



**Korir v Chege & 2 others (As personal representatives, beneficiaries and creditors of the Estate of Wanjiru Mwaura - Deceased) (Environmental and Land Originating Summons E012 of 2021) [2026] KEELC 1851 (KLR) (23 March 2026) (Judgment)**

Neutral citation: [2026] KEELC 1851 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E012 OF 2021  
EM WASHE, J  
MARCH 23, 2026**

**BETWEEN**

**JULIUS KIPTOO KORIR ..... APPLICANT**

**AND**

**GEORGE NDUNG’U CHEGE ..... 1<sup>ST</sup> RESPONDENT**

**LUCY NJOKI CHEGE ..... 2<sup>ND</sup> RESPONDENT**

**KIMAIYO KIPSANG MOSES ..... 3<sup>RD</sup> RESPONDENT**

**AS PERSONAL REPRESENTATIVES, BENEFICIARIES AND CREDITORS OF  
THE ESTATE OF WANJIRU MWAURA - DECEASED**

**JUDGMENT**

1. The Applicant herein did file an Amended Originating Summons dated 28.06.2023 (hereinafter referred to as “the present OS”) against the 1<sup>st</sup> to 3<sup>rd</sup> Respondents seeking a determination of the following questions: -
  - a. Whether the title of the said Wanjiru Mwaura (Deceased) to the freehold interest in 3.5 Acres in land parcel Title Number Moiben/Moibeki Block 9 (Barsombe)/192 has been extinguished by the Applicant’s adverse possession thereof for a period of more than 12 years in terms of section 17 and 38 of the Limitation.
  - b. Whether the Applicant has acquired the freehold interest in 3.5 Acres in land parcel Title Number Moiben/moibeki Block 9 (Barsombe)/192 by their adverse possession thereof for a period of more than 12 years that is, from at least 2004 to date.
  - c. Whether the Respondents have been holding the land in trust for the Plaintiff since the year 2016 when the deceased person’s title to the land was extinguished.



- d. Whether the Land Registrar Eldoret should be ordered to register the Applicant as the absolute proprietor of 3 Acres on land parcel Title Number Moiben/moibeki Block 9 (Barsombe)/192 in place of Wanjiku Mwaura (Deceased) and in place of the Respondents as persons succeeding the deceased.
  - e. Whether the Applicant is entitled to the costs of the suit from the Respondents.
2. The grounds in support of the determination of the above issues in favour of the Applicant are contained on the body of the present OS as well as the Supporting Affidavit filed therein and can be summarised as follows;-
- i. The Applicant herein has been in occupation of the property known as LR.NO.Moiben/Moibeki Block 9 (Barsombe) 192 (hereinafter referred to as the “suit property”) since the year 1992.
  - ii. The registered owner of the suit property did pass on in the year 1992.
  - iii. On or about 28.02.2004 and 08.10.2004, the Applicant did enter into various Agreements For Sale with some of the relatives of the deceased registered owner for the purchase of 3.5 Acres within the suit property.
  - iv. Upon purchase of the 3.5 Acres on the suit property in the year 2004, the Applicant did take possession and has have continuous and uninterrupted occupation for over a period of 12 years.
  - v. Unfortunately, the relatives of the registered owner who sold the portion of 3.5 Acres did not complete the sale and the Applicant has not been able to trace them to transfer the land to him.
  - vi. Currently, the beneficiaries of the deceased registered owner have instituted succession proceedings and are distributing the estate including the suit property herein.
  - vii. It is therefore the Applicant’s pleading that this Court do determine the issues above to determine whether or not he is the beneficial owner of the portion measuring 3.5 Acres within the suit property based on his occupation and direct Land Registrar to grant him the ownership documents thereof.
3. The present OS was duly served on the 1<sup>st</sup> to 3<sup>rd</sup> Respondents as the administrators of the Estate of the registered owner.
4. The 1<sup>st</sup> to 3<sup>rd</sup> Respondents did oppose the present OS through a Replying Affidavit dated 04.10.2023.
5. The grounds upon which the 1<sup>st</sup> to 3<sup>rd</sup> Respondents did oppose the present OS are as follows; -
- i. The registered owner of the suit property did pass on the 07.08.1990.
  - ii. The registered owner and her family had been in occupation of the suit property until the year 1992 when left due to post election violence.
  - iii. Due to the hostility experienced, the deceased registered owner did relocate to Nyandarua County.
  - iv. However, the efforts by the beneficiaries of the registered owner now deceased has been difficult for the reason that the neighbouring families including the Applicant have been issuing threats to them.



- v. According to the 1<sup>st</sup> to 3<sup>rd</sup> Respondents, the actions of the Applicant as well as other unknown persons threatening them with harm is to forcefully occupy the suit property and dispossess them of their lawful asset.
  - vi. The 1<sup>st</sup> to 3<sup>rd</sup> Respondent did deny that the Applicant's occupation on the suit property was peaceful, open and notorious for the last 15 years and therefore the present OS was not merited.
  - vii. The 1<sup>st</sup> to 3<sup>rd</sup> Respondents did further deny the allegation that the Applicant had purchased a portion of 3.5 acres on the suit property from any relatives of the registered owner now deceased.
  - viii. The 1<sup>st</sup> to 3<sup>rd</sup> Respondents did state that if any Agreements of Sale were ever signed, then these Agreements For Sale are null and void and cannot be enforced.
  - ix. The 1<sup>st</sup> to 3<sup>rd</sup> Respondents did further plead that the present OS was incompetent as the Applicant did not annex an extract of the Certificate of Title as provided by law.
  - x. In conclusion, the 1<sup>st</sup> to 3<sup>rd</sup> Respondents were of the view that the Applicant herein is simply meddling with the estate of the registered owner without any lawful justification.
6. The Replying Affidavit was duly served on the Applicant but there was no response therein to rebut the allegations made by the 1<sup>st</sup> to 3<sup>rd</sup> Respondents.
7. Pleadings having duly closed, the present OS was listed for hearing.

#### **Applicant's Testimony & Documentary Evidence**

8. The Applicant's case began with the testimony of the Applicant who was marked as PW 1.
9. The Applicant did inform the Court that he would rely on the Supporting Affidavit dated 28.06.2023 and the witness statement dated 25.04.2022 as his evidence in chief.
10. The Applicant did further produce the following documents in support of his evidence in chief; -
- PW 1 Exhibit 1- A Copy Of The Agreement For Sale Dated 28.02.2004 Between One Samuel Chege Mwaura & The Applicant Relating To The Property Known As Barsombe Nyakiambi Plot.no.192.
  - Pw1 Exhibit 2- A Copy Of The Agreement For Sale Dated 08.10.2004 Between Julious Karanja Mwaura And The Applicant Over A Portion On Barsombe Nyakiambi Plot.no.192.
  - Pw1 Exhibit 3 – A Copy Of An Official Search Of The Property Known As L.r. Moiben/ moiben Block 9 (barsombe)/192.
  - Pw1 Exhibit 4 – Copies Of The Pleadings In Succession Cause No. 33 Of 2020 Relating To The Estate Of Wanjiru Mwaura (deceased).
  - PW1 Exhibit 5 – A Copy of a Letter dated 30.11.2021 from the firm of Martim & Co. Advocates to the Chief Barsombe Location.
11. The Applicant herein did inform the Court that the 1<sup>st</sup> to 3<sup>rd</sup> Respondents herein had failed to recognise him as a legitimate owner of 3 acres within the suit property and issue him with the relevant ownership documents.



12. According to the Applicant, the portion of 3 Acres was duly sold to him by relatives of the deceased registered owner although all of them had since also passed away.
13. It was only through the Court that the Applicant can be able to acquire ownership documents to the portion of 3 acres that he had purchased within the suit property.
14. On cross-examination, the Applicant did admit that the portion of 3 acres he had acquired are within the suit property registered in the name of the deceased Respondent.
15. The Applicant did confirm that the registered owner had passed on in the year 1990.
16. Based on the documents presented before the Succession Court, at the time of the Applicant purchasing the 3 Acres on the suit property, the registered owner had already passed on.
17. The Applicant did admit that at the time he was purchasing the portion of 3 Acres, the estate of the registered owner did not have any administrators and/or beneficiaries.
18. On being referred to the Respondents 'List of Documents dated 28.06.2024, the Applicant did inform the Court that he was not aware of the Confirmed Grant that had sub-divided the suit property.
19. On being referred to PW 1 exhibit 4, the Applicant did testify that it was a Copy of the Confirmed Grant regarding the estate of the registered owner made on 18.03.2021.
20. On being referred to PW 1 exhibit 1 & 2, THE Applicant did disclose that the two documents had been prepared by the Area Chief one Paul Sang.
21. The Applicant did further disclose that the Area Chief was fully aware that he had purchased 3 Acres on the suit property and is the one that had brought the Surveyor to sub-divide the suit property.
22. When referred to PW1 Exhibit 1 & 2; it was his testimony the 2 documents were prepared by the Chief Paul Sang, who was aware that he purchased 3 Acres.
23. According to the Applicant, the suit property was still registered in the name of the deceased.
24. In conclusion, the Applicant did reiterate that he was the person in occupation of about 3 Acres within the suit property for a period of over 12 years and therefore entitled to ownership by way of adverse possession.
25. On re-examination, the Applicant did reiterate that the documents produced as PW 1 EXHIBIT 2 were prepared by the Area Chief and the 1<sup>st</sup> Respondent was even a witness.
26. The Applicant did state that he was the one in occupation of 3 Acres within the suit property.
27. The Applicant did state that his occupation of the suit property has been since 2004 with the knowledge of the Respondents who have not interrupted the same.
28. In essence, the Applicant sought this Court to facilitate him acquire his ownership documents for the portion of 3 Acres on the suit property.
29. At the end of this re-examination, the Applicant was discharged from the witness box.
30. The Applicant's second witness was one Richarg Kurgat who was marked as PW2.
31. PW 2 did introduce himself as a resident of Segero and a farmer by occupation.
32. PW 2 did inform the Court that he had prepared a witness statement dated 25.04.2022 which he did adopt as his evidence in chief.



33. According to PW 2, the Applicant herein had purchased a portion measuring 3 Acres on the suit property in the year 2004 and had been in occupation of the same since then.
34. The Applicant did testify that the Applicant's occupation has been quite and uninterrupted for the last 12 years.
35. PW 2 did aver that the 1<sup>st</sup> Respondent had sold the suit property and relocated to Maili Nne within Cherangani.
36. On cross-examination, PW 2 did state that the Agreements For Sale relating to the portion purchased by the Applicant had been done before the Area Chief.
37. However, PW 2 could not identify the true owner of the suit property when the Agreements For Sale were being executed.
38. PW 2 could not also confirm if the Applicant had taken possession in the year 1992 or the year 2004.
39. PW 2 nevertheless did insist that the 1<sup>st</sup> Respondent was a son and beneficiary of the estate of the registered owner.
40. PW 2 did inform the Court that the Applicant had three homes on the suit property and was living with his brother.
41. On re-examination, PW 2 did state that he was one of the witnesses in the Agreements for Sale between the Applicant and the 1<sup>st</sup> Respondent.
42. At the end of the re-examination, PW2 was discharged and the Applicant did close his case.

#### **1<sup>st</sup>, 2<sup>Nd</sup> & 3<sup>Rd</sup> Respondents Testimonies & Documentary Evidence**

43. The Respondents case began with the testimony of the 1<sup>st</sup> Respondent George Ndungu Chege who was marked as DW 1.
44. The 1<sup>st</sup> Respondent did introduce himself as a resident of Eldoret.
45. The 1<sup>st</sup> Respondent then did inform that he had prepared a witness statement dated 05.05.2023 of which he did adopt as his evidence in chief.
46. The 1<sup>st</sup> Respondent further did produce the following documents in support of his evidence in chief;-  
 Dw1 Exhibit 1- A Copy Of The Ruling Dated 05.06.2024 In The Proceedings Known As Eldoret Chief Magistrates Succession Cause No. 33 Of 2020.  
 Dw1 Exhibit 2- A Copy Of The Order Issued On 11.06.2024 In The Eldoret Chief Magistrates Succession Cause No. 33 Of 2020.  
 Dw1 Exhibit 3- A Copy Of The Grant Of Letters Of Administration Issued On 26.08.2020 In The Proceedings Known As Eldoret Chief Magistrates Succession Cause No. 33 Of 2020.  
 Dw1 Exhibit 4- A Certificate Of Confirmation Issued On 18.03.2021 In Eldoret Chief Magistrates Succession Cause No. 33 Of 2020.  
 Dw1 Exhibit 5- Amended Grant Of Letters Of Administration Issued On 26.02.2021 In Eldoret Chief Magistrates Succession Cause No. 33 Of 2020.
47. The 1<sup>st</sup> Respondent did inform the Court that he was born on the suit property but during the post-election, the family was evicted.



48. The 1<sup>st</sup> Respondent did confirm that the suit property did belong to the grandmother who has since passed on.
49. During the succession proceedings mentioned hereinabove, the Applicant had tried to be recognised as a person with an interested in the estate of the deceased registered owner but his application was disallowed.
50. The 1<sup>st</sup> Defendant did inform the Court that the suit property had since been sub-divided to the three beneficiaries and new ownership documents processed.
51. In addition to the foregoing, each of the beneficiaries was in occupation of their respective portions and therefore the Applicant herein was not in occupation of any parcel of land on the suit property.
52. The 1<sup>st</sup> Respondent did insist that although the family was not in physical possession, the suit property has always been leased for farming to other persons.
53. In conclusion, the 1<sup>st</sup> Respondent sought this Court to dismiss the OS with costs.
54. On cross- examination, the 1<sup>st</sup> Respondent did state that he was born on 15.02.1984 and grew up in the suit property until the year 1992 when they were evicted.
55. The 1<sup>st</sup> Respondent did inform the Court that one GEORGE NDUNGU who was the family used to lease the suit property until 2019 but he did not have evidence of the said Leases.
56. The 1<sup>st</sup> Defendant did testify that the suit property was about 7 Acres.
57. On being referred to DW 1 EXHIBIT 1 & 2, the 1<sup>st</sup> Respondent did state that the Ruling pronounced on the 05.06.2024 was after the present suit had been filed.
58. Nevertheless, the 1<sup>st</sup> Respondent did rely the allegation that the Applicant was in occupation of any portion of the suit property.
59. In concluding his cross-examination, the 1<sup>st</sup> Respondent did reiterate that the suit property had been sub-divided and all the beneficiaries were in their own separate portions.
60. On re-examination, the 1<sup>st</sup> Respondent did confirm that the suit property was sub-divided and the Applicant herein is not in any occupation or possession of any part thereof.
61. At the end of this re-examination, the 1<sup>st</sup> Respondent was duly discharged and the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents did close their case thereafter.
62. The Court has duly perused the pleadings herein, the testimonies of the witnesses, the documentary evidence and the submissions dated 04.08.2025 by the Applicant and 09.09.2025 by the Respondents and identifies the following issues for determination.
  - Issue No. 1- Whether The Plaintiff Has Sufficiently Proved The Elements Of Adverse Possession.
  - Issue No. 2- Whether The Plaintiff Is Entitled To The Reliefs Sought.
  - Issue No.3- Who Shall Bear The Costs Of The Present Suit.
63. The Court having duly identified the above issues for determination, the same will now be discussed as provided below.



## Issue No. 1 - Whether The Plaintiff Has Sufficiently Proved The Elements Of Adverse Possession?

64. To begin with, a claim of adverse possession is founded on the provisions of Sections 7,13, 17 and 38 (i) and (ii) of the Limitation of Actions Act and Section 28 (h) of the Land Registration Act.
65. In the celebrated case of Mtana Lewa -versus- Kahindi Ngala Mwangandi [2015] eKLR, the Court did describe the doctrine of Adverse possession as follows;-

“Adverse possession is essentially a situation where a person takes possession of land and asserts rights over it and the person having title to it omits or neglects to take action against such person in assertion of his title for a certain period, in Kenya, it is twelve (12) years.

The process springs into action essentially by default or inaction of the owner. The essential prerequisites being that the possession of the adverse possessor is neither by force or stealth or under the licence of the owner.

It must be adequate in continuity, in publicity and in extent to show that possession is adverse to the title owner. This doctrine in Kenya is embodied in Section 7 of the Limitation of Actions Act.....”

66. Based on the above authority, there are four key ingredients that an Application seeking ownership under adverse possession must demonstrate.
67. The first ingredient is entry into the suit property, open occupation of the suit property, the occupation should be for a period of 12 years and lastly, that the occupation has not been interrupted by the registered owner for a period of 12 years preceding the proceeding.
68. Having duly identified the ingredients of adverse possession, the same will now be discussed as follows; -

### A. Entry

69. The first ingredient in a claim of adverse possession is entry into the suit property.
70. According to the Applicant, he claims that he did enter the suit property in the year 1992.
71. However, in the year 2004, the relatives of the registered owner who is now deceased did official sale the Applicant a portion of 3.5 Acres on the suit property.
72. The Applicant states that since 2004, he had been in occupation and use of the portion measuring 3.5 Acres on the suit property.
73. The 1<sup>st</sup> Respondent did deny the allegation that the Applicant did enter the suit property in the year 1992.
74. The 1<sup>st</sup> Respondent admits that in the year 1992, there were post-election violence.
75. Nevertheless, the 1<sup>st</sup> Respondent did testify that although they were not in physical occupation, the suit property was being leased out to individuals to plough the same.
76. The question that requires to be answered is how the Applicant did demonstrate his entry either in the year 1992 or the year 2004 as pleaded.
77. As regards the entry alleged in the year 1994, there is not evidence tabled before this Court that the Applicant did enter the suit property in the said year.



78. As regards the entry alleged in the year 2004, the Applicant did present some Agreements For Sale with various persons who are said to be relatives of the registered owner.
79. The Applicant further did produce various photographs of crops which are alleged to have been placed on the suit property.
80. For an Applicant of adverse possession to prove entry, he or she must provide evidence of the developments and/or use of the property upon entry.
81. In the instant case, there is no evidence of any developments and/or use of the suit property in the year 1992 or 2004 by the Applicant.
82. In essence, the use of the two Agreements For Sale do not demonstrate entry into the suit property without actual prove that there were some activities by the Applicant in the year 1992 or 2004.
83. To this end, this Applicant herein has not been able to satisfactorily demonstrate his entry into the suit property either in the year 1992 and/or 2004.

### **B. Open Use**

84. The second ingredient is whether or not the Applicant's entry and occupation was open and notorious to the registered owner.
85. Unfortunately, the Court is Ingredient No. 1 did make a finding that there was no demonstration that the Applicant did enter the suit property in the year 1992 or 2004.
86. As such, the Court was of the considered view that there was no occupation by the Applicant on the suit property that can be deemed to be open and notorious to the Respondents interests herein.
87. In other words, the Applicant also fails to prove this ingredient.

### **Nature Of Occupation**

88. The third ingredient is the period of occupation.
89. The law provides that one seeking an order of Adverse possession must demonstrate continues use of the portion of land in which he claims to have acquired by way of adverse possession.
90. In the instant case, the Applicant was under statutory duty to demonstrate his occupation and use of the suit property registered in the deceased name.
91. The Respondents position was that the suit property has been on lease over the period of time since they vacated the same until it was sub-divided during succession.
92. Unfortunately, neither the testimonies of the Applicant and PW 2 nor the documents presented in Court show the nature of occupation of enjoyed by the Applicant.
93. The pictures produced by the Applicant contain a maize plantation that is barely four (4) months old.
94. If this is the evidence that the Applicant sought this Court to consider as the nature of occupation against the registered owner, then it surely fails short of the expected standards.
95. In conclusion, this Court hereby makes a finding that the Applicant did also fail to prove this ingredient.



### **occupation for period of 12 years**

96. The fourth and last ingredient is that the occupation must have been for a period of 12 years without interruption.
97. As earlier stated, the entry into the suit property by the Applicant either in the year 1992 or 2004 has not been demonstrated by the Applicant.
98. In the absence of entry into a property by an Applicant seeking adverse possession, time cannot start running.
99. Be as it may, there is another issue that needs to be discussed under this ingredient.
100. According to the Certified Copy of the official search produced by the Applicant, the suit property was registered in the name of the deceased on the 14.01.2020.
101. The Court of Appeal in the case of Francis Gitonga Macharia Vs Muiruri Waithaka [1998] eKLR did hold as follows; -

“The limitation period for purposes of adverse possession only starts running after registration of the land in the name of the respondent. It follows that in the instant case, time for adverse possession could not run against the respondent prior to the year 1978 as he had no proprietary interest in the suit property. Time for adversity cannot run against a person who has no interest in the property.....”
102. Clearly therefore, the time upon which one can claim for adverse possession only starts to run after the registered owner has been recorded as the owner of the said property.
103. In the present OS, the registered owner of the suit property was recorded on the 14.01.2020 and therefore no claim of adverse possession can be filed against her for a period that she was not yet registered as the owner of the suit property.
104. Having this in mind, then the Applicant’s present OS against the deceased registered owner is premature as a period of 12 years has not lapsed since her first registration as the owner of the suit property.
105. This being the position, the Applicant fails to demonstrate this ingredient as well.

### **Issue No. 2- Whether The Applicant Is Entitled To The Reliefs Sought.**

106. The second issue is whether or not the Applicant is entitled to the reliefs sought in the present OS.
107. Unfortunately, the Applicant was not able to satisfactorily prove the four ingredients required in a claim of Adverse possession and therefore his claim is not merited.
108. By extension thereof, the reliefs sought in the present OS cannot be granted.

### **issue no.3- who shall bear the costs of the present suit.**

109. Costs are usually awarded to a winning party.
110. In the present OS, the winning party is the estate of the Respondent herein.
111. As such, the Applicant is condemned to pay costs.



## **Conclusion**

112. In conclusion, the Court hereby makes the following Orders in determination of the present OS; -

- A. The amended originating summons dated 28.06.2023 is not merited and therefore dismissed forthwith.
- b. the applicant is condemned to pay costs to the respondent herein.

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 23<sup>RD</sup> DAY OF MARCH, 2026.**

**EMMANUEL M.WASHE**

**JUDGE**

In The Presence Of :

Court Assistant: Mr.Brian

Counsel for Applicant: Ms. Rotich

Counsel for Respondents: Mr. Khaemba

