



Bashora & 75 others v Riverside Farm Malindi Limited (Environment & Land Case 63 of 2019) [2024] KEELC 5150 (KLR) (4 July 2024) (Judgment)

Neutral citation: [2024] KEELC 5150 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 63 OF 2019**

EK MAKORI, J

JULY 4, 2024

BETWEEN

GUYO BASHORA & 75 OTHERS APPLICANT

AND

RIVERSIDE FARM MALINDI LIMITED RESPONDENT

JUDGMENT

The Claim

1. The Applicants, vide the Originating summons dated 6th August 2019, moved this Court seeking the following orders:
 - a. The Applicants are entitled to be declared the proprietors of Plot No. M28 Malindi, which they have acquired by adverse possession. They have lived and worked thereon for over 15 years since late 1959, well beyond the statutory 12 years, and used it peacefully and uninterrupted without any interference from the respondent and any other person. This peaceful use of the land underscores their rightful claim to it.
 - b. The Applicants are entitled to be registered and issued a certificate of title over the same in place of the Respondent.
 - c. Costs of the suit.
2. The Originating summons is founded on the grounds set out in the Supporting Affidavit of Guyo Bashora Dala, the 1st Applicant, with the authority of all the other Applicants. He deponed that he was born on the suit property in 1959 and that the suit property is their ancestral home where they have gathered and cultivated on the same without interruption from the Respondent or any other person. The Respondent has never been in occupation and possession of the suit property at any given time. He also stated that their late grandparents are interred in the suit property, underscoring their deep-



rooted connection to the land. It was averred that the Applicants have lived in the suit property for over 12 years, and they have constructed permanent buildings on the suit property and thus are entitled to possess the suit property by way of adverse possession.

The Rejoinder

3. In response to the Originating Summons, the Respondent filed a Replying Affidavit titled a witness statement sworn by David Pola Mramba, the lawful attorney of Francesco Zinoni, one of the Directors of the Respondent Company. He stated that the Respondent is the registered proprietor of all that parcel of land known as Land plot Number M28 Malindi vide an indenture dated 2/10/1997. It was noted that the Applicants were settlers who occupied the land owned by the Respondent. The Respondent initiated negotiations involving local leaders to assist in having the squatters compensated for their crops, trees, and houses constructed on the Respondent's land before they were settled in another location. He stated that the Applicants were fully compensated for their homes, produce, and trees; therefore, they have no claim on the remainder of the land other than the built area where they had been settled. He further stated that upon successfully settling the Applicants, the Respondent caused its land to be fenced to prevent and deter any acts of trespass. Mr. David Pola asserted that in the subsequent years, the Respondent, through one of its Directors, made an oral agreement with the Applicants and permitted them entry to its land to till and carry other farming activities at minimum annual rent. Further, in a letter dated 30/04/2015, the Applicants requested one of the Respondent's Directors to permit them to plant and harvest their produce, after which they would leave without any demands. It was stated that the Applicants have since destroyed the fence and trespassed into the entire land, cutting down trees and harvesting fruits, while they have no claim of right to the same. He stated that the acts of trespass and assault to one of the respondent's security personnel were reported to the Malindi police station. Further, the Ward Agricultural Officer visited the suit property and reported the damage caused to the trees.

The Applicants' case

4. PW1, Guyo Bashora Dala, is the first witness for the Applicants. He adopted his witness statement dated 6/08/2019 as his evidence in chief and produced the documents as listed. He told the Court that they did not enter into any agreement with anybody nor the Respondent and that the Respondent is unknown to them and an impostor in this case. On cross-examination, he stated that he knew Andrew Randu, his neighbor and their leader. He was referred to Exhibit 5, the letter stating that they were to leave the open area, have been permitted to farm, and not make any other demands after compensation. He also said that they removed a fence that restricted the area where they had been settled and the one where they had been temporarily permitted to farm, but they had no Court order to remove it. On re-examination, he stated that there was no meeting before signing the letter dated 30/04/2015 and that the same was not signed by the other Applicants herein.
5. PW2 Katana Dzombo told the Court that she had recorded a statement but did not recollect it. She further testified that she did not remember placing any thumbprint on it. Her statement was taken as evidence in chief. She added that she did not know the Defendant. On cross-examination, she stated that there is a residential place with a farming area and that they were neither fenced off nor destroyed the fence marking the boundary between the area where they had been settled and the disputed area under contention. She also stated that she could not recollect whether the statement read to her was hers. Additionally, she was not aware that they had been compensated. She further stated that she knew Andrew Randu, Gumbao Karisa, and Kenga Daza. Still, they did not appoint them as their representatives in the compensation negotiations and did not have their permission to act on their



- behalf. On re-examination, she stated that the persons read to her as their leaders are unknown to them, and they have never permitted them to represent them
6. PW3 David Kahindi Ngumbao adopted his statement dated 24/03/2023 as his evidence in chief. He stated that several agreements are with Riverside Farm Limited, which is not the same as Riverside Farm Malindi Limited. He stated that he did not participate in the said agreements. He added that Riverside Limited has never been on the farm since 2000. On cross-examination, he stated that Katana Nzarura was his uncle and was unaware they were compensated. Additionally, he did not know if his father was compensated. He stated that Riverside Farm Limited never set aside a portion of land within the disputed land for them after compensation. He stated that there was no fence marking the boundary between the area where they were settled and the one now in dispute and that they did not remove it. Further, he did not know that a house built by the Respondent was pulled down. He admitted to knowing Andrew and Philip as his neighbors but stated they were not their leaders during the compensation negotiations. He noted that nobody had gone to the land asking for Kshs. 12,000 rent for the use of the land. He stated that compensation was being done by Riverside Farm Limited and not by Riverside Farm Malindi Limited.
 7. PW4 Sifa Karisa Thoya adopted his witness statement dated 24/03/2023 as his evidence in chief. He stated that he was the one who showed the surveyors what they each possessed. He said that 75 families own the land in question. On cross-examination, he stated that the landowner was unknown to him. He noted that it was not true that they had requested to be allowed to farm for a while. He also stated that Randu is his neighbor and that no committee was representing them, acting or negotiating on their behalf on the use of the land in contention. He also stated that he was aware that Riverside Farm Limited compensated them and his father had been paid, but he cannot tell how much money was spent on them in compensation.
 8. PW5 Samuel Masaka Bagwasi, a Land surveyor, told the Court that he was given work to survey parcel No. M28 Malindi is registered in Riverside Farm Malindi Limited; he was instructed by Michira & Advocates. He informed the Court that his duty was to check who the persons were living in parcel No. M28 Malindi. He stated that he looked for a map of the area from the Survey of Kenya FR 41/34 for coordinates. He stated that he did visit the land together with the Court and that there was a map by the County Surveyor that he agreed to. He also told the Court that the Land Office gives instructions on subdividing and surveying land, and the proposal goes through several stages of approval. He further stated that he found no pending subdivision plans, and his work was to confirm whether people were living in plot No. M28 Malindi. He gathered that there were 196 parcels. On cross-examination by Mr. Ole Kina, he stated that he saw that people were living in the built and settled area separated from the other open areas that were now in dispute. There was no development on the rest of the land apart from a demolished building allegedly placed by the Respondents. Other than the beacons placed on the farm, there were no other beacons. Further, Riverside Farm Malindi Limited did not authorize him to enter the land or place any beacons on the disputed portion. He admitted that he is not a licensed land surveyor but works under a licensed land surveyor. He further stated that there was no habitation on the other side of the land where the fence had been placed. He also stated that he placed beacons on 10/06/2022 according to the Applicants' desires.
 9. PW5 Michael Kinyua, Land Surveyor in charge of Malindi and Magarini, produced his report dated 21/03/2022 concerning the suit property. He told the Court that he had established that there were beacons placed around parcel No. M28 Malindi. He had to ascertain the actual location through Google Earth to get a pictorial representation of the physical features. He stated that 15 % of the land has residential buildings, and along the Sabaki River, subsistence agriculture was undertaken. The uninhabited middle has grazing land. He also stated that the habited area has permanent and temporary



buildings. On cross-examination, he told the Court that a fence demarcated the built and grazing and cultivating areas and that he could not tell the percentage of the cultivated area.

The Respondent's Case

10. DW1 David Mulamba, the caretaker of Riverside Farm Malindi Limited, although the known name is Riverside Farm Limited. He stated that 2000 they compensated settlers on the suit property Plot No.M28 Malindi, both farming and residential. The settlers were allocated 15 acres carved from the entire land. Further, after subdivision, they agreed that the settlers would give Kshs. 10,000 to obtain titles. A road for them was done, and he was dealing with the matter. He told the Court that the settlers had their representatives. He stated that in April 2015, they requested time to harvest their crops. He adopted as evidence his Replying Affidavit dated 31/11/2022 and produced as DEX 1-16 documents in the manner they were listed. He added that they had been living well and that they even had goats that they were taking care of. He told the Court that the applicants invaded the land in 2019 and cut down trees and crops. They also pulled down the fence, which had restricted the area where they had been settled, and the disputed portion of parcel No. M28 Malindi, which damage is evident on the ground.
11. DW2 Walter Okoth, a land surveyor, told the Court that 2000 he did some work on the suit land. He stated that he surveyed the land using instructions from Muli & Ole Kina Advocates. He told the Court that he had identified the boundaries and determined the settlers who were there, and that was to settle some of the settlers. He stated that the settlers were being compensated for their trees, vegetation, and structures on the ground and that there were about 30 families. He noted that the exercise saw the squatters get a quarter, a half, or even an acre of land, which they had agreed to be settled. Additionally, they formed a committee that included the area chief and the local community, and the settlers chose their representatives. He stated that the land was about 186 acres after the external survey. They then identified an area for settlement and subdivided it into several units. He told the Court that each family was properly settled and compensated and gave them a proposal on getting titles. He further testified that they visited the site with the Court and that the structures on the ground were the same as in 2000. Moreover, in his report, nothing differed from the report for 2000.

Analysis and determination.

12. The parties filed written submissions. The Applicants identified the following issues for determination: whether the sued Respondent is the same as Riverside Farm Limited. The Applicants submitted that Riverside Farm Malindi Limited and Riverside Farm Limited are different names per the provisions of Section 17 (1) (d) of the [Registration of Business Names Act](#). Whether the Respondents were represented adequately through their agent in the proceedings herein, it was submitted by the Applicant on this point that the Special Power of Attorney was objected to vide a Preliminary Objection, which was upheld in the ruling by this Court dated 13/11/2020(Olola J.). Further, on 3/10/2022, DW1 filed a document titled Minutes of the Board of Directors Meeting held on 30/06/2022 at 10.30 am at the Brescia Italy. They submitted that no known law exists where minutes in a board room resolution can confer powers to a party to be a recognized agent before the Court. Order 9 Rule 2 (a) and the case of Edmund Mwangi Waweru v Gabriel Wanjohi Waweru & another [2017] eKLR to support the argument. Whether the Applicants have had continuous, notorious, and uninterrupted occupation and possession of land parcel No. M28 Malindi. It was submitted that the Applicants had proved their case that they have been in an open, notorious, and uninterrupted occupation of the land in dispute and are entitled to the orders sought. Further, the fact that the Respondents produced agreements for compensation requiring the Applicants to vacate by 31st May 2001 demonstrates that the Applicants were in occupation of the land at the time of the agreement.



In support of their argument, reliance was placed on Section 4 (1) (a) and Section 7 of the Limitations of Actions Act and the case of Tabitha Waitherero Kimani v Joshua Ng'ang'a [2017] eKLR. Whether the Applicants have met the threshold to merit the invocation of the doctrine of adverse possession in their favour, it was submitted that the Applicants have demonstrated that they have lived on the land for over the statutory period of 12 years as per Section 38(1) of the Limitations of Actions Act.

13. The Respondent frames the following issues for determination: whether the Respondent is well represented. It was submitted that the Respondent's representative met the threshold required under Order 4 Rule 1 (4), and no approval by the Court is needed as alleged by the Applicant. It was also submitted that as regards the name, there has been no misrepresentation as to who the Applicants were dealing with. They have been dealing with one Francesco Zinoni and Gianbattista Quaranta, the Directors of Riverside Farm Malindi Limited, and their employees and other agents. The same David Pola, Mramba, and Walter Okoth were involved in settling the Plaintiffs and their parents on the section of land carved out for them. Further, the representatives of the Respondent stated that the two names identify the same entity. Whether the Applicants have met the threshold to have acquired the land by way of adverse possession, it was submitted that the demolished fence on the ground was paramount, and even the clear demarcations showing the area where the Applicants were allocated and that which was left to the Respondent. It was additionally submitted that there were various reports made to the police on the Applicants' violence against the Respondent's servants thus clearly eliminating the fact that there was peaceful possession on the said land as against their claims and against the requirements of adverse possession where occupation is said to be hostile against the respondent's title but peaceful and uninterrupted for a period spanning 12 years. In support of its arguments, the Respondent cited the following thread of authorities; Bugerere Coffee Growers Limited versus Sebaduka & another [1970] EA 147, Makupa Transit Shade Limited & Another v Kenya Ports Authority & another [2015] eKLR, Eve Company (K) Limited v Erastus Rotich t/a Vision [2021] eKLR, Middle East Bank Limited v Thalia Katia Maria Castanha [2016] eKLR, Karen Njeri Kandie v Alassane Ba & Another [2017] eKLR, Leo Investments Ltd v Trident Insurance Company Ltd [2014] eKLR, Fidelity Commercial Bank Limited v Simon Maina Gachie [2016], Spire Bank Limited v Land Registrar & 2 others [2019] eKLR, Raymark Limited v John Lokorio [2021] eKLR, China Wu Yi Limited & another v Irene Leah Musau [2022] eKLR, Geoffrey Kamau Ndishus & anor v Muchiri Murungi eKLR, Hagos Birikiti Tewoldebrehen & another v Evans Ihura & another [2020] eKLR, Fubeco China Fushun v Naiposha Company Limited and 11 Others [2014] eKLR, Mate Gitabi v Jane Kabubu Muga & others [unreported], David Munene Wamwati & 4 Others v The Registered Trustees of The Anglican Church of Kenya & another [Unreported], Wambugu v Njuguna [1983] KLR, Hughes V Griffin [1969] ALL ER, Samuel Miki Waweru v Jane Njeri Richu CA No. 122 of 2001, and Wilson Kazungu Katana & 101 Others v Salim Abdalla Bakshwein & another [2015] eKLR.
14. I have considered the rival evidence, the submissions by the parties, and the authorities relied upon. I frame the following issues for the determination of this Court:
 - a. Whether the Respondent was well represented in this matter.
 - b. Whether the Applicants have proved that they are entitled to the suit land by way of adverse possession.
 - c. Who should bear the costs of this suit?

Whether the Respondent was well represented in this cause.

15. The Applicants have argued that the Respondent is not well represented on two fronts: firstly, that the Respondent and Riverside Farm Limited are not the same, and secondly, that they were



not appropriately represented by their agent. It was argued that the indenture clearly describes the purchaser as Riverside Farm Malindi Limited, the company they have sued. The Respondent, on its part, stated that the instant case is in respect of Riverside Farm Malindi Limited's ownership of land Plot Number M28, in which case that is the relevant name and that reference to Riverside Farm Limited was purely a typographical error that was not intended to mislead and that did not prejudice the Applicants. The Court in *EMK Advocates v Rhombus Construction Company Limited (Miscellaneous Civil Application E1148 of 2020)* [2021] KEHC 5668 (KLR) (Commercial and Tax) held as follows:

“I am therefore in agreement with the Advocates that the use of EMK Advocates and not EMK is a misdescription and an honest mistake capable of rectification. It will not prejudice the Respondent in any way, is not fatal to the proceedings and does not defeat their claim. In *Fubeco China Fushun v Naiposha Company Limited and 11 Others ML HCCC No. 222 of 2012 [2014] eKLR*, Gikonyo J. expressed the following view, which I agree with: The use of Fubeco China Fushun as the Plaintiff, at worst, is a misdescription of the party, that is, China Fushun No. 1 Building Engineering Company Limited. Such misdescription of the Plaintiff is not fatal to the proceedings and does not defeat a party's cause of action. In taking this decision, the Court is guided by the constitutional desire to serve justice which is the very reason why courts have been given unfettered discretion in ordering an amendment in such case in order to reflect and have the correct parties before the Court. Under that power, the Court would still allow the amendment to correct the misdescription. I so order for the avoidance of doubt. I hold and find that this is not a case of a non-existent or faceless entity that would invariably be incapable of suing or being sued. It is a case of pure misdescription of a party and is governed by the same law on misdescription of parties in a contract.”

16. When DW1 testified, he told the Court that the Respondent herein was popularly known as Riverside Farm Limited. The only omitted name is Malindi. Guided by the above, I believe that the Respondent herein rightly participated in the suit despite the omission of one name. In my view, the omission of the name Malindi is not fatal as to render the response defective. In any case, the Applicants allege that these are two separate entities and have not supplied any evidence that the two names belong to two separate entities. Who were the Applicants suing then in this OS?
17. Upon a cursory glance at the Replying Affidavit deposed by David Pola Mramba, it is stated in paragraph one that he is authorized through a Board Resolution to swear the Affidavit. This Board Resolution, following the meeting held on 30th June 2022, clearly states that David Pola Mramba, along with Michael Mugindo Charo, has the authority to represent the company in Court and swear any declarations on its behalf. This is the unmistakable authority of the legitimacy of David Pola Mramba's actions in this case:
 - iii. The company shall be represented by Michael Mugindo Charo and David Pola Mramba, who shall have the authority to appear in court and/or swear any declarations relating on behalf of the company.
 - iv. The company hereby ratifies all the work that has so far been done by the firm of Muli & Ole Kina Advocates in conjunction with David Pola Mramba in the said proceedings.
18. From the above extract, it is clear that one David Pola Mramba had the express authority to act on behalf of the Respondent in these proceedings. The resolution further ratified the actions of David Pola Mramba. Given that the resolution was filed, I do not see any mischief with this. It is trite that a Board Resolution can be filed at any time before the close of proceedings; therefore, its absence from



the beginning was not fatal. See Odunga J. in *Leo Investments Ltd v Trident Insurance Company Ltd* [2014] eKLR:

“Clearly from the foregoing provision, nowhere is it required that the authority given to the deponent of the verifying affidavit be filed. The failure to file the same, in my view, may be a ground for seeking particulars assuming that the said authority does not form part of the plaintiff’s bundle of documents which commonsense dictates it should. Of course, if a suit is filed without a resolution of a corporation, it may attract some consequences. The mere failure to file the same with the plaint does not invalidate the suit. I associate myself with the decision of Kimaru, J in *Republic vs. Registrar General and 13 Others Misc. Application No. 67 of 2005* [2005] eKLR and hold that the position in law is that such a resolution by the Board of Directors of a company may be filed anytime before the suit is fixed for hearing as there is no requirement that the same be filed at the same time as the suit. Its absence is, therefore, not fatal to the suit.”

19. That said, it is my finding that the Respondent was adequately represented by its agent in this suit.

Whether the Applicants are entitled to the suit land by way of adverse possession.

20. It is the Applicants’ case that they have been in continuous, uninterrupted occupation and possession of the suit property for over 12 years. The burden of leading the Court to ascertain this lay with the Applicants. In *Kimani Ruchure v Swift Rutherfords & Co. Ltd* [1980], KLR 10 Kneller J. held that:

“the Plaintiffs have to prove that they have used this land which they claim as of right: nec vi, nec clam, nec precario (no force, no secrecy, no persuasion)

21. The principle of adverse possession is well laid under the *Limitation of Actions Act*. Section 7 of the said Act places a bar on actions to recover land after 12 years from the date on which the right accrued. Further, Section 13 of the same Act provides that adverse possession is the exception to this limitation:

“(1) (1) A right of action to recover land does not accrue unless the land is in the possession of some person in whose favour the period of limitation can run (which possession is in this Act referred to as adverse possession), and, where under sections 9, 10, 11 and 12 of this Act a right of action to recover land accrues on a certain date and no person is in adverse possession on that date, a right of action does not accrue unless and until some person takes adverse possession of the land.

(2) Where a right of action to recover land has accrued and thereafter before the right is barred, the land ceases to be in adverse possession, the right of action is no longer taken to have accrued, and a fresh right of action does not accrue unless and until some person again takes adverse possession of the land.

(3) For the purposes of this section, receipt of rent under a lease by a person wrongfully claiming, in accordance with section 12(3) of this Act, the land in reversion is taken to be adverse possession of the land.”

Section 38 of the Act provides that:

“Where a person claims to have become entitled by adverse possession to land registered under any of the Acts cited in section 37 of this Act, or land comprised in a lease registered



under any of those Acts, he may apply to the High Court for an order that he be registered as the proprietor of the land or lease in place of the person then registered as proprietor of the land.”

22. 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.”

23. In *Mtana Lewa v Kahindi Ngala Mwangandi* [2015] e KLR, 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.”

24. Therefore, for one to claim ownership rights to land by way of adverse possession, one must demonstrate:

- i. Continuous possession of the property - there must be no interruption at all in possession of the suit property.
- ii. The possession of property encroaches on the valid owner’s rights. This may not be the case if the possessor has been rented or received permission from the owner to use it. If either is true, the possession of the land is not truly “adverse.”
- iii. The adverse possessor must not have attempted to hide their possession claim. It must be open and notorious (*kadamnasi* or *kwa uwazi* in the Swahili language). The possessor must use the property like the actual owner would without hiding it.
- iv. The property in question must be in the actual possession of the adverse possessor, not the valid owner, for not less than 12 years.

SUBPARA v.

The adverse possessor must solely and exclusively control the property himself. If the possessor acts as the valid owner in excluding others from possessing the land, the requirements for adverse possession are achieved.

25. The Applicants’ case is that they have occupied the land for more than 12 years, and at no point did the Respondent occupy it. The Respondent contested the applicants’ averments by adducing evidence that the Applicants, through extensive consultation, were resettled and 15 acres of the suit property curved in their favour in the year 2000. They were compensated for the structures and trees they had planted on the land before the resettlement. A fence separating the area occupied by the Applicants



with the remaining piece of land was delineated, which the Applicants have long pulled down contrary to the agreement they had entered. Further, it was stated in a letter dated 30th April 2015. Some representatives of the Applicants requested permission from one of the Respondent's Directors to plant and harvest their produce, after which they would leave without any demands. The Applicants protested this argument, stating that the Respondents never compensated them and, if anything, the said agreements were by Riverside Farm Limited. Further, the representatives were not their leaders.

26. After analyzing what was presented to me, particularly the resettlement plans as undertaken by PW1 and PW2. I find that the compensation agreements were valid, having established that Riverside Farm Malindi Limited and Riverside Farm Limited refer to the same entity. Besides, some of these compensations were made to the parents and relatives of the Applicants. Some of the Applicants, in their testimony, admitted to this. Therefore, the Applicants and their relatives were compensated and agreed to leave the Respondent's farm, only to renege later by invading the entire land and starting grazing and farming and allocating themselves the entire land.
27. It is also my finding that the letter dated 30th April 2015 by three of the Applicants herein shows that they respected that the land belonged to the Respondent. The Applicants' witnesses denied the said letter in their testimony, and the three undersigned in the letter were their representatives. I noted that the three - Andrew Manyeso Randu, Philip Safari Malau, and Albert Karisa Charo, were referred to by the Applicants' witnesses as neighbors. The three would have given the best testimony and disowned the letter. It was not explained why they did not testify, even if it was to disown the letter and place the record straight on the issue of compensation and the resettlement as undertaken by the Respondent.
28. During the site visit, it was clear that the Applicants occupied the residential area while the rest of the land was unoccupied. In addition, a fence, which had been pulled down, demarcated the residential area from the remainder of the land for the Respondent. The Court was shown a demolished structure that allegedly had been placed by the Respondents. The issue was reported to the police. Therefore, it is questionable how the Applicants occupied the said land when it was vacant.
29. The history of the land and the occupation by the Applicants cannot be said to be continuous and uninterrupted since after the Applicants were compensated, a buffer was placed between the land allotted to them and the balance left for the Respondent. Incursions to the suit property have always been reported to the police. Their occupation, therefore, has not been with the acquiescence of the Respondent.
30. In the end, given my findings above, I am not convinced that the Applicants have demonstrated peaceful and uninterrupted occupation of the suit land to earn rights to the land by way of adverse possession.
31. This matter represents one of several cases in the Coast region regarding the unsettling land question occasioned by absentee Landlords and the quest to settle the local community, which largely remains landless. It is a policy issue that the leadership in this region, the Parliament, and the entire Government of the Republic of Kenya must address. I associate myself with Waki J's lamentations in the case of Bahati Temo & 6 others v Swaleh Mohamed Swaleh [2002] eKLR that the issue should be addressed in a jiffy:

“Finally, it is not lost to me that there is a larger underlying problem in this litigation - the problem of “squatters” in the Coastal region. It is however a problem of the policy decision-makers in the Government and Parliament who must take active steps to rectify the warped land policies that now exist. All the courts can regrettably do is to interpret the law as it exists and in accordance with the current Constitution.”



32. The upshot is that the Originating Summons dated 6th August 2019 fails for want of merit, and the same is hereby dismissed with costs to the Respondent.

DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY ON THIS 4TH DAY OF JULY 2024.

E. K. MAKORI

JUDGE

In the Presence of:

Mr. Gambo, for the Respondents

Mr. Songok for the 1st Defendant

Happy: Court Assistant

In the absence of:

Mr. Michira & Mr. Makworo for the Applicants

