



Issack v Basheik & another (Enviromental and Land Originating Summons E001 of 2024) [2025] KEELC 5550 (KLR) (25 July 2025) (Judgment)

Neutral citation: [2025] KEELC 5550 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E001 OF 2024**

LL NAIKUNI, J

JULY 25, 2025

**IN MATTER OF: SECTIONS 17, 37 AND 38 OF THE
LIMITATION OF ACTIONS ACT CAP. 22 LAWS OF KENYA**

**IN THE MATTER OF: SUB - DIVISION 2532/1(PLOT NO.382 SEC.II
MN (SITUATED PAST KIEMBENI WITHIN MOMBASA COUNTY**

IN THE MATTER OF: THE LAND TITLE ACT 2012

**IN THE MATTER OF: AN APPLICATION FOR DECLARATIONS THAT THE
PLAINTIFF HAS OBTAINED OWNERSHIP OF A PORTION OF 2 ACRES**

OF (PLOT NO.382 SEC. II MN AS CR.2532/1 BY WAY OF ADVERSE

POSSESSION

BETWEEN

ABDHUL MOHAMED ISSACK PLAINTIFF

AND

ABDULRAHMAN MOHAMED BASHEIK 1ST DEFENDANT

MAHAMUD ABDALLA MANDHRY 2ND DEFENDANT

JUDGMENT

I. Preliminaries

1. The Judgement of this Honourable Court pertains to the civil suit instituted by Abdhul Mohamed Issack the Plaintiff/Applicant herein. It was against Abdulrahman Mohamed Basheik and Mahamud Abdalla Mandahry, the Defendants/Respondents herein by way of Amended Originating Summons dated 18th January, 2024, amended on 19th January, 2024. It was premised under the provision of Sections 17, 37 and 38 of The Limitation of Actions Act, Chapter 22, Laws of Kenya, Order 37 Rules



7(1), (2) and (3) of the Civil Procedure Rules 2010 Laws of Kenya And all other enabling Provisions of the Law.

2. On 31st January, 2024 the Plaintiff was granted leave to effect service upon the Defendants by way of substituted means as provided for under the provision of Order 5 Rule 17 of the Civil Procedure Rules, 2010. Pursuant to that, an advertisement was published in two (2) local dailies of “The Daily Nation” – English newspaper and “The Taifa Leo” – Kiswahili newspaper with a wide national circulation and readership particularly in the Coastal region thereof. The said service was backed up by a 5 Paragraphed Affidavit of Service dated 23rd February, 2024. Despite of this proper service, the Defendants/Respondents the never responded. Following that, the matter was fixed for formal proof hearing under the provision of Order 10 Rules 4, 5, 6, 7, 9 and 10 of the Civil Procedure Rules, 2010 thereof.
3. On 13th November, 2024 the Honourable Court upon the request by the parties, the Honourable Court in their presence conducted a site visit (“Locus in Quo”) pursuant to the provision of Order 18 Rule 11 of the Civil Procedure Rules, 2010. A comprehensive report has been verbatim re – produced herein for ease of reference.

II. Court directions before the hearing

4. On 13th March, 2024, after confirming that the Plaintiffs had complied with Order 11 of the Civil Procedure Rules 2010, the Honourable Court set “the Viva Voce” hearing date on 13th November, 2024. The Plaintiff/ Applicant called his witness and closed his case on 13th November, 2024.

III. The Plaintiff/ Applicant’s case

5. The Plaintiffs/ Applicants claimed that land adverse possession against the Defendants/Respondents for the following orders: -
 - a. A declaration that the defendants, title No. Plot 382 CR.2532 has been extinguished to the extent of the 2 acres in favour of the Plaintiff by way of adverse possession pursuant to Sections 17, 37 and 38 of the [Limitation of Actions Act](#) Cap.22 Laws of Kenya having occupied the said portion for more than 12 years preceding the filing of this suit.
 - b. That the Plaintiff is entitled to be registered forthwith as the owner of a portion of 2 acres of Plot No. 382 SEC.II MN as CR.2532 which Land the Plaintiff has held on adverse possession since 2011 to date for a period of more than 12 years immediately preceding the filing of this suit, the same being Land which the Plaintiff has occupied openly, exclusively, notoriously and continuously as of right and without any interruption from the Defendant or its predecessors in title.
 - c. That the Land Registrar at Mombasa Land Office to register a portion of 2 acres from the title document of Plot No.382 SEC II MB AS CR.2532 measuring 12 acres in the name of the Plaintiff herein absolutely.
 - d. That costs of this Application be provided for.
6. The Original Summons was based on the following grounds on the face of it and those of the 11 paragraphed supporting affidavit sworn by Abdhul Mohamed Issack, the Plaintiff/ Applicant sworn on the same day with the Originating summons where the Affiant averred:-



- a. The Defendant was and still is the registered owners of the suit property herein being (Plot No.382 SEC.II MN as CR.2532/1 measuring approximately 12 acres (annexed in the affidavit an extract of a certified copy of the title document marked “AMI - 1”).
 - b. Since in the year 2011 when he occupied the land wherein he resided had continuously carried out farming activities being (a) agriculture: three fruits, tomatoes, cassava, maize, papaws and vegetables (b) livestock – 16 goats, 20 chickens and 10 turkeys and hence carrying out all these commercial activities. (Annexed in the affidavit were copies of a bundle photograph marked “AM - 2”).
 - c. Since he had land adverse possession of the said property for a period in excess of 12 years preceding the taking out of this summons, he had therefore acquired prescriptive rights over the property.
 - d. The proprietary rights of the Defendants had been extinguished in his favour under section 38 of the Limitation of Actions Cap. 22, of the Laws of Kenya.
 - e. The affiant had acquired a good title over the suit property under the provision of Section 38 of the Limitation of Actions Act Cap. 22 Laws of Kenya.
 - f. He was entitled to the orders of adverse possession in respect of the portion of 2 acres of (Plot No. 382 Section II MN AS CR. 2532/1.
 - g. His possession of the property was uninterrupted and adverse to that of the Defendant to the extent of the 2 acres that was in his occupation.
 - h. It was in the interest of justice that the orders sought were granted.
 - i. The Affidavit was in support of his application herein.
7. The Plaintiff called PW - 1 on 13th November, 2024 at 3.00 pm wherein the witness told the court that: -
- A. Examination in Chief of PW – 1 by Mr. Tindi Advocate.
8. PW - 1 sworn and testified in Swahili language. He was identified as Abdhul Mohamed Issack, a citizen of Kenya and a holder of the national identity card bearing all the particulars as shown to court during the hearing of the case. He was a business and the farmer. He had sued the 1st and 2nd Defendants. They were the owners of the suit land it was 12 acres. He occupied 2 acres. He filed the OS. He filed an affidavit – with annexure – 3 of them (Plaintiff Exhibit number 1 to 3 (a), (b), (c) and (d) as a set of photographs in that order). The land was at Kiembeni. The witness told the court that he had been there for 13 years. He had caused cultivation on banana, vegetables, maize, cassava. He also had livestock and poultry. In all these years he had not seen any interruptions. He prayed for the court from the filed pleadings. He was a farmer for the livestock and in search of pasture. He found himself on the said land and he settled there. He had attached a copy of the certificate title deed and official search. He needed the title deed in his name.

IV. Submissions

9. On 13th November, 2024 after the Plaintiff closed their case, the Honourable court directed that the parties file their submissions within stringent timeframe thereof on. Pursuant to that the Honourable court reserved a date to deliver its Judgement on 25th November, 2025.



V. Analysis and Determination

10. I have keenly assessed the filed pleadings by all the Plaintiff herein, and in order to reach an informed, reasonable and just decision in the subject matter, the Honourable Court has crafted the following four (4) issues for its determination. But before that the matter proceed on the formal proof. Where a Defendant fails to adduce evidence in support of the Defence and fails to attend court to prosecute the case, the Plaintiff's evidence escapes the possibility of being controverted by defence evidence. It escapes the scrutiny of cross-examination by the Defendant. Therefore, it stands unchallenged and uncontroverted. However, the Plaintiff does not escape the burden and standard of proof which he has to satisfy and discharge in accordance with the law in order for his claim to succeed.
11. 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.”
12. The provision 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.”
13. And the provision 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.”
14. In the case of “Charter House Bank Limited (Under Statutory management – Versus - Frank N. Kamau [2016] eKLR” the court of appeal when discussing the burden of proof on 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”
15. In the present case, the Plaintiff has the burden to adduce some credible and believable evidence to prove on a balance of probabilities, that she has acquired the prescriptive rights. That her possession of the suit land was as of right and in a manner inconsistent with the rights of the registered owner that is to say: the occupation has been open, actual, continuous, uninterrupted, peaceful, exclusive and with the knowledge but without the consent or permission of the registered owner for the prescribed



period of 12 years. In case of:- “Kimani Ruchure – Versus - Swift Rutherfords & Co. Ltd (1980) eKLR 10” Kneller J held that

“the Plaintiffs have to prove that they have used this land which they claim as of right: nec vi, nec clam, nec precario (no force, no secrecy, no persuasion)”

16. In the case of “Kirugi and Another – Versus - Kabiya & 3 Others (1987) KLR 347”, the Court of Appeal held that; -

“The burden was always on the Plaintiff to prove his case on a balance of probabilities even if the case was heard as formal proof. Likewise, failure by the Defendant to contest the case does not absolve a plaintiff of the duty to prove the case to the required standard.”

17. Similarly, in the case of “Gichinga Kibutha – Versus - Caroline Nduku (2018) eKLR”, the Court held that; -

“It is not automatic that (in) instances where the evidence is not controverted the Claimant 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.”

18. In the case of:- “Samson S. Maitai & Another – Versus - African Safari Club Limited & Another [2010] eKLR”, Emukule J observed: -

“..... I have not seen a judicial definition of the phrase ‘Formal Proof’. ‘Formal’ in its ordinary Dictionary meanings - refers to being ‘methodical’ according to rules (of evidence). On the other hand, according to Halsbury’s Laws of England, Vol. 15, para, 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.”

19. Further, in the case of:- “Rosaline Mary Kahumbu – Versus - National Bank of Kenya Limited [2014] eKLR”, the Court held: -

“In contrast, at a formal proof hearing, if the party with the onus of adducing evidence fails to satisfy the truth threshold, the matter would stand to be dismissed on the basis that it was unmeritorious and did not raise sufficient proof of any issues of fact or law. It would be heard and determined on its merits.”

20. In this regard, in a formal proof hearing, a party with the onus of adducing evidence must produce such sufficient evidence which must satisfy the court as to its truth. It is trite law that in any suit of this nature, the party who seeks to rely on the existence of a fact or a set of facts must provide evidence that those facts exist. From the pleadings filed, evidence adduced and submissions made by and on behalf of the Plaintiff the issue that arises for this court’s determination is whether or not the Plaintiff has acquired title to the suit land by operation of the doctrine of adverse possession.

21. There are three (3) issues for determination were: -



- a. Whether or not the Plaintiff has acquired title to the suit land by operation of the doctrine of adverse possession.
- b. Whether the Plaintiff is entitled to the orders sought in the Plaint
- c. Who bears the costs of the suit?

Issue No. a). Whether or not the Plaintiff has acquired title to the suit land by operation of the doctrine of adverse possession.

The Site Visit Report

22. As indicated above, a site visit was conducted and a report prepared. Below is the stated report prepared by the Deputy Registrar.

Republic of Kenya

In the Environment and Land Court of Kenya at Mombasa

Court Name: Mombasa Environment and Land Court

Case Number: ELCLOS/E001/2024

Citation: Abdhul Mohamed Issack Vs Abdulrahman Mohamed Bashek

The site visit report by the Deputy Registrar

1. By the Court Order of Hon. Justice Naikuni dated 13th November, 2024, the Deputy Registrar was directed to conduct a site visit on the subject plot herein situated in the general area of Kiembeni as per Order 18 Rule 11 of the Civil Procedure Rules, 2010.
2. The matter was mentioned before the Deputy Registrar on 20th November, 2024 and the Deputy Registrar scheduled the site visit to be conducted on 4th December, 2024 and conducted the same on the said date in presence of the Court Assistant and the Plaintiff and his Advocate, Mr. Tindi, and the report of the said site visit is as follows;-
3. The subject plot is situated along the tarmacked road from Kiembeni towards Kaloleni. The same is fenced on the back side and the left side, when facing the said road, by a wall erected by the neighbour(s), while the front side next to the said road is fenced with posts and barbed wire.
4. The right side of the plot, when facing the said road, is not fenced off, but has an extended fence made of posts and barbed wire encompassing another portion of land, said to belong to a neighbour
5. The Plaintiff thus, did just point out to us the position where the fence on that side ought to be, though there exists no fence there of whatever nature.
6. Close to the said position of non-existent fence is an iron-sheet structure measuring approximately 6 meters by 4 meters, which the plaintiff indicated that is being used by a certain lady who is his Caretaker. The same is made of old/rusted iron sheets.
7. Towards the centre of the plot is a new stone house under construction, yet to reach ring beam.
8. There were several goats and sheep in the plot, which the plaintiff said he rears on the land and that they are housed in the new stone house still under construction.



9. The subject plot has planted on it few banana and pawpaw plants that appear not to be that old and also about 10 trees, which appear to be relatively old.
10. The Plaintiff also stated that he cultivates maize, cassava and vegetables on the land during the rainy/planting season, though there were no maize, cassava or vegetables on the land as at the time of the site visit.
11. A portion of the plot on the far left side, when facing the said road, has been subdivided into four (4) plots, which the Plaintiff said he intended to sell but had not sold as that particular area gets waterlogged during rainy seasons and also that, he was awaiting the land to be registered into his name.
12. The Plaintiff stated that he does not stay on the land currently as the mud walled house he had constructed thereon collapsed, hence the new stone house he is constructing now.

Dated at Mombasa this 4th day of December, 2024.

Signed By: Hon. Christopher Yalwala

Deputy Registrar - ELC, Mombasa

23. Under this sub – heading, the Honourable Court has deciphered that the main issue is whether or not the Plaintiff has acquired title to the suit land by operation of the doctrine of adverse possession. The land adverse possession is a doctrine of law vide which a person obtains legal title to land by reason of actual, open and continuous occupation of it to the exclusion of the registered owner for a prescribed period. In Kenya, the prescribed period is 12 years. The doctrine is anchored on the provision of Sections 7, 13 and 38 of the *Limitation of Actions Act*. The provision of Section 7 provides 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.”

24. The provision of Section 13 of the *Limitation of Actions Act*, Cap. 22 provides:
 - (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 this Act referred to as adverse possession), 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 cease 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 purpose 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.
25. The procedure for seeking relief on a claim based on adverse is provided for in Section 38 of the *Limitation of Actions Act* and Order 37 of the Civil Procedure Rules, 2010. Section 38 (1) provides;



- (1) 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
- (2) An order made under sub-section (1) of this section shall on registration take effect subject to any entry on the register which has not been extinguished under this Act.
26. And the provision of Order 37 Civil Procedure Rules, 2010 provides:-
- “(1) An Application under Section 38 of the Limitation of Actions Act shall be made by Originating Summons
- (2) The summons shall be supported by an Affidavit to which a certified extract of the title to the land in question has been annexed.”
27. The provision of Article 162(2) of the Constitution of Kenya 2010, Section 13 of the Environment and Land Court Act and Section 38 of the Limitation of actions Act confer jurisdiction on this court to handle claims premised on adverse possession.
28. In the present case, the Plaintiff avers that since the year 2011 when he occupied the land wherein he resided had continuously carried out farming activities being (a) agriculture: three fruits, tomatoes, cassava, maize, papaws and vegetables (b) livestock – 16 goats, 20 chickens and 10 turkeys and hence carrying out all these commercial activities. Since he had adverse possession of the said property for a period in excess of 12 years preceding the taking out of this summons, he had therefore acquired prescriptive rights over the property. In the case of:- “Kimani Ruchure – Versus - Swift Rutherfords & Co. Limited (1980)KLR 10” Kneller J held that:
- “the Plaintiffs have to prove that they have used this land which they claim as of right: nec vi, nec clam, nec precario (no force, no secrecy, no persuasion).”
29. In the case of “Gabriel Mbui – Versus - Mukindia Maranya [1993] eKLR” adverse possession was defined as
- “..the non-permissive physical control over land coupled with the intention of doing so, by a stranger having actual occupation solely on his own behalf or on behalf of some other person, in opposition to, and to the exclusion of all others including the true owner out of possession of that land, the true owner having a right to immediate possession and having clear knowledge of the assertion of exclusive ownership as of right by occupying stranger inconsistent with the true owner’s enjoyment of land for purposes for which the owner intended to use it.”
30. In the case of “M’ikiara M’rinkanya & Another – Versus - Gilbert Kabeere M’mbijiwe, Civil Appeal 124 of 2003 [2007] eKLR”, the Court held that:-
- ‘.....From the above analysis, it is clear that a Judgment for possession of land should be enforced before the expiry of the 12 years limitation period stipulated in Section 7 of the Act. If the Judgment is not enforced within the stipulated period, the rights of the decree holder are extinguished as stipulated in Section 17 of the Act and the judgment debtor acquires possessory title by adverse possession which he can enforce in appropriate proceedings. So, quite apart from the authority of Lougher – Versus - Donovan [1948] 2 All ER 11,



which we consider as still good law in this country, and the previous decisions of this Court, there is a statutory bar in section 7 of the Act for recovery of land including the recovery of possession of land after expiration of 12 years. It follows, therefore, that, to hold that execution proceedings to recover land are excluded from the definition of “action” in section 4 (4) of the Act would be inconsistent with the law of adverse possession...

..as regard recovery of judgment debts, the construction of Section 4 (4) of the Act by local courts barring recovery after 12 years, is as shown in *Lowsley – Versus - Forbes* [1999] 1 AC 329 , consistent with construction given by English Courts to Section 2 (4) of the Limitations Act 1939 and its predecessors for over 100 years that a judgment debt becomes statute barred after 12 years.’

31. Further, in the case “*Mbira – Versus - Gachuhi* [2002] 1 EALR 137” the court stated as follows;
- “.....a person who seeks to acquire title to land by the method of adverse possession for the applicable statutory period, must prove non-permissive or non-consensual actual, open, notorious, exclusive and adverse use by him or those under whom he claims for the statutorily prescribed period without interruption...”
32. Similarly in the case of “*Gabriel Mbui – Versus - Mukindia Maranya* [1993] eKLR” Kuloba enumerated the elements that need to be proved by a party invoking the doctrine of adverse possession as follows;
- a. The intruder resisting suit or claiming right by adverse possession must make physical entry and be in actual possession or occupancy of the land for 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 land by the intruder who pleads adverse possession must be non- permissive use, i.e. without permission from the true owner of the land occupant.
 - d. The non-permissive actual possession hostile to the current owner must be un equivocally exclusive, and with an evinced unmistakable animus possidendi. that is to say occupation with the clear intention of excluding the owner as well as other people.
 - e. The possession by the person seeking to prove title by adviser possession must be visible, open and notorious, given reason for notice to the owner and the community, of the exercise of dominion over the land,
 - f. The possession must be continuous uninterrupted, unbroken, for the necessary statutory period.
 - g. 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
33. Therefore, to determine whether the Applicants’ rights accrued the Court will seek to answer the following
- i. How did the Applicant take possession of the suit property?
 - ii. When did he take possession and occupation of the suit property?
 - iii. What was the nature of his possession and occupation?



iv. How long has the Applicant been in possession?

34. The land adverse possession is essentially a situation where a person takes possession of land and asserts rights over it and the person having title omits or neglects to take action against such person in assertion of his title for a certain period, in Kenya, twelve (12) years. The process springs into action essentially by default or in action of the owner. The essential prerequisites being that 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 owner. On examination of the question above, the Plaintiff has contended that he has been in possession of the suit property for 13 years. From the evidence the Plaintiff has been on the suit property from 2011 and the suit was filed in 2024 which makes it 13 years.

35. The question is therefore was the possession uninterrupted for more than twelve years? The answer is of course to the affirmative because the Defendant never interrupted their stay on the suit property. They had had uninterrupted occupancy of the suit property for more than 12 years. In the case of:- “Githu – Versus - Ndeete [1994] KLR” quoted by the Court of Appeal in “Kenya Commercial Bank (suing as Administrator of the Estate of Paul Njoroge Muchene) – Versus - Sarah Njeri Muchene” the court held that: -

“time ceases to run under the Limitation of Actions Act either when the owner takes or asserts his rights or when his right is admitted by adverse possession. Assertion occurs when the owner takes legal proceedings or makes an entry into land. Giving notice to quit cannot be effective assertion of right for the purpose of stopping the running of time under the Limitation of actions Act.

A title by adverse possession can be acquired under the Limitation of actions Act to a part of the parcel of land to which the owner holds title.”

36. In the case of:- “James Obande Wasui – Versus - Jeremiah Ochwada Musumba [2002] eKLR” the court held that as an occupier’s right, adverse possession runs with the land irrespective of change in proprietorship. Under the provision Section 28 of the Land Registration Act, No. 3 of 2012 as at the time of transfer of the suit land, the land was subject to an overriding interest in the form of rights of adverse possession in favour of the Plaintiff. The provision of Section 28 provides:

‘Unless the contrary is expressed in the register, all registered land shall be subject to the following overriding interests as may for the time being subsist and affect the same, without their being noted in the register-

- a.
- b.
- c.
- d.
- e.
- f.
- g.



- h. Rights acquired or in the process of being acquired by virtue of any written law relating to the Limitation of actions or by prescription.

37. In the current case it cannot be said that the owner asserted his rights when there was a court order preserving the status quo. In the foregoing, it is my finding from the above that the Plaintiff did satisfy the requirements to be declared in adverse possession as they have demonstrated to have been in actual possession of the land for 12 years. Therefore, their claim succeeds.

Issue No. b). Whether the Plaintiff is entitled to the orders sought in the Plaintiff.

38. Under this subtitle, the court shall examine if the Plaintiff has proved his case. The Plaintiff prayed for Judgment against the Defendants as stated above.

39. The Plaintiff sought for the ownership and entitlement of the suit property by virtue of adverse possession. Has the Plaintiff proved the above? My answer is in the affirmative as there has been adequate possession in continuity, in publicity and that it was adverse to the registered owner. I find that the Plaintiff has succeeded to prove his claim on the suit land and the same is allowed with costs to him.

Issue No. c). Who bears the costs of the suit

40. It is now well established that the issue of Costs is at the discretion of the Court. Costs meant the award that is granted to a party at the conclusion of the legal action, and proceedings in any litigation. The Proviso of Section 27 (1) of the Civil Procedure Rules Cap. 21 holds that Costs follow the events. By the event, it means outcome or result of any legal action. This principle encourages responsible litigation and motivates parties to pursue valid claims. See the cases of “Harun Mutwiri – Versus - Nairobi City County Government [2018] eKLR and “Kenya Union of Commercial, Food and Allied Workers – Versus - Bidco Africa Limited & Another [2015] eKLR, the court reaffirmed that the successful party is typically entitled to costs, unless there are compelling reasons for the court to decide otherwise. In the case of “Hussein Muhumed Sirat – Versus - Attorney General & Another [2017] eKLR, the court stated that costs follow the event as a well-established legal principle, and the successful party is entitled to costs unless there are other exceptional circumstances.

41. In “Machakos ELC Pet No. 6 of 2013 Party of Independent Candidate of Kenya & another – Versus - Mutula Kilonzo & 2 others [2013] eKLR” quoted the case of “Levben Products – Versus -Alexander Films (SA) (PTY)Ltd 1957 (4) SA 225 (SR) at 227” the Court held;

“It is clear from authorities that the fundamental principle underlying the award of costs is two-fold. In the first place the award of costs is matter in which the trial Judge is given discretion (Fripp vs Gibbon & Co., 1913 AD D 354). But this is a judicial discretion and must be exercised upon grounds on which a reasonable man could have come to the conclusion arrived at....In the second place the general rule that costs should be awarded to the successful party, a rule which should not be departed from without the exercise of good grounds for doing so.”

42. In the instant case, the Plaintiff who has established his case will be awarded the costs of the Amended Originating summons dated 19th January, 2024.



VI. Conclusion and Disposition

43. Ultimately, having caused such an in-depth analysis to the framed issues herein, the Honourable Court on the Preponderance of Probabilities and the balance of convenience finds that the Plaintiff has established his case against the Defendants. Thus, the Court proceeds to make the following specific orders:
- a. That Judgment be and is hereby entered in favour of the Plaintiff in terms of the Amended Originating Summons dated 19th January, 2024 in its entirety.
 - b. That a declaration do and is hereby issued that the defendants, title No. Plot 382 CR.2532 has been extinguished to the extent of the 2 acres in favour of the Plaintiff by way of adverse possession pursuant to section 17, 37 and 38 of the Limitation of Actions Act cap. 22 Laws of Kenya having occupied the said portion for more than 12 years preceding the filing of this suit.
 - c. That the Plaintiff be and is hereby entitled to be registered forthwith as the owner of a portion of 2 acres of Plot No. 382 SEC.II MN AS CR.2532 which Land the Plaintiff has held on adverse possession since 2011 to date for a period of more than 12 years immediately preceding the filing of this suit, the same being Land which the Plaintiff has occupied openly, exclusively, notoriously and continuously as of right and without any interruption from the Defendant or its predecessors in title.
 - d. That an order do and is hereby issued that the Land Registrar at Mombasa Land Office register a portion of 2 acres from the title document of Plot No.382 SEC II MB AS CR.2532 measuring 12 acres in the name of the Plaintiff herein absolutely.
 - e. That the Plaintiff shall have the costs of the Amended Originating Summons dated 19th January, 2024.

It is so ordered accordingly

JUDGMENT DELIVERED THROUGH MICROSOFT TEAMS VIRTUAL MEANS, SIGNED AND DATED AT MOMBASA THIS 25TH DAY OF JULY 2025.

.....

HON. MR. JUSTICE L.L. NAIKUNI
ENVIRONMENT AND LAND COURT
AT MOMBASA

Judgement delivered in the presence of: -

- a. M/s. Firdaus Mbula – the Court Assistant.
- b. Mr. Tindi Advocate for the Plaintiff.
- c. No appearance for the 1st and 2nd Defendants.

