



Murabu & another v Mwavula (Environment & Land Case E108 of 2024) [2025] KEELC 4234 (KLR) (4 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4234 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE E108 OF 2024**

FM NJOROGE, J

JUNE 4, 2025

BETWEEN

LILY JOHN MURABU 1ST PLAINTIFF

JUHN WIMA USHURU 2ND PLAINTIFF

AND

MICHARL KASHA MWAVULA DEFENDANT

RULING

1. The Notice of Motion application for determination is dated 13/12/2024. It is brought under Order 6 Rules 7 & 8 of the Civil Procedure Rules, Sections 1, 1A, 3A, 6,7, & 63(c) & (e) of the [Civil Procedure Act](#) Cap 21 Laws of Kenya, Sections of the Limitations of Actions Act Cap 22 laws of Kenya, sections of the [Companies Act](#) Cap 380 Laws of Kenya. In the application, the applicant seeks the following orders:
 - a. That the Application be served for a date to be fixed for inter partes hearing;
 - b. That the Honourable Court be pleased to strike out the Originating Summons dated the 25th day of July 2024, Affidavit in Support of Originating Summons Sworn on the 25th day of July 2024 in effect the: Originating Summons filed herein for Want of Jurisdiction, disenfranchisement of Private Property Camouflaged as an Originating Summons and utter perjury and criminal enterprise lodged by the 1st and 2nd Plaintiffs;
 - c. That the Honourable Court in tandem with the aforementioned findings be placed to make declaration that Plot Number 423/II/MN Title Number 13520, Sub Division Number 423, Original Number 328/7 does not fall within the ambit and purview of properties subject to an adverse possession cause of action;



- d. That for the sole purpose of facilitating criminal enterprise, falsified documents, perjury and forgery the Honourable Court be pleased to enjoin into these proceedings the Directorate of Criminal Investigations and the Directorate of Public Prosecutions.
 - e. That the Honourable Court be pleased upon grant of prayers 1 & 2 hereinbefore stated to subject these proceedings and ancillary documents thereto to forensic examination by the Directorate of Criminal Investigations and any such findings of guilt to be subjected to full force of the law.
 - f. That the Honourable Court be pleased to grant such orders in the interest of justice.
 - g. That the costs of this application be provided for.
2. The application is based on the grounds stated on its face, which this court will replicate herein verbatim as follows:
- a. That the Plaintiff has engaged in perjury and extreme case of illegal franchise by embarrassing the Honourable Court to engage in a case of adverse possession where a clear title holder to property to wit Plot Number 423/ii/mn Title Number 13520, Sub Division Number 423, Original Number 238/7 exists contrary to mandatory and express provisions of the law.
 - b. That the exhibits and ancillary documentation thereto have been subjected to criminal enterprise of forgeries whence affirming the disposition as per ground (a) as hereinbefore started.
 - c. That the Originating Summons as proffered herewith is a candidate warranting striking out due to the illegal enterprise displayed by the Plaintiff, moreover the Defendant in full utility of proprietary rights has mutated Plot Number 423/ii/mn Title Number 13520, Sub Division Number 423, Original Number 328/7 into MN/III/14094, MN/III/14095, MN/III/14096, MN/III/14097, MN/III/14098, MN/III/14099, MN/III/140100, MN/III/140101, MN/III/140102, MN/III/140103, MN/III/140104 MN/III/140105, MN/III/140106, MN/III/140107 MN/III/140108 MN/III/140109, MN/III/423/1, which exclusive belong to Michael Kasha Mwavula.
 - d. That indeed and in tandem with the aforementioned grounds the 1st and 2nd plaintiff at no time before the Honourable Court made full disclosure of the aforementioned in tandem with the requirements of actions in the realm and nature of adverse possession as per required hence the entire (sic) remains incompetent.
 - e. That in public interest, preservation and continuance of scarce judicious time and resources, such illegal cause of action that has benefit of jurisdiction to the Honourable Court in tandem with the provisions of law ought to be struck out.
 - f. That the actions and omissions of the 1st and 2nd Plaintiffs are deliberate whence the discretion of the Honourable Court cannot in anyway resuscitate the state of affairs.
 - g. That the Respondent is desirous to enjoy the fruits of his private (sic) as declared by *the constitution*, and on (sic) the same breath litigation that is tainted with fraud ought to come to an end as duly envisaged by the rules of the Honourable Court.
 - h. That it is in the larger interest of justice that the Honourable Court does grant the orders sought herein.



3. The application is supported by the affidavit of the defendant sworn on 13th December 2024 which largely reiterates the ground that are on the face of the application.
4. Lily John Murabu the first plaintiff/respondent swore a replying affidavit dated 4th February 2025 in response to the application. The deponent's response is that she has been living on the suit land since 1976 when she first entered onto the premises together with her late husband. They entered the land when it had been abandoned, and the 2nd respondent joined them on the suit property in 2006; they had never met or heard of anyone claiming to be the legal and or rightful owner of the suit property. She asserts that her third born son was born and raised on the suit property and that is the only home that he knows; that they have developed the suit property openly and without any form of interference or hindrance from any person including the applicant; that they cleared the bushy areas, planted crops, refurbished the abandoned houses, constructed a borehole and even erected a perimeter wall; that the applicant has never asked them to vacate the suit property; that they furnished court with certified copies of legitimate documents listed in the application, and it is for the applicant to provide evidence of their illegitimacy or inauthenticity. She believes that the applicant's claim to the land was extinguished under Sections 37 and 38 of the Limitations of Actions Act due to the plaintiff's alleged actual visible, open, quiet, exclusive, uninterrupted and notorious occupation of the suit property for more than 12 years, which entitled them to a claim under adverse possession.
5. The deponent avers that the respondents have no objection to the proposal that the court do investigate the veracity of the documents they filed, but also that the court should investigate how the applicant herein came to be the registered title holder of the suit property. They urged that the application be dismissed.
6. The application was ordered to be disposed of by way of written submissions and the respondents' submissions dated 27th March 2025 around the record. The respondents aver that the court is vested with jurisdiction to entertain the suit under Section 38 of the *Limitation of Actions Act*. They also submit that the claim by the respondent that a suit property does not fall within the ambit and purview of properties subject to the cause of action of adverse possession is premature since the Originating Summons dated 25th July 2024 raised issues that can only be addressed at the full trial of the suit as opposed to an application.
7. At the time of preparation of this ruling however, the applicant had not filed any submissions on his application. There having been provided no other method of disposal of the application, and submissions not having been filed by the applicant as ordered, this court finds that the applicant has failed to prosecute his application and it is for that reason dismissed with costs to the respondents.

DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 4TH DAY OF JUNE 2025.

MWANGI NJOROGE

JUDGE, ELC, MALINDI.

