

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ELC LAND CASE NO E007 OF 2024 (OS)

FLORIANA MSERI MARINGA
PLAINTIFF

VERSUS

SALIM
ISSA,
FATUMA
GHANIYA
AZIZA
SOEDE
HAMIS (Being the Children of SAID SWELUM EL KHASIB
and Muana Shan Binti Hamis)
DEFENDANT

JUDGMENT

1. The Originating Summons dated **2nd April 2024** is seeking order that the defendant's title in all that parcel of land situate at Merikebuni sublocation of Kilifi County and measuring 6.9 acres or thereabouts and known as **Land Portion Number 250 Mambrui** and registered at the land registry at Mombasa as **Title Numbers CR7612** has been extinguished by operation of **Section 17** of the Limitation Of Actions Act (Cap 22 of the laws of Kenya) and that the defendants' claim to the land is time-barred by the provisions of **Section 7** of the same Act.
2. It is also seeking a declaration that the plaintiff has acquired ownership of the suit land by virtue of the doctrine of adverse possession and that she is entitled to be registered as owner

thereof. An order is also sought that the Land Registrar Mombasa land registry do register the plaintiff as the owner of the suit land.

3. The originating someone is supported by the plaintiff's sworn affidavit attached there to, also dated 4th April 2024, as well as the further affidavit of the plaintiff filed on the 21st January 2026.
4. The plaintiff's evidence is that sometime in the year **1984**, her husband named Joseph Mseri (now deceased) purchased the suit land from one *Abednego Charo* at the price of **Kenya Shillings 16,125/=** By that time *Abednego Charo* was not yet registered as the owner but he claimed to have purchased the land from one *Jeremiah Tsuma* who claimed to have acquired the land from the defendants.
5. The couple took possession of the suit land and built one permanent house and two semi-permanent houses thereon. The plaintiff's husband died and was buried on the suit land. The family has been in continuous occupation of the land since **1984** and has developed it by building their dwelling houses thereon and planting perennial trees such as cashew nut and coconut. Photographic evidence of such developments was attached to the supporting affidavit. The occupation is said to be open, continuous and with the knowledge of the defendants and without any interruption since **1984**; that the defendants have never during the occupation of the land by the plaintiff's family interfered with their position or attempted to evict them from the land despite being aware of their presence; that sometime in the year **2021** one grandson of the defendants came

on to the land with people he claimed were interested in purchasing the land from him, but it is apparent that the prospective purchasers abandoned their idea of purchasing upon seeing that the entire parcel of lands is fully occupied by the plaintiff's family.

6. The plaintiff's claim is that she and her family have dispossessed the defendants of their physical possession of the suit land for over 12 years, and that the proprietary rights of the defendants in the suit land have been extinguished by operation of the law; that the defendants' claim is time barred by virtue of **Section 7** of the Limitations of Actions Act that it is just that the suit land be registered in the plaintiff's name.
7. Despite service by substituted means vide a press advertisement placed in a daily of nationwide circulation on Monday 2nd June 2025, the defendants never filed appearance or any response in opposition to the claim.
8. Submissions of the plaintiff dated, 2nd February 2026, were filed by Mr Shujaa her counsel.

ANALYSIS AND DETERMINATION

9. **Section 7** of the Limitation of Actions Act, provides as follows: -

“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.”

10. In *Hirbaya v Salilu (Environmental and Land Originating Summons E001 of 2025) [2025] KEELC 18496 (KLR) (16 December 2025) (Judgment)* the court stated as follows:

“In law the recognized ingredients for adverse possession to crystallize are that the possession of the land must be nec per vi, nec clam, nec precario, meaning the possession must be without force, open or without secrecy, and exclusive or hostile to the rights of the proprietor of the land. In Mtana Lewa (supra) this principle was aptly expressed as follows:

“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.”

11. This court has perused the Certificate of Postal Search dated **26th March 2024** exhibited by the plaintiff and found that the defendant are the registered owners of the suit land. From the plaintiff's narrative it is clearly evident that she never sought any permission from the defendants or any of them to occupy the land when she did so in 1984. Photographic evidence shows permanent developments on the suit land which are attributed to the plaintiff's family's efforts. Some of them look quite old. Perennial trees appearing in the photograph appear to be quite aged. There is evidence that the plaintiff's husband died and was buried on the suit property. It would indeed appear to this court that the plaintiff's family has been in lengthy occupation of the suit land and has occupied it in a manner hostile to the defendants' title.

12. Also, the evidence of the plaintiff is that the defendants knew of her possession of the suit land, and this court agrees with that because the evidence on record is that the defendants' grandson came along with purchasers and then left, never to return, after seeing the land was fully occupied.

13. In *Chevron (K) Ltd v Harrison Charo Wa Shutu [2016] KECA 248 (KLR)* the Court of Appeal 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)."


14. Having considered the Originating Summons as well as the uncontroverted affidavit and oral evidence of the plaintiff and the submissions of her counsel on record, this court finds that she has established that she is entitled to be declared, and to be registered, as the owner of the suit land by virtue of the doctrine of adverse possession. Consequently, this court hereby allows the Originating Summons dated 2nd April 2024 and issues the following final orders:

a. A declaration is hereby issued declaring that the defendant's title and proprietary interest in all that land known as Portion Number 250 Mambrui registered at Mombasa Land Registry as Title Number CR 7612 has been extinguished by operation of the law;

- b. A declaration is hereby issued declaring that the plaintiff has acquired the land known as Portion Number 250 Mambui (CR Number 7612) by virtue of adverse possession and is entitled to be registered as the owner thereof;**
- c. The Land Registrar, Mombasa Land Registry shall register the plaintiff herein, FLORIANA MSERI MARINGA, as the owner of all that parcel of land known as Portion Number 250 Mambui registered at the Mombasa Land Registry as CR Number 7612;**
- d. Each party shall bear their own costs of the suit.**

Dated, signed and delivered at Malindi on this 21st Day of April, 2026.

MWANGI



JUDGE, ELC, MALINDI.

NJOROGE,