



**Odiero & 3 others (Being officials and t/a Jesus Victory Ministry International)
v Schmid & 2 others (Enviromental and Land Originating Summons
E017 of 2023) [2025] KEELC 5491 (KLR) (24 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5491 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E017 OF 2023**

**YM ANGIMA, J
JULY 24, 2025**

BETWEEN

**MAURICE MDAHO ODIERO 1ST PLAINTIFF
GILBERT KHAEMBA NAMGENDO 2ND PLAINTIFF
PHOEVIE MBAISI IMBUKA 3RD PLAINTIFF
EDWIN SAIDI SULEIMAN MUKA 4TH PLAINTIFF
BEING OFFICIALS AND T/A JESUS VICTORY MINISTRY INTERNATIONAL**

AND

**JUDITH SHOKOWA MZUNDU SCHMID 1ST DEFENDANT
HELMUT SCHMID 2ND DEFENDANT
NASORO SAIDI SULEIMAN 3RD DEFENDANT**

JUDGMENT

A. Plaintiff's claim

1. By an originating summons dated 24.02.2023, amended on 20.04.2023 and further amended on 29.05.2023 and expressed to be filed pursuant to Order 37 Rule 7 of the Civil Procedure Rules, Sections 1A, 1B and 3A of the [Civil Procedure Act](#) (Cap 21), Section 38 of the [Limitation of Actions Act](#) 9 (Cap 22), and all enabling provisions of the law, the plaintiffs sought the following orders;
 - a. That this Honourable court be pleased to declare the Plaintiff as the lawful proprietor of all those parcels of land situated in Mombasa County known as Land Sub-division Numbers 7779 (Original No.303/108) Section I Mainland North comprised in the Certificate of Title No. C.R. 23027 dated 11.07.1995 and Land Subdivision No. 7778 (Original Number



303/107) Section I mainland North comprised in the certificate of Title Number C.R 23026 dated 11.04.1996 measuring 0.0277 and 0.0253 hectares respectively.

- b. That a declaration that the plaintiffs have acquired interest to land in land subdivision numbers 7779 (original No.303/108) Section I Mainland North comprised in the certificate of title No.23027 dated 11.07.1995 and land subdivision No.7778 (original number 303/107) Section I Mainland North comprised in the certificate of title number CR 23026 dated 11.04.1996 measuring 0.0277 and 0.0253 hectares respectively by virtue of adverse possession thereof for a period exceeding the requisite twelve (12) years.
 - c. That an order be issued directing the 1st, 2nd and 3rd Defendants to execute all documents and take all the necessary steps to effect transfer to Numbers 7779 No. 23027 dated 11.07.1995 and Land Subdivision No. 7778 (Original Number 303 107 Section I mainland North comprised in the certificate of Title Number C.R 23026 dated 11.04.1996 measuring 0.0277 and 0.0253 hectares respectively.
 - d. That the deputy registrar and or executive officer of this honourable Environment and Land Court be directed and ordered to execute the transfer instruments and all attendant documents to facilitate the transfer and registration of the said parcel of land being numbers 7779 (original No.303/108) section I mainland North comprised in the Certificate of Title No. 23027 dated 11.07.1995 and Land Subdivision No. 7778 (Original Number 303/107) Section I mainland North comprised in the certificate of Title Number C.R 23026 dated 11.04.1996 measuring 0.0277 and 0.0253 hectares respectively in favour of the plaintiff in the event of the default on the part of the defendants.
 - e. That the Applicants be registered as the proprietor of the parcels of land situated in Mombasa County known as Land Subdivision numbers 7779 (Original No. 303/108) section I mainland North comprised in the Certificate of Title No. 23027 dated 11.07.1995 and Land Subdivision No. 7778 (Original Number 303/107) Section I mainland North comprised in the certificate of Title Number C.R 23026 dated 11.04.1996 measuring 0.0277 and 0.0253 hectares respectively in the place of defendants.
 - f. That there be an order of permanent injunction restraining the defendants either by themselves, agents servants and or employees from interfering with the plaintiff peaceful possession and occupation of the said parcel of land number 7779 (original No.303/108) section I mainland North comprised in the Certificate of Title No. 23027 dated 11.07.1995 and Land Subdivision No. 7778 (Original Number 303/107) Section I mainland North comprised in the certificate of Title Number C.R 23026 dated 11.04.1996 measuring 0.0277 and 0.0253 hectares respectively in any manner whatsoever.
 - g. That the costs of this application be on the Respondent.
2. The summons was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by Maurice Mudano Odiero on 03.07.2023. The plaintiffs pleaded that they were officials a church known as Jesus Victory Ministry International (the church) and were suing in that capacity. They pleaded that they had been in open continuous, and uninterrupted possession of the suit properties for a period exceeding 17 years without the consent of the owner. They further pleaded that they had developed the suit property over the years by constructing a church building thereon.



B. Defendants' response

3. There is no indication on record of the 1st and 2nd defendants having filed a response to the originating summons. However, the 3rd defendant filed a replying affidavit sworn on 12.01.2024 and a further affidavit sworn on 29.02.2024 in response thereto. The 3rd defendant disputed the plaintiffs' claim for adverse possession. He pleaded that he bought the suit properties at a public auction held on 16.11.2017 in execution of a decree issued by the court in Employment Cause No. 67 of 2017. It was his case that upon purchase he obtained an order vesting the suit properties in him and that the plaintiffs were his tenants on Plot No. 7778/I/MN whereas the other plot No. 7779/I/MN was still vacant. It was further pleaded that the plaintiffs' payment of land rates could only have been on the instructions of the landowner of his agent
4. It would further appear that pursuant to leave of court the 3rd defendant filed a statement of defence and counterclaim dated 02.07.2024. By his defence, he denied the plaintiffs' claim in its entirety and put them to strict proof thereof. It was pleaded that the plaintiffs were only in occupation of plot No. 7778 of account of a tenancy agreement dated 2013 paying a monthly rent of Kshs.5000. The 3rd defendant thus contended that the plaintiffs' claim for adverse possession was premature and ought to be dismissed.
5. By his counter-claim, the 3rd defendant reiterated that contents of the defence and pleaded that he was the legitimate owner of the suit properties by virtue of a public auction and a vesting order made in his favour. He further pleaded that the plaintiffs were tenants on one of the suit properties and that they defaulted in rent payments since January 2023 after having paid rent for 10 years.
6. As a result, the 3rd defendant sought the following reliefs in the counter-claim;
 - a. The plaintiffs be evicted from plot No.7778/I/MN and 7779/I/MN.
 - b. That the plaintiffs do pay general damages.
 - c. That the plaintiffs do pay the sum of Kshs. 5000/= per month with effect from 05.01.2023 until the date of judgment.
 - d. Costs of the suit.
 - e. Any other relief the court may deem fit to grant.

C. Plaintiffs' reply

7. The plaintiffs filed a reply to defence and defence to counter-claim dated February 2025. By their reply to defence, they joined issue with the 3rd defendant upon his defence. They reiterated that they had been possession of the suit properties since 2001 and asserted they were entitled to adverse possession thereof. They denied that they had any tenancy relationship with the 3rd defendant or his agent.
8. The plaintiffs denied all the allegations made against them in the counter-claim and put the 3rd defendant to strict proof thereof. They denied the existence of a tenancy relationship and reiterated the contents of their originating summons and the affidavits in support of their claim for adverse possession.

D. Trial of the action

9. At the trial hereof, the plaintiffs called 4 witnesses and closed their case. They also produced 6 exhibits in support of their claim for adverse possession of the suit properties. On his part, the 3rd defendant



called 2 witnesses and closed his case. However, the 1st and 2nd defendants did not participate in the trial since they were absent.

E. Directions on submissions

10. Upon conclusion of the trial, the parties were given timelines within which to file and exchange their respective submissions. The record shows that the plaintiffs filed their written submissions dated 12.03.2025 whereas the 3rd defendant's submissions were dated 24.02.2025.

F. Issues for determination

11. The court has noted that the parties did not file any statement of agreed issues for determination. As such, the court shall frame the issues for determination as stipulated under Order 15 Rule 2 of the Civil Procedure Rules. Under the said rule, a court may frame issues from any of the following:
 - a. The allegations contained in the pleadings or answers to interrogatories.
 - b. The allegations contained in statements sworn by or on behalf of the parties.
 - c. The contents of documents produced by the parties.
12. The court has perused the pleadings, affidavits, documents and evidence on record in this matter. The court is of the view that the following are the main issues which arise for determination herein;
 - a. Whether the plaintiffs have proved their claim for adverse possession.
 - b. Whether the 3rd defendant has proved his counter-claim against the plaintiffs.
 - c. Whether the plaintiffs are entitled to the reliefs sought in the suit.
 - d. Whether the 3rd defendant is entitled to the reliefs sought in the counter-claim.
 - e. Who shall bear the costs of the suit and counter-claim.

G. Analysis for determination

Whether the plaintiffs have proved their claim for adverse possession

13. The court has considered the material and submissions on record. Whereas the plaintiffs submitted that they had satisfied all the elements of adverse possession, the 3rd defendant contended otherwise. The elements of adverse possession were summarized in the case of *Kasuve –vs- Mwaani Investments Ltd & 4 Others* [2004] 1KLR 184 as follows:

“...and in order to be entitled to land by adverse possession, the claimant must prove that he has been in exclusive possession of the land openly and as of right and without interruption for a period of 12 years either after dispossession of the owner or by the discontinuation of possession by the owner on his own volition, *Wanja vs Sakwa No.2* [1984] KLR 284. A title by adverse possession can be acquired under the *Limitation of Actions Act* for part of the land...”

14. Similarly, in the case of *Chevron (K) Limited –vs- Harrison Charo Wa Shutu* [2016] eKLR it was held, inter alia, that:

“At the expiration of the twelve-year period the proprietor's title will be extinguished by operation of the law and section 38 of the Act permits the adverse possessor to apply to



the High Court for an order that he be registered as the proprietor of the land. Therefore the critical period for the determination whether possession was adverse is 12 years and the burden is on the person claiming to be entitled to the land by adverse possession to prove, not only the period but also that his possession was without the true owner's permission, that the owner was dispossessed or discontinued his possession of the land, that the adverse possessor has done acts on the land which are inconsistent with the owner's enjoyment of the soil for the purpose for which he intended to use it. See *Littledale v Liverpool College* (1900)1 Ch.19, 21.”

15. It is evident from the material on record that the plaintiffs were suing as officials of the church. However, there is no credible evidence on record to demonstrate that the plaintiffs are the registered officials of the church. In fact, some of the plaintiffs conceded at the trial that the church was not yet registered whereas some claimed that it was in the process of being registered.
16. In the absence of any documents from the concerned government authorities such as the registrar of societies, the court cannot tell with certainty whether the plaintiffs are officials of the church on whose behalf they filed suit and whether the said church was lawfully operating in the Republic of Kenya.
17. The above notwithstanding, the court is of the view that the plaintiffs' occupation ought to be continuous and without interruption in the legal sense. The material on record shows that the suit properties initially belonged to the 1st and 2nd defendants but they were auctioned on 16.11.2027 in execution of a decree in Mombasa Employment Cause No. 67 of 2017. There is some credible evidence on record to show that a vesting order dated 08.03.2018 was subsequently issued vesting the suit property in the 3rd defendant.
18. There is no indication on record to show that the said execution was ever set aside or annulled. The court is thus of the view that since execution of the said decree was a lawful process, it had the effect of legally interrupting the plaintiffs' possession of the suit property. The effect of such interruption is that time started to run afresh under the *Limitation of Actions Act*. In the premises, by the time the plaintiffs filed the instant suit in 2023, only 5 years had lapsed since the vesting order was made in favour of the 3rd defendant.
19. In the premises, it is not necessary to make a determination on whether or not the plaintiffs were in possession on account of any tenancy relationship. The court's findings on the questions of the plaintiffs' legal capacity and interruption of possession are sufficient to dispose of the suit. Accordingly, the court finds no need to consider the rest of the elements of adverse possession. The court is not satisfied that the plaintiffs' claim for adverse possession has been demonstrated to the required standard.

Whether the 3rd defendant has demonstrated his counter-claim against the plaintiffs

20. The court has already found that the plaintiffs have failed to demonstrate their claim for adverse possession. The court has also found that the 3rd defendant acquired the suit property through a vesting order made in execution of a lawful court process. The court is thus of the view that the 3rd defendant is the legitimate owner of the suit property hence entitled to enjoy immediate possession and other ownership rights appurtenant to such ownership.



Whether the plaintiffs are entitled to the reliefs sought in the suit

21. The court has already found and held that the plaintiffs have failed to prove their claim for adverse possession of the suit properties. It would, therefore, follow that the plaintiffs are not entitled to the reliefs sought in the suit, or any one of them.

Whether the 3rd defendant is entitled to the reliefs sought in the counter-claim

22. The court has found that the 3rd defendant is the legitimate owner of the suit properties hence entitled to enjoy all the rights which come with such ownership. The court is thus inclined to allow his prayer for the eviction of the plaintiffs from the suit property.
23. The court is, however, not inclined to award the general damages claimed by the 3rd defendant. They 3rd defendant did not specify the nature and purpose of the general damages sought. He could not possibly claim general damages for trespass since he pleaded in his defence and counter-claim that the plaintiffs were his tenants on the suit premises hence in possession with his permission.
24. The court is also not inclined to award the 3rd defendant the alleged rent arrears at the rate of Kshs.5,000/= per month with effect from 05.01.2023. There was no credible evidence of the existence of a tenancy agreement between the plaintiffs and the 3rd defendant. The only agreement which was tendered in evidence involved DW2 and not the 3rd defendant. The m-pesa payments were also made by PW4 and not by the plaintiffs. The 3rd defendant may probably have been entitled to claim mesne profits for the plaintiffs' occupation and use of the suit properties but he did not claim them in his counter-claim.

Who shall bear the costs of the suit and counter-claim

25. Although costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the proviso to Section 27 of the *Civil Procedure Act* (Cap 21). A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise. See *Hussein Janmohamed & Sons –vs- Twentsche Overseas Trading Co. Ltd* [1967] EA 287. The court finds no good reason to depart from the general rule. As a consequence, the 3rd defendant shall be awarded costs of the both the suit and counter-claim.

H. Conclusion and disposal orders.

26. The upshot of the foregoing is that the court finds and holds that the plaintiffs have failed to prove their claim for adverse possession to the required standard. The court also finds and holds that the 3rd defendant has proved his counter-claim to the required standard hence entitled to the reliefs specified in the judgment. As a consequence, the court makes the following orders for disposal of the suit and counter-claim;
- a. The plaintiffs' suit is hereby dismissed in its entirety.
 - b. Judgment is hereby entered for the 3rd defendant on the counter-claim as follows;
 - i. An eviction order be and is hereby made for the eviction of the plaintiffs from Plot No.7778/I/MN and No.7779/I/MN.
 - ii. The plaintiffs are hereby granted a grace period of 60 days to vacate voluntarily in default of which they shall be forcibly evicted.
 - c. The 3rd defendant is hereby awarded costs of the suit and the counter-claim.



It is so decided.

JUDGEMENT DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 24TH DAY OF JULY, 2025.

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Y. M. ANGIMA

JUDGE

In the presence of:

Gillian - Court assistant

Mr. Otieno for the plaintiffs

No appearance for the 1st, 2nd and 3rd defendants

