



REPUBLIC OF KENYA



**Cherutich v Kiprop & another (Environmental and Land Originating Summons
944 of 2012) [2025] KEELC 8496 (KLR) (3 December 2025) (Judgment)**

Neutral citation: [2025] KEELC 8496 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS 944 OF 2012
EM WASHE, J
DECEMBER 3, 2025**

BETWEEN

LEONARD KOMEN CHERUTICH APPLICANT

AND

WILLIAM KIPKEMBOI KIPROP 1ST RESPONDENT

LUKA KIPSANG CHEBURET 2ND RESPONDENT

JUDGMENT

1. The Applicant herein did file an Originating Summons dated 31.03.2011 (hereinafter referred to as “the present OS”) seeking the following Orders against the 1st and 2nd Respondents; -
 - a. That the Plaintiff/Applicant be declared to have acquired ownership of 5 Acres on Land Parcel No. Meibeki/Meibeki block 8 (Mawe)/26 having acquired ownership and/or title through adverse possession, continuous, uninterrupted occupation for a period exceeding 12 years.
 - b. That the said portion of land to be surveyed and a portion comprising thereof be registered in the name of the Applicant.
 - c. That costs of this Originating Summons be provided for.
2. The facts in support of the above prayers were contained in the Supporting Affidavit sworn on 31.03.2011 by the Applicant and can be summarised as follows; -
 - i. The Applicant herein entered into an Agreement For Sale dated 20.09.1995 with the 2nd Respondent for a portion of 5 Acres within the property known as LR.NO.Meibeki/Meibeki block 8 (Mawe)/26 (hereinafter referred to as “the suit property”).



- ii. However, unknown to the Applicant herein, the entire property known as LR.NO.Meibeki/Meibeki block 8 (Mawe)/26 was transferred to the 1st Respondent on the 13.09.2010 including the suit property.
 - iii. The Applicant therefore prays that the Court do hereby extinguish the ownership of the 1st Respondent over the suit property by way of adverse possession.
 - iv. Thereafter, the Applicant seeks for a sub-division of the property known as LR.NO.Meibeki/Meibeki block 8 (Mawe)/26 and the suit property measuring 5 acres be transferred to his name thereof.
 - v. The Applicant pleaded that he had been in occupation of the suit property from the year 1995 through on open and notorious use for over 12 years as prescribed by law.
3. The present OS was duly served on the 1st and 2nd Respondents.
 4. The 1st Respondent did file a Replying Affidavit dated 28.04.2011 in opposition of the present OS.
 5. The 1st Respondent pleaded the following facts in challenging the present OS; -
 - i. The 1st Respondent pleaded that he is the registered owner of the entire property known as LR.NO.Meibeki/Meibeki block 8 (Mawe)/26.
 - ii. The 1st Respondent confirmed that he purchased the entire property known as LR.NO.Meibeki/Meibeki block 8 (Mawe)/26 from the 2nd Defendant on the 29.01.2010, obtained the Consent to Transfer thereafter and the same was registered in his name on the 15.07.2010.
 - iii. The 1st Respondent further pleaded that the Applicant herein was not in occupation of any portion of land within the property known as LR.NO.Meibeki/Meibeki block 8(Mawe)/26 as alleged or at all.
 - iv. The 1st Respondent did deny any knowledge of any Agreement For Sale between the Applicant and the 2nd Defendant herein.
 - v. The 1st Respondent stated that if there was any occupation by the Applicant herein, then the same was interrupted through the Reporting done at Moiben Police Station through OB/10/08/10/2010 and OB 18/11/12/2010 based on the actions of the Applicant to cut trees, destroy fences and other acts of trespass.
 6. The 2nd Respondent did file a Replying Affidavit dated 28.09.2011 in reply to the Chamber Summons dated 31.03.2011 but did not file any Replying Affidavit to the present OS.

Applicant's Testimony & Documentray Evidence

7. The Applicant was the first witness called to the witness box and he was marked as PW 1.
8. The Applicant did introduce himself as a resident of Moiben within Uasin Gishu County.
9. The Applicant did inform the Court that he would rely on the Supporting Affidavit sworn on 31.03.2011 and the witness statement dated 12.09.2024 as his evidence in chief.
10. In addition to the above, the Applicant did produce the following documents in support of his evidence in chief;-

PW 1 Exhibit 1- A copy of the Applicant's ID No. XXXXXXX.



PW 1 Exhibit 2- A Copy of an Application for consent to the Land Control Board made by the 2nd Defendant in favour of the Applicant.

PW 1 Exhibit 3- A Copy of the Green Card of the property known as Meibeki/Meibeki block 8 (Mawe)/26 in the name of the 1st Respondent dated 22.07.2014.

11. According to the Applicant, the 2nd Defendant sold him a portion of 5 acres within the property known as Meibeki/Meibeki block 8 (Mawe)/26 and gave him permission to enter and occupy the same.
12. The Applicant informed the Court that he put up two semi-permanent homes and fenced the suit property with a barbed wire.
13. However, in 2011, the Applicant relocated from the suit property and left one Tom Cherrogon to take care of the same.
14. The Care Taker was subsequently removed from the suit property by the 1st Respondent's father who was claiming the entire Meibeki/Meibeki block 8 (Mawe)/26.
15. The Applicant then reported the dispute to the Area Chief but there was no resolution hence the present OS.
16. The Applicant was of the view that the Court should grant the prayers sought in the present OS.
17. On cross-examination, the Applicant stated that he purchased the suit property on the 20.09.1995 from the 2nd Respondent.
18. The Applicant informed the Court that he initially paid a sum of Kenya Shilling One Hundred and Seventy-Two Thousand (KShs.172,000/-) and was left with a balance of Kenya Shillings Three Thousand (KShs.3,000/-) for survey.
19. On being referred to PW 1 Exhibit 3, the Applicant indicated that the first registered owner of the property known as Meibeki/Meibeki block 8 (Mawe)/26 was the Government of Kenya.
20. On Entry No.2 of the Green Card and/or Register of the property known as Meibeki/Meibeki block 8 (Mawe)/26, there is a registration of the 2nd Respondent.
21. On Entry No.4 of the Green Card and/or Register of the property known as Meibeki/Meibeki block 8 (Mawe)/26, there is a Transfer recorded on 13.09.2010 in favour the 1st Respondent and a Title Deed issued thereof.
22. The Applicant informed the Court that he instituted the present OS on the 31.03.2011.
23. Consequently, the period between 2002 and 2011 was only 11 years and the required 12 years had not lapsed.
24. The Applicant insisted that his occupation on the suit property was for a period of more than 12 years.
25. However, the Applicant stated that he had not been able to use the suit property since 2011 there was a case and the police would chase them away.
26. On being referred to PW 1 Exhibit 3, the Applicant admitted that the suit property was registered in the name of the 2nd Respondent.
27. The Applicant informed the Court that he had another residence in Baringo.



28. On being referred to PW 1 Exhibit 2, the Applicant stated that the Application for Consent to the Land Control Board produced had not been executed by the parties herein.
29. The Applicant confirmed that he had no relationship with Tom Cherogon although he recognised him as his care taker.
30. The Applicant averred that the said Tom Cherogon had since relocated from the suit property and settled in Uasin Gishu.
31. The Applicant averred that the care taker was evicted by the 1st Respondent's father and he reported the issue to the Area Chief, but the same was never resolved.
32. On re-examination, the Applicant reiterated that he took possession of the suit property in the year 1995 when the entire property known as Meibeki/Meibeki block 8 (Mawe)/26 belonged to the 2nd Respondent.
33. The Applicant stated that the Land Control Board did not approve any transfer because the District Officer did not even hear them.
34. The Applicant's second witness was Tom Cherogon Baswony who was marked as PW 2.
35. PW 2 introduced himself as a resident of Uasin Gishu.
36. PW 2 confirmed to the Court that he had prepared a witness statement dated 08.10.2013 to which he adopted the same as his evidence in chief.
37. PW 2 informed the Court that he came to know the Applicant after he had purchased the suit property.
38. According to the PW 2, the Applicant did fence the suit property upon purchase of the same and developed two semi-permanent homes.
39. However, in 2009, the Applicant relocated from the suit property and left PW 2 as the care taker of the same.
40. In the same year 2011, the 1st Respondent's father evicted the PW 2 from the suit property.
41. PW 2 stated that the Applicant's structures were still on the suit property.
42. On cross-examination, PW 2 insisted that he was the care taker between the year 1995 to 2011.
43. This is because the Applicant was residing in Baringo.
44. However, in the year 2011, the 1st Respondent's father evicted PW 2 who was on the ground from the suit property.
45. Consequently, an ownership dispute arose which resulted to the present OS.
46. PW 2 did inform the Court that he owns a neighbouring parcel of land which is separated by a road with the suit property.
47. PW 2 confirmed that he was not a witness to the Agreement For Sale between the Applicant and the 2nd Respondent.
48. PW 2 stated that it was the Applicant who had informed him that he had purchased the suit property.
49. PW 2 did clarify that the Applicant was not on the suit property in the year 2011.
50. However, the structures that had been erected by the Applicant were still on the ground up to now.



51. On re-examination, PW 2 confirmed that he had been evicted in the year 2011.
52. PW 2 stated that the structures on the suit property had been erected by the Applicant and were still on the ground.
53. At the end of this re-examination, PW 2 was discharged from the witness box.
54. The Applicant then sought for an adjournment to produce two documents which had been marked namely the Agreement For Sale dated 20.09.1995 which had been objected due to the fact that it was a copy with many alterations and the Letter from the Area Chief dated 28.01.2011.
55. On the 24.06.2025, the Applicant failed to produce the original Agreement dated 20.09.1995 or call the Area Chief to produce the letter dated 28.01.2011.
56. Consequently, the Applicant's case was closed without admission of the two documents mentioned hereinabove.

Respondents Testimonies & Documentary Evidence

57. The Respondents case began with the testimony of the 1st Respondent who was marked as DW 1.
58. The 1st Respondent did introduce himself as a resident of Meibeki within Uasin Gishu County.
59. The 1st Respondent began his testimony by stating that he did not know the Applicant.
60. The 1st Respondent informed the Court that he had prepared a Replying Affidavit dated 28.04.2011 of which he adopted as his evidence in chief.
61. In support of the above evidence, the 1st Respondent produced the following documents; -
 - DW 1 Exhibit 1- A Copy of the Title Deed of Meibeki/Meibeki block 8 (Mawe)/26 in his name.
 - DW 1 Exhibit 2- Copy of his National Identification Card.
 - DW 1 Exhibit 3- Copy of the Receipt issued on 01.07.2010 for an official search of the Meibeki/Meibeki block 8 (Mawe)/26.
 - DW 1 Exhibit 4- Invoice and Receipt of Land Rates dated 06.07.2010 issued by the County to the 2nd Respondent.
 - DW 1 Exhibit 5- Copy of the Transfer Form dated 15.01.2010 from the 2nd Defendant to the 1st Defendant.
 - DW 1 Exhibit 6- Copy of an Official search dated 01.07.2010.
 - DW 1 Exhibit 7- Copy of an Official Search dated 02.07.2010.
 - DW 1 Exhibit 8- Copy of an Official Search dated 01.03.2010.
 - DW 1 Exhibit 9- Copy of an Application for Consent to transfer made before the Land Control Board by the 2nd Respondent to the 1st Respondent.
 - DW 1 Exhibit 10- Copy of the Letter of consent dated 08.07.2010 issued by the Land Control Board in favour of the 1st Respondent.
 - DW 1 Exhibit 11- Copy of a payment receipt dated 23.02.2010 from the Department of Lands for an official Search to be undertaken.



DW 1 Exhibit 12- Copy of an Agreement For Sale dated 13.05.2009 between the 2nd Respondent and the 1st Respondent.

DW 1 Exhibit 13- Copy of an Agreement For Sale dated 29.01.2010 between the 2nd Respondent and the 1st Respondent.

62. Upon production of the documents above, the 1st Respondent sought the Court to dismiss the present OS.
63. On cross-examination, the 1st Respondent confirmed that he purchased the property known as Meibeki/Meibeki block 8 (Mawe)/26 between the year 2009 and 2010.
64. The 1st Respondent did inform the Court that the suit property was about 9.4 Acres in total.
65. The 1st Respondent stated that before he purchased the property known as Meibeki/Meibeki block 8 (Mawe)/26, he duly inspected the same although he could not remember the actual month.
66. The 1st Respondent disclosed that he found the 2nd Respondent's houses on the suit property and not the Applicant's.
67. On being referred to DW 1 Exhibit 13, the 1st Respondent stated that the portion which had houses was about 5 acres and had been fenced off.
68. However, there were no persons that were in use of both the house and the land which had been fenced off.
69. The 1st Respondent confirmed that he had taken possession in the year 2009 and there was no person on the portion of 5 acres that had been fenced.
70. The 1st Respondent stated that by the time he took possession, the Applicant had already been evicted and he was not in occupation of the suit property being claimed.
71. The 1st Respondent averred that all the structures on the property known as Meibeki/Meibeki block 8 (Mawe)/26 belonged to the 2nd Respondent herein.
72. The 1st Respondent concluded his cross-examination by indicating that he acquired his title deed on the 13.09.2010 and there has been no one on the ground since then.
73. On re-examination, the 1st Respondent confirmed that the suit property was 9.4 Acres.
74. The 1st Respondent stated that this is the acreage indicated in the Title Deed.
75. According to the 1st Respondent, the portion that was occupied belonged to the 2nd Respondent and when he took possession, the Applicant was not on the ground.
76. At the end of this re-examination, the 1st Respondent was discharged from the witness box and the 1st Respondent closed his case.
77. The 2nd Respondent was not present dispute knowledge of the hearing and the Court closed the 2nd Respondent's case thereof.
78. The Court has carefully perused the pleadings herein, the testimonies adduced, the evidence placed before the Court and the submissions of the parties herein and identifies the following issues for determination.

Issue No. 1- When Did The 2nd Respondent's Ownership Begin?



Issue No.2- Has The Applicant Proved His Claim Of Adverse Possession?

Issue No.3- Is The Present Os Merited?

Issue No.4- Who Bears The Costs Of The Present Os?

79. The Court having identified the above-mentioned issues for determination, the same will now be discussed below.

Issue No. 1- When Did The 2nd Respondent's Ownership Begin?

80. The first issue for determination relates to the ownership of the property known as Meibeki/Meibeki block 8 (Mawe)/26 which the Applicant seeks a portion of.

81. According to the PW 1 Exhibit 3 which is the Register and/or Green Card of the property known as Meibeki/Meibeki block 8 (Mawe)/26, the said property was first registered in the name of the 2nd Respondent on the 07.03.2002.

82. Thereafter, the property known as Meibeki/Meibeki block 8 (Mawe)/26 was transferred to the 1st Respondent on the 13.09.2010.

83. In other words, the property known as Meibeki/Meibeki block 8 (Mawe)/26 was Government Land prior to 07.03.2002 when the same was registered in the name of the 2nd Respondent as his private property.

Issue No.2- Has The Applicant Proved His Claim Of Adverse Possession?

84. The second issue is whether the Applicant has established his claim for adverse possession against the 1st and 2nd Respondent.

85. In the case of Mtana Lewa-versus-kahindi Ngala Mwangandi (2015) Eklr, the Court stated as follows in terms of the ingredients of adverse possession; -

“Adverse possession is essentially a situation where a person takes possession of land and asserts rights over it and the person having the title to it omits or neglects to take action against such a person in assertion of his title for a certain period, in Kenya, it is twelve years (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.

It must be adequate in continuity, in publicity and in extent to show that possession is adverse to the title owner.

This doctrine in Kenya is embodied in Section 7 of the *Limitation of Actions Act*.

86. In a nutshell, every Applicant for Adverse possession must demonstrate the date of entry, the nature of occupation, the period of continuous use and lastly the use of the property for at least 12 years are provided by law.

87. Based on the above ingredients, the Court will now proceed to evaluate each of them to confirm whether or not the Applicant has satisfied the same.



Ingredient 1- Entry

88. The first ingredient in a claim of adverse possession is entry into the portion of land being claimed.
89. The Applicant pleaded in the present OS and his testimony in Court that he purchased a portion of 5 acres of the property known as Meibeki/Meibeki block 8 (Mawe)/26 owned by the 2nd Respondent.
90. The Applicant sought to rely on the Agreement For Sale dated 20.09.1995 between with the 2nd Respondent.
91. However, the Applicant could not produce the Original Agreement For Sale dated 20.09.1995 after the copy attached to the List of Documents was objected to for having various alterations.
92. As stated earlier, the 2nd Respondent did not file any responses to the present OS.
93. Nevertheless, it was the Applicant's burden as provided under Section 107 of the *Evidence Act*, Cap 80 to prove that his entry into the suit property measuring 5 acres on the property known as Meibeki/Meibeki block 8 (Mawe)/26 happened in the year 1995.
94. To begin with, the Applicant is not clear on whom he is seeking a claim of adverse possession against between the 1st and 2nd Respondent.
95. Be as it may, the property known as Meibeki/Meibeki block 8 (Mawe)/26 was first created on 07.03.2002 based on the document marked as PW 1 Exhibit 3.
96. In essence, the property known as Meibeki/Meibeki block 8 (Mawe)/26 was never in existence before the 07.03.2002 and the 2nd Respondent herein had no ownership rights to alienate to the Applicant as the same was still Government land subject to alienation.
97. Consequently, the Applicant's allegation that he purchased the same from the 2nd Respondent in the year 1995 does not hold water.
98. The only time the Applicant could have made an entry into the suit property against the 2nd Respondent was after 07.03.2002 when the same was registered in his name.
99. On the other hand, if the claim of Adverse possession is against the 1st Respondent, it is clear from the Applicant's document produced as PW 1 Exhibit 3 that the 1st Respondent was issued with a Title Deed dated 13.09.2010 after having purchased the same from the 1st Respondent.
100. In essence therefore, this Court is of the considered view and finding that the Applicant's entry into the Meibeki/Meibeki block 8 (Mawe)/26 initially owned by the 2nd Respondent and subsequently transferred to the 1st Respondent could only have occurred on or 07.03.2002 and not anytime earlier.

Ingredient No.2- Nature Of Occupation

101. The second ingredient is what was the nature of occupation and/or use enjoyed by the Applicant.
102. The expectation of the law is that such an occupation and/or use must be one that is open and notorious hence adverse to the ownership rights of the registered owner.
103. In the present OS, the Applicant was under a duty to provide both documentary evidence and/or call witnesses that could confirm his open and notorious occupation on the suit property.
104. The 1st Respondent objected that the Applicant was not on the suit property or any portion of the property known as Meibeki/Meibeki block 8 (Mawe)/26.



105. The 1st Respondent pointed out that indeed there was a portion of 5 acres which had been fenced off and had two semi-permanent homes within the property known as Meibeki/Meibeki block 8 (Mawe)/26.
106. However, the 1st Respondent clarified that the said portion was not occupied and/or being used by anyone since the year 2010 when he purchased the same.
107. The Applicant in his testimony admitted that he had relocated from the suit property in the year 2005 and left PW 2 as the care taker.
108. PW 2 confirmed that indeed he had been left as a care taker but in the year 2009, he was evicted from the suit property.
109. The Applicant informed the Court that since the year 2009 when he complained to the area District Officer about the actions of the 1st Respondents father of evicting him, there has been no action taken hence the filing of this suit.
110. Based on the above testimonies, it is clear in the mind of this Court that the Applicant herein was denied entry into the suit property since the year 2009.
111. The Applicant did not provide any documentary evidence or demonstrate that after the eviction undertaken by the 1st Respondent's father, he ever went back to the suit property.
112. In other words, it is clear that even if there was any occupation by the Applicant against the 1st and 2nd Respondents, then the same was interrupted in the year 2009 and the Applicant has never succeeded to go back into the suit property.
113. As such, it is clear that there is not use and/or occupation being enjoyed by the Applicant capable of adversely affecting the ownership rights of the 1st Respondent over the entire property known as Meibeki/Meibeki block 8 (Mawe)/26.

Ingredient No.3- Period Of Continuous Use And/or Possession

114. The third ingredient is the period of continuous use and occupation on the suit property.
115. The Applicant in this ingredient must demonstrate that the use and/or occupation on the suit property must be one that has been continuous and interrupted prior to the institution of the claim of Adverse possession.
116. In the present OS, the Applicant and PW 2 admitted that they were evicted from the suit property in the year 2009.
117. Since then, neither the Applicant nor the care taker has even returned to the suit property.
118. If this is the case, then any occupation and/or use of the suit property by the Applicant against the 1st and 2nd Respondents if any existed was between the year 2002 when the property known as Meibeki/Meibeki block 8 (Mawe)/26 was created to the year 2009 when the Applicant was evicted.

Ingredient No.4- Was The Period Of Continuous Use And Occupation For A Period Of 12 Years?

119. The last ingredient is the period in which the Applicant has enjoyed the continuous, uninterrupted use and occupation of the suit property.
120. The law requires that the use and occupation by an Applicant of Adverse possession must be 12 years prior to filing the claim for adverse possession.



121. In the present OS, the same was filed in the year 2011.
122. The prescribed period of 12 years from the year 2002 when the property known as Meibeki/Meibeki block 8 (Mawe)/26 was created and first registered in the name of the 2nd Respondent until the year 2011 when the present OS was filed in Court is less than the 12 years provided in law.
123. As such, the period of 12 years within which the Applicant was to be in actual use and possession of the suit property for a claim of adverse possession to have crystallised had not lapsed by the time of filing the present OS.

Issue No.3- Is The Present Os Merited?

124. Based on the findings in the four ingredients of Adverse possessions discussed hereinabove, this Court is of the view and finding that the present OS is not merited.

Issue No.4- Who Bears The Costs Of The Present Os?

125. Costs usually follow the event.
126. The Applicant having failed to prove his claim for adverse possession against the 1st and 2nd Respondents, he is condemned to pay the costs.

Conclusion

127. In conclusion, this Court hereby makes the following Orders in determination of the present OS; -
 - A. The originating summons dated 31.03.2011 is not merited and therefore dismissed forthwith.
 - B. The applicant is condemned to pay costs to the 1st and 2nd respondents herein.

DATED, SIGNED AND DELIVERED IN ELDORET THIS 3RD DAY OF DECEMBER, 2025.

EMMANUEL.M. WASHE

JUDGE

In The Presence Of:

Court Assistant: Brian

Plaintiff: Ms. Nasongo holding brief Ms. Chelimo for the Plaintiff

Defendant: Mr. Cheptarus for the Defendant

