



**Kamau & 62 others v Kimuri Housing Company Limited & 2 others (Environmental and Land Originating Summons 179 of 2019) [2025] KEELC 3813 (KLR) (12 May 2025) (Judgment)**

Neutral citation: [2025] KEELC 3813 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS 179 OF 2019**

**BM EBOSO, J**

**MAY 12, 2025**

**BETWEEN**

**NANCY WANJIRU KAMAU & 62 OTHERS ..... PLAINTIFF**

**AND**

**KIMURI HOUSING COMPANY LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**THE LAND REGISTRAR, THIKA ..... 2<sup>ND</sup> DEFENDANT**

**THE HONOURABLE ATTORNEY GENERAL ..... 3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

**Introduction**

1. On 9/12/2019, the 63 plaintiffs took out an originating summons dated 4/12/2019 under Order 37 rule 7 of the Civil Procedure Rules and Sections 7 and 38 of the *Limitation of Actions Act*. They invited this court to grant them the following verbatim adverse possession orders in relation to land parcel number Thika Municipality Block 31/251:
  1. A declaration that the plaintiffs have been in continuous and uninterrupted occupation of the suit property for more than 12 years and have acquired by adverse possession all that parcel of land known as Thika Municipality Block 31/251 (Formerly L.R No. 4953/1854) Thika Municipality (with all resultant parcels therefrom)
  2. A declaration that the plaintiffs are entitled to be registered as owners and or proprietors of all that parcel of land known as Thika Municipality Block 31/251 (Formerly L.R No. 4953/1854) Thika Municipality (with all resultant parcels therefrom)
  3. An order directing the 2nd defendant to rectify the land register in such a manner as will reflect the plaintiffs herein as the registered owners of all that parcel of land known as Thika



Municipality Block 31/251 (Formerly L.R No. 4953/1854) Thika Municipality (with all resultant parcels therefrom.)

4. An order directing the 2nd defendant to issue title documents individually or communally in favour of the plaintiffs in respect of parcel of land Thika Municipality Block 31/251 (Formerly LR No. 4953/1854 Thika Municipality 9 (with all resultant parcels therefrom
  5. An order of permanent injunction do issue restraining the 1st defendant either by itself, its agents, stooges, servants, officers and or any other person and or authority connected therewith from entering, alienating, disposing or in any other manner interfering with plaintiffs' exclusive possession of the parcel of land known as Thika Municipality Block 31/251 (Formerly LR No. 4953/18540 Thika Municipality) with all resultant parcels therefrom)
  6. That the costs of these proceedings be borne by the defendant
2. The said originating summons was heard through viva voce evidence and now falls for determination in this judgment. One of the key issues to be answered in the judgment is whether the plaintiffs have met the criteria for crystallization of title to land through the doctrine of adverse possession. Before I analyze and dispose the issues that fall for determination, I will outline the parties' respective cases, evidence and submissions.

### **Plaintiffs' Case**

3. The plaintiffs' case is contained in the originating summons dated 4/12/2019; the supporting affidavit sworn on 4/12/2019 by George Kimani Ng'ang'a; the evidence tendered by George Kimani Ng'ang'a (PW1); the evidence tendered by Nancy Wambui Wanyoike (PW2); the documentary evidence tendered by PW1; and the written submissions tendered by M/s Ishmael & Company Advocates. In summary, the plaintiffs' case is that they have acquired title to the entire suit land through adverse possession. They contend that they have been in adverse and uninterrupted occupation and possession of the suit land since late 1980s without the consent of the owners of the suit land. They want the court to find that their title(s) to the suit land have crystallized under the doctrine of adverse possession. Attached to the Originating summons was a certified copy of the land register showing that the land measures 5.00 acres.

### **1st Defendant's Case**

4. The 1st defendant opposed the originating summons through the two affidavits sworn by Margaret Wambui Ngugi dated 30/1/2020 and 11/2/2022, which were adopted during trial; the viva voce evidence of Margaret Wambui Ngugi [DW1]; the documentary evidence tendered during trial; and the written submissions filed by M/s. E.K Mutua & Co. Advocates. In summary, the case of the 1st defendant is that they purchased the suit land from one Samuel Eric Oreta in September 1993 and took possession of the land in the same year. They were subsequently issued with a certificate of lease relating to the suit land in 2016. They contend that at the time of purchase, the land was vacant. They add that they enjoyed peaceful possession of the land until 2019 when the plaintiffs invaded portions of the suit land and started erecting temporary structures on portions of the land. They contest the plaintiffs' claim that they [the plaintiffs] have acquired title to the suit land through adverse possession. They add that upon purchasing the suit land, they subdivided it and sold the subdivisions to various third party purchasers.



## Case of the 2nd and 3rd Defendants

5. The 2nd and 3rd defendants filed a replying affidavit sworn on 12/3/2020 by Joseph Kamuyu, a Land Registrar at Thika Land Registry at the time. The said Land Registrar subsequently testified as DW1 during trial. He produced six (6) exhibits. In summary, the case of the 2nd and 3rd defendants is that the register relating to the suit land was opened on 7/9/2016 pursuant to a lease issued to Samuel Eric Oreta. The land measures approximately 5 acres. A certificate of lease was issued to Samuel Eric Oreta on 7/9/2016 and a transfer was subsequently effected in favour of the 1st defendant on 10/10/2016. On 15/4/2019, the land register was closed on subdivision of the suit land into parcel numbers 1560 to 1628.

## Plaintiffs' Evidence

6. The plaintiffs led evidence by two witnesses. George Kimani Nganga testified as PW1. He adopted his affidavit dated 4/12/2019 as part of his sworn evidence-in-chief. He produced the following exhibits: (i) certified copy of the land register relating to Thika Municipality Block 31/251; (ii) a written authority from the co-plaintiffs authorizing him to swear affidavits, appear, plead or act in the suit; and (iii) photographs. His evidence- in-chief was that he had been in uninterrupted occupation of an unidentified portion of the suit land since late 1980s and that his co-plaintiffs have been occupying the rest of the suit land for over 12 years. He stated that he entered the suit land in 1989 without anyone's consent, authority or licence as the suit land was free land at the time. He added that he had developed the suit land substantially.
7. During cross examination by counsel for the 2nd and 3rd defendants, he stated that he was born on the suit land in 1973 and he had lived on the land since 1980, adding that in 1980 he was 7 years old.
8. During cross examination by counsel for the 1st defendant, he stated that the suit land measured 10 acres and added that he had not specified the whereabouts of the portion he occupied out of the 10 acres. Asked about the other 62 plaintiffs, he stated that only 21 plaintiffs were in court at the time. He added that they had not exhibited any survey maps showing the portions occupied by the 63 plaintiffs.
9. PW1 stated that the suit land had temporary mabati structures, adding that the structure in which he lived was not among the structures in the photographs tendered by the plaintiffs as evidence. He testified that he was not able to identify and assign to the 63 plaintiffs their structures in the exhibited photographs. Shown exhibit number 3 (a) (iv) (photograph of an incomplete mabati structure] and asked to identify the feature in the exhibit, he stated that it was a church under construction by Nancy Wambui, adding that Nancy Wambui started erecting the church on the suit land in 2019. Asked to comment on settlement and physical developments on the land, he stated that much of the land was not settled and was not developed.
10. PW1 further testified during cross examination by counsel for the 1st defendant that the permanent structures in the exhibited photographs were on different parcels of land, adding that there were no permanent structures on the suit land. It was his evidence that they wanted to be given the unsettled and undeveloped portions of the suit land.
11. During re-examination, PW1 stated that there were people who kept building materials on the suit land but they did not live on it. He added that there were others who ploughed the land but did not live on it.
12. Nancy Wambui Wanyoike testified as PW2. She adopted her undated witness statement as part of her sworn evidence-in-chief. Her evidence was that she had lived on the suit land since 1980s. She



stated that the suit land measured 13 acres. During cross examination, she was shown the exhibited photographs which the plaintiffs were relying on. Asked to identify the house where she lived within the suit land, she pointed at the partly roofed mabati structure which PW1 had identified as Nancy Wambui's incomplete church structure. When reminded that the structure she had identified as her dwelling house was a church, she identified a blue lorry in one of the photographs as her residence. She could not remember when the exhibited photographs were taken. She was not able to identify individual houses for the other 62 claimants. She stated that the portion she occupied was about ¼ of an acre. She did not know the registered proprietor of the suit land.

13. In re-examination, she stated that she was not aware of any subsisting litigations relating to the suit land. She added that "their" children carry on sand selling business on the suit land. She testified that the permanent structures in the exhibited photographs were on a different parcel of land, adding that the permanent structures were not on the suit land.
14. At the request of the plaintiffs' counsel, PW 2 was recalled to comment, by way of evidence, on the report of the Court Deputy Registrar after a visit to the suit land [locus in quo]. She stated that she was not part of the plaintiffs' team that accompanied the Deputy Registrar to the suit land. She nonetheless disputed the contents of the Deputy Registrar's report, contending that there was a permanent house on the suit land which the report had omitted. She added that there were about five (5) stone houses which the report had omitted. In sharp contradiction, she stated that some of the five (5) omitted stone houses were mabati structures. She faulted the report for omitting to mention that the suit land had electricity and water. She urged the court to ignore the report of the Deputy Registrar.
15. In cross-examination during her commentary on the report by the Deputy Registrar, she stated that she did not attend the visit because their advocate did not inform her about the visit. She contended that the entire suit land was occupied but she did not have the names of the occupants. She stated that part of the suit land has maize crop, adding that there were mabati structures on the land.
16. In re-examination during her commentary on the report by the Deputy Registrar, she stated that sand dealers operated in the open, adding that the church structures on the suit land were made of mabati. She stated that there were about four (4) permanent structures on the suit land, adding that the rest were mabati structures. She stated that the car wash on the suit land belonged to "Simon" whose other name she did not know.

### **1st Defendant's Evidence**

17. The 1st defendant led evidence by one of its directors, Margaret Wambui Ngugi, who testified as DW2. She adopted the contents of her two affidavits sworn on 30/1/2020 and 11/2/2022 respectively. She produced three exhibits, among them, 36 photographs. Her evidence was that they bought the suit land in 1993 from Samuel Eric Oreta, adding that at the time of purchase, the suit land was unregistered and was comprised in a letter of allotment dated 25/4/1991. The land was subsequently surveyed and assigned land reference number 4953/1854 under the Registration of Titles Act (now repealed). She added that there was conversion and the suit land was surveyed under the Registered *Land Act* [repealed] as parcel number Thika Municipality Block 31/251.
18. DW2 testified that they took possession of the suit land in 1993. They subsequently applied for and obtained approvals to subdivide the suit land into plots. As they awaited processing of title, they subdivided the suit land and began selling the plots to members of the public. She contended that the 1st defendant had sold plots to 49 members of the public who were identified in her affidavit dated 30/1/2020. She stated that most of the purchasers took possession of their plots while awaiting the 1st defendant to process the sub titles to the suit land and the titles to the plots.



19. DW2 added that in 2016, the Department of Lands processed the title in the name of Samuel Eric Oreta who in turn effected a formal transfer of the land to the 1st defendant. Upon obtaining a registered title in their name, the 1st defendant formalized the subdivision, leading to the closure of the land register relating to Thika Municipality Block 31/251 and the opening of new land registers relating to the subdivisions.
20. DW2 stated that the plaintiffs had lied to the court that they had been on the suit land for 12 years and procured ex-parte interim interlocutory orders on the strength of the falsehoods. DW2 added that on the strength of the ex-parte interim interlocutory orders, some of the plaintiffs started to invade the suit land in 2019, forcefully dispossessing the legitimate purchasers of the plots. She added that some of the purchasers had subsequently sued the 1st defendant.
21. DW 2 testified that the site visit report of the Deputy Registrar correctly reflected the factual position on the ground and adopted it as part of her evidence. She urged the court to dismiss the plaintiffs' claim.

### **2nd & 3rd Defendants' Evidence**

22. The 2nd and 3rd defendants led evidence by Joseph Kamuyu, a Land Registrar based at Thika Land Registry at the time. He testified as DW1. His evidence was summarized in paragraph 5 of this judgment.

### **Plaintiffs' Submissions**

23. The plaintiffs filed written submissions dated 17/12/2024 through M/s Ishmael & Company Advocates. Counsel submitted that the 1st defendant decided not to file a replying affidavit or a defence to the originating summons, hence the originating summons was not challenged materially. Counsel argued that the originating summons was undefended.
24. Counsel thereafter summarized the parties' respective cases and evidence and made comments on the site visit report tendered by the Deputy Registrar of the court. Counsel urged the court to expunge the report from its record, describing it as incoherent and choreographed to favour one party.
25. Counsel for the plaintiffs identified the following as the three issues that fell for determination in the suit: (i) Whether the plaintiffs had satisfied the elements of adverse possession in relation to the suit land; (ii) Whether the 1st defendant responded to the claim; and (iii) What orders should issue.
26. Citing various decisions, counsel argued that the suit land became subject to the doctrine of adverse possession in 1991 when a letter of allotment was issued to Samuel Eric Oreta. Counsel contended that once the allotment letter was issued, the land was deemed to have been alienated and ceased to be Government/Public land.
27. Counsel argued that the plaintiffs had notoriously occupied the suit land to the exclusion of all others in various forms, adding that their occupation had been on the entire parcel, including the unbuilt spaces which they utilized for farming and for other businesses. Counsel argued that it was for this reason that the 1st defendant had never granted vacant possession to any of the alleged buyers of plots. Counsel urged the court to allow the plaintiffs' claim.

### **1st Defendant's Submissions**

28. The 1st defendant filed written submissions dated 9/12/2024 through M/s E.K Mutua & Co Advocates. Counsel observed that in the affidavit sworn on 11/2/2022, Margaret Wambui Ngugi [DW 1] adopted her earlier affidavit dated 30/1/2020 as part of the 1st defendant's response. After making the above observation, counsel itemized the following as the two issues that fell for determination in



- the suit: (i) Whether the plaintiff proved the elements of adverse possession in relation to the suit land; and (ii) What orders should issue.
29. On whether the plaintiffs proved the elements of adverse possession in relation to the suit land, counsel submitted that the suit land was allocated to one Samuel Oreta in 1991 but the land was not registered until 7/6/2016. Counsel argued that prior to 7/6/2016, the suit land was Government land, hence the law of adverse possession did not apply to it.
  30. Submitting that the plaintiffs had failed to demonstrate physical entry into, possession and occupation of the suit land, counsel argued that in a claim for adverse possession, time does not run unless there is a person in adverse possession of the land. Counsel submitted that time does not run merely because the land is vacant and unoccupied. Counsel submitted that none of the plaintiffs was able to point out their homes on the suit land, observing that PW1 who accompanied the Deputy Registrar did not deem it fit to point out his alleged structure on the suit land and did not know the name of any single person who allegedly constructed a permanent structure on the suit land. Counsel submitted that both PW1 and PW2 could not assign any of the structures depicted in the exhibited photographs to any of the plaintiffs. Counsel argued that the site visit report was categorical that the suit land was not developed.
  31. Contending that the plaintiffs failed to demonstrate visible, open and notorious possession of the suit land, counsel submitted that it was not possible for the 1st defendant or any other person to know or identify the persons responsible for the maize and for the temporary structures. Counsel argued that none of the plaintiffs tendered photographic evidence showing their structures or houses on the suit land. Counsel argued that in order for a party to claim adverse possession, they must demonstrate their occupation of land was open and notorious.
  32. Lastly, counsel argued that the plaintiffs entered the suit land by force and started undertaking economic activities and building churches on the land. Counsel argued that such forceful occupation cannot give rise to a right to claim adverse possession. In conclusion, counsel argued that the plaintiffs attempted to “fraudulently acquire” the suit land by forcefully dispossessing the 1st defendant of the land after filing this suit claiming adverse possession. Counsel urged the court to dismiss the claim.

### **Analysis and Determination**

33. The court has considered the originating summons, the affidavits tendered in response to the originating summons, the evidence tendered during trial, and the parties’ respective submissions. Although the Learned State Counsel informed the court on 18/12/2024 that the 2nd and 3rd defendants had filed written submissions, no such submissions were found in the CTS.
34. Based on the questions in the originating summons, the affidavits filed in support and in opposition to the originating summons, and the parties’ respective submissions, the following are the key issues that fall for determination in this judgment: (i) Whether the originating summons should be treated and disposed as an undefended cause as against the 1st defendant; (ii) Whether the doctrine of adverse possession applied to the suit land prior to registration of the suit land in 2016; and (iii) Whether the plaintiffs have satisfied the threshold for crystallization of title under the doctrine of adverse possession. I will dispose the three issues sequentially in the above order. Before I do that, I will outline, in summary, the tenor and import of adverse possession and the statutory underpinnings of the doctrine in the context of land.
35. The common law doctrine of adverse possession of land connotes possession which is inconsistent with and in denial of the title of the true owner of the land. In Kenya, the doctrine has been legislated and is underpinned by Sections 7, 17 and 37 of the *Limitation of Actions Act*. Under the doctrine, the title of the true owner of land is extinguished when an adverse possessor remains in peaceful, open



and uninterrupted possession of the land for a period of 12 years. The Court of Appeal interrogated the constitutionality of the doctrine in the context of the current Constitution in *Mtana Lewa V Kahindi Ngala Mwangandi* [2015] eKLR and did not find it to offend the constitutional framework on protection of the right to property. I now turn to the first issue.

36. Should this originating summons be treated and disposed as an undefended cause as against the 1st defendant? Through their written submissions, the plaintiffs urged the court to treat and dispose the originating summons as an undefended cause. Their position is that the 1st defendant did not file a replying affidavit in response to the originating summons. The case of the 1st defendant is that, they filed two affidavits sworn by Margaret Wambui Ngugi. The first affidavit was dated 30/1/2020 and was filed as a response to an interlocutory application but was subsequently adopted as part of the 1st defendant's response. They add that the second affidavit was dated 11/2/2022 and was filed as a supplementary affidavit in addition to the adopted affidavit.
37. Ideally, the question as to whether the 1st defendant had tendered a response to the originating summons is an issue that should have been raised during pre-trial and an appropriate order procured. The plaintiffs did not raise the issue prior to commencement of trial. They did not challenge the supplementary affidavit dated 11/2/2022 through which the 1st defendant adopted the affidavit dated 30/1/2020 as part of their response to the originating summons.
38. Similarly, there was no objection during trial when DW1 adopted the two affidavits as part of the 1st defendant's response to the originating summons and as part of DW1's evidence-in-chief. DW1 stated thus;
- “The 1st defendant filed a replying affidavit dated 11/2/2022 in response to this originating summons. At paragraph 3 of the affidavit, I made reference to my earlier affidavit sworn on 30/1/2020. I wish to adopt the contents of the two affidavits as part of my sworn evidence in chief.”
39. There being no objection, the court adopted the two affidavits in the following verbatim terms:
- “Court: The contents of the two affidavits are adopted as part of the witness' sworn evidence in chief.
- Signed”
40. It is clear from the foregoing that there are two affidavits that are on record, constituting both the response and the evidence of the 1st defendant. Secondly, the originating summons was taken out under Order 37 of the Civil Procedure Rules. The response required under the above framework is in form of affidavit(s). Put differently, an originating summons under Order 37 of the Civil Procedure Rules attracts a response in form of a replying affidavit; it does not attract a statement of defence like does a suit instituted by way of plaint.
41. For the above reasons, the court finds that this originating summons was properly opposed by the 1st defendant through the two affidavits dated 30/1/2020 and 11/2/2022. Put differently, the court finds that this originating summons is a defended cause as against the 1st defendant.
42. Should the period prior to registration of the suit land count when reckoning the statutory period of 12 years for the purposes of adverse possession? Put differently, did the doctrine of adverse possession apply to the suit land prior to the registration of the land in 2016. The plaintiffs exhibited a certified copy of the relevant land register showing that the suit land was registered on 7/9/2016. On their part, the 1st, 2nd and 3rd defendants presented exhibits showing that the suit land was allocated to Samuel



Eric Oreta as an unsurveyed residential plot in 1991 through a letter of allotment dated 25/4/1991. They exhibited a sale agreement showing that the land was subsequently sold to Margaret Wambui Ngugi on 11/9/1993. They also exhibited a lease relating to the suit land, expressed as registered on 7th September, 2016 in the name of Samuel Eric Oreta. A certificate of lease was issued to the said Samuel Eric Oreta on the same day. The exhibit further shows that Samuel Eric Oreta transferred the suit land to the 1st defendant on 10/10/2016 and a title was issued to the 1st defendant on the same day. Subsequently, on 15/4/2019, a surrender of lease culminating in subdivision was registered. Suffice it to state that, from the evidence placed before court, the suit land was alienated as an unsurveyed plot through a letter of allotment dated 25/4/1991 and was registered on 7/9/2016.

43. The 1st defendant contends that prior to 7/9/2016, the suit land was Government /Public land and that the doctrine of adverse possession did not apply to it. They contend that the 12 year limitation period for crystallization of title under the doctrine of adverse possession can only be reckoned from 7/9/2016 when land was registered as private land. The position of the plaintiffs is that the suit land became private property when the allotment letter was issued in 1991, hence the suit land was subject to the doctrine of adverse possession from April 1991 when the letter of allotment was issued.
44. The court has considered the rival arguments. A similar question was the subject of discussion and determination by the Court of Appeal in *Benson Mukuwa Wachira v the Assumption Sisters of Nairobi Registered Trustees Nairobi Civil Appeal No. 121 of 2006*. The Court of Appeal accepted and adopted the following interpretation of Ojwang J (as he then was) in the judgment that gave rise to the said appeal:

“I have considered whether the word registered, as used in S 38 of the *Limitation of Actions Act* (Cap 22) is to be taken literally. Registration of title to land, as I have already noted herein, is the culmination of governmental processes which ascribe ownership of a parcel of land to particular individual.

And those processes may entail allotment, surveying and the registration. The term “registration” is not recurrent in the common law literature, but it is in use in Kenya statute law, in a country in which I would take judicial notice there also exist unofficial, customary tenures. If the term “registration” were not used in Kenyan law relating to adverse possession, then it is conceivable, I believe, that one could claim adverse possession in relation to obsolescent traditional tenures, and this would entail complications of public policy and of law enforcement. This perception leads me to conclude that the term “owner of land” as it would appropriately apply in Kenyan law, would refer to a person who either already bears a final paper title, or a process document secured by law and leading to the issuance of the final paper title. I would adopt this wider interpretation of the statute law, as I believe it will accommodate certain adverse possession situation of merit.”

45. Court of Appeal held in the appeal thus:

“The effect of the allocation and allotment by the Government was to divest the latter of its legal interest in the suit land and to constitute the appellant the new owner thereof. Following survey and allocation of the title number, a grant for the suit land was registered on 26th May 1995 by which time the respondent had been on the suit land for a period exceeding 14 years (from 1981). Clearly, when the respondent moved into possession of the suit land in 1980, the land belonged to the Kenya Government and the issue of adverse possession could not arise. But after the Government allocated the land to the appellant in



1981, and thus divested itself of interest in it, the appellant became the new owner and hence the doctrine of adverse possession became applicable.”

46. It follows from the above pronouncement and holding by the Court of Appeal that the doctrine of adverse possession became applicable to the suit land from the time the land was alienated through the letter of allotment dated 25/4/1991. That is the finding of the court on the second issue.
47. Have the plaintiffs satisfied the threshold for crystallization of title under the doctrine of adverse possession? To establish adverse possession, the claimant must prove on a balance of probabilities, that he has had both the factual possession of the land and the requisite intention to possess the land [animus possidendi]. Secondly, he must prove, that he has used the land without force, without secrecy and without persuasion ( nec vic, nec clam, nec precario] for the prescribed statutory period of twelve (12) years preceding the initiation of the suit seeking vesting orders. Thirdly, he must demonstrate that the registered/true owner of the land had knowledge [or the actual or constructive means of knowing] that the adverse possessor was in possession of the land. Fourthly, the possession must be continuous; it should not be broken or interrupted.
48. In *Mweu v Kiu Ranching & farming Co-operative Society Ltd* [ 1985] KLR 430 the Court of Appeal observed that:

“ Adverse possession is a fact to be observed upon the land. It is not to be seen in the title...”
49. The 63 plaintiffs led evidence by two of them. Their respective testimonies have been summarized in the preceding paragraphs of this Judgment. They contradicted each other in terms of the acreage of the suit land. They also contradicted the documentary evidence which they produced and relied on. PW1 testified that the suit land is 10 acres. PW2 testified that the suit land is 13 acres. The land register which PW1 produced and which the plaintiffs relied on indicated that the suit land is 5 acres. These material contradictory and inconsistencies on an important aspect such as the acreage of the land which the 63 plaintiffs allege to occupy as adverse possessors cast doubt on the credibility of the evidence of the two witnesses. They leave doubt as to the identity of the land they allegedly occupy as adverse possessors.
50. PW1 produced a total of 12 photographs as photographic evidence of their factual possession of the suit land on the ground. He testified that the permanent structures in the exhibited photographs were on a different parcel of land that is not the subject of this suit, adding that the suit land had only temporary structures. Asked to identify his own temporary dwelling structure in the exhibited photographs, he said it was not in any of the exhibited photographs. He was not able to identify and assign a single structure to any of the 63 plaintiffs. Asked to identify exhibit 3 (a) (iv) which the plaintiffs relied on as evidence of adverse position for a period of 12 years and above, PW1 said that it was a partly roofed church structure made of mabati which Nancy Wambui [PW2] started erecting on the suit land in 2019 - the same year that this suit was filed. PW1’s evidence during cross examination was that much of the suit land was neither settled nor occupied.
51. DW2, Nancy Wambui Wanyoike testified twice. She first gave evidence before the site visit. She was recalled to comment on the Deputy Registrar’s report prepared after the site visit. When asked to identify her dwelling structure on the suit land, she pointed at the partly-roofed mabati structure which PW1 had stated was a church which Nancy Wambui started erecting in 2019. When reminded that the structure she had identified as her dwelling house was an incomplete mabati church structure, she identified a blue stationary lorry in the photograph as her temporary dwelling structure that constituted adverse possession. Like PW1, she testified that the permanent structures in the exhibited photographs were on a different parcel of land.



52. When presented for the second time as the witness to comment on the site visit report, she stated that she was not part of the plaintiff's team that attended the site visit. Her second testimony during evidence-in-chief was a contradiction of her earlier testimony in many ways. In her second testimony, she faulted the Deputy Registrar, contending that the Deputy Registrar failed to identify and include in her report the four (4) permanent structures that the plaintiffs have on the suit land. She contradicted her own earlier testimony and the testimony of PW1.
53. Besides the above inconsistencies, omission and contradictions, the court has looked at the exhibited photographs. It is clear from the exhibited photographs and from the oral evidence of PW1 and PW2 that the plaintiff failed to demonstrate the crucial element of factual possession of the suit land on the ground for an uninterrupted period of 12 years. The permanent structures in the exhibited photographs were misleading and could easily be taken as bonafide evidence of adverse possession were it not for the evidence that was extracted from the two witnesses during cross examination. It was during cross examination that it emerged from PW1 and PW2 that the permanent structures in the exhibited photographs were on a different parcel of land, yet the plaintiffs wanted the court to rely on the permanent structures as evidence of adverse possession. The evidence presented by the two witnesses did not bring out any clear manifestation of factual adverse possession by the 63 plaintiffs for a period of 12 years. The evidence cannot justify the dispossession of the 1st defendant of their land on the basis of adverse possession.
54. The court has also considered the site report by the Deputy Registrar. The Honourable Deputy Registrar who visited the suit land and prepared a report noted as follows:
- “The Director of the 1st defendant and counsel for the plaintiff were present and they confirmed that we were at the suit property
- This is what came out from the scene visit:
1. The suit land is not developed. There are a few temporary structures on the suit land- mainly operating as churches, some containers and on the peripheries, there was sand dealing activity with lorries parked. There was also a car wash and other businesses sandwiched in between the place where sand was being sold along Garissa road.
  2. Most of the land has maize growing on it.
  3. The points where Mr. John Kamau pointed out as being where the beacon ought to be are a few metres from the earth road leading to Gachagi on one side a few meters into the maize plants on the other side, one side is right within the growing maize and other bushes. One side is along Garissa road. (as shown in the hand drawn map of the site.
  4. There are no occupied homes in the suit property.
- Attached to this report are photographs taken at the site and a map”
55. PW2 who was recalled to comment on the report was not part of the plaintiffs' witnesses during the site visit [locus in quo] PW1 was part of the plaintiffs' team but the plaintiff elected not to recall him. The inconsistencies of PW2 cast her as a witness whose testimony was not credible.
56. The court has also considered the physical sketch prepared by the Deputy Registrar. An examination of the sketch reveals that the suit land was at the time of the site visit vacant. The five (5) temporary structures identified on the suit land were (i) “C” – Mabati church structure [Mountain of Blessings



& Healing Evangelism Ministry; (ii) “F” - first container; (iii) “F” -second container; (iv) “G” - Mabati Church structure – Oasis of Love Ministry; and (v) “H” – containers. All the five are on the edges/ boundaries of the suit land. PW1 testified that erection of one of the Mabati church structures commenced in 2019. The plaintiffs did not testify on when the other temporary mabati structure was erected. They did not lead evidence on when the containers were placed on the suit land.

57. PW1 and counsel for the plaintiff faulted the Deputy Registrar’s report alleging that it omitted various important aspects of factual possession. I have considered the allegation. The report tallies with the evidence of PW1 and the first testimony of PW2. It is clear from the confirmation by PW1 and PW2 that the permanent structures on the exhibited photographs were on a different parcel of land, meaning that the plaintiffs took pictures of permanent structures on a different parcel of land and sought to rely on them to obtain adverse possession orders relating to the suit land.
58. For the above reasons, the court finds that the plaintiffs failed to satisfy the threshold for crystallization of title under the doctrine of adverse possession. Consequently, it is the finding of this court that the plaintiffs have failed to prove their case on a balance of probabilities.
59. In light of the above findings, the claim for orders of adverse possession fails for lack of merit.
60. On costs, there are no special circumstances to warrant a departure from the general principle in Section 27 of the *Civil Procedure Act* - that costs follow the event. Consequently, the plaintiffs will bear costs of this suit.
61. In light of the above findings, the claim for orders of adverse possession is rejected and this suit is dismissed for lack of merit. The plaintiffs shall bear costs of the suit.

**DATED, SIGNED AND DELIVERED VIRTUALLY, THIS 12TH DAY OF MAY 2025**

**B M EBOSO [MR]**

**JUDGE**

In the Presence of

Mr. Tumu for the Plaintiff

Mr. Tupet – Court Assistant

