



**Osano (Suing as the Legal Administrate of the Estate of Nyang’la Amada alias Nyangala Amada (Deceased) v Songa (Environment and Land Appeal E076 of 2024) [2026] KEELC 180 (KLR) (22 January 2026) (Judgment)**

Neutral citation: [2026] KEELC 180 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISUMU  
ENVIRONMENT AND LAND APPEAL E076 OF 2024**

**E ASATI, J  
JANUARY 22, 2026**

**BETWEEN**

**ANJELINE JOHN OSANO (SUING AS THE LEGAL ADMINISTRATE OF THE ESTATE OF NYANG’LA AMADA ALIAS NYANGALA AMADA (DECEASED) ..... APPELLANT**

**AND**

**MARY AGOLA SONGA ..... RESPONDENT**

*(Being an Appeal from the judgement of Hon. C.L. Yalwala, Senior Principal Magistrate given on 28th day of August, 2024 in Kisumu MC ELC No. E002 Of 2024.)*

**JUDGMENT**

1. Vide the Memorandum of Appeal dated 17<sup>th</sup> September, 2024, the Appellant filed the appeal herein against the judgement of the trial court in Kisumu MC EL CASE NO.E002 OF 2024 (the suit) dated 28<sup>th</sup> August, 2024.
2. The record of appeal shows that the Appellant was the Plaintiff in the suit wherein vide the plaint dated 22<sup>nd</sup> January, 2024, she in her capacity as the personal representative of the estate of Nyang’la Amada, alias Nyangala Amade, deceased, sued the respondent. The subject matter of the suit was a land parcel known as Kisumu/Marera/2080 measuring approximately 0.6 Ha. The Appellant claimed that the suit land belonged to the deceased and that in the year 2012, after the death of the deceased, the Defendant and one Songa Ouya trespassed onto the suit land and established their homestead thereon and forcefully remained on the land despite the tireless efforts to have them vacate the land. That Songa Ouya died on 5<sup>th</sup> January, 2024 and that the Defendant in an attempt to defeat the beneficial interest of the estate of Nyang’la Amada alias Nyangala Amade (deceased) was planning to bury the remains of Songa Ouya on the suit land.



3. The Appellant therefore sought for an order of permanent injunction, an eviction order, an order to the police to ensure compliance and costs of the suit.
4. In response, the Defendant/respondent herein filed Statement of Defence and Counterclaim dated 8<sup>th</sup> February, 2024. She denied the Plaintiff's claim and sought for orders vide the counter-claim that:-
  - a. She be declared the legal and rightful owner of Kisumu/Marera/2080.
  - b. An order be issued allowing her to bury her deceased husband on parcel No. Kisumu/Marera/2080.
  - c. A permanent injunction be issued restraining the Defendant in the counter-claim either by herself, her employee or servant from trespassing, disposing of, selling or alienating land parcel No. Kisumu/Marera/2080.
  - d. An order that the OCS Maseno police station do enforce and ensure full compliance with the orders
  - e. Costs of the suit.
5. The record shows that the case was heard before the trial court, which vide the judgement dated 28<sup>th</sup> August, 2024, found that the Plaintiff's claim against the Defendant failed.
6. The court found that the Defendant had proved her claim for title over the suit land by way of adverse possession and hence the counter claim succeeded. The court declared the Defendant to be the rightful owner of the suit land by way of adverse possession, issued a permanent injunction restraining the Plaintiff Anjeline John Osano from trespassing, disposing, selling or alienating the suit land, an order directed at the OCS Maseno police station to enforce and ensure compliance with the orders, the court ordered the Defendant in the counterclaim to bear the costs of the suit.

### **The appeal**

7. Aggrieved by the judgement, the Appellant preferred the present appeal. The grounds of the appeal as set out in the Memorandum of Appeal are that;
  - a. the learned Magistrate erred in law and in fact in having failed to appreciate both the pleadings, evidence and the documents presented by the Appellant at the trial.
  - b. the learned Magistrate erred in law and fact in having applied the wrong principle of the law while arriving at the final decision.
  - c. the trial Magistrate erred in law and in fact by dismissing the Plaintiff's case without giving valid and acceptable reason while arriving at the decision.
  - d. the trial Magistrate erred in law and in fact in finding in favour of the Respondent counterclaim while there existed a clear boundary over the time between the Appellant and the Respondent and both parties have lived and stayed on the suit parcel.
  - e. The learned trial Magistrate erred in judgement by failing to appreciate the sketch map of the subject land, while arriving at a decision that dispossessed the Appellant.
  - f. The learned Magistrate erred in law and in fact in ignoring submissions by the Appellant while heavily relying on the Respondent's submissions.



- g. The learned Magistrate erred in law and in fact in creating a notion that the degree in adverse possession had been established.
  - h. The judgement is against the weight of the evidence adduced by the Appellant.
8. Vide directions given on 17<sup>th</sup> June, 2025, the appeal was disposed of by way of written submission.

### **Submissions for the Appellant**

- 9. Written submissions dated 30<sup>th</sup> June, 2025 were filed by the Appellant. She submitted that the trial court wrongly took into account the evidence on record in finding that the Respondent had proved her counterclaim against the Appellant on a balance of probabilities as required by law.
- 10. That the issue for determination is whether the Respondent justified and proved the claim of adverse possession against the Appellant's claim of eviction and permanent injunction.
- 11. That the suit land belongs to one Nyang'la Amada alias Nyangala Amade deceased who as at the time of his death had not sold or transferred the suit land to anyone.
- 12. That before the Grant of Letters of Administration was granted in respect of the estate of the deceased, it means that the deceased property was not available for distribution and that hence time for a claim of adverse possession started to run as at the time when the Grant was issued which was on 22<sup>nd</sup> February, 2023.
- 13. That the Respondent failed to raise any objection in the succession process and that she failed to enforce the claimed oral agreement during the lifetime of the deceased.
- 14. That the Appellant was prejudiced during trial and at the deliver of the judgment as the trial court failed to take note of the time when period for adverse possession started to run.
- 15. The Appellant relied on the case of Evans Otieno Nyakwana -vs- Cleophas Bwana Ongaro (2015)eKLR Appeal No.7 of 2014 on the burden of proof where it was held that the burden of proof lies with the person who wishes the court believe to the existence of a given fact.

The appellant urged the court to allow the appeal with costs.

### **Submission for Respondent**

- 16. Written submissions dated 26<sup>th</sup> September, 2025 were filed by Amondi & Company Advocates for the Respondent. Counsel submitted that on ground 1 of the appeal, the record shows that the trial court appreciated the fact that the suit land was registered in the name of Nyang'la Amade (deceased) and form part of his estate which the Appellant administers. That the trial court considered the claim of adverse possession and section 28 of the [Land Registration Act](#) which specifically addresses rights acquired or in the process of being acquired through limitation of actions or prescription.
- 17. That the trial court considered the evidence of the Respondent and established that the Respondent had had open, continuous, peaceful and uninterrupted occupation of the suit land.
- 18. That in regard to ground 4 of the appeal, the trial court observed jurisprudence around section 6(1) of the [Land Control Act](#) and also considered the Respondent's submissions that the claim could not be based on the oral sale agreement but on adverse possession.
- 19. That regarding the 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> grounds of appeal, the trial Magistrate came to the conclusion after analyzing the evidence of the Respondent and her witnesses.



20. That the judgement was not against the weight of the evidence. Counsel urged the court to find and hold that the Appellant's appeal lacks merit and have it dismissed with costs.

### **Issues for determination**

21. The sole issue for determination is whether or not the trial court erred in dismissing the Plaintiff's claim and allowing the counterclaim.

### **Analysis and determination**

22. This being a first appeal, this court is bound to re-examine the evidence placed before the trial court.
23. The record shows that before the trial court, the Appellant testified as PW1 and produced documents as exhibits. The Appellant adopted the contents of her witness statement dated 22<sup>nd</sup> January, 2024 as her evidence in chief. She had stated in the statement that she is the Legal Administrator of the estate of Nyang'la Amada alias Nyangala Amade, deceased who died on the 20<sup>th</sup> April, 1994.
24. That the deceased was the registered owner of the suit land which measures about 0.6Ha.
25. That sometimes in the year 2012 or thereabout, the Defendant and one Songa Ouya trespassed onto the suit land and established a homestead and that despite repeated demands to have the Defendant and Songa Ouya vacate the land, they remained adamant.
26. That Songa Ouya died on 5<sup>th</sup> January, 2024 and that his body was lying at Jaramogi Oginga Odinga Teaching and Referral Hospital Mortuary Kisumu. That the Defendant was planning to inter the remains of Songa Ouya on the suit land.
27. That the estate of the late Nyang'la Amada stands to suffer irreparable loss and damages if the Defendant proceeded with the burial.
28. On cross-examination, the Appellant stated that the Defendant was not on the land by the time the deceased (Nyang'la Amada) died. That the deceased never sold the land. The Appellant produced the exhibits as per her list of documents dated 22<sup>nd</sup> January, 2024 as follows; a Grant of Letters of Administration Intestate in respect of the estate of Nyang'la Amada and Certificate of Official Search for land parcel No. Kisumu/Marera/2080.
29. The Defendant testified as DW1 and called 2 witnesses. The Defendant adopted the contents of her witness statement dated 31<sup>st</sup> January, 2024 as her evidence in chief. She had stated in the witness statement that the suit land initially belonged to Wamaye Amadi who was the grandfather of the Plaintiff (Appellant herein) who entered into a verbal agreement and awarded the suit property to the Defendant's father in law one Ouya Misingo at a consideration of a bull and Kshs.10,000/-.
30. That Ouya Misingo bought the property for his son Songa Ouya who built his homestead thereon. That he took occupation in the year 1993, built their home thereon and got involved in farming activities. That her children together with the children of the 1<sup>st</sup> wife were all born and raised on the suit land with the Plaintiff's knowledge and without any kind of interruption from anyone claiming that they had trespassed onto the property. That her co-wife died in 1996 and was buried on the suit property and that 2 of her sons who died were also buried on the suit land.
31. That it was her brothers in law who were pushing the Plaintiff to stop the burial, evict her and sell the land.



32. On cross-examination, the Defendant stated that she did not have a title deed to the land. The Defendant produced Chief's letter and a copy of sketch map for the suit land as exhibits.
33. DW2 was Hesbon Otieno Songa, he rehashed the contents of the testimony of DW1. He stated that before coming to court, they tried to engage the Appellant in negotiation whereupon the Appellant agreed that he would sub-divide the parcel into two and leave for them on the side where their homestead is, at a consideration of Kshs.200,000/- but that the Appellant failed to turn up to receive the money and complete the transaction.
34. On cross-examination, DW2 stated that the land belongs to his father. That the land is registered in the name of Nyangala Amade.
35. DW3 was Teresa Migoye. She adopted the contents of her witness statement as her evidence and stated that Songa Ouya took possession of the suit land in the year 1993, built homes thereon and got involved in farming activities. That his children were born and raised thereon. That the 1<sup>st</sup> wife and 2 sons of Songa Ouya died and were buried on the suit land.
36. That she later came to learn that the land had been given to the Plaintiff's mother who went back to her husband Nyang'la Amada to their matrimonial home in Nyakach.
37. On cross-examination, DW3 stated inter alia that one Amadi had gone to DW1's father in law and said that he had lost a wife and wanted a bull to slaughter that the father in law gave Amada a bull plus Kshs.10,000/- in exchange.
38. That Amada pointed out where Songa was to construct a house. That Amadi was selling the land to Ouya Migingo.
39. There is no dispute that the suit land is registered in the name of a deceased person and that the plaintiff is the administrator of the estate of the deceased.
40. It is also not in dispute that the Defendant and her family reside on the suit land where they have their home.
41. The certificate of official search produced as exhibit shows that the suit land parcel No. Kisumu/Marera/2080 was registered in the name of Nyang'la Amade on 22.3.1074.
42. The appellant denied that the deceased ever sold the land to the suit land to the respondent or members of the respondent's family. She maintained that the land was therefore the property of the deceased and that the respondent was a trespasser.
43. The evidence of the respondent was that both the respondent and Songa Ouya entered the suit land in the lifetime of the deceased, registered owner, established their home thereon and have lived thereon to date. That they have interred the remains of various family members who died including the 1<sup>st</sup> wife of Songa Ouya and 2 sons on the suit land. This was not denied by the appellant.
44. Under section 7 of the *Limitation of Actions Act*, a claim to recover land ought to be filed before expiry of 12 years from the date the cause of action arose. Songa Ouya and the respondent entered the suit land in the year 1993 in the lifetime of the deceased who took no step against them so as to assert his rights as registered owner and remove them from the land if indeed they were trespassers. The present suit was filed in the year 2024 apparently prompted by the death of Songa Ouya and the arrangements to inter his remains on the suit land.
45. I find that the appellant's claim had become time barred as at the time of filing the suit.



46. Although the appellant claimed that the respondent and Songa Ouya entered the suit land in the year 2012, she produced no evidence to support this claim. The respondent on the other hand called witnesses and particularly DW3 who testified as to how and when Songa Ouya and the respondent entered the suit land.
47. The court also notes that while the appellant testified that efforts to have the respondent and Songa Ouya vacate the land had been futile, no evidence of such efforts was exhibited.
48. Further in ground (d) of the grounds of appeal, the appellant claimed that there existed a clear boundary between the appellant and the respondent and that both parties have lived on the land. The respondent also claimed that after the death of Songa Ouya parties tried to negotiate so that the appellant could transfer the portion of the suit land that the respondent occupies to the respondent but that the appellant declined. The respondent produced a sketch drawing (map) showing how the land is occupied on the ground. This was however not part of the appellant's case as the appellant claimed the entire land on behalf of the estate of the deceased.
49. For purposes of the claim as contained in the plaint, this court finds that the same was time-barred and that the trial court did not err in dismissing it.
50. In conclusion the court finds that the appeal herein lacks merit and dismisses it. Each party to bear own costs of the appeal.

Orders accordingly.

**JUDGEMENT DATED AND SIGNED AT KISUMU AND DELIVERED VIRTUALLY THIS 22<sup>ND</sup> DAY OF JANUARY 2026.**

**E. ASATI,**

**JUDGE.**

In the presence of:

Maureen Court Assistant.

Appellant present in person.

No appearance for the respondent.

