



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KABARNET

ELC CASE NO. E001 OF 2023 (OS)

**IN THE MATTER FOR ADVERSE POSSESSION PURSUANT TO
SECTION 37 & 38 OF THE LAND ADJUDICATION ACT**

AND

**IN THE MATTER OF SECTION 28(h) OF THE LAND
REGISTRATION ACT, NO.3 OF 2012)**

AND

**IN THE MATTER OF SECTION 7(d) THE LAND ACT, NO.6 OF
2012**

AND

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

AND

IN THE MATTER OF L.R NO.KAKAMOR/SIRWA/45

JOHN CHEPSERGON BONDET

PLAINTIFF

= VERSUS =

JOEL JOHANA

DEFENDANT

J U D G M E N T

1. Vide the originating summons dated 8th June, 2023 the Plaintiff herein seeks the following orders:-

- i) Declaration that, he (Plaintiff) has acquired legal title by way of adverse possession to all that piece of land known as L.R No. Kakamor/Sirwa/45 situated in Mogotio (Sirwa) registered in the name of Joel Johana, the Defendant, pursuant to the provisions of **Section 37** and **38** of the Limitation of Actions Act, Cap 22 Laws of Kenya;
- ii) That the Deputy Registrar of this Court be and is hereby authorized to execute all the necessary transfer instruments that facilitate transfer and registration of all that piece of land known as L.R No. Kakamor/Sirwa/45 in favour of the Plaintiff;
- iii) Such further and other orders as the Court may deem fit and expedient in the circumstances of the case.

2. The suit/application is premised on the grounds that the Plaintiff has been in actual, open, continuous and uninterrupted occupation of the suit property for a period

exceeding 52 years; that the Plaintiff's occupation of the suit property is adverse to the Defendant's interest and that the Defendant's interest has been long extinguished by effluxion of time. Further, that the Plaintiff took occupation of the suit property in 1969 or thereabout and has been in exclusive, continuous, actual, open, uninterrupted use of the suit property to date; that the Plaintiff has lived in the suit property with his family and that the Plaintiff has invested on and developed the suit property for his entire life.

3. The suit/application is supported by the affidavit of the Plaintiff/Applicant in which the grounds on the face of the application are reiterated. Besides reiterating the grounds on the face of the application, the Plaintiff has annexed to the affidavit the following documents:-

- i) Certified copy of green card in respect of the suit property, marked **JKB-1**;
- ii) Letters dated 12/2/1992 and 5/3/1992 marked **JKB 2(a)** and **(b)** respectively; and
- iii) Photographs, marked **JKB-3**.

4. Pursuant to directions given on 15th July 2024, the suit was served on the Defendant by way of substituted service-by advertisement in the Daily Nation newspaper of 15th August, 2024. That fact is attested by the affidavit of service of the process server, Hillary Songoyo, sworn on 17th September, 2024.
5. Despite having been served with the suit papers in the manner indicated above, the Defendant did not file a defence to the suit.
6. On 18th September 2024, the originating summons was converted into a plaint and fixed for hearing by way of *viva voce* evidence.
7. When the suit came up for hearing, the Plaintiff by himself and through his witnesses rehashed his pleaded case. The Plaintiff produced the following documents in support of his case:-
 - i) A Letter dated 25th February, 1992 (**Pexbt 1**);
 - ii) Receipt number 5988544, dated 15th September 2022 for payment of official search fees (**Pexbt 2(a)**);

- iii) A certified copy of green card in respect of the suit property-**Pexbt 2(b)**;
- iv) Letter from the chief, Sirwa Location, dated 5th March, 1992-**Pexbt 3**; and
- v) Photographs-**Pexbt 4**.

8. The Court visited the suit property and made its observations.
9. At close of hearing, the Plaintiff filed submissions, which I have read and considered.
10. The evidence produced by the Plaintiff and his witnesses, both oral and documentary, shows that the Plaintiff has been in use and occupation of the suit property for a long period of time.
11. The evidence adduced by the Plaintiff, comprised in his letter to the Chief, Sirwa Location, shows that as early as 1992 the Plaintiff was in use and occupation of the suit property.
12. During Court visit, the Court confirmed that the Plaintiff has been use of the suit property and has effected

developments therein, planted trees and erected buildings thereon, which appeared fairly old.

13. In terms of **Section 7, 9, 13, 17, 37** and **38** of the Limitation of Actions Act, Cap 22 Laws of Kenya, the title of a registered owner of land will be extinguished and vested in a third party who proves that he has been in possession of land continuously and uninterrupted for a period of 12 years; that such possession has been open and notorious to the knowledge of the owner; that the possession has been without permission of the owner and that the third party has asserted a hostile title and dispossessed the true owner. In that regard, see the decision of the Court of Appeal in **Lewa v. Mwagandi Civil Appeal 56 of 2014 (2015) KECA 532 (KLR) (17 July 2015) (Judgment)**.

14. The title of a registered owner may also be extinguished by the discontinuation of possession by an owner of his own volition. In that regard, see the case of **Wanje v. Saikwa (2) (1984) KLR 284**, quoted by the Court of Appeal in the case of **Titus Mutuku Kasuve v Mwaani Investment Limited & 4 others (2004) KECA 161 (KLR)**.

15. In the absence of any evidence adduced by the Defendant to controvert the evidence adduced by the Plaintiff, I have no doubt that the Plaintiff has demonstrated that he has been in use and occupation of the suit property for a period exceeding 12 years, after dispossessing the registered owner of it or after discontinuation of possession of it by the registered owner of his own volition for a period exceeding 12 years hence he has become entitled to be registered as the proprietor of the suit property on account of having been in adverse possession of it for a period exceeding the period required by law for bringing a claim for adverse possession.

16. The upshot of the foregoing is that the Plaintiff has made up a case for being granted the orders sought in the originating summons dated 8th June, 2023 which orders I hereby grant him as prayed, that to say:-

- i) A declaration be and his hereby made that, the Plaintiff has acquired legal title by way of adverse possession to all that piece of land known as L.R No. Kakamor/Sirwa/45 situated in Mogotio (Sirwa)

registered in the name of Joel Johana, the Defendant, pursuant to the provisions of **Section 37** and **38** of the Limitation of Actions Act Cap 22 Laws of Kenya;

- ii) The Deputy Registrar of this Court be and is hereby authorized to execute all the necessary transfer instruments required to facilitate transfer and registration of all that piece of land known as L.R No. Kakamor/Sirwa/45 in favour of the Plaintiff.
- iii) The Plaintiff to bear his own costs of the suit/application.

**Dated, signed and delivered virtually at Busia this 17th
day of February, 2026**

L. N. WAITHAKA

JUDGE

In the presence of;

Mr Songoyo for the Applicant/ Plaintiff

N/A for the Respondent/ Defendant

Court Assistant; Ian

ORIGINAL