



Chumba alias Willy Butty Chumba v Lelei (Enviromental and Land Originating Summons 22 of 2021) [2025] KEELC 5717 (KLR) (30 July 2025) (Judgment)

Neutral citation: [2025] KEELC 5717 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 22 OF 2021**

EM WASHE, J

JULY 30, 2025

BETWEEN

WILLY KIBET CHUMBA ALIAS WILLY BUTTY CHUMBA APPLICANT

AND

PETER KIPSAT LELEI RESPONDENT

JUDGMENT

1. The Applicant herein based on the Amended Originating Summons dated 31.10.2022 (hereinafter referred to as “the present OS”) sought a determination of the following issues; -
 - a. Whether the Applicant should be declared to have become entitled by adverse possession of 4.6 Acres comprised in land title no. Uasin Gishu/Cheplaskei Block 3(Sertwet)/319 already wholly occupied by the Applicant; Willy Kibet Chumba who has occupied the said parcel for a period of more than 12 years in terms of Sections 17 and 38 of the Limitation of Actions Act;
 - b. Whether the Court should declare that the Applicant has acquired interest in the land comprised in title no. Uasin Gishu/Cheplaskei Block 3(Sertwet)/319 wholly by adverse possession having occupied the said land for a period of more than 12 years;
 - c. Whether the Court should issue an order requiring and directing the Eldoret Land Registrar to register the Applicant Willy Kibet Chumba solely and absolutely as the registered owner of title no. Uasin Gishu/Cheplaskei Block 3(Sertwet)/319 in place of Peter Kipsat Lelei and William Kiptarbei Korir.
 - d. Whether the costs of this suit should be awarded to the Applicant.
2. The Applicant swore a Supporting Affidavit dated 31.10.2022 setting out the following grounds in support of the Amended OS:-



- i. The Applicant pleaded that on 12.04.1994, the Respondent herein who is his brother-in-law and one William Kiptarbei Korir. purchased the parcel of land known as Uasin Gishu/Cheplaskei Block 3(Sertwet)/103.
 - ii. The Applicant confirmed to the Court that the property known as LR.NO.Uasin Gishu/Cheplaskei Block 3(Sertwet)/103 was subdivided into Uasin Gishu/Cheplaskei Block 3(Sertwet)/318 and Uasin Gishu/Cheplaskei Block 3 (Sertwet)/319.
 - iii. The property known as LR.NO.Uasin Gishu/Cheplaskei Block 3 (Sertwet)/319 measuring 1.884 Hectares (hereinafter referred to as “the suit property”) was registered in the name of the Respondent.
 - iv. The Applicant informed the Court that on or about 1994, the Respondent gave consent to one Susan Kemei who was his mother in law to enter the suit property and occupy the same with the Applicant and one David Butty who were her children and brothers in-law to the Respondent.
 - v. The Applicant claims that he has been cultivating the land, planted trees, created a clear boundary, built a residential structure thereon and generally done all human activities on the land without permission of the Respondent.
 - vi. He averred that he has lived on the suit property with his wife and children who know no other home since they were born and their stay has been uninterrupted for a period of over 12 years and with the knowledge of the Respondent.
 - vii. It is the Applicant’s case that he has been on the suit property since 1994 nec vi, nec clam nec precario, and this remained the case until 30th March, 2021 when the Respondent reported the Applicant to the area chief who in turn wrote a letter asking him to vacate the land in 30 days.
 - viii. The Applicant avers that he has remained in possession of the land continuously from 1994 and the Respondent never exercised his right to repossess it or demanded that he vacate the land, thus the Respondent’s proprietary interests over the land have been extinguished.
 - ix. The Applicant states that he wrote to the Respondent through his advocate demanding that he stops interfering with his quiet enjoyment of the land, but the Respondent responded by serving the Applicant with an Eviction Notice dated 05.05.2021 demanding that he vacates the property within 3 months.
 - x. The Applicant asserts that he has acquired title to the suit property by adverse possession against the Respondent and is entitled to unrestricted use and enjoyment of the land.
3. The Amended OS was served on the Respondent who opposed it through a Replying Affidavit dated 11.10.2022 which he pleaded as follows: -
- i. The Respondent stated that he is the registered owner of the suit property and was issued with a Title Deed on 13.07.2021.
 - ii. The Respondent confirmed that the suit property is a subdivision of the parcel of land known as Uasin Gishu/Cheplaskei Block 3(Sertwet)/103.
 - iii. The Respondent denied the allegation that the Applicant had been in peaceful, uninterrupted occupation of the suit property without his Consent.



- iv. The Respondent pleaded that in the year 1994, he gave consent to one Susan Kemei who was the mother in law to occupy the suit property so that her children who included the Applicant herein would attend the nearby school.
- v. In essence, the Respondent confirmed that the entry and occupation of both Susan Kemei and her children including the Applicant was with the consent of the Respondent and was not adverse to his ownership rights.
- vi. The Respondent pointed out that at the time of entry by the mother in law known as Susan Kemei, the Applicant was a Minor who enjoyed the use and occupation of the suit property on account of the permission granted to the mother thereof.
- vii. The Respondent avers that the Applicant cannot claim exclusive occupation of the suit property since he cannot identify/point out the specific portion of land he is claiming.
- viii. The Respondent pleaded that he has always exercised his right to re-enter the suit property to check on the progress of the trees he had planted and to greet the family.
- ix. The Respondent asserted that his ownership of the suit property was only recognised through the Judgement pronounced on 30.10.2019 in the proceedings known as Eldoret Court Of Appeal Civil Appeal No. 59 Of 2015.
- x. As such, the period of 12 years prescribed in a claim of adverse possession could only run after the Respondent was registered as the lawful owner of the suit property.
- xi. The Respondent pleaded that if the 12 years period for seeking adverse possession is to start running, then it can only be computed from the date of the Judgement in the proceedings known as Eldoret Court Of Appeal Civil Appeal No. 59 OF 2015.
- xii. The Respondent averred that the reason why the Applicant was allowed to build a structure of the suit property is because in Kalenjin Culture, any boy that had undergone the adult initiation could not live in the same house with the mother although he had not reached the legal age of majority in law.
- xiii. The Respondent therefore was of the view that the construction of the Applicant's home was with his consent and/or that granted to the mother in law.
- xiv. The Respondent states that his mother-in-law voluntarily handed back possession on 14th June, 2019 and vacated the land with other siblings of the Applicant.
- xv. However, the Applicant refused to vacate the suit property prompting the Respondent to issue the Eviction Notice dated 05.05.2021 pursuant to Sections 152A, 152B, and 152E of the [Land Act](#) but the Applicant again declined to comply.
- xvi. The Respondent averred that the present OS was an afterthought and an effort by the Applicant to defeat the legal import of the Eviction Notice and deny him his proprietary rights.
- xvii. The Respondent denied that the Applicant had constructed, cultivating, planted trees and otherwise used the suit property stating that these were done by the mother in law with his permission until 14.06.2021 when she voluntarily handed over possession.
- xviii. The Respondent stated that on 10.03.2021, while cultivating the suit property was attacked by the Applicant who poured petrol on him and lit a match stick in an effort to injure him.



- xix. The Respondent based on these acts by the Applicant proceeded to make a Report to the nearby police station and was given the OB No. 08/10/03/2021.
 - xx. The Respondent informed the Court that the matter was mediated by the Area Chief and the Applicant sought for forgiveness with a promise not to obscure the Respondent in using the suit property and would vacate the suit property thereafter.
 - xxi. However, the Applicant negated on the commitments made before the Area Chief which resulted to Criminal Proceedings being instituted against the Applicant known as Eldoret Criminal Case No. 1490 OF 2021.
 - xxii. The Respondent asserted that the time for purposes of adverse possession in favour of the Applicant, if at all, began to run in 2020 and as a result, the Applicant has failed to establish his claim and it is only fair and in the interest of justice that the present OS be dismissed with costs.
4. After service of the Replying Affidavit dated 11.10.2022, the Applicant did not file any Further Affidavit and pleadings closed.
 5. On the 16.11.2022, the Court directed that the present OS be deemed as Plaintiff while the Replying Affidavit was deemed to a Defence for purposes of the hearing.
 6. The present OS was then fixed for hearing through viva voce evidence.

Applicant's Case

7. The Applicant's case began on the 12.06.2024 with the testimony of the Applicant who was marked as PW 1.
8. The Applicant informed the Court that he had prepared, filed and served a Witness Statement dated 14.11.2022 of which he adopted as his evidence in chief.
9. In support of his evidence in chief, the Applicant produced the following documents; -
 - PW1 Exhibit 1 - Copy of title deed to the suit property
 - PW1 Exhibit 2 - Copy of the title deed to Uasin Gishu/Cheplaskei Block 3(Sertwet)/103
 - PW1 Exhibit 3 - Copy of the Sale Agreement dated 12.05.1994
 - PW1 Exhibit 4 - Copy of the Plaintiff's marriage certificate
 - PW1 Exhibit 5(a), (b) & (c) - Copies of the Birth Certificates for the Plaintiff's children
 - PW1 Exhibit 6 (a)-(h) - Photographs showing the Plaintiff's developments and his late sister's grave
 - PW1 Exhibit 7 - Copy of proceedings in HCCC No. 170 of 2012
 - PW1 Exhibit 8(a), (b) & (c) - Copy of receipts from the firm of Z.K. Yego
 - PW1 PMFI 9 - Copy of the Chief's letter of March, 2021
 - PW1 Exhibit 10 - Copy of letter from the Plaintiff's advocate to the Defendant
 - PW1 Exhibit 11 - Copy of letter dated 12.04.2021 from P.K. Korir & Co. Advocates
 - PW1 Exhibit 12 - Copy of letter dated 05.05.2021 giving Plaintiff 3 months to vacate the suit land



10. According to the Applicant, he entered into the suit property with his mother Susan Kemei when he was 16 years old with the consent of the Respondent in the year 1994.
11. In the year 1995, the Applicant erected a semi-permanent structure with the permission of the Respondent and did a bigger house in the year 2005 when he got married.
12. Since the year 2005, the Applicant had been staying in the suit property with the wife and three children.
13. The Applicant informed the Court that currently, his homestead occupies around 1.5 Acres while he used 3.1 acres for grazing his livestock
14. The Applicant confirmed that in the year 2021, his mother vacated the suit property even though they had buried their sister in it.
15. The Applicant stated that during his occupation on the suit property, there were proceedings known as Eldoret High Court Civil Case No. 170 OF 2012 which were instituted against them by one Danson Njeru Against William Kiptarbei and Others which included the Applicant's Mother and the Respondent herein.
16. The proceedings known as Eldoret High Court Civil Case No. 170 OF 2012 were heard and determined thereby leading to the proceedings known as Eldoret Court Of Appeal Civil Appeal No. 59 OF 2015.
17. In the determination of Eldoret Court Of Appeal Civil Appeal No. 59 OF 2015, the Court through its judgement pronounced on 30.10.2029 declared the person known as William Kiptarbei and the Respondent as the lawful owners of the disputed property measuring 5 acres thereof.
18. The Applicant insisted that during all these litigations, he was the one in occupation and use of the suit property.
19. The Applicant confirmed that he was the one that instructed the firm of Z.K Yego in the previous proceedings to represent him.
20. The Applicant denied the allegation that the Respondent had planted any trees on the suit property and clarified that the Respondent came to do maize farming on the suit property in the year 2021.
21. The Applicant stated that it was in March 2021 that the Area Chief called him and requested him to vacate the suit property within 30 days as it belonged to the Respondent.
22. However, the Applicant declined to comply with the directives of the Area Chief because he had been in occupation of the suit property for many years hence this suit.
23. The Applicant stated that he had been in occupation of the suit property although he currently occupies half an acre while the Respondent started using 2 acres in the year 2021 for farming and the rest of the land was open for grazing.
24. The Applicant insisted that since the year 2005, he had been using the suit property without the consent of the Respondent and now is above 12 years hence the Court should declare him the lawful owner of the suit property.
25. On cross examination, the Applicant was shown the Title Deed over the suit property and confirmed that it was issued on 13.07.2021.



26. The Applicant was also shown the mutation and testified that it was registered on 14.04.2020 but that he was not present when the survey was done.
27. The Applicant reiterated that he entered the suit property pursuant to permission granted to his mother when he was still a minor and stated that the Respondent never gave him permission to be on the land.
28. The Applicant testified that although he was sued in Eldoret High Court Civil Suit No. 170 OF 2012, there was no evidence that he had filed a Defence in the said case.
29. The Applicant admitted that the Respondent was registered as the owner of the suit property in 2018 and prior to this, the same was registered in the name of one Njeru Gachobe.
30. The Applicant informed the Court that the mother had since vacated the suit property and lives in their ancestral home in Kipkabus with his other siblings.
31. The Applicant confirmed that he was the Accused in the proceedings known as Eldoret Criminal Case No. 1745 OF 2023 which was a case of assault but denied threatening to kill the Respondent.
32. According to the contents of the Chief's Letter dated 06.10.2021, the Applicant confirmed that the Respondent was the one cultivating the suit property from the year 2021.
33. On Re-examination, the Applicant testified that by the time the Respondent's title was issued, he was already occupying the suit property.
34. The Applicant denied the contents of the Chief's Letter and further denied any resolution that he would leave the suit property.
35. At the end of this Re-examination, the Applicant was discharged from the witness box.
36. The Applicant's second witness was Samson Rotich who was marked as PW 2.
37. PW 2 introduced himself as the current Assistant County Commissioner currently stationed in Bungoma Court although he had served as an Assistant Chief of Saruiyot Sub-Location between 2018 and 2021.
38. PW2 testified that to his knowledge, the Applicant has since 1995 been living on LR.NO.Uasin Gishu/Cheplaskei/103 which is the number PW2 knew before the subdivision and was still living on the said land at the time he left in 2021.
39. PW 2 confirmed that the Applicant was in occupation of the suit property when LR.NO.Uasin Gishu/Cheplaskei/103 was sub-divided and created LR.NO.Uasin Gishu/Cheplaskei/319.
40. PW 2 admitted before the Court that the Applicant lived on the suit property land with his mother and his family and had constructed houses on the land whereas the Respondent had never lived on the suit property.
41. PW2 testified that he wrote a letter in dated 31.1.2021 confirming that the Applicant was a resident of Saruiyot sub-location which he produced as Exhibit 13.
42. PW 2 told the court that he was aware that the Applicant and the Respondent sought the assistance of the Senior Chief in relation to a land dispute in the year 2021.
43. On cross-examination, PW2 testified that during the period he served as Assistant Chief, the Senior Chief to whom the dispute was referred was David Kiplagat, although PW2 was not aware what was resolved.



44. PW2 testified that the Applicant lived on the suit property with his mother, 2 sisters and nieces and his mother was still on the land when he left in 2021.
45. On re-examination, PW 2 he testified that he did not know the Applicant's mother moved from the suit property.
46. The Applicant's third witness was one David Kipkosgei Mutai who was marked as PW3.
47. PW 3 confirmed that he had prepared, executed and filed a Witness Statement dated 14.11.2022 of which he adopted as his evidence in chief.
48. PW3 testified that he lived on the suit property with the Applicant and their mother from 1995 until 2001 when he vacated the same.
49. PW 3 informed the Court that their mother left the suit property in the year 2021 and currently, it was only the Applicant who was in occupation of the same.
50. PW 3 stated that the Applicant used to cultivate 1.45 Acres of the suit property while the rest was used for grazing.
51. However currently, the Applicant was using only half and acre while the Respondent was cultivating the rest of the suit property.
52. PW3 confirmed that there was no structure on the suit land when they moved in although there were trees and they planted more trees.
53. PW3 testified that the Respondent never visited the land during the period he lived on the suit property but that he entered the suit property by force in 2021.
54. PW3 testified to a dispute between the Applicant and the Respondent which was referred to the area Chief who summoned them, and since the parties did not come to an agreement, the Chief gave the Applicant 30 days to vacate but the Plaintiff did not comply.
55. PW3 testified that growing up, he knew that the suit property belonged to their mother who alleged to have sub-divided her property and handed over the suit property to the Applicant.
56. On cross-examination, PW3 testified that when they moved into the suit property, he had finished Form 4 while the Applicant was still in secondary school and they occupied the land with the Respondent's permission.
57. PW 3 further testified that he attended the meeting at the Chief's office and denied the allegations that the Applicant asked for forgiveness or promised to vacate the land.
58. PW3 also confirmed that the Respondent started cultivating a portion of the land measuring 1.4 Acres.
59. PW 3 further confirmed that the suit property belongs to the Respondent and he could not understand why their mother gave it to the Applicant.
60. On re-examination, PW3 testified that the Respondent previously used to come and greet them before the year 2021 and planted trees during this period, but insisted that the Applicant's stay on the land has never been interrupted.
61. This marked the end of PW3's testimony as well as the close of the Applicant's case.



Respondent's Case

62. The Respondent's hearing commenced on the 02.10.2024 with the testimony of Chepngetich Lelei who was marked as DW 1.
63. DW 1 confirmed to the Court that she had prepared a witness statement dated 22.03.2021 of which she adopted as her evidence in chief.
64. DW1 began her testimony by informing the Court that the Respondent was indeed her son in law.
65. DW 1 stated that upon the demise of her husband, the Respondent allowed her to enter the suit property and occupy the same with her children including the Applicant who were also the in-laws to the Respondent.
66. At the time of entry into the suit property, the Applicant was still a young man in Form two and she lived on the suit property with the consent of the Respondent until the year 2021 when she moved out.
67. However, the Applicant elected to remain on the suit property and she could not explain the reason why the Applicant had made such a decision.
68. On cross-examination DW1 testified that she is the one who requested the Respondent to use the suit property after she was widowed until she was able to fend for herself, and during that time she was cultivating 1.2 Acres, the Applicant constructed a house when he became an adult and used about 0.4 Acres of the land, while the rest was swampy and used for grazing.
69. DW1 further testified that before she left, she told the Applicant that the land did not belong to their family but to the Respondent and the Applicant got angry and was not willing to vacate.
70. DW1 however testified that the Respondent has never lived on the suit land, never utilised it or planted trees on the suit property, however, one of the Respondent's children died and he was buried on the suit property.
71. She also told the Court that while the Applicant occupies a portion of the land, the Respondent now utilises the other part of the land that she used to cultivate.
72. DW 1 could not confirm whether the Applicant engaged an advocate to defend the case filed by the original owners.
73. On re-examination, DW 1 testified that she stayed on the land from 1995 to 2021 when she surrendered the land to the Respondent.
74. She testified that the Applicant was aware that the suit land did not belong to them, but she could not confirm whether the Applicant was using 0.4 of an acre of the suit property.
75. The Second Respondent's witness was one Ernest Kibiwott Barno who was marked as DW 2.
76. DW 2 introduced himself as the Area Chief of Kipchamo Location and produced the following documents; -
 - DW2 Exhibit 1 - Copy of the letter dated 30.03.2021
 - DW2 Exhibit 1 - Copy of the letter dated 06.10.2024
77. DW2 stated that the letter dated 30.03.2021 was from the former chief, David Kiplagat to the OCS Kiambaa police Station informing him of the resolution that the Applicant was to vacate the Respondent's land and it was signed by all the attendees, including the Applicant.



78. DW2 testified that the second letter dated 06.10.2024 was also with regards to the suit property stating that there was a dispute on the land but that they had resolved that the land belonged to the Respondent.
79. On cross-examination, DW2 testified that he knows the Applicant and that he has been in occupation since around 2007 to date although he could not recall the plot number or the owner of the land and added that the Applicant lived with his mother who later moved out.
80. DW 2 further testified that by the time he took over the chief's office, the two letters had already been written and that according to the letters, the Respondent took possession on 30.04.2021 although the Applicant was still living on the land.
81. DW2 testified that he never attended the meeting but admitted that the letter dated 06.10.2024 written by the former chief and contradicts the first letter.
82. There was no Re-examination on DW 2 and he was discharged from the witness box thereafter.
83. The third Respondent's witness was the Defendant who was marked as DW 3.
84. The Respondent confirmed to the Court that he had prepared and executed a witness statement dated 22.03.2022 of which he adopted as his evidence in chief.
85. In support of his evidence in chief, the Respondent produced the following documents;-
- DW3 Exhibit 1 - Copy of letter dated 30.10.2019 over the property in the names of the Defendant and William Kiptarbei Korir.
 - DW3 Exhibit 2 - Copy of title of Uasin Gishu/Cheplaskei Block 3(Sertwet)/319 issued on 13.07.2019 in the name of the Defendant
 - DW3 Exhibit 3 - Copy of the Mutation Form of Uasin Gishu/Cheplaskei Block 3(Sertwet)/103 dated 19.04.2020
 - DW3 Exhibit 4 - Copy of a judgment of Court of Appeal Civil Appeal No. 59 of 2015 dated 17.05.2018
 - DW3 Exhibit 5 - Copy of a letter dated 06.10.2021 from Geomatican Town & country Surveys to D.K. Korir & Associates relating to Uasin Gishu/Cheplaskei Block 3(Sertwet)/103
 - DW3 Exhibit 6 - Copy of the Application for consent to subdivide Uasin Gishu/Cheplaskei Block 3(Sertwet)/103 and letter of consent dated 11.09.2019
 - DW3 Exhibit 7 - A copy of the charge sheet in Criminal Case No. E1490 of 2021 against the Plaintiff
86. The Respondent sought that the present suit be dismissed and the Applicant do vacate the property as well as costs.
87. On cross-examination, the Respondent testified that LR.NO.Uasin Gishu/Cheplaskei Block 3(Sertwet)/103 was purchased in 1994 and after purchase, he allowed his mother-in-law to use his portion measuring about 5 acres.
88. The Respondent conceded that he had never lived on the suit property but gave consent to his mother-in-law and her children including the Applicant who upon attaining the age of majority was again permitted to live on the land.



89. The Respondent testified that he has been assisting his mother-in-law who surrendered the suit property back in 2019.
90. The Respondent informed the Court that the portion being cultivated was 2 Acres while the homestead was on 2.7 Acres and explained that he had put up 2 rooms and then 1 room, and also admitted that his sister in-law was buried on the land.
91. The Respondent further explained that he is cultivating a portion measuring 2 Acres while the portion occupied by the Applicant is 0.4 Acres.
92. On Re-examination, the Respondent confirmed that he allowed his mother-in-law and the children into the land thus the Applicant entered the land with his consent.
93. This marked the end of DW3's testimony, after which the Respondent closed his case.
94. After the close of the hearing, the Court directed the parties to file and serve written submissions which directions were complied with by the Applicant filing his submissions dated 26.05.2025 while the Respondent's submissions were dated 16.06.2025.
95. Based on the Amended OS dated 31.10.2022 together with the Replying Affidavit dated 11.11.2022 the oral evidence adduced by the witnesses, the documentary evidence and the submissions by the parties, the Court identifies the following issues for determination; -

Issue No.1- Has The Applicant Proved The Elements Of Adverse Possession?

Issue No.2- Is The Applicant Entitled To The Reliefs Sought In The Present Os?

Issue No. 3- Who Bears The Costs Of This Present Os.?

96. The Court having duly identified the above issues for determination, the same will be discussed as provided below.

Issue No.1- Has The Applicant Proved The Elements Of Adverse Possession?

97. The key issue in the present OS is whether the Applicant has proved the ingredients of Adverse possession as provided by law.
98. The doctrine of adverse possession is embodied in of the *Limitation of Actions Act*, which at Section 7 provides that: -

“An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.”

99. In the case of *Mtana Lewa-versus- Kahindi Ngala Mwangandi* (2015) eKLR, the Honourable Court outlined the following ingredients to prove adverse possession; -

Adverse possession is essentially a situation where a person takes possession of land and asserts rights over it and the person having title to it omits or neglects to act against such person in assertion of his title for a certain period, in Kenya, is twelve (12) years. The process springs into action essentially by default or inaction of the owner. The essential prerequisites being that the possession of the adverse possessor is neither by force or stealth nor under the licence of the owner. It must be adequate in continuity, in publicity and in extent to show that possession is adverse to the title owner.



100. In another case of Mbira-versus- Gachuhi (2002) 1 EALR 137, the Honourable made the following finding; -

“... a person who seeks to acquire title to land by the method of adverse possession for the applicable statutory period, must prove non permissive or non-consensual actual, open, notorious, exclusive and adverse use by him or those under whom he claims for the statutorily prescribed period without interruption...”

101. Based on the above judicial authorities, the Court will discuss the ingredients of Adverse Possession as follows; -

Ingredient No. 1- Possession

102. The first ingredient to be proved in a Claim of Adverse possession is entry, possession and/or use of the suit property.

103. In the present OS, the Applicant informed the Court that he entered the suit property way back in the year 1994 with his mother.

104. According to the Applicant, the entry into the suit property way back in 1994 was with the consent of the Respondent but upon attaining the age of majority, the Applicant continued to occupy the said suit property without the consent of the Respondent and adverse to his interest.

105. For this reason, the Applicant claims to have occupied the land exclusively, peacefully, without interruption and with the knowledge of the registered owner who is the Respondent for the statutory period of 12 years.

106. On the other hand, the Respondent did not dispute the Applicant’s entry, use and possession of the suit property.

107. The Respondent informed the Court that the Applicant is still in occupation and use of a portion of the suit property to date.

108. In essence, this Court makes a finding that the Applicant is in possession of the suit property and/or a portion of the same.

Ingredient No. 2- Date Of Entry And/or Taking Possession

109. The second ingredient in a claim of adverse possession is the identification of the time when the Applicant took possession and/or entered into the suit property.

110. According to the Applicant, the date when he entered the suit property was in the year 1994 when he was still a minor.

111. However, after attaining the age of majority, he continued to occupy and or stay in possession of the suit property without the consent of the Respondent herein.

112. The Applicant specifically pleaded and testified that he got married in the year 2005 and has been in occupation of the suit property for more than 20 years hence entitled to a claim of adverse possession.

113. The Respondent on the other hand is of the considered view that the suit property was never in existence in the year 2005.

114. The Respondent pleaded and testified that he became the registered owner of the suit property on the 13.07.2021.



115. According to the Respondent, the previous property was known as LR.NO.Uasin Gishu/Cheplaskei/103 which was the registered property of one Njeru Gachobe.
116. Based on another litigation known as Eldoret High Court Case No. 170 OF 2012 which resulted to Eldoret Court Of Appeal Civil Appeal No. Eldoret Court Of Appeal Civil Appeal No. 59 OF 2015, the Court through its judgement pronounced on 30.10.2019 declared the person known as William Kiptarbei and the Respondent as the lawful owners of the disputed property measuring 5 acres thereof within the property known as LR.NO.Uasin Gishu/Cheplaskei/103.
117. It was based on this Judgement pronounced on the 30.10.2019 in the proceedings known as Eldoret Court Of Appeal Civil Appeal No. Eldoret Court Of Appeal Civil Appeal No. 59 Of 2015 That Lr.no.uasin Gishu/Cheplaskei/103 was sub-divided and the suit property was registered 15.04.2020.
118. The Respondent's pleadings and testimony therefore was that if the Applicant had any possession and/or occupation of the suit property, then such occupation and possession can only have started in the year 2020 and not the year 1994.
119. The Court has indeed looked at the documents presented by the parties at the hearing of the present OS.
120. It is clear that originally, there was a property known as LR.NO.Uasin Gishu/Cheplaskei/103 which was registered in the name of another person other than the Respondent herein.
121. Later on, the property known as LR.NO.Uasin Gishu/Cheplaskei/103 was sub-divided based on a Litigation through the Mutation presented for registration in the year 2020.
122. It is only after the registration of the Mutation of LR.NO.Uasin Gishu/Cheplaskei/103 that the suit property herein was created and its register opened on the 15.04.2020.
123. On the same 15.04.2020, the suit property was recorded in the name of the Respondent for the first time and a title deed issued in his name on the 13.07.2021.
124. As such, the suit property was never in existence in the year 1994 until on the 15.04.2020.
125. In essence, the Applicant's occupation on the suit property could only have started on 15.04.2020 and not anytime prior to the said date.

Nature Of The Possession And/or Occupation

126. The third ingredient is the nature of possession and/or occupation enjoyed by the Applicant.
127. In a claim of adverse possession, the nature of occupation and/or possession must be one which is open, with the knowledge of the owner and adverse to the interests of the owner.
128. In the present OS, it is clear that the occupation by the Applicant is rather open to both the Respondent and the general public.
129. Similarly, the Applicant's occupation is one that is with the knowledge of the Respondent herein.
130. However, the issue of contention is whether the said possession and/or occupation enjoyed by the Applicant is one that is adverse to the ownership of the Respondent.
131. The Applicant admits that his entry into the suit property was by consent issued to DW 1 who is the mother when he was still a minor.



132. However, in the year 2005 when he became of age and married, the Applicant's occupation thereafter became adverse to the interests of the Respondent and is now entitled to claim adverse possession.
133. The Respondent on the other hand pleaded that despite the Applicant becoming of age and marrying while in possession of the suit property, that did not waive the consent that had been granted to them to occupy the suit property as close relatives of the Respondent.
134. According to the Court, the scenario that comes into play in the present OS is not one which is not strange in our jurisdiction.
135. There are a number of cases which have come before the Court where a relative is granted an opportunity to occupy and/or use a relative's property and later, a dispute arises as the one in the present OS.
136. In the case of Mbui-versus- Maranya (1993) KLR 726, the Honourable Court while faced with a similar situation as in the present OS stated as follows; -

“Now, in this Country, go to the county side, where our largest population resides, and see for yourself how people are so caring and mindful of one another's welfare. In the countryside, a lot of people are living on other people's land, thanks to the African milk of generosity and kindness.

Our way of living has always been to depend on one another for mutual survival and progress. This is at every level.

To us, if you want any help, if you want a cow, if you want a piece of land for as long as the owner does not immediately require it, you are given this things, because the owner knows that it does not matter how long you borrow this things, he can always recover whatever he has lent to you and whatever he has let you use.

There are many people who, by a gentleman's agreement, all over the country, are actually living on the land of friends, their clansmen, neighbours or even void land sale agreements.

They do not ever think of claiming or losing title, by adverse possession.....I would be surprised if anyone pretended to be ignorant of these things. And ignorance on the part of a judge would be a calamity for the innocent.

The keeping of our land of landless relatives, clansmenfor long periods of time until they are able to buy their own land is a custom we all know.....The doctrine of adverse possession if not reasonably qualified and properly trimmed shall destroy the cherished ideals and should cultural foundations, and destabilize the society.

137. In another case of Rodgers Mwamboje-versus- Douglas Mwamboje (2014) eKLR, the Court observed as follows; -

“In my view, where a relative, like a brother, a sister, a father, a mother, or even an uncle lives on one's land, unlike in a case of a stranger, there is a rebuttable presumption that consent (sic) has been given. The burden of proving that the consent or permission was not given will be the person claiming the relatives land by virtue of the doctrine of adverse possession.”

138. Clearly therefore, the Applicant herein having acknowledged that the Respondent had consented to his entry as a brother in law, the burden of proving that such a consent was withdrawn upon attaining the age of maturity and/or at the time of marriage vested on the Applicant.



139. So far, the Applicant did not produce any evidence either through his witnesses and/or documentary evidence that the Respondent's consent for him to occupy the suit property was ever terminated and/or withdrawn.
140. The argument that the consent automatically lapsed when the Applicant attained the age of maturity and/or got married is without any legal foundation and misplaced.
141. In other words, the occupation and/or possession of the Applicant on the Respondent's suit property was indeed open, with the knowledge of the owner but never adverse to the ownership rights of the Respondent based on the consent issued to DW 1 and her children who included the Applicant herein.

Period Of Occupation

142. The last ingredient in a claim of adverse possession is the period which the occupation has occurred.
143. According to the law, the period within which an Applicant ought to have occupied and/or possessed the property in dispute should be 12 years from the date of entry.
144. During this period of 12 years, the Applicant's occupation must be one that was never interrupted by the owner of the land.
145. In the present OS, it is the Court's finding that the suit property was created and registered in the name of the Respondent in the year 2020.
146. In essence, the Applicant's occupation on the suit property owned by Respondent could have only began in the year 2020 and the period of 12 years prescribed by law has not lapsed as at the time of filing the Originating Summons dated 30.07.2021.

Issue No.2- Is The Applicant Entitled To The Reliefs Sought In The Present Os?

147. Based on the findings contained in the four ingredients of adverse possession outlined hereinabove, the Applicant has not satisfied all the four ingredients therein and cannot be entitled to the prayers sought in the present OS.

Issue No. 3- Who Bears The Costs Of This Present Os.?

148. On costs, the Applicant having not succeeded in the present OS, then he is condemned to pay costs to the Respondent.

Conclusion

149. In conclusion, the Court hereby makes the following Orders in determination of the Amended Originating Summons dated 31.10.2022; -
 - A. The amended originating summons dated 31.10.2022 is not merited and therefore dismissed forthwith.
 - B. The applicant is condemned to pay costs to the respondent.

DATED, SIGNED & DELIVERED VIRTUALLY AT ELDORET ELC THIS 30TH DAY OF JULY 2025.

EMMANUEL.M. WASHE

JUDGE



In The Presence Of:

Court Assistant: Brian

Advocates For The Applicant: Ms. Mukulo

Advocates For The Respondent: Mr. Lagat

