



**Momanyi v Ponda & 2 others (Environment & Land Case  
E010 of 2024) [2025] KEELC 3373 (KLR) (24 April 2025) (Judgment)**

Neutral citation: [2025] KEELC 3373 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT & LAND CASE E010 OF 2024**

**EK MAKORI, J  
APRIL 24, 2025**

**BETWEEN**

**ELIJAH MOMANYI ..... APPLICANT**

**AND**

**JOSEPH IMRISA PONDA ..... 1<sup>ST</sup> RESPONDENT**

**JOHANNES BLUM ..... 2<sup>ND</sup> RESPONDENT**

**RUTH G. DENHE ..... 3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

1. The Plaintiff herein brought the instant suit against the Respondents seeking a determination of the following issues:
  - a. Whether the Applicant is entitled to be registered as a beneficiary of LR. NO. MN/III/2254 CR. NO.24361 and MN/III/2255 CR NO.24374 situated at Mtwapa, Kilifi County, under a stay of over 12 years preceding the presentation of this Application – hence acquired the same under the doctrine of adverse possession, which is a legal principle that allows a person to acquire ownership of land if they can prove they have possessed it openly, exclusively, and continuously for a specific period (12 years under the Kenyan law) without the owner’s permission.
  - b. Who should bear the costs of the suit?
2. This court directed that service be effected by advertisement in the local dailies, which was done, but the 2nd and 3rd Respondents never filed any response; hence, the matter was set down for formal proof.
3. The Applicant’s supporting affidavit to the application was relied upon as his testimony, and the documents annexed thereto were used as exhibits in the case.



4. The Applicant avers that sometime in 2000, he was approached by the 1st Respondent, who wanted to sell him the subject properties. He paid Kshs. 650,000/-, but the transaction was never completed since he never had the title to the subject properties.
5. The Applicant, driven by unwavering determination and commitment, was compelled to move onto the suit properties, take possession of them, and settle there as he relentlessly searched for the 2nd and 3rd Respondents, who were the registered owners. However, he has not been able to trace them.
6. The Applicant avers that he has occupied the suit properties for over 12 years. His occupation has been open and peaceful, and he exercises control and authority as the owner of the subject properties.
7. Neither the Respondents, their agents, nor any other party claiming an interest in the suit properties has ever challenged the Applicant's peaceful and uncontested occupation of the suit properties, further solidifying his rightful ownership claim.
8. The Applicant is still occupying the suit properties, and the court should declare that, based on the foregoing, he has acquired title to them by way of adverse possession, thereby entitling him to be registered as the proprietor of the suit properties in place of the 2nd and 3rd Respondents.
9. The Applicant correctly submits that it is a trite law, and it has been held in leading authorities that in a claim of adverse possession, the possession of the land must be actual, open, continuous, and exclusive for a prescribed period of 12 years, which is uninterrupted and peaceful. Such occupation also occurs without the consent of the landowner (see *Chevron (K) Ltd v Harrison Charo wa Shutu* [2016] eKLR).
10. The Applicant's claim is uncontroverted. The applicant has attached the certificates of titles in the names of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, confirming that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents are the registered owners of the suit properties.
11. Ultimately, the Applicant's uncontroverted claim, backed by the certificates of titles in the names of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, confirms the strength of his case, succeeding as prayed in the OS with no order as to cost.

**DATED, SIGNED, AND DELIVERED VIRTUALLY AT MALINDI ON THIS 24<sup>TH</sup> DAY OF APRIL 2025.**

**E. K. MAKORI**

**JUDGE**

In the Presence of:

Mr. Ratemo, for the Applicant

Court Assistant: Happy

In the Absence of:

The Respondents

