



REPUBLIC OF KENYA



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Ituangu v Abdulrahim & 7 others; Gulam & another (Interested Parties) (Environmental and Land Originating Summons 206 of 2017) [2025] KEELC 6960 (KLR) (13 October 2025) (Judgment)

Neutral citation: [2025] KEELC 6960 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 206 OF 2017

EK MAKORI, J

OCTOBER 13, 2025

IN THE MATTER OF: LIMITATION OF ACTIONS ACT, CAP 22, LAWS OF KENYA

AND

**IN THE MATTER OF: PARCEL OF LAND KNOWN
AS PLOT NO. MUGUNO PASTA/MAZERAS/1064**

BETWEEN

MUTUA KISALU ITUANGU APPLICANT

AND

RASHID ABDULRAHIM 1ST RESPONDENT

GULAM KADIR ABDULRAHIM 2ND RESPONDENT

FATMA ABDULRAHIM 3RD RESPONDENT

KHADIJA ISAK KHAMIS 4TH RESPONDENT

SHAHNAZ KADMBAIISK PIRMOHAMED 5TH RESPONDENT

KUMAT ABDULRAHIM PIRMOHAMED 6TH RESPONDENT

SHAHIDA ABDULRAHIM PIRMOHAMED 7TH RESPONDENT

AYESHEH ABDULRAHIM CHAKERZEHI 8TH RESPONDENT

AND

SHAUN MOHAMED GULAM INTERESTED PARTY

LAND REGISTRAR, KILIFI INTERESTED PARTY



JUDGMENT

1. This case, initiated through an Originating Summons (OS) dated September 28, 2017, concerns the ownership of land parcels known as Plot No. Mugumo Pasta/Mazeras/1064 and the doctrine of adverse possession. The applicant, Mutua Kisalu Ituangu, seeks a determination of the following questions (which will form the basis of the decision by this court):
 - i. Whether the Applicant is entitled to ownership of parcels of land known as Plot No. Mugumo Pasta/Mazeras/1064 through adverse possession.
 - ii. Whether the Applicant as the occupant of the parcels of land known as Plot No. Mugumo Pasta/Mazeras/1064 is entitled to be legally registered as the owner of that plot.
 - iii. Whether the Applicant is entitled to costs.
2. The Respondents opposed the said application through a replying affidavit sworn by Fatma Abdulrahim on July 1, 2022, by the 1st Interested Party, and another sworn by Shaun Mohamed Gulam on the same date, July 1, 2022, which was filed in court on July 6, 2022.
3. The 2nd Interested Party did not participate at all in this litigation.
4. The matter proceeded through a *viva voce* hearing. Mr. Mutua Kisalu Ituangu, the applicant, testified as PW1. The respondents and the 1st interested party called two witnesses, Fatma Abdulrahim as DW1 and Mr. Shaun Mohamed Gulam as DW2. They adopted the contents of their statements (for PW1 and the replying affidavits for DW1 and DW2, respectively).
5. At the conclusion of the case for the Applicant, Respondents, and 1st Interested Party, the court directed the counsels to submit written arguments. I appreciate the submissions from learned counsel Mr. Gikandi for the Applicants and Mr. Achoka for the Respondents and 1st Interested Party. The submissions greatly assisted this court in reaching its final decision.
6. During the hearing, the Applicant adopted his affidavit supporting the OS, as well as his statement, as his primary evidence. He also presented the documents listed in his further list of documents dated February 2, 2022, as exhibits PExh-1 to PExh-8. The Respondents, through the 3rd Respondent, adopted his affidavit as their primary evidence. The 1st Interested Party also adopted his affidavit and the attached documents as his evidence. The witnesses were cross-examined and re-examined, respectively.
7. The Applicant's case states that he moved to Mazeras in Kilifi County in 1967. He was employed by Katiwa Muli as a shamba attendant on Plot Number Mugumo Pasta / Mazeras / 1064. The Applicant claims that the land belonged to Katiwa Muli. He worked and lived on the property, and his daughter eventually married Katiwa Muli's son. After Katiwa Muli's death, the Applicant's son-in-law became the head of the Katiwa Muli family and later gifted the property to the Applicant to support his family. He built a house on the land where he resides with his family and also engages in farming. He has developed the parcel of land.
8. Before filing this lawsuit, the Applicant searched the property and found that it was registered in the Respondents' names. He had been openly and continuously occupying it for over 12 years, a period that, under the doctrine of adverse possession, could potentially entitle him to ownership. The Applicant obtained a default judgment, and a decree was issued on April 5, 2018. However, during another search to register the property in his name, he discovered that it had been transferred to the 1st Interested Party. All attempts to obtain a copy of the green card have been unsuccessful. The Applicant



claims that transferring the property to the 1st Interested Party violates the principle of lis pendens, making the transfer null and void. He argues that the transfer was a late attempt to prevent his claim of adverse possession from maturing against the now-registered owner, the 1st Interested Party. At the time of filing this suit, his adverse possession claim had matured, and the Respondents had no legal title to transfer to the 1st Interested Party.

9. The Respondents' case is detailed in paragraphs 10 to 13 of the affidavit sworn by Fatma Abdulrahim on July 1st, 2022. They state that the property was initially registered in their father, Pirmohamed Kamalkan's name. After his death, they obtained letters of administration to his estate and discovered that their father had sold the property to the 1st Interested Party, who then transferred the title. They could not locate the original title deed and applied for a duplicate.
10. The 1st Interested Party's case is outlined in paragraphs 8 to 14 of his replying affidavit, sworn on July 1st, 2022. He reaffirms that the property was initially registered in Pirmohamed Kamalkan's name, then transferred through transmission to the Respondents, who later transferred it to him.
11. In paragraph 10 (e), (f), and (g), as well as in the Respondents' affidavit and paragraphs 8 (d), (e), and (f), and 9 of the 1st Interested Party's affidavit, both the Respondents and the 1st Interested Party accuse the Applicant of fraudulently causing a registration in his name on the title to the suit property. Notably, all parties claim they could not trace the green card. However, the defense submits copies of documents showing that in 2016, the Applicant's name was added to the title, and a title deed was issued in his name. But this entry was reversed in the same year, and the title deed was cancelled.
12. During cross-examination and re-examination, when asked about the alleged registration of the property in his name, the Applicant denied any knowledge of such entries. The Applicant argues that the documents appear to be a manipulative attempt by the defense to portray him as a fraud, when in fact, he came to court seeking lawful ownership after occupying the land for more than thirty years.
13. Adverse possession is addressed in sections 7, 13, 17, 37, and 38 of the Limitations of Actions Act, Cap 22 Laws of Kenya. These sections cover adverse possession of land and also include provisions for revocation and registration of the new owner.
14. The Applicant has, on a balance of probabilities, shown that he has been on the suit property for more than 12 years – in fact, since 1967, without any interference from anyone, as explained in his testimony. He has built. Worked on the land for all those years without let or hindrance. Photographs were produced to support this claim.
15. Based on the evidence from the Respondents and the Interested Parties, it appears that visits to the land by them were quite rare, and they do not seem to be well familiar with the land's location.
16. Besides, it's unclear how the Applicant's name initially appeared on the green card and was then quickly removed.
17. As submitted by the parties – with which I agree – for adverse possession to accrue in *Mbira v Gachubi* [2002] IEALR 137, it was held that:

“..... a person who seeks to acquire title to land by the method of adverse possession for the applicable statutory period must prove non-permissive or non-consensual actual, open, notorious, exclusive and adverse use by him or those under whom he claims for the statutory prescribed period without interruption....”



18. Adverse possession is widely recognized under Kenyan law. The Applicant has presented evidence demonstrating that he has physically occupied the property for more than 12 years without interruption and meets the criteria to be acknowledged and registered as the owner of the suit property.
19. In this case, the Applicant has clearly demonstrated that he has maintained long, continuous possession of the property, which he has developed. It is also evident that the registered owner, Pirmohamed Kamalkan, and his successors lost any interest in the land because they failed to visit the property from 2005 until they claimed it in December 2019.
20. While the Applicant has established long possession, we face a complex situation because this court rightly decreed—by its judgment on March 28, 2019 (Olola J.)—that the Applicant should be registered as the owner of the suit property based on the doctrine of adverse possession.
21. Upon presentation of the decree for execution, it was discovered that the title had transferred to the name of the 1st Interested Party during the course of this matter. In fact, the change occurred shortly after the suit was filed and as it progressed.
22. Various changes occurred to the underlying aspects of the initial suit. As stated, the title was changed to the name of the 1st Interested Party. An application was made to have the judgment here set aside and to introduce the Interested Parties to this suit.
23. After the suit was set aside and new parties joined, I reckon that there was no amendment sought to the OS to have the 1st Interested Party joined as a Respondent, and an order sought for cancellation of the title issued to him.
24. I agree with the counsel for the Respondents and the 1st Interested Party that this should have prompted the Applicant to amend their pleadings to challenge the title subsequently passed to the 1st Interested Party, as Respondents in this matter, so that the court could order the title to be cancelled and registered in his favor, having proved adverse possession.
25. This did not happen. Since the title document was changed to the 1st Interested Party's name and the Applicant did not seek orders to cancel the title in the name of the 1st Interested Party, the court will find that although the Applicant has proved adverse possession against the Respondents, he cannot enforce his rights against the 1st Interested Party because he never included them as a Respondent in the case. He must file a new OS against the 1st Interested Party, specifically requesting the cancellation of the title passed to them by the Respondents.
26. In summary, although the Applicant has established all the essential elements of adverse possession against the Respondents and the Respondents lacked a valid title to transfer to the 1st Interested Party, the claim as formulated and the joinder of the Interested Parties were neither adequately contemplated nor appropriately considered. The 1st Interested Party ought to have been included as a Respondent in this lawsuit. As no amendments were made, probably, a subsequent litigation between the Applicant and the 1st Interested Party will be necessary.
27. Based on this, the Applicant's claim would succeed against the Respondents, but since the title has transferred to the 1st Interested Party, this finding cannot be used to invalidate the 1st Interested Party's title.
28. Given this catch-22 situation, no order will be issued regarding costs.

DATED, SIGNED, AND DELIVERED VIRTUALLY AT MALINDI ON THIS 13TH DAY OF OCTOBER, 2025.



E. K. MAKORI

JUDGE

In the presence of:

Ms. Murage for the Applicant

In the Absence of:

Mr. Achoka for the Respondents and the 1st Interested Party

Happy: Court Assistant

