



**Maina v Kabita (Environment & Land Case 251 of 2016)
[2022] KEELC 3065 (KLR) (23 May 2022) (Judgment)**

Neutral citation: [2022] KEELC 3065 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 251 OF 2016**

JM MUTUNGI, J

MAY 23, 2022

BETWEEN

GEORGE MICHAEL MAINA PLAINTIFF

AND

VITALIS KABITA DEFENDANT

JUDGMENT

1. The instant suit was commenced by way of plaint that was amended on 22nd February 2018. The plaintiff averred that he was the proprietor of unsurveyed residential Plot No.134 Gilgil which was later surveyed and given the reference L.R No.30171 North East of Gilgil Township and Title No. Gilgil Township Block 5/2 (herein after referred to as the “suit property”).
2. The plaintiff averred that he had been in possession of the suit land upon being allocated by the Commissioner of Lands on 24th May 1996. He further averred that on 4th July, 2016 the defendant purporting to be the owner of the suit land took possession and erected a temporary shelter on the suit property. The plaintiff vide the amended plaint sought the following orders against the defendant:
 - a. A declaration that the Plaintiff is the legitimate owner of all that parcel of land known as Title No. Gilgil Township Block 5/2 initially referred to as uns. Residential Plot no. 134 situated in Gilgil Township and also L.R No.30171 North East of Gilgil Township.
 - b. A permanent injunction restraining the Defendant by himself, his agents, servants and/or employees from trespassing, selling, wasting, intermeddling and/or interfering in any manner whatsoever with Title No. Gilgil Township Block 5/2 known as Plot no. uns. Residential Plot No. 134 situated in Gilgil Township and also L.R No. 30171 North East of Gilgil Township.
 - c. Eviction Orders
 - b. Costs of this suit



3. The defendant filed his defence and counterclaim dated 19th July, 2016 where he averred that he was the bona fide owner of all that parcel of land known as Gilgil S & S/2021 allocated to him on 10th June, 1996 by the Nakuru District Plots Allocation Committee. He further averred that he had been in possession of the suit property since 1996 and had developed the same by constructing a fence and a farm house thereon 19 years ago. He averred that the plaintiff attempted to unlawfully take possession of the suit property on 4th July, 2016. In his counterclaim the defendant sought for the following orders:
 - (a) A declaration that the defendant is the bonafide owner of all that parcel of land known as Gilgil S&S/2021 situate at Nakuru County by virtue of adverse possession and regular allotment.
 - (b) A permanent injunction restraining the plaintiff, his servants and or agents from interfering and or trespassing on the parcel of land known as Gilgil S & S/2021 situate at Nakuru County.
 - (c) Costs of the counterclaim and interest thereupon at such rate and for such period of time as this Honourable court may deem fit to grant.
4. The plaintiff filed a reply to defence and defence to counter claim dated 14th June 2017. The plaintiff reiterated the contents of the plaint and specifically denied the defendant had been in possession of the suit land prior to July 2016 when the plaintiff asserted the defendant forcefully entered onto the land and erected a temporary structure. The plaintiff denied that the defendant had any valid claim to the suit property and prayed for the dismissal of the defendant's counter claim on account of being devoid of any merit.
5. The suit was part heard before Munyao J on diverse dates when the plaintiff and two witnesses testified in support of the plaintiff's case. The plaintiff's case was closed on 21st February 2019. The defendant who had been taken ill following an accident did not give any oral testimony. The defendant's counsel informed the court that owing to the defendant's health condition he could not withstand a trial. The parties counsel on 25th October, 2021 consented to have the defendant's witness statement and the bundle of documents he had submitted in support of his case admitted in evidence without the defendant being called to testify whereupon the defendant's case was deemed closed as no other witness was offered by the defence. The parties thereafter exchanged their final written submissions.

The Evidence of the parties

6. The plaintiff testified as PW1 and it was his evidence that in November 1995 he applied to be allocated 3 plots and that in 1996 he was allocated plot No.134 which was unsurveyed within Milimani/Leleshwa area in Gilgil. The plaintiff tendered in evidence a letter of allotment dated 24th May 1996 for "Uns.Residential plot no.134 Gilgil" which was produced as "PEX1". He testified that he got the plot surveyed and was issued with a deed plan that renumbered the plot as LR No.30171. The Deed Plan No.403969 dated 17th June 2016 was exhibited in the plaintiff's bundle of documents at page 7 and the Survey Plan F/R 556/144 was exhibited at page 19 in the bundle filed on 10th June, 2017. The plaintiff testified that he had surrendered the Deed Plan and the Survey Plan to the Ministry of Lands to enable the appropriate amendment to be effected in the Registry Index Map (RIM) and the title processed. The plaintiff testified that after he was allocated and shown the plot he took possession and that he permitted a neighbour to utilise the plot for subsistence cultivation. The plaintiff further testified that after the survey process was completed he was issued a lease and certificate of lease for the plot which were exhibited in the bundle of documents and produced as "PEX 7 & 8" respectively.
7. The plaintiff affirmed that he verified with the County Government regarding plot No.134 allocated to him and plot No.2021 allocated to the defendant and that the Country Government confirmed that the two plots were separate and distinct. He stated the County Government gave him a letter dated 2nd



November 2016 which clarified that the plots were separate. The letter was exhibited in the plaintiff's bundle of documents as "Document 6" whose contents interalia were as follows"-

Re: Clarification on plot No. 134 Gilgil Township Milimani and plot No. 2021 Gilgil site and service

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Plot in Gilgil are arranged depending on named areas, for example, Ngomongo, Kampi Somali, Gilgil Township, site and service, Leleshwa, Milimani etc.

In this case site and service is found between the Nairobi Highway and Gilgil town, on the left as you proceed from Nakuru to Naivasha, whereas Milimani borders Leleshwa as you go to the Anti Stock Theft Unit. The above two plots are very different on paper and on the ground therefore not relating to one plot.

Plot No.134 Gilgil Milimani is near Leleshwa North of Gilgil town while plot No.2021 is supposed to be found in site and service, south east of Gilgil town.

In Gilgil sub-county, all plans and areas are clear and typed and nothing is handwritten.

Anything contrary ins Malpractice.

Thank you.

Kangor Yatich Kipkorir

Deputy Sub Country Admistrator"

8. The plaintiff further in his evidence stated the defendant in July 2016 entered onto his said plot No.134 Gilgil claiming ownership of the same. The defendant claimed the plot was plot No.2021 Site and Service which had been allocated to him. The plaintiff stated that the defendant removed the fence that he had put and erected a new fence together with a temporary structure.
9. The plaintiff testified that he had been paying rates to the County Government for his plot and he produced a rates clearance, certificate dated 1st July 2016 and various rates demand notices issued by the County Government. The plaintiff affirmed that he obtained the lease and certificate of lease after the suit had been filed. He explained that he had paid the allotment charges though he did not produce any receipts to support the payment. He affirmed the survey of the plot was one in 2016 and a deed plan prepared which was utilized in the processing of the title.
10. In cross examination he reiterated the defendant had not been on occupation of the plot and that he only came unto the scene in 2016 when he staked claim to the plot, and it was then the defendant removed the fence that the plaintiff had put and erected his own and built a temporary Mabati structure as seen in the photographs exhibited.
11. PW2 Dan Kalis Cherutich a surveyor from Regional Survey Office, Nakuru testified that their office received the court order dated 22nd March, 2016 which was in the following terms: -
 1. That this Honourble court direct the District Land Surveyor and Nakuru County Government Surveyor to proceed and identify whether what the plaintiff describes as plot No.134 or LR No.30171 North East of Gilgil town is on the ground the same or different from what the defendant describes as Gilgil S&S 2021.



2. That the court direct the parties to tender their respective supporting documents to the District and County Surveyor forthwith.
 3. That the officers to conduct the Survey within 30 days and file their report within 7 days thereafter.
 4. That the parties to share cost of the survey exercise and status quo to be maintained.
12. The witness testified that they visited the site as per the court order and prepared a report which was produced as PEX10. The brief report is reproduced hereunder: -

“Following an order by the Hon. Justice Munyao Sila of 22nd March 2016 on the above matter, (copy attached), we visited the site with both the plaintiff and defendant on different dates. On both occasions they all pointed to the same location.

The plaintiff tendered to us his survey plan F/R556/144 for LR 30171. The defendant had neither a survey plan nor a Part Development Plan (PDP).

Our survey showed that the site pointed to us by both parties is the same site where LR 30171 falls. This site is fenced with barbed wire with a small mabati hut at the middle.

It was not possible to locate the defendant’s site because he lacked both survey plan and a development plan.

A.KMunyasya

Regional Surveyor

Rift Valley Region.

13. The witness testified that they were unable to pick the defendant’s plot on the ground because the defendant did not have either a survey plan and/or a Part Development Plan (PDP). He stated the survey plan furnished by the plaintiff related to the land claimed by the plaintiff.
14. In cross examination PW2 stated he and Mr. Munyasia who had signed the report visited the site together and that they did the survey jointly. He stated Mr. Munyasia was the Regional Surveyor but was not available to come to court to produce the report himself.
15. PW3 Gildine Gatwiri Karani was a Land Registrar in Ardhi House, Nairobi within the office of the Chief Land Registrar Ministry of Lands. She testified on the records held by the Lands office. She testified that the Chief Land Registrar authorized the letter (“PEX9”) that forwarded the Lease to the Land Registrar, Naivasha for execution by the Land owner and for registration. The witness identified the Lease that was forwarded (“PEX-7”) and stated the beneficiary was George Maina Michael and he was for his part required to execute the lease, attach his photo and furnish his PIN after which the lease was to be registered. The witness affirmed she was the one who issued the certificate of lease and confirmed the signature on the document to be hers. The witness confirmed as per the records held by the Lands Office the proprietor of the suit land was George Maina Michael. The witness tendered in evidence a certified copy of the abstract of title (green card) and a certified copy of official search which showed the plaintiff was the current registered owner.
16. Under cross examination Pw3 clarified that a Land Registrar’s duty is limited to registering instruments and did not include planning and allotment of land which is a function of the land administration officers. She stated Land allotment and processing of title is done by officers in Land Administration in Ardhi House and the registrable instruments only come to the Registry for registration after all the other processes are completed.



17. As indicated earlier in the judgment no oral evidence was adduced in support of the defendant's case. The defendant's witness statement and the documents he had filed in support of his case were admitted in evidence. The court however will be cautious that the defendant's evidence was not tested in cross examination and neither were the documents subjected to any interrogation through cross examination.

The defendant's evidence

18. The defendant in his statement stated that he was allocated plot No.2021 in Gilgil by the County Government of Nakuru and was issued a letter of allocation exhibited in the bundle of documents. He explained he paid the allotment charges and all the other associated charges and that he paid the survey fees and that plot was beaconed on 8th October 1997 when he took a surveyor to the site. The defendant stated he had consistently paid rates for the suit land Gilgil S&S/2021 since 1996 as evidenced by the receipts for payment exhibited in the bundle of documents. The defendant asserted that he had been on the suit property from July 1996 when the same was allocated to him. He stated he had fenced the plot and had constructed a farmhouse/store which had been on the plot for over 19 years. He averred that it was the plaintiff who on 4th July, 2016 trespassed onto the plot with a group of people and attempted to remove the fence but was restrained by police from Gilgil.
19. The defendant stated he was not aware of the survey the plaintiff claimed to have been done on the suit property that resulted in the plot being renumbered as LR No.30171. The defendant reiterated the suit property was allocated to him as a residential plot Gilgil S&S/2021 as evidenced by the letter of allotment to him. The defendant exhibited a bundle of documents as per the list dated 19th July 2016 filed on 20th July 2016 together with the statement of defence and counterclaim.

Submission, analysis and determination

20. The plaintiff filed his submissions on 24th January 2022 while the defendant filed his submissions on 26th January 2022. I have reviewed the pleadings and the evidence and I have considered the submissions of the parties and the following are the issues that arise for determination.
- i. Whether unsurveyed Residential plot No.134 Gilgil allocated to the plaintiff and Gilgil S&S Residential Plot No.2021 allocated to the defendant were one and the same plot on the ground?
 - ii. Whether the plaintiff was regularly registered as owner of land parcel Gilgil Township Block 5/2 initially referred to as unsurveyed Residential plot No.134 Gilgil Township and later LR No.30171?
 - iii. Whether the defendant has adversely possessed the suit property and whether the plaintiff's claim to the suit property was statute barred on account of limitation?
 - iv. What reliefs should the court grant?
21. In the present matter both the plaintiff claim ownership of the suit property. The plaintiff asserts he was allocated by the commissioner of Lands Uns. Residential plot No.134 within Gilgil Township after he had applied. He produced of letter of allotment dated 24th May 1996 ("PEX1") that indicated he had been allocated the plot shown on plan No.22505/VII/15 measuring approximately 0.16 hectares for a term of 99 years from 1st January 1996. The letter of allotment was among other persons copied to the Town Clerk, Nakuru and the clerk to the council and the District Commissioner Nakuru. The plaintiff stated that he got the plot surveyed and a deed plan was prepared and the plot was renumbered



LR No.30171 and the plot subsequently was registered in his name as Gilgil Township Block 5/2 and he was issued with a lease and certificate of lease. The plaintiff insisted he had been in occupation of the suit property until July 2016 when the defendant unlawfully trespassed onto the plot, removed his fence, and put up his own fence and constructed a temporary mabati structure thereon.

22. The defendant for his part averred he was allocated residential plot No.2021 at Gilgil Site & Service and produced an undated letter of allocation indicating the District plots Allocation Committee (Nakuru County Council) had at its meeting on 10th June 1996 allocated him the plot. The letter did not indicate the plot size and did not attach a Part Development Plan (PDP) to show the location of the plot. Although the defendant stated he had the plot surveyed and beacons he did not exhibit a Survey Plan (F/R).
23. The defendant stated he had been in possession of the plot since he was allocated and to support this assertion he pointed to the barbedwire fence and the mabati structure which he stated he had erected. However, a close scrutiny of the photographs exhibited indicates the mabati hut/structure may have been recently constructed as there was no evidence of long usage as claimed by the defendant.
24. The letter dated 2nd November, 2016 by the Deputy sub County Administrator referred to earlier in this judgment was clear that the location of plot No.134 Gilgil was within Milimani area near Leleshwa, North of Gilgil Town and plot No.2021 was in site and service, South east of Gilgil Town. The Director of surveys approved F/R556/144 that generated the Deed Plan for L.R No.30171. The court faced with the two conflicting letters of allotments where the parties were laying claim to the same plot issued the order dated 22nd March 2016 (reproduced earlier in this judgment) requiring the Land Surveyor to inspect the site and prepare a report to verify the location of the plots claimed by the parties. The Regional Surveyor confirmed the site they visited and surveyed related to Survey Plan F/R556/144 for LR No.30171. According to PW2 who was one of the surveyors who visited the site, the defendant neither produced a survey Plan nor a part development Plan (PDP) and they could therefore not locate the defendant's plot on the ground.
25. The Land Registrar Gildine Gatwiri (PW3) testified that the lease was forwarded from the Chief Land Registrar and that she regularly registered the plaintiff as the proprietor of the suit property. She explained that land allotment and the associated processes leading to issuance of title are done by officers in the Land Administration Department in Ardhi House and it is after that titles are forwarded to the Land Registry for registration. PW3 stated that as per their records, the plaintiff was registered owner of the suit property and pointed to the lease, the certificate of lease and certificate of official search to support her assertion.
26. Under section 3 of the Government Lands Act, Cap 280 Laws of Kenya (now repealed) it was only the Commissioner of Lands who was permitted to exercise powers delegated by the president to allocate any unalienated Government Land. Unalienated government land is defined under section 2 of the said Act as "Land which is not for the time being leased to any other person, in respect of which the commissioner has not issued any letter of allotment". Under the Government Lands Act, for any land within a township to be disposed and/or alienated such land needed to be set aside in terms of section 9 which provides as follows: -

9. The commissioner may cause any portion of a township which is not required for public purposes to be divided into plots suitable for the erection of buildings for business or residential purposes, and such plots may from time to time be disposed in the proscribed manner"



27. It was thus a pre-condition before any allotment of township plots to be made for a survey Plan/Part development Plan (PDP) to be prepared delineating the intended plots for ease of identification. Under section 12 of the Act any such Identified plots were required to be sold by auction, unless the president ordered otherwise.

Section 12 provides:-

12. Leases of town plots shall, unless the president otherwise orders in any particular case or cases, be sold by auction.

28. In the plaintiff's case, the letter of allotment he was issued with dated 24th May 1996 was by the Commissioner of Lands and the same attached a part Development Plan (PDP) delineating the allocated plot 134 -Gilgil. The commissioner of Lands as a delegatee of the powers of the president under the Act in his discretion could waive the requirement of sale of the plot by auction as required under section 12 of the Act. He having executed the allotment letter issued to the plaintiff is deemed to have waived the requirement of sale by auction. Having regard to the evidence I am satisfied that the plaintiff was validly allocated plot No. 134 Gilgil Township by the Commissioner of Lands. The letter of allotment was never revoked and that this was the plot that was subsequently surveyed and deed plan issued for LR No. 30171 and consequently registered as land parcel Gilgil Township Block 5/2 in the name of the plaintiff.
29. The defendant though having been issued a letter of allotment (undated) for a site & service residential plot No.2021 in Gilgil Township, the said letter of allotment did not annex a Part Development Plan (PDP) to show the delineation and location of the plot on the ground. The defendant also did not exhibit copy of extract of the minutes at which he was allocated the plot. Besides it was not evident under what authority the District Plot Allocations Committee was making the allotment. Had the site and service plots been planned and if so had the Commissioner of Lands authority been obtained pursuant to section 9 of the Land Government Act? On the evidence adduced, although the Defendant insists the plot he was allocated was located at the same spot the plaintiff claims his plot to be located, there is no evidence adduced by the defendant to prove his alleged plot No.2021 site and service was on the same spot where the plaintiff's plot is located. Without a PDP designating the position of the defendant's plot on the ground, it is not possible to say the defendant's and the plaintiff's plot sit on the same spot. It is my determination that it is the plaintiff's plot that sits on the spot identified by the Regional Surveyor when they carried out a site inspection pursuant to the court order of 22nd March 2016.
30. On the issue whether the plaintiff was regularly registered as the owner of the suit property, it is my determination that he was. There is evidence that he was allocated the property, there was an approved Part Development Plan (PDP) and the plot was duly surveyed and the survey Plan approved and registered and the plaintiff issued a lease and a certificate of lease. Pw3 affirmed that she duly registered the lease in favour of the plaintiff after the same was forwarded for registration. She confirmed as per the records the plaintiff was the registered proprietor of the suit property and tendered the abstract of title (green card) to support her evidence.
31. The defendant contended that the documents of title the plaintiff was relying on were all made in 2016/2017 and there was no evidence that the plaintiff had indeed complied with the terms of the letter of allotment allegedly issued to him in May 1996 as there was no evidence of acceptance and / or payment of the allotment charges. The plaintiff however stated that he had satisfied all the terms of the allotment, had the plot surveyed and a deed plan prepared and eventually was issued a title for the suit property following the registration of the survey. The allotment made to the plaintiff was never



revoked and/or cancelled by the commissioner of Lands and the law does not provide any time limit within which title has to be processed after an allotment has been made. I therefore hold that nothing turns on the fact that title in favour of the plaintiff was processed in 2016.

32. The defendant has further submitted that the plaintiff's suit is statute barred on account of limitation of action. The defendant's submission is that he was in possession of the suit land from 1996 upto July 2016 when the plaintiff attempted to trespass onto the land. The evidence that the defendant had been in possession is scanty. The evidence that the defendant relies on is the fact that he had fenced the plot and had constructed a temporary structure thereon. The plaintiff's position was that the defendant had forcefully entered the land in July 2016 when he removed the fence that the plaintiff had placed and erected his own fence and constructed the temporary hut. Earlier in this judgment I observed the photographs exhibited by the defendant gave the appearance that the temporary structure had only been recently erected and there was no evidence of long usage. In my view for the defendant to succeed in his assertion that the plaintiff's suit was statute barred in terms of section 7 of the *Limitation of Actions Act*, Cap 22 Laws of Kenya, he had the burden of proving that he had been in occupation and possession of the suit property for a period of 12 years, immediately before the suit was filed and as a consequence the plaintiff was barred from instituting a suit for the recovery of the land on account of the action being time barred. I am not satisfied he has discharged such burden and it is my determination that the defendant's possession is only evident as from 2016 and not earlier. Section 7 of the *Limitation of Actions Act* provides as follows:-

7. An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.

33. In the present case the plaintiff's cause of action arose in 2016 when the defendant entered the property and reportedly removed the plaintiff's fence. There is no evidence that the defendant was in possession of the land before then. I accept the plaintiff's evidence that he had been in possession and had been using the land either by himself and/or through agents authorized by him.
34. Having held that the Defendant had not been in possession for a period of 12 years as at the time the plaintiff instituted the suit it follows that the doctrine of adverse possession through which a person can acquire a right to be declared as owner if he/she had adversely possessed the land would be inapplicable in the circumstances of this case. The court of appeal in the case of *Wilson Karungu Katana & others -vs- Salim Abdalla Baksburein & Another* (2015) eKLR defined what constitutes adverse possession thus:-

“First, the parcel of land must be registered in the name of person other than the applicant the applicant must be on open and exclusive possession of that piece of land in an adverse manner to the title of the owner, lastly, he must have been in the occupation for a period in excess of twelve years having dispossessed the owner or having been discontinued of possession by the owner.”

35. The court of appeal in the above case cited with approval the case of *Kasure -vs- Mwaani Investments Ltd & 4 others* (2004) I KLR 184 where the court held that in order for any applicant to be entitled to land by adverse possession, the claimant must prove that he had been in exclusive possession of the land openly and as of right and without interruption for period of twelve years after either dispossessing the owner or by discontinuance of possession by the owner on his own volition.
36. There is another reason why the adverse possession doctrine would be inapplicable in the present case. In 2016 neither the plaintiff nor the defendant was registered as owner of the land. The doctrine of



adverse possession is applicable in circumstance where there is a registered owner of the property and that is the reason why under Order 37 Rule 7 of the Civil Procedure Rules where an applicant seeks to be declared to have acquired title by reasons of adverse possession such applicant is required to attach/annex a certified copy of the title he claims to have acquired by adverse possession. Section 38 (1) of the [Limitation of Actions Act](#), Cap 22 Laws of Kenya empowers a person who has been in adverse possession of another person's land for the prescribed period of 12 years to apply to the court to be registered as proprietor in place of the person then registered as proprietor of the land.

Section 38(1) of the Limitation Actions Act provides as follows:-

38.Registration of title to land or easement acquired under Act

- (1) Where a person claims to have become entitled by adverse possession to land registered under any of the Acts cited in section 37 of this Act, 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.

Order 37 Rule 7 of the civil Procedure Rules provides as follows:-

Adverse possession [Order 37, rule 7.]

- (1) An application under section 38 of the [Limitation of Actions Act](#) shall be made by originating summons.
- (2) The summons shall be supported by an affidavit to which a certified extract of the title to the land in question has been annexed.
- (3) The court shall direct on whom and in what manner the summons shall be served.

37. The suit land as at 2016 when the plaintiff filed the suit was still owned by the government as no title had been issued to anybody. Although the government had made an allotment of the suit land to the plaintiff, title had not been formalized to the plaintiff and consequently adverse possession by any person could not run against the plaintiff as he had not become the registered owner.
38. From my foregoing discussions and analysis. I have addressed the issues that I identified for determination. In regard to the first issue I have determined that the plot No. 134 Gilgil allocated to the plaintiff is the same plot that was surveyed and eventually registered in favour of the plaintiff. The plot could not be the same as plot No.2021 Gilgil site and service allegedly allocated to the Defendant. The location of the said plot supposedly allocated to the defendant was not identified by the surveyors on the ground even after the court directed that the plots be identified on the ground. The defendant did not adduce any evidence as to the physical location of his plot on the ground and he furnished no authenticated survey plan for this plot.
39. As relates to the second issue the court upon review and analysis of the evidence has determined that the plaintiff was regularly registered as owner of the suit property now described as land parcel Gilgil Township /Block 5/2 which was initially allocated to the plaintiff as Uns. Residential Plot No. 134 Gilgil Township.
40. The court has further determined the third issue that the defendant had not adversely possessed the suit property and further that the plaintiff's suit against the defendant was not statute barred on account of limitation.
41. The court on the basis of the evidence finds that the defendant unlawfully entered onto the plaintiff's parcel of land in July 2016 and hence the defendant's occupation of the land constituted trespass. The



plaintiff as the registered owner is under sections 24, 25 and 26 of the Land Registration Act, 2012 vested with absolute rights of ownership and is entitled to enjoy exclusive possession and use of his land.

42. The upshot is that I find and hold that the plaintiff has proved his case on a balance of probabilities. I find and hold that the defendant has failed to prove his counter claim on a balance of probabilities. I enter judgment in favour of the plaintiff and make the following final orders: -

1. That the plaintiff is hereby declared as the legitimate owner of land parcel Gilgil Township Block 5/2 initially referred to as Uns-Residential plot No.134 Gilgil Township also described as L.R No.30171 North East Gilgil Township.
2. The defendant is a trespasser in the said plaintiff's parcel of land Gilgil Township Block 5/2 within Gilgil Township and is hereby ordered to vacate and deliver vacant possession to the plaintiff within 30 days from the date of this judgment.
3. That in default of compliance with (2) above as aforesaid the plaintiff shall be entitled to an order for the forcible eviction of the defendant upon application.
4. The counterclaim of the defendant is dismissed with costs to the plaintiff.
5. The plaintiff is awarded the costs of the suit.

JUDGMENT DATED SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 23RD DAY OF MAY 2022.

J M MUTUNGI

JUDGE

