



**Okech v Oloo (Environmental and Land Originating Summons
E017 of 2023) [2025] KEELC 7527 (KLR) (30 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 7527 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E017 OF 2023**

E ASATI, J

OCTOBER 30, 2025

BETWEEN

AYUB OCHIENG OKECH PLAINTIFF

AND

THOMAS OMONDI OLOO DEFENDANT

JUDGMENT

1. The suit herein was commenced by way of the Originating Summons dated 15th October, 2023 expressed to be brought pursuant to the provisions of sections 1A and 1B of the *Civil Procedure Act*, Order 37 Rule 7 of the Civil Procedure Rules, section 38(1) of the *Limitation of Actions Act* (Cap 22) and section 28 *Land Registration Act* (No.3 of 2012).
2. Vide the Originating Summons, Ayub Ochieng Okech, the Plaintiff/Applicant herein sought the following orders against Thomas Omondi Oloo, the Defendant/Respondent;
 - i. The Applicant herein who is the current occupant of all that parcel of land known as Kisumu/manyatta "A"/1461 be declared and registered as the legal owner of the said parcel through the doctrine of Adverse Possession.
 - ii. Upon declaration and issuance of prayer 1 above the Land Registrar Kisumu County do issue a title deed for the said parcel known as Kisumu/manyatta "A"/1461 to the Applicant.
 - iii. The costs of the application be provided for.
3. The Originating Summons was supported by the Supporting Affidavit sworn by the Plaintiff/Applicant on 15th December, 2023 and the annexures thereto.
4. In reply to the Originating Summons, the Defendant/Respondent filed a Replying Affidavit sworn on 19th December 2023 vide which he denied the plaintiff's claim and averred that he was the registered



owner of the suit land which he inherited from his late father one Pius Oloo vide KISUMU HC SUCC C NO 632 OF 2014.

5. Vide directions taken on 20th December, 2023, the Originating Summons was deemed to be a plaint, the Replying Affidavit as defence and the matter proceeded as a suit and disposed of by way of viva voce evidence.

The evidence

6. The Plaintiff called a total 5 witnesses. PW1 was Ruth Adhiambo Okoth. She stated that the owner of the land started staying thereon many years ago. More than 30 years ago.
7. On cross-examination, she stated that although she had not seen the title to the suit land, the same was registered in the name of one Owiti. That there are houses on the land which she did not know who built. That there are five graves on the land.
8. The Plaintiff testified as PW2. He adopted the contents of his witness statement recorded earlier as his evidence in chief.
9. He produced exhibits namely; 3 photographs, demand letter dated 23rd October, 2023, certificate of official search for the suit land, copy of the title deed and P3 form.
10. He testified further that the Defendant has never lived on the land. That the land is ancestral land where they have buried their departed relatives including his late wife. That he was born on the suit land and that is where he lives.
11. On cross-examination, he stated that he was claiming the land as ancestral land which he inherited from his parents and grandparents.
12. He stated that it is not true that he entered the land in the year 1997. That the houses on the land were built by his grandfather.
13. That he moved out of the land on 2nd December, 2023 when he was arrested. That he moved out and built a temporary structure elsewhere.
14. PW3 adopted the contents of his witness statement as his evidence. He stated on cross-examination that the Plaintiff is a grandson of the owner of the land. That the owner of the land was called Abdi Owiti who died in the year 1979.
15. That he could not know if there is a time when the land was sold. That there was a time when the Plaintiff was removed from the land and built a temporary structure on another plot nearby where he (plaintiff) resides.
16. PW4 stated that she is a tenant in the premises and she pays rent to the Plaintiff. That she was removed from the land and stays in a different compound. That Ayub was also evicted together with other tenants. That she now lives in a different compound which belongs to Ayub. That there is a fence that separates the place where she currently lives and the previous compound.
17. PW5 testified that there is a person who came and evicted Ayub (Plaintiff) from the land. That if Ayub's father had sold the land he (PW.5) could have known. That Ayub now stays on parcel NO.1460 as he was evicted from No.1461. That he (Ayub) put up iron sheet houses on parcel No.1460 and that is where he resides.
18. On behalf of the Defence, 2 witnesses testified. DW1 was the Defendant/Respondent. He relied on the contents of his Replying Affidavit sworn on 19th December, 2023 as his evidence. He produced copy



of title deed, certificate of official search, Grant of Letters of Administration for the estate of Pius Oloo Ameyo, demand letter dated 23rd October, 2023 by Odhiambo Odera Advocates and photographs as exhibits.

19. He stated that he is the one who has possession of the suit land. That by 15th December, 2023, he is the one who had actual possession of the land whereon he has houses and tenants living in them and paying him rent.
20. That the Plaintiff took possession of the land in the year 2019 to the year 2020. That before that, it was his (DW1's) father's caretaker who was on the land. That the houses on the land were built by his father. That he fenced round the land.
21. DW2 was the area Assistant Chief, who narrated how she got to know of the dispute over the suit land. She testified on cross-examination that she witnessed the fencing of the land but not the eviction of the Plaintiff from the land.
22. That the Plaintiff now occupied a land neighbouring the suit land. That Thomas took over possession of the land since 2nd December, 2023.

Submissions

At the close of the evidence, parties filed submissions on the case.

23. Written submissions dated 9th October 2025 were filed on behalf of the plaintiff/ applicant by the firm of Odhiambo Gwada & Co Advocates. Counsel submitted that on the part of the plaintiff the evidence is clear that the plaintiff's grandparents owned the land and passed it to the plaintiff's parents. That upon the death of the plaintiff's parents the plaintiff built his homestead on the parcel while on the remaining portion he built rental houses.
24. Relying on the case of Kairu vs Gacheru (1988) KLR, Counsel submitted that adverse possession is duly recognized in Kenya law which provides for acquisition of land by adverse possession. That the plaintiff took possession of the suit land in 1990s after the demise of his parents and had acquired rights of adverse possession by the year 2023 when the defendant started claiming ownership.
25. That the occupation was open, public, continuous for a period of over 20 years and thus meeting all the pre-requisites for acquisition of land under the doctrine of adverse possession.
Counsel urged the court to allow the claim with costs.
26. On behalf of the Defendant, written submissions dated 17th October 2025 were filed by the firm of Olel Onyango Ingutiah Advocates. Counsel submitted that section 107 of the Evidence Act places the duty upon the plaintiff to provide evidence of prolonged possession and use of the suit property in order to succeed in the matter. That the plaintiff failed to discharge the burden.
27. Counsel submitted further that the plaintiff only drove away a caretaker placed on the suit land by the Defendant's father and only had possession of the land between 2019 and 2023 a period of hardly 4 years. That this was below the 12 years threshold of possession and use that a claimant for ownership under the doctrine of adverse possession must demonstrate.
28. Counsel relied on the case of Gitimu Kinguru vs Muya Gathangi (1976) eKLR where it was observed that the period for adverse possession must not be broken for 12 years, the case of Mombasa Teachers Co-operative Savings and Credit Society Ltd vs Robert Muhambi Katana & others [2018] eKLR where it was held that adverse possession must be actual, peaceful, open, notorious, exclusive and adverse to the actual owner's interest for the period of 12 years.



29. Counsel further relied on the case of *Wambui Gikwa vs Paul Kimani Muraba* [2016] eKLR where the court observed that time stops to run when the title holder asserts his title to the land in question, when the adverse possessor admits the title holder's rights or when the valid owner makes an effective entry or institutes legal proceedings to regain possession'
30. Relying on the case of *Samuel Kihamba vs Mary Mbaisi* 92015)eKLR, Counsel submitted further that it is now trite that a child living with his family cannot claim adverse possession. That under the provisions of section 16 of the *Limitation of actions Act*, time does not run between the date of death of the deceased registered owner and the date upon which representation is raised to his estate. That the deceased died in 1994 and grant of Letters of Administration was issued to his estate in 2015.

Counsel urged the court to dismiss the claim with costs.

Issues for determination

31. From the pleadings filed, the evidence adduced and the submissions made, the following emerge as the issue for determination;
- a. Whether or not the Plaintiff has acquired title to the suit land by adverse possession.
 - b. Whether or not the suit land should now be registered in the name of the Plaintiff pursuant to the doctrine adverse possession.
 - c. Costs of the suit.

Analysis and determination

32. The first issue for determination is whether or not the Plaintiff has acquired title to the suit land by adverse possession.
33. The Plaintiff's claim as contained in the plaint is based on the doctrine of adverse possession. The ingredients of adverse possession as outlined in the case of *Kimani Ruchure vs Swift Rutherfords & Co. Ltd* (1980)KLR 10 are that "the Plaintiffs have to prove that they have used this land which they claim as of right: nec vi, nec clam, nec precario (no force, no secrecy, no persuasion)
34. And in *Gabriel Mbui vs Mukindia Maranya* [1993]eKLR the court held inter alia that adverse possession is:
- “..the non-permissive physical control over land coupled with the intention of doing so, by a stranger having actual occupation solely on his own behalf or on behalf of some other person, in opposition to, and to the exclusion of all others including the true owner out of possession of that land, the true owner having a right to immediate possession and having clear knowledge of the assertion of exclusive ownership as of right by occupying stranger inconsistent with the true owner's enjoyment of land for purposes for which the owner intended to use it.”
35. In the Plaintiff case, the brought claimed that he was the current occupant of the suit land having been born and raised on the land and inheriting the same from his deceased parents who entered into possession of the land in the year 1970s. That he had been in open, uninterrupted, quiet possession of the suit land for the past over 30 years. That the said occupation had been without occupation from anyone and that he had built a homestead and rental houses on the suit land. That the Respondent had without any colour of right illegally issued a demand notice to the Applicant claiming ownership of the land and vacant possession thereof. And that he had acquired title to the suit land lawfully after



occupying and possessing the land for 30 years and hence invokes the doctrine of adverse possession against the Respondent.

36. As submitted by the defendant and as it is the law under sections 107 to 109 of the *Evidence Act*, the plaintiff had the burden to prove these allegations/assertions on a balance of probabilities.
37. From his evidence, it is clear that the Plaintiff does not acknowledge the title of the Respondent to the suit land. According to him, the suit land is his ancestral land which he inherited from his parents and grandparents. This was his evidence and the evidence of his witnesses. The doctrine of adverse possession is not applicable where a party seeks recovery of his ancestral land from a trespasser or a land grabber. The starting point for a claim of adverse possession is that there must be a registered owner with a valid title who has been indolent and failed to assert his rights and remove the trespasser for the requisite period. If indeed, as the plaintiff claims, the land belonged to the plaintiff's grandparents who passed it down to his parents who in turn left it to him then the land is his and he cannot claim to have acquired it under the doctrine of adverse possession against the defendant. In *Ravindranath Dahyabhai Bhagat v Hamisi Haro & 5 others* [2014]eKLR the Court held that an adverse possessor is a squatter and he has no rights of his own. The Court stated thus: "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."
38. Further, although the Plaintiff claimed to have lived on the land for more than 30 years, he produced no evidence to show this. While on the Originating Summons he claimed to have built a homestead and rental units on the land, in his testimony he stated that the houses on the land were built by his grandfather. His witnesses were not sure or did not know who built the houses. The Plaintiff claimed to have buried his relatives on the suit land as a way to show exclusive occupation and use, but he produced no evidence to show this.
39. Again, it was admitted that the Plaintiff no longer stays on nor has possession of the suit land. Each of the parties had their own account of the events leading to the removal of the Plaintiff from the suit land. However, it was common ground that on 2nd December, 2023, the Defendant as registered owner of the land entered the land and removed or caused the removal of the Plaintiff from the land, fenced it and took possession thereof which possession he still had as at the time of testifying in court.
40. PW4 a tenant of the Plaintiff testified that she was evicted together with the Plaintiff and other tenants and that she now resides in a different compound which belongs to the Plaintiff.
41. PW1 (the Plaintiff) stated that he moved out of the suit land to a nearby land where he put up temporary structures where he resides. This was corroborated by the evidence of PW5 who stated that the Plaintiff is currently staying on land parcel number 1460 after he was evicted from parcel number 1461.

One of the ways to terminate rights acquired under adverse possession is by the registered owner asserting his title by taking possession of the land. In *Githu vs Ndeete* [1994] KLR quoted by the Court of Appeal in *Kenya Commercial Bank (suing as Administrator of the Estate of Paul Njoroje Muchene) vs Sarah Njeri Muchene* the court held that:

“time ceases to run under the *Limitation of Actions Act* either when the owner takes or asserts his rights or when his right is admitted by adverse possession. Assertion occurs when the owner takes legal proceedings or makes an entry into land. Giving notice to quit cannot be effective assertion of right for the purpose of stopping the running of time under the *Limitation of actions Act*.”



42. This was also the holding in *Wambui Gikwa vs Paul Kimani* (supra) relied on by the defendant.
43. In the present case, the act of entry of the registered owner of the land and taking over possession thereof and ejecting the Plaintiff therefrom stopped time from running and terminated any claim by the plaintiff based on adverse possession.
44. Further, if any right of adverse possession was to accrue to the plaintiff it was to accrue against the estate of the deceased who was registered owner of the suit land up to the year 2019 when the land was transmitted to the Defendant. The estate of the deceased has not been sued. The Defendant has not been sued in his capacity as personal representative the estate deceased. The Defendant became registered owner only in the year 2019 from which time the period of 12 years has not elapsed.
45. For the foregoing reason, I find that the Plaintiff has not acquired title to the suit land by adverse possession.
46. There is no basis for finding that the Plaintiff should be registered as owner of the suit pursuant to the doctrine of adverse possession.

Conclusion

47. In conclusion, the court finds that the Plaintiff has not proved his case on a balance of probabilities. The suit is hereby dismissed. Costs to the Defendant/Respondent.

JUDGEMENT DATED AND SIGNED AT KISUMU AND DELIVERED VIRTUALLY THIS 30TH DAY OF OCTOBER, 2025.

E. ASATI,

JUDGE.

In the presence of:

Maureen - Court Assistant.

Odhiambo Gwada for the Plaintiff/Applicant

C. Onyango for the Defendant/Respondent

