



**Oloo & 2 others v Ojwang (Sued as Administratrix of the Estate of John Michael Ojwang Ongoma ) (Environment and Land Appeal E005 of 2024) [2025] KEELC 5607 (KLR) (15 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5607 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MIGORI  
ENVIRONMENT AND LAND APPEAL E005 OF 2024**

**FO NYAGAKA, J  
JULY 15, 2025**

**BETWEEN**

**MAURICE OUMA OLOO ..... 1<sup>ST</sup> APPELLANT  
LUCAS OTIENO OUMA ..... 2<sup>ND</sup> APPELLANT  
CAREN AKOTH OMONDI ..... 3<sup>RD</sup> APPELLANT**

**AND**

**ROSE OKEYO OJWANG (SUED AS ADMINISTRATRIX OF THE ESTATE OF JOHN MICHAEL OJWANG ONGOMA ) ..... RESPONDENT**

*(Being an Appeal against the judgment in Rongo Principal Magistrate's Court ELC Case No. 32 of 2020 by C.N.C. OURO delivered on 1st March, 2024)*

**JUDGMENT**

1. By way of Plaintiff dated 1/9/2020 the Respondent sought the following orders;
  1. An order of Declaration that the Plaintiff and her deceased husband had acquired title to the suit land and that the 1st Defendant as the Administrator of the estate of Oloo Onjwere should effect the transfer of land parcel no. Kamagambo/Kanyajuok/454 to the Plaintiff.
  2. An order of permanent injunction restraining the Defendants from entering the suit parcel of land, erecting any structure thereon, or in any way interfering with the Plaintiff's use of the portion of the land occupied by the Plaintiff without their consent.
  3. Alternatively, an eviction order compelling the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants to vacate the said portion of land and remove the structures erected thereon from the said parcel of land.
  4. General damages for trespass together with interest thereon until payment in full.



5. Costs of the suit with interest thereon until payment in full.
2. The Defendants filed a statement of Defence wherein they denied the contents of the plaint and urged that they were purchasers for valuable consideration. They prayed the court dismiss the suit.
3. The matter proceeded for full hearing with the Respondent as the only Plaintiff's Witness and the 1<sup>st</sup> Appellant as the only Defence Witness.

### **Hearing at the trial court**

4. PW1 was Rose Okeyo Achieng who adopted her witness statement as evidence in chief. In her statement, she stated that she instituted the suit in her capacity as widow and administratrix of the estate of Michael Ojwang Ongoma having obtained a grant of letters of administration. Further, that her husband bought part of the land in 1976 from Ojoo Onjwere (deceased) and that her husband was in occupation and use of the land awaiting transfer. Her husband passed on in 1978 before completing the transfer and she has lived on the parcel to date. She urged that the 1<sup>st</sup> defendant is the son to the person who sold her husband the suit land and further, that her husband did not put any agreement down in writing and the purchase price was Kshs. 9,000/-.
5. She produced the copy of the sale agreement as exhibit 1 (a) and (b), copy of grant of letters of administration for the year 2017 and 2021 as exhibits 2 and 3, the death certificate of Meresa Anduru Ojwang as exhibit 4 and a copy of the green card for Kamgamb/Kanyanjuok/454 as exhibit 5. She stated that the 2<sup>nd</sup> and 3<sup>rd</sup> defendants forcefully entered the suit land in 2018 and 2019 and destroyed her crops. On each occasion, they told her that the reason for trespass was that they had consent from the 1<sup>st</sup> Defendant.
6. The Plaintiff closed her case and the Defendant called one witness in its defence.
7. DW1 was Maurice Ouma Oloo who adopted his witness statement as evidence in chief. He stated that the parcel in question was registered in his name and further, that he got the title in 2005 vide Succession Cause 185 of 2005. He stated that he lived on the suit land with his mother and from the documents in his possession, the plaintiff did not buy the parcel. He testified that his father was the registered owner on 17/01/1977.
8. During cross examination, he stated that his father owned the farm before Michael came and further, that his father died in 1978.
9. The defence closed its case and parties filed submissions. Upon considering the testimonies of the parties, the submissions therein and the evidence tendered, the trial court entered judgement in favour of the Plaintiff.
10. Dissatisfied with the judgment of the trial court, the appellants instituted this suit vide a Memorandum of Appeal dated 28<sup>th</sup> March 2024 premised on the following grounds, reproduced verbatim;
  1. That the learned trial magistrate erred in law by failing to acknowledge that the pleadings of the Respondent lacked the requisite legal specificity to warrant any of the prayers sought and thus the suit was legally untenable.
  2. That the learned trial magistrate erred in law and fact by failing to acknowledge that the Respondent did not properly invoke the jurisdiction of the court.
  3. That the trial court erred in both law and fact by reaching a determination without proper proof as required by law.



4. That the learned trial magistrate erred in both law and fact by granting ambiguous orders against the Appellants which are subject to manipulation and cause more confusion than solution to the parties.
5. That the learned trial magistrate erred in law and fact by failing to conduct proper pre-trial conference and properly identifying issues for trial by the court.
6. That the trial magistrate erred into law and fact by failing to make a finding on the role of the 2<sup>nd</sup> and 3<sup>rd</sup> Appellants in the entire suit yet the final orders is against them.
7. The learned trial magistrate erred in law and fact by finding that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants were to be forcefully evicted yet no material evidence was placed before court to support the allegations against them.
8. The learned trial magistrate erred in law and fact by failing to appreciate the prevailing circumstances on the suit land particularly that the 1<sup>st</sup> Appellant being and administrator, had already distributed the estate at the time of the said proceedings.
9. That the learned trial magistrate erred in law by failing to appreciate that the 1<sup>st</sup> Appellant ought to have been sued in his capacity as an administrator of the estate of Oloo Onywere.
10. That the learned trial magistrate erred in both law and fact by failing to appreciate that the law bars one from pursuing adverse possession through a sale agreement as a point of departure.
11. That the learned trial magistrate erroneously arrived at a wrong decision with no evidence to support neither the claim nor the judgment i.e. proof of occupation.
12. That the trial court erred in both law and fact by failing to protect the rights of the 1<sup>st</sup> Appellant as legal registered proprietor under the law.
13. That the learned trial magistrate erred in law and fact by failing to appreciate that the 2<sup>nd</sup> and 3<sup>rd</sup> Appellants were innocent purchasers for value without notice.
14. That the learned trial magistrate erred in law by delivering a judgment against the Appellants contrary to the weight of evidence on record.
15. The learned trial magistrate failed to take into consideration all relevant laws and the Plaintiffs submissions thus arrived at a wrong decision.

#### Appellants' submissions

11. Learned counsel for the appellant urged that the Appellants raised issues with the jurisdiction of the court and further, that issues of jurisdiction must be first determined before the court delves into the merits of a suit. He stated that although they raised the issue of jurisdiction the same was not taken into consideration by the court.
12. Counsel submitted that the Respondent's suit was anchored on a Sale of Land Agreement dated 12/12/1976, and it is not rocket science to draw the conclusion that the cause of action was based on contract and bound by laws regulating contracts and land. He stated that the sale agreement was between Oloo Onjwere (deceased) as the Vendor and John Michael Ojwang Ongoma (deceased) and that the Plaintiff has brought this suit as an Administratrix of the estate of John Michael Ojwang but sued the 1<sup>st</sup> Appellant in his personal capacity which raises the issue of the 1<sup>st</sup> Respondents' locus standi.
13. Counsel submitted that the Appellants have no issues with the contract as shown as it complies with Section 3 of the [Law of Contract Act](#). However, the suit was filed outside the six (6) year limit for actions



based on contract and therefore the cause of action is time barred under Section 4(1) of the *Limitation of Actions Act*, Cap 22 Laws of Kenya. The Appellants claim that in effect, the suit was scandalous, frivolous and vexatious and otherwise an abuse of the Court process. He pointed out that the suit was filed in 2020 anchored on a sale agreement executed on 12/12/1976 and therefore, the parties had 3 months to obtain Land Control Board to validate the sale agreement as per the Land Control Board Act. The said contract thus became void three months after its execution. He stated that if any cause of action with regard to the said contract arose three months after its execution as a result there was a breach to which an aggrieved party had 6 years to seek remedy in law. Counsel cited Section 6 of the *Land Control Act* and the case of *Hirani Ngaithe Githire v Wanjiku Munge* [1979] KEHC 4 (KLR), urging that as per the pleadings of the Plaintiff and the various amendments that followed, the cause of action and the remedies remained constant as to specific performance. The Plaintiff did not plead adverse possession and the trial court was wrong to delve into issues not raised by the parties either in pleadings or during trial.

14. It is the appellants case that the evidence of PW1 was very clear and further, that the eviction orders against the Appellants was not properly backed by any evidence. He urged that adverse possession cannot survive as a cause of action alongside prayers for specific performance based on contract.
15. Counsel submitted that the court lacked the requisite jurisdiction to deal with the suit on merit as it was not clothed with statutory powers to determine suits that are time barred without leave of court being granted ab initio. He cited the case of *Owners of the Motor Vessel "Lillian S v Caltex Oil (Kenya) Ltd* [1989] KECA 48 (KLR), reiterating that they raised the issue of jurisdiction in their statement of Defence but the trial court did not address them and the proceedings do not disclose why. Further, he submitted that the issues before the trial court were therefore limited to the pleadings. He prayed the court allow the appeal as prayed.

### **Respondents' submissions**

16. Learned counsel for the respondents submitted that it is not in dispute that the Respondent produced a sale of land agreement duly executed on 12<sup>th</sup> December, 1976 and the vendor Oloo Onjwere now deceased put John Michael Ojwang Ongoma in immediate possession and he resided thereon from 12<sup>th</sup> December 1976 to 1978 when the vendor died without having any dispute with John Michael Ojwang' Ongoma. John continued residing on and cultivating the suit land peacefully without any interruption from anyone including the 1<sup>st</sup> defendant until his demise in 2010 whereof he left surviving spouses and children residing and cultivating the suit land.
17. Counsel urged that the Respondent's claim was not solely hinged on the sale of land agreement earlier on executed on 12<sup>th</sup> December, 1976 as the same became null and void for all intents and purposes having failed to obtain the relevant consent of the land control board pursuant to section 6 of the *Land Control Act*, but also on adverse possession the respondent having led evidence of having been in occupation of the subject parcel herein being Kamagambo/Kanyajuok/454 for over 40 years, peacefully, openly, exclusively and without interruption.
18. Learned counsel submitted that the contention that the trial court was devoid of jurisdiction to entertain the claim is ill conceived and further, that the trial magistrate was well seized with the jurisdiction to adjudicate on adverse possession as at the time when this cause was being instituted, heard and determined.
19. Learned counsel urged that the Respondents specifically pleaded adverse possession in his pleadings at paragraph 8 and prayer a) of the Respondents plaint and having pleaded adverse possession, discharged her burden of proof culminating in the court holding as such. He submitted that the Respondent



proved that the 1<sup>st</sup> Appellant's father's right to land parcel No. Kamagambo/Kanyajuok/454 became extinguished in the year 1988 and the title was therefore being held in trust for the estate of John Michael Ojwang' Ongoma. Thus the Appellant obtaining letters of grant of administration intestate, obtaining certificate of confirmation of grant and transmitting the suit land into his name did nothing to oust the rights of the estate of John Michael Ojwang' Ongoma.

20. Learned counsel submitted that since the 1<sup>st</sup> Appellant obtained grant of letters of administration intestate and transmitted the land into his name he has never utilized the suit land because he is aware that the respondent's family has been in occupation of the suit land since 1976. Counsel cited Section 30 (f) of the Registered Lands Act which is similar to section 28 (h) of the [Land Registration Act, 2012](#) and the case of Regina Wanjiru Mwago & Another vs Lucy Wairimu Gichuhi & 2 others (2019) eKLR and the case of Samwel Nyakenogo vs Samuel Onyaru (2010) eKLR.
21. He stated that the estate of John Michael Ojwang' Ongoma had acquired title to land parcel No. Kamagambo/Kanyajuok/454 in the year 1988 and the succession proceedings conducted in the year 2005 by the 1<sup>st</sup> Appellant was conducted when the interests and rights of the deceased Oloo Onjwere had been extinguished in the suit land by operation of law. Pursuant to section 82 of The [Law of Succession Act](#) the defendant is obliged to transfer Land Parcel No. Kamagambo Kamajuok/454 in the names of John Michael Ojwang' Ongoma. He urged that it is clear that adverse possession was specifically pleaded and proved and the learned magistrates finding are justifiable. He prayed that the appeal be dismissed with costs to the appellants.

### **Analysis & Determination**

22. This is a first appeal. The principle upon which a first appellate court exercises jurisdiction is well settled. The task of a first appellate court was summarized in *Abok James Odera t/a A. J Odera & Associates v John Patrick Machira t/a Machira & Co Advocates* [2013] eKLR as follows:

“This being a first appeal, we are reminded of our primary role as a first appellate court, namely, to re-evaluate, re-assess and re-analyse the extracts on the record and then determine whether the conclusions reached by the learned trial judge are to stand or not and give reasons either way.”

Additionally, the Court the of Appeal, in the case of *Susan Munyi v Keshar Shiani* (2013) eKLR stated as follows:

“As a first appellate court our duty of course is to approach the whole of the evidence on record from a fresh perspective and with an open mind. We are to analyse, evaluate, assess, weigh, interrogate and scrutinize all of the evidence and arrive at our own independent conclusions

23. The issue that arises for determination is; Whether the trial court had jurisdiction to entertain the suit.
24. In *Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd* [1989] eKLR, Justice Nyarangi JA, as he then was stated as doth;

“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”



25. Despite adverse possession not being specifically pleaded, a reading of the Plaintiff and the submissions reveals that the Plaintiff intended to stake a claim, premised on the doctrine of adverse possession. Specifically, paragraph 8 of the Plaintiff brings out the question of adverse possession. Then in the reliefs sought, the main prayer she sought was that a declaration issues that the Plaintiff and her deceased husband had acquired title to the suit land so much so that the 1st Defendant be ordered to effect the transfer of land parcel no. Kamagambo/Kanyajuok/454 to her, and then attendant to it, an order of permanent injunction against the Defendants and in the alternative, an eviction order compelling the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants to vacate the said portion of land and general damages.
26. How had she acquired the land, according to her evidence? By the residence on it for long.
27. Furthermore, the Respondent succeeded in her intention as the trial court made a finding on the ownership of the suit land based on their occupation of the land for 45 years, holding that they had a claim by way of adverse possession. Additionally, the appellant conceded that the sale agreement was invalid as the period within which a party can institute a cause of action premised on a contract is 6 years, as per the provisions of section 4 of the *Limitation of Actions Act*. It means that the purchaser whose agreement failed continued to occupy the land without the permission of the seller from the point of the failure.
28. Having established that the claim succeeded based on a claim for adverse possession, the next port of call is on jurisdiction. The issue of jurisdiction of magistrates courts with regards to adverse possession claims was conclusively determined by the Court of Appeal in *Pauline Chemuge Sugawara vs Nairuko Ene Mutarakwa Kirut (2024) KECA 1417 (KLR)*, where the learned justices expressed themselves as follows;
- In the circumstances, in view of the express provisions of section 38 of the *Limitation of Actions Act*, as did the Environment and Land Court, we find that Magistrates' Courts do not have jurisdiction to determine the claims of adverse possession. As a consequence, the trial magistrate in the instant case rightly disregarded hearing and determining it. In the result, this ground is without merit and is accordingly dismissed.
29. The reasoning behind this determination was aptly explained by the court as follows;
- We come to this conclusion also bearing in mind that the jurisdiction of Magistrates' Courts is largely determined by the pecuniary interest designated for determination by each level of the Magistracy specified in the hierarchy of courts, in terms of section 7 of the Magistrates Courts Act. In claims for adverse possession where the value of the land in question may be unknown, as in the instant case, it could be that by the time of filing, the value of the land subject of determination may be far in excess of the particular Magistrates' Court's pecuniary jurisdiction, which for all intents and purposes was not what was intended by the Act.
30. The upshot of this is that at no point in time did the Magistrates' Court have the jurisdiction to determine adverse possession claims. Consequently, the appeal succeeds as the trial court did not have the requisite jurisdiction to entertain the suit and therefore acted ultra vires. The judgment delivered on 1<sup>st</sup> March 2024 is hereby set aside, and the suit in the trial Court is struck out for want of jurisdiction.
31. For avoidance of doubt, the fact that the lower court matter has been struck out it does not mean that the Plaintiff has lost his case on merits. No. It is that the suit failed on a technicality which is that the Court did not have jurisdiction to handle the matter. They are at liberty to move the right forum to decide the dispute on merits.
32. Each party shall bear its own costs of the suit in the trial court and this appeal.



33. Orders accordingly.

**JUDGMENT DATED, SIGNED AND DELIVERED VIA THE TEAMS PLATFORM THIS 15<sup>TH</sup>  
DAY OF JULY 2025**

**HON. DR. IUR NYAGAKA**

**JUDGE**

In the presence of, Singei Advocate holding brief for Mboya for the Applicant (online)

Maurice Ouma Oloo present in open Court.

Ms. Oyala Advocate for G.S. Okoth for the Respondent (online)

