



**Nyembo & 587 others v Jackson & 14 others (Environmental and Land Originating Summons E010 of 2023) [2024] KEELC 14123 (KLR) (18 December 2024) (Judgment)**

Neutral citation: [2024] KEELC 14123 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E010 OF 2023  
EK MAKORI, J  
DECEMBER 18, 2024**

**BETWEEN**

**JESSY BARAKA NYEMBO & 587 OTHERS ..... APPLICANT**

**AND**

**MORRIS JACKSON & 14 OTHERS ..... RESPONDENT**

**JUDGMENT**

1. The originating Summons filed by the applicants herein went unopposed. The Respondents were served but failed to enter appearance nor mount a defense.
2. Four witnesses testified. They adopted their filed statement and documents. They claimed to have lived on the suit property for over 12 years for the doctrine of adverse possession to attach in their favour. Significantly, they said they have lived and occupied the suit property, Plot No.11/IV/MN Title No.CR 6142, since birth. They call the place home and have developed it over time, hence the current suit.
3. I frame the issues for the determination of this Court whether the Applicants are entitled to the suit property by the operations of the doctrine of adverse possession and who should bear the costs of the suit.
4. The applicant cited several authorities enunciating how adverse possession should be reckoned in the written submissions filed. I will refer to them if need be.
5. In *Murangi Stephen Mwangi Gatunge v Edwin Onesmus Wanjau & Mwangi Kimingi* [2022eKLR], the court held:

“It is trite law that a claim for adverse possession is attached to the land and not the title, and it matters not that the land was owned by which party.”



6. The principle of adverse possession is well settled under the *Limitation of Actions Act* - Section 7 of the said Act places a bar and actions to recover land after 12 years from the date the right accrued. Further, Section 13 of the same Act provides that adverse possession is the exception to this limitation.
7. The principle of adverse possession was elaborately set out in *Wambugu v Kamau Njuguna* [1983] KLR 172, where the court held that:

“In order to acquire by the statute of limitations title to land which has a known owner, that owner must have lost the right to the land either by being dispossessed of it or by having discontinued his possession of it.”
8. In the case of *Gabriel Mbui v Mukindia Maranya* [1993], eKLR adverse possession was defined as:

“..the non-permissive physical control over land coupled with the intention of doing so, by a stranger having actual occupation solely on his own behalf or on behalf of some other person, in opposition to, and to the exclusion of all others including the true owner out of possession of that land, the true owner having a right to immediate possession and having clear knowledge of the assertion of exclusive ownership as of right by occupying stranger inconsistent with the true owner’s enjoyment of land for purposes for which the owner intended to use it.”
9. In the case of *Mtana Lewa v Kahindi Ngala Mwangandi* [2015] eKLR, the Court of Appeal defined adverse possession as:

“Adverse possession is essentially a situation where a person takes possession of land and asserts rights over it and the person having title omits or neglects to take action against such person in assertion of his title for a certain period, in Kenya, twelve (12) years. The process springs into action essentially by default or in action of the owner. 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.”
10. To claim rights to land through adverse possession, one must demonstrate open possession and uninterrupted occupation for not less than twelve years and that the said occupation was within the owner's knowledge. The Applicant's case is that they have occupied the suit property for well beyond 12 years and made development thereon.
11. The court, in the case of *Susan Mumbi v Kefala Grebedhin* (Nairobi HCC NO. 332 1993) Juma J. (as he then was), held that:

The question of the court presuming adverse evidence does not arise in civil cases. The position in civil cases is that whoever alleges has to prove. It is the Plaintiff to prove her case on a balance of probability, and the fact that the Defendant does not adduce any evidence is immaterial.”
12. Flowing from the foregoing and in light of the case law herein referred to against the evidence adduced, I am of the view that the Applicants have demonstrated that they deserve the suit land by way of adverse possession and proceed to allow prayers sought in the Originating Summons since the claim was undefended no order as to costs.



**DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY ON THIS 18<sup>TH</sup> DECEMBER 2024.**

**E. K. MAKORI**

**JUDGE**

In the Presence of:

Mr. Makwero, for the Applicants

Happy: Court Assistant

