



Mungania (Suing as an Administrator of the Estate of the Late M'Mungania M'Mbwii - Deceased) v Muriira (Sued as an Administratrix of the Estate Of The Late Lawrence Muriira M'Thiruaine - Deceased) & 2 others (Enviromental and Land Originating Summons E005 of 2021) [2025] KEELC 6607 (KLR) (18 September 2025) (Judgment)

Neutral citation: [2025] KEELC 6607 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E005 OF 2021**

**JO MBOYA, J
SEPTEMBER 18, 2025**

BETWEEN

NAOMI KATHIIRA MUNGANIA (SUING AS AN ADMINISTRATOR OF THE ESTATE OF THE LATE M'MUNGANIA M'MBWII - DECEASE) PLAINTIFF

AND

SCOLA KARUTHU MURIIRA (SUED AS AN ADMINISTRATRIX OF THE ESTATE OF THE LATE LAWRENCE MURIIRA M'THIRUAINÉ - DECEASED) 1ST DEFENDANT

NEWTON MUTUMA GITONGA 2ND DEFENDANT

I & M BANK LIMITED 3RD DEFENDANT

JUDGMENT

1. What is before me is the Originating Summons [OS] dated the 6th November 2020; and wherein the Plaintiff has sought the determination of various/diverse issues. The various issues in respect of which determination is sought by the Plaintiff are as hereunder;
 - i. Whether the Plaintiff has been in open, continuous and unsanctioned possession of L. R. No. Ntima/Ntakira/2591 since 1992.2.
 - ii. Whether the date of grant to the defendant of letters of administration intestate of the late Lawrence Muriira Thiruaine dates back to the date of his death.
 - iii. Whether the plaintiff has become entitled to the said L. R. No. Ntima/Ntakira/2591 by adverse possession.



- iv. Whether the 1st defendant and the estate of the late Lawrence Muriira Thiruaine (deceased) generally became trustees to the land after 12 years ending on 12/10/2006 with the defendant as the beneficiary of the Trust.
 - v. Whether the subsequent change of ownership to the 2nd Defendant is subject to the Plaintiff's rights of adverse possession under the *Limitation of Actions Act*, Chapter 22, Laws of Kenya.
 - vi. Whether the Plaintiff should be registered as the owner of L.R. No. Ntima/Ntakira/2591.
 - vii. Whether the Register in respect of L. R. No. Nima/Ntakir/2591 should be rectified by and replacing it with that of the Plaintiff.
 - viii. Whether the production of the original title deed [Certificate of Title] should be dispensed with for purposes of the rectification.
 - ix. Whether the Defendant should bear the costs of this suit.
2. The Originating summons is premised on the grounds highlighted in the body thereof. In addition, the originating summons is supported by the affidavit sworn on the 6th November 2020; further affidavit sworn 1st October 2021; and supplementary affidavit sworn on the 1st April 2025, respectively. Furthermore, the Plaintiff has also annexed various documents in support of the averments in the named affidavits.
 3. The 1st and 2nd Defendants [who were the initial Defendants] duly entered appearance on the 28th January 2021; and thereafter filed a reply to the originating summons; list and bundle of documents and a case summary. In particular, the 1st and 2nd Defendants contended that the claim by the Plaintiff was premature, misconceived and legally untenable. Moreover, the 1st and 2nd Defendants also posited that there was an order of permanent injunction that had been issued vide Meru HCC Appeal No. 100 of 2019 between the same parties; and wherein the court had prohibited/barrred the Plaintiff herein from entering upon; remaining on and/or interfering with the 1st Defendant's right[s] to and in respect of the suit property.
 4. The 3rd Defendant, sought for and obtained leave to be joined into the matter and thereafter filed a Replying affidavit sworn on the 2nd December 2024; witness statement dated the 3rd April 2025; and list and bundle of documents dated the 7th April 2025. Instructively, the 3rd Defendant posited that the suit property was lawfully charged to and in her favour by the 2nd Defendant. In this regard, it was contended that the 3rd Defendant lawfully holds a valid charge in respect of the suit property.
 5. The subject matter came up for directions on the 12th March 2025; whereupon the court ordered that the parties do file and exchange their witness statements, list and bundle of documents and list of witnesses. Furthermore, the parties agreed that the Originating summons shall proceed on the basis of viva voce [Oral] evidence.
 6. The Plaintiff's case is premised on the evidence of one witness, namely; Naomi Kathira M'Mugania. Same testified as PW1.
 7. It was of the testimony of the witness [PW1] that same is the widow and legal administratrix of M'Mugania Mbuii [now deceased]. Besides. The witness averred that same is conversant with the facts of this matter. In addition, the witness testified that same has since sworn and filed various affidavits, namely; the supporting affidavit sworn on the 6th November 2020, further affidavit sworn on the 1st October 2021 and the supplementary affidavit sworn on the 1st April 2025. Instructively, the witness sought to adopt and rely on the contents of the said affidavits as her evidence in chief.



8. Additionally, the witness testified that same has annexed various documents to the supporting affidavit and the further affidavit and which documents the witness sought to tender and produce as exhibits before the court. There being no objection, the annexures attached to the named affidavit[s] were tendered and produced as exhibits P1 to P7, respectively.
9. It was the further testimony of the witness that same has been in occupation of the suit property since the year 1992; and in this regard, the witness sought to be declared as the owner of the suit property on the basis of adverse possession/ prescription.
10. On cross examination, the witness testified that the 1st Defendant [now deceased] was a nephew of her husband [now deceased]. However, the witness averred that same is not conversant/familiar with any agreement that was entered into between her late husband and the late husband of the 1st Defendant pertaining to exchange of land.
11. Whilst still under cross examination, the witness testified that same has been in occupation of the land since 1992. To this end, the witness referenced various letters which same has produced before the court. Nevertheless, it was the testimony of the witness that her occupation of the suit property has not been peaceful. For good measure, the witness averred that her occupation has been disturbed over-time. Moreover, the witness added that she has also been assaulted by the 1st and 2nd Defendants.
12. It was the further testimony of the witness that same is aware and familiar with an order that was issued by the High Court vide Civil Appeal No. HCCA 100 of 2019 and wherein same [witness] was permanently barred from entering onto; or remaining on the land. Nevertheless, the witness averred that it is her who has been using the land. Furthermore, the witness testified that same filed an appeal against the said order.
13. The witness however, acknowledged that same has not produced any document to demonstrate that an appeal was ever filed.
14. It was the further testimony of the witness that the 2nd Defendant acquired the suit property by fraud. Moreover, the witness testified that the evidence of fraud is part of documents which same has tendered and produced before the court.
15. On re-examination, the witness averred that same has been variously assaulted during her stay and occupation of the suit property. In particular, the witness clarified that same has been assaulted by the 1st and 2nd Defendants.
16. On further re-examination, the witness averred that despite having been assaulted, same has never moved out of the suit property. On the contrary, the witness averred that it is her who is in occupation of the suit property.
17. On the other hand, the witness also testified that the suit property was also the subject of proceedings before the land dispute tribunal, namely; Meru Central District Land Disputes Tribunal; and the Provincial Land Appeals Committee. To this end, the witness referenced various proceedings from the land district tribunal and the provincial lands appeal tribunal.
18. With the foregoing testimony, the Plaintiff's case was closed.
19. The 1st and 2nd Defendants did not attend court on the scheduled hearing date. In the absence of the 1st and 2nd Defendants and their legal counsel, the case for the 1st and 2nd Defendants was closed without any evidence being tendered.



20. The 3rd Defendant's case is premised on the evidence of one witness, namely; Victoria Abuti. Same testified as DW1.
21. It was the testimony of the witness that same is an employee of the 3rd Defendant. In particular, the witness testified that same works at the Debt and Recoveries section of the 3rd Defendant. In this regard, the witness averred that same is therefore conversant with the facts of the case. Moreover, the witness referenced the replying affidavit sworn on the 2nd December 2024; and which replying affidavit the witness sought to adopt as her evidence in chief.
22. Suffice it to state that the said Replying affidavit was indeed adopted and constituted as the evidence in chief of the witness.
23. Additionally, the witness referenced the witness statement dated the 3rd April 2025; and which witness statement same sought to adopt as her further evidence in chief. Instructively, the witness statement was duly constituted as the further evidence in chief of the witness.
24. Other than the foregoing, the witness also adverted to the list and bundle of documents dated the 7th April 2025; and which same sought to tender and produce as exhibits. There being no objection to the production of the documents as exhibits before the court, same [Documents] were duly produced and admitted as exhibits D1 to D6, respectively.
25. It was the testimony of the witness that the suit property is currently charged to the 3rd Defendant. Furthermore, the witness averred that the 3rd Defendant undertook due diligence prior to and before perfecting the charge in respect thereof.
26. On cross examination by Learned counsel for the Plaintiff, the witness averred that the bank undertook due diligence before charging the property. Besides, the witness added that the suit property was also valued. In addition, the witness testified that the 3rd Defendant was alive to the fact that the suit property was under cultivation.
27. Whilst still under cross examination, the witness testified that if the 3rd Defendant knew that the 2nd Defendant was not the one using the suit property, the 3rd Defendant would not have disbursed the banking facility.
28. On re-examination, the witness reiterated that the bank undertook due diligence and also undertook valuation of the suit property. In particular, the witness averred that the bank procured and obtained a certificate of official search in respect of the suit property. To this end, the witness referenced a copy of official search tendered and produced before the court.
29. It was the further testimony of the witness that the bank was convicted that the title to the suit property was clear of any encumbrance[s] and thereafter proceeded to charge the property. In this regard, the witness invited the court to find and hold that the Plaintiff's claim is misconceived and legally untenable.
30. With the foregoing testimony, the 3rd Defendant's case was duly closed.
31. The advocates for the Plaintiff and the 3rd Defendant sought for time to file and exchange written submissions. To this end, the court proceeded to and circumscribed the timelines for the filing and exchange of the written submissions.
32. The Plaintiff filed written submissions dated the 6th July 2025 and wherein same has highlighted four [4] key issues, namely; that the Plaintiff herein has been in occupation of the suit property since the year 1992; that the occupation by the Plaintiff has been open, continuous and uninterrupted; the 1st and



- 2nd Defendants have never taken any action to remove and/or evict the Plaintiff from the suit property; and that the Plaintiff's occupation has been adverse to the rights and/or interests of the 1st and 2nd Defendants.
33. Regarding the first issue, learned counsel for the Plaintiff has submitted that the Plaintiff herein has tendered and produced before the court various documents including the proceedings and decisions of the land dispute tribunal, which clearly demonstrate that the Plaintiff has been in occupation of the suit property. In particular, learned counsel has referenced the proceedings that were taken before Meru Central Land Dispute Tribunal vide Case No. 58 of 2001. Furthermore, counsel for the Plaintiff has also referenced the proceedings and decision taken vide Eastern Province Lands Dispute Appeal Committee Case No. 38 of 2004.
 34. Flowing from the foregoing, learned counsel for the Plaintiff has submitted that it is evident that the Plaintiff is the one who has been in occupation of the property and not the 1st and 2nd Defendants. Moreover, it has been submitted that the duration of occupation of the Suit Property is in excess of 12 years.
 35. Turning to the second issue, learned counsel for the Plaintiff has submitted that the Plaintiff's occupation has been open, continuous and uninterrupted. In particular, it has been submitted that neither the 1st nor the 2nd Defendants has filed any suit for recovery of the suit property. In any event, it has been contended that it is only a suit for recovery of vacant possession that could have halted the running of time. In this regard, Learned Counsel for the Plaintiff has cited and referenced the Decision in the case of Njuguna Ndatho versus Masaai Itumo[2002]eklr.
 36. Regarding the third issue, learned counsel for the Plaintiff has submitted that the actions by the Plaintiff has been hostile to the rights of the 1st and 2nd Defendants. In this regard, it has been posited that the Plaintiff has established and proved the requisite ingredients underpinning a claim for adverse possession.
 37. Finally, learned counsel for the Plaintiff has submitted that by the time the 1st Defendant was transferring the title of the suit property to the 2nd Defendant, the 1st Defendant's right[s] to or interest over the suit property stood extinguished by effluxion of time. In this regard, it has been submitted that the 1st Defendant had no title capable of being transferred to and in favour of the 2nd Defendant. Instructively, learned counsel for the Plaintiff has referenced and relied on the doctrine of *nemo dat quod non habet*.
 38. In support of the foregoing submissions, learned counsel for the Plaintiff has cited and referenced various decisions including Njuguna Ndatho vs Masaai Itumo & 2 Others [2002]eKLR and Garrison Muindi Baruthi vs Willy Gatinku Mukobwa & Another Nyeri Court of Appeal Civil Appeal No. 98 of 1998 [UR].
 39. The 3rd Defendant filed written submissions and wherein same has raised and canvassed two [2] key issues, namely; that the suit property is lawfully charged to the 3rd Defendant; and that the Plaintiff has failed to prove the requisite ingredients underpinning adverse possession.
 40. Having reviewed the pleadings filed by the parties; the evidence tendered [both oral and documentary] and upon consideration of the written submissions filed on behalf of the parties, I come to the conclusion that the determination of the subject dispute turns on key three [3] issues, namely; whether a claim for adverse possession can be raised where the claimant contends that the suit property was fraudulently acquired or otherwise; whether the claim before hand can be granted on the face of an existing order of permanent injunction issued and existing against the Plaintiff; and whether



the Plaintiff has established and proved the requisite ingredients underpinning the claim on adverse possession or otherwise.

41. Regarding the first issue, it is important to highlight that the Plaintiff approached the court vide originating summons dated the 6th November 2020; and which originating summons is supported by three [3] sets of affidavits. In particular, the originating summons is supported by the affidavit sworn on the 6th November 2020; and wherein the Plaintiff has highlighted the gist/ substratum of her claim.
42. At paragraph 5 of the supporting affidavit, the Plaintiff herein has contended that the husband of the 1st Defendant procured and obtained the suit property from the Plaintiff's husband [now deceased] through trickery by duping the Plaintiff's late husband that same would be given 2.5 acres from land parcel No. 4104 within Ruiru/Rwarera Adjudication Section. For ease of reference, it is appropriate to reproduce the entire of paragraph 5 of the said affidavit.
43. Same are reproduced as hereunder;
 5. M'Mungania M'Mbwii through trickery by duping him that he would give him 2.5 acres from land parcel No.4104 within Ruiru/Rwarera Adjudication Section which turned out not to be his but neither him nor his family members including the defendant have ever taken possession of the suit land and I have always been in possession and user thereof" a" and "b" are copies of together with my family.(Annexed hereto and marked "NKM 5the proceedings and award in Meru LDT Case No. 58 of 2001 and Eastern Province PLDA Case No.38 of 2004 respectively.
44. Other than the foregoing, the Plaintiff also tendered and produced before the court a copy of the proceedings and decision rendered by the Eastern province Disputes Appeal Committee vide Case No. 38 of 2004 [see exhibit P5].
45. From the said proceedings, it is apparent that the Plaintiff's position has been and remains that the suit property was acquired by the 1st Defendant's late husband by fraud and trickery. To this end, I beg to reproduce the following observations which are captured at the foot of the proceedings.

"I latter took this case to Meru Central District tribunal after discovering that the land that was exchanged with mine didn't belong to Lawrence Muriria Thirwaine but it belonged to Muguna M'Irware. Lawrence acquired the title deed while I did not acquire the land which we were exchanging so, I appeal to this court to give me back my land".
46. My understanding of the position taken by the Plaintiff both in terms of paragraph 5 of the maiden supporting affidavit and before the provincial appeals land committee is to the effect that the Plaintiff posits that the acquisition and registration of the suit property in the name of the 1st Defendant's husband [now deceased] was fraudulent. In addition, the Plaintiff also appears to hold the position that what she is claiming back is [sic] her Land.
47. Pertinently, the Plaintiff is not conceding that the 1st Defendant' late husband was the legitimate owner and proprietor of the suit property. Moreover, the position by the Plaintiff was reiterated and amplified during cross-examination by learned counsel for the 3rd Defendant.
48. The Plaintiff testified thus;

"I have availed evidence to show that the 2nd Defendant acquired the suit property by fraud.
The evidence of fraud is part of the documents which I have availed before the court"
49. To my mind, the claimant herein cannot propagate a claim for adverse possession without first and foremost conceding that the suit property lawfully belongs to the adverse party. Indeed, adverse



possession only stems from an acknowledgement and explicit admission that the Suit Property lawfully belongs to the adverse party save that the adverse party [the Registered Owner] has been dispossessed of occupation and possession by the Claimant. [See Ernest Wesonga Kweyu vs Kweyu Omuto [1990] KECA 63 (KLR)]

50. To buttress the proposition that the Plaintiff cannot implead adverse possession whilst at the same time contending that the title of the adverse party was acquired by fraud, it suffices to take cognizance of the decision in the case of Haro Yonda Juaje –v- Sadaka Dzenge Mbauro & Kenya Commercial Bank (2014) eKLR; where the Court [Angote, J] stated thus;
- (29) One cannot succeed in a claim for adverse possession before conceding that indeed the registered proprietor of the land is the true owner of the said land. It does not lie in the mouth of a claimant to aver that the title held by the registered proprietor was fraudulently acquired and then claim the same parcel of land under the doctrine of adverse possession. If the Plaintiff's averment is that the title which was issued to the Defendant was fraudulently acquired, then his cause of action would be for the rectification of title by cancellation pursuant to the provisions of Section 143 of the Registered Land Act and not adverse possession. He cannot use the doctrine of adverse possession to go around the decision of the Minister. [Emphasis supplied].
51. Moreover, the Court of Appeal in the case of Richard Wefwafwa Songoi v Ben Munyifwa Songoi [2020] KECA 942 (KLR), held that one cannot purport to be the lawful/ beneficial owner of the same Land which same is claiming by way of adverse possession. Simply put, a claim for adverse possession is inconsistent with; and antithetical to a claim for trust/ beneficial ownership.
52. For coherence, the Court held thus:
42. The appellant testified he started using the suit property when he was given by his father. In the same vein, the appellant claims title to the parcel by way of adverse possession. The appellant's claim is founded on title by way of gift from his father. He prevaricates and lays claim to the land parcel by way of adverse possession against the respondent. The pleas of title and a claim for adverse possession are mutually inconsistent and exclusive.
43. Comparatively, the Supreme Court of India in Mohan Lal –v- irza Abdul Gaffar, 1996, 1 SCC 639 faced with an inconsistent claim of title by agreement and adverse possession stated that since the appellant admitted he came into possession of land lawfully under an agreement and continued to remain in possession till date of the suit, the plea of adverse possession was not available to the appellant. That having come into possession by agreement, he must disclaim his right thereunder and plead and prove assertion of his independent hostile adverse possession to the knowledge of the transferor and that the latter had acquiesced to his illegal possession during the entire period of 12 years. [Emphasis Supplied].
53. Flowing from the foregoing, it is apparent that the claim by the Plaintiff herein cannot stand insofar as the Plaintiff has not unequivocally conceded the validity of the title of the 1st Defendant's husband [now deceased]. In addition, there is no gainsaying that the Plaintiff's claim also cannot stand because the Plaintiff also suggest[s] that the suit property lawfully belongs to her and hence the position that was canvassed before the Provincial Appeals Committee.
54. Simply put, the Plaintiff has stated thus;

“I have appealed to this court to give me back my land”



55. Turning to the second issue, it is important to recall and reiterate that the Plaintiff herself conceded that same is aware of an order that was issued by the high court vide Meru HCC Appeal No. 100 of 2019. Furthermore, the Plaintiff conceded that the order under reference prohibited her [Plaintiff] from entering onto or interfering with the 1st Defendant's rights to the land.

56. To this end, it is imperative to reproduce the evidence of PW1 whilst under cross examination.

57. Same stated thus;

“I am aware of the order that was issued by the high court vide Civil Appeal No. 100 of 2019 barring me from entering onto the land. However, I wish to state that I am the one who has been on the land. I do confirm that I filed an appeal against the said order. I have availed the document before the court”.

58. Despite the contention by PW1 that same had appealed against the said order, no evidence was tendered and/or placed before the court to demonstrate any such appeal. Furthermore, it is common ground that an appeal by and of itself does constitute an order.

59. Following the testimony by the Plaintiff, wherein same spoke to and identified the order issued vide Meru HCC Appeal No. 100 of 2019, this court called for the file for perusal. I beg to confirm that there is indeed an order that was issued by Hon. Justice Mabeya, Judge on the 29th July 2020 and wherein the Plaintiff herein [who was the Appellant/Respondent] was prohibited from entering upon and/or interfering with the 1st Defendant's occupation of the suit property.

60. It is instructive to reproduce the terms of the said order. Same are reproduced as hereunder;

“That an order of injunction be and is hereby issued to permanently restrain the Respondent, her assignees, agents, family or anybody acting on her behest from entering, remaining or in any way interfering with the Petitioners peaceful occupation of parcel No. Ntima Ntakira 2591”.

61. It is important to underscore that the order under reference is an order in rem. In particular, the order touches on and impacts on the suit property. For as long as the said orders remains, this court cannot issue and grant a contradictory order. In any event, such an endeavour would be tantamount to sitting on appeal on the decision of the judge of the high court. I beg to state that such kind of an endeavour is frowned upon by the rule of law.

62. Before concluding on this issue, it is important to reference the provisions of Section of 44 of the [Evidence Act](#), Chapter 80 Laws of Kenya. For coherence, the said provisions underscore the import and tenor of a Judgment in rem.

63. Same state thus;

44. Judgments in rem

(1) A final judgment, order or decree of a competent court which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is admissible when the existence of any such legal character, or the title of any such person to any such thing, is admissible.

(2) Such judgment, order or decree is conclusive proof—



- (a) that any legal character which it confers accrued at the time when such judgment, order or decree came into operation;
- (b) that any legal character to which it declares any such person to be entitled accrued to that person at the time when such judgment, order or decree declares it to have accrued to that person;
- (c) that any legal character which it takes away from any such person ceased at the time from which such judgment, order or decree declared that it had ceased or should cease;
- (d) that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, order or decree declares that it had been or should be his property.

64. Turning to the third issue, I wish to state that where a claimant seeks a declaration that same has acquired title by way of adverse possession, it is incumbent upon the claimant to demonstrate that his/her occupation, possession and use has been open, continuous, peaceful and uninterrupted for a duration in excess of 12 years. Instructively, such a claimant must satisfy the doctrine christened as *nec vi, nec clam and nec precario*.

65. The question that does arise is whether the Plaintiff herein has established the requisite ingredients? To be able to answer the question herein, it is appropriate to revert to the evidence of the Plaintiff whilst under cross examination by learned counsel for the 3rd Defendant. The Plaintiff stated thus;

“I have not had a peaceful occupation of the land. I am often assaulted and disturbed”.

66. Other than the foregoing, it is also imperative to recall that the Plaintiff herein had indicated that same has had numerous court battles over the suit land with the late Lawrence Muriiria Thiraine and his estate. [See paragraph 6 of the supporting affidavit].

67. Instructively, the numerous court battles alluded to by the Plaintiff include the proceedings before Meru Central Land Dispute Tribunal; Provincial Lands Appeals Committee; and Meru HCC Appeal No. 100 of 2019, the latter which birthed the order of permanent injunction barring the Plaintiff from *inter-alia* remaining on the suit property.

68. From the Plaintiff's own mouth, it is indicated that same has not had peaceful and uninterrupted occupation of the suit property. To my mind, the absence of peace negates a critical ingredient which the Plaintiff was obliged to prove, namely; peaceful and an uninterrupted occupation/possession/ use. [See *Jandu vs Kirpal* [1975] EA 225].

69. Whilst considering a similar situation in the case of *Wilson Kazungu Katana & 101 Others V. Salim Abdalla Bakshwein & Ali Abdalla Bakshwein* [2015]eKLR, the court stated as hereunder;

“This suffices to demonstrate that the possession and occupation by the appellants as well as their forefathers was permissive upon payment of rent to the deceased which they faithfully did. On his demise however, the respondents using every means and avenue available to them, attempted albeit unsuccessfully to evict the appellants from the suit premises at times with disastrous consequences. All these happened because the respondents were in law asserting their title to the suit premises which action had the effect of stopping the time from running for purposes of adverse possession. In the premises, the appellants' possession or occupation of the suit premises between 1970 and the filing of the Mombasa O.S. cannot



be said to have been peaceful and uninterrupted as all along there were attempts to evict the appellants from the suit premises. As stated by this Court in the case of Francis Gacharu Kariri v. Peter Njoroge Mairu, Civil Appeal No. 293 of 2002 (UR):

“...the possession must not be broken, or any endeavours to interrupt it.”

The appellants in this case have continuously been subjected to forceful acts by the Respondent with intention to evict them, some have been arrested and successfully prosecuted over disputes relating to their occupation, violent incidents have occurred from time to time leading to serious injuries and loss of life, while disputing over the suit premises including one where the respondents brother Said Abdalla Bakshwein was seriously injured and some workers and a squatter killed.

70. To my mind, the totality of the evidence that was tendered by the Plaintiff does not meet and/or satisfy the threshold for declaring that the Plaintiff has acquired title over the suit property by way of adverse possession.
71. In a nutshell, I am afraid that the Plaintiff has fallen short of the threshold.

Final Disposition.

72. Having analysed the thematic issues which were highlighted in the body of the Judgment, it must have become apparent that the Plaintiff's claim is devoid and bereft of merits.
73. In particular, it suffices to reiterate that a claim for adverse possession is antithetical to; and in consistent with the plea of fraud. Simply put, one cannot implead adverse possession whilst at the same time maintaining that the title of the adverse party was acquired by fraud.
74. Flowing from the foregoing, the final orders that commend themselves to the court are as hereunder;
- i. The Plaintiff's suit be and is hereby dismissed.
 - ii. Costs of the suit be and are hereby awarded to the 3rd Defendant only.
 - iii. The Costs in terms of clause [ii] shall be agreed upon; and in default be taxed by the Deputy Registry in the conventional manner.
75. It is so ordered.

DATED, SIGNED AND DELIVERED AT MERU THIS 18TH DAY OF SEPTEMBER 2025.

OGUTTU MBOYA, FCI Arb; CPM [MTI-EA].

JUDGE.

In the presence of:

Court Assistant Hussein

Miss Kajuju holding brief for Mr. Mwenda Mwarania for the Plaintiff

Mr. Kithome for the 3rd Defendant

N/A for the 1st and 2nd Defendants

