



Siele v Bii (Sued as the Legal Representative of the Estate of Chelangat Tabutany Maseti alias Tabutany w/o Ratego) (Environment and Land Case E002 of 2024) [2026] KEELC 2734 (KLR) (7 May 2026) (Judgment)

Neutral citation: [2026] KEELC 2734 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ENVIRONMENT AND LAND CASE E002 OF 2024**

LA OMOLLO, J

MAY 7, 2026

BETWEEN

WILLIAM KIPKOSKE SIELE PLAINTIFF

AND

**EUNICE BII (SUED AS THE LEGAL REPRESENTATIVE OF THE
ESTATE OF CHELANGAT TABUTANY MASETI ALIAS TABUTANY W/O
RATEGO) DEFENDANT**

JUDGMENT

Introduction.

1. The Plaintiff commenced the present proceedings vide the Originating Summons dated 7th March, 2024. It is expressed to be brought under Order 37 Rule 7 of the Civil Procedure Rules and Section 38 of the *Limitation of Actions Act*.
2. The Plaintiff seeks the determination of the following questions;
 - a. Whether the Applicant has been in open, quiet and exclusive possession of 1.5 Ha being whole of LR No. Kericho/Kabianga/476 for a period exceeding 12 years.
 - b. Whether the Applicant is entitled to the said 1.5 Ha by adverse possession.
 - c. Whether the Honourable Court should order the Respondent to execute mutation and transfer forms so as to effect a valid transfer of the said 1.5 Hectares being the whole of LR No. Kericho/Kabianga/476 to the Applicant and in default, an authorized officer of this Honourable Court do execute the said forms on their behalf.



- d. Whether this Honourable Court should issue an order of injunction restraining the Respondent by herself, her agents, nominees and/or representatives from interfering with the Applicant's quiet possession of the said land.
 - e. Whether the Respondent should bear costs of this suit.
3. The Plaintiff also seeks for the following orders;
 - a. A declaration that the Applicant has been in open, quiet and exclusive possession of 1.5 Hectares being whole of LR No. Kericho Kabianga/476 for a period exceeding 12 years.
 - b. A declaration that the Applicant is entitled to the said 1.5 Hectares by adverse possession.
 - c. An order directing the Respondent to execute mutation and transfer forms so as to effect valid transfer of the said 1.5 Hectares comprised in whole of L.R No. Kericho/Kabianga/476 to the Applicant and in default an authorized officer of this Honourable Court do execute the said forms.
 - d. An order restraining the Respondent, her agents and/or representatives from interfering with the Applicant's quiet possession of the said land.
 - e. Costs of this suit.
4. The application is supported by the Affidavit sworn by the Plaintiff on 7th March, 2024.

Factual Background.

5. On 1st July, 2024 the Court issued directions that the Originating Summons shall be deemed as a Plaint and the suit shall be canvassed by way of oral evidence.

The Plaintiff's Contention.

6. The Plaintiff contends that he has commenced the present proceedings against the Defendant who is the legal representative of the estate of Chelangat Tabutany Maseti alias Tabutany W/O Ratego (Deceased).
7. The Plaintiff also contends that the Defendant was issued with a Limited Grant of Letters Ad Litem with respect to the said estate.
8. The Plaintiff further contends that in the year 1995, he purchased land parcel No. Kericho/Kabianga/476 which measures 1.5 Ha from the deceased at a consideration of Kshs. 242,500/=.
9. It is the Plaintiff's contention that he paid the purchase price as follows;
 - a. Kshs. 230,000/= at execution of the agreement.
 - b. Kshs. 10,000/= on 25th June, 1995.
 - c. Kshs. 2,000/= on 26th June, 1997.
 - d. Kshs. 500/= on 27th August, 1998.



10. It is also the Plaintiff's contention that the last installment was paid on 27th August, 1998.
11. It is further the Plaintiff's contention that upon execution of the agreement dated 28th May, 1995, he immediately took possession, fenced off the land with Mauritius thorns and started constructing semi-permanent houses that included a grass thatched kitchen, two mud houses and a granary.
12. He contends that Chelangat Tabutany Maseti alias Tabutany W/O Ratego (Deceased) relocated to Nandi after selling the suit parcel of land to him. He goes on to state that she died on 7th July, 2010 before completing the transfer.
13. He also contends that at the time of the death of Chelangat Tabutany Maseti alias Tabutany W/O Ratego (Deceased), the suit parcel of land was still registered in her name.
14. He further contends that he has been in open, quiet, continuous and uninterrupted peaceful possession of the said parcel of land since the year 1996.
15. It is his contention that on 2nd July, 2013, he was summoned to the Koiwa Lelach Chief's Office and goes on to state that at the said offices he met the Assistant Chief one Ezekiel Munai and one of the grandsons of Chelangat Tabutany Maseti alias Tabutany W/O Ratego (Deceased), one Samuel Kipngeno Korir.
16. It is also his contention that at the Chief's office, Samuel Kipngeno Korir alleged that the land he was in occupation of was larger than what he purchased.
17. It is further his contention that Samuel Kipngeno Korir also alleged that he surveyed the suit parcel of land and found that it measures 3.7 acres.
18. He contends that Samuel Kipngeno Korir alleged that he was entitled to 3.5 acres and the land he was in occupation of was in excess by 0.2 acres. He goes on to state that Samuel requested that he be paid Kshs. 60,000/= for the 0.2 acres and the Plaintiff adds that he refused to pay the said sum of money.
19. He also contends that some of the family members of the deceased are hesitant to transfer the land to him which has constrained him to come to Court.
20. He further contends that he has been advised by his advocates on record that he is entitled to the suit parcel of land by way of adverse possession as he has been in open, quiet and uninterrupted possession for a period of over twenty years.
21. He ends his deposition by stating that unless the Court issues an order of Permanent injunction against the Respondent and anyone claiming through her, he will suffer loss. He goes on to state that he has established his home on the suit parcel of land and that is where he also farms.
22. The Defendant was served with the pleadings herein on 19th April, 2024 as set out in the Affidavit of Service sworn by Kibet Victor Chelule on 26th April, 2024 which affidavit is in the court record.
23. Despite service, the Defendant did not enter appearance and did not also participate in these proceedings.

Plaintiff's Evidence.

24. William Kipkoske Siele testified as PW1. In his introduction, he stated that he lives in Koiwalelach in Kericho County.
25. He testified that he knows the Defendant and explained that sued her because he is yet to be given the title deed for the suit parcel of land.



26. It was also his evidence that he purchased the suit parcel of land from Chelangat Tabutany Maseti alias Tabutany W/O Ratego (Deceased) but she did not transfer the land to him.
27. It was further his evidence that Chelangat Tabutany Maseti alias Tabutany W/O Ratego (Deceased) died in the year 2010. He produced a copy of her death certificate as Exhibit P1.
28. He testified that the Defendant is the daughter of Chelangat Tabutany Maseti alias Tabutany W/O Ratego (Deceased) and added that she was issued with Limited Grant of Letters of Administration Ad Litem on 23rd January, 2024. He produced a copy of the Limited Grant of Letters of Administration Ad Litem as Exhibit P2.
29. He also testified that the suit parcel of land is located in Belgut, Kabianga and he produced a certified copy of the register as Exhibit P3.
30. He further testified that as per the green card, the registered owner is Tabutany W/O Ratego. It was his evidence that the Limited Grant produced as Exhibit P2, showed that it was issued with respect to the estate of Chelangat Tabutany Maseti (Deceased).
31. It was also his evidence that Chelangat Tabutany Maseti and Tabutany W/O Ratego refer to one and the same person.
32. It was further his evidence that he purchased the suit parcel of land in the year 1995 from Chelangat Tabutany Maseti alias Tabutany W/O Ratego (Deceased). He produced a copy of the land sale agreement as Exhibit P4(a).
33. He testified that the agreement had an addendum dated 25th June, 1995.
34. He also testified that according to the agreement, he purchased the whole portion of land parcel No. 476 which measures 1.5 Ha.
35. It was his evidence that the purchase price was Kshs. 242,500/= which he paid in installments.
36. It was also his evidence that he paid kshs. 230,000/= as the first installment, Kshs. 10,000/= as the second installment, the Kshs. 2,000/= as the third installment and he paid the last installment of Kshs. 500 on 27th August, 1998.
37. It was further his evidence that he took possession of the suit parcel of land in August, 1995 and he has been in occupation to date.
38. He testified that at the time of purchase, Chelangat Tabutany Maseti alias Tabutany W/O Ratego (Deceased) was not living on the suit parcel of land as she had moved to Nandi.
39. He also testified that he has developments on the suit parcel which developments include houses, tree and banana plantations.
40. He further testified that the houses on the suit parcel of land are three in number and they are made of timber and iron sheets while the walls are made of mud.
41. It was his evidence that he built the houses when he took possession. He produced photographs of the said developments as Exhibit P5(a), (b) and (c).
42. It was also his evidence that in the course of his occupation, he has not had any disputes with anyone.
43. It was further his evidence that no beneficiary of the estate of Chelangat Tabutany Maseti alias Tabutany W/O Ratego (Deceased) has challenged and/or questioned his occupation of the suit parcel of land apart from one of her grandson's one



Samuel Kipngeno who questioned his right to use and occupy the land in the year 2013 when he requested that it be transferred to him.

44. He testified that the said Samuel Kipngeno requested for a payment of Kshs. 60,000/= as an addition to the purchase price.
45. He also testified that Samuel Kipngeno did not go to Court and he instead went to the Chief's office and added that the said Samuel Kipngeno did not interfere with his use and occupation of the land.
46. It was his evidence that he has been living on the suit parcel of land since the year 1995 and he now seeks the reliefs in the Originating Summons.
47. It was also his evidence that the agreement he entered into was witnessed by;
 - a. Paul Langat who is alive.
 - b. Kipkorir Langat (Deceased) who is the son of Chelangat (Deceased)
 - c. Chebwogen Langat the wife of Paul Langat who is alive.
 - d. Sara Sigilai the daughter of Chelangat who was still alive and lived in Nandi.
48. The Plaintiff's case was then closed.

Issues For Determination.

49. The Plaintiff filed submissions on 20th January, 2026 while the Defendant did not file submissions.
50. The Plaintiff sets out a summary of the evidence adduced during the hearing and submits on the following issues;
 - a. Whether the Plaintiff is entitled to 1.5 Ha comprised in all that property known as LR No. Kericho/Getarwet/89 by virtue of adverse possession, and;
 - b. What remedies are available to the parties herein.
51. On the first issue, the Plaintiff relies on the judicial decision of *Andafu v Akhulunya* [2025] KECA 714 (KLR) and submits that he has been in actual and uninterrupted possession of the suit parcel of land since the year 1995.
52. The Plaintiff also submits that his occupation has been open as he fenced off and cultivated the suit parcel of land continuously for more than three decades.
53. The Plaintiff further submits that during the period he has been in possession, the Defendant has not tried to re-possess and/or re-enter the land.
54. The Plaintiff while reiterating his evidence submits that his possession has been exclusive.
55. The Plaintiff concludes his submissions by urging the Court to allow the prayers sought in the Originating Summons.

Analysis And Determination.

56. After considering the pleadings, the evidence adduced by the Plaintiff and his submissions, it is my view that the following issues arise for determination;
 - a. Whether the Plaintiff has acquired land parcel No. Kericho/Kabianga/476 by way of adverse possession.



- b. Whether the prayers sought in the Originating Summons should be granted.
- c. Who should bear costs of the suit.

Summary of Evidence and Documents.

57. I shall start by summarizing the Plaintiff's evidence and the documents produced in support of his claim.
58. It is the Plaintiff's case that he purchased land parcel No. Kericho/Kabianga/476 from Chelangat Tabutany Maseti alias Tabutany W/O Ratego (Deceased) vide a land sale agreement dated 28th May, 1995.
59. It is also the Plaintiff's case that he purchased the said parcel of land at a consideration of Kshs. 242,500/= which he paid in installments.
60. It is further the Plaintiff's case that he took possession of the suit parcel of land but upon payment of the full purchase price, Chelangat Tabutany Maseti alias Tabutany W/O Ratego (Deceased) did not transfer the said parcel of land to his name.
61. It is the Plaintiff's case that he has been in peaceful possession of the suit parcel of land until the year 2013, when one of the grandsons of Chelangat Tabutany Maseti alias Tabutany W/O Ratego (Deceased) claimed that the land he was in occupation of was bigger than the land he purchased.
62. It is also the Plaintiff's case that he thereafter tried to have the land transferred to his name, but the family members of the deceased refused which prompted him to file this suit before Court.
63. The Plaintiff produced a copy of the Certificate of Death of Chelangat Tabutany Maseti (Deceased) as Exhibit P1. It is No. 164687 and it shows that Chelangat Tabutany Maseti (Deceased) died on 7th July, 2010. Her death was registered on 27th July, 2010. The death certificate was issued on 13th June, 2013.
64. The Plaintiff also produced a copy of a Limited Grant of Letters of Administration Ad Litem issued in Kericho CM Ad Litem No. E007 of 2024 as Exhibit P2. It states that on 23rd January, 2024 Eunice Bii was issued with Letters of Administration Ad Litem with respect to the estate of Chelangat Tabutany Maseti (Deceased).
65. A certified copy of the green card for land parcel No. Kericho/Kabianga/476 was produced as Exhibit P3. It was certified as the true copy of the original on 28th August, 2024 by C. Wacuka Land Registrar. It shows that the land measures 1.5 Ha and it is on Registry Map Sheet No. 13. Entry No. 1 is dated 16th February, 1970 and shows that the land was registered in the name of Tabutany W/O Ratego (Deceased) while entry No. 2 which is dated 29th August, 2007 shows that title deed was issued on the said date.
66. A copy of a land sale agreement dated 28th May, 1995 was produced as Exhibit P4(a). The agreement is between Chelangat Tabutany Maseti (vendor) and William Kipkoske Siele (purchaser). The agreement is for the sale of land measuring 1.5 Ha at a consideration of Kshs. 242,500/=. The agreement states that the purchaser paid Kshs. 230,000/= and the balance was to be paid on 9th June, 1995. The agreement is witnessed by;
 - a. Paul A. Langat
 - b. Kipkorir A. Langat
 - c. Chebwogen



d. Sarah Sigei

67. Chebwogen's other names are not legible.
68. A copy of an addendum dated 25th June, 1995 was produced as Exhibit P4(b). It states that Kshs. 10,000/= was paid on 25th June, 1995. It also states that the total amount of money paid as at that date was kshs. 200,040/= (sic). It is signed by Chelagat Tabutany Maseti (vendor) and William Kipkoske Siele (purchaser) and witnessed by Sahara Sigei and Julius Kipketer. The bottom section of the addendum is illegible.
69. Colored photographs were produced as Exhibit P5 (a), (b) and (c). Exhibit P5 (a) is a bundle of four photographs. Three photographs are of trees, maize and a banana plantation while the fourth photograph is of a man and two children standing in front of a homestead.
70. Exhibit P5 (b) is a bundle of eight photographs of a maize plantation and trees while Exhibit P5 (c) is a bundle of four photographs two of which show parcels of land that are tilled while the other two are of persons standing on a field and the land that is tilled.

A. Whether the Plaintiff has acquired land parcel No. Kericho/Kabianga/476 by way of adverse possession.

71. 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.” (Emphasis mine)

72. 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)

73. In the judicial decision of *Richard Wefwafwa Songoi v Ben Munyifwa Songoi* [2020] eKLR the Court of Appeal held as follows;

- “40. A person who claims adverse possession must inter alia show:
 - (a) on what date he came into possession.
 - (b) what was the nature of his possession?
 - (c) whether the fact of his possession was known to the other party.
 - (d) for how long his possession has continued and



(e) that the possession was open and undisturbed for the requisite 12 years.”

74. The Plaintiff produced a copy of a land sale agreement dated 28th May, 1995 (Exhibit P4 (a) as evidence that he purchased land parcel No. Kericho/Kabianga/476 from Chelangat Tabutany Maseti alias Tabutany W/O Ratego (Deceased).
75. The Plaintiff also produced a copy of an addendum to the agreement dated 25th June, 1995 as Exhibit P4 (b) . Parts of it are illegible.
76. In his evidence, the Plaintiff testified that he paid the last installment of the purchase price on 27th August, 1998.
77. In the judicial decision of *Mbui v Maranya* [1993] KEHC 161 (KLR) the Court 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)
78. The Court of Appeal in *Peter Mbiri Michuki v Samuel Mugo Michuki* [2014] KECA 342 (KLR) held as follows;
- “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)
79. In the above cited judicial decisions, the Court held that the period of limitation begins to run in favour of a purchaser from the date of payment of the last installment of the purchase price.
80. The Plaintiff testified that he took possession of the suit parcel of land in the year 1995 and that he paid the last installment on 27th August, 1998.
81. The period of limitation therefore begun to run on 27th August, 1998 when he paid the last installment of the purchase price. As at the time of filing of this suit, a period of twenty-six years had lapsed.
82. Therefore, I find that the Plaintiff has demonstrated that he has been in peaceful and exclusive possession of land parcel No. Kericho/Kabianga/476 for over 12 years. The evidence adduced further points to the fact that his possession has been open and without interruption for a period of over 12 years before he filed this suit.



B. Whether the prayers ought in the Originating Summons should be granted.

83. The prayers sought in the Originating Summons have been set out in the preceding paragraphs but I will nonetheless replicate them as hereunder;

- a. Whether the Applicant has been in open, quiet and exclusive possession of 1.5 Ha being whole of LR No. Kericho/Kabianga/476 for a period exceeding 12 years.
- b. Whether the Applicant is entitled to the said 1.5 Ha by adverse possession.
- c. Whether the Honourable Court should order the Respondent to execute mutation and transfer forms so as to effect a valid transfer of the said 1.5 Hectares being the whole of LR No. Kericho/Kabianga/476 to the Applicant and in default, an authorized officer of this Honourable Court do execute the said forms on their behalf.
- d. Whether this Honourable Court should issue an order of injunction restraining the Respondent by herself, her agents, nominees and/or representatives from interfering with the Applicant's quiet possession of the said land.
- e. Whether the Respondent should bear costs of this suit.

84. The Plaintiff also seeks the following orders;

- a. A declaration that the Applicant has been in open, quiet and exclusive possession of 1.5 Hectares being whole of LR No. Kericho Kabianga/476 for a period exceeding 12 years.
- b. A declaration that the Applicant is entitled to the said 1.5 Hectares by adverse possession.
- c. An order directing the Respondent to execute mutation and transfer forms so as to effect valid transfer of the said 1.5 Hectares comprised in whole of L.R No. Kericho/Kabianga/476 to the Applicant and in default an authorized officer of this Honourable Court do execute the said forms.
- d. An order restraining the Respondent, her agents and/or representatives from interfering with the Applicant's quiet possession of the said land.
- e. Costs of this suit.

85. Given my finding on issue (A) above, nothing is easier than granting the prayers sought in the Originating Summons.

C. Who should bear costs of the suit?

86. 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.

87. In the result, I find and order as follows;

- a. William Kipkoske Siele is hereby declared to have acquired land parcel No. Kericho/Kabianga/476 which parcel of land measures 1.5 Ha by way of adverse possession.
- b. Eunice Bii is hereby ordered to execute within 90 days of the date hereof, all documents necessary for purposes of transfer and registration of land parcel No. Kericho/Kabianga/476 to William Kipkoske Siele.
- c. In default of (b) above, the Deputy Registrar of this Court shall execute the said documents.
- d. A permanent injunction is hereby issued restraining the Defendant, by herself, her agents, nominees and/or representatives from interfering with the Plaintiff's quiet possession of land parcel No. Kericho/Kabianga/476.
- e. The Plaintiff shall have costs of the suit.

88. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 7TH DAY OF MAY, 2026.

L. A. OMOLLO

JUDGE.

In the presence of: -

Mr. Kipkorir for Koech for the Plaintiff.

No appearance for the Defendant

Court Assistant; Mr. Joseph Makori.

