

REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT KISII

ELC (SO) NO. E001OF 2023

In the matter of Limitation of Actions Act – Cap 22 of the Laws of Kenya

and

In the matter of L. R. No. Central Kitutu / Mwachichana/623

**In the matter of a claim for adverse possession pursuant to Section 38 of
the Limitation of Actions Act.**

SAMWEL NYANAMI NYAKUNDI APPLICANT

Versus

ELIAS NYAKUNDI alias

ELIAS ORWARU OBENDO RESPONDENT

JUDGMENT

1. Vide Originating summons dated 6.12.2022, the Applicant sued the respondent under the provisions of Order 37 of the Civil Procedure Rules and Section 38 of the Limitation of Actions Act, Cap 22. The applicant

claims to have acquired the whole land L. R. No. Central Kitutu / Mwangichana / 623 by way of adverse possession.

2. Consequently, he raised the following questions for determination: -

- i. Whether a declaration ought to issue that the right(s) of respondent or any other person claiming under his title or entitled to so claim is (are) barred under the Limitation of Actions Act – Chapter 22 of the Laws of Kenya and title thereto extinguished upon the ground that the applicant has been in occupation of a portion of that parcel of land known as L. R. No. Central Kitutu/Nwagichana / 623 measuring 0.25 hectares or thereabouts (hereinafter referred to as “the suit premise” for a period spanning almost 45 years.**
- ii. Whether an Order ought to be made that the applicant be registered as proprietor of the suit premises.**
- iii. Whether an Order ought to issue restraining the respondent, either by himself, his agents, assigns, or any other person (s) claiming under his title, from interfering with the applicant’s quiet use, possession and enjoyment of the suit premises in any manner whatsoever.**
- iv. Who ought to bear the costs of this summons.**

v. Whether other or further Orders ought to be made as are expedient in the circumstances.

3. The summons is supplied by the Affidavit of Samuel Nyanami Nyakundi (Applicant) and the following grounds :-

- a) *The respondent was at all times material hereto the proprietor of land parcel L. R. No. Central Kitutu / Mwagichana / 623 (hereinafter referred to as “the suit premise”.*
- b) *The parties entered into a land sale agreement for the sale to me of the whole of the suit premises.*
- c) *The respondent did not procure land control board consent to transfer the said parcel of land within six (6) months of the agreement wherefore the dale became void.*
- d) *The Applicant nevertheless continued to occupy and has been in occupation of the suit premises since year 1977.*
- e) *The Applicant has quietly utilized the suit premises for over twelve (12) years continuously, as of right without complaint from the respondent.*
- f) *The Applicant has with the full knowledge of the Respondent utilized the suit premises for purposed of farming subsistence crops such as maize.*
- g) *On 18th June, 2021 the parties reached a settlement to the intent that the Applicant do give the Respondent a token of*

Kshs. 9,000/-=and that the Respondent do procure land control board consent and do transfer title to the suit premises

- h) The Applicant gave the respondent the agreed token of Kshs. 9000/= which he had requested for but the Respondent has declined to apply for consent and transfer the suit premises to the Applicant*
- i) The Applicant has for almost forty-five (45) years peacefully occupied and utilized the suit premises as of right.*
- j) The right any, of the Respondent to lay claim over the suit premises stands extinguished appreciating that the applicant has acquired title to the suit premises by virtue of adverse possession*
- k) It is only just and expedient that the applicant's interest over the suit premises be upheld for in so doing his statutory and constitutional right to property shall be given effect.*

4. In the Affidavit in support of the originating summons, the Applicant annexed a copy of the green card for the suit land. He also annexed a copy of a sale agreement dated 8th November 1977, signed between him and the respondent in the presence of S. S. Balongo, Advocate. In addition to the two documents annexed to the Affidavit, the Applicant filed a mediation report dated 18.6.2021 and a survey report dated 19.12.2025.

5. The Respondent was served with the pleadings in the case and the hearing notices. However, he did not enter an appearance or file a defence. Therefore, the suit proceeded undefended.
6. The Applicant gave his testimony on 3.11.2025 and 20.4.26, producing the documents previously stated as exhibits in support of his claims. He told the court that he had been asking the Respondent to transfer the land to him. He even involved the local administration, but his efforts yielded no fruit. This necessitated the filing of this case.
7. The witness stated that he had lived on the suit land for over 50 years. He is asking the court for Orders to facilitate his obtaining title to the land.

ANALYSIS AND DETERMINATION

8. I have reviewed the pleadings filed and the evidence (oral and documentary) adduced by the Applicant. I have also noted that the suit is not defended.
9. Among the documents produced is a Mediation report dated 18.6.2021, signed by both the Defendant and the Plaintiff. In this report, the Respondent confirmed that the Plaintiff is in occupation of the suit land at West Kitutu / Mwangichana / 623.
10. Further, the Plaintiff produced a survey report dated 19/12/2025, which also confirmed that the Plaintiff occupies LR No. West Kitutu/ Mwangichana/623, measuring 0.25 Ha. The fact of the Plaintiff's

occupation continuously for more than twelve (12) years has not been controverted.

11.Despite the Respondent signing the agreement before the mediator stating that the land was sold to the Plaintiff, he has failed, neglected and/or refused to execute the transfer of the land into the Plaintiff's name. This necessitated the matter proceeding to hearing. The Respondent's appearance before the mediation affirms that the Applicants' occupation has been peaceful.

12.It follows that the rights of the Respondent over the land has been extinguished by operation of the law. In the judgment by Chesoni JA in **Wambugu vs Njuguna (1983)KLR p.179** quoted *Hosea vs Njiru & Others (1974) EA 526* which held that

'once payment of the last instalment of the purchase price has been effected, the purchaser's possession became adverse to the vendor and he henceforth by occupation of twelve years was entitled to be registered as the proprietor of it.'

13. It is in light of the evidence of occupation (corroborated by the survey report) and duration is more than twelve years (as date of sale agreement)

I am satisfied the Plaintiff has proved his case. Accordingly, I enter

Judgment in his favour as follows: -

- a) **The Plaintiff be and is hereby declared as the owner of Land West Kitutu/ Mwangichana/623 measuring 0.25 ha by way of adverse possession.**
- b) **The Defendant / Respondent is directed to execute all the necessary documents and provide his photo / ID/PIN to facilitate the transfer within thirty (30) days hereof.**
- c) **In default of compliance with (b) above, the Deputy Registrar of this Court shall execute all the requisite documents to facilitate the transfer in favour of the Plaintiff.**
- d) **An Order of permanent Injunction is issued directing the Defendant / Respondent and or his representatives from interfering with the Plaintiff's use and occupation of the said land.**
- e) **Each party to bear their costs of the suit.**

DELIVERED, DATED and SIGNED at KISII this 20th day of APRIL 2026.

**A. OMOLLO
JUDGE**

In presence of:

Michael / Elrina – Court Assistants

Ms. Kabungo Advocate for Applicant

ORIGINAL