

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ELC SUIT NO. E009 OF 2025(O.S)

EDWINA AKOTH KOLA OTTA.....

.....PLAINTIFF

VERSUS

JOSEPH OTENE NYUMBA.....

.....DEFENDANT

JUDGMENT

1. The Plaintiff brought this suit against the Defendant by way of an Originating Summons dated 26th February 2025, seeking the determination of the following questions;

a) Whether the Plaintiff has acquired all that parcel of land known as Title No. Kisumu/Buoye/4172 measuring 0.09 hectares (hereinafter referred to as “the suit property”) by reason of adverse possession, and trust.

b) Whether the Plaintiff should be registered as the proprietor of the suit property.

c) Whether the registration of the Defendant as the proprietor of the suit property should be cancelled and the Defendant compelled to transfer the property to the Plaintiff.

2. The Originating Summons was supported by the affidavit of the Plaintiff sworn on 26th February 2025. The Plaintiff averred that she purchased the suit property from the Defendant in July 2005 through two agreements of sale. The Plaintiff averred that she was in peaceful occupation of the suit property until sometime before filing the suit, when the Defendant came to the suit property and claimed to own the same. The Plaintiff averred that the Defendant had, since then, been harassing her and threatening her with eviction from the suit property.

3. The Plaintiff averred that the Defendant had always been aware of her occupation of the suit property and had never lived on or occupied the suit property. The Plaintiff averred that the Defendant's activities were aimed at permanently depriving her of the suit property. The Plaintiff averred that the Defendant's title to the suit property had been extinguished by virtue of the Limitation of Actions Act, Chapter 22, Laws of Kenya.

4. The Plaintiff annexed to her affidavit in support of the Originating Summons, among others, a copy of a certificate

of official search in respect of the suit property, copies of the agreements of sale entered into with the Defendant, and photographs said to be of the suit property.

5. The Defendant was served personally with the Originating Summons. The Defendant did not enter an appearance and, as such, did not defend the Originating Summons. The Originating Summons was heard by way of oral evidence. At the trial, the Plaintiff adopted her witness statement dated 26th February 2025 as part of her evidence in chief and produced the documents attached to her list of documents of the same date as a bundle as P.EXH.1. The Plaintiff told the court that she purchased the suit property from the Defendant, but the Defendant refused to transfer the property to her. On examination by the court, the Plaintiff stated that the name "Otta" was her deceased husband's name. She stated that she took possession of the suit property in 2006 and had been cultivating it since then. She stated that she was living on a parcel of land adjacent to the suit property. She stated that the Defendant had refused to transfer to her the suit property and was planning to resell it

to other parties. She stated that the name of the Defendant was John Otene Nyumba and not John Oteng Nyumba.

6. After the close of the Plaintiff's evidence, the Plaintiff's advocate informed the court that the Plaintiff wished to rely entirely on the evidence on record and did not wish to make closing submissions.

7. I have considered the Originating Summons together with the supporting affidavit. I have also considered the evidence tendered by the Plaintiff in support of her case. In Salim v Boyd and Another [1971] E.A 550, it was held that for a claimant of land by adverse possession to succeed, he must prove that he has been in open, continuous and uninterrupted occupation of the land for a period of 12 years or more. In Kimani Ruchine & Another v. Swift, Rutherford Co. Ltd. & another [1977] KLR 10 Kneller J. stated as follows at page 16:

“The Plaintiffs have to prove that they have used this land which they claim as of right, nec vi, nec clam, nec plecario (no force, no secrecy, no evasion) ...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.”

8. As I have stated earlier in this judgment, the Defendant did not defend the Originating Summons. This means that the evidence that was tendered by the Plaintiff as to the circumstances under which she entered the suit property and when she made the entry was not controverted. The averment that the Plaintiff took possession of the suit property in February 2006 and had remained in possession since then was not disputed. It was also not disputed that the Plaintiff's occupation of the property was open, continuous, and uninterrupted. It was also not disputed that the Defendant is the registered owner of the suit property and that, as at the time of filing this suit, the Plaintiff had occupied the suit property for over 12 years.

9. I am satisfied that the Plaintiff has proved her adverse possession claim against the Defendant. I therefore enter judgment for the Plaintiff against the Defendant as follows;

- a) I declare that the Plaintiff has acquired all that parcel of land known as Title No. Kisumu/Buoye/4172 measuring approximately 0.09 hectares by adverse possession.
- b) The Deputy Registrar of this court shall execute on behalf of the Defendant all documents necessary to facilitate the transfer of all that parcel of land known as Title No. Kisumu/Buoye/4172 to the name of the Plaintiff.
- c) The Plaintiff shall pay all fees and other statutory charges required for the transfer of the suit property from the Defendant to the Plaintiff.
- d) Immediately after registering the Plaintiff as the owner of all that parcel of land known as Title No. Kisumu/Buoye/4172, the Land Registrar shall place an inhibition on the register of the property inhibiting the registration of any dealings with the property for a period of 3 years from the date of registration of the inhibition.
- e) Since the suit was not defended, each party shall bear its own costs.

**Delivered and signed at Kisumu on this 17th day of
December 2025**

**S. OKONG'O
JUDGE**

Judgment delivered through Microsoft Teams Video Conferencing
Platform in the presence of:

Mr. Sala for the Plaintiff

N/A for the Defendant

Ms. J.Omondi-Court Assistant

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