

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KISII

ELCLC NO. E008 OF 2025

JOSHUA BOSIRE OBURU PLAINTIFF

VERSUS

NYAMISA OGECHI DEFENDANT

JUDGMENT

1. This suit was commenced through an Originating Summons which was filed on 5 February 2025. The summons is taken out pursuant inter alia to the provisions of Order 37 Rules 1, 3, 4 , 7 and 15 of the Civil Procedure Rules, 2010, and Sections 37 and 38 of the Limitation of Actions Act, Cap 22, Laws of Kenya. It will be seen that these are provisions of law supporting a claim of adverse possession and indeed the suit herein is one of such. The applicant, whom I will refer to as the plaintiff, asserts that he has acquired title through adverse possession to land measuring 0.31 Ha, out of the land parcel West Kitutu/Mwamonari/759 (the suit land). He has also included in his Originating Summons a claim of Kshs. 500,000/= for crop damage. Despite service, the respondent, hereinafter referred to as the defendant, did not enter appearance and filed nothing to oppose the suit. He also did not appear at the hearing of the suit despite being served.
2. The case of the plaintiff, as discerned from the affidavit in support of the Originating Summons, and also in his evidence contained in a witness statement, and in his oral evidence in court, is that he inherited the land claimed from his uncle, Obonyo Ong'era Nyambane, in 1985. He avers that he took possession of the land in 1986 and planted crops, including bananas, coffee, trees and tea. He states that in 2023, the sons of the defendant namely Charles Momanyi Ogechi, John Asuma Ogechi, and Jackson Onsongo Ogechi, trespassed into his land and destroyed his crops. He states that the matter was mediated by the area Chief and he had the value of the damaged crops assessed. He avers that he has been on the land for over 38 years without interference. Among the exhibits he produced was the green card to the suit land, a crop damage report, and a survey report.

He testified in court that he does not reside on the suit land but elsewhere where his father was given land.

3. PW-2 was one Samuel Nyakundi Monari. He testified that the land of the plaintiff borders his land. He did not know the size of the land occupied by the plaintiff but he was aware that he came into possession in 1986.
4. With that evidence the plaintiff closed his case.
5. I invited Mr. Maroko, learned counsel for the plaintiff, to make submissions, which he did in writing, and I have taken the same into account.
6. This is a case of adverse possession coupled with a claim of Kshs. 500,000/= for crop damage. As I earlier mentioned, the claim is not defended.
7. Starting with the claim for adverse possession, it is trite that for one to prove adverse possession, he must demonstrate possession that *is nec vi, nec clam, and nec precario*, that is without force, without secrecy, and without permission, for a continuous uninterrupted period of 12 years. In our case, the plaintiff avers to have entered into possession in 1986 after he obtained the land from his uncle. He contends that he has been in possession since then, peacefully and without interruption. I have certainly no evidence of any interruption or any interference with the possession of the plaintiff for the duration of 12 years from 1986. In fact, it would appear that the defendant is not bothered at all with the possession of the plaintiff or with his claim to have title to 0.31 Ha which he asserts that he occupies. His occupation of this land is demonstrated in the survey report, which he produced, which is prepared by one Prescott Nyakango who has described himself as a Land Surveyor. That survey report affirms that the plaintiff occupies 0.31 Ha of the suit land, which from the green card, measures 1.2 ha in total. I have nothing to cast doubt on that survey report.
8. I am thus persuaded that the plaintiff has proved that he is entitled to 0.31 ha out of the land parcel West Kitutu/Mwamonari/759 by way of adverse possession. I order the defendant to carve out this portion and sign off all the necessary documents to enable transfer of this portion to the plaintiff. If he does not do so, the Deputy Registrar or a person authorized by the Deputy Registrar, to execute the requisite documents and see to it that this portion of 0.31 ha is transferred to the plaintiff. The plaintiff will however need to shoulder all requisite charges.
9. Let me now turn to the claim for Kshs. 500,000/= as crop damage. In his evidence, the plaintiff averred that it is the sons of the defendant who destroyed his crops. I therefore do not see how he can make a claim for this amount from the defendant who did not interfere

at all with his crops or with his possession. I therefore dismiss this claim of Kshs. 500,000/= against the defendant.

10. I believe that I have dealt with all issues save for costs. The defendant did not defend the suit. He is also a relative of the plaintiff. Technically, there is no wrong that he has committed to the plaintiff. In those circumstances, I make no orders as to costs.

11. Judgment accordingly.

DATED AND DELIVERED THIS 11 DAY OF FEBRUARY 2026

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

Delivered in the presence of :

Mr. Maroko for the plaintiff

No appearance for the defendant

Court Assistant – Michael Oyuko