



**Idha & 19 others v Rahami (Civil Suit 146 of 2022)
[2025] KEELC 5178 (KLR) (4 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5178 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
CIVIL SUIT 146 OF 2022**

LL NAIKUNI, J

JULY 4, 2025

**IN THE MATTER OF: LAND TITLE NO.CR.32208, SUB-DIVISION NO.10948/I/MN
(ORIGINAL NUMBER 3/2 SECTION I MAINLAND NORTH) MOMBASA DISTRICT**

AND

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

AND

IN THE MATTER OF: LIMITATION OF ACTIONS ACT CAP 22 OF LAWS OF KENYA

BETWEEN

FAT-HIA RYCE IDHA 1ST PLAINTIFF
JULIANA ATIENO MATANDI 2ND PLAINTIFF
PETER MAKAU CHELELE 3RD PLAINTIFF
LILY ROSE AMBAISI 4TH PLAINTIFF
MWANASHA MATANO MWATONDO 5TH PLAINTIFF
MARY WANJIRU GIOCHE 6TH PLAINTIFF
DOROTHY KERUBO MWANGA 7TH PLAINTIFF
HALIMA JUMA MWINYI 8TH PLAINTIFF
SYLVIA WAKESHO MWANGOMBE 9TH PLAINTIFF
MOMO NOOR MOHAMED 10TH PLAINTIFF
JAMES MADAGA 11TH PLAINTIFF
MARIAM AHAMAD BILALI 12TH PLAINTIFF



STEPHEN NGANGA KAGOMBE 13TH PLAINTIFF
MERCY MUMBI WAIRIMU 14TH PLAINTIFF
FATUMA ABDALLA RASHID 15TH PLAINTIFF
HAMADI ABDALLA RASHID 16TH PLAINTIFF
MWANAISHA ABDALLA RASHID 17TH PLAINTIFF
RAMADHANI ABDALLA RASHID 18TH PLAINTIFF
OMARI ABDALLA RASHID 19TH PLAINTIFF
MISHI ABDALLA RASHID 20TH PLAINTIFF

AND

AHMAD RAHAMI DEFENDANT

JUDGMENT

I. Preliminaries

1. The Judgement of this Honourable Court pertains the suit instituted by Fat-Hia Ryce Idha, Juliana Atieno Matandi, Peter Makau Chelele, Lily Rose Ambaisi, Mwanasha Matano Mwatondo, Mary Wanjiru Gioche, Dorothy Kerubo Mwangi, Halima Juma Mwinyi, Sylvia Wakesho Mwangombe, Momo Noor Mohamed, James Madaga, Mariam Ahamad Bilali, Stephen Nganga Kagombe, Mercy Mumbi Wairimu, Fatuma Abdalla Rashid, Hamadi Abdalla Rashid, Mwanaisa Abdalla Rashid, Ramadhani Abdalla Rashid, Omari Abdalla Rashid and Mishi Abdalla Rashid the Plaintiffs/Applicants herein. It was against Ahmad Rahami, the Defendant/Respondent herein by way of Originating Summons on the 19th December, 2022 filed on 20th December, 2022 premised under the provision of Sections 37 and 38 of the *Limitation of Actions Act* Cap. 22 of the Laws of Kenya, under Order XXXVII Rule 7 of the Civil Procedure Rules, 2010 and all other relevant enabling provisions of the Law.
2. Procedurally, the Defendant was served with the Originating Summons, through substituted means pursuant to the provision of Order 5 Rule 17 of the Civil Procedure Rules, 2010. This was by publishing an advertisement in one of the local dailies – “The Standard” newspaper of 14th September, 2023 as captured in a filed Affidavit of Service dated 15th September, 2023. Despite of the service, the Defendant/Respondent failed to comply in accordance with the provision of Order 7 and 11 of the Civil Procedure Rules, 2010. Resultantly, the matter proceeded uncontested for formal proof under the provision of Order 10 Rules 4, 5, 6, 7 9 and 10 of the Rules thereof.

Court directions before the hearing

3. On 20th September, 2023, after confirming that the Plaintiffs had complied with Order 11 and taking directions under the provision of Order 37 Rules, 13, 16 and 18 of the Civil Procedure Rules 2010, the Honourable Court set the hearing date on 6th June, 2024. The Plaintiffs/Applicants called PW - 1 and PW - 2, on the same day and closed their case thereafter.



II. The Plaintiffs/ Applicants' case

4. The Plaintiffs/Applicants led by Fat-Hia Ryce Idha claimed entitlement of the suit property by virtue of adverse possession and for determination of the following questions:-
 - a. The Defendant's title and ownership of the Land Title No. CR. 32208, Sub-division No. 10948/I/MN (Original Number 3/2 Section I Mainland North) Mombasa District, has been extinguished by lapse of time.
 - b. The Plaintiffs have obtained title and ownership to by virtue of the doctrine of adverse possession.
 - c. Pursuant to (1) above the Chief Land Registrar to be ordered to enter the Plaintiffs' names in the said register as the proprietors of Land Title No. Cr.32208, Sub-division No. 10948/I/MN (Original Number 3/2 Section I Mainland North) Mombasa District, and a Title deed be issued in their names.
 - d. Whether a permanent order can be issued against the Defendant, its servants, agents or authorized independent contractors not to be evicted or demolish the Plaintiffs houses built on the suit property.
 - e. The applicant be awarded costs of this proceedings.
5. The Plaintiffs prayed for the following ORDERS: -
 - a. That the Plaintiffs be registered as the proprietor in common of the property known as Land Title No. Cr.32208, Sub-division No. 10948/I/MN (Original Number 3/2 Section I Mainland North) Mombasa District) in the place of the Defendant.
 - b. That the Defendant, its agents, servants and/or any other authorized independent contractor be restrained by permanent injunction from entering the suit land or demolishing the Plaintiffs' houses and/or properties, structures thereon and/or evicting the Plaintiffs, their families and/or tenants or in any other manner whatsoever interfering with the Plaintiffs and their tenants peaceful occupation of the suit land.
 - c. That the costs of this suit be provided for.
6. The Original Summons was based on the following grounds on the face of it and those of the 11 paragraphed supporting affidavit sworn by FAT-HIA RYCE IDHA, the 1st Plaintiff/Applicant sworn on the same day with the Originating summons where she averred:-
 - a. The Deponent was born on the subject land parcel title no. 10948/I/MN (CR.32208) (Original Number 3/2 Section I Mainland North) where his parents had erected a permanent house that they lived in to date. Annexed in the affidavit and marked as "FRI - 2" were copies of photos of her house and other Plaintiffs' houses situated on the suit property.
 - b. The suit property was registered in the name of the Defendant. They conducted a search in the Land Registry and confirmed the same. Annexed in the affidavit and marked as "FRI - 3" were copies of the title deed and a search done on 1st September 2022.
 - c. The Deponent had peacefully coexisted with the other Plaintiffs on the subject parcel of land without any interference for a continuous period of over twelve years.



- d. The suit property was her home and she did not know of any other place that she could call home.
 - e. She had fully been convinced that she had acquired an interest by way of adverse possession over the suit property.
 - f. The Deponent herein applied to this Honourable Court for an order that the entries in the land registry, Mombasa showing the Defendant or any other person for that matter as the proprietor of the suit property be deleted and or expunged forthwith and the Plaintiffs be registered as the joint proprietors of the suit property.
 - g. The Deponent never knew any other home hence it was in the interest of justice that this suit was heard and determined by way of viva voce evidence.
 - h. The Deponent had proved his case on a balance of probability.
7. The Plaintiffs/ Applicants called PW 1 and PW 2 on 4th June, 2024 and who testified as follows:-

A. Examination in chief of PW - 1 by M/s Midia Advocate.

8. PW - 1 was sworn and testified in the English language. She identified herself as FAT – HIA RYCE IDHA, a Citizen of Kenya with all the particulars as shown in the national identity card. She was born in the 1965 and resided at Mkomani on the suit property since the time of her birth. According to her that was where her parents had lived and built their homes there. They never bought the property neither did they pay rates. They had planted some plantations trees, gardens and cultivated cassava. PW - 1 stated that they had never been interrupted by any one. They had never met the Defendant. She only came to know of him through an official search. They lived there peacefully with the other Plaintiffs.
9. PW - 1 further told the court that they did not know any other place. They had filed a set of photographs; title deed and the receipts for rates. She urged the Court to give them the land as that was the only home they knew and had resided with their parents. The witness was given authority to institute this suit on behalf of the other Plaintiffs. According to her the Plaintiffs were from different ethnic groups. The land measured 3.6 HA (Approximately 10 acres). When her parents were buried the witness recalled that they were buried at Kikowani.

A. Examination in Chief of PW - 2 by M/s. Midia Advocate.

10. PW - 2 was sworn and in English language. She was called Juliana Atieno Matandi, a citizen of Kenya bearing all the particulars as indicated in the national identity card. She told the court that she lived at Mkomani, Nyali from the year 1985. That her husband built a house but when he died, she moved to another house; they were from Siaya. They had not paid any one nor rates, they had never been removed from the land; they had lived there in peace. She did not know the Defendants.
11. PW - 2 stated that she had never seen him and her prayer was to get the title deed for the place/ land; there were documents they filed here in Court as evidence, in support of the case, she was given authority represent the other Plaintiffs in Court. His father used to work for Kenya Ports Authority (KPA); they resided on the suit property. The witness was married to a Chonyi and when he died and he was buried at Kaloleni where their land was situated.
12. On 4th June, 2024 the Plaintiffs through their legal counsel M/s Midia marked their case closed.



III. Submissions

13. On 19th December, 2024, immediately after the closure of the Plaintiffs/Applicants' the Honorable Court directed the parties to canvass the originating summons dated 19th December, 2022 through written submissions. Unfortunately, by the time of penning down this judgement, the Honourable Court had not been in a position to access the submissions by the Plaintiff. Therefore, Honorable Court reserved a date for delivery of Judgement on 23rd May, 2025 accordingly.

IV. Analysis and Determination

14. I have carefully read and analyzed all the pleadings herein, both the oral and all the documentary evidence adduced in court, and the relevant provisions of *the Constitution* of Kenya, 2010 and the law.
15. In this regard, for the Honourable Court to reach an informed, fair and Equitable decision, there are three (3) key issues for determination is:
- a. Whether the Plaintiffs have made out their claim of the suit land through the Doctrine of Land Adverse Possession?
 - b. Whether the Parties herein are entitled to the prayers sought?
 - c. Who meets costs of the suit

Issue No. A): Whether the Plaintiffs have made out their claim of the suit land through the Doctrine of Land Adverse Possession

16. Under this sub – heading, the Honourable Court has deciphered that the main issue is on the acquisition of land through the Doctrine of Land Adverse possession. The Court will examine whether the Plaintiffs/ Applicants is entitled to ownership of all that parcel of land known as Land Title No. Cr.32208, Sub-division No. 10948/I/MN (Original Number 3/2 Section I Mainland North) Mombasa District) which was registered in the name of the Defendant by virtue of adverse possession. Although the suit was undefended, the Plaintiffs have a duty to formally prove their case on a balance of probabilities as is required by law. In the case of “Kirugi and Another – Versus - Kabiya & 3 Others (1987) KLR 347”, the Court of Appeal held that; -

“The burden was always on the Plaintiff to prove his case on a balance of probabilities even if the case was heard as formal proof. Likewise, failure by the Defendant to contest the case does not absolve a plaintiff of the duty to prove the case to the required standard.”

17. Similarly, in the case of “Gichinga Kibutha – Versus - Caroline Nduku (2018) eKLR”, the Court held that; -

“It is not automatic that (in) instances where the evidence is not controverted the Claimant shall have his way in Court. He must discharge the burden of proof. He must proof his case however much the opponent has not made a presence in the contest.”

18. In the case of:- “Samson S. Maitai & Another – Versus - African Safari Club Limited & Another [2010] eKLR”, Emukule J observed: -

“..... I have not seen a judicial definition of the phrase ‘Formal Proof’. ‘Formal’ in its ordinary Dictionary meanings - refers to being ‘methodical’ according to rules (of evidence). On the other hand, according to Halsbury’s Laws of England, Vol. 15, para, 260, ‘proof’ is that



which leads to a conviction as to the truth or falsity of alleged facts which are the subject of inquiry. Proof refers to evidence which satisfies the court as to the truth or falsity of a fact. Generally, as we well know, the burden of proof lies on the party who asserts the truth of the issue in dispute. If that party adduces sufficient evidence to raise a presumption that what is claimed is true, the burden passes to the other party who will fail unless sufficient evidence is adduced to rebut the presumption.”

19. Additionally, in the case of:- “Rosaline Mary Kahumbu – Versus - National Bank of Kenya Ltd [2014] eKLR”, the Court held: -

“In contrast, at a formal proof hearing, if the party with the onus of adducing evidence fails to satisfy the truth threshold, the matter would stand to be dismissed on the basis that it was unmeritorious and did not raise sufficient proof of any issues of fact or law. It would be heard and determined on its merits.”

20. In this regard, in a formal proof hearing, a party with the onus of adducing evidence must produce such sufficient evidence which must satisfy the court as to its truth. It is trite law that in any suit of this nature, the party who seeks to rely on the existence of a fact or a set of facts must provide evidence that those facts exist. From the pleadings filed, evidence adduced and submissions made by and on behalf of the Plaintiff the issue that arises for this court’s determination is whether or not the Plaintiff has acquired title to the suit land by operation of the doctrine of adverse possession.

21. Where a Defendant fails to adduce evidence in support of the Defence and fails to attend court to prosecute the case, the Plaintiff’s evidence escapes the possibility of being controverted by defence evidence. It escapes the scrutiny of cross-examination by the Defendant. It therefore stands unchallenged and uncontroverted. However, the Plaintiff does not escape the burden and standard of proof which he has to satisfy and discharge in accordance with the law in order for his claim to succeed.

22. This is what in law is termed as the “Burden of Proof” and is encapsulated for by Section 107 of the *Evidence Act* Cap 80 laws of Kenya which provides as follows:-

“107. Burden of Proof (1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.(2)When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”

23. The doctrine of Land Adverse possession is one through which a person obtains legal title to land by reason of actual, open and continuous occupation of it to the exclusion of the registered owner for a prescribed period. In Kenya, the prescribed period is 12 years. The doctrine is anchored on the provision of Sections 7, 13 and 38 of the *Limitation of Actions Act*, Cap. 22. 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.”

24. Section 13 of the *Limitation of Actions Act* provides:

- (1) A right of action to recover land does not accrue unless the land is in possession of some person in whose favour the period of Limitation can run (which possession is this Act referred to as adverse possession), 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 cease 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 purpose 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.
25. The procedure for seeking relief on a claim based on adverse is provided for in Section 38 of the [Limitation of Actions Act](#) and Order 37 of the Civil Procedure Rules, 2010. Section 38 (1) provides;
- (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 sub-section (1) of this section shall on registration take effect subject to any entry on the register which has not been extinguished under this Act.
26. And Order 37 Civil Procedure Rules provides:
- “(1) An Application under Section 38 of the [Limitation of Actions Act](#) shall be made by Originating Summons
 - (2) The summons shall be supported by an Affidavit to which a certified extract of the title to the land in question has been annexed.”
27. Article 162(2) of [the Constitution](#) of Kenya 2010, Section 13 of the [Environment and Land Court Act](#) and Section 38 of the [Limitation of actions Act](#) confer jurisdiction on this court to handle claims premised on adverse possession.
28. In the present case, the Plaintiffs aver that they had been in physical occupation and possession of a land parcel title no. 10948/I/MN (CR.32208) (Original Number 3/2 Section I Mainland North). The 1st Applicant was born on the subject land parcel title no. 10948/I/MN (CR.32208) (Original Number 3/2 Section I Mainland North) where his parents had erected a permanent house that they lived in to date and she was born in 1965 which is 57 years she had been on the land.
29. In the case of:- “Kimani Ruchure – Versus - Swift Rutherfords & Co. Ltd (1980)KLR 10” Kneller J held that:
- “the Plaintiffs have to prove that they have used this land which they claim as of right: nec vi, nec clam, nec precario (no force, no secrecy, no persuasion).”
30. In the case of “Gabriel Mbui – Versus - Mukindia Maranya [1993] eKLR” adverse possession was defined as
- “..the non-permissive physical control over land coupled with the intention of doing so, by a stranger having actual occupation solely on his own behalf or on behalf of some other person, in opposition to, and to the exclusion of all others including the true owner out of



possession of that land, the true owner having a right to immediate possession and having clear knowledge of the assertion of exclusive ownership as of right by occupying stranger inconsistent with the true owner's enjoyment of land for purposes for which the owner intended to use it."

31. The evidence by PW – 1 was born in the year 1965 and resided at Mkomani; she recorded her statement – dated 19th December, 2022. The suit property was registered in the name of the Defendant. They conducted a search in the Land Registry and confirmed the same. The Deponent had peacefully coexisted with the other Plaintiffs on the subject parcel of land without any interference for a continuous period of over twelve years. The suit property was her home and she did not know of any other place that she could call home.
32. In the case of "M'ikiara M'rinkanya & Another – Versus - Gilbert Kabeere M'mbijiwe, Civil Appeal 124 of 2003 [2007] eKLR", the Court held that:-

'...From the above analysis, it is clear that a judgment for possession of land should be enforced before the expiry of the 12 years limitation period stipulated in section 7 of the Act. If the judgment is not enforced within the stipulated period, the rights of the decree holder are extinguished as stipulated in section 17 of the Act and the judgment debtor acquires possessory title by adverse possession which he can enforce in appropriate proceedings. So, quite apart from the authority of *Lougher v Donovan* [1948] 2 All ER 11, which we consider as still good law in this country, and the previous decisions of this Court, there is a statutory bar in section 7 of the Act for recovery of land including the recovery of possession of land after expiration of 12 years. It follows, therefore, that, to hold that execution proceedings to recover land are excluded from the definition of "action" in section 4 (4) of the Act would be inconsistent with the law of adverse possession...

..as regard recovery of judgment debts, the construction of Section 4 (4) of the Act by local courts barring recovery after 12 years, is as shown in *Lowsley – Versus - Forbes* [1999] 1 AC 329 , consistent with construction given by English Courts to Section 2 (4) of the Limitations Act 1939 and its predecessors for over 100 years that a judgment debt becomes statute barred after 12 years.'

33. Further, in the case "Mbira – Versus - Gachuhi [2002] 1 EALR 137" the court stated as follows;

".....a person who seeks to acquire title to land by the method of adverse possession for the applicable statutory period, must prove non-permissive or non-consensual actual, open, notorious, exclusive and adverse use by him or those under whom he claims for the statutorily prescribed period without interruption..."

34. Similarly in the case of "Gabriel Mbui – Versus - Mukindia Maranya [1993] eKLR" Kuloba enumerated the elements that need to be proved by a party invoking the doctrine of adverse possession as follows;
 - a. The intruder resisting suit or claiming right by adverse possession must make physical entry and be in actual possession or occupancy of the land for statutory period.
 - b. The entry and occupation must be with, or maintained under, some claim or colour of right or title, made in good faith by the stranger seeking to invoke the doctrine of adverse possession as against everyone else.



- c. The occupation of land by the intruder who pleads adverse possession must be non- permissive use, i.e. without permission from the true owner of the land occupant.
 - d. The non-permissive actual possession hostile to the current owner must be un equivocally exclusive, and with an evinced unmistakable animus possidendi. that is to say occupation with the clear intention of excluding the owner as well as other people.
 - e. The possession by the person seeking to prove title by adviser possession must be visible, open and notorious, given reason for notice to the owner and the community, of the exercise of dominion over the land,
 - f. The possession must be continuous uninterrupted, unbroken, for the necessary statutory period.
 - g. The rightful owner must know that he is ousted. He must be aware that he had been dispossessed, or he must have parted and intended to part with possession
35. Therefore, to determine whether the Applicants’ rights accrued the Court will seek to answer the following
- i. How did the Applicant take possession of the suit property?
 - ii. When did he take possession and occupation of the suit property?
 - iii. What was the nature of his possession and occupation?
 - iv. How long has the Applicant been in possession?
36. Adverse possession is essentially a situation where a person takes possession of land and asserts rights over it and the person having title omits or neglects to take action against such person in assertion of his title for a certain period, in Kenya, twelve (12) years. The process springs into action essentially by default or in action of the owner. The essential prerequisites being that possession of the adverse possessor is neither by force or stealth nor under the license of the owner. It must be adequate in continuity, in publicity and in extent to show that possession is adverse to the title owner.
37. On examination of the questions above, the Plaintiffs have contended that they had been in possession of the suit property before they were born. It was the evidence of PW 2 that she lived at Mkomani, Nyali from 1985 her husband built a house but he died, she moved to another house; they were from Siaya. They had not paid any one nor rates, they had never been removed from the land; they had lived there in peace. She did not know the Defendants.
38. From the evidence produced by both the Plaintiffs; the Plaintiffs got to the land in from the years 1965 and 1985 respectfully. The suit was filed in the year 2022 which makes it 57 and 37 years respectively, from the calculation of the time the Plaintiffs the number of years the Plaintiffs have been in possession of the suit property was more than 12 years.
39. The question is therefore was the possession uninterrupted for more than twelve years? The answer is of course to the affirmative because the Defendant never interrupted their stay on the suit property. They had had uninterrupted occupancy of the suit property for more than 12 years. In the case of:- “Githu – Versus - Ndeete [1994] KLR” quoted by the Court of Appeal in the case of:- “Kenya Commercial Bank



(suing as Administrator of the Estate of Paul Njoroge Muchene) – Versus - Sarah Njeri Muchene” the court held that:-

“time ceases to run under the Limitation of Actions Act either when the owner takes or asserts his rights or when his right is admitted by adverse possession. Assertion occurs when the owner takes legal proceedings or makes an entry into land. Giving notice to quit cannot be effective assertion of right for the purpose of stopping the running of time under the Limitation of actions Act.

A title by adverse possession can be acquired under the Limitation of actions Act to a part of the parcel of land to which the owner holds title.”

40. Additionally, in the case of:- “James Obande Wasui – Versus - Jeremiah Ochwada Musumba [2002] eKLR” the court held that as an occupier’s right, adverse possession runs with the land irrespective of change in proprietorship. Under the provision of Section 28 of the Land Registration Act, No. 3 of 2012, as at the time of transfer of the suit land, the land was subject to an overriding interest in the form of rights of adverse possession in favour of the Plaintiff. Section 28 provides:

‘Unless the contrary is expressed in the register, all registered land shall be subject to the following overriding interests as may for the time being subsist and affect the same, without their being noted in the register-

- a.
- b.
- c.
- d.
- e.
- f.
- g.
- h. Rights acquired or in the process of being acquired by virtue of any written law relating to the Limitation of actions or by prescription.

41. In the current case it cannot be said that the owner asserted his rights when there was a court order preserving the status quo. In the foregoing, it is my finding from the above that the Plaintiffs did satisfy the requirements to be declared in adverse possession as they have demonstrated to have been in actual possession of the land for 12 years. Therefore, their claim succeeds.

Issue No. B). Whether the Plaintiffs are entitled to the prayers sought

42. The Plaintiffs sought for the ownership and entitlement of the suit property by virtue of adverse possession. Had the Plaintiffs proved the above? My answer is in the affirmative as there has been adequate possession in continuity, in publicity and that it was adverse to the registered owner. Thus, I find that the Plaintiffs have succeeded to prove their claim on the suit land and the same is allowed with costs to them.



Issue No. C): Who bears the costs of the suit

43. It is now well established that the issue of costs is at the discretion of the Court. Costs mean the award a party is awarded at the conclusion of a legal action or proceedings in any litigation. The Black Law Dictionary defines cost to mean:-

“the expenses of litigation, prosecution or other legal transaction especially those allowed in favour of one party against the other”

44. The provision of Section 27 (1) of the [Civil Procedure Act](#), Cap. 21 holds that costs follow the events. It provides as follows:-

“(1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers: Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.”

45. Additionally, the provision provides for ‘costs of and incidental to all suit or application’ which expression includes not only costs of suit but also costs of application in suit as described by Mulla (supra) at 536. Furthermore, Rtd. Justice Richard Kuloba in his book *Judicial Hints on Civil Procedure*, 2nd Edition, 2005 at 95 notes that the words ‘the event’ means the result of all the proceedings incidental to the litigation. Accordingly, the event means the result of the entire litigation. The order as to costs as provided for under Section 27 remains at the discretion of the court.

46. The award of costs is therefore not cast in stone but courts have ultimate discretion. In exercising this discretion, courts must not only look at the outcome of the suit but also the circumstances of each case. In “*Morgan Air Cargo Limited – Versus - Evrest Enterprises Limited* [2014] eKLR” the court noted that;

“The exercise of the discretion, however, depends on the circumstances of each case. Therefore, the law in designing the legal phrase that “Cost follow the event” was driven by the fact that there could be no “one-size-fit-all” situation on the matter. That is why section 27(1) of the [Civil Procedure Act](#) is couched the way it appears in the statute; and even all literally works and judicial decisions on costs have recognized this fact and were guided by and decided on the facts of the case respectively. Needless to state, circumstances differ from case to case.”

47. In this case, as this Honourable Court has opined above, the Plaintiffs shall have the costs of the Originating Summons dated 19th December, 2022 filed on 20th December, 2022.

V. Conclusion and Disposition

48. In the end, having caused such an in-depth analysis to the framed issues herein, the Honourable Court on the preponderance of probabilities finds that the Plaintiffs have established their case against the Defendant herein. Thus, the Court proceeds to make the following specific orders:-



- a. That the suit by the Plaintiffs/ Applicants as per the originating summons dated 19th December, 2022 filed on 20th December, 2022 succeeds in its entirety and is hereby allowed with costs.
- b. That an order do and is hereby issued that Plaintiffs be registered as the proprietor in common of the property known as Land Title No. Cr.32208, Sub-division No. 10948/I/MN (Original Number 3/2 Section I Mainland North) Mombasa District) in the place of the Defendant.
- c. That an order do and is hereby issued that the Defendant, its agents, servants and/or any other authorized independent contractor be restrained by permanent injunction from entering the suit land or demolishing the Plaintiffs' houses and/or properties, structures thereon and/or evicting the Plaintiffs, their families and/or tenants or in any other manner whatsoever interfering with the Plaintiffs and their tenants peaceful occupation of the suit land.
- d. That the Plaintiffs shall have the costs of the Originating Summons dated 19th December, 2022 filed on December 20, 2022.

It is so ordered accordingly.

JUDGMENT DELIVERED THROUGH MICRO – SOFT TEAMS VIRTUAL MEANS SIGNED AND DATED AT MOMBASA THIS 4TH DAY OF JULY, 2025.

.....

**HON. MR. JUSTICE L. L. NAIKUNI,
ENVIRONMENT AND LAND COURT
AT MOMBASA**

Judgement delivered in the presence of:

- a. M/s. Firdaus Mbula, the Court Assistant.
- b. M/s. Midia Advocate for the Plaintiffs/ Applicants.
- c. No appearance for the Defendant/ Respondent

