Mbucho (Acting on His Own Behalf and as the Personal Representative of the Estate of Teresiah Munji Mbucho - Deceased) & 2 others v Muhia & another (Environment and Land Appeal E040 of 2021) [2023] KEELC 20940 (KLR) (16 October 2023) (Judgment)

Neutral citation: [2023] KEELC 20940 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

ENVIRONMENT AND LAND APPEAL E040 OF 2021

BM EBOSO, J

OCTOBER 16, 2023

BETWEEN

JOSEPH MUNJI MBUCHO (ACTING ON HIS OWN BEHALF AND AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF TERESIAH MUNJI MBUCHO - DECEASED) .... 1ST APPELLANT

EUNICE WANJA MUNJI .... 2ND APPELLANT

GEORGE MUNIU MBUCHO .... 3RD APPELLANT

AND

MARGARET WANGUI MUHIA .... 1ST RESPONDENT

GEORGE MUHIA KARIUKI .... 2ND RESPONDENT

(Being an Appeal against the Judgment of Hon H. M NG'ANG'A Principal Magistrate, delivered on 5/5/2021 in Gatundu Civil Case No. 36 of 2019)

JUDGMENT

Introduction

1. This appeal challenges the Judgment rendered on 5/5/2021 by Hon H M Nganga, Principal Magistrate, in Gatundu Chief Magistrate Court Civil Case No 36 of 2019. The four appellants were the defendants in the said suit. The two respondents were the plaintiffs. One of the key issues to be determined in this appeal is whether the respondents proved existence of a valid and enforceable contract for sale of land parcel number Kiganjo/ Nembu/25xx. Another key issue to be determined is whether the respondents established a proper case for an order of specific performance of a sale of land contract relating to land parcel number Kiganjo/Nembu/25xx [hereinafter referred to as "the suit property"]. I will outline a brief background to the appeal before I dispose the issues that fall

for determination in the appeal. It is noted from the court record that Teresiah Munji Mbucho died during the pendency of the appeal. Joseph Munji Mbucho was subsequently admitted to the suit as her personal representative.

Background

2. Through a plaint dated 19/11/2019, the two respondents sought the following reliefs against the appellants: (i) a declaration that they were the sole owners of the suit property either by purchase or through adverse possession; (ii) an injunctive order prohibiting the appellants against transferring, selling, subdividing, charging, intermeddling or dealing in the suit property; (iii) an order directing the 1st appellant to immediately surrender to the respondents the original title deed relating to the suit property and transfer the land to the respondents; (iv) an order directing the Land Registrar to cancel or revoke the title held by the 1st appellant, rectify the parcel register relating to the suit property, register the respondent as proprietors of the land, and issue them with a title; and (v) costs of the suit.

3. The respondents' claim was that on or about November 2007, they entered into an oral agreement with Teresiah Wanjiku Mbucho (hereinafter referred to as "the deceased") [the 1st defendant in the trial court], for the sale of land parcel number Kiganjo/Nembu/25xx [the suit property] at a consideration of Kshs 250,000. The respondents contended that it was a term of the agreement that they would take possession of the suit property upon payment of a deposit of Kshs 10,000 to Teresiah Wanjiku Mbucho (deceased) or her agents. The respondents further contended that despite paying a total of Kshs 226,000, the respondents failed to effect transfer of the suit property to them and instead, repeatedly trespassed onto the suit property.

4. In response to the respondents' claim, the appellants filed a defence dated 30/11/2020. The case of the appellants was that the respondents never purchased the suit property but were simply tenants under a tenancy agreement to cultivate a quarter acre of the suit property.

5. Upon taking evidence and receiving submissions, the trial court rendered the impugned Judgment in which it allowed the respondents' suit noting that the respondents had proved that Teresiah Wanjiku Mbucho (deceased) and the appellants had intended to sell the suit property to them.

Appeal

6. Aggrieved by the Judgment of the trial court, the appellants brought this appeal, advancing the following eighteen (18) verbatim grounds:

    1. The learned magistrate erred in law and in fact by declaring the respondents as purchasers of the suit property based on hearsay evidence.

    2. The learned magistrate erred in law and in fact by disregarding the evidence adduced by the appellants and went ahead to enter judgment in favour of the respondents.

    3. The learned magistrate erred in law and fact in disregarding the trite law that there cannot be a sale of land without a written agreement for sale duly executed by both parties and attested to by a witness in violation of the provisions of Section 3(3) of the *Law of Contract Act*.

    4. The learned magistrate misdirected himself in stating that the appellants could not prove existence of a lease without an agreement for lease but on the same limb acknowledged the existence of a sale in the absence of a sale agreement.

    5. The learned magistrate erred in law by entering judgment in favour of the plaintiffs in total disregard of the Law of Contracts.

6. The learned magistrate misdirected himself in disregarding the provisions of the Law of Evidence and the *Stamp Duty Act*.

7. The learned magistrate misdirected himself in declaring a valid sale of land based on an acknowledgment of payment of Kshs 30,000 only that did not indicate the parcel number or measurement of the land being sold.

8. The learned magistrate erred in law and in fact when he held that the acknowledgment notes entered between the parties referred to the sale of the suit property yet they did not express any common intention between the parties for the sale and transfer of the suit property to the respondents.

9. The learned magistrate erred in law and in fact when he held that the acknowledgment notes entered between the 2nd, 3rd and 4th appellants on the one hand and the respondents on the other hand bound the 1st appellant yet no evidence was issued to the effect that the 1st appellant had issued any power of attorney in favour of the 2nd, 3rd and 4th appellants.

10. The learned magistrate erred in law by granting the respondents the entire parcel of the suit property despite there being evidence that the respondents only cultivated half of the suit property.

11. The learned magistrate erred in law and in fact by adjudging that the sale between the respondent and the 2nd appellant was valid in spite of there being no evidence adduce to state that the 1st appellant (deceased) who is the registered owner had any part in the sale.

12. The learned magistrate erred in law in impugning that the 2nd appellant had the power of attorney to transact on behalf of the 1st appellant while no evidence had been adduced on the existence of the Power of Attorney.

13. The learned magistrate erred in law in declaring that the respondents had proven adverse possession despite the fact that the threshold for adverse possession had not been met.

14. The learned magistrate misdirected himself in entering judgment in favour of the respondents in total disregard of for the purpose for which the doctrine of adverse possession was coined and adopted and simply watered it down to mere occupation of the property for 12 years notwithstanding the fact that the occupants were tenants. [sic]

15. The learned magistrate erred in law when he found that the respondents had proved their claim for adverse possession yet the said claim was filed in violation of the mandatory provisions of Order 37 Rule 7 (1) and (2) of the Civil Procedure Rules, 2010 and Section 38 of the *Limitation of Actions Act*.

16. The learned magistrate erred in law and in fact in declaring that the respondents had proven that they intended to buy the suit property even in the absence of a sale agreement despite the fact that the respondent's counsel admitted that she was the parties and therefore there was no reason that the intending parties did not sign the sale agreement.

17. The learned magistrate erred in law and in fact in entering judgment in favour of the respondents in total disregard of for the fact that ignorance of the law is not a defence.

18. The learned magistrate erred in law and in fact in allowing the respondents' daughter to represent the respondents in court in spite of the fact that she was in conflict of interest for

being a witness in the acknowledgement of receipt and for also having admitted being the advocate for both parties in the alleged sale of land.

7. The appellants sought the following reliefs through the amended memorandum of appeal: (i) that the appeal be allowed; (ii) that the Judgment in Gatundu CMELC No. 36 of 2019 delivered on 5/5/2021 be set aside; and (iii) costs of the appeal be awarded to them.

Appellants' Submissions

8. The appeal was canvassed through written submissions dated 23/1/2022, filed by M/s Wambua, Samuel Advocates. Counsel for the appellants identified the following as the three issues that fell for determination in the appeal: (i) Whether the respondents established sale of the suit property; (ii) Whether the respondents established their claim for adverse possession; and (iii) Who should bear the costs of the appeal.

9. On whether the respondents established sale of the suit property, counsel submitted that the respondents did not establish that there was an agreement for sale between Teresiah Munji Mbucho (deceased) and the respondents. Counsel relied on Section 3 (3) of the *Law of Contract Act*. Counsel contended that PW1 [the 1st respondent] testified that she had paid a sum of Kshs 226,000 for purchase of the suit property to the 2nd to 4th appellants and not to Teresiah Munji Mbucho (deceased) who was the registered owner of the suit property. Counsel further contended that during cross-examination, PW1 confirmed that Teresiah Munji Mbucho (deceased) did not execute any document to transfer or vest any interest in the property in them. Counsel added that the acknowledgment slips issued to the respondents were also not executed by Teresiah Munji Mbucho (deceased) but were signed by persons who did not have authority to sell the land. Counsel argued that the acknowledgment notes could not be said to have created a binding contractual relationship between the respondents and Teresiah Munji Mbucho (deceased).

10. Counsel further submitted that DW1 [1st appellant] testified that the monies indicated in the acknowledgment notes were rents for the portion of the property which the respondents leased. Counsel added that the signatures were not attested to by a witness contrary to Regulation 89(2) of the Land Registration (General) Regulations, 2017.

11. On whether the respondents established their claim for adverse possession, counsel submitted that the respondents did not establish the elements of adverse possession and in particular that their possession, if any, was not uninterrupted. Counsel further submitted that the respondents did not prove that their possession of the suit property was nec vi nec clam nec pre cario because of the following reasons: (i) the respondents entered the portion of the suit property with the consent of the appellants pursuant to an oral tenancy agreement; (ii) the respondents did not produce evidence to prove that they had been in possession of the entire suit property for a continuous duration of 12 years; and (iii) the respondents did not establish that their alleged occupation of the suit property was continuous and uninterrupted. Counsel argued that the claim for adverse possession was filed through a plaint in violation of Order 37 Rule 7(1) of the Civil Procedure Rules, 2010. Counsel argued that the trial court erred in issuing a declaration to the effect that the respondents' possession of the suit property was adverse to the registered owner given that such relief had not been sought in the claim before it.

12. On the issue of costs, counsel relied on the principle that costs follow the event as espoused in Section 27 of the *Civil Procedure Act*. Counsel urged the court to set aside the Judgment of the trial court and direct the respondents to pay costs of both the appeal and the proceedings before the trial court.

13. The 1st and 2nd respondents filed written submissions dated 28/2/2023 through M/s Wanyonyi & Muhia Advocates.

14. Counsel for the respondents deciphered the following as the four issues that fell for determination in the appeal: (i) Whether there was a valid contract and/or sale agreement in respect of sale of land title number Kiganjo/ Nembu/25XX; (ii) Whether the respondents are the rightful owners of land parcel number Kiganjo/ Nembu/25XX; (iii) Whether a claim of adverse possession on the part of the respondents suffices in respect of land title number Kiganjo/ Nembu/25XX; and (iv) Who should bear the costs of the appeal.

15. On whether there was a valid contract and/or sale agreement in respect of land title number Kiganjo/ Nembu/25XX, counsel submitted that the respondents produced a booklet containing details of payments and witnessing of the payments by appending of signatures by both parties. Counsel further submitted that the booklet contained express acknowledgments of the payments made for the purchase of land title number Kiganjo/ Nembu/25XX being described therein as the land adjoining the one the respondents had previously bought. Counsel added that the respondents had previously bought land title number Kiganjo/ Nembu/25XX, adding that, it followed that the land adjoining it was land title number Kiganjo/ Nembu/25XX.

16. Counsel submitted that prior to the aforesaid booklet, the parties had entered into an oral agreement for the purchase of the suit property and that the booklet entries were made out of abundance of caution by the appellants and in order to adhere to the provisions of Section 3(3) of the *Law of Contract Act*. Counsel added that the suit property was identified as the subject matter in the booklet and that the parties were correctly identified. It was counsel's submission that the signing of the booklet confirmed the intention of the parties to contract. Counsel added that the receipt of the payments by the appellants was proof of payment of consideration and was an unequivocal confirmation of their intention to sell the suit property to the respondents. Counsel submitted that the booklet contained all the essential elements of a valid contract and was enforceable.

17. On whether the respondents were the rightful owners of land parcel number Kiganjo/Nembu/25XX, counsel submitted that pursuant to the impugned judgment, the suit property had already been registered in favour of the respondents and a title deed issued. Counsel added that the respondents were entitled to registration of the transfer in their favour, having purchased the suit property and paid the purchase price. Counsel contended that the allegation made by the appellants that the amount paid by the respondents was the total of 6 years rent was baseless and unsupported by evidence. Counsel added that the appellants did not produce a lease agreement to corroborate the evidence of the defence witness. Counsel submitted that the trial court was right in making the finding that the appellants intended to sell the suit property to the respondents and that consideration had passed. He argued that the respondents were the rightful owners of the suit property.

18. On whether a claim of adverse possession on the part of the respondents sufficed, counsel submitted that a claim for adverse possession attaches to land and not to the title. He added that it doesn't matter who the owner of the land is. Counsel contended that the respondents had enjoyed continuous and uninterrupted use and occupation of the suit property with the knowledge of the appellants since the year 2007. Counsel further contended that the respondent's farm manager (PW2) testified to 14 years of peaceful co-existence with DW1 who lived across the suit property. Counsel relied on the decisions in the cases of Stephen Mwangi Gatunge v Edwin Onesmus Wanjau [2002]eKLR and Mbira v Gachuhi [2002] 1EALR 137.

19. On the issue of costs, counsel relied on Section 27 of the *Civil Procedure Act* and the decision in the case of DGM v EWG [2021]eKLR. Counsel urged the court to dismiss the appeal with costs.

Analysis and Determination

20. I have read the record of appeal together with the parties' respective submissions. In what is clearly an overkill, the appellants advanced 18 grounds of appeal. In their subsequent written submissions, they framed the following three issues which they invited this court to determine: (i) Whether the respondents established the sale of the property; (ii) Whether the respondents established their claim for adverse possession; and (iii) Who should bear costs of this appeal.

21. On their part, the respondents framed the following four issues: (i) Whether there was a valid contract and/or sale agreement in respect of land title number Kiganjo/Nembu/25XX; (ii) Whether the respondents are the rightful owners of land parcel number Kiganjo/ Nembu/25XX; (iii) Whether a claim of adverse possession on the part of the respondents suffices in respect of land title number Kiganjo/Nembu/25XX; and (iv) Who should bear the costs of this appeal.

22. Taking into account the grounds of appeal and the two sets of issues that were framed by the parties, the following are the key issues that fall for determination in this appeal: (i) Whether the respondents proved the existence of a valid and enforceable contract for sale of land parcel number Kiganjo/ Nembu/25XX; (ii) Whether the respondents established a case for the equitable relief of specific performance; (iii) Whether the respondents proved their claim of title to land under the doctrine of adverse possession; and (iv) What order should be made in relation to costs of this appeal and costs of the suit in the trial court. Before I dispose the four issues, I will briefly outline the principle that guides this court when exercising appellate jurisdiction.

23. This is a first appeal. The principle upon which a first appellate court exercises jurisdiction is well settled. The task of the first appellate court was summarized by the Court of Appeal in the case of Susan Munyi v Keshar Shiani [2013] eKLR as follows:

> " As a first appellate court our duty of course is to approach the whole of the evidence on record from a fresh perspective and with an open mind. We are to analyze, evaluate, assess, weigh, interrogate and scrutinize all of the evidence and arrive at our own independent conclusions."

24. The above principle was similarly outlined in Abok James Odera t/a A. J Odera & Associates v John Patrick Machira t/a Machira & Co Advocates [2013] eKLR as follows:

> " This being a first appeal, we are reminded of our primary role as a first appellate court, namely, to re-evaluate, re-assess and re-analyse the extracts on the record and then determine whether the conclusions reached by the learned trial judge are to stand or not and give reasons either way."

25. The first issue is whether the respondents proved the existence of a valid and enforceable contract for sale of land parcel number Kiganjo/Nembu/25XX. The respondents' case in the trial court was that in 2007, they entered into an oral agreement with the deceased, pursuant to which the deceased sold to them land parcel number Kiganjo/ Nembu/25XX. The case of the appellants was that there was no valid contract for sale of the above land, adding that the monies acknowledged in the notes exhibited by the respondents related to rent received in relation to half portion of the suit property.

26. In June 2003, the following legal framework which is contained in Section 3(3) of the *Law of Contract Act* came into force:

> "(3) No suit shall be brought upon a contract for the disposition of an interest in land unless—
>
> (a) the contract upon which the suit is founded—
>
> (i) is in writing;
>
> (ii) is signed by all the parties thereto; and
>
> (b) the signature of each party signing has been attested by a witness who is present when the contract was signed by such party:
>
> Provided that this subsection shall not apply to a contract made in the course of a public auction by an auctioneer within the meaning of the Auctioneers Act (Cap. 526), nor shall anything in it affect the creation of a resulting, implied or constructive trust.

27. Did the contract which the respondents sought to enforce through the suit satisfy the above formal requirements? My answer to the above question is in the negative. At all material times, the suit property was registered in the name of Teresiah Munji Mbucho [the deceased]. From the evidence that was presented to the trial court, there was no written, signed/executed and attested agreement between the respondents and the deceased relating to the suit property. None at all.

28. The respondents relied on acknowledgements relating to payments that had been made by the respondents to the 2nd, 3rd and 4th respondents. None of the acknowledgements was made by the deceased. Secondly, none of the acknowledgements identified or made reference to land parcel number Kiganjo/ Nembu/25XX. None of them made any reference to any specific acreage of the property that was being sold.

29. The totality of the evidence on record is that there was no compliant contract for disposition of an interest in land. In the absence of a compliant contract under Section 3(3) of the *Law of Contract Act*, the suit before the trial court was a non-starter.

30. It has been observed by our superior courts umpteen times that the legal framework in Section 3(3) of the *Law of Contract Act* was informed by the desire to avoid the uncertainties that prevailed in the pre-2003 era when unexecuted and unattested memoranda and the doctrine of part-performance were considered to be saving elements in non-compliant land disposal contracts. Section 3(3) of the *Law of Contract Act* constitutes a strict formal requirement whose legal ramification is to completely preclude the court enforcement of non-compliant contracts for disposal of interests in land.

31. Indeed, in Civil Appeal Number 22 of 2013, Peter Mbiri Michuki v Samuel Mugo Michuki [2014] eKLR, the Court of Appeal emphasized the ramifications of non-compliance with the requirements of Section 3(3) of the *Law of Contract Act* in the following words:

> "Section 3(3) of the *Law of Contract Act* provides that no suit based on a contract of disposition of interest in land can be entertained unless the contract is in writing, executed by the parties and attested. Section 3(7) of the *Law of Contract Act* excludes the application of Section 3(3) of the said Act to contracts made before the commencement of the subsection.

Section 3(3) of the *Law of Contract Act*, came into effect on 1st June, 2003. .... Prior to the amendment of Section 3(3) of the *Law of Contract Act* in 2003, the subsection read as follows: -

(3) No suit shall be brought upon a contract for disposition of an interest in land unless the agreement upon which, the suit is founded, or some memorandum or note thereof, is in writing and is signed by the party to be charged or by some person authorized by him to sign it;

Provided that such a suit shall not be prevented by reason only of the absence of writing, where an intending purchaser or lessee who has performed or is willing to perform his part of a contract-

(i) Has in part performance of the contract taken possession of the property or any part thereof; or

(ii) Being already in possession, continues in possession in part performance of the contract and has done some other act in furtherance of the contract." (Emphasis added)"

32. It is clear from the foregoing that for a post-June 2003 sale of land contract to be valid and enforceable at law, there ought to be compliance with the mandatory requirements of Section 3(3) of the *Law of Contract Act*. The alleged oral contract giving rise to this appeal cannot be said to have satisfied the above mandatory formal requirements.

33. For the above reasons, it is my finding that the respondents did not prove the existence of a valid and enforceable contract for sale of land parcel number Kiganjo/Nembu/25XX.

34. The second issue is whether the respondents established a case for grant of the relief of specific performance. Specific performance is a discretionary equitable remedy. The discretion of the court to grant the remedy is, however, exercised on well-settled principles. First and foremost, jurisdiction to grant an order of specific performance is exercised after the party seeking it has demonstrated the existence of a valid enforceable contract. An order of specific performance will not be granted if there is no valid and enforceable contract or if the contract suffers from some defects such as non-compliance with the mandatory formal requirements of a specific category of contracts or if the contract suffers from some form of illegality.

35. In their book The Law of Real Property, Seventh Edition, the Rt Hon Sir Roberty Megarry and Sir William Wade outline the following principles which govern the exercise of jurisdiction to grant the equitable remedy of specific performance:

"Like other equitable remedies, specific performance is discretionary. However, the court's discretion is governed by settled principles. Examples of where the remedy may be refused include the following:

i. in proper cases where there is mistake or great hardship, even though these do not invalidate the contract at law.

ii. where there has been delay causing injustice to the other party

iii. whether the vendor would be required "to embark upon difficult or uncertain litigation in order to secure any requisite consent or obtain vacant possession.

iv. where the property is being used for illegal purposes, which would make the purchaser liable to prosecution, even though on this ground he has no right to terminate the contract; or

v. where the vendor's title is doubtful but he has failed to disclose the known cause of that doubt and the purchaser has agreed to accept any defects that there may be.

In these cases the contract will remain binding at law, so that the party in default will be liable in damages, but equity will not assist with a decree of specific performance. On the other hand, specific performance may be decreed before the legal time for performance has arrived if there has been an anticipatory breach, e.g. by repudiation"

36. In Gurdev Singh Birdi and Marinder Singh Ghatora v Abubakar Mahhubuti Court of Appeal No 165 of 1996, the Court of Appeal outlined the following principle which guides our courts when exercising jurisdiction to grant the remedy of specific performance.

> " It cannot be gainsaid that the underlying principle in granting the equitable relief of specific performance has always been that under all the obtaining circumstances in the particular case, it is just and equitable so to do with a view to doing more perfect and complete justice. Indeed...a plaintiff must show that he has performed all the terms of the contract which he has undertaken to perform, whether expressly or by implication, and which he ought to have performed at the date of the writ in the action."

37. In the present appeal, the court has made a finding to the effect that there was no valid and enforceable contract for sale of land parcel number Kiganjo/Nembu/25XX. In the absence of a valid and enforceable contract between the deceased and the respondents the trial court had no basis for granting the respondents' an order of specific performance. The notes acknowledging receipt of money were signed by the respondents and third parties. They were not signed by the deceased. Secondly, the notes are not the contract contemplated under Section 3(3) of the *Law of Contract Act*.

38. I have said enough to demonstrate that the respondents did not establish a case for grant of the equitable relief of specific performance. That is my finding on the second issue.

39. Did the respondents prove their claim of title to the suit land under the doctrine of adverse possession? The respondents' case was that they entered into an oral agreement with the deceased, pursuant to which the deceased agreed to sell to them the suit property at Kshs 250,000. They contended that it was a term of the oral agreement that upon paying the deposit, they would immediately take possession of the land and start farming on it. They alleged that they paid a deposit of Kshs 10,000 in 2007 and started farming on the land in the same year. The appellants contested the claim and contended that the respondents were rent paying tenants.

40. The common law doctrine of adverse possession is recognized under Sections 7 and 17 of the *Limitation of Actions Act*. Under the doctrine of adverse possession, a trespasser to a registered land acquires title to that land after enjoying open and quiet possession of the land for the uninterrupted period of 12 years.

41. The threshold for an order of adverse possession was summarized by the Court of Appeal in Kisumu Civil Appeal No 27 of 2013; Samuel Kihamba v Mary Mbaisi [2015] eKLR in the following words:

> " 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 licence 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 possi dendi or intention to have the land."

42. I have examined the evidence that was placed before the trial court. Margaret Wangui Munia testified as PW1. A key aspect of her evidence which is captured at the opening paragraph on page 82 of the record of appeal reads as follows:

> " In total we have paid Kshs 226,100 between 2007 – 2009."

43. It is clear from the above evidence that PW1 testified in the trial court that as late as the year 2009, they were paying purchase price for the suit land as purchasers. She also stated that they farmed on the land while paying purchase price in instalments between 2007 and 2009. The appellants contended that the payments were rents. The respondents did not, however, lead evidence relating to the precise point in time when they ceased to purchasers and became adverse possessors or when time started running for the purpose of adverse possession. What is, however, clear is that the respondents initiated their suit on 20/11/2019. Between the year 2009 when the respondents claim to have been cultivating the land and paying purchase price as purchasers and November 2019 when they initiated the suit in the trial court is a period of 10 years. They cannot be said to have satisfied the threshold of 12 years that was required in order for them to be considered to have acquired title to the land under the doctrine of adverse possession. For the above reasons, I have no doubt that the respondents did not prove acquisition of title under the doctrine of adverse possession. That is my finding on the third issue.

44. On costs, the respondents on one part and the appellants on the other part contributed to the dispute through their disregard of the mandatory provisions of Section 3(3) of the *Law of Contract Act*. The 2nd, 3rd and 4th appellants purported to receive money while aware that they had no capacity to sell the suit land. For this reason, parties will bear their respective costs of this appeal and the suit in the trial court.

Disposal Orders

45. In the end, this appeal succeeds in the following terms.

    a. The Judgment rendered in Gatundu Chief Magistrate Court Civil Case No 36 of 2019 on 5/5/2021 by Hon H. M Ng'ang'a, Principal Magistrate, is wholly set aside and is substituted with an order dismissing the plaintiffs' suit with no order as to costs.

    b. Parties shall bear their respective costs of this appeal.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 16TH DAY OF OCTOBER 2023

B M EBOSO

JUDGE

In the presence of: -

Mr Wambua for the Appellants

Ms Amondi for the Respondents

Court Assistant: Osodo/Hinga