



Kazungu & 2 others v Ali (Environmental and Land Originating Summons E014 of 2023) [2025] KEELC 1479 (KLR) (20 March 2025) (Judgment)

Neutral citation: [2025] KEELC 1479 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E014 OF 2023
EK MAKORI, J
MARCH 20, 2025**

**IN THE MATTER OF AN APPLICATION FOR DECLARATION THAT THE APPLICANTS
HAVE OBTAINED TITLE OVER LAND PARCEL NUMBER 83 OF GROUP 1 KILIFI**

BETWEEN

**STEPHEN CHARO KAZUNGU 1ST APPLICANT
WILLIAM KAZUNGU CHARO 2ND APPLICANT
MWENDA CHARO YAA 3RD APPLICANT**

AND

HASSAN SAYYID OMAR SAYID ALI RESPONDENT

JUDGMENT

1. The Applicants herein commenced this suit by way of an Originating Summons dated the 21st day of December 2023 seeking the following prayers:
 - a. The Applicants, who have dedicated over 30 years of their lives to the peaceful, open, and uninterrupted occupation of the land parcel known as plot 83 of Group 1 Kilifi, are entitled to be declared as its proprietors, having acquired it by adverse possession. They have lived, occupied, and worked on the land, demonstrating their commitment and dedication to their claim.
 - b. The Applicants are entitled to be registered as proprietors and issued a certificate of title over the said one acre in place of the Respondent.
 - c. The Applicants are entitled to the costs of this suit.



2. In support of their case, the first Applicant swore an affidavit supporting the Originating Summons. The second Applicant recorded his statement dated the 20th day of April, which is attached to the Originating Summons. The Applicants further called one more witness, Faustin Kadenge Kazungu.
3. The Respondent was served by way of substituted service after physical service was attempted and failed. Thus, the matter proceeded as a formal proof.
4. The court directed the Applicants to canvass the matter by way of written submissions.
5. The issues that fall for the determination of this court, which I frame, is whether the Applicants have acquired the suit property by dint of the operations of adverse possession and who should bear the costs of this action.
6. The applicants testified that they have been in the actual occupation of the suit property for more than 30 years. In proof of that fact, the Applicants produced a letter dated the 18th day of January 2023, written by the area chief, Omar A. Ngala, of the Mavueni/Takaungu Location. The letter was attached to the affidavit in support of the Originating Summons. The Applicants have developed the suit property with houses, shade trees, mature mango trees, and mature coconut trees, which were planted over twenty years ago. The Applicants produced photographs showing established and built homes and homesteads as proof of the said fact. The pictures are attached to the affidavit supporting the Originating Summons. The Applicants further rely upon the survey report by one Edward Kiguru dated the 7th day of January 2023.
7. The Applicants proceeded to testify that they had occupied the land peacefully and without any interruption from the Respondent. They testified that they have never received any notice to vacate or threat of litigation, nor have they seen the Respondent on the land. The Applicants contend that they have been on the land continuously for more than 30 years, demonstrating their peaceful and rightful occupation.
8. Further, the Applicants testified that they had buried the remains of their parted relatives on the suit property, where the family graveyard is. They produced photographs showing some of the existing graves of their parted relatives. They further testified that they openly conduct their burial ceremonies and play “Disco Matanga,” which goes on for over a week.
9. In support of the Applicants' claim, Mr. Otara submits - rightly so - that the doctrine of adverse possession was aptly defined in the leading decision in this realm - *Mtana Lewa v Kahindi Ngala Mwangandi* [2015]eKLR, where the Court of Appeal held that adverse possession is essentially a situation where a person takes possession of land and asserts rights over it and the person having title to it omits or neglects to take action against them for a set period (in Kenya, 12 years) essentially gaining ownership through the owner's inaction. The court of appeal proceeded to point out the key points to be proven on the adverse possession claim, which include:
 - a. One must prove exclusive, open, notorious, and continuous possession of the land for a statutory period (12) years without the owner's permission.
 - b. The claimant must demonstrate that their possession was not permissive or consensual and that they acted as if they were the actual owners of the land.
 - c. The doctrine of adverse possession is not unconstitutional and does not arbitrarily limit property rights.
10. I am satisfied that in the current case, the Applicants have proven all the ingredients of adverse possession and thus have acquired ownership of all that land parcel known as plot number 83 of



Group 1 Kilifi and that by the operation of the doctrine of adverse possession has extinguished the Respondent's title.

11. The upshot is that the Originating Summons dated 21st December 2023 is hereby allowed. Since the claim was undefended, there will be no order as to costs.

DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY ON THIS 20TH DAY OF MARCH 2025.

E. K. MAKORI

JUDGE

In the Presence of:

Mr. Otara, for the Applicants

Happy: Court Assistant

In the absence of:

The Respondents

