

REPUBLIC OF KENYA
IN THE ENVIRONMENT LAND COURT AT SIAYA
ORIGINATING SUMMONS E006 OF 2023

JOBBY ODHIAMBO OGUNDE.....APPLICANT

VERSUS

SPRANOES OKOTH ODUNDO.....RESPONDENT

JUDGEMENT

- 1 Jobby Odhiambo Ogunde has moved this court by way of Originating Summons dated 2/10/2023 supported by his affidavit sworn on even date. The applicant seeks a declaration pursuant to the provisions of Section 38 of the Limitation of actions Act as owner of land parcel No. ASEMBO/MEMBA/3183 measuring approximately 0.69 Ha (suit property) registered in the name of Spranoes Okoth Odundo.
- 2 It is the applicant's case that he was born on the suit property and has been living, occupying and using the same to date. He alleges that the possession, use and occupation of the said subject land has been peaceful and uninterrupted for a period more than 36 years. Further that the said registered owner is not occupying and/or working on the said parcel of land as he is living on another parcel of land and his interest has been extinguished by operation of the law.
- 3 The respondent did not respond to the suit despite service as evidenced by several Affidavits of Service sworn by

Moses Omondi Ogada filed on 15/02/2024; 14/3/2024 and 25/04/2024. The matter was also fixed for mention several times when the respondent was duly served but failed to attend court.

- 4 The plaintiff suit was heard viva voce on 10/03/2025. The Plaintiff testified as PW1. He adopted his witness statement dated 2/10/2023 as his evidence in chief. The same rehashes the contents of the supporting affidavit. PW1 produced a Green Card and Search Certificate in respect of the suit property Pexh 1 and 2. He also produced a set of photographs in proof of occupation Pexh2(a), (b), (c) and ((d).
- 5 He told the court that the houses in photo 2(a) belonged to his deceased parents, 2(b) to the witness, 2(c) to his deceased brother and 2(d) depicted the entire homestead. PW1 testified that the respondent was aware of the occupation and has never raised any issues over the same. He urged the court to grant him the prayers sought.
- 6 Ground Status Report - following the hearing the court made an order that the County Land Registrar and Surveyor Bondo visit the suit property and prepare a ground status report on occupation and activities thereon. The report was filed on 6/5/2026 after several extensions owing to pecuniary inabilities on the part of the plaintiff.

SUBMISSIONS

- 7 The directions of the court were that the final submissions were to be filed alongside the ground status report. The plaintiff filed submissions on 8/05/2025 which I have considered.

ANALYSIS AND DETERMINATION

- 8 Having considered the foregoing the key issue that calls for determination is whether the plaintiff has proved a claim for adverse possession of the suit property against the defendant and who should bear the costs of this suit.
- 9 The Limitation of Actions Act underpins the doctrine of adverse possession in the undernoted provisions;

Section 7 states that; -

“An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person”

Section 13 reads;-

“(1) A right of action to recover land does not accrue unless the land is in the possession of some person in whose favour the period of limitation can run (which possession is in this Act referred to as

Adverse Possession), and, where under sections 9, 10, 11 and 12 of this Act a right of action to recover land accrues on a certain date and no person is in Adverse Possession on that date, a right of action does not accrue unless and until some person takes Adverse Possession of the land.

(2) Where a right of action to recover land has accrued and thereafter, before the right is barred, the land ceases to be in Adverse Possession, the right of action is no longer taken to have accrued, and a fresh right of action does not accrue unless and until some person again takes Adverse Possession of the land.

Section 17 goes on to state;

“Subject to section 18 of this Act, at the expiration of the period prescribed by this Act for a person to bring an action to recover land (including a redemption action), the title of that person to the land is extinguished”.

10 Finally, **Section 38**(1) and (2) states;

“(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.

- 11 To prove a claim for adverse possession it is now trite that several elements must be met by the party claiming adverse possession. Simply put the suit property must have a known owner; That the said known owner must have lost his right to the land by being dispossessed by the applicant; That the applicant's possession of the land was without the true owner's permission; That the discontinuance by possession has been open for a continuous period of 12 years; The defendant has not taken any action against the plaintiff to extinguish their occupation of the suit land or interrupt the same over the minimum statutory period of 12 years and that the applicant has done acts on the land which are inconsistent with the owner's enjoyment of the soil for the purpose for which he intended to use it. See **Wambugu Vs. Njuguna (1983) KLR 172, Benson Mukuwa Wachira Vs Assumption Sisters of Nairobi Registered Trustees [2016] eKLR; Chevron (K) Ltd Vs. Harrison Charo Wa Shutu (2016)eKLR and Kisumu Civ App. No. 110 of**

2016 Richard Wefwafwa Songoi v Ben Munyifwa Songoi [2020] eKLR

- 12 The plaintiff produced copy of the Green Card and certificate of official search for parcel No. ASEMBO/MEMBA/3183. My perusal of the same revealed that as at 15/7/2010 the registered proprietor was Spranoes Okoth Odundo. He was issued with a title deed on 9/9/2010. This therefore confirms that the suit property was a registered property which was also registered in the name of a third party other than the claimant. Though a copy of the title was not annexed the green card and search suffice as held in the case of **Symon Gatutu Kimango & 587 Others Vs East African Portland Cement Co.Ltd (2011)eKLR**.
- 13 The limitation period required for a claim of adverse possession against another's land is 12 years of continuous occupation. It is the plaintiff's case that he has been on the suit property for a period of over 36 years having been born thereat. According to the copy of the official search to the suit property the same was first registered on 15/7/2010 under the defendant's name. The present suit was filed on 4/10/23 making a period of slightly more than 12 years which is within the statutory requirement.
- 14 It was also incumbent upon the applicant to prove possession and or occupation of the suit property. PW1 evidence was that he also built his home on the suit

property and adduced photographs showing several houses. This evidence I agree with the counsels' submissions was not controverted.

- 15 PW1 further testified that he has lived on the suit property with the knowledge of the registered owner who has never chased him from the property for all this period.
- 16 A ground status report dated 4/4/2026 was filed by the Land Registrar Bondo Rarieda pursuant to the orders of this court. According to list of attendance the Defendant is listed (No. 10) as having attended together with one Chrispine Achieng. The observations made during the sight visit is that the plaintiff's family was well established on the suit property, there was an existing natural hedge separating the plaintiff's family and defendants' family.
- 17 The report concludes that the suit property is registered in the name of SIPRANOES OKOTH ODUNDO. This is the defendant. It confirms the suit property exists both on the ground and in the map. The survey report has outlined the portion occupied by the plaintiff (Part A) which was not in dispute. A portion has been marked B and stated to be in dispute between the plaintiff and the defendant. It is therefore my view that the disputed portion must be left out to enable resolution through the relevant recognised channels. The court therefore adopts the report as the evidence before court.

- 18 The defendant did not defend the suit and further that no material was placed before the court to contradict the plaintiff's evidence. It is therefore my finding that the plaintiff has proved his case on a balance of probabilities.
- 19 The upshot of the foregoing is that judgment is hereby entered for the Plaintiff against the Defendant as follows;
- a. That the Plaintiff and his siblings have been in adverse possession of a portion marked A of parcel No. ASEMBO/MEMBA/3183 for a period of 12 years as shown and delineated on Ground Assessment on ASEMBO/MEMBA/3183 diagram No. 7.
 - b. That SPRANOES OKOTH ODUNDO interest and claim over the portion above on parcel No. ASEMBO/MEMBA/3183 occupied by the Plaintiff and his siblings has been extinguished by operation of law.
 - c. That the plaintiff shall furnish the names and copies of Identity Cards of his siblings in (b) above to the court within 7 days.
 - d. That the identified portion A in parcel No. ASEMBO/MEMBA/3183 be transferred and registered in the name of the Plaintiff and his siblings in (c) above in common and the Land Registrar Bondo/Rarieda shall issue title deed in accordance with this judgement.

e. There shall be no orders as to costs.

Delivered and **Dated** at **Siaya** This **13th** **Day** of
May 2026

HON. LADY JUSTICE A.E. DENA

JUDGE

13/5/2026

**Judgment delivered virtually through Microsoft teams
Video Conferencing Platform in the presence of:**

Mr. Ken Omollo for the Applicant/ Plaintiff

No appearance for Respondent/Defendant

Court Assistant: Abuid Wekesa