



**Koros v Masanya (Environment and Land Case 70 of 2018)
[2025] KEELC 5598 (KLR) (25 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5598 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT AND LAND CASE 70 OF 2018**

MN KULLOW, J

JULY 25, 2025

**IN THE MATTER OF SECTION 38 OF THE LIMITATION OF ACTIONS ACT,
CAP 22 LAWS OF KENYA AND IN THE MATTER OF A CLAIM FOR ADVERSE
POSSESSION IN RESPECT OF LAND PARCEL NO. TRANSMARA/ENDONYOKOPIT/187**

BETWEEN

WILSON KIPETER KOROS PLAINTIFF

AND

PHILIP LETEIPA MASANYA DEFENDANT

JUDGMENT

A. Introduction

1. This is a judgment in respect of an Originating Summons filed by the Plaintiff, Wilson Kipeter Koros, pursuant to Section 38 of the *Limitation of Actions Act*, seeking a declaration that he has acquired title by way of adverse possession over a portion measuring approximately 1.5 acres out of land parcel number Transmara/Endonyokopit/187 (hereinafter "the suit property"). The suit was commenced by the Plaintiff on 19th October 2018.
2. Upon the taking of directions by this Honourable Court, the Originating Summons and supporting affidavit were deemed to constitute the plaint while the Defendant's replying affidavit was treated as the statement of defence. Both parties adduced viva voce evidence and subsequently filed written submissions.
3. The Plaintiff contends that he has been in continuous, open, exclusive, peaceful, and uninterrupted occupation of a portion of the suit land since 1999, having taken possession pursuant to a sale agreement with the Defendant. The Defendant denies these claims, arguing that the Plaintiff's occupation was not peaceful, nor continuous, and further contending that the Plaintiff was evicted from the land in or about 2007.



B. Plaintiff's Case In Brief

4. The Plaintiff's case is grounded in adverse possession. He avers that he entered into a land sale agreement with the Defendant on or about 2nd September 1999 for the purchase of a portion measuring 1.5 acres of the suit land. He testified that he took possession immediately after the agreement and has remained on the land since then, engaging in various acts of possession such as cultivation and constructing a homestead.
5. The Plaintiff further relied on photographic evidence (marked as Plaintiff's Exhibits 1–5), which he stated show his ongoing presence and use of the land. He emphasized that his occupation has been open, notorious, and without force or secrecy. He argued that the Defendant has not taken any legal action to evict him or to assert title, and therefore the statutory period of 12 years required under the Limitation of Actions Act has lapsed in his favour.
6. It was also the Plaintiff's position that the argument raised by the Defendant that his family had not consented to the sale is immaterial in law, as the transaction took place long before spousal or family consent was made a legal requirement under the Land Laws (Amendment) Act of 2016. He urged the Court to find in his favour, arguing that he has satisfied the legal threshold for a claim of adverse possession.

C. Defendant's Case In Brief

7. The Defendant, while acknowledging that he is the registered proprietor of the suit land, disputed the Plaintiff's assertion of adverse possession. He admitted entering into a land sale agreement with the Plaintiff but insisted that the agreement only covered 1.5 acres and not the entire parcel. He further argued that the Plaintiff never paid the full purchase price and that the transaction was not sanctioned by his family, which led to the Plaintiff being evicted from the land in or about 2007.
8. The Defendant contended that adverse possession requires actual, continuous, peaceful, and exclusive occupation of land for at least 12 years. According to his testimony, the Plaintiff's occupation was interrupted in 2007 when he was allegedly chased away by family members and ceased living on the land thereafter. The Defendant insisted that the Plaintiff's subsequent absence from the land nullifies any claim to continuous possession and that the Plaintiff's case should fail on that basis.
9. Reliance was placed on the Court of Appeal's decision in Mtana Lewa - v- Kabindi Ngala Mwagandi [2005] eKLR, where the Court articulated the elements of adverse possession as being peaceful, open, and continuous use of land, without the permission of the owner. The Defendant argued that these elements were not satisfied.

D. Issues For Determination

10. It is established law that the issues for determination in a suit generally flow from either the parties' pleadings or as framed by them for the court's determination; see the Court of Appeal decision in the case of Galaxy Paints Co. Ltd- v-Falcon Grounds Ltd (2000) 2 EA 385.
11. I have carefully and anxiously considered the parties' respective pleadings, evidence and the submissions including the issues framed therein. Order 15 Rules 1 and 2 of the Civil Procedure Rules, 2010 (The Rules herein) provide for framing of issues and materials from which issues may be framed in a suit respectively.
12. In the foregone, I am of the considered view that the issues for determination in this suit boil down to-



- a. Whether the Plaintiff could claim adverse possession arising from an Agreement for Sale
- b. Whether the Plaintiff has met the threshold for grant of orders of adverse possession
- c. Who shall bear the costs?

E. Legal Analysis And Disposition

13. I shall now proceed to address each of the above issues sequentially and in detail, while applying the applicable law and judicial precedent to the facts before the Court.
14. The doctrine of adverse possession in Kenya is founded under *Limitation of Actions Act*, CAP 22 Laws of Kenya. Section 7 of the said Act places a bar on actions to recover land after 12 years from the date on which the right accrued.
15. Further section 13 of the same *Act*, provides that adverse possession is the exception to this limitation:
 1. A right of action to recover land does not unless the land is in the possession of some person in whose favour the period of limitation can run (which possession is in this Act referred to as adverse possession), and, where under Section 9, 10, 11, and 12 a right of action to recover land accrues on a certain date and no person is in adverse on that date, a right of action does not accrue unless and until some person takes adverse possession of the land.
 2. Where a right of action to recover land has accrued and thereafter, before the right is barred, the land ceases to be in adverse possession, the right of action is no longer taken to have accrued, and a fresh right of action does not accrue unless and until some person again takes adverse possession of the land.
 3. For the purposes of this section, receipt of rent under a lease by a person wrongfully claiming, in accordance with Section 12(3), the land in reversion is taken to be adverse possession of the land”.
16. On the other hand, Section 38 of the *Act* allows a claimant to apply to Court for orders of adverse possession and provides that:

“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.”
17. The doctrine of adverse possession was aptly defined in *Mtana Lewa - v- Kabindi Ngala Mwangandi* (2015) eKLR where the Court of Appeal held that: -

“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 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 of stealth nor 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.”



18. From the above definition, adverse possession can only arise out of non-permissive possession. In this case and from the evidence presented, it is undisputed that the Plaintiff entered into the suit property in 1999 after signing a land sale agreement with the Defendant for a portion measuring 1.5 acres. The Plaintiff testified that he took possession immediately, began cultivating the land, and later constructed a homestead. He has remained in occupation since, and produced photographic evidence to support this.
19. It is not a strange phenomenon to allow a purchaser possession of the property being sold before the transaction is completed. In most instances, this is allowed pending completion of the transaction, which may include compliance with the requisite statutory formalities as appears to have been the case in this instance. Such a purchaser is not allowed onto the property as a trespasser, but they are understood to be on the land with permission from the registered owner.
20. This element of permissive possession was well explained in *Gabriel Mbui - v- Mukindia Maranya* (1993) eKLR, where Justice Kuloba had this to say:-

“(3) The occupation of the land by the intruder who pleads adverse possession must be non-permissive use, i.e. without permission from the true owner of the land occupied. It has been held many times that acts done under licence or permitted by, or with leave of, the owner do not amount to adverse possession and do not give the licensee or permitted entrant any title under the limitation statute. If one is in possession as a result of permission given to him by the owner, or if he is in possession of the land as a licensee from the owner, he is not in adverse possession. Permissive occupation is inconsistent with adverse possession. The stranger must show how and when his possession ceased to be permissive and became adverse.

The rule on permissive possession is that possession does not become adverse before the end of the period during which one is permitted to occupy the land...where possession was consensual or contractual in its inception, it cannot be called “adverse”. Thus, when possession is given by the vendor in pursuance of a sale, it is by leave and licence of the vendor; it is not just taken... The actual possessor must have usurped the land without leave. Possession by leave and licence of the owner is not adverse possession, for then the owner who has given leave has no cause of action during the time span of his permission or licence and the limitation period does not run against him until the licence has ended. If possession has commenced and continued in accordance with any contract, express or implied, between the parties in and out of possession, to which the possession may be referred as legal and proper, it cannot be presumed adverse. So also in cases between mortgagor and mortgagee. The ingredient of unpermitted occupation is usually expressed as “hostile” possession, to emphasize that “hostility” is the very marrow of adverse possession. And to say that possession is hostile means nothing more than that it is without permission of the one legally empowered to give possession. Any kind of permissive use, as by a tenant, licensee, contract purchaser in possession, or easement holder, is rightful and not hostile. Any time an adverse possessor and owner have discussed the adverse possession, permissive agreement may have occurred, and that destroys adverse possession (*Cobb v Lane* [1952] 1 All E R 1199; Denning, MR, in *Wallis’s Cayton Bay Holiday Camp Ltd v Shell-Mex and B P Ltd* [1974] 3 All ER 575 at p 580; *Chanan*



Singh, J, Jandu v Kirpal and another (1975) EA 225 at pp 233, 234, 237;
Madan, J (as he then was), in *Gatimu Kinguru - v- Muya Gathangi*, 1[1976]
Kenya L R 253, at pp 257, 258);”

21. It is a well-known fact that time cannot begin to run even if the purported contract becomes null and void by operation of law, until the permission initially granted to occupy the land is expressly revoked. This revocation may be done by the Vendor, or by the adverse possessor making it clear that they no longer remain on the land under the auspices of the said permission. This is so that the registered owner is made aware of the risk of losing his title if no take steps are taken to evict the purchaser from the land.
22. Furthermore, one of the requirements of adverse possession is open possession, without secrecy and the acquisition of rights in such a clandestine manner would in essence defeat the very important ingredients of openness of possession. Hence, a purchaser in possession cannot sit quietly enjoying rights of possession of land under a contract, and at the same time acquire rights as an adverse possessor over the property without first making it clear to the vendor that they are no longer relying on the permission granted by virtue of the contract.
23. It is this outright termination of the license or permission that turns what would otherwise be a purchaser in possession into an adverse possessor and vests in them the right to claim adverse possession.
24. Termination of possession also gives the Vendor the right to re-enter the land to re-assert his rights thereon or to take steps to evict the adverse possessor. In *Sisto Wambugu - v- Kamau Njuguna* (1983) eKLR, namely:

“*Hughes v Griffin* has been cited in Megarry’s *Law of Real Property* on this topic (4th Edn) at p 1013 and, applying its reasoning, it is in my judgment evident that a person (here the appellant) must have an effective right to make entry and to recover possession of the land in order that the statute may begin to run. He cannot have that effective right if the person in occupation is there under a contract, or other valid permission or licence, which has not been determined.”
25. Nevertheless, adverse possession can arise out of sale agreement if nothing subsequent to the sale agreement is in contravention of any law or equity. See *Gabriel Mbui v Mukindia Maranya* (1993) eKLR. In that case, the court further explained that:-

“Where adverse possession arose out of a sale of agreement under which the payment of the purchase price by the adverse possessor was by installments, and the agreement fails, the period of limitation affords an action for adverse possession only after the last and final payment has been made to complete the agreed purchase price. The period of limitation starts to run on the date of the payment of the last installment of the purchase price (Todd, J, in *Wanyoike - v- Kabiri* [1979] Kenya LR 236 at 239; also see among others, Simpson J (as he then was), in *Hosea v Njiru and others* [1974] E A 526 at 529, 530).”
26. Applying this to the present case, while the Plaintiff’s entry in 1999 was pursuant to a sale agreement and therefore permissive the permission was never formally revoked. The Defendant took no steps to enforce the agreement or evict the Plaintiff. No demand letters, no notices to vacate, and no court action were initiated. The Plaintiff remained on the land, undisturbed.
27. While The Defendant has alleged that the Plaintiff was “chased away by family members” in 2007, but this was never substantiated. No documentary evidence or third-party testimony was presented.



Notably, DW1 confirmed during cross-examination that the Plaintiff had been in occupation and that the agreement had been witnessed by family members of the Defendant. This shows the transaction was known to the family and lends credence to the Plaintiff's uninterrupted occupation claim.

28. In this case, the Defendant's failure to revoke the agreement or take steps to remove the Plaintiff must be interpreted as neglect or inaction, which triggered the running of time under Section 7. Therefore, while the Plaintiff entered permissively, the sale transaction collapsed, and his continued occupation beyond 12 years became adverse.
29. Moreover, the Plaintiff's conduct on the land was not only consistent with ownership but also visible and unequivocal. He established a homestead, fenced the portion in question, and cultivated it over several years. These acts of possession were never discreet or concealed. Indeed, such long-term physical development of the land reflects a clear intention to own and occupy it as of right. There was no evidence that the Defendant or his agents contested or disrupted these activities during the statutory period. Under settled law, such acts constitute open and notorious possession sufficient to alert any reasonable registered owner to the assertion of ownership by the occupier.
30. Additionally, the Court considers the significance of the Defendant's failure to exercise any of his rights as the registered proprietor during the material time. Despite allegedly knowing that the Plaintiff was on the land without having completed payment, the Defendant neither pursued eviction proceedings nor attempted to assert his title through administrative or judicial means. This inactivity is not merely passive neglect it operates as an acquiescence that satisfies the legal threshold under *Mtana Lewa - v- Kabindi Ngala Mwangandi* for adverse possession to accrue. The law imposes a duty on a title holder to protect their interest; prolonged inaction, where possession is adverse, extinguishes the legal title.
31. The Court also rejects the Defendant's argument that family objection invalidated the Plaintiff's occupation. DW1's admission that the transaction was known to family members and that the Plaintiff remained on the land undermines the credibility of any alleged hostile eviction in 2007. The lack of contemporaneous records, complaints, or corroborating witnesses to support that alleged eviction renders the claim speculative. On balance, the Plaintiff has discharged the burden of proof required under Section 107 and 109 of the *Evidence Act*, having demonstrated factual possession, animus possidendi (intention to possess), and a lapse of the statutory period without interruption.
32. Accordingly, the Court makes the following orders:
 - i. A declaration is hereby issued that the Plaintiff, Wilson Kipeter Koros, has acquired title by way of adverse possession over a portion measuring 1.5 acres of land comprised in LR No. Transmara/Endonyokopit/187.
 - ii. The Defendant's title to that portion is hereby extinguished pursuant to Section 38 of the *Limitation of Actions Act*.
 - iii. The Land Registrar Transmara shall register the Plaintiff as the proprietor of the said 1.5 acres.
 - iv. The Defendant shall execute the necessary documents to effectuate the transfer within 30 days, failing which the Deputy Registrar of this Honourable Court shall do so.
 - v. Each party shall bear their own costs.

It is so ordered!

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON 25TH DAY OF JULY, 2025. _

MOHAMMED N. KULLOW



JUDGE

Ruling delivered in the presence of: -

N/A for the Petitioner

N/A for the Respondent

Philomena W. Court Assistant

