



**Nyamwega & another (Administrators of the Estate of the Late Stephen Maranga Sure) v Sure
(Environment & Land Case 188 of 2018) [2022] KEELC 2847 (KLR) (14 July 2022) (Judgment)**

Neutral citation: [2022] KEELC 2847 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 188 OF 2018**

**LA OMOLLO, J
JULY 14, 2022**

BETWEEN

EUNICE MORAA NYAMWEGA 1ST PLAINTIFF

ADELINE NYABOKE MARANGA 2ND PLAINTIFF

**ADMINISTRATORS OF THE ESTATE OF THE LATE STEPHEN MARANGA
SURE**

AND

EVANS ORINA SURE DEFENDANT

JUDGMENT

1. The plaintiffs are administrators of the estate of the late Stephen Maranga Sure.
2. Vide a plaint dated December 4, 2013, they aver that before his death on March 23, 1997, the late Stephen Maranga Sure was the registered owner of the following parcels of land:
 - a. Njoro/Ngata Block 1/842
 - b. Njoro/Ngata Block 1/841
 - c. Njoro/Ngata Block 1/840
 - d. Njoro/Ngata Block 1/839
 - e. Njoro/Ngata Block 1/838
3. They aver further that they are the widow and daughter of the late Stephen Maranga Sure while the defendant is his brother.
4. It is their averment that they have been issued with letters of Administration to the Estate of the late Stephen Maranga Sure vide Nairobi Succession Cause Number 1437 of 1997.



5. They aver that they allowed the defendant to occupy one of the deceased's parcels of land in Kiamunyi but he has now refused to leave the property.
6. The plaintiffs now pray for judgement against the defendant for:
 - a. A temporary injunction do issue restraining the Defendant his servants and/or agents or any other person acting on his behalf from entering, cultivating or in any other manner dealing with any of the following properties:
 - a. Njoro/Ngata Block 1/842
 - b. Njoro/Ngata Block 1/841
 - c. Njoro/Ngata Block 1/840
 - d. Njoro/Ngata Block 1/839
 - e. Njoro/Ngata Block 1/838
 - b. A permanent mandatory injunction do issue against the Defendant his servants and/or agents to vacate the suit property.
 - c. An order of eviction do issue against the Defendant his servants and/or agents or any other person acting on his behalf.
 - d. Costs of this suit.
 - e. Any other relief that this honorable Court may deem fit to grant.
7. The defendant filed his statement of defence and counterclaim on February 18, 2014. In his statement of defence he denied all the allegations set out in the plaint and averred that he is the rightful owner of all those parcels of land listed under paragraph 3 of the plaint. he prayed that the plaintiff's suit be dismissed with costs.
8. In his counter claim, he avers that he is entitled to be registered as the proprietor of the suit properties on the principle of adverse possession as he has been in continuous, uninterrupted possession for a period of over twenty years.
9. He lists the suit properties as follows:
 - a. Njoro/Ngata Block 1/842
 - b. Njoro/Ngata Block 1/841
 - c. Njoro/Ngata Block 1/840
 - d. Njoro/Ngata Block 1/839
 - e. Njoro/Ngata Block 1/838
10. He therefore prays for judgement against the plaintiff for:
 - a. An order of permanent injunction restraining the plaintiffs (now defendants) or their agents from evicting the defendant (now plaintiff) or interfering with the defendant's quiet possession of the said parcels of land known as Title Njoro/Ngata Block 1/842, 841, 840, 839, 838.



- b. An order directing that the parcels of land as set out in paragraph 3 of the Plaint be registered in the names of the defendant (now plaintiff) as the sole proprietor and other certificates with the plaintiffs (now defendants) on the same be cancelled.
 - c. Costs of the suit and counter claim.
 - d. Any other or further relief this Honorable court may deem fit to grant.
11. The plaintiffs filed their reply to defence and counter claim dated February 28, 2014 on March 3, 2014.

The Plaintiffs Evidence.

12. Eunice Moraa Nyamwega testified as PW1. It was her evidence that she is the widow of Stephen Moranga adding that she has filed an authority to act on behalf of the Co-Plaintiff who is her daughter Adeline Nyaboke Moranga Sure.
13. She adopted her witness statement dated December 4, 2013 as part of her evidence and produced the documents listed in her list of Documents dated December 4, 2013. The documents are as follows:
 - a. Letters of Administration as Exhibit P1.
 - b. Official Searches as Exhibit P2.
 - c. Demand Letter as Exhibit P3.
 - d. Affidavit of Service as Exhibit P4.
14. She testified that she had perused the witness statement filed by the defendant and stated that it is not true that the defendant took occupation of the suit parcel in 1993.
15. She stated that in 1993 December, they started constructing a toilet and a bathroom which they completed in 1994 and reiterated that the defendant was not on the suit property in 1993.
16. It was her testimony that her late husband moved to Nairobi in April 1994 and that the Defendant took occupation of the suit properties in late October 1996.
17. She stated that the defendant got a job which was to begin in November. They invited him to stay at the suit properties and the stay was only meant to last a short time.
18. She testified that the defendant claims that he developed the land in 1994 and got married while there are not true. It is her testimony that the Defendant joined them in Nairobi and lived with them in late 1994 to 1995.
19. PW1 also testified that in 1997 her late husband gave the defendant notice to vacate the land. It is her testimony that the defendant's statement that he only knew that he was meant to vacate the suit properties in 2013 is not true.
20. She further testified that in August 2002, they had a family meeting and the Defendant was given one year to move out and further that in 2005, Mr. Wamaasa Advocate gave him notice to move out but he did not.
21. It was PW1's further evidence that the defendant is still in occupation of the suit properties. She ended her testimony by praying for orders of eviction against the defendant adding that she holds the suit properties in trust for their children.



22. On cross examination, she confirmed that the properties in paragraph 3 were in the name of Stephen Maranga Sure who was her husband and is deceased.
23. She also confirmed that he was an absolute owner and would have been the only one to give permission for entry and that apart from her husband, the Defendant and herself there was no one else knows what transpired.
24. She admitted that the permission to stay was oral and that she has no evidence that the defendant came to the land in 1996 and not 1993.
25. She admitted that it was her word against the defendant's. She stated that her husband had died on 23rd of March, 1997 and that he had given the Defendant notice in the morning in the hearing of the defendant and another brother in law.
26. She confirmed that between the years 1997 to 2000, there were verbal notices that were issued and another notice was issued by Wamaasa Advocate in the year 2005 but she did not have it in court.
27. She stated that she had evidence of the Demand Notice in court as she had produced it as exhibit 4. She stated that between the years 1996 to 2013 she did not evict him as they only talked.
28. She admitted that the Defendant is staying on the suit parcel with his family to date and when she was referred to paragraph 4 of the Reply to defence and counterclaim, she admitted that the defendant occupied the whole parcel of land that he had been allowed to occupy.
29. On re-examination, she stated that her husband died in 1997 and after that the Defendant was given notice. She stated further that they were involved in an accident the same day and she fell sick and that subsequently, she was trying to get letters of Administration to the Estate of her deceased husband.
30. She also stated that she concentrated on the treatment of her son and was only able to deal after three years. She was referred to exhibit P3 which she confirmed that it referred to the letter written in 2005 by Wamaasa Advocate and posts regret of his failure to vacate.
31. PW1 stated that after she had given the notice in the year 2005, they obtained Letters of Administration. She stated that in 2008 her daughter was still a minor and that in 2010 she attained the age of majority and was made a co-administrator.
32. PW1 further explained that when her daughter attained the age of majority, the initial co-administrator who was her brother in law had to exit. She further explained that she got all the documents in 2010.

Defendant's Case.

33. Evans Orina Sure testified as DW1. He adopted his witness statement dated 14th February 2014 as part of his evidence.
34. He testified that he knows PW1 adding that she is his sister-in-law.
35. It is his testimony that he took occupation of the suit properties in December 1993 and built houses in the same year. He also testified that the late Stephen Maranga Sure brought him to the parcel of land from Kisii.
36. He further testified that his brother passed away in 1997 and had never given him notice to vacate. That even after the death of his brother, he did not receive any notice from PW1.
37. It was his evidence that he has built a house on the suit properties and that the house is made from timber and has a cement floor.



38. It was his further testimony that he is in occupation of 842 and 841 while he farms on the other plots.
39. He stated that his brother left behind a widow and children and they have tried to resolve the issue as a family but PW1 does not attend the meetings.
40. It was also his evidence that there was another meeting where the brother of PW1 came but PW1 refused to go to the meeting adding that it would have been his desire that the matter be resolved amicably.
41. It was his further evidence that in respect of the Counter Claim, he wants the titles cancelled and issued in his name as he has been in occupation for twenty-nine years.
42. He stated that he had another parcel at home in Kisii County in Nyaribari Chache.
43. In addition to his oral testimony, his statement indicates that he built a house on the suit property in the year 1993 and got married in the year 1994. That his brother died on 23rd March, 1997 and that he never heard anything from the Plaintiff until 27th November, 2013 when he received a letter from Wamaasa & Co. Advocates dated 23rd September, 2013 to vacate the premises within fourteen days.
44. On cross examination he confirmed that the suit parcels belonged to his late brother as the registered owner and he also confirmed that he was invited by her late brother to live on the land.
45. He admitted that he was not part of the succession proceedings and when he was referred to exhibit P1 which is the Certificate of Confirmation of Grant, he confirmed that confirmation was done on 9th June, 2010.
46. He also admitted that that he did not file any objection to the confirmation and was not aware that it is usually gazetted. He confirmed that his late brother left behind four children.
47. He reiterated that the land was given to him by his brother. He stated that he was married while in occupation, his children were born there and that the suit properties are his home.
48. The court sought clarification from DW1 and in his response, he stated that his brother gave him the suit properties to build and live on and that his brother did not say how long he was to live on the suit properties.
49. DW1 stated that PW1 never asked him to vacate the suit properties and that she did not give him Ksh.50,000/= but only gave him Kshs. 20,000/= which he paid back into her National Bank account.
50. DW1 stated that he is capable of buying land in Kiamunyi but he never did. He admitted that there was a meeting in 2014 which meeting was after he had received the letter from Wamaasa Advocate and that the meeting was to discuss whether the two families could settle the matter out of court.
51. He also stated that he believed that they would reach a settlement but they were not able to.
52. Ben Maikuri Sure testified as DW2. He relied on his witness statement dated July 12, 2019 as part of his evidence.
53. It was his testimony that he is one of the Administrators of the Estate of his deceased brother and that they have never resolved this dispute as a family.
54. He testified that he was never a party to the process culminating to the transfer of the suit land to the Plaintiff's name.



55. In addition to his oral evidence, in his witness statement he stated that the defendant is his younger brother and that he is in occupation of the suit properties.
56. He also stated that the properties were registered in the name of Stephen Maranga Sure who died on March 23, 1997. That prior to his death he had never lived on the land and that in 1993 he called the defendant to occupy it.
57. He further stated that the defendant put up a structure and established his family on the land. That their brother Stephen Maranga Sure died in the year 1997 and that he, the deceased had never asked the defendant to vacate the land.
58. On cross-examination, he confirmed that the properties listed in his statement belong to his brother and that he is not aware of any succession proceedings since he was never involved.
59. He further confirmed that he was a co-administrator with the plaintiff but he did not give his consent for the plaintiff to hold the properties in trust for the children.
60. He admitted that he knew that the grant was confirmed when the case was filed and he never informed her to claim the suit property as a co-administrator.
61. He further confirmed that he did not raise any objections in the succession cause that the defendant had been left out of the proceedings.
62. DW2 stated that his brother never asked the Defendant to leave the suit land and he knows this since he is the eldest in the family.
63. He stated further that in the meeting held in 2002, they only discussed family matters and not the suit land and also that in 2005 they never went to Wamaasa, Masese Nyamwenge & Company Advocates to discuss the suit property.
64. He also stated that the defendant should be given the suit land since it belongs to his deceased brother and also the plaintiff had allowed him to live on the suit land.
65. On re-examination, he stated that the defendant has never left the suit land since 1993 and that the deceased had bought materials and requested the defendant to build on the suit land which he lives to date.
66. Stephen Korir Bett testified as DW3. He relied on his witness statement dated July 12, 2019 as part of his evidence. He testified that he lives in Kiamunyi and that the Defendant is his neighbor who came to the suit land in 1983. He further testified that he has been residing in Kiamunyi since 1982.
67. It was his testimony that he saw the Defendant build and fence the suit properties adding that apart from him living in the area with his family, he is also a village elder.
68. He testified that the defendant never left the suit property as he resides on the property with his family.
69. On cross-examination, he confirmed that he has lived in Kiamunyi for 40 years and that the Defendant lives less than a kilometer from where he lives.
70. He further confirmed that he does not know the owner of the suit land but only saw the defendant living there.
71. He admitted that he does not know if the Defendant owns another parcel of land neighboring the suit property.



The Plaintiffs Submissions.

72. The plaintiffs in their submissions gave a summary of their case, the defence case and addressed the court on the following issues:
- a. Whether the Plaintiffs are the rightful owners of the suit properties and if the answer is in the affirmative, whether the honorable court should grant the prayers sought in the plaint.
 - b. Whether the Defendant is entitled to be registered as the owner of the suit properties by virtue of the legal doctrine of adverse possession and whether the Defendant has proved his claim for adverse possession.
 - c. Who should bear the costs of this suit.
73. On the first issue, the plaintiffs relied on sections 25 and 26 of the [Land Registration Act](#) and submitted that the court finds that Eunice Moraa Nyamwega as the owner of the suit properties and that she holds the suit properties on her behalf and in trust of her children.
74. On the second issue, the plaintiffs relied on the case of [Mtana Lewa Vs Kabindi Ngala Mwangandi](#) [2015] eKLR and submitted that the defendant's testimony and pleadings cannot pass the legal test of adverse possession.
75. On the issue of costs, the plaintiffs relied on section 27(1) of the [Civil Procedure Act](#) and submitted that they be awarded costs of this suit.

Defendant's Submissions.

76. The defendant in his submissions gave a summary of the plaintiff's case, his case and addressed the court on the following issues:
- a. Is the Plaintiff entitled to an order of permanent injunction against the Defendant?
 - b. Is the Plaintiff entitled to an order of eviction against the Defendant?
 - c. Is the Defendant entitled to an order he be registered as the sole proprietor of the suit parcels of land by virtue of the legal doctrine of adverse possession?
77. On the first issue, the defendant cited the case of [Mariko Ndwiga Vs Edith Muthanje](#) [2020] where it was held that "an order of injunction cannot issue to restrain a trespasser who is already in possession. The only effective remedy against a person in occupation is an order of eviction." He submitted that the plaintiffs are not entitled to an order of permanent injunction against the defendant as the defendant has been and is still in occupation of the suit parcels of land.
78. On the second issue, the defendant relied on section 152E of the [Land Act](#) and submitted that the plaintiff is not entitled to an eviction order as she has never served an eviction notice upon the defendant.
79. On the third issue, the defendant relied on the Court of Appeal case of [Francis Gicharu Kariri Vs Peter Njoroge Mairu](#) 293 of 2002 (Nairobi) and section 82(a) of the [Succession Act](#) and submitted that an order do issue and the defendant be declared the owner of the suit parcels of land by virtue of adverse possession and the Certificate of title issued to the plaintiffs cancelled and the defendant be registered as the lawful owner to the suit parcels.



Analysis And Determination.

80. I have read and taken into consideration the pleadings filed in respect of this matter, oral evidence tendered, exhibits produced, submission of the defendant and judicial decisions referred to.
81. It is my considered view that the issues for determination are as follows:
- a. Whether the Plaintiffs are the legal owners and/or have beneficial interest in Njoro/Ngata Block 1/842, Njoro/Ngata Block 1/841, Njoro/Ngata Block 1/840, Njoro/Ngata Block 1/839 and Njoro/Ngata Block 1/838
 - b. Whether the Defendant has acquired interest in the suit properties on account of adverse possession.
 - c. Whether orders of eviction should issue against the Defendant.
 - d. Who should bear cost of the suit?

A. Whether the Plaintiffs are the legal owners and/or have beneficial interest in Njoro/Ngata Block 1/842, Njoro/Ngata Block 1/841, Njoro/Ngata Block 1/840, Njoro/Ngata Block 1/839 and Njoro/Ngata Block 1/838.

82. The plaintiffs are the wife and daughter of Stephen Maranga Sure (deceased). They have produced a certificate of confirmation of grant. The confirmation was issued in Nairobi High Court Succession Cause No. 1437 of 1997. It was her evidence and also confirmed from the certificate of confirmation of grant that the suit properties are now registered in her name to hold in trust for the children. The children are listed and their names are:
- a. Adeline Nyaboke Maranga
 - b. Janet Kerubo
 - c. Leila Kemunto
 - d. Steve Maranga
83. The certificate of confirmation of grant is produced as Exhibit P1.
84. Importantly, the defendant and DW2 acknowledge that the suit property belonged to their deceased brother. DW2 states that he is not aware that the property has since been registered in the name of the PW1 and claims that he was not involved in that process.
85. The Defendant, however, is laying claim to them on account of the doctrine of adverse possession. I will deal with this aspect of the Defendant's claim and defence at a later stage.
86. Bearing this evidence in mind, I find that the Plaintiffs are the legal and beneficial owners of Njoro/Ngata Block 1/842, Njoro/Ngata Block 1/841, Njoro/Ngata Block 1/840, Njoro/Ngata Block 1/839 and Njoro/Ngata Block 1/838.



B. Whether the Defendant has acquired interest in the suit properties on account of adverse possession.

87. In *Kabindi Ngala Mwangandi Vs Mtana Lewa* [2014] eKLR, the learned judge while making a determination on the constitutionality of the doctrine of adverse possession, began his analysis by defining the term “adverse possession and he stated thus;

Adverse possession is the process by which a person can acquire a title to someone else’s land by continuously occupying it in a way that is inconsistent with the right of the owner. If the person in adverse possession continuous to occupy land, and the owner does not exercise his right to recover it by the end of the prescribed period of 12 years, the owner’s remedy as well as his title to the land are extinguished by virtue of the provisions of sections 7,9,13,37 and 38 of the *Limitation of Actions Act*.

88. A registered owner of land by the provisions of section 7 of the *Limitation of Actions Act* may not bring an action-

“...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 “.

89. There two points for determination under this heading. The first is the legal effect of consent/permission vis-a vis a claim of adverse possession and the second is the question as to when time begins to run in favour of the Defendant as against the legal representatives of the estate of Stephen Maranga sure.

90. The oral testimonies and written statements of PW1, DW1 DW2 are important for purposes of determination of the first point.

91. PW1’S evidence is that the defendant took occupation of the suit properties at the invitation of herself and her deceased husband. She explained that the defendant got a job that was to begin in November 1996 and they let him stay in the suit properties and he was supposed to stay there for a short while.

92. The defendant in his oral testimony stated that the late Stephen sure brought him to the suit properties. He stated that he was brought from Kisii. In his written statement at paragraph 2 he states that his late brother Stephen Maranga Sure picked him from home to come and live in the suit properties.

93. DW2 in his written statement at paragraph 8 states that in the year 1993 the deceased called the defendant from home to come and live in the suit properties.

94. In my view, the fact of permission to occupy the suit properties is at the heart of this dispute and needs to be addressed to resolve the claim of adverse possession by the defendant. This obviates the need to get into calculations on the number of years that the defendant has been in occupation and/or when time begins to run in favour of the defendant.

95. The Court of Appeal in *Wilson Kazungu Katana & 101 others Vs Salim Abdalla Bakshwein & another* [2015] eKLR sought to define what constitutes adverse possession. The court stated as follows:-

“From all these provisions, what amounts to adverse possession? First, the parcel of land must be registered in the name of a person other than the Applicant, the Applicant must be in 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 that occupation for a period in excess of twelve years



having dispossessed the owner or there having been discontinuance of possession by the owner.

This concept of adverse possession has been the subject of many discourses and decisions of this Court. Suffice to mention but two, *Kasuve v Mwaani Investments Limited & 4 others* [2004] 1KLR 184 and *Wanje v saikwa (2)* (supra).

In the first decision, the court was emphatic that in order to be entitled to land by adverse possession, the claimant must prove that he has been in exclusive possession of the land openly and as of right and without interruption for a period of twelve years either after dispossessing the owner or by discontinuance of possession by the owner on his own volition.

In the *Wanje* case, the Court went further and took the view that in order to acquire by 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 and that what constitutes dispossession of a proprietor are acts done which are inconsistent with his enjoyment of the soil for the purpose for which he intended to use.

Further, the court opined that a person who occupies another's persons land with that person's consent, cannot be said to be in adverse possession as in reality he has not dispossessed the owner of the land and the possession is not illegal. (Emphasis is mine)

What these authorities are emphasizing is that for one to stake a claim on a parcel of land on the basis of adverse possession, he must show that he entered the parcel of land more or less as a trespasser as opposed to by consent of the owner. (Emphasis is mine)

In other words, his entry must be adverse to the title of the owner of the land. It is also possible to enter the land with the consent of the owner, but if the owner at some point terminates the consent and the applicant does not leave but continues to occupy the land and the owner takes no steps to effectuate the termination of the consent for a period of twelve years after then, such applicant would be perfectly entitled to sue on account of adverse possession....”

96. In the case of *Wilson Kazungu Katana Supra* the Court of Appeal also made reference to its decision in *Samuel Miki Waweru Vs Jane Njeri Richu*, Civil Appeal No. 122 of 2001, (UR), where it held as follows:

“...it is trite law that a claim of adverse possession cannot succeed if the person asserting the claim is in possession with the permission of the owner of, or in (accordance with) provisions of an agreement of sale or lease or otherwise. Further, as the High Court correctly held in *Jandu v Kirpal* [1975] EA 225 possession does not become adverse before the end of the period for which permission to occupy has been granted...”

97. The evidence tendered in this matter points to the fact that the defendant took occupation with the permission of the deceased and/or his wife. At no point was their entry and possession adverse to the title of the deceased.
98. I am not persuaded that the defendant has been in possession of the suit land without force, without secrecy and without persuasion for 12 years as against his deceased brother and his legal representatives. I find that the defence of adverse possession is not available to him.



99. On the second point, it is important for me to determine when time begins to run in favour of a defendant as against the legal representatives of the estate of deceased owner.
100. Section 9 (2) of the *Limitation of Actions Act* provides as follows;

Where a person brings an action to recover land of a deceased person, whether under a will or on intestacy, and the deceased person was on the date of his death in possession of the land, and was the last person entitled to the land to be in possession of the land, the right of action accrues on the date of death.

101. Section 9 speaks to the circumstances in this case. The plaintiffs have instituted action to recover land of a deceased person- Stephen Maranga Sure. The deceased person died intestate, as at the date of his death, he was in possession of the suit land (this is on account of my finding on the legal effect of permission/ consent vis-à-vis adverse possession.) The right of action- by his legal representatives- to take possession of the suit land accrued on the date of death i.e. March 23, 1997 and it is on the same date that time began to run.
102. PW1 gave evidence that they first served the defendant with a demand letter in the year 2005 and the demand was that he vacates the suit premises but he failed to do so. In the year 2013, they served him with another demand letter, asking him to vacate. This demand letter makes reference to the demand letter of June 28, 2005. This demand letter has been produced as Exhibit P3. The period between the death of the owner and institution of this suit is 21 years but evidence tendered points to the fact that there was an interruption of continuity in the year 2005 when the defendant was first served with a demand letter to vacate. Time then started to run afresh from the year 2005 to the year 2013 when another demand letter was served. This second demand letter had the effect of interrupting time that was running in favour of the defendant.
103. Consequently, and on the strength of the evidence tendered, I am unable to find that the defendant has been in occupation of the suit premises as against the plaintiffs without force, without secrecy and without persuasion for a continuous period of 12 years.
104. The net effect, is that the defendant's defence of adverse possession and counterclaim fails.

C. Whether orders of evictions should issue against the Defendant.

105. On account of my finding in (a) and the twin issued addressed and finding in (b), I have no doubt that orders of eviction should issue against the defendant.
106. The Administrators of the Estate of the deceased wish to take possession of the suit land and they have every right to do so.

D. Who should bear the cost of this suit.

107. The general rule is that costs shall follow the event in accordance with the provisions of section 27 of the *Civil Procedure Act* (Cap. 21).
108. In the case of *Jasbir Singh Rai & 3 others Vs Tarlochan Singh Rai & 4 others* SC. Petition No. 4 of 2012: [2014] eKLR. The Supreme Court held that costs follow the event and that the court has the discretion in awarding such costs.
109. I note that the plaintiff and defendant are members of the same family and it is important that this matter is resolved without pitting them against each other any more than is necessary.



Disposition.

110. The upshot of the foregoing is that judgment is entered in favour of the plaintiff in the following terms;

- a. A permanent injunction is hereby issued against the Defendant his servants and/or agents from interfering with Njoro/Ngata Block 1/842, Njoro/Ngata Block 1/841, Njoro/Ngata Block 1/840, Njoro/Ngata Block 1/839 and Njoro/Ngata Block 1/838.
- b. An order of eviction is hereby issued against the Defendant his servants and/or agents or any other person acting on his behalf in respect of Njoro/Ngata Block 1/842, Njoro/Ngata Block 1/841, Njoro/Ngata Block 1/840, Njoro/Ngata Block 1/839 and Njoro/Ngata Block 1/838.
- c. There shall be a stay of execution of the orders in (b) for a period of 90 days from the date of this judgment.
- d. Each party shall bear own costs.

111. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 14TH DAY OF JULY, 2022.

L. A. OMOLLO

JUDGE.

In the presence of: -

Miss Cheloti for the Plaintiffs

Ombui for the Defendant

Court Assistant; Ms. Jeniffer Chepkorir.

