



Siringet & another v Ngili (As the Legal Representative of the Estate of Nelson Ngwili) & 22 others (Environment & Land Case 253 of 2017) [2025] KEELC 4426 (KLR) (24 April 2025) (Judgment)

Neutral citation: [2025] KEELC 4426 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 253 OF 2017
LC KOMINGOI, J
APRIL 24, 2025**

BETWEEN

KISAREI SIRINGET 1ST PLAINTIFF

RAPHAEL KISAREI 2ND PLAINTIFF

AND

ESTHER NZULA NGILI (AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF NELSON NGWILI) 1ST DEFENDANT

SAMUEL MUINDE PHILIP (AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF PHILIP WAMBUA) 2ND DEFENDANT

SCHOLAR MUINDI 3RD DEFENDANT

PAUL NGOMA 4TH DEFENDANT

WAYUA JOAN MUTHAI (AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF JOHANA MUTUNGI) 5TH DEFENDANT

PATRICK KIOKO 6TH DEFENDANT

JOSEPH MUTURI 7TH DEFENDANT

ROSEMARY MWIKALU KITONYI (AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF SOLOMON L OYIEMU) 8TH DEFENDANT

KAMUNTHE MUSYOKA 9TH DEFENDANT

NTHENYA MATHUA MUTISYA 10TH DEFENDANT

NDUO NDISO 11TH DEFENDANT

FRANCIS MAWEU 12TH DEFENDANT



MASENO JOHN	13 TH DEFENDANT
KIOKO MAKAU	14 TH DEFENDANT
KINGOO MUKAU	15 TH DEFENDANT
NDUKU DAUDI	16 TH DEFENDANT
ONESMUS KIOKO NZIOKA (AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF MAKAU WAMBUA)	17 TH DEFENDANT
STEPHEN MUTUA KYULE (AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF LUCY NDUNGE KYULE)	18 TH DEFENDANT
DAUDI KIMATU	19 TH DEFENDANT
JOSEPH NZUVE	20 TH DEFENDANT
JOSHUA KYEVA MUSAU	21 ST DEFENDANT
JOSEPHINE MBULA SOLOMON	22 ND DEFENDANT
KENNEDY MULI DAUDI	23 RD DEFENDANT

JUDGMENT

1. This suit was first filed at the High Court in Nairobi through the Plaintiff dated 20th November 2000 and Amended on 1st November 2019, before it was transferred to this Court.
2. The Plaintiffs who are father and son respectively working and residing in Konza claim that, the 1st Plaintiff was the absolute registered proprietor of property Kajiado/Kaputiei Central/461 being a member of Ilmamen Group Ranch which was dissolved in 1995.
3. It is their case that the Defendants who all work and reside within Konza have encroached and trespassed on this property without licence or authorisation and despite being asked to vacate, have failed and neglected to vacate. The plaintiffs therefore seek the following reliefs against the Defendants:
 - a. An order that with the help of the OCS Kajiado Police Station the Defendants be and are hereby evicted from parcel No. Kajiado/Kaputiei/461.
 - b. A permanent injunction restraining the Defendants their kin, agents, servants or anyone claiming under them from trespassing upon, encroaching into, cultivating, selling, disposing off or in any other manner interfering with the Plaintiff's quiet possession and ownership of LR No. Kajiado/Kaputiei/461.
 - c. An order for mesne profits.
 - d. Interests on (c) above.
 - e. Costs of the suit.
 - f. Any other order that the Hon. Court may deem fit to grant.
4. The 1st, 2nd, 5th, 6th, 7th, 8th, 9th, 12th, 17th, 18th and 20th Defendants in their Further Amended Joint Statement of Defence and Counterclaim dated 31st October 2024 contested the Plaintiffs' claim on



grounds that they bought their portions of land from the 1st Plaintiff on diverse dates between 1987 and 1993 through validly executed sale agreements as follows:

- i. The 1st Defendant Nelson Ngwili Kilonzo purchased 5 acres of property 461 on diverse dates between 13th September 1989 and 24th December 1988 and the last instalment of the purchase price of Kshs. 8,000 fully paid on 24th December 1988.
 - ii. The 2nd Defendant Philip Wambua purchased 2 acres of property 461 between 11th February 1989 and 7th May 1989 and the purchase price of Kshs. 13,500 fully paid in instalments.
 - iii. The 5th Defendant Wayua Joan Muthai purchased 5 acres of property 461 between 15th November 1991 February 1989 and 7th May 1989 and the purchase price of Kshs. 13,500 fully paid in instalments.
 - iv. The 7th Defendant Joseph Mutune purchased 5 acres of property 461 between 7th February 1989 February 1989 and 6th May 1990 at Kshs. 10,000 which was paid in full.
 - v. The 8th Defendant Rosemary Mwikali Kitonyi purchased 6 acres of property 461 between 14th August 1989 and 7th October 1989 for Kshs. 2,000 and further purchased an extra 2 acres for Kshs. 8,000 on 6th July 1991 from its previous owner one Peter Mutua.
 - vi. The 9th Defendant Kamonthe Musyoka purchased 5 acres between 23rd August 1989 and 1st September 1991 for Kshs. 12,000.
 - vii. The 12th Defendant Francis Maweu purchased 5 acres between 7th July 1995 and 15th July 1995 for Kshs. 20,000 which was paid in full.
 - viii. The 17th Defendant Makau Wambua purchased 5 acres between 2nd August 1992 and 18th August 1997 for Kshs. 10,000 which was paid in full.
 - ix. The 19th Defendant Daudi Kimatu purchased 1 acre on 8th July 1989 for Kshs. 2,300 which was paid in full.
 - x. The 18th Defendant Stephen Mutua purchased 6 acres between 17th November 1989 and 15th August 1992 and the purchase price paid in full.
 - xi. The 20th Defendant Joseph Nzuve purchased 5 acres between 11th May 1992 and 20th October 1993 for Kshs. 15,000 which was paid in full.
5. These purchases were witnessed by the 2nd Plaintiff. Upon the purchase, they developed their portions and have continued to reside on them. However, the 1st plaintiff refused/neglected to subdivide and transfer the property to them on the claim that they had breached their contractual obligations, a claim that was untruthful and the Plaintiffs suit was time barred. They therefore sought for the following orders against the Plaintiffs:
- a. An order for Specific performance of the sale agreements between the 1st, 2nd, 5th, 6th, 7th, 8th, 9th, 12th, 17th, 18th and 20th Defendants and the 1st Plaintiff.
 - b. A declaration that the Plaintiffs rights to recover the acres of land comprised in LR No. Kajiado/Kaputiei Central/461 which he sold to the Defendants on diverse dates are barred under the *limitation of Actions Act* and his title thereto extinguished on the grounds that the defendants have openly, peaceably and continuously been in occupation and possession of the aforesaid parcels of lands for a period exceeding 20 years.



- c. An order that the defendants be each registered as proprietors of the of the acres the land they each bought in place of the plaintiffs and in default on the part of the plaintiffs, the Deputy Registrar of this honourable court be ordered to execute the transfer instruments and all attendants' documents.
 - d. Permanent injunction do issue restraining the plaintiffs by themselves, their assigns, successors, servants and/or agents from entering, taking possession, trespassing and/or harassing, evicting and/or threatening the defendants, their servants, tenants, employees or agents and/or interfering with the defendants' exclusive use and possession of the Suit Property.
 - e. Costs of the suit as well as the Counterclaim plus interest thereon at the current court rates since filing of suit till payment in full
 - f. Such further Orders as the Honourable Court may deem fit.
6. In their reply to this Defence and Counterclaim, the Plaintiffs contested that there were no sale agreements executed between the 1st Plaintiff and the Defendants and no portions of land was allocated to them. They claimed that the Defendants invaded their property without authorisation and their counter claim should be dismissed.
 7. The 3rd, 4th, 11th and 13th Defendants in their Further amended defence and counterclaim dated 3rd December 2019 contested the Plaintiffs allegation on the grounds that they purchased portions of the suit property on diverse dates from the 1st Plaintiff as follows:
 - i. The 3rd Defendant Scholar Muindi purchased 3 acres on 7th August 1990 for Kshs. 3,000 which was fully paid.
 - ii. The 4th Defendant Paul Ngoma purchased 4 acres on 4th February 1991 for Kshs. 12,000 which was fully paid.
 - iii. The 11th Defendant Ndivo Ndiso purchased 3 acres on 7th March 1993 for Kshs. 9,000 which was fully paid.
 - iv. The 13th Defendant Francis Maweu purchased 5 acres on 15th February 1987 for Kshs. 10,000 which was fully paid.
 8. They therefore claimed that they were not trespassers but had rights to their properties and sought:
 - a. An order for Specific performance of the sale agreements between the 3rd, 4th, 11th and 13th Defendants and the 1st Plaintiff.
 - b. An order that the Plaintiffs subdivide land parcel No. Kajiado/Kaputiei Central/461 to the 3rd, 4th, 11th and 13th Defendants and the 3rd, 4th, 11th and 13th Defendants be registered as proprietors of their respective parcels of land purchased from the 1st Plaintiff (1st Defendant in the Counterclaim).
 - c. A permanent injunction do issue restraining the Plaintiffs by themselves, their assigns, successors, servants and/or agents from entering, taking possession, evicting and or interfering with quiet enjoyment and occupation of the above land parcel by the 3rd, 4th, 11th and 13th Defendants.
 - d. Costs of the counterclaim.



9. The Plaintiffs in their reply to this defence and counterclaim reiterated that they were the registered owners of the property and had never sold it off to any of the Defendants. They pray that counterclaim be dismissed with costs.

Evidence of the Plaintiffs

10. PW1, Serina Ole Seeru, adopted his witness statement dated 14th April 2022 as his evidence in chief and produced his bundle which was marked as P. Exhibit 1 to 3. He stated that suit property was registered in his late father's name who filed the suit seeking to get his land back.
11. On cross examination he stated that the land belonged to his father and the Defendants entered a long time ago when he was still a child and was residing elsewhere with his relatives. He also stated that the actual year of entry of the Defendants on the suit property was not indicated in the pleadings. He testified that he was not aware that his father had sold the suit property to the Defendants and that his father neither reported the trespass to the police or the area chief. He confirmed that he could see his father's name and signature on some documents and that the Defendants had constructed their homes on the suit property. He indicated that when he went back to his home after the period he was away living with his aunt, he found the Defendants on the property and they had constructed their homes thereon. He also indicated that the title deed in his father's name was issued in 1998 which was about 11 years after the Defendants entered on the land.
12. On re-examination he was shown the 3rd, 4th, 11th and 13th Defendants bundle and indicated that he could not see his father's signature or Identification card number. It was only his name that was on the documents.

Evidence of the Defendants

13. DW1 Joseph Mutune confirmed that he resides on the suit property which initially belonged to Kisarei Siringet and his son Raphael. He adopted his witness statement dated 6th June 2023 as his evidence in chief and produced his bundle of documents dated 2nd June 2023 as evidence which was marked as D. Exhibit 1 to 7. He stated that there were sale agreements entered between 7th February 1989 and 3rd May 1990. He also stated that he entered on the suit property on 7th February 1989 and has been residing thereon with his family since then.
14. On cross examination he stated that at the time of entering into the sale agreement, Kisarei did not have the title. While making reference to the sale agreement dated 7th February 1989, he stated that he did not recall where he wrote the parcel number and they only got the parcel number after the suit was filed. He stated that Raphael (The 2nd Plaintiff) is the one who wrote the sale agreement on his behalf though his name and signature are missing. He also admitted that neither him nor his witnesses signed on the said agreement. This was the same for the sale agreement dated 1st March 1989 and 5th April 1989. However, Kisarei acknowledged receipt of the purchase price. He confirmed that he is the one who wrote Kisarei's Identification number which was 0793341/63 on the sale agreement but the number indicated on the title deed is 0793370. He maintained that he entered the suit property in 1989 although by then he had not paid the full purchase price of Kshs. 10,000. He later completed the payment. He stated that the seller brought a surveyor to the suit property who showed them their portions but he did not put beacons on it and the sisal plants on the land were used as the boundary marks.
15. On re-examination he stated that he entered the property in 1989 after Kisarei had been shown his portion by the Group ranch. However, by the time of the sale, the parcel did not have a parcel number. He confirmed that the Identification number indicated on the sale agreement belonged to Kisarei Ole



- Siringet. He confirmed that the boundaries were marked by sisal plants and that he entered the suit property upon purchase.
16. DW2 Kamunthe Musyoka adopted her witness statement as her evidence in chief as well as her documents which were marked as D. Exhibit 8 and 9. She stated that together with her husband, they entered the suit property on 23rd August 1989. Her husband paid the full purchase price for the property, and upon his demise he was buried thereon.
 17. On cross examination she confirmed that the sale agreement dated 23rd August 1989 was between her husband and Kisarei and she witnessed the sale/purchase although her name was not recorded as one of the witnesses. She together with Joseph Tukuyoi and Banson Taka also witnessed her husband paying the purchase price. She indicated that she did not have title for the land and that the beacons were marked by sisal plants planted by the seller.
 18. On re-examination she stated that at the time of the purchase, Kisarei did not have title to the land and could therefore not seek consent from the Land Control Board. It is her case that when the title was issued in 1998, he did not take them to the Land Control Board to get consent. She reiterated that the payment of consideration was witnessed by Joseph Tukuyoi, Benson Taka and Osoi John who was the 1st Plaintiff's first born son.
 19. DW3 Wayua Joan Mutungi adopted her witness statement. She testified that her late husband Johana Mutungi bought the parcel of land from Kisarei for Kshs. 12,500 and they started residing on it on 15th November 1991.
 20. On cross examination she stated that they were knew Kisarei prior to the purchase of their parcel. She stated that her husband signed the sale agreement and she put her thumbprint on it. She also confirmed that the purchase price was paid in full.
 21. DW4 Daudi Kimatu adopted his witness statement as his evidence in chief. He testified that he purchased his portion from Kisarei through the sale agreement dated 8th July 1989 which was produced as D. Exhibit 10.
 22. On cross examination he stated that Kisarei signed the sale agreement although there were no witnesses. He admitted that they never went to the Land Control Board.
 23. DW5 Rosemary Mwikali adopted her witness statement filed on 23rd June 2023 as her evidence in chief. She stated that the land was purchase by her late husband Solomon Lugaliala who is deceased. She stated that she was the Administrator of his estate. She also produced sale agreements dated 14th August 1989 and 7th October 1989 as her exhibits. She testified that since then, she has been on the suit property and her husband had also been buried thereon.
 24. On cross examination she stated that they first purchased 5 acres and later an additional 2 acres and the purchase price was paid in full. She stated that the late Kisarei fell ill in 2002 before obtaining consent from the Land Control Board to transfer the land. She stated they had been on the suit property since 1989. They later approached the 2nd Plaintiff to facilitate the transfer but he was reluctant.
 25. DW6 Stephen Mutua Kyule adopted his witness statement as his evidence in chief. He testified that his late mother, Lucy Kyule purchased the parcel on 17th November 1989 and 11th May 1992 as per the sale agreements. He also stated that they had lived on the suit property from 1989 when it was purchased.
 26. On cross examination he stated that he was not present at the time of the purchase, but he was aware that his mother bought 5 acres of land from the 1st Plaintiff. The agreement was witnessed but the



witnesses did not sign it. He added that Kisarei brought a surveyor who showed the purchasers their parcels which were demarcated by sisal plants.

27. DW7 Joseph Nzuve adopted his witness statement as his evidence in chief and produced a sale agreement dated 11th May 1992 as an exhibit. He stated that he had since lived on the suit property.
28. On cross examination he confirmed that his sale agreement bore his and Kisarei's signature. Upon the purchase he was shown his portion which was demarcated by sisal plants. He stated that they tried to get their titles from Kisarei but he kept asking them to be patient. He passed on before giving them the titles.
29. On re-examination he confirmed that the sisal plants were planted by Kisarei and his sons to mark the boundaries.
30. DW8 Francis Maweu adopted his witness statement as his evidence in chief and produced a sale agreement executed by him and Kisarei dated 7th July 1995 as an exhibit. During cross examination he stated that a surveyor visited the land although he could not recall whether he was given any documentation. He confirmed that he never visited the Land Control Board to get consent.
31. DW9 Onesmus Kioko adopted his witness statement as his evidence in chief and produced a sale agreement dated 2nd August 1992 between his late father and the late Kisarei as an exhibit. He stated that he resides on the suit land and his father had also been buried thereon. During cross examination he stated that he was present when his father purchased the land which he paid for in instalments. He stated that he did not know whether a surveyor visited the land but there were sisal plants which demarcated the boundaries.
32. DW10 Scholastica Muindi adopted her witness statement as her evidence in chief and produced a sale agreement dated 6th August 1991 as an exhibit. She stated that she purchased her portion of land for Kshs. 9,000 and paid the purchase price in full. On cross examination she stated that she was a housewife at the time of the purchase but though she was literate, she did not sign on the sale agreement. She stated that she is the one who reduced the agreement in writing in the presence of Kisarei and his sons. She stated that she paid the purchase price in cash. She admitted that the parcel number is not indicated on the agreement as Kisarei did not have a title deed at the time of this transaction. She also confirmed that no consent was acquired for the transaction.
33. DW11 Alexander Nthiani Ngoma adopted his witness statement as his evidence in chief and produced a sale agreement as an exhibit. He testified that the sale agreement was duly executed by himself and Kisarei on 19th September 1993. He paid the full purchase price for the 6 acres. On 27th November 1993 he purchased an additional 1 1/2 acres and has been living on the suit property. During cross-examination, he stated that he got an eviction notice from Kisarei's advocates in the year 2000. The letter claimed that he was a trespasser but he did not vacate because he had purchased the land. He pointed out that Kisarei kept asking them to wait for their titles. He stated that the surveyor never visited the suit property and it was Kisarei and other old men who demarcated the portions using sisal plants.
34. DW12 John Maseno Muindi adopted his witness statement as his evidence in chief and produced a sale agreement as an exhibit. He stated that he had been on the suit property from 5th November 1990. He testified that the land was measured informally and boundaries demarcated using sisal plants and they did not obtain consent from the Land Control Board. On cross examination he stated that he had several sale agreements having purchased about 17 acres of land. He stated that the agreement dated 15th February 1987 was written by Karanja, the 1st Plaintiff's son but he did not sign it. He stated that he had not signed on the agreement dated 5th November 1990 but Kisarei had signed it. He indicated



that he visited the Land Control Board on several occasions but they were not issued with a consent. He further stated that in the year 2000, he received an eviction notice from Kisarei's advocates.

35. DW13 Priscilla Syokau Ndivo adopted her witness statement as her evidence in chief. She testified that her late husband purchased the land from Kisarei through the sale agreement dated 7th March 1993 produced as exhibit and Kisarei acknowledged receipts of payment which were witnessed by Joseph Nzuki. On cross examination she stated that she did not have title to the land although the last payment for the purchase price was done on 30th July 1995.
36. DW14 Joseph Nzuki confirmed that he knew Ndivo (DW13's husband) and he witnessed him paying Kisarei Kshs. 3,000 for his portion of land. He also witnessed the signing of the sale agreement.
37. DW15 Samuel Muinde Philip adopted his witness statement as his evidence in chief. He testified that Philip Wambua was his father. He produced sale agreements dated 11th July 1989, 7th October 1989 and 29th May 1994 between his father and Kisarei. He also produced an acknowledgement dated 7th May 1989 where Kisarei acknowledged to have received the purchase price for the portions. On cross examination he stated that the parcels were never surveyed and he was not aware if consent from the Land Control Board was obtained. On re-examination he stated that Kisarei pointed out the 8 acres of property to his father.
38. DW16 Esther Nzula Ngwili adopted her witness statement as her evidence in chief. She stated that the late Nelson Ngwili was her husband. He purchased four acres of land as per the sale agreement dated 13th September 1987 and an additional one acre vide the sale agreement dated 4th November 1987 which was witnessed by Kisarei's wife Nemojo Ene Siringet. In 1988 they moved to the suit property and have been residing thereon since then. On cross examination she also confirmed that the plots were not surveyed but had sisal plants as boundary marks. She stated that although she did not witness the execution of the sale agreement her husband had paid the full purchase price. On re-examination she stated that Kisarei's wife acknowledged receipt of Kshs. 10,000 as payment for the 5 acres of land on 24th December 1988. She also confirmed that no consent from the Land Control Board was sought by Kisarei.
39. At the close of the oral testimonies, parties tendered final written submissions.

Submissions of the Plaintiffs

40. Counsel submitted on the following issues for determination:
41. On Whether the Defendants should be evicted from property LR NO. Kajiado/Kaputiei Central/461, it was submitted that the Plaintiffs' witness produced a title deed in the name of the 1st Plaintiff as its registered owner therefore their ownership had been proved. However, the Defendants produced sale agreements which were not binding as they had not been signed by the vendor. They also testified that the portions they occupied were not surveyed and there were no beacons demarcating their alleged portions which only meant that they were occupying the suit property illegally. It was pointed out that DW6 confirmed that no survey had been undertaken which was contradictory to his witness statement and that they were also not certain of the acreages they claimed to have purchased. As such, this was proof that the Defendants were in illegal occupation of the suit property and ought to be evicted.
42. On whether the sale agreements and subsequent transactions were valid, it was submitted that the Defendants confirmed that the agreements were not executed by the 1st Plaintiff. The Defendants also confirmed that Land Control Board consent had not been obtained and the sale was therefore voided after the lapse of 6 months as provided under Section 6 of the *Land Control Act*. Reference was also made to In the Matter of the Estate of Kaipon Koruta Tasiaku Succession Cause No. 47 of 2015.



43. On whether an order for specific performance should issue, counsel submitted that this claim was made 20 years after the alleged sale agreements were entered into between 1989 and 1994. This relief was therefore statute barred under Section 4(1) of the *Limitation of Actions Act* which stipulated that an action founded on a contract could not be brought after the lapse of six years. Counsel also submitted that the Defendants ought to have sought leave to pursue a time barred claim which had not been done in this case. It was also submitted that the Defendants did not provide evidence to show that they attempted to have the contractual obligations fulfilled. This relief as well as the counterclaims should therefore be dismissed with costs to the Plaintiffs.

Submissions of the 1st, 2nd, 5th, 6th, 7th, 8th, 9th, 12th, 17th, 18th and 20th Defendants

44. On whether the Plaintiffs were entitled to the orders sought, it was submitted that the Defendants produced sale agreements for their respective portions of land and the said agreements had been duly executed by the late 1st Plaintiff- Kisarei Siringet as provided Section 3 of the *Law of Contract Act*. Counsel submitted that 2nd Plaintiff who was a witness in some of the agreements was never called to testify and PW1 testified indicated that when the alleged transactions took place, he was a young boy and had no recollection of the events. It was also submitted that the claim that the Defendants invaded the property without permission was false because no reports of the said invasion or trespass were ever made to the police. The Plaintiffs had therefore not met the required burden of proof threshold as established under Section 108 of the *Evidence Act* citing *Sagala v Sagala* [2024] KEHC 5573 (KLR). Counsel also submitted that at the time of the various agreements, the 1st Plaintiff's title had not been processed by the Group Ranch but the portions of land being sold were clear from the agreements and Courts could not rewrite contracts as held in *National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd & another* [2001] eKLR.
45. On whether the Defendants were entitled to the prayers sought in the Counterclaim, it was submitted that the Defendants had been in open occupation of the suit property for over 20 years and had made substantial improvements thereon. Therefore, the Plaintiffs claim over those portions of land had since been extinguished and the suit should be dismissed with costs to them.

Submissions of the 3rd, 4th, 11th and 13th Defendants

46. Counsel outlined five issues for determination as follows.
47. On whether the informal agreements between the 3rd, 4th, 11th and 13th Defendants and the 1st Plaintiff were valid, it was submitted that the hand written sale agreements were valid because they bore the date of the sale, acreage being sold, purchase price and witnesses. This was therefore sufficient evidence of the sale citing the Court of Appeal in *Fidelity Commercial Bank Ltd v Kenya Grange Vehicle Industries Ltd* [2017] eKLR where it was held that the meaning should be derived from the documents itself without reference to anything outside of the document. Similarly, in *Kairu v Shaw* [1986-1989] EA 221 it was held that in interpreting a contract, the Court ought to give effect to the intention of the parties.
48. On whether an order for specific performance should issue, it was submitted that specific performance being an equitable remedy is discretionary based on valid agreements as held in *Thrift Homes Ltd v Kenya Investment Ltd* [2015] eKLR. And the 3rd, 4th, 11th and 13th Defendants having proved that they had valid agreements between them and the 1st Plaintiff were therefore entitled to that relief.
49. On whether a permanent injunction against the Plaintiffs should issue, it was submitted that the Defendants were deserving of the sought injunction as they had been residing on the suit property



for over 38 years. Reference was made to *Bandari Investments & Co. Ltd v Martin Chiponda & 139 others* [2022] eKLR.

50. On whether the Defendants had acquired rights under adverse possession, it was submitted that upon the payment of the purchase price, the Defendants took possession of their respective parcels and began residing thereon with the earliest being 1987 and the latest being 1997. Therefore, they had met the required adverse possession requirement as held in *Cheromei v Muigai* [2024] KEELC 5604 (KLR) and *Peter Mbiri Michuki v Samuel Mugo Michuki* [2014] eKLR where the Court of Appeal held that adverse possession should be calculated from the date of payment of the purchase price in full because from this date the owner is dispossessed of possession.
51. On whether they were entitled to costs of the counterclaim, it was held that having proven that they were entitled to the suit property by way of adverse possessions, they were entitled to costs of the counterclaim.

Analysis and Determination

52. I have considered the pleadings, evidence on record, written submissions, and authorities cited. I find that the issues for determination are:
 - i. Whether the Plaintiffs are entitled to the prayers sought;
 - ii. Whether the Defendants have proved their counterclaims;
 - iii. What reliefs should issue;
 - iv. Who should bear costs of the suit?
53. The Plaintiffs first filed this suit in the year 2000 seeking eviction of the Defendants from property Kajiado/Kaputiei Central/461. The Plaintiffs claimed that the Defendants trespassed on the suit property but the year of trespass was not indicated. PW1 in his testimony also testified that he could not remember when the Defendants entered the suit property but it was a long time ago when he was young. A title deed to the suit property was produced to support the claim that the 1st plaintiff was the owner. The Defendants did not contest that the property belonged to the 1st Plaintiff.
54. Their contention was that they were not trespassers but residing on their respective portions upon purchase of the same from the 1st Plaintiff starting from the year 1987 with the latest agreement being entered in the year 1995. It is their case that at the time of the purchase, the 1st Plaintiff did not have title to the suit property as it was still under the group ranch. He however showed each of them their respective portions which were not surveyed and did not have beacons but the boundaries were demarcated by sisal plants.
55. To support their claim, the Defendants produced individual handwritten sale agreements between them and the 1st Plaintiff as well as acknowledgement of payments. They however claimed that the 1st Plaintiff did not seek consent from the Land Control Board to transfer the suit property to them.
56. The plaintiffs did not demonstrate that they tried to evict the Defendants who they claim are trespassers from the suit property. Only a few of them stated that they were asked to vacate in the year 2000 before this suit was filed. PW1 also confirmed that the Defendants had developed the suit property and he was aware of their presence on the land ever since he was young.
57. On whether the sale agreements produced were valid, the Plaintiffs did not contest their validity or lead evidence to the contrary. Therefore, what remains is that the Defendants purchased their respective parcels from the 1st Plaintiff. It is on record that some of the Defendants entered into the sale agreements



in 1987 and started residing thereon. As such, by the time this suit was filed in 2000, the Defendants had been on the land for a long time. They are entitled to their specific portions by dint of Section 7 of the *Limitation of Actions Act*.

58. All the Defendants produced sale agreements between themselves and the 1st Plaintiff (deceased). Upon signing these agreements, the Defendants moved into their respective portions, built their homes and have been residing thereon for a period of almost 38 years.
59. The Plaintiffs on their part claimed that the sale agreements are not valid as they were not executed by the deceased. It should be noted that the Plaintiffs did not subject the sale agreements for analysis by a document examiner to confirm that the signature was not that of Kisarei Ole Siringet.
60. The Plaintiffs also claim that the failure to obtain consent from the Land Control Board made the agreements void. The Defendants have explained the reason for this failure; that the seller Kisarei Ole Siringet had no title in his name by the time they signed the sale agreements; that he was to get the title from the group ranch which he did but he did not disclose the same to the Defendants. In the case of Joseph Gichuki Kariuki & 3 others v Robert Kimani [2020] eKLR, S.Okong'o J. stated thus; "...by receiving the purchase price in full and giving the Appellants possession of the suit property with an undertaking that he was going to transfer the property to the Appellants, the Respondent had created a constructive trust in favour of the Appellants that he had an obligation to honour by transferring the suit property to them."
61. I find that the Plaintiffs have failed to prove their case against the Defendants on a balance of probabilities. The Plaintiffs' suit is dismissed with costs.
62. However, it being on record that the Plaintiffs' claim to land had been extinguished after the lapse of 12 years, then the Defendants are entitled to registration as legal owners of their individual plots where they have been residing.
63. From the foregoing, I find that the Plaintiffs are entitled to be registered as the owners of the respective portions they occupy. In the case of Peter Mbiri Michuki v Samuel Mugo Michuki [2014] eKLR, the Court of Appeal held that; "Our reading of the record shows that the Plaintiff entered the suit property pursuant to a sale agreement in 1964 as a bona fide purchaser for value. The entry in 1964 was with permission of the Appellant qua vendor. In the case of Public Trustee v Wanduru [1984] KLR 314 at 319, Madan J.A stated that adverse possession should be calculated from the date of payment of the purchase price to the full span of twelve years if the purchaser takes possession of the property because from this date, the true owner is dispossessed of possession. A purchaser in possession of the land purchased, after having paid the purchase price, is a person in whose favour the period of limitation can run."
64. Alternatively, I find that the Defendants are entitled to an order of specific performance. In the case of Thrift Homes Ltd v Kenya Investment Ltd [2015] eKLR, it was held, "The jurisdiction of specific performance is based on the existence of a valid enforceable contract and will not be ordered if the contract suffers from some defects or mistake or illegality. Even where a contract is valid and enforceable, specific performance will not be ordered where there is an adequate alternative remedy."
65. From the evidence tendered, it is clear that the deceased Plaintiff executed valid sale agreements with the Defendants who fully paid the purchase price. I agree with the Defendants' submissions that the 2nd Plaintiff ought to transfer the said parcels to them.
66. In conclusion, I find that the Defendants are entitled to the reliefs sought in their counterclaims.
67. Accordingly, judgement is entered in favour of the Defendants as against the Plaintiffs as follows;



- a. That the Defendants are hereby entitled to be registered as proprietors of the respective portions of land they occupy by dint of adverse possession.
- b. In the alternative, an order of specific performance is hereby issued to compel the 2nd Plaintiff to execute transfer documents in favour of the Defendants within ninety (90) days from the date of this judgement. In default, the Deputy Registrar of this honourable court do execute all the necessary documents to effect such registration.
- c. That the Plaintiffs by themselves, their assigns, successors, servants and/or agents are permanently restrained from entering, taking possession, trespassing and/or harassing, evicting and/or threatening the defendants, their servants, tenants, employees or agents and/or interfering with the Defendants' exclusive use and possession of their respective properties.
- d. That costs of this suit be borne by the Plaintiffs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 24TH DAY OF APRIL 2025.

L.KOMINGOI

JUDGE

In the presence of:

Mr. Karwanda for Mr. Wachira Maina for the Plaintiffs

Mr. Nairi for the 1st, 2nd, 5th-9th, 12th-17th, 20th Defendants

Ms. Irura for Mr. Gathaara for the 3rd, 4th, 11th-13th Defendants

Court Assistant: Mutisya

