



REPUBLIC OF KENYA



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Vuyiya v Munubi (Civil Appeal 1 of 2019) [2026] KECA 770 (KLR) (24 April 2026) (Judgment)

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REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CIVIL APPEAL 1 OF 2019
MS ASIKE-MAKHANDIA, HA OMONDI & LK KIMARU, JJA
APRIL 24, 2026

BETWEEN

RUTH AUMA VUYIYA APPELLANT

AND

DORCUS INYAMBULA MUNUBI RESPONDENT

(Being an appeal from the Judgment and decree of the Environment and Land Court at Kakamega, (Matheka. J) dated 19th September, 2018 in ELCC No. 83 of 2013)

JUDGMENT

1. This is a first appeal against the judgment and decree of the Environment and Land Court “the ELC” at Kakamega delivered on 19th September 2018 by Matheka. J. The dispute leading to this appeal regards the ownership and use of all that piece or parcel of land known as Maragoli/Lugovo/925, “the suit property”, which the respondent, Dorcus Inyambula Munubi, successfully sought to be declared the owner thereof by way of adverse possession.
2. The trial court, having considered the affidavits, documentary evidence, and submissions of the parties, entered judgment in favour of the respondent, thereby extinguishing the appellant’s title. Aggrieved by that decision, the appellant, Ruth Auma Vuyiya, has now approached this Court on first appeal, faulting the ELC’s findings both in law and fact, and urging this Court to set aside the said judgment and decree. This appeal therefore, invites us to interrogate the propriety of the trial court’s reasoning, the sufficiency of the evidence relied upon, and the application of the law on adverse possession to the peculiar circumstances of this case.
3. By way of contextualizing the appeal, it is necessary to set out albeit briefly the background to the dispute. The dispute was commenced by way of an Originating Summons “OS “dated 21st January 2013 filed before the ELC by the respondent who sought to be declared entitled to the suit property by way of adverse possession. In her supporting affidavit to the OS, she deposed that the suit property was originally ancestral land belonging to the late Elisha Munubi, the father to both her late husband



- Gideon Gudai Munubi “Gideon” and the appellant’s late husband Peter Vuyiya Munubi “Peter”. She deposed that she had lived on the suit property for over sixty years, built permanent houses thereon, farmed it extensively, and raised her children there. She even buried her husband, Gideon and some of her children thereon. She deposed that the appellant had never occupied the suit property, she instead resided at Moi’s Bridge in Trans-Nzoia County, and that her title to the suit property had thereby been extinguished by her long, open, continuous, and exclusive occupation of the suit property.
4. The appellant, filed a Replying Affidavit dated 30th October, 2014, opposing the OS. She deposed that the suit property was properly registered in the name of her late husband, Peter following land adjudication process. She explained that Peter had acquired part of the suit property through purchase and had built a permanent house thereon, though he later moved out and settled in Moi’s Bridge. She deposed that the respondent’s family were mere caretakers allowed on the suit property by Peter on goodwill, and were therefore not entitled to ownership. She further deposed that the respondent was a beneficiary of a different parcel of land known as, Kakamega/South Maragoli/Lugovo/993, registered in her husband’s name, and therefore she had no claim to the suit property. She contended that the OS was filed in bad faith, that she had taken out letters of administration to Peter’s estate, and that she therefore held the suit property lawfully in trust for her children.
 5. The judgment of the ELC was not a perfunctory declaration but a considered engagement with the competing narratives placed before it. The ELC began by identifying the central issue for determination being as to: whether the respondent, had satisfied the legal requirements for the inference of adverse possession under sections 37 and 38 of the *Limitation of Actions Act*. It examined the affidavit evidence and exhibits, noting that the respondent had demonstrated long, uninterrupted occupation of the suit property, having built permanent houses, cultivated the suit property, raised her family thereon for decades and even buried her husband and some of her children on it. The ELC emphasized that adverse possession is not merely about the passage of time but about occupation that is open, notorious, exclusive, and inconsistent with the rights of the registered proprietor of the suit property. On this score, the ELC found that the respondent’s occupation was visible, continuous, and without interruption, thereby extinguishing the appellant’s title.
 6. The ELC also addressed the appellant’s rebuttal that the respondent was only a caretaker and that she had another parcel of land registered in her husband’s name. It found that this assertion was not supported by any credible evidence and that the appellant had not taken any steps to assert her ownership rights over the suit property for the statutory period of twelve years. It dismissed the argument that the prescriptive period had not lapsed, reasoning that the respondent’s occupation predated the issuance of the title in 2009 and was traceable to the family’s ancestral arrangements. The ELC further noted that the appellant’s reliance on succession proceedings and letters of administration did not negate the fact of the respondent’s long possession, which had ripened into ownership by operation of law.
 7. In its analysis, the ELC underscored that adverse possession operates to protect long-standing occupiers against dormant title holders who fail to assert their rights. It concluded that the respondent had met the threshold, and that the appellant’s title had been extinguished. Accordingly, it entered judgment in favour of the respondent, declaring her entitled to be registered as proprietor of the suit property and ordered the appellant to effect transfer and pay costs of the OS to the respondent.
 8. Dissatisfied with that judgment and decree, the appellant lodged the instant appeal against the respondent, on eight grounds. In summary, she contends that the ELC erred in law and fact by: entertaining the claim without first determining whether valid summons had been served; failing to address the question of the respondent’s legal capacity to sue in the absence of a grant of letters of administration to her late husband’s estate; finding adverse possession proved without properly



analyzing its constituent elements, relying instead on the twelve-year rule in a blanket manner; holding that the prescriptive period had not lapsed, when the title to the suit property was issued in 2009 and the suit was instituted in 2013, only four years thereafter; recording evidence in shorthand and thereby omitting vital facts contrary to Order 18 Rule 4 of the Civil Procedure Rules; failing to comply with Order 21 of the Civil Procedure Rules in the structure of the judgment, which resulted in blanket observations without adequate discussion of witness testimony; additionally, ignoring crucial evidence from both appellant's and respondent's defence witnesses regarding eviction and occupation, thereby undermining the doctrine of continuous and peaceful possession; and finally, that although the ELC raised credible issues for determination, it failed to account for them in its judgment, leading to erroneous findings both in law and fact.

9. The appeal was heard by way of written submissions only. When called out, Ms. Otuma, who held brief for Mr. Angu, learned counsel appeared for the appellant. There was no representation for the respondent either through counsel or in person despite evidence of service of the hearing notice on them. Nonetheless, she had filed written submissions which we opted to rely on in determining the appeal, their absence notwithstanding.
10. Counsel for the appellant, submitted that the ELC erred both in law and fact in allowing the respondent's claim for adverse possession when it lacked jurisdiction to entertain the OS in the absence of valid summons extracted and served on the appellant. Counsel stressed that service of summons is not a mere technicality but a jurisdictional prerequisite. In support thereof, counsel cited Samuel Kamau Macharia & another v Kenya Commercial Bank Ltd & 2 others [2012] eKLR and James Kanyiiita Nderitu & another v Marios Philotas Ghikas & another [2016] eKLR, where the court held that proceedings conducted without proper service of summons are irregular and liable to be set aside.
11. Counsel further contended that the respondent lacked locus standi to institute the proceedings, as she had not obtained letters of administration to her late husband's estate. She relied on Trouistik Union International v Jane Mbeyu [1993] eKLR and Otieno v Ougo [1986-1989] EA 468, in which it was held that only duly appointed legal representatives may sue or be sued on behalf of a deceased person's estate. In her view and for that reason, the respondent's suit was therefore void ab initio therefor.
12. On adverse possession, counsel submitted that the ELC erred in relying solely on the passage of time without interrogating the essential elements of adverse possession. She argued that the respondent's occupation of the suit property was permissive, arising from family arrangements, and therefore not hostile to the appellant's title. She cited Isack M'inanga Kiebia v Isaaya Theuri M'lintari & another [2018] KESC 22, where the Supreme Court cautioned against construing family occupation as adverse possession. She also relied on Wambugu v Njuguna [1983] KLR 172 and Mtana Lewa v Kahindi Ngala Mwangandi [2015] eKLR, which emphasized that adverse possession requires exclusive, open, and hostile occupation inconsistent with the owner's title. She noted that since the appellant was registered as proprietor in 2009 and the suit was filed in 2013, the statutory twelve-year period had not lapsed before the institution of the OS.
13. Counsel also faulted the ELC for failing to properly record, analyze, and evaluate the evidence, contrary to Orders 18 Rule 4 and 21 Rule 4 of the Civil Procedure Rules. She argued that the judgment was devoid of structured issues and reasoned analysis, amounting to blanket findings unsupported by the record. She cited Peters v Sunday Post Ltd [1958] EA 424 to emphasize that failure to evaluate evidence properly constitutes an error of law warranting appellate intervention.
14. Additionally, she submitted that interruptions to possession defeated the respondent's claim, pointing to evidence of eviction and displacement. She relied on Githu v Ndeete [1984] KLR 776, Sisto



- Wambugu v Kamau Njuguna [1983] KLR 172, and Public Trustee v Wanduru [1984] KLR 314, in which it was held that eviction or dispossession interrupts possession and resets the statutory period.
15. Counsel further argued that the ELC failed to resolve contradictions in the respondent's pleadings, which simultaneously invoked trust and adverse possession—two mutually exclusive doctrines. She cited Independent Electoral and Boundaries Commission v Stephen Mutinda Mule & 3 Others [2014] eKLR, where the Court held that failure to determine issues framed for adjudication amounts to abdication of judicial duty.
 16. On costs, the appellant submitted that costs ordinarily follow the event under Section 27 of the *Civil Procedure Act*, citing in support thereof *Jasbir Singh Rai & 3 others v Tarlochan Singh Rai & 4 others* [2007] KECA 132 (KLR), *Supermarine Handling Services Ltd v Kenya Revenue Authority* [2010] eKLR and *Orix Oil (Kenya) Limited v Paul Kabeu & 2 Others* [2014] eKLR. She argued that the order for costs against the appellant was unfair and ought to be set aside. In conclusion, counsel urged the Court to allow the appeal, set aside the judgment of the ELC, dismiss the OS and award her costs both in the ELC and this appeal.
 17. In opposing the appeal the respondent submitted that the doctrine of adverse possession is recognized in law as a valid limitation of proprietary rights, citing *Teresa Wachuka Gachira v Joseph Mwangi Gachira - Civil Appeal No. 325 of 2003*, where the Court stressed the need for proof of exclusive, continuous, and uninterrupted possession for at least twelve years for adverse possession to be found. She distinguished that case from her own, noting that unlike the appellant in *Teresa Wachuka* (supra), she had lived on the suit property for over sixty years, built houses, raised her children, buried her husband and some of her children thereon and made permanent developments, while the appellant resided elsewhere at Moi's Bridge and had never occupied the suit property.
 18. She further submitted that the suit property was originally part of the estate of her father-in-law, Elisha Munubi, and during first registration, portions were allocated to his sons as trustees for the wider family. She contended that although the appellant secretly caused the suit property to be registered in his name, she was nonetheless the one in actual possession and use of it. That the appellant indeed admitted in her evidence that she resided at Moi's Bridge and had never possessed or occupied the suit property.
 19. She maintained that all the essential ingredients of adverse possession were satisfied; to wit that: her occupation of the suit property was open, exclusive, peaceful, and uninterrupted for decades, far exceeding the statutory twelve-year period. She argued that the appellants' claim that her family were mere caretakers was unfounded, as her occupation was adverse to the registered owner's title and not permissive. She reiterated that the ELC correctly found in her favour, and that the judgment and decree of the ELC was sound in law and fact.
 20. In conclusion, the respondent submitted that the appeal was actuated by ill motive and mischief, and urged this Court to uphold the ELC's judgment, dismiss the appeal, and award her costs.
 21. This being a first appeal, the duty of this Court is well settled. A first appellate court is obligated to subject the entire evidence tendered before the trial court to a fresh and exhaustive re-evaluation and re-analysis, and to draw its own independent conclusions, while bearing in mind that it neither saw nor heard the witnesses testify and must therefore give due allowance for that disadvantage. See *Gitobu Imanyara & 2 others -vs- Attorney General* [2016] eKLR.
 22. From the record, four issues crystallize for our determination which are whether: ELC had jurisdiction to entertain the OS in the absence of valid summons issued and served on the appellant by the respondent; the respondent had locus standi to institute the suit without a grant of letters of



administration to her husband's estate; the respondent proved adverse possession in law; whether the trial court properly evaluated the evidence and addressed all material issues raised.

23. On the first issue, jurisdiction is foundational. It is trite that a court cannot assume jurisdiction over a matter without proper service of summons or voluntary appearance. In *James Kanyiita Nderitu & another v Marios Philotas Ghikas & another* (supra), this Court held that proceedings conducted without proper service of summons are irregular and liable to be set aside. The appellant contends that no summons were extracted and served on her. However, the record shows that the appellant entered appearance to the OS and subsequently filed a replying affidavit and thereafter participated in the proceedings to the end without any protestations about lack of service of summons. In our view, Voluntary participation in proceedings cures defects in service if at all, as was held in *Shah v Mbogo* [1967] EA 116.
24. Further, the whole essence of service of summons to a party is to notify that party of the existence of the suit so that he may take, remedial measures and that is exactly what happened here! Otherwise, what was the appellant responding to by filing the replying affidavit and fully participating in the proceedings? We also note that the appellant never raised the issue with the ELC. She is raising it for the very first time in this appeal which is not permissible. Again having fully participated in the proceedings, we do not appreciate the prejudice the appellant could have suffered in the premises. We are therefore satisfied that jurisdiction was properly assumed by the ELC in this dispute.
25. On the second issue of locus standi, the law is that only a duly appointed legal representative of the estate of the deceased may sue or be sued on behalf of a deceased person's estate. This principle was affirmed in *Trouistik Union International v Jane Mbeyu* (supra) and reiterated in *Otieno v Ougo* [1986-1989] EA 468. However, the respondent's claim was not predicated on representing her late husband's estate but on her own occupation and possession of the suit property. Adverse possession is a personal claim based on factual occupation, not succession. In *Kasuve v Mwaani Investment Ltd & 4 others* [2004] 1 KLR 184, this Court held that a claimant under adverse possession need not demonstrate title but must prove actual possession adverse to the registered owner. Once again, the appellant never raised the issue with the ELC. She is doing so for the first time in this appeal which is not permissible. In the end we are satisfied that the respondent had capacity to institute the claim in her own right.
26. On the third issue, whether adverse possession was proved, the law requires that possession must be open, continuous, exclusive, and adverse to the interests of the registered proprietor of the suit property for at least twelve years. This principle was restated in *Mtana Lewa v Kahindi Ngala Mwangandi* (supra), where the Court held that adverse possession is not established merely by occupation but by occupation that is inconsistent with the title of the true owner. The appellant argued that the statutory period had not lapsed since registration in 2009. However, in *Githu v Ndeete* (supra), the Court held that time begins to run when the claimant takes possession in a manner adverse to the owner, not necessarily from the date of registration.
27. The evidence shows that the respondent had been in occupation of the suit property for decades, actually 60 plus years, developed it substantially by building houses, cultivating, and even buried her husband and some of her children thereon. All these were going on under the watch of the appellant who never raised a finger. Obviously, all these actions were adverse to the appellant's title. If indeed the respondent was a mere caretaker of the suit property, as the appellant wants us to believe, we doubt that the appellant would have allowed all the foregoing to happen more so when the appellant is on record as having warned the respondent that her children were not welcome on the suit property. This assertion also rocks the boat against her claim that the respondent's claim was multifaceted as it was based on family trust as well as adverse possession. From the pleadings the respondent's claim was hinged on



adverse possession and nothing more. Much as in the course of evidence reference was made to family trust regarding the suit property, that per se does not turn the claim to one of family trust. Further we do not see anything remotely suggesting that the appellant ever raised the issue in the ELC.

28. In the end we are satisfied, the respondent's occupation of the suit property was exclusive, open, and uninterrupted, satisfying the requirements of adverse possession. Further, much as the appellant contended that the continuous occupation of the suit property by the respondent was interrupted by acts of eviction and dispossession, no such evidence was led by the appellant.
29. On the fourth issue, whether the trial court properly evaluated the evidence, appellate courts have consistently held that a judgment must demonstrate consideration of the pleadings, evidence, and issues raised. In *Peters v Sunday Post Ltd* (supra), it was held that failure to evaluate evidence constitutes an error of law warranting appellate court's intervention. The appellant contends that the trial court made blanket findings without structured analysis. However, upon our re- evaluation of the record, we are satisfied that the ELC considered the affidavits, documentary evidence, and submissions, and addressed the central issue of adverse possession. While the judgment may not have been elaborate in form, it sufficiently dealt with the substance of the dispute. In other words, the judgment was not perfunctory as the appellant would want as to believe. It should also be appreciated that judges have different styles of crafting judgements and rulings. In other words, there is no set format or style that must be adhered to or a yardstick against which each judgment or ruling should be measured. With this in mind, we are satisfied that the complaints by the appellant regarding failure by the trial court to comply with the provisions of orders 18 rule 4 and 21 rule are certainly devoid of merit.
30. In the ultimate, we find no merit in the appeal. The respondent established her claim of adverse possession, and the appellant's grounds fail to demonstrate any error of law or fact warranting our interference. We therefore agree with the findings of the ELC that the respondent is entitled to be registered as proprietor of the suit property on account of adverse possession. Accordingly, the appeal is bereft of merit and is dismissed with costs to the respondent.

DATED AND DELIVERED AT KISUMU THIS 24TH DAY OF APRIL, 2026.

ASIKE-MAKHANDIA

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JUDGE OF APPEAL

H.A. OMONDI

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JUDGE OF APPEAL

L. KIMARU

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

