



Wamanje & another v Awori (Environmental and Land Originating Summons E012 of 2023) [2025] KEELC 6907 (KLR) (7 October 2025) (Judgment)

Neutral citation: [2025] KEELC 6907 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUSIA
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E012 OF 2023
BN OLAO, J
OCTOBER 7, 2025**

BETWEEN

PETER ODWORY WAMANJE 1ST APPLICANT

EUGINE VICTOR WANDERA 2ND APPLICANT

AND

JOSHUA AWORI RESPONDENT

JUDGMENT

1. Peter Odwory Wamanje And Eugine Victor Wandera (the 1st and 2nd Plaintiffs respectively) approached this Court vide their Originating Summons dated 13th October 2023 and filed on the same day. They impleaded Joshua Awori (the Defendant) citing the provisions of Order 37 of the [Civil Procedure Rules](#) as well as Sections 37 and 38 of the [Limitation of Actions Act](#) and Section 28(b) of the [Land Registration Act](#). They sought a determination of the following questions with regard to the land parcel NO Samia/BUkangala A/152 (the suit land):

1. Whether the Defendant is the registered proprietor of the land parcel No Samia/BUkangala "A"/152.
2. Whether the Plaintiffs have been in possession and use for a period exceeding 12 years.
3. Whether the Plaintiffs have acquired rights by adverse possession.

Arising out of the above, the Plaintiffs sought for the following orders:

- a. A declaration that the 2nd Plaintiff has acquired the land parcel No Samia/Ukangala "A"/152 by adverse possession.
- b. Costs of this suit.

The Originating Summons is supported by the Plaintiffs' affidavits of even date.



2. In his supporting affidavit, the 1st Plaintiff has deposed, inter alia, that his late father Wamaje Aori and mother Abigael Akochi lived and tiled on the land parcel No Samia/Bukhangala/“A” 156 which, after the demise of his father, he discovered that their land was adjacent to the suit land which they have always treated as one parcel. That discovery came about in 2005 when they sold a portion to the 2nd Plaintiff and upon enquiry, it was discovered that their land is registered in the name of the Defendant who is not their relative and in fact resides in Nangina village which is some 20 kilometres away. When they contacted the Defendant, he said he is not aware about the land parcel No Samia/BUkangala/“A” 152 where the 1st Plaintiff and his family have utilized for grazing and tilling to the exclusion of any other person until 2005 when they sold it to the 2nd Plaintiff (the replying affidavit erroneously state that it was sold to the 2nd Respondent) who has been in possession thereof since 2005. He therefore seeks an order that the suit land be registered in the name of the 2nd Plaintiff.
3. On his part, the 2nd Plaintiff also by his supporting affidavit of even date has deposed that in 2005 he entered into an agreement with the Defendant (the agreement is dated 10th May 2005 and is actually between the 1st Plaintiff as vendor and the 2nd Plaintiff as purchaser). That by the said agreement, he took possession of the land parcel No Samia/Bukhangala “A”/156 which he and his family have always occupied and used for grazing, planting and have also erected semi-permanent structures thereon.
4. The Plaintiffs first filed a list of documents dated 13th October 2023 and later, they filed a further list of documents dated 19th September 2024. By those two lists, they produced the following documents:
 1. Copy of register for the land parcel No Samia/Bukhangala “A” 156 in the name of Wamanje Aiyo.
 2. Copy of register for the land parcel No Samia/BUkangala “A” 152 in the name of Joshua Ayienya Awori (Defendant).
 3. Copy of the sale agreement between the 1st Plaintiff as vendor and the 2nd Plaintiff as purchaser dated 10th May 2005 for a portion measuring 8.0 Hectares out of the land parcel No Samia/BUkangala “A” 156.
 4. Certificate of search for the land parcel No Samia/BUkangala “A” 156 in the name of Wamanje Aiyo.
5. The record shows that the Defendant was served with the Originating Summons on 15th October 2023 by one Benjamin Adeya Egesa a process server of this Court. However, by 6th April 2024, the Defendant had not filed any response to the Originating Summons and the Deputy Registrar listed the suit for hearing before me.
6. Trial commenced on 9th July 2025 and the Plaintiffs were the only witnesses who testified in support of their case. They adopted as their evidence the contents of their supporting affidavit and also produced as their documentary evidence the documents filed vide the list of documents dated 13th October 2023 and 19th September 2024. Submissions were thereafter filed by Mr Jumba instructed by the firm of Balongo & Company Advocates for the Plaintiff. The Defendant did not file any response to the Originating Summons and therefore the suit is not defended.
7. I have considered the evidence by the Plaintiffs, un-rebutted as it is, and the submissions of their counsel Mr Jumba.
8. The Plaintiff’s Originating Summons is premised on the provisions of Sections 37 and 38 of the [Limitation of Actions Act](#). Section 38(1) provides that:



1. “Where a person claims to have become entitled by adverse possession to land registered under any of the Acts cited in section 37 of this *Act*, or land comprised in a lease registered under any of those Acts, he may apply to the High Court for an order that he be registered as the proprietor of the land or lease in place of the person then registered as proprietor of the land.”

In the case of *Kasuve Mwaani Investments Ltd & Others* C.a. Civil Appeal No 35 of 2002 [2004 eKLR], the Court of Appeal addressed itself as follows with regard to the threshold in cases of adverse possession:

“Section 38(1) of the *Limitation of Actions Act* Chapter 22 Laws of Kenya authorizes a person who claims to have been entitled to land by adverse possession to apply to the High Court for an order that he be registered as proprietor in place of the registered proprietor. And in order to be entitled to the land by adverse possession the claimant must prove that he has been in exclusive possession of the land openly and as of right and without interruption for a period of 12 years either after dispossessing the owner or by the discontinuation of possession by the owner on his own volition – *Wanje -v- Saikwa* (No 2) 1984 KLR 284. A title by adverse possession can be acquired under *Limitation of Actions Act* for a part of the land and the mere change of ownership of the land which is occupied by another under adverse possession does not interrupt such person’s adverse possession – see *Gitu -v- Ndeete* 1984 KLR 776”.

The possession must be without force, stealth or the permission of the owner of the land – *Kimani Ruchine -v- Swift Rutherford Company Ltd* 1980 KLR 10. It must be open, continuous, peaceful, notorious and with the knowledge of the owner – *Robert Shome & Others -v- Samson Kazungu Kalama* 2015 eKLR (c.a. Civil Appeal No 32 of 2015). See also a rendition of the doctrine in the case of *Mtana Lewa -v- Kabindi Ngala Mwangandi* C.a. Civil Appeal No 56 of 2014 [2015 eKLR].

9. Although the 1st Plaintiff is enjoined in this Originating Summons, it is clear from his own testimony that infact he sold a portion measuring 8.0 Hectares out of the land parcel No Samia/BUkangala “A” 156 to the 2nd Plaintiff vide a sale agreement dated 16th May 2005. It would appear that all along, the 1st and 2nd Plaintiffs assumed that they were transacting over the land parcel No Samia/BUkangala/“A” 152 being the suit land and which is registered in the name of the Defendant. The suit land, however, measures 3.4 Hectares. The 1st Plaintiff ought not to have been a Plaintiff in this case. His name is hereby struck out.
10. According to the Originating Summons, what the Plaintiffs seek is an order that they have acquired the suit land by way of adverse possession. Although there was an error in the sale agreement, the 2nd Plaintiff’s case, which is not controverted, is that he has been in adverse possession of the suit land for a period exceeding 12 years. This is what he has pleaded in the said Originating Summons which I have cited in extension at the commencement of this judgment. Therefore, even if the 2nd Plaintiff purchased and paid for 8.0 Hectares from the 1st Plaintiff, his case is that he has adversely acquired the suit land which, as per the register, measures 3.4 Hectares and that is what this Court will award him because that is the land registered in the Defendant’s name. Indeed the land parcel No Samia/BUkangala/“A” 156 is registered in the name of Wamanje Aiyo the 1st Plaintiff’s father and who has not been sued.
11. The 2nd Plaintiff’s case as supported by the 1st Plaintiff, and which is not rebutted, is that since 2005 he has been in possession of the suit land grazing and farming thereon. Adverse possession is basically about the occupation of the land being claimed. In the absence of rebuttal evidence, this Court must



accept the 2nd Plaintiff's case that what he occupies is the suit land as per the Originating Summons. If the 2nd Plaintiff purchased a portion out of the land parcel No Samia/BUkangala/"A" 156 but instead went into occupation of the suit land in 2005, that means that by the time he filed this suit in 2023, he had been in occupation thereof for 18 years well beyond the 12 years limitation period. There is nothing to suggest that the said occupation has not been open, notorious, peaceful and un-interrupted.

12. The up-shot of all the above is that having considered the evidence herein, un-rebutted as it is, I make the following disposal orders:
 1. The 1st Plaintiff's name is struck out from the Originating Summons.
 2. Judgment is entered for the 2nd Plaintiff as against the Defendant in the following terms:
 - a. The 2nd Plaintiff has acquired by way of adverse possession the land parcel No Samia/BUkangala/"A" 152.
 - b. The Defendant shall within 30 days of being served with this judgment surrender to the Land Registrar Busia the original title for the land parcel No Samia/BUkangala/"A" 152 for cancellation and registration of the same in the name of the 2nd Plaintiff.
 - c. In the absence of the original title deed to the land parcel No Samia/BUkangala/"A" 152, the Land Registrar Busia shall proceed and cancel the Defendant's title and the Deputy Registrar shall execute any relevant documents on behalf of the Defendant.
 - d. No order as to costs.

JUDGMENT DATED, SIGNED AND DELIVERED ON THIS 7TH DAY OF OCTOBER 2025 BY WAY OF ELECTRONIC MAIL.

BOAZ N. OLAO

JUDGE

7TH OCTOBER 2025

Right of Appeal

