



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Marua v Awiti & 2 others (Enviromental and Land Originating Summons
44 of 2017) [2025] KEELC 5570 (KLR) (18 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5570 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MIGORI
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 44 OF 2017**

MN KULLOW, J

JULY 18, 2025

IN THE MATTER OF LAND REGISTRATION ACT 2012

AND

IN THE MATTER OF CIVIL PROCEDURE ACT CAP 21 OF THE LAWS OF KENYA

AND

IN THE MATTER OF LIMITATION OF ACTIONS ACT CAP 22 OF THE LAWS OF KENYA

BETWEEN

BENSON MENYA MARUA PLAINTIFF

AND

ELIJAH JAOKO AWITI 1ST DEFENDANT

JAMES MAKORI NYANCHONG'I 2ND DEFENDANT

MONICAH AKOTH OWENGA 3RD DEFENDANT

JUDGMENT

1. The Plaintiff had filed an Originating Summons dated 23rd December 2016 under Order 37 Rule 2 of the *Civil procedure Rules*, Section 37 and 38 of the *Limitation of Actions Act* Cap 21 Laws of Kenya and *Land Registration Act* of 2012 seeking the following Orders:-
 - a. Whether the Applicant/Plaintiff has been in an open and uninterrupted occupation of Land parcel No. Suna East/Wasweta I/19739 for a period of over 30 years.
 - b. Whether the Applicant has established a claim of Adverse Possession.



- c. Whether the Applicant is entitled to the said land Parcel No. Suna East/Wasweta I/19739 by adverse Possession under the law of Limitation of Action Act against the 2nd Defendant.
 - d. Whether the 3rd Defendant can be compelled to transfer the Parcel of Land No. Suna East/Wasweta I/19739 to the Applicant and in default the Executive Officer of this Honourable court be authorised to execute the necessary documents to effect the said transfer.
 - e. Who shall bear the Costs of this suit.
2. The Applicant avers that he has been in open, notorious and uninterrupted occupation of the suit land No. Suna East/Wasweta I/19739 for over 30 years. At the hearing the Applicant relied on his Supporting Affidavit sworn on 23rd December 2016 as his testimony as well as annexures thereto marked as BMM 1 to 8.
 3. The Applicant contends that upon filing and the serving the aforementioned Originating Summons, only the 3rd Respondent entered appearance and subsequently filed an Affidavit in opposition sworn on 18th September 2018.
 4. The 3rd Respondent deponed that she is the sole proprietor of the suit land No. Suna East/Wasweta I/19739 by virtue of purchase of the suit land. Furthermore, the 3rd Respondent avers that the Applicant is not in actual possession of the suit land and that the Applicant permanently resides in Nakuru and therefore contends that the Applicant has not demonstrated the mandatory ingredients of claim based on Adverse possession.
 5. I have read I have considered and reviewed the pleadings, the testimony of the witness and exhibits before this court in totality, and it is my considered view that the issue arising for determination are as follows:-
 - a. Whether the Applicant has proved his claim of Adverse Possession?
 - b. Whether the Plaintiff is entitled to the reliefs sought?

Whether the Plaintiff has proved his claim of Adverse Possession?

6. The legal framework for adverse possession is provided in Sections 7, 13, 17 and 38 (1) and (2) of the [Limitation of Actions Act](#) and Section 28 (h) of the [Land Registration Act](#).
7. In Malindi App No. 56 of 2014 [Mtana Lewa v Kabindi Ngala Mwangandi](#) [2015] eKLR where it held;

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 in assertion of his title for a certain period, in Kenya, 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 or stealth nor under the licence of the owner. It must be adequate in continuity, in publicity and in extent to show that possession is adverse as to the title owner.
8. Further, in the case [Mbira v. 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...”



9. The Court of Appeal in Kisumu Civ App. No. 110 of 2016 *Richard Wefwafwa Songoi v Ben Munyifwa Songoi* [2020] eKLR opined that a person claiming adverse possession must establish the following:-
- a. On what date he came into possession.
 - b. What was the nature of his possession.
 - c. Whether the fact of his possession was known to the other party.
 - d. For how long his possession has continued, and
 - e. That the possession was open and undisturbed for the requisite 12 years.
10. From the evidence of the Applicant, it is clear that he has been staying on the land exclusively and has made it his abode for a long time a fact which was not challenged by the Respondent and further the Respondent despite the knowledge of occupation of the suit land did not at any one time challenge the applicant's continuous occupation and use of the suit land. It is trite law that a claim of Adverse possession the occupation must be non-permissive and despite the Respondent's testimony that he did not approve of their occupation did not do anything to disrupt the occupation.
11. It is therefore my finding that the applicant has sufficiently demonstrated that he has acquired descriptive and overriding rights over the portion of land L.R No. Suna East/Wasweta I/19739 by virtue of his occupation for over 30 years and that his rights are adverse to the respondents rights to the same portion of land and consequently, I find and hold that the Plaintiff/Applicant has proved his claim on adverse possession and I accordingly allow the Originating Summons dated 23rd December 2016 on following terms:-
1. A declaration be and hereby issued that the applicant, Benson Menya Marua has acquired title of Suna East/Wasweta I/19739 by way of adverse possession owing to his open and uninterrupted occupation of the parcel of the land for a period exceeding 12 years.
 2. A declaration is further issued that the applicant be registered as the owner of the above portion having acquired title thereto by way adverse possession.
 3. An order of permanent injunction is hereby issued restraining the respondents and/or his agents from interfering with the applicant's occupation and enjoyment of the said Suna East/Wasweta I/19739.
 4. No orders as to costs.

It is so ordered.

DATED , SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON 18TH DAY OF JULY, 2025.

MOHAMMED N. KULLOW

JUDGE

Ruling delivered in the presence of: -

N/A for the Plaintiff

N/A for the Defendants

Philomena W. Court Assistant

