



REPUBLIC OF KENYA



**KENYA LAW**  
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**Katana & 7 others (Suing on His Behalf and Behalf of 41 others) v Ndegwa;  
National Lands Commission (Third party) (Originating Summons  
E002 of 2024) [2025] KEELC 1187 (KLR) (12 March 2025) (Judgment)**

Neutral citation: [2025] KEELC 1187 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ORIGINATING SUMMONS E002 OF 2024**

**EK MAKORI, J**

**MARCH 12, 2025**

**IN THE MATTER OF: TITLE KNOWN AS CR.5593 PLOT  
NUMBER 8/III/MN**

**AND**

**IN THE MATTER OF: APPLICATION FOR DECLARATION  
THAT THE APPLICANTS HAVE OBTAINED OWNERSHIP OF  
THE ABOVE SAID LAND BY WAY OF ADVERSE  
POSSESSION**

**BETWEEN**

**KADII KAZUNGU KATANA ..... 1<sup>ST</sup> PLAINTIFF  
COSMUS MWANGOME MASHAKA ..... 2<sup>ND</sup> PLAINTIFF  
JEGO LUGO NYAWA ..... 3<sup>RD</sup> PLAINTIFF  
CHIGUBA MWANDIGO JOJOMERA ..... 4<sup>TH</sup> PLAINTIFF  
MWADZOMBO MWIRU MWABUNI ..... 5<sup>TH</sup> PLAINTIFF  
SHADRACK MBURA KATITE ..... 6<sup>TH</sup> PLAINTIFF  
DAVIS MWATELA DZUYA ..... 7<sup>TH</sup> PLAINTIFF  
CHUYE NJUGU NDORO ..... 8<sup>TH</sup> PLAINTIFF  
SUING ON HIS BEHALF AND BEHALF OF 41 OTHERS**

**AND**

**FRANCIS WAWERU NDEGWA ..... RESPONDENT**

**AND**



JUDGMENT

1. The Originating Summons by the applicants dated 18<sup>th</sup> January, 2024 seeks:
  - a. A declaration that they have acquired the suit property – Plot NO. CR. 6196 124/IV/MN measuring approximately 127 acres or thereabouts by dint of the operations of adverse possession.
  - b. The title should be cancelled and registered in their names.
  - c. Costs of the suit.
2. The Originating Summons is premised on the supporting affidavit of the applicants sworn on the 18<sup>th</sup> January, 2024.
3. The applicants argue that the respondent is the registered owner of the suit property, as evidenced by the copy of the postal search annexed and marked as “KKK-2.” The applicants and their families have been living, staying, and cultivating on the suit property. They have been uninterruptedly in possession of it for over 50 years, having been born there and raised their families. This land is not just a property, it’s their only known home, and no one has ever come to claim property ownership.
4. The applicants filed an application dated 16<sup>th</sup> February 2024 to seek orders that they be allowed to serve the Originating Summons pleadings to the respondents via a Newspaper of Nationwide circulation. The same was allowed, and an Advertisement was made on 5<sup>th</sup> June 2024.
5. The respondent and 3<sup>rd</sup> party herein failed to enter appearance or file any response to the Originating Summons, indicating their lack of contestation. Hence, the applicants filed a request for judgment, which was duly endorsed, and the matter proceeded through a formal proof hearing on 5<sup>th</sup> November 2024. The applicants testified in court and adopted their witness statement dated 18<sup>th</sup> January 2024, and list of documents on the even date as their evidence in chief. They urged the court to allow their claim.
6. I frame the issues for the determination of this court as follows:
  - a. Have the applicants met the threshold for grant of orders for adverse possession?
  - b. Who should bear the costs of this suit?
7. The applicants herein are suing on their own behalf and on behalf of 41 other families occupying the suit land, the claim being adverse possession.
8. Counsel for the applicants rightly submits that it is trite that a claim for adverse possession is attached to land, not title. It matters not that the respondents owned the land – See the decision in Maweu VS Liu Ranching & Farming Cooperative Society [1985] eKLR as quoted in Gachuma Gacheru v Maina Kabuchwa [2016] eKLR where the Court held:

“ Adverse possession is a fact to be observed upon the land. It is not to be seen in a title”
9. Counsel for the applicants proceeds to submit (which submissions I agree with) that the principle of adverse possession is well settled under the Limitation of Actions Act. Section 7 of the said Act places a



bar on actions to recover land after 12 years from the date on which the right accrued. Further Section 13 of the same Act, provides that adverse possession is the exception to this limitation:

“(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.”

10. Counsel further states that adverse possession is about occupation of land belonging to another, asserting a right to be given title based on the prolonged occupation of the said property. Adverse possession accrues to land and not title and unless the respondents took steps to evict the applicants from the suit land, which in this case they did not, the applicants are entitled to the suit land having occupied it for more than 50 years. It was the applicant's testimony that the respondent has never set foot on the suit property, nor is he known to the applicants. The applicants have shown that they and 41 other families have been in continuous and uninterrupted occupation and possession of the suit property for over 50 years. That fact has not been disputed. Furthermore, they have been occupying the land, cultivating it, and building houses that they live in and consider their homes.
11. Counsel contends that for a claim of adverse possession to issue, it is essential that the said land is identified as was held by the Court in *Wilson Kazungu Katana & 101 others v Salim Abdalla Bakshwein & another* [2015] eKLR where the court observed:

“The identification of the land in possession of an adverse possessor is an important and integral part of the process of proving adverse possession. This Court so stated this in the case of *Githu vs. Ndele*.

12. Furthermore, under the provisions of Order 37 Rule 7 of the Civil Procedure Rules, which requires that an application for adverse possession be accompanied with a title deed extract, the applicants have attached a copy of postal search for the suit property as required by law. The search shows that the land is registered in the respondent's name, and shows the property's name and size, making it easily identifiable. Also attached are photographs of the suit property showing the applicant occupies it. See the decision in - *Stephen Mwangi Gatunge v Edwin Onesmus Wanjau* [2022] eKLR, highlighting these parameters.
13. Having considered the evidence put forth, the submissions and the authorities cited and the principles applicable for adverse possession to attach, and based on the fact that the respondents never appeared or mounted a defence, Summons dated 18<sup>th</sup> January, 2024 be and is hereby allowed as prayed—there is no order as to costs.

**DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY ON THIS 12<sup>TH</sup> DAY OF MARCH 2025.**

**E. K. MAKORI**

**JUDGE**

In the Presence of:

Ms. Apiyo, for the Applicants



Happy: Court Assistant

In the Absence of:

Respondents

