



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MACHAKOS**  
**ELC MISC APPL. NO.333 OF 2012**

**JAMES GICHURU MBUGUA ..... APPLICANT**

**VERSUS**

**LANTEI OLE KEPONYI ..... RESPONDENT**

**R U L I N G**

1. By Originating summons (OS) dated 29.8.2012 and filed on 4.9.2012, the Plaintiff/Applicant seeks the following reliefs:

1. That the Applicant had become entitled by adverse possession to three (3) acres of land parcel **KAJIADO/KITENGELA/7473** and which is registered in the name of the Respondent.
2. That the Applicant got into possession of the said land parcel (i.e. 3 acres) by purchasing the same from the Respondent through sale agreement dated 20<sup>th</sup> October, 1985.
3. That Applicant has stayed in the said parcel (3 acres) of KAJIADO/KITENGELA/7473 for over 12 years.

2. The OS is supported by the affidavit James Gichuru Mbugua sworn on 29.8.2012 and annexures thereto. The Defendant was served with the summons but failed to enter appearance or file defence or Reply to the OS. The OS is anchored on order 37 Rule 15 and 16 of Civil Procedure Rules Cap 21. The Plaintiff testified on 17.12.2014 to the effect that he bought subject matter on 20.10.1985 vide attached agreement from the Defendant. The sale was for 3 acres which the Defendant excised from his original land Kajiado/Kitengela/5087. The 3 acres were given Number **KAJIADO/KITENGELA/7473**.

3. The Plaintiff was shown some parcel of land by the Defendant and given possession after paying KShs.18,000/- as the purchase prices. The Plaintiff has been in occupation with wife and children since the time he purchased the land. However, the Defendant declined to procure land Control Board consent to enable the suit land to be transferred to the Plaintiff names. The Plaintiff testified that he has fenced the suit land, built a house and continues to occupy and farm since 1985 and thus seeks the court to hold that he has acquired the same land by way of adverse possession.

4. The Defendant was served with the summons herein but opted not to oppose the reliefs sought. Under Section 6 of Land Control Act Cap 302 Laws of Kenya, the consent for transfer was to be procured

within 6 months of the agreement and in default the agreement becomes null and void. In **SITUMA VS. CHERONGO CIVIL APPEAL NO.351/02 (2007) KLR P.84**. Court of Appeal held:

***“By virtue of Section 8 of LCA Cap 302, the application for the consent of the LCB was required to be made within 6 months of making of the agreement subject to the jurisdiction of the High Court to extend the period. Upon failure.....to make an application for consent of Land Control Board within 6 months, the agreement for sale of land became void for all purposes by virtue of the Land Control Act (LCA)”.***

5. In the same authority, **SITUMA VS. CHARONGO** *supra*, the court held;

***“where purchaser of land in a Controlled transaction pending completion was permitted to be in possession of land by vendor pending completion of the sale and the transaction thereafter becoming void for the lack of the LCB consent such a permission was terminated by the operation of the law and the continued possession, if not illegal, became adverse from the time the transaction became void.”***

6. The occupation based on an agreement which has become a nullity by operation of the law, transpose into an adverse possession and the period prescribed by section 38 of Limitation of Actions Act Cap 22 starts to run. The Plaintiffs occupation since 1985 to date of filing the suit herein amounts to a span of 28 years or thereabout. The law requires a minimum of 12 years of adverse possession to enable claimant's right to crystalize.

7. It is this court's finding that the Plaintiff has acquired the tittle to the 3 acres of suit land by way of adverse possession. The court thus makes the following orders:

1. The executive officer of the court will sign all relevant documents including application for consents and transfers to facilitate the transfer of Kajiado/Kitengela/7473 into the Plaintiff names.
2. There be no orders as to costs as the Defendant did not defend the suit.

**Signed and Delivered at Machakos, this 23<sup>rd</sup> day of January, 2015.**

**CHARLES KARIUKI**

**JUDGE**