



Onyango v Ojwang (The Legal Representative of the Estate of William Ojwang Koyo, Deceased) (Environmental and Land Originating Summons E002 of 2023) [2026] KEELC 240 (KLR) (22 January 2026) (Judgment)

Neutral citation: [2026] KEELC 240 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E002 OF 2023
E ASATI, J
JANUARY 22, 2026
IN THE MATTER OF A CLAIM FOR TITLE TO LAND BY
ADVERSEDEFENDANT POSSESSION OVER LR NO KISUMU/DAGO/2640

BETWEEN

AUGUSTINE OGUTU ONYANGO PLAINTIFF

AND

MOSES OJWANG (THE LEGAL REPRESENTATIVE OF THE ESTATE OF WILLIAM OJWANG KOYO, DECEASED) DEFENDANT

JUDGMENT

1. Vide the Originating Summons dated 15th February 2023, the plaintiff who claims to be entitled to become registered as proprietor of the suit premises known as L.R No. Kisumu/Dago/2640 by way of adverse possession sought the following orders against the defendant: -
 1. A declaration that the defendant's title to L.R NO. Kisumu/Dago/2640 is extinguished by the plaintiff's adverse possession thereof for a period of more than 12 years in terms of the *Limitation of Actions Act*.
 2. An order that the plaintiff be declared the owner of L.R No. Kisumu/Dago/2640 by adverse possession.
 3. An order do issue compelling the Defendants to sign all the transfer documents in favour of the plaintiff and in default the Deputy Registrar to sign the transfer documents.
 4. Costs of the proceedings be borne by the defendant.



2. The Originating Summons was supported by the contents of the Supporting Affidavit of the applicant sworn on 16th February 2023 and the annexures thereto.
3. The Originating Summons was opposed vide the averments in the Replying Affidavit of the Respondent sworn on 14th March 2023.
4. The Originating Summons was heard by way of viva voce evidence.

The Evidence

5. The plaintiff testified as PW1. He adopted the contents of his witness statement dated 2nd April, 2024, as his evidence in chief. His case is that in the year 1994 his late mother by the name of Wilkister Adhiambo Onyango purchased plot No. 1848 being a portion of parcel No. Kisumu/Dago/1520 from one Mary Apel Onyango deceased. Mary Apel Onyango was the daughter in law of Hezron Koyo Muga (deceased), the registered owner.
6. That the seller died before the transaction was completed and the administrator of the estate of Hezron Koyo Muga was known as William Ojang Koyo who entered into another agreement dated 6th January 2003 with Wilkister Adhiambo, deceased, for the sale of the said plot. PW1 stated that he was a witness in the agreement.
7. That William Ojwang Koyo through Succ Case No. 694 of 2000 became the registered owner of land parcel No. Kisumu/Dago/1520. That William Ojwang Koyo re-subdivided land parcel No. Kisumu/Dago/1520 again and the plot No. 1848 bought by the plaintiff's mother became No. Kisumu/Dago/2640.
8. That William Ojwang Koyo died on or about the year 2008 before he transferred the land parcel No. Kisumu/Dago/ 2640 to the plaintiff's mother. That the plaintiff's mother died on 20th February 2020 before she had the land registered in her name. The plaintiff stated that he had been in possession of the suit property from the year 2000 uninterrupted. That the defendant's family have never been in possession of the suit property from the year 1994. That even when William Ojwang Koyo had the land in his name he did not interrupt the plaintiff's occupation of the land.
9. He stated in court that he occupied the suit land in the year 2000. That before then it was his mother Wilkister Adhiambo Onyango who was in possession from the year 1994.
10. PW1 produced exhibits namely; sale agreement dated 19th November 1994, payment receipt dated 12th July 1993, Application for Land Control Board consent dated 2nd July 1993, Sale Agreement dated 6th January 2003, Certificate of Confirmation of Grant for the estate of Hezron Koyo, Certificate of Official Search dated 22nd May 2002, Mutation forms dated 7th July 2006, Birth Certificate for Jane Auma Ouma, Death Certificate for Mary Apel.
11. On cross examination PW1 stated that currently, the land is registered in the name of William Ojwang who was son to Hezron Koyo. He stated that he has a house on the suit land. That the defendant was the son of William Ojwang Koyo. That he sued Moses because he is the one who took over as Administrator from William Ojwang.
12. PW2 was Erick Siwalo Ogutu, younger brother of the plaintiff. He adopted the contents of his witness statement dated 18th April, 2024 as his evidence and added that the suit land was gifted to the plaintiff by his mother and that the plaintiff has had his home on the suit land since 1998.
13. On cross examination PW2 stated that his mother had paid Kshs 70,000/= for the land.



14. PW3 was Ramadhan Bakari who stated that he had known the plaintiff for the past 36 years as his neighbour. That land Parcel No. Kisumu/Dago/2640 was occupied by Augustine for about 36 years. That since his childhood, he had been seeing the plaintiff working on the land. That the plaintiff's mother by the name Wilkister used to hire him to work on the land. That he had never seen Moses Otieno work on the land.
15. On Cross-Examination, he stated that he knows the defendant who is a teacher and that the defendant stays at Mukindwa which is separated from Dago area by a road. That it is only one person who stays on the suit land and that is Augustine.
16. The defendant testified as DW1. He adopted the contents of his Replying Affidavit sworn on 5th March 2024 as his evidence in chief. He had stated in the Replying Affidavit that he was an administrator of the estate of William Ojwang Koyo deceased alongside Isabella Madi Ojwang who is his mother. That the plaintiff encroached onto their land parcel No. Kisumu/Dago/2640 in the year 2021 and fenced it. That the averment by the plaintiff that he had been staying on the suit land for over 12 years was a lie.
17. That the plaintiff had not had uninterrupted possession of the land. That there was a court case namely KSM CMC ELC CASE NO.96 of 2021 still pending. That the plaintiff stays on a different parcel of land and not on the suit land. That in Case No, 96 of 2021, the plaintiff therein who is a personal representative of Wilkister Adhiambo Onyango deceased seeks for an order of transfer of the suit land to the personal representatives of the estate of Wilkister Adhiambo Onyango.
18. That Hezron Koyo Muga had no daughter in law known as Mary Apel Onyango(deceased). That the plaintiff herein filed objection to the Defendant's Succession Cause No. Kisumu CMC SUCC CAUSE NO. 514 of 2018 also pending determination. That the plaintiff has opportunity to let the issue of ownership of the suit land be heard in succession cause. That the plaintiff is a vexatious litigant. He produced exhibits namely Copy of Grant of Letters of Administration, Copy of Mutation form and drawings, Copy of Certificate of grant, Copy of Plaintiff and Notice of withdrawal.
19. On Cross examination, DW1 stated that the suit land originated from land parcel No, Kisumu/Dago/1520 whose owner was Hezron Koyo. That when Hezron Koyo passed on, William Ojwang Koyo became the registered owner in the year 2000 upon succession. That if his father sold the land, he would have informed the family. That the land is not developed that the plaintiff tried to enter the land, construct a house and fence but that he (DW1) obtained an injunction that restrained him. That it is his (DW1's) mother used to cultivate the land. That the suit land is vacant, that it a structure which the plaintiff tried to erect but was stopped by injunction.

Submissions

20. At the close of the evidence, parties filed written submissions. Written submissions dated 8th July 2025 were filed by Kanji Koge Advocates on behalf of the plaintiff. Counsel submitted that the plaintiff had been living on the suit land for 15 years before the same was registered in the name of the defendant. That the plaintiff's entry onto the suit land was non-permissive. That his entry onto the suit land in the year 2000 was before the defendant became registered owner. Counsel relied on the cases of Mtana Lewa Vs Kahindi Ngala Mwangandi (2015) eKLR and Wambugu – vs- Njuguna (1963) KLR 173 and submitted that the plaintiff had demonstrated that he had been in peaceful, continuous and uninterrupted occupation of the suit land for more than 12 years and without the permission of the defendant. That the plaintiff is entitled to the relief sought.
21. On behalf of the defendant written submissions dated 25th August 2025 were filed by Kagna & Co. Advocates.



22. Counsel submitted that adverse possession can only arise out of non-permissive possession yet from the facts of the case the contract of sale entered into on behalf of a deceased person without grant of Letters of Administration is *vid ab initio*. That both Wilkister Adhiambo Onyango and Mary Apel Onyango had no capacity to transact. That no nexus has been established between land parcel number 1520, 1848 and 2640 (the suit land herein). That the plaintiff has failed to explain why the contract of sale was not completed. That at the time of filing, hearing and conclusion of the matter before court, the title was in the name of a deceased person and that the plaintiffs are not in occupation.

Issues for determination

- a. Whether or not the defendant's title to Land Parcel No. Kisumu/Dago/2640 has become extinguished.
- b. Whether the plaintiff has acquired title to the suit land by adverse possession
- c. Whether the plaintiff is entitled to the relief sought.

Analysis and determination

23. The first issue for determination is whether the defendant's title to the suit land has become extinguished.
24. Section 17 of the *Limitation of Actions Act* provides that when the registered owner of land fails to take action to assert his rights within the limitation period, the title of the registered owner becomes extinguished. Under S. 7 of the same Act the limitation period within which to take action for recovery of land is 12 years from the date the cause of action accrued.
25. The copy of certificate of official search produced as exhibit shows that the suit land was as at 17th December 2021 registered in the name of William Ojwang Koyo –Deceased. The defendant is indicated to be sued in the capacity of legal representative of William Ojwang Koyo deceased. The defendant also described himself as one of the administrators of the estate of the deceased. So the person who ought to have taken action to assert his right over the suit land is the deceased or the defendant herein.
26. According to the plaintiff, he had been in possession of the suit property since the year 2000. That he has a house on the land. The evidence of the defendant was that the suit land has all along been vacant and that when the plaintiff tried to enter the land, the defendant sought an order of injunction to stop him.
27. There is however no evidence of the plaintiff's entry onto or presence on the suit land the photographs produced as exhibit show land that is vacant save for a small temporary structure which according to the defendant was the subject of the application for injunction. No evidence was adduced that the plaintiff resides or carries out any activities on the suit land. Adverse possession must be actual.
28. I find that the conditions under section 17 of the Limitation of Action for the title to become extinguished have not been demonstrated.
29. The 2nd issue is whether adverse possession has been proved.
30. I find no evidence that the plaintiff has had adverse possession of the land. The plaintiff's claim is based more on the contract of the sale between Wilkister Onyango and Mary Apel. Further, there is evidence of the existence of a court case namely; KSM CMC EL Case No. 96 of 2021 filed by the plaintiff's co- Administrator of the estate of the deceased Wilkister Anyango seeking ownership of the of the suit land on the basis of the sale agreement(s).



31. For a claim of adverse possession to succeed, the applicant must prove actual, exclusive, continuous, peaceful and uninterrupted possession of the subject land. This has not been proved herein.
32. For the foregoing reasons I find that the plaintiff is not entitled to the relief sought. I further find that the plaintiff has failed to prove his claim on a balance of probabilities. The suit is hereby dismissed. Each party to bear own costs of the suit.

Orders accordingly.

JUDGEMENT DATED AND SIGNED AT KISUMU AND DELIVERED VIRTUALLY THIS 22ND DAY OF JANUARY 2026.

E. ASATI,

JUDGE.

In the presence of:

Court Assistant.

Nganga for the Plaintiff.

Nanungi for the Defendant. rent; width: 50%}

