



Mwagandi & 3 others v Tunje (Environmental and Land Originating Summons E006 of 2025) [2026] KEELC 718 (KLR) (5 February 2026) (Judgment)

Neutral citation: [2026] KEELC 718 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E006 OF 2025
EK MAKORI, J
FEBRUARY 5, 2026**

BETWEEN

**KADZO CHAI MWAGANDI 1ST APPLICANT
ANDREW KASENA MWAGANDI 2ND APPLICANT
MUSA GWARIDE KASENA 3RD APPLICANT
ANDERSON KASENA KALAMA 4TH APPLICANT**

AND

CHRISTINE MUYASA TUNJE RESPONDENT

JUDGMENT

1. The applicants herein submitted this application via Originating Summons (OS) dated 17th March 2025, accompanied by a supporting affidavit sworn on 17th January 2025 by the applicants, against the respondent, seeking adverse possession of Title No. Mavueni B. Settlement Scheme/1974.
2. The respondent failed to enter an appearance after being served with the summons and did not submit a reply affidavit. After obtaining leave to serve by substituted service through a nationwide newspaper, the respondent was served by advertisement in the standard newspaper, yet still did not appear. Consequently, the matter proceeded as a formal proof.
3. Kadzo Chai Mwagandi, who testified as PW1 on behalf of the applicants, adopted her statements and those of the four applicants. According to the evidence adduced, the Mwagandi family has been cultivating Title No. Mavueni B. Settlement Scheme/1974 for subsistence since 1987 and has lived on the land since 1997. She also produced a search dated 17th January 2025 as proof that the respondent, Christine Muyasa Tunje, was the registered owner of PEX-1, and a bunch of photographs as PEX-2, as proof of possession and occupation. The applicants have used and occupied the suit property for the last 38 years, and their use and occupation have never been interrupted during that period.



4. I received submissions from learned counsel for the applicants, Ms. Amina, with much appreciation, as they went a long way toward resolving the issues raised in the OS.
5. The issues I frame for this court's decision are whether the applicants have proved their case to merit the invocation of the doctrine of adverse possession and whether the applicants are entitled to the orders sought in the OS.
6. The elements of adverse possession were recently restated by the Court of Appeal in the case of *Karitu v Mwhike 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.”
7. 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*.
8. 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.”
9. Evidence led that the applicants have been in actual possession of the suit parcel of land since 1987, when they began cultivating it, has not been controverted. In 1997, they took actual possession of the suit property by planting trees and erecting permanent structures on the land. Before 1987, the suit land remained unoccupied and unclaimed. The land was bushy when the applicants started cultivating it in 1987, and they had to clear it. They conducted a search of the land to ascertain whether there was a registered owner and obtained a certificate of search dated 17th January 2025, which they exhibited. They do not know the respondent, and she has never approached them to evict them from the land or to disrupt their stay on it in any way.
10. Thus, from the applicants' evidence, the requirements of the Latin maxim: *nec vi, nec clam, nec precario* have been met for one to acquire title to land through adverse possession; their occupation of the land has been without force, without secrecy, and without permission. The possession has been open, continuous, and not obtained by force or with the owner's permission.
11. During the whole period of time the applicants have had the suit parcel of land, they have utilized the same for cultivation, put up permanent structures on it, and lived on it, but have never been stopped nor have any actions been taken against them over the said parcel of land. The possession has been open, as they have cultivated, harvested, and lived on the parcel of land with the community's awareness.



A village elder confirmed that there has never been a dispute over the suit parcel of land since the applicants took possession of it, and that the applicants have cultivated and occupied the suit property since 1987 to date.

12. Because the applicants entered the land and asserted their possession of it through uninterrupted use without force or hostility, I conclude that they have the right to claim registration through adverse possession, since the aggregate stay and use of the suit property exceeds the statutory 12 years.
13. Therefore, I grant the orders as sought in the OS dated 17th March 2025

DATED, SIGNED, AND DELIVERED ELECTRONICALLY IN NYERI ON THIS 5TH DAY OF FEBRUARY, 2026.

E. K. MAKORI

JUDGE

In the presence of:

Ms. Amina for the Applicants

Kendi: Court Assistant

