



Ochieng (Suing on his own behalf and as Lega Representative of the Estate of Johnstone Francis Ochieng - Deceased) & 3 others v Nyambaja (Sued on his own behalf and as Legal Representative of the Estate of Nyambaja Okello - Deceased) (Enviromental and Land Originating Summons E035 of 2021) [2025] KEELC 5574 (KLR) (18 July 2025) (Judgment)

Neutral citation: [2025] KEELC 5574 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MIGORI
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E035 OF 2021**

MN KULLOW, J

JULY 18, 2025

BETWEEN

JOASH STANLEY OKINYI OCHIENG (SUING ON HIS OWN BEHALF AND AS LEGA REPRESENTATIVE OF THE ESTATE OF JOHNSTONE FRANCIS OCHIENG - DECEASED) 1ST PLAINTIFF
SAMWEL EDWIN OMONDI 2ND PLAINTIFF
RHODA ONYANGO 3RD PLAINTIFF
ROSEMARY AUMA 4TH PLAINTIFF

AND

MAURICE ONYANGO NYAMBAJA (SUED ON HIS OWN BEHALF AND AS LEGAL REPRESENTATIVE OF THE ESTATE OF NYAMBAJA OKELLO - DECEASED) DEFENDANT

JUDGMENT

1. The Plaintiff herein commenced this suit by way of amended Originating Summons dated 16th August, 2021 against the Defendants seeking the following orders:-
 1. Whether the Defendant and the Estate of Nyambaja Okello Deceased, had obtained by way of adverse possession a portion measuring 1.7 hectares of Land Parcel Kanyamkago/Kawere/424
 2. That this Honourable court do order cost of the suit.
2. The originating summons is premised on the grounds on its face and further on the Plaintiff's supporting affidavit sworn on 6th August, 2021, where the Plaintiff avers that the Defendant herein is the registered owner of the suit land and that sometime in the year 1979 Johnstone Francis Ochieng



who is the father of the Plaintiffs purchased a portion of the land measuring 3.5 acres from the Defendant's family land known as L.R No. Kanyamkago/Kawere/424.

3. The Plaintiff further contends that the said Johnstone Francis Ochieng and his family comprising of the Plaintiffs and others were put into immediate possession of the portion measuring 3.5 acres where they have established their homes, cultivated land and the boundaries well demarcated on the land.
4. However, sometime in the year 2010, the Defendant obtained grant of letters of administration of the Estate of Nyambaja Okello, and the Defendant sub-divided the original title number Kanyamkago/Kawere/424 into 15 portions whereby the portion known as Kanyamkago/Kawere/3564 measuring 1.7 hectares was mutually designated to the Plaintiffs.
5. The Plaintiffs content that owing to their occupation and use of the suit land for over 12 years they have acquired prescriptive and adverse rights over the suit land and the Defendant rights over the same has since been extinguished and they thus urge the court to allow their claim on adverse possession and rectification of the register thereof.
6. Even though the Defendant was served he never entered appearance nor filed a Replying affidavit and the court having satisfied itself proceeded to hear the matter on the 27th June, 2023 where the 1st Plaintiff herein testified as PW1 on his own behalf and on behalf of the other Plaintiffs. It was his testimony that the Plaintiffs had lived on the suit land for over 30 years, planted trees on the land and developed it by putting up a permanent home.
7. In support of their case the Plaintiff/Plaintiff produced the following document as the Plaintiff's exhibits:-
 - i. PEX1 Photographs of the homestead
 - ii. PEX2 A copy of Sale Agreement
 - iii. PEX3 A letter dated 6th April, 2021 and copies of arbitration proceedings between the parties
 - iv. PEX4 copy of a green card

And they prayed the court to grant him the prayers sought.

8. I have reviewed the pleadings herein, the exhibits produced, and the submissions filed in totality and it is my considered opinion that the following issues arise for determination: -
 - a. Whether the Plaintiffs have sufficiently proved their claim on Adverse Possession.
 - b. Whether the Plaintiffs are entitled to the reliefs sought.
 - c. Whether the Plaintiffs have sufficiently proved their claim on Adverse Possession Claim of Adverse Possession.
9. Sections 7,13, 17 and 38 (1) and (2) of the Limitation of Actions Act and Section 28 (h) of the Land Registration Act provides the statutory framework for the doctrine of adverse possession.
10. Makhandia, JA in Mtana Lewa v Kabindi Ngala Mwagandi [2015] eKLR in describing the doctrine of adverse possession held as follows: -

“Adverse possession is essentially a situation where a person takes possession of land and asserts rights over it and the person having title to it omits or neglects to take action against such person in assertion of his title for a certain period, in Kenya, it is twelve (12) years. The process springs into action essentially by default or inaction of the owner. The essential



prerequisites being that the possession of the adverse possessor is neither by force or stealth or under the licence of the owner. It must be adequate in continuity, in publicity and in extent to show that possession is adverse to the title owner. This doctrine in Kenya is embodied in Section 7 of the *Limitation of Actions Act*.....”

11. The requirements for a claim of adverse possession are now well settled; The land in question must be registered in the name of a person other than the Plaintiffs, the Plaintiffs must demonstrate that they took possession of the parcel of land, asserted his rights over it in an adverse manner to the title of the land owner and the said title holder did not take any precipitate action against the said Plaintiff for a period of 12 years. Lastly, he must then demonstrate that his possession and occupation of the said land was not by force or under the licence of the land owner and that the said possession was open, in continuity for an uninterrupted period of over 12 years.
12. With regards to the possession; the claimant must also establish the date he took possession, the nature of his possession, the duration of his possession and whether the same was open and uninterrupted for the 12 years’ statutory period. See Court of Appeal decision in *Richard Wefwafwa Songoi v Ben Munyifwa Songoi* [2020] eKLR)
13. Since the Plaintiffs have demonstrated that they took possession of the suit land and they have been in active possession of the same for the period of over 12 years and the Defendant neither testified nor filed any defence I find the Plaintiff’s evidence as not controverted and I therefore I find that the Plaintiffs have satisfactorily proven their claim of adverse possession and I accordingly allow the Originating Summons dated 6th August, 2021 on the following terms:
 - i. A declaration be and is hereby issued that the Plaintiffs have acquired by adverse possession a portion of measuring 1.7HA of L.R NO. Kanyamkago/Kawere/3564
 - ii. Consequently, it is hereby ordered that the portion measuring 1.7 HA that the Plaintiffs have been in possession be registered in the Plaintiff’s name within 90 days from the date of this judgement.
 - iii. Since the suit was not defended, I will not make any orders on costs.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON 18TH DAY OF JULY, 2025.

MOHAMMED N. KULLOW

JUDGE

Ruling delivered in the presence of: -

No appearance for the Plaintiff

No appearance for the Defendants

Philomena W. Court Assistant

