



Mkota & 8 others v Jimbim Investments Ltd & 2 others (Environmental and Land Originating Summons 3 of 2023) [2025] KEELC 6975 (KLR) (8 October 2025) (Judgment)

Neutral citation: [2025] KEELC 6975 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 3 OF 2023
EK MAKORI, J
OCTOBER 8, 2025**

BETWEEN

**MWANA MGENI SALIM MKOTA 1ST APPLICANT
KOMBO SALIM MKOTA 2ND APPLICANT
MESAID SALIM MKOTA 3RD APPLICANT
DAGILASI MICHAEL MKOTA 4TH APPLICANT
SAID MBARAK SAID 5TH APPLICANT
ALI MBARAK SAID 6TH APPLICANT
GADAFI MBARAK SAID 7TH APPLICANT
JUMA BEGANDE SALIM MKOTA 8TH APPLICANT
NDUKU MBARAK SAID 9TH APPLICANT**

AND

**JIMBIM INVESTMENTS LTD 1ST RESPONDENT
NATIONAL SOCIAL SECURITY FUND BOARD OF TRUSTEE 2ND
RESPONDENT
SULTAN PALACE DEVELOPMENT LIMITED 3RD RESPONDENT**

JUDGMENT

1. The Applicants filed this suit via Originating Summons, seeking the following prayers:



- a. A declaration be issued stating that the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, and 9th Applicants have acquired Plot No. 1075/III/MN, Title No. CR.19153, measuring approximately 8.169 hectares, through adverse possession.
 - b. An order of declaration be issued in favor of the Applicants, stating that the Respondents' claim stands extinguished and barred by virtue of Section 17 of the *Limitation of Actions Act*, Laws of Kenya, over the land claimed by the Applicants.
 - c. An order be issued directing the Registrar of Titles at the Mombasa Land Registry to transfer the land known as Plot No. 1075/III/MN, Title No. CR.19153, measuring approximately 8.169 hectares, to the 1st through 9th Applicants, respectively.
 - d. An order of permanent injunction be issued to restrain the Respondents—by themselves, their agents, servants, workers, and/or any others claiming through them—from entering, working, trespassing into, alienating, charging, mortgaging, selling, transferring, subdividing, or otherwise dealing with the land known as Plot No. 1075/III/MN, Title No. CR.19153, measuring approximately 8.169 hectares.
 - e. That the costs of this suit be provided.
2. The Originating Summons was supported by an Affidavit sworn by Mwana Mgeni Salim Mkota on August 8, 2023, on his and the other Applicants' behalf under their authority, along with annexures attached to the affidavit.
 3. The Respondents were served with the Originating Summons. The 2nd Respondent submitted a Replying Affidavit sworn by Hellen Koech on September 18, 2023, with annexures. The 1st and 3rd Respondents did not defend the case.
 4. On October 30, 2023, the Court granted leave for the Applicants to serve the 1st and 3rd Respondents via advertisement in a daily newspaper. The Applicants served them through the Daily Nation on December 11, 2023. The affidavit of service, sworn by Osoro Kennedy Omwoyo on January 12, 2024, was filed in court, along with the newspaper attachment.
 5. On February 13, 2025, the Court allowed the Applicants to file a further list of documents. In this regard, the Applicants filed a supplementary list of documents dated February 13, 2025.
 6. The case before the court focuses on adverse possession, with the Applicants claiming continuous occupation and possession of Land Parcel No. 1075/III/MN, Title No. CR.19153, which covers approximately 8.169 hectares, for over twelve years. The evidence presented by the Applicants shows the following periods of occupation: Mwana Mgeni Salim Mkota for thirty-six years; Kombo Salim Mkota for thirty-four years; Mesaid Salim Mkota for thirty years; Dagilasi Michael Mkota for twenty-three years; Said Mbarak Said for thirty-four years; Ali Mbarak Said for thirty-three years; Gadafi Mbarak Said for twenty-nine years; Juma Begande Salim Mkota for twenty-one years; and Nduku Mbarak Said for twenty-nine years.
 7. The Applicants argue that the 1st Respondent was registered as the owner of the disputed land for 99 years starting February 1, 1988. However, at registration, the Applicants were in possession, had built permanent premises, and kept livestock while practicing subsistence farming as supported by photographs marked 'MMSM4.'
 8. The Applicants attached the Title extract as Exhibit No. "MMSM1" and a Postal Search Certificate dated August 1, 2023, as Exhibit No. "MMSM2".



9. The Applicants assert that, in addition to the existing permanent structures on the contested land, they have planted trees that exceed 12 years of age, as evidenced in Exhibit No. “MMSM5”. These trees comprise *Azadirachta indica*, *Balanite wilsoniana*, *Cordia monoica*, *Thevetia peruviana*, *Cocos nucifera*, *Delonix regia*, *Malinkara zanzibarica*, *Bougainvillea*, *Casuarina equisetifolia*, *Plumeria rubra*, *Tabernaemontana montana*, *Malinkara zanzibarica*, *Ficus sur*, *Ziziphus mucronata*, and *Grewia bicolor*.
10. The Applicants submitted a report identifying mature trees on the disputed land, which is within boundaries supported by Deed Plan No. 136835 for Land Parcel No. MN/III/1075, delineated by beacons MB1, MB2, M6X, 3X, and M5. The land area is 8.169 Ha, confirmed by FR 190/53. Survey plans re-established boundaries, with all beacons found. The parcel has a masonry building, temporary structures, and trees: Mivunje (30), Mikilifi (7), Minazi (3). The surveyor confirmed the structures are on parcel MN/III/1075, with a Topo Cadastral Survey showing their positions, trees, and coordinates.
11. The Applicants argue that their occupation of the suit property has been peaceful, open, and uninterrupted for over 12 years. They have remained on the disputed land without interruption and have made no payments to the Respondents. The Applicants have occupied the land with the Respondents' knowledge, and their adverse possession is of non-permissive use. In other words, they are occupying the land without the Respondents' permission, and they assert that they have acquired Land Parcel No. L.R. No. MN/III/1075 through adverse possession.
12. Despite the change of ownership, the Applicants argue that the period for adverse possession continues. The Respondents' interests have been extinguished by time under the [Limitation of Actions Act](#). The Applicants have maintained exclusive possession and demonstrated their unwavering intent to possess the property.
13. The Applicant and the 2nd respondent filed submissions in this matter for which this Court is grateful.
14. This court examines whether the Applicants have occupied Plot No. 1075/III/MN, Title No. CR.19153, about 8.169 hectares, through adverse possession for over 12 years without interruption. It assesses whether they have acquired a registerable interest, possess the right to peaceful use, and have clear, recognized occupancy. The court considers whether they intended to maintain, took possession, and asserted rights non-permissively, openly, and exclusively. The decision also addresses who will bear costs.
15. From the outset, the 2nd Respondent states they have no interest in the suit or its outcome, having transferred ownership to the 3rd Respondent. They argue that no cause of action should be brought against them, as all sales and transfer transactions of the suit properties were conducted lawfully. Therefore, they should be removed from the suit. They contend that Order 1 Rule 10 of the Civil Procedure Rules specifies what should happen in cases of misjoinder of parties and the striking out of improperly joined parties.
16. This court was moved under Order 37 Rule 7 of the Civil Procedure Rules, which provides the procedure for filing suits under Adverse Possession. It states that it shall be done through the Originating Summons.
17. 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.
18. The Applicants have, on a balance of probabilities, shown that they have been on the suit property for more than 12 years without any interference from anyone, as explained in paragraph 6 of this judgment.



They have built on the property, and are farming on the suit property. Photographs were produced to support this claim.

19. For adverse possession to accrue in *Mbira v Gachuhi* [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....”
20. Adverse possession is widely recognized under Kenyan law. The Applicants have demonstrated that they have occupied the property physically for more than 12 years without interference from anyone. They have satisfied the criteria to be recognized as the owners of the suit property in question.
21. The court will allow the Applicants’ claim and issue the following final orders:
 - a. A declaration is hereby issued stating that the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, and 9th Applicants have acquired Plot No. 1075/III/MN, Title No. CR.19153, measuring approximately 8.169 hectares, through adverse possession.
 - b. An order of declaration is hereby issued in favor of the Applicants, stating that the Respondents’ claim stands extinguished and barred by virtue of Section 17 of the *Limitation of Actions Act*, Laws of Kenya, over the land claimed by the Applicants.
 - c. An order is hereby issued directing the Registrar of Titles at the Mombasa Land Registry to transfer the land known as Plot No. 1075/III/MN, Title No. CR.19153, measuring approximately 8.169 hectares, to the 1st through 9th Applicants, respectively.
 - d. An order of permanent injunction is hereby issued to restrain the Respondents—by themselves, their agents, servants, workers, and/or any others claiming through them—from entering, working, trespassing onto, alienating, charging, mortgaging, selling, transferring, subdividing, or otherwise dealing with the land known as Plot No. 1075/III/MN, Title No. CR.19153, covering approximately 8.169 hectares.
 - e. The Applicants shall bear the costs of the 2nd Respondents in defending this action.
 - f. The 1st and 3rd Respondents will bear the costs of this litigation incurred by the Applicants.

DATED, SIGNED, AND DELIVERED AT MALINDI, VIRTUALLY ON THIS 8TH DAY OF OCTOBER 2025.

E. K. MAKORI.

JUDGE

In the Presence of:

Ms. Gichuhi for the Applicants

Mr. Ochieng for the 2nd Respondent

Happy: Court Assistant

ELC CASE NO E003 OF 2023 O.S Page 13 of 13

