



**Chengo & 3 others v Bellman (Environment and Land Case E009 of 2024)
[2025] KEELC 6511 (KLR) (30 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6511 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND CASE E009 OF 2024
FM NJOROGE, J
SEPTEMBER 30, 2025**

BETWEEN

**GETRUDE REHEMA CHENGO 1ST APPLICANT
BAHATI CHENGO KITSAUMBI 2ND APPLICANT
MADARAK CHENGO KITSAUMBI 3RD APPLICANT
HILDA KAREMBO CHENGO 4TH APPLICANT**

AND

DAVID DURELL BELLMAN RESPONDENT

JUDGMENT

1. The Applicants filed this suit by way of an Originating Summons dated 7/5/2024 claiming to have acquired title over Plot No. 530/III/MN Title No. 14270 measuring approximately one decimal one five one hectares (1.151 Ha) in area (the suit property) by adverse possession. They specifically seek a determination of the following issues: -
 1. Whether the Applicants have acquired the said 1.151Ha of the suit property by reason of adverse possession against the Respondents herein;
 2. Whether the Applicants are entitled to be registered as the proprietors of 1.151ha of the land known as Title No, 14270, Plot No. 530/III/MN and should an order vesting good title in the Applicants be issued by this honourable court in favour of the Applicants;
 3. Whether the respondent should execute a transfer and all acts necessary to convey the said title to the Applicants as the rightful proprietors and enable it to be registered as such and in default the Deputy Registrar be authorized to sign the relevant documents on behalf of the Respondents;



4. Whether the Applicants are entitled to costs of the suit.
2. The Applicants are represented by the firm of Messrs. Stephen Jumbale & Company Advocates.
3. The Applicants' claim is anchored on the 1st Applicant's supporting affidavit of 12 paragraphs sworn on even date and the annexed documents marked as "GRC 1" to "GRC 4" (P. Exh 1 to 4) which include; a copy of the title deed (GRC 1), copies of the Applicants' identity cards (GRC 2), photographs showing activities carried out by the Applicants and their houses on the suit parcels of land (GRC 3) and a copy of certificate of official search regarding the suit property (GRC 4).
4. Precisely, the Applicants' case is that their family has been in occupation and possession of the suit property for a period exceeding 12 years. Being siblings, they state that they were born and raised on the suit property and that their father, Chengo Kitsaumbi, who died sometime in February 2020 was buried on the suit property. The Applicants aver that their occupation has been open, continuous and uninterrupted, without any permission and to the exclusion of the Respondent, who is said to be the registered owner.
5. The Respondent was served by way of a press advertisement. Notably, he neither entered appearance nor filed a response. The hearing proceeded ex-parte.
6. The Applicants' case was anchored on the testimony of Getrude Rehema Chengo, the 1st Applicant herein. She adopted the contents of her supporting affidavit as her evidence-in-chief, and produced the documents therein as PExhibit 1-4. She told the Court that she was aged 48 years and that her family has lived on the suit property for long. She urged the Court to grant the Applicants the suit property.

Analysis And Determination

7. The doctrine of adverse possession in Kenya is embodied in Section 7 of the [Limitation of Actions Act](#), (Cap 22) which is set out in these terms:

“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.”
8. 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;
9. 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.
10. 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.”
11. The Applicants claim that they acquired title to the suit property by operation of the doctrine of adverse possession. It was therefore upon them to adduce evidence that convinces the court that on a balance of probabilities, it proves the claim. This is envisaged under Section 107, 108 and 109 of the *Evidence Act* which read: -
- Section 107(1):
- “Whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.”
- Section 108:
- “The burden of proof in a suit or proceedings lies on that person who would fail if no evidence at all were given on either side.”
- And section 109:
- “The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided for by law that the proof of that fact shall lie on any particular person.”
12. In the present case, the Applicants’ burden was to adduce some credible evidence to prove on a balance of probabilities, that they acquired the prescriptive rights; that their possession of the suit property was as of right and in a manner inconsistent with the rights of the registered owner that is to say- 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.
13. Having carefully considered the evidence on record, I find that the 1st Applicant, Getrude Rehema Chengo, testified under oath that she is 48 years old and has lived on the suit land all her life alongside her siblings, who are the other Applicants. She further stated that their late father, Chengo Kitsaumbi, who passed away in February 2020, was also buried on the suit land. These allegations were supported by the annexed photographs (PEXh.3). This evidence was not challenged or controverted as the Respondent failed to enter appearance or file any defence.
14. The Applicants also tendered a copy of the title (PEXh.1), which shows that the Respondent is the registered owner of the property. The copy of the official search (PEXh.4) confirms the same. However, the Applicants’ evidence demonstrates that despite the Respondent’s registration, the latter has not exercised any proprietary rights over the suit property for over 12 years.



15. In *Wambugu v Njuguna* [1983] KLR 173, the Court of Appeal held that a person seeking title by adverse possession must prove exclusive possession, open and uninterrupted, for the statutory period of 12 years. The Applicants meet these criteria.
16. Based on the uncontroverted evidence adduced and the applicable legal principles, I am satisfied that the Applicants have acquired the suit property by adverse possession and are entitled to the orders sought in the Originating Summons.
17. I hereby make the following final Orders:
 - a. It is hereby declared that the Applicants have acquired by adverse possession title to a portion measuring approximately 1.151 hectares of the land known as Plot No. 530/III/MN Title No. 14270;
 - b. An order is hereby issued vesting title of the said portion of land in the names of the Applicants in equal shares;
 - c. The Respondent is directed to execute all documents necessary to effect the transfer and registration of the said portion of land to the Applicants, failing which, the Deputy Registrar of this Honourable Court shall execute the same on his behalf;
 - d. The Land Registrar, Kilifi County, is hereby directed to effect the transfer and issue a title in favour of the Applicants;
 - e. There shall be no orders as to costs.

DATED, SIGNED AND DELIVERED AT MALINDI ON THIS 30TH DAY OF SEPTEMBER, 2025.

MWANGI NJOROGE

JUDGE, ELC, MALINDI.

