

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT**  
**BUNGOMA**  
**ELC CIVIL SUIT NO. 90 OF 2010 (OS)**

**JAMIN WAFUKHO NDUBI alias WEFUKHO NDUBI  
(Deceased) Substituted by NYONGESA WAFUKHO  
NDUBI.....PLAINTIFF**

**VERSUS**

**ALFRED NEPHAT MWANIKI.....  
.....DEFENDANT**

**JUDGMENT**

1. The Plaintiff brought the Originating Summons dated 15/9/2010 seeking a determination that he had acquired title to the land known as Bokoli/Chwele/722 measuring 5.6 hectares (the suit land) registered in the Defendant's name through adverse possession. He sought to have the court declare that the Defendant's rights over the suit land had been extinguished through adverse possession and that he should be registered as the proprietor of the land.
2. Jamin Ndubi swore the affidavit in support of the suit in which he deponed that prior to the Defendant being registered as the proprietor of the suit land, he was registered as proprietor of the land in 1964. That he charged the suit land to secure a loan of Kshs. 25,000/= on 7/4/1978. When he could not repay the loan, the bank threatened to auction the land. The Defendant, who was the Bank Manager at the Agricultural

Finance Corporation (AFC), Bungoma Branch at the time, offered to assist him. The Defendant took a loan and paid off the debt on the agreement that he would plant sugarcane on the suit land and that the proceeds from the sugarcane harvest would be paid into the Defendant's account to defray the loan sum.

3. Unknown to the Plaintiff the Defendant had transferred the suit land to his name. The suit land was later discharged and the Plaintiff caused a caution to be registered against the land in 1991.
4. He averred that the Defendant has never occupied the suit land and that he had been in peaceful, open, uninterrupted occupation of the land since 1964. He elaborated that his neighbours and members of the public knew that he was the owner of the land.
5. Despite being served through substituted means, the Defendant did not defend the suit. Jamin Wefukho Ndubi died during the subsistence of the suit and was substituted by the administrator of his estate, Nyongesa Nafukho Ndubi.
6. The hearing of the suit proceeded on 24/2/2026 when Nyongesa Wafukho Ndubi gave evidence. He relied on the supporting affidavit sworn by his late father and produced copies of the land register, Chief's letter dated 25/4/2013 and search done on the suit land.
7. The Plaintiff filed submissions, which the court has considered. The Plaintiff submitted that he has been working, living and staying on the suit land even after the Defendant transferred the title to his name in 1980. He cited several decisions to

support the assertion that he had met the requirements for a declaration of adverse possession of land.

8. The issue for determination is whether the Plaintiff has proved on a balance of probabilities that he is entitled to be registered as the owner of the suit land in place of the Defendant.
9. While this may not be the ordinary claim for adverse possession, the court is persuaded that the Plaintiff has been in continuous uninterrupted occupation of the suit land and the Defendant has never taken possession of the land. There is no evidence to controvert the Plaintiff's chronology of events that led to the registration of the Defendant as proprietor of the suit land.
10. The Plaintiff has proved on a balance of probabilities that he has acquired title to the suit land through adverse possession and deserves to be registered as proprietor of the suit land. He will meet his own costs for the suit.

Delivered virtually at Bungoma this 29<sup>th</sup> day of April 2026.

**K. BOR  
JUDGE**

**In the presence of: -**

Mr. Onuong'a Onkangi for the Plaintiff

No appearance for the Respondent

Court Assistants- Bett & Metrine