



**Ng'ang'a v Hooper & another (Environment & Land Case
E038 of 2022) [2023] KEELC 17681 (KLR) (18 May 2023) (Judgment)**

Neutral citation: [2023] KEELC 17681 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E038 OF 2022**

JO MBOYA, J

MAY 18, 2023

BETWEEN

BERNARD MBUGUA NG'ANG'A PLAINTIFF

AND

CLARE HOOPER 1ST DEFENDANT

RICHARD HOOPER 2ND DEFENDANT

JUDGMENT

1. The Plaintiff herein has laid a claim to and in respect of L.R No. 11914/18 (hereinafter referred to as the suit property), on account of adverse possession, contending that same has been in occupation and possession thereof for the requisite statutory duration.
2. Invariably, the Plaintiff filed and lodged an Originating summons dated the 19th August 2022; and in respect of which same has sought for the following reliefs;
 - i. A Declaration that the title issued to the Defendants over Land Reference number 11914/18 extinguishes by the Plaintiff's Adverse Possession thereof for a period of more than 12 years in terms of the *Limitation of Actions Act*.
 - ii. That the Plaintiff has become entitled by the adverse possession to all that Land measuring approximately 2.05 Ha on Land Reference Number 11914/18.
 - iii. An order that the Registrar registers the Plaintiff as the Proprietor of the said Land measuring approximately 2.015 Ha on Land Reference Number 11914/18.
 - iv. That the Land Registrar be directed that the order herein shall be an Instrument of transfer of ownership.



- v. That the Land registrar to dispense, procure and produce certificate of title to be issued to the Plaintiff.
 - vi. That Pending the determination of the matter, an Injunction be issued restraining the Defendants whether themselves, their agents, employees and or servants howsoever from illegally or otherwise interfering with the Plaintiff's quiet possession and enjoyment of the said Land Neference number 11914/18.
 - vii. That Costs of this Summons be provided for.
3. For good measure, the Originating Summons herein is supported by an affidavit sworn by the Plaintiff and in respect of which the Plaintiff has attached three documents, to wit, a copy of the Certificate of Title; a copy of the Certificate of Official search; and a copy of a sheet containing Four separate photographs (sic) relating to the suit property.
 4. Upon being served with the Originating summons and the supporting affidavit thereto, the Defendants herein duly entered appearance and thereafter filed a Replying affidavit sworn on the 19th December 2022; and to which the deponent has exhibited a total of 30 annexures, detailing and reiterating the fact that the 1st Defendant and the deponent, respectively, have never ceded possession in respect of the suit property.
 5. In addition, the Defendants also sought for and obtained Leave of the Honourable court and thereafter filed a Supplementary Replying affidavit sworn by the 2nd Defendant herein. Instructively, the Supplementary Replying affidavit is sworn on the 23rd January 2023.
 6. On the 9th February 2023, the instant matter came up for directions, whereupon the Parties agreed to canvass and ventilate the Originating summons on the basis of affidavit evidence. Furthermore, the counsel for the Parties also agreed to file and exchange written submissions within a circumscribed timeline.
 7. Nevertheless and despite the terms of the directions of the Court, when the matter came up for Mention on the 28th February 2023; only the Defendants had filed their written submissions. For clarity, no submissions were filed by the Plaintiff.
 8. Consequently and in view of the foregoing, the Honourable court proceeded to and indeed reserved the matter for Judgment.

Submissions by the Parties:

a. Plaintiff's Submissions:

9. It is instructive to point out that both the Plaintiff and the Defendants herein agreed to file and exchange their respective submissions, albeit within a set timeline. However, by the time the matter came up for mention, the Plaintiff herein had not filed his written submissions.
10. Further and in addition, prior to commencing the crafting of the instant Judgment, I checked out the case tracking system (CTS), to ascertain and authenticate whether the Plaintiff had filed his submissions, albeit out of time.
11. Notwithstanding the foregoing, it is imperative to observe that no such submissions had been filed. Consequently and in this regard, the court shall be guided by the Depositions contained at the foot of the Supporting affidavit and the grounds contained in the Originating Summons.



b. Defendants' Submissions

12. On the other hand, the Defendants' herein filed written submissions dated the 15th March 2023; and in respect of which same has raised, highlighted and amplified three pertinent issues for consideration and determination by the Honourable court.
13. Firstly, Learned counsel for the Defendants has submitted that the Defendants herein acquired the suit property on or about the year 1998; and thereafter, same entered upon, took possession and have been in occupation of the suit property to date.
14. In addition, Learned counsel submitted that for purposes of ensuring their security, the Defendants herein entered into a Radio alarm agreement M/s Ultimate Security Limited wherein the latter undertook to provide round the clock security services to the Defendants; and in particular, in respect of the suit property, which is situated along Mutai Road, in Karen within the sub-county of Lang'ata.
15. In this regard, Learned counsel invited the Honourable court to take cognizance of the Agreement which was executed on the 1st October 1998 and the various invoices and payments receipts, which have hitherto been issued by the security service provider covering the entire duration between 1998 to date.
16. On the other hand, Learned counsel also referred the Honourable court to another set of documents and in particular, the minutes of the Members of the Community residing within Banda Area and wherein the Defendants property is situate. For ease of reference, Learned counsel referred to the Bundle alluded to and synchronized as annexures RH 10 to RH 12, respectively.
17. Furthermore, Learned counsel also alluded to other service providers who have hitherto been engaged by the Defendants to provide assorted services in respect of the suit property. In this regard, counsel alluded to the service contract document entered into between the 2nd Defendant and M/s Rentokil Initiative, dated the 2nd June 2006; and wherein the service provider variously provided and supplied fungicide and insecticide for elimination of termites and for incidental purposes. For ease of reference, Learned counsel referred to annexure RH7.
18. Essentially, it was the submissions of Learned counsel for the Defendants' that the Defendants have continuously been in possession and occupation of the suit property and that at no point in time, has the Plaintiff herein entered upon, taken possession of or occupied any portion of the suit property, whatsoever.
19. Secondly, Learned counsel submitted that despite the averment by the Plaintiff that same was in occupation and possession of the suit property, same has neither tendered nor produced before the Honourable court any credible/ plausible evidence to vindicate his claim of occupation.
20. In addition, Learned counsel has submitted that even though the Plaintiff has purported that his occupation of the suit property has been notorious, continuous and uninterrupted for a period of more than 17 years, no evidence has been availed to buttress such averment.
21. Furthermore, Learned counsel has also submitted that the Plaintiff has also failed to bring forth any statement or evidence of the neighbors and neighbors servants, whom same purports to be conversant with him, as far as occupation and possession of the suit property is concerned.
22. In this respect, Learned counsel has submitted that it was incumbent upon the Plaintiff to prove and establish his claim pertaining to adverse possession. However, Learned counsel has added that the Plaintiff has failed to establish or demonstrate his claim, either as required under the law or at all.



23. Is support of the submissions that the burden of proving the claim for adverse possession laid on the shoulders of the Plaintiff, Learned counsel for the Defendants has cited and relied on various decisions, inter-alia, Kweyu versus Omuto (1990)KLR, Richard Wefwafwa Songoi versus Ben Munyifwa Songoi (2020)eKLR, Mbira versus Gachui (2002) 1 EALR 137, Raphael Kaindi Kawala versus Mount Elgon Beach Properties Ltd (2018)eKLR, Mweu versus Kiu Ranching & Farming Cooperative Society Ltd (1985)KLR and Sisto Wambugu versus Kamau Njuguna (183)eKLR, respectively.
24. Lastly, learned counsel for the Defendants has submitted that the only time when a group of persons attempted to forcibly enter onto the suit property was on the 11th January 2023, whereupon the Defendants guards resisted and repulsed the individuals. For clarity, counsel pointed out that the said individual did not gain entry or access to the suit property.
25. Furthermore, Learned counsel also referred the Honourable court to the contents of paragraphs 8, 9 and 10 of the further Replying affidavit sworn on the 23rd January 2023 and posited that the intruders came back again on the 18th January 2023 and attempted to gain entry into the premises.
26. However, it was clarified that their attempt to enter upon the suit Property was again resisted and ultimately the police were informed and came to the Locus in Quo culminating into of the arrest of one of the offenders, who transpired to be known as Jackson Mwangi Wambue.
27. Be that as it may, Learned counsel for the Defendants submitted that a claim for adverse possession cannot be anchored on forcible and forceful entry or attempted forcible entry, onto the suit property, either in the manner that the offenders attempted on the 11th January 2023 and 18th January 2023, respectively.
28. To buttress and underscore the foregoing contention, Learned counsel for the Defendants has cited and relied upon the case of Ochura Birundu & Another versus John Olarashar Olengiru (2018)eKLR, where the Honourable Court, (Hon. Justice J.M Mutungi, Judge); is reported to have discussed the issue that adverse possession can not be procured on the basis forcible and forcefully occupation; or by use of force.
29. In view of the foregoing, Learned counsel has thus contended that the Plaintiff herein has failed to prove the claim for adverse possession pertaining to and concerning the suit property. Consequently, counsel has implored the Honourable court to find and hold that the Plaintiff suit is devoid and bereft of merits.

Issues for Determination:

30. Having reviewed and evaluated the Pleadings and Documents filed by the respective Parties and upon considering the written submissions filed on behalf of the Defendants; the following issues do arise and are thus worthy of determination;
 - i. Whether the Plaintiff herein has tendered or adduced credible Evidence to warrant a finding on account of Adverse Possession.
 - ii. Whether the Defendants have established that same have never ceded possession; and if so, what Reliefs ought to be granted.



Analysis and Determination

Issue Number 1

Whether the Plaintiff herein has tendered or adduced credible Evidence to warrant a finding on account of Adverse Possession.

31. It is the Plaintiff herein who filed and mounted the instant suit vide originating summons dated the 19th August 2022 and in respect of which same contended that he has been in possession and occupation of the suit property for a duration of over 17 years.
32. Furthermore, the Plaintiff averred that during the entire (sic) 17 year period, none of the Defendants herein interrupted or disturbed his occupation and use of the suit property.
33. In addition, the Plaintiff also averred that the neighbors and neighbors servants, who reside in the neighborhood of the suit property are conversant with him and that same is well known within the neighborhood of the suit property. In this regard, the Plaintiff averred that on the basis of such occupation, possession and use of the suit property, the court should proceed and decree that same has acquired the suit property on account of adverse possession.
34. Instructively, the Plaintiff has thereafter attached and exhibited a sheet containing Four assorted photographs, which are contented to have been taken in respect of the suit property and which are (sic) testament to the Plaintiff's occupation/possession of the suit property.
35. As pertains to the photographs which have been annexed as annexure BMN3, it is important and pertinent to observe that same are Electronic documents ; and hence it was incumbent upon the Plaintiff and his legal handlers to generate and tender before the Honourable court an Electronic certificate in accordance with the provisions of Section 106B of the Evidence Act, Chapter 80 Laws of Kenya.
36. Nevertheless, no such Electronic Certificate, either as required under the law or at all has been tendered. In this respect, there is no gainsaying that the photographs upon which the Plaintiff hinges his claim of occupation, possession and use of the suit property (for purposes of advancing adverse possession), are indeed invalid and devoid of any probative value. Consequently, such photographs cannot be utilized and or relied upon in proof of the claim for Adverse possession.
37. Without belaboring the point and especially the importance of an Electronic Certificate, it is imperative to take cognizance of the holding of the Court of Appeal in the case County Assembly of Kisumu & 2 others versus Kisumu County Assembly Service Board & 6 others [2015] eKLR, where the court held as hereunder;
 65. Section 106B of the Evidence Act states that electronic evidence of a computer recording or output is admissible in evidence as an original document "if the conditions mentioned in this section are satisfied in relation to the information and computer."
 66. In our view, this is a mandatory requirement which was enacted for good reason. The court should not admit into evidence or rely on manipulated (and we all know this is possible) electronic evidence or record hence the stringent conditions in sub-section 106B(2) of that Act to vouchsafe the authenticity and integrity of the electronic record sought to be produced. For ease of reference, we wish to reproduce Section 106B of the Evidence Act in its entirety:

106B Notwithstanding anything contained in this Act, any information
(1) contained in an electronic record which is printed on a paper, stored,



recorded or copied on optical or electro-magnetic media produced by a computer (herein referred to as computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein where direct evidence would be admissible.

- (2) The conditions mentioned in subsection (1), in respect of a computer output, are the following—
 - (a) the computer output containing the information was produced by the computer during the period over which the computer was used to store or process information for any activities regularly carried out over that period by a person having lawful control over the use of the computer;
 - (b) during the said period, information of the kind contained in electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;
 - (c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its content; and
 - (d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.
- (3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in paragraph (a) of sub section (2) was regularly performed by computers, whether—
 - (a) by combination of computers operating in succession over that period; or
 - (b) by different computers operating in succession over that period; or
 - (c) in any manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers,

then all computers used for that purpose during that period shall be treated for the purposes of this section to constitute a single computer



and references in this sections to a computer shall be construed accordingly.

- (4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following—
 - (a) identifying the electronic record containing the statement and describing the manner in which it was produced;
 - (b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;
 - (c) dealing with any matters to which conditions mentioned in sub-section (2) relate; and
 - (d) purporting to be signed by a person occupying a responsible position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate), shall be evidence of any matter stated in the certificate and for the purpose of this subsection it shall be sufficient for a matter to be stated to be the best of the knowledge of the person stating it.
- (5) For the purpose of this section, information is supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of an appropriate equipment whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purpose of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities.”

67. In relation to this case, the relevant conditions in that section are (a) if the computer output was recorded by a person having lawful control over the computer used; (b) if the output was recorded in the ordinary course of that person’s activities using a computer or some other electronic devise and fed into a computer that was properly operating throughout the material period; and (c) if that person gives a certificate that to the best of his knowledge, the output is an electronic record of the information it contains and describes the manner in which it was produced.
 68. The [Evidence Act](#) does not provide the format the certificate required under sub-section 106B(2) thereof should take. The certificate can therefore take any form including averments in the affidavit of the recorder.
38. Having found and held that the impugned photographs, which were proffered by the Plaintiff, are devoid of probative value and thus incapable of providing evidence of occupation; the next question that must be addressed is whether there is any other evidence that has been tendered by the Plaintiff.



39. In this regard and for good measure, I beg to point out that the entire affidavit filed by the Plaintiff merely contains averments, which have not been verified or better still supported by any cogent and tangible evidence. Certainly, it is not lost on the court that the burden of proving the claim for adverse possession laid on the shoulders of the Plaintiff.
40. In this respect, it is appropriate to reiterate the holding of the Court of Appeal in the case of Raphael Kahindi Kawala versus Mount Elgon Beach Properties Ltd (2018)eKLR, where the court of appeal stated and held as hereunder;
24. In Gabriel Mbui vs. Mukindia Maranya eKLR, it was correctly stated that the burden of proving title by adverse possession rests upon the person so asserting. Further, this Court stated in Mweu vs. Kiu Ranching & Farming Co-operative Society Ltd. [1985] KLR 430: that “adverse possession is a fact to be observed upon the land. It is not to be seen in the title. A man who buys land without knowing who is in occupation of it risks his title just as he does if he fails to inspect his land for 12years after he had acquired it.” In addition, it is equally established that adverse possession does not arise merely by occupation and use. (See Alfred Warimo vs. Mulaa Sumba Baraza, Civil Appeal No. 186 of 2011 (Ksm)).
41. Furthermore, the ingredients to be established, demonstrated and proved before a claim for adverse possession can be sustained, were elaborately discussed in the case of Kweyu versus Omuto (1990)KLR, at page 716; where the Court stated and held as hereunder;
- “By adverse possession is meant a possession which is hostile, under a claim or color of title, actual, open, uninterrupted, notorious, exclusive and continuous. When such possession is continued for the requisite period (12 years), it confers an indefeasible title upon the possessor. (Color of title is that which is a title in appearance, but not in reality). Adverse possession is made out by the Co-existence of two distinct ingredients: the first, such a title as will afford color; and, second, such possession under it as will be adverse to the right of the true owner. The adverse character of the possession must be proved as a fact; it cannot be assumed as a matter of law from mere exclusive possession, however long continued. And the proof must be clear that the party held under a claim of right and with intent to hold adversely. These terms (“claim or color of title”) mean nothing more than the intention of the dispenser to appropriate and use the land as his own to the exclusion of all others irrespective of any semblance or shadow of actual title or right. A mere adverse claim to the land for the period required to form the bar is not sufficient. In other words, adverse possession must rest on de facto use and occupation. To make a possession adverse, there must be an entry under a color of right claiming title hostile to the true owner and the world, and the entry must be followed by the possession and appropriation of the premises to the occupant’s use, down publicly and notoriously.”
42. Further and in addition, the necessity to prove that the claimant has indeed been in occupation of the suit property to warrant adverse possession was also reiterated in the case of Richard Wefwafwa versus Ben Munyifwa Songoi (2020)eKLR, where the court stated thus;
36. For a claim founded on adverse possession to succeed, the person in possession must have a peaceful and uninterrupted user of the land. Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are important factors in a claim for adverse possession.
37. In this appeal, the appellant had the burden to prove not mere possession of the suit property, but possession that was nec vi, nec clam, nec precario. (See Kimani Ruchine -v- Swift,



Rutherfords Co. Ltd. [1980] KLR 1500 and Karnataka Board of Wakf -v- Governemnt of India & Others [2004] 10 SCC 779).

43. Clearly, there is no gainsaying that the Plaintiff herein bore the burden of establishing and proving the claim of adverse possession, by placing before the Honourable court evidence to show that indeed same has been in occupation and possession of the suit property, peacefully, continuously and without interruption for statutory duration, namely, 12 years as espoused by the provisions of Section 12 of the Limitation of Actions Act, Chapter 22 Laws of Kenya.
44. Sadly, the Plaintiff herein has neither tendered nor produced before the Honourable court any scintilla of evidence, to show or establish his entry upon, occupation of and possession of the suit property or at all. Consequently, it is my finding and holding that the Plaintiff has failed to discharge the burden of proof as envisioned by the Provisions of Sections 107, 108 and 109 of the Evidence Act, Chapter 80 Laws of Kenya.
45. Contrarily, the Defendants herein have placed before the Honourable court a plethora of documents, showing that same have remained in occupation and had possession of the suit property from the onset, when same bought and acquired the suit property to date. Indeed, the Defendants have tendered before the court evidence of a security contract entered into and executed with M/s Ultimate Security Ltd, who undertook to provide alarm security services to the Defendants and the suit property.
46. Additionally, the Defendants have also placed before the Honourable court evidence of invoices from the Security Firm, namely, M/s ultimate security ltd, being the service provider and the revenue receipts pertaining to the payments, which have been made by the Defendants, on account of provision of security services in respect of the suit property.
47. To my mind, the Defendants have established that same have continuously been in actual and constructive possession and occupation of the suit property for all the duration right from acquisition to date. Instructively, the occupation and possession of the suit property by the registered owners, militates against and negates a claim for adverse possession.
48. Notably and before departing from the issue herein, it is appropriate to observe that the Plaintiff herein, appears to be one of the two people who proceeded to the neighborhood of the suit property on the 11th January 2023 and 18th January 2023, with a view to forcibly and forcefully gaining entry onto the suit property, perhaps with a view of actualizing a scheme as against the registered owners of the suit property.
49. Nevertheless, evidence was placed before the Honourable court to show that the attempted entry onto and ingress upon the suit property was averted and resisted by the Defendants security guards, who ultimately alerted the police personnel from Karen Police Station. For good measure, it was averred that the police eventually arrived at the scene on the 18th January 2023; and arrested one of the two trespassers/offenders.
50. Whereas the Plaintiff herein is not the trespasser/offender, who was arrested and ultimately charged at Ngong Law Courts; the point I wish to make is to the effect that a claim for adverse possession cannot be propagated and espoused by a person who is not in occupation of the designated property.
51. Notably and for the avoidance of doubt, a claim for adverse possession cannot be relied upon or better still, propagated with a view to gaining ingress or entry, which was never available at the onset/ or time of institution of the suit.
52. Furthermore, one cannot resort to violence and forcible entry onto a property and thereafter (sic) purport to anchor a claim for adverse possession on the basis of such forcible and violent entry.



Clearly, for one to propagate a claim for adverse possession, it must be shown that the impugned entry was peaceful and thereafter same has continued in occupation/ possession for the requisite statutory duration.

53. In the case of Ochura Birundu & Another versus John Olarashar Ole Ngiru (2018)eKLR, the Court had occasion to consider whether forcible entry and use of force could be relied upon to anchor/ sustain a claim for adverse possession.
54. In the course of the Judgment, the court (Hon. Justice J.M Mutungi, Judge) stated and held as hereunder;

Would forcible entry and resistance of the owner re-entry constitute adverse possession? I do not think so as the ingredients of the doctrine of adverse possession are that the adverse possessor peacefully enters the land and occupies the same openly and carries on activities on the land that are inconsistent and hostile to the rights of the true owner. An adverse possessor does not need to position a guard to prevent the owner from accessing the property until the period of 12 years expires. The possession is meant to be peaceful, open, quiet and uninterrupted for the entire period of 12 years for the doctrine of adverse possession to be applicable.

55. To surmise, it must have become evident and apparent that the Plaintiff herein, has neither established nor demonstrated that same has been in occupation or had possession of the suit property, peacefully, continuously and uninterrupted for the statutory duration to warrant the declarations sought at the foot of the originating summons herein.
56. Additionally and in any event, it may very well be that the Plaintiff had discerned, the loopholes inherent in his case and lack of bona fides in the suit; and thus his deliberate failure to file the requisite submissions, either within the circumscribed timelines or at all.
57. Be that as it may, this Honourable court was alive to the fact that even though no submissions were filed by the Plaintiff, the court was still obliged and obligated to interrogate the Plaintiff's suit and consider the depositions, contained at the foot of the supporting affidavit.
58. Instructively and for the sake of completeness, the depositions were duly considered but ultimately, same were found wanting and devoid of any probative value, or at all.

Issue Number 2

Whether the Defendants' have established that same have never ceded possession and if so; what Reliefs ought to be granted.

59. The Plaintiff herein had sought to persuade the court that same had acquired and obtained ownership of the suit property by prescriptive rights. However, the Plaintiff has failed to tender credible evidence to vindicate his claim.
60. To the contrary, the Defendants placed before the Honourable court overwhelming and credible evidence, confirming that same are actually and constructively in possession of the suit property. In this regard, the Defendants even availed evidence of security contract entered into with a service provider, essentially to ensure the security of both the Defendants and their property, namely the suit property.
61. In addition, the Defendants also placed before the Honourable court evidence that same are still the registered proprietors/owners of the suit property. In any event, the issue of ownership of the suit property by the Defendants was duly admitted and acknowledged.



62. By virtue of being the registered owners of the suit property, the Defendants are no doubt, entitled to exclusive possession, occupation and use of the suit property, in the manner articulated by the provisions of Sections 24 and 25 of the *Land Registration Act*, 2012.
63. Furthermore, the extent and scope of the Rights that inhere in the Defendants herein, by virtue of being the Owners of the Property; was underscored by the court in the case of *Waas Enterprises Limited versus City Council Of Nairobi & another* [2014] eKLR, where the court stated and held as hereunder;

“As a registered proprietor, the plaintiff is entitled to enjoy all proprietary rights to the exclusion of all others. This includes the right to exclusive possession of the suit land. The rights of a proprietor of land are set out in Sections 24 and 25 of the *Land Registration Act* which provide as follows :-

“24. Subject to this Act—

- (a) the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and
- (b) the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or incidents of the lease.
25. The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject—
1. to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and
 2. to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register.
- (2) Nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which the person is subject to as a trustee.”

It therefore follows from the above that only the plaintiff is entitled to enjoy proprietary rights over the suit land.”

64. Consequently and in view of the foregoing, there is no doubt, that the Defendants are entitled to enjoy the rights and privileges attendant to ownership of the suit property. Invariably, the enjoyment of such rights can only accrue and be partaken of by declining the reliefs that were sought at the foot of the Originating Summons, which in any event, was stillborn.

Final Disposition

65. Having addressed, analyzed and considered the issues that were itemized in the body of the Judgment, I come to the conclusion that the Plaintiff's claim at the foot of the originating Summons dated the 19th August 2022, was neither established nor proven, either to the requisite standard or at all.



66. Furthermore, I have also come to the conclusion that the Defendants have effectively been in possession, occupation and use of the suit property. Consequently, I have opined that a claim for adverse possession cannot legally lie and/or co-exists with the active occupation of the suit property by the registered owner.
67. In the premises, the Plaintiff's claim is devoid and bereft of merits; and hence same be and is hereby Dismissed with costs to the Defendants.
68. For clarity, the costs shall be taxed and certified by the Deputy Registrar of the court, albeit on high scale taking into account that the subject suit lacked bona fides, right from the onset.
69. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 18TH DAY OF MAY 2023.

OGUTTU MBOYA,

JUDGE.

In the Presence of;

Benson Court Assistant

Mr. Shah for the Defendants

N/A for the Plaintiff

