



**Kisaju Farm Limited & another v Shukla (Environmental and Land Originating Summons E006 of 2023) [2025] KEELC 5693 (KLR) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5693 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E006 OF 2023  
LC KOMINGOI, J  
JULY 31, 2025**

**BETWEEN**

**KISAJU FARM LIMITED ..... 1<sup>ST</sup> PLAINTIFF**

**SIMON NGICHIRI MUKIRI ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**NARENDRA MOHANLAL SHUKLA ..... DEFENDANT**

**JUDGMENT**

1. By way of Originating Summons dated 23<sup>rd</sup> September 2023 brought under Section 38 of the [Limitation of Actions Act](#) and other enabling provisions, the Plaintiffs seek determination of the following questions:
  - i. Whether the Plaintiffs have by way of adverse possession acquired title to the said parcel of land.
  - ii. Whether the Defendant's right and interest over the said parcel has been extinguished under and by virtue of [Limitation of Actions Act](#).
  - iii. Whether the Court should cancel the title of the Defendant and have the same vested in the Plaintiff's name.
2. The Plaintiff in his Supporting Affidavit depones that he is one of the Directors of Kisaju Farm Limited and had authority to swear the Affidavit.
3. He states that the suit property; Kajiado/Kisaju/1160 which was a subdivision of Kajiado/Kisaju/575 was initially registered in favour of David Gichumbi Njoroge. On 18<sup>th</sup> June 2006, the said David transferred it to the Defendant -Narendra Mohanlal Shukla and a title was issued in his favour. The Defendant had only paid a deposit of Kshs. 400,000 for the land.



4. In the agreement dated 17<sup>th</sup> September 2007, between David Gichumbi Njoroge and Simon Mukiri, it was agreed that Simon Mukiri would refund the deposit of Kshs. 400,000 to the Defendant so that he would transfer the property to the company- Kisaju Farm Limited. It was further agreed that Simon Mukiri would pay Kshs. 1,600,000 to David Gichumbi in order to be entitled to half share of parcel Kajiado/Kisaju/1160. A company- Kisaju Farm Limited would then be incorporated where they would be Directors and equal shareholders. On 15<sup>th</sup> October 2007, the said company- Kisaju Farm Limited, was incorporated and they took possession of the property in 2008 and fenced it. He states that David Gichumbi passed on in 2013 but the company is still active and in possession of the land for the last Sixteen (16) years without any interruption. He therefore sought that the Plaintiff be registered as the rightful owner of the suit property.
5. Despite service by advertisement in the Daily Nation, the Defendant did not file any response.

### **Evidence of the Plaintiff**

6. PW1 Simon Ngichiri Mukiri, the Plaintiff adopted his Affidavit as his evidence in chief and produced three documents which were marked as P. Exhibit 1 to 3. He stated that the Plaintiff ought to be registered as the owner of the suit property.
7. At the close of the oral testimony, the Plaintiff tendered final written submissions.

### **The Plaintiffs' Submissions**

8. Counsel submitted that the plaintiff had been in open occupation of the land for a period exceeding 12 years adverse to the interests of the Defendant as per Section 13 of the *Limitation of Actions Act*. As such the Plaintiff was entitled to registration as the owner by dint of adverse possession.

### **Analysis and Determination**

9. I have considered the pleadings, the evidence on record, the written submissions and the authorities cited and find that the issues for determination are:
  - i. Whether the Plaintiffs have proved their claim for adverse possession;
  - ii. Whether the Plaintiffs are entitled to the reliefs sought;
  - iii. Who should bear costs of this suit?
10. Has the Plaintiff acquired property Kajiado/Kisaju/1160 by way of adverse possession as claimed?

The claim in this suit is that Mr. Narendra Mohanlal Shukla, the Defendant herein, purchased the suit property from one Mr. David Gichumbi Njoroge. In 2006, the property was transferred to him after paying a deposit of Kshs. 400,000. There was no evidence of the sale, or the alleged payment of Kshs. 400,000. Nothing was produced to show that David had passed on.
11. The Plaintiff went on to state that the Defendant found no value in the property and decided not to occupy it. Since he had not paid the entire purchase price, it was agreed that they would refund him the Kshs. 400,000 which he had paid as deposit and this was done.
12. It was also agreed that Simon Mukiri would pay Kshs. 1,600,000 and acquire half share in the property. He alleges that this payment was also made but, once again, there was no evidence of this. He went on to state that he and David G. Njoroge agreed to incorporate a company and the Defendant would transfer the property to the said company which he failed to do.



13. They then occupied the property in 2008, fenced it and have been in occupation since then without interruption. This fact was not controverted.
14. The agreement dated 17<sup>th</sup> September 2007 between David G. Njoroge and Simon Mukiri on the terms of payment was produced as exhibit.
15. There is also a letter dated 20<sup>th</sup> November 2019 from Simon Mukiri to Mr. Azim Taibjee. The letter confirms that Taibjee & Bhalla Advocates were the Defendant's advocates for the transaction between him and David Njoroge. The letter was seeking assistance from the said advocates to obtain the title from the Defendant.
16. There is also a copy of a green card which despite its illegibility, the faint property number looks 1160 as claimed.
17. It is trite that in a claim for adverse possession, the claimant must show, by evidence that his possession was adverse to the Defendant's title. That it was nec vi, nec clam, nec precario. The Court of Appeal in *Abdulkhalik Mohamed Abdulkhalik Mazurui & 2 others v Josiah Kafuta J. Mtila & another* [2021] KECA 653 (KLR) held thus;

“... this Court in *Kimani Ruchine v Swift Rutherford & Co.Ltd and Wambugu vs. Njuguna* (supra) where, in the former it was stated that;

“The plaintiffs have to prove that they have used this land which they claim, as of right: nec vi, nec clam, nec precario... So the plaintiffs must show that the company had knowledge (or the means of knowing, actual or constructive) of the possession or occupation”.

18. I am aware that the Defendant did not file any response to the claim herein. In the case of *Gichinga Kibutha Vs. Caroline Nduku* (2018) eKLR the court held that;

“It is not automatic that instances where the evidence is not controverted the claimant shall have his way in court. He must discharge the burden of proof. He must proof his case however much the opponent has not made a presence in the contest.”

I am satisfied that the Plaintiffs herein have discharged this burden to the required threshold.

19. In conclusion I find that the Plaintiffs have established their claim for Adverse Possession.
20. Accordingly Judgement is entered for the Plaintiffs as against the Defendant as follows;
  - a. That a declaration is hereby issued that the Plaintiffs have acquired Title to the land known as Kajiado/Kisaju/1160 by way of Adverse Possession.
  - b. That the Land Registrar is directed to register the Plaintiffs as the owners of the land known as Kajiado/Kisaju/1160.
  - c. That there shall be no order as to costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 31<sup>ST</sup> DAY OF JULY 2025.**

**L.KOMINGOI**

**JUDGE.**

In the presence of:

Mr. Muhoro for the Plaintiff.



N/A for the Defendant.

Court Assistant – Mutisya.

