



**Francesca v Andreoli & another (Environmental and Land Originating Summons
E062 of 2025) [2026] KEELC 2295 (KLR) (21 April 2026) (Judgment)**

Neutral citation: [2026] KEELC 2295 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E062 OF 2025
FM NJOROGE, J
APRIL 21, 2026**

BETWEEN

ANDOLFATO CRISTINA BENEDICTA FRANCESCA PLAINTIFF

AND

DAVIDE ANDREOLI 1ST DEFENDANT

LUCA DEOLA 2ND DEFENDANT

JUDGMENT

1. The Originating Summons dated 30th April 2025 is seeking the principal order of a declaration that the applicant has acquired title by way of adverse position to a portion measuring one half of a land parcel known as Portion Number 2989 Malindi Municipality Kilifi County (hereinafter also referred to as “the suit land”) after allegedly having been in exclusive, open, continuous, and hostile possession thereof for a period exceeding 12 years without any interruption from the registered owners. It would appear that the plaintiff occupied the land while it was still under the registration in the name of the first defendant but the defendant later transferred the same to the second defendant who allegedly also never bothered the plaintiff’s possession of the same.
2. The Originating Summons is supported by the plaintiff’s sworn affidavit, also dated 30th April 2025. In the affidavit she states that the suit land was originally registered in the name of the first respondent, David Andreoli, who subsequently transfer dated to the second respondent; that the suit land used to consist of 2 distinguishable portions or shares, each informally referred to and treated as “half-shares”, and one of those half-shares was registered in the name of Della Persia Patrizia, who is the applicant’s mother, while the other half-share was owned by the first defendant, who, as narrated hereinbefore, transferred it to the second respondent; that in or about the year 2012 the portion owned by the respondents was in a state of neglect and abandonment with overgrowth and lack of occupation by any person while Della Persia Patrizia was using her half share. Acting solely on her own initiative, the plaintiff entered the vacant half-share owned by the defendants. She cleared the bush and began using



it as part of the homestead and garden and incorporated it within the compound. She did not seek permission from either of the respondents. She also proceeded to purchase the other half-share owned by her mother lawfully. Since taking possession, she has undertaken extensive and visible development and acts of ownership over the entire suit land and has constructed a perimeter wall enclosing the entire property, with the two half shares being served by a single main gate, and with both half shares having landscaped and planted and maintained gardens and provided with security and regulated access. She has maintained such continuous, visible, notorious, and exclusive occupation which is hostile to the title of the registered owners from 2012 to date. Neither the first or the second respondent has ever turned up on the land to claim or assert right over it or otherwise interfere with her possession and use of the land; that the transfer of ownership from the first to the second respondent did not interrupt the plaintiff's adverse position; that the portion the plaintiff claims is physically identifiable and distinguishable from the rest of the property, having been fenced and landscaped and occupied so required by the applicant. This court's order, perchance granted, declaring her as owner of the defendants' half share by way of adverse possession, would allow her to be the registered owner of the entire property known as Portion No 2989 Malindi.

3. Despite service by substituted means, the defendants never entered appearance. Neither did they file any response to the suit.
4. The Originating Summons was disposed of by way of viva voce evidence as though commenced by way of plaint and only the plaintiff gave evidence in her own case, substantively adopting and reiterating the matters in the Originating Summons and the supporting affidavit.

Analysis And Determination.

5. The essentials of adverse possession are that the claimant must have occupied the suit land *nec per vi, nec clam, nec precario*. ("without force, without secrecy, and without permission.") Permission here is that of the title holder or the paper title owner of the suit land. In Kenya the statutory period that results in the ripening of a claim for adverse possession is 12 years. In *Gabriel Mbui v Mukindia Maranya* [1993] eKLR the court stated as follows:

“The possession must be continuous, uninterrupted, unbroken, for the necessary statutory period. This element means that the possession by the adverse possessor must continue without significant interruption for a solid block of time at least as long as the period of limitation, being at the moment twelve years before the filing of suit.”

6. The claimant must have held and used the suit land in a manner hostile to the title of the registered owner. In short, he must demonstrate *animus possidendi*. In the case of *Chevron (K) Ltd v Harrison Charo Wa Shutu* [2016] KECA 248 (KLR) it was held as follows:

“We are equally satisfied from the evidence that, by building structures on the suit premises without obtaining permission from the appellant, as described earlier in this judgment, the respondent manifested *animus possidendi*, a clear mind and intention of dealing with the suit premises as if it was exclusively his and in a manner that was in clear conflict with the appellant's rights. The appellant was, as such dispossessed of the suit premises by those acts. The respondent's acts were *nec vi, nec clam, nec precario* (that is, neither by force, nor secretly and without permission).”

7. Having considered the contents of the Originating Summons and the supporting affidavit, I am of the view that the plaintiff has not only established *animus possidendi*, but also that she has been in possession of the suit land *nec per vi, nec clam, nec precario*.



8. I therefore allow the Originating Summons dated 30th April 2025 as prayed in terms of prayers number (a) (b) (c) and (d) thereof.

DATED, SIGNED AND DELIVERED AT MALINDI ON THIS 21ST DAY OF APRIL, 2026.

**MWANGI NJOROGE,
JUDGE, ELC, MALINDI.**

