



Oteba v Matayo; Okello (Interested Party) (Environmental and Land Originating Summons E015 of 2024) [2025] KEELC 5791 (KLR) (30 July 2025) (Judgment)

Neutral citation: [2025] KEELC 5791 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUSIA
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E015 OF 2024**

**BN OLAO, J
JULY 30, 2025**

BETWEEN

GEORGE OUMA OTEBA PLAINTIFF

AND

BARASA MATAYO DEFENDANT

AND

ROBERT HUMPHREY OKELLO INTERESTED PARTY

JUDGMENT

1. George Ouma Oteba (the Plaintiff herein) moved to this Court vide his Originating Summons dated 23rd April 2024. He impleaded Barasa Matayo as the Respondent seeking the determination of the following issues with regard to the land parcel No Bukhayo/Lupida/645 (the suit land):
 - a. Whether the Plaintiff has been in open, public, continuous and notorious possession and occupation of the whole of the land parcel No Bukhayo/Lupida/645 measuring 1.6 Hectares for a period exceeding 12 years.
 - b. Whether the Respondent's title to the said land became extinguished upon expiry of 12 years from the time the Plaintiff went into occupation and/or possession of the said land.
 - c. Whether the Plaintiff is entitled to be registered as the proprietor of the suit land by way of adverse possession.
 - d. Whether the registration of the Respondent as absolute owner of the entire land parcel No Bukhayo/Lupida/645 stands revoked by the orders sought.
 - e. Who should be condemned to pay the costs of the Originating Summons.
2. Arising out of the above, the Plaintiff sought judgment against the Respondent in the following terms:



1. That the Respondent's proprietary right over the land parcel No Bukhayo/Lupida/645 got extinguished by way of adverse possession upon expiry of 12 years from the date the Plaintiff came into possession.
 2. That the registration of the Respondent as the owner of the land parcel No Bukhayo/Lupida/645 be cancelled forthwith and in substitution thereof, the Plaintiff's names be entered/registered in the Register of the said land.
 3. That the Respondent do execute all the relevant documents to facilitate the transfer and registration of the land parcel No Bukhayo/Lupida/645 into the Plaintiff's names and failure to do so, the Deputy Registrar of this Court do sign such documents as may be required.
 4. That the Respondent do meet the costs of this case.
3. In support of the Originating Summons, the Plaintiff filed a supporting affidavit of even date to which he annexed three (3) documents and also filed a statement of his witness Methodi Makokha Iyelo.
 4. The Plaintiff's case is that he purchased the suit land from One Agnes Mutua Musikari Kanda in 2006 and took possession thereof by establishing a home. And although in his supporting affidavit at paragraph 3 he depones to have annexed a copy of sale agreement, no such copy was availed. That the said Agnes Mutua Musikari Kanda had purchased the suit land from the Respondent who handed to her the original title deed together with signed application for consent from the Land Control Board. That Agnes Mutua Musikari Kanda then handed over those documents to the Plaintiff when he purchased the suit land but the Respondent never turned up to finalize the transaction between himself and her over the suit land.
 5. The Plaintiff has been in occupation and possession of the suit land for an uninterrupted period of over 12 years and is therefore entitled to the same by way of adverse possession.
 6. Annexed to the supporting affidavit are the following documents:
 1. Acknowledgment letter dated 19th December 2023 between Agnes Mutua Musikari Kanda acknowledging that she had sold the suit land to the Plaintiff.
 2. Application for the consent of the Land Control Board dated 14th August 1979.
 3. Copy of the title deed to the suit land in the name of the Respondent.

The Plaintiff also filed a statement of his witness Methodi Makokha Iyelo (PW1) dated 23rd April 2024. In the said statement, the witness confirms that the Respondent is his cousin but the Plaintiff lives on the suit land which he purchased from Agnes Mutua Musikari Kanda who had purchased it from the Respondent. That the Plaintiff has remained in possession of the suit land since 2006 where he does farming.
 7. Having been unable to serve the Respondent whose whereabouts is unknown, the Applicant moved to Court vide his Notice of Motion dated 3rd October 2024 seeking leave to serve him by way of substituted service. That Motion was allowed on 3rd December 2024 and the notice was published in the Star Newspaper of 4th February 2025. To date, 5 no response has been filed to the Originating Summons.
 8. Meanwhile, by a Notice of Motion dated 20th March 2025 one Robert Humphrey Okello the Interested Party herein sought to be enjoined in this suit. When that Motion came up on 25th March 2025, he sought leave to get an advocate and was given 14 days to do so. However, he did not turn up in Court again although Mr Makokha counsel for the Plaintiff had stated that he would not be o+



9. bjecting to the Interested Party’s application. That Motion was therefore not prosecuted but basically, the Interested Party was claiming that the suit land had also been purchased by his late father Johnson Mangoli Okello from the Respondent on 5th February 1975.
10. Without appearing to determine the Interested Party’s Notice of Motion dated 20th March 2025, the Plaintiff’s claim is premised on adverse possession and since the suit land is still registered in the name of the Respondent, the Interested Party’s only recourse would really be to file a suit against the Respondent subject always to limitation of time. I do not see what interest he would prosecute in these proceedings. He can only file his own suit.
11. Having said so, the hearing proceeded ex-parte on 23rd July 2025 and the Plaintiff and his witness testified and adopted the contents of their respective affidavit and statement as their evidence after the Court had issued directions on 14th February 2025 that the Originating Summons be the plaint. The Plaintiff also produced as his documentary evidence the documents annexed to his supporting affidavit. They were led by Mr Makokha counsel for the Plaintiff who opted not to file any submissions.
12. I have considered the evidence by the Plaintiff, un-rebutted as it is. It is not in dispute that the Respondent is the registered proprietor of the suit land since 12th June 1997 as per the copy of the title deed. The Plaintiff has produced a copy of an acknowledgement letter dated 19th December 2023 in which it is stated that he had purchased the suit land from one Agnes Mutua Musikari Kanda and made full payment although the sum paid is not disclosed. He says he has been in open, continuous and uninterrupted occupation of the suit land since 2006. As the Respondent did not file any reply to the Originating Summons, that evidence is not contested. The only issue for my determination is whether the Plaintiff has proved that he is entitled to an order that he has acquired the suit land by way of adverse possession.
13. Section 38(1) of the *Limitation of Actions Act* provides that:

“Where a person claims to have become entitled by adverse possession to land registered under any of the Acts cited in section 37 of this Act, 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.”

In *Kasuve -V- Mwaani Investments Ltd & Another* 2004 1 KLR 184, the Court of Appeal stated thus:

“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 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.”

Such possession must be without force, stealth or the permission of the owner – *Kimani Ruchine -V- Swift Rutherford Company Ltd* 1980 KLR 10. It must also be open, continuous, peaceful, notorious and with the knowledge of the owner – *Robert Shume & Others -V- Samson Kazungu Kalama C.A.* Civil Appeal No 32 of 2015 [2015 eKLR].

14. I have considered the Plaintiff’s uncontroverted evidence in light of the above precedents and the applicable law. There is no doubt that the Plaintiff has met the threshold of orders that he has obtained ownership of the suit land by way of adverse possession as sought in his Originating Summons. He says he purchased the suit land in 2006 and took possession thereof. This suit was filed on 23rd April 2024 which means that he has been in occupation of the suit land for 18 years which is well beyond the 12



years period required. The Plaintiff has stated in paragraphs 6(c) and (d) of his supporting affidavit that Agnes Mutua Musikari Kanda gave him the original documents of the transaction with respect to the suit land which she had obtained from the Respondent when she purchased it from the Respondent. That included the original title deed which is therefore in his possession and not the possession of the Respondent.

15. The up-shot of the above is that this Court is satisfied that the Plaintiff has proved his case as required in law. Judgment is therefore entered for him as against the Respondent in the following terms:
1. The Plaintiff has acquired the land parcel No Bukhayo/Lupida/645 by way of adverse possession.
 2. The Respondent's right to the land parcel No Bukhayo/Lupida/645 has been extinguished by effluxion of the law.
 3. The Plaintiff shall hand over the original title deed of the land parcel No Bukhayo/Lupida/645 to the Land Registrar for cancellation and the Respondent shall within 30 days of this judgment execute all the relevant documents to facilitate the registration of the Plaintiff as the proprietor thereof.
 4. In default of (3) above, the Land Registrar Busia shall execute all such documents on behalf of the Respondent.
 5. The Plaintiff shall meet his own costs of the suit and the registration process.

BOAZ N. OLAO

JUDGE

30TH JULY 2025

Judgment dated, signed and delivered by way of electronic mail on this 30th day of July 2025.

Right of Appeal.

BOAZ N. OLAO

JUDGE

30TH JULY 2025

