

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ELC ORIGINATING SUMMONS NO. E016 OF 2021

IN THE MATTER OF THE LIMITATION OF ACTIONS

AND

IN THE MATTER OF LAND REFERENCE NO.: NAKURU
MUNICIPALITY BLOCK 24/753

**Under Sections 17, 18, 37 and 38 of the Limitation of Actions Act Cap 22 of
the Laws of Kenya and Order 36 Rule 3D of the Civil Procedure Rules)**

BETWEEN

ASSEMBLIES OF CHRIST EVANGELICAL HOLINESS

CHURCH – KENYA (*Suing through its registered trustees Bishop*

***Francis Ranogwa & Bishop John Sereka*)**

PLAINTIFF/APPLICANT

VERSUS

JOHN MACHOKA 1ST DEFENDANT/RESPONDENT

ISAAC KIPKEMBOI TOWETT 2ND DEFENDANT/RESPONDENT

JUDGMENT

1. By the Originating Summons dated 20th August 2021, the Applicant sued the Respondents seeking the following orders:

- 1) *The Applicant be declared to have become the legal owner entitled by adverse possession of over twelve (12) years*

since 1997 for ALL THAT parcel of land comprised No. Nakuru Municipality Block 24/753 situated in Nakuru.

- 2) The said Applicant be registered as the sole proprietor of the said parcel of land namely LR No. Nakuru Municipality Block 24/753 in place of ISAAC KIPKEMBOI TOWETT in whose favour the land is currently registered.*
- 3) An Order do issue requiring and directing the Land Registrar Nakuru to register the Applicant Assemblies of Christ Evangelical Holiness Church-Kenya as the proprietor of land parcel No. Nakuru Municipality Block 24/753 in place of ISAAC KIPKEMBOI TOWETT and in place of any other person succeeding the Defendant.*
- 4) Costs of this application be provided for.*

PLAINTIFF'S CASE

2. PW1, Bishop Francis Ranogwa of Assemblies of Christ Evangelical Holiness Church of Kenya, adopted his affidavits sworn on 20th August, 2021, and 19th May, 2022, respectively as his evidence, and produced a letter of authority and minutes (item No 6 and 7 on list of documents), dated 18th August, 2021, as Pex No. 1 (a).
3. PW1 stated that there is a church on the suit parcel of land, Nakuru/Municipality Block 24/753, which was built in 1997. PW1 further

stated that he has an official search which shows that the parcel is registered in the name of Isaac Kipkemboi Towett, and the white card that indicates that it was previously registered in the name of Lawrence Mburu and John Macharia, respectively.

4. It was PW1's evidence that the church erroneously built on the suit property Nakuru Municipality Block 24/753, where they have been worshipping, and paying utility bills. He stated that they put up a wooden structure and iron sheets, a baptismal pool, a gate and a timber fence together with stones.
5. PW1 testified that after discovering that they had built on the wrong parcel of land No. 753, they approached the owner one Mr. Lawrence Mburu and entered into an agreement dated 11th June 1997, that they remain on No. 753, and he takes No. 751.
6. It was PW1's evidence that Lawrence Mburu did not meet the terms of the exchange agreement, however, they continued to occupy 753, and it is not true that the 1st defendant allowed us to use and occupy the suit property. Further that they did not approach the 2nd defendant to give them Kshs. 200,000/= so that they could vacate the suit property.
7. Upon cross-examination by counsel for the 1st Defendant, PW1 admitted that the utility bills that he had produced were for 2012 and did not have any recent bills. He also stated that he did not bring any application documents for water and electricity connection.

8. It was PW1's evidence that the church is a semi structure and there is no residential house. The person who lives there just occupies a small part of the worship house. He admitted that he did not know the size of the plot. It was his testimony that the Presiding Pastor David Kiptoo signed the agreement on behalf of the church but went to America. He further stated that he was not aware of any discussions between Pastor Kiptoo and the 1st Defendant. He was also not aware that Pastor Asena negotiated the church's occupation of the suit land with the 1st Defendant with whom they worked with at Kenya Power and Lighting Company.
9. Additionally, PW1 informed the court that he bought the land from Lawrence Mburu who is a member of Kipsigis Tugen Farm, but never sued him. He stated that the got a donor who gave a condition that in order to build a permanent structure he needed a title deed in the Church's name, and was not aware that in November, 2008, the presiding Pastor Solomon Mukhunza, swore an affidavit of loss of title deed and wanted it replaced.
10. He told the court that it is not true that the 2nd defendant asked them to vacate and that is why they came to court.
11. Upon cross-examination by counsel for the 2nd Defendant, PW1 stated that the exchange letter was issued after discussions with Lawrence Mburu, but they did not involve a Surveyor. He stated that they were supposed to meet the expenses of the exchange which they did not do so as Lawrence was also supposed to prepare a title for plot No. 753 for them.

12. PW1 confirmed that the church is located in a residential area, but never got any architectural designs, or applied for approvals or change of user. He further stated that he neither knew the 1st defendant nor who lives on Plot No.751.
13. On re-examination, PW1 confirmed that there are services in the Nakuru church every Sunday, and that the Municipality had never said that the building is illegal. He further stated that the documents produced show that the building has been in existence for more than 10 years. Further, that both parties to the exchange agreement did not meet the terms of the agreement but the church continued to be in occupation.
14. PW2's witness statement was similar to PW1's, therefore he did not testify as he was seated in court while he was giving evidence.
15. PW3, Peter Nyakundi, an Advocate of the High Court of Kenya, adopted his supplementary affidavit dated 23rd May 2022, as part of his evidence and testified that he purchased Plot No. 752 Nakuru Municipality Block 24/752 in April 1997, from Mwangi Kiratu vide a sale agreement dated 26th April 1997, and that Plot No. 751 was empty.
16. It was his evidence that the neighboring plot No. 753 had a temporary church, and that parcel, Nos. 751, 752 and 753 are adjacent to each other. He stated that Mr. Kiratu told him that if he was interested in Plot No. 751, he could also purchase it as it belonged to Mburu who was his cousin. He stated that the 1st Defendant purchased plot No. 751 and constructed thereupon and while he was constructing on Plot No. 752, he ensured that the beacons were located. He stated that the 1st Defendant

was staying on plot No. 751. PW3 stated that the suit plot belongs to the church and not the 1st Defendant.

17. Upon cross-examination by Mr. Ayuka, PW3 stated that he has not transferred the title in his name and the same was issued in the name of Zakaria Muchunu on 12th March 2004 and the agreement was dated 26th April 1997. He further stated that he has constructed on that plot, obtained the Municipal approvals and consent in his name and further that titles had not been issued when he purchased the Plot.
18. PW3 also stated that he did not know when Mr. Machoka obtained his title, but he was staying in the neighboring plot No. 791. On further cross-examination by Mr. Oumo, he confirmed that Plot No. 751 was unoccupied when he purchased Plot No. 752 but later came to know that the plot No. 751 belongs to the 1st defendant.
19. It was PW3's testimony that the plaintiff was not the 1st allottee by Kipsigis Tugen Farm, but one Zacharia, who sold to him his plot informed him that there was confusion between 751 and 753. Plot No. 751 belongs to the church, but because of confusion, the church built on Plot No.753.
20. Upon re-examination by Mr. Wafula, PW3 stated that there was an exchange agreement between the church and the owner of 753, who is the 2nd Defendant and that there has never been a dispute on the suit parcel of land.

DEFENDANTS' CASE

21. DW1, John Machoka, the 1st Defendant, adopted his replying affidavit to the Originating Summons dated 19th October 2021 as part of his evidence, and produced the attached documents as Dex Nos. 1 to 4.
22. DW1 stated that he sold plot No. Nakuru Municipality Block 24/753 to the 2nd defendant, which he had bought from Lawrence Kinyuro Mburu in 1997, vide a sale agreement, which he produced in court. He further stated that the plot was empty and had no structure on the ground, but later found a temporary building. He testified that he went back to the seller and asked him why there was a church structure on the suit land, and was told that it was a temporary structure and when he was ready to develop, they would move out.
23. It was his testimony that when he sold the plot to the 2nd Defendant the structure was still in place and explained to him the status of the plot. It was DW1's evidence that the plot belongs to the 2nd Defendant, and that when he was selling the plot there was a Pastor who came up with a list of items that he wanted to be paid before they move out, and demanded Kshs.200,000/=. He further stated that the church had asked me to give them time to move out.
24. On cross-examination by Mr. Oumo, DW1 stated that he sold the land to the 2nd defendant vide a sale agreement for a consideration of Kshs.4.6million which was paid in full and at the time he had a title in his name. He stated that they signed a transfer form and a title was issued in the name of Isaac Kipkemoi Towett and explained to him how he got the suit land and showed him the agreement that he used to buy the land on 9th June 1997.

25. It was DW1's further evidence that they pointed out the beacons to Isaac together with a surveyor and fenced the plot with off-cuts when he bought it. He testified that he realized after the agreement that the church had constructed some structures, and that a pastor called David told him that they had built on the land by mistake and they had an adjacent piece of land. He also stated that the church came up with a list of the things they wanted to be refunded (Kshs.200,000/=) but Isaac refused and the church filed this case.
26. It was DW1's testimony that he had written a letter to the plaintiff to move out on 15th June 2021 but they did not respond. He urged the court to order that the land belongs to Isaac Kpkemoi Towett and the church structure be demolished.
27. On cross-examination by Mr. Wafula, DW1 stated that he bought the plot from Lawrence in 1997 and got a certificate of lease in 1998, but never used the land. It was his evidence that at the time the structure was being built, he had not completed payment of the land. He stated that the pastors approached him to allow them to look for alternative. And further wrote to them a letter to vacate the suit land.
28. DW1 stated that he transferred the land to Mr. Towett while the church structures were in place, who took possession but has not built.
29. On re-examination by Mr. Onchuru, he testified that he took action by going to the person who sold him the land when he realized that the church had built structures and later told the pastors to vacate. He also

told the court that he informed the pastors not to build permanent structures.

30. DW2, Isaac Kipkemboi Towett, the 2nd Defendant adopted his replying affidavit to the originating summons dated 10th April 2023 as his evidence and stated that he is the registered owner of the suit land having been registered as such on 16th June 2021 as per the green card and the title.
31. DW2 testified that he bought the suit land from the 1st Defendant John Machoka who was the registered owner at a consideration of Kshs.4.6 million which he paid in full. It was his evidence that he carried out a search, saw the suit land and later sent his son together with a surveyor to verify the beacons.
32. DW2 further testified that there was a timber structure (off-cuts) on the suit land and was told that the church was there on a temporary basis and they would move out. He stated that he told Mr. Machoka to inform the church to move out, but later pastors came to his office and told him that they wanted to move out but they needed compensation for the structures on the suit land of which he declined. He prayed that the Plaintiff's suit be dismissed with costs.
33. On cross-examination by Mr. Onchuru, DW2 stated that he saw the documents before buying the land, and that the Pastor did not lay a claim on the suit land as he only wanted compensation.

34. Upon cross-examination by Mr. Wafula DW2 stated that he had not developed the suit land as the church structures have not been removed. Further that he did not give the church permission to be on the land after he bought it.

PLAINTIFF'S SUBMISSIONS

35. Counsel for the Plaintiff filed submissions dated 2nd December 2025, and identified the following issues for determination:

a) Whether the Plaintiff's claim of adverse possession over LR NO. NAKURU MUNICIPALITY BLOCK 24/753 is merited.

b) Whether transfer of land and change of title extinguish a claim of adverse possession.

c) Whether adverse possession can apply on leasehold allocated by the government.

36. On the first issue as to whether the Plaintiff claim for adverse possession on the suit land has merit, counsel relied on Sections 7, 13, 17 and 38 (1) of Limitation of Actions Act and Section 28 (h) of the Land Registration Act on the doctrine of adverse possession and submitted that the Plaintiff has acquired the suit land by way of adverse possession upon expiry of 12 years.

37. Counsel also relied on the cases of **Mtana Lewa –v Kahindi Ngala Mwangandi (2005) eKLR**, **Mbira VS Gachui 2002 EALR 137**, and submitted that the Plaintiff has been in open and notorious occupation of the suit land from 1997, without the permission of the owner.

38. On the second issue whether the transfer of land and change of title extinguishes a claim of adverse possession, counsel relied on the cases of **Wilson Njoroge Kamau v Nganga Muceru Kamau [2020] KEELC 3904 (KLR)**, **Michael Mungai Ngángá V Paul Kiprotich Bii & another [2022] eKLR**, and submitted that a mere act of transfer on land to a third party does not extinguish the right of an adverse possessor where the limitation period of 12 years has lapsed.
39. On the issue as to whether adverse possession can apply on leasehold allocated by the government, counsel submitted that the case is against the 1st and 2nd Defendants and not against the government. Counsel cited Section 41 of the Limitation of Actions Act and submitted that the Act does not apply to government land or land otherwise enjoyed by government. It was counsel's further submission that the Plaintiff's claim is only for the remainder of the lease, and not to alienate the government's ownership right.
40. It was Mr. Wafula's submission that adverse possession cannot be claimed against land registered in the name of a corporation or government and relied on the case of **Marao Gitahi V Geral Wambui Kiragu [2019] eKLR**, and urged the court to grant the plaintiff's prayers in the Originating Summons together with costs.

1ST DEFENDANT'S SUBMISSIONS

41. Counsel for the 1st Defendant filed submissions dated 15th December 2025, and reiterated the evidence by the parties and relied on the cases

of **Haro Yonda Juaje v Sadaka Dzenzo Mbauro & another [2014] eKLR**, and **Mwalimu & 6 others v Halal & another (Environmental and Land Originating Summons 370 of 2010) [2022] KEELC 15035 (KLR)** where the court held that for a claim of adverse possession to succeed, the occupation of the suit land by the applicants who are pleading adverse possession must be without permission from the registered owner.

42. Counsel submitted that from PW1's evidence the occupation was on the wrong plot and later allowed through negotiations (permitted) by Lawrence Mburu, thus the same was not hostile. Further, both the plaintiff and defendant produced a letter dated 7th July 1997, which clearly shows that there was an agreement to exchange parcels 24/751 with 24/753, which is a permission to continue with the temporary occupation on the suit land. It was counsel's submission that the Plaintiff did not tell the court when this exchange agreement was broken.
43. It was counsel's further submission that the plaintiff's occupation on the suit land was with permission having been negotiated with Pastor David Kiptoo and two other succeeding pastors. Permissive occupation is fundamentally inconsistent with adverse possession, which ensures that there is no dispossession of the land from the registered owner despite not being in occupation.
44. Counsel relied on the cases of **Munyaka Kuna Company Limited v Bernado Vicezo De Masi (The Administrator of the Estate of Domenico De Masi (Deceased) [2018] eKLR**, **Wallis' Cayton Bay Holiday Company Ltd vs Shell Mex and B.P Ltd [1975]QB 94**, where

the court held that to defeat a title by dispossessing the former owners, Acts must be done which are inconsistent with his enjoyment of the soil for the purpose for which he intended to use it. Occupation by permission does not accrue any right of adverse possession on the plaintiff.

45. Counsel further relied on the cases of **Mwinyi Hamisi Ali vs Attorney General & Another CA NO. 125 of 1997**, where the court held that it was adverse possession does not apply where possession is by consent and in a Court of Law sympathy takes a second stand as the Court is governed by statutes.
46. Mr. Ayuka submitted that consent/permission may be oral or written, and in this case the permission/consent to continue worshipping was given orally to Pastor David Kiptoo and two other succeeding pastors. Upon cross- examination, PW1 stated that Lawrence Mburu did not full fulfil his part of the bargain, but failed to tell the Court whether they ever transferred parcel 24/751, which he said they had purchased but wrongly occupied 24/753.
47. According to counsel, payment of utility bills (water & electricity) is not proof of land ownership, as they are essential services that can be procured on a property without proof of ownership and can be discontinued/ disconnected once there is default on payment. The occupation of the plaintiff was permissive, hence the claimant cannot claim under adverse possession.

48. Mr. Ayuka further submitted that when the 2nd Defendant acquired the same they again engaged him to allow them time to move out, which clearly demonstrates that at no time did the plaintiff dispossess the 1st defendant of the suit property. Counsel urged the court to dismiss the Plaintiff's suit with costs to the 1st Defendant.

2ND DEFENDANT'S SUBMISSIONS

49. Counsel for the 2nd Defendant filed submissions dated 20th January 2026, and identified the issue for determination as to whether the Plaintiff can claim adverse possession against the 2nd Defendant. Counsel relied on Section 7 of the Limitations of Actions Act 2012 and the case of **Mbira VS Gachui 2002 EALR 137**, and submitted that the Plaintiff was on the suit land with the permission of the original owner after the Plaintiff realized that it had mistakenly occupied a wrong property other than its property within the same locality being L.R. Nakuru Municipality Block 24/751 and therefore cannot claim under the doctrine of adverse possession.

50. Counsel submitted that the 2nd Defendant is a bonafide purchaser for value having purchased the property from the 1st Defendant and had the certificate of lease issued to him on the 16th June 2021, and relied on the cases of **Rerji Karsan Sanghani VS Peter Gakunu [2019] eKLR, Waweru —vs- Richu CA: 122 of 2001, and Wanje VS Saikwa C.A. No. 72 of 1982 (1984) KLR**, and urged the court to dismiss the Plaintiff's case with costs to the 2nd Defendant.

ANALYSIS AND DETERMINATION

51. The issue for determination is as to whether the Plaintiff has met the ingredients of the doctrine of adverse possession. The law on adverse possession is anchored on the Limitation of Actions Act, Cap 22 and the Registration of Land Act No 6 of 2012.

52. Section 7 states that

“An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person”

Further in Section 13

“(1) A right of action to recover land does not accrue unless the land is in the possession of some person in whose favour the period of limitation can run (which possession is in this Act referred to as Adverse Possession), and, where under sections 9, 10, 11 and 12 of this Act a right of action to recover land accrues on a certain date and no person is in Adverse Possession on that date, a right of action does not accrue unless and until some person takes Adverse Possession of the land.

(2) Where a right of action to recover land has accrued and thereafter, before the right is barred, the land ceases to be in Adverse Possession, the right of action is no longer taken to have accrued, and a fresh right of action does not accrue unless and until some person again takes Adverse Possession of the land.

(3) For the purposes of this section, receipt of rent under a lease by a person wrongfully claiming, in accordance with section 12(3) of

this Act, the land in reversion is taken to be Adverse Possession of the land”.

53. Section 38 of the Act provides that:

“Where a person claims to have become entitled by adverse possession to land registered under any of the Acts cited in section 37 of this Act, or land comprised in a lease registered under any of those Acts, he may apply to the High Court for an order that he be registered as the proprietor of the land or lease in place of the person then registered as proprietor of the land.”

54. In the case of **Bedan Maina Njoroge v Patrick Ngaruiya & another [2021] eKLR**, the court held as follows:

*“33. The Limitation of Actions Act does not expressly define adverse possession. Nevertheless, case law is awash with what adverse possession entails and generally it is essentially a situation where a person takes possession of land, asserts rights over it and the person having title to it omits or neglects to take action against such person in assertion of his title for a certain period, in Kenya 12 years. See Court of Appeal decision in **Mtana Lewa –v Kahindi Ngala Mwangandi (2005) eKLR**. It is also a well settled principle that a party claiming Adverse Possession ought to prove that this Possession was “*nec vi, nec clam, nec precario*,” that is, peaceful, open and continuous. The Possession should not have been through force, no in secrecy and without the authority or permission of the owner. These doctrines are internationally accepted and were specifically reiterated by the South Africa Supreme Court in the case*

*of Z F Stoffberg NO & others v City of Cape Town (1325/2017)
[2019] ZASCA.”*

55. It was the Plaintiff’s evidence that they bought plot No 751 but mistakenly built on the wrong plot No. 753. The evidence shows that they started on a wrong footing and tried to regularize the mistake but the person they entered into an exchange agreement with did not honour his part of the bargain.

56. It is also on record that the Plaintiff, later tried to negotiate with the 1st and 2nd Defendants to allow them to continue occupying the suit land as they look for an alternative land. It is also not in dispute that the Plaintiff had put up temporary structures to be used as a church on the suit land and that they had allegedly bought an adjacent land.

57. The entry into the wrong parcel of land, the exchange agreement with one Lawrence Mburu, the negotiation to continue occupying the suit land as they look for alternative land, the discussion with the 1st and 2nd Defendant for compensation for the structures on the land, are the opposite of non-permissive occupation of the suit land. The doctrine of adverse possession does not apply where possession is by consent.

58. The Supreme Court of India held in the case of **Karnataka Board of Wakf –vs- Government of India & Others [2004] 10 SCC 779**, thus:

“In the eye of the law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won’t affect his title.

But the position will be altered when another person takes possession by clearly asserting title in denial of the title of the true owner. It is a well settled principle that a party claiming adverse possession must prove that his possession is “nec vi, nec clam, nec precario”, that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period.”

59. The Plaintiff’s was trying their lack with the doctrine of adverse possession; their possession was neither peaceful nor uninterrupted. The occupation was not hostile to the owner’s title.
60. The court will not go into the issues as to whether the Plaintiff has been on the suit land for the statutory period of 12 years to qualify as an adverse possessor as the Plaintiff’s actions indicate that their occupation was with the consent of the Defendants and that the same was never uninterrupted.
61. Consequently, I find that the Plaintiff has not proved that it acquired the suit land by way of adverse possession and therefore the Originating Summons is dismissed with costs to the Defendants.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 3RD
DAY OF MARCH 2026.**

M. A. ODENY

JUDGE