



REPUBLIC OF KENYA



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**Laboso v Rael Jerono Sirorei alias Rael Jerono Yegon (Environment & Land  
Case 109 of 2021) [2022] KEELC 2675 (KLR) (19 July 2022) (Judgment)**

Neutral citation: [2022] KEELC 2675 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET  
ENVIRONMENT & LAND CASE 109 OF 2021  
MN MWANYALE, J  
JULY 19, 2022  
FORMERLY ELDORET ELC CASE NO 99 OF 2020**

**BETWEEN**

**RICHARD KIPKEMBOI LABOSO ..... APPLICANT**

**AND**

**RAEL JERONO SIROREI ALIAS RAEJ JERONO YEGON ..... RESPONDENT**

**JUDGMENT**

1. Richard Kipkemboi Laboso, the Applicant in the Originating Summons seeks to be declared as having obtained title through Adverse Possession of Nandi/kurung/353 measuring 3.2 acres against the Respondent Rael Jerono Sirorei alias Rael Jerono Yegon.
2. The Applicant further seeks orders to extinguish the title in respect of Nandi/kurugung370 by virtue of the Doctrine of Adverse Possession.
3. The Originating Summons is supported by the Applicants Supporting Affidavit where the Applicant depones that;
  - i. He entered into an Agreement for sale for 3.2 acres for which was in Nandi/kurugung/353 in January 2007, with the Respondent.
  - ii. That immediately after the purchase he took possession of the 3.2 acres and has lived thereon since the said time.
  - iii. That on 4/4/2017 L.R. No. Nandi/kurgung/353 was subdivided into Nandi/kurkung/870 measuring 3.2 acres which the Applicant had purchased and another property; Nandi/kurgung/869.



- iv. That the Respondent has refused to transfer the property to him, after the purchase, but he has occupied the 3.2 acres from 2007 when the transaction was executed and it is now more than 13 years.
4. The Respondent did not enter appearance despite service as evidenced by the Affidavit of Service deponed by Moses Osundwa Shikanda a Court Process Server based at Kapsabet Law Courts on 3<sup>rd</sup> January, 2002.
5. Having not entered appearance, and filed a Replying Affidavit, the Applicant – filed a request for Judgment, and Interlocutory judgement was accordingly entered on 1/3/2022 by the Hon. Deputy Registrar of this Court.
6. The matter was thereafter set for formal proof, the Applicant having taken directions under Order 38 for the conversion of the Originating Summons into plaint, the Applicant into the Plaintiff, the Supporting Affidavit into witness statements and the annexures into list of documents.
7. The Applicant shall now be referred to as the Plaintiff, and the Respondent as Defendant.
8. As observed in paragraph 6 above, the Defendant having not entered appearance, the matter proceeded as formal proof, interlocutory judgment having been entered as against the Defendant.

**Plaintiff's Case: -**

9. The Plaintiff testified and called two more witnesses. It was his evidence as P.W.1, that in the year 2007, he purchased 3.2 acres within Nandi/kurgung/353 which belong to the late Kipyego arap Sirorei the husband of the Defendant.
10. An agreement for sale between the two was exhibited as P Exhibit No. 1. The Agreement provided for sale and purchase of 3.2 acres within parcel number Nandi/kurgung/353 for kshs. 384,000/=, it was signed by the Defendant as the seller and the Plaintiff as the purchaser.
11. Exhibit 1 was executed on 19/1/2007, in the presence of witnesses witness for both the vendor and the purchaser.
12. It was the Plaintiff's further testimony that he took possession of the 3.2 acres immediately after execution of the Agreement and he has lived thereon since.
13. He produced in evidence P Exhibit 2, 3 and 4, which were death certificate in respect of Kipyego Soronei, a green card of Nandi/kurgung/358 and green card of Nandi/kurgung/870. HC further testified that after the subdivision of Nandi/kurgung/353 into Nandi/kurgung/ 869 and Nandi/kurgung/870, the Defendant did not transfer Nandi/kurgung/870 to him but registered the same to herself.
14. Lastly he testified that he farms on a portion of Nandi/kurgung870, keeps livestock on the other half and his homestead is there, having occupied the same since 2007, and prayed that he be registered as the owner of the parcel thereon.
15. The Plaintiff then called two witnesses. PW2 Elphanus Kimutai Bitok testified in favour of the Plaintiff. It was his testimony that he was a witness to the Agreement of sale that had been entered between the Defendant as the seller and the Plaintiff as the purchaser, his role having been the village elder.
16. Having adopted his witness statement dated January 22, 2021, the witness (P.W.2) confirmed that the Plaintiff took possession of the property he purchased in 2007 and has lived thereon without any interruption.



17. Edward Kipchumba Kenyo also testified and adopted his witness statement dated January 18, 2021 as his evidence in chief, it was his testimony that he witnesses the Agreement for Sale, between the plaintiff as purchaser and the Defendant as seller in 2007 and that the Plaintiff took possession thereon in 2007 and has been living thereon.
18. Having called 3 witnesses the Plaintiff's case was closed. Since the matter was undefended and proceeded as formal proof, the Plaintiff's evidence was uncontroverted.
19. The Plaintiff has to nonetheless satisfy the Court, that the uncontroverted evidence, aids him in discharging the burden of proof, and that he is thus entitled to grant of the prayers sought in the plaint, as was held in the case of *Karugi and Others -vs- Kabiya and 3 Others* (1983) eKLR where the Court of Appeal observed "the burden on a Plaintiff to prove his case remains the same throughout the case even though the burden may become easier to discharge where the matter is not validly defended. The burden of proof is no way lessened because this is heard by way of formal proof."
20. Accordingly guided by the above cited decision, the Court frames the following as issues for determination.
  - i. Whether the Plaintiff has satisfied the conditions for Adverse Possession.
  - ii. If the answer to (i) above is in the affirmative, is the Plaintiff entitled to the relief's sought?
  - iii. If the answer to (i) above is the negative, is the Plaintiff entitled to the reliefs sought?
  - iv. Who bears the costs of the suit?
21. The Plaintiff has submitted on the issues as above, and submitted on the elements to prove for adverse possession.
22. In *Mbira vs Gachubi* (2002) EALR 137, the Court laid the elements to be proven for purposes of adverse possession, the Court held "a person who seeks to acquire title to land by the method of adverse possession for the applicable statutory period must prove, non – permissive, non-consensual actual, open notorious exclusive, and adverse use by him or those under whom he claims for the statutory prescribed period without interruption."
23. The Plaintiff submits that the Agreement for Sale (P Exhibit 1 was invalid), since the registered owner had died and the purported sale was therefore amounted to trespassing or intermeddling with the deceased estate, hence there was no permission. The effect of the Agreement for sale (P Exhibit 1) in so far as was executed by not the registered owner but a beneficial owner, was that it was a nullity, which could have been rectified only upon issuance of letters of Administration of the Defendant.
24. The Agreement for Sale was thus a nullity in Law, having been executed by a party with no capacity. The entry pursuant to that agreement was therefore an illegality. In reaching this finding, the Court finds parity of reasoning in the decision. In the Court of Appeal in *Miki Waweru vs Jane Njeru Richu* 2007 (eKLR) "in over view 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 operation of Law and the continued possession if not illegal, becomes adverse from the time the transaction become void."
25. The Court thus finds the entry by the Plaintiff to have been non permissive.
26. On whether the lived on the suit land for 12 years. The statutorily period to be proved for adverse possession case is 12 years. Three witnesses before Court, to wit, P.W.1, P.W.2 and P.W.3 all testified that



the Plaintiff entered the suit property upon execution of the Agreement for Sale dated 19/01.2007. It follows therefore that the 12 years period crystallized in 2019, the present suit was filed in November 2020, hence the 12 years period had crystallized in 2019, before the suit was filed. The Court thus finds that the statutorily period of 12 years was equally proved.

27. In their testimony, the Plaintiff, PW2 and PW3 equally stated that the Plaintiff's occupation of the 3.2 acres from 2007, has been open, notorious and interrupted. The Plaintiff equal had placed a restriction on 17/7/2012 on Nandi/kurgung/353 that action lends weight that the Plaintiff had interest in Nandi/kurgung/353 and that interest having been registered by a restriction, was open and notorious.
28. The Court has no difficulty in finding that the Plaintiff occupation in Nandi/kurgung/353, now subdivided to Nandi/kurgung/353, now subdivided to Nandi/kurgung 869 and 870 was open, notorious and uninterrupted.
29. On issue number 1, the Court finds and holds that the Plaintiff, has proven the elements of adverse possession and answers issue number 1 in the affirmative.
30. Having proven the elements of adverse possession on a balance of probability as required, it is the Courts finding, the Plaintiff is entitled to the prayers sought in the plaint.

### **Disposition**

31. Having found that the Plaintiff is deserving of the orders sought in the plaint, the Court enter judgment for the Plaintiff in terms that;
  1. The Defendant's title and interest in Nandi/kurgung/870 measuring 3.2 acres as currently occupied by the Plaintiff is hereby extinguished by virtue of Section 17 of the [Limitation of Actions Act](#).
  2. The County Land Registrar, Nandi County to rectify the register of Nandi/kurgung/870 and register the Plaintiff as the proprietor thereof.
  3. There shall be no orders as to costs.

**DATED AT KAPSABET 19<sup>TH</sup> THIS JULY 2022.**

**HON. M. N. MWANYALE,**

**JUDGE.**

**Delivered in the absence of the parties.**

**Parties to be supplied copy via email.**

