



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELCLOS CASE NO E074 OF 2024**

**PETER MAINA IHUGO .....**  
**PLAINTIFF**

**=VERSUS=**

**MARGARET HELEN SHAW .....**  
**DEFENDANT**

**JUDGEMENT**

1. The Plaintiff commenced this suit by way of an Originating Summons dated 30<sup>th</sup> December 2024, seeking the following orders against the Defendant:

***i. A declaration that the Defendant's / Respondent's title, interest or claim over the suit land with Land Reference Number 214/174 have extinguished.***

***ii. An Order that the Registrar of Titles, Nairobi County, do delete entries in favour of the respondent, if any, on the green card/Register and or register the appropriate discharge in respect thereof without Gazettement.***

- iii. An order that the Applicant PETER MAINA IHUGO has become entitled to adverse possession of the suit land with land reference number 214/174 and that the legal title thereof rests in him.**
- iv. An order that the Lands Registrar of Nairobi County cancel the existing title and register the Applicant PETER MAINA IHUGO as the absolute proprietor of all that piece of land situated in Nairobi County with Land Reference Number 214/174 in place of MARGARET HELEN SHAW by reason of the fact that the Applicant has become entitled to the said land by adverse possession.**
- v. An Order that the Lands Registrar of Nairobi County without Gazettement do proceed and issue a Title Document for the parcel of land in Nairobi County with Land Reference Number 214/174 in the name of the Applicant PETER MAINA IHUGO.**
- vi. That the Orders referred to in paragraphs a, b, d and e above be registered against the Title to property known as the suit land situated in Nairobi County with Land Reference Number 214/174 in terms of Section 38 (2) of The Limitation Actions Act, Chapter 22, Laws of Kenya.**

***vii. That the Lands Registrar of Nairobi County be directed that the order herein shall be an instrument of transfer of ownership of the whole suit land with Land Reference Number 214/174 from the Respondent to the Applicant.***

***viii. That each party to bear their Costs.***

2. The Originating summons is supported by the affidavit of Peter Maina Ihugo, sworn on even date.
3. The Originating Summons was canvassed by way of viva voce evidence.

#### **THE PLAINTIFF'S CASE**

4. The Plaintiff Peter Maina Ihugo testified as the sole witness in support of his case. He adopted his supporting affidavit as his evidence in chief.
5. The Plaintiff informed the Court that he has been in open, exclusive, and uninterrupted possession of Land Reference Number 214/174, the suit property herein, for over thirty years. He testified that the suit property belongs to the Defendant, who previously resided there but abandoned it for over three decades.
6. He further testified that he entered the suit property around 1979 after moving to Nairobi for work. He stated that he discovered an abandoned house on the land and took possession of the property openly and without interference. He further stated that his wife later joined him on the

disputed land in 1982, and they have lived as a family on the suit property ever since.

7. He explained that around 1985, he began developing structures on the suit property for rental purposes and used part of the land for subsistence farming. He stated that he has earned income from the land for over thirty-nine years through rental income and agricultural activities. He asserted that all his children were conceived and raised on the suit property, and they have always regarded it as their home.
8. The Plaintiff asserts that the Defendant has never reclaimed possession, challenged his occupation, or compelled him to relinquish possession of the suit land. Consequently, he maintains that his occupation has been open, continuous, exclusive, and adverse to the Defendant's title for the statutory period.
9. Based on the foregoing, the Plaintiff urged the Court to grant the orders sought, arguing that they are essential for the interests of justice, the safeguarding of property rights, and the proper administration of justice.
10. Though duly served, the Defendant neither entered an appearance nor filed a response to the suit. The matter proceeded as an undefended suit.

### **ANALYSIS AND DETERMINATION**

11. Having considered the Originating Summons, the sole issue for determination is whether the Plaintiff has acquired title to the suit property through adverse possession.
12. Although the suit was undefended, the Plaintiff still bears the legal burden of proving his claim. The Court must also be satisfied that the evidence before it establishes the pleaded cause of action. **Section 107 of the Evidence Act** provides that:

***1)Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.***

***(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.***

13. In **Karugi & another v Kabiya & 3 others [1983] KECA 38 (KLR)**, the Court of Appeal held that:

***“The burden on a Plaintiff to prove his case remains the same throughout the case, even though the burden may become easier to discharge when the matter is not validly defended, the burden of proof is not in any way lessened because this is heard by way of formal proof.”***

14. The doctrine of adverse possession is anchored in Sections 7, 17 and 38 of the Limitation of Actions Act.
15. **Section 7 of the Limitation of Actions Act** provides that;

***“An action may not be brought by any person to recover land after 12 years from the date on which the right of action accrued to him or if it first accrued to some other person through whom he claims to that person.”***

16. **Section 17** extinguishes the title of the registered proprietor upon the expiration of the limitation period, while Section 38 allows a person claiming to have become entitled to land by adverse possession to apply to the court for an order vesting the land in him.
17. The legal principles governing adverse possession are well settled. A claimant must demonstrate that their occupation of the land was open, notorious, continuous, exclusive and adverse to the registered title owner for at least twelve years. Such possession must be without force, secrecy or permission. The claimant must also demonstrate animus possidendi, indicating an intention to possess the land as an owner, to the exclusion of the true owner.
18. The ingredients of the doctrine of adverse possession were discussed in **Mtana Lewa v Kahindi Ngala Mwangadi (2015) eKLR**, as follows:

***“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 having title***

***to it for a certain period. In Kenya, it 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 nor under the licence of the owner. It must be adequate, in continuity, in public and in extent to show that possession is adverse to the title owner.”***

19. Similarly, in **Samuel Kihamba v Mary Mbaisi (2015) eKLR**, the Court held that:

***“Strictly, for one to succeed in a claim for adverse possession, one must prove and demonstrate that he has occupied the land openly, that is, without force, without secrecy and without licence or permission of the land owner, with the intention to have the land. There must be an apparent dispossession of the land from the land owner. These elements are contained in the Latin phraseology, nec vi nec clam, nec precario. The additional requirement is that of animus possidendi, or intention to have the land.”***

20. It is well settled that a party claiming adverse possession must demonstrate that the possession was actual, peaceful,

open, continuous and uninterrupted for a minimum of twelve years.

21. The first issue for determination is whether the Plaintiff proved that his possession of the suit property was actual, peaceful, exclusive, continuous and uninterrupted for not less than 12 years.
22. For the Applicant to be entitled to the suit property by way of adverse possession, he must demonstrate that he has been in continuous, uninterrupted occupation for a period of not less than 12 years.
23. In the case of **Wambugu vs Njuguna (1983) KLR 173**, the Court of Appeal held that:

***“Adverse possession contemplates two concepts; Possession and discontinuance of possession. It further held that the proper way of assessing proof of Adverse possession would 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 or she has been in possession for the requisite number of years.*”**

24. In the present case, the Plaintiff pleaded and testified that he entered the suit property around 1979 after relocating to Nairobi for work and discovered an abandoned house. He stated that his wife joined him on the land in 1982, that they raised their family on the suit property, and that from around

1985, he developed structures for rental purposes while also using part of the land for subsistence farming. He further stated that the Defendant had not reclaimed possession or challenged his occupation, or caused him to vacate the land. These were the central facts upon which the claim for adverse possession was based.

25. The Plaintiff did not produce any documentary evidence to support his claim. No title deed, official search, certified copy of the register, green card, survey plan, photographs, rates records, rent receipts, utility bills, building approvals, witness statements, or other materials were produced to establish ownership, identity, occupation, development or use of the suit property.
26. This omission was fatal to the claim. Adverse possession is a claim to land and, ultimately, to title. A claimant seeking cancellation of an existing title and registration in his own name must present cogent evidence identifying the land claimed, proving the registered proprietorship of the person against whom the claim is made, and establishing the nature and duration of the alleged adverse occupation. Bare averments, unsupported by documentary or other corroborative evidence, cannot suffice.
27. In the absence of evidence proving the essential elements of adverse possession, the Court has no basis to grant the declarations and orders sought.
28. Consequently, I find that the Plaintiff has not proved his case on a balance of probabilities as required. The upshot of the

foregoing is that the Originating Summons dated 30<sup>th</sup> December 2024 is dismissed with no orders as to costs.

**RULING SIGNED, DATED, AND DELIVERED VIA MICROSOFT TEAMS THIS 8<sup>TH</sup> DAY OF MAY 2026.**

.....  
**HON. T. MURIGI**  
**JUDGE**

**IN THE PRESENCE OF:-**

Ms Ndehi for the Plaintiff

Ahmed - Court assistant