



**Langat & 3 others (Suing as the administrators of the Estate of Samuel Cheruiyot Lang'at) v Byomdo (Environment & Land Case 114 of 2018) [2025] KEELC 45 (KLR) (22 January 2025) (Judgment)**

Neutral citation: [2025] KEELC 45 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT & LAND CASE 114 OF 2018  
MAO ODENY, J  
JANUARY 22, 2025**

**BETWEEN**

**ELIZABETH CHEBET LANGAT ..... 1<sup>ST</sup> PLAINTIFF  
ERNEST KIPROTICH CHERUIYOT ..... 2<sup>ND</sup> PLAINTIFF  
ERICK LANGAT CHERUIYOT ..... 3<sup>RD</sup> PLAINTIFF  
ENOCK KIPTOO CHERUIYOT ..... 4<sup>TH</sup> PLAINTIFF  
SUING AS THE ADMINISTRATORS OF THE ESTATE OF SAMUEL  
CHERUIYOT LANG'AT)**

**AND**

**JOEL KIPNGENO BYOMDO ..... DEFENDANT**

**JUDGMENT**

1. By a Plaint dated March 16, 2018, the Plaintiffs herein sued the Defendants seeking the following orders:
  - a. A declaration that the Estate of Samuel Langat is the beneficial and legal owner of Nakuru/Olenguruone/Kiptagich/59 by virtue of adverse possession.
  - b. The District Land Registrar to enter into the register a transfer of the Suit property to the Estate of Samwel Cheruiyot Langat.
  - c. A permanent injunction restraining the Defendant or his servants or agents from entering, evicting, alienating or interfering in any manner with the exclusive possession of the Plaintiffs and his successors or assignees to Nakuru/Olenguruone/Kiptagich/59.
  - d. Costs of this suit plus interest at Court rates.



- e. Such other reliefs as this Honourable court may deem fit to grant.

### **Plaintiffs Case**

2. PW1 Elizabeth Chebet Langat adopted her witness statement dated 17<sup>th</sup> March 2023 and produced the bundle of documents as Pex No. 1 to 4. She testified that she is the widow of the late Samuel Langat and one of the Administrators to his estate. PW1 testified that her husband began using the land parcel between 1993 to 1995 where he planted tea.
3. PW1 produced records of tea production at pages 3 to 10 and testified that nobody ever came to claim the land but after her husband's demise the defendant came and laid claim on the land. She further testified that they would want to continue with the cultivation of the suit parcel of land.
4. PW2 Johana Kiprono Korgoren also adopted his witness statement and stated that he lives in Olunguruone and knew Samuel Langat as his neighbor who had employed him in 1991 and worked until 1995 as a Farm Manager. PW2 testified that he neither heard of any dispute concerning the suit land when Samuel Langat was alive nor saw the Defendant. He further stated that in 1992, he planted tea on the suit land and only heard of the Defendant after the demise of Samuel Langat.
5. PW3 Jonathan Kimetto testified that he is a retired Chief of Kiptagich having been a Chief from 1998 to 2018. He testified that he knew Samuel Langat when he came to buy land in the settlement Scheme and was among those who farmed on their land and planted trees. PW3 further testified that in 2017, the Defendant came to claim the suit land who informed him that he had been at work. PW3 testified that the land belonged to the late President Moi who later gave it away to people to plant tea.
6. The Defendant filed an application to be allowed to defend the case, which was dismissed. The case was therefore undefended.

### **Plaintiffs' Submissions**

7. Counsel for the Plaintiff filed submissions dated 4<sup>th</sup> November 2024 and identified the following issues for determination:
  - a. Whether the Plaintiffs are entitled to the ownership of the Suit Property by virtue of adverse possession
  - b. Whether the District Land Register can enter into the register a transfer of the suit property to the Estate of Samwel Cheruiyot? and
  - c. Whether the court can issue a permanent injunction restraining the Defendant or his servants or agents from entering, evicting, alienating or interfering in any manner with the exclusive possession of the Plaintiffs and their successors or assignees to the suit property.
8. On the first issue, counsel submitted that the Plaintiffs have achieved the elements for a valid claim for adverse possession as the possession claimed is adequate and in continuity, it is open and public and it is adverse to that of the registered owner. Counsel relied on Section 7 (i) of the Land Act, Section 28 of the Land Registration Act and the cases of Mtana Lewa vs Kahindi Ngala Mwagandi, Maweu vs Liu Ranching & Farming Cooperative Society [1985] eKLR and Samuel Kihambi vs Mary Mbaisi (2015) Kisumu Civil Appeal No 27 of 2013.
9. Counsel further submitted that the deceased's entry and possession of the suit property was before the Defendant was registered as a proprietor in 1994 and it was non-permissive and non-consensual



without a license from anyone, further that the possession was continuous, open, public for a period of 25 years.

10. On the second issue, counsel submitted that the Plaintiffs have proved their case for adverse possession and it is equitable and just that the County Land Registrar enters into the Register a transfer of the suit property to the Estate of Samwel Cheruiyot and relied on the case of *Mbira vs Gachuhi* (2002).
11. On the third issue, counsel submitted that the Plaintiffs have continuously occupied the suit property for the past 25 years and it follows that the Defendant ought to be restrained permanently from interfering with the Plaintiff's quiet enjoyment of the suit property and relied on the case of *Bandari Investments & Co Ltd vs Martin Chiponda & 139 others* [2022] KEELC 1469 (KLR). Counsel prayed that this Honourable Court allows the Plaintiff's claim with costs.

### **Analysis and Determination**

12. The issues for determination are whether the Plaintiffs have met the threshold for grant of an order of adverse possession and whether they are entitled to be registered as beneficial owners in place of the respondent and an order of a permanent injunction against the Respondent.
13. The principles to be considered in an application for an order of adverse possession are now well settled as set out in several provisions of the *Limitation of Actions Act*. Section 7 of the said Act places a bar on actions to recover land after 12 years from the date on which the right accrued. Further Section 13 of the same Act provides that adverse possession as the exception to this limitation:

“(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. Similarly, in the case of *Wambugu vs Njuguna* [1983] KLR 172, where the Court held that:

“In order to acquire by the statute of limitations title to land which has a known owner, that owner must have lost his right to the land either by being dispossessed of it or by having discontinued his possession of it. Dispossession of the proprietor that defeats his title are acts which are inconsistent with his enjoyment of the soil for the purpose of which he intended to use it.”

And that:

“The proper way of assessing proof of adverse possession would then be whether or not the title holder has been dispossessed or has discontinued his possession for the statutory period and not whether or not the claimant has proved that he has been in possession of the requisite number of years.”



15. The doctrine of adverse possession is one of the ways of acquiring land through operation of the law. Such a claimant must meet the threshold provided for under the *Limitation of Actions Act* and was held in the case of *Mbira v Gachuhi* (2002) IEALR 137 where the court stated that:

“.....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 statutory prescribed period without interruption....”
16. A claimant of adverse possession must first acknowledge ownership of the suit land to which he or she claims to have been entitled to by the operation of the law. This should be proof that the titleholder to whom the claim of adverse possession is hinged is the rightful owner of the suit land. It was the Plaintiffs’ case that the late Samwel Cheruiyot Langat began using the suit land known as Nakuru/Olenguruone/Kiptagich/59 between 1993 to 1995 whereby he had exclusive, uninterrupted use for commercial tea farming and was well known by the neighbours and local administration as the owner.
17. It is also on record that the administrators of the estate of the late Samwel Cheruyot Langat filed Nairobi Succession Cause No. 2691 of 2013 whereby they included LR NO. Nakuru/Olenguruone/Kiptagich/59 as one of the properties to be administered and a certificate of confirmation of grant issued on 12<sup>th</sup> October 2015.
18. The question is how a property registered in the name of the defendant could be included in the properties of the deceased to be administered. Was the suit land a property of the deceased, if so how can he claim adverse possession of his own property? This is a clear indication that the plaintiffs do not acknowledge the Defendant as the titleholder even though they have annexed it to their pleadings as proof that it is registered in his name. This makes the claim questionable.
19. It is instructive that when the Administrators filed the Succession Cause and included the suit parcel belonging to the defendant, they thought that it would be easy to transfer the land vide transmission but they hit a snag. That is the reason they have brought this claim for adverse possession to sanitize the error they made in the inclusion of the suit property as part of the estate of the deceased. The claim for adverse possession therefore must fail
20. Further in a claim for adverse possession the applicant must describe precisely the acreage and the portion that he/she is claiming. The Applicant indicated that she cannot remember the acreage that she is claiming, is it the whole parcel of land or a portion. She produced a map described as a map of parcels of land including the suit property with no explanation where it originated from and what it means. A surveyor to explain the coordinates should produce a map, the map does not indicate which parcels are covered and for what purpose it is produced. PW1 stated that they were cultivating the shaded areas but it is not clear which parcel they are on as it is not indicated and further that the acreage and coordinates are not specific.
21. From the title attached, it is indicated that the acreage of suit parcel is 3.0 Hectares which is approximately 7.4 acres, if we were to rely on the map produced in court, which we do not, it indicates some shaded areas as the portions that the deceased was cultivating, how can we know how many acres was under such cultivation by the deceased?



22. For a claim of adverse possession to succeed, it is important for the Applicant to clearly identify the land and the portions claimed as was held in the case of Wilson Kazungu Katana & 101 Others vs. Salim Abdalla Bakshwein & Another [2015] eKLR that:

“The identification of the land in possession of an adverse possessor is an important and integral part of the process of proving adverse possession. This was so stated by this Court in the case of Githu vs. Ndete [1984] KLR 776. The appellants did not discharge the burden of proving and specifically identifying or even describing the portions, sizes and locations of those in their respective possession from the larger suit premises that they sought to have decreed to them.”

23. I have considered the pleadings, the evidence on record, the submissions by counsel together with the relevant judicial authorities and find that the Applicants have not met the threshold for grant of an order of adverse possession. The case is therefore dismissed with no orders as to costs.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 22<sup>ND</sup> DAY OF JANUARY 2025.**

**M. A. ODENY**

**JUDGE**

