



**Oracha (Suing on her own behalf and/or as a personal representative of the Estate of Tom Juma Ombewa - Deceased) & another v Amkoa & 3 others (Environmental and Land Originating Summons E008 of 2022) [2025] KEELC 730 (KLR) (20 February 2025) (Judgment)**

Neutral citation: [2025] KEELC 730 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISUMU  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E008 OF 2022  
SO OKONG'O, J  
FEBRUARY 20, 2025**

**BETWEEN**

**ARNOLDA ANYANGO ORACHA (SUING ON HER OWN BEHALF AND/OR AS A PERSONAL REPRESENTATIVE OF THE ESTATE OF TOM JUMA OMBEWA - DECEASED) ..... 1<sup>ST</sup> PLAINTIFF**

**ROSELYNE ADHIAMBO OGOLLA (SUING ON HER BEHALF AND/OR AS A PERSONAL REPRESENTATIVE OF THE ESTATE OF ROSALLIA OGWEL ALIAS ROSE OGWEL) ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**PETER OGONJI AMKOA ..... 1<sup>ST</sup> DEFENDANT**

**MUHORONI/NYANDO DISTRICT LAND REGISTRAR ..... 2<sup>ND</sup> DEFENDANT**

**MUHORONI/NYANDO DISTRICT LAND SURVEYOR ..... 3<sup>RD</sup> DEFENDANT**

**THE HON ATTORNEY GENERAL ..... 4<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. The Plaintiffs brought this suit against the Defendants by way of an Originating Summons dated 31<sup>st</sup> March 2022 seeking the following orders;
  - a. A declaration that the 1<sup>st</sup> Plaintiff had become entitled by adverse possession to a portion of all that parcel of land known as Title No. Kisumu/Sidho West/2766 measuring approximately 5 acres (hereinafter referred to as “the suit property”).
  - b. A declaration that the 2<sup>nd</sup> Plaintiff had become entitled by adverse possession to a portion of all that parcel of land known as Title No. Kisumu/Sidho West/2766 measuring approximately 3 acres (“the suit property”).



- c. An order of a temporary injunction restraining the 1<sup>st</sup> Defendant from attempting to take possession of, tilling, planting any crops on, carrying out any farming activity on, leasing, disposing of, charging or in any other manner whatsoever dealing with the suit property pending the hearing and determination of the suit.
- d. An order directing the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants to visit the suit property and establish the extent of the suit property occupied by each of the Plaintiffs and file a report in court before the hearing of the Originating Summons.
- e. An order that the 1<sup>st</sup> Plaintiff be registered as the proprietor of the portion of the suit property measuring approximately 5 acres.
- f. An order that the 2<sup>nd</sup> Plaintiff be registered as the proprietor of the portion of the suit property measuring approximately 3 acres.
- g. An order for general damages against the 1<sup>st</sup> Defendant for trespass on the portions of the suit property to which the Plaintiffs were entitled.
- h. An order for special damages against the 1<sup>st</sup> Defendant in the sum of Kshs. 201,600/- being the value of the sugar cane and banana crops belonging to the 1<sup>st</sup> Plaintiff damaged by the 1<sup>st</sup> Defendant.
- i. An order of a permanent injunction restraining the 1<sup>st</sup> Defendant from in any manner interfering with the Plaintiffs' interest in the suit property.
- j. An order that the Officer Commanding Miwani Police Station ensure compliance with the orders issued by the court.
- k. Costs of the Originating Summons.

### **The 1<sup>st</sup> Plaintiff's case**

2. In her affidavit in support of the Originating Summons dated 31<sup>st</sup> March 2022, the 1<sup>st</sup> Plaintiff stated as follows: She was the widow of Tom Juma Ombewa, deceased (hereinafter referred to only as "the deceased") who died on 16<sup>th</sup> November 2015 in Kisumu. She was issued with a Grant of Letters of Administration Ad Litem in respect of the estate of the deceased by the Chief Magistrate's Court at Kisumu on 10<sup>th</sup> September 2021. The deceased purchased a portion of the suit property measuring about 5 acres from John Ondiek Wamteri, deceased (hereinafter referred to as "Wamteri") on 20<sup>th</sup> March 1987 at Kshs. 10,000/-. Wamteri was the first registered owner of the suit property which measured 3.4 hectares in total. Wamteri and the deceased died before the said portion of the suit property was transferred and registered in the name of the deceased. Her family particularly she had been in active occupation and use of the said portion of the suit property mostly growing sugar cane and banana plants thereon from 1987 which was about 35 years at the time of swearing the affidavit. Her occupation and use of the said portion of the suit property was open, continuous and without force and with the full knowledge of the family of Wamteri who included his son, James Ochieng Ondiek who died around 20<sup>th</sup> September 2021 and his nephew one, Javan.
3. The 1<sup>st</sup> Plaintiff stated further that her son conducted a search on the suit property around August 2021 which revealed that the suit property had been transferred and registered in the name of the 1<sup>st</sup> Defendant on 29<sup>th</sup> June 2021 and a title deed had been issued to him on the same date. She averred that she came to learn later that the suit property was transferred to the 1<sup>st</sup> Defendant by Wamteri's son James Ochieng Ondiek who had obtained a Grant of Letters of Administration in respect of



Wamteri's estate in Nyando Senior Principal Magistrate's Court Succession Cause No. E015 of 2010. The 1<sup>st</sup> Plaintiff averred that she had personally and/or as an administrator of the estate of her deceased husband become entitled through adverse possession to a portion of the suit property measuring 5 acres. She stated that around January 2022, the 1<sup>st</sup> Defendant attempted to forcibly take possession of her portion of the suit property by ploughing with a tractor about 1.2 acres of her portion of the suit property in the process of which he damaged growing sugar cane worth Kshs. 96,000/- an incident that was reported to the police. She stated that on 25<sup>th</sup> March 2022, the 1<sup>st</sup> Defendant again attempted to take possession of her portion of the suit property by force when the 1<sup>st</sup> Defendant ploughed a portion of the land she was entitled to causing more damage to her sugarcane and banana plants. She stated that the damaged crops were valued at Kshs. 105, 600/-. She stated that this incident was also reported to the police. At the trial, the 1<sup>st</sup> Plaintiff adopted her witness statement dated 1<sup>st</sup> February 2023 as her evidence in chief and produced the documents that were attached to her list of documents dated 1<sup>st</sup> February 2023 as a bundle as P.EXH.1. In her brief oral testimony, the 1<sup>st</sup> Plaintiff told the court that the 1<sup>st</sup> Defendant purchased the same land that her deceased husband had purchased in 1987 and which she had cultivated since it was purchased.

#### **The 2<sup>nd</sup> Plaintiff's case**

4. The 2<sup>nd</sup> Plaintiff also supported the Originating Summons with an affidavit dated 31<sup>st</sup> March 2022. The 2<sup>nd</sup> Plaintiff stated as follows: She was a sister-in-law to Rosallia Ogwel, deceased (hereinafter referred to as "Rose") who died on 4<sup>th</sup> April 2016 at Kisumu. Rose was not survived by a child or a spouse. She was issued with a Grant of Letters of Administration Ad Litem in respect of the estate of Rose by the Chief Magistrate's Court at Kisumu on 10<sup>th</sup> September 2021. Rose purchased a portion of the suit property measuring about 3 acres from Wamteri on 17<sup>th</sup> March 1985 at Kshs. 5,500/-. Wamteri was the first registered owner of the suit property. Around 2011, Rose gave her nephew Clivefenton Ogolla (hereinafter referred to as "Ogolla") the said portion of the suit property as a gift. Rose and Wamteri both died before the suit property was subdivided and the said portion measuring 3 acres was transferred to Rose. Her (the 2<sup>nd</sup> Plaintiff) family particularly she had actively occupied and used the said portion of the suit property from 1985 by mostly cultivating it. Her long occupation and farming activities on the said portion of land for about 37 years were open, continuous and without force. Her occupation and use of the property were with full knowledge of the family of Wamteri.
5. The 2<sup>nd</sup> Plaintiff stated further that in August 2021, she did a search on the suit property through the 1<sup>st</sup> Plaintiff's son, Sylvester Juma which search revealed that the suit property was registered in the name of the 1<sup>st</sup> Defendant on 26<sup>th</sup> June 2021 and that the 1<sup>st</sup> Defendant had been issued with a title deed in respect thereof. The 2<sup>nd</sup> Plaintiff stated that she later learnt that the suit property was transferred to the 1<sup>st</sup> Defendant by Wamteri's son, James Ochieng Ondiek on the strength of a Grant of Letters of Administration that he obtained at the Senior Principal Magistrate's Court at Nyando in Succession Cause No. E015 of 2020. The 2<sup>nd</sup> Plaintiff averred that personally and/or as an administrator of the estate of Rose she had acquired the said portion of the suit property measuring 3 acres by adverse possession. The 2<sup>nd</sup> Plaintiff stated that on 22<sup>nd</sup> January 2022 and 25<sup>th</sup> March 2022, the 1<sup>st</sup> Defendant made attempts to forcefully take possession of the whole of the suit property including the portion thereof the 2<sup>nd</sup> Plaintiff was entitled to.
6. At the trial, the 2<sup>nd</sup> Plaintiff adopted her witness statement dated 1<sup>st</sup> February 2023 as her evidence in chief. She also adopted the bundle of documents that had been produced by the 1<sup>st</sup> Plaintiff in support of her case. The 2<sup>nd</sup> Plaintiff told the court that after purchasing the portion of the suit property measuring 3 acres in 1985, Rose was cultivating it on and off. She stated that Rose grew sugar cane and



rice on the property. She stated that she was using the said portion of the suit property when the 1<sup>st</sup> Defendant purchased the whole of the suit property.

7. The Plaintiffs after giving evidence called three (3) witnesses. The first one was, Silvester Okumu(PW3). PW3 told the court that the 1<sup>st</sup> Plaintiff was her mother while the 2<sup>nd</sup> Plaintiff was her aunt. PW3 adopted his witness statement dated 1<sup>st</sup> February 2023 as his evidence in chief. He stated that his deceased father, Tom Juma Ombewa purchased the portion of the suit property claimed by the 1<sup>st</sup> Plaintiff in 1987 and that his family had been cultivating the land since then. He stated that the family used the land peacefully until 2021 when the 1<sup>st</sup> Defendant claimed to be the owner thereof. The next witness was Esther Hoka Onyango (PW4). PW4 told the court that she was a retired Agricultural Officer. He stated that at the material time, he was the Agricultural Officer in Ombeyi Ward. She stated that the 1<sup>st</sup> Plaintiff was known to her. She stated that she knew her through the Assistant Chief Obumba Sub-Location. She stated that there was crop damage on the 1<sup>st</sup> Plaintiff's farm and the matter was reported to the Assistant Chief who contacted her and asked her to go to the farm and assess the extent of the damage. She stated that there were two incidences of crop damage; in January and March 2022. She stated that she prepared two reports for the said incidents which had already been produced as exhibits. The Plaintiff's last witness was Martin Owiti Olum(PW5). PW5 told the court that he was a retired Assistant Chief of Obumba Sub-Location. He adopted his witness statement dated 31<sup>st</sup> October 2023 as his evidence in chief.

#### **The 1<sup>st</sup> Defendant's case**

8. The 1<sup>st</sup> Defendant opposed the Originating Summons through a replying affidavit dated 6<sup>th</sup> March 2023. In his affidavit, the 1<sup>st</sup> Defendant stated as follows: He was the registered owner of the suit property which measured 3.4 Hectares. He purchased the suit property from James Ochieng Ondiek at Kshs. 1,500,000/- which he paid in two instalments. James Ochieng Ondiek had been issued with a Grant of Letters of Administration in respect of the estate of his deceased father who was the initial registered owner of the suit property. He took possession of the suit property after the same was registered in his name on 29<sup>th</sup> June 2021. He tilled the land from the time he acquired the same until the Plaintiffs filed this suit. The 1<sup>st</sup> Defendant stated that neither the Plaintiffs nor the deceased persons whose estates they were representing had been in possession of the portions of the suit property they were claiming. The 1<sup>st</sup> Defendant stated that since the Plaintiffs were not in occupation of the land, there was no need to evict them from the property before he took possession. The 1<sup>st</sup> Defendant stated that he had never been arrested for crop damage on the suit property. The 1<sup>st</sup> Defendant averred that if any of his agents were arrested for crop damage and charged, they were not convicted. The 1<sup>st</sup> Defendant averred that there was no evidence in the Plaintiffs' application as to when time started running in their favour for the purposes of adverse possession.
9. At the trial, the 1<sup>st</sup> Defendant adopted his witness statement dated 6<sup>th</sup> March 2022 as his evidence in chief and produced the documents attached to his list of documents dated 6<sup>th</sup> March 2023 as a bundle as D.EXH.1. The 1<sup>st</sup> Defendant told the court that he was the registered owner of the suit property which he purchased from James Ochieng Ondiek at Kshs. 1,500,000/-. He stated that he started using the suit property in June/July 2021. He stated that when he took possession of the suit property, there was no other activity taking place on the land. He stated that he was aware that a nephew of James Ochieng was accused of crop destruction and was charged but was acquitted. He stated that he only became aware of the Plaintiffs' interest in the suit property when they filed this suit against him. He stated that when he planted maize on the suit property in 2021 there was no sugar cane on the land.



10. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants closed their cases without calling evidence. The court thereafter directed the parties to make closing submissions in writing. The Plaintiffs filed joint submissions dated 13<sup>th</sup> March 2024. The 1<sup>st</sup> Defendant filed submissions dated 20<sup>th</sup> May 2024 while the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants filed joint submissions dated 17<sup>th</sup> May 2024.

### **Analysis and determination**

11. I have considered the Plaintiffs' Originating Summons and the response thereto by the Defendants. I have also considered the evidence adduced by the parties and the submissions of counsel. Apart from the adverse possession claim over the suit property, the parties did not address the court in their submissions on the other reliefs that were sought by the Plaintiffs in the Originating Summons some of which I believe have been overtaken by events. In the circumstances, I am of the view that the only issues arising for determination in this suit are the following;
1. Whether the Plaintiffs have proved their adverse possession claim over the suit property;
  2. Who is liable for the costs of the suit?
12. In *Gabriel Mbui v. Mukindia Maranya*[1993] eKLR, the court stated that a person claiming land by adverse possession must establish on a balance of probabilities the following;
1. He must make physical entry and be in actual possession or occupancy of the land for the statutory period.
  2. The entry and occupation must be with, or maintained under, some claim or colour of right or title made in good faith by the stranger seeking to invoke the doctrine of adverse possession as against everyone else.
  3. The occupation of the land by the intruder who pleads adverse possession must be non-permissive use, i.e. without permission from the true owner of the land occupied.
  4. The non-permissive actual possession hostile to the current owner must be unequivocally exclusive, and with the evinced unmistakable animus possidendi, that is to say occupation with clear intention of excluding the owner as well as other people.
  5. Acts of user by the person invoking the statute of limitation to found his title are not enough to take the soil out of the owner or his predecessors in title and to vest it in the encroacher or squatter unless the acts be done which are inconsistent with the owner's enjoyment of the soil for the purpose for which he intended to use it.
  6. The possession by the person seeking to prove title by adverse possession must be visible, open and notorious, giving reasonable notice to the owner and the community of the exercise of dominion over the land.
  7. The possession must be continuous uninterrupted, unbroken for the necessary statutory period.
  8. The rightful owner or paper title holder against whom adverse possession is raised must have an effective right to make entry and to recover possession of the land throughout the whole of, and during, the statutory period.
  9. The rightful owner must know that he is ousted. He must be aware that he had been dispossessed, or he must have parted and intended to part with possession.



10. The land, or portion of the land adversely possessed must be a definitely identified, defined or at least an identifiable portion, with a clear boundary or identification. The absence of a plot or title number need not present any difficulty, nor should it be a bar to establishing a claim of adverse possession.
13. In *Kimani Ruchine & Another v. Swift, Rutherford Co. Ltd. & another* [1977] KLR 10 Kneller J. stated as follows at page 16:
- “The Plaintiffs have to prove that they have used this land which they claim as of right, necvi, nec clam, necplocario (no force, no secrecy, no evasion)...The possession must be continuous. It must not be broken for any temporary purposes or by any endeavours to interrupt it or by any recurrent consideration.”
14. In *Wambugu v. Njuguna* [1983] KLR 172 the court stated as follows:
- “First in order to acquire by the Statute of Limitations title to land which has a known owner, that owner must have lost his right to the land either by being dispossessed of it or by having discontinued his possession of it. Dispossession of the proprietor that defeats his title entails acts which are inconsistent with his enjoyment of the soil and for the purpose for which he intended to use it. The *Limitation of Actions Act* (Chapter 22) on adverse possession contemplated two concepts: dispossession and discontinuance of possession. The proper way of assessing proof of adverse possession would then be whether or not the title holder has been dispossessed or has discontinued his possession for the statutory period and not whether or not the claimant has proved that he has been in possession for the requisite number of years.”
15. In *Mwangi Githu v. Livingstone Ndeete* [1980] eKLR, Potter J. quoted volume 24 of Halsbury’s Laws of England, 3<sup>rd</sup> edition, page 252 where the authors stated as follows:
- “To constitute dispossession, acts must have been done inconsistent with the enjoyment of the soil by the person entitled for the purpose for which he had a right to use it (q). Fencing off is the best evidence of possession of surface land; but cultivation of the surface without fencing off has been held sufficient to prove possession.”
16. In *Githu v. Ndeete* [1984] KLR 776 it was held that:
1. “Time ceases to run under the *Limitation of Actions Act* either when the owner takes or asserts his rights or when his right is admitted by the adverse possessor. Assertion occurs when the owner takes legal proceedings or makes an effective entry into the land. Giving notice to quit cannot be effective assertion of right for the purpose of stopping the running of time under the *Limitation of Actions Act*.
  2. A title by adverse possession can be acquired under the *Limitation of Actions Act* to a part of the parcel of land which the owner holds title.”
17. It is on the foregoing principles that the Plaintiffs’ claim falls for consideration. The burden was on each Plaintiff to individually establish the elements of adverse possession set out in the above cases. The 1<sup>st</sup> Plaintiff’s case is that her deceased husband, Tom Juma Ombewa (the deceased) purchased a portion of the suit property measuring 5 acres (2.02 Ha.) from the then registered owner thereof, John Ondiek Wamteri, deceased (Wamteri) on 20<sup>th</sup> March 1987 at a consideration of Kshs. 10,000/- which was paid in full. The 1<sup>st</sup> Plaintiff has averred that the suit property was to be subdivided and



the portion that the deceased purchased transferred to the deceased by Wamteri. The 1<sup>st</sup> Plaintiff has averred that they took possession of the said portion of the suit property in 1987 after purchasing the same and started cultivating it awaiting the subdivision of transfer as aforesaid. The 1<sup>st</sup> Plaintiff has averred that Wamteri died on 13<sup>th</sup> January 1992 while her deceased husband, Tom Juma Ombewa died on 16<sup>th</sup> November 2015 before the suit property was subdivided and the 5-acre portion purchased by the deceased transferred to him. The 1<sup>st</sup> Plaintiff has averred that even after the death of Wamteri, her family remained in possession of the said portion of the suit property and continued to cultivate the same openly and peacefully. The 1<sup>st</sup> Plaintiff has averred that her possession of the said portion of the suit property continued even after the death of the deceased and was only interrupted in 2021 when the 1<sup>st</sup> Defendant showed up and claimed to be the owner of the whole of the suit property.

18. The 2<sup>nd</sup> Plaintiff's case is that her sister-in-law, Rosallia Ogwel alias Rose Ogwel(Rose) purchased a portion of the suit property measuring 3 acres (1.21 Ha.) from the then registered owner thereof, John Ondiek Wamteri, deceased (Wamteri) on 17<sup>th</sup> March 1985 at a consideration of Kshs. 5,500/- which was paid in full. The 2<sup>nd</sup> Plaintiff has averred that the suit property was to be subdivided and the portion that Rose purchased transferred to Rose by Wamteri. The 2<sup>nd</sup> Plaintiff has averred that Rose took possession of the said portion of the suit property in 1985 after purchasing the same and started cultivating it awaiting the subdivision and transfer as aforesaid. The 2<sup>nd</sup> Plaintiff has averred that Wamteri died on 13<sup>th</sup> January 1992 while Rose died on 4<sup>th</sup> April 2016 before the suit property was subdivided and the 3-acre portion purchased by Rose transferred to her. The 2<sup>nd</sup> Plaintiff has averred that before her death, Rose had given the said 3-acre portion of the suit property to her nephew, Clivefenton Ogolla (whom I believe is the son of the 2<sup>nd</sup> Plaintiff) as a gift. The 2<sup>nd</sup> Plaintiff has averred that her family particularly she had been in active possession and use of the suit property mostly cultivating it from 1985 until the 1<sup>st</sup> Defendant showed up in 2021 and claimed to be the owner of the whole of the suit property.
19. The 1<sup>st</sup> Defendant's case is that he purchased the suit property from Wamteri's son, James Ochieng Ondiek who was also the duly appointed legal representative of his estate at a consideration of Kshs. 1,500,000/- which he paid in full. The 1<sup>st</sup> Defendant has averred that the suit property was transferred to him on 29<sup>th</sup> June 2021 after which he took possession thereof and started cultivating the same. The 1<sup>st</sup> Defendant has averred that neither the 1<sup>st</sup> Plaintiff nor the 2<sup>nd</sup> Plaintiff were in possession of the suit property when possession of the property was given to him.
20. I have carefully analysed the evidence adduced by the parties. I am persuaded that the 1<sup>st</sup> Plaintiff has proved that her deceased husband and she had occupied a portion of the suit property measuring 5 acres peacefully, continuously and without any interruption from 1987 when the 1<sup>st</sup> Plaintiff's deceased husband purchased the same from Wamteri until 2021 when a dispute arose between her and the 1<sup>st</sup> Defendant. The deceased entered and took possession of the said portion of the suit property with the permission of Wamteri. The suit property was agricultural land and the transaction between the deceased and Wamteri required the consent of the Land Control Board. There is no evidence that such consent was obtained within the statutory timeline. In the absence of the said consent, the agreement of sale between the deceased and Wamteri became void after 6 months from the date of the agreement. The continued possession and use of the said portion of the suit property by the deceased and subsequently his family after the agreement of sale became void was adverse to the proprietary interest of Wamteri in the property. The 1<sup>st</sup> Plaintiff produced in evidence the agreement of sale which her deceased husband entered into with Wamteri in 1987. The 1<sup>st</sup> Plaintiff produced further evidence showing that at the time the suit property was sold to the 1<sup>st</sup> Defendant by the son of Wamteri, the 1<sup>st</sup> Plaintiff was cultivating the 5-acre portion of the suit property that was sold to the deceased and



had grown sugarcane and banana plants on the property. I find no truth in the 1<sup>st</sup> Defendant's claim that the 1<sup>st</sup> Plaintiff was not in occupation of the suit property when the same was sold to him. The evidence adduced by the 1<sup>st</sup> Plaintiff of the several attempts by the 1<sup>st</sup> Defendant and his agents to forcefully evict the 1<sup>st</sup> Plaintiff from the suit property was not rebutted by any credible evidence. The fact that the 1<sup>st</sup> Defendant was not charged with the offence of crop damage and that the nephew of James Ochieng Ondiek who was charged with the destruction of the 1<sup>st</sup> Plaintiff's crops on the suit property was acquitted could not support the 1<sup>st</sup> Defendant's claim that there was no cultivation on the suit property. I am satisfied from the foregoing that the 1<sup>st</sup> Plaintiff has proved her claim adverse possession claim against the 1<sup>st</sup> Defendant.

21. Concerning the 2<sup>nd</sup> Plaintiff, there is evidence that Rose acquired a portion of the suit property measuring 3 acres from Wamteri on 17<sup>th</sup> March 1985. Like in the case of the 1<sup>st</sup> Plaintiff, the transaction was subject to the provisions of the *Land Control Act*, Chapter 302 Laws of Kenya. There is no evidence that the consent of the Land Control Board was obtained for the transaction which became void after the expiry of 6 months from the date of the agreement of sale. The burden was on the 2<sup>nd</sup> Plaintiff to prove that Rose and subsequently she remained in possession and used the property continuously from the time the agreement of sale became void until 2021 when the 1<sup>st</sup> Defendant purchased the suit property. The 2<sup>nd</sup> Plaintiff placed no evidence before the court in proof of Rose or her own occupation of the 3-acre portion of the suit property which she is claiming by adverse possession. The 2<sup>nd</sup> Plaintiff who claimed that she was cultivating the said portion of the suit property produced no evidence of the said cultivation. In the circumstances, it is my finding that the 2<sup>nd</sup> Plaintiff's adverse possession claim has not been proved.

## Conclusion

22. For the foregoing reasons, I hereby make the following orders;
  1. The 2<sup>nd</sup> Plaintiff's claim is dismissed.
  2. I declare that the 1<sup>st</sup> Plaintiff has acquired a portion of all that parcel of land known as Title No. Kisumu/Sidho West/2766 measuring 5 acres (approximately 2.02 Ha.) by adverse possession.
  3. The National Government Surveyor/Kisumu County Surveyor shall subdivide Title No. Kisumu/Sidho West/2766 into two (2) portions measuring approximately 1.38 Ha. and approximately 2.02 Ha. at the cost of the 1<sup>st</sup> Plaintiff and the portion thereof measuring approximately 2.02Ha. shall be transferred by the 1<sup>st</sup> Defendant to the 1<sup>st</sup> Plaintiff with the 1<sup>st</sup> Plaintiff paying all the charges involved in the transfer of her portion of the property to her name. The portion of Title No. Kisumu/Sidho West/2766 measuring approximately 1.38Ha. shall remain in the name of the 1<sup>st</sup> Defendant.
  4. While surveying Title No. Kisumu/Sidho West/2766 for the purposes of the subdivision, the surveyor shall ensure that the portion of the said property under cultivation by the 1<sup>st</sup> Plaintiff forms part of the land measuring approximately 2.02 Ha. to be curved out for the 1<sup>st</sup> Plaintiff from Title No. Kisumu/Sidho West/2766.
  5. The Land Surveyor carrying out the survey shall make provision for access roads as may be necessary in his opinion.
  6. The 1<sup>st</sup> Defendant shall surrender the original title deed for Title No. Kisumu/Sidho West/2766 to the Land Registrar when called upon to do so to facilitate the subdivision of the property.



7. The status quo prevailing as of the date hereof as it relates to the title and possession of Title No. Kisumu/Sidho West/2766 shall be maintained pending the subdivision thereof and transfer in terms of the orders above.
8. Either party shall be at liberty to apply with regard to orders No. 3, 4 and 5 above.
9. Each party shall bear its costs of the Originating Summons.

**DELIVERED AND DATED AT KISUMU ON THIS 20<sup>TH</sup> DAY OF FEBRUARY 2025**

**S. OKONG'O**

**JUDGE**

Judgment delivered virtually through Microsoft Teams Video Conferencing Platform in the presence of:

Mr. Okello for the Plaintiffs

Mr. Abande for the 1<sup>st</sup> Defendant

N/A for the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants

Ms. J. Omondi-Court Assistant

M

