



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT

AT NYAMIRA

ELC CASE NO 1 OF 2021 (O.S)

(FORMERLY KISII ELC CASE NO. 3 OF 2021 (O.S))

LEANARD OTWORI JUMA.....PLAINTIFF

VERSUS

FRANCIS ONGAKI MAMBOLEO.....DEFENDANT

JUDGMENT:

This is a case pitting a nephew against his maternal uncle. By an Originating summons dated 01/02/21 the Applicant, who is a nephew to the Respondent, moved the court for the following orders: -

- 1. The Applicant be declared to have become the legal owner entitled by adverse possession of over 12 (twelve) years since 2004 of ALL THAT parcel of unregistered land measuring approximately 1.2 Acres being a portion of Title Number ISOGE/KINENI SCHEME/202 within Isoge Kineni Settlement Scheme.**
- 2. The said Applicant be registered as the sole proprietor of the said parcel of land belonging to FRANCIS ONGAKI MAMBOLEO which is currently not registered but initial buying Agreements in the presence of the chief and village elders, have audio recordings to that effect.**
- 3. The Respondents either by themselves, agents, servants and/or employees be restrained from interfering with the Applicant's peaceful possession and occupation of the suit property.**
- 4. The Honourable Court be pleased to direct the Deputy Registrar and/or the Executive Officer of the Honourable Court to execute the transfer instrument and all other documents attendant to the transfer and registration of the suit property in favour of the Applicant.**
- 5. Costs of this Application be provided for.**

The summons was supported by the following Grounds: -

- 1. The applicant has been in possession and management of the unregistered parcel of land, the subject matter of this suit since 2004 and has leased a house constructed on the property severally and collected rent on the property.**
- 2. The Respondents are a total stranger to the suit land. They have never visited and/or utilized it nor has he made any physical claim to it and the Applicant has had quiet enjoyment of the same for the entire period of his occupation since the year 2004.**
- 3. The Applicant has built and maintained a fence around the boundary of the suit property so as to secure the premises and enjoy the use of land to the exclusion of all other people and has maintained a plantation of Eucalyptus trees some of which are over fifteen (15) years old.**
- 4. Consequently, the Applicant and his family have enjoyed uninterrupted continual possession of the said property since 2004 to date.**

and an Affidavit in support which the Applicant relied upon in his evidence in chief. He also called his sister, one Everylne Nyabonyi as a

witness, Victor Ondieki Obeto and Andrew Bosire as additional witness. In the Affidavit in support, the Applicant deposes that in the year 1987, his late father, Henry James Obeto was asked by the Respondent to look for a piece of land which the Respondent would later purchase. His late father was in a better position to look for the land since, whereas the Respondent lived in Nairobi where he was a Senior Civil servant and was not conversant with issues of land back at home, the deceased lived in Nyamira County. Eventually, a piece of land viz. L.R. NO. ISOGE/KINENI SCHEME/202 was identified belonging to the late Omache Nyagechange. The Applicant's father Mr. Juma Obeto was given money, Kshs. 45,000/= to remit to the owner of the said land for a portion measuring 1.2 Acres.

The Applicant's parents were allowed to cultivate the land and after their demise, the Plaintiff took over and has been cultivating it since the death of his father and mother in 2004 and 2007 respectively. After the death of both parents, the Applicant planted Eucalyptus trees on the 1.2 Acres piece of land which trees are still on the suit land to date. He also deposed to the fact that he has in the past leased out the suit property particularly a mud house thereon since 2016. He concludes his Affidavit evidence by saying that on 13/01/2021 the Respondent served him with a Demand letter through Nyandoro & Co. Advocates demanding that he vacates the suit land. He said that he could not do so because he has already acquired Title by way of Adverse possession having stayed on the suit premises for more than 12 years, and to be exact, 17 years without interruption and while giving sworn evidence in court and having adopted his Replying Affidavit as his evidence in chief, the Applicant said that the suit land is still unregistered and that it has been in the hands of his family since the same was bought by the Respondent in 1989. His mother handed over the land to him when her health deteriorated in 2004. He is the eldest of his parents' children. The applicant repeatedly testified that it was the Respondent who permitted his late father to stay on and cultivate the suit property. The mother Title is still in the name of Arano Omache who is the son of the late vendor, Omache Nyagechange. He proceeded to say that there is a mud house on the suit land which he has been leasing at Kshs. 200/= per month. The same is made of corrugated iron sheets and mud walls. The Applicant says that the trees planted on the suit property are about 15 years old and that the Respondent was irked by the trees which was the reason he was asked by the Respondent to vacate the land since he did it without the Respondent's approval. He claims not to be a trespasser but that he doesn't know the arrangements made over the land between his late father and the Respondent. He also said that after being served with a Demand letter, he tried to reach out to the Respondent but all in vain. The family also owns a piece of land at Isoge measuring 5 Acres where they used to live together with their parents and where his parents were buried.

On Cross-Examination by M/s Gogi for the Respondent, the Applicant said that it is true that his late father bought the suit land on behalf of the Respondent and that the latter allowed his father to use the land. He used the words " He (*his father*) entered the suit land with the Respondent's consent and permission." The land was bought from Omache Nyagechange and the Title Deed is now in the name of the latter's son, Aroni Omache. The Applicant who testified online from Hungary said that he left the County in October 2021 and that he started cultivating maize, beans and general crops on the suit land in 2004 before planting the Eucalyptus trees but he has never lived on the land. Mr. Juma admitted that he does not even know the L.R. Title NO. of the land and that he had never disclosed to the Respondent that he had planted the Eucalyptus trees on the suit property or that he had leased out the same. He was not sure that the mud house was put up with the Respondent's permission. But that the same was built to take care of the property. He said that he called for a meeting with the Respondent in order to get to know the arrangement the latter had with his deceased father. He concluded the answers to cross-examination by saying that he filed the suit to avoid the expiry of the 4 days he was given to vacate the suit land and also when the Respondent refused to "restitute" him for the loss.

On Re-examination, the Applicant argued that if the Respondent wanted the land back, he should have demanded so before his (the applicant's) parents were buried in accordance with the customs of the Abaagusii Community. He further went on to admit that during the lifetime of his parents, the arrangement over the land in dispute had been brought to the family's attention and that failure by the Respondent to demand back the suit land immediately before or immediately after their mother's demise meant that the Respondent would never claim it back. The Applicant's sister, Everlyne Nyabonyi, PW2 adopted her statement dated 01/12/2021 as her evidence in chief by supporting her brother's claim. She testified that she grew up as the family was cultivating the suit premises and that unspecified records in their parents' custody indicated that their father had bought the suit land on behalf of the Respondent but that the latter has never managed, utilized or claimed the land from her parents.

She further testified that on 27/12/2020 the Respondent wanted to meet her brother but did not disclose the agenda and her brother responded by telling him to reschedule the meeting. She concluded her statement by saying that she had tried to reach out to her maternal uncle, Joseph Momboleo, her aunt Agnes Obwori and other relatives to help resolve the dispute but the Respondent "was abrasive". On cross-examination Everlyne admitted that she was aware of the arrangement concerning the suit property between her late parents and the Respondent through some documents she found at home and that the Applicant was cultivating the land on behalf of the family and that when not in school she and her siblings would go to work on the land. She could not tell the age of the trees but she suspected they could be more than 20 years old. She added that after receiving the Demand letter, they asked for a meeting with the Respondent so as to plead for more time to harvest their trees and that this did not happen because the Respondent refused to meet them. On re-examination, Everlyne said that at no time did the Respondent ever cultivate the suit land.

PW3- Peter Ondieki Obeto who said he is a brother to the late Juma Obeto, the father to the Applicant said that the Respondent came to his shop at Keroka town in December 2020 and wanted to know who had planted trees on his land. When the Respondent threatened to fell down the trees Mr. Obeto requested him to allow him time to look for his brothers and get a solution to the issue. He didn't have the details of how the land was acquired but that the land was bought by his late brother on behalf of the Respondent and his brother and his wife managed the land till they died and then the Applicant took over the management. He further said that on 07/02/21, the Applicant asked him to represent him in a meeting with the vendor's sons and family to discuss the possibility of the Applicant getting a copy of the Title Deed to enable him file a Civil Suit against the Respondent. But to his surprise Omache's son, Augustino Aroni Omache, had also invited the Applicant and Mr. Obeto asked that the meeting be postponed because his mission of going there was to get a copy of the Title Deed part of which the suit had falls.

On cross-examination by the Respondent's Counsel. Mr. Obeto said that he couldn't tell whether the Applicant had obtained permission to plant the Eucalyptus trees nor in whose name the Title to the land was. All that he knows is that he had been sent by the Applicant to go to the vendor's home to secure a copy of the Title Deed on 13/02/2021 and that he refused to sign a Memorandum he was shown by the Respondent which he did not even read. On re-examination Mr. Obeto said that he doesn't know whether the trees are still thereon nor the acreage of the land.

PW3 Andrew Bosire, brother to PW2 and the Applicant's father testified that for over 5 years he had benefited from the suit land when the

Applicant's father and mother Salome Kerubo Juma gave the land to him after he was chased away from his Bomet home and his house burnt down following the 1992 post-election violence. He also wrote in his statement that for 27 years he managed the suit land and that during this period it was his brother's (Henry Juma's) family that was in occupation of the suit land without any interference. He now stays in Miriri, Nyansiongo, Borabu District where he does business. He also admitted that his late brother had informed him that the land was not his (his brother's) but that the same belonged to the Respondent who is the Andrew's in-law and that his efforts to call the Respondent to a reconciliation meeting fell on deaf ears since the Respondent could not pick their calls. He only picked when they called through somebody else's phone number. On cross-examination, the witness said that he only cultivated but did not live on the suit land.

The Respondent, through his Replying Affidavit sworn on 07/02/2021, deposes that the Applicant is his nephew whom he licensed to work in his (Respondent's) farm as a caretaker taking care of the land on his behalf and that such a license cannot yield into adverse permission. In his statement dated 23/02/2022 he repeated the same. He adopted both as his evidence in chief. He further added that the Applicant's late mother, One Salome Juma was his sister and the Applicant's father was his brother-in-law. He bought the parcel of land in contention in 1988 when he was a District Officer. The land belonged to the late Joseph Omache and the transaction was negotiated and executed at his late brother-in-law's house where the vendor had been invited. The 1.2 Acres of land out of the parcel of land known as L.R. No. ISOGE/KINENI SCHEME/202 cost Kshs. 45,000/=. Those present during the execution of the Agreement were the vendor, his son Augustino and the Applicant's father and mother. He then gave his sister, Salome Kerubo the land to cultivate. The Applicant's father had also bought a parcel of land in the neighbourhood not long before this transaction which prompted the Respondent to also get interested to purchase the suit land. After buying building materials i.e. iron sheets and bricks which he gave to the Applicant's father in addition to Kshs. 100,000/= to put up a house for him, the latter instead used the materials to build his own house and only used the wreckage of an old house on the suit land to put up a mud house. The Respondent felt betrayed. When on 27/12/2020, the Respondent called the Applicant for a meeting to find out why he had planted trees on the suit land without his permission, he was so offended by the Applicant's riposte that he was so busy to meet him. He said he had a very tight schedule and that if the Respondent wanted a meeting "it could only be in the near future." This stunned him so much that the Respondent gave the Applicant a quit notice to vacate the suit premises. The Applicant had not authority to be on the suit land and was hanging onto his parents' earlier licensee. On cross-examination by Ms. Muma for the Applicant, Mr. Mamboleo said that he learnt there were trees planted on the suit land in December 2020 after the Applicant refused to turn up for the meeting. He became suspicious and went to see what was happening on the land. He concluded his testimony by saying that he had not given specific instructions on the use of the land.

DW2 – James Omwache, who stays in Isoge, testified that he knew the uncle/nephew relationship between the Respondent and the Applicant and that the Applicant was a licensee of the Respondent in as far as the suit premises was concerned. He also testified that it was his late father who sold to the Respondent 1.2 Acres out of L.R. ISOGE SETTLEMENT SCHEME/202 at Kshs. 45,000/= and in 1989, allowed his late sister Salome to cultivate the land. He further adduced evidence that sometime in 2021 the Applicant visited the family behind the Respondent's back asking them to transfer the suit land to him. But his elder brother, Augustino Aroni Omache, the registered owner and the rest of the family refused to do so. On re-examination, James said that the Respondent has been visiting the suit land annually or bi-annually.

DW3 – Jared Kenyatta Omache and DW4 Anyona Guto both echoed the evidence of DW2 James Omache. When cross-examination by Ms. Muma, Anyona Guto said that there was an old house on the suit land which fell down and another one was put up and that it is the Applicant who cultivates the suit property to-date. He concluded by saying that the Respondent has been visiting the land and that the trees thereon were planted on the Applicant's instructions and could be 4 years' old. The Applicant contracted people to plant the trees and that the Applicant's mother used to cultivate the land before him.

DW5 – Dennis Okong'o, a nephew to PW2 and PW3 testified that he also at one time cultivated the land with the Respondent's permission but later he was asked to vacate in order to pave way for the Respondent's sister, Salome. The 43-year-old neighbour to the suit land said on cross-examination that the trees have never been harvested and that they were planted in 1994. He further stated that the house on the suit land was only transferred from one place to another but still on the suit land. The Applicant told them he was given the land to cultivate by his late father. In reply to re-examination, Okong'o said that when the Applicant visited the Omache family on a fishing expedition, they declined to give him the information he wanted on the Description of the suit land and demanded that he comes with the Respondent. When his mission failed, the Applicant disappeared. The facts of this case are not in dispute.

This is a case where the Respondent bought 1.2 Acres out of L.R. NO. ISOGE/KINENI SCHEME/202 from the late Omache Nyagechange through his brother Henry Juma Obeto, now deceased, at a consideration of Kshs. 45,000/= in 1988. The land is today registered in the name of the Vendor's son, One Augustino Aroni Omache. After the purchase, the Respondent did not have immediate use of the land. He therefore gave permission and consent to the Applicant's father Henry Juma Obeto and the Applicant's mother Salome Kerubo Juma, a sister to the Respondent. Both are now deceased. The former died in 2004 while the latter died in 2007. After the demise of both parents, the Applicant, being their eldest son, took over the license and continued cultivating the land as his parents used to do. At one point, his father gave to his paternal uncle, PW3 Andrew Bosire, the piece of land to cultivate for over 5 years after the latter was ejected from Bomet and his house burned down following the post-election violence of 1992. The Applicant then decided to plant Eucalyptus trees on the suit land and when invited by the Respondent to explain why he did so without permission in December 2020, he answered the Respondent who is his maternal uncle that he had a tight schedule and could only see the Respondent later. Out of frustration, the Respondent wrote a Demand letter to the Applicant on 13/01/2021 asking the Applicant to vacate the suit premises.

Upon receipt of the Demand letter, the Applicant tried to reach out to the Respondent through his uncles but the Respondent was not willing to meet him. He decided to meet the family of the late Omache Nyagechange so that the land could be transferred to him discreetly. He also wanted to know the L.R. NUMBER of the land so that he could file a suit claiming adverse possession. In his effort to reach the aforesaid family on a finishing expedition, the family told him that he could only be given the information he requested if he was accompanied by the owner of the land, the Respondent. Apparently, the day the Applicant was supposed to get the information, a trap was laid for him and when he sent his paternal uncle, the uncle, Mr. Peter Ondieki found the Respondent at the Omache's residence. The fishing expedition flopped. The Applicant then filed this suit claiming that he had already acquired Title by adverse possession by being in occupation of the land for more than 12 years, 17 to be precise without interruption. Whereas he does not deny that he got into the land through a license given to his late father and later passed on to him, he still maintains that the Applicant has lost the right to the land. But from his evidence and that of his sister's (PW2) the Applicant's earlier intention was to move the court for an injunction to allow him harvest his trees from the suit land. But their intention developed into the acquisition of the land.

One thing is very clear from all the witnesses in this case. That both the Plaintiff and his late parents entered in the suit land with the Respondent's express permission and consent. And the instructions were clear and unequivocal – to cultivate the land and earn a living out of it.

A person who seeks to acquire Title to land through the doctrine of adverse possession by way of occupation of the suit land for the applicable statutory period must establish that he has been in occupation *nec per vim, nec clam, nec precario*, a Latin legal term meaning 'without force, without secrecy, without permission' i.e. nonconsensual actual, open, notorious, exclusive and adverse use by him or those under whom he claims, for the statutorily prescribed period without interruption. He must have the right intent to claim and hold the land in opposition to the rest of the world. He must show, on evidence, that the true owner or persons interested in the property have proper knowledge of the adverse assertion of ownership by the occupant who has no colour of right to the land and has the intent to hold solely for himself (donated by the exercise of the act of dominion over the land, which includes making ordinary use and taking ordinary profit of which the land is susceptible in its present state).

From the evidence, it is not in dispute that the Applicant has been on the suit premises since 2007 after his mother's death. Through himself and his witnesses the Applicant testified that his father and mother sought permission from the Respondent to occupy the suit land therefore making them licensees. According to the Applicant, when his mother's health deteriorated she handed over the suit land to him meaning that the Applicant was assigned the license his parents had acquired from the Respondent. The ingredient of *nec precario*, meaning "but without permission of the landowner" is therefore negated. This evidence came from the Applicant himself. On this point the Court of Appeal held in the case of *Waweru –vs-Richu (C.A.122 of 2001)* at page 406 that:

***“.....it is trite law that a claim for adverse possession cannot succeed if the person asserting the claim is in possession with the permission of the owner*”**

In *Wanje –vs-Saikwa (No.2) Civil appeal Number 72 of 1982 [1984] KLR* Justice Chesoni said at page 289:

“A person who occupies another person's land with that other person's consent cannot be said to be in adverse possession as in reality he has not dispossessed the owner of his land and the possession is not illegal. Again, there is no adverse possession when land is occupied under a license until the license has been determined”.

The Applicant and his paternal uncle (PW3) testified that the Respondent ought to have informed him that his parents were cultivating his land before the two were buried. But when PW2 was cultivating the land after he was displaced in Bomet, he knew that the land belonged to the Respondent. That license was never determined and the Applicant continued to ride on it.

In the same case at page 293 Justice Nyarangi Ag. JA as he then was said: -

“.....the Appellants have been cultivating the land and reside on the land and those activities, constitute adverse possession. However, the cultivation and the residence was with express permissive possession and did not become adverse during the time the Appellants were allowed to occupy the land.”

The Applicant has not demonstrated to this Court that this license was terminated and if so, when.

In *Benjamin Kamau Murima and others vs Gladys Njeri (Nrb) C.A. No. 213 of 1996 (unreported)* the court of appeal held:

“One needs only to look at the position of the occupier and if it is found that his occupation is derived from the proprietor of the said land in the form of permission or agreement or grant, then such occupation is not adverse, but if it is not so derived then it is adverse.”

The Applicant and his uncles testified that he took possession of the parcel of land **AS A MANAGER** without interruption. This being the case, the mandatory element of *pre cario* (without permission) is certainly negated. This is a very crucial condition in adverse possession. If the law were to be otherwise then every person who is permitted to be on another's land would inevitably own that land after the twelfth year. This would lead to absurdities. All the landless persons in the country who have been given shelter or a place to cultivate would abuse such magnanimity and then disinherit the nobility of their benefactors.

In *Mbira vs Gachuhi Nairobi HCCC No. 2826 of 1997* Kuloba J. held: -

“..... It has always been the law that permissive or consensual occupation is not adverse possession. The possession must be adverse. Adverse possession is occupation inconsistent with the Title of the true owner; inconsistent with and in denial of the right of the true owner of the premises. If one looks to the position of the occupier and finds that his right to occupation is derived from the owner in the form of permission or agreement or grant, it is not adverse.....”

Here the Applicant used the Respondent's land with his permission for as long as the Respondent did not need it. He did not dispossess him of the land. In the case of *N'gati Farmers Co-operative Society Limited –vs- Codicillary Ledidi & Others* the Court of Appeal held that: -

“.....the claim for adverse possession requires that the owner has been in possession but is now out of possession (either because he has been dispossessed or because he has simply discontinued possession).”

It must be shown by the occupier, that there was dispossession of the proprietor, or discontinuance of possession by the proprietor. "Dispossession" 'means the adverse possessor comes in and drives out the person in possession from the possession of the land; while "discontinuance" is where the person in possession goes out and is followed into possession by another. A person does not necessarily discontinue possession of it merely because he does not use his land, either by himself or by some person claiming through him. That alone is not sufficient. And for this I wish to associate myself with the strong views of Chesoni JA (as he then was) in the above quoted case of Wanje –vs-Saikwa (No.2) Civil appeal Number 72 of 1982 [1984] KLR at page 288 quoting Megarry's manual of the laws of real property:

"If the owner has little present use for the land, much may be done on it by others without demonstrating a possession inconsistent with the owner's Title.....in order to acquire by the statute of limitations a Title to land which has a known owner, that owner must have lost his right to the land either by being dispossessed of it or by having discontinued his possession of it....."

The Applicant wants the Respondent's Title of the entire 1.2 Acres cancelled and his name inserted in place thereof. I cannot imagine of any better expression of gluttony.

As I said in the case of **Seventh Day Adventist Church E. A. Ltd VS Isoge F.C.S. Nyamira ELC Case No. 42 OF 2021**

".....It is important to state here that the doctrine of adverse possession was not meant to be an instrument of fraud and ingratitude. In Kenya, it is not uncommon for landless people to approach good hearted landowners and ask the latter to allow them cultivate their land for their upkeep or even to earn a living. The person pleading for such a favour does so with the clear understanding that the favour is not meant to be permanent or to dispossess the rightful owner. But with time he thinks he can dislodge his benefactor. The benefactor may have given the needy person the parcel of land not because he didn't need the land at the moment or because he had plenty but because he wanted to share the little he had. There are also those who for some reason are not in immediate need of the land e.g. someone leaving the country for further studies or for some temporary engagements and then comes back after 12 years only for the yester-needy person to tell him that he is now dispossessed. As long as you obtained the land with the owner's permission it does not matter how long you are in possession of the land. You still remain a licensee. Possession arising from permissive entry, occupation and use by virtue of mutual understanding and affinity does not give rise to adverse possession after the statutory period of limitation. The doctrine of adverse possession was not intended to be used by those who enter or remain on another's land on rapport, whether by blood or by any other relationship. You enter or remain on my land under mutual understanding you must remain there as such under the presumed or actual permissive or consensual entry and accommodation, and occupation remains permissive and consensual for whatever period I am disposed to allow you to be there....."

This is yet another case of ungratefulness gaining momentum very fast in our society where the concept of Adverse Possession is being distorted and which occupies the minds of some misguided people. A brother invests in land from his own sweat, gives his sister a piece of land and allows her to use it in order to earn some income and educate her children. At one point the sister extends the favour to a displaced brother in law and before she dies, she assigns the license over the land to her eldest son who has grown up and been educated partly from the income made out of the said land. The nephew then turns against his uncle and bites the hand that fed him. The Applicant must have reaped enormous benefits for all that period he and his parents and siblings were in possession. The least that the Respondent expected is that his own nephew would turn around and approach the family that had sold the land to the Respondent and request the family to transfer the land to him (the Applicant). I must commend the family of the late Omache Nyagechange for their forthrightness. Had they not turned down the overtures of the Applicant, the latter was hell bent to fraudulently acquire the suit land. This is a perfect case of a person who is shown mercy but pays evil for the good accorded him. How many uncles would give you a piece of land to cultivate and does not even come to find out what is going on for ages. That is the measure of trust that the Respondent had on his sister's family. He even never bothered when the land was given to the brother in law by his sister when the latter had nowhere to run to and earn a living from.

As I said in the case of **Seventh Day Adventist Church E. A. Ltd VS Isoge F.C.S. Nyamira ELC Case No. 42 OF 2021** (supra) I made an observation I would not hesitate repeating here:

".....A holding such as is sought for by the Applicant would be of calamitous practical consequence on cherished positive cultural practices and traditions amongst our people, meant to provide social and economic security in the event of misfortune befalling a member of society. The law would be very inauspicious to allow this sort of ungrateful, immoral, horrifying and unconscionable behavior. I refuse to be part of such retrogressive expansion of the law....."

The upshot of the above is that although the Applicant has occupied the suit land for a period of over 12 years, he did so with the Respondent's permission and had the intention of occupying the land until the owner of the said land thought otherwise. This permission never came to an end and therefore his use of the land was not adverse to the owner's.

The suit therefore fails, and it is hereby dismissed with costs.

What do we do with the trees on the parcel of land, L.R. NO. ISOGE/KINENI SCHEME/202? None of the parties has made a prayer for the Trees planted on the suit land allegedly by the Applicant. But I wish not to leave the ownership of same in abeyance lest it becomes an issue of conflict.

As to anything appended to the land, I apply the Latin maxim, **Quicquid plantatur**

solo, solo cedit (, "whatever is affixed to the soil belongs to the soil" or 'that which is attached to the land becomes a part of the land'). In **SAID ABDALLA BUDZO & 36 OTHERS v TIOMIN (K) LIMITED & ANOTHER [2007] eKLR Mombasa H.C.C.C. 31 of 2004 L.**

Njagi J. had this to say:

“.....If this is the philosophy upon which the plaintiffs’ claim is founded, then the claim is totally misconceived. Barring some express agreement between a title holder and a third party to the effect that the latter would acquire an interest in anything on the land, the basic principle of law is summed in the latin maxim “quicquid plantatur solo, solo cedit.” Translated into English, this simply means that whatever is affixed to the soil belongs to the soil. In my view, the trees on the land in issue belong to that land and by extension to the holders of the freehold titles.....”

In *Jane Awuor Ondiege & another v Ali Yusuf Malumbo & 4 others; Rural Electrification Authority (Third Party) [2020] eKLR Mombasa ELC NO. 220 OF 2013*, Justice Munyao Sila held that:

“.....The final issue is whether the plaintiffs have proved a suit for compensation for the cut trees. The plaintiffs could only succeed on this claim if I held that they deserve the land. I have already dismissed their case for the land and it follows that the suit for compensation for the trees must fail, for trees form part and parcel of the land following the principle of *quicquid plantatur solo solo cedit*”.

Consequently, the Eucalyptus Trees on L.R. No. ISOGE/KINENI SCHEME/202 form part and parcel of the land. I need say no more.

Judgment dated, signed and delivered at Nyamira this 14th Day of March, 2022.

MUGO KAMAU

JUDGE

In the Presence of: -

Court Assistant: Sibota

Plaintiff’s Counsel: Mr. Were holding brief for Mr. Ochwal

Defendants’ Counsel: Mr. Maroko for the Defendant/Applicant