



REPUBLIC OF KENYA



KENYA LAW
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**Kali v Maina (Environmental and Land Originating Summons E011 of 2024)
[2025] KEELC 6248 (KLR) (16 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6248 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E011 OF 2024
EM WASHE, J
SEPTEMBER 16, 2025**

BETWEEN

ESILIM KALI APPLICANT

AND

JOSEPH WAWERU MAINA RESPONDENT

JUDGMENT

1. The Plaintiff approached the Court through an Originating Summons dated 03.10.2024 (hereinafter referred to as “the present OS”) seeking the determination of the following issues in his favour against the Respondent herein; -
 - a. Whether or not the Plaintiff has been in continuous and uninterrupted occupation, possession and use of the entire L.R. No. Eldoret Municipality/block 9/17 Boarder Farm, Parcel No. 158 for more than 12 years.
 - b. Whether or not the said possession, use and continuous occupation of L.R. No. Eldoret Municipality/block 9/17 Boarder Farm, Parcel No. 158 has been peaceful, open and adverse to the Defendant and uninterrupted for more than 12 years.
 - c. Whether the rights of the Defendant to L.R. No. Eldoret Municipality/block 9/17 Boarder Farm, Parcel No. 158 have been extinguished by effluxion of time.
 - d. Whether the Plaintiff should be declared as the lawful owner of L.R. No. Eldoret Municipality/block 9/17 Boarder Farm, Parcel No. 158 and consequently the land title be issued in his name.
 - e. That the Honourable Deputy Registrar of the court to sign land transfer forms, consents or any transmission documents so as to convey L.R. No. Eldoret Municipality/block 9/17 Boarder Farm, Parcel No. 158 to the Plaintiff/Applicant.



- f. Who should pay costs of this suit.
2. The Applicant relied upon the following grounds in the determination of the above issues; -
- i. The Applicant informed the Court that he entered the property known as Eldoret Municipality Block 9/17 (border Farm)/158 (hereinafter referred to as “the suit property”) in the year 1965 together with his family.
 - ii. The Applicant contends that at the time of entry into the suit land, the same was owned by one Patel who asked him to watch over the suit land and was at liberty to build a home pending the re-entry of the alleged owner.
 - iii. However, in the year 1998, the Respondent herein visited the suit property and informed the Applicant that he was the duly registered owner of the suit property.
 - iv. The Respondent nevertheless has failed to assert his ownership by taking possession and/or occupation up to date.
 - v. Consequently, the Applicant continued to occupy and use the suit property since 1998 to date with the knowledge of the Respondent and without interruption thereof.
 - vi. Based on the Green Card of the suit property, the registered proprietor is the Respondent.
 - vii. The Applicant demonstrated his occupation and use of the suit property for the last 12 years by presenting documentary evidence of the homes built, the boundaries erected and the agricultural activities therein.
 - viii. The Applicant further pleaded that during the last 55 years he had been in occupation of the suit property, he family has grown and the children do not know any other hand save for the suit property herein.
 - ix. It is therefore the Applicant’s contention that he has acquired rights over the suit land by virtue of adverse possession having been in continuous, uninterrupted and exclusive occupation and possession for a period of more than 12 years.
 - x. The Applicant was apprehensive that unless the Orders sought are granted, there is likely to be a breach of peace and dispossession of the suit land as the Defendant and other parties might encroach, demarcate or sell the suit land.
3. Despite the Respondent being served with the Summons and the pleadings herein by way of advertisement in the Daily Nation newspaper on 19.12.2024 and an Affidavit of Service filed to that effect, there was no Response filed before the Court.

Applicant’s Testimony & Documentary Evidence

4. The Applicant’s case began on the 06.05.2025 with the testimony of the Applicant who was marked as PW 1.
5. The Applicant introduced himself as resident of Kapsoya within Uasin Gishu County.
6. Thereafter, the Applicant adopted his witness statement dated 03.10.2024 as his evidence in chief.
7. In support of his evidence in chief, the Applicant produced the following documents; -
Applicant’s Exhibit 1- Copy of the Applicant’s Kenyan Identification Card.
Applicant’s Exhibit 2- Copy of the Official Search to the suit property dated 26.09.2024.



Applicant's Exhibit 3- A Copy of the Register (Green Card) of suit property.

Applicant's Exhibit 4- A Bundle of photographs showing the occupation by the Applicant on the suit property.

Applicant's Exhibit 5- A copy of a Letter from the Area Chief of Kapsoya Location dated 02.10.2024 to whom it may concern and referring to the Applicant.

Applicant's Exhibit 6- A copy of a letter from the area Village Elder dated 04.09.2024 in reference to the Applicant.

8. In concluding his evidence in chief, the Applicant sought this Court to determine the issues herein in his favour.
9. The Applicant was then discharged from the witness box and the Applicant thereafter closed his case.
10. The Respondent having failed to enter appearance and/or file any Response thereof, the matter was deemed as undefended and the Respondent's case was closed.
11. The Applicant thereafter duly filed his submissions dated 03.06.2025.
12. The Court has carefully perused the present OS, the testimony of the Applicant and the submissions herein and the issues for determination are as follows; -
Issue No. I – Whether The Applicant Has Proved His Claim Of Adverse Possession To The Required Standard.
Issue No. Ii - Whether The Applicant Is Entitled To The Reliefs Sought In The Originating Summons.
Issue No. Iii - Who Shall Bear The Costs Of The Suit.
13. The Court having identified the above-mentioned issues for determination, then the same are discussed herein below.

Issue No. I - Whether The Applicant Has Proved His Claim Of Adverse Possession To The Required Standard

14. The Statutory provisions that deal with claims of adverse possession are provided for under Sections 7, 13, 17 and 38 (1) and (2) of the *Limitation of Actions Act* as read with Section 28 (h) of the *Land Registration Act* provides the legal framework for a claim of adverse possession.
15. A party claiming Adverse Possession must prove that his possession of the subject land is peaceful, open and continuous for a statutory period of 12 years and the said possession is adverse with an intention to dispossess the true owner thereof.
16. In the case of *Mtana Lewa-versus- Kahindi Ngala Mwangandi* (2015) eKLR, the Court described the ingredients of adverse possession in the following manner; -

“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 or stealth or 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. This doctrine in Kenya is embodied in Section 7 of the *Limitation of Actions Act...*”

17. For a claim of Adverse possession to be successful, the Applicant must demonstrate that the land in question is registered in the name of a person other than him, that he took possession of the suit land, asserted his rights over it in an adverse manner and the further that the title holder did not take any precipitate action against him for a period of 12 years.
18. The Applicant must also demonstrate that his possession and occupation of the suit land was not with the licence of the land owner and that the said possession was open, continuous and uninterrupted period of over 12 years.
19. In the case of Richard Wefwafwa Songoi-versus- Ben Munyifwa Songoi (2020) eKLR, the Court of Appeal made a finding that the burden of prove in a claim of adverse possession is on the Applicant to demonstrate the date he took possession, the nature of his possession, the duration of possession and whether the said possession was open and uninterrupted for the 12 years’ statutory period.
20. In the present OS, the ownership of the suit land is not in dispute.
21. The Applicant produced two documents marked as Applicant’s Exhibits 2 & 3 being the copies of Certificate of Official Search and Register (Green Card) of the suit parcel which confirm the same is registered in the name of the Respondent.
22. The question that follows is whether the Applicant has been in actual, open, continuous and uninterrupted possession, occupation and use of the suit land for a period of 12 years and whether the said possession and occupation was adverse to the rights of the Respondent over the said parcel of land hence the Applicant acquiring overriding rights and interests capable of registration as a result.
23. The Applicant contends that he entered into or took possession the suit parcel sometimes in the year 1965 together with his wife and has been in possession since then for a period of over 55 years.
24. He averred that sometimes in the year 1998, the Respondent went into the suit land and informed them that he was the registered and bonafide owner of the suit land and that he would be back to take full possession and occupation thereof.
25. That despite stating that he would take over the possession and occupation of the suit land, the Respondent has never gone back to suit land to date.
26. The Applicant further also produced copies of letters from the Area Chief and the Village elder as Applicant’s Exhibit 5 & 6 respectively to support his assertion that he has been residing on the suit land and the area residents know him.
27. The Applicant further testified that he has been occupying and using the entire suit land together with his family and had put up permanent structures on the land, put up a fence and has been ploughing exclusively and continuously without interruption from the Respondent.
28. The Applicant produced a bundle of photographs as Applicant’s Exhibit 4 to prove his occupation and use of the suit land.
29. From the foregoing, it is clear that the Applicant has been in actual, open, continuous and uninterrupted possession of the suit land since the year 1965, which period is over the 12 years statutory period required by law.



30. Having established that the Applicant has indeed been in actual possession, occupation and use of the suit land, the question that begs to be answered is whether that possession, occupation and use was adverse with the intention to dispossess the Respondent of the suit land.
31. In the case of Wilson Kazungu Katana & 101 Others-versus- Salim Abdalla Bakshwein & Another (2015) eKLR, the Court of Appeal described what amounts to dispossession in a claim for adverse possession to be acts done by the adverse possessor which are inconsistent with the true owner's enjoyment of the soil for the purpose for which he intended to use the same.
32. Based on the bundle of photographs produced as Applicant's Exhibit 4, it is evident that the Applicant's occupation and use of the suit property amounted to a dispossession of the suit property from the Respondent herein.
33. In the case of Peter Kamau Njau-versus- Emmanuel Charo Tinga (2016) eKLR, the Court made a finding that time for adverse possession will only be interrupted either by the title holder's re-entry/repossession of the land or where there is an order of eviction or suit filed.
34. There was no demonstration of the Respondent ever exercising his right of repossession and/or re-entry into the suit land, or obtained an eviction order or filed any suit filed against the Applicant with an intention and/or view of disrupting the Applicant's possession and occupation.
35. In view of the foregoing, I find that the Applicant has proved his claim on adverse possession to the required standard.

Issue No. ii - Whether the applicant is entitled to the reliefs sought in the Originating Summons.

36. The second issue is whether the Court upon consideration of the ingredients amounting to adverse possession can grant the reliefs sought or not.
37. Based on the finding that the Applicant has proved the ingredients of Adverse possession as discussed in Issue No. 1, then this Court is of the view that the present OS is merited and should be allowed.

Issue No. iii - Who shall bear the costs of the Suit.

38. Costs generally follow the event unless the court directs otherwise.
39. However, in view of the fact that this matter was undefended, the Court is of the considered view that there will be no orders of costs against the Respondent.

Conclusion

40. In conclusion, the Court hereby makes the following Orders in determination of the present OS:-
 - A. A Declaration Be And Is Hereby Made That The Applicant Is The Beneficial Owner Of The Suit Property Known As Lr.no.eldoret Municipality Block 9/17 (border Farm)/158 By Way Of Adverse Possession
 - B. A Declaration Be And Is Hereby Made That The Respondents Ownership Over The Suit Property Known As Lr.no.eldoret Municipality Block 9/17 (border Farm)/158 Is Forthwith Extinguished By Operation Of Law.
 - C. The Applicant Is Granted Possession, Occupation And Use Of The Suit Property Known As Lr.no.eldoret Municipality Block 9/17 (border Farm)/158 To The Exclusion Of The Respondent Henceforth.



- D. That An Order Be And Is Hereby Issued To The Respondent To Execute All The Required Documents To Faciliate The Transfer Of The Suit Property Known As Lr.no. Eldoret Municipality Block 9/17 (border Form)/ 158 In Favour Of The Applicant Within 60 Days From The Date Of This Judgement.
- E. In Default Of D Above, The Deputy Registrar, The Environment & Land Court Is Directed To Execute The Relevant Documents For Purposes Of Transefr Of The Suit Property.
- F. There Will Be No Orders As To Costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT ELDORET ON 16TH DAY OF SEPTEMBER, 2025.

EMMANUEL.M. WASHE

JUDGE

In the presence of:

Court Assistant: Mr. Brian

Plaintiff: Mr. Kirwa for the Appellant

Respondent: N/A for Respondent

