



**Mibei v Soy (Environmental and Land Originating Summons
E001 of 2023) [2026] KEELC 565 (KLR) (5 February 2026) (Ruling)**

Neutral citation: [2026] KEELC 565 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E001 OF 2023
MN MWANYALE, J
FEBRUARY 5, 2026**

BETWEEN

JOHN KIPLANGAT MIBEI APPLICANT

AND

KIPLANGAT ARAP SOY RESPONDENT

RULING

1. This Ruling has been necessitated by the fact that while testifying in this matter as P.W.1, on 4/2/2026, the plaintiff stated under oath that he was related to the Defendant, their mothers having been closely related. Upon noting the same, the court asked the plaintiff to clarify the nature of the relationship to wit, the plaintiff repeated about 4 times that he was related to the Defendant but virtue of their mother's having been relatives.
2. It was clear to the court that this being a claim in adverse possession, and noting various dictas over the issue, the plaintiff would be non-suited against the defendant in a claim of adverse possession.
3. Mr. Bii Learned Counsel for the Plaintiff when asked to comment on the issue, stated that he was not aware of the law on adverse possession between relatives and stated that the Plaintiff may not have heard the question correctly, and the question of the relationship between the plaintiff and the Defendant was once again put to the Plaintiff who confirmed the relationship as earlier stated, at which point the court stood down the witness and stated that it shall determine the issue of whether the Plaintiff had a course of action in adverse possession against the defendant, hence this Ruling.
4. Having admitted under oath that he is related to the Defendant the question would be to the doctrine of adverse possession applicable to the parties herein?



5. This issue was answered by the court of Appeal in Kisumu in its decision in the case of Samuel Khamba Vs. Mary Mbaisi (2015) eKLR where the Court of Appeal held inter alia

“We are satisfied, on the material that was tendered before the Learned Judge, that the Appellant acquired the suit from the Respondent who later changed her mind after the suit had been registered in favour of the Appellant. The suit filed by the Respondent against the Appellant was founded on adverse possession where the Respondent claimed to have acquired adverse rights over the suit having occupied the same for twelve years. Could the doctrine of adverse possession apply against the parties to the suit before the Learned Judge who were related by being mother and stepson? He thinks not. We are persuaded by various dictas which we have quoted and relied upon in this judgment and must state it would create havoc for families and the society of Kenya generally if the principle of adverse possession applied within families against close relatives.”

6. Similarly, the High Court in the case of Mbui Vs. Maranja 1993 as well as in Rodgers Mwaboje Vs. Douglas Mwabonje, had declined to grant adverse possession reliefs between relatives.
7. That being the position of the law and having admitted to be relatives, the court finds that the plaintiff's suit in view of his admission discloses no Cause of action against the defendant.
8. In order to achieve the overriding objectives under section 1A(1) of Civil Procedure Act of just, expeditious, proportionate and affordable resolution of disputes, it is the court's view that to hear the 7 Plaintiff's witnesses and a further 4 defence witnesses, in a matter where the plaintiff's own admission has altered the course of action and there is now no course of action in adverse possession as pleaded, would be to squander the precious and Limited Judicial time, and hence the court views that the overriding objectives would be best achieved if the hearing of the matter is halted, by a dismissal of the suit for failure to disclose a cause of action against the Defendant and under the provisions of section 3A of the Civil Procedure Act in order for ends of justice to be met and to prevent abuse of court process the court hereby dismisses the Plaintiff's suit; with no orders as to costs.
9. The court notes that it had referred the matter to the court annexed mediation, where the mediation failed.
10. Given the circumstances under which the dismissal is being made, not after a full hearing but after partially hearing the plaintiff, as a sole witness, the parties are granted liberty and/or leave to appeal, should they be dissatisfied with this Ruling.

DATED AT KILGORIS THIS 5TH DAY OF FEBRUARY, 2026

HON. M.N. MWANYALE

JUDGE

In the presence of

CA – Sylvia/Sandra/Clara

Mr. Kiprotich for the Defendant

Mr. Bii for the Plaintiff

