



**Amba v Okoyo (Environmental and Land Originating Summons
64 of 2021) [2024] KEELC 13879 (KLR) (16 December 2024) (Judgment)**

Neutral citation: [2024] KEELC 13879 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 64 OF 2021
GMA ONGONDO, J
DECEMBER 16, 2024**

BETWEEN

DANIEL TOWE AMBA PLAINTIFF

AND

ALFRED OMONDI OKOYO DEFENDANT

JUDGMENT

1. In the originating summons dated 12th April 2018 generated under sections 1, 1A, 3 and 3A of the [Civil Procedure Act](#) Chapter 21 Laws of Kenya and Sections 37 and 38 of the [Limitation of Actions Act](#) Chapter 22 Laws of Kenya, the applicant/plaintiff who appears in person, sued the respondent/defendant for;
 - a. An order that the applicant and his family has been in adverse possession of a portion of parcel No. Gem/Kanyanjwa/400 measuring 0.6 Ha (The suit land herein) for a period of over 12 years.
 - b. An order that upon expiry of 12 years since the applicant and his family have been in occupation and possession of the suit land and the respondent's rights over the title have been extinguished.
 - c. An order that the respondent holds the whole land in trust for the applicant.
 - d. An order that the suit land be transferred to the applicant and the applicant be registered as the owner of the said parcel of land.
 - e. An order that the respondent do execute all the transfer documents in favour of the applicant and in event of default, the Deputy Registrar of this Honourable court herein be empowered to execute the same to give effect to the aforesaid order.
 - f. An order that the respondent does meet cost of this suit.



- g. Such other or further relief order of this Honourable court may deem fit and just to grant in the circumstances.
2. The originating summons is founded upon the plaintiff's supporting affidavit of sixteen paragraphs sworn on even date. Briefly, the plaintiff's complaint is that during adjudication in 1970's, his father, Amba Ongondo-Deceased-1, acquired Land Reference No. Gem/Kanyanjwa/399 which is adjacent to the suit land. That upon the death of Deceased-1, the plaintiff took charge of his estate as his only son and has been utilizing and possessing both parcels of land as one whole parcel for over 40 years. That the suit land is registered in the name of Peter Okoyo Nyajowi alias Okoyo Nyajowi -Deceased 2. That suddenly, the defendant who is the son to Deceased-2, entered the suit land and erected a structure thereon hence, holds the suit land in trust for the plaintiff.
3. By the replying affidavit of ten paragraphs sworn on 23rd July 2018 with the accompanying documents being certificate of death in respect of Deceased-2, title deed of the suit land and chief's letter marked as 'AO-1, AO-2 and A0-3' respectively, the respondent/defendant who appears in person, opposed the originating summons and prayed for dismissal of the same with costs. He averred, inter alia;
- a. That he is the only surviving son of Deceased-1 who is the sole registered proprietor of the suit land (vide copies of Death Certificate and Title Deed annexed and marked "AO-1" and "Ao2").
- b. That the plaintiff is the only son of deceased-1 who is the sole registered proprietor of land parcel No. Gem/Kanyanjwa/399 and therefore the plaintiff is the sole beneficiary of his father's interest (vide copy of Chief's Letter dated 22nd January 2018 annexed and marked "AO-3")
- c. That although two parcels are contiguous to each other sharing a common boundary the plaintiff has on various occasions made false claims to a portion of the suit land but four different surveyors have on different occasions confirmed the M. boundary between the two parcels of land and assisted in planting sisals to mark the boundary but the plaintiff each time uproots the same.
- d. That notwithstanding the above neither the plaintiff nor the defendant have obtained a grant of letters of administration to the estates of Deceased-1 and Deceased-2 and therefore the plaintiff has no locus standi to institute this suit.
4. The plaintiff (PW1) testified that the suit land was owned by Deceased-1, This was corroborated by his wife, EVELYNE AUMA TOWE (PW2) and PW3, JOEL OTIENO OGUTA, the then Chief Gem West Location, Rangwe who testified that the suit land belonged to Deceased-1 who was the father of PW1. That thereafter, Deceased-2 took it away and registered the same in his own name.
5. The Defendant (DW1) told the court that the suit land belonged to Deceased-2 in whose name the same is registered. Both DW2, Sharon Anyango and Alfred Omondi Okoyo (DW3) reinforced this piece of evidence that the suit land belonged to Deceased-2.
6. On 4th October 2024, the parties informed the court that they did not wish to file submissions in this suit.
7. After hearing the parties, on 20th January 2021, the court referred this dispute to the Deputy County Commissioner Rangwe Sub County for possible amicable settlement pursuant to Article 60 (1) (g) and 159 (2) (c) of *the Constitution* of Kenya 2010. However, the parties failed to arrive at an amicable settlement as captured in the Deputy County Commissioner's letter dated 2nd February 2022 and noted in the court's proceedings of 2nd March 2022.



8. Surveyor (National) Homa Bay County filed a report dated 6th March 2024 further to court directions of 25th September 2024. The same is to the effect that the boundaries of the suit land are clear and intact on the ground.
9. It is established law that the issues for determination arise out of the pleadings of the parties or as framed by the parties for the court's determination; see *Great Lakes Transport (U) Company Ltd-vs-Kenya Revenue Authority* (2009) KLR 720.
10. Order 15 of the Civil Procedure Rules 2010 provides for framing of issues and materials from which issues may be framed. I bear in mind the plaintiff's/applicant's issues dated 12th April 2018 including whether the plaintiff has been in actual occupation and use of a portion of the suit land and whether anyone has ever interrupted the peace of the plaintiff over the same portion of land...
11. In the foregone, the issues for determination boil down to whether; (a) the plaintiff and the defendant have the locus standi to sue and be sued respectively herein. (b) Subject to issue (a) hereinabove, has the plaintiff proved that he has acquired the suit land by adverse possession and (c) Is the defendant holding the suit land in trust for the plaintiff?
12. At paragraph 8 of the Replying affidavit, the defendant raised the issue of locus standi in relation to the plaintiff and himself. In the case of *Alfred Njau & others-vs-City Council of Nairobi* (1982-88) 1 KAR 229, the Court of Appeal held;

‘.....locus standi is the right to appear or be heard in court or other proceedings.....’
13. It is trite law that a litigant is clothed with locus standi upon obtaining a limited or full grant of letters of administration in cases of intestate succession; see *Rajesh Pranjivan Chudasama-vs-Sailesh Pranjivan Chudasama* (2014) eKLR and *Trouistik Union International and another-vs-Jane Mbeyu and another* (1993) eKLR.
14. In section 2 of the *Civil Procedure Act* Chapter 21 Laws of Kenya, the term ‘Legal Representative’ means a person who in law represents the estate of a deceased person, and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued.
15. It is common ground that the plaintiff and the defendant are not legal representatives of the estates of deceased-1 and Deceased-2 respectively. Thus, they lack locus standi in this suit.
16. As regards adverse possession, the essential ingredients thereof are well settled; see *Wambugu-vs-Njuguna* (19830 KLR 172).
17. Also, the claimant must not have the permission of the owner of the suit property to be thereon and no steps taken to repulse or eject the claimant from the property for the statutory period of 12 years as stipulated under section 38 of the *Limitation of Actions Act* Chapter 22 Laws of Kenya; see *Elijah O.L Opar-vs-Tobias Odhiambo Abach* (2019) eKLR.
18. Concerning trust, the same is a question of fact to be proved by way of evidence; see *Mumo-vs-Makau* (20020 1 EA 170).
19. Section 28 of the *Land Registration Act* 2016 (2012) sets out overriding interests over registered land. The same include; adverse possession and trusts.



20. As already observed in paragraph 15 herein-above, the plaintiff and the defendant have no locus standi in this suit. In the circumstances, the issues of ownership of the suit land by adverse possession and trust are premature and cannot hold.
21. In the premises, the suit is a non-starter, incompetent and fails.
22. Wherefore, the instant suit generated by way of the originating summons dated 12th April 2018, be and is hereby struck out with no orders as to costs.
23. It is so ordered.

DATED AND DELIVERED AT HOMA BAY THIS 16TH DAY OF DECEMBER 2024

G. M. A ONG'ONDO

JUDGE

PRESENT;

1. Plaintiff in person
2. Defendant in person
3. Luanga and Obunga, Court assistants

