



**Naibei v Lumbasi & another (Civil Appeal 43 of 2020)  
[2025] KECA 1783 (KLR) (24 October 2025) (Judgment)**

Neutral citation: [2025] KECA 1783 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CIVIL APPEAL 43 OF 2020  
MSA MAKHANDIA, PO KIAGE & HA OMONDI, JJA  
OCTOBER 24, 2025**

**BETWEEN**

**JULIUS NAIBEI ..... APPELLANT**

**AND**

**EDWIN JUMA LUMBASI ..... 1<sup>ST</sup> RESPONDENT**

**GORPACHENI KATAU MREFU ..... 2<sup>ND</sup> RESPONDENT**

*(Being an appeal from the Judgment and decree of the Environment and Land Court of Kenya at Bungoma, (Olao, J), dated 14<sup>th</sup> November, 2019 in Bungoma Civil Case No. 7 of 2009 Consolidated with HCCC No. 76 of 2009 (OS)*

**JUDGMENT**

1. The appellant, Julius Naibei, (later substituted by his son, Jacob Ngeyo Chesori), filed this appeal against the judgment and decree rendered by the Environment and Land Court “the ELC” at Bungoma, (Olao, J), dated 14<sup>th</sup> November, 2019 in Bungoma Civil Case No. 7 of 2009. The dispute leading to this appeal concerns ownership of land parcel No. MALAKISI/WEST SASURI/762, “the suit property”, registered in the names of the respondents, Edwin Juma Lumbasi and Gorpacheni Katau Mrefu.
2. The facts of the dispute are fairly straightforward. The respondents initiated proceedings in the High Court at Bungoma being Civil Case No. 7 of 2009, seeking orders for the eviction of the appellant, costs, and any other relief that the court deemed fit to grant. Their case was built on the premise that the appellant had unlawfully trespassed and occupied the suit property, having taken advantage of tribal clashes that occurred in Mt. Elgon area in the years 1992, 1996, and 2008. The suit property was by then registered in the name of their grandfather, Aineah Mrefu Wambembe, “the deceased”. The respondents asserted that following the deceased’s declining health, he had transferred the suit property to them. Subsequent thereto they caused the suit property to be transferred and registered



- in their names and a title deed issued to them. However, the appellant had trespassed into the suit property during the tribal clashes that engulfed Mt Elgon area in the nineties and had refused to vacate despite demands, and had even threatened them with lethal or fatal consequences if they persisted in their clamour for his eviction.
3. On the other hand, the appellant had also filed in the High Court at Bungoma Civil Case No. 76 of 2009 (OS) against the respondents claiming that he was entitled to the suit property by virtue of Adverse Possession asserting that he had occupied the suit property since 1993, having purchased it from the deceased. He averred that his possession had been peaceful, continuous, and uninterrupted, thereby entitling him to the suit property by way of adverse possession under Section 38 of the Limitation of Actions Act. He sought various declarations, including permanent injunction against the respondents from interfering with his ownership and use of the suit property, and for it to be formally transferred and registered in his name.
  4. The case for the appellant was that he entered the suit property in 1993 after purchasing portions of it from the deceased, who was the original registered owner. He claimed to have lived and farmed those portions peacefully and continuously for over 17 years, demarcated them and even constructed permanent houses thereon and planted crops. By 2005, he stated, the respondents' proprietary rights had lapsed over the portions he occupied, and their subsequent registration as proprietors in 2008 was meaningless since his occupation by that time had already exceeded 12 years, entitling him to legal proprietorship through adverse possession.
  5. As proof of his claim, the appellant submitted sale agreements dated 21<sup>st</sup> February 1993, 4<sup>th</sup> March 1993, 6<sup>th</sup> March 1993, and 28<sup>th</sup> June 1993 respectively, alongside additional supporting documents, including a Green Card of the suit property. His witnesses, Meshack Kiso Mng'ame corroborated his claim that the transactions had taken place between 1993 and 1995, during which several buyers, including Gidern Kittiy, Martin Kittiy, and Timoa Karatasi, purchased various portions from the deceased.
  6. The respondents countered the appellant's claims, maintaining that they legally acquired the suit property through a valid transfer instrument from the deceased, having obtained all the requisite Land Control Board consents. They contended that the appellant did not purchase the suit property from the deceased and that even if any sale occurred, it was null and void for want of consent from the relevant land control board. They argued further that the appellant forcefully occupied the suit property by taking advantage of tribal clashes in Mt. Elgon area, rather than acquiring it through legal means. Additionally, they pointed out that the appellant's occupation of the suit property was neither peaceful nor uninterrupted, citing multiple attempts by the deceased to reclaim the suit property, including interventions by the local administration through the District Officer, Cheptais Division, who issued several formal summons to the appellant between 1998 and 2005. They therefore contended that the appellant had no valid claim under adverse possession since his occupation of the suit property had been disrupted over the years.
  7. {By consent of the parties, the two suits were consolidated and transferred to the ELC and heard as one, with Bungoma Civil Case No. 7 of 2009 being the lead file. Upon reviewing the evidence, the ELC rejected the appellant's claim of adverse possession. It made a finding that although the appellant alleged that he had purchased the suit property from the deceased, the tendered sale agreements did not bear the signature of the deceased. Instead, the transactions appeared to have involved third parties, rendering the agreements invalid in law. Consequently, the appellant's entry onto the suit property could not have been adverse if it was based on the impugned sale agreements.



8. Further, the ELC found that the appellant's occupation of the suit property was neither peaceful nor uninterrupted as required, as evidence presented showed that disputes over the suit property had persisted over the years, with various interventions and summons issued by the District Officer to the appellant being in 1998, 2002, and 2005 suggesting, therefore, that the rightful owner, the deceased, had consistently contested the appellant's occupation of the suit property. This demonstrated that the alleged possession was not continuous and free from interference or interruption as claimed by the appellant.
9. Lastly, the ELC determined that the respondents held a valid title to the suit property as from 2008, and their registration had not been impeached on grounds of fraud or illegality. As registered proprietors, they were entitled to exercise ownership rights, including evicting trespassers. Consequently, the court ordered that the appellant vacate the suit property within three months, failing which eviction would be carried out by an authorised auctioneer. The appellant's counterclaim anchored on adverse possession was accordingly dismissed, and costs awarded to the respondents on the counterclaim as well as the main suit.
10. Dissatisfied with the judgment and decree, the appellant contests it in this appeal on nine grounds. He contends that the ELC wrongly relied on three letters allegedly written by District Officers of Cheptais Division, which were marked for identification but were never formally produced or authenticated; that his entry on the suit property was under colour of right, as the deceased witnessed and sanctioned the entry; the judgment violated Order 21 Rule 1 and 4 of the Civil Procedure Rules, as it was delivered more than a year after the hearing had been concluded; the judgment lacked framed issues; failed to evaluate the totality of his evidence, submissions, and cited legal precedents; ignored Section 7 of the Law of Limitation Act; the respondents did not discharge their burden of proof; and that the judgment was poorly reasoned, both factually and legally, leading to an unjust outcome. Lastly, he challenges the award of costs to the respondents, asserting that the ELC failed to consider all the circumstances of the case.
11. The appeal was heard by way of written submissions. When called out, Ms. Wanyama, holding brief for Mr. Bw'Onchiri learned counsel appeared for the appellant whilst Ms. Masengeli, learned counsel appeared for the respondent.
12. The appellant's submissions merely reiterated and expounded on the grounds of appeal already set out elsewhere in this judgment. There is therefore no need to rehash them.
13. The respondents in opposing the appeal maintained that the ELC's findings were sound in both fact and law and should not be disturbed.

Counsel submitted that the appellant failed to satisfy the requirements for adverse possession, as his occupation of the suit property was not peaceful, uninterrupted, or without secrecy, as required under Section 38 of the *Limitation of Actions Act*. She argued that the evidence including summons issued by the various District Officers of Cheptais Division in 1998, 2002, and 2005, respectively demonstrated persistent disputes over the suit property thereby negating any claim of continuous and uninterrupted possession as claimed by the appellant.

14. Counsel relied on the case of *Wambugu v. Njuguna* [1983] KLR 172, to assert that for a claim based on adverse possession to succeed, the claimant must demonstrate exclusive, continuous, and undisturbed occupation of the subject piece of land for 12 years. That in the circumstances of this case, the appellant's occupation was contested throughout, making his claim unsustainable. Further, counsel cited the case of *Mtana Lewa v. Kahindi Ngala Mwangandi* [2015] eKLR, where the Court reiterated that the possession must be unequivocally adverse to the rights of the registered owner. She argued



that since the appellant's alleged purchase of the suit property was not sanctioned by the registered owner, his possession could not be deemed adverse, but rather conditional occupation, subject to the owner's reclaim.

15. It was also submitted that the ELC properly exercised its discretion in awarding costs against the appellant under Section 27 of the *Civil Procedure Act*, asserting that the appellant's counterclaim lacked merit and was rightly dismissed. Counsel maintained that the appellant failed to establish proprietary rights, reinforcing the court's conclusion that he had no valid claim to the suit property. Ultimately, Counsel prayed for the dismissal of the appeal with costs.
16. This being a first appeal, it is the duty of this Court to re-analyze and re-assess the evidence on record, in light of the grounds of appeal and the submissions made during the hearing, and reach its own independent conclusions. See *Selle v Associated Motor Boat Co.* [1968] EA 123.
17. After considering the record, the written submissions of both parties, the cited authorities and the law, the issues we discern for our determination are whether: the appellant established a valid claim for adverse possession; the respondents' proprietary rights were properly upheld; the ELC erred in relying on unauthenticated documents, in reaching its verdict; and whether the award of costs to the respondents was warranted.
18. John Locke articulates his labour theory of property in *Two Treatises of Government*, stating:

"Whatsoever then he removes out of the state that nature hath provided, and left it in, he hath mixed his labour with, and joined to it something that is his own, and thereby makes it his property." (Locke, John. *Two Treatises of Government*. Edited by Mark Goldie. London: Everyman, 1999.)
19. This reasoning closely aligns with the doctrine of adverse possession, which allows individuals to claim ownership of land which they have occupied and utilized continuously for a statutory period, without formal title and without the consent or acquiescence of the registered proprietor. Indeed, in Kenya, adverse possession is governed by Section 7 of the *Limitation of Actions Act*, which essence provides that a landowner cannot recover possession of his property after twelve years of uninterrupted occupation by another as a trespasser. This legal framework reinforces Locke's argument that property rights should be vested in those who actively use and cultivate land rather than in absentee titleholders who neglect it. Thus, both Locke's philosophical justification and Kenyan statutory law converge on the principle that sustained and productive land use can establish valid ownership, even without formal documentation. The doctrine is rooted in English common law and has been upheld in various judicial decisions of this Court.
20. In case of *Mtana Lewa v. Kahindi Ngala Mwangandi* (supra), this Court observed:

"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 take action against such person in assertion of his title for a certain period, in Kenya, 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 license of the owner. It must be adequate in continuity, in publicity, and in extent to show that the possession is adverse to the title owner."



21. The elements to be proved in a claim of adverse possession have been pronounced in various decisions of this Court. In *Samuel Kihamba v Mary Mbaisi* [2015] eKLR, for instance, this Court observed thus:

“Strictly, for one to succeed in a claim for adverse possession one must prove and demonstrate that he has occupied the land openly, that is, without force, without secrecy, and without license or permission of the land owner, with the intention to have the land. There must be an apparent dispossession of the land from the land owner. These elements are contained in the Latin phraseology, *nec vim, nec clam, nec precario*. The additional requirement is that of *animus possidendi*, or intention to have the land. See *Eliva Nyongesa Lusena & another v Nathan Wekesa Omacha Kisumu Civil Appeal No 134 of 1993 (ur)*. These prerequisites are required of any claimant, irrespective of whether the claimant and the respondent are related or whether the claim relates to family ancestral land.”

22. See also the cases of *Kim Pavey & 2 others v Loise Wambui Njoroge & another* [2011] eKLR and *Wambugu v Njuguna* (supra). From the foregoing, a party claiming adverse possession has to prove that he has occupied the land in question openly without license or permission of the land owner, with the intention not to leave it, and that he has dispossessed the registered owner of the land for the statutory period, as opposed to merely establishing that he has been in possession of the land for twelve years.

23. Applying the aforesaid established principles against the backdrop of the case at hand, the appellant claimed ownership of the suit property through adverse possession, arguing that he had occupied it since 1993 without interruption from the deceased who was the registered proprietor. However, from the record, it is clear that the appellants’ occupation was not peaceful or uninterrupted at all.

24. It is apparent that there were multiple disputes and interventions by the local provincial administration between 1998 and 2005 to get him out of the land. In their supplementary list of documents, the respondents presented three letters from the various District Officers, Cheptais Division, addressed to the appellant concerning his unlawful occupation of the suit property. These letters provide clear evidence that a dispute existed between the appellant and the deceased as early as 8<sup>th</sup> May 1998, barely five years after the appellant allegedly took possession of the suit property following the impugned sale agreements in 1993. Given their significance and brevity, the contents of these letters are reproduced below:

“ 8. 5.98

1: Mr Julius Teria Naibei

Re: Appointment

You are required to report to this office on Wednesday 13.5.98 at exactly 9:00 am without fail.

This is in relation with the land dispute between you and Aineah Mrefu Wambembe. Please come along with your son Jacob Chesor Keroko who is now staying on the land.

Cheboi Willy District Officer Cheptais Division”

“24<sup>th</sup> March 2002

2: Mr Julius Teria Naibei

Mr Jacob Chesor Keroko



Summon Letter

You are hereby required to come to this office DC's office on 28.3.2002 at exactly 10:30 am without fail. This is to discuss about the issue of the land between you and MR AINEAH WAMBEMBE MREFU.

Note that this is not the first time you have been summoned to this office, you have been served with so many summon letters but you never turn up.

J. O. (name illegible)

District Officer Cheptais Division”

“13.9.05

3: Mr Julius Teria Naibei

Mr Jacob Chesori Koroko

Re: Summons

You are required to come to this office D. O's office on 18/9/05 at exactly 10 am without fail. This is in relation with the land dispute you have with mzee AINEAH WABEMBE MREFU.

Please note that this is the 3<sup>rd</sup> appointment to this office and you have not given it at redress (sic). Please come.

I. M Oseko District Officer Cheptais Division.”

25. Additionally, the sale agreements, the basis upon which the appellant claimed his entitlement to the suit property as a purchaser for value did not bear the signature of the deceased. They were at best forgeries. The absence of the deceased's signature on the purported sale agreements significantly weakened the appellant's claim of lawful entry and ownership of the suit property under the doctrine of adverse possession. A thorough scrutiny of the purported sale agreements shows that the deceased did not sign any of them as the vendor. This casts doubt on the appellant's claim since, as the legally recognized owner of the suit property, the deceased was the only person who could have lawfully entered into a sale agreement for the suit property. There is no evidence on record indicating that he authorized any other individual, whether his sons or relatives or whomsoever, to engage in such transactions on his behalf with the appellant. The current appellant himself even confirmed in his testimony that his late father did not purchase the suit property from the deceased either.
26. In property transactions, the legal validity of a sale agreement hinges on the signature of the registered owner, confirming consent and indeed the intent to sell and transfer to the buyer ownership of the property. Without the deceased's signature, the purported agreements lack legal efficacy, raising doubts about whether a valid contract for the sale of the suit property ever existed. The trial court examined the documents presented and found that the sale agreements bore signatures from third parties, rather than the deceased. This raises critical issues, for instance, the agreements did not directly involve the deceased, the original registered owner, making it impossible to establish a legally binding contract between him and the appellant. Secondly, without the deceased's signature or corroborating evidence of a formal transfer process, the appellant could not demonstrate that his entry was based on a legitimate contract of sale. Lastly but not least, for adverse possession to succeed, entry must be without permission of the owner of the land but also clear and unequivocal. If entry was based on a defective sale agreement, the claim for adverse possession is impugnable.



27. The converse again will be that if his entry in the suit was on the basis of the impugned sale agreements, then it was with the consent of the deceased and, therefore, time for purposes for purposes of adverse possession would have started running following any default of whatever kind on the part of either the appellant or the respondent. No such evidence was led. Again, the appellant claimed that he bought the portions of the suit property over a period of time. This then begs the question, when did time start to run for purposes of adverse possession in respect of each parcel. Yet the appellant is claiming the entire suit property! All this can mean one thing, the appellant took advantage of the tribal clashes at the time involving the Bukusus and Sabaot communities to invade the suit property with the sole purpose of displacing the respondents. It is not lost on us that the protagonists are Bukusus and Sabaot. We may as well add that we agree with the respondents' assertion that the appellant's entry on the suit was criminal as he did so under the guise of tribal clashes that engulfed the area at that time. To have allowed the appellant's claim on adverse possession would have been tantamount to the ELC sanitizing or giving a seal of approval to the appellant's criminal acts.
28. Additionally, the respondents contended that any alleged transaction was null and void for want of Land Control Board consent, as required under Section 6 of the [Land Control Act](#). This section demands that all transactions involving agricultural land must receive consent from the Land Control Board within six months, failing which the agreement is rendered unenforceable.
29. In *Samuel Miki Waweru v. Jane Njeri Richu* [2007] eKLR, this Court of held:
- “Where the claim to land is based on an agreement of sale, adverse possession does not arise until the contract becomes null and void for want of Land Control Board consent.”
30. No evidence was led by the appellant as regards this aspect which lends credence that the appellant's entry to the suit property was under the guise of the land clashes. The ELC was in the premises justified in dismissing the appellant's counterclaim based on this evidentiary flaw. His occupation was contested, and the respondents actively sought to reclaim the suit property. The requirement for continuous, peaceful, and unequivocal possession was not satisfied, leading to the dismissal of the appellant's claim. The ELC's decision to reject the claim was therefore legally sound.
31. As to the second issue, we are satisfied that the respondents' proprietary rights were properly upheld based on the evidence presented. Evidence presented demonstrated that their acquisition of the suit property was lawful. From the record, the respondents became the registered proprietors of the suit property on 25<sup>th</sup> November 2008 following a transfer executed by the deceased. The official Certificate of Search confirmed this fact. The registration followed consent obtained for the transaction from the relevant Land Control Board, which was followed by the issuance of valid title deed in their names. This granted them absolute ownership of the suit property in terms of Section 24 of the [Land Registration Act](#).
32. The validity of the transfer process was confirmed by the ELC which examined the relevant documentation and found that they had been lawfully executed. The transfer was voluntary, prompted by the deceased's advanced age and failing health, and the respondents followed the necessary legal steps, obtaining the required approvals before registration. There was no evidence of fraud or misrepresentation in the acquisition of the suit property on the part of the respondents.
33. Under Section 24 of the [Land Registration Act](#), the registered proprietor of land holds absolute ownership, subject only to overriding interests recognized by law. As already indicated, the respondents were registered as proprietors on 25<sup>th</sup> November 2008, and their title was not impeached on grounds of fraud or illegality. This means that, until and unless successfully challenged, their registration conferred



- indefeasible ownership rights, including the right to evict trespassers such as the appellant. The law protects registered proprietors from unlawful intrusions, particularly where adverse possession is not established, like in this case, or where individuals such as the appellant attempt to exploit political instability to appropriate the suit property.
34. We are satisfied, just like the ELC, that the appellant having failed to establish the elements of adverse possession; the respondents, as registered proprietors, retained their legal rights to the suit property, and the court correctly upheld their ownership.
  35. As to the third issue, the appellant raised several complaints regarding the procedural handling of his case by the ELC. He argued that the court improperly relied on three letters allegedly authored by the District Officers, Cheptais, which were marked for identification but were never formally produced or authenticated. He claimed that this amounted to hearsay evidence and led to a miscarriage of justice. Further, he contended that the trial court failed to adhere to the provisions of the Civil Procedure Rules, specifically Order 21 Rule 1 and 4, to the effect that judgments be delivered within sixty days after conclusion of the hearing. He asserted that the ELC delivered the judgment over a year later, without recording any valid reasons for the delay. Additionally, he argued that the judgment lacked properly framed issues, thereby compromising procedural fairness. The appellant further maintained that the ELC failed to properly analyze and consider his testimony, witness statements, and legal precedents cited, leading to an unfair determination. He also claimed that the respondents' suit was statute-barred under Section 7 of the *Limitation of Actions Act*, as the cause of action allegedly arose in 1993.
  36. Upon reviewing the judgment, we are satisfied that these procedural complaints do not hold any merit. While the letters from the District Officers were marked for identification, they were not the sole basis for the court's determination. The judgment relied on independent evidence, including testimonies and historical records indicating long-standing disputes over the suit property between the appellant and the deceased. Even without the letters, it was evident that the appellant's occupation of the suit property was contested, negating the possibility of adverse possession. Further, and as a parting shot on this aspect, the appellant did not deny or dispute receipt of those letters and the contents therein.
  37. Regarding compliance with the Civil Procedure Rules, while the judgment was delivered beyond the prescribed timeframe, this delay did not invalidate the judgment as long as substantive justice was upheld in the process. Though the rule requires that judgments be delivered within sixty days after conclusion of the hearing, the rule does not provide what happens to a judgment delivered thereafter. In any event what prejudice did the appellant suffer from the delay? In our view, delays though undesirable, do not automatically render a judgment a nullity when the merits of the case remain unaffected. See the case of *Wandi v Muchira* (Petition (Application) E029 of 2024) [2025] KESC 40 (KLR) (9 June 2025).
  38. The ELC also properly framed issues for determination, including whether adverse possession was proved, whether the respondents' ownership of the suit property could be impugned, and whether the respondents' suit was time-barred. The ELC then answered all these issues and gave reasons. Based on the foregoing, we are satisfied that the appellant's complaints regarding the trial court's procedural lapses lack merit.
  39. Our last issue for determination is whether the award of costs to the respondents was warranted. The award of costs in this case must be examined in the context of Section 27 of the *Civil Procedure Act*. The provision grants the court discretion to determine costs, guided by the general principle that costs follow the event unless the court offers cogent reasons to depart from the rule. The Supreme Court in the case of *Jasbir Singh Rai & 3 Others v. Tarlochan Singh Rai & 4 Others* (Petition 4 of 2012) [2014]



KESC 31 (KLR), held that costs are a matter of judicial discretion but must be exercised reasonably and judicially. The court held that unless exceptional circumstances are demonstrated, the successful party should be awarded costs.

40. We are satisfied that the award of costs to the respondents was warranted, as they were forced to defend their legitimate ownership of the suit property against an unsubstantiated claim by the appellant. The appellant failed to prove adverse possession, and there were no compelling reasons for the ELC to deny costs to the respondents. The award of costs remains legally sound and in line with established judicial principles.
41. In conclusion, having found all the appellant's grounds of appeal lacking in merit, we dismiss the appeal in its entirety with costs to the respondents.

**DATED AND DELIVERED AT KISUMU THIS 24<sup>TH</sup> DAY OF OCTOBER, 2025.**

**ASIKE-MAKHANDIA**

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**JUDGE OF APPEAL**

**P.O. KIAGE**

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**JUDGE OF APPEAL**

**H.A. OMONDI**

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**JUDGE OF APPEAL**

I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**

