



REPUBLIC OF KENYA



**KENYA LAW**  
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**Angira v Omenya & another (Environmental and Land Originating Summons  
50 of 2019) [2025] KEELC 772 (KLR) (20 February 2025) (Judgment)**

Neutral citation: [2025] KEELC 772 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISUMU  
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS 50 OF 2019**

**E ASATI, J**

**FEBRUARY 20, 2025**

**BETWEEN**

**SOSPETER OUMA ANGIRA ..... PLAINTIFF**

**AND**

**CARYLUS JUMA OMENYA ..... 1<sup>ST</sup> DEFENDANT**

**JANE ODWAR OGUTU ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. Vide the Originating Summons dated 4<sup>th</sup> November, 2019, Sospeter Ouma Angira who claims to be entitled to 1.10Ha of land parcel number Kisumu/Border/4264 and 4738 sought for orders that;
  - a. The Applicant/Plaintiff be declared the proprietor of 1.10Ha parcel of land NO. Kisumu/Border/4264 and 4738 which he has occupied openly, exclusively, continuously and without interruption from 2003 to date for a period of 16 years.
  - b. That the applicant has acquired a bona fide titles 1.10Ha portion of land parcel Kisumu/Border/4264 and 4738 by adverse possession.
  - c. That the Applicant is entitled to be registered as the proprietor of 0.05 of land Kisumu/Border/4738, 1.05Ha of parcel NO. Kisumu/Border/4264.
  - d. The defendant be ordered to transfer 1.1 Ha portion of said parcel number Kisumu/Border/4264 and 0.05 Ha parcel No.4738.
  - e. That in default of the Defendants' failing to transfer the said parcel to the Applicant, the Deputy Registrar to execute the necessary documents to effect the transfer of ownership of 1.05 Ha portion of land parcel number Kisumu/Border/4264 and 0.05 Ha of parcel No.4738 from the Respondent to the Applicant.



- f. That the Defendant be restrained from entering, wasting, damaging and/or in any way alienating 1.10Ha portion of land parcel number Kisumu/Border/4264 and 4738 until the hearing and determination of this matter.
  - g. That costs of this suit be awarded to the Plaintiff/applicant.
2. The 2<sup>nd</sup> Respondent/Defendant filed her Replying Affidavit sworn on 19<sup>th</sup> July, 2020 denying the Plaintiff's claim.
  3. The matter proceeded by way of viva voce evidence.

### **The Evidence**

4. The Plaintiff testified as PW1. He relied on the contents of his Supporting Affidavit to the Originating Summons and witness statement dated both 4<sup>th</sup> Novembers, 2019.
5. His testimony was that sometimes on 7<sup>th</sup> June, 2003 he entered into an agreement for sale of a portion of land parcel NO. Kisumu/Border ADJUDICATION SECTION PLOT NO.1498 measuring 2.5 acres at an agreed consideration of Kshs.350,000/= from the 1<sup>st</sup> Respondent. That immediately upon execution of the initial agreement dated 7<sup>th</sup> June, 2003, he fenced off the entire portion purchased, took full control and possession thereof and constructed his home thereon.
6. That he later paid an additional Kshs.42,000/- to the purchase price because the size of the land he purchased was found to be 2.8 acres and not 2.5 acres.
7. That after obtaining title to land parcel No.1498, the 1<sup>st</sup> Respondent sub-divided the land into four (4) portions namely Kisumu/Border/4264, 4265, 4266 and 4267. That the 1<sup>st</sup> Respondent refused to transfer the purchased land to him and further refused to cooperate in obtaining any consent from the Land Control Board. That his home constructed in the year 2003 sits on two parcels of land namely; Kisumu/Border/4264 (1.05Ha) registered in the name of the 1<sup>st</sup> Respondent and parcel number 4738 (0.05 Ha) registered in the name of the 2<sup>nd</sup> Respondent.
8. That he has been in continuous and uninterrupted occupation of the two parcels measuring 1.05Ha and 0.05 Ha since the year 2003.
9. He produced 4 exhibits namely; certified copy of registers for Kisumu/Border/4264 and 4738, sale agreements dated 7<sup>th</sup> June, 2003, 2<sup>nd</sup> September, 2003 and 1<sup>st</sup> June, 2006, ground survey report and photographs.
10. He indicated that he had already sorted out the claim against the 1<sup>st</sup> Defendant and hence he had no further claim against him. Hence was pursuing claim against the 2<sup>nd</sup> Respondent only. He denied that he was a party in a case at Nyando Court and further denied involvement in any other case over the suit land.
11. On cross-examination, he stated that parcel No.4738 was part of what he bought and that he had fenced it as part of his land. That it did not originate from the original parcel No.1498. That he was not aware of the origin of parcel No.4738.
12. That he had been in occupation of parcel No.4738 since the year 2003. That the register for parcel No.4738 was opened on 4<sup>th</sup> June, 2015.



13. PW2 was one Patrick Opiyo Adero, a land Surveyor. He produced the ground survey report and testified that the Plaintiff's home sits on two parcels of land namely; 4264 and 4738. That part of parcel NO.4738 is fenced with No.4264.
14. The 2<sup>nd</sup> Defendant testified as DW1. She adopted the contents of her witness statement dated 2<sup>nd</sup> February, 2022 as her evidence in chief. She had stated in the witness statement that she is the registered owner of a parcel of land known as Kisumu/Border/4738 which was a resultant parcel of sub-division of land parcel NO. Kisumu/Border/2387. That Kisumu/Border/2387 belonged to her late husband one Hezron Ogutu Chama. That after the death of her husband in the year 1992, succession proceedings were conducted and the land transferred into her name. That she lives on a different parcel of land.
15. She stated further that the 1<sup>st</sup> Respondent has never been owner of land parcel NO. Kisumu/Border/4738. That the Applicant forced himself onto land parcel NO. Kisumu/Border/4738 recently and not in the year 2003 as he alleges.
16. That land parcel No. NO. Kisumu/Border/4738 is subject of an ongoing litigation between herself and other parties in NYANDO ELC NO.14 OF 2018 (Formerly Kisumu HCC no.156 of 2015).
17. She stated further that both the Applicant and the 1<sup>st</sup> Respondent had trespassed onto her land. She prayed for orders of eviction against them.
18. The 2<sup>nd</sup> Defendant produced exhibits namely; court order in Kisumu CMCC NO.212 of 1987, court order in Kisumu PMCC MISC. APPL. NO.15 OF 2010, Certificate of official search for NO. Kisumu/Border/2387 in the name of Hezron Ogutu Chama, Grant and certificate of confirmation of Grant in KSM HC SUCCESSION NO.377 of 2000, Certificate of Official search for NO. Kisumu/Border/2387 in the name of the 2<sup>nd</sup> Respondent and pleadings in Nyando SRMC ELC NO.14 OF 2018 (Formerly KSM HCCC NO.156 OF 2015).
19. On cross-examination, DW1 stated that she was the owner of land parcel No. NO. Kisumu/Border/4738 which land was previously registered in the name of her husband. That the parcel of land was a resultant parcel out of sub-division of the original parcel No.2387 which belonged to her husband.
20. That currently it was the Plaintiff who was staying on land parcel No. NO. Kisumu/Border/4738. That she had had a land dispute with the 1<sup>st</sup> Defendant Carylus Juma for a long time since the year 1987. That before the Plaintiff entered the land, it was her who was using it.
21. That she moved out of the land in the year 1992 upon the death of her husband and that she stopped tilling the land. That she did not know when the Plaintiff entered the land because she had left.

### **Submissions**

22. At the close of the evidence, parties filed submissions on the case.
23. It was submitted on behalf of the Plaintiff vide the written submissions dated 5<sup>th</sup> June 2024 file by the firm of Ko'Wino & Company Advocates that the issue for determination is whether or not the Plaintiff has demonstrated or proved his claim of adverse possession on a balance of probabilities. Counsel relied on the case of Kasuve -vs- Mwaami Investments Ltd & 4 Others [2004]eKLR 184 where it was held that in order to be entitled to land by adverse possession, the claimant must prove that he has been in possession of the land openly without interruption for a period of over 12 years either after dispossession of the owner or by discontinuation of possession by the owner of his own volition.



24. Counsel submitted that the Plaintiff's evidence that he took possession of the land in the year 2003 has not been challenged. That the 2<sup>nd</sup> Respondent admitted that she vacated the land in the year 1992 when her husband died and has never used the suit land again.
25. That the Plaintiff has proved all the element of adverse possession and judgement should be entered in his favour.
26. On behalf of the Respondent written submissions dated 22<sup>nd</sup> July, 2024 were filed by the firm of Bruce Odeny & Company Advocates. Counsel submitted that the Applicant is not entitled to the suit parcel of land by virtue of adverse possession.
27. That the Applicant claimed in his Originating Summons that the only reason he sought for adverse possession was because the 1<sup>st</sup> Defendant had allegedly sold to him land parcel NO. Kisumu/Border ADJUDICATION SECTION Plot No.1498 measuring 2.5 acres which after survey was discovered to be in excess by 0.3acres bringing the total acreage to 2.08 acres for which he paid an extra amount of Kshs.42,000/- to cover for the excess but that after conclusion of the adjudication exercise the 1<sup>st</sup> Defendant became adamant in facilitating the process to have the Plaintiff registered as proprietor of the parcel.
28. That later, the 1<sup>st</sup> Defendant sub-divided the parcel NO. Kisumu/Border/1498 to create Kisumu/Border/4264, 4265, 4266 and 4267.
29. That the basis of the Plaintiff's claim was the sale of Kisumu/Border/ADJUDICATION SECTION PLOT NO.1498 only and not any other parcel.
30. That it is absurd that the Plaintiff is claiming land parcel No.4738 which was not part of the sale transaction by the 1<sup>st</sup> Defendant who declined to transfer the same to the Plaintiff.
31. That land parcel NO.4738 has never been part of No.1498.
32. That exhibit D.Exh.1 shows that it was ordered in Case NO. Kisumu CMCC NO.212 OF 1987 that the name of the 1<sup>st</sup> Defendant be struck out from the land register as the owner of Kisumu/Border/2387 which was the parent of title of Kisumu/Border/4738.
33. The name was replaced with that of Hezron Ogutu Chama – husband to the 2<sup>nd</sup> Defendant.
34. That Kisumu/Border/4738 was registered on 4<sup>th</sup> June, 2015 barely 5 years before the date of filing the suit. That the Plaintiff can therefore not claim adverse possession on land parcel No.4738.
35. Counsel relied on the case of Mtana Lewa -vs- Kahindi Ngala Mwangandi [2015]eKLR on the definition of adverse possession.
36. Counsel submitted further that there had been litigation namely; Kisumu CMCC NO.212 OF 1987, Kisumu PMCC MISC. APPL. NO.15 OF 2010 and NYANDO SRMCC NO.14 OF 2018 (FORMERLY KSM HCCC NO.156 OF 2015).
37. Counsel further relied on the case of Peter Mbiru Michuki -vs- Samuel Mugo Michuki [2014]eKLR where the court stated that adverse possession should be calculated from the date of payment of the purchase price to the full span of twelve years if the purchaser takes possession of the property because from that date, the true owner is dispossessed of possession.
38. That the interest of adverse possession in this case started to accrue in Kisumu/Border/PLOT NO.1498 which was the only subject of the sale and not parcel NO.4738.



39. Counsel submitted that the Plaintiff had failed to prove adverse possession and prayed that the suit be dismissed.

### **Issues for determination**

40. The Plaintiff testified that his claim against the 1<sup>st</sup> Respondent had been sorted out as the 1<sup>st</sup> Respondent had transferred land parcel NO. Kisumu/Border/4264 to him and caused him to be issued with a title deed. Hence, he had no further claim against him.
41. The outstanding issue for determination therefore is whether the Plaintiff has acquired title to land parcel NO. Kisumu/Border/4738 by adverse possession and whether he is therefore entitled to the relief sought.

### **Analysis and Determination**

42. The Plaintiff's pleadings and evidence is that the land he bought from the 1<sup>st</sup> Defendant was a portion of land parcel known as NO. Kisumu/Border/ADJUDICATION SECTION PLOT NO.1498.
43. That the size of the portion of land sold was 2.5 acres for which he paid Kshs.350,000 but paid Kshs.350,000 but when measurements were taken later and the size found to be 2.8 acres, he paid an additional Kshs.42,000/- for the extra portion.
44. The land sale agreements relate to plot No. 1498 only. The Applicant's evidence was that it was only when he invited the surveyor to the ground that it was found out that the portion of land fenced by the Applicant covered two parcels of land namely; parcel No.4264 and 4738. The applicant conceded that he did not know the origin of land parcel number 4738.
45. The 2<sup>nd</sup> Defendant pleaded and testified that parcel number 4738 came into being in the year 2015. That it belonged to her and that she had never had any dealings with the Applicant concerning the land. The green card produced as exhibit showed that the register in respect of land parcel number 4738 was opened on 4<sup>th</sup> June, 2015 and that the suit land was registered in the name of the 2<sup>nd</sup> Respondent on the same day. The green card also showed that the land was a product of subdivision of land parcel number parcel No. 2387 and that the land measures approximately 0.0465 Hectares.
46. There is no evidence that the 1<sup>st</sup> Respondent had ever been owner of land parcel number 2387 or 4738. The owner of land parcel number 2387 was not sued herein. The 2<sup>nd</sup> Respondent has not been sued in a representative capacity on behalf of the previous owner or owner of the mother land parcel number 2387. The 2<sup>nd</sup> Respondent only became owner of land parcel 4738 in the year 2015. From the year 2015 up to the time of filing suit in the year 2019, 12 years had not elapsed. The implication of this is that under section 7 of the *Limitation of Actions Act* the right to act against the trespasser and recover the land only accrued in favour of the 2<sup>nd</sup> Respondent in the year 2015 and the 2<sup>nd</sup> Respondent's title had not become extinguished under the provisions of section 17 of the same act.
47. Adverse possession is a legal doctrine by which a person obtains legal title to land by reason of actual, open and continuous, non-permissive and non-consensual occupation of it to the exclusion of the registered owner for a prescribed period, in Kenya 12 years.
48. In the case of *Mtana Lewa –vs- Kahindi Ngala Mwangandi* [2015] e KLR the Court of Appeal defined adverse possession as:

“Adverse possession is essentially a situation where a person takes possession of land and asserts rights over it and the person having title omits or neglects to take action against



such person in assertion of his title for a certain period, in Kenya, twelve (12) years. The process springs into action essentially by default or in action of the owner. The essential prerequisites being that possession of the adverse possessor is neither by force or stealth nor under the license of the owner. It must be adequate in continuity, in publicity and in extent to show that possession is adverse to the title owner.”

49. I find that adverse possession in respect of land parcel No. Kisumu/Border/4738 has not been proved.
50. Regarding costs, under the provisions of section 27 of the *Civil Procedure Act*, costs follow the event.
51. In conclusion, I find that the applicant has not proved his claim against the 2<sup>nd</sup> Respondent on a balance of probabilities. The same is therefore hereby dismissed. Costs to the 2<sup>nd</sup> Respondent.

Orders accordingly.

**JUDGEMENT DATED AND SIGNED AT Kisumu AND DELIVERED THIS 20<sup>TH</sup> DAY OF FEBRUARY, 2025 VIRTUALLY THROUGH MICROSOFT TEAMS ONLINE APPLICATION.**

**E. ASATI,**

**JUDGE.**

In the presence of:

Maureen: Court Assistant.

No appearance for the Plaintiff/Applicant

Akinyi for the Defendant/Respondent.

