



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT MALINDI

ELC CASE NO. ELC E049 OF 2025 (OS)

**IN THE MATTER OF LAND PARCEL PLOT NUMBER 816
MALINDI TITLE NUMBER CR. 12101 REGISTERED UNDER
THE LAND ACT**

AND

**IN THE MATTER OF SECTION 38 OF THE LIMITATION OF
ACTIONS ACT CAP 22, LAWS OF KENYA**

AND

**IN THE MATTER OF AN APPLICATION FOR A
DECLARATION THAT THE APPLICANTS HAVE OBTAINED
TITLE OVER THE SAID PARCEL OF LAND BY WAY OF
ADVERSE POSSESSION**

BETWEEN

PRISCILLA

GACERI

MUGAMBI.....APPLICANT

-VERSUS-

RICHARD KARL ZIPS

RESPONDENT

JUDGMENT

- 1.** The applicant filed the Originating Summons (OS), dated 17th September 2025, together with the affidavit deposed in support thereof, also dated 17th September 2025, seeking to be declared the proprietor of the parcel of land known as plot 816-Malindi, Title Number CR NO. 12101, under the doctrine of adverse possession.
- 2.** Despite service via substitute service through the local daily, the respondent did not enter an appearance, and the matter proceeded to formal proof.
- 3.** After the trial, I received submissions from learned counsel for the applicant, Mr. Makworo.
- 4.** The issues I frame for the court's decision are whether the applicant has met the threshold for the set principles under the doctrine of adverse possession and whether the

applicant is entitled to be declared the proprietor of portion 816 Malindi, CR 12101, by way of adverse possession.

5. The Superior Courts have distilled the essential elements required to prove adverse possession as actual and exclusive, open and notorious, continuous and uninterrupted occupation and possession of the suit property for at least 12 years, without the consent of the registered owner, hostile to the owner's title (*nec vi, nec clam, nec precario*).

6. The doctrine of adverse possession is further elaborated upon, as exemplified by the decision in the Court of Appeal case **Wambugu v Njuguna [1983] KLR 172**, which held:

"Time for adverse possession begins to run when the true owner is dispossessed or when possession is discontinued, not merely when the claimant takes occupation."

7. In the above case, the Superior Court clarified the distinction between dispossession, where the owner is forced out, and discontinuance of possession, where the owner abandons possession.

8. In **Kasuve v Mwaani Investments Ltd & 4 others [2004] KLR 184**, the Court of Appeal established a well-known test for adverse possession, stating:

"A person claiming adverse possession must show that they have been in exclusive possession of the land openly and as of right, without interruption, for a period of 12 years, either after dispossessing the owner or after the owner discontinued possession."

9. In *Mtana Lewa v Kahindi Ngala Mwagandi* [2015]

eKLR, the Court of Appeal defined adverse possession as the process by which a person in possession of land owned by another acquires valid title to it, provided certain conditions are met. The Court emphasized that adverse possession concerns occupation that is inconsistent with the owner's enjoyment of the land.

10. In *Chevron (k) Ltd v Harrison Charo Wa Shutu*

[2016] eKLR, the Court of Appeal reaffirmed:

"Possession must be peaceful, open and continuous, and the claimant must demonstrate acts inconsistent with the owner's title."

11. Finally, in the case of *Kimani Ruchine v Swift*

***Rutherford & Co. Ltd* [1980] KLR 10**, the High Court held:

"The Claimant's possession must be clear and unequivocal, showing an intention to dispossess the true owner."

- 12.** In her testimony and documentation, the applicant asserts that she entered the property as early as the year 2000. She contends that she entered the property without the registered owner's permission.
- 13.** She produced a series of documents showing that she obtained permission from the Municipal Council to build permanent structures and permission from the then-District Commissioner to operate a business on the property. Single business permits were also issued in the applicant's favor.
- 14.** The applicant has further produced photographs demonstrating that she has built permanent structures on the property. She also produced contracts showing that she has leased some of the buildings to tenants.
- 15.** The applicant has also demonstrated that the respondent is the registered owner by producing an official search.
- 16.** On a balance of probabilities, given that the evidence adduced by the applicant remains uncontroverted, I conclude that she has occupied the property for more than 25 years, excluding the registered owner, which demonstrates open and notorious possession. Based on the evidence presented,

the applicant has satisfied the legal requirements for adverse possession to apply in her case.

17. I, therefore, grant the prayers sought in the OS.

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