



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**  
**ELC NO. E129 OF 2025(O.S)**  
**IN THE MATTER OF ORDER 37 RULE 7 OF THE CIVIL  
PROCEDURE RULES 2010**  
**AND**  
**IN THE MATTER OF SECTION 38 OF THE LIMITATION OF  
ACTIONS ACT**  
**AND**  
**IN THE MATTER OF SECTION 28(H) OF THE LAND  
REGISTRATION ACT  
NO. 3 OF 2012**  
**AND**  
**IN THE MATTER OF L.R. NO. 7785/995**  
**BETWEEN**  
**WAMBUA NDAMBU.....**  
**APPLICANT**  
**VERSUS**  
**MARY GORETI**  
**IGA.....RESPONDENT**  
**JUDGMENT**

1. The Applicant instituted this suit by way of an Originating Summons dated 26<sup>th</sup> March 2025, seeking the following orders;

***1, THAT the Chief Land Registrar do register the Applicant WAMBUA NDAMBU as the owner of L.R. No. 7785/995.***

***2. THAT the Deputy Registrar of the Honourable Court be authorized to execute the transfer or any other document to effect the said transfer.***

***3. THAT the costs be in the cause.***

#### **THE RESPONDENT'S CASE**

Though duly served, the Respondent did not enter an appearance or file a response to the application.

#### **THE APPLICANT'S CASE**

2. The Applicant averred that he has occupied the suit property since 2006 and has built structures thereon. He further averred that a neighbor provided him with the land reference number for the suit property, which enabled him to obtain the title. He went on to state that the neighbours told him they had lived there for 20 years and had not seen the owner. He

stated that he cleared the land of bushes, built a wooden house where he lives with his workers, and has been farming ever since.

3. The Originating Summons was canvassed by way of written submissions.

### **THE APPLICANT'S SUBMISSIONS**

4. The Applicant filed his submissions dated 1<sup>st</sup> June 2025.
5. On his behalf, Counsel outlined the following issues for the court's determination: \_

*a) Whether the Applicant has been in possession and occupation of the suit property?*

*b) The duration of the Applicant's possession.*

*c) Whether the Applicant's possession is adverse to the Respondent's ownership of the suit property.*

6. On the first issue, Counsel submitted that the Applicant's occupation and possession of the suit property have not been challenged. To buttress this point, Counsel relied on the amended Originating Summons and the annexures attached to the supporting affidavit.

7. Regarding the second issue, Counsel contended that the Applicant has maintained continuous and uninterrupted possession and occupation of the suit property for over 18

years. It was further submitted that the Applicant's evidence remained unchallenged.

8. Regarding the third issue, Counsel submitted that the Applicant did not use force, coercion, or undue influence to gain possession and occupancy of the suit property. It was submitted that his entry onto the suit property was marked by amicable discussions with neighbouring landowners. Counsel further submitted that the Applicant's possession was continuous, uninterrupted, open, and without secrecy as he cultivated the land, built a house, and installed a gate.
9. Counsel further argued that the Applicant has exclusively occupied the property since 2007, after learning from neighbors that they had never seen anyone claim the suit property. Counsel maintained that activities such as farming, building a residence, and erecting a gate demonstrate exclusive possession of the suit land.
10. Counsel submitted that the possession was without the owner's consent because there was no license, lease, or any agreement between him and the landowner. It was argued that building a dwelling and other improvements on the land

without the owner's consent demonstrates that his possession was adverse to the owner.

11. Counsel asserted that the Applicant conducted due diligence and obtained an invoice for the rates along with a copy of the title confirming that the Respondent is the registered owner of the suit property.

### **ANALYSIS AND DETERMINATION**

12. Having considered the pleadings and the submissions by the Applicant, the only issue that arises for determination is whether the Applicant is entitled to the orders sought.

13. The Applicant is seeking a declaration that he has acquired the suit property by way of adverse possession.

14. The doctrine of adverse possession is embodied in Section 7 of the Limitation of Actions Act, which stipulates that:

***“An action may not be brought by any person to recover land after the end of 12 years from the date on which the right of action accrued to him or, if it is first accrued to some person through whom he claims, to that person.”***

15. Further, Section 13 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 Section 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.**

**3) For the purposes of this section, receipt of rent under a lease by a person wrongfully**

***claiming, in accordance with Section 12(3) of this Act, the land in reversion is taken to be adverse possession of the land***

16. Section 38 gives guidelines on the procedure to be followed by a person claiming adverse possession.

17. The ingredients of the doctrine of adverse possession were discussed in the case of **Wambugu vs Njuguna (1983) KLR 173**, where the Court of Appeal held that: -

***“Adverse possession contemplates two concepts: Possession and discontinuance of possession. It further held that the proper way of assessing proof of adverse possession would 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 or she has been in possession for the requisite number of years.”***

18. The Court of Appeal discussed the ingredients in the case of **Mtana Lewa Vs Kahindi Ngala Mwangandi (2005) eKLR**, where it was held that: -

***“Adverse possession is essentially a situation where a person takes possession of land, 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 of 12 years. The process springs into action essentially by default or inaction by the owner. The essential prerequisites being that the possession of the adverse possessor is neither by force or stealth or under 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.*”**

19. It is well established that a party claiming adverse possession must prove that their possession was peaceful, open, and continuous. The possession should not have been obtained by force, secrecy, or without the owner’s consent.
20. For the Applicant to be entitled to the suit property by way of adverse possession, he must prove that he has been in

continuous, uninterrupted occupation for a period of not less than 12 years.

21. In **Mombasa Teachers Co-operative Savings and Credit Society Limited vs Robert Muhambi Katana & 15 Others**

**[2018] eKLR**, the Court of Appeal stated that: -

***“Likewise, it is settled that a person seeking to acquire title to land by adverse possession must prove non-permissive or non-consensual, actual, open, notorious, exclusive, and adverse use/occupation of the land in question for an uninterrupted period of 12 years as espoused in the Latin maxim nec vi nec clam nec precario.***

22. The Applicant insisted that he has occupied the suit property peacefully, openly, and continuously for more than 18 years without any interruption. He contended that he had built dwelling structures for himself and his workers, was cultivating the suit property, and had fenced it.

23. This court is called upon to determine whether the Applicant is in possession of the suit property. In the case **of Kasuve v Mwaani Investment Ltd & 4 others**, the court emphasized

that mere occupation is insufficient unless it is accompanied by *animus possidendi*.

24. In the matter at hand, the Applicant alleged that he had exclusively occupied the suit property for more than 18 years. The burden was on the Applicant to prove actual, physical, continuous possession. The Applicant did not present tangible evidence to prove occupation of the suit property. He did not produce photographs of the alleged wooden structures on the suit property. Similarly, he did not adduce any evidence to show that he was carrying out farming activities on the suit property. Additionally, the Applicant did not call a neighbor to verify his physical possession thereof.

25. The Applicant did not demonstrate the nature of exclusivity of the alleged possession. The court is left with bare assertions which, without corroboration, are insufficient to meet the threshold for granting the orders sought. In the absence of cogent and corroborative evidence demonstrating actual, open, and exclusive possession of the suit property for the requisite period, I am not satisfied that the Applicant has discharged the burden of proof placed upon him.

26. In the end, I find that the Applicant has not proved his case on a balance of probabilities as required. Consequently, the Originating Summons dated 26<sup>th</sup> March 2025 is hereby dismissed.

**RULING SIGNED, DATED, AND DELIVERED VIA MICROSOFT TEAMS THIS 11<sup>TH</sup> DAY OF DECEMBER, 2025.**

.....  
**HON. T. MURIGI**  
**JUDGE**

**IN THE PRESENCE OF: -**

Mangalla for the Applicant

Ahmed - Court Assistant