



Ngeno v Chepkwony (Sued in his capacity as the legal representative of Taplule w/o Kenda - Deceased) & another (Environmental and Land Originating Summons E001 of 2024) [2026] KEELC 702 (KLR) (12 February 2026) (Judgment)

Neutral citation: [2026] KEELC 702 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E001 OF 2024
LA OMOLLO, J
FEBRUARY 12, 2026
IN THE MATTER OF LR NO. KERICHO/GETARWET/89
AND
IN THE MATTER OF THE ESTATE OF TAPLULE W/O KENDA (DECEASED)

BETWEEN

SIMON CHERUIYOT NGENO PLAINTIFF

AND

SIMEON KIPKOECH CHEPKWONY (SUED IN HIS CAPACITY AS THE LEGAL REPRESENTATIVE OF TAPLULE W/O KENDA - DECEASED) 1ST DEFENDANT

ESTHER CHEPKURUI SOI 2ND DEFENDANT

JUDGMENT

Introduction.

1. The Plaintiff commenced the present proceedings vide the Originating Summons dated 27th February, 2024. The Originating Summons is expressed to be brought under Order 37 Rule 7 of the Civil Procedure Rules and Section 38 of the *Limitation of Actions Act*.
2. The Plaintiff seeks the determination of the following questions;
 - a. Whether the Applicant has been in open quiet, uninterrupted and exclusive possession of 1.5 (one decimal five) acres comprised in LR No. Kericho/Getarwet/89 for a period exceeding 12 years.



- b. Whether the Applicant is entitled to the said 1.5 acres comprised in LR No. Kericho/Getarwet/89 by adverse possession.
 - c. Whether the Honourable Court should order the 2nd Respondent to execute mutation and transfer forms so as to effect a valid transfer of the said 1.5 acres comprised in LR No. Kericho/Getarwet/89 to the Applicant.
 - d. Whether this Honourable Court should issue a permanent order of injunction restraining the Respondents whether by themselves, their agents, nominees, servants and/or representatives from interfering with the Applicant's quiet possession of the said land.
3. The Plaintiff also seeks the following orders;
- a. A declaration that the Applicant is entitled to 1.5 acres comprised in LR No. Kericho/Getarwet/89 by adverse possession.
 - b. An order directing the 2nd Respondent to execute mutation and transfer forms so as to effect a valid transfer of the said 1.5 acres comprised in LR No. Kericho/Getarwet/89.
 - c. An order restraining the Respondents whether by themselves, their agents and/or representatives from interfering with the Applicant's quiet possession of the said land.
 - d. Costs of this suit.
 - e. Such other or further relief as this Honourable Court shall deem, fit and just to give.
4. The application is supported by the affidavit of Simon Cheruiyot Ngeno sworn on 27th February, 2024.
5. He contends that he was born in the year 1960 in Tulwamoi Village where land parcel No. Kericho/Getarwet/89 is situated.
6. He also contends that his deceased father one Cheliten Arap Chumo was the registered owner of land parcel No. Kericho/Getarwet/87 and explains that the said parcel of land borders land parcel No. Kericho/Getarwet/89 which is registered in the name of Taplule w/o Kenda (deceased).
7. He further contends that the 1st Defendant is the legal representative of the estate of Taplule w/o Kenda while the 2nd Defendant is a beneficiary of the said estate.
8. It is his contention that around the year 1982, his deceased father settled him on a portion of their parcel of land that borders land parcel No. Kericho/Getarwet/89 and adds that the said portion of land measures one and a half acres.
9. It is also his contention that his deceased father was previously in occupation of the said portion of land before the land was adjudicated. He goes on to state that there is a swamp on the land which swamp separates their family land from the suit parcel of land.
10. It is further his contention that there was also a fence between land parcel No's Kericho/Getarwet/87 and what he believed to be the entire portion of land parcel No. Kericho/Getarwet/89.
11. He contends that after taking possession, he planted tea on one acre, and trees and pasture on the other portion of land. He goes on to state that around the year 2017 he dug two fish ponds on half an acre portion of the land.
12. He also contends that in December, 2006 land parcel No. Kericho/Getarwet/87 was transmitted to his mother one Chepkemoi Tabutany Chumo.



13. He further contends that sometime in the year 2008, his mother sold a portion of land parcel No. Kericho/Getarwet/87 to Soet Primary School.
14. It is his contention that they surveyed land parcel No. Kericho/Getarwet/87 for purposes of excising the portion of land sold to Soet Primary School and explains that during the survey they discovered that the portion of land he was in occupation of formed part of land parcel No. Kericho/Getarwet/89. He goes on to state that the land he has been in possession of measures one-and-a-half acres.
15. It is also his contention that they discovered that him and his deceased father had been in illegal occupation of the said portion of land which belongs to the Defendants.
16. He further contends that all along he thought that he was in possession of a portion of land parcel No. Kericho/Getarwet/87.
17. It is his contention that once it became apparent that he had encroached on land parcel No. Kericho/Getarwet/89, the 1st Defendant raised a ruckus and claimed that he had trespassed onto their land.
18. It is also his contention that despite the 1st Defendant raising a ruckus, neither of the Defendants took any step to reclaim the land from him.
19. It is further his contention that from the year 2008 to date, the Defendants have constantly opposed his possession of the said portion of land.
20. He contends that in the year 2020, one Erick Chepkwony, the 1st Defendant's brother cut down his trees. He goes on to state that when he confronted him, he (Erick Chepkwony) assaulted him.
21. He also contends that in March, 2023 the 1st Defendant who is his wife's brother in law, called him and showed him a certificate of Confirmation of Grant and demanded that he vacates the said portion of land as the land now belonged to the 2nd Defendant. He goes on to state that his wife's name is Josephine C. Ng'eno.
22. He further contends that in an effort to secure his rights, he together with his wife filed Summons for Revocation of Grant. He goes on to state that they had no legal representation and the said Summons were later dismissed for want of prosecution.
23. It is his contention that he sought legal advice and then lodged the present claim for adverse possession.
24. It is also his contention that his family has been in possession of the said portion of land since the year 1950 and he took possession in the year 1982 after he attained the age of majority.
25. He reiterates that he has been in open, quiet and peaceful possession of the said portion of land since the year 2006 when the Defendants started claiming that he was in wrongful possession of the said portion of land until the year 2020, when a member of the Defendants family cut down his trees and assaulted him.
26. He ends his deposition by stating that he has acquired said portion of land by way of adverse possession as he has been in quiet, peaceful and uninterrupted possession for a period exceeding 12 years.
27. The Defendants did not file any response to the Originating Summons.

Factual Background.

28. On 24th February, 2025 the Court gave directions that the Originating Summons dated 27th February, 2024 be deemed as a Plaint. The affidavit in support of the Originating Summons was to be deemed as the Plaintiff's witness statement.



29. Further directions were that the Originating Summons would be heard by way of viva voce evidence.
30. The matter came up for hearing on 16th July, 2025 and the Defendants were not present in Court.
31. The Court observed that from the Court record, it was evident that the Defendants had been served with the Originating Summons as evidenced by the Affidavit of Service sworn on 14th May, 2024.
32. The Court also observed that an affidavit of service sworn by Paul Kiplimo Kogo on 7th July, 2025 had been filed and it shows that the Defendants had been served with the hearing notice.
33. The Court ordered that the matter proceeds and it proceeded for hearing in the absence of the Defendant.

Plaintiff's Evidence.

34. Simon Cheruiyot Ngeno testified as PW1. It was his evidence that he lives on land parcel No. Kericho/Getarwet/89 which was registered in the name of Taplule w/o Kenda. He produced a copy of the green card for land parcel No. Kericho/Getarwet/89 as Exhibit P1.
35. It was also his evidence that he sued the Defendants over the said parcel of land.
36. It was further his evidence that the 1st Defendant is the son of Taplule w/o Kenda while the 2nd Defendant is her helper.
37. He testified that Taplule w/o Kenda did not have children and she therefore married the 2nd Defendant through a woman to woman marriage.
38. He also testified that Taplule w/o Kenda is deceased and letters of administration with respect to her estate were issued to the 1st Defendant. He produced a Copy of a Certificate of Confirmation of Grant dated 11th January, 2023 as Exhibit P2.
39. He further testified that he filed the suit over land parcel No. Kericho/Getarwet/89.
40. It was his evidence that his father gave him the portion of land he was in possession of in the year 1982 and added that he fenced it and planted trees along the boundary before planting tea and grass.
41. It was also his evidence that he planted the tea in the year 1990 while the trees were planted in the year 1982. He explained that the trees that were planted are Blue gum, gardenalia and indigenous trees.
42. It was further his evidence that he had photographs that showed the developments made on the said portion of land. He produced the said photographs as Exhibit P3(a), (b) and (c).
43. He testified that in the year 2006, he learnt that the portion of land he was in possession of measures 1.5 acres.
44. He also testified that in the year 2006, his mother sold land to Soet Primary School and when a surveyor went to the land to survey it, he asked him to measure his portion of land.
45. He further testified that he had planted tea on the said portion of land and that he lived on land parcel No. 87.
46. It was his evidence that the portion of land he was given by his father was not registered in his father's name and neither was it registered in his name.



47. It was also his evidence that the family of Taplule Kenda discovered that he was in possession of the said portion of land in the year 2006 when the survey of the school was done but they did not take any action.
48. It was further his evidence that a dispute arose in the year 2020 between him and the Defendants when one Eric Chepkwony fell his trees and damaged his tea bushes and that when he asked him (Eric Chepkwony) why he fell his trees, Eric told him that the said portion of land belonged to them.
49. It was his evidence that Eric Chepkwony then assaulted him.
50. He testified that he reported the matter to the police station and Eric Chepkwony was arrested and taken to Court.
51. He also testified that he could not remember the case number but he had a bond dated 20th September, 2020 which requires him to attend Court and testify in an assault case. He produced the said bond as Exhibit P4.
52. He further testified that he is still in possession of the said portion of land and prayed that the Court gives him a title deed to the land.
53. It was his evidence that since he took possession of the said portion of land in the year 1982, the only interruption to his possession was the incident that took place in the year 2020.
54. It was also his evidence that apart from him being assaulted, he was not evicted and neither was his farm was taken away from him.
55. Elijah Kibet Rotich testified as PW2. He stated that he filed a witness statement dated 26th February, 2025.
56. It was his evidence that he lives in Getarwet Kericho County.
57. It was also his evidence that the Plaintiff and the Defendants are his neighbours.
58. It was further his evidence that he is aware that the dispute was over land parcel No. Kericho/Getarwet/89.
59. He testified that the Plaintiff was claiming a one-and-a-half-acre portion of land parcel No. Kericho/Getarwet/89.
60. It was his testimony that the Plaintiff's mother sold a portion of her land to Soet Primary School and a surveyor went to the land to confirm the acreage of the portion that was sold.
61. He further testified that the Plaintiff's portion of the land was also surveyed at the request of the school.
62. It was his evidence that the surveyor also wanted to know the boundary of the land that the school was buying and explained that the Plaintiff's portion of land is adjacent to the land that the school was purchasing from his mother.
63. It was further his evidence that the Plaintiff has been in occupation of the said portion of land since the year 1982 and he has planted trees, napier grass and tea bushes on it.
64. He testified that he lives on the adjacent parcel of land.
65. He also testified that the registered owner of land parcel No. 89 is Taplule Kenda who is deceased and added that there has been no dispute between her (Taplule Kenda) and the Plaintiff.



66. He further testified that the family members of Taplule are aware that the Plaintiff is in possession of the said parcel of land as that he has planted trees and napier grass.
67. It was his evidence that the survey of the school was done in the year 2006 and added that as at the time of survey, Taplule was deceased.
68. It was also his evidence that the Defendants who are the children of Taplule were present during the survey.
69. It was further his evidence that the Defendants have not filed any case in Court but in the year 2020, they confronted the Plaintiff over his occupation.
70. He testified that one Eric Chepkwony, the 1st Defendant's brother cut down the Plaintiff's trees and they fell and damaged the tea plantation. He went on to state that when the Plaintiff asked, a fight ensued and Eric stated that the land did not belong to the Plaintiff.
71. It was his testimony that the confrontation led to Eric Chepkwony assaulting the Plaintiff and added that despite the said confrontation and assault, the Plaintiff was not evicted and is still in possession of one-and-a-half-acres of the suit parcel of land.
72. The Plaintiff's case was then closed.

Issues For Determination.

73. The Plaintiff filed submissions on 19th September, 2025. The Defendants did not file submissions.
74. The Plaintiff submits on the following issues;
 - a. Whether the Plaintiff is entitled to 1.5 acres comprised in all that property known as LR No. Kericho/Getarwet/89 by virtue of adverse possession, and;
 - b. What remedies are available to the Plaintiff.
75. On the first issue, the Plaintiff relies on the judicial decision of Andafu v Akhuonya (Civil Appeal 70 of 2019) 2025 KECA 714 KCR and submits that he has been in uninterrupted possession of a one-and-a-half-acre portion of land parcel No. Kericho/Getarwet/89 since the year 1982.
76. The Plaintiff also submits that he asserted dominion over the said parcel of land by reinforcing the boundaries, planting tea bushes and trees.
77. The Plaintiff further submits that for a period of over four decades, the Defendants have never interfered with his possession of the suit land.
78. The Plaintiff then sets out his evidence and that of his witness and submits that his possession has been peaceful, without force and that he has been in possession for a period of over four decades.
79. It is the Plaintiff's submissions that his possession of the one-and-a-half-acre portion of the suit parcel of land has been exclusive and he has therefore acquired it by way of adverse possession.
80. The Plaintiff concludes his submissions by urging the Court to grant the prayers sought in the Originating Summons.

Analysis And Determination.

81. After considering the evidence of the Plaintiff and his witness together with his submissions, the issues that arise for determination are as follows;



- a. Whether the Plaintiff has acquired a portion of land parcel No. Kericho/Getarwet/89 measuring one and a half acres by way of adverse possession.
- b. Whether the Plaintiff is entitled to the orders sought in the Originating Summons.
- c. Who should bear costs of the suit.

A. Whether the Plaintiff has acquired a portion of land parcel No. Kericho/Getarwet/89 measuring one and a half acres by way of adverse possession.

82. It is the Plaintiff's case that in the year 1982, his deceased father one Cheliten Arap Chumo settled him on a portion of land parcel No. Kericho/Getarwet/87 that bordered land parcel No. Kericho/Getarwet/89. Land parcel No. Kericho/Getarwet/87 was registered in his deceased father's name while land parcel No. Kericho/Getarwet/89 is registered in the name of Taplule w/o Kenda.
83. It is also the Plaintiff's case that after he took possession, he reinforced the boundary by planting trees before later planting tea bushes.
84. It is further the Plaintiff's case that in the year 2006, his mother sold a portion of land parcel No. Kericho/Getarwet/87 to Soet Primary School which caused it to be surveyed so as to set apart the land purchased by Soet Primary School.
85. It is also the Plaintiff's case that during this survey exercise, they discovered that the portion of land he was in occupation of formed part of land parcel No. Kericho/Getarwet/87 which is registered in the name of Taplule w/o Kenda.
86. It is also the Plaintiff's case that after the said discovery, the family of Taplule w/o Kenda raised a ruckus but it was not until the year 2020, when one Eric Chepkwony cut down his trees which damaged his tea bushes.
87. It is further the Plaintiff's case that apart from the said incident in the year 2020, he has lived peacefully and exclusively on the said portion of land for a period of over four decades.
88. The Plaintiff produced a copy of the green card for land parcel No. Kericho/Getarwet/89 as Exhibit P1. Entry No. 1 is dated 12th November, 1968 when Taplule w/o Kenda was registered as the owner. Entry No. 2 is of 12th May, 2017 and shows that the title deed was issued on the said date.
89. A copy of a Certificate of Confirmation of Grant issued on 11th January, 2023 in Kericho CM Succession Cause No. 142 of 2020 in the matter of the Estate of the late Mary Chemetet Kenda alias Taplule w/o Kenda (deceased) was produced as Exhibit P2. The grant is issued to Simeon Kipkoech Chepkwony. As per the schedule on its face Esther Chepkirui Sois was given land parcel No. Kericho/Getarwet/89.
90. Colored photographs were produced as Exhibit P3 (a), (b) and (c). The photographs are of trees, a tea plantation and napier grass.
91. A copy of a bond to attend Court dated 20th September, 2020 was produced as Exhibit P4. The bond is issued to Simon Cheroyot (sic) to attend Court on 21st September, 2020 to give evidence in a suit where Erick Chepkwony was charged with assault causing actual bodily harm.
92. Section 38 (1) and (2) of the *Limitation of Actions Act* provides as follows:

“(1) Where a person claims to have become entitled by adverse possession to land registered under any of the Acts cited in section 37 of this Act, or land



comprised in a lease registered under any of those Acts, he may apply to the High Court for an order that he be registered as the proprietor of the land or lease in place of the person then registered as proprietor of the land.

- (2) An order made under subsection (1) of this section shall on registration take effect subject to any entry on the register which has not been extinguished under this Act.”

93. The Court of Appeal in *Kasuve Vs Mwaani Investments Limited & 4 others* 1 KLR 184 held as follows;

“In order to be entitled to land by Adverse Possession, the claimant must prove that he has been in exclusive possession of the land openly and as of right without interruption for a period of 12 years either after dispossessing the owner or by discontinuation of possession by the owner on his own volition”. (Emphasis mine)

94. In the judicial decision of *Richard Wefwafwa Songoi v Ben Munyifwa Songoi* [2020] eKLR the Court of Appeal held as follows;

“40. A person who claims adverse possession must inter alia show:

- (a) on what date he came into possession.
- (b) what was the nature of his possession?
- (c) whether the fact of his possession was known to the other party.
- (d) for how long his possession has continued and
- (e) that the possession was open and undisturbed for the requisite 12 years.”

95. From the evidence adduced, it is my view that the Plaintiff has demonstrated that he has been in possession of a one-and-a-half-acre portion of land parcel No. Kericho/Getarwet/89 registered in the name of Taplule w/o Kenda since the year 1982 to date.

96. The Plaintiff has also demonstrated that apart from Eric Chepkwony cutting down his trees and assaulting him in the year 2020, his possession of the said portion of the suit parcel of land has been open, exclusive and without interruption for a period of over twelve years.

97. I find, therefore, that the Plaintiff has proved his claim for adverse possession.

B. Whether the Plaintiff is entitled to the orders sought in the Originating Summons.

98. Having found in favour of the Plaintiff under issue (a) above i.e. that the Plaintiff has proved his claim of adverse possession, it follows that the Plaintiff is entitled to orders sought in the Originating Summons.

99. The orders sought in the Originating Summons are as follows:

- a. A declaration that the Applicant is entitled to 1.5 acres comprised in LR No. Kericho/Getarwet/89 by adverse possession.
- b. An order directing the 2nd Respondent to execute mutation and transfer forms so as to effect a valid transfer of the said 1.5 acres comprised in LR No. Kericho/Getarwet/89.
- c. An order restraining the Respondents whether by themselves, their agents and/or representatives from interfering with the Applicant’s quiet possession of the said land.



- d. Costs of this suit.

C. Who should bear costs of the suit?

100. The general rule is that costs follow the event. This is in accordance with the provisions of Section 27 of the *Civil Procedure Act*. (Cap 21). A successful party should ordinarily be awarded costs of an action unless the Court, for good reason directs otherwise.

Disposition.

101. In the result, I find and order as follows;

- a. The Plaintiff is hereby declared to have acquired a one-and-a-half-acre portion of land comprised in Kericho/Getarwet/89 by way of adverse possession.
- b. The Defendants are hereby directed to execute all the necessary documents for purposes of the subdivision, transfer and registration of the one-and-a-half-acre portion of land comprised in the land known as Kericho/Getarwet/89 in the Plaintiff's name within 90 days of the date of delivery of this Judgement.
- c. In default of (b) above, the Deputy Registrar of this Court shall execute the said documents.
- d. A permanent injunction is hereby issued restraining the Defendants, their agents, nominees, servants or representatives from interfering with the Plaintiff's possession of the one-and-a-half-acre portion of land comprised parcel No. Kericho/Getarwet/89.
- e. The Plaintiff shall have costs of the suit.

102. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 12TH DAY OF FEBRUARY, 2026.

L. A. OMOLLO

JUDGE.

In the presence of: -

Mr. Kipkorir for the Plaintiff

No appearance for Defendant.

Court Assistant; Mr. Joseph Makori.

