



**Mwangula & 10 others v Riko (Environment and Planning Originating Summons E001 of 2024) [2025] KEELC 8634 (KLR) (11 December 2025) (Judgment)**

Neutral citation: [2025] KEELC 8634 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT AND PLANNING ORIGINATING SUMMONS E001 OF 2024  
JO OLOLA, J  
DECEMBER 11, 2025**

**BETWEEN**

**ISSA BAKARI MWAMGULA ..... 1<sup>ST</sup> PLAINTIFF  
REHEMA BAKARI MWAMGULA ..... 2<sup>ND</sup> PLAINTIFF  
SUILEMAN BAKARI MWAMGULA ..... 3<sup>RD</sup> PLAINTIFF  
SALIM BAKARI MWAMGULA ..... 4<sup>TH</sup> PLAINTIFF  
KASIM BAKARI MWAMGULA ..... 5<sup>TH</sup> PLAINTIFF  
HAMISI BAKARI MWAMGULA ..... 6<sup>TH</sup> PLAINTIFF  
KOLOLA BAKARI MWAMGULA ..... 7<sup>TH</sup> PLAINTIFF  
MUHUNZI BAKARI SULEIMAN ..... 8<sup>TH</sup> PLAINTIFF  
FATUMA BAKARI MWAMGULA ..... 9<sup>TH</sup> PLAINTIFF  
HIDAYA BURASHI DEMU ..... 10<sup>TH</sup> PLAINTIFF  
MWANAHARUSI SUDI BIND ..... 11<sup>TH</sup> PLAINTIFF**

**AND**

**BINARI JUMA RIKO ..... DEFENDANT**

**JUDGMENT**

**Background**

1. By an Originating Summons dated 27<sup>th</sup> June 2023 as amended on 6<sup>th</sup> June 2024, Issa Bakari Mwangula and 10 other Plaintiffs urge the court to determine some three (3) questions framed as follows:



1. Are the Plaintiffs/Applicants entitled to be declared as the proprietors of land on Plot No. Bububu Scheme "A"/158 which they have acquired by adverse possession after staying and or occupying and/or residing on the plot for over 12 years? ;
2. Are the Plaintiffs/Applicants entitled to be registered as the owner of Plot No. Bububu Scheme "A"/158 and be issued with Certificate of Title? ; and
3. Are the Plaintiffs/Applicants entitled to the costs of this suit?
2. The Amended Originating Summons is supported by an Affidavit sworn on 6<sup>th</sup> June 2024 by the 1<sup>st</sup> Plaintiff – Issa Bakari Mwangula wherein he deposes that the Plaintiffs have been in occupation of the suit property since the year 2001.
3. Binari Juma Riko (the Defendant) did not enter appearance. Following an order issued by this court on 18<sup>th</sup> July 2024, the Defendant was served with the summons through substituted service in the Daily Nation Newspaper on 1<sup>st</sup> August 2024. The suit thereafter proceeded by way of formal proof.

### **Analysis and Determination**

4. I have carefully perused and considered the Plaintiffs' pleadings the testimony of their sole witness as well as the evidence adduced at the trial. I have similarly perused and considered the submissions and authorities placed before me by the Learned Advocates representing the Plaintiffs.
5. The 11 Plaintiffs have approached this court seeking for a determination that they have acquired the parcel of land known as Mombasa/Bububu 'A' Settlement Scheme/158 by way of adverse possession. It is their case that they have all occupied the parcel of land registered in the name of Binari Juma Riko for a period in excess of 12 years.
6. Section 38(1) and (2) of the *Limitation of Actions Act*, Cap 22 of the Laws of Kenya provides as follows:
  - “(1) Where a person claims to have become entitled by adverse possession to land registered under any of the Acts cited in section 37, 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) An order made under subsection (1) of this section shall by registration take effect subject to any entry on the register which has not been extinguished under this Act.”
7. As Makhandia J.A. did state in *Mtana Lewa v Kahindi Ngala Mwangandi* (2015) eKLR:
 

“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 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 owners, the essential prerequisite 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.”



8. The threshold for a claim of adverse possession was laid out in the case of *Kimani Ruchine v Swift Rutherford Co. Ltd (1980) KLR* that:

“The Plaintiffs have to prove that they have used this land which they claim, as of right: Nec Vi, nec clam, nec precario... The possession must be continuous. It must not be broken for any temporary purpose or by any endeavors to interrupt it or by any recurrent consideration.”

9. In the matter before me, the Plaintiffs aver that they have occupied the suit premises continuously without interruption for more than 12 years. PW1 who told the court he was 38 years old testified that a majority of the Plaintiffs including himself were born on the land and that they had remained thereon to-date.

10. In support of their case the Plaintiffs produced photos of houses and other developments on the land. They have also produced a certificate of search that indicates that the Defendant was issued with a title deed for the said parcel of land on 7<sup>th</sup> July 2007. As the Defendant did not enter appearance herein, the Plaintiffs’ testimony remained uncontroverted and unchallenged.

11. In the premises, I am satisfied that the Plaintiffs have proved their claim on a balance of probabilities and I hereby enter judgment in their favour and make the following orders:

- a. A declaration is hereby made that the Plaintiffs are the proprietors of the parcel of land known as Mombasa/Bububu “A” Settlement Scheme/158 having acquired the same by adverse possession.
- b. A declaration is hereby made that the Plaintiffs are entitled to be registered as the owners of the said plot No. Mombasa/Bububu “A” Settlement Scheme/158 and to be issued with a certificate of title.
- c. I make no order as to costs.

**JUDGMENT DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 11<sup>TH</sup> DAY OF DECEMBER, 2025**

.....

**J.O. OLOLA**

**JUDGE**

In the presence of:

- a. Ms. Firdaus Court Assistant.
- b. No appearance for the Plaintiffs/Applicants
- c. No appearance the Defendant

