



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**ELC OS NO. E16 OF 2023**

**IN THE MATTER OF LAND KNOWN AS PLOT 143 MALINDI  
TITLE NO. 48 FOLIO 436 FILE 3650**

**AND**

**IN THE MATTER OF SECTION 38 OF THE LIMITATION OF  
ACTIONS ACT, CAP 22, LAWS OF KENYA**

**AND**

**IN THE MATTER OF AN APPLICATION FOR DECLARATION  
THAT THE APPLICANTS HAVE OBTAINED TITLE TO LAND  
PARCEL NUMBER 149 MALINDI**

**AND**

**IN THE MATTER OF 6 ACRES OCCUPIED BY THE  
APPLICANTS WITHIN LAND PARCEL NUMBER 149 MALINDI**

**BETWEEN**

**ALEX BAYA KAZURI & 9 OTHERS.....**

**.....APPLICANTS**

**VERSUS**

**SAID OMAR & 2 OTHERS**

**.....RESPONDENTS**

**JUDGMENT**

**1.** The applicants herein filed this suit through an Originating Summons dated June 26, 2023, seeking the following prayers:

- a) That the applicants are entitled to be declared the owners of six (6) acres of land within a parcel known as plot 149 Malindi, which they have acquired through adverse possession, having lived, occupied, and worked on the land for more than thirty (30) years peacefully, openly, and without interruption from the respondents.**
- b) The applicants are entitled to be registered as proprietors and issued a certificate of title for the said 6 acres instead of the respondents.**

**c) The applicants are entitled to recover the costs of this suit.**

- 2.** The respondents who were served with the pleadings through substituted service, specifically by an advertisement in the Daily Nation on January 19, 2024, chose not to appear, respond, or take any action regarding the lawsuit against them.
- 3.** Directions were issued for the matter to proceed as an undefended suit.
- 4.** Furthermore, the court ordered the applicants to submit written arguments. I appreciate receiving the submissions from learned counsel Mr. Otara for the applicants, as they significantly contributed to resolving the issues raised in this case.
- 5.** Arising from the foregoing, I outline the following issues for the court's determination: whether the applicants have proven their entitlement to be registered as owners of the suit property under the doctrine of adverse possession; whether they are entitled to the reliefs they seek; and the issue of costs for the current litigation.

- 6.** In support of their case, the 1st applicant swore an affidavit supporting the originating summons. The 5th and 7th applicants also submitted their statements dated June 13, 2024, which are attached to the originating summons. Additionally, the applicants called one more witness named Gia Katana M'kalakala.
- 7.** The applicants testified that they have occupied the suit property for over 30 years. They developed the land with houses, shade trees, and mature mango and coconut trees planted more than twenty years ago. To support this, they provided photographs of the houses, homesteads, and mature mango and coconut trees, which were attached to their affidavit in support of the originating summons. They also rely on the Sketch Plan, and from PW1's testimony, they contend that they reside within a section marked as 149B, which covers six acres.
- 8.** The applicants testified that they have used the property peacefully and without interference from the respondents. In court, they stated that they have never received any notice to vacate, threats of legal action, nor have they seen the

respondents on the property. They have been continuously on the land for over 30 years. The 7th applicant is the mother of the 2nd applicant and has lived on the same homestead since her marriage. She is currently 80 years old. The applicants have lived openly and peacefully on the property for more than three decades. To prove this, they testified that they have buried their relatives' remains there in the family graveyard, and they submitted photographs of some of the graves. Additionally, they stated they hold their burial ceremonies openly and play "Disco Matanga," which lasts more than a week.

- 9.** As correctly submitted by Mr. Otara, learned counsel for the applicants, the doctrine of adverse possession was aptly defined in *Mtana Lewa v Kahindi Ngala Mwangandi* [2015] eKLR, where the Court of Appeal held that adverse possession is essentially a situation where an individual takes possession of land and asserts rights over it, and the person holding the title neglects or omits to take action against them for a period of twelve years. This results in the acquisition of ownership through the owner's inaction. The Court of Appeal also pointed

out the key points to be proven in an adverse possession claim, which include:

- a) One must demonstrate exclusive, open, notorious, and continuous possession of the land for a statutory period of twelve (12) years without the owner's permission.***
- b) The claimant must prove that their possession was neither permissive nor consensual and that they behaved as if they were the true owner of the land.***
- c) The doctrine of adverse possession is constitutional and does not arbitrarily restrict property rights.***

**10.** The applicants' claim over the suit property went unchallenged; consequently, I find in favor of the applicants and proceed to grant the prayers sought in their originating summons.

**Dated, signed, and delivered electronically at Malindi on 22<sup>ND</sup> October, 2025.**

**E. K. MAKORI**

**JUDGE**

**In the Presence of:**

**Mr. Otara for the Applicants.**

**Happy: Court Assistant**