



**Otieno v Mwai Commercial Agencies & another (Enviromental and Land Originating Summons E018 of 2023) [2025] KEELC 4806 (KLR) (26 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4806 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E018 OF 2023**

**A OMBWAYO, J**

**JUNE 26, 2025**

**BETWEEN**

**JUDITH AOKO OTIENO ..... APPLICANT**

**AND**

**MWAI COMMERCIAL AGENCIES & ANOTHER & ANOTHER & ANOTHER  
& ANOTHER & ANOTHER & ANOTHER ..... RESPONDENT**

**JUDGMENT**

**Introduction**

1. The Applicant commenced this suit vide Originating Summons dated 23rd August, 2023 against the Respondents seeking the following orders:
  1. That the Applicant be declared to have become the legal owner entitled by adverse possession of over 12 (twelve) years since 16th September, 2004 of All That 1/4 acre out of Land Parcel Known as LR No. PIAVY/1850.
  2. That the Applicant be registered as the sole proprietor of 1/4 acre out of Land Parcel Known as LR No. PIAVY/1850 which is registered in the name of Charles Mathenge Njuki (Deceased).
  3. That the Respondents either by themselves, agents, servants and /or employees be permanently restrained from interfering with the Applicant's peaceful possession and occupation of the suit property.
  4. That the Honorable Court be pleased to direct the Land Registrar to execute the transfer instrument and all other documents attendant to the transfer and registration of the one acre out of Land Parcel Known as LR No. PIAVY/1850 in favor of the Applicant.
  5. That the costs of this application be provided for. Applicant's case



2. The application was supported by the supporting affidavit sworn by Judith Aoko Otieno, the Applicant on 23rd August, 2023.
3. She stated that they jointly entered into an agreement with the 2nd Respondent through his agent, the 1st Respondent on 16th September, 2004. She further stated they jointly paid the purchase price of KShs. 170,000/= each individual paying KShs. 42,500/=.
4. She went on to state that she had exclusive occupancy of the 1/4-acre part of the suit parcel where she has been doing subsistence farming.
5. She stated that the surveyor showed her the 1/4-acre portion as well as the other occupants' portion. She added that the 2nd Respondent has never transferred the same to them despite numerous follow ups.
6. She also stated that she had since learnt that the vendor was deceased and two administratrix were appointed to manage the deceased estate. She stated that the suit land was not among the properties subjected for distribution by the deceased estate.
7. She stated that they have also learnt that the proprietor of the 1st Defendant known as Joseph Mwai was also deceased. She stated that 12 years have since lapsed since they paid the full purchase price on 16th September, 2004.
8. She urged the court to allow the application as prayed.
9. The Respondents did not file any response to the summons. Submissions
10. None of the parties filed their submissions. Analysis and Determination
11. I have considered the pleadings and the evidence on record and I am of the view that the following issues need to be determined:
  - a. Whether the Applicant has acquired the suit property adversely.
  - b. Who should bear the costs of the suit.
12. It is not in dispute that the Respondents did not enter appearance or controvert the Applicant's application despite service.
13. The doctrine of adverse possession is founded under Section 7, 13, 37 and 38 of the *Limitation of Actions Act*. Further, in order for one to succeed in the claim for adverse possession, a party must prove he had uninterruptedly possessed and occupied the suit land continuously and the Respondent was aware of such. Section 7 of the *Act* provides as follows:
 

“An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person. Section 13 “(1) A right of action to recover land does not accrue unless the land is in the possession of some person in whose favour the period of limitation can run (which possession is in this Act referred to as adverse possession), and, where under sections 9, 10, 11 and 12 of this Act a right of action to recover land accrues on a certain date and no person is in adverse possession on that date, a right of action does not accrue unless and until some person takes adverse possession of the land...”
14. In *Kasuve v Mwaani Investments Limited & 4 others* 1 KLR 184, the Court of Appeal restated what a Plaintiff in a claim for Adverse Possession has to prove;



15. In order to be entitled to land by Adverse Possession, the claimant must prove that he has been in exclusive possession of the land openly and as of right without interruption for a period of 12 years either after dispossessing the owner or by discontinuation of possession by the owner on his own volition.”
  16. In the case of *Public Trustee v Wanduru Ndegwa* [1984] KECA 72 (KLR) Kneller JA held as follows: “The position of a vendor and a purchaser of registered land is this. The vendor as the registered owner retains the legal estate and becomes the trustee of it for the purchaser when the purchaser pays a deposit for it. The vendor retains a lien on the property for the balance of the purchase money which disappears when it is paid and the purchaser then becomes the sole beneficial owner and the vendor becomes a bare trustee for the purchaser. If the vendor trustee allows the purchaser cestui qui trust to remain in possession the latter is in adverse possession because the vendor as the absent registered owner always retains the legal estate and this prima facie entitles him to resume possession from the purchaser in possession.
  17. The limitation period will begin to run from the date of the payment of the purchase price in full or last instalment of it. See Harman J in *Bridges v Mees*, [1957] I Ch 475; and Simpson J (as he then was) in *Hosea v Njiru Ors*, [1974] EA 526 (K). The upshot is that although Kamau is the proprietor of this registered land Mrs Muthoni is in possession and actual occupation of it and has been in possession of it for over twelve years so she has rights acquired under the *Limitation of Actions Act...*”
  18. Further, in the case of *East Africa Pentecostal Church through the Registered Trustees v Hezekiel* [2024] KEELC 4589 (KLR) the court held as follows:

“...For adverse possession arising out of an aborted sale agreement or license, the time for adverse possession starts to run after the payment of the entire purchase price or when the license terminates...”
  19. In the present case, it is not in dispute that the Applicant jointly with three others purchased the suit property from the 2nd Respondent through its agent the 1st Respondent at a consideration of Kshs. 170,000/=. This is evidenced by the sale agreement dated 16th September, 2004 as well as the receipt (JOOb). It was the Applicant’s case that she has been in quiet, peaceful and continuous occupation of the suit property after purchasing the same from the 2nd Respondent. It is also not in contention that the Applicant’s claim remains uncontroverted by the Respondents.
  20. In view of the above, it is this court’s opinion that the Applicants indeed purchased the suit property from the 2nd Respondent and also having paid the full purchase price, the limitation period begun running on 16th September, 2004. It is also this court’s view that 12 years have since lapsed from the time the Applicant took possession.
  21. In the upshot, I find that the Applicant has satisfied the requirements on adverse possession and therefore legally acquired the suit property by way of adverse possession.
  22. The prayers as sought in the originating summons dated 23rd August, 2023 are hereby allowed as prayed.
- Each party to bear its own costs. It is so ordered.

**SIGNED BY: HON. JUSTICE ANTONY O. OMBWAYO**

**THE JUDICIARY OF KENYA. NAKURU ENVIRONMENT AND LAND COURT  
ENVIRONMENT AND LAND COURT**



DATE: 2025-06-26 17:01:04

