



**Yego v Sigisin & 3 others (Environment & Land Case E017 of 2022)
[2023] KEELC 17633 (KLR) (18 May 2023) (Judgment)**

Neutral citation: [2023] KEELC 17633 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET
ENVIRONMENT & LAND CASE E017 OF 2022**

MN MWANYALE, J

MAY 18, 2023

BETWEEN

JOHN KIPKORIR YEGO PLAINTIFF

AND

RAEL JEPTUM SIGISIN 1ST DEFENDANT

DENNIS KIPKOSGEI 2ND DEFENDANT

ABIGAEEL JEPKOECH 3RD DEFENDANT

FRANCIS KIBET MAIYO 4TH DEFENDANT

JUDGMENT

1. The plaintiff, John Kipkorir Yego, took out on originating summons dated May 18, 2022, seeking orders *inter alia*,
 - a. That the honorable court declares that the registered proprietors interest, her successors in title, the administrators of the estate of the registered proprietor or whomsoever claiming through them that may be or may have been registered as the proprietors of a portion of 5.0 acres occupied, possessed and used by the applicant out of Nandi/baraton/776 be extinguished.
 - b. That on declaration of the interests as extinguished, her name, successors in title the administrators or whomsoever claiming through her or them that may be and may have been registered as the proprietor(s) during the pendency of this suit, be deleted and/or be removed from the register and the applicant be registered as the proprietor of a portion of 5.0 acres out of Nandi/baraton/776 in place of the present proprietor(s) and administrators and/or successors in title, he having acquired ownership thereof by way of adverse possession.
 - c. That the honourable court be pleased further to order and direct that the 5.0 acres out of the suit land Nandi/baraton/776 be vested on the applicant.



- d. That the defendant/respondent, their successors in title, administrators or whomsoever claiming through her or them that may be and or may have been registered as the proprietors be ordered to pay costs to the plaintiff/applicant in this case.
2. The suit having been commenced by way of an originating summons, direction were taken on 25/10/2022, where the originating summons was converted to a plaint, and the supporting affidavit as a witness statement thereof.
3. The replying affidavit dated 16/8/2022 was converted as a defence, the matter was then to proceed by way of *viva voce* evidence.
4. Parties were also granted leave to file additional documents and witness statements.

Plaintiff's Case and Evidence: -

5. It is the plaintiff's case as pleaded in the originating summons dated May 18, 2022 that he is in possession and occupation of a portion measuring 5.0 acres out of parcel Nandi/baraton/776, having been in possession thereof for more than 12 years having bought and entered thereon on July 11, 2008 from 1st respondent.
6. That the occupation has been continuous uninterrupted, open and notorious and adverse to the defendant/respondent since the said date and that the respondents as successors to the registered proprietor in title have nothing to succeed in the said portions of 5.0 acres out Nandi/baraton/776.
7. That he had developed the land and has been in possession from that particular day and date.
8. Only the plaintiff testified in support of his case. It was his evidence that he first purchased 3 acres on 11/7/2008 from the defendant and was given vacant possession in December 2008, he paid a total of Kes 840,000/= for 3 acres. Initially purchasing 3 acres and thereafter 2 acres.
9. After purchase 1st defendant moved to Lessos. He had bought all the developments and trees and the house thereon was bought in the 2nd agreement made on 12/10/2008 for purchase of the 2 acre for Kes 665,000/= which included a house erected thereon a toilet and fence. Hence making it to 5 acres.
10. The plaintiff further stated that someone else had purchased 0.7 acres of the suit property and was in occupation.
11. The plaintiff further indicated that from 2008 he had occupied the suit property but was not involved in the pending succession cause.
12. The plaintiff produced the copy of register of Nandi/baraton/776 as P Exhibit 2. A copy of search as P exhibit 3 and an agreement for sale dated 11/7/2008 as P Exhibit 4, and chief's letter dated 9/11/2020 as P Exhibit 5.
13. The plaintiff further stated that he had been using the more than 3 acres and had not been sued over his occupation of the suit property.
14. In cross – examination, he stated that he was living in 5 acres of Nandi/baraton/776 that in 2008 the property was in the name of Chepkasi Sigisin who was the 1st defendant's mother; and no succession had been done. In respect to the neighbor Edwin Kirwa, the plaintiff indicated that he was not calling the neighbor as his witness. It was his answer that he took possession of the property in January of 2009 and planted tea bushes in 2013 which were planted on about 3.1 acres. He supplied tea to Kapchorwa Tea factory though he did not have the supply agreement he had been utilizing 5 acres.



15. He stated that the 2nd agreement was genuine. He demolished Rael's house in 2020 and they were his farm hands who were residing thereon. He had attended land control board meeting and had not gotten the LCB consent. He was not aware when the agreement expired and had not sued for specific performance. He had gone to chief and there was a dispute, he had filed an objection in the Succession Cause No. E093/2021 pending before the High Court at Kapsabet. The objection had been filed before this suit was filed.
16. In re-examination, he stated that he was to be included in the succession proceedings, and as he had been given possession, which he was given in January 2009. The vacant possession was for the whole 5 acres. He demolished the house so as to utilize the whole property. He had paid 65,000/= for the developments on the property. He stated that he had bought the property from Rael Cheptumo with no objection from anyone. He had voluntarily signed the letter from the Chief, in the presence of Abigael and Dennis.
17. The plaintiff case thereafter closed, and matter proceeded for defence case.

Defence Case and Evidence: -

18. In the replying affidavit to the originating summons sworn on 16/8/2022, that was converted to a defence, it was the defence case was that the suit property initially belonged to the late Arap Sigisin who was the 1st defendant father and the suit property was registered in the name of Chepkasi Sigisin, the 1st defendant mother. That the 1st defendant being an only child to the late Chepkasi Sigisin was the sole beneficiary of LR No Nandi/baraton/776 measuring about 2.3 hectares.
19. The 1st Defendant believing that the property was subject to intergenerational trust/customary trust nonetheless sold 3 acres comprised in the suit property without knowledge and/or consent of the other beneficiaries of her late mothers estate.
20. That her children discovered the sale in 2019 and objected to the same. That transaction was a nullity because of want of legal capacity and the 1st defendant was willing to refund the plaintiff less mesne profits.
21. It is the defendant's further case that her late mother's house that stood in the remaining 2 acres of land was demolished two weeks prior to filing of the suit.
22. The defendant joint defence is that;
 - a. The 1st defendant did not have the legal capacity to transfer the legal interest in the portion comprised in the suit parcel as the property belonged and was registered in the name of her late mother.
 - b. The agreement between the plaintiff and 1st defendant was thus a nullity for want to legal capacity to transact.
 - c. The transaction amounted to intermeddling of Estate of a deceased person hence null and void *ab initio*.
 - d. The transaction was void by operation of law for want of the land control board consent being an agricultural land.
23. On the strength of the above the defendant prayed for the dismissal of the suit.
24. Four defence witnesses testified DW1, Francis Maiyo confirmed that the plaintiff had purchased 3 acres within Nandi/baraton/776 which property measured 5 ½ acres and belonged to Chepkasi Sigisin who



had inherited from her husband and that Chepkasi Sigisin was his older sister. The witness was also a witness to the Agreement for sale dated 11/7/2008, and she said the plaintiff did not purchase the 2 ½ acres with the improvements thereon. The registered owner passed in 1984. There was an objection by the 1st defendant's daughter Abigael, to the sale of the 3 acres.

25. The witness supported decision by the 1st defendant to refund the plaintiff his money for the purchase of the 3 acres.
26. In cross – examination the witness stated that John Yego had purchased 3 acres in 2008 and he was present during the purchase but Dennis and Abigael 2nd and 3rd defendant respectively were not consulted as they were minors. The plaintiff had been utilizing the property from 2008 when he bought the same.
27. In re-examination, he stated that John Yego had purchased only 3 acres and nothing more. The 1st Defendant daughter had objected to the sale of the 2.5 acres. He was not aware whether Rael the 1st Defendant reported to police on the demolition in 2020.
28. On her part DW2, stated that she knew the plaintiff as her neighbor who she had sold 3 acres within Nandi/baraton/776, the whole acreage was 5.5 acres. It was her testimony that she had executed the agreement for sale dated 11/7/2008, whilst her mum whom the property was registered had died on 2/11/1984. At time of execution of the agreement for sale, DW2 had not undertaken subdivision.
29. It was her further testimony that her late mother had inherited parcel number 776 from her late husband (DW2's father).

The witness indicated that she did not sale the 2.5 acres that had remained, and the house that was demolished in 2020 was hers. She never reported the demolition as there was a succession cause; she filed the succession cause which is pending before the Kapsabet High Court case no. E093/2021.

She stated that John Yego the plaintiff only utilized 3 acres.
30. It was her further testimony that she wanted to refund John Yego for the 3 acres less Mesne profits, since she did not have a grant at the time of the sale of the suit property.

At the time of the chief's meeting, the house had not been demolished.
31. In cross – examination, she stated that she had sold 3 acres at 840,000/=. She was not aware of the current price; but confirmed that there was an increase in value. She stated that she had given sold 3 acres but not the extra 2.5 acres. Her daughter was in class 8 and a minor at the time of the sale.
32. The objection to the sale of 2.5 acres was done by Abigael the 3rd defendant in 2020. She disputed an agreement for sale drawn and executed before Mr. Chumo Advocate but agree with the agreement for sale drawn and executed by Mr. Choge Advocate.
33. She did not report about the demolition of the house, succession had not been filed. She indicated further that she only sold 3 acres and her family members had agreed to the sale including Mr. Kitur Bor; her children were minors but the adults gave consent.
34. In re-examination, the witness stated that she only sold 3 acres within Nandi/baraton/776. She gave possession to the plaintiff in 2009 she did not give possession to the 2.5 acres, and the house was demolished in 2020 at which time she had commences succession proceedings.
35. She did not sign the minutes of 9/11/2020 because she had not sold the extra 2.5 acres, if she had sold she would have signed.



36. DW3, Dennis Kipkosgei testified. It was his testimony, that he knew the plaintiff who had bought 3 acres in Nandi/baraton/776. When the transaction was entered in 2008, between the plaintiff and his mother (PW2) he was 12 years old.
37. He stated that the plaintiff had bought 3 acres and he took photographs of the house that was demolished in 2022. He indicated that Mr. Yego was only using the portion he had purchased. The witness indicated that Mr. Yego had filed an objection in the succession cause E 093/2021 at Kapsabet High Court. It was the DW3's testimony that the plaintiff be refunded the monies he used to buy, the 3 acres less mesne profits.
38. In cross – examination, he indicated that he was a minor under the care of his mother, when his mother sold the property thus her mother was under no obligation to consult him on the sale.
39. He indicated that he moved from suit property in 2009. In 2020 he sought recognition to occupy the 2 ½ acres and meeting was held on 9/11/2020. He did not sign the minutes of the elders because he was not in agreement with the verdict reached.
40. In further cross- examination, the witness was adamant that their mother had no right to sell the property and they wanted to refund the plaintiff John Yego. He indicated that in the succession cause pending before Court they did not include the plaintiff as a beneficiary.
41. In re-examination, the witness indicated that he did not obtain the letter for the succession personally, but the minutes of 9/11/2020 was equally done before the same chief.
42. The other occupant Edwin had not claimed against the estate. The 2.5 acre are not occupied when she took the photograph of house to the chief and during the meeting at the chief's office, Mr. Yego confirmed that the house belonged to his mother.
43. DW4, the last witness testified that she was aware that the plaintiff had purchased 3 acres within Nandi/baraton/776, which property belonged to her grandmother Leah Chepkasi Sigisin and that the property Nandi/baraton/776 measured 5.5. Acres, but her mother had sold only 3 acres out of it.
44. It was the witness's evidence that her mother did not consult her brother and herself since they were minors but she lodged a complaint before the Chief in 2020 about the sale of the additional 2.5 acres. They were minutes prepared in 9/11/2020 but she did not sign the minute since she disagreed with the findings that the whole property had been sold. The witness wanted her mother to refund the money to John Yego since succession had not been done when she sold the 3 acre yet the property was ancestral, and Yego should refund the mesne profits since he had been utilizing the 3 acres.
45. In cross – examination, the witness stated she was married in 2018, and the bethrowal was in Lemok in Uasin Gishu. She had not gone back to the suit property since 2008, it was her testimony that her mother sold the property when she was a minor and her mother had no obligation to consult her, as her mother ranked higher than her. In succession she confirmed that he had nothing to show that John Yego did not utilize the whole property.
46. She indicated that they had not sued John Yego and had no eviction orders against him. In the letter dated 11/12/2020, it was indicated that John Yego and Edwin Kirwa occupied the property, because the chief knew people in her jurisdiction.
47. In re – examination, she deemed having been issued with the letter dated 11/12/2020. She stated that Edwin Kirwa was not on the property. The chief had refused to issue the letter for succession until she was called by her Advocate.



48. After the testimony of the 4 defence witnesses the defence case closed and parties were directed to file their respective submissions.

Plaintiff's Submission:-

49. In his submission before Court, the plaintiff submitted general on the principles of adverse possession and further submitted that a purchaser is a person in whose favour time for purposes of adverse possession can run and he placed reliance on the decisions in Public Trustee v Wanduru as well as Wanyoike v Kabiri (1979) KLR.
50. It was the plaintiffs further submission that he had fulfilled the mandatory requirement of attaching certified copy of the register as set in the decision in Githi Mwangi & 4 others v Joseph Mwai Kabiru & 4 others (2005) eKLR.
51. The plaintiff further urges the court in his submission to enter judgment on admission on account that the defendant did admit the sale to him and the occupation by him of the suit property. On the strength of the above submissions the plaintiff prays for entry of judgment as prayed for in the originating summons.

Defendant Submission: -

52. The defendant in their submission do not dispute sale of 3 acres to the plaintiff by the 1st defendant *vide* the agreement of sale dated 11/7/2008 at which time the suit property belonged to the late Chepkasi Sigisin aka Leah Chepkasi for a consideration of Kes 840,000/= and possession and occupation was to take effect from January 2009.
53. The defendant submit that no consent of land control board was issued pursuant to the sale hence the sale was an illegality. The defendant framed 4 issues for determination and submitted on them. The issues were;
- a. Whether the plaintiff has proved ownership by way of adverse possession of 5 acres comprised in LR No Nandi/baraton/776.
 - b. Whether the suit land is ancestral hence subject of an inter-generational trust
 - c. Whether a claim for inter-generational trust is subject to limitation of actions.
 - d. Whether the 1st defendant had the legal capacity to transfer a legal title/interest in the suit to the plaintiff.
54. On the 1st issue of whether the plaintiff proved adverse possession, it is the defendant submission that the entry by the plaintiff, was by permission after the 1st defendant received the payment of Kes 340,000/= for the 3 acres hence the occupation was not adverse the defendant submits; and cites the decision in Samuel Miki v Jane Njeri Richu. The defendant further submit that the plaintiff did not prove occupation of the 2.5 acres.
55. The defendant thus submits that adverse possession has not been proved on the 3 acres a there was permission and the 2.5 acres as no proof of occupation was tabled before court.
56. The defendant submits that the suit property is ancestral land hence subject to an inter-generational trust and that the suit ancestral land is not subject to Limitation of Action Act, pursuant to section 20 (2) of the Limitation of Action Act.



57. The 2nd, 3rd and 4th defendant submits that the 1st defendant lacked capacity to enter into a valid agreement for sale of the 3 acres as succession in respect of the estate of the 1st defendant mother Leah Chepkasi Sigisin had not been undertaken; and that the dealings thus amounted to intermeddling as the agreement was a nullity.

58. On the strength of the above submissions the defendant pray that the suit be dismissed.

Issues For Determination: -

59. On analysis of the pleadings, the evidence on record as well as the rival submissions, and whereas the plaintiff did not frame any issues for determination while the defendant framed 4 issues as enumerated in paragraph 53 above.

60. The Court frames the following as issues for determination.

- i. Whether or not the suit property was ancestral land and under an intergenerational trust thus not subject of the Limitation of Action Act?
- ii. Whether or not the plaintiff has proved his claim against the defendant?
- iii. Whether or not the defendant defence succeeds?
- iv. Is the plaintiff entitled to the reliefs sought for in the plaint?
- v. Who bears the costs of the suit?

61. In their submission before court the defendant submit that the suit property was a subdivision of Nandi/baraton/564 which originally belonged to the 1st defendant father and was registered to the 1st defendant mother upon demise of the 1st defendant husband and the 1st defendant was a beneficiary of the her mother's estate, together with the 3rd and 4th defendant hence the suit property was ancestral and that section 20 (2) excepted ancestral land from the provisions of the Limitations of Act cap 22, upon which the originating summon as well as the entire plaintiff's claim was anchored on.

62. The plaintiff did not address the court on the issue mainly because the plaintiff was the first to file submission and did not seek leave to respond to this issue and the submissions by the defendant general.

63. Section 20 (1) and 20 (2) of the Limitations of Action Act provides as follows:

- “ 1) None of the periods of limitation prescribed by this act apply to an action by a beneficiary under a trust, which is an action;
 - a) In respect of a fraud or fraudulent breach of trust to which the trustee was a party or privy or
 - b) To recover from the trustee trust property or the proceeds thereof, in the possession of the trustee or previously received by the trustee and converted to his use.
- 2) Subject to subsection (i) an action by a beneficiary to recover trust property or in respect of any breach of trust (not being an action for which a period of Limitation is prescribed by any other provision of this Act) may not be brought after the end of six years from the date on which the right of action accrued.

Provided that the right of action does not accrue to a beneficiary entitled to a future interest in the trust property, until the interest falls in possession.”



64. Whereas the 1st, 2nd and 3rd defendant herein are beneficiaries of the Estate of Chepkasi Sigisin, their beneficial interest is still a future interest as it is subject to the succession proceedings in Kapsabet High Court E 091/2021 which is yet to be confirmed.
65. Thus whereas the suit property Nandi/baraton/776, is ancestral within the definition of ancestral as defined in the decision of the Court of Appeal in the case of *Mbui Mukangu v Gerald Maturiri Mbui* (2004) KLR where the Court held that *interalia*, that “ancestral land was one which was held by one generation for the benefit of the other generation”; the 1st, 2nd and 3rd defendant interests in the suit property have not yet crystallized as the succession proceedings have not been confirmed, hence the right of action has not accrued to them as beneficiaries since their interest is a future interest and the same falls within the proviso of section 20 (2) of Cap 22.
66. The court finds that as the 1st, 3rd and 4th defendant rights and interests on the suit property has not accrued in view of the fact that grant is yet to be confirmed.
67. Thus on non-application of the provisions of the *Limitations of Action Act*, in this matter as submitted by the defendant in view of section 20 (2) of the *Limitation of Action Act*, the court is not persuaded by the said submissions for the reasons that firstly;-
- a) The limitation that does not apply to ancestral land based on limitation customary law is the limitation prescribed in section 20(2) of the *Limitation of Action Act*, which is 6 years. This finding is made on the basis of decision of the Court of appeal in *Macharia Kibari v Ngigi Kibari* (1994) eKLR where the Court observed *interalia*;

“Limitation prescribed in section 20(2) of the *Limitations of Actions Act*, will not apply to a trust coming into existence under customary law. Under customary law the land even after the right of action has accrued is held in trust even for decades before any step is contemplated for a formal transfer or division. Limitation does not apply in customary law”
 - b) Secondly the right of action has not accrued to the 2nd and 3rd defendant as the succession cause is yet to the confirmed. Under the proviso to section 20 (2) the right of action does not accrue to a beneficiary entitled to a future interest in trust property until the interest falls into possession.
 - d) Thirdly, the right of action contemplated in section 20 of the *Limitation of Action Act*, is an action by a beneficiary as against a trustee, (Section 20(1) of the *Limitation of Action Act*.)

In this case, there is no action against a trustee nor a third party as there is no counter claim.

68. For the above reasons and in answer to issue number 1, the court finds the suit property to be ancestral, but subject to *Limitation of Action Act* under the proviso of section 20 (2) of the Act.
69. On issue number 2, as to whether the plaintiff has proved his claim against the defendant. The plaintiff's claim is for adverse possession of 5.0 acres comprised in Nandi/baraton/776.
70. The plaintiff testified as the sole witness in the matter and he produced a copy of an agreement for sale of 3 acres dated 11/7/2008 for a total of Kes 840,000/=.
71. It was his evidence that upon the said purchase, he later on made another *vide* an agreement dated 12/10/2008 for an extra 2.5 acres. Hence his claim for 5.0 acres.



72. With regard to the agreement dated 11/7/2008, for the 3 acres the plaintiff produced a copy in evidence as P Exhibit No. 4. He equally produced as P Exhibit 2a copy of search for Nandi/baraton3, and a letter dated 9/11/2020 from the chief as P Exhibit 5.
73. All the 4 defence witnesses, equally testified to the purchase of 3 acres by the plaintiff but denied the purchase of the extra 2.5 acres, by the plaintiff. The defence witnesses equally confirmed the occupation of the 3 acres by the plaintiff from January 2009, although the plaintiff stated that his entry was from December 2008.
74. The defence witnesses further confirmed that after the sale of the 3 acres they did not interfere with possession of the same save they objected to the sale of 2.5 acres before the chief in 2019.
75. From the testimonies of the witnesses plus documentary evidence produced before Court indeed the plaintiff purchased has proven purchase and occupation of 3 acres, with regard to the 2.5 acres, the plaintiff did not produce the agreement for sale in respect of this extra 2.5 acres, neither did he call any witnesses, including neighbors so as to prove occupation of the extra 2.5 acres, no photographs of the tea bushes were produced and the Court finds he did not prove the occupation of the extra 2.5 acres as the same was not corroborated, however in respect of the 3 acres the Court finds that the plaintiff proved possession, and occupation and the same was corroborated by all the defence witnesses.
76. The occupation is said to have been with permission as purchaser pursuant to an agreement for sale dated 11/7/2008 which sale by dint of provisions of Land Control Act ought to have obtained an LCB consent in terms of Section 6 thereof.
77. The defendant submits that as there was no land control board, then the agreement expired and since the entry was pursuant to an agreement there was permission hence not adverse.
78. The defendant placed reliance on the case of Samuel Miki v Jane Njeri Richu. On the same breath the defendant submits that the 1st Defendant lacked capacity to enter into any valid contract of sale for lack of capacity for failure to take out letters of administration in the respect of the Estate of the late Leah Cheps in Sigisin.
79. The plaintiff submissions on this two important points are silent. The Court has looked at the law and whereas the decision cited by the defendant to wit Samuel Miki v Jane Njeri Richu stated the general law on purchases and adverse possession, the same said decision created an exception, where a purchaser takes possession and does not obtain land control board consent.

The Court held thus,

“In our view where a purchaser or lessee of land in a controlled transaction is permitted to be in possession of the land by the vendor, or lessor pending completion and the transaction thereafter becomes void under section 6 (1) of Land Control Act for lack of consent of the land control board, such permission is terminated by operation of law and continued possession by the respondent. If not illegal becomes adverse from the time the transaction becomes void.”

79. In our present case here the 1st defendant did not have capacity to enter into an agreement hence the agreement dated 11/7/2008, was null and void. It follows thus the occupation by the plaintiff pursuant to an agreement that was void, became adverse to the defendant ownership by parity of reasoning with the Samuel Miki case and as was held by the Court in Opot v Osoma ELC case KELC 16453) KLR.
80. Having dealt with the two issues of illegality of the agreement and permission the Court now seeks to answer the question whether the plaintiff has proved adverse possession. The decision by the Court



of Appeal in the case of *Mtana Lewa v Kabindi Ngala* (2015) eKLR, restated the doctrine of adverse possession thus;

“The process springs into action essentially by default or inaction of the owner. The essential perquisites being that the possession of the adverse possessor is neither by force or stealth nor under the licence of the owner. It must be adequate in continuity, in publicity and in extent to show that possession is adverse to the title owner.”

81. The plaintiff entered possession in January 2009 as per the 1st defendant in respect of the 3 acres hence time started running thereof and crystallized in 2021. The suit having been filed in 2022, the right of adverse possession had accrued.
82. The plaintiff as well as defence witnesses confirmed the occupation to have been peaceful and continuous for the said period thus the plaintiff has proved adverse possession in respect of 3 acres in Nandi/baraton/776 but occupation of the 2.5 acres extra was not proved as it was not corroborated, the plaintiff having not called any witnesses; whereas the burden of proof squarely lay with him.
83. Thus in answer to issue number 2 the plaintiff has proved adverse possession in respect to 3 acres in Nandi/baraton/776.
84. In view of the findings on issue number 1 and issue number 2, the court in answer to issue number 3 finds that the defendant defence does not succeed as the plaintiff has proven adverse possession of the 3 acres in Nandi/baraton/776.
85. On issue number 4, the court notes that whereas the plaintiff has succeeded to prove his claim and interest in 3 acres within Nandi/baraton/776, the reliefs sought in the (O.S) converted to plaint are not available to the plaintiff. For reason that the suit property Nandi/baraton/776 is still registered in the name of the late Chepkasi Sigisin and is currently subject of succession cause No. E91/2021 before the High Court at Kapsabet.
86. The reliefs as drawn if they were granted would mean that this Court usurps the jurisdiction of the succession court which this Court cannot and should not do.
87. The finding by this court that the plaintiff has proven his claim and interest 3 acres of Nandi/baraton/776 should be sufficient to assist the plaintiff to pursue his claim in the succession cause.

Disposition: -

88. The plaintiff has proved his claim and interest under the doctrine of adverse possession for 3 acres comprised within Nandi/baraton/776 but the Court declines to grant the reliefs as sought in the originating summons converted to a plaint.
89. As the plaintiff has proven his case he is awarded the costs of the suit.
90. It is so ordered and judgment accordingly.

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

HON. M. N. MWANYALE,

JUDGE

In the presence of;

Ms Isiaho for the Defendant

Mr. Choge for the plaintiff

