



REPUBLIC OF KENYA



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**Okik v Ochieng (Sued on her own behalf and on behalf of the Estate of Paul Ochieng Mundi alias Obimbo Mundi - Deceased) & another (Environmental and Land Originating Summons 94 of 2018) [2025] KEELC 8342 (KLR) (27 November 2025) (Judgment)**

Neutral citation: [2025] KEELC 8342 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MIGORI**  
**ENVIROMENTAL AND LAND ORIGINATING SUMMONS 94 OF 2018**

**MN KULLOW, J**  
**NOVEMBER 27, 2025**

**IN THE MATTER OF: THE LIMITATION OF ACTIONS ACT, CHAPTER 22 LAWS OF KENYA AND IN THE MATTER OF: A CLAIM FOR ADVERSE POSSESSION UNDER SECTION 38 OF THE LIMITATION OF ACTIONS ACT AND IN THE MATTER OF: LR NO. KANYAMKAGO/KAMGUNDHO/1398**

**BETWEEN**

**ALICE MKANJALA OKIK ..... PLAINTIFF**

**AND**

**MARY ATIENO OCHIENG (SUED ON HER OWN BEHALF AND ON BEHALF OF THE ESTATE OF PAUL OCHIENG MUNDI ALIAS OBIMBO MUNDI - DECEASED) ..... 1<sup>ST</sup> DEFENDANT**

**IDAH AKELO OKENGE ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

### **Introduction**

1. The Plaintiff, Alice Mkanjala Okik, commenced these proceedings by way of an Originating Summons dated 5<sup>th</sup> April 2018 brought pursuant to Section 38 of the *Limitation of Actions Act*, seeking the following orders:
  - a. That this Honourable Court be pleased to declare that the Plaintiff, and any other person claiming under her, has acquired by way of adverse possession title to LR No. Kanyamkago/Kamgundho/1398;
  - b. That this Honourable Court be pleased to order that the suit property be transferred and registered in the Plaintiff's name;



- c. That the Defendants herein be ordered and/or directed to execute and/or sign all necessary instruments to facilitate the transfer and registration of the suit property into the Plaintiff's name, and in default, the Deputy Registrar be authorized to execute such instruments to effect the transfer;
  - d. That the Defendants do bear the costs of this suit; and
  - e. That this Honourable Court do make any such further orders as may be deemed expedient in the circumstances.
2. The Originating Summons was supported by the sworn affidavit of the Plaintiff, in which she deposed that by a written agreement dated 17<sup>th</sup> December 1997, the husband of the 1<sup>st</sup> Defendant, the late Paul Ochieng Mundi alias Obimbo Mundi, sold to her a portion of land then known as LR No. Kanyamkago/Kamgundho/159, measuring approximately 0.8 hectares, for a consideration of Kshs.80,000, which she paid in full.
  3. She stated that the 1<sup>st</sup> Defendant witnessed the agreement and affixed her fingerprint thereon, and that although the deceased seller was unable to effect transfer immediately due to pending succession and name-regularization processes, the 1<sup>st</sup> Defendant undertook after his death to complete succession and transfer the land to her.
  4. The Plaintiff further averred that following the sale she took possession of the land, constructed a house upon it, planted trees, and cultivated crops continuously, openly, and without interruption since 1997. She contended that in June 2017, she discovered that the 1<sup>st</sup> Defendant had unlawfully subdivided the original parcel and caused the suit portion now known as LR No. Kanyamkago/Kamgundho/1398 to be transferred to the 2<sup>nd</sup> Defendant without her consent. She accused the 1<sup>st</sup> Defendant of acting fraudulently despite being aware of her prior interest and assurances of completing the transfer.
  5. The Plaintiff also deposed that her occupation constitutes an overriding interest protected by Section 28 of the *Land Registration Act*, and that her long, open, and uninterrupted possession since 1997 has been adverse to the interests of the Defendants. She stated that the Defendants had not taken any legal steps to interrupt her occupation, and described the 2<sup>nd</sup> Defendant's entry in 2017 as mere trespass. She asserted that she depends on the land for subsistence and urged the Court to grant the reliefs sought.

## Response

6. In response to the Originating Summons, the 1<sup>st</sup> Defendant, Mary Atieno Ochieng, filed a Replying Affidavit sworn on 5<sup>th</sup> March 2019, in which she deposed that she is the widow of the late Paul Ochieng Mundi alias Obimbo Mundi, who passed away on 8<sup>th</sup> February 2012. She stated that the deceased co-owned Land Parcel No. Kanyamkago/Kamgundho/159 jointly with Mundi Odede and Dede Mundi, each holding a one-third share. She averred that, to the best of her knowledge, the Plaintiff only worked on the land as a lessee, not as a purchaser, and further contended that the suit is premature, defective and ought to be dismissed with costs. She reiterated that, based on advice from her advocate, the Originating Summons is incurably defective and should be struck out.
7. The 2<sup>nd</sup> Defendant, Idah Akelo Okenge, also filed a Replying Affidavit sworn on the same date, in which she stated that on 31<sup>st</sup> May 2017, she purchased a portion of Land Parcel No. Kanyamkago/Kamgundho/1221 measuring 0.80 hectares from the 1<sup>st</sup> Defendant for Kshs. 600,000, and produced the sale agreement in support.
8. She averred that Parcel No. 1221, measuring 1.65 hectares, was subsequently subdivided into LR Nos. 1397 and 1398, measuring 0.81 Ha and 0.80 Ha respectively, and that the resulting parcels were



registered in the names of the 1<sup>st</sup> Defendant and herself. She further deposed that upon acquisition of the title deed for LR No. 1398, she took vacant possession, prepared the land and cultivated maize, beans, bananas, sweet potatoes and sugarcane, annexing photographs of her crops as evidence.

9. She asserted that a portion was reserved for construction of a house in the near future. The 2<sup>nd</sup> Defendant denied that the Plaintiff was ever in possession of the suit property, claimed that the land was vacant at the time of purchase, and described the Plaintiff's alleged agreement of 17<sup>th</sup> December 1997 as vague and legally untenable. She concluded that she lawfully owns LR No. 1398 and swore her affidavit in opposition to the Plaintiff's claim.

#### Hearing

10. At the hearing, the Plaintiff (PW1) testified that she purchased the land in 1997 from the late Paul Ochieng Mundi, took possession, built a mud house, planted trees, and cultivated crops. She adopted her filed documents as exhibits PExh 1–11. In cross-examination, she admitted that the sale agreement did not bear a parcel number, that the 1<sup>st</sup> Defendant did not own the land at the time of the alleged sale, that she had no letters of administration, and that LR No. 1398 was registered in the 2<sup>nd</sup> Defendant's name in June 2017. PW2, a retired senior chief, testified that he prepared the sale agreement and witnessed the transaction, though he conceded that he omitted the parcel number by oversight. PW3 testified that the Plaintiff had built a mud house on the land and that her son lived there, although he confirmed that the 2<sup>nd</sup> Defendant had planted sugarcane on the land. After PW3's evidence, the Plaintiff closed her case.
11. The defence hearing proceeded on 26<sup>th</sup> July 2023, where the 1<sup>st</sup> Defendant (DW1) adopted her witness statement and testified that the Plaintiff occupied the land as a lessee for 20 years and that her husband never sold the land to the Plaintiff. She denied knowledge of any house built by the Plaintiff and stated that the Plaintiff stopped working on the land in 2018.
12. DW2, testifying under a Special Power of Attorney from the 2<sup>nd</sup> Defendant, adopted her witness statement and produced documents showing the 2<sup>nd</sup> Defendant's purchase of LR No. 1398 in 2017, subdivision documents, title deeds, and photographs of crops she had planted. He stated that the land was vacant at the time of purchase and that there were no structures belonging to the Plaintiff. Both witnesses were cross-examined, after which the defence case was closed. The Court then directed parties to file submissions, which were duly filed, and reserved judgment.

#### Submissions and Issues for Determination

13. The parties filed their respective written submissions, which this Court has carefully considered together with the pleadings, affidavits, documentary evidence and the oral testimony adduced by all witnesses. Having evaluated the entire record, the Court is of the view that the dispute turns on two principal issues for determination:
  - a. Whether the Plaintiff has proved, on a balance of probabilities, that she has acquired title to LR No. Kanyamkago/Kamgundho/1398 by way of adverse possession; and
  - b. Whether the Plaintiff is entitled to the reliefs sought in the Originating Summons dated 5<sup>th</sup> April 2018.



## Analysis and Determination

### Issue 1: Whether the Plaintiff has proved, on a balance of probabilities, that she has acquired title to LR No. Kanyamkago/Kamgundho/1398 by way of adverse possession;

14. Section 38(1) of the Limitation of Actions Act empowers a claimant to apply for registration as proprietor upon establishing acquisition of land by adverse possession. In *Kasuve v Mwaani Investments Ltd* [2004] 1 KLR 184, the Court of Appeal held that a claimant must prove exclusive, open and uninterrupted occupation for at least twelve years.
15. The combined effect of Sections 6, 13 and 17 of the Act is that the registered owner's title is extinguished once the statutory period lapses, as affirmed in *Benjamin Kamau v Gladys Njeri* (CA 2136 of 1996). The 2010 land laws also preserve adverse possession: Section 28(h) of the Land Registration Act recognises prescriptive rights as overriding interests, while Section 7(d) of the Land Act recognises acquisition of title through prescription. Further, possession must be without force, without secrecy and without permission *nec vi, nec clam, nec precario* as stated in *Kimani Ruchine & Another v Swift Rutherford* [1980] KLR 10, and must be adequate in continuity, publicity and extent as described in *Mtana Lewa v Kahindi Ngala Mwangandi* [2015] eKLR.
16. Applying these principles to the present case, the Plaintiff testified that she purchased a defined portion of land from the late Paul Ochieng Mundi on 17<sup>th</sup> December 1997, immediately took possession, constructed a mud house, planted trees and cultivated crops continuously from that date. PW2, the retired senior chief who prepared and witnessed the sale agreement, confirmed that although the written document omitted the parcel number, the land was physically identified, known to both parties and pointed out at the time of the transaction.
17. PW3 also confirmed that the Plaintiff's house existed on the land and that her family occupied it. The Court notes that while the omission of the parcel number is an irregularity, it is not fatal, because throughout the proceedings all parties Plaintiff, PW2, PW3, the 1<sup>st</sup> Defendant and the 2<sup>nd</sup> Defendant consistently referred to one and the same identifiable parcel, later renumbered as LR No. 1398 through subdivision. No evidence was led suggesting confusion, competing claims or reference to any other parcel.
18. The Defendants alleged that the Plaintiff occupied the land as a lessee. However, no lease agreement was ever produced, no terms of such tenancy were proved, and no evidence of rent or duration was tendered. A party alleging permissive occupation bears the legal burden of proof. The absence of any such evidence leads this Court to reject the allegation of a lease. To the contrary, the evidence shows that the Plaintiff entered the land pursuant to a sale transaction.
19. Her right therefore emanated from the 1997 sale, and when transfer was not effected by the seller despite her long occupation, and no lease existed to show permissive possession, her continued occupation ripened into adverse possession. By the time the land was eventually subdivided and renumbered in 2017, the Plaintiff had already occupied it openly, peacefully and exclusively for over twenty years, thereby extinguishing the title of any subsequent transferee by operation of Sections 7, 13 and 17 of the Limitation of Actions Act.
20. For these reasons, the Court is satisfied that the Plaintiff has proved, on a balance of probabilities, that she has been in continuous, open, exclusive and adverse possession of the suit property for a period exceeding twelve years. Accordingly, the Plaintiff acquired LR No. Kanyamkago/Kamgundho/1398 by way of adverse possession.



## **Issue 2: Whether the Plaintiff is entitled to the reliefs sought in the Originating Summons**

21. Having found under Issue 1 that the Plaintiff acquired title to LR No. Kanyamkago/Kamgundho/1398 by way of adverse possession, the next question is whether the reliefs sought should issue. Under Section 38(1) of the *Limitation of Actions Act*, once a claimant establishes acquisition of land by adverse possession, the Court is obligated to order that such claimant be registered as proprietor in place of the registered owner. In addition, Section 28(h) of the *Land Registration Act* provides that rights acquired by prescription are overriding interests, binding on all subsequent proprietors.
22. In this case, the Plaintiff has demonstrated long, open, exclusive, uninterrupted and adverse possession exceeding twelve years. Consequently, the title of any registered owner, including the 2nd Defendant, was extinguished by operation of law before the suit was filed. The Plaintiff therefore has a perfected statutory right to be registered as proprietor. The auxiliary orders she seeks compelling execution of transfer documents and empowering the Deputy Registrar to execute in default are standard mechanisms for giving effect to a successful claim of adverse possession. As costs follow the event, the Defendants must bear them.
23. The Court therefore finds that the Plaintiff is entitled to all the substantive and consequential reliefs sought in her Originating Summons.

### **Final Orders**

24. Having considered the pleadings, evidence and submissions, and having found that the Plaintiff has acquired the suit property by way of adverse possession, the Court makes the following final orders, mirroring the reliefs sought in the Originating Summons dated 5<sup>th</sup> April 2018:
  - a. A declaration is hereby issued that the Plaintiff, Alice Mkanjala Okik, and any other person claiming under her, has acquired by way of adverse possession, title to LR No. Kanyamkago/Kamgundho/1398.
  - b. An order is hereby issued that LR No. Kanyamkago/Kamgundho/1398 be transferred and registered in the name of the Plaintiff.
  - c. The Defendants are hereby ordered and/or directed to execute and/or sign all necessary instruments to facilitate the transfer and registration of LR No. Kanyamkago/Kamgundho/1398 into the Plaintiff's name within SIXTY (60) DAYS from the date of this Judgment.

In default thereof, the Deputy Registrar of this Court is authorised to execute all necessary instruments on behalf of the Defendants to effect the transfer.
  - d. The Defendants shall bear the costs of this suit.
  - e. The Court grants any other consequential orders necessary to give effect to the above orders.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 27<sup>TH</sup> DAY OF NOVEMBER, 2025.**

**MOHAMMED N. KULLOW**

**JUDGE**

Judgment delivered in the presence of: -



for the Plaintiff

for the 1<sup>st</sup> Defendants

for the 2<sup>nd</sup> Defendants

Philomena W. Court Assistant

