



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT MILIMANI LAW COURTS, NAIROBI**  
**ELCLOS E037 OF 2025**

**JOSEPH KARUORO CLAUDIO..... 1<sup>ST</sup>**  
**APPLICANT**

**BENARD NYAKUNDI MAKORI..... 2<sup>ND</sup>**  
**APPLICANT**

**VERSUS**

**AGNETA LUCY SIMULI..... 1<sup>ST</sup>**  
**RESPONDENT**

**CHIEF LAND REGISTRAR..... 2<sup>ND</sup>**  
**RESPONDENT**

**JUDGEMENT**

**Background**

1. The applicant has brought this suit by way of originating summons application dated 11<sup>th</sup> February 2025 and amended on the 7<sup>th</sup> January 2026 seeking the following orders;

- a) The applicants have obtained title over land parcel LR.NO 2327/153 converted to Nairobi Block 192/388 situated in Hardy Karen Langata sub county within Nairobi County by way of adverse possession having occupied the same in an exclusive, open, peaceful, continuous and uninterrupted manner for a period of over 12 years since December 1998.
- b) That the 1<sup>st</sup> respondent's title over land parcel LR.NO 2327/153 recently converted to Nairobi Block 192/388 situate

in Hardy Karen Langata sub county within Nairobi county has been extinguished by operation of law.

- c) That the applicants be registered as the absolute and indefeasible proprietors of the parcel of land known as L.R.NO 2327/153 recently converted to Nairobi Block 192/388 situate in Hardy Karen Langata sub county within Nairobi County.
- d) The chief land registrar, the 2<sup>nd</sup> respondent herein do register the applicants as the proprietors of the land parcel known as LR.NO 2327/153 recently converted to Nairobi Block 192/388 situate in Hardy Karen Langata sub county within Nairobi county pursuant to order c above in place of the 1<sup>st</sup> respondent herein within 7 days of the judgement, order or decree herein.
- e) Costs of the suit and interest be borne by the 1<sup>st</sup> respondent.

2. The application was supported by the affidavit of the 2<sup>nd</sup> respondent who deponed that the suit property is registered in the name of the 1<sup>st</sup> respondent. That together with the 1<sup>st</sup> applicant they had been staying on the suit property since the December of 1998 without the consent of the 1<sup>st</sup> applicant but with her knowledge. That the stay had been uninterrupted for a period of over 25 years in which years they have done developments on the property.

3. That the period of stay being over 12 years of open peaceful and continuous interruption, gave them the right to claim for ownership under adverse possession.
4. The applicant served the 1<sup>st</sup> respondent through the primary way of service and further via substituted service on the 4<sup>th</sup> August 2025 by an advert in the local daily but the 1<sup>st</sup> respondent did not enter appearance.
5. The 2<sup>nd</sup> respondent on the other hand replied in a replying affidavit sworn by W.M Muigai dated 29<sup>th</sup> September 2025 where he deponed that he was not in any position to confirm or deny the allegations as in the application and further the claim for adverse possession as against the 2<sup>nd</sup> respondent was unfounded. The only piece of information that he was able to ascertain was that the suit property was in the name of the 1<sup>st</sup> Applicant.

### **Analysis and Determination**

6. The record confirms that on 31<sup>st</sup> July 2025, the Plaintiff/applicant made an oral application for leave to serve the 1<sup>st</sup> respondents through substituted service.

Order 5 Rule 17 of the Civil Procedure Rules provides for substituted service where the court is satisfied that the summons cannot be served personally unto the respondent. In the instance case, the applicant made an oral application in court for leave to serve the respondent by way of advertisement. The court did grant leave to

the applicant, and service was effected through placing an advert in the star newspaper on the 4<sup>th</sup> August 2025 and filed a return of service. What is left is for the court to determine the application on merit.

7. Adverse possession is a statutory process of acquiring title to land by extinguishing the title of the registered owner, by the actual occupation of the land in a manner that is visible, open, notorious, exclusive, continuous and uninterrupted for a statutory period of 12 years. Adverse possession is based on facts, which must be asserted, pleaded and proved. The applicant must show the date that they took over possession on behalf of the beneficiaries, the nature of their possession, how long the possession has been, and whether the possession was open and undisturbed.

8. In the case of **Richard Wefwafwa Songoi v Ben Munyifwa**

**Songoi [2020] eKLR** the Court of Appeal held that, '*A person who claims adverse possession must inter alia show:*

*(a) on what date he came into possession.*

*(b) what was the nature of his possession?*

*(c) whether the fact of his possession was known to the other party.*

*(d) for how long his possession has continued, and (e) that the possession was open and undisturbed for the requisite 12 years.*

9. On the 22<sup>nd</sup> January 2026 Originating Summons be heard by way of oral evidence. Bernard Nyakundi Makori gave His testimony as PW1 adopting his affidavit sworn on the 7<sup>th</sup> January 2026 where he indicated that together with the 1<sup>st</sup> applicant they took over the property which had been abandoned in December 1998 and since then the owner the 1<sup>st</sup> respondent had never interfered with their stay. That they had made developments on the same and continued occupying and paying the utility bills as well. This he indicated had been uninterrupted for over 12 years. He indicated that this had been corroborated by the assistant chief in a letter dated 21<sup>st</sup> May 2025.
10. PW2 Ronnie Mervin Kamau indicated relied on his witness supporting affidavit dated 7<sup>th</sup> January 2026. He indicated to have carried out works of repairs in the 6-bedroom maisonette that was part of the suit property in the year 2002 and other construction works alluding to the fact that he had known the applicants to be on the suit property and hence owners of the property since the year 2002. This information was subject to cross examination.
11. PW3 George Rodgers Nyachiro testified adopting contents of his statement dated 19<sup>th</sup> December 2025. He indicated to be the assistant chief of the area and that the applicants were well known to him as the occupants of the suit property and that as per the records in the local administration offices, the applicants had been in possession since 1998.

12. The 1<sup>st</sup> respondent did not enter appearance nor defended the summons. The 2<sup>nd</sup> respondent adopted his witness statement dated 29<sup>th</sup> September 2025 as his evidence in chief. He asserted that indeed the suit property was registered in the 1<sup>st</sup> respondent's name and that was the much information he could confirm. The issue of who had been in possession over the same, he told the court he could not ascertain

On cross examination he indicated that there had been no transactions in the property since March of the year 1998 and neither had there been any court proceedings over the same.

At the close of both the applicant and respondent's case, the court directed the parties to file submissions and the applicant filed submissions dated 28<sup>th</sup> January 2026,

12. The plaintiff submitted that he had satisfied the ingredients of adverse possession being that;

- i. They had been in open and notorious occupation of the suit property relying in the case of **Tabitha Waitherero Kimani v Joshua Ng'ang'a [2017] KEELC 2455 (KLR)**,
- ii. That they had established that the occupation had been continuous and uninterrupted for over 12 years
- iii. That they had established that the occupation had been with the knowledge of the 1<sup>st</sup> respondent having entered in the abandoned premises without any permission but continued to reside in it without any interruption for over 25 years indicating that in cases of adverse possession actual

knowledge was not required rather proof of constructive knowledge as held in **Kweyu Vs Omuto (1990)KLR 709**

- iv. That they had demonstrated actual possession by virtue of the fact that they were resident in the six-bedroom maisonette, they had been paying utility bills, they had carried out maintenance works and further regulated access to the same by employing security guards.
- v. That the possession for the period was exclusive since the 1<sup>st</sup> respondent and any other 3<sup>rd</sup> parties had been excluded.
- vi. That the occupation of the suit property had been peaceful being that the occupation had been without force. They submitted that entry was without force and that at not any particular time had the 1<sup>st</sup> respondent had not issued any eviction notice.

13. Counsel submitted that having demonstrated the above, then the applicant were entitled to orders of adverse possession.

**Analysis and Determination:**

14. From the pleadings the following in my view are the issues arising for determination in this suit;
  - i. Whether the applicants have proved their adverse possession claim in respect of the suit property.
  - ii. Whether the applicants are entitled to the reliefs sought against the defendant
  - iii. Who is liable for the costs of the suit?

In **Gabriel Mbui v Mukindia Maranya[1993] eKLR**, the court stated that a person claiming land by adverse possession must establish on a balance of probability the following elements;

- a) The person claiming land by adverse possession must make physical entry and be in actual possession or occupancy of the land for the statutory period.
- b) The entry and occupation must be with, or maintained under, some claim or colour of right or title made in good faith by the stranger seeking to invoke the doctrine of adverse possession as against everyone else.
- c) The occupation of the land by the intruder who pleads adverse possession must be non-permissive use, i.e. without permission from the true owner of the land occupied.
- d) The non-permissive actual possession hostile to the current owner must be unequivocally exclusive, and with the evinced unmistakable *animus possidendi*, that is to say occupation with clear intention of excluding the owner as well as other people.
- e) Acts of user by the person invoking the statute of limitation to found his title are not enough to take the soil out of the owner or his predecessors in title and to vest it in the encroacher or squatter, unless the acts be done which are inconsistent with the owner's enjoyment of the soil for the purpose for which he intended to use it.

- f) The possession by the person seeking to prove title by adverse possession must be visible, open and notorious, giving reasonable notice to the owner and the community of the exercise of dominion over the land.
- g) The possession must be continuous uninterrupted, unbroken for the necessary statutory period.
- h) The rightful owner or paper title holder against whom adverse possession is raised must have an effective right to make entry and to recover possession of the land throughout the whole of, and during, the statutory period
- i) The rightful owner must know that he is ousted. He must be aware that he had been dispossessed, or he must have parted and intended to part with possession.
- j) The land, or portion of the land adversely possessed must be a definitely identified, defined or at least an identifiable portion, with a clear boundary or identification. The absence of a plot or title number need not present any difficulty, nor should it be a bar to establishing a claim of adverse possession.

**In Wambugu v Njuguna [1983] KLR 172** the court stated as

follows:

*“First 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*

*entails acts which are inconsistent with his enjoyment of the soil and for the purpose for which he intended to use it. The Limitation of Actions Act (Chapter 22) on adverse possession contemplated two concepts: dispossession and discontinuance of possession. 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 for the requisite number of years.”*

15. The burden was on the applicants to establish the elements of adverse possession set out above. On the issue of possession, it is not disputed that the applicants are in possession of the suit property as at the time of filing this suit. As stated, the 1<sup>st</sup> respondent, being the owner of the suit property did not enter appearance nor did he tender evidence at the trial. The 2<sup>nd</sup> respondent's testimony is not of much weight as it did not shed any light in regards to the issues raised. The evidence that was tendered by the applicants as to when and how they entered the suit property was not controverted. The same applies to the evidence that they have carried out maintenance and repairs on the 6-bedroom maisonette, constructed on the property, carried out maintenance on the other areas in the suit property such as cutting of the grass, installing of cabros as evidenced by the photographs attached to his bundle of documents Even, in the absence of

evidence from the 1<sup>st</sup> respondent , the applicants still had a duty to prove their case.The applicants told the court in both written and oral testimony that they took possession in December 1998 and have remained in possession over 25 years.

16. The applicant produced various documents in support of their claim including a letter from the assistant chief confirming he knows them to be residents on the suit property, an employment agreement as between the applicants and one peter Njonjo Kimani dated 4<sup>th</sup> January 2010 to offer security services on the suit property, photographs showing the developments made on the property.The applicants have also produced copies of utility bills paid over the years and in particular the electricity bills dating back to the year 2015.There is also a document at page 24 of the supporting affidavit dated the year 2000 pointing out to the fact that the applicants were to be supplied with electricity starting from the year 2001 on the location that is the suit property. The documents do not point to occupation from the year 1998 but point to occupation for more than 12 years on the suit property. This in my view is enough evidence of physical occupation on the property and as they have submitted in their pleadings, the occupation had been exclusive without any interruption from the 1<sup>st</sup> respondent and any other parties claiming on the property.

17. Due to the foregoing, it is my finding that the applicants have proved the time duration in which they have been in occupation of the suit property how they entered the suit property

The applicants have also demonstrated that for the duration of their occupation of the suit property, they intended to dispossess the registered owner thereof of the property by taking up the initiative to develop on the same and causing restriction to property asserting occupation and possession.

It can then be said in the circumstances that the applicants' occupation of the suit property was with clear intention of excluding the 1<sup>st</sup> respondent being the registered owner from the property.

18. In addition to the foregoing, there is no rebuttal of evidence that the 1<sup>st</sup> respondent were not aware of the applicants' occupation of the suit property. In Samuel Kihamba v Mary Mbaisi [2015]

**eKLR** the Court of Appeal stated that: *"Open and willing dispossession has been interpreted to mean that the owner has knowledge, whether actual or not, or a means of having that knowledge of the occupation of his or her property by the claimant."*

Having submitted as above, I hold the view that the applicants have substantiated their claim for adverse possession.

### **Final disposition**

For the foregoing reasons, the originating summons application dated 30<sup>th</sup> June 2025 and amended on 7<sup>th</sup> January 2026 is merited

and allowed on all the prayers (a, b, c and d) with no order as to costs .

**It is so ordered.**

**DATED, SIGNED** and **DELIVERED** virtually at **NAIROBI** on this **25<sup>th</sup>** day of

**March, 2026.**

**MOHAMMED N. KULLOW**  
**JUDGE**

**Judgment delivered in the presence of: -**

**Mr. Ndegwa**..... for the Applicants

**N/A**..... for the Respondents

**Philomena W.**..... Court Assistant