

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ELC NO. 52 OF 2019

ALPHONCE

BUNDI-----1ST

PLAINTIFF

NICHOLAS ONDUKO BUNDI-----

2ND PLAINTIFF

JOHN MOGAKA BUNDI-----

3RD PLAINTIFF

REBECCA BISIERI

BUNDI-----4TH PLAINTIFF

NAOMI MORAA BUNDI-----

5TH PLAINTIFF

VERSUS

SHAMIRA CHEPKEMEI CHELANGA-----1ST

DEFENDANT

RAHILA CHERUTO CHELANGA-----2ND

DEFENDANT

MOHAMED KIPKOSKEI CHELANGA-----3RD

DEFENDANT

IBRAHIM KIPKORIR CHELANGA-----4TH

DEFENDANT

**(Sued as the personal representatives and
beneficiaries of the estate of Ishmael Juma
Chelanga-Deceased)**

JUDGMENT

- 1.** The plaintiffs commenced this suit through an originating summons dated **15/7/2019**. They seek to be declared owners of Title No. **Kapkoi/Mabonde Block 1/Ex-Prison/206**, by virtue of adverse possession, which they have occupied since **2000**, to date.
- 2.** The plaintiffs support the originating summons through an affidavit sworn by Nicholas Bundi, the 2nd plaintiff, sworn on **15/7/2019**, attaching copies of authority to act, signed by the plaintiffs on **16/7/2019**, a copy of a title deed issued to Ishmael Kiplagat Juma Chelanga on **13/2/1992**, a copy of death certificate of the late Grace Bosibori Njoga, late James Bundi Nyairo, agricultural report serial No. **21818**, boundary dispute summons dated **11/2/2005**, chief's letter dated **5/7/2019**, copy of search, grant of letters of administration issued on **15/11/2019**, rectified confirmed grant on **22/11/2011**, with respect to the estate of the late Ishmael Juma Chelanga to the defendants.
- 3.** The originating summons was also supported by a list of witness statements and a list of documents dated **4/12/2019** and **3/12/2019**, respectively.

4. At the hearing, the plaintiffs called Nicholas Bundi, John Mogaka Bundi, Pamina Juma, and Copernicus Mutoka as **PW1, 2, 3, and 4**. PW1, 2, 3, and 4 relied on their witness statements dated **27/11/2019, 8/12/2019, 5/12/2019, and 4/12/2019**, respectively.
5. On his part, PW1 produced as plaintiffs' exhibits a copy of a title deed for **Kapkoi/Mabonde Block 1/Ex-Prison/206**, a death certificate for his late parents, a photograph showing developments on the land, a copy of verification serial number **31818**, summons from the Land Registrar, chief's letter dated **5/7/2019**, a copy of the confirmed and rectified grants as **P. Exhibits No. (1) - (9)**, respectively.
6. In cross-examination, PW1, 2, 3, and 4 were all consistent that the plaintiffs and their late parents' entry into the suit land was with effect from **2000** or thereabouts, which they have developed with the full knowledge of the registered owner(s). PW1, 2, 3, and 4 told the court that at no time did the defendants enter the suit land to drive them out, or stop the developments therein, save for two attempts by one Andrew to visit the land.

7. Further, PW1, 2, 3, and 4 told the court that the plaintiffs' use, possession, and occupation of the suit land was open, uninterrupted, continuous, and exclusive.
8. In response to the originating summons, the defendants relied on a replying affidavit sworn by Shamira Chepkemei Chelanga, the 1st defendant, on **11/9/2019**, on behalf of the rest of the defendants. The defendants admit that the suit land remains registered in the name of Philomen Chelanga, now deceased, as constituting one of the properties of the deceased's estate, to which the 1st defendant is one of the legal administrators.
9. The defendants aver that before **1992**, one Francis had been appointed as a caretaker to the suit land, and with effect from **2000**, one James Nyairo was allowed to come into the land and took over the house which the former caretaker used to occupy.
10. The defendants aver that to preserve the property, their late mother placed a caution on the register dated **11/8/2000**, attached as **SCC-(1)**, which has not been lifted or altered to date. The defendants aver that the plaintiffs' burying their kin on the land does not confer any special right to them, since there is no property in a dead person.

- 11.** Again, the defendants deny that the plaintiffs have put up any structures on the suit land; otherwise, if any, they were temporary in nature and done with the consent of the deceased owner. The defendants blame the plaintiffs for being ungrateful and out to take advantage of their benefactor's generosity. The defendants urge the court, in the interest of justice and morality, to find the claim lacking merit.
- 12.** At the hearing, the defendants did not attend to ventilate their defence.
- 13.** The plaintiffs rely on written submissions dated **10/3/2023**, isolating four issues for determination. Reliance is placed on ***Chevron (K) Ltd -vs- Harrison Charo Wa Shutu [2016] eKLR, Section 7*** of the Limitation of Actions Act, Cap 22, ***Jacob Mwanto Wangora -vs- Mary Waruga Wokabi & Others [2018] eKLR*** as cited in ***Samwel Nyakenogo -vs- Samwel Orucho Onyaru [2010] eKLR.***
- 14.** The defendants rely on written submissions dated **29/2/2023**, isolating five issues for determination. It is submitted that the plaintiffs' witnesses and the evidence do not support the claim, since the caution placed on the suit land was an act that the registered owner was asserting ownership. Reliance is placed on

Ahmed Suleiman & Another -vs- Noor Khamis Surur [2023] eKLR, Mtana Lewa -vs- Kahindi Ngala Mwangandi [2005] eKLR, Public Trustees -vs- Wanduru Ndegwa [1924] eKLR, and Tabitha Waithera Kimani -vs- Joshua Nganga [2017] eKLR.

15. The issues for my determination are:
- (a) ***Whether the plaintiffs have met the ingredients of adverse possession.***
 - (b) ***If the plaintiffs are entitled to the reliefs sought.***
 - (c) ***What is the order as to costs?***
16. In **M'Riria & 5 Others -vs- Muthomi Civil Appl. NO. 253 of 2019 [2025] KECA 951 [KLR] (4th April 2025) (Judgment)**, the court held that the ingredients of adverse possession are:
- (a) ***Ownership of the land by the person against the claim is made.***
 - (b) ***Open, continuous, and exclusive possession of the land by the claimant for 12 years.***
 - (c) ***Assertion of rights by the dispossessor by inconsistent acts to the right of the true owner. See also Mbira -vs- Gachuhi [2002] 1 EALR 137.***
17. Adverse possession, therefore, sets in when a person takes possession of land and asserts a right over it, and the true owner, having title, neglects or omits to

take action against such a person for **12** years. See ***Mtana Lewa*** (*supra*).

- 18.** Adverse possession in Kenya is governed by **Sections 7, 13, and 38(1)** of the Limitation of Actions Act, **Section 28** of the Land Registration Act and **Article 40** of the Constitution to defeat a title of a registered owner, after **12** years of inaction and use of the land by the intruder through acts inconsistent with the intended use by the true owner. For such a case to succeed, the person in possession must have a peaceful and uninterrupted use of the land.
- 19.** In this suit, the plaintiffs plead, testify, and submit that they entered into the land without permission or authority of the true owner in **2000** or thereabout.
- 20.** The physical facts of exclusive possession and the *animus possidendi* to hold as the owner to the exclusion of the actual owner, as held in ***Ndolo -vs- Kitutu & Others Civil Appeal No. 294 of 2018 [2022] KECA 12891 [KLR] (18th November 2022) (Judgment)***, have to be established in a claim for adverse possession. The court held that the direct import of the cited provisions of the law are the person dispossessed of land cannot bring an action to recover the land after **12** years from the date on

which the right to action accrued, which is the date of dispossession, and that after the expiration of the **12** years, the title held by the true owner stand extinguished.

21. In **Jandu -vs- Kirplal & Another [1975] EA 225**, what constitutes adverse possession was said to mean possession by a person holding the land on his own behalf, and while in possession, the statue is set running, and it continuous to run for **12** years, with no action, affective entry, or otherwise the title of the true owner become extinguished, and the intruder becomes the owner.

22. In **Samuel Kihamba -vs- Mary Mbaisi [2015] eKLR**, and in **Wambugu -vs- Njuguna [1983] [KLR] 171**, the ingredients to establish are: open occupation of the land, without force, without secrecy, and without licence or permission of the land owner, with the intention to have the land. Therefore, from the case law cited, two key elements are to be established: dispossession and discontinuance of, which has remained there until the **12** years expired, undertaking adverse acts on it as per the photograph, with the knowledge of the true owner, openly, and with the intention to own the land as of right.

- 23.** In **Richard Wefwafwa Songoi -vs- Ben Munyifwa Songoi [2020] eKLR**, the court held that a claimant must show that the occupation was peaceful and uninterrupted, with physical facts of exclusive possession, and the *animus possidendi*.
- 24.** Exclusivity of possession must be proved by the claimant. Evidence of joint use by the claimant and other people has not been shown by the defendant. The plaintiffs have identified the land under their exclusive use. The defendants have not denied that for **12** years, they have not made an effective entry, use, and occupation of the land. See **Wilson Kazungu Katana & 101 others -vs- Salim Abdalla Bakshwein & Another [2015] eKLR**.
- 25.** Apart from the caution registered by the late mother to the defendants, there is no evidence of an effective entry, notice to vacate the land, and legal action for repossession made to drive out the intruder.
- 26.** In **Alfred Welimo -vs- Mulaa Sumba Barasa CA No. 186 of 2011**, the court held that adverse possession is not merely established by the abandonment of the land, but must be coupled with the intention to possess.

27. In this suit, the plaintiffs' late parents, after their demise, were interred on the suit land with no objection to the same by the true owner(s).
28. In **Maweu -vs- Liu Ranching & Farming Cooperative Society Ltd[1985] eKLR**, the court held that adverse possession is a fact to be observed upon the land. Further in **Githu -vs- Ndeete [1984] KLR 776**, the court held that the mere change of ownership to a legal representative does not interrupt adverse possession.
29. Time for adversity in this case began running during the lifetime of the late Ishmael Chelanga, during the lifetime of his successors in title, the wife, and it currently affects the defendants, since adverse possession is part of overriding interests, which a title deed is subject to. Therefore, the time that has begun to run is stopped when the true owner asserts his right or when his right is admitted by the adverse possessor.
30. In **Joseph Gachumi Kiritu -vs- Lawrence Munyambu Kabura [1996] eKLR**, the court held that assertion of right occurs when the owner takes legal proceedings or makes an effective entry into the land. Further, the court held that a peaceful and effective entry or a suit for recovery of land is what is

required. See also **Andafu -vs- Akhulunya Civil Appeal 70 of 2019 [2015] KECA 714 [KLR] (25th April, 2025)**.

- 31.** In this suit, the defendants have not tendered evidence to substantiate the contents of the replying affidavit that the late John Tengea or the plaintiffs were mere licences or permitted tenants on the suit land. Evidence of the terms and conditions of the licence or tenancy has not been provided. Evidence of notice to vacate or admission of the superior rights of the defendants by the plaintiffs is also missing. Placing caution on the title register was not enough. See **Maina -vs- Langat & Others Civil Appeal No. 21 of 2016 [2025] KECA 75 [KLR] (24th January 2025)**.
- 32.** The upshot is, I find the suit proved to the required standards. The plaintiffs are declared owners of Title No. **Kapkoi/Mabonde Block 1/Ex-Prison/206**, by virtue of adverse possession.
- 33.** The defendants, as the legal representatives of the estate of the late Ishmael Juma Chelanga, are directed to sign the transfer forms for the same to the plaintiffs within **2 months** from the date hereof. In default, the Deputy Registrar of the court to effect the transfer in favour of the plaintiffs. The costs of

the transfer and registration to be met by the plaintiffs. There will be no order as to costs.

34. Orders accordingly.

Judgment dated, signed, and delivered via **Microsoft Teams/Open Court** at **Kitale** on this **2nd** day of **February 2026**.

In the presence of:

Court Assistant - Dennis

Miss Njambi for the plaintiffs

Miss Rotich for the defendants

1st plaintiff present

2nd plaintiff absent

3rd plaintiff absent

4th plaintiff absent

1st defendant absent



**HON. C.K. NZILI
JUDGE, ELC KITALE.**