



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MALINDI**

**ELCLOS NUMBER E.016 OF 2025 (O.S)**

**CHRISTOPHER                      MWADIME                      MZUNGU.....**

**.....APPLICANT**

**-VERSUS-**

**MARIANELLI                      COMPANY                      LIMITED                      .....**

**.....RESPONDENT**

**JUDGMENT**

**1.** The Originating Summons (OS) dated May 8th, 2025, seeks the orders that:

***(a) The applicant has acquired by adverse possession all that parcel of land known as Land Reference No. 10878 situated at Malindi Municipality in Kilifi County measuring 2.230 Ha (under Grant No. CR.46432);***

***(b) The respondent's title to the suit property is hereby extinguished by operation of law, and consequently, the applicant is entitled to the same.***

***(c) It is declared that the respondent holds the suit property as trustee for the applicant; and (d) An order of Specific Performance be issued to the respondent to transfer the suit property to the applicant;***

***(e) The costs of the suit to be provided for and any other reliefs the court deems fit to grant in the circumstances.***

2. The OS is supported by the Supporting Affidavit of Christopher Mwadime Mzungu, sworn on May 8, 2025.
3. The respondent was served through substituted service via advertisement in the local dailies and did not appear or submit a defense. The matter proceeded through formal proof.
4. At the close of the applicant's case, I received submissions from counsel for the applicant, Mr. Ondabu, with much appreciation, as they went a long way to assist the court in reaching its verdict on the issues raised in the OS.
5. The issues for determination before this court are whether, based on the evidence presented, the applicant has proven his case to justify the issuance of the orders requested in the OS.
6. In the Supporting Affidavit, the applicant claims that he has been in occupation of the suit property since October 26,

2010, to date, and has never been threatened or evicted from the property.

- 7.** The applicant testified that he was placed in charge of the suit property by the Director of the Defendant herein, Marianelli Mario. The applicant also stated that, since he was placed in charge of the property, he has enjoyed a peaceful, uninterrupted occupation of the property with the owner's knowledge.
- 8.** Furthermore, the applicant asserts that the suit property is still in the name of the respondent, confirming that no transfer has been made to another party. He produced a copy of Grant No. CR 46432 for the land reference No. 10878 as exhibit No. CMMI on page 8 of the OS application. Since taking charge of the property, he has maintained it in good condition and has not received any remuneration. The applicant claims to be the sole person entitled to the property, as the respondent has never sent anyone to claim it, nor has any family member of the director or any other director of the respondent made any claim over it. The applicant has lived on the property since October 26, 2010, without interruption or threat of eviction. He has thus lived

there for 15 years and has used the property as his home, for farming various food crops, and rearing animals, as evidenced by the photographs produced as exhibits. He has done so openly and without disturbance.

- 9.** The applicant asserts that he has been living on the property with his family since he was put in charge, leading to this application, seeking a declaration and registration of him as the legal owner through adverse possession, under Section 7 of the Limitations of Actions Act, Chapter 22 Laws of Kenya.
- 10.** Additionally, the applicant presented photographs showing the location of the land, supporting the fact that he has been living, occupying, developing, and in actual possession of the suit property, Land Reference No. 10878.
- 11.** Section 7 of the Limitation of Action Act, Chapter 22, Laws of Kenya, provides for Actions to Recover Land and Rent and states as follows:

***“7. Actions to recover land***

***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.”***

**12.** Further, Section 38 of the Limitation of Action 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."***

**13.** Section 28 of the Land Registration Act also recognizes the right to land acquired under any written law related to the limitation of actions or other rights obtained through written law. Through these statutes, an adverse possessor gains title and is entitled to equal protection under the law for the property.

**14.** The principle of adverse possession was more elaborately set out by Justice A.A. Kneller and Justice A.R.W. Hancox in the Court of Appeal case of **Wambugu v Njuguna [1983] KLR 172**, which stated:

***"In order to acquire by the statute of limitations title to land which has a known owner, that owner must have lost his right to the land either by being dispossessed of it or by having discontinued his***

***possession of it. Dispossession of the proprietor that defeats his title are acts which are inconsistent with his enjoyment of the soil for the purpose of which he intended to use it."***

And that:

***"The proper way of assessing proof of adverse possession would then be whether or not the title holder has been dispossessed or has discontinued his possession for the statutory period and not whether or not the claimant has proved that he has been in possession of the requisite number of years."***

**15.** The Court of Appeal in **Malindi Appeal No. 56 of 2014, Mtana Lewa v Kahindi Ngala Mwangandi [2015] eKLR**, Justice Asike Makhandia, Justice W. Ouko, and Justice K. M'Inoti defined adverse possession as:

***"Adverse possession is essentially a situation where a person takes possession of land and 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 is twelve (12) years. The process springs into action essentially by default or inaction of the owner. The essential prerequisites being that the possession of the adverse possessor is neither by force or stealth nor under the license of the***

***owner. It must be adequate in continuity, in publicity, and in extent to show that possession is adverse to the title of the owner."***

**16.** In Nairobi **High Court Civil Case No. 283 of 1990, Gabriel Mbui v Mukindia Maranya [1993] eKLR**, Judge R.C. Kuloba summarized the elements of adverse possession as follows:

***"... there must be proved or established the elements of (a) actual possession or occupancy of the land that is, (b) hostile to the current owner with a right to immediate possession, (c) which is visible, open, notorious, and exclusive, (d) exercised continuously and uninterrupted for a statutorily defined number of years, (e) maintain under some colour of right as against everyone else, (f) with an evinced unmistakable animus possidendi, (g) held in good faith, without fraud. This statutory method of acquiring title to land by limitation depends on the intent of the occupant to claim and hold the land opposition to all the world, and embodies the idea that the owner of, or the person interested in the property, have knowledge of the assertion of the ownership by the occupant for the statutorily prescribed period. It consists of actual possession with intent to hold solely for the possessor***

***to the exclusion of all others, and it is denoted by the exercise of acts of dominion over the land, including making of ordinary use and taking of ordinary profits of which the land is susceptible in its present state."***

**17.** Flowing from the foregoing, the facts presented in the applicant's OS, Supporting Affidavit, and viva voce testimony are not disputed. The court finds that the applicants' possession of the suit property is adverse to the respondent's title and directs that the applicants be registered as the owners of the suit property under Section 7 of the Limitation of Actions Act, as prayed in the OS, with costs.

**Dated, signed, and delivered electronically in Nyeri on this 11th day of March, 2026, in the absence of Mr. Ondabu, who was aware of the date of delivery.**

**E. K. MAKORI**

**JUDGE**