have been transferred to her.
100. At paragraph 11 of the statement of defence, the Defendants state that they object to any execution of transfer documents until their grievances are addressed and the Plaintiff discloses all information.
101. The Defendants also state at paragraph 8 of the statement of defence that the late Taputany w/o Chumo had a balance of kshs. 240,000/= which she did not clear before the land could be transferred to her. The Defendants also state that the Plaintiff has failed to admit that he owes Kipkurui Sigira (Deceased) kshs. 360,000/= which sum they claim.
102. A reading of the Defendants pleadings shows that they do not dispute the fact of sale. They however allege that certain sums of money are owing to them.
103. The question that follows is, what is the Court supposed to do with these averments in the statement of defence and Replying affidavit?
104. In the judicial decision of Kenya Power & Lighting Co Ltd v Rassul Nzembe Mwadzaya [2020] eKLR the Court held as follows;

“ 12. It is noteworthy that the Appellant in its amended Statement of Defence filed on 15th October 2012 denied all the allegations raised by the Respondent and attributed contributory negligence on the part of the Respondent. Although a defence was filed on behalf of the Appellant, no witness was called to prove that defence. Since no evidence was adduced in support of the defence case, the defence on record therefore remained as a mere allegation. This is the position in law and was restated in the case of Edward Muriga through Stanley Muriga... Vs...Nathaniel D. Schulter, Civil Appeal No.23 of 1997, where the Court of Appeal stated:-

“In this matter, apart from filing its statement of defence the Defendant did not adduce any evidence in support of assertions made therein. The evidence of the 1st Plaintiff and that of the witness remain uncontroverted and the statement in the defence therefore remains mere allegations. Section 107 and 108 of the *Evidence Act* are clear that he who asserts or pleads must support the same by way of evidence”.

13. Further, it is trite that if no evidence is tendered to support an averment in a pleading, in this case, the defence, such averment stand as such as mere statement.”



105. In the present case, the Defendants filed a Replying Affidavit and a Statement of Defence but they failed to call evidence. Therefore, the averments in the said documents remain to be mere allegations which have not been proved.
106. Even though the Defendants did not adduce evidence, the Plaintiff was obligated to call sufficient evidence and prove his case to the required standard and rebut the averments in the replying affidavit and statement of defence.
107. In the judicial decision of *Gichinga Kibutha v Caroline Nduku* [2018] eKLR the Court held as follows;
- “It is not automatic that in instances where the evidence is not controverted, the claimant’s claim shall have his way in Court. He must discharge the burden of proof. He must proof (sic) his case however much the opponent has not made a presence in the contest.” (Emphasis mine)
108. The law on adverse possession is in Section 38 (1) and (2) of the *Limitation of Actions Act*. It is as follows:
- “(1) Where a person claims to have become entitled by adverse possession to land registered under any of the Acts cited in section 37 of this Act, or land comprised in a lease registered under any of those Acts, he may apply to the High Court for an order that he be registered as the proprietor of the land or lease in place of the person then registered as proprietor of the land.
- (2) An order made under subsection (1) of this section shall on registration take effect subject to any entry on the register which has not been extinguished under this Act.”
109. The Court of Appeal in *Mtana Lewa v Kahindi Ngala Mwangandi* [2015] eKLR 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 is twelve (12) years. The process springs in to action essentially by default or inaction of the owner. The essential prerequisite 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 averse to the title owner.” (Emphasis mine)
110. Simply stated, for a claim of adverse possession to be upheld, the Plaintiff must prove the following;
- a. That he is in open occupation of the suit parcel
 - b. That his occupation is without force
 - c. That his occupation is without secrecy
 - d. That his occupation is without license or permission of the owner.
111. When an adverse possession claim stems from an agreement for the sale of land, the Plaintiff is required to further prove payment of the purchase price in full or the date of payment of the last instalment.



112. In the decision of *Samuel Kihamba v Mary Mbaisi* [2015]eKLR the Court of Appeal held as follows;
- “Strictly, for one to succeed in a claim for adverse possession one must prove and demonstrate that he has occupied the land openly, that is, without force, without secrecy, and without license or permission of the land owner, with the intention to have the land. There must be an apparent dispossession of the land from the land owner. These elements are contained in the Latin phraseology, *nec vi, nec clam, nec precario*. The additional requirement is that of *animus possidendi*, or intention to have the land. See *Eliva Nyongesa Lusenaka & Anor v Nathan Wekesa Omacha Kisumu Civil Appeal No. 134 of 1993 (ur)*.
113. The import of this decision is that a party who claims adverse possession must prove each and every element of adverse possession.
114. As afore stated, it is the Plaintiff’s case that his late father Charles Kikwai Chumo purchased a portion of land parcel No. Kericho/Kipchimchim/1090 from Langok w/o Murgor in 1972 and took possession.
115. In the judicial decision of *Cheromei v Muigai (Environment & Land Case E005 of 2023) [2024] KEELC 5604 (KLR) (25 July 2024) (Judgment)* the Court held as follows;
- “ 18. Having been allowed possession under a sale, the Applicant can only claim that his occupation became adverse if he can prove that the license was determined. In such circumstances where an Applicant claims adverse possession arising out of an agreement for sale, courts have held that the purchaser’s possession becomes adverse to the vendor once the purchase price is paid in full. Time starts to run from that point, and on completion of the statutory time limit of 12 years, the purchaser would be entitled to become registered as proprietor of the land under adverse possession. In *Peter Mbiri Michuki v Samuel Mugo Michuki* [2014] eKLR, the Court of Appeal held that:
- “32. Our reading of the record shows that the Plaintiff entered the suit property pursuant to a sale agreement in 1964 as a bona fide purchaser for value. The entry in 1964 was with permission of the appellant qua vendor. In the case of *Public Trustee v Wanduru*, [1984] KLR 314 at 319 Madan, J.A. stated that adverse possession should be calculated from the date of payment of the purchase price to the full span of twelve years if the purchaser takes possession of the property because from this date, the true owner is dispossessed off possession. A purchaser in possession of the land purchased, after having paid the purchase price, is a person in whose favour the period of limitation can run.” (Emphasis mine)
116. In the above cited judicial decision, the Court held that where a party claims adverse possession arising out of an agreement for sale, the purchaser’s possession becomes adverse to the vendor once the purchase price is paid in full. The period of adverse possession is therefore calculated from the date the purchase price was paid in full and once twelve years lapse, the owner is dispossessed of possession.
117. In the present case, it is evident that the Plaintiff’s claim of adverse possession stems from an agreement of sale.
118. The question of payment or non-payment of the purchase price is important for the determination of a claim for adverse possession arising from a sale agreement and shall be interrogated in subsequent paragraphs.



119. Even though it was the Plaintiff's evidence that his late father purchased a portion of land parcel No. Kericho/Kipchimchim/1090 from Langok w/o Murgor, no agreement in support of the said assertions was produced and/or oral evidence tendered of the fact of purchase. Oral evidence would be important for agreements for the sale of land entered into before 2003 when the Contract Act was amended and the amendment had the effect of making it compulsory for agreements for the sale of land to be in writing.
120. Further, the Plaintiff did not lead evidence on the terms of the said purchase such as the purchase price and size of land that was purchased. I note however that the Defendants in their statement of defence at paragraph 5 concede that the Plaintiff is in occupation of Parcel no. Kericho/Kipchimchim/3674 which measures one acre.
121. In the judicial decision of *Abala v Oracha* (Environmental and Land Originating Summons E005 of 2023) [2024] KEELC 6279 (KLR) (26 September 2024) (Judgment) the Court held as follows;
- “ 33. In his exam in chief, the Plaintiff testified that the agreement for sale was executed on 2nd July, 1982 between him and James and witnessed by James's widow and his brother Gilbert. However, this agreement for sale was never produced to substantiate his assertion.
34. Further, there was no proof whatsoever that the purchase price was ever paid and it is surprising that his brother Gilbert Adala who allegedly witnessed the agreement and payment of the initial deposit of Kshs. 1000/= was not even called as a witness.
35. Additionally, neither the assistant chief nor one Mulango who on 5/09/1982 supposedly witnessed the payment of the final balance of 4,500/- were called to testify. He also contradicted himself when he testified that the agreement for sale was tripartite- between him, James, and Zedekiah. It can only be concluded that the agreement for sale was a figment of his imagination. Thus, I am unable to establish when time started to run.” [Emphasis mine]
122. In the judicial decision of *Kiptum v Njau & another* (Environment & Land Case 292 of 2013) [2022] KEELC 14823 (KLR) (15 November 2022) (Judgment) the Court held as follows;
- “In the present case, I find that the Plaintiff was required to pay her final instalment (sic) on or before the 30th of October 2001. She testified and told this Court that she complied with the terms of the sale agreement. The Court has as shown above, however observed that the Plaintiff has not presented evidence upon which the Court can clearly make a finding that the last purchase price was paid, and if so, on a specific date, month or year. That without that confirmation, then the Plaintiff's claim that she had been in adverse possession of the suit land for more than 12 years by the time she filed this suit is without evidence in support.” [Emphasis Mine]
123. In the judicial decision of *Njeri Kimani* (Suing in her capacity as the administratrix of the estate of Nasser Kimani Njoroge (Deceased) v Edwin Onesmus Wanjau (Suing in her capacity as the administrator of the estates of Kimingi Wariera (Deceased) and of Mwangi Kimingi (Deceased) [2022] eKLR the Court



cited the Court of Appeal decision of Joseph Gachumi Kiritu v Lawrence Munyambu Kabura [1996] eKLR where it was held as follows;

“It is not possible for one to determine, in the absence of evidence as to the exact date of last instalment paid by the Respondent and possibly the amount thereof, the exact date when possession of land by the Respondent become adverse. It is a matter for the Respondent (Plaintiff) to prove and he did not prove it. It transpires therefore that the respondent did not properly or at all prove that he was in adverse possession of suit land for a minimum of twelve years” (Emphasis mine)

124. This court notes that the Plaintiff has instituted the present proceedings on behalf of the estate of his late mother Taputany Cheptonui Chumo. This Court also notes that it is the Plaintiff's case that his late father Charles Kikwai Chumo purchased a portion of land parcel No. Kericho/ Kipchimchim/1090. The Plaintiff has not established a link between the estate of his late father who allegedly purchased the suit parcel and the estate of his late mother, whose estate he represents.

Disposition.

125. As was held in the above cited judicial decisions, it is imperative for a party anchoring his claim of adverse possession on an agreement for the sale of land and/or purchase to produce the agreement to substantiate the claim and/or to tender oral evidence of the fact of purchase and to produce evidence of the date of full payment or payment of the last installment to enable the Court to establish when the time begun to run in his favour.

126. The Plaintiff ought to have adduced evidence to show payment of the purchase price and/or date of payment of last instalment in respect of the purchase price. This would be helpful to this court in computing when time begun to run in his favour.

127. In the result, I find that the Plaintiff has failed to prove his claim for adverse possession to the required standard and his claim is hereby dismissed with no order as to costs.

128. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 26TH DAY OF JUNE, 2025.

L. A. OMOLLO

UDGE.

In the presence of: -

Mr. Kirui Evanson for the Applicant.

Respondents – Absentm00e

Court Assistant; Mr. Joseph Makori

