



**Ajowi (Suing as Legal Representative of Pitalis Ajowi Owuor) v Fredrick Omondi Omollo
(Suing as Legal Representative of Paul Ariwa - Deceased) & another (Enviromental and Land
Originating Summons E004 of 2023) [2025] KEELC 6874 (KLR) (9 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 6874 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E004 OF 2023**

E ASATI, J

OCTOBER 9, 2025

**IN THE MATTER OF LAND PARCEL NO.S KISUMU/KARATENG'/2624 AND KISUMU/
KARATENG'/2625 (FORMERLY PARCEL NO. WEST KISUMU/KARATENG'/1616)**

AND

IN THE MATTER OF LIMITATION OF ACTIONS ACT (CAPS 22 OF THE LAWS OF KENYA)

AND

**IN THE MATTER OF THE LAND REGISTRATION
ACT (ACT NO.3 OF 2012 LAWS OF KENYA)**

BETWEEN

**JOHN OSANGO AJOWI APPLICANT
SUING AS LEGAL REPRESENTATIVE OF PITALIS AJOWI OWUOR**

AND

**FREDRICK OMONDI OMOLLO (SUING AS LEGAL REPRESENTATIVE OF
PAUL ARIWA - DECEASED) 1ST RESPONDENT
GEORGE OMONDI MWALO 2ND RESPONDENT**

JUDGMENT

Introduction

- 1 Vide the Originating Summons dated 25th July, 2023, JOHN OSANGO AJOWI, the Plaintiff, in his capacity as legal representative of PITALIS AJOWI OWUOR who is claimed to have acquired land parcel numbers Kisumu/Karateng'/2624 and Kisumu/Karateng'/2625 measuring 0.521 Ha and 0.08



Ha respectively (formerly Kisumu/Karateng'/1616) by virtue of adverse possession, placed before this court the following question for determination: -

- a. whether the Applicant has been in open, public, continuous and notorious possession and occupation of land parcel numbers Kisumu/Karateng'/2624 and Kisumu/Karateng'/2625 (formerly WEST KARATENG'/1616) measuring approximately 0.521 Ha and 0.08 Ha respectively for a period exceeding 12 years continuously, open and peacefully without interruption.
 - b. whether the Respondents' title to the said parcel of land became extinguished upon expiry of 12 years from the time of the Applicant's deceased father went into occupation, and possession of the land which occupation predates the registration of the suit land into the names of the Respondents.
 - c. whether the Applicant is entitled to be registered as the proprietor of the land parcel No. Kisumu/Karateng'/2624 and Kisumu/Karateng'/2625 (Formerly WEST Kisumu/Karateng'/1616) by virtue of a diverse possession.
 - d. whether the Registration of the Respondents themselves as absolute owners of parcel Numbers No. Kisumu/Karateng'/2624 and Kisumu/Karateng'/2625 (Formerly WEST Kisumu/Karateng'/1616) respectively stands revoked by the order herein being sought.
 - e. who should be condemned to pay the costs of this Originating Summons?
2. The Originating Summons was supported by the contents of the Supporting Affidavit sworn by the Plaintiff/Applicant on 25th July, 2023 and the annexures thereto.
 3. The 1st Respondent filed a Replying Affidavit sworn on 23rd August, 2023 vide which he stated that he was, from 13th March, 2015, the legal representative of the estate of the late Paul Ariwa Lala.
 4. The 2nd Respondent similarly filed a Replying Affidavit sworn on 23rd August, 2023.

The evidence

5. Vide direction taken on 26th October, 2023 the matter proceeded to hearing by way of viva voce evidence.
6. PW1 was the Plaintiff. He adopted the contents of his Affidavit sworn on 25th July, 2023 and reply to the Respondents' Replying Affidavit as his evidence. He had stated in the Affidavit that his father owned and lived on the suit land till the year 2002 when he died. That both his parents were buried on the suit land.
7. That his siblings and him live on the suit land. That in July, 2019, he realized that the land had been registered in the name of one Paul Ariwa in 1977 and later transferred to the name of his son the 1st Respondent herein in the year 2017.
8. That he filed an application in the High Court to nullify the certificate of confirmation of grant issued to the 1st Respondent which application was disallowed.
9. That the Respondent's father registered the land into his name by false representation, tricking or even unorthodox means since he has never physically possessed and/or occupied the land.
10. He prayed that the land be restored to his father.



11. On cross-examination, he stated that land parcel No.1618 Elkanah Joro and does not belong to Vitalis Ajowi. That Ariwa owned land No.755 Karateng'. That he was unable to access the land because the 1st Defendant fenced round it and demolished the houses thereon that belonged to the Plaintiff and the Plaintiff's father.
12. PW2 adopted the contents of his witness statement dated 25th July, 2023 as his evidence.
13. He stated on cross-examination that because the land belongs to Ajowi, the 1st Defendant must have done forgery for the land to have been given to him (1st Defendant).
14. On behalf of the Defendants, the 1st Defendant testified as DW1. He relied on the contents of his Replying Affidavit sworn on 23rd August, 2023 and a further reply dated 28th December, 2023.
15. He produced as exhibits letter dated 28th October, 1974, Chief's letter dated 28th July, 2021, copy of Judgement by Justice Aburili in Succession Cause No.71 of 2015, survey report dated 25th November, 2019 and letter dated 8th May, 1973.
16. On cross-examination, he stated that the land of Ariwa was No.Kisumu/Karateng'/1616 while Ajowi's was No. Kisumu/Karateng/1618.
17. That the proceedings produced by the Plaintiff do not relate to the suit land.
18. DW2 was Marion Omollo Anusa who testified that the land belongs to Paul Ariwoa Alala. That it was Ariwa who gave him parcel number 1616. That Ajowi was not buried on the suit land.
19. DW3 was one Michael Opiyo who stated inter alia that a search was done and that it showed that the land belongs to Ariwa.

Submissions

20. Written submissions dated 17th March, 2025 were filed by the Plaintiff while written submissions dated 17th day of March, 2025 were filed by the Respondent.

Issues for determination

21. The questions in the Originating Summons form the issues for determination herein.

Analysis and determination

22. The first question is whether or not the Plaintiff has had open, public, continuous possession and occupation of the suit land parcel numbers No. Kisumu/Karateng'/2624 and 2625 (formerly West Kisumu/Karateng'/1616) by virtue of adverse possession.
23. It was the Applicant's/Plaintiff's case as stated in the Affidavit in support of Originating Summons that he was born in 1958 on the suit lands. That his parents died and were buried on the suit lands. That he grew up on the suit lands.
24. That in 1973, his father one Vitalis Ajowi Owuor had lived on the suit land for 30 years and fought an attempt by the one Elkana Ojoro to defraud him of the land. That his father lived peacefully on the land until the year 2002 when he died and was buried.
25. That the fact that the land had changed hands from his father to Paul Ariwa came to light in July 2019 when he obtained a green card and learnt that the land had been registered in the name of Paul Ariwa in 1977 and later in 2017 transferred to the 1st Defendant.



26. On the first question, PW2 Apolo Ayuyo Ogada testified that he knew Pitalis Ajowi's (Plaintiff's father's) homestead.
27. That Pitalis Ajowi lived in his homestead until the year 2002 when he died was buried in his homestead. That the wife had pre-deceased him and that he (Pitalis Ajowi) had buried her on the land.
28. That he was surprised to see Fredrick Omondi Omollo fencing the homestead of Pitalis Ajowi. That the house of Pitalis Ajowi and the house of Pitalis Ajowi's father are still on the land todate.
29. However, the evidence of PW1 on cross-examination was that the 1st Defendant fenced the land round and demolition both the Plaintiff's house and the house of the Plaintiff's father.
30. The Defendant denied that the Plaintiff's father or the Plaintiff has ever had occupation of the suit land.
31. Adverse possession is a doctrine of law vide which a person obtains legal title to land by reason of actual, open and continuous occupation of it to the exclusion and without the consent or permission of the registered owner for a prescribed period. In Kenya, the prescribed period is 12 years. The doctrine is anchored on sections 7, 13 and 38 of the *Limitation of Actions Act*.
32. In order for a claim of adverse possession to succeed, the plaintiff must prove that his /her possession of the suit land was as of right and in a manner inconsistent with the rights of the registered owner that is to say: the occupation has been open, actual, continuous, uninterrupted, peaceful, exclusive and with the knowledge but without the consent or permission of the registered owner for the prescribed period of 12 years. In *Kimani Ruchure vs Swift Rutherfords & Co. Ltd (1980)KLR 10 Kneller J* held that "the Plaintiffs have to prove that they have used this land which they claim as of right: nec vi, nec clam, nec precario (no force, no secrecy, no persuasion).
33. In the case of *Gabriel Mbui vs Mukindia Maranya [1993]eKLR* adverse possession was defined as;

“..the non-permissive physical control over land coupled with the intention of doing so, by a stranger having actual occupation solely on his own behalf or on behalf of some other person, in opposition to, and to the exclusion of all others including the true owner out of possession of that land, the true owner having a right to immediate possession and having clear knowledge of the assertion of exclusive ownership as of right by occupying stranger inconsistent with the true owner's enjoyment of land for purposes for which the owner intended to use it.”
34. In the case of *Mtana Lewa –vs- Kahindi Ngala Mwangandi [2015] e KLR* the court of Appeal defined adverse possession as:

“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 certain period, in Kenya, twelve (12) years. The process springs into action essentially by default or in action of the owner. The essential prerequisites being that possession of the adverse possessor is neither by force or stealth nor under the license of the owner. It must be adequate in continuity, in publicity and in extent to show that possession is adverse to the title owner.”
35. The burden of proof was on the Plaintiff to prove that both his late father and himself have had possession of the suit land in the manner that amounts to adverse possession.



36. No evidence was produced in the form of photographs to show occupation. It was part of the Plaintiff's evidence that his house and the house of his father on the land were demolished in 2019.
37. The second question for determination is whether the title to the suit land became extinguished upon expiry of 12 years from the time the Applicant's deceased father went into occupation and possession of the land which occupation pre-dates the registration of the suit land into the names of the Respondent.
38. Section 17 of the Limitation of Action Act provides for when the title of a registered owner of land become extinguished due to adverse possession. As already stated, there is no evidence that either the Plaintiff's father or the Plaintiff has ever had possession of the suit land.
39. The next question for determination is whether the Plaintiff is entitled to be registered as the proprietor of land parcel No. Kisumu/Karateng'2624 and 2625 by virtue of adverse possession.
40. Having read the evidence and the pleadings, I find that the same has not been demonstrated.
41. Firstly, the Plaintiff does not recognise that the land belongs to the Defendant. He claims that the land belonged to his father one Pitalis Ajowi Awuor. The Plaintiff brings the suit in his capacity as the Administrator of the estate of his father.
42. Secondly, the Plaintiff claimed that the Defendant obtained registration of the suit lands in their names by false representation, tricking and unorthodox means. If that be the case, then the Plaintiff cannot invoke the doctrine of adverse possession. The doctrine of adverse possession requires that the claimant recognize ownership of the suit land by the defendant against whom he/she claims. In *Langat & others (Suing as the administrators of the Estate of Samuel Cheruiyot Lang'at) v Byomdo*(2025)eKLR, it was held that

“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.”

43. Similarly, in the case of *Yaa v Nyaje* (Environment & Land Case 24 of 2015) [2022] KEELC 12662 (KLR) (26 September 2022) (Judgment) the court held that:

“It is noteworthy that the defendant who hinges her claim on adverse possession questions whether the original seller had capacity to sell the land from the plaintiff on the ground that neither an allotment letter nor payment for the allotment letter was produced. For a party to succeed in a claim of adverse possession, such party must acknowledge the titleholder's title. If you do not acknowledge the title, then you cannot hinge your claim on such title.”

And in *Lukholola v Aluvale*(2023)eKLR the Court stated that;

“There is no dispute that the plaintiff is the registered proprietor of the suit property. From the material on record, the plaintiff was registered as proprietor on March 4, 1998 and title deed issued to him on November 6, 2001. The defendant does not dispute the plaintiff's proprietorship. In any case, he cannot validly claim adverse possession without acknowledging the plaintiff's title.”

44. Further the court has already found that no evidence of actual possession by the Plaintiff's father or the Plaintiff has been exhibited.



45. And finally, the Plaintiff testified that in 2019, the Defendants entered the land, fenced round it and demolished the houses belonging to the him and his father that were thereon. PW2 stated that the houses are still thereon todate. The question that this kind of contradictory evidence pose is whether indeed there have ever been any houses on the suit land as claimed by the plaintiff. But be that as it may, it was the totality of the plaintiff's evidence that in the year 2029 the Defendant entered the land a registered owner or as a personal representative of the registered owner, fenced it, took possession and denied the plaintiff access thereto. The meaning or effect of this action by the Defendant is that any rights acquired by the plaintiff under the doctrine of adverse possession were terminated.
46. In the case of Joseph Gachumi Kiritu vs Lawrence Munyambu Kabura; civil Appeal no.20 of 1993 quoted in Presbyterian Church of East Africa (Uthiru Church) & another vs Kihoro & 3 Others (Civil Appeal 303 of 2018[2022]KECA 49 (KLR) (Civ) (4 February 2022) Judgement the Court of Appeal held that
- “time which has begun to run under the Act is stopped either when the owner asserts his right or when his right is admitted by the adverse possessor. Assertion of right occurs when the owner takes legal proceedings or makes an effective entry into the land...”
47. In the case Fredrick Ndonga Maungu v Margaret Omollo Were (sued as the Administratrix of The Estate of Samwel Were Odera- Deceased) [2022] eKLR it was held that “Time stops to run in favour of the adverse possessor when the registered owner asserts his right over the land by inter alia entry thereon and taking possession or by the adverse possessor acknowledging the registered owner’s right and vacating the land.”
48. In Kim Pavey & 2 others v Loise Wambui Njoroge & another [2011] eKLR the court held: “The passage from Cheshire Modern Law of Real Property which Potter JA made reference in Githu v Ndeete is important and deserves to be read in full. It is at page 894 section VI under the rubric the methods by which time may be prevented from running and the learned Author says: - “Time which has begun to run under the Act is stopped either when the owner asserts his right or when his right is admitted by the adverse possessor. Assertion of right occurs when the owner takes legal proceedings or makes an effective entry into the land. The old rule was that a mere formal entry was sufficient to vest possession in the true owner and to prevent time from running against him ... He must either make a peaceable and effective entry or sue for the recovery of the land. Again, in the case of Githu v Ndeete [1984] KLR 776 at page 780 this Court held that time ceases to run when the owner asserts his right by taking legal proceedings or by an effective entry into the land or when his right is admitted by the adverse possessor.”
49. I find that the Plaintiff is not entitled to the suit land by virtue of the doctrine of adverse possession.
50. Having made the foregoing findings, there is no basis for allowing the prayers sought in the Originating Summons.
51. The court finds that the Plaintiff has not proved his claim on a balance of probabilities. The suit is hereby dismissed.
52. Costs are awarded to the Respondents.
- Orders accordingly.

JUDGEMENT DATED AND SIGNED AT KISUMU AND DELIVERED THIS 9TH DAY OF OCTOBER, 2025 VIRTUALLY THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI,



JUDGE.

In the presence of:

Maureen - Court Assistant.

Plaintiff/Applicant in person

1st Defendant/Respondent in person.

