



**Shadrack Menza Gona t/a Jesus Healing And Miracle Ministries
International v Kitua (Environmental and Land Originating Summons
E013 of 2022) [2025] KEELC 4025 (KLR) (27 May 2025) (Judgment)**

Neutral citation: [2025] KEELC 4025 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E013 OF 2022**

AY KOROSS, J

MAY 27, 2025

BETWEEN

**SHADRACK MENZA GONA T/A JESUS HEALING AND MIRACLE
MINISTRIES INTERNATIONAL APPLICANT**

AND

SELINA NDUGWA KITUA DEFENDANT

JUDGMENT

1. This suit is instituted by an originating summons (OS) dated 26/05/2022 in which the applicant seeks to be deemed an adverse possessor of the entire land parcel no. L.R. Mavoko Municipality Block 6/848 (“suit property”) measuring 0.0479 ha that is registered in the respondent’s name.
2. The OS is supported by affidavits deposited on diverse dates of 26/05/2022 and 11/12/2024 by Shadrack Menza Gona (“Shadrack”), who is described as the applicant’s founder. Reliance is also placed on several documents annexed to these affidavits.
3. In this OS, the applicant seeks the following reliefs from this court: -
 - a. The applicant be declared the owner of the suit property in place of the respondent.
 - b. By adverse possession, the applicant be registered as the lawful owner of the suit property.
 - c. A declaration that the respondent’s title to the suit property had been extinguished in the applicant’s favour.
 - d. Costs.



4. It is the applicant's case that Jesus Healing and Miracle Ministries International ("Church") was initially registered as Jesus Healing and Miracle Ministries before a change of name took place on 25/09/2015.
5. It is maintained that the church used to be a tenant of the respondent and paid rent to her through her agents, Margaret Muthoni Kirunyu or Luprom Properties Management (agent), until sometime in December 2010 when the agent stopped demanding rent.
6. It is argued that since the church was in rental arrears, no notice of vacation had been issued to it, and occupation had lasted for the uninterrupted period of 12 years, thus, a claim of adverse possession had accrued.
7. The pleadings were served upon the respondent by substituted means, but she did not respond, and thereafter, the matter was slated down for hearing by way of written submissions.
8. The applicant's law firm on record, Ms. Maosa & Co. Advocates, filed their written submissions dated 16/12/2024, where counsel urged this court to allow the reliefs sought in the OS.
9. This court has considered these submissions and is highly indebted to counsel for their articulated submissions.
10. Thus, upon identifying and considering the issues for determination, this court will, in its analysis and determination, consider the applicant's counsel's arguments on the particular issue and also consider provisions of the law and judicial precedents they relied upon to advance their arguments.
11. Having considered the pleadings, evidence, and written submissions, the following issues, which shall be handled consecutively, arise for determination: -
 - I. Whether the applicant's suit is competent.
 - II. Whether the applicant's claim met the threshold of adverse possession.
 - III. What appropriate orders should be granted, including an order as to costs?

Analysis and Determination

I. Whether the applicant's suit is competent.

12. This issue was never addressed by the applicant's counsel in their submissions.
13. From the certificate of registration issued on 25/09/2015, it is undisputed evidence that the church is registered under the auspices of the [Societies Act](#).
14. By Section 9 of the Act, the church's officials include a chair, treasurer, and secretary who are deputised by known officials. It is noteworthy that by Section 17 of the same Act, the officials can be changed. The import of this is that the particulars of every office bearer of a registered society are known.
15. In light of these provisions of law, the description of the applicant as Shadrack Menza Gona T/A Jesus Healing and Miracle Ministries International, with Shadrack being described as its founder, cannot do as this court is not told whether Shadrack is a recognised official under the Act or not.
16. Further, it is the considered view of this court that the definition of the word society under this Act, propounds that a society is an association of more than 10 persons, thus, it cannot also be said that Shadrack is trading as the society.



17. Suffice it to say, a society is an unincorporated entity, and therefore, it has no legal personality to sue in the manner in which it has instituted these proceedings, and this court concurs with the Court of Appeal decision of *Ephuntus Kihara Guchu v Grace Gathoni Matu, Mary Muthoni Mbugua, Leah Wambui Kimani, Josephine Muthoni Wamwea & Deas Wanjira Njoki (Officials of Multipurpose Women Group)* [2020] KECA 814 (KLR), which stated thus in paragraph 32 of its judgment as follows: -

“...it has consistently been held that registered societies do not have legal personalities capable of suing and being sued in their own names but through their officials or trustees in accordance with their respective constitutions.”

18. Lack of capacity to sue is a weighty matter that goes to the root of the validity of these proceedings, and it is this court’s considered view that it is not curable by Article 159 of *the Constitution*. Therefore, this court concludes and finds the suit by the applicant is incompetent.

II. Whether the applicant’s claim met the threshold of adverse possession.

19. The doctrine of adverse possession is statutorily underpinned in our *Limitation of Actions Act*. The relevant provisions are found in Sections 7, 13 and 38 thereof.

Section 7 provides that:

“An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.”

Section 13 states that: -

“(1) A right of action to recover land does not accrue unless the land is in the possession of some person in whose favour the period of limitation can run (which possession is in this Act referred to as adverse possession), and, where under sections 9, 10, 11 and 12 of this Act a right of action to recover land accrues on a certain date and no person is in adverse possession on that date, a right of action does not accrue unless and until some person takes adverse possession of the land.

(2) Where a right of action to recover land has accrued and thereafter, before the right is barred, the land ceases to be in adverse possession, the right of action is no longer taken to have accrued, and a fresh right of action does not accrue unless and until some person again takes adverse possession of the land.

(3) For the purposes of this section, receipt of rent under a lease by a person wrongfully claiming, in accordance with section 12(3) of this Act, the land in reversion is taken to be adverse possession of the land.”

Lastly, Section 38 (1) elucidates that: -

“(1) Where a person claims to have become entitled by adverse possession to land registered under any of the Acts cited in section 37 of this Act, or land comprised in a lease registered under any of those Acts, he may apply to the



High Court for an order that he be registered as the proprietor of the land or lease in place of the person then registered as proprietor of the land.”

20. The principles of law on adverse possession are settled in Kenya, and the burden is usually on the adverse possessor to strictly prove all the elements of adverse possession to the required standards, notwithstanding, as in the case herein, that the applicant’s case was undefended. Pointedly, it must be borne in mind that claims of adverse possession are matters of fact that are observed on the land.
21. In their submissions, the applicant’s counsel thrashed the principles of adverse possession to the pulp, with the applicants’ counsel contending that the threshold of adverse possession had been met. In this regard, reliance is placed on the Court of Appeal decision of *Mtana Lewa v Kahindi Ngala Mwangandi* [2015] eKLR, which summarised the tests of adverse possession thus: -

“In terms of Sections 7,9,13,17,37 and 38 of the title of a registered owner of land will be extinguished and vested in a third party who proves that he has been in possession of the land continuously and uninterrupted for a period of 12 years; that such possession has been open and notorious to the knowledge of the owner; that the possession has been without the permission of the owner; and that the third party has asserted a hostile title and dispossessed the true owner.”
22. Turning to matters of evidence, it is undeniable that the applicant was granted permission to occupy the suit property by the respondent and therefore, entered the suit property by license.
23. This court is not told the exact date when this license was issued, the particulars thereof or when the applicant entered the suit property. Nevertheless, there is no evidence this license has ever been terminated.
24. From evidence, the respondent’s agent started collecting rent from the applicant over the suit property from 31/05/2006 to 9/10/2010. As seen from the receipts, a monthly rental sum of ksh. 4000/- was usually paid by the applicant to the agent. From 9/10/2010 onwards, the applicant defaulted in making rental payments, and no action has been taken against it; it is on this basis that the applicant is contending that it has met the threshold of adverse possession.
25. In this court’s humble opinion, even if the applicant has defaulted in paying rent for many years, the license had to be revoked first which is not so in this case, and once so terminated, only then could it file suit, subject, of course, to the usual principles of adverse possession.
26. Usually, the proper way of assessing proof of adverse possession is whether or not the respondent has been dispossessed or has discontinued her possession for the statutory period, and not whether or not the applicant has proved that it has been in possession for the requisite period. See *Wambugu vs. Njuguna – Civil Appeal No. 10 of 1982*.
27. Moreover, it is not in all cases of possession of a title holder’s land that time for purposes of adverse possession can run; for example, time cannot run in favour of a licensee. Guidance on this is drawn from the Court of Appeal decision of *Samwel Nyakenogo v Samwel Orucho Onyaru* [2010] KECA 307 (KLR) which stated:-

“Time can run in favour of a tenant at will by virtue of section 12 of the *Limitation of Actions Act* but it cannot run in favour of a licensee, therefore a licensee has no possession (Hughes v. Griffin [1969] 1 WLR 23).”



28. Furthermore, as held in *Mbira v. Gachuhi* [2002] 1 EA, which has been cited in a line of court decisions and comprehensively dealt with several tests of adverse decision, the applicant is also required to prove that the construction of the church was inconsistent with the enjoyment by the respondent for the purposes for which she intended to use the suit property for.
29. On this test, the applicant fails as the letter dated 24/01/2005 by the then Municipal Council shows the construction of the church was conducted with the respondent's affirmation.
30. There is also the test of *animus possidendi*, which the applicant has not met, as, by virtue of the license, there was never any intention for the applicant to possess the suit property to the exclusion of the respondent. Besides, the respondent never intended to part with possession at the time of the applicant's entry.
31. This court has shown it was not sufficient to show that some acts of adverse possession had been committed, but rather all the tests of adverse possession had to be met.
32. Notwithstanding this court has found the suit incompetent, for the reasons stated above, it also finds the applicant did not prove its claim of adverse possession to the required standards and the OS is hereby dismissed.
33. It is trite law that costs follow the event, and because the suit was unopposed, the applicant will bear its costs. Ultimately, this court makes the following final disposal orders;
 - a. The applicant's suit against the respondent is hereby dismissed with the applicant bearing its costs.

Orders accordingly.

DELIVERED AND DATED AT MACHAKOS THIS 27TH DAY OF MAY, 2025.

HON. A. Y. KOROSS

JUDGE

27. 05.2025

**JUDGMENT DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS VIDEO
CONFERENCING PLATFORM**

In the presence of;

Mr Otieno holding brief for Mr Maosa for applicant

N/A for respondent.

Ms Kanja- Court Assistant

