



**Nyaenya v Okongo (Enviromental and Land Originating Summons
E002 of 2024) [2024] KEELC 13453 (KLR) (20 November 2024) (Judgment)**

Neutral citation: [2024] KEELC 13453 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E002 OF 2024**

JM KAMAU, J

NOVEMBER 20, 2024

IN THE MATTER OF LIMITATIONS OF ACTIONS ACT, CAP 22 OF THE LAWS OF KENYA

AND

IN THE MATTER OF CIVIL PROCEDURE ACT, 2021 OF THE LAWS OF KENYA

AND

IN THE MATTER OF LAND REGISTRATION ACT 2012

BETWEEN

ROBERT MOSAGWE NYAENYA APPLICANT

AND

JOSEPH MASITA OKONGO RESPONDENT

JUDGMENT

1. This undefended suit was commenced by the Applicant, Robert Mosagwe Nyaenya against Joseph Masita Okongo vide an Originating summons dated 21/3/2024 and filed in court on 12/4/2024. The same asks the following Questions: -
 - a. Has the Applicant been in open, quiet, peaceful, continuous and an uninterrupted occupation of a portion measuring 3.52Hectres (8.7acres) approximately in the land parcel No. West Mugirango/ Nyamaiya/1028?
 - b. If so, has the Applicant therefore by operation of the law acquired adverse possession of a portion measuring 3.52Hectares (8.7 Acres) approximately in the said land parcel No.West Mugirango/ Nyamaiya/1028?
 - c. Can the Respondent now be compelled to execute the necessary documents for transfer of a portion of land measuring 3.52Hectares (8.76 acres) approximately in land parcel No.West



Mugirango/ Nyamaiya/1028 and be authorized to execute the same for and on behalf of the said Respondent in form of the Applicant?

- d. Who should be condemned to pay costs of this Originating Summons?
2. The same is hinged on a Supporting Affidavit sworn on 2/3/2024. His claim is a portion of Land Parcel No. West Mugirango/Nyamaiya/1020 which he claims belongs to his late grandfather Okongo Nyaenya but is now registered in the Respondent's name as shown in the Green Card attached to the Affidavit in support. The same was so transferred by way of transmission in 2018. By then the Applicant and his family had occupied a portion thereof measuring 3.52 Hectares i.e. 8.7 Acres or thereabout where he and the family have made various developments for a period of over 50 years to date. The same has been without consent, permission, open, continuous and without interruption of any sort. These facts were reproduced in his evidence adduced in court on 5/11/2024. The Applicant, now 56 years old, says that he was born on the suit land. He testified that the Respondent occupies the balance of the 12.4 Hectares of the land. There is an Affidavit of service sworn on 24/6/2024 by one Peter Cherere Sagwe showing that the Respondent was duly served with the pleadings herein but chose not to defend the suit.
3. The evidence tendered by the Applicant confirms with the evidence of ownership of the suit land by way of the respective Green Card dated 16/1/2024. The same is in the name of the Respondent herein. Likewise, there are photographs of the development of the suit land. There being no evidence to controvert the Applicant's evidence on oath, I find that the Applicant has proved that he has been in occupation and possession of the suit land together with his family quietly, openly, uninterruptedly, without consent and continuously for a period of over 12 years which in effect has amounted to the Respondent losing his right to the 3.52 Hectares of West Mugirango/Nyamaiya/1028. Consequently, all the Questions in the Applicant's prayers are ably answered in the affirmative and Accordingly the Applicant is hereby granted Judgment in terms of his prayers contained in his Originating Summons dated 21/3/2024.

JUDGMENT DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 20TH DAY OF NOVEMBER, 2024.

MUGO KAMAU

JUDGE

In the Presence of: -

Court Assistant: Brenda

Applicant's Counsel: Mr. Soire

Respondents' Counsel: N/A

