



**Maranya v Mendembo & another (Environment & Land Case  
74 of 2022) [2025] KEELC 261 (KLR) (29 January 2025) (Judgment)**

Neutral citation: [2025] KEELC 261 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT & LAND CASE 74 OF 2022**

**EK MAKORI, J  
JANUARY 29, 2025**

**BETWEEN**

**ELIZABETH SARINGI MARANYA ..... PLAINTIFF**

**AND**

**JULIANA MENDEMBO & ANOR ..... DEFENDANT**

**JUDGMENT**

1. The Plaintiff herein filed the instant suit seeking inter-alia:
  - a. A declaration that the Defendants' continued occupation and subsequent actions on the Plaintiff's suit property known as Plot No. 1111 (CR. 80759) are unlawful and constitute illegal trespass;
  - b. eviction against the Defendants;
  - c. An order compelling the OCS Watamu Police Station to enforce and supervise compliance with prayer (b) above;
  - d. A permanent injunction restraining the Defendants from trespassing, occupying, and/or interfering with the suit property;
  - e. General Damages for trespass;
  - f. Costs and Interest.
2. Elizabeth Saring Maranya, the Plaintiff who testified as PW1, stated in her testimony that she is the legal owner of the suit property, known as Plot No. 1111 (CR. 80759), by being the Lessee of the suit property, which initially belonged to the National Government. The Government allotted her the property and issued the Certificate of Title for a 99-year term from 1<sup>st</sup> July 1992.



3. To bolster and substantiate her claim, Plaintiff produced the following documents during the trial - A copy of the letter of allotment issued by the Government over the suit property and receipts of payment for the amount payable under the allotment letter, a copy of the Plaintiff's formal written acknowledgment of acceptance of the allotment, a copy of the Certificate of Title issued granting the Plaintiff property rights over the suit property for a term of 99 years from 1<sup>st</sup> July 1992, A copy of the registered Lease executed between the National Government and her as well as a demand notice for land rates issued to her by the County Government of Kilifi over the suit property together with the payment receipt for the said rates.
4. Juliana Mendembo, who testified as DWI, and Elvis Shutu averred that they are the legal owners of the suit property by having been in peaceful and uninterrupted occupation for over 30 years. Jackson Gona, a clan elder, testified in support of their claim. In other words, the Defendants claim adverse possession over the suit property. The Defendants contend that they are squatters and are waiting for the Government to address their squatter status and issue titles for the said suit property. The Defendants also produced the letter allegedly sent to the Commissioner of Lands in 1999, payment receipts made to the Malindi Municipal Council, development plans approved by the said Municipal Council, and squatter upgrade documents issued by the said Municipal Council. The Defendants claim that the Plaintiff acquired suit property fraudulently to their detriment.
5. After the Plaintiff and Defendant cases were closed, the Court directed parties to file written submissions. They did comply.
6. I frame the issues for this Court's determination as to who the lawful owner of the suit property is, whether the prayers sought in the plaint are sustainable, and who should bear the costs of this suit.
7. Arising from the evidence on record and the submissions by the parties, the land in question was Government land. The Plaintiff contends that it was allotted to her in 1992, that she complied with the offer letter by paying the requisite fees, and that the lease document was issued in 2022 when she came to discover the Defendants had encroached upon the suit property and when asked to vacate, they neglected to do so, hence this suit. The Defendants claim to have been in occupation of the suit property for over 30 years, had been promised by the Municipal Council that they were to be settled on the land, and therefore had a legitimate expectation that that was to happen, only to discover that the Plaintiff had been allocated the land.
8. The Plaintiff, citing several authorities, submits that adverse possession cannot apply when dealing with Government land as enunciated in the decisions in *Ravji Karsan Sanghani v Peter Gakunu* [2019] eKLR and *Marao Gitahi v Gerald Wambui Kiragu* [2019] eKLR.
9. The Plaintiff further submits that when the land is converted to private land, time for purposes of adverse possession is computed from the time a lease to the land is issued; in this case, the lease was issued to the Plaintiff in 2022, which is when the time for computation of adverse possession started to tick—see *Titus Kigoro Munyi v Peter Mburu Kimani* [2015] eKLR.
10. The Plaintiff believes that the land was legally and properly allocated to her, and by fulfilling the condition set in the offer document leading to the lease being issued in 2022, the Court should find that she is the rightful owner of the suit property. In this regard, Plaintiff cites the decisions in *Nelson Kazungu Chai & 9 others v Pwani University College* [2017] eKLR and *Ali Gadaffi & another v Francis Muhia Mutungu & 2 others* [2017] eKLR.
11. The Plaintiff asserts that the allotment letter had two conditions, one for payment of Kshs. 10,6660/= and second for acceptance of the allotment in writing and evidence of compliance on these two conditions was tendered before this Court. As such, the allegation of 90 days within which to comply



- is unfounded. See *Bubaki Investment Company Ltd v National Land Commission & 2 others* [2015] eKLR.
12. She finally avows that the fraud alleged in the acquisition of the suit property is unfounded and that there was no requirement to establish who was on the ground through a ground report as no consent or participation of the Defendants was unnecessary as they were trespassers in the first place. Reliance on this point was placed in the case of *Kiruwa & another v Weindaba & 7 others* (Environment & Land Case 14 of 2021) [2024] KEELC 1663 (KLR) (26 March 2024) (Judgment).
  13. The Defendants submit that they have legally acquired the suit property, having occupied it for over 30 years, and the Municipal Council of Kilifi identified them as squatters and allowed them to pay rates awaiting formal allocation. They also state that it would be unfair to evict them at this point.
  14. They question the period Plaintiff took from 1992 to 2022 to get a lease over the suit property. They believe the conditions in the offer letter were not fulfilled as required within 90 days. Besides, a letter of offer per se cannot confer ownership of a suit property see *Mbau Saw Mills Ltd v Attorney General for and on behalf of the Commissioner of Lands, Karatina Town Council & Geoffrey Karungaru Kabua* [2014] KEHC 4946 (KLR).
  15. The Defendants further contend that the process of acquisition of Government land, as enunciated in *Nelson Kazungu Chai & 9 others v Pwani University College* [2017] eKLR, was not fulfilled; hence, the lease that the Plaintiff has is impeachable and ought to be declared invalid and of no value as held in *Munyu Maina v Hiram Gathiha Maina* [2013] eKLR.
  16. I have two warring arguments: that of the Plaintiff, who contends that she has a legal and valid lease over the suit property, and that of the Defendants, who plead adverse possession.
  17. The suit land was allocated to the Plaintiff via a letter of allotment dated 15<sup>th</sup> September 1992. She accepted the offer, as acknowledged by the letter the Department of Lands wrote to the Director of Survey on 25<sup>th</sup> February 1994 to undertake the survey process. She paid all the requisite fees. The survey took a while. It was not until 26<sup>th</sup> October 2022 that she was issued the lease document.
  18. The allotment letter did not provide the timelines within which the requisite fees were to be paid as correctly submitted by the Plaintiff, citing *Bubaki Investment Company Ltd v National Land Commission & 2 Others* [2015] eKLR, Mutungi J. held:

“If the offer is open and is not specific within what period it has to be accepted, I would agree with the authors that the revocation of the offer would have to be communicated to the offeree.”
  19. The offer was not revoked, and the Plaintiff complied with the terms in the allotment letter.
  20. Meanwhile, the Defendants had settled on the land. The defunct Kilifi Municipal Council promised to settle them as squatters, and they were paying rates to the said authority. In aggregate, they contend that they have occupied the land for over 30 years and had a legitimate expectation that they would be settled.
  21. I agree with the authorities cited by the parties on how Government Land is allocated and the processes enunciated in *Nelson Kazungu Chai & 9 others v Pwani University College* [2017] eKLR. The plaintiff fulfilled the conditions set in the allotment letter and paid all the requisite fees, but the Survey Department took a while to survey the land, and it was not until 2022 that she was issued the lease document. Fraud cannot be imputed on her part.



22. Before the lease document was issued to her, the land was deemed Government land. Adverse possession, as correctly submitted by the Plaintiff, cannot apply to Government land; see - Ravji Karsan Sanghani v Peter Gakunu [2019] eKLR, where the Court held:

“...It is trite law that adverse possession cannot accrue against the land that is owned by the Government. The Plaintiff contended he occupied the suit land in 1979 and had since that time effected various developments thereon which demonstrated his occupation and possession was adverse to the rights and interests of the registered owner. Thus, even assuming the Plaintiff had during the period 1979 to 1986 occupied and possessed the land under circumstances that could amount to adverse possession. The doctrine of adverse possession is inapplicable where the land is public or trust land or is owned by the Government.”

23. For purposes of computation of time, therefore, in an adverse possession plea as put by the Defendants - time started to run in 2022 when the land was converted to private land - see Titus Kigoro Munyi v Peter Mburu Kimani [2015] eKLR where the Court held:

“...limitation period for purposes of adverse possession only starts running after registration of the land in the name of the respondent. It follows that in the instant case; time for adverse possession could not run against the respondent prior to the year 1978 as he had no proprietary interest in the suit property. Time for adversity cannot run against a person who has no interest in the property.”

24. As correctly submitted by the Plaintiff, the same issue was highlighted in the case of Marao Gitahi v Gerald Wambui Kiragu [2019] eKLR, the Court while faced with a similar situation held:

“As is seen from the provision of Section 41 of the Act, adverse possession cannot accrue against land registered in the name of a Corporation/Government. This Act thus excludes public land from the application of the Act. In the present case, the Plaintiff claims to have been in possession of the suit land since the year 1983. However, it does seem that this land was Government land hence the registration of the Settlement Fund Trustee the year 1992. The Plaintiff thus could not have been in lawful possession of the Defendant’s land before the registration of the Defendant as its proprietor.”

25. In my view, then arising from the foregoing adverse possession is not available to the Defendants, and the Plaintiff will be entitled to the prayers sought in the plaint in this manner:

- a. A declaration be and is hereby issued that the Defendants’ continued occupation and subsequent actions on the Plaintiff’s suit property known as Plot No. 1111 (CR. 80759) are unlawful and constitute illegal trespass;
- b. Eviction is issued against the Defendants, who are to vacate the suit property within 90 days after the delivery of this judgment.
- c. An order be and is hereby issued compelling the OCS Watamu Police Station to enforce and supervise compliance with prayer (b) above after the lapse of 90 days in case the Defendants refuse or neglect to vacate the suit property.
- d. A permanent injunction be and is hereby issued restraining the Defendants from trespassing, re-entry, occupying, and/or interfering with the suit property



- e. General Damages for trespass – declined, not prosecuted, nor proved.
- f. Costs of the suit to the Plaintiff in any event.

**DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY ON THIS 29<sup>TH</sup> DAY OF JANUARY 2025.**

**E. K. MAKORI**

**JUDGE**

**In the Presence of:**

Mr.Kago H/B for Ms. Muisyo for the Plaintiff

Ms. Minyazi for the Defendants

Happy: Court Assistant

