CM ADVOCATES LLP



CAN YOU LOSE REGISTERED LAND WITHOUT EVER GIVING IT AWAY?

Lessons from Kakuzi PLC vs Makuyu Club.

The Supreme Court clarifies when permissive occupation becomes adverse and the risks that arise when land changes hands without the regularization of existing occupation arrangements.

INTRODUCTION

The acquisition of registered land is ordinarily regarded as the culmination of a process intended to secure proprietary rights. However, registration does not necessarily insulate a landowner from claims arising from prolonged occupation by third parties. Where another person occupies land openly, continuously and exclusively, without the authority of the registered proprietor, the passage of time may ultimately extinguish the proprietor's right to recover that land.

The Supreme Court's decision in ***Kakuzi PLC v Makuyu Club (Suing through Joel Wanyoike, Irungu Ndirangu & SK Kirubi as Trustees of the Club) [2026] KESC 69 (KLR)*** offers important guidance on this principle, particularly where occupation initially commenced through a donation or permission granted by a previous proprietor.

The decision addresses a significant question in land law, ***"what happens when land is made available for another party's use, but the arrangement is never formally transferred or registered, and ownership subsequently changes hands?"***

THE BACKGROUND: A GOLF COURSE, AN INFORMAL DONATION AND A DISPUTED TITLE

The dispute concerned approximately 70 acres forming part of L.R. No. 11674 (I.R. 20386/2), a parcel measuring over 12,000 acres and registered in the name of Kakuzi PLC.

Makuyu Club traced its occupation of the disputed portion to 1934, when the land was allegedly donated by the then white settlers for use as a golf course. Over the years, the Club developed the property, establishing a golf course, constructing a clubhouse, landscaping the grounds and sinking a borehole.

Kakuzi subsequently acquired the larger parcel in 1967. Although the Club continued using the disputed portion, the alleged donation had never been formally transferred or registered in its favour.

Kakuzi maintained that the Club's occupation was permissive and that it had continued to acknowledge the company's proprietary interest. It further argued that its predecessors and subsequently the company had supported the Club through the provision of equipment, payment of staff wages and financial assistance towards maintenance of the golf course.

The Club, on the other hand, maintained that its occupation had been open, continuous and exclusive, and that Kakuzi had neither interrupted its possession nor taken effective steps to assert ownership over the disputed portion. The Environment and Land Court in its judgment delivered on 18th October 2019 found in favour of Makuyu Club and held that it had acquired the disputed portion through adverse possession. The Court of Appeal upheld that determination, prompting Kakuzi to appeal to the Supreme Court.

The Supreme Court dismissed the appeal on 23rd October 2026, affirming the decisions of the lower courts.

WHEN DOES PERMISSIVE OCCUPATION BECOME ADVERSE?

One of the central issues before the Supreme Court was whether occupation that initially commenced through the consent or donation of a previous proprietor could subsequently give rise to a claim for adverse possession.

The starting point was Section 7 of the Limitation of Actions Act (CAP 22), which provides that an action to recover land cannot be brought after the expiry of twelve years from the date on which the right of action accrued.

For a claim in adverse possession to succeed, the claimant must demonstrate actual possession that is open, peaceful, continuous and exclusive, without the license or permission of the registered proprietor, and accompanied by the intention to possess the land to the exclusion of the true owner.

The Court reaffirmed the established principle in *Wambugu v Njuguna [1983] KLR 172* that occupation can either be permissive or adverse, the two concepts cannot coexist. Accordingly, occupation pursuant to a valid license, tenancy or other subsisting permission does not ordinarily give rise to adverse possession. The limitation period only begins to run when that permission is terminated or otherwise ceases to operate. However, the Supreme Court made an important distinction where the original permission arose from an informal donation that had never been formally transferred.

In paragraph 37 of its judgment, the Court observed that a donation of land ought to be transferred and registered in favor of the donee. In the absence of such transfer and registration, the donation remains incomplete. Although it may permit occupation and use of the property, it does not, in itself, confer ownership.

The Court consequently held that where ownership subsequently changes hands, an incomplete donation that does not create a legally enforceable interest binding upon the successor in title lapses. Continued occupation thereafter is no longer supported by the original proprietor's permission and may become adverse to the new owner's title.

This distinction is particularly significant. It demonstrates that the circumstances under which occupation commences are not necessarily determinative of its legal character throughout the entire period of occupation. An arrangement that initially permits occupation may cease to provide a legal basis for that occupation following a change in ownership.

DOES THE SUBSEQUENT OWNER HAVE TO ACTIVELY ASSERT OWNERSHIP?

The second significant issue concerned the steps a subsequent proprietor must take to protect its proprietary interest and prevent time from

running in favour of an adverse possessor. The Court recognized that consent to occupy land may be express or implied, oral or written, and may arise through a license or tenancy agreement. However, where the permission is terminated and the occupier remains on the property, the registered proprietor must take effective steps to enforce that termination.

In this regard, the Court relied on the principle in *Joseph Gachumi Kiritu v Lawrence Munyambu Kabura [1996] eKLR*, affirming that time ceases to run where the owner asserts their right or where the adverse possessor acknowledges the owner's title. Importantly, the Court clarified that asserting ownership requires more than merely communicating an intention to exercise proprietary rights. In paragraph 43 of the Judgement, the Court agreed with the Court of Appeal that an assertion of title must be accompanied by unequivocal acts capable of interrupting the adverse possessor's occupation. Such acts may include physical re-entry, dispossession or formal acknowledgement of the owner's title by the occupier. Mere notices or correspondence are insufficient.

The practical implication is that a registered proprietor cannot necessarily preserve ownership simply by writing letters, expressing dissatisfaction with occupation or maintaining informal dealings with the occupier. The proprietor must take effective steps to recover possession or otherwise assert the right to the land.

THE APPLICATION OF THE LAW: WHY KAKUZI'S CLAIM FAILED

Applying these principles, the Supreme Court found that time began to run in favor of Makuyu Club in 1967, when Kakuzi acquired the property. Although the Club's initial occupation had been facilitated by a donation from the previous proprietors, that donation had not been formally transferred or registered. Upon the change of ownership, the original permission lapsed.

The Club thereafter remained in continuous, uninterrupted and exclusive occupation of the disputed portion. Kakuzi did not demonstrate that it had taken effective steps to recover possession or interrupt that occupation within the statutory twelve-year period.

The company's provision of equipment, payment of staff wages and financial assistance towards the maintenance of the golf course did not, in the circumstances, amount to an effective assertion of its proprietary rights.

Of particular significance was Kakuzi's attempt in May 2002 to formalize the Club's occupation through a lease agreement. By then, approximately thirty-five years had elapsed since the company acquired the property.

The Court found that this intervention came too late to interrupt the running of time or revive the rights that had already been extinguished through adverse possession. The Supreme Court accordingly dismissed the appeal, affirmed the Court of Appeal's judgment and awarded costs against Kakuzi.

IMPLICATIONS FOR LANDOWNERS, PURCHASERS AND PROPERTY PRACTITIONERS

The decision carries important implications for anyone acquiring, managing or dealing with land that is occupied or utilized by third parties.

1. **A title search alone may not reveal the full extent of proprietary risk**

A purchaser may establish that a vendor is the registered proprietor and that the title is free from registered encumbrances. However, this does not necessarily disclose whether third parties have been occupying portions of the property for extended periods or whether their occupation may support a claim for adverse possession. Consequently, due diligence should extend beyond the examination of title documents. Physical inspections, inquiries into existing occupation arrangements and verification of the circumstances under which third parties entered the property are equally important.

2. **Informal land arrangements should be properly documented and regularized**

The decision illustrates the risks associated with allowing third parties to occupy or utilize land pursuant to informal donations, permissions or understandings that are never formalized. Where land is intended to be donated, the necessary legal and registration requirements

should be completed to secure the intended proprietary interest.

Similarly, where occupation is intended to be temporary or permissive, the parties should document the arrangement, clearly define its duration and conditions and provide for its termination.

3. A change in ownership requires a fresh assessment of existing occupation arrangements

A purchaser acquiring land that is already occupied by third parties should not assume that an informal arrangement made by a previous proprietor will automatically continue to bind the new owner. The purchaser should establish the legal basis of the occupation, determine whether any enforceable interest subsists and take appropriate steps to regularize the arrangement or recover possession where necessary.

This is particularly important because, as demonstrated in this decision, the subsequent proprietor's failure to assert its rights may allow the statutory limitation period to run against it.

4. Proprietors must take effective action where their rights are threatened

Where occupation is no longer authorized, the registered proprietor should take timely and legally effective steps to protect its interest. Depending on the circumstances, this may involve formally terminating the permission, demanding vacant possession, instituting recovery proceedings or taking effective physical possession.

The important consideration is that the proprietor must do more than merely acknowledge the existence of an occupation dispute. Its actions must be capable of interrupting the adverse possession.

CONCLUSION

The Supreme Court's decision in *Kakuzi PLC v Makuyu Club* reinforces an important principle in land law, registered ownership is not necessarily permanent where the proprietor fails to exercise and protect the rights associated with that ownership.

More importantly, the decision clarifies that occupation which initially commences lawfully may subsequently become adverse where the legal basis for that occupation ceases to exist, particularly following a change in ownership.

For property practitioners, the judgment is a reminder that land transactions must account not only for the interests reflected in the register but also for the persons physically occupying and utilizing the property. Ultimately, a purchaser may acquire a registered title, but the protection of that title requires more than registration. It requires vigilance, proper documentation and timely enforcement of proprietary rights.

It is, however, worth noting that the matter may not have reached its final chapter. Following the Supreme Court's judgment delivered on 23rd October 2026, Kakuzi PLC has since filed an application before the Supreme Court seeking a review of the decision. In its application, Kakuzi challenges, among other things, the Court's finding concerning the registrability of the licence arising from the alleged donation of the land to Makuyu Club, arguing that the finding was premised on an erroneous interpretation of the applicable registration law. The application remains subject to determination by the Supreme Court. Accordingly, the legal position emerging from the judgment remains significant, although the pending review proceedings may introduce a further dimension to the dispute.

HOW CM ADVOCATES CAN ASSIST.

The issues arising from *Kakuzi PLC v Makuyu Club* demonstrate the importance of obtaining appropriate legal advice when acquiring, managing or dealing with land occupied by third parties.

At CM Advocates LLP, we provide legal support to individuals, investors, developers, companies and institutions in navigating the legal and practical complexities of land ownership and property transactions. Our services include:

1. **Land Due Diligence** - Assessing title, existing occupation arrangements and potential third-party interests before property acquisition.

2. **Adverse Possession and Land Disputes** - Advising on adverse possession claims, recovery of land and protection of proprietary rights.
3. **Property Transactions** - Drafting and advising on transfers, donations, leases and other arrangements affecting interests in land.
4. **Property Management** - Structuring occupation agreements and advising on measures to minimize disputes arising from the use and occupation of property.

We recognize that land ownership involves more than holding a registered title. It requires careful structuring of transactions, proper management of occupation arrangements and timely protection of proprietary interests.

CM Advocates LLP provides strategic, commercially informed legal advice to help clients protect their property interests, manage land-related risks and navigate disputes arising from ownership and occupation of land.

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