



**Mwiliza v Nyatome (Enviromental and Land Originating Summons
E021 of 2024) [2025] KEELC 7871 (KLR) (13 November 2025) (Judgment)**

Neutral citation: [2025] KEELC 7871 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E021 OF 2024
AA OMOLLO, J
NOVEMBER 13, 2025**

BETWEEN

ELVIS KIPTOO MWILIZA PLAINTIFF

AND

GRACE KEMUNA NYATOME RESPONDENT

JUDGMENT

1. The Plaintiff filed this suit against the Respondent vide Originating summons dated 25th March 2024 seeking for the following orders;
 - a. Spent
 - b. That a declaration be and is hereby made that the Plaintiff is absolutely entitled by way of adverse possession to all the residual period in the leasehold title of property known as Nairobi/Block 106/230 within Dam Estate in Langata Sub-county, Nairobi County;
 - c. That a declaration be and is hereby made that the Defendant's rights to title in the leasehold property known as Nairobi/Block 106/230 has extinguished in favour of the Plaintiff under Section 37 & 38 of the Limitation of Acrion Act;
 - d. That an order be and is hereby made allowing the Deputy Registrar of this Court to sign all such transfer forms and such necessary documents to help the Plaintiff be registered as the sole owner of the residual period in the leasehold title of the property known as Nairobi/Block 106/230 within Dam Estate in Langata Sub-county, Nairobi County;
 - e. That the Honourable Court be pleased to waive the requirement to annexe certified extract of the title pursuant to Order 37 Rule 7 of the Civil Procedure Rules and it is place, admit certified copy of the official search annexed;
 - f. That there be no orders as to costs;



2. The OS is on the grounds that the Plaintiff grew and was brought up in the leasehold property known as Nairobi1/Block 106/230 (hereinafter "suit property") within Dam Estate in Langata Subcounty, Nairobi County while his grandparents were the ones occupying the same and later left the same to them Plaintiff's parents and later to the Plaintiff.
3. The Applicant avers that they, together with their siblings, have lived on the suit property all their lives, having inherited occupation from their parents who had similarly occupied the land for decades. That he has been in open, continuous, and exclusive possession of the suit property for over twelve (12) years. The Applicant added that he has been paying land rates to the Nairobi County Government and covering other estate-related expenses, despite the property being registered under L.Z Construction Ltd and later learning of the Respondent's alleged ownership. The Applicant maintains that neither they nor their predecessors have ever had any dealings or disputes with the Respondent, who has never taken possession of the land.
4. He stated that he has obtained letters of no objection from both the area chief and the Dam Estate Association confirming their long-term occupation and peaceful possession. That as such he has gained adverse possession on the same and wishes to have his rights registered on the residual period in the leasehold title of the suit property.

Evidence

5. PW1, Elvis Kiptoo Mwiliza, a business man specializing in export of vegetables testified in support of his case. He stated that he took possession of the suit property in 2011 when he moved into Nairobi and began his small family. That he lived in the house when he was younger with his parents but they vacated in 2009 to Eldoret. In 2011 when he returned, he found the house vacant and settled in noting that there are other houses in the area, with Dam Estate Management Company taking care of the general security and compliance with payments within the estate.
6. He testified that the management company does not collect rent on behalf of the property owners and that he only learnt of the Defendant when preparing the court documents. That also he has never obtained consent to occupy the suit property and his possession has never been interrupted. He knew the suit property was a rental unit and he tried to get audience with the landlord to no avail. Further, during the time his parents lived in the house, he never dealt with L.Z Engineering Co.Ltd or the Defendant.

Submissions

7. The Plaintiff filed submissions dated 25th September 2025 stating that he seeks to be registered as the proprietor of suit property by virtue of adverse possession. He avers that he has been in open, exclusive, continuous, and actual possession of the suit property for over twelve (12) years, from 2011 to the time of filing suit in 2024, without any interruption from the Defendant, who has been the registered owner since 26th January 1989.
8. The Plaintiff testified that upon returning to Nairobi in 2011, he found the property vacant, took possession openly, and began living there with his family while meeting estate obligations. The Defendant, despite being served through substituted service in the Standard Group Daily Newspaper on 14th September 2024, did not enter appearance, and the matter proceeded unopposed.
9. In support of his case, the Plaintiff produced a certificate of official search confirming the Defendant's ownership, his rates payment certificates, a chief's letter verifying his occupation, and a letter dated 1st February 2024 from the estate management company affirming that the Plaintiff and his family had



long been in possession and were regarded as the owners. The Plaintiff submits that knowledge of the Defendant was not necessary at the time of taking possession, since the Defendant had discontinued possession and had the means of knowing actually or constructively of the Plaintiff's occupation.

10. He relies on the Court of Appeal's decision in *Kasuve v Mwaani Investments Limited & 4 Others* [2004] 1 KLR 184, where it was held that to succeed in adverse possession, a claimant must prove exclusive possession of the land openly and as of right, without interruption, for at least twelve years either after dispossessing the owner or following discontinuation of possession by the owner.
11. The Plaintiff further relies on *Kimani Ruchire v Swift Rutherfords & Co. Ltd* (1980) KLR, where Kneller J. stated that the claimant must demonstrate possession *nec vi, nec clam, nec precario* (without force, secrecy, or permission), and that the true owner had knowledge or the means of knowing of such possession. Additionally, he cites *Tabitha Waitherero Kimani v Joshua Ng'ang'a* [2017] eKLR, in which Ombwayo J. articulated the four principles of adverse possession; open and notorious use, continuous use, exclusive use, and actual possession.
12. Applying these principles, the Plaintiff submits that his occupation was open and notorious as confirmed by the estate management and local administration, continuous for more than twelve years, exclusive to the exclusion of the true owner, and in actual possession through physical occupation and maintenance of the property.

Analysis and Determination:

13. Having carefully considered the Plaintiff's pleadings, the oral and documentary evidence on record, and the written submissions by the Plaintiff, the sole issue for determination is whether the Plaintiff has satisfied the requirements for the acquisition of title by adverse possession in respect of the suit property. It is not disputed that the Defendant is the registered proprietor of the said property for a term of 99 years from 26th January 1989.
14. The Plaintiff's testimony supported by his evidence; certified copy the Search, copy of a land rates invoice, screenshot of the e-payment receipts, copy of the area chief's letter dated 2nd February 2024 and copy of a letter from the Dam Estate Association of Residents, is that he and his family have occupied the suit property openly, continuously, and exclusively for more than twelve (12) years, without interruption or permission from the Defendant, who has never asserted ownership or taken possession during that period. The Defendant, though duly served through substituted service in the Standard Group Daily Newspaper on 14th September 2024, failed to enter appearance or file a response; hence, the Plaintiff's evidence remains uncontroverted.
15. The particulars to be considered under ownership through adverse possession was extensively discussed by the Court of Appeal in *Mtana Lewa v Kahindi Ngala Mwagandi* [2015] KECA 532 (KLR) as follows;

“Adverse possessions 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 neglects 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 or under the licence of the owner. It must be adequate in continuity, in publicity and in extent to show that possession is adverse to the title owner. This doctrine in Kenya is embodied in Section 7 of the *Limitation of Actions Act*, which is in these terms:-



“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.”

The *Limitation of Actions Act* makes further provision for adverse possession at Section 13 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 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.
- (3) For the purposes of this section, receipt of rent under a lease by a person wrongfully claiming, in accordance with section 12(3), the land in reversion is taken to be adverse possession of the land.”

16. Guided by the above discussion on adverse possession principles to the instant case, it is my view that the Plaintiff’s occupation of the suit property was open and notorious, as evidenced by the letters from the Dam Estate Management Company and the area chief confirming his long-term and undisturbed occupation. His possession has been continuous and uninterrupted from 2011 to the time of filing suit in 2024, thereby satisfying the statutory limitation period under Sections 7, 13, and 38 of the *Limitation of Actions Act* (Cap 22, Laws of Kenya). His use of the property has been exclusive, as he has occupied it with his family, maintained it, and paid estate-related dues without interference or claim from the Defendant.
17. Further, the Defendant’s inaction for over twelve years amounts to discontinuation of possession, thereby extinguishing her rights under Section 17 of the *Limitation of Actions Act*.
18. Accordingly, the Court finds and hold that the Plaintiff has proved his case on a balance of probabilities and met all the elements of adverse. Therefore, he is entitled to be registered as the proprietor of the residual leasehold interest in suit property as follows;
 - a. A declaration be and is hereby made that the Plaintiff, Elvis Kiptoo Mwiliza, has acquired ownership of the leasehold interest in Nairobi/Block 106/230 by way of adverse possession.
 - b. The Defendant’s title and interest in the said property is hereby extinguished pursuant to Sections 7, 17, and 38 of the *Limitation of Actions Act* (Cap 22, Laws of Kenya).
 - c. The Chief Land Registrar is hereby directed to register the Plaintiff as the proprietor of the residual period of leasehold interest in Nairobi/Block 106/230, in place of the Defendant.
 - d. No order as to cost.

DATED, SIGNED AND DELIVERED AT Nairobi THIS 13TH DAY OF NOVEMBER, 2025

A. OMOLLO



JUDGE

