



**Nyambega (Suing as Administrator of the Estate of Abel Moranga Nyamao)  
v Kemoni & another (Environmental and Land Originating Summons  
E005 of 2024) [2025] KEELC 4644 (KLR) (23 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4644 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E005 OF 2024  
DO OHUNGO, J  
JUNE 23, 2025**

**BETWEEN**

**PAUSTINA MORAA NYAMBEGA ..... PLAINTIFF  
SUING AS ADMINISTRATOR OF THE ESTATE OF ABEL MORANGA  
NYAMAO**

**AND**

**EVANS ISOE KEMONI ..... 1<sup>ST</sup> DEFENDANT  
MOMANYI TIMOTHY MOGAKA ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. The Plaintiff/Applicant moved the Court through Originating Summons (OS) dated 6<sup>th</sup> July 2024 in which she averred that she was the administrator of the estate of Abel Moranga Nyamao who claimed to have acquired title to a 29.5 feet by 80 feet by 29.5 feet by 90 feet portion of parcel number Ekerubo Settlement Scheme/282 (the suit property) by way of adverse possession. She therefore sought determination of the following questions:
  1. Has the Applicant herein been in open quiet and an uninterrupted occupation and possession of the portion measuring 29.5 feet by 80 feet by 29.5 feet by 90 feet in land parcel No. Ekerubo Settlement Scheme /282 for a period of more than 12 years?
  2. If it is so has the said open quiet and an uninterrupted occupation and possession of the portion measuring 29.5 feet by 80 feet by 29.5 feet and 90 feet in land parcel No. Ekerubo Settlement Scheme /282 have been adverse to the said title?



3. Has the Applicant therefore acquired title to the said portion measuring 29.5 feet by 80 feet by 29.5 feet by 90 feet in land parcel No Ekerubo Settlement Scheme/282 under the provisions of the Law of Limitation of Action Acts against the registered proprietor thereof?
4. Can the 2<sup>nd</sup> Respondent now be compelled to transfer the aid (sic) portion measuring 29.5 feet by 80 feet by 29.5 feet by 90 feet in land parcel No Ekerubo Settlement Scheme/282 to the Applicant herein and in default can the Deputy Registrar of this Honorable Court be authorized to execute and transfer the same on behalf of the 2<sup>nd</sup> Respondent herein?
5. Who shall hear costs of this suit?
2. Hearing of the matter proceeded by way of oral evidence. Paustina Moraa Nyambega testified as the sole witness in respect of the Plaintiff's case. She stated that she is the administrator of the estate of Abel Moranga Nyamao (deceased) who was her husband who passed away in the year 2013. That the deceased purchased and took possession of a 29.5 feet by 80 feet by 29.5 feet by 90 feet portion of the suit property from the First Defendant/Respondent in 1996. That the deceased enjoyed possession until the year 2015 when the First Defendant transferred the land to the Second Defendant/Respondent who is her nephew. She produced a copy of a certificate of death in respect of the deceased, Letters of Administration Ad Litem issued to her in respect of the deceased's estate, a copy of a sale agreement and a copy of certificate of official search.
3. Under cross-examination and re-examination, she stated that the agreement stated that the land purchased was Plot number 62 and added that although the agreement was in the deceased's name, she was the one who paid the purchase price to the First Defendant. She added that she made a report to the police under OB07/23/04/2024 that the deceased had sold the land. She also stated that she had not resided in the suit property since the year 2010 and that instead, Charles Mogaka who is both her brother and the Second Defendant's father has been in joint occupation together with the Second Defendant. She also testified that Charles Mogaka and the Second Defendant had fenced the land, constructed a kitchen on it and grow vegetables on it.
4. The Plaintiff's case was then closed.
5. Evans Isoe Kemoni (DW1) testified that he neither knew nor sold any land to Paustina Moraa Nyambega. He however conceded knowing the deceased and added that he sold land to the deceased and that the deceased later sold the land to the Second Defendant. He also stated that he had never seen Paustina in the suit property.
6. Momanyi Timothy Mogaka (DW2) testified that he purchased the suit property from the deceased on 15<sup>th</sup> February 2010 and became the registered proprietor. He added that Paustina has never lived in the suit property and that after purchasing the suit property, he built an iron sheet kitchen on it and started growing vegetables on it. He further built three kiosks on it which are occupied by tenants.
7. Defence case was then closed. Directions for filing and exchange of written submissions were issued. The Plaintiff filed submissions dated 9<sup>th</sup> May 2025 while the Defendants filed submissions dated 13<sup>th</sup> May 2025.
8. I have considered the pleadings, the evidence and the submissions. The issues that arise for determination are whether adverse possession has been established and whether the reliefs sought should issue.
9. The law relating to adverse possession is found at Sections 7, 13, 17 and 38 of the Limitations of Actions Act. The Court of Appeal discussed ingredients of adverse possession in the case of Richard



Wefwafwa Songoi v Ben Munyifwa Songoi [2020] eKLR where it stated that a party claiming adverse possession must assert hostile title in denial of the title of the registered proprietor. The process must start with a wrongful dispossession of the rightful owner and the proper way of assessing proof of adverse possession is whether the title holder has been dispossessed or has discontinued his possession for the statutory period of 12 years, as opposed to whether the claimant has proved that he or she has been in possession for 12 years. The party who claims adverse possession must demonstrate the date she came into possession, the nature of her possession, whether the fact of her possession was known to the registered proprietor and that the possession was open and undisturbed for the requisite 12 years.

10. Recently, in *Munyanya v Keya* [2024] KECA 1831 (KLR), the Court of Appeal distilled the qualities of possession required to establish adverse possession. The Court stated that the possession must be:
  - a. Adverse to the interests of the owner – meaning that the claimant is in possession as owner in contradistinction to holding in recognition of or subordination to the true owner or to a recognized superior claim of another;
  - b. Actual - as opposed to constructive possession where the test is the degree of the actual use and enjoyment of the parcel of land involved by the claimant or his agent, tenant or licensee;
  - c. Open and notorious - meaning that the possession must be open and conspicuous to the common observer so that the owner or his agent on visiting the land might readily see that the owner's rights are being invaded. Differently put, the possession must be manifest to the community;
  - d. Without force - meaning that the possession and occupation must have been achieved peaceably not through actual or threatened violence;
  - e. Exclusive - meaning that the possession must be of such exclusive character that it will operate as an ouster of the owner of the legal title. Differently put, the claimant must demonstrate that she wholly excluded the owner from possession for the required period;
  - f. Continuous and uninterrupted for the period of twelve years - meaning that the title owner did not re-enter the property under circumstances showing her intention to assert dominion against the adverse user for at least twelve years. (See *Joseph Ndafu Njurukani & 2 Others v Emily Naliaka Barasa*, Kisumu Civil Appeal No. 149 of 2022).
11. There is no dispute that the deceased purchased land from the First Defendant. The question that must however be answered is whether the deceased retained possession as owner. The answer to that question is certainly in the negative. There is evidence on record that the deceased sold the suit property to the Second Defendant as a result of which the Second Defendant obtained title. The Plaintiff conceded in her testimony that she made a report to the police under OB07/23/04/2024 to the effect that the deceased had sold the suit property. She further conceded that she has never had possession of the suit property after the year 2010. Indeed, the Second Defendant testified that he purchased the suit property from the deceased on 15<sup>th</sup> February 2010.
12. In the absence of evidence of possession and being aware that her late husband sold the suit property, the Plaintiff has not shown any assertion of hostile title in denial of the title of the Second Defendant who is the registered proprietor. I find that adverse possession has not been established and that in the circumstances, the reliefs sought cannot issue.
13. I find no merit in the Plaintiff's case. I dismiss it with costs to the First Defendant. In view of the close family relationship between the Plaintiff and the Second Defendant, I do not award any costs in favour of the Second Defendant.



**DATED, SIGNED, AND DELIVERED AT NYAMIRA, THIS 23<sup>RD</sup> DAY OF JUNE 2025.**

**D. O. OHUNGO**

**JUDGE**

Delivered in the presence of:

Mr Soire for the Plaintiff

Mr Ombachi for the Defendants

Court Assistant: B Kerubo

