Submissions on the Burden of Proof in an Unopposed Adverse Possession Claim

Educational sample 194 | Nairobi

Educational reconstruction from a reported Kenyan judgment. This is newly drafted text, not an original court filing and not a matter handled by our team. Identifying details are replaced with bracketed fields. Verify the facts, current law, jurisdiction and court directions before signing, swearing or filing.

Reconstructed formal document

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

CAUSE CIVIL SUIT OR APPLICATION NO [correct reference]

[CLAIMANT PLAINTIFF OR APPELLANT] v [RESPONDENT OR DEFENDANT]

WRITTEN SUBMISSIONS

1. The Applicant historically relied on the owners’ non-appearance and his unchallenged evidence. The absence of a defence did not relieve him of proving every element of adverse possession. Service, entry and entitlement remain separate questions.

2. The claimed February 2011 entry was not reconciled with the affidavit’s reference to earlier occupation by grandparents. The Court needed a clear start date and circumstances showing when possession became adverse rather than derivative or permissive.

3. Assertions of fencing and maintenance lacked independent support on the source record. The official search established registered owners but did not show dispossession, discontinuance or notorious adverse acts. The owners’ physical absence alone could not establish loss of title.

4. The statutory period must be continuous and adverse, not merely a count of years of residence. The precise extent of possession and the owners’ actual or reasonably apparent awareness require the evidence identified in the file.

5. The Court dismissed the historical claim without costs. These submissions explain that failure and cannot be used to obtain title on assertion alone. Any new claim must address its own title, possession history and evidence and must disclose the effect of any previous judgment.

DATED at [place] on [date]. Signed [party or advocate]. DRAWN AND FILED BY [name and address for service]. TO BE SERVED UPON [each affected party and address].

Use and evidence notes

Identify the issue, pleaded position, admitted evidence and bundle pages. Submissions do not introduce new facts or exhibits. Follow current directions on filing, length, authorities and service. Distinguish a requested amount from the actual award, a losing historical argument from the holding and a liability finding from proof of every damages head.

Supporting material schedule: [document date]; [author or custodian]; [description]; [bundle page]; [authenticating witness]; [admission or permission]. Attach only genuine available records and mark missing records accurately.

Source and procedural limits

An originating summons sought the remaining leasehold interest in Nairobi land. The claimant alleged occupation from February 2011 and more than twelve years of exclusive possession without permission. His affidavit also referred to grandparents' earlier occupation. The owners did not appear after substituted service. A further affidavit and official search confirmed registered proprietors, but independent evidence of commencement, continuity and adverse character was lacking.

The Court dismissed the adverse-possession claim without an order for costs. Family occupation made the start and nature of possession uncertain; no sufficient evidence showed when it became adverse to the owners. An unopposed claim still required proof. Residence for thirteen or fourteen years, an official search and assertions of fencing were insufficient on this record.

Limitation of Actions Act sections 7, 13, 17 and 38, Land Registration Act section 28(h), and Order 37 rule 7 require careful application. Attach the prescribed title material and identify the claimed land and leasehold remainder. Prove when possession became non-permissive and adverse, its extent, visibility and continuity. Do not treat a landowner's absence or a non-appearance as automatic loss of title, or use this specimen to revive the dismissed claim.

[2025] KEELC 7920 (KLR) — 13 November 2025. Original judgment: https://sheriahub.com/cases/ke/caselaw/mark-v-mmumbuongo-another-2025-keelc-7920-klr

The original decision may identify participants. The specimen replaces their identifying details. A source decision is not proof that a draft was filed, that an allegation succeeded, or that the same result will follow in another case.