



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT MALINDI

ELC CASE NO. E008 OF 2025 (OS)

ALI KALOLENI KATANA & 12 OTHERS.....

APPLICANTS

-VERSUS

ATHMAN BIN ALI ABUBAKAR & 7

OTHERS.....RESPONDENTS

JUDGMENT

- 1.** The applicants, vide Originating Summons (OS) dated 25th March 2025, sought a declaration that they are the proprietors of Plot Number 115, Mambrui, CR 6206, by virtue of the doctrine of adverse possession.
- 2.** The application was supported by the affidavit of Bahati Katana Sanzua, who swore that the applicants have lived on the said parcel for over 12 years and have extensively developed it peacefully and without interruption.

3. The deponent produced the authority to plead, photographs showing the structures and farming activities, and an official search to demonstrate that the respondents are the current registered owners
4. Despite service, including service through the local daily in the form of substituted service under the leave of the court, there was no response from the respondents, and the matter proceeded to formal proof on 4th November, with one witness taking the witness stand.
5. He adopted the supporting affidavit and produced documentary evidence in support of their case.
6. I received submissions from learned counsel for the applicant, Mr. Makworo.
7. The issues I frame for the determination of this court are whether the applicants have satisfied the legal requirements for adverse possession and whether the applicants can be declared proprietors of Plot No. 115, Mambrui, CR 6206.
8. The elements of adverse possession were recently restated by the Court of Appeal in the case of **Karitu v Mwihiike Farmers Company Limited & 3 others (Civil Appeal**

E397 of 2024) [2025] KECA 1127 (KLR) (20 June 2025)

(Judgment), where the Court held that:

“30. A party claiming adverse possession must prove that they have occupied the land openly, without license or permission of the registered owner, with the intention to possess it, and that such occupation has resulted in the dispossession of the owner for the statutory period. It is not sufficient merely to show possession for twelve years.”

9. The Court of Appeal further held in the case of **Bakari Sheban & 39 others v Said Bin Rashid Khamis [2017] KECA 718 (KLR)**:

“Like any other civil claim, the burden was on the appellants to prove on a preponderance of evidence that their occupation of the suit property was adverse, in the sense that occupation was hostile, open, actual, uninterrupted, notorious, exclusive and continuous for a period of 12 years.” See *Kweyu v Omutut (1990) KLR 709*.

10. In **Bakari Sheban & 39 others** (supra), the Court of Appeal also explained that:

“The adverse character of the possession must be proved as a fact; it cannot be assumed as a matter of law from mere exclusive possession, however long

continued. And the proof must be clear that the party held under a claim of right and with intent to hold adversely...the intention of the dispossessor is to appropriate and use the land as his own, to the exclusion of all others, irrespective of any semblance or shadow of actual title or right.”

11. Evidence has been led that the applicants have been in occupation of the suit property for a period spanning more than 12 years, hence meeting the statutory threshold for invoking the doctrine of adverse possession.

12. Therefore, I grant the orders as sought in the OS dated 25th March 2025.

Dated, signed, and delivered electronically in Nyeri on this 5th day of February, 2026.

E. K. MAKORI

JUDGE

In the presence of:

Mr. Makworo for the Applicants

Kendi: Court Assistant