



REPUBLIC OF KENYA



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**Kibwalei v Lukorito & another (Environmental and Land Originating Summons
E010 of 2024) [2025] KEELC 7271 (KLR) (27 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 7271 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E010 OF 2024
MAO ODENY, J
OCTOBER 27, 2025**

BETWEEN

JOSEPH AYABEI KIBWALEI PLAINTIFF

AND

VERONICA TIRIGI LUKORITO 1ST DEFENDANT

REBECCA CHERONO ROTICH 2ND DEFENDANT

JUDGMENT

1. The Plaintiff filed Originating Summons dated 18th October 2024, which was subsequently amended on 15th May, 2025, seeking the following orders:
 - a. That there be a declaration that the plaintiff has acquired 4 Acres by adverse possession an absolute title to all that parcel of land known as Rongai/Lengenet Block 3/200 measuring approximately 4.44 hectare situate in Nakuru County.
 - b. That the court issues an order that the plaintiff be registered as the registered proprietor of 4 Acres from that parcel of land known as Rongai/Lengenet Block 3/200 measuring approximately 4.44 hectare situate in Nakuru County in place of the Defendant.
 - c. That the Defendant be ordered by this Honourable Court to execute all the necessary transfer documents to effect the transfer of all that parcel of land known as Rongai/Lengenet Block 3/200 measuring approximately 4.44 hectare in default the Court do authorize the deputy registrar to execute all such documents.
 - d. That costs of this suit be paid by Defendants.
2. The originating Summons was supported by the Affidavit of Kibwalei Chemjor, the Applicant, who stated that the 1st Defendant bought shares for Kshs. 1000/ which was equal to 7 acres. He stated that the 1st Defendant surrendered to him the said land upon payment of the amount in 1973.



3. He further deponed that he has been residing peacefully on 4 acres of the parcel of land known as Rongai Lengene Block 3/200 since 1973, which is a period of over 12 years. He stated that the defendant has threatened to take possession of the suit land. The Applicant claims an order of specific performance to compel the Defendant to transfer the suit land to him.
4. Veronica Terigi Lukorito, filed a Replying Affidavit sworn on 10th January, 2025, in opposition to the Originating Summons and gave a historical background of the suit parcel of land, which she stated that the Plaintiff deliberately did not disclose.
5. She deponed that the Plaintiff is the son of the late Kibwalei Chemjor who died in September 2021, and was a younger brother to the late Rotich Chemjor her, father, who died in February 2021.
6. The Defendant also stated that Kibwalei Chemjor, Rotich Chemjor together, with their brother Kandie Chemjor, who is not a party to this suit, were shareholders of Kiplombe Sasurwa Kapselek Farm Company Limited, a land buying company in the seventies and eighties (1973 – 1989)
7. That in 1989, the land buying company allocated its members according to each person's share payment and the three were allocated as follows:
 - a. Rotich Chemjor – Rongai/ Lengenet Block 3/200 measuring 4.44hectares
 - b. Kibwalei Chemjor – Rongai/ Lengenet Block 3/80 measuring 8.42hectares
 - c. Kandie Chemjor was also allocated his share but which he sold to a third party.
8. It was her evidence that her father Rotich had bought land in Trans Nzoia and left some livestock in his brother Kibwalei's care on the suit land under license on the understanding that Kibwalei Chemjor, would take care of the animals, cultivate the farm for his own benefit and also ward off any would-be trespassers.
9. Veronica further stated that in October 2014, while on a visit to Kibwalei's home, in Eldama Ravine, he discovered that Kibwalei with his 2nd wife, had sold his animals and denied them access to the suit land prompting him to initiate meetings at the chief's office. That during the meetings in 2014 and 2015, he stated that he is entitled to 4 acres out of the suit land as he had paid the land rent and built a cattle dip
10. It was her evidence that in 2015 they learnt that Kibwalei had built a grass-thatched house and put a stranger to reside in but was later found dead in unclear circumstances. That they later built a second structure which prompted them to report the matter to Menengai Police Station under OB No. 13/29/10/2015. Later on 17th February 2015, the title to the suit land was transferred to Rebecca Cherono Rotich and Veronica Tirigi in trust for all the siblings.
11. According to the Defendant, Veronica, in 2015, the Plaintiff filed Nakuru Environment and Land Court Case No. 202 of 2015, seeking the annulment of the registration of the Defendant and the sister as proprietors of title No. Rongai/ Lengenet Block 3/200 allegedly on the grounds of fraud.
12. The defendants filed a counterclaim and upon the hearing of the case, the court in its judgment dismissed the Plaintiff's suit and declared the Defendants the owners of the suit land.
13. Veronica further stated that the affidavit in support of the Originating Summons testifies to the fact that the Applicant derives the right to sue from his father Kibwalei Chemjor but the person who has signed is Joseph Ayabei Kibwalei who alleges that he bought shares in 1973 which is not true.
14. The defendant urged the court to dismiss the case with costs.



Plaintiff's Submissions

15. Mr. Bosire, counsel for the Plaintiff filed submissions dated 23rd July, 2025 and identified the following issues for determination:
 - a. Whether the Plaintiff has met the legal threshold for adverse possession?
 - b. Whether the Plaintiff is entitled to orders of declaration, registration and specific performance against the Defendants?
 - c. Whether the Defendants are holding the suit land in trust for the Plaintiff?
16. On the first issue, counsel submitted that the Plaintiff has been in open, peaceful, exclusive and uninterrupted occupation of the land from 1973 to date, a period exceeding 51 years. It was counsel's submission that the Defendants did not take any steps to assert their title or evict the Plaintiff until 2015 and even then, no suit or counterclaim was instituted against him. Counsel relied on Sections 7 and 38 (1) of the *Limitation of Actions Act* and the case of Kasukwu Ndolo vs Eliud Mbithi Kasuku [2006] eKLR.
17. On the second issue, counsel submitted that the Plaintiff is protected under Section 28 (h) of the *Land Registration Act*, 2012 which recognizes overriding interests including rights acquired by adverse possession. Counsel relied on Articles 10, 40 and 159 (2e) of *the Constitution* of Kenya and the case of Wambugu vs Njuguna [1983] KLR 172, and submitted that the minutes of the Kapsetek Assistant Chief's meeting held on 20th February, 2015 acknowledged that the land belonged to the Plaintiff.
18. Counsel further relied on the case of Macharia Mwangi & 87 Others vs Davidson Mwangi Kagiri [2014] eKLR and urged the court to grant the orders sought.

Defendants' Submissions

19. Counsel for the Defendants filed submissions dated 30th June, 2025, and submitted that this matter is res judicata as per the Judgment in ELC 202 of 2015, where the court declared that the Defendants are the rightful owners of the suit land.
20. Counsel also gave a brief background to the relationship between the plaintiff and the defendants and the outcome of ELC No. 202 of 2015 which determined the issue of ownership of the suit land.
21. It was counsel's further submission that the Plaintiff has not met the threshold for grant of the orders of adverse possession, hence, the suit should be dismissed with costs. Counsel relied on Section 7 of the *Limitation of Actions Act* and the case of Raphael Kahindi Kawala vs Mount Elgon Beach Properties Limited (2018) eKLR.

Analysis and Determination

22. The issue for determination is whether the Plaintiff has satisfied the ingredients of adverse possession. For a claimant to succeed in a claim for adverse possession, he or she must meet the criteria set out under the *Limitation of Actions Act*.
23. In the case of Wambugu -v- Njuguna, (1983) KLR 173, the Court of Appeal held that adverse possession contemplates two concepts: possession and discontinuance of possession. It was further held that the proper way of assessing proof of adverse possession is whether or not the title holder has been dispossessed or has discontinued his possession for the statutory period, and not whether or not the claimant has proved that he or she has been in possession for the requisite number of years.



24. Further, Section 13 of the same Act provides that adverse possession as the exception to this limitation:

“(1) A right of action to recover land does not accrue unless the land is in the possession of some person in whose favour the period of limitation can run (which possession is in this Act referred to as adverse possession), and, where under sections 9, 10, 11 and 12 of this Act a right of action to recover land accrues on a certain date and no person is in adverse possession on that date, a right of action does not accrue unless and until some person takes adverse possession of the land.”

25. Similarly, in the case of *Mbira v Gachuhi* (2002) IEALR 137 the court stated that:

“.....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 statutory prescribed period without interruption....”

26. This is a case where the issue of adverse possession should not even arise as the Plaintiff had previously filed Nakuru Civil case No. 202 of 2015 against the Defendants which was heard and determined on 25th February 2021 by Justice Mutungi.

27. As earlier stated, the Defendants filed a counterclaim and upon hearing the suit, the court rendered a Judgment and stated at page 9 paragraph 1 as follows:

“As owners of the suit property (the Defendants) they are entitled to enjoy the rights of ownership without any hindrance from anybody. They are entitled to have exclusive rights of use and possession. On the evidence adduced, the court is satisfied the Plaintiff has had unauthorized use and possession of the suit land. Even though he may have had permission to occupy and use the land initially, that permission was withdrawn as evidenced by the various meetings aimed at resolving the ownership wrangle between the Plaintiff and the First Defendant”

28. The Plaintiff failed to disclose that there has been a case in respect of the same suit parcel of land, which was heard, and the issue of ownership determined by a competent court. When there is non-disclosure by a party, of important material facts, which go to the core of the case, then such non – disclosure works against the party guilty on non-disclosure. The Plaintiff stated in his verifying affidavit at paragraph 3 that there is no any other case pending in any court between him and the Defendants over the subject matter, which he knew was false.

29. Such disclosure could have informed the court that this matter is res judicata and as such, the court has no jurisdiction to deal with the current Originating summons.

30. Furthermore, a party cannot succeed in a claim for adverse possession if he/she does not acknowledge that the title upon which he/she hinges the claim was procured legally or regularly. The Plaintiff had claimed in Case No. 202 of 2015 for cancellation of the Defendants’ title as it had been fraudulently acquired.



31. In the case of Haro Yonda Juaje v Sadaka Dzenzo Mbauro & Kenya Commercial Bank (2014) eKLR, the Court held that:

“One cannot succeed in a claim for adverse possession before conceding that indeed the registered proprietor of the land is the true owner of the said land. It does not lie in the mouth of a claimant to aver that the title held by the registered proprietor was fraudulently acquired and then claim the same parcel of land under the doctrine of adverse possession. If the Plaintiff’s averment is that the title which was issued to the Defendant was fraudulently acquired, then his cause of action would be for the rectification of title by cancellation pursuant to the provisions of Section 143 of the Registered *Land Act* and not adverse possession. He cannot use the doctrine of adverse possession to go around the decision of the Minister.”

32. Similarly, the Plaintiff’s occupation of the suit land was with the permission of the Defendants’ father and when the Plaintiff wanted to assert ownership, the Defendants’ father reported the matter to the Chief and there were meetings to resolve the issue. The Plaintiff later took the dispute to court and the same was dismissed. It follows that the occupation was neither quiet nor peaceful as stipulated by the law of adverse possession.

33. I have considered the Originating Summons, the submissions by counsel and find that the Plaintiff has not proved his case and is therefore dismissed with costs to the Defendants.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 27TH DAY OF OCTOBER 2025.

M. A. ODENY

JUDGE

