



**Mwangala (Suing on his behalf and on behalf of 6 others) v Mohamed (Enviromental and Land Originating Summons E006 of 2024) [2025] KEELC 1102 (KLR) (6 March 2025) (Judgment)**

Neutral citation: [2025] KEELC 1102 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E006 OF 2024**

**EK MAKORI, J  
MARCH 6, 2025**

**BETWEEN**

**SIMEON JUMVI MWANGALA (SUING ON HIS BEHALF AND ON BEHALF OF 6 OTHERS) ..... APPLICANT**

**AND**

**MOHAMED BIN ALI BIN MOHAMED ..... RESPONDENT**

**JUDGMENT**

1. By way of an Originating Summons dated 18<sup>th</sup> March 2024, the Applicants seek the following reliefs:
  - a. That this summons be served on Mohamed Bin Ali Bin Mohamed by fixing a copy thereof on the court notice board in the court house or by advertisement once in the Daily Newspaper of nationwide circulation.
  - b. That the Respondent’s interest in all that piece of land situated in Kilifi County known as CR 5593 and being Plot No. 8/III/MN measuring approximately 79 acres has been extinguished.
  - c. That the Registrar of Titles, Mombasa County do delete entry in favour of the Respondent in the title of the land described in paragraph 2 above or register appropriate discharge in respect of the Applicants thereof without Gazettement.
  - d. That the Applicants be registered as the proprietors of all that parcel of land situated in Kilifi County and known as CR 5593 and being Plot Number 8/III/MN measuring approximately 79 Acres which said piece of land is comprised in the Certificate of Title Registered in the Land Titles Registry in place of Mohamed Bin Ali Bin Mohamed by reason of the fact that the Applicants have become entitled to the said land by adverse possession.
  - e. That the Registrar of Titles Mombasa do issue certificate of Title for the parcel situated in Kilifi County and known as CR 5593 and being Plot Number 8/III/MN measuring approximately



79 Acres which said piece of land is comprised in the Certificate of Title Registered in the Land Titles Registry in place of Mohamed Bin Ali Bin Mohamed.

- f. That the orders referred to in paragraph 2, 3, 4 and 5 above be registered against the Titles to all the Parcel land situated in Kilifi County and known as CR 5593 and being Plot Number 8/III/MN measuring approximately 79 Acres which said piece of land is comprised in a Certificate of Title registered in the Land Titles Registry at Mombasa in terms of Section 38 (2) of the [Limitation Actions Act](#), Chapter 22 Laws of Kenya.
  - g. That the costs of the Originating Summons be provided for.
2. The OS is premised on the grounds on its face and on the Supporting affidavit of Simeon Jumvi Mwangala dated 18<sup>th</sup> March 2024, one of the Applicants, with the authority of the other Applicants. He stated that at all times material to the suit, they have been living on the suit property and have been in physical occupation and possession of the suit property for over 50 years with their families uninterrupted. Further, the suit land is registered in the name of the Respondent, whom they have never seen on the property. Additionally, it was stated that they have constructed both permanent and temporary houses and other social amenities.
  3. The Respondent was served by substituted service *vide* the Daily Nation newspaper of 5<sup>th</sup> June 2024 and did not enter appearance nor file any document. Interlocutory judgment was endorsed on 1<sup>st</sup> July 2024 and the matter proceeded undefended.
  4. PW1—Simeon Jumvi Mwangala relied on the averments contained in the Supporting affidavit he filed on 18<sup>th</sup> March 2024. He produced PEX 1-4 documents as per the list of documents of even date. He added that they have lived on the suit property for over 50 years.

#### **The Plaintiffs'/Applicants' Submissions**

5. The Applicants identified one sole issue determination; whether the Applicants have met the threshold for grant of orders for adverse possession. It was submitted that it is trite that a claim for adverse possession is attached to land and not title and it matters not that the Respondent owned the land. In support of their argument, they relied on the authority of [Maweu v 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”

6. It was further submitted that adverse possession is about occupation of land belonging to another, and 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 Applicant is entitled to the suit land having occupied it for more than 50 years. The continuous use of the land by the Applicants, without any attempt by the Respondent to reclaim it, further strengthens their claim. It was the Applicant's testimony that the Respondent has never set foot on the suit property, nor is he known to the Applicants. In addition, the Applicants built homes and cultivated the land without interruption. In support of their argument, they relied on the authorities of [Wilson Kazungu Katana & 101 others v Salim Abdalla Bakshwein & another](#) [2015] eKLR and [Stephen Mwangi Gatunge v Edwin Onesmus Wanjau \(Suing in her capacity as the administrator of the estates of Kimingi Wariera \(Deceased\) and of Mwangi Kimingi \(Deceased\)\)](#) [2022] KEELC 1217 (KLR)



## Analysis and Determination

7. I have considered the Originating Summons and the grounds it is founded upon, the submissions and authorities relied upon by the Applicants, and one issue for determination arises: whether the Applicants have met the threshold for grant of orders of adverse possession.
8. The doctrine of adverse possession in Kenya is founded under the *Limitation of Actions Act*, Cap 22 Laws of Kenya. 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 Section 9, 10, 11, and 12 a right of action to recover land accrues on a specific date and no person is in adverse 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), the land in reversion is taken to be adverse possession of the land.”
9. Section 38 of the Act allows a claimant to apply to court for orders of adverse possession and provides that:

“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.”
10. The doctrine of adverse possession was aptly defined in *Mtana Lewa v Kabindi Ngala Mwangandi* [2015] eKLR where the Court of Appeal held that:

“Adverse possession is essentially a situation where a person takes possession of land and asserts rights over it and the person having title to it omits or neglects to take action against such person in assertion of his title for a certain period, in Kenya is twelve (12) years. The process springs into action essentially by default or inaction of the owner. The essential prerequisites being that the possession of the adverse possessor is neither by force of stealth nor under the licence of the owner. It must be adequate in continuity, in publicity and in extent to show that possession is adverse to the title owner.”
11. From the definition of adverse possession in the authority above, the essential prerequisites of adverse possession are that the possession:
  - i. Must not be by force or stealth



- ii. Must not be under the licence of the owner
  - iii. Must be adequate in continuity, in publicity, and in extent to show that possession is adverse to the title owner
12. In *Mombasa Teachers Co-operative Savings & Credit Society Limited v Robert Mubambi Katana & 15 others* [2018] eKLR, the Court of Appeal held that:

“18. Likewise, it is settled that a person seeking to acquire title to land by of adverse possession must prove non-permissive or non-consensual, actual open, notorious, exclusive and adverse use/occupation of the land in question for an uninterrupted period of 12 years as espoused in the Latin maxim, nec vi nec clam nec precario. See *Jandu v Kirplal & Another* (1975) EA 225. In other words, a party relying on the doctrine bears the burden of demonstrating that the title holder has lost his/her right to the land either by being dispossessed of it or having discontinued his possession of it for the aforementioned statutory period. See this Court’s decision in *Wambugu v Njuguna* [1983] KLR 173.”

13. The Applicants state that they have been uninterrupted in their stay on the suit land for over 50 years. The Respondent, who is the registered proprietor, is unknown to them and has never taken any steps to evict them. Their testimonies went unanswered. I will allow the Applicants' claim as pleaded in the OS. Since the claim was undefended, I will not award costs.

14. It is so ordered.

**DATED, SIGNED, AND DELIVERED AT MALINDI ON THIS 6<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:

Respondent ( No Appearance/Defence)

