



**Mohamed & 3 others v Umedaly (Environment and Land Case  
E034 of 2022) [2025] KEELC 7017 (KLR) (16 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 7017 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT AND LAND CASE E034 OF 2022**

**JO OLOLA, J**

**OCTOBER 16, 2025**

**BETWEEN**

**MOHAMMED KASSAM MOHAMED ..... 1<sup>ST</sup> APPLICANT**

**ABDUL LATIF MOHAMED ..... 2<sup>ND</sup> APPLICANT**

**IRSHADALI SUMRA MOHAMED ..... 3<sup>RD</sup> APPLICANT**

**AMEERALY SUMRA MOHAMED ..... 4<sup>TH</sup> APPLICANT**

**AND**

**KHADIJA UMEDALY ..... RESPONDENT**

**JUDGMENT**

**Background**

1. This suit has spent a considerable time in the court corridors. It was initially filed in the High Court on 8<sup>th</sup> November 1996 as Mombasa HCCC No. 473 of 1996 (OS). It was transferred to this court and given its current reference on 21<sup>st</sup> March 2022.
2. By an Originating Summons dated 8<sup>th</sup> March 1996, Mohamed Kassam Mohamed, Abdul Latif Mohamed, Irshadali Sumra Mohamed and Ameraly Mohamed (hereinafter “the Applicants”) pray for orders:
  1. That the Applicants have by adverse possession acquired a portion measuring 0.16500 acres of land known as parcel No. 429 Mombasa/Block XVII by virtue of adverse possession;
  2. That the Respondent be ordered to transfer the 0.16500 acres of land known as parcel No. Mombasa/Block XVII to the Applicants by virtue of adverse possession;



3. That in the alternative and without prejudice to the above, the Court declares that the Respondent holds land parcel No. 429 Mombasa/Block XVII subject to the registrable right of the Applicants by operation of estoppel or by way of purchase;
  4. That the Court do extend time for applying to the Land Control Board for consent if acquisition was by purchase; and
  5. Costs of Application be granted.
3. The Originating Summons is supported by an Affidavit sworn by Irshadali Sumra Mohamed (the 3<sup>rd</sup> Applicant) wherein he avers that they started occupying the said parcel of land registered in the name of Khadija Umedaly in the year 1975. The Applicants aver that they have acquired the suit property by operation of estoppel and that they have since developed the same.
  4. Khadija Umedaly (the Respondent) did not enter appearance. On 25<sup>th</sup> July 1997 the court ordered that the Respondent be served by way of substituted service. The said service was effected by way of advertisement carried out in both the East African Standard and the Daily Nation newspapers on 22<sup>nd</sup> September 1997.
  5. Subsequently, on 23<sup>rd</sup> August 1999, the High Court issued a decree as follows:
    - a. That a vesting order be and is hereby made ordering the Respondent/ Judgment debtor to execute a transfer in respect of all that parcel of land known as Mombasa/Block XVII/429 to the Applicants/ Decree-holders herein;
    - b. That in the event of the said Respondent failing to sign the said transfer the Deputy Registrar of the High Court be pleased to sign the transfer; and
    - c. That costs of this Application be provided for.
  6. Some two days later on 25<sup>th</sup> August 1999, some four (4) individuals, namely, Mwanaidi Binti Hassan, Amina Ramadhani Haji, Rajab Ramadhan, Haji and Ali Ramadhan Haji (the Interested Parties) filed a Chamber Summons application seeking to be enjoined as Interested Parties in the suit and for an order for the court to review, vary, rescind or set aside and vacate the judgment in favour of the Applicants. It was the Interested Parties' case that the judgment was irregularly obtained through non-disclosure and deliberate mis-presentation of material facts by the Applicants.
  7. Asserting that the Applicants were in occupation of the suit property out of their own permission, the Interested Parties sought for orders as follows:
    - a. A declaration that the Interested Parties have acquired plot No. 429 (xvii) Mombasa Island by the operation of S.38 of the Limitation of Action Act and are therefore entitled to be registered as the proprietors thereof; and
    - b. An order that the Respondent do effect a transfer of the said plot No. 429 (XVII) M.I to and the same be registered in the names of the Interested Parties forthwith.
  8. In a Ruling delivered on 20<sup>th</sup> September 2002, J. Khaminwa, as Commissioner of Assize allowed the Interested Parties' application and enjoined them into the suit. However, for some unclear reasons following their joinder, the Interested Parties did not participate any further in defending their claim herein. The suit therefore proceeded by way of formal proof.



## Analysis and Determination

9. I have carefully perused and considered the pleadings filed by the Applicants, the testimony of the sole witness who testified herein and evidence adduced at the trial. I have similarly perused the submissions placed before the Court by Mr. Maundu, Learned Counsel for the Applicants.
10. The Applicants herein were a father and his three (3) sons. By their Originating Summons as filed herein, the Applicants claim to be entitled to all that parcel of land known as Mombasa/Block XVII/429 and measuring approximately 0.16500 acres by way of adverse possession. As a result, they urge the court to order the Respondent to transfer the said parcel of land to the Applicants.
11. In the alternative, the Applicants pray for a declaration that the Respondent holds the suit property subject to the registrable right of the Applicants by operation of estoppel or by way of purchase. In that respect, the Applicants have urged the court to issue an order extending the time within which they were required by law to apply to the Land Control Board for the Board's consent.
12. The doctrine of adverse possession is captured in our laws under the *Limitation of Actions Act*, Cap 22 of the Laws of Kenya. Section 7 of the said Act provides thus:
  - “7. 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.”
13. On the other hand, Section 13 of the said Act provides that:
  - “(1) A right of action to recover land does not accrue unless the land is in the possession of some person in whose favour the period of limitation can run (which possession is in this Act referred to as adverse possession), and, 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 ceases 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.”
14. In addition, Section 38(1) of the Act provides that:
  - “(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) ....”



15. Considering the doctrine of adverse possession in *Wambugu –vs- Njuguna* (1983) KLR 173, the Court of Appeal did hold as follows:

“The general principle is that until the contrary is proved, possession in law follows the right to possess. In order to acquire by the Statute of Limitation title to land which has a known owner, the owner must have lost his right to the land either by being dispossessed of it or by having discontinued his possession of it. Dispossession of the proprietor that defeats his title are acts which are inconsistent with his enjoyment of the soil for the purpose for which he intended to use it.

The *Limitation of Actions Act*, on adverse possession, contemplates two concepts: dispossession and discontinuance of possession. The proper way of assessing proof of adverse possession would then be whether or not the title holder has been dispossessed or has discontinued his possession for the statutory period, and not whether or not the claimant has proved that he has been in possession for the requisite number of years.”

16. Addressing the same issue in *Mtana Lewa –vs- Kahindi Ngala Mwangandi* (2015) eKLR, the Court of Appeal once again reaffirmed the doctrine as follows:

“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 neglect 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 nor under the license of the owner. It must be adequate in continuity, in publicity and in extent to show that possession is adverse to the title owner.”

17. In the matter herein, the Originating Summons is supported by an Affidavit sworn by Irshadali Sumra Mohamed (the 3<sup>rd</sup> Applicant) who testified herein as the sole witness. In his written statement dated 1<sup>st</sup> February 2024 which he adopted as his evidence-in-chief, the 3<sup>rd</sup> Applicant states inter alia as follows:

“We moved into the said plot number Mombasa/Block XVII/428 in 1975 in order to secure it as our home was being burgled from time to time from this plot which was vacant. We took over the plot for security purposes. We fenced it and therein constructed a store and started a scrap business. We have been in continuous and uninterrupted occupation of the plot since 1975 and the said plot has been in our care since then.”

18. In support of their position that they had taken over the land and built structures thereon over the years, the Applicants produced photographs of various structures said to be built on the property in their Supplementary List of Documents dated 6<sup>th</sup> February 2024. From a perusal of the said photographs, it was evident that among others, the Applicants run a beauty parlor known as Zeenat and a meat supply business known as Sumra Meat Supply on the premises. In support of their contention that they ran a scrap metal business on the property, the Applicants not only exhibited photos of the scrap metal but also produced licences issued to an entry known as Amico Enterprises to deal in all kinds of scrap metal including copper that date back from the year 1986.

19. As it turned out, no evidence was tendered to contradict the Applicants’ position that they had occupied the land since the year 1975 and that their occupation thereof was permissive and/or that it had been interrupted at any particular time. It was evident from a perusal of the Green Card for the suit property that the same was registered in the name of one Khadija Umedaly (the Respondent) on



4<sup>th</sup> May 1945. There was no evidence that the said registered proprietor had used the land from the time the Applicants claim to have fenced off the same. On the contrary it was clear from the material placed before the court that the Applicant had over the period exercised rights over the property that were inconsistent with the registered proprietor's enjoyment thereof.

20. In the premises I was persuaded that the Applicants had proved on a balance of probabilities that they were entitled to the suit property under the doctrine of adverse possession. Accordingly, I hereby enter judgment for the Applicants and order as follows:
- a. An order is hereby issued that the Applicants have acquired the portion of land measuring 0.16500 acres out of land parcel No. Mombasa/Block XVII/429 by virtue of adverse possession.
  - b. The Respondent is hereby directed to forthwith transfer the 0.16500 acres out of the parcel of land known as Mombasa/Block XVII/429 to the Applicants in default of which the Deputy Registrar of this Court is hereby authorized to execute any instruments of transfer to effect the said transfer.
  - c. There shall be no order as to costs.

JUDGMENT DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 16<sup>TH</sup> DAY OF OCTOBER, 2025

.....

J.O. OLOLA

JUDGE

In the presence of:

- a. Ms. Firdaus Court Assistant.
- b. No Appearance for the Applicants
- c. No Appearance for the Respondent

