

**THE REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA**  
**ELCL(OS) NO. E004 OF 2025**

**STEPHEN  
LOCHU.....PLAINTIFF**

**VERSUS**

**SILAS OKIBO MOSETI.....1<sup>ST</sup>  
RESPONDENT**

**LAND SETTLEMENT OFFICER, NAIVASHA.....2<sup>ND</sup>  
RESPONDENT**

**LAND REGISTRAR, NAIVASHA.....3<sup>RD</sup>  
RESPONDENT**

**ATTORNEY GENERAL.....4<sup>TH</sup>  
RESPONDENT**

**RULING.**

1. The instant suit was instituted vide an Originating Summons dated 26<sup>th</sup> May, 2025 wherein the Plaintiff sought for the following orders:
  - i. A declaration that the Plaintiff has been in open, continuous and uninterrupted possession and occupation of the parcel of land known as Naivasha/OlJORAI Phase 1/1438 measuring one decimal five one hectares (1.51 Ha) for a period in excess of 12 years.
  - ii. A declaration that the Plaintiff has become entitled by adverse possession to all that piece of land known as Naivasha/OlJORAI Phase 1/1438 measuring 1.51 hectares situated in Nakuru County.
  - iii. A declaration that the 1<sup>st</sup> Defendant's title over the suit land has been extinguished by virtue of the doctrine of

adverse possession and therefore be and is hereby revoked and cancelled.

- iv. A declaration that the title to the suit land is being held in trust by the 1<sup>st</sup> Defendant for the Plaintiff.
  - v. The Plaintiff be and is hereby registered as the proprietor of the said piece of land known as Naivasha/Oljorai Phase 1/1438 measuring 1.51 hectares situated in Nakuru County.
  - vi. The Deputy Registrar of the Honourable Court does execute all necessary documents to facilitate registration of the Plaintiff as the absolute proprietor of the said piece of land known as Naivasha/Oljorai Phase 1/1438 measuring 1.51 hectares situated in Nakuru County.
  - vii. That the costs of the Application be provided for.
2. Contemporaneously with the Originating Summons, the Plaintiff filed a Notice of Motion Application seeking an order of injunction restraining the Respondents from dealing in any way with Land Parcel No. Naivasha/Oljorai Phase 1/1438 as well as for an order inhibiting the registration of any transfer, lease, charge or any other instrument whatsoever in respect of Parcel No. Naivasha/Oljorai Phase 1/1438, pending the hearing and determination of the Originating Summons.
  3. Both the Originating Summons and the Notice of Motion Application were premised on the grounds stated on their face as well as on the Supporting Affidavit of equal date sworn by Stephen Lochu, the Plaintiff herein claiming ownership of the land based on an over 30 years of continuous occupation (adverse possession), thus challenging the original owner's right to recover the land stating that it had been extinguished under the Limitation of Actions Act. That Consequently, the 1<sup>st</sup> Defendant/Respondent's title issued in 2018 was void and fraudulent, as there had been no valid proprietary interest left to transfer. That the balance of convenience favored the Plaintiff, who had his home and farm

on the property, over the 1<sup>st</sup> Defendant/Respondent, who was a stranger residing in the United States of America.

4. That the 1<sup>st</sup> Defendant/Respondent had filed a suit being Nakuru Magistrate Court ELC Case No. E200 of 2023 seeking to evict the Plaintiff and be declared the rightful owner based on his title deed wherein vide a judgment of 29<sup>th</sup> April 2025, the Magistrate's Court had dismissed the suit, for reason that he did not hold a valid title as he could not prove how he acquired the land while living in the USA.
5. In response to the said Notice of Motion and the Originating Summons, the 1<sup>st</sup> Respondent filed a Notice of Preliminary Objection dated 26<sup>th</sup> June, 2025 based on the Grounds that the Honorable Court lacked the requisite jurisdiction under Section 7 and 38 (1) of the Limitation of Actions Act Cap 22 to take cognizance, hear and determine the application and Originating Summons herein since they are both founded on the doctrine of adverse possession wherein the Applicant had not accumulated the 12 years to sustain a suit for adverse possession against the 1<sup>st</sup> Respondent since time started running on the 3<sup>rd</sup> October 2018. That both the Originating Summons and the Application dated 26<sup>th</sup> May 2025 were therefore premature, misconceived and an abuse of the Court process as the title deed held by the 1<sup>st</sup> Respondent was yet to be extinguished.
6. Lastly that both the Application and the Originating Summons were both fatally defective and incompetent for contravening the mandatory provisions of Order 37 Rule 7 of the Civil Procedure Rules which required summons founded on adverse possession to be accompanied by a certified extract of the title to the land in question either in the form of the certified extract of the register or green card.
7. That both the subject Application and Originating Summons were non-starters and incompetent thus liable for dismissal *in limine* with costs to the 1<sup>st</sup> Respondent.
8. The Preliminary Objection was disposed of by way of written submissions wherein the 1<sup>st</sup> Respondent vide his submissions dated 14<sup>th</sup> July 2025 in

support of his Preliminary Objection dated 26<sup>th</sup> June 2025 framed his issues for determination as follows:

- i. Whether the Preliminary Objection dated 26<sup>th</sup> June 2025 is merited.
  - ii. Whether the Originating Summons dated 26<sup>th</sup> May 2025 is fatally defective.
9. On the first issue for determination as to whether the Preliminary Objection dated 26<sup>th</sup> June 2025 was merited, he hinged his reliance on the decisions in the cases of **Mukisa Biscuit Manufacturers Ltd vs Westend Distributors Limited [1969] E.A 696** and **Independent Electoral & Boundaries Commission v Cheperenger & 2 others [2015] KESC 2 (KLR)** to submit that for a Preliminary Objection to pass the muster of the law, it must firstly raise a pure point of law, secondly, that there is demonstration that all the facts pleaded by the other side are correct; and thirdly, that there is no fact that needs to be ascertained.
10. That it was trite law that for a claim founded on adverse possession to succeed, the claimant must prove that he had been in exclusive possession of land openly and as of right without interruption for a period of 12 years after dispossessing the owner or by discontinuation by the owner of his own violation. That subsequently, where the Applicant had not met the statutory period of twelve (12) years, it would amount to a mere academic exercise if a court was to entertain such a claim.
11. That indeed, the Applicant herein had pleaded correctly that the title he sought to impeach had been issued to the 1<sup>st</sup> Respondent on 3<sup>rd</sup> October 2018. That accordingly, for any claim founded on adverse possession to crystallize against the said title, the same had to be after the lapse of the mandatory statutory period of twelve (12) years. That the instant suit having been instituted in May 2025, had evidently failed to meet the above stated statutory threshold for a claim founded on adverse possession. That it was therefore needless for the Honorable Court to expend precious judicial time on such a futile endeavor.

12. That further, the Applicant having conceded that the 1<sup>st</sup> Respondent had been registered as the owner of the suit parcel of land on the 3<sup>rd</sup> October 2018, the same had become an undisputed fact which required no hearing to be proven as the 1<sup>st</sup> Respondent would not adduce any contrary evidence. That resultantly, the submission by the Counsel for the Applicant in the written submissions dated 4<sup>th</sup> July 2025 that the legality of the title was a disputed fact had fallen by the wayside and misplaced as the same could not be determined in an Adverse possession claim. Reliance was placed in the decided case of **Ongwen & another v Keya & another (Environment & Land Case E027 of 2021) [2023] KEELC 279 (KLR)**.
13. That subsequently, the 1<sup>st</sup> Respondent's objection that the Applicant has not met the statutory threshold for adverse possession under Section 38(1) of the Limitation of Actions Act was a pure point of law. That the Applicant could only be entitled to sustain a suit founded on adverse possession upon the 1<sup>st</sup> Respondent's proprietary rights being extinguished after a period of a 12 years as provided for under the provisions of Section 7 of the Limitation of Actions Act. He placed reliance on the Court of Appeal's decision in the case of **Benjamin Kamau Murima & Others vs Gladys Njeri CA No. 213 of 1996** to submit that in the instant case, the title that the Applicant sought to extinguish having been acquired on 3<sup>rd</sup> October 2018, it could not possibly be extinguished without the statutory timeframe of 12 years having lapsed. He thus submitted that it would be inconsequential to consider the other ingredients of adverse possession. Further reliance was placed on the Court of Appeal's decision in the case of **Kioko & another v Mulinge & another (Civil Appeal 447 of 2019) [2025] KECA 274 (KLR)**.
14. It was thus his submission that he had demonstrated that the Originating Summons dated 26<sup>th</sup> May 2025 was premature and capable of being disposed at preliminary stage pursuant to the provisions of Sections 7, 9 and 38 of the Limitation of Actions Act.

15. On the second issue for determination as to whether the Originating summons dated 26<sup>th</sup> May 2025 was fatally defective, he placed reliance on the provisions of Order 37 Rule 7 of the Civil Procedure Rules to submit that since the section was couched in mandatory terms, failure annex a certified extract of the title rendered the entire summons fundamentally defective and incompetent. He hinged his reliance in the Court of Appeal's decision in the case of **Wilson Kazungu Katana & 101 others v Salim Abdalla Bakshwein & another [2015] KECA 728 (KLR)**.
16. In opposition to the Preliminary Objection, the Plaintiff/Applicant vide his submissions dated 4<sup>th</sup> July 2025, framed one (1) issue for determination to wit; whether the Preliminary Objection raised by the 1<sup>st</sup> Respondent was on a pure point of law.
17. He then proceeded to submit in the negative noting that the 1<sup>st</sup> Respondent's Preliminary Objection was misconceived, incompetent and a waste of court's time since it raised factual disputes which could only be determined through a hearing and production of evidence and therefore could not be dismissed by way of a preliminary objection.
18. He placed reliance on the **Mukisa Biscuit case** (supra) to submit that the court could not determine the validity of the objection raised herein without delving into the facts of the case, which includes how and when the title herein had been obtained by the 1<sup>st</sup> Respondent. Further reliance was placed on the decisions in the cases of **George Oraro v Barak Eston Mbaj, Civil Suit No. 85 of 1992 [2005] KEHC 3182 (KLR)** and **Mombasa Teachers Co-operative Savings and Credit Limited v Robert Muhambi Katana and 15 others [2018] eKLR**.
19. It was his submission that the Preliminary Objection raised by the 1<sup>st</sup> Respondent herein was misconceived since it was founded on disputed facts particularly the legality of the title he held. That the question as to when the time started running for purposes of adverse possession would be determined based on the evidence produced being whether the Applicant had been in open, continuous and exclusive occupation of the

land for over 12 years. That the legality of the title held by the 1<sup>st</sup> Respondent would also be a question to be raised in the cause of the trial.

20. He thus submitted that the Preliminary Objection raised by the 1<sup>st</sup> Respondent was not just on a point of law, but on points of facts. That whereas the 1<sup>st</sup> Respondent had claimed that he was the rightful owner of the suit property being Naivasha/Oljai Phase 1/1438, throughout the proceedings at the Nakuru Magistrates' court and even now, he had not adduced any evidence to show how he had come to possess the title and his registration as the owner which would subsequently be in question. Reliance was placed in the decided case of **Chikove & 45 others v Mbogori & 2 others (Environment & Land Case (OS) E001 of 2021) [2022] KEELC 15671 (KLR) (6 December 2022) (Ruling)**. That subsequently, the Preliminary Objection herein was misconceived, incompetent and a waste of Court's time. And should be dismissed with orders as to costs.

**Determination.**

21. I have given due consideration to the application, its response, the rival arguments and the authorities cited as well as the applicable law wherein I find that the 1<sup>st</sup> Respondent's application seeks to attack the jurisdiction of the court to try the matter against him for reason that the said suit herein being founded on the doctrine of adverse possession was premature.

22. In order to gain a clear perspective of the backdrop against which the Preliminary Objection herein was raised, a brief background of the suit is necessary. The instant suit was instituted by way of an Originating Summons dated 26<sup>th</sup> May 2022 wherein the Plaintiff/Applicant sought to be registered as the proprietor of the land known as Naivasha/Oljai Phase 1/1438 measuring 1.51 hectares situated in Nakuru County (suit property) by way of adverse possession. In his Notice of Motion, the Plaintiff/Applicant sought orders of temporary injunction restraining the

Defendants from dealing in any way with the said land, and an order prohibiting registration of any instrument over the suit property.

23. That he had been in occupation of the suit property from the year 1993, a period of over 30 years wherein the said possession had been notorious, continuous, non-permissive and adverse. That in the year 2023 the 1<sup>st</sup> Respondent had moved to court vide Nakuru Magistrate Court ELC Case No. E200 of 2023 claiming ownership of the suit property. That vide a judgment of 29<sup>th</sup> April 2025, his suit had been dismissed for reason that he did not hold a valid title. That on several occasions, his home had been invaded by unknown persons instructed by the 1<sup>st</sup> Respondent in cohort with the local administration and police to harass and threaten him with a motive to evict him from the suit property.
24. There was no response from the Hon Attorney General for the 2<sup>nd</sup> -4<sup>th</sup> Defendants/Respondents wherein the 1<sup>st</sup> Respondent filed the Preliminary Objection in response to the said Notice of Motion on the basis that the Applicant's suit having been founded on the doctrine of adverse possession and he having been registered as proprietor of the suit land on the 3<sup>rd</sup> October 2018, the Applicant had not accumulated the 12 years to sustain a suit for adverse possession against him since time started running on the 3<sup>rd</sup> October 2018.
25. That secondly the Applicant's suit contravened the mandatory provisions of Order 37 Rule 7 of the Civil Procedure Rules which required summons founded on adverse possession to be accompanied by a certified extract of the title to the land in question either in the form of the certified extract of the register or green card which in this case the said extract had not been annexed.
26. I find the issue arising for determination as being:
  - i. Whether the Preliminary Objection raised is sustainable.
27. In the precedent setting case of **Mukisa Biscuit Manufacturing Co Ltd -vs West End Distributors (1969) EA 696**, the relevant principles on Preliminary Objections were set as follows:

*“A Preliminary Objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.*

The often-quoted statement from the judgment by Sir Charles Newbold P. is:

*"a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion."*

28. It is thus clear that a Preliminary Objection must be on pure points of law and not a mixed question of fact and law wherein if argued on the assumption that all facts pleaded by the other side are correct, is capable of disposing of the suit or application entirely.
29. It is also trite that a question of limitation touches on the jurisdiction of the court wherein if a matter was prematurely filed, the court would lack jurisdiction to entertain it.
30. Turning to the matter at hand, from the pleadings filed before court, it is clear that several facts are contested by the parties herein wherein whereas the Applicant's conviction is that he has been on the suit property for over 30 years where he has established his home, the 1<sup>st</sup> Respondent's argument on the other had is that he having been registered as the proprietor of the said land on 3<sup>rd</sup> October 2018, the time for computing adverse possession against his title started to run on the said date thus at the time of filing of the Originating Summons in the year 2025, the 12 year period had not matured.
31. The cornerstone of a valid preliminary objection is that it must be a pure point of law argued on the assumption that all facts pleaded by the other side are correct. The issue that the Applicant has been on the suit

land for more than 30 years, is a question of fact which must be ascertained and proven through evidence for example, testimony, photographs, utility bills, dates of settlement which also requires determining the legal effect of that fact in light of the Applicant's claim of uninterrupted occupation.

32. On the other hand, the 1<sup>st</sup> Respondent/Defendant's registration as proprietor is an argument that requires the court to determine when the Applicant's cause of action accrued, that is when the original owner's right to sue was extinguished which involves a mixed question of law and fact that requires calculating the continuous, non-permissive possession period of 12 years.

33. It is thus evident that the issue of occupation of the suit property herein is contested, and that the court would be called upon to establish the same in order to determine the rightful ownership of the land. This can only be done at full hearing. Subsequently, the instant Preliminary Objection does not qualify to be one that raises a pure point of law.

34. As to whether the Applicant Applicant's suit contravened the mandatory provisions of Order 37 Rule 7 of the Civil Procedure Rules, the said provision of the law provide as follows;

*"An application under section 38 of the Limitation of Actions Act (Cap. 22) shall be made by originating summons.*

*(2) The summons shall be supported by an affidavit to which a certified extract of the title to the land in question has been annexed.*

*(3) The court shall direct on whom and in what manner the summons shall be served."*

35. I have considered the Applicant's list of documents wherein the first document is listed as an "extract of the title deed for parcel Naivasha/Oljorai Phase 1/1438" which copy of the extract of the title shows that the 1<sup>st</sup> Defendant was registered to the suit land on the 3<sup>rd</sup> October 2018. At paragraph 41 of the Supporting Affidavit, the extract is

annexed as SL-7(a) and a Certificate of Official Search dated 25<sup>th</sup> January 2023 as SL-7(b). This line of argument therefore falls on the wayside.

36. In the end, I find that the Preliminary Objection dated 26<sup>th</sup> June, 2025 to the Plaintiff/Applicant's Originating Summons and Notice of Motion Application both dated 26<sup>th</sup> May 2025 lacks merit and the same is dismissed with costs.

**Dated and delivered via Microsoft Teams at Naivasha this 16<sup>th</sup> day of October 2025**



**M.C. OUNDO**

**ENVIRONMENT & LAND - JUDGE**