



**Maruti v Maruti (Environmental and Land Originating Summons
E002 of 2024) [2025] KEELC 6199 (KLR) (24 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6199 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E002 OF 2024**

CK NZILI, J

SEPTEMBER 24, 2025

BETWEEN

EZEKIEL SIMIYU MARUTI PLAINTIFF

AND

JAMIN AID MARUTI DEFENDANT

JUDGMENT

1. The court, by an originating summons dated 20/6/2024, is asked to find the plaintiff entitled to Title No. Waitaluk/Kapkoi Block 10/Kapkoi Sisal/334, the suit land, by virtue of adverse possession. By way of a supporting affidavit of Ezekiel Simiyu Maruti, sworn on 30/6/2024, he deposes that he purchased the entire suit land from the defendant by a sale agreement dated 27/10/2007 for Kshs. 135,000/=, which he paid in full, took vacant possession, was given the original title deed, but unfortunately, the defendant declined or neglected to transfer the land to him.
2. At the hearing, Ezekiel Simiyu Maruti testified as PW1; he adopted his supporting affidavit as his evidence-in-chief, and produced the annexures thereto, namely, a copy of the sale agreement, title deed, copy of records, and photographs as P. Exhibits No. 1, 2, 3, and 4, respectively.
3. In cross-examination, PW1 told the court that the defendant is his younger brother and that even though the sale agreement did not indicate the plot number, he took vacant possession of the land. Asked about the letter dated 1/12/2006, attached to the affidavit in reply, PW1 said that the letter was written on his behalf by his lawyers. He insisted that he bought the land in 2007 and not in 1996, for which he made payments for the purchase price by way of cheque No. 021214, in favour of the defendant. PW1 told the court that his late wife was known as Joan Naliaka Simiyu, who passed on in 2023. PW1 denied that his late wife was the one who had been permitted to utilize the land by the defendant.



4. PW1 said that he has been in full and exclusive possession of the suit land since 2007. PW1 said that the original title deed was handed over to him by the defendant in 2007, as part of the terms of the sale agreement. PW1 said that the letter written to the defendant regarding his wife was not related to the sale agreement. PW1 insisted that he was the one who had planted mature blue gum trees on the suit land and not the defendant. PW1 said that though he lives on a separate land, he is the one who has been in full control of the suit land.
5. Jamin Said Maruti opposed the suit by a replying affidavit sworn on 20/8/2024. He admitted that he was the registered owner of the suit land, but denied entering into any sale agreement with the plaintiff as alleged or at all, or selling or receiving the alleged purchase price of Kshs. 135,000/=.
6. At the trial, the defendant adopted his replying affidavit as his evidence-in-chief. He told the court that the alleged sale agreement is self-defeating, in view of a letter dated 1/12/2006, by the plaintiff, claiming a purchase which took place on 10/2/1996. He produced the letter as D. Exhibit No. 1. DW1 denied that the plaintiff ever took possession of or settled on his land in 2007, or carried out any developments there, given that there was no such transaction.
7. Further, DW1 denied handing over vacant possession or the original title deed to the plaintiff as alleged or at all. On the contrary, DW1 told the court that the plaintiff took away the original title deed from their mother's custody. Additionally, DW1 denied ever undertaking to visit or attend the land control board meeting to transfer the land to the plaintiff, for there was no such arrangement over the sale or transfer. DW1 denied that the plaintiff has been in exclusive, open, continuous, notorious, or peaceful occupation of the suit land for more than 12 years, as alleged or at all, to be entitled to the reliefs sought.
8. Moreover, DW1 denied that the plaintiff had expended any money to cause such developments on the suit land, to be entitled to any equitable rights or interests on the suit land by way of adverse possession.
9. Following the close of the hearing of the suit, parties were directed to file written submissions by 15/8/2025. From the record, only the plaintiff complied with these directions.
10. The plaintiff isolated four issues for determination in his submissions dated 14/8/2025. Regarding the sale of the suit land, the plaintiff submits that the defendant admitted to having entered into a sale of land agreement with the plaintiff in 2007, and, in effect, handed over the original title deed for the transfer process.
11. On the issue whether the plaintiff has been in possession of the suit land continuously, openly, peacefully, without force and uninterrupted for over 12 years, the plaintiff submits that he took possession of the suit land and has been in use and made considerable developments as seen in his photographs.
12. Concerning whether the plaintiff has acquired the suit land by way of adverse possession, the plaintiff submits that he is entitled and that he should be registered as the proprietor of the suit land. The plaintiff also submits that time started running after the defendant failed to accompany the plaintiff to the area land control board and to effect the transfer.
13. The plaintiff relies on Section 38 of the *Limitation of Actions Act*, Kipkoech Arap Langat & another v Kipng'eno Arap Laboso [2015] KEHC 6777 (KLR).
14. Adverse possession is essentially a situation where a person takes possession of land and asserts rights over it, and the person having title omits or neglects to take action against such person in assertion of his title for a period of 12 years.



15. In *Mtana Lewa v Kahindi Ngala Mwangandi* [2015] eKLR, the court observed that the process springs into action essentially by default or inaction of the owner, the prerequisites being that the possession is neither by force, stealth or under licence of the owner, it must be adequate, in continuity, in publicity, and in extent to show that the possession is adverse to the title owner.
16. In *Wambugu v Njuguna* [1983] KLR 173, the court cited that there must be dispossession and discontinuance of possession by the true owner. Further, in *Mbira v Gachuhi* [2002] 1 EALR 137, the court held that a party must prove non-permissive or non-consensual, actual, open, notorious, exclusive and adverse use by him or those under him without interruption for a period of 12 years.
17. Adverse possession is a matter of fact to be established through evidence. See *Samuel Kihumba v Mary Mbaisi* [2015] eKLR. The true owner must be shown to have lost his rights to the land, either by being dispossessed of it or by having discontinued his possession of it by acts of the intruder that are inconsistent with the enjoyment of the soil, for which he intended to use the land.
18. As to adverse possession involving relatives, the court in *Eunice Karimi Kibunja v Mwirigi M'Ringer Kibunja* [2013] eKLR, observed that there must be animus possidendi, with open and willing dispossession, whereby the owner knows whether actual or by other means, of the occupation of the property by an intruder.
19. Adverse possession does not apply where possession is by consent. In *Mwinyi Hamisi Ali v Attorney General & Philemon Mwaisaka* CA No. 125 of 1997, the court observed that sympathy takes a second stand in a court of law and that a consent might be oral, written, or implied.
20. In *Rodgers Mwamboje v Douglas Mwamboje* [2014] eKLR, a claimant was staging on his brother's land. The court held that under African customs, the issue of consent in such a situation was a rebuttable presumption.
21. In *Mbui v Maranya* [1993] KLR 726, the court took the view that a court may not overlook the African cultural setup of being mindful of the relatives' welfare, in the spirit of the African milk of generosity and kindness, for mutual survival and progress. The court warned that adverse possession among relatives must be reasonably qualified and adequately trimmed; otherwise, it could risk destroying the cherished ideal and sound cultural foundation, hence destabilizing society.
22. Time in adverse possession out of an aborted sale agreement starts to run upon clearance of the purchase price, as held in *Public Trustee v Wanduru Ndegwa* [1984] eKLR. A person claiming adverse must therefore state the date of entry, the nature of his possession, whether the true owner knew of the possession, prove the 12 years, and lastly, whether the possession has been open, notorious, and uninterrupted for 12 years. See *Wefwafwa Songoi v Ben Manifwa Songoi* [2020] eKLR.
23. In this suit, the plaintiff states that the sale agreement took place on 21/10/2007. He states that he paid the purchase price by way of a banker's cheque in the name of the defendant. The defendant disputes the alleged sale agreement. He does not, however, impeach the sale agreement or account fraud, illegality, lack of capacity, misrepresentation, undue influence, coercion, or lack of consideration.
24. The defendant did not plead such a defence or subject the sale agreement to forensic document examination. It is not the duty of courts to rewrite contracts. See *National Bank of Kenya v Pipeplastic Samkolit (K) Ltd & Another* [2001] eKLR.
25. Specific performance, like any other equitable remedy, is discretionary, based on the existence of a valid and enforceable contract. The defendant has not pleaded that the sale agreement and the cheque paid to him suffers from some defects under the [*Law of Contract Act*](#).



26. The defendant did not make a police report that his original title deed was unlawfully acquired by the plaintiff, in circumstances amounting to fraud or illegality. The plaintiff has pleaded that he has been utilizing the suit property since 2007. No police report has been made to recover the original title from the plaintiff. The defendant in cross-examination admitted that the signature appearing on the sale agreement is his. His only defence is that the sale agreement referred to another land title No. 116. The defendant appeared to change lane in cross-examination and alleged that the sale agreement was not in regard to parcel No. 334 but was on No. 116.
27. In sum, the defendant does not deny that the plaintiff has been on the suit land since 2007, and was also handed over the original title deed. The inference to be drawn is that the plaintiff has been on the suit land as of right with the intention to own. The rights of the defendant became extinguished after both dispossession and discontinuance of possession from 2007, following his neglect or refusal to effect the transfer in favour of the plaintiff.
28. The upshot is that the plaintiff has met the ingredients of adverse possession to be entitled to the reliefs sought. The defendant is directed to sign the transfer forms within 2 (two) months in favour of the plaintiff; in default, the same shall be effected by the Deputy Registrar.
29. Costs of the suit to the plaintiff.
30. Orders accordingly.

JUDGMENT DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 24TH DAY OF SEPTEMBER 2025.

In the presence of:

Court Assistant - Dennis

Parties present

Okile for the plaintiff absent

Ongosi for the defendant present

