



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**HCCC NO. 29 OF 2010 (0S)**

**1. MBARAK ABDALLA ABUD**

**2. MBARAK AWADHI OMAR**

**3. ANSWAR SALIM MOHAMED.....APPLICANTS**

**=VERSUS=**

**SALEH BIN ABDALLA SHURUTI.....RESPONDENT**

**J U D G M E N T**

**Introduction:**

1. In the Originating Summons dated 7<sup>th</sup> April 2010, the three Applicants are seeking to be declared as the proprietors of parcel of land known as sub-division number 224/III/MN CR No.4119 by virtue of the doctrine of adverse possession.
2. According to the Affidavit of the 2<sup>nd</sup> Applicant, the 1<sup>st</sup> and 3<sup>rd</sup> Applicant are his brothers; that they were raised on the suit property and that they have fully developed the parcel of land.
3. It is the deposition of the Applicants that the Defendant has never questioned their presence on the suit property and that they do not know his whereabouts.
4. The Applicants annexed on the Affidavit a letter by the Assistant Chief. According to the Assistant's Chief's letter, the three Applicant's are residing on the suit property and they have cash crops.
5. The Respondent was served with the Originating Summons by way of advertisement in the Standard Newspaper but neither entered appearance nor filed a Replying Affidavit.
6. The Originating Summons proceeded by way of viva voce evidence. PW1, PW2 and PW3 all informed the Court that they have been living on the suit property for more than 30 years continuously, peacefully and exclusively.
7. In the absence of a Replying Affidavit, the Applicant's evidence is not controverted.
8. Having read the Originating Summons and heard the Applicants, I am satisfied that the Applicants have dispossessed the Respondent the suit property having stayed on the land for more than twelve (12) years continuously, peacefully, exclusively and in a manner that is adverse to the Respondent's interests in the land.
9. For those reasons, I allow the Originating Summons dated 7<sup>th</sup> April 2010 in the following terms:

**(a) A declaration be and is hereby made that the Applicants are entitled to all that parcel of land occupied by them and described as sub-division number 224/III/MN by virtue of adverse**

**possession.**

**(b) The Chief Land Registrar, be and is hereby directed to register sub-division number 224/III/MN in favour of the three Applicants as tenants in common with equal shares and issue to the Applicants with a Certificate of Title.**

**(c) Each party to bear his own costs.**

Dated and delivered in Malindi this **26<sup>th</sup>** day of **June**, 2015.

**O. A. Angote**

**Judge**