



REPUBLIC OF KENYA



**Meyo v Njoga (Environmental and Land Originating Summons
E020 of 2023) [2025] KEELC 8058 (KLR) (20 November 2025) (Judgment)**

Neutral citation: [2025] KEELC 8058 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E020 OF 2023**

E ASATI, J

NOVEMBER 20, 2025

BETWEEN

PATRICK PAUL MEYO PLAINTIFF

AND

JOSHWA ODERO NJOGA DEFENDANT

JUDGMENT

1. Vide the Originating Summons dated 17th May, 2023, the Plaintiff herein claiming to have acquired ownership of land reference No. KISUMU/RERU/2324 by adverse possession, presented to court the following questions for determination against the Respondent: -
 - i. Whether by virtue of having been in open, peaceful and uninterrupted occupation of a parcel of land being L.R. NO. KISUMU/RERU/2324 for 21 years, the Plaintiff is entitled to be declared the owner of the said parcel of land and to have the same registered in his name.
 - ii. Whether the Defendant ought to be ordered to effect transfer of the said parcel of land in to the name of the Plaintiff and failing that, the Deputy Registrar of this court sign such documents necessary to effect transfer in favour of the Plaintiff as may be necessary.
 - iii. Whether the Defendant ought to be ordered to pay the costs of the suit.
2. The Originating Summons was based on the averments in the Supporting Affidavit sworn on 17th May, 2023 and the annexures thereto.
3. In response to the Originating Summons, the Defendant filed his Replying Affidavit sworn on 11th September, 2023 denying the Plaintiff's claim.
4. Vide directions given on 29th January, 2024 the matter was disposed of by way of viva voce evidence.



Plaintiff's evidence

5. The Plaintiff called 3 witnesses. PW1 was the Plaintiff. He relied on the contents of his Supporting Affidavit sworn on 17th May, 2023, his Further Supporting Affidavit sworn on 29th January, 2024 and the witness statement dated 2nd March, 2024 as his evidence in chief.
6. PW1 had stated in the Supporting Affidavit that in the year 2002 he entered into a sale agreement with one AMOL ONYUKA, deceased, for the purchase of land parcel number KISUMU/RERU/2324, (the suit land herein) measuring 0.35Ha. That he paid the full purchase price at the time of execution of the agreement and that the deceased placed him in occupation of the land. That since he assumed possession of the land in the year 2002, he had held steadfastly to the possession and had been utilizing the land for farming purposes wherein he grows subsistence crops. That he had been in open, continuous and peaceful occupation and use of the suit parcel for a period well in excess of 21 years.
7. That he was surprised to discover in the year 2022 that the land was registered in the name of the Defendant herein. That he had never known the Defendant who was a former Assistant Chief of the area to have an interest in the suit land and that the Defendant has never complained about his (Plaintiff's) occupation of the land. That in the circumstances, the suit land ought to be declared to belong to him by adverse possession and that the Defendant ought to be ordered to transfer the land to him.
8. He added vide the Further Supporting Affidavit that contrary to what is deposed to in the Replying Affidavit, the Defendant has never been registered as the owner of land parcel number KISUMU/RERU/2307 and that the same parcel of land has never been registered in the name of one Ng'ong'a Onyuka. That the Defendant did not put him (Plaintiff) into possession of the suit land and did not give him permission to enter the land.
9. Similar averments were contained in the Plaintiff's witness statement dated 2nd March, 2024.
10. The Plaintiff produced 4 exhibits namely; a bundle of photographs, certificate of official search dated 16th June, 2022; copy of green card for KISUMU/RERU/2324 and copy of green card for KISUMU/RERU/2307.
11. In court, the Plaintiff stated that it was only part of the suit land he purchased from Amol Onyuka. That the rest of the land belongs to the family of Amol Onyuka. That he only claims the lower part of the land, while the upper part remains with the family of Amol Onyuka.
12. That the Defendant was aware of his (Plaintiff's) purchase of the land. He stated further that the size of the land he bought was about 0.2 Hectares or thereabouts and that the entire suit land measures 0.35 Hectares.
13. On cross-examination the Plaintiff stated that he lost the land sale agreement with which he bought the land from Amol Onyuka. That he did not conduct search at the time of purchase of the land and that he bought the land in trust and in good faith knowing Amol as the owner thereof.
14. PW2 was Consolata Ochieng Amol. She adopted the contents of her witness statement dated 2nd August, 2024 as her evidence. She stated that the suit land belonged to her husband Amol Onyuka, deceased, who sold it to the plaintiff to get money to educate their son.
15. That since she got married in 1980 she moved onto the suit land and started cultivating the land. That she had buried the bodies of two of her deceased grandmothers on the suit land and that all that while, she was never aware that the land was registered in the name of Defendant. That they inherited the



land from their deceased grandmother. She stated that the Defendant as the area Assistant Chief in the year 2002 when the land was sold to the Plaintiff was consulted about the sale. That the Defendant instructed the Plaintiff to pay the purchase price in order for the late Amol Onyuka to pay school fees and that the Defendant also affirmed that he was to effect the requisite procedures to change the name in the title to the Plaintiff's.

16. That the Plaintiff started cultivating the said land in the year 2002 and that the possession was without interruption. That it was later when the Plaintiff wanted to transfer the land when search was conducted and found that the land was registered in the name of the Defendant.
17. On cross-examination, the PW2 stated that she is the one who is using the land to date.
18. PW3 was one Maurice Onditi Odero. He testified vide his witness statement dated 2nd August, 2024 which was adopted as his evidence in chief that the suit land belonged to Amol Onyuka and that the same had always been used by PW2 who is the wife of Amol Onyuka and the Plaintiff. That the Plaintiff continued with the cultivating thereof without interruption from the Defendant.
19. That he had never seen the Defendant or Ng'ong'a Onyuka use the suit land. That the Plaintiff had bought only a portion of the suit land. That the Plaintiff engaged a surveyor to demarcate his portion for him. That the demarcation was done in the presence of the village community including the Defendant and that the Defendant never raised any claim.

Defendant's evidence

20. The Defendant testified as DW1 and called a witness. He adopted the contents of his Replying Affidavit sworn on the 11th September, 2023 as his evidence in Chief. He had stated in the Replying Affidavit that Amol Onyuka sold the suit land to one Ng'ong'a Onyuka. That the late Ng'ong'a Onyuka approached him (Defendant) before an objection team from the Land Adjudication office stationed at Reru market for exchange of the parcel of land. That he initially owned land parcel No. KISUMU/RERU/2307 which he consequently exchanged with Ng'ong'a Onyuka with the suit land herein.
21. That he then allowed Amol Onyuka to work on the land out of good will since he was his cousin. That he gave him license to work on the land since he had no problem with him.
22. That he never noticed that the Plaintiff was working on the land at all. That if the Plaintiff bought land as he alleges then clearly, he was duped as Amol Onyuka whom he (Defendant) had licensed to use the land never brought the Plaintiff's issue to his (Defendant's) attention.
23. That he had been visiting the land and had never noticed the Plaintiff being on the land. That it was only in 2019 when he begun noticing that the Plaintiff was farming a small portion measuring 0.03 Ha on the lower part of the land and that the rest of the land remained vacant.
24. That the Plaintiff started laying claim over the land in 2019 after the death of Amol Onyuka and that the Defendant openly disagreed with the Plaintiff over the use of the land.
25. That one cannot pursue adverse possession where his presence was only noticed in 2019. That the Plaintiff should pursue the family of the deceased for a refund. That the orders sought amount to arbitrary taking away of his (Defendant's) land. DW1 produced a copy of title deed for the suit land as exhibit.
26. On cross-examination, he stated that no relative of Amol Onyuka had been buried on the suit land. That land parcel No. 2307 was his ancestral land which he exchanged with Ng'ong'a Onyuka.
27. That he was not party to the sale agreement between Amol Onyuka and the Plaintiff herein.



28. DW2 was Daniel Njoga Odera. He adopted the contents of his witness statement dated 12th April, 2024 as his evidence in chief. He stated that his home which is on land parcel No. KISUMU/RERU/2325 borders the suit land. That the Plaintiff used to work on the lower part of the suit land through proxies. That the upper part of the land was being used by Amol Omumi (Amol Onyuka) before his death. That after the death of Amol, the upper part of the said land has not been used.

Submissions

29. At the close of the evidence, parties filed written submissions on the case. Written submissions dated 26th June, 2025 were filed by the firm of Olel, Onyango, Ingutiah Advocates on behalf of the Plaintiff. Written submissions dated 19th August, 2025 were filed by the firm of Ben Aduol Nyanga & Company Advocates for the Defendant.

Issues for determination

30. The questions on the Originating Summons form the issues for determination herein.

Analysis and determination

31. The first question for determination is whether by virtue of having been in open, peaceful and uninterrupted occupation of the suit land for a period of 21 years, the Plaintiff is entitled to be declared the owner of the said parcel of land and to have the same registered in this name.
32. It was submitted on behalf of the Plaintiff that sections 7 and 13 of the *Limitation of Actions Act* provide for a person who is not the registered owner of a parcel of land acquiring title thereto without the consent of the registered proprietor except where the proprietorship is on the government.
33. That the Plaintiff who claims the land is required to prove that he has been in exclusive possession, openly and without interruption for a period in excess of 12 years. Counsel relied on the case of *Kasuve v Mawani Investment Limited & 4 Others* 1 KLR 184 where the court of Appeal held that;
- “In order to be entitled to land by adverse possession, the claimant must prove that he has been in exclusive possession of the land openly and as of right without interruption for a period of 12 years either after dispossessing the owner or by discontinuation of possession by the owner on his own volition.”
34. Counsel further relied on the case of *Mtana Lewa v Kahindi Ngala Mwangandi* [2015]eKLR.
35. Counsel submitted that section 17 of the *Limitation of Actions Act* is to the effect that where a person does not bring a suit for recovery of his land before the end of the prescribed period that person’s rights over the land are extinguished.
36. That the burden of proof was on the Plaintiff to prove the elements of adverse possession namely; that he has been in actual possession of the land, that the possession was open and not secret and that the claim must be against the owner.
37. That in the present case the Plaintiff testified that he had had possession of the land since 2002 when he entered thereon. That he produced a copy of certificate of official search and green card and a bundle of photographs. That the Plaintiff’s evidence was corroborated by the testimony of PW2, PW3 as well as DW2.
38. Counsel further relied on the case of *Wambugu Njuguna* [1983] KLR 173 and *Kimani Ruchere v Swift Rutherford & Company Ltd* (1980)KLR 10 at page 16 where the court held inter alia that the



Plaintiffs have to prove that they have used the land which they claim as of right, nec vi, nec clam, nec precario (no force, no secrecy, no persuasion).

39. That the Plaintiff met all the criterion as set out in the law to prove the claim.
40. On behalf of the Defendant, Counsel submitted that it is trite that a claim of adverse possession is attached to land and not the title. That the defendant has objected to the Plaintiff's claim that he has been in open, continuous and exclusive occupation of the suit land. That the Plaintiff had not enjoyed the peaceful possession claimed in the Originating Summons. That it was in 2019 when the Defendant began noticing that the Plaintiff was farming a small portion of the lower portion of the Defendant's land.
41. Counsel relied on the case of Samuel Kinamba v Mary Mbaisi (2015)eKLR and the case of Gabriel Mbui v Mukindia Muranya (1993)eKLR where it was held that adverse possession must be established as a fact. Counsel submitted that no documents were produced to show that the deceased and PW2 sold the land to the Plaintiff. That the Plaintiff's entry onto the land was through Amol Onyuka whom the Defendant had licensed to use the land while the Defendant was away.
42. Counsel submitted that the Plaintiff had not disclosed the size of the lower portion of the suit land that he was using. Counsel relied on the case of Wilson Kazungu Katana & 10 Others v Salim Abdalla Bakshwein & Another [2015]eKLR where it was held that the identification of the land in possession of the adverse possessor is an important integral part of the process of proving adverse possession.
43. Relying on the provisions of section 107 of the *Evidence Act*, Counsel submitted that it was upon the Plaintiff to prove the allegations she made.
44. On costs, Counsel submitted that the Plaintiff having failed to prove his case and having heavily prejudiced the Defendant, should bear the costs of the suit. Counsel prayed that the Originating Summons be dismissed with cost to the Defendant.
45. I have considered the evidence and the submission on record.
46. It is common ground that the suit land is registered in the name of the defendant. The green card and certificate of official search produced confirmed this. The certificate of official search and green card show that the suit land measures 0.35 Hectares.
47. The Plaintiff however pleaded that the suit land belonged to one Amol Onyuka from whom he bought the suit land. He stated in paragraph 9 of the Supporting Affidavit that he was quite surprised to learn that the land was registered in the name of the Defendant. He testified that he was placed on the suit land by Amol Onyuka who, according to the Plaintiff, was the owner of the land and the one who sold the land to him.
48. The Defendant's position was that the Plaintiff's entry onto the land, if indeed he had possession of the suit land, was permissive because the Plaintiff was given possession of the land by Amol Onyuka who was on the land by permission of the Defendant.
49. Looking at the record, I do not find any evidence that the Defendant gave license to Amol Onyuka, deceased, to be on the land. While in the Replying Affidavit, the Defendant claimed that he allowed Amol Onyuka to use the land because he was unable to use it and because Amol was his cousin and he had no problem with him, in his testimony and submissions, he claimed that he gave Amol Onyuka license to use the land because he was away.
50. I find that the entry of the Plaintiff onto the suit land was not with permission or license from the Defendant.



51. The Plaintiff claimed to have entered onto the suit land with the permission of Amol Onyuka who according to him was the owner, upon purchase. No evidence of purchase was availed. The Plaintiff claimed to have lost his copy of the sale agreement but claimed that PW2 (the widow of the seller) could be having a copy thereof. PW2 did not produce the agreement but claimed that her deceased husband and herself sold the land to the Plaintiff and consulted the Defendant on the same and that the Defendant as the area Assistant Chief at the time advised the Plaintiff to pay the purchase price. There is no evidence to support this allegation. There was also no evidence to show that the suit land at any time belonged to the deceased, Amol Onyuka.
52. The Plaintiff's entry onto the land therefore was adverse to the interest of the Defendant as the registered owner.
53. Prove of possession and/or occupation of the subject land for the prescribed period is the heart of a claim of adverse possession. The Plaintiff, as submitted by both parties, must prove that he/she has had exclusive, open, continuous, peaceful and uninterrupted possession of the suit land.
54. In the Originating Summons, the Plaintiff claimed to have had occupation of the suit land measuring 0.35Ha whose ownership he claimed to have acquired by adverse possession. In paragraph 2 of the Supporting Affidavit, the Plaintiff claimed to have entered into a land sale agreement with Amol Onyuka, deceased, in the year 2002 for the purchase of "land parcel number KISUMU/RERU/2324 measuring approximately 0.35 hectares (hereinafter referred to as the suit property).."
55. He claimed further that the deceased put him in possession and he (plaintiff) assumed possession of the suit property in the year 2002 and that he had held steadfastly to the said possession. The Plaintiff produced a bundle of photographs as exhibits to demonstrate his possession. The photographs attached to the Replying Affidavit show the entire land; the area cultivated and planted with a crop of maize and the rest of the land which is overgrown and is bushy. Parties are bound by their pleadings.
56. In *IEBC & Another v Stephen Mutinda Mule & 3 Others* [2014]eKLR which cited a decision of the Malawi Supreme Court of Appeal in *Malawi Railways Ltd v Nyasulu* [1998] MWSC 3 in which the Judges quoted with approval from an article by Sir Jack Jacob entitled "The Present Importance of Pleadings" published in (1960) *Current Legal Problems*, at page 174 that;
57. As the parties are adversaries, it is left to each one of them to formulate his case in his own way, subject to the basic rules of pleadings..... for the sake of certainty and finality, each party is bound by his own pleadings and cannot be allowed to raise a different or fresh case without due amendment properly made. Each party thus knows the case he has to meet and cannot be taken by surprise at the trial. The court itself is bound by the pleadings of the parties as they are themselves. It is no part of the duty of the court to enter upon any inquiry into the case before it other than to adjudicate upon the specific matter in dispute which the parties themselves have raised by the pleadings. In deed the court would be acting contrary to its own character and nature if it were to pronounce any claim or defence not made by the parties. To do so would be to enter upon the realm of speculation.
58. Moreover, in such event, the parties themselves or at any rate one of them might well feel aggrieved; for a decision given or defence not made or raised by or against a party is equivalent to not hearing him at all and thus be a denial of justice

“In the adversarial system of litigation therefore, it is the parties themselves who set the agenda for the trial by their pleadings, and neither party can complain if the agenda is strictly adhered to. In such an agenda, there is no room for an item called “Any other Business” in the sense that points other than those specific may be raised without notice”.



59. Again in *Joseph Mbuta Nziu v Kenya Orient Insurance Company Ltd* [2015]eKLR where the court referring to a decision of Nigerian Supreme Court, the Court of Appeal stated in *Adetoun Oladeji (NG) Ltd v Nigerian Breweries PC S.C 91/2002*, Judge Pius Aderemi J.S.C. expressed himself and we would readily agree as follows;

“..... It is now a very trite principle of law that parties are bound by their pleadings and that any evidence led by any of the parties which does not support the averments in the pleading, or put in another way, which is at variance with the averment of the pleadings does to no issue and must be disregarded.”

60. In all his documents filed in court; that is to say, the Originating Summons, the Supporting Affidavit, the Further Supporting Affidavit and the Witness Statement, the Plaintiff claimed the suit land in its entirety. There is nowhere in these documents that the Plaintiff mentions that he only bought a portion, occupies a portion or is claiming only a portion of the suit land.

61. However, in his testimony in court, he introduced the narrative of having purchased only part of the suit land.

He stated;

“I purchased part of the land which I own. The surviving family of Amol owns part of it. I am only claiming the lower part which I bought. The upper part remains with the family of Amol Onyuka it is true that I have been working on the lower part of the land which I bought as Daniel Njoga states in his statement.....”

Referring to the photographs he had produced as exhibit, he stated;

I see exhibit P1 (photographs). The crops shown on the photographs were planted by me using my workers. The mango trees shown in the photos shows the upper part of the land that does not belong to me.....

The size of the land I bought is about 0.2 (two) Hectares or thereabouts.

The entire piece of land measure 0.35Ha. I only claim the portion I bought.”

62. This evidence was supported by the evidence of PW2 (the widow of Amol Onyuka) and DW2. Nonetheless, the same is at variance with the pleadings in the Originating Summons, the Affidavits and the Witness Statements filed. It is also at variance with the prayers as stated in the Originating Summons and the plaintiff's submissions. In his submissions, the Plaintiff asks the court to enter judgement in his favour and against the Defendant for;

- a. A declaration that the Plaintiff has acquired the suit LR No. KISUMU/RERU/2324 portion thereof measuring approximately 0.35Ha by way of adverse possession having possessed, stayed and cultivated the land peacefully, openly and uninterrupted for a period of 12 years in excess.
- b. The Defendant's proprietary interest in the said land had been or has been extinguished by the Plaintiff's adverse possession thereof.
- c. The Plaintiff be registered as the proprietor of a portion of that parcel of L.R. NO. KISUMU/RERU/2324 measuring 0.35 Ha.
- d. The Defendant be directed to execute all the necessary documents to facilitate the transfer of the portion of the parcel of L.R. NO. KISUMU/RERU/2324 measuring approximately



0.35Ha into the name of the Plaintiff within 30 days failure to which the Deputy Registrar of the Court to execute all such documents in favour of the Plaintiff.

- e. Costs of the suit be borne by the Defendant.
63. The Plaintiff in his oral evidence in court first claimed that he was entitled to the lower part of the land without specifying the size or measurements of the said lower part. Later he started that the portion he claims measures 0.2 Ha or thereabout. Vide his submissions he claims a portion measuring 0.35 Ha.
64. Perusal of the copy of register attached to Affidavit Supporting the Originating Summons shows that the size of the entire of the suit land is 0.35 Ha. In other words, the Plaintiff through his submissions asks the court to award him the whole of the suit land yet in part of his evidence he claims to be entitled to only the lower part of the land.
65. In a claim of adverse possession, it is not only very crucial to identify the land the subject matter of the claim but also, particularly in a case where only a portion of the land is claimed, the size of the portion which must be pleaded and proved because that is the subject matter of the suit. A surveyor's report in my view would be the best evidence to guide and prove the size of the portion occupied by the claimant in such a case.
66. In the case of *Wilson Kazungu Katana & 101 Others -v- Salim Abdalla Bakhshwein C.a. Civil Appeal No 11 Of 2014 [2015 eKLR]*, relied on by the Defendant, the Court of Appeal observed that the identification of the land in possession of an adverse possessor is an important and integral part of the process of proving adverse possession. This was so stated by this Court in the case of *Githu -v- Ndeete 1984 KLR 776*.
67. And in the case of *Gabriel Mbui -v- Mukindia Maranya 1993 eKLR* it was held that the land or portion of the land adversely possessed must be defined or at least an identifiable portion with a clear boundary or identification.
68. The plaintiff did not place before court that he ascertained the size of the portion of the land he claimed to be occupying. It was important to ascertain the size especially given the Defendant's evidence that it was in only in the year 2019 that he noticed the plaintiff farming a small portion of the lower side of the land measuring 0.03 Ha. Hence the evidence adduced by the plaintiff left the issue of the size of the claimed portion unresolved: whether it was the entire land, or a portion measuring 0.2 Ha or 0.03 Ha. The burden of proof under section 107 of the *Evidence Act* was with the plaintiff.
69. The period of occupation was also left unresolved. For a claim of adverse possession where the plaintiff claims to have entered the suit land on the strength of a land sale agreement, time for adverse possession only starts to run from the date of payment of the purchase price. In this case there is no evidence of purchase as no land sale agreement was produced. Although the plaintiff claimed that he paid the entire purchase price in the year 2002 when he bought the land thereonto, this claim was denied by the Defendant. It was the word of the plaintiff against that of the Defendant. It was not explained why PW2 did not produce her copy of the land sale agreement if indeed it existed. But again, even if such agreement was produced, it could have no bearing on or nexus with the defendant as he was admittedly not a party thereto. In *Peter Mbiri Michuki v Samuel Mugo Michuki [2014] eKLR*, the Court of Appeal held that:
32. Our reading of the record shows that the Plaintiff entered the suit property pursuant to a sale agreement in 1964 as a bona fide purchaser for value. The entry in 1964 was with permission of the appellant vendor. In the case of *Public Trustee v Wanduru, [1984] KLR 314 at 319 Madan, J.A.* stated that adverse possession should be calculated from the date of payment of the purchase price to the full span of twelve years if the purchaser takes possession of the property



because from this date, the true owner is dispossessed of possession. 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.” There was no evidence of payment of the purchase price to enable determination of when time begun to run in favour of the plaintiff if at all.”

70. Question 1 on the Originating Summons is therefore, for the foregoing reasons, determined in the negative.
71. It follows that question 2 on the Originating Summons namely; whether the Defendant ought to be ordered to effect transfer of the said parcel of land in to the name of the Plaintiff and failing that, the Deputy Registrar of this court sign such documents necessary to effect transfer in favour of the Plaintiff as may be necessary, is as well determined in the negative. There is no basis for making an order for transfer of the suit land in favour of the plaintiff.
72. Regarding costs, under section 27 of the *Civil Procedure Act*, costs follow the event.

Conclusion

73. The result is that the plaintiff has failed to discharge the burden of prove his claim therefore fails. The suit is dismissed with costs to the Defendant.
74. Orders accordingly.

JUDGEMENT DATED AND SIGNED AT KISUMU AND DELIVERED VIRTUALLY THIS 20TH DAY OF NOVEMBER, 2025.

E. ASATI

JUDGE.

In the presence of:

Maureen: Court Assistant.

Wanyangu h/b for C. Onyango for the plaintiff.

Ochieng for the defendant.

