



**Martins v Ram (Environment & Land Case 43 of 2019)
[2022] KEELC 3939 (KLR) (5 August 2022) (Judgment)**

Neutral citation: [2022] KEELC 3939 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT & LAND CASE 43 OF 2019**

**A OMBWAYO, J
AUGUST 5, 2022**

BETWEEN

SARA ANYISO MARTINS PLAINTIFF

AND

SHYAM SINGH BANSAL RAMSI RAM PLAINTIFF

JUDGMENT

1. On the 16th of January, 1991, Joe Louis Martin filed an *ex-parte* originating summons dated January 15, 1991, seeking orders that he be registered as the lessee of land Ref No Kisumu Municipality Block 7/261 in place of Shyam Singh Bansal Ramsi Ram. The Originating summons was grounded on the facts that Shyan Singh Bansal Ramsi Ram was noted as the proprietor of Kisumu Municipality/Bloc 7/261 on 28/9/1975 and a certificate of lease in his name was issued on 12/4/1988. That the applicant entered the land in 1971 and by the time of filing the suit in 1991, he had lived in the suit land for 19 years and had possessed the same and controlled the same and therefore was entitled to be declared to be in adverse possession against Shyan Singh Bansil Ramsi under the provision of Section 37 and 38 (1) of the Limitation of Action Act cap 22 laws of Kenya having been in peaceable, open uninterrupted possession and user of the land.
2. On the August 11, 1992, an order was granted by Justice Shields in Chamber on 23/7/1992, whose import was that the title of the defendant was extinguished and that Joe Martins was to be registered as the lessee of Land Reference number Kisumu Municipality/ Block 7/261 in place of the defendant. The order was issued by the Deputy Registrar Kisumu. The *ex-parte* applicant died on 25/8/1992 after obtaining the orders. Later, the property was transferred in the names of Sarah Anyiso Martins the administratrix of the estate of the deceased *ex-parte* applicant decree holder.
3. On 2/10/1997, Kohli Patel Raichura advocates applied to set aside the *ex-parte* Judgment and the order made on 23/7/1992 and issued on 11/8/1992. On the 6/2/2002, the High Court ultimately set aside orders made on 23/7/1992 and issued on 11/8/1992. Moreover, all consequential orders were set aside.



4. On October 23, 2012 the High Court made an order that the Register in respect of Kisumu Municipality/block 7/261, the suit property, be rectified to remove the names of Savona Enterprise Limited, and replaced it with the Names of Shyam Singh Bansal Bansi Ram; The Court further granted an Order that a Prohibition be registered against the suit property, prohibiting any disposal or Transaction upon the suit property in any way; Sarah Anyiso Martins, was substituted as the applicant in place of the late Joe Luis Martins. The applicant, Sarah Anyiso Martins, was to remain in occupation of the suit property until the final determination of this cause; The Originating Summons was deemed duly filed and served and the Respondent was at liberty to respond thereto within 60 days from the date of the order; The Originating Summons was deemed as Plaint and the Replying Affidavit as Defence and the matter was to be heard by way of *viva voce* evidence.

Plaintiffs Case

5. Sarah Anyiso Martins states that the said Originating Summons was filed by her late husband M/s Joe Louis Martins (deceased) prior to his demise in August 1992. That she made and interacted with the deceased first in the year 1979 when she was taken to his house by her mother to work as a house girl. That at the said time she was only 11 years old. That 3 years later in 1983, the deceased and the applicant got married and were blessed with 4 daughters namely Angeline Martins, Josephine Martins, Filah Martins and Lavina Martins. That since she met the deceased in 1979, he was living in the suit premises occupying 2 rooms while he collected rent from 3 tenants who occupied 2 rooms and 1 room each. Later the tenants left and new ones came in. That he was then working as a freelance auditor from home where he did a few auditing work for his close friends as a way of keeping him busy and making extra income in addition to the rent he collected from the tenants which was his main source of income. That at all times since she moved into the suit premises in 1979, all the neighbours used to pay rent to her deceased husband.
6. That in 1991, her husband instituted this current summons seeking adverse possession orders given the fact that he had taken possession of the suit premises way back in 1971.
7. That the same was heard and determined in favour of her husband and orders of adverse possession granted on August 11, 1992. That unfortunately, approximately 2 weeks later her husband passed on and their advocates on record then M/s Kasamani and Co Advocates, took out letters of administration on her behalf whereupon the suit property was vested in her name sometime in the year 1997. That consequently, their advocates on record proceeded to evict the existing tenants then, who had refused to pay rent to her since the demise of her husband citing they could not pay rent to a black African woman.
8. That since the orders of adverse possession was granted and subsequent to the demise of her husband the plaintiff continued to be in peaceful, continuous and uninterrupted exclusive possession of the suit premises until sometime in 1997 when she received a letter from the Respondent's advocate demanding rent arrears and further seeking vacant possession. That the said letter clearly indicates that her late husband entered into continuous and exclusive possession adversely and without any permission from the Respondent whatsoever. It states;
9. That subsequent to the said letter and 2 years later, bringing a total of 7 years since the orders of adverse possession were issued in favour of her late husband, the Respondent herein through his Power of Attorney filed an application to set aside the orders of August 11, 1992 on May 24, 1999 which orders were granted leading to the reopening of the case.
10. That since the applicant joined her late husband in the suit premises in 1979 until 1997; 18 years later, when she received the letter demanding for rent, they peacefully occupied the suit remises and never



- paid rent to anyone. That moreover, at the time of the said demand notice, the ownership of the suit property had already been transferred to her.
11. That since her husband had taken possession of the suit premises in 1971 until the time of filing the current summons in 1991 he had acquired the property by way of adverse possession having demonstrated that he had remained in continuous quiet and uninterrupted actual and constructive possession.
 12. That she reiterated that at the time of meeting her husband in the year 1979 until the time of his demise in 1992, they peacefully and exclusively occupied the suit premises while collecting rent from the occupying tenants then.
 13. The Respondent herein became the owner of the suit premises in 1969 as the administrator of the estate of his wife who died in 1964. That at the time of her death, she was survived by the Respondent and 2 daughters who then relinquished their right to the suit property to their father; the Respondent.
 14. That the said respondent has never met her deceased husband nor herself, never appeared before this honourable court to lay his claim and as far as they are concerned they doubt whether he is still alive and the claims have been brought by individuals trying to take advantage of her and benefit themselves.
 15. That she has always been paying the rents and rates of the suit property for the years she has been in possession. That neither her husband nor herself have ever been a tenant and or paid any rent to the Respondent or his Attorneys.
 16. That it is in the interest of justice and fairness that this honourable court finds in her favour and allow her and her children to enjoy the fruits of the judgment.
 17. In the supporting affidavit of Angeline Martins, she states that she is well conversant with the facts of this case and that the applicant herein is her mother. That she was born in the year 1986 and as such 33 years old. That she has 3 other siblings namely Josephine Martins, Filah Martins and Lavina Martins. That they all stayed in the suit premises together with their parents. That her father; Joe Louis Martins, passed on in the year 1992 August and her Mother remained their sole provider. That ever since she was born they have been staying in the suit premises as their own home peacefully until the year 1999.
 18. In the supporting affidavit of Halima Hassan, she states that sometimes in the year 1980 her aunty took possession of 2 rooms in the suit premises rented to them then by the husband of the Applicant herein; Joe Martins (deceased). That at the said time the premises were occupied by the Applicant who was then the deceased's house help and the deceased. That they paid rent of Kshs 1000/= to the Land lord; Joe Martins. That sometimes in the year 1985 the two Asian tenants moved out of the rooms they were occupying in the suit premises. That they occupied the said premises peacefully as tenants for almost 17 years before they were evicted in the year 1997.
 19. That during these 17 years, they paid rent to Joe Martins until sometime in 1992 August when he passed on and they started remitting the same to the Applicant herein.
 20. That they never knew or paid out rent to any other person apart from the Applicant and her deceased husband.

Defendants Case

21. The defendants case is that it is not true that the Applicant entered and lived in the suit premises since 1971. According to the defendant, the applicant entered the suit premises as a tenant occupying two rooms in 1983 and as such there could not be any basis whatsoever to register her as the leasee. That the remaining four rooms in the suit premises were rented out to other tenants some of whom namely:



- Rehema Ali, Halima Hassan, Fopeek Said and Mohamed Ali who were later removed by the Applicant upon acquiring the same by adverse possession *vide* Kisumu HCC no 62 of 1991
22. That Shyam Singh Bansal Bansi Ram the proprietor of Kisumu Municipality/Block 7/261 appointed one Mr MV Desai as his Agent/Attorney to rent the residential premises in the said plot and to collect rent for him.
 23. That Shyam Singh Bansal Bansi Ram later on had to file case against the said MV Desai being Kisumu CMCCC NO 535 OF 1994 to recover a claim of Kshs 177,000/- being balance of rent from tenants residing in Kisumu Municipality/BLOC 7/261 from March, 1983, 1988 which amount was settled.
 24. That Mr MV Desai *vide* his letter dated May 10, 1988 addressed to the Defendant's advocates M/s Kohli, Patel & Raichura listed the names of the tenants residing in the premises when he ceased to be a care taker. That the Applicant's husband rented from the said MV Desai two rooms of the residential premises in the said property. The defendant attached a copy of the Rent Restriction Tribunal at Kisumu, Rent Case No 80 of 1983 to which was attached to his proposed written statement of Defence in which it is written that the Applicant's husband rented the premises from MV Desai from March 19, 1983 paying monthly rent of Kshs 1,050/- and in paragraph 12, that he paid rent upto July 31, 1983.
 25. That in paragraph 14 and 15 of the said proposed written statement of Defence, it is written that the said Mv Desai made him a caretaker of the premises and *in lieu* thereof gave him four rooms for use free of rent which is not admitted by the proprietor or the said MV Desai.
 26. That it is therefore absolutely not true that the Applicant has since 1971 peacefully or openly as a right or without interruption for 19 years, possessed or controlled that land measuring 0.0465.
 27. That there was no adverse possession of the Applicant's husband even for a day and Section 37 and 39 (1) of the [Limitation of Actions Act](#) cap 22 laws of Kenya cannot be invoked.
 28. That the Applicant had not become entitled to the whole or part of IR Kisumu Municipality/block 7/261.
 29. That the Affidavit is in addition to the Affidavits already filed herein that is:-
 - a. Affidavit of CM Patel sworn in November 1997.
 - b. Defendant's Affidavit sworn on May 18, 1997.
 - c. Affidavit of Shyam Singh Bansal Bansi Ram sworn on February 28, 2000.
 30. When the matter came up for hearing the Defendant stated he is the current registered owner and proprietor of the said parcel of land as per a copy of the Title document.
 31. He was born in Kenya in June 1931 and worked at the Ministry of Home Affairs/Kenya Police between 1955 and 1968 when he retired from active service.
 32. That he stayed in his property for some time in Kenya before he moved to the UK at which time he appointed Kulwant Singh Deogan as his Attorney to look after his property matters and collect rent.
 33. That the said parcel of land was originally in the name of his mother, Raj Kaur. His mother passed on in 1954. The parcel of land was left in the hands of his father, Bansi Ram as legal administrator.
 34. After the death of his father in 1964, he was the legal administrator of the estate of his late mother while his two sisters Harbans Kaur, Maya Devi were also beneficiaries of the estate.



35. That in 1966, his sisters Harbans Kaur and Maya Devi renounced all their interests in the said parcel and on that basis, he had the parcel of land transferred from his name as an administrator into his name as the sole owner/proprietor by the process of transmission.
36. That in the parcel of land there is a building with six (6) rooms. His family occupied one large room while the rest were rented out to tenants who were paying rent.
37. The fact that there were tenants residing in the property made it necessary that a person be around to collect rent and manage the property.
38. He stayed in Kenya for a short while after his retirement in 1968 then he moved to the United Kingdom (Britain) later on. He could not physically and constantly manage and take care of the parcel of land while he was in Britain.
39. That his moving to Britain prompted him to appoint Mr K S Deogan as his attorney to do it for him. Mr K S Deogan was residing in Nairobi. He could occasionally travel from Nairobi to Kisumu to manage, take care of the property.
40. That it became difficult and inconveniencing for Mr K S Deogan to keep coming from Nairobi to Kisumu to deal with the defendants property.
41. The Defendant appointed Mr M V Desai around 1982 to be his agent with instructions to let out, rent out rooms in the house and to collect rent and remit the same to his advocates M/s Kholi Patel and Raichura Advocates.
42. That the Defendant is aware that in 1983, Mr. Desai let to Mr Joe Martins two rooms in the house on the parcel of land. Mr Joe Martins took up the two rooms and was supposed to pay rent to Mr M v Desai who was to remit the same to his advocates.
43. At one point in time and during his stay in the premises as a tenant, Mr Joe Martins defaulted in payment of rent as a result of which Mr M v Desai instructed M/s Kholi, Patel & Raichura Advocates to write demand letters for the rent that had fallen in arrears.
44. Mr Joe Martins responded to the said letters through a letter dated May 3, 1988 by L g Menezes Advocates.
45. That in the said letter, it is clearly acknowledged that Mr Joe Martins was a tenant as from March 1983 and that the tenancy was as a result of an agreement between Mr M V Desai who was the defendant's agent and Mr Joe Martins. When Mr Joe Martins failed to keep his rent payment up to date, it became necessary for him to be sued.
46. In May 1988 when Mr M V Desai stopped being the defendant's agent he left the entire plot under the supervision of M/s Jagjit Joinery Works.
47. The Defendant's advocate instituted a suit in the Rent Restriction Tribunal, Case No 80 of 1988. This suit was instituted in the name of Mr KS Deogan as the plaintiff and Mr Joe Martins as the defendant. This is because the Defendant was away in Britain and he had appointed him as his attorney.
48. That on March 16, 1990, the suit came up for hearing but it did not proceed because the Defendant's attorney Mr K S Deogan did not make it from Nairobi to Kisumu in time. The suit was dismissed.
49. When the Defendant demanded for the rents collected by Mr Desai as his agent and deposited with his advocates, he learnt that Mr Desai had been collecting rent but not remitting the same to the advocates.



As a result of this, the Defendant's advocates instituted a suit in the name of Mr K S Deogan as his attorney against Mr M V Desai.

50. That Mr Joe Martins entered into the house on LR Kisumu Municipality/Block 7/261 as a tenant through the permission and let by agent Mr M V Desai. Mr M V Desai had his authority, power and instructions to let the rooms in the building and collect rent from the tenants.
51. That at all times, Mr Martins was a tenant and has never occupied the defendant's land as a person without permission or without the knowledge of the Defendant.
52. DW1, Mr Balbir Singh Sandha relied on his statement which is undated and filed on 2/11/2020. He states that he has been living in Kisumu for over 70 years and knew the defendant as Shyam Singh Bansal Ram and his father one Bansi Ram Bansal. The gist of his evidence is that the defendant's father owned a property next to the temple which he developed and in which the family used to live. The defendant was his friend and has been coming to Kenya several times and he usually turns up with religious groups. He confirmed that the person who appeared in court was Shyam Singh Dansal Ram Bansi.
53. The Defendant called DW4, Michael James Burdick Menezes practising in the firm of Lg Menezes advocate. He produced a letter dated 3/5/1988 in the firm letter heard. It refers to the plot number Kisumu Municipality Block 7/261. He confirms that the letter was signed by his father.
54. The plaintiff through her advocates Otieno Yogo Ojuro & Company advocates submits that the plaintiff has demonstrated that she has occupied, continues to occupy the suit property without permission and or adversely.
55. She submits that the defendant has never been occupation of the suit property and cannot attest to how and when the plaintiff took possession.
56. She states that there was enough evidence that her husband entered to the land adversely.
57. The plaintiff submits that the non-permissive actual possession was continuous exclusive and uninterrupted for the statutory period of 12 years or more to dispossess the paper title holder.
58. The Plaintiff argues that the possession was continuous for 12 years. The Plaintiff further submits that he has satisfied the honourable court on a balance of probability that she is entitled to an order of adverse possession over the suit property as against the Defendant. She argues that the letter produced by Menezes Mitch DW4, has no evidential value.
59. The Defendant on his part submits that the land is in the name of the Defendant, case No 43/1992 at Winam is in court, she doesn't know whether the case was concluded, she was issued with a Grant of Letters of administration but she doesn't understand the process of confirmation of the Grant and or the Grant was ever confirmed, she doesn't have any history of the land, she doesn't know how Joe Martins entered the land, she does not have any documents concerning the land in 1971, she does not know of her husband was ever sued for not paying rent and if he (deceased) went to LG Menezes Advocate, that her late husband used to talk of a Mr Desai concerning the house (land), and with her confirmation that Desai and Joe Martins knew each other but she doesn't know their relationship concerning the house. The defendant submits that there is sufficient material for the conclusion that the late Joe Martin was a tenant and hence a licensee who could not sustain a claim based on adverse possession.
60. Ther defendant submits that Exhibit D3, the letter dated 3/5/1988 produced in court by DW3, Mr Mitchel JB Menezes puts it beyond doubt that the late Joe Martins was a tenant and nothing more or nothing less.



61. According to the defendant, a licensee occupies a parcel of land with the consent of the actual owner. A person who occupies land with the consent of the owner cannot be said to be in adverse possession as in reality he has not dispossessed the owner and the possession is not illegal.
62. The defendant cites *Benjamin Kamau Murima and others vs Gladys Njeri* (Nrb) CA No 213 of 1996 (unreported) the honourable Judges of appeal stated:

“One needs only to look at the position of the occupier and if it is found that his occupation is derived from the proprietor of the said land in the form of permission or agreement or grant, then such occupation is not adverse, but if it is not so derived then it is adverse.”
63. The defendant contends that Just like any of the other tenants, the late Joe Martins enjoyed the possession and or occupation at the instance of the proprietor through his agent. Accordingly, the occupation and or possession could not have been adverse, it was with the knowledge and permission of the owner/proprietor.
64. The burden and instance of proof lies with the plaintiff in line with Sections 107, 108, 109 and 111 of the *Evidence Act* (Cap 80).
65. The Defendant submits that the plaintiff failed to establish her claim on a balance of probabilities. She has failed to establish and or prove the ingredients that constitute adverse possession, ie that the deceased entered the parcel of land (Kisumu Municipality/Block 7/26) without the permission of the proprietor, and “...used this land which they claim, as of right: *nec vi nec clam, nec precario*...”
66. The Plaintiff has conceded to the existence of a case in Winam Court whose fate she doesn’t know, she admits that her late husband knew and used to talk with Mr. Desai over the said land and she did not know the subject of such discussion.

Analysis And Determination

67. I have considered the evidence on record and do find that some facts can be discerned in the letter dated 3/5/1988 addressed to Kohli Patel & Raichara by LG Menezes on behalf of Mr Joe Martin. In the letter, Mr LG Menezes describes Joe Martins as his client who had instructed him to acknowledge receipt of various letters dated 25/3/1988, March 30, 1988, April 18, 1988.
68. According to that letter, Joe Martins met Mr MV Desai who claimed to be the proprietor of the suit property and rented 2 rooms of the said property to Joe Martins on or about the 19/3/1983 for a monthly rent of Kshs 1050.
69. According to the letter in August 1983, Mr Desai left for Britain for medical treatment and appointed Mr Joe Martins as the Caretaker of the property. It is alleged that Mr Desai allocated 4 rooms rent free to the said Joe Martins to be used rent free until he returned from Britain. As at 3/5/1988, the said Joe Martins was acting as a caretaker. It is clear that Mr Desai was not the registered owner of the suit property, but the said Joe Martins according to the letter by L g Menezes was shocked to learn that Mr Kohli Patel & Raichier Co Advocates client thus the defendant was the owner of the land.
70. According to LG Menezes, the said Joe Martins claimed rent from Mrs Rosy Nawezi Manfi with the Authority of Mr Desai.
71. In apparent confirmation that he was a tenant and the tenancy commenced in 1983, Joe Martins, though LG Menezes states that:- “I may add that it is extremely surprising that 5 years after my client was given a tenancy by Mr Desai, your client now comes forward to make various allegations against my client.”



72. This statement presupposes that Joe Martins entered the premises in 1983 as a tenant and was still being treated as a tenant in 1988.
73. Moreover, this court finds that as at the 16/3/1990 there was a pending suit in the Rent Restriction tribunal at Kisumu being case number 80 of 1988 that was dismissed for want of prosecution on the said date.
74. This court finds that the suit property was developed by the defendant's family and occupied by the family briefly before relocating to Britain and leaving the suit property in the hands of one MV Desai as an agent. Mr Desai also left for Britain for treatment and left the suit property to Joe Martins as a tenant and caretaker.
75. The principle of adverse possession is inscribed in our laws. Section 7 of the [Limitations of Action Act](#) Cap 22 Laws of Kenya provides: -

“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.”

76. Moreover, section 13 of the said [Act](#), provides that adverse possession is the exception to this limitation:
- (1) A right of action to recover land does not accrue unless the land is in the possession of some person in whose favour the period of limitation can run (which possession is in this Act referred to as adverse possession), and, where under sections 9, 10, 11 and 12 of this [Act](#) a right of action to recover land accrues on a certain date and no person is in adverse possession on that date, a right of action does not accrue unless and until some person takes adverse possession of the land.
 - (2) Where a right of action to recover land has accrued and thereafter, before the right is barred, the land ceases to be in adverse possession, the right of action is no longer taken to have accrued, and a fresh right of action does not accrue unless and until some person again takes adverse possession of the land.
 - (3) For the purposes of this section, receipt of rent under a lease by a person wrongfully claiming, in accordance with section 12(3) of this [Act](#), the land in reversion is taken to be adverse possession of the land.”

Finally, Section 38 of the [Act](#) provides that:

“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.”

77. The principle of adverse possession was succinctly set out in the case of [Wambugu vs Njuguna](#) [1983] KLR 172, where the Court held that:

“In order to acquire by the statute of limitations 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. Dispossession of the proprietor that defeats his title are acts



which are inconsistent with his enjoyment of the soil for the purpose of which he intended to use it.”

The court summed up the law as follows:-

“The proper way of assessing proof of adverse possession would then be whether or not the title holder has been dispossessed or has discontinued his possession for the statutory period and not whether or not the claimant has proved that he has been in possession of the requisite number of years.”

78. The prescriptive right to land does not automatically accrue unless the person in whom this right has accrued takes action. Section 38 of the Act gives authority to the claimant to apply to Court for orders of adverse possession.

79. The findings of the Court in Malindi App No 56 of 2014 Mtana Lewa v Kabindi Ngala Mwangandi [2015] eKLR are valid where it held;

Adverse possession is essentially a situation where a person takes possession of land and asserts rights over it and the person having title to it omits or neglects to take action against such person in assertion of his title for a certain period, in Kenya, is twelve (12) years. The process springs into action essentially by default or inaction of the owner. The essential prerequisites being that the possession of the adverse possessor is neither by force or stealth nor under the licence of the owner. It must be adequate in continuity, in publicity and in extent to show that possession is adverse to the title owner.

80. Further, in the case *Mbira v Gachubi* (2002) 1 EALR 137: the court stated as follows;

“... a person who seeks to acquire title to land by the method of adverse possession for the applicable statutory period, must prove non permissive or non-consensual actual, open, notorious, exclusive and adverse use by him or those under whom he claims for the statutorily prescribed period without interruption...”

81. In this matter, I do find that the defendant was registered as proprietor in 1975 and the lease certificate was issued in 1988. The plaintiff’s husband entered the suit property as a tenant in 1983 and by 3/5/1988, he still considered himself as a caretaker of the property. There was the letter by LG Menezes written on behalf of the plaintiff’s husband to Kohli, Patel Raichura advocates, and the rent restriction case that was dismissed in 1990 for non-attendance that demonstrates that the plaintiff’s husband was a tenant and caretaker.

82. It is the court’s view that the period of 12 years required to enable the plaintiff acquire prescriptive rights began running on 16/3/1990 when the suit was dismissed and stopped running when the plaintiff filed this suit. The suit was filed prematurely as the 12 years were not exhausted. Moreover, the plaintiff was in permissive and consensual possession as a caretaker and tenant, and therefore could not claim adverse possession. From the foregoing, I do find that the plaintiff suit fails as she has not demonstrated that she is in adverse possession. However, the court finds that the plaintiff is a caretaker and protected tenant by virtue of section 4 of the Rent Restriction Act Cap 296 Laws of Kenya hence will remain in possession as a tenant and shall not be evicted from the suit land until the court so orders. The upshot of the above is that the suit is dismissed with costs.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 5th DAY OF AUGUST, 2022

ANTONY OMBWAYO



JUDGE

This Judgment has been delivered to the parties by electronic mail due to measures restricting court operations due to the COVID-19 pandemic and in the light of the directions issued by his Lordship, the Chief Justice on 15th March 2020

