



**Githinji v Ikinya (Environmental and Land Originating Summons  
E019 of 2024) [2025] KEELC 4049 (KLR) (22 May 2025) (Judgment)**

Neutral citation: [2025] KEELC 4049 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E019 OF 2024**

**EK MAKORI, J**

**MAY 22, 2025**

**IN THE MATTER OF SECTION 38 OF THE LIMITATION OF ACTIONS ACT (CAP 22)**

**AND**

**IN THE MATTER OF ORDER 37 RULE 7 OF THE CIVIL PROCEDURE RULES, 2010**

**BETWEEN**

**EZEKIEL MBURU GITHINJI ..... APPLICANT**

**AND**

**PATRICK ALEX MAINA IKINYA ..... RESPONDENT**

**JUDGMENT**

1. The Applicant initiated this lawsuit with an Originating Summons dated October 14, 2024. The requests made to the court are as follows:
  - a. This court declares the Applicant the rightful owner of Kilifi/Kijipwa/133, measuring 1.049 hectares, having possessed the land adversely for a duration exceeding twelve (12) years since 2009.
  - b. The title of the Respondent to Kilifi/Kijipwa/133 be declared extinguished, invalid, and null and void, and that the Applicant be registered as the proprietor of the suit land.
  - c. costs.
2. The Applicant was unable to serve the Respondent with the aforementioned Originating Summons and made an Application dated December 4, 2024, for the Respondent to be served via substituted service through the Daily Nation. This request was granted, and the Respondent was served by substituted service through the Daily Nation on December 18, 2024.



3. The Respondent neither entered an appearance nor submitted a response to the originating summons, despite being served.
4. The Applicant testified that the Respondent owns Kilifi/Kijipwa/133, which measures 1.049 Ha. The Applicant has occupied this property without interruption since 2009, exclusively using it and constructing structures thereon. Photographs of these developments and structures are annexed. He has occupied the property without an agreement or permission from the Respondent, and his occupation has been open, without secrecy or force.
5. The Applicant asserts that the court should declare him the rightful owner of Kilifi/Kijipwa/133 (1.049 Ha), having possessed the land adversely for over twelve years since 2009. He argues that the Respondent's title should be declared extinguished and that he should be registered as the owner.
6. The issues that I frame for the consideration of this court are: (1) Whether the Applicant has demonstrated his claim for adverse possession to the requisite standard; and (2) Who bears the cost of the suit?
7. As submitted by counsel for the Applicant, the doctrine of adverse possession is enshrined in Section 7 and Section 38 of the *Limitation of Actions Act*, Chapter 22 of the Laws of Kenya, which stipulates the following:

“7. Actions to recover land

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.

38 Registration of title to land or easement acquired under Act

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.
  2. An order made under subsection (1) of this section shall on registration take effect subject to any entry on the register which has not been extinguished under this Act the decree or made the order without unreasonable delay.”
8. As correctly articulated by counsel representing the Applicant, the foundation of Adverse Possession under Sections 7 and 38 of the *Limitation of Actions Act* was delineated in the case of *Celina Muthoni Kithinji v Safiya Binti Swaleh & 8 others* [2018] eKLR, which enumerated the essential elements of adverse possession as follows:

“12. It is also a well settled principle that a party claiming Adverse Possession ought to prove that this Possession was “nec vi, nec clam, nec precario,” that is, peaceful, open and continuous. The Possession should not have been through force, no in secrecy and without the authority or permission of the owner.

13. This being a claim for Adverse Possession, the plaintiffs must show that they have been in continuous Possession of the land for 12 years or more; that such



Possession has been open and notorious to the knowledge of the owner and that they have asserted a hostile title to the owner of the property.”

9. In the case of James Maina Kinya v Gerald Kwendaka [2018] eKLR, the court agreed with the perspective expressed in Maweu v Liu Ranching and Farming Cooperative Society 1985 KLR 430, in which the court stated that:

“28. Thus, to prove title by adverse possession, it was not sufficient to show that some acts of adverse possession had been committed. It was also to prove that possession claimed was adequate, in continuity, in publicity and in extent and that it was adverse to the registered owner. In law, possession is a matter of fact depending on all circumstances.”

10. The Applicant restates his assertion concerning adverse possession, indicating that he has maintained continuous occupation of the suit property since 2009, culminating in a total of 15 years from the commencement of his occupancy to the initiation of this lawsuit, without any effort on the part of the Respondent to reclaim the land or assert any rights associated with ownership. This uninterrupted occupation has conferred upon the Applicant exclusive possession of the suit property.
11. Since the lawsuit is undefended, the Applicant has established his case to support the requested orders, which are granted as stated in the Originating Summons, along with costs.

**DATED, SIGNED, AND DELIVERED VIRTUALLY IN MALINDI ON THIS 22<sup>ND</sup> DAY OF MAY 2025.**

**E. K. MAKORI**

**JUDGE**

In the Presence of:

Mr. Mbuvi for the Applicant

Happy: Court Assistant

