



**Letting v Ngetich (Legal Representative of the Estate of the
Late John Kipkemboi - Deceased) (Environment and Land Case
E016 of 2023) [2026] KEELC 307 (KLR) (27 January 2026) (Judgment)**

Neutral citation: [2026] KEELC 307 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAPSABET

ENVIRONMENT AND LAND CASE E016 OF 2023

GMA ONGONDO, J

JANUARY 27, 2026

IN THE MATTER OF LIMITATION OF ACTIONS ACT CAP 22

AND

**IN THE MATTER OF A CLAIM FOR ADVERSE POSSESSION PURSUANT
TO SECTION 38 OF LIMITATIONS OF ACTIONS ACT AND IN THE
MATTER OF AN APPLICATION UNDER SECTION 17, 30 & 38 OF
THE LIMITATION OF ACTIONS ACT CAP 22 LAWS OF KENYA**

AND

**IN THE MATTER OF SECTION 28 AND SECTION 30 OF THE
REGISTERED LAND ACT, CAP 300 LAWS OF KENYA (NOW REPEALED)**

AND

IN THE MATTER OF LAND REGISTRATION ACT AND THE LAND ACT, 2012

AND

IN THE MATTER OF ORDER 37 RULE 7 & 8 OF THE CIVIL PROCEDURE RULES, 2010

AND

**SECTIONS 1A, 1B, 3 & 3A AND SECTION 5 OF THE CIVIL PROCEDURE ACT
(CAP 21 LAWS OF KENYA)**

AND

**IN THE MATTER OF LAND PARCEL NUMBER LR NO. 14281/1 NANDI HILLS FOR AN
ORDER THAT THE PLAINTIFF HAS ACQUIRED THE SAME BY ADVERSE POSSESSION.**

BETWEEN

WILFRED KIRWA ARAP LETTING PLAINTIFF



AND

ALEX KIPROTICH NGETICH (LEGAL REPRESENTATIVE OF THE ESTATE OF THE LATE JOHN KIPKEMBOI - DECEASED) DEFENDANT

JUDGMENT

1. By an Originating Summons dated 6th September 2023 under, inter alia, sections 17, 30 & 38 of the *Limitation of Actions Act* cap 22 Laws of Kenya, the plaintiff through Korir, Chepleting and Company Advocates, sued the defendant for;
 - a) A declaration that the Defendant's right to recover the whole of land parcel number LR NO. 14281/1 Nandi Hills (The suit land) is barred under the *Limitation of Actions Act* Cap 22 of Laws of Kenya, and title over a portion in occupation/use of the Plaintiff thereto extinguished on the grounds that the Plaintiff herein has openly, peacefully and continuously been in occupation of the aforesaid land parcel for a period exceeding 12 years.
 - b) That there be an order that the Plaintiff be registered as the proprietors of the suit land in place of the Defendant and/or the register thereof be rectified to the Plaintiff's ownership of the aforesaid suit land.
 - c) That the Defendant herein be ordered to execute all the requisite papers necessary to have the Plaintiff be registered as owner of whole of the suit land decreed by the Court, in default, the Deputy Registrar and/or Court Administrative Officer be at liberty to execute all such necessary documents to give effect to the judgment and/or decree of the Court.
 - d) Costs of this Originating Summons be borne by the Defendant
 - e) Such further and/or other orders be made as the Court may deem fit and expedient, in the circumstances of this case.
2. The originating summons is founded upon the plaintiff's seventeen paragraphed affidavit sworn on even date and the annexed documents inclusive of a copy of letter of consent to transfer (WKL-4) and bundle of photographs showing house and tea bushes (WKL-5a to 5d) alongside seven grounds which include;
 - a) That on or about the year 1975 the Plaintiff purchased the suit land from the deceased herein John Kipkemboi Kemei who was the original owner of the land parcel of land known as Nandi Hills – LR NO. 10214/3 (The original land) which was later subdivided to enable all purchasers take up their portions and as such he was given the suit land measuring about 20 acres to which he has occupied to date.
 - b) That on or about 2006, the Plaintiff came to learn with great dismay of the death of the deceased who had also sold him the aforesaid parcel of land.
 - c) The Plaintiff has peacefully and openly occupied and cultivated whole of the suit land, for uninterrupted duration exceeding 12 years, with effect from 1975, and has thus acquired ownership by way of prescription and/or adverse possession.
3. The defendant through Wann Law Advocates opposed the suit by way of his replying affidavit of Twenty-Nine paragraphs sworn on 6th November 2023, termed the originating summons devoid of merit, frivolous and prayed that the same be dismissed with costs. He averred in part;



- a) That from the outset, the said Originating Summons ought to be struck out as the Plaintiff has not annexed a certified copy of the title he is claiming or a certified copy of an excerpt of the title he is claiming from the Lands Registry.
 - b) That all along, after the demise of the deceased, the defendant was appointed by the estate to spearhead the process of securing all the assets of the deceased and uniting them with the intended beneficiaries. The defendant also took charge of settling any liabilities of the deceased and indeed settled every verifiable claim that was brought to his attention as provided for in law as per a copy of a letter dated 28th November 2022 from the defendants advocates to the plaintiff (AKN 3a) and a response letter dated 29th November 2022 from his advocates (AKN 3b) annexed to the replying affidavit.
 - c) That in the course of the Plaintiff's actions, the defendant has taken several steps to interrupt and stop the fraud and illegalities committed by the Plaintiff, including reporting the Plaintiff, the area chief to the County Commissioner of Nandi County and that he further instructed his advocates to write to the Directorate of Criminal Investigations to look into the matter as disclosed in the letters (AKN 4a and 4b annexed to the replying affidavit).
4. The suit was heard by way of viva voce evidence as the originating summons was converted to a plaint and the replying affidavits to statements of defence further to court orders of 12th June 2024.
 5. PW1, Eliud Kiprono Letting told the Court that the Plaintiff aged 86 years is his father who bought twenty acres of the suit land measuring 110 acres in area from John Kipkemboi Kemei (Deceased herein) who was a grandfather to the defendant in the year 1975 when PW1 was aged ten years. That one John Goren also bought 35 acres out of the suit land. That the Plaintiff carries out activities including dairy and tea farming thereon. That the deceased had no issue with payment of the purchase price, became sick and passed on in the year 2006. That thereafter, the Defendant undertook succession process in respect of the estate of the deceased without involving the Plaintiff and issued notice to the plaintiff and his family to vacate the portion of the suit land in dispute. PW1 relied on the Plaintiff's list of documents dated 6th September 2023 (P Exhibits 1 to 5) and further list of documents dated 19th February 2024 S/Nos. 1 to 4 (P Exhibits 6 to 9 respectively) as well as the power of attorney dated 4th November 2024 (P Exhibit 10) in this suit. Under cross examination, he stated in part, that he had no title or register of the suit land.
 6. PW2, Daniel Koros, a farmer relied on his statement dated 24th May 2024 as part of his evidence in chief. In cross examination, he testified that he did not know that the plaintiff has title to the suit land.
 7. PW3 Nicholas Kiptoo Letting, testified that he is a retired teacher and elder brother to the Plaintiff. He relied on his statement dated 24th May 2024 as part of his testimony. During cross examination, he stated in part that he had nothing to show that the Plaintiff bought a portion of the suit land from the deceased and that he had not seen title of 20 acres thereof.
 8. In his testimony, the Defendant (DW1) relied on his replying affidavit, his statement dated 24th June 2024 and a list of documents dated 27th June 2024 (DExhibits 1 to 6) in this suit. He told the court that the Deceased was his grand-father and he is the administrator and beneficiary of the estate of the Deceased further to Eldoret High Court Succession Cause No. 92 of 2007. That the suit land belonged to the Deceased and that it has title deed.
 9. By the submissions dated 14th November 2025, learned counsel for the Plaintiff referred to the originating summons, the background of the case including the alleged purchase of 20 acres out of the suit land by the Plaintiff from the deceased and framed two issues for determination mainly, whether



the Plaintiff has acquired the suit land by adverse possession. In analyzing the issues in favour of the plaintiff, counsel cited sections 7 and 38 of the *Limitation of Actions Act* Chapter 22 Laws of Kenya, the case of Kariuki-vs-Mica {2025} KECA 31 (KLR) as well as the case of Kimani Ruchine-vs-Swift Rutherford & company Ltd (1980) KLR in support of the case. It was therefore, submitted that the prayers in the originating summons be granted as the plaintiff has established his claim inclusive of actual and uninterrupted occupation of the suit land.

10. In the submissions dated 8th December 2025, learned counsel for the Defendant referred to the parties' respective pleadings and identified two issues for determination including whether the Plaintiff has made out a case for the reliefs sought in the originating summons. Counsel submitted in the negative for reasons that reliance on P Exhibit 10 is fatal, among other things. That section 7 (g) of the *Land Registration Act* 2016 (2012) provides for maintenance of register and powers of attorney. To buttress the submissions, counsel relied on, inter alia, the case of Chirchir Arao Kuto vs Nancy Cherotich Koech & another (2022) eKLR, and the case of Mtana lewa-vs Kahindi Ngala (2015) eKLR as well as section 27 on of the *Civil Procedure Act* Chapter 21 Laws of Kenya.
11. It is established law that the issues for determination in a suit arise out of the pleadings or as frame by the parties for the court's determination; see Great Lakes Company Transport Company (U) Ltd-vs-Kenya Revenue Authority {2009} KECA 401 (KLR).
12. It is trite law that the parties are bound by their pleading generally; see Raila Odinga-vs-Independent Electoral and Boundaries Commission & 2 others {2017} KESC 37 (KLR).
13. Additionally, it is established law that a Court may base its decision on an un-pleaded issue if it appears from the course followed at the trial that the issue has been left to the Court for decision; see Odd Jobs-vs-Mubia 1970 EA 476.
14. I have anxiously considered the entire Originating Summons, the replying affidavit, the evidence of PW1, PW2, PW3 and DW1 alongside the rival submissions including the authoritative pronouncements cited therein as well as Great Lakes, Oginga and Mubia cases (supra). In the foregone, the issues that emerge for determination crystallize to whether;
 - a. The suit should be struck out on the basis that;
 - i. lack of annexed certified copy of title in respect of the suit land,
 - ii. the Plaintiff's unregistered power of attorney and
 - iii. lack of the Defendant's locus standi to be sued herein.
 - b. Subject to the issues captured in (a) hereinabove, has the Plaintiff proved his claim for adverse possession over the suit land against the defendant on a balance of probabilities to attract the orders sought in the originating summons?
15. At paragraph 5 of his pleadings namely the replying affidavit, the defendant took issue with the plaintiff's pleadings in respect of lack of an annexed copy of the title to the land he is claiming or the suit land. Under cross examination, DW1 stated;

'.....The land in dispute has title deed.....'
16. The Plaintiff is seeking registration of the suit land in his name in place of the defendant. Order 37 Rule 7 of the Civil Procedure Rules 2010 relates to proof of the identity of the land and its registered owner.



17. The Land Registration 2016 (2012) under section 26 affirms that a registered title is generally conclusive evidence of ownership of the suit land. During examination in chief, PW1 stated;

‘.....I have no title or register of the suit land. I cannot tell if my father requested for extract of title thereof....’
18. PW2 told the Court that he did not know that the Plaintiff has title to the suit land. PW3 stated that he had not seen title of 20 acres thereof.
19. In the case of *Birunda Farm -vs- Sawenja & 35 others* {2024} KEELC 1384 (KLR), it was observed that an extract of title to the suit land is a mandatory requirement. That no other document can substitute for it as required under Order 37 Rule 7 (supra) and would lead to a suit being struck out.
20. Also, in the case of *Lazaro Oduor Otieno-vs-Jesca Awuor Onyango & 2 others* 2017 KLR, the suit was struck out for failure to annex a certified extract of title as required by law. The Court proceeded to order each party to bear their own costs of the suit.
21. Clearly, the identity of the land in possession of the plaintiff as alleged in the suit, is integral. Thus, failure to annex an extract of title as required by law, renders the instant suit commenced by the originating summons incompetent; see also *Birunda Farm and Otieno cases* (both supra) and *Wilson Kazungu Katana and 101 others-vs-Salim Abdalla Bakshwein and another* (2015) eKLR.
22. PW1 testified for and on behalf of his father/the Plaintiff and relied on the Power of Attorney (P exhibit 10) herein, under cross examination, he stated that;

‘.....I do not know whether P Exhibit 10 was registered and it’s force of law.....’
23. DW1 raised issue with P Exhibit 10 in this suit and it is common ground that the same is unregistered. Generally, P Exhibit 10 combined with no agreement for sale as regards the suit land or any part thereof, cannot confer or transfer title, right or interest in the suit land as held in *Sujat Lamp & Industries Ltd-vs-State of Haryana* (2012) 1 SCC 656 and reaffirmed by the Supreme Court of India Civil Appeal No. 1598 of 2023; *Shakeel Ahmed-vs-Sayed Akhlaq Hussain*; see also sections 7 (g) and 44 of the [Land Registration Act](#) 2016 (2012) and the decision in the case of *Karanja* (Suing through his Power of Attorney Harry Karanja) vs *Ombati & another* {2025} KEELC 2409 (KLR).
24. It was the testimony of DW1 that the Deceased was his grand-father and that he is the administrator and beneficiary of the estate of the Deceased further to Eldoret High Court Succession Cause No. 92 of 2007. That the suit land belonged to the Deceased.
25. Section 2 of the [Civil Procedure Act](#) Chapter 21 Laws of Kenya defined the term ‘Legal Representative’ and Order 24 Rule 3 of the Civil Procedure Rules 2010 stipulates that a Legal representative can be made a party in a suit
26. On that score, the Plaintiff failed to sue DW1 in a representative character in this suit; see *Trouistik Union International -vs-Mbeyu & another* (1993) eKLR and *Rajesh Pranjivan Chudasama-vsSailesh Pranjivan Chudasama* (2014) eKLR.
27. Concerning adverse possession, I subscribe to the case of *Wilson Kazungu Katana* (supra) regarding the ingredients of the principle;
 - a. The piece of land in question must be registered in the name of a person other than the applicant,



- b. The applicant must be in open and exclusive possession of that piece of land in an adverse manner to the title of the owner, and
 - c. The Applicant must have been in that occupation for a period in excess of twelve years having dispossessed the owner or there having been discontinuance of possession by the owner.
28. Further, I bear in mind that possession can take different forms such as cultivation as held in the case of Titus Ong'ang'a Nyachio-vs-Martin Okioma Nyauma and 3 others (2017) eKLR. That there can be no dispossession if enjoyment and use are possible as noted in Halsbury's Laws of England 3rd Edition Volume 24 paragraphs 481 and 484 at pages 251 and 152. That sections 25 (1) (b) and 28 of the Land Registration Act, 2016 (2012) alongside section 7 of the Land Act, 2016 (2012) provide for overriding interests. The plaintiff claims that he bought 20 acres of the suit land from the deceased. In an adverse possession claim, the applicant must show that such possession was without the permission of the owner as held in Richard Wefwafwa Songoi -vs- Ben Munyitwa Songoi (2020) eKLR.
29. Besides, in view of the issues analyzed and captured in paragraphs 15 to 26 hereinabove which may dispose of this suit as noted in Mukisa Biscuit Manufacturing Co Ltd vs West End Distributors Ltd (1969) EA 696, the present suit is rendered incompetent.
30. Accordingly, the instant suit is hereby struck out with costs to the defendant.
31. It is so ordered.

DATED AND DELIVERED AT KAPSABET THIS DAY OF 27TH DAY OF JANUARY, 2026.

HON G M A ONGONDO

JUDGE

In the presence of; -

Mr. Korir learned counsel for the Plaintiff

Mr. Maranga learned counsel for Defendant

Walter, Court Assistant

