



**Wangombe v Rugoiyo (Environmental and Land Originating Summons  
E006 of 2024) [2025] KEELC 713 (KLR) (20 February 2025) (Judgment)**

Neutral citation: [2025] KEELC 713 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E006 OF 2024  
YM ANGIMA, J  
FEBRUARY 20, 2025**

**BETWEEN**

**WILSON WANDIGA WANGOMBE ..... APPLICANT**

**AND**

**JOHN RUGOIYO ..... RESPONDENT**

**JUDGMENT**

**A. Plaintiff's claim**

1. By an originating summons dated 21.05.2024 brought pursuant to Sections 7 and 38 of the *Limitation of Actions Act* (Cap 22) and Order 37 Rule 7 of the Civil Procedure Rules 2010 the Applicant sought adverse possession of Title No. Nyandarua/Ol Joro-orok Salient/1636 (the suit property).
2. The summons was supported by the supporting affidavit sworn by the Applicant on 21.05.2024 and the annexures thereto. The Applicant pleaded that vide a sale agreement dated 17.05.1996 he purchased the suit property from the Respondent who was the registered owner thereof.
3. He further pleaded that he took possession of the suit property upon purchase and developed it by fencing it, constructing a house, a pit latrine, store and chicken coup and that he settled thereon with his family members. It was his case that although he had been occupying and cultivating the suit property for over 28 years he was unable to trace the Respondent so that he may transfer the same to him as a consequence whereof he filed the instant suit for adverse possession.
4. The Applicant's case was that he since he had been in open, continuous, exclusive and uninterrupted possession of the suit property for over 28 years then the Respondent's title thereto had been extinguished by operation of law and that he had become entitled to be registered as proprietor of the property on account of the doctrine of adverse possession.



5. The record shows that when the Applicant was unable to trace the Respondent for service of the originating summons, he obtained leave of court to serve him through substituted service by advertising it in a newspaper of nationwide circulation giving the Respondent at least 21 days to enter appearance. It would appear that there was no appearance by the Respondent hence the suit proceeded in his absence.
6. The record further shows that when the originating summons was listed for directions it was directed that the same shall be canvassed through affidavit evidence and written submissions only. The record shows that the Applicant filed written submission on 21.05.2024 in support of his claim.
7. The elements of adverse possession were summarized in the case of *Kasuve –vs- Mwaani Investments Ltd & 4 Others* [2004] 1KLR 184 as follows:

“...and in order to be entitled to land by adverse possession, the claimant must prove that he has been in exclusive possession of the land openly and as of right and without interruption for a period of 12 years either after dispossession of the owner or by the discontinuation of possession by the owner on his own volition, *Wanja vs Sakwa No.2* [1984] KLR 284. A title by adverse possession can be acquired under the *Limitation of Actions Act* for part of the land...”
8. Similarly, in the case of *Chevron (K) Limited –vs- Harrison Charo Wa Shutu* [2016] eKLR it was held, inter alia, that:

“At the expiration of the twelve-year period the proprietor’s title will be extinguished by operation of the law and section 38 of the Act permits the adverse possessor to apply to the High Court for an order that he be registered as the proprietor of the land. Therefore the critical period for the determination whether possession was adverse is 12 years and the burden is on the person claiming to be entitled to the land by adverse possession to prove, not only the period but also that his possession was without the true owner’s permission, that the owner was dispossessed or discontinued his possession of the land, that the adverse possessor has done acts on the land which are inconsistent with the owner’s enjoyment of the soil for the purpose for which he intended to use it. See *Littledale vs Liverpool College* (1900)1 Ch.19, 21.”
9. The court has considered the Applicant’s supporting affidavit and the annexures thereto. The court notes that his affidavit evidence was not controverted by the Respondent since he did not defend the originating summons. The court is inclined to believe the Applicant’s evidence that he has been in open, continuous, exclusive and uninterrupted possession and occupation of the suit property since at least the month of August 1996.
10. The court accepts the Applicant’s evidence that he had undertaken various developments on the suit property over the years and that he has constructed some structures and cultivated some crops thereon. The court believes his affidavit evidence that he has utilized the suit property and developed it for over 12 years hence he is entitled to a declaration that he has acquired rights over it on account of the doctrine of adverse possession. There is no evidence to show that the Respondent has taken any steps to interrupt the Applicant’s use and occupation of the suit property. As a result, the court is satisfied that the Applicant has adequately demonstrated his claim for adverse possession to the required standard.
11. The upshot of the foregoing is that the court is satisfied that there is merit in the Applicant’s claim for adverse possession. As a result, the court makes the following orders for disposal of the originating summons dated 21.05.2024;



- a. A declaration be and is hereby made that the Applicant, Wilson Wandiga Wangombe, is entitled to be registered as proprietor of Title on Nyandarua/Ol Joro-orok Salient/636 measuring about 4.8 ha on account of the doctrine of adverse possession.
- b. The Deputy Registrar of the court shall sign all necessary forms, documents and instruments on behalf of the Respondent to facilitate the transfer of the suit property into the Applicant's name.
- c. That Land Registrar - Nyandarua County shall cause the Applicant to be registered as the proprietor of the Title No. Nyandarua/ol Joro-orok Salient/636 and shall for that purpose dispense with production of the original title deed and all documents in the possession, custody or control of the Respondent.
- d. There shall be no order as to costs.

It is so decided.

**JUDGMENT DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY THIS 20<sup>TH</sup> DAY OF FEBRUARY 2025.**

In the presence of:

Ms. Wanjiru Muriithi for the Applicant

No appearance for the Respondent

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**Y. M. ANGIMA**

**JUDGE**

