



**Orinyo v Ekakoro (Environment and Land Case E011 of 2020)
[2025] KEELC 7195 (KLR) (21 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 7195 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUSIA
ENVIRONMENT AND LAND CASE E011 OF 2020**

BN OLAO, J

OCTOBER 21, 2025

BETWEEN

JONAM OMUSE ORINYO APPLICANT

AND

OSUKUKU OKEMERI EKAKORO RESPONDENT

JUDGMENT

1. Jonam Omuse Orinyo (the Plaintiff) cited the Defendant Osukuku Okemeri Ekakori vide the Originating Summons dated 23rd November 2020 and filed herein on 24th November 2020 contending that he had acquired by way of adverse possession the land parcel No South Teso/Amukura/1101 (the suit land). He asked this Court to determine the following questions:
 1. Whether the Plaintiff herein purchased a portion measuring 3 acres out of the land parcel No South Teso/Amukura/1101 from the Defendant at a consideration of Kshs.4,600 in 1978.
 2. Whether the Plaintiff has continuously, notoriously and without interruption occupied the aforesaid parcel of land for a period exceeding 12 years.
 3. Whether the Plaintiff's entry was with the consent and knowledge of the Defendant.
2. Arising from the above determination, the Plaintiff sought the following declarations.
 1. A declaration that a portion of the land parcel No South Teso/Amukura/1101 measuring 3 acres has been acquired by Jonam Omuse Orinyo by way of adverse possession.
 2. The County Land Registrar do effectuate the entry on the Land Registry.
 3. Costs of this suit to the Plaintiff.
3. In support of his Originating Summons, the Plaintiff filed a supporting affidavit and statement both dated 23rd November 2022.



4. The affidavit and statement are both brief and therein, the Plaintiff has averred that in 1978, he purchased from the Defendant a portion of land measuring 3 acres out of the suit land at a consideration of Kshs.4,600. He immediately took possession of the said portion and has continued to occupy and use it without interruption and grows foodstuff and trees thereon including building structures. Annexed to the Originating Summons are the following documents:

1. Copy of the un-dated sale agreement between the parties.
2. Copy of the Register for the land parcel No South Teso/Amukura/1101.
3. Copy of Proforma from the Agricultural Department recommending the sub-division of the land parcel No South Teso/Amukura/1101 for agricultural purposes.
4. Copy of application for the Land Control Board consent dated 4th March 1983.
5. Copy of the letter of consent of the Land Control Board dated 15th April 1983.

The Plaintiff also filed statements of his two witnesses namely Nathan Omuse Odera (PW2) and Moses Nashan Odekee (PW3).

5. In his statement dated 17th June 2022, Nathan Omuse Odera (PW2) states that the Plaintiff moved to their Kalaani village in 1978 together with his three children. He purchased land from the Defendant where he was blessed with seven more children. He has lived on the said land peacefully and uninterrupted for close to 40 years and has even buried one of his children and grandchild thereon without interference from the Defendant. That on no single day has the Defendant ever had any dispute with the Plaintiff.

6. On his part, Moses Nashan Odekee (PW3) states in his statement also dated 17th June 2022 that he is the area Assistant Chief of Kiriko Sub-Location and has known the Plaintiff since 1978 when he (Plaintiff) purchased land from the Defendant. That the Plaintiff has developed the land where he has houses and has planted trees which are now over 30 years old. The Plaintiff has continued to occupy the suit land without any interruption and that as the area Assistant Chief, he did not receive any report regarding the suit land.

7. The Defendant was the only witness who testified in support of his case. He filed his replying affidavit dated 16th December 2020 in which he deposed, inter alia that the Plaintiff is a stranger to him whose sole intention is to enrich himself unjustly. That the Plaintiff has been and still is a cattle broker who used to keep his cattle on the suit land while awaiting market days and the Defendant allowed him to use a portion measuring 50 feet by 100 feet for that purpose. He denied that there was any land sale agreement between him and the Plaintiff and added that all the documents produced by the Plaintiff are forgeries. He accused the Plaintiff for abusing the hospitality which he has accorded him by hosting him on the suit land. That the Plaintiff is a mere licensee on the suit land and is not even occupying 3 acres as claimed. The Plaintiff's claim cannot be termed as adverse possession and should be dismissed with costs.

8. Although he listed as his witnesses the County Land Surveyor, he was not called as a witness. And neither did he produce as his documentary evidence the surveyor's report listed on his list of exhibits dated 16th December 2020. However, the Defendant filed another list of documents dated 13th March 2025 and which he produced as his documentary evidence during the trial. These documents are:

1. Copy of the official search dated 12th March 2025.
2. Copy of a letter addressed to the Amagoro Land Control Board.



3. Copies of Summons from the Assistant County Commissioner.
4. Copies of Medical discharge summary.
5. Copy of official search dated 6th February 2009.
6. Copies of official search dated 15th October 2020.
7. Copy of Registry Index Map.

In addition to the said replying affidavit dated 16th December 2020, the Defendant also filed a statement dated 30th March 2025 in which he states that in 1978, the Plaintiff approached him requesting a place to keep his animals near the market. So he gave the Plaintiff a portion to keep his animals and he was given Kshs.4,600 as a token of appreciation. The Defendant denied having signed any sale agreement.

9. Around 2006, the Defendant wanted to sub-divide the suit land among his sons and so he requested the Plaintiff to attend a meeting so he could be told to vacate. The Plaintiff did not attend the meeting.
10. Then in September 2020 he was served with Court documents. He denied that there was any sale agreement and states that the Plaintiff is taking advantage of his kindness to deprive him of his property.
11. The hearing commenced on 18th March 2025 when the Plaintiff testified and called as his witnesses Nathan Omuse Odera (PW2) and Moses Nashon Odekee (PW3). They all adopted as their evidence the contents of their affidavit and statements. The Plaintiff produced as his documentary evidence the documents referred to above.
12. The Defendant was the only witness who testified in support of his case and produced as his documentary evidence and also adopted as his evidence his statement dated 13th March 2025.
13. Submissions were thereafter filed both by Mr Jumba instructed by the firm of Balongo & Company Advocates for the Plaintiff and by Mr Kibathi instructed by the firm of Chege Kibathi & Company Advocates LLP for the Defendant.
14. The Plaintiff's case is that he has obtained and acquired by way of adverse possession a portion out of the suit land measuring 3 acres having utilized it since 1978.
15. Section 38(1) of the *Limitation of Actions Act* on which this Originating Summons is hinged provides that:

“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 -v- Mwaani Investments Ltd & Another* 2004 I KLR 184, the Court set down what a party seeking land by way of adverse possession must prove. It said:

“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”.



Such possession must be without force, stealth and the permission of the owner – 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 Shume & Others -v- Samson Kazungu Kalama 2015 eKLR. In the case of Mtana Lewa -v- Kahindi Ngala Mwagandi C.a. Civil Appeal No 56 of 2014 [2015 eKLR], the Court described the doctrine of adverse possession as follows:

“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, 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 or under the licence of the owner. This doctrine in Kenya is embodied in Section 7 of the Limitation of Actions Act ...”

The Plaintiff's case is that he took possession of a portion of the suit land measuring 3 acres in 1978 following the execution of a land sale agreement at a consideration of Kshs.4,600. The Defendant has denied the existence of the said agreement referring to it as a “mere forgeries”. He has not however told the Court what action he took upon discovery of the said “mere forgeries” yet that is a criminal offence. When he was cross-examined by MR JUMBA counsel for the Plaintiff, however, he said:

“It is true that I got Kshs.4,600 from the Plaintiff but it was not for purchasing he land. It was just in appreciation for giving him the land. It was a plot. It was not 3 acres. It is true that todate the Plaintiff is still in the land. It is also true that I have never filed a suit to evict him from the land. I have never gone to the Land Control Board. I have never sub-divided the land into 5 acres and 3 acres.”

And when he was re-examined by his own counsel MR NYABOTO, he denied having signed any documents.

16. Documents speak for themselves. The documentary evidence produced by the Plaintiff include a sale agreement, copy of application for consent and or copy of the consent. The sale agreement is short and I will reproduce it fully in order to appreciate the contents thereof in the context of this dispute. It is not dated but it reads as follows:

“I Mr Osukuku Okemer Ekakoro have signed to sale my parcel of three acres to Mr Jonam Omuse Orinyo for Kshs.4,600 only. He has paid me the whole amount. Therefore I owe him nothing upto date.”

Nothing can be added or removed from that sale agreement. If, as is now confirmed, the Plaintiff is still on the suit land since 1978 pursuant to the said sale agreement, then he is essentially trespasser. Yet, as confirmed by the Defendant himself, he has not taken any action to evict the Plaintiff from the portion of the suit land which he continues to occupy. And the sale agreement does not make any reference to the allegation by the Defendant that “it was just in appreciation for giving him the land.” Before that, the Defendant had said in his evidence in chief that:

“I gave him the land for free to keep his cattle. He is lying if he says I sold to him. The land belongs to my father, I want my land.”

To begin with, the register shows that the suit land has since 7th December 1972 belonged to the Defendant and not his father. Secondly, it is inconceivable that for 42 years from the 1978 when the



Plaintiff occupied a portion of the suit land upto 2020 when this suit was filed, the Defendant had not taken any action to evict the Plaintiff from the suit land yet he now alleges that his signature was forged. By 2006 when he says he called the Plaintiff to attend a meeting as he wanted to sub-divide the suit land among his sons, the Plaintiff had been on the suit land for 28 years long beyond the 12 years required in land to justify orders that he had acquired the portion which he claims by way of adverse possession. This Court is satisfied that the Defendant received the sum of Kshs.4,600 being the full purchase price for the portion measuring 3 acres out of the suit land. That having been the agreed purchase price, the Plaintiff is entitled to the 3 acres because it is now well settled that a person in occupation of land having fully paid the purchase is a person in whose favour time for purposes of adverse possession can run. In the case of Public Trustee -v- Wanduru Ndegwa C.A. Civil Appeal No 73 of 1982 [1984 KLR 314] Madan JA (as he then was) said this of a purchaser in possession after paying the full purchase price of the land being claimed:

“A purchaser in possession of the land purchased, after having paid the purchase price, is a person in whose favour the period of limitation can run under Section 10(1) of the English Limitation Act 1939 (closely akin to our Section 7) as against the vendor: Bridges - v- Mees 1957 I ch 475 at 484; referred to with approval by this Court in Mwangi Githu -v- Livingstone Ndeete and Others C.A. NO 24 of 1979 (unreported).”

See also the decision of the same Court in the case of PETER MBIRI MICHUKI -V- SAMUEL MUGO MICHUKI 2014 eKLR. It is clear from the above that the Defendant’s rights on the portion of the suit land measuring 3 acres was extinguished by effluxion of the law by 1990. And from that time, the Defendant was merely a trustee holding that portion in trust for the Plaintiff. Any claim to the 3 acres of the suit land by the Defendant is therefore defeated by the provisions of Section 7 of the Limitation of actions Act which reads:

7: “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 accrues to him or, if it first accrued to some person through whom he claims, to that person.”

In the circumstances of this case, this Court is also satisfied that it can impose the equitable doctrine of constructive trust to support the Plaintiff’s claim in adverse possession. In his submissions, counsel for the Defendant placed much emphasis on doubting the validity of the documents for application the consent of the Land Control Board. Counsel submitted on that issue as follows under paragraphs D(25) to (28) of his submissions:

D(25) “My Lord, during examination in chief, the Applicant produced an application and consent purported to have been made by the Respondent. However, it was the Respondent’s assertion that he never made any such application to the Amagoro Land Control Board to sub-divide his suit land herein South Teso/Amukura/1101 into two portions of 3 and 5 acres.

(26) The Respondent further asserted that he had all along no knowledge of the said application and consent thereof, never appeared before the relevant Land Control Board for the alleged purpose and never appeared before the relevant Land Control Board for the alleged purpose and never signed the application or any document relevant in that regard.

(27) My Lord, on the far upper right side of the purported application is written faintly as ‘absent’ and just thereunder a faint date is indicated as ‘15.3.8’ purporting to a possible date on/or around the 80’s.

(28) My Lord, our reasonable deduction of the said scanty information will be that it was indicated so due to unavailability of the Respondent on the particular day (15th). Which then my Lord



begs the question, why would the Respondent be absent when required if really he made an application to the said LCB”.

However, as was held in the case of *Public Trustee -v- Wanduru Ndegwa supra*:

“The provisions of *Land Control Act* have no application where the claim to title of agricultural land by operation of law such as by adverse possession. It is not an agreement, a transaction or a dealing in agricultural land.”

What counsel is trying to suggest is that there was no valid agreement between the parties which can be enforced by this Court. However, as already stated above, the Defendant having received the sum of Kshs.4,600 as purchase price for the 3 acres which the Plaintiff continues to occupy to-date, this Court must invoke and apply the equitable doctrine of constructive trust. It is common ground that the Plaintiff is in occupation of the portion of the suit land which he claims. In the case of *Mwangi & Another -v- Mwangi 1986 KLR 328*, it was held that the interest of a registered proprietor of land is subject to the overriding interests of persons in possession and occupation thereof even without legal title and that such overriding interests are equitable rights which are binding on the land. The proposition in *Mwangi & Another -v- Mwangi (supra)* was adopted in the case of *Macharia Maina & others -v- Davidson Kagiri C.A. Civil Appeal No 6 of 2011 (Nyeri)* as consolidated with *Civil Appeals No 26 and 27 of 2011 [2014 eKLR]*. Further, a constructive trust is defined in *Black’s Law Dictionary 10th Edition* as an “equitable remedy by which a Court recognizes that a claimant has a better right to certain property than the person who has legal title to it.”

17. In the circumstance of this case, the Plaintiff has not only proved that he has been in occupation of the 3 acres out of the suit land peacefully, openly with the knowledge of the Defendant and without interruption for 12 years but further, there is sufficient evidence to enable this Court impose a constructive trust in his favour.
18. Ultimately therefore and having considered all the evidence herein, this Court is satisfied that the Plaintiff has proved his case that he is entitled to an order that he has acquired the portion of land measuring 3 acres out of the land parcel No South Teso/Amukura/1101 by way of adverse possession. This Court therefore issues the following disposal orders:
 1. The Plaintiff has acquired 3 acres out of the land parcel No South Teso/Amukura/1101 by way of adverse possession.
 2. The Defendant’s title to 3 acres out of the land parcel No South Teso/Amukura/1101 is hereby extinguished by operation of the law.
 3. The Defendant shall within 30 days of this judgment surrender to the Land Registrar Busia the original title deed for the land parcel No South Teso/Amukura/1101 for cancellation.
 4. The Land Registrar Busia and the County Surveyor Busia shall thereafter demarcate and issue a title deed for a portion measuring 3 acres out of the land parcel No South Teso/Amukura/1101 in the name of the Plaintiff. In doing so, the Land Registrar Busia and the County Surveyor Busia shall as much as possible ensure that the 3 acres is the portion currently utilized by the Plaintiff.
 5. In default of (4) above, the Deputy Registrar of this Court shall execute all the relevant documents on behalf of the Defendant to facilitate the registration of the said 3 acres in the name of the Plaintiff notwithstanding the absence of the original title deed to the land parcel No South Teso/Amukura/1101.



6. The Plaintiff shall meet the costs of the survey and registration of the 3 acres out of the land parcel No South Teso/Amukura/1101 in his name.
7. Costs to the Plaintiff.

BOAZ N. OLAO

JUDGE

21ST OCTOBER 2025

**JUDGMENT DATED, SIGNED AND DELIVERED BY WAY OF ELECTRONIC MAIL ON THIS
21ST DAY OF OCTOBER 2025.**

Right of Appeal.

BOAZ N. OLAO

JUDGE

21ST OCTOBER 2025

