



**Machuki v Ogero (Environmental and Land Originating Summons
E007 of 2022) [2024] KEELC 895 (KLR) (27 February 2024) (Judgment)**

Neutral citation: [2024] KEELC 895 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E007 OF 2022**

M SILA, J

FEBRUARY 27, 2024

BETWEEN

HENRY OSORO MACHUKI APPLICANT

AND

JACKLINE NYANGOGE OGERO RESPONDENT

JUDGMENT

1. Through an Originating Summons filed on 21 October 2022, the applicant claims to be entitled, by way of adverse possession, to land measuring approximately 0.3 hectares out of the land parcel Wanjare/Bokeire/2773 (the suit land) which land is registered in the name of the respondent. Despite being duly served, the respondent did not enter appearance and did not in any way participate in this suit. The only material that I have is therefore that supplied by the applicant.
2. In his supporting affidavit and in his oral evidence in court, the applicant averred that on 17 May 1985, the then registered proprietor of the suit land, one Mokandu Ogero (now deceased), sold to him part of the land measuring 100 x 436 x 62 x 430 feet of which he annexed a copy of the sale agreement. The seller did not however take him to the Land Control Board for consent to transfer. He averred that the seller put him in possession which he has continued to enjoy to date. He stated that he does not live on the land but has planted trees on it. It was his evidence that upon the demise of the seller, the respondent took out letters of administration and caused the suit land to be transferred to her by way of transmission and became the registered owner on 20 November 1996. He elaborated that despite having title the respondent has not interfered with his quiet possession of the land that he claims. He avers that his possession has been quiet and peaceful, that it has been open and known to the registered proprietor, and the possession has been continuous and uninterrupted since he purchased the land in 1985.
3. As I mentioned, the respondent did not file anything to oppose the suit and the case is thus unchallenged. I have no reason to doubt the pleadings and evidence of the applicant. The applicant



also provided a sketch map drawn by a surveyor to indicate his possession of the land. The same demonstrates that the applicant is in possession of land measuring 0.3 Ha of the suit land. The total area covered by the suit land is 1.34 Ha. I am persuaded to enter judgment for the applicant for this area measuring 0.3 Ha and do declare that he has obtained title to this portion by dint of adverse possession. I order the respondent to cooperate with the applicant and execute all requisite documents which are needed in order to subdivide the suit land and transfer this portion measuring 0.3 Ha to the applicant. If the defendant does not do so, the Deputy Registrar of this court to ensure that the documents are executed by an officer of this court.

4. The last issue is costs. The respondent did not contest the case and in the circumstances of this case I am of the persuasion that there should be no orders as to costs.
5. Judgment accordingly.

DATED AND DELIVERED THIS 27TH DAY OF FEBRUARY 2024

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

Delivered in presence of: -

Mr. Soire for the applicant.

No appearance for the respondent.

