



**REPUBLIC OF KENYA**

**High Court at Eldoret**

**Environmental & Land Case 743 of 2012**

**ERICK CHEPKWONY AENGWO.....PLAINTIFF**

**VS**

**JONATHAN RUTTO KIBIESANG .....DEFENDANT**

*(Suit instituted by way of Originating Summons seeking prayers of adverse possession; plaintiff purchased suit land in 1978 but surrendered the land back to the defendant in 1990; subsequent agreement by parties to have each occupy the other's parcel; land registered in 1994; whether period before 1994 could be computed to run time before land became registered; whether entry through a sale agreement is incapable of founding a claim by adverse possession; whether the possession based on agreement to swop occupation of land could found a claim for adverse possession)*

**JUDGMENT**

**A. BACKGROUND AND PLEADINGS**

1. This suit was instituted on 3 August 2011 by way of Originating Summons brought pursuant to the provisions of Order 37 rule 7 of the Civil Procedure Rules, 2010, Section 38 of the Limitation of Actions Act, CAP 22, and Section 30 (f) of the Registered Land Act, CAP 300, Laws of Kenya (now repealed).
2. This is a claim by the applicant, (hereinafter referred to as the plaintiff) for orders that he is entitled to 0.25 Hectares of land comprised in the land parcel Baringo/Tiriondonin/ 44. It is his case that he has been in open, uninterrupted occupation without the consent of the defendant of 0.25 Ha of the suit land without the consent of the defendant. It is also his case that his occupation has been for a period in excess of 12 years; that the title of the defendant to the 0.25 Ha of the suit land has been extinguished; and that the said piece of 0.25 Ha ought to be transferred to the plaintiff.
3. The Originating Summons is supported by the affidavit of the plaintiff. In his affidavit, the plaintiff has annexed an extract of the register indicating that the suit land is registered in the name of the defendant. He has deponed that he commenced occupancy of the suit land on 4 August 1978 after the two parties concluded a sale agreement for a consideration of Kshs.1,000/= which was paid in full. The agreement is annexed to the supporting affidavit. The plaintiff has further deponed that since then to date, he has been in exclusive occupancy of the suit land. It is deponed that the defendant acquired title to the land in 1994 but did not seek to remove the plaintiff from the land. He has deponed that his occupancy has been in the open without secrecy and without the defendant's consent. He has averred that he has made substantial developments on the land, constructed a house, kept cattle, and grown cattle feed on the land.
4. Upon being served with the summons, the defendant appointed counsel and filed a Replying Affidavit in opposition to the Originating Summons. He has denied that the applicant has made substantial

developments on the suit land. He has deponed that on the contrary, he (the defendant) planted crops in April 2011. He has conceded being the registered owner of the suit land but has denied that the plaintiff's occupation has ever been adverse. He has deponed that the plaintiff and himself, mutually agreed to exchange user of two parcels of land, the suit land Baringo/Tiriondonin/44 and Baringo/Tiriondonin/86 belonging to the plaintiff. He has averred that it was agreed that he (the defendant) could cultivate maize on land parcel No.86 while the plaintiff grows napier grass in land parcel No.44.

5. He has explained that this arrangement arose after the earlier agreement made in 1978 was mutually rescinded and purchase price refunded to the plaintiff in the year 1990. He has deponed that when he indicated to the plaintiff that he would wish to resume occupation of the suit land, the plaintiff was reluctant and offered to exchange his land parcel for the suit land and volunteered to add an extra 0.1 acre. This was captured in an agreement made on 18/5/2011 which is annexed to the Replying Affidavit. Prior to this agreement, it is deponed that the plaintiff had refused to give up the suit land which prompted the defendant to report the matter to the Chief for mediation and the Chief had ordered each party to occupy their respective registered parcels.

6. The defendant has declared surprise that the plaintiff has now filed this claim, when he himself (the defendant), has not filed any claim on the plaintiff's land, which he (the defendant) has also been in occupation of for a period in excess of 20 years (in apparent reference to the alluded exchange of users). The defendant has contended that the plaintiff's use of the suit land was with his consent and mutual understanding and the issue of adverse possession does not arise.

7. This matter came before me for directions on 14/2/2013. I gave directions that since the facts are contested the matter do proceed by way of viva voce evidence with the affidavits on record being deemed as the pleadings of the parties.

8. The matter then proceeded for hearing on 17 April 2013. Only the plaintiff and defendant testified with none calling witnesses.

## **B. EVIDENCE OF THE PARTIES**

9. In a rather brief evidence in chief, the plaintiff testified that he is about 70 years old. He stated that the defendant is the registered owner of the land Baringo/Tiriondonin/44 and he produced an extract of the register (green card). The same shows that the defendant is the first registered owner of the suit land, having been so registered on 22/11/1994. The plaintiff testified that the defendant sold him the land through an agreement and that he started living on the land in 1978. The agreement was however not produced as an exhibit. He testified that he has made substantive developments on the land and produced several photographs to demonstrate this. He stated that since the year 1978, he has been in peaceful occupation and that he now wants the suit land transferred to him.

10. In cross-examination, the plaintiff agreed that he owns the land parcel Baringo/Tiriondonin/38 which abuts the suit land. He agreed that he also owns the land parcel Baringo/Tiriondonin/86. He elaborated that they made an agreement for sale of the suit land (No.44) on 4 August 1978 at a purchase price of Kshs.1,000/=. He conceded that from the year 1990 to 2011, he permitted the plaintiff to plough a portion of his land parcel No. 86 equivalent to the acreage comprised in the suit land parcel No. 44. On his part, he stated that he has been utilizing the whole of the suit land. He stated that he entered the land after purchasing it. He conceded that there was no house on the suit land. He agreed that they entered into an agreement before the District Officer on 18 May 2011 where it was agreed that they would formally swop the land parcels No. 44 with 0.6 hectares of the land parcel No. 86, with the plaintiff further agreeing to add 0.1 of an acre.

11. He stated that after the agreement entered into on 18 May 2011, the defendant rejected the land parcel No.86 because of pressure from his (defendant's wife) and therefore the agreement was never implemented. He stated that he claims the suit land because he purchased it in 1978. He denied that the agreement of 1978 was rescinded in 1990 and denied being refunded Kshs.1,000/= in the same year.

12. The defendant in examination in chief, testified that the plaintiff is his uncle (the plaintiff's mother and the defendant's wife being sisters). He conceded that they had an agreement for sale of the suit land in the year 1978 for a consideration of Kshs.1,000/=. He however contended that the agreement was rescinded in the year 1990 and that he refunded the Kshs.1,000/= through the plaintiff's wife, who happens to be his aunt. This agreement was rescinded because the defendant's wife requested the plaintiff to allow them back their land.

13. He testified that the plaintiff however requested him to allow him to continue planting napier grass in the suit land (land parcel No.44) while in return, the plaintiff would allow him (the defendant) to plough maize in the land parcel No.86 owned by the plaintiff. The two thus agreed to exchange the user of the two parcels of land, with the defendant permitting the plaintiff to use the suit land to plant napier grass for his cattle, and in return, the plaintiff permitting the defendant to use the plaintiff's land parcel No. 86 to plant maize. The defendant thus started planting maize on the plaintiff's land parcel No.86 from the year 1991 to the year 2011.

1. However, in the year 2011, the defendant's wife moved into the suit land and the plaintiff complained to the defendant and then reported the matter to the area Chief. The Chief with the assistance of some elders, resolved that each of the two should go back to the parcels of land that they own, that is, the plaintiff to return to his land parcel No.86, and the defendant to regain possession of the suit land.
2. The plaintiff was however not happy with this decision and reported the matter to the District Officer (D.O). The D.O heard the dispute after which the two resolved to enter into a formal agreement of exchange whereby it was agreed that the plaintiff would keep the suit land, and the defendant would keep the plaintiff's land parcel No. 86, but that the plaintiff would add an extra 0.1 of an acre to the acreage that the defendant was cultivating maize.
3. This agreement which was entered into on 18/5/2011 was produced as Defence Exhibit No.1. The defendant testified that he has allowed the plaintiff to use the suit land from the year 1991 just as the plaintiff has allowed the plaintiff to use the defendant's land parcel No. 86. He testified that the plaintiff's use of the suit land was therefore with his permission, in the same way that his use of the plaintiff's land, was with the permission of the plaintiff.

17. Cross-examined by counsel for the plaintiff, the defendant reiterated that he refunded the Kshs.1,000/= in the year 1990. He explained that the plaintiff's land parcel No.86 was smaller than the suit land. He agreed that from the year 1978 to 2011 the plaintiff has been in occupation of the land.

18. The parties having closed their respective cases, I allowed the parties to present their submissions.

### C. SUBMISSIONS OF COUNSEL

19. In his submissions, Mr. Y.M. Barasa, learned counsel for the plaintiff, submitted that the plaintiff commenced occupation of the suit land from the year 1978 pursuant to a sale agreement. He contended that the plaintiff's occupation remained uninterrupted until this suit was filed. He argued that the agreement to formally swap the two parcels of land, of 18 May 2011, should not be interpreted as an interruption since the terms thereof were never implemented. The plaintiff still continued to be on the suit land. He averred that the agreement of 1978 was never revoked, as there was no evidence of refund of the purchase price in 1990, as alleged by the defendant. In any event, he argued that the plaintiff still continued in occupation without any interruption. He was of the view that the plaintiff has proved his case on a balance of probabilities. In support, he relied on the case of **Public Trustee v Wanduru (1984) KLR 314**.

20. On the other hand, Mr. R.R. Mwetich, learned counsel for the defendant, urged this suit to be dismissed. He conceded that the agreement of 1978 was not disputed but contended that it was revoked in 1990 after which the parties only allowed each to use the other's land. He argued that at no time could time be said to have started running against the defendant to support any claim of adverse possession. According to counsel, the period between 1978-1990 could not be considered, because the plaintiff entered the land with the permission of the defendant pursuant to an agreement for sale.

21. He contended that after the year 1990, the former agreement of 1978 was rescinded and the parties informally agreed to swap the user of their respective parcels of land. In the opinion of Mr. Mwetich, the possession of the plaintiff of the suit land from the year 1990 could not be adverse because he had the permission of the defendant to utilize the suit land, just as the defendant, had permission of the plaintiff to utilize the plaintiff's land. He stressed that it was in recognition of this, that the parties entered into a formal agreement on 18/5/2011 to now exchange their respective parcels. This he pointed out, was a clear manifestation, that the plaintiff acknowledged the title of the defendant to the suit land. In his view, time only started running against the defendant from 18/5/ 2011.

22. In any event, Mr. Mwetich argued that time could not start running before the land became registered and for all purposes, time could only start running from 1994 when the suit land became registered. He stressed that the occupation of the suit land by the plaintiff from 1994 was in never adverse. To support his arguments, Mr. Mwetich relied on the cases of *Kamau v Kamau (KLR) 1 E&L, 105; Waweru v Richu (2007) 1 EA 403*, and the unreported decisions in *Sisto Wambugu v Kamau Njuguna, Civil Appeal No.10 of 1982* (which I have discovered is actually reported in (1983) KLR 172 as *Wambugu v Njuguna*).

#### **D. DETERMINATION BY COURT**

23. The parties herein never framed the issues but in my view the following are the issues to be determined.

- (1) *Whether there was a sale agreement for the sale of the suit land to the plaintiff in the year 1978.*
- (2) *Whether the occupation of the suit land by the plaintiff can be said to have been adverse from the year 1978 - 1990.*
- (3) *Whether there was an agreement to rescind the sale agreement of 1978 and in place thereof the parties only agreed to swap user of their respective parcels of land commencing the year 1991.*
- (4) *Whether the occupation of the plaintiff on the suit land can be said to have been adverse from the year 1991.*
- (5) *Whether adverse possession could only run from the year 1994 when the suit land was first registered.*
- (6) *Is the plaintiff entitled to the prayers sought ?*

#### **Issue 1 & 2**

*Whether there was a sale agreement for the sale of the suit land to the plaintiff in the year 1978 and Whether the occupation of the suit land by the plaintiff can be said to have been adverse from the year 1978 - 1990.*

24. I do not think it is in contention that there was a sale agreement entered into, between the plaintiff and the defendant, for the sale of the suit land for a consideration of Kshs.1,000/= which consideration was paid in full. This is despite the plaintiff not putting forth the written agreement of 1978 in evidence. The defendant did not refute that he did sell the suit land to the plaintiff in the year 1978.

25. The next issue is whether time started running from the year 1978 as against the defendant so that in the year 1990 the defendant's title to the suit land had been extinguished. I will make this determination without prejudice to the other issues because as we shall see, my determination of issue No.2 is actually not going to determine whether the plaintiff is entitled to his prayers herein.

26. It was the contention of Mr. Mwetich, that since the plaintiff entered into the suit land through a sale agreement, that entry was with the permission of the defendant and since it was entry with permission, it

cannot sustain a claim for adverse possession. It is trite law that to sustain a claim for adverse possession, such possession must be *nec vi, nec clam, nec precario*. In other words it must be possession that is without force, without secrecy and without permission.

27. It follows that possession in itself is not enough to sustain a claim for adverse possession. Such possession must be one that challenges the title of the registered owner. If possession is with the permission of the registered owner, it cannot be said to be possession that challenges the title of the registered owner, and thus such possession cannot be adverse, and since it is not adverse, it cannot support a claim for adverse possession. For example, if a person is in occupation of land as licensee or lessee, such occupation is with the permission of the registered owner and is not adverse to the title of the registered owner. Such possession, by its nature, acknowledges the title of the registered owner and occupation thereof is under the control and permission of the registered owner. It is not occupation that is *nec precario*. (See **Hughes v Griffin (1969)** 1 WLR 23 which case emphasizes that a licensee cannot claim land by way of adverse possession).

28. The question that arises in this matter is whether entry through a sale agreement is entry by permission such that occupation thereof can be said to be occupation with permission of the registered owner and thus not adverse. The corollary to this question is whether entry and occupation through a sale agreement is the equivalent of dispossession of the registered owner.

1. In the case of **Wambugu v Njuguna**, the court of appeal held inter alia that "*where the claimant is a purchaser under a contract of sale of land, it would be unfair to allow time to run in favour of a purchaser pending completion when it is clear that he was only allowed to continue to stay because of the pending purchase because had it not been for the pending purchase the vendors would have evicted him. The possession can therefore only become adverse once the contract is repudiated.*" (holding No.7). It held further that "*where a claimant pleads the right to land under an agreement and in the alternative seeks an order based on subsequent adverse possession, the rule is : the claimant's possession is deemed to have become adverse to that of the owner after the payment of the last instalment of the purchase price. The claimant will succeed under adverse possession upon occupation for at least twelve years after such payment.*"
2. The decision in **Wambugu v Njuguna** was that if a purchaser has not paid the full purchase price, time for adverse possession does not begin to run, and that it will only be deemed to start running after the full purchase price is paid. It was not the ratio decidendi of the case that an entry by sale can never sustain a claim by adverse possession. In arriving at this decision, the court of appeal referred to the case of **Bridges v Mees (1957)** Ch 475. In this case, there was entry through purchase and the purchase price paid in full. It was held that after the seller had received full payment he remained a bare trustee for the purchaser.

31. The reasoning is that if the purchaser has entered into the land before fulfilling the terms of the purchase, his occupation of the land is subject to the vendor terminating the agreement for breach. He thus continues occupying the land as licensee which can be terminated by the vendor terminating the contract. If the contract is terminated or repudiated, then it is at that point that time starts running. But once the full purchase price is paid, then the occupation by the purchaser is not under a licence any more, because the contract has been performed by both parties, the only issue pending, being the formal transfer of the land to the purchaser.

32. The case of **Waweru v Richu** puts the point very succinctly, and it considered purchases of land which are subject to the Land Control Act, and those which are not. It was held 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 or in pursuance of an agreement for sale or lease or otherwise. It was further held that a purchaser of land under a contract of sale, not subject to the Land Control Act, who is in possession of the land with the permission of the vendor pending completion, cannot lay a claim of adverse possession of such land at any time during the period of validity of the contract, unless and until, the contract of sale has first been repudiated or rescinded by the parties, in which case adverse possession starts from the date of termination of the contract. It was also held that where a purchaser or lessee of land in a controlled transaction is permitted to be in possession of the land by the vendor, or lessor, pending

completion, and the transaction thereafter becomes void under Section 6(1) of the Land Control Act for lack of consent of the Land Control Board, such permission is terminated by the operation of the law and the continued possession, if not illegal, becomes adverse from the time the transaction becomes void.

33. The position in *Wambugu v Njuguna* was reiterated in the case of *Public Trustee v Wanduru (1984) KLR* relied upon by Mr. Barasa. In the said case it was stated that the limitation period will begin to run from the date of the payment of the purchase price in full or last instalment of it. (See P325 per Kneller J). *Bridges v Mees* was applied. There does not seem to be doubt that the position is clear that where the purchase price has been paid in full, time starts running upon the full purchase price.

1. For agricultural land in which consent of the land control board is required, it may not matter that the full purchase price has not been paid. This is because such agreement if consent has not been granted, becomes void, six months after. Since the agreement is voided, possession thereafter will not be founded on any agreement and it can therefore sustain a claim for adverse possession. This point is however not in issue here, for in the circumstances of this case, the full purchase price was paid by the plaintiff to the defendant. It follows therefore that time was capable of running against the defendant from the year 1978 if the land was registered. But the land was not yet registered in 1978. It was unregistered land at the time of sale.
2. To consider whether time could be said to be running, I turn to the dictum of Kneller J.A in *Public Trustee v Wanduru* (at p325) where he stated thus :

*"If the land were not registered land it might be argued that lawful entry by a purchaser under a written contract would confer a lawful title and his possession could not be adverse."*

36. From this dictum, since the land was unregistered, it became the lawful property of the plaintiff upon entry thereto. The property became the plaintiff's by virtue of the contract and subsequent entry, and therefore his possession was not one that was adverse to the defendant's, but was a possession of what rightfully belonged to him.

37. This disposes of issue 1 and 2.

#### **Issue 3 & 4**

*whether the agreement between the two parties of 1978 was rescinded in 1990 and in place thereof the parties agreed to swap their respective parcels of land and whether possession of the suit land by the plaintiff since 1991 can be said to be adverse to the defendant's title.*

38. It is the assertion of the defendant that the agreement of 1978 was rescinded by the refund of the purchase price to the plaintiff. The plaintiff has denied that the agreement of 1990 was ever rescinded and has denied having any knowledge of receipt by his wife of the sum of Kshs. 1,000/= as refund. My own assessment of the evidence on record is that the agreement was rescinded and that the plaintiff agreed to give back the ownership of the land to the defendant. The defendant explained that it was because of this rescission that he ended up being on the plaintiff's land parcel No. 86, because it was latter agreed to swap user of the two parcels, i.e the plaintiff to continue retaining possession of the suit land to grow napier grass, whereas the defendant would use the plaintiff's land to grow maize.

39. Although the plaintiff has denied this, he has not given any reason why he allowed the defendant user of his parcel of land No. 86 and if so on what terms.

40. I am more inclined to believe the defendant's evidence that this was because the two parties informally exchanged the user of their parcels of land. It is probably for this reason, that when the land was first registered in 1994, it became registered not in the name of the plaintiff, but in the name of the defendant. This is the only conclusion I can reach, for the plaintiff did not give any reason why the suit land never became registered in his name when the land fell due for registration if the agreement of 1978 was not rescinded. It was instead registered in the name of the defendant and the plaintiff does not seem to have had any quarrel with this.

41. From the year 1991 onwards, the plaintiff was a licensee of the defendant just as the defendant was a licensee of the plaintiff in the plaintiff's land parcel No. 86. It is settled law that a person who is a licensee cannot claim to be entitled to land by way of adverse possession (See *Hughes v Griffin* applied in the case of *Wambugu v Njuguna*). The occupation by the plaintiff of the suit land from the year 1990 or 1991 cannot therefore be said to have been adverse to the title of the defendant.

42. It is perhaps on the realization that their loose exchange agreement was incapable of being enforced, and the pressure put on the defendant by his wife to reclaim the suit land, that the parties thought of making permanent this arrangement through the written agreement of 18/5/2011. The agreement is home-made and very brief and states that the two parties have agreed to exchange their farms. The plaintiff's suit herein is not based on that agreement and he does not pretend to be seeking to enforce that agreement. His claim herein is squarely one of adverse possession. In any event, I do not think that the agreement of 2011 is enforceable for want of consent of the land control board pursuant to the provisions of Section 6 of the Land Control Act, (CAP 302) Laws of Kenya, which requires all sales of agricultural land to be subject to the issuance of consent by the land control board.

43. This period, from 2011 onwards, cannot sustain a claim for adverse possession.

### Issue 5

*Whether time (if at all) could only start running from the year 1994.*

44. I have already held that the occupation of the suit land by the plaintiff from the year 1991 or thereabouts was with the permission/licence of the defendant and therefore he cannot sustain a claim for adverse possession for this period of occupation.

45. There is the question whether time only started running from the time of registration in 1994 or whether time started running in 1978. Time for adverse possession does not begin to run for land that is unregistered. Mr. Mwetich relied on the case of *Kamau v Kamau* to demonstrate that time could not run until the title was registered. The decision in *Kamau v Kamau* related to acquisition of an easement by prescription. In the case of *Kamau*, there was reference to the decision in the case of *Tayebali Adamji Alibhai v Abdulhussein Adamji Alibhai (1938) 5 EACA 1*. In the case of *Tayebali*, there was a claim to easement by way of adverse possession. In the said case the land became registered in 1923 and it was held that time could only begin running from the period of registration. The court was of the view that the acquisition of a title against the registered owner by adverse possession must be taken as connoting such possession as dates from the granting of the certificate of title. The claim in *Tayebali* failed. The plaintiff was claiming possession from the year 1915 but the land became registered in 1923. The suit was filed in the year 1934. The required time to sustain an easement by way of adverse possession was 20 years which could not have lapsed from 1923 when the land became registered.

46. The title if the land is unregistered, is not extinguished but a person can claim that the registered owner thereafter holds it as trustee. The claim would be based on a statutory trust and not on adverse possession. This position is brought out by the provisions of Section 37 of the Limitation of Actions Act (CAP 22). The same provides as follows :-

*37. This Act applies to land registered under the Government Lands Act, the Registration of Titles Act, the Land Titles Act or the Registered Land Act, in the same manner and to the same extent as it applies to land not so registered, except that -*

*(a) where, if the land were not so registered, the title of the person registered as proprietor would be extinguished, such title is not extinguished but is held by the person registered as proprietor for the time being in trust for the person who, by virtue of this Act, has acquired title against any person registered as proprietor, but without prejudice to the estate or interest of any other person interested in the land whose estate or interest is not extinguished by this Act;*

47. Section 37 (1) (a) above, as can be seen, provides that where the land is not registered, the title of the

*proprietor is not extinguished but is held by him in trust for the person who would have otherwise been able to sustain a claim by way of adverse possession.* The claim in this instance would be a claim based on trust and not a claim by way of adverse possession.

48. This position is buttressed by Section 38 of the Limitation of Actions Act which provides as follows :-

**38. (1)** *Where a person claims to have become entitled by adverse possession to land registered under any of the Acts cited in section 37, or land comprised in a lease registered under any of those Acts, he may apply to the High Court for an order that he be registered as the proprietor of the land or lease in place of the person then registered as proprietor of the land.*

49. The reference to registered land again comes out from the above provision. It will be seen that Section 38 applies where a person claims to have become entitled by adverse possession to land *registered* under any of the Acts cited in Section 37.

50. It ought to be remembered that in Kenya, the right to claim land by way of adverse possession is statutory and I think there is preposition that the land needs to be registered for one to found such a claim. The reasoning could be because in the circumstances of Kenya, unregistered land is inevitably unalienated Government Land or Trust Land. Under Section 41 of the Limitation of Actions Act, one cannot sustain a claim for adverse possession for land which is Government land, or Trust Land, or land vested under County Councils. There are various authorities on this point the most prominent being the court of appeal decision in ***Gitu v Ndungu (2001) 2 EA 376*** where it was held that time could not start running to sustain a claim for adverse possession, when such land was still under the Settlement Fund Trustees which is an appendage of the Government.

51. The answer to issue No. 5 in this case then is that time for adverse possession could not therefore start running until after registration in the year 1994.

52. However, as I held before, the possession of the plaintiff as at 1994 and thereafter was with the permission of the defendant. The time that ran from the time of registration was therefore irrelevant for purposes of supporting the plaintiff's suit.

#### **Issue 6-**

*Is the plaintiff entitled to the prayers sought ?*

53. I have held above that the time from 1978 - 1990 was not time running adversely to the interests of the defendant. The plaintiff was an actual owner of the land. From 1991 to present, the plaintiff has been occupying the land as a licensee of the defendant. Time could not however run until the year 1994 when the land was first registered but the period after 1994, was still a period in which the plaintiff occupied the suit land as a licensee, pursuant to the licence granted in 1991.

54. The period that was relevant for purposes of computing time, was a period in which occupation of the suit land by the plaintiff was with the permission of the defendant. The occupation was not adverse to the title of the defendant. The plaintiff's suit cannot succeed. I therefore dismiss the same with costs to the defendant.

55. I also order the plaintiff to forthwith vacate the suit land within the next 7 days and in default the defendant is at liberty to apply for eviction.

56. It is so ordered.

DATED AND DELIVERED AT ELDORET THIS 23RD DAY OF MAY 2013.

**JUSTICE MUNYAO SILA**

**ENVIRONMENT AND LAND COURT AT ELDORET**

*Delivered in the presence of:-*

*Mr. Y.M. Barasa of M/s Wambua Kigamwa & Company for the plaintiff.*

*Miss J.C. Tarus holding brief for Mr. R.R. Mwetich of M/s Manani Lilan & Co for the defendant.*