



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Siketi v Kumero & 4 others (Land Originating Summons E004 of 2023)
[2025] KEELC 8044 (KLR) (18 November 2025) (Judgment)**

Neutral citation: [2025] KEELC 8044 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUSIA
LAND ORIGINATING SUMMONS E004 OF 2023**

BN OLAO, J

NOVEMBER 18, 2025

BETWEEN

GABRIEL ISOJO SIKETI PLAINTIFF

AND

MARK WAMUKOYA KUMERO 1ST DEFENDANT

PASCAL OTIENO KUMERO 2ND DEFENDANT

GODFREY OPIYO MBEMBE 3RD DEFENDANT

MATHEW OKELLO KUMERO 4TH DEFENDANT

EMMANUEL ODHIAMBO 5TH DEFENDANT

JUDGMENT

1. Gabriel Isojo Siketi (the Plaintiff) filed this “homemade” Originating Summons on 9th August 2023 in which he impleaded Mark Wamukoya Kumero, Pascal Otieno Kumero, Godfrey Opiyo Mbembe, Mathew Okello Kumero and Emmanuel Odhiambo (the 1st to 5th Defendants respectively) and sought a determination of the following five (5) questions with respect to the land parcel No South Teso/Amukura/1913 (the suit land) herein:
 1. Whether the Plaintiff purchased one (1) acre from Cornel Mbembe Kumeroto be excised from the land parcel No South Teso/Amukura/1913 in the year 2004.
 2. Whether or not the Plaintiff soon after the sale aforesaid was given vacant possession to use the land to the exclusion of the Defendants.
 3. Whether or not the Plaintiff openly and notoriously occupied and used the suit land to the exclusion of the Defendants.
 4. Whether or not the Plaintiff has acquired title by way of adverse possession.



5. Whether or not the Defendants will be condemned to pay costs of this suit.
2. The Plaintiff sought judgment against the Defendants jointly and severally in the following terms:
 - a. A declaration that the Plaintiff is entitled to one (1) acre of land to be excised from the land parcel No South Teso/Amukura/1913 by way of adverse possession.
 - b. In default of the Defendant failing to sub-divide and transfer one (1) acre of land from the land parcel No South Teso/Amukura/1913 the Deputy Registrar of this Court be authorized to sign all transfer documents on their behalf.
 - c. Costs of this suit to be paid by the Defendants.
3. In support of his Originating Summons, the Plaintiff filed both a supporting affidavit and statement dated 9th August 2023. The gist of his claim is that vide a sale agreement dated 21st June 2004 he purchased one (1) acre of land from the Defendants deceased father one Cornel Mbembe Kumero out of the land parcel No South Teso/Amukura/1913 being the suit land. That he has been in continuous open notorious and un-interrupted occupation of the said one (1) acre to the exclusion of the Defendants since 2004 which is some 19 years from the date of purchase. However, in or around 2009, the Defendants secretly petitioned for the Estate of their deceased father without including him in the list of beneficiaries. The Defendants should therefore be compelled to transfer the one (1) acre to him by way of adverse possession.
4. He also filed a statement of his witness Albert Etyang (PW2) dated 20th January 2025. He is the Assistant Chief of Akobwait sub-location and states that on 21st June 2004, the deceased and his wife Elizabeth Akoth Mbembe visited his office in the company of the Plaintiff and one Gabriel Ekesa Olimiri. That the deceased informed him that he (deceased) wanted to sell a portion of the suit land measuring one (1) acre to the Plaintiff and requested his help in drafting a sale agreement. So he drafted the sale agreement which was signed by the Plaintiff, the deceased and their witnesses who were the deceased's wife Elizabeth Akoth Mbembe and the Plaintiff's witness Gabriel Ekesa Olimiri. He also witnessed the deceased receive the purchase price of Kshs.35,000 after which the Plaintiff took possession of the one (1) acre portion where he constructed a house and planted trees and sugar cane and has been in full occupation thereof since then.
5. The Plaintiff filed two lists of documents which were produced in support of his case.
6. In the first list dated 9th August 2023 it contained the following documents:
 1. Copy of sale agreement between the Plaintiff and the deceased dated 21st June 2004 for a portion of land measuring one (1) acre at a consideration of Kshs.35,000.
 2. Copy of Register for the land parcel No South Teso/Amukura/1913.The second list dated 20th January 2025 contained the following documents:
 1. Copy of certificate of search for the land parcel No South Teso/Amukura/1913.
 2. Copy of a letter dated 18th March 2024 from the Chief Albert Etyang and addressed to the Magistrate's Court Busia in reference to the land parcel No South Teso/Amukura/1913.
7. The 2nd Defendant Pascal Otieno Kumero (DW1) and with the written authority of his Co-Defendants, i.e. the 1st, 3rd, 4th and 5th Defendants, filed a replying affidavit dated 15th September 2023 in which he deposed, inter alia, that the deceased never sold any land to the Plaintiff and that the



purported sale agreement produced herein is forged. He also denied that the Plaintiff has been in possession of a portion of the suit land from 2004 to date adding that the suit land was registered in the Defendants' name through a succession process and if the Plaintiff had any claim to the suit land, he should have brought it up in the Succession Cause. That from his own knowledge, the Plaintiff has been trying to forcefully grab a portion of the suit land since 2008 and if he is in occupation thereof then he does so as a trespasser. That he has been further advised that the suit is time barred under the Limitation of Actions Act.

8. The Defendants also filed statements of their witnesses David Sikwekwe Karani (DW2) and John Ouma Wachieng(DW3) both dated 26th January 2024.
9. In his statement David Sikwekwe Karani (DW2) states that he knows the Defendants and has been their neighbour and they share a boundary. That the Plaintiff is his neighbour and he has never seen him (Plaintiff) on the suit land. That the suit land belonged to the Defendants late father Cornel Mbembe Kumero who acquired it in 1988 after purchasing it from the late Christopher Karani Imailuk and his family is the one which has been ploughing it since then and nobody has interrupted their occupation thereof. That when Cornel Mbembe Kumero died on 6th September 2007, his widow Elizabeth Akoth Mbembe and the Defendant filed for succession in Busia High Court Succession Cause No 14 of 2009 and nobody objected to the transfer of the suit land into the names of the Defendants. That he does not know the Plaintiff who is not a resident of the area and neither has he lived on the suit land.
10. On his part, John Ouma Waochieng(DW3) states that he has been a family friend of the Defendants and their late father Cornel Mbembe Kumero since 1988 and that they have been using the suit land. He added that the deceased had never sold the suit land to anyone and when the deceased died on 6th September 2007, his widow Elizabeth Mbembe Kumero and the Defendants filed Busia High Court Succession Cause No 14 of 2009 whereupon the suit land was transferred in the Defendants names. He urged the Court to dismiss the Plaintiff's suit.
11. The Defendants filed their lists of documents dated 26th February 2024 to which the following documents are annexed:
 1. Copy of title deed for the land parcel No South Teso/Amukura/1913.
 2. Copy of official search for the land parcel No South Teso/Amukura/1913.
 3. Certificate of Grant issued on 1st March 2010 (not 5th May 2009) as indicate on the list) in Busia High Court Succession Cause No 14 of 2009.
12. The hearing commenced and ended on 24th March 2025 when all the parties testified and called their respective witnesses. They adopted their affidavit and statements as their evidence and produced as their documentary evidence the list of documents filed herein. The 1st, 3rd, 4th and 5th Defendants did not testify having authorized the 2nd Defendant to do so on their behalf.
13. Submissions were thereafter filed both by the Plaintiff who is acting in person and by Mr. Nandwa instructed by the firm of Nandwa & Company Advocates for the Defendants.
14. I have considered the evidence by all the parties and their witnesses including the documentary evidence filed and the submissions by the Plaintiff and Mr. Nandwa counsel for the Defendant.



15. This is claim hinged on adverse possession. Section 38(1) of the *Limitation of Actions Act* empowers the Plaintiff to approach this Court for an order that he has acquired by way of adverse possession a portion of the suit land measuring one (1) acre. It reads:

“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.”

16. The doctrine of adverse possession has been the subject of much litigation in this country. In the case of *Kasuvev Mwaani Investments Ltd & Others* 2004 KECA 161 KLR (CA Civil Appeal No 35 of 2002 NBI) the Court described it as follows:

“Section 38 (1) of the *Limitation of actions Act* chapter 22 Laws of Kenya authorises a person who claims to have been entitled to land by adverse possession to apply to the High Court for an order that he be registered as proprietor in place of the registered proprietor. 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 – *Wanje v Saikwa* (NO 2) 1984 KLR 284. A title by adverse possession can be acquired under *Limitation of Actions Act* for a part of the land and the mere change of ownership of the land which is occupied by another under adverse possession does not interrupt such person’s adverse possession – (see *Githu v Ndeete* 1984 KLR 776).”

17. The Supreme Court of India in the case of *Karnataka Board Of Wakf v Government Of India & Others* 2004 10 SCC 779, the essentials of adverse possession were discussed as follows:

“In the eyes of the law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non use of the property by the owner even for a long time won’t affect his title. But the position will be attended when another person takes possession of the property and asserts a right over it. 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. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible exclusive, hostile and continued over the statutory period.”

18. I am also guided by the case of *Kimani Ruchinev Swift Rutherford & Company Ltd* 1980 KLR 10 [1976-80 I KLR 1500] wherein at paragraph 10, KNELLER J said:

“10: 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 evasion). So the Plaintiffs must show that the company had knowledge (or the means of knowing, actual or constructive) of possession or occupation. The possession must be continuous. It must not be broken for any temporary purposes or by any endeavours to interrupt it or by any recurrent consideration; see *Wanyoike*



Gathure v Beverly 1965 E.A. 514, 518, 519 per Miles J.” KNELLER J went on to add in paragraphs 20 and 35 that:

- 20: No right of action to recover land occurs unless the lands are in the possession of some person in whose favour the period of limitation can run. The possession is after all adverse possession, so the statute does not begin to operate unless and until the true owner is not in possession of his land. Dispossession and discontinuance must go together ...”
- 35: Possession can take different forms such as fencing or cultivation. It depends on the physical characteristics of the land. Cutting timber and grass from time to time is not sufficient to prove sole possession of the land because these are acts which are not inconsistent with the enjoyment of the land by the person seemingly entitled to it. The resource or status of the claimants is not a factor in the correct approach to deciding what Constitutes a sufficient degree of sole possession and user. The standard is an objective one and related to the nature and situation of the land. Certainly, where the cultivation of the land is the evidence put forward to support the claim by adverse possession then it should be definite as to area and to time, see generally West Bank Estates Ltdv Arthur1966 3 W.L.R 750.”

The Plaintiff’s claim is premised on pleadings that he went into occupation and possession of one (1) acre out of the suit land following a sale agreement on 21st June 2004 with Cornel Mbembe Kumero and after paying the full purchase price of Kshs.35,000. The Defendants, through the replying affidavit of the 2nd Defendant, have deposed in paragraph 4 thereof that the said sale agreement is a forgery. The said agreement was drawn by Albert Etyang (PW2) the area assistant chief who testified that the Plaintiff and the deceased Cornel Mbembe Kumero together with his wife visited his office and requested him to draft the sale agreement. He added that the Plaintiff has been in occupation of the one (1) acre since then. Although the Defendant claims that the sale agreement is a forgery, no reason was advanced by the Defendant as to suggest why the said witness who is the parties Assistant Chief would elect to give false testimony against the Defendants. And I did not notice anything in his demeanor when he testified before me on 24th March 2025 to demonstrate that he was not an honest witness. I am satisfied that both him and the Plaintiff spoke the truth with regard to the execution of the sale agreement and which was witnessed by Elizabeth Akoth Mbembe the deceased’s wife.

19. I also have no doubt that the Plaintiff took possession of the one (1) acre in 2004 following the execution of the sale agreement and after the Plaintiff had paid the full purchase price. A purchaser in possession of land after paying the full purchase price in a party in whose favour the period of limitation can run Public Trusteev Wanduru1984 KLR 319 and also Peter Michukiv Samuel Michuki2014 eKLR. Further, when the 2nd Defendant was cross-examined by the Plaintiff, he said:

“The land is our inheritance. The whole land is 5 acres so each of us is entitled to 1 one acre. Currently, we only occupy 4 acres out of 5 acres.”

That is a clear admission that the Defendants have been dispossessed by the Plaintiff of one (1) acre out of the suit land which, as per the Register, measures 5.56 acres. Adverse possession, it must be



remembered, is all about dispossessing the true owner of the land being claimed – Sisto Wambugu v Kamau Njuguna 1983 KLR 172. It is also now well settled that a claim by adverse possession can be made for only a portion of the land as is the position in this case – Githu v Ndeete 1984 KLR 776.

20. In his submissions, counsel for the Defendants has cast doubt on the sale agreement drawn by the Assistant Chief on 21st June 2004 on the basis that it contravenes Section 34 of the *Advocates Act*. The Plaintiff is not seeking to enforce that sale agreement. His claim is based on adverse possession. That possession and occupation having been affirmed by this Court, the Plaintiff's rights to the one (1) acre of the suit land are equitable rights which are binding on the suit land which is subject to those rights – Mwangi & another v Mwangi 1986 KLR 328. The Plaintiff having gone into occupation of the said one (1) acre in June 2004, it follows that at the expiration of the 12 years in June 2016, the Defendants as the registered proprietors of the suit land became mere trustees holding the one (1) acre in trust for the Plaintiff.
21. The Defendants' counsel has also cast doubt on whether the Plaintiff in fact paid the full purchase price. He has submitted on that issue as follows at page 3 of his submissions:

“The requirement to be noted here my Lord is that when adverse possession depends on a sale agreement, then completion of payments is a must and taking immediate possession for a period in excess of 12 years. My Lord, no evidence of completion of payment was adduced in Court. It is not clear whether payment was made in cash or bank transfer and no acknowledgement was filed in Court.”

The Defendants were not parties to the sale agreement between the Plaintiff and their late father Cornel Membe Kumero. In fact they have trashed the sale agreement as being “forged”. They cannot therefore purport to rebut the Plaintiff's evidence as corroborated by the Assistant Chief (PW2) that indeed their father received the full purchase price. Besides, the sale agreement which was drafted in Swahili language states in paragraph 2 thus:

“Nimepokea Pesa Zote Shilingi Eflu Thelathini Na Tano (35,000) Sina Deni Na Mwenye Shamba.”

Translated, it means:

“I Have Paid All The Money Thirty-five Thousand (35,000) I Have No Debt With The Owner Of The Land”.

This was clearly an admission by the late Cornel Mbembe Kumero that he had received the full purchase price for (1) one acre and that there was not debt outstanding from the Plaintiff whom he was already referring to as the “owner” of the land. I am of course aware that Section 23 (1) of the *Environment and Land Court Act* provides that:

“The language of the Court shall be English.”

Ideally, that agreement should have been translated into English language. I am however also aware that Article 7(1) and (2) of *the Constitution* provides that:

“The national language of the Republic is Kiswahili”

“The official language of the Republic are Kiswahili and English”

I have previously taken the route that a Court should, in the interest of justice, accept as evidence any document which is not in English language so long as it can understand the



same – Simon Khaembe Mwanja v Jamin Wasike Khaembe & ANOR 2020 eKLR and also Grace Nanyama Wanyama V Patrick Wamukota Bungoma ELC Case No 14 of 2012 [2022 KEELC 14769 KLR]. Many of the litigants in our Courts are lay persons including those whom they approach to draft documents on their behalf. It would be an act of monstrous injustice to shut out crucial evidence simply because the same is not in the language of the Court especially in a situation such as this where the Court, and the parties themselves, understands the language in which such documentary evidence has been crafted. The sale agreement speaks for itself and it clearly states that the Plaintiff fully paid the purchase price leaving no doubt. I do not see any other better evidence which the Plaintiff could have availed other than the confirmation by the deceased that he had been fully paid the purchase price.

22. The Defendant also deposed in paragraph 9 of his replying affidavit as follows:

SUBPARA 9:

That I have been advised by our advocates on record which advise I verily believe to be true that the applicant claim if any is time barred under the Limitation of Actions Act Chapter 22 Laws of Kenya.”

A claim to land by way of adverse possession cannot be time barred. If anything, if the Defendant had any counter-claim, then it would have been time barred. Not the Plaintiff’s claim.

23. The Defendant also averred in paragraph 10 of his replying affidavit that the Originating Summons is “fatally defective” for failure to comply with mandatory provisions of the law. No such provisions were cited. And for my part, I do not see any defect in the Originating Summons.

24. Having considered the evidence herein, I am satisfied that the Plaintiff has proved his case as required in law. There shall be judgment in the following terms:

1. The Plaintiff has acquired a portion of land measuring one (1) acre out of the land parcel No South Teso/Amukura/1913.
2. The Defendants’ interest in the said one (1) acre have been extinguished by operation of the law.
3. The Defendants shall within 30 days of this judgment surrender to the Land Registrar Busia the original title to the land parcel No South Teso/Amukura/1913 and execute all the relevant documents to facilitate the transfer of a portion measuring one (1) acre out of the land parcel No South Teso/Amukura/1913 in the name of the Plaintiff.
4. In default of (3) above, the Land Registrar Busia shall cancel the register and the Deputy Registrar of this Court shall execute all the relevant documents to facilitate the registration of a portion measuring one (1) acre out of the land parcel No South Teso/Amukura/1913.
5. The Land Registrar Busia and County Surveyor will ensure that as much as possible, the one (1) acre is within the portion occupied by the Plaintiff.
6. Costs to the Plaintiff.

BOAZ N. OLAO.

JUDGE

18TH NOVEMBER 2025

Judgment dated, signed and delivered by way of electronic mail to counsel for the Defendants and in open Court to the Plaintiff who is present personally on this 18th day of November 2025.



Right of Appeal.

BOAZ N. OLAO

JUDGE

18TH NOVEMBER 2025

