



**Langat v Koech (Environment and Land Case 10 of 2013)
[2026] KEELC 2045 (KLR) (16 April 2026) (Judgment)**

Neutral citation: [2026] KEELC 2045 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ENVIRONMENT AND LAND CASE 10 OF 2013**

LA OMOLLO, J

APRIL 16, 2026

**IN THE MATTER OF SECTION 38 OF THE LIMITATION
OF ACTIONS ACT (CAP 22) LAWS OF KENYA**

AND

IN THE MATTER OF LAND PARCEL KERICHO/GELEGELE/150

BETWEEN

CHRISTOPHER KIPRONO LANGAT PLAINTIFF

AND

TIGISEY KIPNGENO KOECH DEFENDANT

JUDGMENT

Introduction.

1. The Plaintiff commenced the present proceedings vide the Originating Summons dated 12th February, 2013 which Originating Summons was amended and filed on 2nd November, 2020.
2. The Amended Originating Summons is expressed to be brought under Sections 3 & 3A of the *Civil Procedure Act* and Order 37 Rule 7 of the Civil Procedure Rules.
3. The Plaintiff seeks the following orders;
 - a. The said Plaintiff be declared to have become entitled to 3 Acres out of all that piece of land registered under the Registered *Land Act* (Chapter 300, Laws of Kenya Repealed)) formerly known as Kericho/Gelegele/150 by virtue of the said Plaintiff's adverse possession of the said land for over twelve (12) years.



- b. The said Plaintiff be registered as the proprietor of the said 3 Acres out of former parcel number CIS Kericho/Gelegele/150.
 - c. The Defendant be permanently restrained from entering, alienating, wasting, damaging, disposing or in any other way dealing with the suit land.
 - d. The costs of the suit be awarded to the Plaintiff.
4. The Plaintiff also seeks for the following prayers;
- a. A declaration that the Plaintiff is entitled to exclusive and unimpeded right of possession and occupation of 3 acres out of all that piece of land known as Kericho/Gelegele/150.
 - b. An order directing that the Plaintiff be registered as the sole proprietor of 3 acres out of all that piece of land known as Kericho/Gelegele/150.
 - c. A permanent order restraining the Defendant from entering, alienating, wasting, damaging, disposing or in any other way dealing with the suit land.
 - d. Costs of the suit.
5. The application is supported by the undated Amended Supporting Affidavit of Christopher Kiprono Langat.

Factual Background.

6. On 26th February, 2014, the Court gave directions that the Originating Summons be heard by way of viva voce evidence.

The Plaintiff's Contention.

7. The Plaintiff contends that he purchased a three-acre portion of land parcel No. Kericho/Gelegele/150 on 14th June, 1991 from John Milile Kaplelach now deceased and has been in quiet uninterrupted possession of it.
8. He also contends that the Defendant is one of the legal representatives of the estate of John Milile Kaplelach (deceased) and he has threatened to evict him from the suit parcel of land.
9. He ends his deposition by stating that he has lived on the said parcel of land for a period of over twenty years and he will suffer irreparable damage if he is evicted.

The Defendant's Response.

10. The Defendant filed a Replying Affidavit sworn on 22nd May, 2013.
11. He deposes that the Plaintiff trespassed onto the suit parcel of land and erected structures on it.
12. He also deposes that the land sale agreement that the Plaintiff is relying on is not authentic as it only signed by one party.
13. He further deposes that the application for the land control board consent to subdivide and transfer the suit parcel of land was allegedly fraudulently applied for after the statutory timeline that is provided for under the *Land Control Act* had lapsed.
14. It is his deposition that the consent that was thereafter issued is void ab initio.



15. It is also his deposition that the Plaintiff has not been in peaceful possession of the portion of the suit parcel of land. He goes on to state that he has written numerous letters to the Plaintiff questioning his acts of trespass.
16. It is further his deposition that Kericho HCC No. 23 of 2007 was filed challenging the Plaintiff's acts of trespass. He goes on to state that the said suit was dismissed for want of prosecution.
17. He deposes that the Plaintiff should be evicted and restrained from trespassing onto and/or occupying the suit parcel of land.
18. He ends his deposition by stating that he is advised by his advocates on record that the Plaintiff's application is incompetent, bad in law and fatally defective.

Plaintiff's Evidence.

19. Christopher Langat testified as PW1. He stated that he filed a witness statement dated 23rd April, 2014. He prayed that the Court adopts the said statement as part of his evidence- in- chief, which prayer the Court acceded to.
20. It was his evidence that he purchased a portion of the suit parcel of land from the Defendant's deceased father one John Kaplelach vide the land sale agreement dated 14th June, 1991. He produced a copy of the said land sale agreement as Exhibit P1.
21. It was also his evidence that the portion of land he purchased measures 3 acres and it was for a consideration of kshs. 80,000/=.
22. It was further his evidence that he took possession of the said portion of land in the year 1991, fenced it and started cultivating it adding that he also lives on the said portion of land.
23. He also testified that he paid the purchase price in installments and by the year 1992, he had a balance of Kshs. 7,000/=.
24. He further testified that John Kaplelach's (deceased) family demanded that he completes payment and, in the process, destroyed his fence.
25. It was his evidence that at the time he purchased a portion of the suit parcel of land, he also purchased a cow at kshs. 3,800/=.
26. It was also his evidence that John Kaplelach's (deceased) family further demanded that he pays for the cow.
27. He also testified that after he paid the purchase price in full and they obtained the land control board consent. He produced a copy of the letter of consent to subdivide issued on 27th January, 1993 as Exhibit P2.
28. He further testified that they subsequently applied for the consent to transfer the land but unfortunately, the Defendant's father died before the transfer was effected adding that the Defendant's father died in the year 1994.
29. It was also his evidence that thereafter, they had a dispute with the Defendant's sons and that the dispute was reported at the Chief's office. He produced the 'proceedings' of the said dispute as Exhibit P3.



30. It was further his evidence that he entered into a further agreement dated 6th December, 1992 with John Kaplelach (deceased) for the purchase of a cow. He produced a copy of the said agreement as Exhibit P4.
31. He also produced a copy of the application for consent of the land control board that was made by John Kaplelach (deceased) dated 7th December, 1992 as Exhibit P5.
32. He further produced a copy of the application for consent to transfer dated 19th April, 1994 as Exhibit P6.
33. He testified that on 4th November, 2002 he conducted a search on the suit parcel of land and it showed that the land was registered in the name of John Melile Kaplelach. He produced a copy of the said Certificate of official search as Exhibit P7.
34. He also testified that on 27th January, 2003 they met at the Office of the Chief Gelegele to resolve the dispute with regard to the balance of Kshs. 7,000/= which balance was in respect of the purchase price.
35. He further testified that it was resolved that he pays the balance through the Chief's office. He produced the minutes of the meeting held at the Chief's office as Exhibit P8.
36. It was his evidence that he paid the said amount through the Chief's office but the sons of John Kaplelach (deceased) refused to collect it.
37. It was also his evidence that on 26th March, 2012, they held another meeting at the Chief's office after the Defendant and his brothers complained and insisted that he vacates the suit parcel of land.
38. It was further his evidence that the elders resolved that he could not give vacant possession of the land as he had purchased it from the registered owner. He produced a copy of the minutes of the said meeting as Exhibit P9.
39. He testified that he was always ready and willing to pay the balance of the purchase price of kshs. 7,000/= but the Defendant refused to accept it.
40. He also testified that after the land was subdivided, the surveyor prepared a sketch plan which he produced as Exhibit P10.
41. He further testified that he is seeking that the Court makes a declaration that he is the owner a three-acre portion of the suit parcel of land.
42. It was his evidence that he has lived on the suit parcel of land for a period of over twenty-eight years.
43. In his witness statement, PW1 states that William Kipkorir Sang and Solomon Kitur (deceased) were present when he purchased a portion of the suit parcel of land and were witnesses in the agreement dated 16th June, 1991.
44. Upon cross examination, PW1 confirmed that he took possession of the suit parcel of land in the year 1991.
45. He admitted that when John Kaplelach (deceased) was alive, his possession was peaceful but when he died, a dispute arose between him, the Defendant and his brothers.
46. He also admitted that the land sale agreement he produced as Exhibit P1 did not bear the vendor's signature.
47. He confirmed that Exhibit P6 was an application for consent to transfer the suit parcel of land while Exhibit P5 was the application for consent to subdivide the land.



48. He also confirmed that the original parcel of land was known as Kericho/Gelegele/SS/150.
49. He admitted that the application for consent to transfer (Exhibit P6) was for land parcel No. Kericho/Gelegele/204 and explained that it was an error.
50. He further admitted that the family of John Kaplelach (deceased) filed a suit at the Kisii High Court in the year 2007 where they sought that he be evicted from the suit parcel of land.
51. He confirmed that the said suit was later dismissed for want of prosecution.
52. PW1 admitted that he was not aware that there was a succession cause that was filed in respect of the suit property.
53. He denied that he was refunded money by Anna as stated in the further agreement that was produced as Exhibit P4.
54. Upon re-examination, PW1 stated that both him and John Kaplelach (deceased) did not sign the land sale agreement that they entered into.
55. He also stated that the application for consent to subdivide was with respect to land parcel No. Kericho/Gelegele/150.
56. He reiterated that he had all along stayed on the said parcel of land and stated that he came to learn of the succession cause in the year 2013.
57. Upon clarification by the Court, PW1 confirmed that he did not have the current certificate of official search of the suit property and the Court directed that a Certificate of Official Search as at the year 2019 be availed.
58. Julius Tanui testified as PW2. It was his evidence that he was the Senior Chief, Gelegele Location, Sotik Sub-County in Bomet County.
59. It was also his evidence that he had been a Chief for a period of over twenty-three years.
60. It was further his evidence that both the Plaintiff and the Defendant came from Gelegele Location and added that he personally knew them.
61. He also testified that the dispute between them was with regard to land parcel No. Kericho/Gelegele/150 which belonged to the Defendant's deceased father one John Melile who died in the year 1994.
62. He further testified that John Melile (deceased) sold a three-acre portion of the suit parcel of land to the Plaintiff and he only became aware of the said sale in the year 2003.
63. It was his evidence that there was a dispute over the sale of the suit parcel of land that was initiated by the Defendant.
64. It was also his evidence that the Defendant's contention was that the Plaintiff had not purchased the land.
65. It was further his evidence that they conducted proceedings where witnesses were called and they gave evidence that they had witnessed the sale.
66. He testified that there were minutes of the said proceedings and they were produced by PW1 as Exhibit P8.
67. He also testified that some of the persons who witnessed the sale were now deceased.



68. He further testified that at the time of the hearing of the dispute he was still a Senior Chief but he was away on leave.
69. It was his evidence one Benard Busienei who was also a Chief, handled the proceedings and added that he was now retired.
70. It was further his evidence that at the end of the proceedings it was found that the Plaintiff had purchased a three-acre portion of the suit parcel of land and that he was in possession.
71. He testified that it was resolved that the Plaintiff continues living on the said portion of land where he was living to date.
72. He also testified that he knew that the Plaintiff was in possession of the said portion of land even before the dispute was brought to him.
73. Upon cross examination, he confirmed that the minutes produced as Exhibit P8 were with respect to the proceedings held before him.
74. He also confirmed that it was noted in the said minutes that the Plaintiff had a balance of kshs. 7,000/= and that the said amount was still owing.
75. He clarified that Benard Busienei was an Assistant Chief who acted in his place when he was away on leave.
76. He admitted that from the further agreement produced as Exhibit P4, it was evident that there were disputes elsewhere before the dispute was taken to them.
77. He stated that the Plaintiff lived peacefully on the said portion of land from the time the registered owner died and clarified that after the registered owner died, the Plaintiff had not been in peaceful possession of the suit parcel of land.
78. He stated that the registered owner of the suit parcel of land died in the year 1994 and added that he was not aware that there was a dispute in the year 1994.
79. That marked the close of the Plaintiff's case.

The Defendant's Evidence.

80. Tigisey Kipngeno Koech testified as DW1. He prayed that his witness statement dated 21st December, 2021 be adopted as part of his evidence- in- chief, which prayer the Court acceded to.
81. It was his evidence that the suit parcel of land belonged to their deceased father one John Melile Kaplelach.
82. It was also his evidence that the Plaintiff is his cousin as the Plaintiff's mother and his mother are sisters.
83. It was further his evidence that the Plaintiff's mother is known as Oboti Chepesa while his mother is Anna Cheruto Melile.
84. He testified that his deceased father invited the Plaintiff's mother who at that time was living in Rongai to go and live on the suit parcel of land on a temporal basis and that the Plaintiff did not therefore buy any land.
85. He further testified that a dispute arose in the year 1993 between his father and the Plaintiff and added that at the same time his deceased father had a dispute with their neighbor over land.



86. It was also his evidence that his deceased father borrowed Kshs. 3,000/= from the Plaintiff so that he could go to Court.
87. It was further his evidence that after his deceased father came back from Court, he discovered that the Plaintiff had taken his cow and calf and explained that this was how the dispute between his deceased father and the Plaintiff begun.
88. He reiterated that the Kshs. 3,000/= given to his deceased father was not for the purchase of land as it was to enable him to go to Court.
89. He also reiterated that his deceased father did not sell the land to the Plaintiff as alleged.
90. When he was referred to the land sale agreement that was produced as Exhibit P1, he testified that the said agreement was with respect to land parcel No. 13.
91. He also testified that No. 13 was crossed out and No. 150 written in its place. He further testified that the size of the alleged portion of land which was subject of the agreement is indicated as 3.2 acres and 2 acres and it was, therefore, not clear what was it measures in size.
92. It was also his evidence that various amounts were indicated on the said agreement. He explained that a sum of Kshs. 88,000/= , later a sum of Kshs. 85,000/= and a sum of Kshs. 73,000/= are all mentioned in the agreement.
93. It was further his evidence that a sum of kshs. 13,000/= was also mentioned in the said agreement.
94. He testified that the purchase price in the said sale agreement appeared to have been changed.
95. He also testified that the said agreement had various names indicated on it but no signatures.
96. He further testified that he could not tell who were the witnesses to the said transaction.
97. It was his evidence that he had a letter dated 14th May, 2003 which letter is from the Chief. He explained that the said letter is evidence that there was a dispute. The letter was marked and produced as DMFI-1. It was also his evidence that the Chief who wrote the said letter was still alive.
98. It was further his evidence that their area District Officer wrote a letter dated 3rd February, 2004 and that the District Commissioner wrote the letter dated 12th May, 2003.
99. He also testified that he had a letter dated 21st July, 2005 written by an advocate known as Ondari. He explained that the said letter shows that as at that date, there was a dispute. He produced a copy of the said letter as Exhibit D4.
100. DW1 was referred to the application for consent of the Land Control Board that had been produced as Exhibit P5 and he confirmed that it was dated 7th December, 1992.
101. He testified that as per the Letter of Consent produced as Exhibit P2, the Land Control Board issued the consent on 27th January, 1993.
102. He also testified that the letter that requested them to appear before the Land Control Board was dated 11th February, 1997.
103. He further testified that the Plaintiff has not lived peacefully on the suit parcel of land as there have been disputes since the year 1993 between the Plaintiff and their deceased father and later between them and the Plaintiff.
104. He prayed that the court issued orders of eviction against the Plaintiff.



105. It was also his evidence that the minutes of the meeting held at the Chief's office produced as Exhibit P8 show that the said meeting was held on 27th January, 2003.
106. It was further his evidence that the said minutes show that there had been a dispute over the suit parcel of land.
107. Upon cross examination, DW1 confirmed that the Plaintiff took possession of a portion of the suit parcel of land in the year 1991.
108. He also confirmed that the dispute began in the year 1993 and that their father died in the year 1994 and further confirmed that after the death of their father, the dispute continued between the Plaintiff and their family.
109. He stated that the dispute was over the Plaintiff's claim that he had purchased a portion of their land.
110. He also stated that initially the Plaintiff claimed two acres and later claimed 3 acres of land.
111. He further stated that they gave the Plaintiff a notice through their lawyer that asked him to vacate the land.
112. He confirmed that many meetings were held with the view of the Plaintiff vacating the suit parcel of land.
113. He also confirmed that after the Plaintiff refused to vacate the suit parcel of land, they filed Kericho HC Case No. 27 of 2007.
114. He admitted that he was not aware of the outcome of said the suit but later clarified that the suit was dismissed between the years 2008 to 2009 and the Plaintiff then filed the present suit.
115. He also stated that they instructed an advocate known as Ondari to file a suit in Kisii and that the said suit was later transferred to Kericho but the said advocate did not inform them how the said suit was concluded.
116. He reiterated that he sued the Plaintiff first but his then advocate became indolent.
117. He confirmed that the Plaintiff lived on the suit parcel of land with his family.
118. He also confirmed that the Plaintiff had constructed structures on the said portion and that he ploughed it.
119. Upon re-examination he stated that the Plaintiff took possession of the suit parcel of land on 14th June, 1991 and added that he wrote several letters to the Plaintiff asking him to vacate the land.
120. He then reiterated that Case No. 23 of 2007 was filed in Kericho High Court.
121. Anna Melile testified as DW2. She testified that she was the owner of land parcel No. 150.
122. She also testified that the Plaintiff took possession of a portion of the said parcel of land and he later refused to vacate it.
123. She further testified that the Plaintiff's mother is her sister and traditionally, the Plaintiff is her son.
124. It was her evidence that the Plaintiff's mother sought to live on their land as they looked for land to move to.
125. It was also her evidence that she together with her deceased husband, John Melile gave the Plaintiff permission to live on the land with his mother.



126. It was further her evidence that she could not remember when her deceased husband died and neither could she remember the year the Plaintiff and his mother took possession of the land.
127. She testified that when her deceased husband was alive the Plaintiff took his cow and calf and that this was the genesis of the dispute.
128. She also testified that the Plaintiff and his mother were asked to move out of the land by her deceased husband but they refused to do so.
129. She further testified that they reported the matter to the elders who sat down and discussed the issue and produced a copy of the minutes of the said meeting dated 17th April, 2003 as Exhibit D5.
130. It was her evidence that the Plaintiff should be evicted from the suit parcel of land.
131. It was also her evidence that soon after her husband died, the Plaintiff tried to give them kshs. 7,000/= but they refused to accept the money.
132. It was further her evidence that she was not aware if the said amount of money was being paid so that the Plaintiff can stay on the suit parcel of land.
133. Upon cross examination, she reiterated that she is related to the Plaintiff.
134. She stated that she is not a sister to the Plaintiff's mother but they belong to the same clan.
135. She also stated that there was no agreement for sale of land and denied that she received any amount of money.
136. She admitted that she could not remember when the sum of Kshs. 7,000/= was given to her but confirmed that the money was paid to the Chief's office.
137. She stated that the Plaintiff paid money to the Chief's office and sent someone to tell them to go and collect it and added that when this was happening her husband was deceased.
138. She denied that they sold a portion of the suit parcel of land to the Plaintiff so that they could go and buy cows.
139. She reiterated that the Plaintiff's mother sought to live on a portion of the suit parcel of land temporarily.
140. She stated that they did not measure the portion of land they were to occupy and instead she and her deceased husband just showed them a portion of land to cultivate.
141. She also stated that she trusted her deceased husband and that he could not have done anything without informing her.
142. She further stated that she has a co-wife who left the home but later came back.
143. She stated that her deceased husband wrote a letter which she left at home wherein he stated that her co-wife should not be allowed to come back.
144. She also stated that her co-wife has one child known as Kiprono who her husband recognized as his son.
145. She further stated that they came to Court after the elders finished deliberations.
146. Upon re-examination, she stated that the Plaintiff's mother belongs to her clan and that is why she refers to her as a sister.
147. Upon clarification by the Court, DW2 stated that she was born in the year 1954.



148. Julius Arap Tanui who testified as PW2 was called by the Defendant and he testified as DW3.
149. It was his evidence that he was a retired Chief of Gelegele Location.
150. He testified that he retired in the year 2021. When he was referred to MFI D1 he confirmed that it was a letter dated 14th May, 2003 that he had written.
151. He also testified that he wrote the said letter to the Plaintiff wherein he told him to stop putting up a fence on the disputed parcel of land.
152. He further testified that he also asked the Plaintiff to stop fencing the land until the case was resolved.
153. It was his evidence that the suit parcel of land belongs to John Melile (deceased) who was the father to the Defendant.
154. It was also his evidence that the Defendant filed a complaint in his office.
155. It was further his evidence that there was maize planted on the suit parcel of land as at the time the letter dated 14th May, 2003 was written.
156. He produced the letter dated 14th May, 2003 as Exhibit D1.
157. Upon cross examination, he reiterated that at time of writing of the said letter there was maize growing on the land.
158. He confirmed that the maize that was planted on the land belonged to the Plaintiff.
159. He also confirmed that the dispute that was brought before him was with respect to fencing of the land. He stated that the Defendant complained that the Plaintiff was fencing off land that belonged to his deceased father.
160. He further confirmed that the Plaintiff was living on the land.
161. He stated that the Plaintiff stopped fencing the land and cows destroyed the maize.
162. He also stated that he advised the Plaintiff to go to the Agricultural Officer so that he could claim damages for his destroyed maize crops.
163. The Defendant's case was then closed.

ISSUES FOR DETERMINATION.

164. The Plaintiff filed his submissions on 1st December, 2025 while the Defendant filed his submissions on 6th December, 2025.
165. The Plaintiff submits on the following issues;
 - a. Whether the Plaintiff has acquired title to a three-acre portion of land parcel No. Kericho/ Gelegele/150 by way of adverse possession.
 - b. Whether the registration of the Defendant as a proprietor extinguished the Plaintiff's accrued rights.
 - c. Whether the Plaintiff is entitled to the orders sought.
166. On the first issue the Plaintiff relies on Section 38 (1) of the *Limitation of Actions Act*, the judicial decision of *Karanja vs Isaac & 6 Others* [2025] eKLR and submits that he took possession of the suit parcel of land in the year 1991.



167. The Plaintiff also submits that his possession of a portion of the suit parcel of land has been peaceful, open and notorious with the knowledge of the previous and current registered owners.
168. The Plaintiff further submits that he has developed and used a portion of the suit parcel of land as of right and without license or consent of the Defendant.
169. It is the Plaintiff's submissions that as at the time the Defendant was being registered as the owner of the suit parcel of land, he had occupied the land for a period of over twelve years and therefore the title of the previous owner was extinguished by operation of the law under Section 7 of the *Limitation of Actions Act*.
170. It is also the Plaintiff's submissions that his possession of a portion of the suit parcel of land has been uninterrupted.
171. It is further the Plaintiff's submissions that DW1 alleged in his evidence that he filed a suit seeking that the Plaintiff be evicted.
172. The Plaintiff submits that DW2 stated that no such suit was filed and, in any event, no evidence of the said suit was produced in Court.
173. The Plaintiff also submits that the only dispute between the parties was a boundary dispute.
174. The Plaintiff further submits that DW2 confirmed in her evidence that the land that he was given together with his mother was not demarcated.
175. The Plaintiff reiterates the evidence of DW2 and DW4 and submits that he purchased a portion of the suit parcel of land.
176. It is the Plaintiff's submissions that all the witnesses confirmed that he has been in possession of the suit parcel of land.
177. The Plaintiff relies on the judicial decisions of *Rose Akello Otieno vs Joseph Odote & another* [2022] KEELC 853 (KLR) and *Public Trustee vs Wanduru* [1984] KLR 314 as was cited in *Peter Mbiru Michuki vs Samuel Mugo Michuki* [2014] eKLR in support of his submissions.
178. On the second issue, the Plaintiff submits that rights acquired through adverse possession are not defeated by a change of ownership.
179. The Plaintiff relies on the judicial decision of *Githu vs Ndeete* [1984] KLR 776 and submits that the Defendant has been registered as the owner of the suit parcel of land.
180. It is the Plaintiff's submissions that the said registration does not defeat his interest in the three-acre portion of the suit parcel of land.
181. The Plaintiff submits that he has been in possession of a three-acre portion of the suit parcel of land for a period of over thirty years and he has therefore acquired the said portion by way of adverse possession.
182. The Plaintiff concludes his submissions by urging the Court to allow his claim as prayed.
183. In his submissions, the Defendant sets out a summary of the pleadings and evidence and submits on the following issues;
 - a. Whether the Plaintiff herein is entitled to 3 acres out of land parcel No. LR No. Kericho/ Gelegele/150 by way of adverse possession and whether the Plaintiff has satisfied all the statutory requirements and prerequisites entitling him to the said land by way of being in adverse possession for a period of over 12 years. (sic)



- b. Who should bear costs of this suit.
184. On the first issue, the Defendant submits that it is not disputed that the Plaintiff is in possession of a portion of the suit parcel of land.
185. The Defendant also submits that the only issue in dispute is how the Plaintiff took possession.
186. The Defendant further submits that even though the Plaintiff contends that he purchased a portion of the suit parcel of land, DW2 in her evidence testified that she and her deceased husband allowed the Plaintiff and his mother to live on the land.
187. It is the Defendant's submissions that the land sale agreement that the Plaintiff is relying on has different purchase prices and that in the Originating Summons that was initially filed by the Plaintiff, he alleged that he had acquired the entire suit parcel of land by way of adverse possession.
188. It is also the Defendant's submissions that later the Plaintiff amended the Originating Summons and he now contended that he acquired a three-acre portion of the suit parcel of land.
189. It is further the Defendant's submissions that the sale agreement that the Plaintiff is relying on was not attested to and neither was it witnessed.
190. The Defendant relies on Section 3(3) of the Contract Act and submits that since the said agreement was not witnessed, then it is irregular and invalid.
191. The Defendant submits that since the agreement is irregular then it follows that the consent that the Plaintiff alleges to have obtained is a nullity.
192. The Defendant relies on Section 8(1) of the *Land Control Act* and submits that the Plaintiff acquired the land control board consent two years after the alleged agreement was signed which was not within the timelines provided for under the law.
193. The Defendant also submits that even though the Plaintiff contends that he paid the full purchase price, he has not provided any evidence to show that the registered owner of the suit parcel of land received the said amount of money.
194. The Defendant relies on the judicial decision of Gabriel Mbui vs Mukindia Maranya [1993] eKLR and submits that where a claim for adverse possession arises from an agreement for sale of land, time begins to run from the date of payment of the last installment of the purchase price.
195. It is the Defendant's submissions that the Plaintiff has not enjoyed quiet possession of the portion of the suit parcel of land.
196. It is also the Defendant's submissions that he produced a letter written by his Counsel (Exhibit D5) wherein the Plaintiff asked to vacate the suit parcel of land.
197. It is the Defendant's further submissions that he produced minutes of a meeting held on 17th April, 2003 (Exhibit D4) wherein it was stated that there had been a long-standing dispute between the parties over the suit parcel of land.
198. It is further the Defendant's submissions that the Chief produced a letter (Exhibit D1) which was addressed to the Plaintiff and required him to stop fencing the suit parcel of land.
199. The Defendant submits that from the evidence adduced before Court, it is clear that possession was not peaceful.



200. The Defendant relies on the judicial decisions of Samuel Kihamba vs Mary Mbaisi [2015] eKLR, Wambugu vs Njuguna [1983] KLR 171, Mbira vs Gachuhi [2002] 1 EALR 137 and submits that the Plaintiff has not proved his claim for adverse possession.
201. The Defendant concludes his submissions by urging the Court to dismiss the Plaintiff's Amended Originating Summons with costs.

Analysis And Determination.

202. After considering the pleadings, the evidence adduced by both the Plaintiff and the Defendant together with their respective submissions, it is my view that the following issues arise for determination;
- a. Whether the Plaintiff has acquired a three-acre portion of land parcel No. Kericho/Gelegele/150 by way of adverse possession.
 - b. Whether the prayers sought in the Amended Originating Summons should be granted.
 - c. Who should bear costs of the suit.

Summary Of Evidence And Documents.

203. I shall start by briefly summarizing the evidence of the parties herein and the documents produced either in support of or in opposition to the claim.
204. It is the Plaintiff's case that he purchased a three-acre portion of land parcel No. Kericho/Gelegele/150 from John Kaplelach now deceased vide a land sale agreement dated 14th June, 1991 at a consideration of Kshs. 80,000/=.
205. It is also the Plaintiff's case that he paid the purchase price in installments and an amount of Kshs. 7,000 remained unpaid.
206. It is further the Plaintiff's case that John Kaplelach (deceased) obtained the consent to subdivide the land but died before the consent to transfer was issued.
207. It is the Plaintiff's case that after the death of John Kaplelach (deceased) there were disputes with the Defendant and his family members.
208. It is also the Plaintiff's case that the Defendant refused to accept the balance of the purchase price and it was resolved at the Chief's office that he would remain in possession of the suit parcel of land.
209. The Plaintiff therefore prays that the Court finds that he has acquired a portion of the suit parcel of land by way of adverse possession.
210. In support of his case, the Plaintiff produced a copy of a handwritten land sale agreement dated 14th June, 1991. (Exhibit P1) The agreement is between John A Melile (Vendor) and Christopher Kiprono (Purchaser). The agreement states that it is for sale of Plot No. 13 which plot number is crossed out and No. 150 is written beside it.
211. The size of the portion of land being sold has been repeatedly crossed out and it is not clear whether it is 3.2 or 3.6 acres. The purchase price is stated to be Kshs. 88,000/= which has been crossed out and a sum of Kshs. 85,000/= written on it. The agreement states that the sum of Kshs. 73,000/= has been paid leaving a balance of Kshs. 12,000/=. Neither the purchaser nor the vendor has signed the agreement but there are signatures of witnesses whose names have not been indicated.



212. A copy of a letter of consent to subdivide land was produced as Exhibit P2. It is dated 27th January, 1993 and addressed to John Melile. It is signed by John A. Abuduba the Chairman Chepalungu Land Control Board.
213. A copy of handwritten minutes of a meeting held on 17th April, 2003 were produced as Exhibit P3. The minutes are with respect to a land dispute between John Melile's family and Christopher Langat over plot No. 150. The minutes state that thirteen elders were present and no resolution of the dispute was reached. The meeting advised that the dispute be forwarded to the District Officer's Office at Ndanai for further investigations.
214. A copy of a handwritten agreement dated 6th December, 1992 was produced as Exhibit P4. Portions of the said agreement are not legible but it states that Annah Melile is to pay back Kshs. 17,300/= and Kshs. 1,700/= for cattle. It is signed by Simon Koech and Annah Melile. The agreement has the stamp of Benard K. Busienei the Assistant Chief Gelegele Sub-Location who has also signed it.
215. A copy of an application for a consent was produced as Exhibit P5. The application is dated 7th December, 1992 and it is made by John Melile to the Chairman, Chepalungu Land Control Board for the subdivision of Kericho/Gelegele/150.
216. A copy of an application for consent to transfer was produced as Exhibit P6. The application is dated 19th April, 1994 and it made by John A. Melile. It is addressed to the Chairman Chepalungu Land Control Board and it seeks for a consent to transfer a portion of land parcel No. Kericho/Gelegele S.S/204 measuring 1.2 Ha to Christopher Kiprono Langat.
217. A copy of a certificate of official search dated 4th November, 2002 was produced as Exhibit P7. The Certificate of official search is with respect to land parcel No. Kericho/Gelegele/150. It shows that the land measures 39 acres and on 22nd July, 1986, John Melile Kaplelach was registered as the owner. It also shows that on 8th August, 1986, a land certificate was issued.
218. A copy of the minutes of the meeting held on 27th January, 2003 were produced as Exhibit P8. The minutes state that a panel of elders sat and investigated whether John Melile sold a portion of land measuring 3 acres. The minutes also state that John Melile sold the said portion at a consideration of Kshs. 80,000/= and only Kshs. 73,000/= was paid.
219. The minutes further state that Christopher Langat should pay the balance of the purchase price within fourteen days with the deadline being set for 12th February, 2003. A list of eighteen elders is listed as constituting the panel and the minutes are certified by the Acting Chief Gelegele- Location one Busienei and confirmed by the Chief.
220. A copy of the minutes of the meeting held on 26th March, 2012 were produced as Exhibit P9. The reference of the said letter is "Ploughing Obstruction Case". The dispute is between Christopher Langat vs Simion Koech and Charles Koech. The minutes state that sixteen persons were present at the meeting and it was resolved that Christopher Langat continues to plough the land as the case of malicious damage is pending in Court.
221. A copy of a surveyor's sketch was produced as Exhibit P10. It is titled "Kericho/Ndanai Gelegele Settlement Scheme Plot No. 150." Portions of the said sketch are illegible.
222. The Defendant's case on the other hand is that his parents allowed the Plaintiff to take possession of a portion of the suit parcel of land.
223. It is also the Defendant's case that the Plaintiff did not purchase a portion of the suit parcel of land as alleged.



224. It is further the Defendant's case that the Plaintiff's possession of a portion of the suit parcel of land has not been peaceful as there has been numerous disputes.
225. In support of its case, the Defendant produced a Copy of a Letter dated 14th May, 2005 as Exhibit D1. DW3 in his evidence set out in great detail the contents of the said letter.
226. A copy of a letter dated 21st July, 2005 was produced as Exhibit D4. The letter was written by Sonye J. Ondari and addressed to Christopher Langat. The reference of the letter is "Tigisey Kipng'eno Koech" The letter demands that the Plaintiff vacates the Defendant's parcel of land within twenty-one days. The letter also asks the Plaintiff to remove the structures that he has erected on the Defendant's land.
227. A copy of minutes dated 17th April, 2003 were produced as Exhibit D5. The minutes are of a meeting held over a land dispute between John Melile's family and Christopher Langat. The minutes state that a panel of elders sat but the parties could not agree and therefore the dispute was referred to the District Officer. The minutes also state that Christopher Langat is to go with all the documents showing that he purchased the land to the District Officer's office together with one William Sang. The minutes have a list of thirteen elders who heard the dispute and it is signed by the acting Chief Gelegele Location one Busienei. At the bottom of the minutes, a note was made that Christopher Langat took his Kshs. 7,000/=.

A. Whether the Plaintiff has acquired a three-acre portion of land parcel No. Kericho/Gelegele/150 by way of adverse possession.

228. It is not disputed that the Plaintiff is in possession of a portion of land parcel No. Kericho/Gelegele/150. What is disputed is the circumstances under which he came into possession.
229. 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.”
230. 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)
231. The Plaintiff contends that he purchased a portion of the suit parcel of land vide a land sale agreement dated 14th June, 1991(Exhibit P1).
232. The Defendant on the other hand denies that any such sale took place and submits that the land sale agreement produced as Exhibit P1 was not signed by the parties and it did not therefore comply with Section 3(3) of the *Law of Contract Act*.



233. The contents of the land sale agreement dated 14th June, 1991 have been set out in the preceding paragraphs and it is evident that neither the vendor nor the purchaser signed it.
234. The Court of Appeal in *Gladys Wanjiru Ngacha v Treresa Chepsaat 4 others* 2013 KECA 29 (KLR) held as follows;
- “Section 3(3) of the *Law of Contract Act* provides that no suit based on a contract of disposition of interest in land can be entertained unless the contract is written, executed by the parties and attested. Section 3(7) of the *Law of Contract Act* excludes the application of Section 3(3) of the said Act to contracts made before the commencement of the subsection. The current Section 3(3) of the *Law of Contract Act*, commenced on 1st June, 2003.”
235. In the above cited judicial decision, the Court of Appeal held that Section 3(7) of the *Law of Contract Act* excludes the application of Section 3(3) of the *Law of Contract Act* to contracts made before commencement of the said subsection. Section 3(3) of the *Law of Contract Act* commenced on 1st June, 2003.
236. In the present suit, the land sale agreement that the Plaintiff is relying on is dated 14th June, 1991 and therefore the provisions of Section 3(3) of the *Law of Contract Act* do not apply to it.
237. If the Plaintiff intended for this Court to make a finding on the fact of purchase, then he should have led oral evidence to prove this fact but did he?
238. The Plaintiff produced the minutes marked as Exhibit P8. The minutes are of a meeting held on 27th January, 2003 by a panel of elders who investigated whether or not John Melile sold a portion of land measuring 3 acres. The panel of elders found that John Melile sold the said portion at a consideration of Kshs. 80,000/= and only Kshs. 73,000/= was paid. The panel of elders directed Christopher Langat to pay the balance of the purchase price within fourteen days. A list of eighteen elders is listed as constituting the panel and the minutes are certified by the Acting Chief Gelegele- Location one Busienei and confirmed by the Chief.
239. DW2 confirmed that the Plaintiff paid the said sum of money to the Chief’s office but they refused to take it. As per Exhibit D5, the Plaintiff took back the Kshs. 7,000/= that he had taken to the Chief’s office.
240. From the totality of the evidence adduced, it is evident that the Plaintiff did not pay the entire purchase price for the portion of land that he alleged to have purchased.
241. It is important to note that the Plaintiff’s contention is that he purchased a portion of the suit parcel of land while the Defendant’s contention is that the Plaintiff was given permission by his deceased father to take possession.
242. Irrespective of whether the Plaintiff purchased the land and/or whether the Plaintiff was given express permission, it is evident that the Plaintiff’s possession of a portion of the suit parcel of land was with the permission of the registered owner.
243. In the judicial decision of *Mbui v Maranya* [1993] KEHC 161 (KLR) the Court held as follows;
- “The occupation of the land by the intruder who pleads adverse possession must be nonpermissive use, ie 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 love 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 (sic).” (Emphasis mine)

244. In the above cited judicial decision, the Court held that a party in possession of land with the permission of the registered owner cannot claim adverse possession.

245. In *Mbui v Maranya* (supra) the Court further held as follows;

“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 Kahiri* [1979] Kenya L R 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).” [Emphasis mine]

246. In the above cited judicial decision, the Court further held that where adverse possession arises out of a sale agreement, the period of limitation begins to run from the date of payment of the last installment of the purchase price.

247. In the present case the Plaintiff admits to not have paid the last installment of the purchase price and from the evidence adduced, it is evident that his attempts to pay the said amount of money were unsuccessful.

248. In the judicial decision of *Cheromei v Muigai* (Environment & Land Case E005 of 2023) [2024] KEELC 5604 (KLR) (25 July 2024) (Judgment) the Court held as follows;

“

“18. Having been allowed possession under a sale, the Applicant can only claim that his occupation became adverse if he can prove that the license was determined. In such circumstances where an Applicant claims adverse possession arising out of an agreement for sale, courts have held that the purchaser’s possession becomes adverse to the vendor once the purchase price is paid in full. Time starts to run from that point, and on completion of the statutory time limit of 12 years, the purchaser would be entitled to become registered as proprietor of the land under adverse possession.

In *Peter Mbiri Michuki v Samuel Mugo Michuki* [2014] eKLR, the Court of Appeal held that:

“32. Our reading of the record shows that the Plaintiff entered the suit property pursuant to a sale agreement in 1964 as a bona fide purchaser for value. The entry in 1964 was with permission of the appellant qua vendor. In the case of *Public Trustee v Wanduru*, [1984] KLR 314 at 319 Madan, J.A. stated that adverse possession should be calculated from the date of payment of the purchase price to the full span of twelve years if the purchaser takes possession of the property because from this date, the true owner is dispossessed off possession. A purchaser in possession of the land purchased, after having paid



the purchase price, is a person in whose favour the period of limitation can run.” (Emphasis mine)

249. The Court in *Cheromei v Muigai* (Environment & Land Case E005 of 2023) (supra) cited above, relied on the Court of Appeal judicial decision of *Peter Mbiri Michuki v Samuel Mugo Michuki* [2014] eKLR where it was held that the period of limitation begins to run in favour of a purchaser in possession after payment of the purchase price.
250. It is my view that in the present case, the period of limitation cannot be said to have started to run as the Plaintiff did not pay the entire purchase price.
251. Further, it is also important to note that the Plaintiff’s possession of a portion of the suit parcel of land was not peaceful.
252. Various minutes of meetings held to try and resolve disputes between the parties were produced as Exhibit P3, Exhibit P8 and Exhibit D5.
253. Considering the totality of the evidence adduced, it is evident that the Plaintiff has not proved his claim for adverse possession.

B. Whether the prayers sought in the Amended Originating Summons should be granted.

254. The prayers sought by the Plaintiff in the Amended Originating Summons are as follows;
- a. A declaration that the Plaintiff is entitled to exclusive and unimpeded right of possession and occupation of 3 acres out of all that piece of land known as Kericho/Gelegele/150.
 - b. An order directing that the Plaintiff be registered as the sole proprietor of 3 acres out of all that piece of land known as Kericho/Gelegele/150.
 - c. A permanent order restraining the Defendant from entering, alienating, wasting, damaging, disposing or in any other way dealing with the suit land.
 - d. Costs of the suit.
255. Given my finding on issue (a) above, the prayers sought in the Amended Originating Summons cannot be granted.

C. Who should bear costs of the suit.

256. The general rule is that costs shall 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.

257. In the result, I find that the Plaintiff has failed to prove his claim for adverse possession to the required standard and his claim is hereby dismissed with costs.
258. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 16TH DAY OF APRIL, 2026.

L. A. OMOLLO

JUDGE.



In the presence of: -

Mr. Mutai Joshua for the Plaintiff.

Mr. Okok for the Defendant.

Court Assistant; Mr. Joseph Makori.

