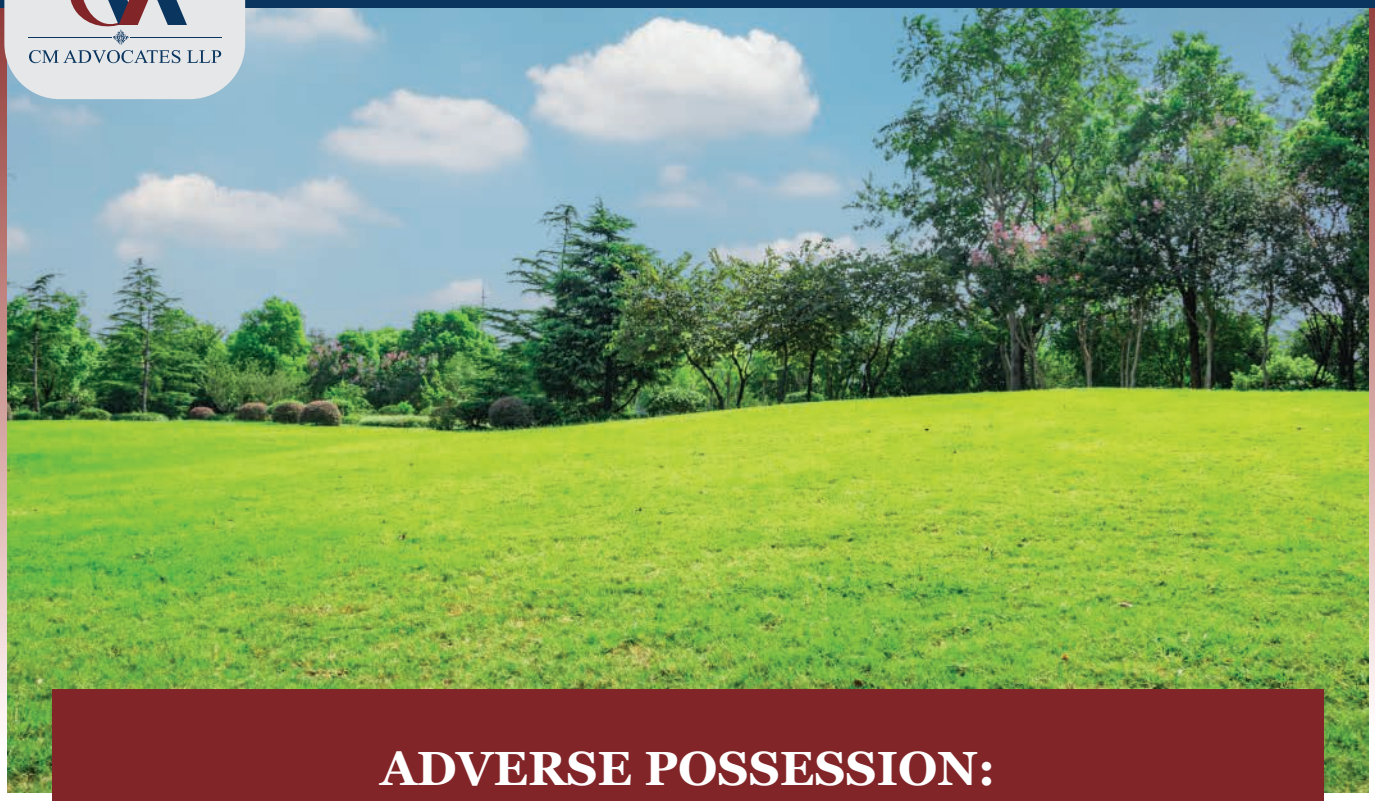


ADVERSE POSSESSION:
A Landmark Reminder for Passive Landowners

Court of Appeal Clarifies Legal Thresholds in Mwalimu & 6 Others v Halal & Another [2025] KECA 1186 (KLR)

INTRODUCTION

The doctrine of adverse possession, being a common law doctrine, has been the subject of numerous decisions including the most recently delivered judgement by the Court of Appeal in the matter of ***Mwalimu & 6 Others v Halal & Another [2025] KECA 1186 (KLR)*** on the 4th of July 2025.

Nowhere has the internal turmoil of the doctrine been highlighted better than in this recent decision which has enriched and clarified the considerations to be taken into account by a court called upon to make a determination as to the extent, threshold and applicability of the doctrine of adverse possession.

In brief, the doctrine posits that where an individual residing in a particular piece of land not belonging to himself/herself can claim ownership to the land of another person through certain acts over a defined period of 12 years. The individual can acquire a claim or an interest in the land, power enough to strip the cloak of ownership from the owner and to vest in themselves.

CASE OVERVIEW

In this specific case, the family of Fadhil Mwalimu had occupied the Plot No. Mombasa Island Block XV/31 land and operated a motor garage under a tenancy agreement initially entered into by their late father, Fadhili Mwalimu, with the former registered proprietor.

Their claim was that they had continuously and openly occupied the land for over 30 years without paying rent, and had thus acquired ownership through adverse possession.

However, the court in its findings was of the opinion that occupation of land beyond the limitation period of 12 years does not guarantee success in a claim for adverse possession. That there is more to it than just occupation of the land.

Moreover, a claim for adverse possession cannot stand on account of one being a continuous tenant or licensee on a particular land. if one is in possession of land as a result of permission given to him by the owner or as a result of a license, he cannot claim to be in adverse possession.

KEY LEGAL PRINCIPLES

1. Permissive Occupation ≠ Adverse Possession

The case reaffirmed that occupation which starts under a tenancy, lease, or licence is permissive and cannot mature into adverse possession unless:

- The occupant clearly disclaims the owner's title; and
- The possession continues uninterrupted and hostile for at least 12 years.

In this matter, the court noted that hostility arguably began in 2002 following a rent demand, but suit was filed in 2010—just 8 years later, thereby failing the legal threshold.

2. Fraud Claims Defeat Adverse Possession Arguments

The appellants also alleged that the registered title was obtained fraudulently. However, the Court emphasized that a person cannot claim adverse possession while simultaneously disputing the validity of the registered title. These two legal claims are mutually exclusive and cannot co-exist in the same cause.

3. Adverse Possession Can Arise from Informal or Familial Occupation

The judgment further highlights that a person seeking to acquire title to land by way of adverse possession must prove non-permissive or non-consensual, actual opening, notorious, exclusive and adverse use/ occupation of the land in question for an uninterrupted period of 12 years. Unwritten licences or informal arrangements with family members may start permissively but—if not revoked or formalized—can evolve into claims for ownership.

EXTENDED PRACTICAL LESSONS FOR LANDOWNERS, BUYERS & DEVELOPERS

This case issues a warning to landowners and investors who allow informal, unregulated or unmonitored use of their property:

1. Buyers Must Take Actual Possession Promptly

Buyers—especially those purchasing land from:

- Land-buying companies,
- Cooperatives, or
- Third-party sellers

must ensure they take physical possession of the land upon completion.

Failing to do so allows squatters, caretakers, or former occupants to accrue adverse possession rights. Courts have upheld such claims where buyers:

- Paid full consideration,
- Acquired title,
- But never entered or developed the land.

Legal Tip: Demand vacant possession at handover and document the same through signed possession certificates and dated photographic evidence.

2. Expired Leases or Tenancies Without Rent = Risk Zone

If a:

- Tenant overstays after lease expiry,
- Licence is terminated but the occupant remains,
- Occupier stops paying rent and no action is taken,

this inaction by the registered owner can allow the occupier to begin accruing time toward adverse possession.

Even long-standing tenants who stop paying rent and continue living or working on the land without legal resistance may ultimately acquire ownership if 12 years pass without intervention.

HOW CM ADVOCATES LLP CAN HELP PROTECT YOUR LAND

We offer structured, strategic support for property owners, landlords, and developers to prevent or respond to adverse possession risks.

SCENARIO	OUR LEGAL INTERVENTIONS
Buyer fails to take possession	Legal notices, possession protocols, eviction proceedings
Tenant overstays without rent	Lease enforcement, re-entry, and court-ordered eviction
Family member/caretaker occupies land	Licence agreements, revocation, and protective land entries
Informal occupiers on project sites	Pre-development land clearance and occupation audits
Suspected adverse possession risk	Filing recovery suits, lodging restrictions or cautions, injunctive relief

PRACTICE AREA INTEGRATION

This case underscores the need for multidisciplinary legal strategy as offered through the following CM Advocates LLP practice areas:

- Private Clients: Formalizing intra-family land use through revocable tenancy, licences, declarations, and succession structures.
- Real Estate Development: Ensuring legal handover of sites, clearance of pre-existing occupants, and protective title management.
- Commercial Real Estate: Drafting water-tight leases with strict post-expiry provisions and legal exit enforcement.
- Litigation & Dispute Resolution: Rapid court intervention where time-sensitive recovery or injunctive orders are needed.

FINAL WORD

"The law does not protect the idle. If you own land, act like it."

This judgment warns landowners not to rely solely on registration. If you allow a person to stay—tenant, relative, or third party—without documentation, follow-up, or repossession, they may one day claim to own it.

Need Help Preventing or Responding to Adverse Possession Claims?

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