



**Eroit v Emuruon (Sued as Legal Representative of the Estate of Asange Oporu (Deceased)) (Environmental and Land Originating Summons 20 of 2022) [2025] KEELC 8171 (KLR) (24 November 2025) (Judgment)**

Neutral citation: [2025] KEELC 8171 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT BUSIA**  
**ENVIROMENTAL AND LAND ORIGINATING SUMMONS 20 OF 2022**  
**BN OLAO, J**  
**NOVEMBER 24, 2025**

**BETWEEN**

**ERASMUS EMOIT EROIT ..... APPLICANT**

**AND**

**LAZARO OMUNYIN EMURUON ..... RESPONDENT**

**SUED AS LEGAL REPRESENTATIVE OF THE ESTATE OF ASANGE OPURU (DECEASED)**

**JUDGMENT**

1. This judgment was due on 18<sup>th</sup> November 2025. However, due to my impending transfer effective January 2026, this Court has taken much time finalizing part-heard cases and delivering as many judgments and rulings as I can manage. The result has been that my diary is swamped hence the delay in delivering this judgment. The same is regretted.
2. Erasmus Omoit Eroit (the Plaintiff) has through his Originating Summons dated 5<sup>th</sup> July 2022 impleaded Lazaro Omunyin Emuruon (the Defendant and sued as the Legal Representative of the Estate of Asangae Oporu) seeking a determination of the following questions with regard to the land parcel NO South Teso/Osurette/771 (the suit land):
  1. Whether the Plaintiff has been in open, quiet and notorious possession of the parcel of land NO L.R South Teso/Osurette/771 for a period of over 24 years exceeding 12 years required in law for acquisition of land by adverse possession.
  2. Whether the Defendants entitlement and title to the land NO L.R South Teso/Osurette/771 measuring about 1.2 Ha has become extinguished upon expiry of 12 years from the time the Plaintiff has been in possession since the year 1998 when he entered into and has been in occupation of defined parcel NO South Teso/Osurette/771.



3. Whether the Plaintiff has acquired title to the said parcel of land known as NO South Teso/Osurette/771 measuring 1.2 Ha by virtue of adverse possession and whether such title should be issued to the Plaintiff.
  4. Whether the Plaintiff should be registered as the owner of the entire parcel of land known as South Teso/Osurette/771 measuring 1.2 Ha.
  5. Who pays costs of this suit.
3. Arising out of the above, the Plaintiff sought judgment against the Defendant in the following terms:
1. That the Defendant's right over the land parcel NO South Teso/Osurette/771 measuring approximately 1.2 Ha as possessed by the Plaintiff got extinguished by adverse possession upon expiry of the statutory period of 12 years.
  2. That the Plaintiff is hereby granted right of title to the land parcel South Teso/Osurette/771 absolutely.
  3. That the Defendant to execute all relevant documents to transfer the land parcel NO South Teso/Osurette/771 and in default, the Deputy Registrar Environment and Land Court Busia be authorized to execute same after expiry of any period granted by the Court.
  4. Costs be borne by the Defendant.

In support of his claim, the Plaintiff filed a supporting affidavit dated 5<sup>th</sup> July 2022 as well as an un-dated statement filed on 15<sup>th</sup> July 2022. The gist of the supporting affidavit and un-dated statement is that in the year 1998, he purchased the suit land from one David Emoru Oporu for a consideration which is not disclosed. That the said David Emoru Oporu (hereinafter Oporu) did not process the title for the suit land for him as the same belonged to his (Oporu's) brother. That having paid the consideration, the Plaintiff took possession and occupation of the suit land in 1998 to-date and he has lived peacefully thereon for 24 years. That the Defendant is alleging that the suit land belonged to his father Asangae Oporu now deceased who had been given it to him and he has now obtained a Grant of Letters of Administration and locked the Plaintiff out of the succession process. That the Defendant is not entitled to the suit land as it does not form part of the Estate of Asangae Oporu. That he has buried his relatives on the suit land as is entitled to the orders sought.

4. The Plaintiff also filed statements of his witnesses Paul Okuta Imodoi (pw2), Belinda Irangi Omoit (pw3) And Akure John Paul (PW4) all dated 29<sup>th</sup> September 2024. He also filed a statement of David Emoru Oporu who however was not called as a witness.
5. In his statement Paul Okuta Imodoi (PW2) states that he knows the parties herein. He confirms that the Plaintiff purchased the suit land from Oporu in 1998 and immediately settled thereon with his family. That the Defendant's brother the late Alongo Omukaga Oporu later lodged a dispute over the suit land before the District Officer who referred it to the Tribunal at Amukura which declared that Oporu was the owner of the suit land. The Defendant tried to review that case but in vain. That the Plaintiff rightfully purchased the suit land and has been living thereon peacefully.
6. On her part, Belinda Irangi (PW3) confirmed that she is the daughter of the Plaintiff born in 1999 in Aburi Village Akoreet Location In Teso Sub-location. That she has lived on the suit land since birth and was surprised to hear that the Defendant had secretly filed for succession. In 2002, the Defendant tried to stop the burial of the witness's brother on the suit land yet another member of the Plaintiff's family had been buried thereon in 2016 without any complaint.



7. On his part Akure John Paul (PW4) confirms that he has known the Plaintiff for the past 60 years together with his entire family. That upon his retirement in 1989, the Plaintiff purchased the suit land from his cousin Oporu and settled thereon. The Plaintiff has lived peacefully on the suit land with his family and has even buried two members of his family thereon. But at different times, the Defendant has tried to get possession of the suit land from the Plaintiff but to no avail and his efforts have been rejected by the Land Tribunal and Land Control Board at Amukura. In 2022, the Court quashed the Defendant's attempt to block the burial of the Plaintiff's son on the suit land. That the Defendant lacks the locus standi to lay any claim to the suit land since he is rightfully on his father's land.
8. The Plaintiff filed his list of documents also dated 5<sup>th</sup> July 2022 comprising the following:
  1. Copy of official Search Certificate for the land parcel NO South Teso/Osurette/771.
  2. Copy of death certificate for Asangae Oporu Okutta.
  3. Copy of a letter from the office of the Chief Akoreet Location dated 16<sup>th</sup> November 2020.
9. In response to the Originating Summons, the Defendant filed both a replying affidavit dated 22<sup>nd</sup> September 2022 and a statement dated 18<sup>th</sup> February 2025 to which he annexed his documentary evidence.
10. The gist of his replying affidavit and statement is that he is the Legal Representative of the Estate of the late Asangae Oporu in whose name the suit land is registered. That prior to his demise, the said Asangae Oporu had not sold any part of the suit land to anybody including to the Plaintiff. That the Plaintiff has failed to attach a copy of any sale agreement. That the late Asangae Oporu had no children but had adopted him as his son. That he filed succession proceeding in Busia Chief Magistrate's Court case NO E187 of 2020 to which the Plaintiff has filed an objection. That the Plaintiff is not related to the family of Asangae Oporu and while there have been disputes, none has been forwarded to the District Officer. The Plaintiff cannot therefore claim to have occupied the suit land without interference. His case is defective and must be struck out with costs.
11. The Defendant filed the following documents:
  1. Copy of Limited Grant of Letters of Administration issued in Busia Chief Magistrate's Court Succession Cause No E523 of 2022.
  2. Copy of summons issued by the District Officer Amukura on 27<sup>th</sup> October 1998 and addressed to David Emoru (seller) and Rasmu Eroto (buyer) and also to the Defendant and others as complainants.
  3. Copy of certificate of death for Asangae Oporu Okuta.
  4. Copy of Letter from the Chief Akoreet dated 19<sup>th</sup> July 2020 addressed to the Deputy Registrar.
  5. Copy of Kenya Gazette dated 24<sup>th</sup> December 2020.
  6. Copy of Official Certificate of Search for the land parcel NO South Teso/Osurette/771.
  7. Copy of minutes meeting held on 22<sup>nd</sup> August 2020.

The trial commenced on 9<sup>th</sup> October 2024 and concluded on 24<sup>th</sup> February 2025. The Plaintiff testified and called his witness named above and although David Emoru Oporu filed his statement, he was not called as one of the Plaintiff's witnesses. The Plaintiffs and his witnesses adopted as their evidence the contents of their statements summarized above.



12. The Defendant was the only witness who testified in support of his case. He adopted his affidavit and statements as his evidence. All the parties produced as their documentary evidence.
13. At the end of the plenary trial, submissions were filed by Mr Okutta Instructed By The Firm Of Ouma Okutta & Associates Advocates for the Plaintiff as well as the Defendant acting in person.
14. I have considered the evidence by the parties including the documents filed and their submissions.
15. The Plaintiff's claim is that he has acquired the suit land by way of adverse possession. Section 38(1) of the *Limitation of Actions Act* allows him to approach this Court for that order. It reads:

38 (1): "Where a person claims to have become entitled by adverse possession to land registered under any of the Acts cited in Section 37, 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 & Others* 2004 Keca 161 Klr [2004 Klr 184] (c.a. Civil Appeal No 35 of 2002 NBI), it was held that:

"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 of by the discontinuation of possession by the owner on his own volition."

The Supreme Court of India in the case of *Karnataka Board Of Wakf -v- Government Of India & Others* 2004 10 SCC 779 and which has been followed by Courts in the country held thus:

"Adverse possession is a hostile possession by clearly asserting hostile title in denial of the true owner. It is a well settled principle that a party claiming adverse possession must prove that his possession is 'nec vi, nec clam, nec precario,' that is peaceful, open and continuous."

In the case of *Mtana Lewa -v- Kahindi Ngala Mwangandi C.a.* Civil Appeal No 65 of 2014 [2014 eKLR] it was held that:

"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, the period 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." Emphasis mine.

I shall be guided by the above precedents among others.

16. The Plaintiff's entry onto the suit land is alleged to have been by way of a sale agreement executed in 1998. It is now well settled that a purchaser of land having paid the full purchase price is a person in whose favour time for purposes of adverse possession can begin to run from the moment the full purchase price has been paid - *Public Trustee -v- Wanduru* 1984 KLR 319. In paragraph 2 of his statement, the Plaintiff has said:

"Sometimes back in the year 1998, I bought all that defined parcel of land measuring about 1.2 Ha and known as L.R South Teso/Osurette/771 from David Emoru Oporu in the year 1998 at a consideration through a land sale agreement. The parcel that David sold to me was his land which he had entrusted to his brother a portion as he had no other portion



having been in Uganda. I have never been issued with Title Deed as properly was in his late brother's name.”

The suit land, as per the Certificate of Search filed herein, was registered in the name of Asangae Oporu on 9<sup>th</sup> August 1973 although on 29<sup>th</sup> July 1998, a restriction was placed thereon awaiting succession proceedings.

17. In response to the above averment by the Plaintiff, the Defendant in paragraph 5 of his replying affidavit has deposed that:

5: “That prior to his death, the late Asangae Oporu did not sale (sic) neither any part of his land nor the whole of his land above mentioned to anybody including the Applicant herein and the Applicant is put to strict proof of his allegations.”

When the trial commenced on 9<sup>th</sup> October 2024, I noted that the sale agreement had not been filed and I gave counsel for the Plaintiff time to do so. It was subsequently filed via a further list of documents dated 13<sup>th</sup> December 2024. It is dated 17<sup>th</sup> August 1998 and was executed between David Oporu as the seller and the Plaintiff as purchaser. However, the said David Oporu had no capacity to transact over the suit land registered in the name of Asangae Oporu. That can only mean that the Plaintiff entered the suit land through “stealth” which as per the decision in *Mtana Lewa -v- Kahindi Ngala Mwangandi* (supra) soils the Plaintiff's claim since such entry is supposed to be peaceful. Not by force or stealth.

18. The Plaintiff's occupation and possession of the suit land has also not been peaceful. In paragraph 9 of his supporting affidavit, the Plaintiff has averred thus:

9: “That from the time of purchasing same to-date, I have immensely constructed on the said parcel of land and have been living peacefully therein for over 24 years since the year 1998 to-date.”

But in response to that averment, the Defendant has deposed as follows in paragraph 11 of his replying affidavit:

11: “That the respondent herein among other family members of the deceased have had cases before the area chief and other authorities to stop the Applicant herein from interfering with the deceased's Estate land and that at one time, this matter was forwarded to the District Officer's Office (annexed hereto and marked LOE-3 is Summons dated 27<sup>th</sup> October 1998) and so the Applicant cannot allege to have occupied the deceased's Estate land for so long without any interference from the respondent herein and other family members of the deceased given that this was their ancestral family land.”

The said summons is dated 27<sup>th</sup> October 1998 from the District Officer Amukura and addressed to the Chief Eremi Location. It is brief and due to its relevance, I shall reproduce it in extenso. It reads:

“ Re: Summons

1. David Emoru – Seller
2. Rasmu E. Eroto – Buyer
3. Lazaras O. Emoruoni
4. Silvanus Emoruowy
5. Fidelis Asangai Complainants



6. Karol Emoruoni
7. Dismas Emoruoni

Please urgently inform the above-named persons to appear before the undersigned on Tuesday 3<sup>rd</sup> November 1998 at 9.00 am without fail.

All the named are residents of Lukolis Akoret Location. David Emoru is said to have sold family land without prior knowledge of the family or the complainants.

E. N. Ngugi

District Officer

Amukura.”

Since the Plaintiff's case is that he purchased the suit land from David Emoru Oporu, I have reason to believe that he must be the same person referred to as “rasmo E. Orotu – buyer” in the said Summons while the Defendant must be the person referred to as Lazaras O. Emuruoni named among the complainants. The Summons are dated 27<sup>th</sup> October 1998 just 2 months from the date when the parties and others were summoned to the District Officer's Office at Amukura. Under those circumstances, the Plaintiff cannot be heard to claim that he has lived on the suit land peacefully for 24 years. Disputes over his occupation and possession of the suit land started very early and escalated during the succession process and now this suit.

19. It is clear from the above that not only did the Plaintiff enter the suit land through stealth and evasion but further, his family's occupation of the suit land has not been peaceful. His claim to the suit land by way of adverse possession must therefore collapse and is for dismissal.
20. With regard to costs, the parties are related. In paragraph 3 of his supporting affidavit, the Plaintiff has averred:
  - 3: “That I know the Respondent herein who is my relative within the community.”It is unfortunate that they could not find an amicable route to resolve this dispute. Hopefully, it is not too late for the Plaintiff, riding on his success in this dispute, to reach out to the Defendant and cobble up some settlement over the suit land. Nothing is impossible. To give them a start, I direct that each bears their own costs.
21. Ultimately therefore and having considered all the evidence herein, I issue the following disposal orders:
  1. The Plaintiff's suit is dismissed.
  2. The parties shall meet their own costs.

**JUDGEMENT DATED, SIGNED AND DELIVERED BY WAY OF ELECTRONIC MAIL ON THIS 24<sup>TH</sup> DAY OF NOVEMBER 2025 WITH NOTICE TO THE PARTIES.**

**BOAZ N. OLAO**

**24<sup>TH</sup> NOVEMBER 2025**

