



REPUBLIC OF KENYA



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Siele (Suing as personal representative of the Estate of Kipsiele Arap Langat - Deceased) v Chepkwony (Sued as a personal representative of the Estate of Chepkwony Arap Marisin - Deceased) (Environmental and Land Originating Summons E015 of 2021) [2025] KEELC 5548 (KLR) (24 July 2025) (Judgment)

Neutral citation: [2025] KEELC 5548 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E015 OF 2021

LA OMOLLO, J

JULY 24, 2025

**IN THE MATTER OF SECTION 38 OF THE LIMITATION
OF ACTIONS ACT (CAP 22) LAWS OF KENYA**

AND

IN THE MATTER OF LR NO. KERICHO/KIMULOT/694 & 695

BETWEEN

**VINCENT CHERUIYOT SIELE (SUING AS PERSONAL REPRESENTATIVE OF
THE ESTATE OF KIPSIELE ARAP LANGAT - DECEASED) PLAINTIFF**

AND

**DAVID KIPTANUI CHEPKWONY (SUED AS A PERSONAL
REPRESENTATIVE OF THE ESTATE OF CHEPKWONY ARAP MARISIN -
DECEASED) DEFENDANT**

JUDGMENT

Introduction

1. The Plaintiff commenced the present proceedings vide the Originating Summons dated 9th June, 2021.
2. The Originating Summons is expressed to be brought under Order 37 Rule 7 of the Civil Procedure Rules, 2010.
3. The Plaintiff seeks the determination of the following questions;
 - a. Whether the late Kipsiele Arap Langat's family is entitled to a portion of 2 acres of land comprised in LR No. Kericho/Kimulot/694 by virtue of adverse possession.



- b. Whether the late Kipsiele Arap Langat's family should be declared the proprietor of the said portion of 2 acres comprised in LR No. Kericho/Kimulot/694, currently registered in the name of Chepkwony Arap Marisin (Deceased).
 - c. Whether a beneficiary to the Plaintiff's estate, Elijah Siele, was settled on the parcel Kericho/Kimulot/694, by his late father, Kipsiele Arap Langat, and planted tea bushes in a portion of 2 acres comprised in Kericho/Kimulot/694 over 30 years ago.
 - d. Whether the Defendant settled and occupies a portion of land comprised in the Plaintiff's parcel LR No. Kericho/Kimulot/695.
 - e. Whether the Defendant forcefully took possession and unlawfully started plucking tea on the said portion of 2 acres comprised in Kericho/Kimulot/694 belonging to Elijah Siele.
 - f. Whether Elijah Siele should be compensated for damages and mesne profits arising from the unlawful plucking of tea leaves in the said portion of 2 acres comprised in Kericho/Kimulot/694.
 - g. Who should bear the costs plus interest of this suit.
4. The application is supported by the affidavit of Vincent Cheruiyot Siele sworn on 7th June, 2021.
 5. He contends that he is one of the sons and one of the legal representatives of the estate of the late Kipsiele Arap Langat who died on 7th June, 2021.
 6. He also contends that the late Kipsiele Arap Langat is the registered proprietor of land parcel No. Kericho/Kimulot/695.
 7. He further contends that the Defendant is one of the sons of the late Chepkwony Arap Marisin who is the registered owner of land parcel No. Kericho/Kimulot/694.
 8. It is his contention that his late father's parcel of land shares a common boundary with that of the Defendant's father's parcel of land.
 9. It is also his contention that in the year 1974, his late father purchased land parcel No. Kericho/Kimulot/695 from the Defendant's late father. He occupied the said parcel of land and obtained a title deed.
 10. It is further his contention that his late father and the Defendant's father mutually agreed to exchange a portion of two acres out of their respective parcels of land but the said agreement was not formally recorded.
 11. He contends that between the years 1974 and 1979 the Defendant settled on a two-acre portion of land parcel No. Kericho/Kimulot/695 as agreed.
 12. He also contends that similarly in the year 1980, his brother Elijah Siele took possession of a two-acre portion of land parcel No. Kericho/Kimulot/694 and planted tea bushes.
 13. He further contends that the Defendant's father passed away in the year 1980 and the living arrangement continued as agreed. This continued even after the demise of his father in the year 2011.
 14. It is his contention that sometime in November, 2019 the Defendant started laying claim to the two-acre portion of land occupied by his brother. This led to a dispute between the two families.



15. It is also his contention that in the months of November and December, the Respondent filed a complaint with the area Chief who called a Baraza and the issue was deliberated upon with the help of surveyors. The Defendant was invited to the Baraza but the issue remained unresolved.
16. He further contends that on 24th March, 2020, the Assistant County Commissioner Kimulot Division Bomet County, Mr Ezekiel Amonde accompanied by police men, the Chiefs from Kimulot division, Assistant Chiefs and Surveyors from Bureti, Kericho County launched an invasion where upon he (the Assistant County Commissioner) handed over the disputed portion of land with his brother's tea to the Defendant.
17. It is his contention that the Defendant immediately moved in and fenced off the disputed portion. The Defendant now occupies both of the two-acre portions of land that were exchanged.
18. It is also his contention that they were aggrieved by the said developments and a member of their family wrote a letter of appeal (sic) against the actions of the Assistant County Commissioner to the County Surveyor, Bomet. The County Surveyor, Bomet undertook to resolve the issue and he visited the ground on 11th June, 2020 to ascertain the boundaries.
19. It is further his contention that at the ground visit on 11th June, 2020, the surveyors from Bomet who were accompanied by security personnel, the area Chief, Assistant Chief and village elders ascertained the boundaries.
20. He contends that the surveyors from Bureti as well as the Assistant County Commissioner failed to attend the exercise as requested.
21. He also contends that during the ground visit it was resolved that the Defendant and his family would move out of the disputed area until the two families could agree on how they would handle the inconsistencies between the map and the situation on the ground.
22. He further contends that it was further agreed that his (Plaintiff) family would continue plucking the tea until a decision is made on whether the map would be amended or the boundary would remain unchanged.
23. It is his contention that the Defendant agreed with the said resolution and sought for a period of two months to consult on the appropriate action to be taken.
24. It is also his contention that on 25th August, 2020, the Defendant forcefully removed his (Plaintiff) brother one Elijah Siele and started harvesting tea while alleging that he was occupying the disputed portion on the instructions of the Assistant County Commissioner.
25. It is further his contention that the Defendant's actions are a breach of peace and an injustice to his family as the Defendant is reaping from where he did not sow.
26. He contends that the Defendant's actions have brought distress and hardship to his family as the tea farm has been his brother's only source of income for a period of over thirty years. He adds that the alienation by the Defendant amounts to an injustice.
27. He also contends that his brother relied on the tea farm and acquired loans from various sacco's with the strength that the proceeds from the tea will facilitate the repayment of the loans. He adds that the loans remain unpaid because of the Defendant's actions.
28. He further contends that he is advised by his advocates on record that his family has acquired the two-acre portion of the



suit parcel by way of adverse possession as they have been in possession for a period of over twelve years. He goes on to state that the Defendant's actions are in breach of their rights and should be stopped by this Court.

29. It is his contention that the Defendant settled and occupied a two-acre portion of his father's land peacefully for a period of over forty years and he should not be allowed to utilize both the two exchanged two-acre portions as he does now.
30. It is also his contention that the Defendant did not occupy the disputed two-acre portion until after the demise of their late fathers.
31. He ends his deposition by stating that the Defendant trespassed onto the suit parcel and is liable for mesne profits that accrued from 25th August, 2020 to date.

Defendant's Response.

32. The Defendant filed a Replying Affidavit sworn on 7th February, 2023.
33. He deposes that in the early 1970s his late father settled at Kimulot, Chebang'ang location. He directed his second born son, one Reuben Chepkwony to also settle in Chebang'ang. He stayed there for a short while before he left for Bureti, Kaptele farm.
34. He also deposes that his late father later sold a portion of his land to a Mr. Sigei who was a teacher at Chebang'ang Primary School and they lived together in harmony as neighbors.
35. He further deposes that the said Mr. Sigei decided to move back to Bureti and he informed his (Defendant) late father of his decision to move.
36. It is his deposition that Mr. Sigei sold his portion of land to the late Kipsiele A Langat. The land was not registered in Mr. Sigei's name by the time he was selling it and that his (Defendant) father had gone back to his Bureti Farm.
37. It is also his deposition that Kipsiele A. Langat informed his (Defendant) father about the transfer of the land. He goes on to state that the said portion is rectangular in shape stretching downwards towards an all-weather public road and measures approximately 2.83 Ha.
38. It is further his deposition that Kipsiele A. Langat demarcated the area occupied by Mr. Sigei. He adds that his (Defendant) father passed on in the year 1986.
39. He deposes that after the demise of their father, his brother David Chepkwony went and settled on the Chebang'ang farm now registered as parcel No. 694.
40. He also deposes that his brother David Chepkwony upon settlement noted that there was encroachment on his portion of land. The said encroachment was towards the all-weather road at the foot (sic) of the land.
41. He further deposes that his brother tried to negotiate with Kipsiele A. Langat and even involved the local administration but they did not resolve the dispute. He adds that Kipsiele A. Langat allegedly threatened to have David Chepkwony imprisoned and upon advise of the elders, his brother opted to bury the hatchet.
42. It is his deposition that Kipsiele A. Langat passed on in the year 2011 and the dispute remained unresolved. Kipsiele A Langat's son one Elijah Siele took possession upon the death of his father.



43. It is also his deposition that in the year 2018, the family of his late father while undertaking succession proceedings revived the issue as the land did not have an access road.
44. It is further his deposition that his brother David Chepkwony decided to seek justice through the local administration hoping that he would be successful.
45. He deposes that a number of meetings were held on diverse dates to try and resolve the issue. He adds that in the year 1995, there was a massive exchange of letters between the two parties as David Chepkwony had been allegedly remanded at Kaptebeng'wet police station.
46. He also deposes that in the year 2019, David Chepkwony approached the Chief Chebang'ang Location and requested for the demarcation of the land.
47. He further deposes that his brother also wrote a letter to the Sub County Survey Department at Konoin requesting them to demarcate the land but they were dismissed by Mr. Elijah Siele who termed them as incompetent. He adds that Mr. Elijah Siele stated that he had worked as a driver attached to the District Land Survey at Nakuru and later Bomet where he taught them survey work as they were his students (sic).
48. It is his deposition that the survey team from Konoin Sub County led by Mr. Tororei left the suit parcels amid fears that their superior, Elijah Siele would exonerate (sic) them. He adds that no demarcation was done and that the family of Kipsiele A. Langat affirmed that the land belonged to his (Defendant) late father who had not shown them and that time was to tell when the same could be reverted. (sic)
49. It is also his deposition that they approached their area Chief who advised them to approach the Assistant County Commissioner, Kimulot one Mr. Amonde.
50. It is further his deposition that the Assistant County Commissioner directed the Chief to write a letter detailing the said dispute while he (Assistant County Commissioner) wrote a letter to the District Land Surveyors Office in Litein. The surveyors scheduled a date for 24th March, 2020 for a visit to the suit parcel.
51. He deposes that on 24th March, 2020 the Assistant County Commissioner went to the suit parcel in the company of the District Land Survey (sic) together with security from the Maramara Police Post.
52. He also deposes that the visit was successful. He adds that Elijah Siele confessed that the suit parcel did not belong to them and that it belonged to the family of the late Chepkwony Marisin.
53. He further deposes that Elijah Siele was allowed a period of one month to clear the Cyprus and Eucalyptus trees he had planted together with the tea bushes.
54. It is his deposition that Elijah Siele had been warned by his father not to trespass on the land but out of his rudeness (sic) he planted tea seedlings at night to evade his late father's speculation (sic).
55. He ends his deposition by stating that the facts point to a boundary dispute between the two parcels of land (sic) and not a claim of adverse possession. This is because the Defendant (sic) is in occupation and control of the disputed portion which should essentially be an access road.

Factual Background.

56. On 26th January, 2022 the Court gave directions that the Originating Summons dated 9th June, 2021 be deemed as a Plaint. At the time the said directions were being given, the Defendant had not filed his response to the Originating Summons.



57. On 5th July, 2023, the Court issued directions that the Defendant's Replying Affidavit be deemed as his Statement of Defence.
58. Further directions were that the Originating Summons would be heard by way of viva voce evidence.

Plaintiff's Evidence.

59. Vincent Cheruiyot Siele testified as PW1. It was his evidence that he resides in Chemosit Village, Kericho. It was also his evidence that he was an accountant working at the Kenya Commercial Bank, Naivasha.
60. It was further his evidence that he brought the suit on behalf of his late father Kipsiele Arap Langat who was the registered owner of land parcel No. Kericho/Kimulot/695 and had a title deed in his name.
61. He testified that he was the administrator of his late father's estate and was issued with Letters of Administration on 15th March, 2021. He produced a copy of the said letters of administration as Exhibit P1.
62. He also testified that he had a search certificate for land parcel No. Kericho/Kimulot/695 dated 21st March, 2020 which he produced as Exhibit P2.
63. He further testified that his late father had purchased the said land from Chepkwony Arap Marisin in the year 1973 and that the said Marisin passed on in the year 1986.
64. It was his evidence that in the year 2011 his father passed on.
From the year 1973 to the year 2011 there was no dispute in respect of the suit parcel.
65. It was also his evidence that the late Chepkwony Arap Marisin was the registered owner of land parcel No. Kericho/Kimulot/694 and that they share a common boundary.
66. It was further his evidence that he had in his possession a copy of the search for land parcel No. Kericho/Kimulot/694 that was dated 11th May, 2021 that he produced as Exhibit P3.
67. He testified that a dispute over the access road arose in the year 2019 when the owners of land parcel No. 694 began to claim that they did not have an access road and asked them, the owners of land parcel No. 695 to give them an access road.
68. He also testified that the sons of the late Chepkwony reported the matter to the Chief who called two village barazas.
69. He further testified that after the sitting at the baraza, they stated that they had no problem in giving the late Chepkwony's family an access road.
70. It was his evidence that there were no minutes of the baraza meeting but they were advised to give an access road. In the said baraza they did not agree and therefore no conclusion was reached.
71. It was also his evidence that in March, 2020 the sons of the late Chepkwony Marisin went to the Kimulot Deputy County Commissioner's office to lodge a complaint.
72. It was further his evidence that the Deputy County Commissioner at the time, the Chief and Assistant Chiefs for the entire location, surveyors from Bureti Sub County and the police went to the ground. In the Plaintiff's absence, they surveyed and demarcated the land.
73. He testified that later, the surveyors from Litein made a report. He produced a copy of the report of the meeting convened by the Assistant County Commissioner on 24th March, 2020 as Exhibit P4.



74. He also testified that a report was done by the Surveyors dated 7th April, 2020. It was on the Defendant's List of documents and it was titled as "Surveyors Report on Boundary Determination on parcel number Kericho/Kimulot 693 & 694" The report was marked as MFIP5.
75. He further testified that the said report had three recommendations. Recommendation number one stated that a proper ground survey of the entire parcel of land before subdivision ought to be carried out to ascertain the extent of the acreage of the parcels.
76. It was his evidence that subsequent to the said report, the sons of Chepkwony fenced off a portion of land parcel No. 695 (sic) measuring two acres and yet there was no recommendation for this to be done.
77. It was also his evidence that the portion they fenced off had tea leaves that had been planted by his brother one Elijah Siele in the year 1986.
78. It was further his evidence that since the Defendant fenced off the said portion in July, 2020, he (Defendant) has been plucking the tea.
79. He testified that they initially thought that the dispute was over an access road but it later mutated to a dispute over ownership.
80. He also testified that they wrote a letter to the Surveyor Bomet, Deputy County Commissioner (Konoin) and also to the Surveyors who visited the land in their absence which letter they copied to the Deputy County Commissioner Kimulot.
81. He further testified that the Bomet County Surveyor responded to the said letter through the letter dated 2nd June, 2020. The title of the letter is "Re-establishment of Boundary Kericho Kimulot 694/693".
82. It was his evidence that he had in his possession a survey report dated 12th June, 2020 which was to re-establish the boundary between land parcel No's 694 and 695.
83. It was also his evidence that the report made reference to Kericho/Kimulot/693 but the search attached was for parcel No. 695.
84. It was further his evidence that the second page had a technical finding while the last page stated as follows;
- "The parcel Kericho/Kimulot 693 is supposed to be Kericho/Kimulot 695 as per the Lands Record."
85. He testified that the report had a conclusion and a recommendation. He invited the Court to look at bullet 4:
- "If the RIM Boundary Line AMKJE on the attached map, between the two parcels is adopted as the boundary between the two parcels i.e Kericho/Kimulot/693 and 694 then the family of kipsieleLangat, (sic) Kericho/Kimulot/693, will lose the tea bushes bounded on the attached map by lines GILKJDFG while the family of Chepkwony, Kericho/Kimulot/694, will lose the home states (sic) they are currently occupying bounded on the attached map by lines ABLMA."
86. He also testified that the report found that the Defendant's home stead which is on a portion of two acres forms part of their (Plaintiff) land while the two acres with tea bushes forms part of the Defendant's land.



87. He then prayed for orders as set out in the originating summons.
88. Upon cross examination, he confirmed that he was seeking orders of adverse possession.
89. He admitted that he lived on plot No. 695 while the parent title was No. 693. He denied knowing how his father acquired plot No. 695 but stated that he purchased it.
90. He also admitted that he did not have any sale agreement and neither was he aware of the number of acres his father had purchased. He confirmed that he only had in his possession a certificate of search.
91. He further admitted that before the year 2020, there was no dispute. When he was referred to the Chief's letter dated 13th July, 1995 he stated that he had not seen the said letter and neither was he aware of any dispute in the year 1995.
92. He denied to have ever seen the letter dated 10th July, 1995 and confirmed that his late father processed the title for their land even though he was not aware if the seller was present.
93. He confirmed that his evidence was that two acres of their land was encroached upon and that it had tea plantations. He also confirmed that the two acres was not being used as an access road.
94. When he was referred to the photos appearing at No. 8 on the Defendant's list of documents, he confirmed that parcel B belonged to his father while parcel A belonged to the Defendant.
95. He also confirmed that A, B and C were originally land parcel No. 693. He admitted that the dispute relates to C as the Defendant was claiming part of it as an access road.
96. He confirmed that the whole of C measured 2 acres.
97. When he was referred to the survey report appearing as document No. 1 on the Defendants List of Documents, he read out part B of the Recommendation and Conclusion which stated as follows;
- “Since the proprietor of parcel number Kericho/Kimulot/693 is a buyer from the proprietors of parcel number Kericho/Kimulot/694 they should be in a position together with the sellers give (sic) the exact acreage of land bought so as the allocation done should reflect the same on the ground and the titles issued.”
98. He admitted that it was not true that they did not know the acreage of the parcel as they had a copy of the search and map.
99. He then read out recommendation (c) which stated as follows;
- “After a comprehensive & detailed survey is carried out the proprietors of the two parcels should cause a proper amendment of the RIM”
100. He was then referred to Exhibit P4 and he read out paragraph 5 as follows;
- “On the material day...Mr. Siele Elijah. The only Defendant present at the time accepted that part of parcel 694 indeed had been combined into parcel 693 on the pretext that it was exchanged with a portion of parcel 693 of which he had no proof.”
101. PW1 then read out the penultimate paragraph as follows;
- “Upon completion of the exercise Siele asked to be given one month to remove trees.”



102. He then stated that his brother would answer the questions about what happened.
103. He admitted that the present suit is for adverse possession and that it had been filed in the year 2021. He also admitted that the suit was filed one year after the meeting with the County Commissioner. The said meeting took place on 24th March, 2020.
104. He further admitted that the suit was filed seven (sic) years after the Chief wrote the letters dated 13th July, 1995 and 10th July, 1995. The letter appears as document No. 4 on the Defendant's list of documents.
105. He disclosed that from the year 1995 when the letters were written to the year 2021 when the suit was filed, the period that had lapsed was twenty-nine (sic) years.
106. When he was referred to the survey report which had been marked as MFIP5, he read out bullet No. 2 of the emerging issues section of the report as follows;

“David K.A Siele claims that Chepkwony and kipsiele had no boundary dispute until after the death of Chepkwony Arap Marisin (sic) when his son David Kiptanui Chepkwony (sic) lodged a boundary dispute fifteen years after the death of his father.”
107. He confirmed that one of the prayers he is seeking is for a declaration that he was entitled to two acres of land parcel No. Kericho/Kimulot/694. He also confirmed that he was seeking the said prayer based on the map attached to MFIP5.
108. He also confirmed that he was seeking for mesne profits. This was because the tea plantations belonged to his brother and they were taken away from him in the year 2020. He then reiterated that he filed his claim of adverse possession in the year 2021.
109. Upon re-examination, he was referred to Exhibit P1(Search Certificate). He stated that the said search showed that Kipsiele Langat was issued with a title deed on 6th September, 1973.
110. He reiterated that his father died in the year 2011 while Chepkwony died in the year 1986.
111. He stated that at the time of the transfer, both his father and the Defendant's father were alive.
112. He also stated that there has never been any dispute as to the acreage and that the Surveyor's report recommended that the buyer and the seller give the exact acreage.
113. He further stated that he was not yet born in the year 1973 and reiterated that both the buyer and the seller were deceased. He stated that he was not aware of any dispute in the year 1995 as they were in occupation of the suit land and they experienced no disturbance.
114. He also stated that his brother planted tea in the year 1986/1987 which he had been plucking all along. He further stated that the tea was still on the land and that it had not been uprooted.
115. Elijah Kibet Siele testified as PW2. It was his evidence that he was sixty years old and that he was a farmer living in Bomet County.
116. It was also his evidence that he was born in the year 1963. It was further his evidence that the dispute was between land parcel No's 694 and 695 which belonged to Chepkwony Marisin and Kipsiele Langat respectively.
117. He testified that David Kiptanui Chepkwony, the son of Chepkwony Marisin took two acres of their land which had tea bushes that he planted in the year 1987.



118. He also testified that the land was taken away from them in the year 2019.
119. He further testified that in the year 2019, he (David Kiptanui Chepkwony) first alleged that he wanted an access road and then secondly claimed that there was a boundary dispute before now claiming the two-acre portion.
120. It was his evidence that the Defendant first called the elders, then the Chief then the District Officer.
121. When he was referred to the minutes of the meeting held on 11th June, 2020, he confirmed that on the said date, surveyors from Bomet County visited the suit parcels.
122. He testified that they were informed that they were in occupation of part of the Defendant's land while the Defendant was in occupation of a portion of their land.
123. He confirmed that he was growing tea on the two-acre portion of land and produced the said minutes as Exhibit P6.
124. He also testified that he had a KTDA pay slip for March 2021 that was issued to him. He produced the pay slip as Exhibit P7 which was for Grower No. KT0570006 10396.
125. He further testified that he plucked tea until the year 2020 when he was chased away from the land.
126. When he was referred to Exhibit P4 he testified that he gave up the parcel on advise by the District Officer on 24th March, 2020 after the meeting with the Assistant County Commissioner.
127. It was his evidence that this all happened during Covid and that he was alone at the said meeting as his brothers were away.
128. It was also his evidence that there were many police officers, six Assistant Chiefs, a Chief and the District Officer. He was unable to resist as he was removed forcefully.
129. It was further his evidence that on the following day, he was chased away with pangas and that he was aggrieved because his tea bushes had been taken away.
130. He testified that he tried to state that the Defendant was also in occupation of their land but they were partisan and were not ready to listen to him.
131. He also testified that he was still living on the other portion of the land and reiterated that there was tea on the two acres of land that the Defendant was harvesting.
132. Upon cross examination he confirmed that he was the Plaintiff's brother.
133. He also confirmed that he did not witness the sale agreement between their fathers and admitted that he was in Class one in the year 1973 when the land was purchased.
134. He further confirmed that Exhibit P7 did not state which parcel of land the tea was coming from.
135. He admitted that Exhibit P7 is a pay slip that was issued in March, 2021 and also admitted that he was chased away from the disputed portion in the year 2020. He further admitted that the said pay slip was not relevant to this case.
136. He confirmed that he did not accept to vacate the land as he was forcefully evicted. He also confirmed that they appealed the said decision to the County Commissioner.
137. He reiterated that the tea was on two acres and that was the portion of land he had been evicted from.



138. He admitted that the said parcel was registered in his father's name and that he had died in the year 2011. He reiterated that the tea was planted in the year 1987 and that it belonged to him.
139. He confirmed that he was seeking for mesne profits from the two acres of land and reiterated that his evidence was that he grew tea on two acres of his father's parcel of land from which portion he was forcefully evicted.
140. Upon re-examination he stated that he had been informed that some of their land formed part of the Defendant's land while some of the Defendant's land formed part of the Plaintiff's land but he did not know the exact position.
141. Simon Kipkemboi Isirei testified as PW3. He testified that he lives in Nandi but works in Bomet. He also testified that he works with the Ministry of Lands as the County Surveyor, Bomet.
142. It was his evidence that he was aware of the dispute in this matter and that he had a survey report dated 12th June, 2020.
143. It was also his evidence that they visited the two parcels of land. The parcels were land parcel No. Kericho/Kimulot/693 (which their record showed was parcel No. 695) and land parcel No. Kericho/Kimulot/694.
144. It was further his evidence that the correct parcel Number was No. 695.
145. He testified that the issue in dispute was that the owners of parcel No. 694 claimed that part of their parcel, the portion adjacent to the road, had been taken over by the owners of parcel No. 695 and that they planted tea on it.
146. He also testified that the owners of land parcel No. 695 had encroached on parcel No. 694.
147. He further testified that the owners of land parcel No. 694 had taken possession of a portion of land parcel No. 695 and established a homestead.
148. It was his evidence that both parties had encroached on each other's parcels of land.
149. It was also his evidence that their conclusion was that if the two parties would agree, surveyors could go to the ground and establish a road of access without disturbing the developments on the land.
150. He reiterated that the owners of land parcel No. 694 had constructed a homestead on a portion of land parcel No. 695 while the owners of land parcel No. 695 had planted tea on a portion of land parcel No. 694.
151. It was his evidence that the encroachment occurred in the 1970's and he produced the report as Exhibit P5.
152. Upon cross examination he confirmed that he did not go to the ground but after he went through the report, he understood what was written on it.
153. He admitted that the said report referred to land parcel No's 693, 694 and 695. He also admitted that the parcels were issued upon first registration which was after adjudication.
154. He also admitted that he had in his possession a certificate of search for land parcel No. 694. It showed that the land was registered in the name of the Chepkwony Marisin on 6th September, 1973 and that it measured 3 Ha.
155. He further admitted that he had in his possession a search for land parcel No. 695 which showed that the land was registered in the name of Kipsiele A. Langat on 6th September, 1973.



156. He confirmed that each of the titles was independent. He also confirmed that the only records they had were for land parcel No's 694 and 695. They did not have any records for parcel No. 693.
157. He acknowledged that their office was only meant to show boundaries.
158. He revealed that the owners of land parcel No. 694 wanted their portion of land where the owners of land parcel No. 695 had planted trees and that there was no access road.
159. He reiterated that the owners of land parcel No. 694 had their homestead on land parcel No. 695.
160. He confirmed that there were clear boundaries save for the encroachment.
161. He acknowledged that the extent of encroachment was not indicated in the report as it was a status report but he had stated that both parties had encroached onto each other's parcels of land.
162. He admitted that land parcel No. 694 had an access road as per the map but on the ground, there was a tea bush. He confirmed that the recommendation was for the surveyors to go back to the ground and re-establish boundaries without disturbing the developments.
163. When he was referred to the Surveyor's report dated 7th April, 2020 which was appearing as document No. 1 on the Defendant's List of Documents dated 7th February, 2023, he admitted that from the recommendation part, it was clear that they did not investigate the buyer and seller issue.
164. He also admitted that recommendation No. (C) proposed the amendment of the Registry Index Map. He disclosed that he agreed with recommendation No. (C) that a survey be done and if the parties agreed, the Registry Index map be amended. He then produced a printout of the map as Exhibit P8.
165. He revealed that the shaded portion marked as A belonged to the owners of land parcel No. 695 but had been encroached upon by the owners of land parcel No. 694.
166. He also revealed that the shaded portion marked as B belonged to the owners of land parcel No. 694 but was encroached upon by the owners of land parcel No. 695.
167. He confirmed that portion B had the tea plantation and that it was the portion that would assist the owners of land parcel No. 694 access the road.
168. He admitted that his report had no claim and that he was not aware of the portion the parties were claiming adverse possession of.
169. David Kiptanui Chepkwony testified as DW1. He testified that he was a farmer and that he lived in Kimulot. He also testified that he knew the Plaintiff and that they did not have any dispute. He further testified that he owned land parcel No. 694.
170. It was his evidence that he had filed a witness statement dated 7th February, 2023. He prayed that the Court adopts the said statement as part of his evidence in Chief which prayer the Court acceded to.
171. He testified that he had documents that he wanted the Court to look at. The first document was a Survey Report.
172. It was his evidence that there was a boundary dispute between land parcel No's 693 and 694. The issue which led to the surveyor making the report was that a portion of his land had been encroached upon.
173. It was also his evidence that the Surveyor stated that there was a problem with the boundaries.
174. It was further his evidence that land parcel No. 694 belonged to him after he acquired it from his father. The letter was marked as MFID1.



175. He testified that he had a Chief's letter dated 13th July, 1995. The said letter confirmed the area in dispute. The letter was produced as Exhibit D2.
176. He also testified that he had a Chief's letter dated 10th July, 1995 which showed that they had a dispute as early as the year 1995. The letter was produced as Exhibit D3.
177. He further testified that he had in his possession another letter dated 24th March, 2020 which described him as a Plaintiff. The Defendants were listed as the sons of Philip Kipsiele Langat and the Plaintiff was number 4 on the list.
178. It was his evidence that there was a dispute on the two parcels of land and that they were trying to find a solution.
179. It was also his evidence that the said letter stated that Elijah Siele, one of the sons of Philip Kipsiele Langat was to remove trees in one month.
180. In his witness statement dated 7th February, 2023 DW1 reiterates the averments in his replying affidavit also sworn on 7th February, 2023.
181. Upon cross examination he reiterated that he did not have any dispute with the Plaintiff.
182. He admitted that land parcel No. 694 belonged to him while land parcel No. 695 belonged to Siele.
183. He also admitted that he had built some houses on land parcel No. 695 in the year 1995.
184. He further admitted that Siele had planted trees on a portion of land parcel No. 694.
185. He confirmed that he could not remember the year but he knew that Siele was on the parcel. He also confirmed that they had been living peacefully.
186. Upon re-examination he stated that the portion of land that has tea growing on it belonged to him as it was given to him in the year 1985.
187. He denied that his house is on the Plaintiff's portion of land and stated that he did not agree that the Plaintiff should take part of the tea plantation because they had been in occupation of it for more than two years.
188. Both the Plaintiff and the Defendant's case was closed.

Issues for Determination.

189. The Plaintiff filed his submissions on 28th November, 2024 while the Defendant filed his submissions on 27th January, 2025.
190. The Plaintiff submits on the following issues;
 - a. Whether the Plaintiff is entitled to 2 acres in LR No. Kericho/Kimulot/694 acquired through adverse possession.
 - b. Whether the Plaintiff is entitled to mesne profits.
 - c. Who should be condemned to costs.
191. With regard to the first issue, the Plaintiff relies on Section 38 of the *Limitation of Actions Act*, the judicial decision of John Omuse v Sifrosa Akumu Oburon [2019] eKLR and submits that the parties herein have occupied two-acre portions of each other's parcels of land.



192. The Plaintiff also submits that he has planted tea bushes on a two-acre portion of land parcel No. Kericho/Kimulot/694 which belongs to the Defendant while the Defendant has put up his homestead on a two-acre portion of land parcel No. Kericho/Kimulot/695 which belongs to him (Plaintiff).
193. The Plaintiff further submits that there was no formal exchange of parcels by the previous owners and therefore he (Plaintiff) took hostile possession of the Defendant's property and started cultivating and planting tea bushes thereon.
194. It is the Plaintiff's submissions that the parties have lived on the said parcels of land openly, exclusively and visibly. It is also the Plaintiff's submissions that he (Plaintiff) developed the disputed portion and that the Defendant was aware of his (Plaintiff) occupation.
195. It is further the Plaintiff's submissions that the Defendant admitted in his evidence that the interruption in the occupation of the suit parcel begun in November, 2019 which led to the series of meetings with the Chief, Surveyors and the Assistant County Commissioner. The said dispute arose after a period of over forty years of peaceful and uninterrupted occupation of the disputed portion of the suit parcel.
196. The Plaintiff relies on the judicial decision of *Rose Akello Otieno v Joseph Odote & another* [2022]eKLR and reiterates that there was no formal exchange of the two-acre portions of the suit parcel even though it appears like there was an exchange.
197. With regard to the second issue, the Plaintiff submits that his family took possession of the disputed portion sometime in the year 1985 and planted tea bushes. He was harvesting the tea as a means of earning a living.
198. The Plaintiff also submits that sometime in August, 2020 the Defendant and his siblings chased the Plaintiff away from the disputed portion.
199. The Plaintiff further submits that he used to harvest 800 kilograms of green tea leaves valued at Kshs. 22 per kilogram. It has been four years and three months since the unlawful eviction which is cumulatively 51 months.
200. The Plaintiff calculates the amounts he is seeking as follows;
- $$51 \times 800 \text{ kg} = 40,800\text{kg} \times \text{Kshs. } 22 = \text{Kshs. } 897,600/=.$$
201. The Plaintiff submits that he was entitled to a yearly bonus which he calculates as follows;
- $$51 \text{ months}' \times 800 \text{ kg} \times \text{Kshs. } 20 = 816,000.$$
202. It is the Plaintiff's submissions that the amount due to him is Kshs. 897,600 + Kshs. 816,000 = Kshs. 1,713,600/=.
203. With regard to the third issue, the Plaintiff submits that the he should be awarded costs of the suit.
204. The Plaintiff concludes his submissions by stating that the main issue in contention is not a boundary dispute but an issue of possession. He submits that this contention is supported by the Surveyor's evidence who testified that parties took possession of the two-acre portions in the 1970s.
205. The Plaintiff relies on the judicial decisions of *Ruth Wangari Kanyagia vs Josephine Muthoni Kinyanjui* [2017] eKLR, *Rose Akello Otieno v Joseph Odote & another* [2022] eKLR and urges the Court to allow the prayers sought in his Originating Summons.



206. The Defendant in his submissions reiterates the averments in his Replying Affidavit and submits on the following issues;
 - a. Whether or not the Plaintiff/Applicant have a claim of adverse possession.
 - b. Whether the Plaintiff is entitled to the prayers sought.
207. On the first issue, the Defendant relies on Sections 7, 9, 10, 11, 12, 13 & 38 of the *Limitation of Actions Act*, the judicial decision of *Mtana Lewa vs Kahindi Ngala Mwangandi* [2015] eKLR and submits that the essential prerequisites of adverse possession are that possession is neither by force nor under the license of the owner. The possession must be adequate in continuity, in publicity and the Applicant must show that possession is adverse to the title owner.
208. The Defendant submits that the Court has to make a determination on whether the Plaintiff's possession has been continuous for the requisite period.
209. The Defendant also submits that the period of twelve years is calculated from the date possession became adverse to the title or interest of the registered owner.
210. The Defendant further submits that time cannot begin to run in favour of a person who is in occupation with permission of the owner.
211. It is the Defendant's submissions that the identity and size of the portion of land that is subject to adverse possession must be identifiable. The Defendant relies on the judicial decision of *Gatimu Kinguru vs Muya Gathangi* [1976] KLR 253 in support of his submissions.
212. It is also the Defendant's submissions that the Plaintiff has not led evidence on the portion of land that he wants the Court to declare that he has acquired by way of adverse possession.
213. It is further the Defendant's submissions that the Plaintiff vacated the disputed portion in the year 2020 a year before filing the present suit, the filing of this suit is therefore an after thought and does not address issues that relate to adverse possession.
214. The Defendant submits that the prayers sought in the Originating Summons are essentially that the parties had exchanged two-acre portions of their parcels of land.
215. It is the Defendants submissions that the said issues cannot be determined by way of adverse possession.
216. The Defendant submits that there are other issues with regard to the acreages on the respective title deeds and the map which can only be resolved at the Land Registry.
217. He concludes his submissions by urging the Court to dismiss the Plaintiff's suit with costs.

Analysis and Determination.

218. After considering the pleadings, submissions and the testimonies of the Plaintiff, his witnesses and the Defendant, the issues that arise for determination are as follows;
 - a. Whether the Plaintiff has acquired a portion of land parcel No. Kericho/Kimulot/694 measuring two acres by way of adverse possession.
 - b. Whether the Plaintiff is entitled to the orders sought in the Originating Summons.
 - c. Who should bear costs of the suit.



A. Whether the Plaintiff has acquired a portion of land parcel No. Kericho/Kimulot/694 measuring two acres by way of adverse possession.

219. It is the Plaintiff's case that he is the legal representative of the estate of his late father Kipsiele Arap Langat who is the registered owner of land parcel No. Kericho/Kimulot/695.
220. It is also the Plaintiff's case that his late father purchased the said parcel of land from the Defendant's father one Chepkwony Marisin (deceased) who was the owner of land parcel No. Kericho/Kimulot/694.
221. It is further the Plaintiff's case that sometime in the year 2019, the Defendant and his family members begun to claim that their parcel of land did not have an access road and therefore they asked the Plaintiff's family to give them a road.
222. It is the Plaintiff's case that the Defendant and his family members reported the issue to the local Chief and the Deputy County Commissioner Kimulot which led to the latter visiting the suit parcel with the local administration officers and surveyors.
223. It is also the Plaintiff's case that the issue that begun as a request for an access road, allegedly mutated to a claim of ownership of land and soon after the visit by the Deputy County Commissioner, the Plaintiff was forcefully removed from a two-acre portion of land parcel No. Kericho/Kimulot/694 that they were in occupation of.
224. It is further the Plaintiff's case that they had planted tea bushes on the said portion which the Defendant and his family have been plucking to date.
225. It is the Plaintiff's case that the Defendant is are in occupation of a two-acre portion of land parcel No. Kericho/Kimulot/695 which belonged to his late father where he has established his homestead.
226. The Plaintiff submits that the estate of his late father has acquired the two-acre portion of land parcel No. Kericho/Kimulot/694 where they have planted tea bushes by way of adverse possession.
227. In support of his case the Plaintiff produced a copy of letters of administration issued by the Principal Magistrate's Court at Sotik in Succession Cause No. 8 of 2021 with respect to the estate of Kipsiele Arap Langat alias Kipsiele A. Langat alias Kipsiele Langat that was issued to Zakayo Cheruiyot Siele and Cheruiyot Siele Vincent on 15th March, 2021. (Exhibit P1)
228. The Plaintiff also produced a copy of a Certificate of Official search for land parcel No. Kericho/Kimulot/695 that was issued on 21st August, 2020. (Exhibit P2) It states that said parcel of land measures 3.43 Ha and was registered in the name of Kipsiele A. Langat on 6th September, 1973. He was issued with a title deed on 10th September, 1973.
229. The Plaintiff further produced a copy of a Certificate of Official Search for land parcel No. Kericho/Kimulot/694 that was issued on 11th May, 2021. (Exhibit P3) It states that the said parcel of land measures 3.00 Ha and it was registered in the name of Chepkwony Marisin on 6th September, 1973. On 10th July, 1974 he was issued with a title deed.
230. A copy of a report of a meeting dated 24th March, 2020 was produced as Exhibit P4. The report was compiled by Ezekiel Amonde the Assistant County Commissioner Kimulot Division. The title of the said report is "Harmonization on encroachment of land parcel Kericho/Kimulot/694 belonging to the late Chepkwony Marisin"



231. The report indicates that the members present were the Plaintiff (sic) David Kiptanui and his family members and the Defendants (sic) who were the sons of the late Philip Kipsiele Langat. The said sons are David Siele, Robert Siele, Simon Siele, Vincent Siele, Jacob Siele, Kenneth Siele and Elijah Siele.
232. The report states that the dispute started in the year 1974 when the late Philip Kipsiele Langat hived off a portion of land parcel No. Kericho/Kimulot/694 and amalgamated it with land parcel No. Kericho/Kimulot/693.
233. The report also states that the late Chepkwony Maritim (sic) who died in the year 1980 tried to resolve the issue by approaching the clan elders and local administration but they were not able to resolve it.
234. The report further states that in the year 1995, David Kiptanui Chepkwony the son of the late Chepkwony Marisin took up the matter and on 13th March, 2020 approached the Bureti Sub County Surveyor to establish the acreage of land parcel No. Kericho/Kimulot/694.
235. The report states that the Assistant County Commissioner received a letter from the surveying team requesting him to provide security and to avail the NGAO team from Kimulot Division on 24th March, 2020 for a survey exercise.
236. The report also states that on the said date, teams from both the Survey department and the local administration were present and before the survey was done, the parties present were given an opportunity to give briefs on the dispute.
237. The report further states that Elija Siele admitted that part of land parcel No. 694 was combined with land parcel No. 693 on the pretext that it was exchanged with a portion of land parcel No. 693 but he had no proof of the said exchange.
238. The Report states that the survey was done and new beacons placed on the disputed portions. Upon conclusion of the exercise, Elijah Siele requested for a one-month period to enable him remove trees from the demarcated portions.
239. The Plaintiff's produced a Survey Report dated 12th June, 2020 as Exhibit P5. The survey report was prepared by the County Surveyor, Bomet and is with regard to land parcel No's Kericho/Kimulot/693 and 694.
240. The report states that they visited the suit parcels on 11th June, 2020 to ascertain the boundaries between the two parcels. The exercise was done in the presence of the two concerned parties and the local administration personnel that included the Chief, Assistant Chief and the village elders.
241. The parties set out the history of their dispute and some of the technical findings were that the disputed portion of the land has tea bushes growing on it and it was fenced off by David Kiptanui Chepkwony.
242. The other technical finding was that land parcel No. Kericho/Kimulot/693 is supposed to be Kericho/Kimulot/695 as per the land records.
243. They also made the finding that land parcel No. Kericho/Kimulot/695 is land locked.
244. They made the following conclusion and recommendations;As per the Registry Index Maps (RIM) the boundary between Kericho/Kimulot/693 and Kericho/Kimulot/694 is line AMKJE.Registry index map (RIM) is the only available document we relied on.RIM may not be authority on boundaries.In the RIM boundary, line AMKJE on the attached map, between the two parcels is adopted as the boundary between the two parcels i.e Kericho/Kimulot/693 and 694 then the family of kipsieleLangat (sic), Kericho/Kimulot/693, will lose the tea bushes bounded on the attached map by lines GILKJDFG while the family of Chepkwony, Kericho/Kimulot/694, will lose the home states (sic)



they are currently occupying bounded on the attached map by lines ABLMA. If the live fence that has been in existence for as long as the early seventies separating the two parcels is adopted as the boundary between the two parcels none of the parties shall lose their properties but Kericho/Kimulot/694 shall remain landlocked. If the two parties so wish, then the RIM should be amended to conform with the ground situation. The parties are asked to maintain the original boundaries in existence before the surveyor from Litein interfered with the parcel number kericho/Kimulot/693 (695) (sic). The two parties to meet with a view of sorting out the issue of parcel number kericho/Kimulot/694 (sic) being landlocked. The principle (sic) of give and take may apply. Any aggrieved party to seek redress in the Court of law. Enclosed are the relevant maps.

245. The survey report is prepared by Patrick K. Rotich and checked by Samwel K. Langat (County Surveyor Bomet) on 22nd July, 2020.
246. A copy of minutes of a meeting held on 11th June, 2020 was produced as Exhibit P6. The minutes are dated 1st February, 2021 and signed by the Chief Chebangang Location. The title of the said minutes is “Minutes of Land Dispute Between Ker/Kimulot 693 and Ker/Kimulot 694 held at the site on 11th June, 2020 as from 10:00 am”
247. Among the fifteen members present were the Chief and Assistant Chief Chebangang Location, one David Siele representing the Plaintiff’s family and one David Chepkwony representing the Defendant’s family. There were also officers present from the survey office who were led by one Patrick Rotich.
248. Patrick Rotich the County Surveyor informed the members present that the boundary demarcation ought to have been done on both land parcel No’s. Kericho/Kimulot/693 and Kericho Kimulot/694.
249. The said surveyors proceeded to mark the said boundary and established that there were glaring errors in the previous survey. It was established that David Siele’s family had a piece of land in David Chepkwony’s parcel of land and vice versa.
250. They made the following resolutions;
 - “ 1. The Defendant mr david chepkwony (sic) requested that, they be granted two months to consult and decide whether to adopt the land map to amend boundary or maintain status quo.
 2. Mr. david chepkwony (sic) family requested for one week to remove the fence which was erected after the previous survey.
 3. Mr. david siele’s (sic) family would response (sic) and continue plucking their tea bushes until a decision is made on whether the land map will be amended or the boundary to remain unaltered.
 4. Mr. david Chepkwony (sic) (defendant) accepted that the resolution on tea and fence would b (sic) adhered to and implemented.”
251. A copy of an unclear KTDA pay slip was produced as Exhibit P7. The contents of the said receipt are not legible.
252. A printout of the map of Kericho/Kimulot/ 694P695 was produced as Exhibit P8. Parts of the said map are shaded A and B as per the evidence of PW3. The part shaded and marked A is the portion of land parcel No. 695 that is occupied by the owners of land parcel No. 694 while the part shaded and marked B is the portion of land parcel No. 694 that is occupied by the owners of land parcel No. 695.



253. The Defendant's case on the other hand is that they have a boundary dispute with the Plaintiff's family. The Defendant contends that the Plaintiff encroached on a portion of land parcel No. 694 which issue they tried to resolve to no avail.
254. It is the Defendant's case that because of the said encroachment, they could not access the main road. The issue was first raised in the year 1995 before they again reported the matter to their area Chief in the year 2019.
255. It is also the Defendant's case that in the year 2020, the Assistant County Commissioner in the company of the local administration and surveyors went to the suit parcel and established the boundaries.
256. The Plaintiff's family was dissatisfied with the said exercise and they wrote a letter to the Bomet County Surveyor. This led to another boundary re-establishment exercise on 11th June, 2020.
257. The Defendant contends that the Plaintiff does not have a case for adverse possession and that the issues between the parties cannot be resolved in the present proceedings.
258. In support of his case, the Defendant produced a letter dated 13th July, 1995 (Exhibit D2). It is written by David Birir, the Chief Kimulot Location and addressed to the Land Registry Kericho/Bomet.
259. The letter makes an invitation to the said office asking them to plan and visit the suit parcel to confirm the acreage of land parcel No. Kericho/Kimulot/695.
260. The Chief states that he received a complaint from one David Chepkwony who stated that his late father did not sell the entire parcel of land to Philip A. Langat.
261. A copy of a letter dated 10th July, 1995 was produced as Exhibit D3. The letter is written by David Birir Chief, Kimulot location and addressed to David Chepkwony.
262. The letter summons him to appear before him (the Chief) on 13th July, 1995 at 8 am in relation to the land dispute between Kipsiele Langat and himself (David Chepkwony).
263. The letter requests him to repair the fence he destroyed and bring a village elder's letter stating that he had referenced the land.
264. A copy of a report dated 24th March, 2020 was produced as Exhibit D4. The said report was also produced by the Plaintiff as Exhibit P4 and its contents have already been set out in the preceding paragraphs.
265. It is not disputed that the Plaintiff is the legal representative of the estate of the late Kipsiele Arap Langat the registered owner of land parcel No. Kericho/Kimulot/695.
266. It is also not disputed that the Defendant is the legal representative of the estate of the late Chepkwony Arap Marisin the registered owner of land parcel No. Kericho Kimulot/694.
267. It is further not disputed that the Defendant has constructed his homestead on a portion of land parcel No. Kericho/Kimulot/695 while the Plaintiff has planted tea bushes on a portion of land parcel No. Kericho/Kimulot/696.
268. It is not disputed that sometime in March, 2020 a survey exercise was conducted on land parcel No. Kericho/Kimulot/694 and upon re-establishment of boundaries, the Defendant fenced off the portion initially occupied by the Plaintiff.



269. What is disputed is the nature of the dispute between the parties and/or whether the Plaintiff acquired the two-acre portion of land parcel No. Kericho/Kimulot/694 by way of adverse possession.
270. 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.”
271. 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”.
272. 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.”
273. Before delving into any other issue, it is important to note that the Plaintiff in the affidavit in support of the Originating Summons at paragraph 7 contends that his late father and the Defendant’s late father mutually agreed to exchange a portion of two acres each from their respective parcels of land.
274. The Plaintiff also contends that the Defendant established his home on the two-acre portion of land parcel No. Kericho/Kimulot/695 while the Plaintiff planted tea bushes on the two-acre portion of land parcel No. Kericho/Kimulot/694.
275. This position was confirmed by DW1 who during cross- examination admitted that he built houses on a portion of land parcel No. Kericho/Kimulot/695 while one Siele, planted trees on a portion of land parcel No. Kericho/Kimulot/694.
276. It is important to note that DW1 did not speak to the fact of the exchange but admitted to possession.
277. The County Surveyor Bomet who testified as PW3 confirmed that both parties had encroached on each other’s parcels of land.



278. A report of a meeting dated 24th March, 2020 was produced by both the Plaintiff and Defendant as Exhibit P4 and Exhibit D4 respectively. The title of the report is “Harmonization on encroachment of land parcel Kericho/Kimulot/694 belonging to the late Chepkwony Marisin”. The report further states that Elija Siele (PW2) admitted that part of land parcel No. 694 was combined with land parcel No. 693 on the pretext that it was exchanged with a portion of land parcel No. 693 but he had no proof of the said exchange.
279. This Court is of the view that the fact that the Plaintiff admits and has produced documents that speak to the fact that there was a mutual exchange of the suit parcels means that the plaintiff’s possession of the disputed portion of land parcel No. Kericho/Kimulot/694 was with the consent of Chepkwony Arap Marisin (deceased).
280. It is evident that there is consistency in the narrative that there occurred an amalgamation of part of parcel 694 and 695 on account of an exchange that occurred between the parties herein.
281. In the judicial decision of Ramadhan Wanzala Omoro v County Government of Kakamega [2020] eKLR the Court cited with approval the Court of Appeal judicial decision of Samuel Miki Waweru vs. Jane Njeru Richu, Civil Appeal No. 122 of 2001 where it was held as follows;
- “...it is trite law a claim of adverse possession cannot succeed if the person asserting the claim is in possession with the permission of the owner of, or in (accordance with) provisions of an agreement of sale or lease or otherwise. Further, as the High Court correctly held in Jandu v Kirpal [1975] EA 225 possession does not become adverse before the end of the period for which permission to occupy has been granted.” [Emphasis Mine]
282. In the judicial decision of Emmanuel Njogu Muchina v Judy Njeri Micere [2021] eKLR the Court held as follows;
- “The possession by the plaintiff is therefore with permission and not hostile. That ground alone in my view disqualifies the plaintiff from the claim of Adverse Possession. I find it a waste of judicial time to go into the other elements of Adverse Possession.” (Emphasis mine)
283. As was held in the above cited judicial decisions, a claim for adverse possession cannot succeed if a party takes possession of a suit parcel with the permission of the owner. That being the case, the Plaintiff’s claim of adverse possession cannot succeed.
284. This Court however notes that the Plaintiff in his submissions states that there was no formal exchange of the parcels of land and that he (Plaintiff) took hostile possession of a portion of the Defendant’s property and started planting tea bushes. This is a clear departure from pleadings and documents adduced in support of his claim.
285. In the judicial decision of Daniel Toroitich Arap Moi vs. Mwangi Stephen Muriithi & Another [2014] eKLR the Court of Appeal held as follows;
- “Submissions cannot take the place of evidence. The 1st respondent had failed to prove his claim by evidence. What appeared in submissions could not come to his aid. Such a course only militates against the law and we are unable to countenance it. Submissions are generally parties’ “marketing language”, each side endeavouring to convince the Court that its case is the better one. Submissions, we reiterate, do not constitute evidence at all. Indeed, there are many cases decided without hearing submissions but based only on evidence presented.” (Emphasis mine)



286. In *Mwavula v Waweru t/a Antique Auctioneers Agencies & another* (Civil Appeal E374 of 2023) [2024] KEHC 5988 (KLR) (24 May 2024) (Ruling) the Court held as follows;

“What the Applicant does not seem to appreciate is that submissions are not pleadings or evidence. As was held by Mwera, J (as he then was) in *Erastus Wade Opande vs. Kenya Revenue Authority & Another* Kisumu HCCA No. 46 of 2007:

“Submissions simply concretise and focus on each side’s case with a view to win the Court’s decision that way. Submissions are not evidence on which a case is decided.”

(Emphasis mine)

287. As was held in the above cited judicial decisions, submissions cannot take the place of evidence and neither are they pleadings. It is trite law that parties are bound by their pleadings. That being the case, the Plaintiff cannot aver in his affidavit in support of the Originating Summons that there was an agreement between the parties that the Plaintiff’s family was to take occupation of a two-acre portion of land parcel No. Kericho/Kimulot/694 and then contradict himself in his submissions by stating that his possession was hostile.

288. This Court is alive to the fact that there is a dispute between the Plaintiff and the Defendant. This is evident from the various letters, reports and minutes each of the parties have produced in Court. There have been attempts to resolve it and suggestions have been made on how to resolve it.

289. The dispute that exists as between the Plaintiff and the Defendant cannot be resolved by way of a claim of adverse possession.

B. Whether the Plaintiff is entitled to the orders sought in the Originating Summons.

290. Given my finding on issue (a) above, this Court cannot grant the other prayers sought in the Originating Summons.

D. Who should bear costs of the suit.

291. 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.

292. In the result, I find that the Plaintiff has failed to prove his claim of adverse possession. Consequently, this suit is hereby dismissed with costs.

293. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 24TH DAY OF JULY, 2025.

L. A. OMOLLO

JUDGE.

In the presence of: -

Mr. Mutai for the Plaintiff.

Mr. Ngeno for the Defendant

Mr. Pkukat – Court Assistant

