



**Okwemba v Mullo & another (Environment and Land Case
E014 of 2023) [2026] KEELC 315 (KLR) (29 January 2026) (Judgment)**

Neutral citation: [2026] KEELC 315 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE E014 OF 2023
AA OMOLLO, J
JANUARY 29, 2026**

BETWEEN

CAROLYNE AKEYO OKWEMBA APPLICANT

AND

CHARLES ODHIAMBO MULLO 1ST RESPONDENT

ROSELYN ADOYO MULLO 2ND RESPONDENT

JUDGMENT

1. The Applicant, Carolyne Akeyo Okemba, filed the Originating Summons dated 14th March 2023, supported by her affidavit sworn on the same date, together with all annexed documents. She seeks the following reliefs;
 - a. A declaration that the Defendants' title to the Suit Property was extinguished by adverse possession of the same by the Plaintiff for over 13 years.
 - b. A declaration that the Plaintiff has acquired interest and title to the Suit Property free of any encumbrances by adverse possession against the Defendants.
 - c. An Order do issue calling for the Subordinate Court file in Milimani, CMCC/E822/2023 Charles Odhiambo Mullo v Moran Auctioneers & 2 Others, to this Honourable Court for the same to be heard and determined together with the instant suit for the fair, just and expeditious disposal of the issues.
 - d. An Order that the Plaintiff be and is hereby registered as the proprietor/owner of the Suit Property
 - e. An Order of permanent injunction be and is hereby issued to restrain the Defendants whether by themselves, their agents, servants or anyone claiming under the Defendants or their instructions from evicting the Plaintiff, re-entering, leasing, selling, disposing off, charging,



mortgaging, encumbering or in any way interfering with the Plaintiff's quiet possession, use and or ownership of the Suit property.

- f. Costs of the Suit be paid by the Defendant.
2. The OS is premised on the grounds inter alia, that the Applicant, together with her estranged husband, Alfrique Otieno, purchased the Suit Property from the Respondents in 2010 for KES 6,300,000. That they took immediate vacant possession, though the transfer has not been registered due to unresolved legal costs and marital disputes. She posits that since the acquisition, they have openly and peacefully occupied the suit property for over 12 years by renting it out and collecting rent without any objection from the Defendants.
3. The Applicant stated that her estranged husband managed the rent for family expenses but moved out in March 2021, taking with him the sale and transfer documents and refusing to cooperate with her or account for rent proceeds. She asserted that she remains in possession, with the property currently vacant following a tenant's February 2023 vacating after a lawful distress for rent arrears.
4. The Applicant asserts that the Respondents have never sought to reclaim the property or assert ownership since 2010. She duly registered a caution at the Nairobi Lands Registry in June 2022, which remains in force, and has never paid any rent or fees to the Respondents, thereby establishing continuous and adverse possession. She contends that her occupation, being open, quiet, and uninterrupted for more than twelve years, has extinguished the Defendants' title under the law of adverse possession.
5. The Applicant further highlights that the 1st Respondent has attempted to challenge her possession through a separate suit in the Milimani Court, denying the sale and claiming rent recovered from the tenant. Still, there are no orders restraining her from the property.
6. The 1st and 2nd Respondents, in opposition to this suit by way of an Originating Summons, filed a replying affidavit and a further affidavit, both sworn by Charles Odhiambo Mullo on 18th August 2023 and 9th May 2024, respectively. He stated that they are the lawful and registered joint owners of Maisonette No. U03 on LR No. 18111/45, Baraka Estate, Embakasi, referred to as "the suit property", having acquired it from the original developer in 2003.
7. They deny ever selling or disposing of it to the Applicant and maintain that they have never lost possession of it. They assert that the Originating Summons is founded on conjecture and hearsay, and that the Applicant has not demonstrated when, how, or by whom possession was allegedly lost or acquired.
8. The Respondents explained that in 2011, after relocating abroad for work, they appointed Alfrique Otieno as their agent to manage the property. They further stated that the tenants were lawfully in possession of the premises from 2012 onwards, paying rent to the Respondents through the agent.
9. Any rent collected by the agent and not remitted constituted a lawful debt owed to the Respondents. The Respondents deny that the Applicant ever exercised exclusive possession, noting that the long-term tenant swore an affidavit confirming the Respondents as the true landlords and denying any knowledge of the Applicant.
10. The Respondents further contend that payment of land rent and rates up to 2023 confirms their continued ownership and control. They also claim that the Applicant's alleged distress for rent in 2022 was illegal and carried out under duress by auctioneers and police officers, resulting in the tenant's forced payment. The Respondents state that upon learning of the intrusion, they promptly filed CMCC/E822/2023 to protect their property and recover the monies paid.



11. The Respondents stated that, with regard to the suit property, the Applicant also filed a suit for the division of the matrimonial property under the *Matrimonial Property Act* No. 49 of 2023, vide civil case No. E046 OF 2022 (OS), *Carolyn Akeyo Okwemba v Alfrique Otieno Mwana*, but the suit was dismissed, including an application for a temporary injunction.
12. They argue that the Applicant's claim of adverse possession is legally untenable, since possession was never exclusive, hostile, or uninterrupted. They assert that filing an adverse possession claim is a constructive admission of trespass and that the suit is scandalous, frivolous, vexatious, and an abuse of the court process.
13. In response to the 1st and 2nd Respondents' replying affidavit, the Applicant filed a further affidavit sworn on 16th February 2024 reiterating her averments in the supporting affidavit filed alongside the OS. She deposed that she does not have the original sale documents because her estranged husband retained them after their separation and has refused to cooperate.
14. The Applicant denies the Respondents' claims that they paid property rent and rates before 2023, asserting that her possession has always been open, uninterrupted, and lawful, including the collection of rent from the tenant, Ben Mwangi Nguyo, who acknowledged her as the rightful lessor. She further contends that the distress for rent she levied was lawful and that the prior criminal matters cited by the Respondents are irrelevant to this suit.
15. The Applicant emphasises that the Respondents, in collusion with her estranged husband, have attempted to interfere with her possession by forcefully entering the property after the tenant vacated in February 2023.

Submissions

16. The Applicant filed her submissions dated 7th October 2025, while the Respondents filed two copies of submissions dated 13th May 2024 and 22nd October 2025. The Applicant submits that she has been in continuous, open, and exclusive possession of the suit property since 2010, when she took vacant possession with her estranged husband.
17. Although the entry arose from an alleged sale, the claim before the Court is based on adverse possession, not the sale. She averred that she had demonstrated possession through long-term rent collection, bank statements, and lawful distress for rent against a defaulting tenant, showing that tenants consistently recognised her as the lessor and the person in control of the property.
18. The Applicant submitted that the Respondents have failed to prove any occupation or possession after 2010. Their reliance on emails is challenged on the grounds of non-compliance with Section 106B of the *Evidence Act*, as held in *Ogembo v Yongo* [2024] KEHC 15763 (KLR). Furthermore, the alleged collection of rent by the Respondents or their agent was not supported by credible evidence. In contrast, her evidence of rent collection and enforcement of tenancy rights remained uncontroverted, showing uninterrupted possession.
19. The Applicant submitted that the Respondents' belated payment of land rent and rates in 2023 did not amount to possession and did not interrupt time for adverse possession. She relied on the case of *Kipketer Togom v Isaac Cipriano Shingore* [2012] KEHC 5426 (KLR), arguing that interruption requires physical entry or eviction proceedings, neither of which occurred.
20. Citing the cases of *Celina Muthoni Kithinji v Safiya Binti Swaleh & 8 Others* [2018] eKLR, *Mtana Lewa v Kahindi Ngala Mwagandi*, and *Chevron (K) Ltd v Harrison Charo Wa Shutu* [2016] KECA



248 (KLR), she asserts that she has proved her possession was peaceful, open, continuous, and without permission for over twelve years.

21. The Respondents, on their part, submitted that the Applicant has not met the legal threshold for a claim of adverse possession, which requires continuous, exclusive, and hostile occupation for at least twelve years as articulated in *Kasuve v Mwaani Investments Ltd & 4 Others* [2004] 1 KLR 184. They argue that the Applicant never had exclusive possession of the suit property because, from 2011, the Respondents appointed her estranged husband as their managing agent under a written Agency Agreement.
22. Pursuant to that agreement, a tenant was installed in 2012 and remained in occupation until 2023, holding factual possession, while the Respondents retained legal and beneficial ownership. They submitted that the Applicant and her husband exercised supervisory access only as agents, which is incompatible with the exclusive possession required under *Kimani Ruchire v Swift Rutherford & Co Ltd*.
23. The Respondents further submitted, in the alternative, that any occupation by the Applicant or her husband was permissive and therefore not adverse. Relying on *Carolyn Akeyo Okemba*, the case of *Samuel Miki Waweru v Jane Njeri Richu* (CA No. 122 of 2001), and *Jandu v Kirpal* [1975] EA 225, they argued that possession founded on a licence, agency, tenancy, or agreement of sale cannot ripen into adverse possession unless the permission is revoked and the occupier thereafter refuses to vacate.
24. They further submitted that the 2011 Agency Agreement and Mr Otieno's sworn admission in HCCC No. E046 of 2022, which states that he never purchased the property, confirms that his presence, access, and rent collection were exercised purely under the Respondents' authority and not hostile to their title. It is their argument that rent collection under the Agency Agreement proves management, not possession.
25. Additionally, section 4 of the Agreement required the agent to collect rent strictly on behalf of the Respondents and to account for it, affirming the Respondents' continuing dominion and constructive possession of the property. Accordingly, the rent receipts relied on by the Applicant are probative not of her possession, but of the Respondents' ownership exercised through an agent and a sitting tenant.

Analysis and Determination:

26. The central issue in this case is whether the Applicant has established the elements of adverse possession against the 1st and 2nd Respondents' registered title. Under Sections 7 and 38 of the *Limitation of Actions Act*, a claimant must prove open, continuous, exclusive, and hostile possession for at least twelve years. Such burden of proof lies on the claimant to demonstrate that the possession was without force, without secrecy, and without permission.
27. In the classic case of *Sisto Wambugu v Kamau Njuguna* [1983] KECA 69 (KLR), the Court of Appeal held that adverse possession is concerned with the discontinuance of possession by the true owner and the taking of possession by the adverse possessor. Thus, time begins to run when the actual owner is dispossessed or ceases to hold possession.
28. The Applicant contends that she and her estranged husband obtained possession of the suit property in 2010 through purchase from the Respondents. It is her evidence that they openly rented the property for over 12 years. Acts such as leasing property, collecting rent, and enforcing tenancy rights can constitute acts inconsistent with the owner's enjoyment of the land.
29. In supporting this evidence, the Applicant annexed bank statements to show rental payments from her alleged tenant on the suit property. She also produced letters dated October 2022 demanding rent



made on her behalf by the law firm of Litoro & Omwebu Advocates. She annexed a copy of the plaint filed by the Respondents in CMCC E822 of 2023 as proof that she indeed levied distress for rent against one Ben Mwangi, pointing to her possession of the suit property. The Applicant explained her inability to produce the sale agreement, stating that it was taken by her estranged husband, who has now refused to cooperate.

30. One of the ingredients of adverse possession, which must be proved, is the lack of consent of the registered land owner. Where entry is with permission, time does not run for purposes of adverse possession until the consent is withdrawn and the occupier asserts a hostile claim. In *Public Trustee v Wanduru Ndegwa* [1984] KECA 72 (KLR), the Court of Appeal held that possession that is referable to a contract, licence, or other lawful relationship is not adverse. Similarly, as held in the case of *M'nkanata M'nanjau V Mutuamwari Njiima* [2011] Kehc 2706 (Klr), a licensee cannot claim to be in adverse possession of the owner of the property.
31. In this instance, the 1st and 2nd Respondents argue that possession was not adverse because it was permissive, arising from an Agency Agreement appointing the Plaintiff's estranged husband as their agent. They annexed a copy of the agency agreement allegedly executed between them and Mr Alfrique Otieno on 26th June 2011, appointing him as the exclusive agent to manage the suit property on their behalf. Of course, the Applicant in the further affidavit deposed that the agency is now being used as a scheme between the Respondents and her estranged husband to ensure that her claim fails.
32. The Respondents annexed a copy of a replying affidavit of Alfrique Otieno filed in Nairobi HC Matrimonial cause no 49 of 2018. In that suit, the Applicant herein had sued the said Alfrique Otieno, who denied ownership of the suit property, described as house no. 323 on LR 18111/211, situated at Baraka estate in Embakasi, Nairobi. The Respondents stated that this cause was dismissed, a fact which the Applicant has not denied.
33. Thus, the Applicant was under a duty to show that the agency agreement purporting to establish the Respondents' consent to Alfrique Otieno's possession is a deceptive device. She does not say whether Alfrique Otieno is related to the Respondents or give any reasons why the Respondents would collude with this Mr Otieno if, indeed, they sold the suit property to them. Neither does the Applicant state where the sale transaction took place or how the payments were made.
34. Besides stating that the estranged husband took away the sale agreement, the Applicant produced a Co-operative bank statement which, on its face, listed Ssesse Safaris as the account holder. It is in this account that one Ben Mwangi made a payment of Kshs 25000 on 4th March 2019. However, the Applicant does not explain her nexus with Ssesse Safaris.
35. Additionally, the Applicant relied on the letters demanding rent for the period March 2021 until October 2022. The letter also states that the tenant had been in occupation since 2018. These correspondences do not support the assertion of a twelve-year occupation to the date of filing of the suit, as they refer only to occupation from 2018.
36. Adverse possession must be inconsistent with the rights of the actual registered owner and not attributable to any lawful arrangement. Relying on the fact that there was an agreement between the Respondents and the Applicant's estranged husband, which has not been invalidated, the estranged husband's rent collection on the suit property was on behalf of the Respondents; hence, there was no hostility to the title.
37. Further, adverse possession requires that the Applicant exercise control to the exclusion of the true owner. The Court in *Karumbi v M'Ngaruni* [2025] KEELC 4717 (KLR), citing *Mbira v Gachuhi*



(2002) EALR 137, held that a person claiming adverse possession must show clear and exclusive possession with the intention to dispossess the true owner.

38. It is my considered opinion that the facts and documents presented by the Applicant do not meet the threshold for a claim of adverse possession to succeed. If She has a stake in the impugned property, that stake is not recoverable under the doctrine of adverse possession in light of the lack of proof that her occupation (if at all) was without the consent of the Respondents. Further, there was no evidence to support the claim that her possession (if any) had lasted for 12 years.
39. Consequently, I find that she has not proved her case on a balance of probabilities. The result is that the originating summons is hereby dismissed. Given that the suit proceeded by way of written submissions, I find that the Respondents' costs were minimised; hence, I award them half costs of this suit.

DATED, SIGNED AND DELIVERED BY UPLOAD TO THE CTS, THIS 29TH DAY OF JANUARY, 2026

A. OMOLLO

JUDGE

