

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ELC (OS) NO. E022 OF 2025

IN THE MATTER OF THE LAND REGISTRATION ACT 2012 (CAP 284) LAWS OF KENYA

AND

IN THE MATTER OF SECTION 38 OF THE LIMITATION OF ACTIONS ACT (CAP 22) LAWS OF KENYA

BETWEEN

JOSEPH OTIENO OTIENDE.....APPLICANT

VERSUS

HAJI JAFFER KANA(CHAIRMAN)

HAJI ABDULLA JADEJA (VICE- CHAIRMAN)

MOND YUSUF BHOLIM (TREASURER OF

KISUMU BHADALA JAMAT.....RESPONDENTS

JUDGEMENT

Vide the Originating Summons dated 18th April 2025 Joseph Otieno Otiende who claims to be an adverse possessor of land parcel known as KISUMU/NYALENDA “B” /961 placed before Court, the following questions for determination against the Respondents: -

- 1) whether the Applicant has been in actual, hostile, open, continuous and uninterrupted possession of land parcel

known as KISUMU/NYALENDA “B”/961 for a period of over 12 years.

- 2) whether the Applicant has in the process of such possession / occupation constructed his and his family members’ home therein as of right to the total exclusion of the respondent.
- 3) whether the Applicant has overriding interest under Section 28(h) and (j) of the Land Registration Act 2012 over land parcel No. KISUMU/NYALENDA “B” /961.
- 4) whether in the circumstances the respondent’s title to the suit land was extinguished after 12 years of the Applicant’s possession/occupation and that the Respondent now remains registered only as a trustee for the Applicant.
- 5) whether the Applicant is an active adverse possessor of the land parcel No. KISUMU/NYALENDA “B” /961.
- 6) Whether the honorable Court ought to vest land parcel number KISUMU/NYALENDA “B” /961 to the Applicant.
- 7) If 1,2,3 & 4 above are in the affirmative, whether the Kisumu County Land Registrar should be directed to

register the rights and interests to the Applicant upon land parcel No. KISUMU/NYALENDA "B" /961.

8) Whether the Applicant is entitled to costs of the Application.

No response was filed to the Originating Summons. Affidavit of service sworn by Georgine Imbaya Advocate on 26th June 2025 indicates that the O.S and all accompanying documents were served upon the respondents on 23rd April 2025 by registered post to their only known address that is P.O. Box 888, 4785, 158 and 158 respectively. And that the same documents were again served upon the respondents by way of advertisement in the Standard Newspaper of 20th May 2025.

The matter therefore proceeded without the participation of the respondents. Vide directions given on 2nd July 2025, the hearing proceeded by way of *viva voce* evidence.

The Evidence

The Plaintiff testified as PW1. He adopted the contents of his Supporting Affidavit as his evidence in chief. He had stated in the Supporting Affidavit that land parcel NO. KISUMU/NYALENDA "B" /961 is registered in the name of

Kisumu Bhadala Jamat. That the Respondents are the officials of Kisumu Bhadala Jamat a society registered under the Societies Act on 11th January 1980. That he gained ingress into the said parcel of land without consent, permission and/or let by the Respondents in the year 1985. That prior to taking possession of the same, his father was cultivating thereon and left the land to the Applicant when he relocated to another parcel of land where he lived until his death.

That the Applicant had remained in actual physical and outright occupation and possession at the exclusion of the Respondent or any person with interest in the land since the year 1985.

That the occupation has been peaceful and without interruption for a period of 39 years to date. Further that the occupation has been open, overt, clear, noticeable and hostile to the rights and interests of the Respondents and persons claiming interest in the land by virtue of the fact that he (Applicant) is in occupation with his family and has constructed a house thereon.

That the occupation relates to the entire parcel of land. That the respondents and any person claiming interest have never

been in occupation of the land. That he is now entitled to title to the land as an adverse possessor thereof.

The applicant produced exhibits namely; copy of his National Identity Card, copy of register (green card) for the suit land, copy of adjudication record for the suit land, certificate of registration for Kisumu Bhadala Jamat Society, copy of annual returns for Kisumu Bhadala Jamat Society and 2 photographs.

Submissions

At the close of the evidence written submissions dated 4th November 2025 were filed on behalf of the Plaintiff by Imbaya Law Advocates. Counsel submitted that the position of law as regards undefended claims as set out in the case of *Gichinga Kibatha -vs- Caroline Nduku [2018] eKLR* is that the claimant must discharge the burden of proof by proving his case however much the opponent has not made a presence in the contest. Relying on Section 7, 13 and 38 of the Limitations of Action Act, the case of *Richard Wefwafwa Songoi -vs- Ben Wefwafwa Songoi, Cicily Muraugo Mutero -vs- John Alex Maira Karanja & another and Gabriel Mbui -vs- Mukindea Maranya [1993] KEHC 161 (KLR)* Counsel submitted that the Applicant

had proved his claim of adverse possession to the required standard and that he is entitled to the relief sought.

Counsel referred the Court to the evidence adduced by the Plaintiff and the case law.

Analysis and determination

From the pleadings filed, the evidence adduced and the submissions made, a sole issue arises for determination, namely whether or not the Plaintiff is entitled to title to the suit land by operation of the doctrine of adverse possession.

Adverse possession is a doctrine of law. The Appellant has produced evidence that the land is registered in the name of the Respondent. He has pleaded and testified that he has had exclusive open and uninterrupted occupation of the land since the year 1985. When the land became registered in the name of the Respondent Society in the year 1990, the registered owner ought to have taken steps to remove the trespasser failing which time for adverse possession began to run in favor of the trespasser (the Applicant) and against the Respondents title. The Applicant testified that he had had exclusive and peaceful possession of the land for a period exceeding 12

years. He produced photographs to show the development he has carried out on the land. He testified that he had constructed his home on the land as demonstrated by the images on the photographs.

The registered owner is a Society with many members, neither the society or any member thereof on behalf of the Society has interrupted the applicant's occupation and possession of the suit land.

From the evidence placed before Court, I find that the plaintiff has proved the ingredients of adverse possession. I also find that by virtue of the Plaintiff's occupation of the suit land and the Respondents failure to take action to assert his title, the Respondents title to the suit land has become extinguished under the provision of Section 17 of the Limitation of Actions Act. I find that the Plaintiff has proved his case on a balance of probabilities.

Judgment is hereby entered in favor of the Plaintiff/applicant as follows: -

- a) A declaration that the Plaintiff has acquired title to the whole land parcel No. KISUMU/NYALENDA "B" /961 by adverse possession.**
- b) An order for transfer of the suit land by the respondents in favour of the applicant within 3 years hereof in default of which the Deputy Registrar of the Court shall sign all necessary documents so as to effect the transfer.**
- c) No orders as to costs**

Orders accordingly.

Judgement dated and signed at Kisumu and delivered virtually this 5th day of February 2026.

**E. ASATI,
JUDGE.**

In the presence of:

Court Assistant.

Imbaya for the Applicant.

N/A for the Respondents.