



**Langat v Charero & another (Environmental and Land Originating Summons
24 of 2021) [2026] KEELC 293 (KLR) (29 January 2026) (Judgment)**

Neutral citation: [2026] KEELC 293 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS 24 OF 2021**

**JO OLOLA, J
JANUARY 29, 2026**

BETWEEN

EZEKIEL KIPRONO LANGAT APPLICANT

AND

KADZO FUNDI KUCHA CHARERO 1ST RESPONDENT

RIZIKI FUNDI KUCHA CHARERO 2ND RESPONDENT

JUDGMENT

1. By an Originating Summons dated 25th January 2021, Ezekiel Kiprono Lang'at (hereinafter "the Applicant") prays for orders:
 1. That the Respondents interest in Mombasa/ Mwembelegeza/384 measuring 0.05 Ha has been extinguished;
 2. That the Applicant be registered as the proprietor of all that parcel of land Mombasa/ Mwembelegeza/384 measuring 0.05Ha which said piece of land is comprised in a title deed in the District Land Registry at Mombasa in place of Respondents (by) reason of the fact that the Applicant has become entitled to the said land by adverse possession;
 3. That the orders referred to in paragraph 1 and 2 above be registered against the title Mombasa/ Mwembelegeza/384 measuring 0.05Ha which said piece of land is comprised in a title deed in the District Land Registry at Mombasa in terms of section 38 (2) of the [Limitation of Actions Act](#), Cap 22 Laws of Kenya; and
 4. That the costs of this Originating Summons be provided for.
2. The Originating Summons is supported by an affidavit sworn by the Applicant and is premised on the grounds:



- i. That the Applicant has been in an uninterrupted exclusive physical occupation of Mombasa/Mwembelegeza/384 measuring 0.05Ha for a continuous period of over 20 years;
 - ii. That the Respondents have shown no interest on the land and have never given any notice to the Applicant to vacate the same;
 - iii. That the Respondents rights and interest in the said parcel of land have been extinguished;
 - iv. That it is fair and just that the Applicant be registered as the owner of the suit property so that he can live in peace together with his family members;
 - v. That the Applicant has peacefully and openly exercised proprietary rights over the suit property for over 20 years; and
 - vi. That the Applicant has no other place to call home save for the suit property.
3. Kadzo Fundi Kucha Charero and Riziki Fundi Kucha Charero (the Respondents) were served by way of substituted service through the Standard Newspaper of 8th February 2023. The two did not enter appearance and the matter proceeded by way of formal proof.

The Applicant's Case

4. At the trial herein the Applicant testified as the sole witness in his case. Adopting his witness statement dated 25th January 2021, the Applicant told the court that he had moved into and occupied the suit property in the year 2000 when it was bare and free from occupation. He further told the court that he had upon occupying the land, constructed a house in which he has lived with his family ever since.
5. The Applicant told the court that throughout his occupation of the land, he had never seen the owners or received any notice from them to vacate the land.

Analysis and Determination

6. I have carefully perused and considered the Originating Summons, the sole testimony of the Applicant as well as the evidence adduced at the trial.
7. By the suit as filed, the Applicant prays for a determination that he has acquired all that parcel of land known as Mombasa/Mwembelegeza/384 measuring 0.05 Ha by way of adverse possession. Consequently, the Applicant urges the court to have him registered as the proprietor of the suit property. Despite service by way of substituted service, the Respondents did not enter appearance and as such, the suit proceeded undefended.
8. Section 38 of the *Limitation of Actions Act*, Cap 22 Laws of Kenya provides that:
 - “(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.”



9. As was stated by the Court of Appeal in *Mombasa Teachers Co-operative Savings & Credit Society Limited –vs- Robert Muhambi Katana & 15 Others* (2018 eKLR:

“....., it is settled that a person seeking to acquire title to land by way of 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*.”

10. In the matter herein, it was the Applicant’s case that he entered and has lived on the suit land peacefully for a period exceeding 20 years. However, while the Applicant asserted that he had built a house on the land, planted bananas and that he was rearing chicken thereon, there was absolutely no evidence rendered to corroborate those claims.

11. In matters of evidence, Section 107 of the *Evidence Act* Cap 80 of the Laws of Kenya provides that:

“ 107 (1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”

12. It was telling that while the Applicant purported to have developed the suit land for a period in excess of 20 years, no evidence of any development on the suit land were provided before the court. The Plaintiff’s testimony thus remained uncorroborated and unsupported by any other evidence.

13. In the circumstances herein and even though the matter proceeded as an undefended claim I was not persuaded that the Applicant had discharged the burden of proof to the required standards.

14. In the premises I find and hold that the Applicant has failed to prove that he has acquired title to the suit property by way of adverse possession. The suit is accordingly dismissed with no order as to costs.

JUDGMENT DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 29TH DAY OF JANUARY, 2026

..... .

J.O. OLOLA

JUDGE

In the presence of:

- a. Ms. Firdaus Court Assistant.
- b. Mr. Birir Advocate for the Applicant
- c. No Appearance for the Respondents

