



Ngala & 31 others v Estate of Abdulla Mohamed Khalfan & others (Enviromental and Land Originating Summons E020 of 2022) [2025] KEELC 5023 (KLR) (2 July 2025) (Judgment)

Neutral citation: [2025] KEELC 5023 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E020 OF 2022**

EK MAKORI, J

JULY 2, 2025

BETWEEN

CHENGO NGALA & 31 OTHERS & 31 OTHERS & 31 OTHERS ... APPLICANT

AND

**THE ESTATE OF ABDULLA MOHAMED KHALFAN &
OTHERS RESPONDENT**

JUDGMENT

1. The applicants' Originating Summons application, dated July 20, 2022, seeks various reliefs and declarations as outlined therein through the operation of adverse possession. The application was supported by an affidavit deposed by the 1st applicant, Chengo Ngala, on the same date.
2. The respondents submitted a response via a replying affidavit sworn by Yusuf Majid Said, the 9th respondent, dated September 29, 2022, together with a counterclaim.
3. At the hearing, Kazungu Ngala, PW1, testified that he was born in 1948 and had lived on the suit property, where he had also buried his parents. During cross-examination, he stated that they had occupied the property peacefully for over fifty years until 2021, when they began facing harassment and arson from people claiming ownership. They were eventually evicted from the property.
4. Kingi Kirao adopted his statement and testified as PW2. He stated that he has lived on the disputed property since he was born in 1960. In 2021, the community was attacked at night, leading to their eviction. His twelve children now reside in the Msabaha area. He also mentioned that they later returned and are now resettling.
5. The 1st applicant, Chengo Ngala, adopted his witness statement and testified as PW3. He stated that he has lived on the suit property since 1950, the year he was born, along with 15 children and grandchildren. He indicated that roughly 35 families are settled on the land. He admitted that, at the time of filing this suit, they had been evicted. Furthermore, he stated that he did not have exact



measurements or the size of the suit property, as no survey or subdivision had been done in the area by the government. Various annexures were produced evidencing the registration of the land and photographs showing the applicants' settlement on the suit property.

6. Following adjournments due to Nyevu Mbitha's health issues, which had caused her to collapse during cross-examination, the proceedings resumed, and Nyevu Mbitha testified as PW4, adopting her statement. During cross-examination, she stated that although she could not identify the individuals responsible for destroying and burning some of the houses, the next morning, they realized that Yusuf Majid, the 9th respondent, was behind the destruction, as he returned later in the day with police officers.
7. The respondents presented a single witness, Yusuf Majid Said, the 9th respondent, who adopted his replying affidavit dated September 29, 2022, including annexures, and represented the other respondents. He stated that the suit property, Portion No. 207, belongs to the respondents based on the search conducted on August 4, 2022, and has not yet been transferred to the respective shares of the respondents as shown in the title document and the distribution in Malindi Kadhi Succession Petition No. 40 of 2018.
8. He denied that the applicants have resided on the suit property since the 1940s and that they have been using the land, and he was personally in charge of it since his father's death in 1989.
9. He stated that the only individual known to him was Chengo Ngala Hinsano, who entered and assumed possession of four acres allocated to the 4th respondent herein. The matter was reported to the area Chief, and a decision was made that he would remain on the land until he had harvested his crops by September 30, 2014.
10. He denied any involvement in the demolitions and stated that only the 1st applicant was notified to vacate; however, the 1st applicant did not comply. Additionally, a notice to vacate was issued in 2015. He moved out but later returned to plant maize and fruit trees before filing this suit.
11. He claimed that his family peacefully occupied the land until 2015, when one of his workers cut down the trees and was later charged in Malindi Criminal Case No. 281 of 2016. The Agricultural Extension Officer, Malindi Magarini, prepared an assessment report concerning the damages.
12. On January 18th, 2021, more than 100 people encroached on the property involved in the litigation, claiming ownership. The event was documented, and law enforcement responded to the scene. In the relevant succession case, orders were issued to protect the property, and a surveyor was dispatched for a ground inspection. The intruders began construction activities, and photographic evidence showed the structures were recently built. As a result, the structures were dismantled following the directives from the Kadhis Court.
13. He claimed that the 13th applicant and a person called Mramba reportedly sold parts of the land to uninformed buyers, as evidenced by the sale agreements submitted.
14. On August 2, 2022, the applicants attempted an unauthorized incursion onto the land once again, but it was unsuccessful. This act was intended as a basis to seek injunctive orders from this court.
15. The 9th respondent concluded that the orders sought in the OS cannot be upheld, as the applicants are trespassers.
16. During cross-examination regarding his authority to represent the other respondents and his role as the estate's administrator, he stated that he was one of the beneficiaries according to the succession petition and bore significant responsibility for protecting the suit property.



17. Following the conclusion of the applicants' and respondents' cases, the court directed the learned counsels for the parties to submit written submissions regarding the issues raised in the Originating Summons (OS) and the counterclaim. Mr. Wanga, representing the applicants, complied with this directive. Conversely, Mr. Atiang, representing the respondents, did not submit any written submissions.
18. Based on the materials and submissions presented before me, the issues I have outlined for the court's decision are whether the applicants are entitled to the orders sought in the Originating Summons (OS) through the doctrine of adverse possession. Additionally, I consider whether the counterclaim is valid and which party should bear the costs of both the OS and the counterclaim.
19. Regarding the issue of adverse possession, I concur with the authorities cited by Mr. Wanga on behalf of the applicants concerning the proper application of the doctrine.
20. In the case of *Gabriel Mbui v 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.”
21. Further in *Cheromei v Muigai* (Environment & Land Case E005 of 2023) [2024] KEELC 5604 (KLR) (25 July 2024), Onyango J. shared the following view on what constitutes adverse possession:

“The doctrine of adverse possession was aptly defined in *Mtana Lewa vs Kahindi 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.”
22. This stance was reinforced in the case of *Rose Akello Otieno v Joseph Odote & another* [2022] eKLR, where Asati J. stated:

“.... the occupation has been open, actual, continuous, uninterrupted, peaceful, exclusive, and with the knowledge but without the consent or permission of the registered owner for the prescribed period of 12 years. In *Kimani Ruchure vs 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 permission).”



23. The applicants assert that they have occupied the suit property, with some beginning their residence in the 1940s. Furthermore, they state that it is on this property that they have laid their loved ones to rest. They contend that the 9th respondent forcibly evicted them only in 2021.
24. In contrast, the 9th respondent, who has been sued alongside the other respondents, demonstrated that the land has never been in continuous occupation by the applicants. He indicated that only the 1st applicant unlawfully gained access to the land and cultivated crops on it. He stated that he reported the matter to the area chief. The 1st applicant was granted time to harvest his crops and vacate the premises by September 30, 2014.
25. The 9th respondent further asserted that in the year 2015, one of the workers, Hinsano, was responsible for cutting down trees on the disputed property and was subsequently charged.
26. He further stated that in 2021, over 100 individuals invaded this land but were subsequently evicted as a result of the orders contained in the Succession Petition before the Malindi Kadhis Court.
27. After thoroughly reviewing the evidence submitted by both the applicants and the respondents, including the available photographic evidence, I conclude that the structures shown as historically built houses were temporary and do not serve as proof of long-term occupation from the 1940s. Besides the recently constructed temporary structures, no documentation has been provided to confirm that the applicants lived there during the period they claimed.
28. From their testimonies, the applicants could not determine the exact land they claim to have occupied, whether it was plot No. 207 or 209.
29. Based on the evidence, I also concluded that the other applicants who signed up to be represented in this matter might not have existed. Still, they seem to be the intruders trying to forcibly enter the land in 2021.
30. Furthermore, although the applicants claimed to reside with their families on the suit property, this was not substantiated; for example, PW2 confirmed that his children live in the Msabaha area.
31. Furthermore, regarding the matter of continuous, notorious, and uninterrupted occupancy, evidence was presented indicating that the applicants have never peacefully occupied this land, considering the proceedings in the Kadhi's Succession Petition and the disclosed criminal cases.
32. In conclusion, the applicants have not demonstrated that they have maintained open, actual, continuous, uninterrupted, peaceful, and exclusive possession of the land, with knowledge but without the consent or permission of the registered owner, for the statutory period of twelve years. The applicants must establish that their use of the land, which they assert as of right, was conducted *nec vi, nec clam, nec precario* (without force, secrecy, or persuasion). They did not.
33. Consequently, the applicants' claim has not met the threshold required for invoking the doctrine of adverse possession, and therefore, the orders sought in the OS are not granted. As a result, their claim is dismissed with costs.
34. Conversely, the 9th respondent has demonstrated that the applicants are indeed trespassers on the suit property, and the counterclaim herein is entirely successful, with costs.

DATED, SIGNED, AND DELIVERED VIRTUALLY IN MALINDI ON THIS 2ND DAY OF JULY 2025.

E. K. MAKORI

JUDGE



In the Presence of:

Mr. Wanga for the Applicants

Happy: Court Assistant

In the Absence of:

Mr. Atiang for the Respondents

