



Muinduko v Mwea Farmers Ltd (Enviromental and Land Originating Summons E002 of 2025) [2026] KEELC 1363 (KLR) (10 March 2026) (Judgment)

Neutral citation: [2026] KEELC 1363 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E002 OF 2025**

AY KOROSS, J

MARCH 10, 2026

BETWEEN

STEPHEN MUINDUKO APPLICANT

AND

MWEA FARMERS LTD RESPONDENT

JUDGMENT

1. The applicant filed this suit against the respondent through an originating summons (“OS”) dated 27th January 2025, supported by the applicant’s affidavit and annexures therein. The OS is brought on the basis that the applicant has been in adverse possession of 22 ½ acres (“disputed portion”) of land parcel no. Ndithini/Mananja Block 1/309 (“suit property”), for over 12 years. He now seeks the following reliefs from this court:
 - a. A declaration that the applicant has had adverse possession of land parcel Ndithini/Mananja Block 1/309 for over twelve (12) years.
 - b. A declaration that the applicant has had prescriptive rights over land parcel Ndithini/Mananja Block 1/309, and has had adverse possession thereof for over fifty-four (54) years.
 - c. That the respondent be ordered to execute documents of transfer in respect of all that portion of land measuring 22.5 acres within Ndithini/Mananja Block 1/309 in favour of the applicant, failure to which the deputy registrar be directed to sign such documents of transfer in favour of the applicant in place of the respondent.
 - d. An order directing the Land Registrar, Machakos, to issue title documents and register land parcel number Ndithini/Mananja Block 1/309 in favour of the applicant.
 - e. The cost of this application is to be provided for.



2. In his supporting affidavit deposed on the instant date, he avers that he became a member of the respondent and purchased 22.5 shares, with each share valued at Kshs. 100/- per acre. He provided receipts showing his registration as a member on 31/07/1977 and payment of Kshs. 2,200/-, along with a share certificate confirming the value of each share. He was subsequently shown plot no. 322 within LR. 11930/R as his purchased land.
3. To support this, he submitted a list of members settled on LR. 11930/R as of 30th June 1993; however, his name does not appear on the list, and plot no. 322 is attributed to Mutisya Nguti Benjamin and Mrs Esther Mutiioki. He also provided a map, but the court could not relate it to the properties in contention. Moreover, some of his documents were illegible. He asserts that although he attempted to conduct an official search over the suit property at the Machakos land registry on 21/01/2025, he was informed that no such register existed. He maintains that he has always had peaceful possession of the disputed land and has buried his parents and daughter there.
4. The applicant also called several witnesses who filed witness statements. John Mbaluka Kimuyu, whose family allegedly neighbours the disputed land, states that they live on adjoining parcels and that the applicant had resided there since 1971 and had carried out several activities, including burying family members on the disputed land. He informs the court that the applicant lived there with his wife and four children and has developed the property with a three-bedroom house, a kitchen, and two-room houses for his sons. Elijah Kimuyu Mbaluka corroborated this testimony, adding that he assisted the applicant in installing a traditional boundary using plants in 1997. The applicant's children, Rose Munyiva and Immanuel Maithya, confirmed that the applicant planted trees on the property. Julius Wambua stated he works on the disputed property as a casual worker.
5. Despite service, the respondent did not enter an appearance, and the matter proceeded through written submissions dated 1st December 2025, filed by the applicant's law firm of Ms. Kirigo Wakori & Co. Advocates. The applicant identifies two issues for determination: whether the applicant has satisfied the threshold for the grant of orders of adverse possession, and who should bear the costs. Following a comprehensive review of the pleadings, evidence, relevant law, and jurisprudence, including those relied upon by the applicant, the court hereby adopts these issues as framed by the applicant and will consider them collectively.
6. Regarding the legal and jurisprudential framework, adverse possession, a doctrine rooted in common law, is statutorily codified within our *Limitation of Actions Act* and constitutes a recognised method of land acquisition in Kenya. The pertinent provisions are enshrined in Sections 7, 13, and 38 of the said Act. Case law establishes that, notwithstanding the absence of opposition to a claim of adverse possession, the burden of proof rests on the applicant to establish the requisite elements thereof strictly. The guiding principles of adverse possession were well outlined in the decision of *Lewa v Mwangandi* [2015] KECA 532 (KLR), which has been relied upon by the applicant, and it summarised them thus:-

“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 or under the licence of the owner. It must be adequate in continuity, in publicity and in extent to show that possession is adverse to the title owner.”
7. When a claimant asserts adverse possession, this court is obliged to interpret the law strictly. Furthermore, the claimant must satisfy all the elements of adverse possession, not merely some. It



should be noted, and as established in the case of Mweu vs. Kiu Ranching & Farming Co-operative Society Ltd. [1985] KLR 430, that adverse possession is a matter of fact that is observed on the land. Furthermore, it is well recognised that claims of adverse possession must be directed against the registered owner of the suit property, and the proof of the existence and registration of the property is essential.

8. Respecting the first element of proof of registration of title, which is grounded in Order 37, Rule 7(2) of the Civil Procedure Rules, it is required that the originating summons be supported by an affidavit to which a certified extract of the land title in question is annexed. Moreover, according to the Court of Appeal case of Johnson Kinyua v. Simon Gitura Rumuri, Civil Appeal No. 265 of 2005 (Nyeri) [2011] KLR, an official search certificate that is duly sealed and signed by the Registrar of Lands constitutes admissible evidence of the entries specified therein. In this case, the applicant did not produce either of these documents to establish the existence of the suit property or its registration in the respondent's name. Thus, this court finds he failed to discharge this burden.
9. There is also the second related element concerning the identification of the land in dispute, which the Court of Appeal's decision in Wilson Kazungu Katana & 101 others v. Salim Abdalla Bakshwein & another [2015] KECA 728 (KLR) addressed as follows:

“The identification of the land in possession of an adverse possessor is an important and integral part of the process of proving adverse possession. This was so stated by this Court in the case of Githu v Ndele [1984] KLR 776.” The appellants did not discharge the burden of proving and specifically identifying or even describing the portions, sizes and locations of those in their respective possession from the larger suit premises that they sought to have decreed to them.”
10. The orders sought by the applicant lack clarity as to the specific portion of land he seeks to be recognised as an adverse possessor of. In one instance, he seeks to be deemed an adverse possessor of the entire suit property, the extent of which has not been disclosed, while in other instances, he claims adverse possession over 22½ acres of the suit property. This court cannot sustain such inconsistencies. Furthermore, the applicant's own evidence demonstrates that the Land Registrar informed him that the suit property is not registered; in other words, its existence, size, and location are unknown and unregistered. Pointedly, the map he tendered is of no significance, as he has failed to connect it to the suit property. Of importance, claims of adverse possession are made in respect of registered land, and he cannot succeed where such land is unregistered. Consequently, this court finds he fails on this limb.
11. Nevertheless, in conclusion, based on the reasons and findings outlined above, this court finds that the applicant has not sufficiently demonstrated his claim of adverse possession to the required standards. Therefore, the applicant's case is hereby dismissed, and he shall bear his own costs, as the case was not contested.

Judgment accordingly.

DELIVERED AND DATED AT MACHAKOS THIS 10TH DAY OF MARCH, 2026.

HON. A. Y. KOROSS

JUDGE

10. 03.2026

**JUDGMENT DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS VIDEO
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In the presence of;

Ms Kanja Court Assistant.

Ms. Wakori for the Applicant.

No appearance for Respondent.

