



**Mwadimemzungu v Marianelli Company Limited (Environmental and Land Originating Summons E012 of 2023) [2024] KEELC 13822 (KLR) (17 December 2024) (Judgment)**

Neutral citation: [2024] KEELC 13822 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E012 OF 2023  
EK MAKORI, J  
DECEMBER 17, 2024**

**BETWEEN**

**CHRISTOPHER MWADIMEMZUNGU ..... APPLICANT**

**AND**

**MARIANELLI COMPANY LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Originating Summons dated 20th November 2023 seeks the following orders:
  - a. That the Plaintiff/Applicant acquires title to the suit property by adverse possession of all that parcel of land known as Land Portion No. 633 (Original Number 12/7) Malindi.
  - b. That the Defendant/Respondent's title to the suit be extinguished by operation of law and it so be declared and decreed pursuant to Section 17 of the *Limitation of Actions Act*, Cap 22 Laws of Kenya, the Defendant's title of land known as parcel Number 663 (Original Number 12/7) Malindi as extinguished.
  - c. That the Plaintiff/Applicant be declared and decreed as the registered owner of all that parcel of land known as parcel Number 633 (Original Number 12/7) Malindi.
  - d. That the Defendant/Respondent be stopped from evicting the Plaintiff/Applicant from the parcel of land known as parcel Number 633 (Original Number 12/7) Malindi.
  - e. That costs of the application should be in the cause.
2. The matter proceeded ex parte. Christopher Mwadime Mzungu's (the Applicant) affidavit dated 20<sup>th</sup> November 2023 supported the originating summons. He stated that he has occupied the suit property since 2004 and has never been threatened or evicted. He testified that Marianelli Mario, the Respondent's Director, has left him in charge of the property since 2004. To date, the suit property is in the name of the Respondent, confirming that no transfer has been made to another party. A copy



of the indenture for the suit property was exhibited. The Applicant averred that he has always taken care of the suit property and maintained it without remuneration. The Applicant is the only person entitled to the suit property as the Respondent has never sent anyone to claim it, and neither has any family member of the said director or any other director from the Respondent.

3. The Applicant has lived on the suit property with his family since 2004, and during that period, there has been no threat of eviction through any letter or action. He seeks to be declared the legal owner under the doctrine of adverse possession, highlighting the peaceful and stable nature of his occupation.
4. I frame the issues for the determination of this Court whether the Applicant is entitled to the suit property by the operations of the doctrine of adverse possession and who should bear the costs of the suit.
5. The Applicant produced photographs of the suit property, where the property is located, its structures, and developments as proof of his occupation. These photographs show the condition of the property over the years, demonstrating the Applicant's continuous and uninterrupted possession.
6. 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.
7. 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.”
8. 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.
9. 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.”
10. 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.”
11. 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.”

12. 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 he has occupied the suit property for well beyond 12 years and made development thereon.
13. 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.”
14. 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 Applicant has demonstrated that he deserves the suit land by way of adverse possession and proceeds 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 17<sup>TH</sup> DECEMBER 2024.**

**E. K. MAKORI**

**JUDGE**

In the Presence of:

Mr. Oduor, for the Applicants

Happy: Court Assistant

Respondents (no appearance entered)

