



**Nyina v Okola (Environmental and Land Originating Summons
E039 of 2024) [2025] KEELC 5952 (KLR) (27 August 2025) (Judgment)**

Neutral citation: [2025] KEELC 5952 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E039 OF 2024
CG MBOGO, J
AUGUST 27, 2025
IN THE MATTER OF THE LIMITATION OF ACTIONS ACT
AND
IN THE MATTER OF LAND REFERENCE NUMBER 94/91**

BETWEEN

PHILLIP OPENJI NYINA PLAINTIFF

AND

ROSEMARY OKOLA DEFENDANT

JUDGMENT

1. Pursuant to Sections 17, 18, 37 and 38 of the *Limitations of Action Act*, Cap 22 and Order 37 Rule 7 of the *Civil Procedure Rules*, the plaintiff filed the originating summons dated 7th June, 2024 seeking the orders that:-
 1. The plaintiff/ applicant be declared to have become the legal owner entitled by adverse possession of over twelve (12) years of all that parcel of land comprised in Title Number LR. No. Nairobi Block 94/91 situated in Nairobi.
 2. The said plaintiff/applicant be registered as the sole proprietor of the said parcel of land namely LR. No. Nairobi Block 94/91 in place of the above-named respondent in whose favour the land is currently registered.
 3. The honourable court be pleased to grant a vesting order in respect of LR. No. Nairobi Block 94/91 to the plaintiff and do direct that the Deputy Registrar of this honourable court be authorized to execute any transfer documents and forms requisite to effectuate the ownership of the acquisition of ownership by the applicant Phillip Openji Nyina.
 4. Costs of this application be provided for.



2. The originating summons was supported by the affidavit of the plaintiff sworn on even date. The plaintiff deposed that he has been living with his family on the suit property since the year 2005, and that the defendant is well known to him as she employed him as a caretaker over the suit property known as LR. No. Nairobi/Block 94/91 in the year 2004. He deposed that the last time he saw the defendant was in the year 2005 when she left. The plaintiff deposed that when he moved into the suit property, it was completely dilapidated and he carried out extensive repairs using his own money in order to make the house habitable. Further, that he has spent a lot of money to maintain the exterior of the property to secure the premises and enjoy the use of the land to the exclusion of all other neighbours. Further, that while the defendant was aware that he was living on the premises, she made no efforts to demand any rent or appoint an agent to collect rents or make payments from him.
3. The plaintiff deposed that as a consequence, no lease agreement, or any form of agreement was executed between them, and that since 2005, the defendant stopped remitting wages and he ceased being a salaried employee. Further, he deposed that he has made attempts to locate her and he is only aware of the address which appears on the transfer of lease. He maintained that he has lived on the suit property in a manner totally adverse to the interest of the defendant who has never interfered with his occupation. Further, that he is aware that substantial amounts are due on the property for rates and that unless the same is paid, the property may be auctioned. He urged the court to declare him as the legal owner entitled by adverse possession having been in possession for over 12 years since 2005.
4. The application was canvassed by way of written submissions. The plaintiff filed his written submissions dated 5th June, 2025 and he raised three issues for determination as follows:-
 - a. Whether the plaintiff has been in open, continuous, and uninterrupted possession of the suit property for a period exceeding 12 years.
 - b. Whether such possession has been adverse to the title and interests of the defendant.
 - c. Whether the plaintiff is entitled to be declared the legal owner of LR. No. Nairobi Block 94/91 by way of adverse possession.
5. On the first issue, the plaintiff submitted that pursuant to Sections 7, 13 and 17 of the [Limitations of Actions Act](#), he has established that he has been in possession of the suit property for a period in excess of 12 years as evidenced from the affidavit. To buttress on this issue, the plaintiff relied on the case of [Chevron \(K\) Ltd v Harrison Charo Wa Shutu](#) [2016] eKLR.
6. On the second issue, and while relying on the cases of [Mtana Lewa v Kabindi Ngala](#) [2015] eKLR, and [Wambugu v Njuguna](#) (1983) KLR 173 the plaintiff submitted that he has expressed an interest to acquire the property which includes the improvements and owing to the period that he has been in occupation, the title holder has been dispossessed and has discontinued her possession over the suit property.
7. On the third issue, it was submitted that pursuant to Section 38 (1) and (2) of the [Limitations of Actions Act](#), he has met the threshold for this court to declare him the lawful owner of the suit property.
8. I have considered the originating summons, the supporting affidavit, the affidavit evidence and the written submissions filed. The issue for determination is whether the plaintiff has demonstrated his claim for adverse possession and whether he is entitled to the orders sought.
9. It is not in dispute that the defendant is the registered owner of the suit property as evidenced from a copy of the official search dated 12th February, 2025. The suit is not opposed, however, this court ought to test the evidence and see whether it meets the threshold before granting any orders.



10. Section 107 of the Evidence Act provides:-

- “(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
- (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”

11. Further, Section 109 provides as follows:-

“The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of the fact shall lie on any particular person.”

12. To prove a claim of adverse possession, a plaintiff has to provide sufficient evidence to substantiate his claim. In the case of Gabriel Mbui vs Mukindia Maranya [1993] eKLR, it was held:-

“The burden of proving title by adverse possession rests upon the person asserting it. This is to say the burden of proof is upon the person setting up and seeking to prove title by adverse possession (*Mamuji v Dar* [1935] 2 EACA 111, *Bwana v Ibrahim* (1948) 15 EACA 7; and Forbes, JA, in *Abdulkarim and another v Member for Lands and Mines and another 1* [1958] EA 436). He proves it on the usual standard of proof in civil cases namely, on a balance of probability. What does he prove? He proves three adequacies: continuity, publicity, and extent. For to prove title by adverse possession, it is not sufficient to show that some acts of adverse possession have been committed: the possession must be adequate in continuity, in publicity and in extent, to show that it is adverse to the rightful, paper title owner.”

13. As I place reliance on the above provisions of the law and the authority cited, the averments raised by the plaintiff in his supporting affidavit are mere allegations as they are only on paper. As stated earlier, besides the copy of the official search and the transfer of lease said to be registered on 30th December, 1987, there is nothing else to show that the plaintiff has met the threshold for a claim of adverse possession.

14. The plaintiff alleges to have been in occupation together with his family since the year 2005, and made improvements on the suit property to a habitable condition. Further, he claims that rates continue to accrue and the property risks to be auctioned. There is absolutely no evidence to support these claims. All the critical evidence to support the alleged facts are absent. I doubt whether the plaintiff is in actual use, possession and occupation of the suit property.

15. From the above, it is my finding that the plaintiff has failed to discharge the burden of proof to warrant a claim of adverse possession. The originating summons dated 7th June, 2024 thus fails and it is dismissed with no orders as to costs.

Orders accordingly.

DATED, SIGNED & DELIVERED VIRTUALLY THIS 27TH DAY OF AUGUST, 2025.

HON. MBOGO C. G.

JUDGE



In the presence of:

Mr. Benson Agunga - Court assistant

No appearance for the Plaintiff

