



**Kasha v Ole Tonkei (Environment & Land Case 44 of 2020)
[2023] KEELC 20414 (KLR) (28 September 2023) (Judgment)**

Neutral citation: [2023] KEELC 20414 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 44 OF 2020
LC KOMINGOI, J
SEPTEMBER 28, 2023**

BETWEEN

NTIPAPA OLE KASHA PLAINTIFF

AND

OLOIBOR OLE TONKEI DEFENDANT

JUDGMENT

1. The Originating Summons dated 27th July 2020 seeks to have the following questions determined;
 - i. Whether the Applicant/Plaintiff is entitled to be declared the proprietor of parcel of land Parcel Number Dalalekutuk/Enkorika/1084 by virtue of its adverse possession for the period prescribed in the *Limitation of Actions Act* Cap. 2 Laws of Kenya.
 - ii. Whether the Registrar of lands is to be directed that the order made herein shall be an instrument of transfer of ownership of land parcel number Dalalekutuk/Enkorika/1084 from the Respondent to the Applicant.
 - iii. Whether the Respondent can be restrained from entering, wasting, demanding and/or in any way alienating Land Parcel Number Dalalekutuk/Enkorika/1084 until the hearing and determination of this matter.
 - iv. Whether the last original indentures in respect of Land Parcel Number Dalalekutuk/Enkorika/1084 which are with the Respondent be dispensed with.
 - v. Whether the costs are to be provided for.
 - vi. The court to visit the site disputed property.
2. In his Supporting Affidavit dated July 27, 2020 the Applicant averred that he had been in possession of the suit of the suit property from the 1970s and had greatly developed and improved it. On March 12,



- 1980 he acquired customary rights over it and became a registered member No 120 of Enkorika Group Ranch and sometime in 1997, the group was dissolved and each member was allocated the parcels of land they occupied. Upon dissolution of the group he discovered that his land was in the Respondent's name and a Title Deed had been issued to him.
3. He went on to aver that between 1995 and 2013 the Respondent had filed suits seeking his eviction from the suit property but all the suits were dismissed and had never been appealed. The suits are: High Court Civil case No 3356 of 1995 which was dismissed on November 9, 2011 for want of prosecution; Civil Suit No 107 of 2013 (Kajiado) this was dismissed on February 21, 2014 for being time barred; and Civil Suit No 74 of 2014 (Principal Magistrate's Court Kajiado) once again dismissed on June 17, 2015 for being time barred.
 4. As such, the Applicant claimed that he was entitled to the reliefs sought since he had been on the suit property for over 40 years with full knowledge of the registered proprietor.
 5. The Respondent in his Replying Affidavit dated October 29, 2020 contested the claim deponing that he was the registered owner of LR No Kajiado/Dalalekutuk/1084 measuring 91.56 Hectares. That sometime in 1994 the Applicant trespassed onto the suit property, erected a homestead and has been residing on it to-date. In 1995 the Respondent asked him to vacate the suit property but the Applicant refused on grounds that the proprietary rights of the entire Enkorika Group was subject to HC Civil Suit No 2857 of 1994. He then instituted HCCC No 3356 of 1995 seeking eviction orders against the Applicant but the matter was dismissed on November 9, 2011 for want of prosecution. He affirmed that he went on to file Kajiado SPMCC No 107 of 2012 which was dismissed on February 21, 2014 for being time barred and further filed Kajiado SPMCC No74 of 2014 which was also dismissed in June 17, 2015 for being time barred.
 6. He went on to depon that there was evidence that the Applicant was not an adverse possessor because he had not enjoyed exclusive and uninterrupted possession of the suit property. He also claimed that the Originating Summons offended Order 37 Rule 7(2) of the *Civil Procedure Rules* which provided that an Affidavit in support of Originating Summons ought to be accompanied by a certified extract of the Title Deed of the land in question. He also went on to state that the Applicant could not assert a claim of adverse possession because his rights stopped running when he instituted legal proceedings against him.
 7. The Respondent also contested the Applicant's claim and sought for its dismissal with costs stating that he wanted to deprive him of his property because both of them having been members of Enkorika Group Ranch were allocated different parcels. He was allocated parcel number 233 measuring 90.67 hectares while the Applicant was allocated parcel number 202 measuring 29.02 hectares.
 8. The Applicant filed a Supplementary Affidavit dated March 10, 2021 in response to Respondent's reply rehashing that he had been on the suit property from early 1970s and had made considerable improvements on it with the full knowledge of the Respondent. In response to the requirements of Order 37 Rule 7(2), he stated that it was a procedural technicality which should not hamper dispensation of justice adding that the Respondent was in possession of the Title Deed as such a copy of the same could not be produced by the Applicant.
 9. On the March 10, 2021 directions were taken that the Originating Summons be canvassed by viva voce evidence.



Evidence of the Plaintiff

10. The Applicant Ntipapa Ole Kasha testifying as PW1 adopted his Affidavits as his evidence in chief and asked to be declared the owner of the suit land as well as costs for the suit.
11. On Cross-examination he stated that he was born on the suit land and had been residing there since. He said that as a member of the Enkorika Group Ranch he was given 184 hectares of land upon the dissolution of the said group but he was never issued Title although he had other documents. He confirmed that he found out from the Land Registrar that the Respondent had Title to the suit land but he was not aware how he got it. He went on to state that when he found out about the registration, he reported it to the group ranch but they did not act on his complaint. He also confirmed that the Respondent had instituted several suits against him but none of them had been successful.
12. On re-examination he re-affirmed that he was born on the suit land although he did not have Title to it and that all the suits filed by the Respondent had been dismissed.
13. Testifying as PW2 was Kashiro Ole Mopel stated that he was the Applicant's younger brother and a pastoralist residing at Enkorika. He adopted his witness statement as evidence in chief. He stated that they were born and raised at Enkorika and when the land was subdivided, the Applicant was allocated that piece of land but when he went to get the Title he discovered that it was in the Respondent's name. He testified that he was aware that the Respondent had filed suits against the Applicant for the said land but he had never resided on it.
14. On Cross-examination he stated that he was born and resided at Enkorika on the piece of land that neighboured the Applicant's suit land. He stated that when he was born the land had not been subdivided. He noted that although he did not belong to the Enkorika Group Ranch, he was present when surveyors went to subdivide it albeit he could not remember the year. He also stated that he was aware that the Respondent had filed suits to evict the Plaintiff from the suit land.
15. On re-examination he re-stated that the plaintiff had always resided on the suit land with his sons and that he was also aware of the suits filed against the Plaintiff by the Defendant.
16. PW3 Merreu Mbamae also adopted his witness statement as his evidence in chief testified that he was familiar with the Plaintiff who had resided on the suit land for over 50 years and the land in question belonged to the Applicant.
17. On cross examination he stated that he was a committee member of Enkorika Group ranch and the members documents were in custody of the Chief who was the Group's meetings minutes taker. He stated that he was aware that Title to the suit land was in the Defendant's name which he had acquired irregularly and the Land Registrar was aware of the issue. He informed court that the issue of the allocation was not reported to the police because they thought the group would resolve it. He also affirmed being aware of the suits that had been filed by the Respondent against the Applicant.
18. On re-examination he stated that as a committee member he was present when the land subdivision was done over twenty years ago. He stated that the Respondent was allocated a different piece of land and the suit land belonged to the Applicant. He also stated that some committee members including the Vice Chairman – Letasima Ole Tolimo- one of the Respondent's witnesses colluded with the Defendant and issued him Title to the suit land which belonged to the Applicant.
19. PW4 Isaya Kasha adopted his witness statement as his evidence and testified that he was the Applicant's first born son who was born and raised on the suit land and his children had also been born and raised there and his father had built homesteads as well as sunk a borehole on the suit land. In his



statement he indicated that sometime between 1984 and 1987 members were shown their beacons and traditionally everyone would be allocated land according to where they had been residing. However in 1994 when the Titles were issued, the Respondent was issued with Title to the land where they had been residing.

20. On cross examination he stated he was born in 1971 on the suit land and that his father was a member of the Enkorika Group Ranch but when he was allocated the land, he was not given Title which was instead given to the Respondent. He went on to state that they had been living in distress due to the many court cases that had been filed by the Respondent against their father.
21. On Re-examination he stated that subdivision of the land was done several years back but could not remember when. He went on to indicate that all the suits filed against his father had been dismissed and the father was in court to get Title to his land.

Evidence of the Defendants.

22. DW1 Oloibor Ole Tonkei while adopting his affidavit as his examination in chief stated that since 1990 he had tried to evict the Plaintiff from the suit land but he had refused to heed to the notices and he should be compelled to leave. He adduced as evidence documents marked as D. Exhibit 1 to 21.
23. On cross examination he stated that there was evidence where the Chief had written to the OCS Kajiado about the suit land and added that he had also filed suits regarding the land seeking eviction orders against the Plaintiff. He stated that whereas he was a resident on another land, he was given the suit land as a gift by the Group Ranch and the Applicant entered in it in 1994 after the subdivision.
24. On re-examination he stated that he was given the suit land since he was a member of the ranch and the Applicant had entered on it in 1994 before the subdivision was undertaken.
25. DW2 Larasuna Ole Tolimo who was initially Enkorika Group Ranch's vice chairman testified and adopted his witness statement (24th August 2021) as his evidence in chief. He stated that the Plaintiff being a member of the Group Ranch was given a portion of it as his property, but he was not residing on the portion that was allocated to him. He had instead been living on the Defendant's land. He also stated that he was aware that the Defendant had tried to evict the Plaintiff from the suit land and had filed cases in court in that regard.
26. On cross examination he stated that the community was aware that he was the vice chairman and acting chairman although he did not have any documents to show for it. He stated that prior to the subdivision he resided on a different part of the land, but after subdivision everyone went to the portion of land allocated to them. He indicated he could not recall the original title number of the whole land before it was subdivided. He also confirmed that the Group ranch was no longer in existence and that the chairman had also passed away and that is why he was the acting chairman.
27. He went on to state that the land was subdivided according to the members register (which had about 400 members) and that his land was 400 acres noting that he started residing on it after the subdivision which took place in 1994. He also pointed out that the land was not subdivided equally due to its topographical setting and that once it subdivided, the surveyor showed the members their allocated plots on ground. However, not the whole land was subdivided because some land was set aside for common amenities such as schools and health centres. He indicated that the process was minuted although the said minutes were not produced in court.
28. He acknowledged that the Applicant had been residing on the suit land even before it was subdivided although he was allocated another portion of land about 7Kms away from the land in dispute. And that the said land was still intact.



29. He noted that he was aware that the Respondent had filed a suit at the High court in Nairobi which was dismissed but he was not aware of the other suits filed in Kajiado. He contested the issue of colluding to deprive the Plaintiff of his property stating that he was the vice chairman during the subdivision and the land owners were issued with the Titles. He also contested the claim that the Plaintiff had reported the issue of the allocation of the suit land to the Group ranch pointing out that it was only the Defendant who filed his complaint and that is why he was his witness. He also noted that the dispute was not resolved by the elders because both the Plaintiff and the Defendant could not agree.
30. On re-examination he re-stated that the Plaintiff was residing on the land that had been allocated to the Defendant.
31. DW3 Ntiisho Ole Mayamei while adopting his witness statement as his evidence in chief stated that he was a treasurer at Enkorika Group ranch and was aware of the dispute. He stated that the group ranch was dissolved in the year 1984 and subdivided the land amongst its registered members. The Defendant was allocated the suit land measuring 90.67 hectares while the Plaintiff was allocated land LR No Kajiado/Dalalekutuk/1084 but never moved to that land but instead resided on the land belonging to the Defendant. He also testified that he was aware that the Defendant had filed a suit in court to evict the Plaintiff.
32. On cross examination he stated that he was elected treasurer eight years ago after the previous treasurer passed on. But prior to that he was just a member of the group and was well aware of the dispute between the Plaintiff and the Defendant. He stated that he was member number 96 and had been given land approximately 300 acres. He confirmed that he was physically present during the subdivision because members were being shown their portions of land during that exercise. He stated that the Plaintiff resided on the suit land even before it was subdivided and that is the property that he was still residing on. However, he was allocated another piece of land which was about 10kms from the suit land but he had never occupied it. He went on to indicate that the Defendant was in occupation of another piece of land which was a bit of a distance from the suit land.
33. He stated that he was aware of the suits filed by the Defendant.
34. At the close of oral testimonies parties tendered final written submissions.

The Plaintiff's Submissions

35. Counsel for the Applicant summarised the case and submitted that issue for determination was whether the Applicant was entitled to parcel No Kajiado/Dalalekutuk/1084. Counsel submitted that from the testimonies, it was affirmed that the Plaintiff had been in occupation of the suit land even before subdivision and that the Defendant had never occupied it and had proved his adverse possession rights as set out in Section 7 and 13 of the *Limitation of Actions Act* and in *Maweu v Liu Ranching and Farming Coopertaiive Society* (1985) KLR 430 which held that proof of possession ought to be adequate, in continuity, in publicity and it was adverse to the registered owner.
36. Counsel went on to point out that it was until 1995 when the Defendant instituted the first suit against the Applicant and by then the Applicant had already been residing on the land. The suit was dismissed in 2013 (18 years) for want of prosecution and even the other suits file in Kajiado were dismissed for being time barred citing *Gathoni v Kenya Cooperative Creameries Ltd* (1982) KLR 104 and *Iga v Makerere University* [1972] EA which indicated that when a suit is time barred, then court cannot grant reliefs. In conclusion counsel stated that it had been approximately 28 years since the Defendant was issued with Title to the suit land and it was clear that he was just a custodian of the Title.



The Defendant's Submissions

37. Counsel for the Defendant also summarised the case and identified the issues for determination as whether the Plaintiff had met the threshold for adverse possession and was entitled to the orders sought.
38. On the legal threshold for adverse possession counsel made reference to Sections 7, 13 and 38 of the *Limitation of Actions Act* as well as Order 37 rule 7 of the *Civil Procedure Rules* and the following case laws which pronounced themselves on the applicable threshold for adverse possession: *Wambugu v Njuguna* [1983] KLR 172, *Mtana Lewa v Kabindi Ngala Mwangadi* [2015] eKLR, *Kassuve v Mwaani Investments Ltd & 4 others* 1 KLR 184, *Samuel Kibamba v Mary Mbaisi* [2015] eKLR, *Maweu v Liu Ranching and Farming Co-operative Society* (1985) KLR 430 and *Richard Wefwafwa Songoi v Ben Munyifwa Songoi* [2020] eKLR. Based on these cited cases, counsel submitted that the Plaintiff ought to have proved that he occupied the suit land openly, without force, without secrecy and without permission of the owner.
39. On whether the Plaintiff was entitled to the orders sought, counsel submitted that the Plaintiff's claim that he had been on the suit property and had exercised his customary rights over it in the 1980s was not valid since he could not exercise rights over a non-existent property. Counsel stated that the land was subdivided between the year 1984 - 1987 and titles issued in the year 1994. As such by the time the Defendant filed his suit in 1995, the action had only taken place for one year and he could not have exercised rights over the suit land earlier because it still belonged to the Group Ranch. The said suit was dismissed for want of prosecution in 2011 even though it was on record that the Defendant was unwell. Following this, the Defendant once again filed two more suits in 2012 and 2014 in Kajiado but they were also dismissed for being time barred. Counsel submitted that instituting the said suits stopped time from running as was held in *Benson Mukuwa Wachira v Assumption Sisters of Nairobi Registered Trustees* [2016] eKLR, *James Maina Kinya v Gerald Kwendaka* [2018], *Joseph Gabumi Kiritu v Lawrence Munyambu Kabura* which meant that time started running in 2015 after Kajiado SPMCC No 74 of 2014 was dismissed. Therefore, the Plaintiff's reliefs sought were unmerited and should be dismissed with costs.

Analysis & Determination

40. I have considered the pleadings, the evidence on record, the written submissions and the authorities cited. The issues for determination are;
 - i. Whether the Applicant/Plaintiff is entitled to be declared the proprietor of land Parcel Number Kajiado/Dalalekutuk/1084 by virtue of its adverse possession.
 - ii. What orders should issue?
 - iii. Who should bear costs of this suit?
41. The Applicant claims that he has been on the suit property since early 1970s even before it was subdivided and residents issued with Title Deeds. He went on to claim that upon subdivision he continued residing on it until sometime in 1994 when he went for the Title Deed only to discover that was in the Defendants' name. The witnesses acknowledged and confirmed that the Applicant had been residing on the suit land even before the land was subdivided and residents apportioned specific portions. Counsel for the Defendant argued that prior to the subdivision and issuance of Titles, the land was community land in which the Applicant could not stake claim against. Therefore, could the Applicant claim adverse possession for the period of years he had been on the unregistered, undivided suit land between 1970s and 1994? The Court of Appeal in *Benson Mukuwa Wachira v Assumption*



Sisters of Nairobi Registered Trustees [2016] eKLR pronounced itself on the issue of claiming adverse possession on unregistered land as follows:

“...It is not difficult to discern that if the suit land is not registered, then compliance with Section 38 (1) may be problematic not least because, a litigant may be unable to show the court that he has become entitled to be registered in respect of land whose title is not yet in place and more importantly, because as at the date of institution of the suit for adverse possession there must be in existence a title which the court can declare to be extinguished by adverse possession under Section 38(1) (supra). Unless such suit land is registered at the time of institution of the suit under any of the statutes referred to in Section 37 of *The Limitation of Actions Act*, a claim for the title by a trespassing claimant would be misplaced and, a court order would be incapable of being effected...”

The Applicable Law

42. The Doctrine of Adverse Possession is one of the ways of land acquisition in Kenya.

Section 7 of the *Limitations Actions Act*, provides that;

“An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.”

Section 13 of the *Limitations of Actions Act*, provides that;

- “(1) A right of action to recover land does not accrue unless the land is in the possession of some person in whose favour the period of limitation can run (which possession is in this Act referred to as adverse possession), and, where under sections 9, 10, 11 and 12 of this Act a right of action to recover land accrues on a certain date and no person is in adverse possession on that date, a right of action does not accrue unless and until some person takes adverse possession of the land.
- (2) Where a right of action to recover land has accrued and thereafter, before the right is barred, the land ceases to be in adverse possession, the right of action 10 [Rev. 2007] Limitation of Actions CAP. 22 is no longer taken to have accrued, and a fresh right of action does not accrue unless and until some person again takes adverse possession of the land.
- (3) For the purposes of this section, receipt of rent under a lease by a person wrongfully claiming, in accordance with section 12(3) of this Act, the land in reversion is taken to be adverse possession of the land.”

Section 38 (1) of the *Limitations of Actions Act*, provides that;

- “(1) Where a person claims to have become entitled by adverse possession to land registered under any of the Acts cited in section 37 of this Act, or land comprised in a lease registered under any of those Acts, he may apply to the High Court for an order that he be registered as the proprietor of the land or lease in place of the person then registered as proprietor of the land”.



Order 37 of the Civil Procedure Rules, provides that;

“The executors or administrators of a deceased person, or any of them, and the trustees under any deed or instrument, or any of them, and any person claiming to be interested in the relief sought as creditor, devisee, legatee, heir, or legal representative of a deceased 104 Civil Procedure CAP. 21 [Subsidiary] person, or as cestui que trust under the terms of any deed or instrument, or as claiming by assignment, or otherwise, under any such creditor or other person as aforesaid, may take out as of course, an originating summons, returnable before a judge sitting in chambers for such relief of the nature or kind following, as may by the summons be specified, and as circumstances of the case may require, that is to say, the determination, without the administration of the estate or trust, of any of the following questions—

- (a) any question affecting the rights or interest of the person claiming to be creditor, devisee, legatee, heir or cestui que trust;
- (b) the ascertainment of any class of creditors, devisees, legatees, heirs, or others;
- (c) the furnishing of any particular accounts by the executors, administrators or trustees, and the vouching, when necessary, of such accounts;
- (d) the payment into court of any money in the hands of the executors, administrators or trustees;
- (e) directing the executors, administrators or trustees to do, or abstain from doing, any particular act in their character as executors, administrators or trustees;
- (f) the approval of a sale, purchase, compromise or other transaction;
- (g) the determination of any question arising directly out of the administration of the estate or trust.

In the case of Mtana Lewa v. Kabindi Ngala Mwangadi (2005) eKLR, it was held that;

“ Adverse possession is essentially a situation where a person takes possession of land asserts rights over it and the person having title to it omits or neglects to take action against such person in assertion of his title for a certain period. In Kenya, twelve (12) years.....”

It is not in dispute that the plaintiff has been in occupation of the suit property since birth.

43. From the foregoing, it is thus it is therefore settled that the issue of adverse possession could not arise before the land was delineated, surveyed and registered. Therefore, the doctrine of adverse possession is only applicable from 1994 when the suit land was allocated to/ registered in the name of Respondent. This court is similarly in agreement with Counsel for the Respondent that it was up until subdivision and issuance of Title in 1994 that time started running.
44. Counsel for the Respondent went on to submit that time stopped running in 1995 when the Respondent filed High Court Civil Suit No 3356 of 1995 This court is in agreement with Counsel that the suit indeed did stop time from running as was affirmed by the Court of Appeal in Benson Mukuwa Wachira v Assumption Sisters of Nairobi Registered Trustees (*supra*):

“ ... The High Court correctly stated in *Amos Weru Murigu v Marata Wangari Kambi & Another* (*supra*)—



“...as regards assertion of title, it is not enough for a proprietor of land to merely write to the trespasser (to vacate). A letter by the proprietor, even if it be through an advocate or the chief of the area does not amount to assertion of title in law and cannot therefore interrupt the passage of time for the purpose of computing the period of adverse possession. For there to be interruption, the proprietor must evict or eject the trespasser but because eviction is not always possible without breach of peace, institution of suit against a trespasser does interrupt and stop the time from running.”

45. It is on record that the suit filed in 1995 was dismissed in 2011 for want of prosecution sixteen (16) years later. After this the Respondent then filed Kajiado SPMCC No 107 of 2012. It took the Respondent over sixteen (16) years to prosecute a suit and assert his rights over the suit land. All this time the Applicant has been in possession of the land in full awareness of the Defendant. It seems as though when the Respondent filed the first suit in 1995, he folded his hands and sat pretty in the glory of “time has stopped running”. It is inexplicable how for over a decade and a half an owner of property did not move a muscle or put an effort in prosecuting the suit until 2011. It is trite law that Equity aids the vigilant not the indolent! Especially where one has slept on their rights.

46. This court is thus not convinced that the Respondent tried to eject the Applicant from the suit land. Once again the Court of Appeal in *Benson Mukuwa Wachira v Assumption Sisters of Nairobi Registered Trustees* (*supra*) went on to hold:

“... It is important to point out that in adverse possession, it is the knowledge by the owner of the land that there is a trespasser on his land that counts... As long as the owner knows that there is a trespasser on his land and the owner does not assert his title or eject the trespasser, time in adverse possession will run...”

47. It is further on record that the Applicant has been publicly and in continuous possession of the suit property since 1994 which are ingredients for adverse possession as pronounced by the Court of Appeal in *Mount Elgon-Beach Properties Limited v Kalume Mwanongo Mwangaro & another* [2019] eKLR:

“... As to whether the essential ingredients of adverse possession were approved to the required standard, this Court in the case of *Prisca Narotso Etyanga alias Prisca Narotso Etyang'a v James Gitau Gachaiya suing on behalf of a Legal Representative of Elizabeth Njeri Gitau* [2017] eKLR reaffirmed the pronouncement by the Court in *Samuel Kihamba v Mary Mbaisi* [2015] eKLR thus:

“Strictly, for one to succeed in a claim for adverse possession one must prove and demonstrate that he has occupied the land openly, that is, without force, without secrecy, and without license or permission of the land owner, with the intention to have the land. There must be an apparent dispossession of the land from the land owner. These elements are contained in the Latin phraseology, *nec vi, nec clam, nec precario*. The additional requirement is that of *animus possidendi*, or intention to have the land. See *Eliva Nyongesa Lusenaka & Anor v Nathan Wekesa Omacha* Kisumu Civil Appeal No 134 of 1993 (ur). These prerequisites are required of any claimant...”

48. As per Section 28 of the *Land Registration Act*, 2012, as at the time the defendant was issued with a title for the suit property the plaintiff was already in occupation. His title was subject to an overriding interest in the form of rights of adverse possession in favour of the plaintiff.

49. In conclusion I find that the plaintiff is entitled to be registered as the owner of the suit property.



50. Under Section 27 of the *Civil Procedure Act*, costs shall follow the event. The defendant shall bear costs of the suit.
51. Accordingly judgement is entered for the plaintiff as against the defendant as follows:
- a. That a declaration is hereby issued that the Plaintiff is entitled to be registered as the owner of Kajiado/ Dalalekutuk /1084 by dint of adverse possession;
 - b. That an order is hereby issued that the Plaintiff be registered as proprietor of land LR No Kajiado/Dalalekutuk/1084 comprising 91.56 hectares or thereabouts in place of the Defendant.
 - c. That the Defendant is hereby ordered to transfer LR No Kajiado/ Dalalekutuk/1084 to the Plaintiff within Ninety (90)days from the date of this judgment failure to which the Deputy Registrar ELC Kajiado shall execute all the documents necessary for such transfer to be effected.
 - d. That an Order of permanent injunction is hereby issued restraining the Defendant from alienating, utilizing, charging or developing or in any way interfering with LR No Kajiado/ Dalalekutuk/1084.
 - e. That the costs be borne by the Defendant.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 28TH DAY OF SEPTEMBER 2023.

L.KOMINGOI

JUDGE.

In the presence of:

Mr. Kibet Korir for Mr. Nairi for the Plaintiff.

Mr. Mukeli for the Defendant.

Court Assistant – Mutisya.

