



**Mwakuzi v Mwakundia (Environmental and Land Originating Summons
012 of 2023) [2025] KEELC 5835 (KLR) (28 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5835 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KWALE
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS 012 OF 2023**

LL NAIKUNI, J

JULY 28, 2025

BETWEEN

OMARI HAMISI MWAKUZI APPLICANT

AND

ELIHAKIM ALI HUSSEIN MWAKUNDIA RESPONDENT

JUDGMENT

1. The Judgment before this Honourable Court regards the Originating summons dated 6th December 2023 and filed in court on 20th December 2023. It was instituted by Omari Hamisi Mwakuzi the Plaintiff/Applicant herein against Elihakim Ali Hussein Mwakundia the Defendant/Respondent herein.
2. The service of the Originating summons and the Summons to Enter Appearance upon the Defendant was effected through substituted means pursuant to the leave of Court granted on 26th July 2024. An advertisement was published in one of the local dailies with a wide national circulation – “The Standard Newspaper”. A six [6] Paragraphed Affidavit of Service dated 21st June 2024 attaching an extract of the advertisement was filed to that effect. Despite of this, the Respondent never filed any response to the suit despite service.
3. Subsequently, on 15th February 2025 the court pursuant to the provisions of Order 10 Rules 4, 5, 6, 7, 9 and 10 of the Civil Procedure Rules 2010, set down the matter for formal proof with directions that all witnesses adduce evidence physically that is through “viva voce”. The land surveyor was allowed to adduce evidence and to produce his land survey report by virtual means.



II. The Plaintiff's case

4. The Plaintiff claimed to be entitled to the ownership of all that parcel of land known as number Kwale/Diani Settlement Scheme/80 by virtue of acquiring a title through the doctrine of land adverse possession. [Hereinafter referred to as "The Suit Land"]
5. The Plaintiff/Applicant sought for the following orders before court; -
 - a. The Applicant herein be declared the rightful owner of the suit properties Kwale/Diani Settlement Scheme/80 which parcel he has cultivated and has been in actual possession peacefully, openly and uninterrupted for a period of 57 years since 1966.
 - b. An order do issue to the registrar of Land Kwale to strike out the name of the Respondent from the register and subsequently enter the names of the Applicant as the sole proprietor of the suit property Kwale/Diani Settlement Scheme/80.
 - c. A permanent injunction do issue restraining the respondents whether by themselves, their servants, representatives, agents and/or assigns howsoever from dealing with, entering in, obstructing any activities on, interfering with the Applicant's agents and or representatives sub - dividing, demolishing any structures on selling, alienating, occupying and/or in any other was interfering with the suit property
 - d. That costs of this suit be provided for.
6. The suit was premised on the 16th Paragraphed supporting affidavit of Omari Hamisi Mwakuzi sworn on 6th December 2024 with five [5] annextures marked as "OHM - 1 to 5" where the Plaintiff averred that: -
 - a. The suit property had been his ancestral home belonging to his family and in addition both his parents and grandparents had been in occupation of the suit property up until their demise
 - b. He was 55 years of age and had been born and brought up on the suit property. That he had since lived on the suit property which was under his care and protection and he indulged in farming on the said suit land as evidenced by the coconut and mango trees thereon.
 - c. Vide an official search dated 15th June 2021 he learnt that the suit property was registered in the names of the Respondent having made an entry in the green card in the year 1994.
 - d. His family had been in use and occupation of the suit property all along and were not aware of any sale or transfer of the suit property. Further in the year 2006 an occupational survey report conducted by the Ministry of Lands and Settlement placed him on the suit property.
 - e. He stated that his occupation and use of the suit property had been for over 12 years, that the occupation was adverse, uninterrupted, notorious, peaceful and open without any interference as he had never been served with any notice to vacate the land or an eviction
 - f. The occupation was adverse to the interest of the registered owner who was the Respondent. That he had therefore acquired ownership of the suit property by way of adverse possession and the Respondent's rights over the same were thus extinguished.
 - g. He averred that in order to safeguard his interests over the suit property, the court ought to restrain the Respondent by way of a permanent injunction. He sought that the suit be allowed.



III. Hearing and Evidence

7. On 6th February 2025, the Plaintiff called his first witness PW - 1 who testified in Court as follows:

A. Examination in Chief of PW - 1 by Mr. Kowade Advocate.

8. PW – 1 was sworn and testified in Kiswahili language. He identified himself as Mr. Omari Hamisi Mwakuzi. He was a holder of the Kenyan National Identity card bearing all the details as noted by Court. He stated that he was an Artisan and that he lived at Ukunda. That he was before court for the suit property Kwale/ Diani Settlement Scheme/80 which had been taken away by the Respondent Eli Hakim Ali Hussein as per an official search conducted on 15th June 2021.
9. The witness told court that he had been in occupation of the land from the year 1976 when he was 10 years old and in class 1 Primary school. That his father was called Hamisi Omar Mwakuzi was the initial owner of the land who used to cultivate the same. That he died in the year 2008 and was buried in the family cemetery which was in the land. That on the land they have planted mangoes and maize plantation and the same had 6 house thereon which were both semi and permanent.
10. He further testified that the land measures 5 Acres and he lived thereon with his sisters who occupied their own houses. That there has never been any fiscal demarcation of the land and they have been in occupation of the same until the year 2022 when some people went to the land to clear bushes but were chased away. They did not know them.
11. According to the witness, they never got any permission from the registered owner to be in occupation of the suit property. That they had been in occupation of the suit property from the year 1976 hence been in occupation for 48 years. The land belonged to their father. They would be cultivating on it. That he had never met the registered owner and thus the land belonged to them. He stated that the persons who came to clear the bush were unknown.
12. He stated that the area chief was unknown to him but he had neighbours namely Ali Rashid Shikanda and Ali Alphani Nyawa. The court was urged to grant the title to the suit property.

B. Examination in Chief of PW - 2 by Mr. Kowade Advocate.

13. PW – 2 was sworn and testified in English language. He identified himself as Njenga Wainaina a Land Surveyor. He stated his registration details as noted by Court. He also stated that he was the director of a surveying institutions trading in the name and style of “Surv Print Tech Limited. That he had prepared a report dated 3rd February 2025 over the suit property herein Diani/Kwale Settlement Scheme/80 measuring 5.4 acres. It was close to 23 kilometres from Ukunda. That the exercise was to confirm the ground status.
14. It was his evidence that he had moved round the suit property and identified the beacons. That the land borders residential houses. The geographical coordinates are formed. That the parcel was picked with GNS and GPS MAP 645. The methodology used was IPC beacons. That the land had both permanent and semi-permanent houses and the land was further fully occupied.
15. Further that a clear boundary was brick walled and on the northern side there was a road to the southern side which was a water point. That there was also a school Rophine Junior Field School. In conclusion the witness stated that there were old structures with school children, elderly and houses on the land.



C. Examination in Chief of PW - 3 by Mr. Kowade Advocate.

16. PW – 3 was sworn and testified in English language. He was called Mr. Suleiman Yusuf Mwadzoyo. He was the Assistant Chief of Gombato sub–location of Diani Location within the County of Kwale. He adopted the witness statement as was made in ELC No 010 of 2023 as stated therein. He stated that the Plaintiff was known to him as the owner of Kwale/Diani Settlement Scheme/80. That the property has boundaries and permanent houses therein. That the plaintiff had been in occupation of the suit property from the year 1977.
17. The witness stated that the Respondent was not known to him and he had never heard of any land dispute over the suit property for the 40 years. He testified that as an administrator he would support the Mwakuzi family be granted the title to the land as their right.

IV. Submissions

18. On 8th April 2025 the Honourable Court upon the closure of the case by the Plaintiff in the presence of counsel, court gave directions on the disposition of the originating summons dated 6th December 2023 by way of written submission.

A. The Written Submissions by the Plaintiff

19. Through the Law firm of Messrs. OG Makowade Advocates, the Plaintiff filed his Written Submissions dated 22nd April 2025. Mr. Makowade Advocate started by stating that the submissions were on the Plaintiff's claim as against the Defendant. The Learned Counsel informed Court that the Applicant was seeking a declaration that he has acquired ownership of land parcel Kwale/Diani Settlement Scheme 80 by way of adverse possession, having been in uninterrupted, exclusive, and open occupation of the same for more than 55 years. Counsel gave a brief procedural background of the case and stated that The matter therefore proceeded ex parte. The Applicant led oral evidence [viva voce] and called three witnesses:
 - Himself, Omari Hamisi Mwakuzi
 - The Area Chief
 - A Government Surveyor
20. That the evidence, tendered before the Honourable Court, was unchallenged. On the factual background, it was submitted that the Applicant was born and raised on the suit property over 55 years ago. His parents and grandparents occupied the land well before demarcation under the Diani Settlement Scheme. After his father passed away, the Applicant remained on the land, which he has continued to cultivate, develop, and live on with his family. On 15th June 2021, the Applicant discovered that the Respondent's name had been registered on the Green Card in the year 1994, allegedly through a sale.
21. The Counsel asserted that the Applicant had no knowledge of this transaction and has never seen the Respondent occupy or claim the land. A Government occupational survey conducted in the year 2006 confirmed that the Applicant and his family had occupied the land since the year 1966. A more recent survey and ground report dated 2nd February 2025 confirmed:
 - a. The parcel measures approximately 2.2 hectares [5.4 acres].
 - b. It has clearly defined boundaries on both the ground and the official Survey Map.



- c. There are permanent developments within the boundaries, including residential houses and farming.
 - d. The land is fully occupied by the Applicant, with no indication of any other party in possession.
22. The Learned Counsel averred that the area Chief, who testified in court, stated:
- He was born in the locality in the early 1960s and has lived there his entire life.
 - He has personally known the Applicant’s family since the early 1970s.
 - The Applicant’s family has always lived on the suit land.
 - The Applicant’s late father is buried on the land.
 - As the local administrator, he has never received any complaint or dispute regarding ownership or possession of the land—despite chiefs being the first point of call in land conflicts.
23. It was submitted that the claim is anchored on the *Limitation of Actions Act*, Cap 22, specifically: the provision of Sections 7, 13[1], 17 and 38[1]: Allows a person in adverse possession to apply to be registered as the legal proprietor. It was stated that in the cases of “Mtana Lewa v Kahindi Ngala Mwangandi [2015] eKLR” and “Mombasa Teachers Co-operative Savings & Credit Society Ltd v Robert Muhambi Katana [2018] eKLR”, the Applicant must prove:
- a. Actual Possession: The Applicant had been physically present on the land since birth, engaging in domestic use and farming.
 - b. Open and Notorious Use: His presence and use of the land had been visible to the community and authorities.
 - c. Exclusive Possession: The Applicant had exercised complete control over the parcel, to the exclusion of others.
 - d. Non-Permissive [Hostile] Possession: The occupation had not been by consent or license.
 - e. Continuous and Uninterrupted for Over 12 Years: The Applicant and his family have occupied the land since at least 1966.
24. That the Respondent’s failure to act since registration in year 1994 confirmed the Applicant’s adverse claim. Reference was made to the holding in the case of:- “Kimani Ruchine v Swift Rutherford [1980] KLR 10”, where the Court held that possession must be open, continuous, and as of right. The Applicant’s conduct fits this legal standard in every respect.
25. On fraudulent registration and occupation, Counsel averred that the Respondent’s name was entered on the Green Card in 1994, nearly 30 years after the Applicant’s family began occupying the land. This registration has never been followed by actual possession or assertion of ownership rights. Mere registration cannot defeat an already matured claim of adverse possession.
26. In conclusion the court was asked to Allow the prayers sought in the Originating Summons for adverse possession as prayed; and Issues further order directing the Deputy Registrar of this Honourable Court to sign all necessary documents to effect transfer of title to the Applicant within seven [7] days from the date of judgment.



V. Analysis and Determination

27. I have carefully read and considered all the filed pleadings herein, the evidence adduced by the witnesses summoned by the Plaintiff, the written submissions, the myriad of cases cited herein by parties, the relevant provisions of *the Constitution* of Kenya, 2010 and statutes.
28. This Honourable Court will still examine the facts of the case and in order to arrive at an informed, just, equitable and reasonable decision, the Honorable Court has three [3] issues for its determination. These are: -
- a. Whether the Plaintiff had acquired the title by way of adverse possession as required by Law?
 - b. Whether the parties herein were entitled to the reliefs sought
 - c. Who will bear the Costs of originating summons?

ISSUE No. a). Whether the Plaintiff had acquired the title by way of adverse possession as required by Law

29. It is noted that the Defendant did not participate in the suit despite service being effected on him. However, the Applicant does not escape the burden and standard of proof which they have to satisfy and discharge in accordance with the law in order for his claim to succeed. This Court has a duty to interrogate and evaluate uncontroverted evidence in order to determine whether the applicant is entitled to the prayers sought.
30. The provision of Section 107[1] of the *Evidence Act*, Cap. 80 provides that
- “Whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.”
- The provision of Section 108 provides:-
- “The burden of proof in a suit or proceedings lies on that person who would fail if no evidence at all were given on either side.”
31. And section 109 provides;
- “The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided for by law that the proof of that fact shall lie on any particular person.”
32. On this aspect, I wish to refer to the case of “Samson S. Maitai & Another v African Safari Club Limited & Another [2010] eKLR, where the Court held that: -
- “I have not seen judicial definition of the phrase ‘formal proof’. ‘Formal’ in its ordinary dictionary meaning refers to being ‘methodical’ according to rules of evidence. On the other hand, according to Halsbury’s Laws of England, Vol. 17 Paragraph 260, proof is that which leads to a conviction as to the truth or falsity of alleged facts which are the subject of inquiry. Proof refers to evidence which satisfies the court as to the truth or falsity of a fact. Generally, as we well know, the burden of proof lies on the party who asserts the truth of the issue in dispute. If that party adduces sufficient evidence to raise a presumption that what is claimed



is true, the burden passes to the other party who will fail unless sufficient evidence is adduced to rebut the presumption”.

33. Also see the case of “Gichinga Kibutha v Caroline Nduku [2018] eKLR” the Court held that:-

“It is not automatic that instances where the evidence is not controverted the Claimants shall have his way in Court. He must discharge the burden of proof. He must proof his case however much the opponent has not made a presence in the contest.”

34. Further, in the case of:- “Charter House Bank Limited [Under Statutory management v Frank N. Kamau [2016] eKLR”, the Court of Appeal when discussing the burden of proof upon the Plaintiff in a situation where the Defendant failed to adduce evidence stated that:

“we would therefore venture to suggest that before the trial court can conclude that the Plaintiff’s case is not controverted or is proved on a balance of probability by reason of the Defendant’s failure to call evidence, the court must be satisfied that the Plaintiff has adduced some credible and believable evidence, which can stand in the absence of rebuttal evidence from the Defendant.... The Plaintiff must adduce evidence, which in the absence of rebutted evidence by the Defendant convinces the court that on a balance of probabilities, it proves the claim. Without such evidence, the Plaintiff is not entitled to Judgement merely because the Defendant has not testified”

35. The doctrine of adverse possession in Kenya is embodied in Section 7 of the [Limitation of Actions Act](#), [Cap 22] in these terms:

“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 is first accrued to some person through whom he claims, to that person”.

36. The provision of Section 13 of the Act is in these terms:

“[1] A right of action to recover land does not accrue unless the land is in possession of some person in whose favour the period of limitation can run [which possession is in this Act referred to as adverse possession”

37. Section 17 of the said Act stipulates that upon the expiry of the period [12 years] prescribed by the Act for a person to bring an action to recover land, the title of that person to the land stands extinguished.

38. On the other hand, Section 38 of the Act allows a claimant to apply to Court for orders of adverse possession and 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.”



39. In neighbouring jurisdiction, the law of adverse possession is provided for in the laws of Uganda under Section 16 of the Limitation Act [Cap 80] which provides that:

“ 16. Extinction of title after expiration of period Subject to sections 8 and 29 of this Act and subject to the other provisions thereof, at the expiration of the period prescribed by this Act for any person to bring an action to recover land [including a redemption action], the title of that person to the land shall be extinguished.”

40. The guiding principles of adverse possession were well outlined in the Supreme Court of India decision of “Karnataka Board of Wakf v Government of India & Others [2004] 10 SCC 779] that was cited with approval in the Court of Appeal decision of “Raphael Kahindi Kawala v Mount Elgon Beach Properties Limited [2018] eKLR”. The Karnataka Board case [Supra] summarized these principles 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 of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile 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.”

41. In the textbook by Megarry & Wade: The Law of Real Property, 9th Edition, Stuart Bridge, Elizabeth Cooke and Martin Dixon, Sweet & Maxwell, London, at Paragraphs 7-007; 7-014; 7-029 to 7-110], the learned authors provide more clarity on the operation of the law of adverse possession as follows: “...Possession is a legal concept which depends on the performance of overt acts, and not on intention. It requires an appropriate degree of physical control of the land and it must be a single and exclusive possession...it is in the public interest that a person who has long been in undisputed possession should be able to deal with the land as owner. It is more important that an established and peaceful possession should be protected than that the law should assist the agitation of old claims. A statute which effects this purpose is “an act of peace.” Long dormant claims have often more cruelty than of justice in them...Adverse possession runs counter to the principle of the indefeasibility of a registered title and can only be justified in limited circumstances...To establish adverse possession, a squatter must prove both factual possession of the land and the requisite intention to possess [animus possidendi]...The principles which determine whether conduct amounts to adverse possession were affirmed by the House of Lords in J A in “Pye [Oxford] Limited v Graham [2002] UKHL 30; [2003] 1 AC 419...” the House held that:-

“ where licensees remained in possession of grazing land for more than 12 years after the expiry of the licence, they had acquired title to the land by adverse possession, because they were in factual possession and shown the requisite intention.”

42. The court is making reference to the decisions made in diverse jurisdictions in order to make apparent that the doctrine of adverse possession is certainly not an alien concept in law. In our local jurisdiction,



the doctrine of adverse possession was aptly defined in the case of “Mtana Lewa v Kahindi Ngala Mwangandi [2015] eKLR “where the Court of Appeal held that:-

“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 of stealth nor 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.”

43. The elements of adverse possession were further summarized in the case of “Kasuve v Mwaani Investments Ltd & 4 Others [2004] 1KLR 184 as follows:

“...and in order to be entitled to land by adverse possession, the claimant must prove that he has been in exclusive possession of the land openly and as of right and without interruption for a period of 12 years either after dispossession of the owner or by the discontinuation of possession by the owner on his own volition, *Wanja vs Sakwa No.2* [1984] KLR 284. A title by adverse possession can be acquired under the *Limitation of Actions Act* for part of the land...”

44. Therefore, for a claim of adverse possession, the manner of entry and possession are crucial. See the case of: “Gabriel Mbui v Mukindia Maranya [1993] eKLR; where the Court held:-

“Throughout the decided cases, the recurrent theme is that possession to be adverse must be actual, open, notorious, regular, continuously uninterrupted, hostile, exclusive occupancy held with a cherished animus possidendi under a claim of right held in good faith, without any form of permission from a knowing rightful owner entitled to immediate possession, for the statutory period. Out of these cases, the typical formulation of the classical requirements for adverse possession to be claimed, has been, that in order to acquire title to land without buying or paying for it in the traditional sense, or through some other legal disposition such as by inheritance or trust, there must be proved or established the elements of 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”.

45. I hold that the legal principles on the doctrine of a claim of land through Adverse possession have been adequately articulated herein. Now the Honourable Court wishes to turn to the application of said principles to the instant case.

ISSUE No. b). Whether the parties herein were entitled to the reliefs sought

46. Under this sub - heading, the Honourable Court will endeavour to apply the above legal position to this case. It is the Applicant’s case that he has been in possession of the suit property herein from the year 1976 when he was ten years old. That the land initially belonged to his father Hamisi Omari Mwakuzi. That as a family they had farmed on the land since time immemorial as evidenced by the many coconut and mango trees together with the residential houses built thereon. He stated that other than himself,



- the land was occupied by his sisters together with their families. That his sisters had also put up both permanent and semi-permanent houses on the land.
47. The court has had the chance to peruse the Land Survey report dated 3rd February 2025 as carried out by PW - 2. Its contents indicate that the land was under the occupation at the time of conducting the survey exercise. Further, that there were clear beacons that separates its corners from the adjacent parcel. Further that the parcel had distinct structures made of brick and mortar while others were semi-permanent structures made of iron sheets and mud. The issue of occupation is thus proved.
48. Has the occupation been continuous? According to PW - 3 the Assistant area chief, the Mwakuzi family had been in occupation of the suit property since the year 1977. He was very definite about the year as it was when the demarcation for the area commenced formally. It was part of his evidence before court and was further stated in the letter dated 24th March 2025 addressed to the ELC Court Kwale. According to him, he had information from the village elder one Abdalla Taimbarugu that the Plaintiff who was a son to the late Hamisi Mwakuzi has been in occupation of the suit property together with the rest of his family members. The aspect of continuous occupation of the applicant herein with his family has thus in my view been sufficiently demonstrated.
49. On the aspect of whether the open and continuous occupation of the suit property has been interrupted. I have perused the official search certificate presented before court by the Applicant. It indicates that the suit property was registered in the name of the Respondents on 21st March 1994. There has been no indication that the occupation and use was at any given point interrupted by any party and specifically the Respondent. It is trite that the filing of a suit asserting rights over land stops time from running in adverse possession. No evidence has been tendered before court suggesting in any way that the Applicants occupation of the suit property was ever contested by the Respondent in court. The mandatory provisions of Order 37 Rule 7 of the Civil Procedure Rules, 2010 requires that an application for adverse possession be accompanied with a title deed extract. Does the failure to producing the title deed invalidate the adverse possession claim? I believe what was envisaged here by the legislators was to deduce the status of the land.
50. The Applicant has relied on the Green card for the suit property as listed in the list of documents dated 6th December 2023. I however wish to state that I have not come across the alleged copy in the pleadings. What is on the court record is a copy of an official search indicating the land was registered in the Respondent's names on 21st March 1994. It is noteworthy that the land was initially registered under the repealed Registered *Land Act*, Cap. 300 which is now governed by The *Land Act*, 2012.
51. In my opinion the search certificate forms cogent evidence as to the current status on ownership of the land. The same having not be challenged, I find it that the ownership of the suit property has been established as being in the name of the Respondent. It was the evidence of the Applicants that the Respondent has never been in use and occupation of the suit property. That he is unknown to them. This was evidenced by the photographs showing the developments on the land. As to the admissibility and weight to be placed on the photographs produced in evidence, Section 65[5] and [6] of the *Evidence Act*, Cap. 80 come into play, a certificate of electronic evidence was however not filed before court. Be it as It may, my attention has been drawn to the survey report "OHM - 4" by Japheth Kamwara the land surveyor from the land adjudication and settlement office whose contents were the land was occupied and the same had both cash crops and maize and cashew. Further that the coconut trees and mango trees had been grown years back and there were structures erected thereon. The report is dated 9th June 2023.



52. From this evidence it is confirmed that the Applicant's occupation of the suit property has been to the exclusion of all others including the true owner out of possession of that land. For that reason, the Applicant's claim for adverse possession succeeds as prayed.

ISSUE No. c). Who will bear the costs of the originating summons?

53. It is now trite law that the issue of costs is at the discretion of the Court. Costs mean the award a party is awarded at the conclusion of a legal action or proceedings in any litigation.
54. The provision of Section 27 [1] of the *Civil Procedure Act*, Cap. 21 holds that costs follow the event. By event it means the result and outcome of the legal action.
55. Although the Applicant has successfully established its case but taking that the Respondent never entered appearance or defend this claim, there shall be no orders as to costs.

VI. Conclusion and Disposition

56. In the end, having caused such an in-depth analysis to the framed issues herein, the Honourable Court finds that the Plaintiff has established his case against the Defendant herein.
57. However, prior to making my final orders, I note that on 8th April 2025 before closure of the Plaintiff's case, Counsel on record orally moved Court seeking that there be an amendment to the filed pleading to include the prayer that should the Plaintiff be successful their pleadings to read;

“The land registrar directed to have the land registered in the name of the Plaintiff”

58. The Honourable Court is of the view that the Applicant should formally move Court seeking for the above execution relief. Thus, in the meantime, the Honourable Court proceeds to make the following specific orders: -
- a. That Judgement be and is hereby entered in favour of Plaintiff/Applicant in accordance with Originating Summons dated 6th October, 2025.
 - b. That the Applicant herein be and is hereby declared the rightful owner of the suit properties Kwale/Diani Settlement Scheme/80 which parcel he has cultivated and has been in actual possession peacefully, openly and uninterrupted for a period of 57 years since 1966.
 - c. That an order is hereby issued to the Land Registrar of Land Kwale to cancel and/or strike out the name of the Respondent from the register his title having been extinguished and subsequently enter the names of the Applicant as the sole proprietor of the suit property Kwale/Diani Settlement Scheme/80.
 - d. That a permanent injunction do issue restraining the Respondent whether by himself, his servants, representatives, agents and/or assigns howsoever from dealing with, entering in, obstructing any activities on, interfering with the Applicant's agents and or representatives sub-dividing, demolishing any structures on selling, alienating, occupying and/or in any other was interfering with the suit property
 - e. That there shall be no orders as to costs.
59. It Is Ordered Accordingly.

**JUDGEMENT DELIVERED THROUGH THE MICRO – SOFT TEAMS VIRTUAL MEANS,
SIGNED AND DATED AT KWALE THIS 28TH DAY OF JULY 2025**



HON. MR. JUSTICE L.L NAIKUNI
ENVIRONMENT & LAND COURT, KWALE

Ruling delivered in the presence of: -

Mr. Daniel Disii, the Court Assistant.

Mr. Kowade advocate for the Plaintiff/Applicant

No appearance for the Defendant/Respondent

