



Kalama & 39 others (Under Umoja Family Moja CBO) v Nahdey (Environment and Planning Originating Summons E004 of 2024) [2025] KEELC 5068 (KLR) (4 July 2025) (Judgment)

Neutral citation: [2025] KEELC 5068 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND PLANNING ORIGINATING SUMMONS E004 OF 2024**

JO OLOLA, J

JULY 4, 2025

BETWEEN

KAZOSI CHARO KALAMA 1ST PLAINTIFF

ANDREW MRABU NDAA 2ND PLAINTIFF

JOSHUA MAE MWARINGA 3RD PLAINTIFF

**EDDWIN MULANDI KYALO & 36 OTHERS & 36 OTHERS & 36
OTHERS 4TH PLAINTIFF**

UNDER UMOJA FAMILY MOJA CBO

AND

MOHAMED AHMED NAHDEY DEFENDANT

JUDGMENT

1. By an Originating Summons dated 30th July, 2024, the Forty (40) Plaintiffs/Applicant urge the Court to determine the following:
 1. Whether the Applicants themselves, their ancestors and families be declared to have become entitled by virtue of adverse possession of 30 years of all that piece of land containing an area of 3.790 Ha or thereabout registered under the Registration of Titles Act (Chapter 281 Laws of Kenya) in the name of Mohamed Ahmed Nahdey and compromised in Plot No. 1057/III/MN CR No. 23982 of Section III Mainland;
 2. Whether the Plaintiffs/Applicants are entitled to be duly registered as proprietors of the suit land by virtue of adverse possession;
 3. Whether the Registrar of Titles, Mombasa do cancel and rectify entries in favour of the Respondent in the title or register of Lands described in paragraph 1 above by reasons of the



fact that the Applicants have become entitled to the 3.790 Ha piece of the land they occupy by adverse possession;

4. Whether the Registrar of Title Mombasa do issue Certificate of Title in favour of the Applicants for the 3.790 Ha piece of land they occupy as described in paragraph 1 above;
 5. Whether the orders referred to in paragraph 1, 2, 3 and 4 above be registered against the suit title in terms of Section 38 (2) of the *Limitation of Actions Act* Chapter 22 Laws of Kenya;
 6. That the Land Registrar, Mombasa County do dispense with the production of the original title document and all other legal documents to be produced by Kazosi Charo Kalama, Andrew Mrabu Ndaa, Joshua Mae Mwaringa, Edwin Mulandi Kyalo & 36 others all under Umoja Family Umoja C.B.O.; and
 7. That costs of this application be provided for.
2. The Originating Summons is supported by an Affidavit sworn by Kazosi Charo Kalama (the 1st Plaintiff) and is premised on the grounds that:
- i. The Plaintiffs/Applicants herein have been in occupation of the parcel of land known as Plot No. 1057/III/MN of section III Mainland North and hence openly, peacefully and as of right been in possession and occupation of the said piece of land over 30 years.
 - ii. That the Respondent is the registered proprietor of the said parcel of land and has shown no interest in the land or given any notice to the Plaintiffs to vacate the same; and
 - iii. That it is fair and just that the Applicants be registered as owners of the 3.790 Ha of land so that they stop living in fear that they may wake up to an eviction one day with their families.
3. Following an application made by the Plaintiffs, the Defendant – Mohamed Ahmed Nahdey – was served by way of substituted service. The Defendant did not however enter appearance and the matter proceeded by way of formal proof.
4. By the Originating Summons dated 30th July, 2024, the Plaintiffs who are 40 in number claim to be entitled to the parcel of land known as Plot No. 1057/III/MN CR. No. 23982 measuring 3.790 Ha by virtue of adverse possession. It is the Plaintiff's case that they have been in an open, peaceful and uninterrupted quiet possession and occupation of the said property for a period in excess of 30 years.
5. The doctrine of adverse possession is founded under the *Limitation of Actions Act*, Cap 22 of the 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. Section 38 of the Act allows a claimant to apply to court for orders of adverse possession and provides as follows:
- “Where a person claims to have become entitled by adverse possession to land registered under any of the Acts cited in Section 37 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 the proprietor of the land.”
6. Explaining the doctrine in *Mtana Lewa –vs- Kahindi Ngala Mwangandi* (2015) eKLR, the Court of Appeal held as follows:
- “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 neglect 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 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.”

7. The Plaintiffs herein are registered under the Community Based Organization Act 2022 in name of Umoja Family Moja which was issued with a Certificate of Registration on 8th November, 2023. Testifying through the 1st Plaintiff Kazosi Charo Kalama (PW1), they told the court that they took possession of the suit property sometimes in the year 1983 and that they have remained thereon to-date.
8. In support of their case, PW1, produced photographs showing homesteads, houses and food crops said to have been planted on the suit land. A perusal of the said photographs reveal that the Plaintiffs have been in open occupation of the suit property for some time and that they use the land to cultivate various food crops. PW1 further produced a sketch map showing the portions of land occupied by the 40 Plaintiffs.
9. From the Certificate of Search dated 13th October, 2023 as produced by the Plaintiffs, it was evident that Mohamed Ahmed Nahdey named herein as the Defendant is the registered proprietor of the suit property. The Defendant was served by way of substituted service but did not enter appearance in this matter.
10. From the material placed before the court, I was persuaded that the Plaintiffs had demonstrated that they were exercising proprietary rights over the suit property to the exclusion of the registered proprietor. In the circumstances I am persuaded that the Plaintiffs have proved on a balance of probabilities that they have a valid claim of adverse possession in respect of the suit property as against the Defendant.
11. In the premises, I hereby enter judgement for the Plaintiffs as against the Defendant and hereby grant orders as follows:
 - a. A declaration is hereby made that the Plaintiffs have acquired and become entitled to all that parcel of land known as Plot No. 1057/III/MN (CR No. 23982.) measuring 3.790 Ha or thereabouts registered in the name of Mohamed Ahmed Nahdey by way of adverse possession.
 - b. A declaration is hereby made that the Plaintiffs are entitled to be registered as proprietors of suit property by virtue of adverse possession.
 - c. An order is hereby issued directing the Registrar of Titles Mombasa to cancel and rectify the entries in favour of the Defendant in regard to the suit property and to register Kazosi Charo Kalama, Andrew Mrabu Ndaa, Joshua Mae Mwaringa, Edwin Mulandi Kyalo and 36 others (under Umoja Family Moja C.B.O.) as the absolute proprietors of Plot No. 1057/III/MN (CR. No. 23982).
 - d. There shall be no order as to costs.

JUDGEMENT DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 4TH DAY OF JULY, 2025

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J.O. OLOLA

JUDGE



In the presence of:

- a. Ms. Firdaus Court Assistant.
- b. Ms. Barayan Advocate for the Plaintiff
- c. No Appearance for the Defendant

