



**Aduma v Mukoya (Environmental and Land Originating Summons
E012 of 2023) [2025] KEELC 5578 (KLR) (24 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5578 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E012 OF 2023
SO OKONG'O, J
JULY 24, 2025**

BETWEEN

WASHINGTONE ONDU ADUMA APPLICANT

AND

HERBERT MUKOYA MUKOYA RESPONDENT

JUDGMENT

1. The Applicant instituted this suit through Originating Summons dated 4th October 2023, seeking the following orders;
 1. That the Applicant be declared to have become the legal owner by adverse possession of over 12 years since 1987 of all that parcel of land known as Title No. Kisumu/Korando/4157(hereinafter referred to as “the suit property”).
 2. That the Land Registrar, Kisumu County be directed to enter the name of the Applicant, his beneficiaries or legal assigns in the register as the sole proprietor of the suit property in place of the Respondent in whose favour the land is currently registered.
 3. That the Respondent be permanently barred from interfering with the peaceful possession of the suit property by the Applicant.
 4. That the costs of this application be borne by the Respondent.
2. The Originating Summons was brought on the grounds set out on the face thereof and on the affidavit of the Applicant sworn on 4th October 2023. The Applicant averred that the Respondent was either registered mistakenly or fraudulently as the proprietor of the suit property.
3. The Applicant averred that he had been in open, peaceful and continuous occupation of the suit property since 1987. The Applicant averred that his possession and occupation of the suit property



had been for a period in excess of 12 years. The Applicant averred that the said possession had been adverse, uninterrupted, notorious, peaceable and open.

4. The Applicant averred that his occupation of the suit property was adverse to the interest and title held by the Respondent. The Applicant averred that his activities on the suit property were inconsistent with the Respondent's enjoyment of the suit property. The Applicant averred that the Respondent had been dispossessed and had never been in occupation of the suit property. The Applicant averred that he had acquired rights of ownership over the suit property by way of adverse possession, and the Respondent's rights over the same had been extinguished by effluxion of time.
5. The Applicant averred that he had established his home on the suit property and had continuously cultivated part of the same. The Applicant averred that no prejudice would be occasioned to the Respondent and that it would be in the interest of justice if the orders sought were granted.
6. In his supporting affidavit, the Applicant averred that he was born on the suit property, which was occupied by his parents before he was born. The Applicant averred that he inherited the suit property from his parents, whom he found living on the property when he was born. The Applicant averred that he had had peaceful enjoyment of the suit property, a portion of which he was using for cultivation.
7. The Applicant averred that in 2023, he was considering transferring the suit property to his children for ease of succession in future. The Applicant averred that he went to the land registry to begin the process of transfer. The Applicant averred that he learnt from the land registry that the suit property was registered in the name of the Respondent. The Applicant averred that on further investigation at the land registry, he learnt that the suit property may have been registered in the name of the Respondent in 1993 following the land adjudication in the area, either by mistake, fraud or unknown reasons.
8. The Applicant averred that he reported the matter to the area chief, who confirmed that the suit property had been their ancestral land since 1980s. The Applicant averred that before and after the registration of the Respondent as the owner of the suit property, he had been and was still in open, peaceful and continuous occupation of the suit property. The Applicant averred that he had a right of ownership over the suit property by adverse possession. The Applicant averred that his possession of the suit property had been uninterrupted, continuous and exclusive since 1987.
9. The Respondent was served with the Originating Summons but failed to enter an appearance or file a response thereto. The Originating Summons was heard through oral evidence. The Applicant gave evidence as PW1. The Applicant adopted his witness statement as his evidence in chief and produced a copy of his Identity Card and a copy of the Certificate of Official Search on the title of the suit property as P.EXH 1 and P.EXH. 2, respectively. The Applicant told the court that they had lived on the suit property for the last 48 years. The Applicant stated that when he went to obtain the title deed for the suit property, he found that the property was registered in the name of the Respondent. The Applicant stated that he did not know how the Respondent became registered as the owner of the suit property.
10. On examination by the court, the Applicant stated that the suit property measured 0.05Ha. The Applicant stated that he was born in 1975 and lived on the suit property with his family. He told the court that he was the only one living on the suit property. He told the court that he had never met the Respondent. The Applicant averred that he occupied the suit property in 1987. He stated that he was living with his grandmother on another parcel of land in the same area. He stated that the suit property was being used by his step-mother who had no child. He told the court that when his step-mother passed on, he started using the suit property.
11. The Applicant called one witness, Paul Obanda Omwa (PW2). PW2 adopted his witness statement which was filed on 18th October 2023 as his evidence in chief. On examination by the court, PW2 stated



that he was born in 1968. He stated that he had known the Applicant for several years. He stated that the Applicant's mother was living on the suit property. He told the court that the Respondent was also known to him. He stated that the Respondent used to live in the neighbourhood but moved towards Ojola. He stated that he last saw the Respondent several years ago. He told the court that the Applicant had fenced the land and had also put up a structure thereon. He stated that the property had a gate and that the Applicant was cultivating it. He stated that the Applicant used to live on the land, but moved out and put up his homestead elsewhere.

Analysis and Determination

12. I have considered the Applicant's Originating Summons together with the affidavit filed in support thereof. I have also considered the evidence tendered by the Applicant and his witness. In *Salim v Boyd and Another* [1971] EA 550, it was held that for a claimant of land by adverse possession to succeed, he must prove that he has been in open, continuous and uninterrupted occupation of the land for 12 years or more.
13. In the case of *Kimani Ruchine & Another v Swift, Rutherford Co. Ltd. & another* (1977) KLR 10 Kneller J. stated as follows at page 16;

“The Plaintiffs have to prove that they have used this land which they claim as of right, necvi, nec clam, nec plecario (no force, no secrecy, no evasion)...The possession must be continuous. It must not be broken for any temporary purposes or by any endeavours to interrupt it or by any recurrent consideration.”
14. The Respondent did not defend the suit. The averments contained in the Applicant's affidavit on how he entered the suit property, the developments he has carried out thereon and the period for which he has been in occupation of the same without any interference by the Respondent or anyone else were not controverted. The Applicant gave evidence that he entered and occupied the suit property in the year 1987 and that he was still in possession of the same. I am satisfied that the Applicant has established his adverse possession claim over the suit property.

Conclusion

15. In conclusion, I hereby enter judgment for the Applicant against the Respondent for;
 1. A declaration that the Applicant has acquired all that parcel of land known as Title No. Kisumu/Korando/4157(the suit property) by adverse possession.
 2. An order for the Land Registrar, Kisumu County to register the Applicant, Washington Ondu Aduma as the proprietor of Title No. Kisumu/Korando/4157 in place of the Respondent, Herbert Mukoya Mukoya.
 3. An order that the Land Registrar shall register an inhibition against Title No. Kisumu/Korando/4157 inhibiting the registration of any other or further dealings with the land for three (3) years immediately after registering the Applicant as the proprietor of Title No. Kisumu/Korando/4157.
 4. Each party shall bear its costs of the suit.

DELIVERED AND SIGNED AT KISUMU ON THIS 24TH DAY OF JULY 2025

S. OKONG'O

JUDGE



Judgment delivered virtually through Microsoft Teams Video Conferencing Platform in the presence of;

Mr. Kwaro for the Applicant

N/A for the Respondent

Ms. J. Omondi-Court Assistant

