



**Kamar v Okech (Environment & Land Case 6 of 2015)
[2023] KEELC 22330 (KLR) (21 December 2023) (Judgment)**

Neutral citation: [2023] KEELC 22330 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT & LAND CASE 6 OF 2015
FO NYAGAKA, J
DECEMBER 21, 2023**

BETWEEN

AGNES CHENANGAT KAMAR PLAINTIFF

AND

OKUKU OKECH DEFENDANT

JUDGMENT

1. The Plaintiff, Agnes Chenangat Kamar, instituted the instant suit through a Complaint dated 7th January, 2015. She claimed to be the legal owner of Plot No. B/3 (hereinafter ‘the suit land’) located in Mukwujit Centre within West Pokot County. She averred that she purchased the suit land from one, John Wekesa Wanyonyi (hereinafter referred to as ‘Wanyonyi’) who was the husband of the original allottee by the name Leonida N. John, (hereinafter referred to as ‘Leonida’). Leonida is said to have died on 23rd August, 1993.
2. The Plaintiff pleaded that upon payment of land rent of Kshs. 27,250 and transfer fees of Kshs. 3,000/- on 28th May, 2014, the suit land was transferred to her by the County Government of West Pokot. Subsequently, to her, the County Surveyor of West Pokot placed beacons for the Plot, but one Okuku Okech, the Defendant herein, who occupies the adjoining plot, removed the beacons. He has since been interfering with her quiet possession of the Plot.
3. The Plaintiff averred that the Defendant had no proprietary interests whatsoever in the suit land and despite the notice of intention to sue, the Defendant took no action. As a result, she prayed for the following reliefs:
 - a. A declaration that the Plaintiff is the sole owner of Plot No. B/3 in Murkwijit trading Centre and further that the Defendant has no legal interest in the said property.



- b. A permanent injunction to restrain the Defendant from in any way interfering with the Plaintiff's use and occupation of plot No. B/3 on Murkwijit Trading Centre.
- c. Costs
- d. Interests

The Plaintiff's Evidence

4. The Plaintiff testified as PW1. She stated that Mr. Wanyonyi, her neighbour at Murkwijit, sold her the suit land. That in the process she went with him to the County Government where they both conducted a search and confirmed that the suit land belonged to Wanyonyi's wife. To that end, she referred to a letter dated 28/05/2014 issued by the Chief Revenue Officer, PMFI 1.
5. She produced the Sale Agreement dated 28/05/2014 as PExh 2 and the receipts for payment of outstanding land rent and transfer fees of Kshs.27,250 /-and Kshs.3000/- as PExh 3 and 4 respectively. She produced further as PExh 6 a letter written to her by the Defendant claiming ownership of the suit land and PExh 7 and 8 receipts issued to Wanyonyi's wife.
6. On cross-examination, the Plaintiff stated that she was not aware if Wanyonyi's wife, Leonida, had already sold out the suit land to someone else. She admitted that there was a part of a building which was found to be built on the alleged plot when the land was surveyed. She stated that John Wanyonyi had no authority land to sell the land to her.
7. She called Mr. Wanyoyi as her witness. He testified as PW2. He stated that he had lived in Murkwujit area since the year 1970 and that his wife, Leonida, who passed away in 1993 applied for and was allotted Plot No. B3. He stated that the Defendant's father was their neighbour who occupied Plot No. B4. He marked for identification a receipt issued to Leonida by the County Government of West Pokot as land rent for Plot No. B3 for 10 years.
8. He stated that he sold the suit land to the Plaintiff in the year 2014. Upon doing so they went to the Count Government Office and confirmed that the Plot belonged to Leonida. At the office the Plaintiff was requested to pay for land rent that had not been paid form the year 1988 to 2014.
9. He testified that they subsequently made a Sale Agreement before the sub-chief. It was his evidence that the plots had no title deeds to date and that the County Government transferred the Plot based on the death certificate of Leonida alone.
10. Peter Adok, the Chief Officer in charge of Land and Physical Planning testified as PW3. In reference to PExh 1, the letter by the Chief Revenue Officer, he testified that although the letter showed the suit land as belonging to Leonida it had no letter head.
11. He stated that he did not know how PExh 1 came to bear the County's stamp on it and that it was not issued officially. He refused to produce in evidence PMF 1-3 since, to him, they were not officially issued. But he produced receipt No. 27201 as PExh 7.
12. On cross-examination, he testified that he was in a position identify all Murkwijit plots. According his records and list, the suit land herein was issued to one Bernard Wafula. That in 1976, there was a change from Bernard Wafula to one Oketch Omondi. He marked for identification as DMFI 5 a letter showing that the plot belonged to Okech Omondi.
13. His evidence was that all the plots in Murkwujit measured approximately 50 x 100ft and none measured approximately 35 x 100ft. He disowned PMFI 1. He stated that at no time was the suit land



was ever repossessed by the County and the records did not show the suit Plot was ever reallocated to Leonida.

14. It was his testimony that a recommendation was, however, made at one time that Leonida be given half of it but it was not ratified. He referred to DMFI-2 a letter dated 3rd June, 1988 written by Magina & Co. Advocates where Leonida protested upon learning that the suit land belonged to someone else.
15. He stated that the County Government did not have any records to show that the suit land was sold in the year 2017 because there would have been an agreement to that effect. His testimony was that the suit land belonged to Okech, and further that the County had not received payment for any rates from Leonida.
16. Upon cross-examination, he stated that in the year 1988, the County Government erroneously received Kshs. 800/- from Leonida. He further conceded that in the year 2014, the County Government received Kshs.30,250/- from the Plaintiff and the receipt was erroneously issued.
17. Ibrahim Longolomoi, the Chief Officer Lands and Physical Planning testified as PW4. His evidence was that ownership of the suit land belonged to the Plaintiff. Giving a chronology of change of hands, he stated that in the year 1975, the land was originally allocated to Benard Wafula. In 1987, Leonida owned it and it was subsequently transferred to the Plaintiff herein on 28th May, 2014. He stated that he wrote a letter dated 28/05/2021.
18. For the foregoing he produced as PEXh 9 and 10 copies a letter dated 28th May, 2021 and the "Kalamazoo" records respectively. He also produced the letter by the Plaintiff's spouse, one Paul L. Rikilem, as PEXh 11. In the said letter the spouse specifies that the wife to John Wanyonyi, PW2 died on 23/08/1993. PW4 testified further that the Defendant never owned the suit land.
19. His further evidence was that Okech Omondi owned Plot No. B4 which neighbours the suit Plot since 1975 and that ownership thereof had not changed hands since.
20. Upon cross-examination he stated that he only had become the Chief Officer of land from the year 2020. He stated that before him there was an officer by the name Peter Adoki. He stated that their records showed that Plot B3 (the suit land) was allocated to Bernard Wafula in 1975 which upon cross-examination he said was an amendment to Benard Wafula's name. He stated further that no record of the Murkwijit record file and the Kalamazoo showed that Benard Wafula sold the land to Leonida.
21. For analysis purposes this Court notes herein that the said officer named as Peter Adoki testified herein as PW3.
22. Upon being shown the amended Area List dated 05/08/1976, marked as DMFI-2 which he confirmed was in his possession and records, PW4 stated further that it indicated that the suit land belonged to Okech Omondi. He stated further that in that year, Plot B4 indicated that it belonged to Rachael Kanyi and it later reverted to Okech Omondi.
23. He stated that in 1987 the record appeared that the suit land was being given to Leonida but there were no records of a second allocation for the land to belong to Leonida John through it. He stated also that their records do not indicate that she sold the Plot in 1988.
24. Upon being cross-examined further he stated that the letter dated 03/06/1977 from Magina & Co. Advocates indicated that the Plot (suit land) was allocated to Leonida John in 1978. To this he answered further that as at that year the Plot was not available for allocation as it had already been awarded to someone else. He confirmed that the contents of the letter showed that the (defunct) Council refused to accept receipt of any rates from Leonida John because the Plot belonged to someone else.



25. He stated further that he was aware that from in 1988 Leonida sold the Plot to someone else and no rats were paid on it up to 2014.
26. Upon being shown DMF1-4 he stated it showed that Omondi Okech made payment of Kshs. 9,000/- for the suit land in the year 2003 a fact not captured in Kalamazoo. He stated that the receipt was doubtful because it was not captured in the Kalamazoo.
27. In the end, he stated that the suit land was first allocated to Benard Wafula and there were no records to show that it was repossessed and there are no records to show whether he sold or leased it.
28. On re-examination, he testified that Benard was the owner of the plot in 1975 then changed hands to Leonida in 1987 and when that happened, Benard Wafula never complained. He did not however indicate whether or not the said Benard Wafula was alive or not at the time of change or afterward.
29. He stated that the receipt issued to Omondi Okech, DMF 1-4, did not appear in Kalamazoo records and there is no record or even minutes to show that an amendment was done in favour of Omondi Okech.

The Defendant's Case

30. The Defendant challenged the Plaintiff's case through a Defence dated 25th February, 2015. By it he denied that the Plaintiff was allotted the suit land. He averred that the first allottee by the County government of West Pokot was Bernard Wafula Wanyama and that was in the year 1975.
31. He pleaded that the suit land was then transferred to his father, Oketch Omondi in the year 1976 who assumed occupation and after his death, he (the son) took over occupation to date. He averred that if the suit land was allotted to Leonida N. John, then it was done fraudulently since he was never notified of any repossession of the suit property by the County Government of West Pokot.
32. The Defendant denied the Plaintiff's assertion of payment of land rent and transfer fees. It was his case that he had been paying government rent and rates in the name of his father and if any was outstanding, he was supposed to clear it himself.
33. He pleaded that he had been in occupation of the both the suit land and Plot No. B4 since the year 1976. On the foregoing, it was his case that the Plaintiff's case was frivolous and out to be dismissed with costs.

The Defendant's Evidence

34. Okuku Okech testified as DW1. He adopted his statement dated 25th February, 2015 as his evidence. The Statement was that his now late father bought the Plot from one Benard in 1976 and they had since been in occupation.
35. It was his oral evidence that the suit land was bought by his father Okech Omondi from Benard Wafula. He referred to the County Government List and produced it as DExh. 1. He produced further the area list dated 5th August, 1976 indicating that the suit land belonged to his father and the land rates paid. He produced the receipts dated 1st December, 2003 and another dated 18th January, 2009 as DExh 3(a) and (b).
36. He testified that in the year 1988, one Martin Asangu Wakhungu, came and told him that he had bought the suit land from Leonida and wanted to build on it. He showed him the sale agreement dated 16th May, 1988. It was between him and Leonida. He marked the agreement as DMFI-4.
37. He testified that neither Leonida nor Wakhungu took possession of the land and he has been in occupation. Further, that that upon receiving a letter from the Plaintiff's advocates (DExh 6) on



- ownership of the suit land, he notified his father who subsequently wrote a letter, produced as DExh 7, to the County Council on 8th July, 2014.
38. On cross-examination, he could not corroborate through evidence of a Sale Agreement that Benard Wafula sold the suit land to his father. But he called the said Benard Wafula as his witness.
 39. Benard Wafula testified as DW2. He adopted his statement of 25th February, 2015. In it he stated
 40. He stated that in or about 1975 he applied for allocation of a Plot in Murgwiji shopping centre. That was from the County Council of West Pokot. He was allocated the suit land by the County Government of West Pokot and his name was entered in the Area List against the suit. Later, in 1976 he sold the Plot to Okech Omondi: the agreement being verbal. Mr. Omondi paid him Kshs. 4,500/= and he gave him vacant possession since then. He said it was Omondi's Obligation to transfer the Plot into his name. In the oral testimony he referred to the area list (DExh 1) dated 7th August, 1975. He stated further that currently, Okech a son of the Omondi, was the owner to whom he sold the Plot to.
 41. On cross examination, he admitted that he did not have the allotment letter because he had given it to Mzee Okech Omondi. He stated that he did involve the (defunct) County Council while selling the plot by going there with Okech Omondi whereat they obtained consent to sell. He stated further that upon selling the suit land, his name was removed and Okech Omondi's name entered.
 42. Robert Sehemu testified as DW3. He was the Administrative Officer, Plot allocation of West Pokot County. He stated that before being absorbed by the County Government he was a Records Officer in the County Council.
 43. He stated that before a person could be allocated a plot by West Pokot County, they had to make an application for the Plot and there was an area list of all owners of plots. His evidence was that the suit land was initially owned by Benard Wafula in 1975. He produced the area list dated 7th August, 1975 as DExh 1. He testified that the plot then changed hands in on 5th August, 1976 to Okech Omondi. He referred to the updated Area List produced by DW1 as DExh 2. He stated that Okech Omondi paid revenue to the County Council. He referred to DExh 3(a) and (b).
 44. He dispelled any doubt that the County Council ever repossessed the suit land by stating that the process was usually done in writing by the County Council to the allottee. He stated that for this case, there was no evidence that it was ever repossessed.
 45. His evidence was that there was no record whatsoever to show or indicate that the suit land was ever allocated to Leonida John. He stated that Plot B3 was not available for re-allocation or allocation in the year 1988.
 46. He stated that the original Kalamazoo record name for Plot B was Bernard Wafula. In reference to Kalamazoo record produced as PEXh 10, he stated that the fact that Benard Wafula's name, Okech Omondi's name are not appearing might point to possible tampering of records.
 47. In explaining the manner in which land changed hands, the County Administrative Officer stated that in the records, the place for remarks would be indicated "transferred" from Benard Wafula to Okech Omondi. He referred to PEXh 10 and stated that it should have been indicated from Leonida John to Agnes Chelangat. It was his evidence that in PEXh 10, no remarks had been made.
 48. He testified further that after remarking 'transfer', one had to write through which receipt number it was done by writing "vide" receipt number dated 'xyz'.
 49. The Plaintiff and the Defendant filed written submissions dated 10th July, 2023 and 31st August, 2023 respectively. This Court infused their content and accordingly considered them in the analysis below.



Issues for Determination

50. Having carefully reproduced and understood the parties' respective cases, the issues that arise for determination are;
- i. Who the original Allottee of Plot No. B/3 Murkwijit was.
 - ii. Based on (i) above, who the lawful owner of Plot No. B/3 Murkwijit was.
51. I will consider the issues sequentially.

Analysis and Determination

SUBDIVISION - i. Who the original Allottee of Plot No. B/3 Murkwijit was.

52. Robert Sehemu, the Administrative Officer, in charge of Plot allocation of West Pokot County was candid in his testimony on the manner a person is allocated a plot by the County Government of West Pokot. He stated that the process would usually commence through an application by an individual to the County Government. Once it was approved, an area list was generated. The List showed all the owners of a particular locality.
53. I have keenly placed side by side the evidence of both parties herein including the letter dated 3rd April, 1988 addressed to the County Council of Pokot, produced as DExh 5. Neither party demonstrated that an initial application was made to the County Council of West Pokot for allotment of the suit land. Further, there is also no evidence adduced by the contestants as well as the employees of the County Council to show approval of an application and actual allocation of the suit land to either Leonida N. John or Oketch Omondi.
54. A letter of allotment has terms and conditions which must be complied with by an allottee within a set time frame in order for one to acquire proprietary interests in the allotted land.
55. Whereas a Letter of Allotment is not conclusive proof of ownership of land, (see; Court of Appeal decision in Nairobi Civil Appeal No. 71 of 19973, Wreck Motors enterprises -vs- The Commissioner of Lands and 3 others) it constitutes a crucial formative transactional document between an Allottee and the relevant County Government or allocating authority. Thus, on the basis of the letter of allotment this Court cannot ascertain the original allottee of Plot No. B/3 Murkwijit.
56. That being the case, ascertaining the original allottee of the suit land will depend on the documents other than the original application and attendant allocation. I therefore can only now turn to the other pieces of evidence adduced by the parties herein.
57. The Plaintiff sought to rely on the letter dated 21st May, 2014 authored by County Revenue Officer to assert ownership of the suit land. I have carefully analysed the letter. It bears no authentication feature including letter head, subject or reference to aid this Court ascertain its contents let alone ownership of the suit land. Therefore, I find it of no probative value in terms of ownership of the Plot.
58. The Defendant relied on the area list of Murkwijit Trading Centre, produced as DExh 1. It is dated 7th August, 1975. In the list, plot No. B/3 is listed as owned by Bernard Wafula. This Court notes, following the testimony of Robert Sehemu, that the foregoing area list is the earliest document in time showing ownership of Plot No. B/3.
59. In absence of a letter of Allotment by both parties, and in view of the fact that there is no other piece of evidence by the Plaintiff to challenge the Area List of 1975, this Court is of the opinion that the original allottee of the suit land was Bernard Wafula.



ii. An assessment of the lawful owner of Plot No. B/3 Murkwijit.

60. The finding that Benard Wafula was the original allottee of the suit land, as discussed in the preceding paragraphs, largely resolves the entire dispute herein. I say so because on 5th August, 1976, almost a year after the original allocation, the Public Health technician, Mr. Christopher Cherumben wrote to the Clerk, Pokot County Council a letter produced by the Defendant as DExh 2.
61. From the letter, he was primarily requesting amendment of Plot holders and an approval of establishing “C” line. It, in the process, shades light on ownership of Plot No. B3 as of the year 1976. It indicates that the plot had changed hands from Benard Wafula to Okech Omondi.
62. It is important to note that the first time Ms. Leonida N. John’s name comes to picture in respect to the suit land is in the year 1987, a period more than 10 years after the Okech Omondi had, as per the preceding evidence, gotten ownership.
63. The receipts issued to Leonida on 16th May, 1988 and on 23rd June 1988, produced as PExh 7 and 8 by the County Council do not prove ownership of the suit land. It would be naturally expected that before one is given chance to pay for rates or rent for a Plot he or she should be an owner thereof. The Plaintiff has the burden of proof under Section 107 of the Evidence Act. The provision is to the effect that:-
- “(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
- (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”
64. There is no documentary evidence corroborating the Plaintiff’s claim that Leonida N. John or whoever she claims to have been the owner who transferred the Plot to her was the first in time to be in allotted. There is none either to show that he was the first, if ever, to be in possession of the suit land.
65. I now revert to the oral evidence adduced by the witnesses.
66. The Plaintiff asserted that John Wanyonyi, the husband of Leonida N. John sold to her the suit land. She stated that before purchasing it she went to the County Government with Mr. Wanyonyi where they confirmed ownership. On that assertion, this Court finds that apart from the oral assertion, no evidence was adduced to prove a search was conducted showing that indeed the suit land was Leonida’s. The Court expected that the Plaintiff should have availed a document of sorts issued by the County Government (the defunct Municipal Council of the time) to prove ownership confirmation at the time.
67. I have also keenly interrogated the evidence of John Wanyoyi who testified as PW2. Despite claiming that his wife, Leonida, applied and was allocated the suit land, there is nothing on record, as already established in the analysis of the first issue, to prove that assertion. If the wife was allocated the parcel nothing would have been easier than showing the Application for allocation and the allocation itself or even Minutes of the Council to demonstrate that fact.
68. The lawfulness of Leonida’s ownership of the suit land was further put to question by the Plaintiff’s own witness, Peter Adok, who testified as PW3. As the chief officer of land, it was his evidence that the suit land was issued to Bernard Wafula and that in 1976, there was a change from Bernard Wafula to one Oketch Omondi.



69. It was his evidence that the County never repossessed the Suit land thereby rebutting any incidence of the land having been acquired afresh by Leonida.
70. That piece of testimony was corroborated by the evidence of Ibrahim Longolomoi, the Chief Officer Lands and Physical Planning when he gave an account of how the suit land changed hands. He was emphatic that the County never took possession of the suit land from the Benard Wafula as to give Leonida an entitlement to claim she was allotted by the County Council. It is this Court's finding that once the Plot was allocated to Bernard Wafula and no evidence was tendered that the said Wafula neither surrendered the same to the Council nor failed to fulfil the conditions of allotment as to give chance for repossession of the same from him it remained his and could not be lawfully allocated any other person until proper revocation of ownership was made.
71. The decision in the case of *Republic -vs City Council of Nairobi & 3 Others (2014)* relied upon by the Defendants is persuasive in this instance. It was observed;
- “...Once an allotment letter is issued and the allottee meets the conditions therein, the land in question is no longer available for allotment since the letter of allotment confers absolute rights of ownership or proprietorship unless it is challenged by the allotting authority or is acquired through fraud, mistake, or representation or that the allotment was outrightly illegal or it was against public interest.”
72. The Plaintiff sought to rely heavily on the evidence of PW4, one Ibrahim Longolomoi. As I have stated above, Mr. Longolomoi admitted in his testimony that the Plot B4 was first allocated to one Bernard Wafula in 1975. He had the records to that effect. But regarding to Plot No. B3 (the suit land herein) he seemed to have not much record about the suit Plot because he relied heavily on the Kalamazoo (PEXh 10) which is titled County Council of West Pokot - Plot Rent Record Card”. The document is seems to have been for Leonida John at first but it is crossed and an insertion indicated as being for Agnes Chenagat. The crossing and insertion or change of the records are not countersigned. It is not indicated as to who made the changes and when he/she did so and by what authority he/she did so. Does it mean that Agnes Chenagat has been the owner and been making payments of rent since 1988? Certainly not, given that she is said to have bought the Plot in 2014. The Change should have reflected her name from the Year 2014. This makes the record less authentic for evidentiary value in this matter.
73. Further and be that as it may, I have carefully analysed the Kalamazoo record produced in evidence herein as (PEXh 10). First it is coincidental that the record starts in the year 1988 as the first entry in the first column. This is the year Leonida John claimed to have been allocated the land. As I have stated above, there is no other corroborative evidence that she ever applied for and was allocated the Plot. This creates a lot of suspicion for a number of reasons.
74. Contrary to the evidence of PW4 that the Kalamazoo is a record which is bought and filled in as is originally bought, it was instructive that the pages or leaves of each of the Kalamazoo are not serialized so as to avoid plucking off or insertion of a leave or page that could substitute a proper entry. Secondly, upon scrutiny of the entries in the record it is clear to me that from the year 1988 to 1997 as appears on page 1 all of them are by one hand. It is the similar observation regarding page 2 whose years under reference are 1998 to 2013. Does it mean that since 1988 to 1997 only one clerk or officer of the West Pokot handled the Kalamazoo? How about the following set of years from 1998 to 2013? This is not possible without an explanation from PW4 who produced the record.
75. Further, since the Kalamzoo was for rent payment? Did it mean that since 1975 there was no rent paid on the Plot B3? Even if there was none, why is the Rent Record (Kalamazoo) of all those years missing? Does it mean Plot No. B3 started existing in 1988 when Leonida John showed up with a claim of



- allocation? This question is pertinent because even with the existence of PExh 1, the rents due and owing were indicated. Why would the records of the rents due and owing for the other years since 1975 and who owed them not be shown? If the records do not exist, how come it existed in the Area List and how come it showed that it was allocated to Benard Wafula and the amendment showed that it was due to Omondi?
76. Does it mean Plot No. B3 was created in 1988? From the totality of the evidence herein, certainly not. My finding about the PExh 10 and the evidence thereon is that the same was a document fraudulently created to show that a record existed in favour of Leonida John and Agnes Chenangant. I reject it. I also do not believe most of the evidence of PW4: he was an unreliable witness particularly in the face of the evidence of PW3.
77. These missing gaps in the evidence of PW4 are answered by DW3 Rober Sehemu, who was the Administrative Officer, Plot Allocation in West Pokot County Government who testified as follows: “There were records in the Kalamazoo in regard to Plot B3. The initial Kalamazoo record name for Plot B was Benard Wafula. That Kalamazoo also contained the whole List of allocations of 1975.” He went on to say, regarding the Kalamazoo produced in Court as PExh 10, “This is an alleged Kalamazoo record. The name of Benard Wafule does not appear here. Here also Oketch Omondi’s name does not appear. I do not know why the names of the two people are not in there. There is a capability of tampering with the Kalamazoo... From PExh 10 in the section of rent due is the only one which has been filled. It is missing “rent paid” and the receipt number.” (Even) page 2 “the entry is wrong because the rent due was supposed to be 1500/=... paid is indicated 27,250/= instead of the Kshs 1500/=”.
78. The totality of the evidence presented by both the Plaintiffs’ and the Defendants’ witnesses’ points to the inevitable inference that Leonida’s N. John claim of ownership is shaky, unfounded and unsustainable in law. Further, it means that the purported Sale Agreement dated 28th May, 2014 between Leonida’s husband and the Plaintiff cannot stand since it was mounted on a land unlawfully claimed by the seller, John Wanyonyi.
79. In any event, since the Plaintiff’s evidence and that of John Wanyonyi point to an allocation to someone else (although this Court has found that that other person was never allocated the parcel), and that person was deceased by the time of the purported sale, it means that if ever the property could have belonged to the said wife of John Wanyonyi, it only could have consisted her part of her Estate. It could not have been available for sale by the said Wanyonyi to anyone else without the absence of the grant of letters of administration or a Will to the effect that the seller was the executor thereof. Thus, had the property consisted in the deceased’s estate, what the said Wanyonyi would have done with the Plaintiff was intermeddling with the Estate of the deceased wife of Wanyonyi and that would have been unlawful still.
80. Even assuming that the whole of my analysis of the evidence herein led me to a wrong finding about the ownership, but which I am convinced it is not the case, it is clear that the Omondi Oketch and his son Okuku Okech had lived on and used the Plot for more than 12 years from the time the said Leonida John was said to have been allocated the Plot, if indeed she was, but which I have found not the case. If that would have been true, still her right to the ownership of the Plot would have been extinguished by virtue of Sections 12 and 17 of the *Limitation of Actions Act*, even if the ownership of the Plot would have been transferred to the Plaintiff.
81. Thus, deriving from the foregoing, this Court finds that the lawful owner of the suit land belongs to the Estate of the late Okech Omondi.



82. Let us hear the conclusion of this matter. This Court finds no merit in the Plaintiff's case. She had not proved her case on a balance of probabilities. Accordingly, the following final Orders hereby issue;

- i. The Plaintiff's claim is hereby dismissed in its entirety.
- ii. A declaration hereby issues that plot No. B/3 Murkwijit Centre belongs to the Estate of Okech Omondi.
- iii. A permanent injunction hereby issues restraining the Plaintiff from interfering with the Defendant's quiet and peaceful occupation and ownership of Plot No. B/3 Murkwujit Trading Centre.
- iv. Costs of the suit to be borne by the Plaintiff.

83. It is so Ordered.

JUDGMENT DATED, SIGNED AND DELIVERED AT KITALE VIA ELECTRONIC MAIL ON THIS 21ST DAY OF DECEMBER, 2023.

HON. DR. IUR FRED NYAGAKA

JUDGE, ELC KITALE

