



**Kortot & another v Gisore (Environment & Land Case E004 of 2021)
[2022] KEELC 12591 (KLR) (22 September 2022) (Judgment)**

Neutral citation: [2022] KEELC 12591 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENT & LAND CASE E004 OF 2021**

EM WASHE, J

SEPTEMBER 22, 2022

**IN THE MATTER OF SECTION 7,37 AND 38 OF THE
LIMITATION OF ACTIONS ACT, CAP 22 LAWS OF KENYA**

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**IN THE MATTER OF ORDER 37 RULE 7(1),(2)
AND 3 OF THE CIVIL PROCEDURE RULES 2010**

&

**IN THE MATTER FOR AN ORDER THAT THE PLAINTIFF HAVE ACQUIRED TITLE
UNDER THE PROVISIONS OF THE LIMITATION OF ACTIONS ACT, CAP 22 LAWS OF
KENYA BY WAY OF ADVERSE POSSESSION AND SHOULD BE REGISTERED AS SUCH**

BETWEEN

NTETIA ENE KORTOT 1ST PLAINTIFF

NONKOKWA ENE KORTOM 2ND PLAINTIFF

AND

WILLIAMSON ONYANCHA GISORE DEFENDANT

JUDGMENT

1. The 1st and 2nd Plaintiffs (hereinafter referred to as “The Plaintiffs”) filed an Origination Summons dated July 1, 2021 against the Defendant seeking for the following orders; -
 1. That Ntetia Ene Kortot and Nonkokwa Ene Kortombe registered as the proprietors of all that parcel of the land known as Transmara/mapashi/329 in which they have been in occupation having acquired ownership and/or title thereto through adverse possession.



2. That the title of the Defendant with respect to the said land be declared as having been extinguished by operation of the law of adverse possession.
2. The Grounds upon which the Originating Summons were premised upon are as follows; -
 - a. The property known as Transmara/mapashi/329 was registered in the name of the Defendant in the year 1997.
 - b. The Defendant purchased the property known as Transmara/mapashi/329 from the Plaintiffs husband in the year 1988.
 - c. The Plaintiffs have had uninterrupted possession of the property known as Transmara/mapashi/329 since the year 1988 before even the Defendant was registered as the owner to date without permission and without force, hence acquired title by way of adverse possession and the title of the Defendant has been extinguished by operation of the Limitation of Actions Act, cap 22 Laws of Kenya.
 - d. The Plaintiff and the family members have been using the property known as Transmara/mapashi/329 for farming since the year 1988 and its now over 30 years of their occupation without interruption.
 - e. In the month of June 2021, the Defendant demanded the Plaintiffs to vacate the property known as Transmara/mapashi/329.
 - f. Consequently therefore, the Defendant's request to the Plaintiffs to vacate the property known as Transmara/mapashi/329 is highly unconscionable and inequitable keeping in mind the period which the Plaintiffs have occupied the same.
 - g. That it is only just and fair that the Court do declare the Plaintiffs as the absolute owners of the property known as Transmara/mapashi/329 measuring approximately 4.1 Hectares.
3. The Originating summons is supported by the Affidavit of the 1st Plaintiff dated July 1, 2021 which identified the following key documents; -
 - i. An Agreement For Sale made in the year 1988 between the Defendant and the Plaintiff's husband.
 - ii. A copy of an Official Search and Copy of the Title Deed to the property known as Transmara/mapashi/329(hereinafter referred to as "the suit property").
 - ii. Copies of various Lease Agreements between the Plaintiffs and other persons who have Leased the suit property.
4. The Plaintiffs List of documents dated July 1, 2021 then provided copies of the key documents identified in the Supporting Affidavit of the 1st Plaintiff.
5. The Plaintiffs further filed a List of Witnesses dated July 1, 2021 indicating that the witnesses would be the 1st and 2nd Plaintiff.
6. The Defendant upon being served with the Plaintiffs pleadings filed a Replying Affidavit dated July 29, 2021.
7. The Defendant admitted that he purchased the suit property from the Plaintiffs husband on May 12, 1988.



8. In the year 1997, the Defendant was registered as the owner of the suit property but a dispute arose which resulted to the Title being issued in the year 2013.
9. Immediately thereafter, the Defendant faced personal challenges which included the death of his son Donald Kengori Onyancha, the mysterious disappearance of the daughter Merolyine Mwangi Onyancha and a mental psychiatric case of his son Justus Ochwangi Onyancha.
10. As result of the above challenges, the Respondent was unable to immediately take possession of the suit property and continues to have difficulties in taking possession as the Plaintiffs herein have leased the suit property to third parties.
11. The Respondent further specified that he had made efforts to gain possession through the offices of the local administration in an effort to amicably settle the matter but there has been no success.
12. The Respondent also pleaded that the Plaintiffs herein are not in physical occupation of the suit property but instead leased out the same to third parties for commercial purposes only.
13. In conclusion therefore, the Respondent denied that the Plaintiffs have satisfied the ingredients of adverse possession and sought to have the entire Application dismissed with costs.
14. The Plaintiff filed a Supplementary List of Documents on the March 4, 2022 which contained (i) Copy of a Lease Agreement dated February 5, 2001, (ii) Copy of a Lease Agreement dated April 10, 2007 (iii) Copy of a Lease Agreement dated March 10, 2016, (iv) Copy of Lease Agreement dated December 11, 2016 (v) Copy of a Lease Agreement dated October 7, 2018, (vi) Copy of Certificate of Official Search for the property known as Transmara/mapashi/329,(vii) Copy of the Title Deed of the property known as Transmara/mapashi/329.
15. The Defendant on the other hand filed a List of Documents on the December 2, 2021 which contained (i) Certificate of official Search of the property known as Transmara/mapashi/329, (ii) Copy of the Title Deed of the property known as Transmara/mapashi/329 (iii) copy of the Lease Agreement to plant sugarcane signed before the chief for the property known as Transmara/mapashi/52.
16. A Supplementary List of Documents was filed on the March 1, 2022 containing (i) Land Leasing Agreement to plant sugarcane, (ii) Sketch Map for the property known as Transmara/mapashi/52.
17. In addition, the Defendant filed a List of Witnesses on the December 9, 2021 indicating that the one witness to be called would be the Defendant.
18. The hearing of the suit commenced on the March 3, 2022 with the 1st Plaintiff being the 1st Witness.
19. The 1st Plaintiff indicated that she was a farmer living within Mapashi area of Trasmara Sub-County.
20. The 1st Plaintiff testified that she did not know the Defendant until when they were summoned by the area chief.
21. At the Chief's Office, the 1st Plaintiff was informed that her late husband had sold the suit property to the Defendant.
22. However, the 1st Plaintiff insisted that the suit property belonged to her and the 2nd Plaintiff.
23. The Defendant then produced the Title Deed to the suit property and indeed it was in his name.
24. Prior to the meeting at the Chief's office, the Plaintiffs heard rumours that their Late husband had sold off the suit property but they had not been informed of the same.



25. According to the 1st Plaintiff, at the time the Defendant purchased the suit property, the entire area was still under adjudication.
26. Consequently, the late husband might have sub-divided the property allocated to him and transferred a portion to the Defendant.
27. The 1st Plaintiff testified that even through the Defendant purchased the suit property, he never took possession of the same.
28. According to the 1st Plaintiff, the suit property has been in the occupation and use by the herself and the 2nd Plaintiff up to now.
29. The 1st Plaintiff indicated that they have waited for the Defendant to go take possession for the last Ten (10) years but he did not turn up.
30. The 1st Plaintiff therefore decided to use the suit property for farming and grazing.
31. The occupation by the 1st Plaintiff was without permission and in the open up to date.
32. The 1st Plaintiff indicated that currently, the suit property has been leased to third parties who have planted sugar cane for commercial use.
33. The 1st Plaintiff produced the following exhibits in support of their case.
Plaintiff Exhibit 1- Lease Agreement dated February 5, 2001.
Plaintiff Exhibit 2- Lease Agreement dated April 10, 2007
Plaintiff Exhibit 3- Lease Agreement dated March 10, 2016.
Plaintiff Exhibit 4- Lease Agreement dated December 11, 2016.
Plaintiff Exhibit 5- Lease Agreement dated October 7, 2018.
Plaintiff Exhibit 6- Copy of the Certificate of Official Search dated May 4, 2021.
Plaintiff Exhibit 7-Copy of the Title of Transmara/mapashi/329.
34. In concluding her evidence in chief, the 1st Plaintiff indicated that she has been in occupation and use of the suit property for over 12 years and is therefore entitled a claim of adverse possession.
35. Similarly, the 1st Plaintiff sought for costs of the suit.
36. In Cross-examination, the 1st Plaintiff confirmed that she was aware that the suit property had been sold to the Defendant.
37. However, the 1st Plaintiff indicated that she had not be informed of the sale of the suit property by the Late husband.
38. In Reference to the Plaintiff's Exhibit 1 & 2, the 1st Plaintiff informed the Court that she knew both the Lessors.
39. The 1st Plaintiff indicated that both Exhibit 1 & 2 related to the Lease of the suit property.
40. In Reference to Exhibit 6, the 1st Plaintiff indicated that she did not know when the Title Deed of the suit property was issued.



41. Nevertheless, the 1st Plaintiff testified that it is only when they visited the Land Registrar's office in Transmara and they were informed that the registration number of the suit property was Transmara/mapashi/329.
42. In Reference to Item 9 in the Defendant's Supplementary List of Documents dated February 9, 2022, the 1st Plaintiff indicated that she knew Henry Onyancha.
43. The 1st Plaintiff's testimony was that she had executed a Lease Agreement dated November 22, 2018.
44. The Lease Agreement dated November 22, 2018 was over the property known as Transmara/mapashi/52 where she resides.
45. The property known as Transmara/mapashi/52 was registered in her name and she had leased it for sugar-cane farming.
46. The 1st Plaintiff indicated that most of the Lease Agreements were not done by an Advocate but by the chief and/or her children.
47. In relation to the suit property, the 1st Plaintiff indicated that it had been sold to the Defendant but he did not take possession until the year 2021.
48. Consequently therefore, the 1st Plaintiff indicated that the suit property can not belong to the Defendant due to the period in which she had used the suit property.
49. In Re-examination, the 1st Plaintiff indicated that both the properties known as Transmara/mapashi/52 and Transmara/mapashi/329 belong to her.
50. Nevertheless, the 1st Plaintiff indicated that the suit property was registered in the name of the Defendant.
51. The 1st Plaintiff testified that she had leased the suit property many times without any objection by the Defendant.
52. The 1st Plaintiff indicated that the period in which they have leased the suit property has been more than 12 years and the Defendant has never challenged the same.
53. The Plaintiff thereafter closed their case.
54. The Defence hearing proceeded on the March 22, 2022.
55. The Defendant informed the court that he resides in Nyamira and is a farmer.
56. The Defendant confirmed that he knows the Plaintiffs herein.
57. The Defendant informed that court that he would rely on his Affidavit dated December 2, 2021 as his evidence in chief.
58. The Defendant indicated to the court that he would rely on the List of Documents dated December 2, 2021 as well as the supplementary list of documents dated February 9, 2022.
59. The Defendant produced the following documents as Defence Exhibits; -
Defence Exhibit 1- Copy of Official Search of Transmara/mapashi/329.
Defence Exhibit 2- Agreement For Sale dated 12/05/1988 appertaining to Transmara/mapashi/329.
Defence Exhibit 3- Copy of the Title Deed of Transmara/mapashi/329.



Defence Exhibit 4- Lease Agreement dated 22/11/2019.

Defence Exhibit 5- Sketch drawing of Transmara/mapashi/329.

60. The Defendant testified in court that according to him, the Plaintiffs have not been occupying the suit property.
61. The Defendant further testified that the Plaintiffs have only been leasing the suit property to other third parties who do sugar cane farming for commercial purposes.
62. Consequently, the Defendant denied the Plaintiff's allegations that they have been farming on the suit property or utilising the same.
63. In Reference to Defence Exhibit 3- the Defendant indicated that he became the registered owner of the suit property in the year 1997 and issued with a title in the year 2013.
64. Consequently therefore, the period between 2013 and 2021 when this claim was filed, a period of Twelve (12) years had not lapsed.
65. In Refence to Defence Exhibit 5- the Defendant indicated that the Sketch Map shows how the two properties are placed on the ground.
66. The Defendant stated to the court that the suit property was a sub-division of the original property known as Transmara/mapashi/52.
67. The issue of sub-division was clearly captured in the Agreement for Sale of the year 1988.
68. The sub-division produced the suit property which was registered in the name of the Defendant and Transmara/mapashi/5 remained in the name of the Plaintiff's late husband.
69. According to the Defendant, the Plaintiffs herein had since moved away from Transmara/mapashi/52 and also leased it out for sugar-cane farming.
70. As appertains the Plaintiffs Exhibit 1-5, the Defendant indicated that the same did not have any connection and/or reference to the suit property.
71. In conclusion therefore, the Defendant requested the Court to dismiss the Plaintiffs claim and assist him return and/or take possession of the suit property which legally belongs to him.
72. In cross-examination, the Defendant reiterated that he is the registered owner of the suit property having purchased the same in the year 1988.
73. Unfortunately, the Defendant informed the Court that he has never occupied the suit property.
74. The Defendant testified that the Green Card relating to the suit property which was opened in the year 1997 indicated his name as the first registered owner.
75. Since the year 1997 up to the year 2021, a period of 24 years had lapsed.
76. The Defendant stated that for the entire 24 years, he had not been able to take possession thereof.
77. Some of the reasons the Defendant gave for being unable to take possession included the tribal clashes and the family misfortunes which he had informed the court about earlier.
78. Nevertheless, the Defendant indicated that he has made numerous complaints to the Local Administration in an effort to reach an amicable solution.



79. The Defendant also told the Court that insecurity in the area was a concern and therefore, he could not forcefully take possession as the same would result to a fight.
80. In Re-examination, the Defendant indicated that he did not have any relationship with the Plaintiffs save that they were neighbours.
81. The Defendant indicated that the Plaintiff own Transmara/mapashi/52 while he owns the suit property.
82. The Defendant reiterated that he purchased the suit property in the year 1988 but was registered as the first owner in the year 1997 and the title issued in the year 2013.
83. The Defendant indicated that the Local Administration was well aware of the dispute and had been trying to get an amicable solution.
84. In conclusion of his evidence in chief, the Defendant indicated that the Plaintiffs do not reside on the suit property but only lease it out to third parties for commercial purposes.
85. The Defence thereafter closed their case.
86. The Court directed that parties to file their written submissions before it considers the merits of the suit.
87. The Plaintiffs complied by filing their submissions on the April 28, 2022 and the Defendants filed their submissions on the May 17, 2022.
88. The Court has gone through the Pleadings herein, oral and documentary evidence adduced in court and the submissions of the parties including the authorities therein.
89. The issue before the Court is ideally whether or not the Plaintiffs have satisfied the ingredients of adverse possession against the Defendant.
90. The Plaintiff's Claim is premised on Section 7 of the [Limitation of Actions Act](#), cap 22, Laws of Kenya which provides as follows; -

“An action may not be brought by any person to recover land after the end of twelve (12) 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.”
91. Section 13 of the [Limitation of Actions Act](#), cap 22 Laws of Kenya further provides as follows; -

“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”
92. Disputes regarding adverse possession have been determined in our courts for long period of time.
93. The Courts therefore have identified various ingredients that a claimant of adverse possession must prove to be successful in a claim of adverse possession.



94. In the case of *Mtana Lewa-versus-Kabindi Ngala Mwagandi*(2015) eKLR, the ingredients of adverse possession were highlighted as follow; -
- “For one to succeed in a claim of adverse possession, one must prove and demonstrate that he has occupied the land openly, that is without secrecy, without force, and without license or permission of the land owner, with the intention to have the land. There must be an apparent dispossession of the land from the land owner. These elements are contained in the latin maxim nec vi,nec cla,nec precario.”
95. The Court of Appeal in Kisumu Civ App. No. 110 of 2016 *Richard Wefwafwa Songoi v Ben Munyifwa Songoi* [2020] eKLR opined that a person claiming adverse possession must establish the following
- a. On what date he came into possession.
 - b. What was the nature of his possession?
 - c. Whether the fact of his possession was known to the other party.
 - d. For how long his possession has continued and
 - e. That the possession was open and undisturbed for the requisite 12 years.
96. The Court having established the ingredients relating to adverse possession, it is now time to evaluate oral and documentary evidence to arrive at a just decision.
97. The evidence adduced by the Plaintiffs is that the suit property was part of the original property known as Transmara/mapashi/52.
98. The Plaintiffs testified that they have been residing and/or occupying the suit property way before adjudication of the property known as Transmara/mapashi/52 which was then divided by their late husband to create the suit property.
99. The Plaintiffs indicated that after the creation and registration of the suit property, the Defendant has never taken possession and/or made an entry thereof.
100. The Plaintiffs testified that they did not know the Defendant until the year 2021 when they were summoned by the Area Chief.
101. During this meeting at the Area Chief’s office in the year 2021, the Plaintiffs realised that the Defendant had purchased the suit property and obtained a title Deed thereof.
102. The Defendant similarly in his evidence in chief indicates that after he purchased the suit property, he was not handed over possession and has actually never taken possession of the suit property.
103. The Defendant’s evidence is that immediately after he acquired the title deed of the suit property, a number of family misfortunes visited him which hindered his ability to physically take possession and occupy the suit property.
104. In addition to the family misfortunes mentioned hereinabove, there were tribal clashes within the Transmara area where the suit property is located thereby making it difficult for those who are not locals to visit and/or reside in the area.



105. According to the Agreement For Sale dated May 12, 1988, the suit property Defendant purchased a portion of Ten (10) Acres from the Plaintiffs husband who was the open of a parcel of land known as Uasin Gishu West Section Plot No. 52.
106. Clause 3 of the Agreement For Sale dated May 12, 1988 provides that the Purchaser would be handover physical possession upon settling the full consideration thereof which was to happen on the November 30, 1988.
107. Clearly therefore and in line with the Agreement for Sale dated May 12, 1988, the Defendant ought to have taken possession of the entire Ten (10) Acres of Uasin Gishu West Section Plot.No.52 which later became the suit property.
108. The Plaintiffs in their testimony confirmed that the Defendant was shown his boundaries of the suit property by their husbands.
109. Indeed, during the hearing, there was no party that registered any boundary dispute between the suit property and the neighbouring property known as Transmara/mapashi/52.
110. However, the Defendant has denied that the Plaintiffs have been in possession.
111. The Defendant testified that the Plaintiffs have not occupied any portion of the suit property.
112. Instead, the Plaintiffs have been residing on the property known as Transmara/mapashi/52.
113. The Defendant testified that all what the Plaintiffs have done is to Lease out the suit property to third parties for commercial use and in particular growing of sugar cane.
114. Infact, the Defendant indicated that the Plaintiffs have since also vacated the property known as Transmara/mapashi/52 and Lease it out as well.
115. Looking at the Plaintiffs List of Documents dated July 1, 2021, the Court takes notice that the Plaintiff has placed before the Court Lease Agreements from way back in the year 2001 all the way to the year 2018.
116. The Plaintiffs however did not present any evidence of their own occupation on the suit property.
117. During the hearing, there was a general consensus between the parties that the suit property was in use by third parties who had been given possession and/or rights of use by the Plaintiffs.
118. The question that begs to be answered is what succeeds to be possession in adverse possession?
119. Does the Plaintiff/Applicant require to be in actual occupation and/or use of the property in question?
120. Can the occupation and or use of the property in dispute be delegated to a third party to enjoy it on behalf of the Plaintiff/Applicant and still be deemed actual occupation in favour of the Plaintiff/Applicant?
121. In the case of *Kimani Ruchire-versus- Swift Rutherford& Co.Ltd* (1980) KLR,10, the Judge held as follows; -

“The Plaintiffs have to prove that they have used this land which they claim as of right; nec vi, nec clam, nec precario (no force, no secret, no persuasion). So, the Plaintiff must show that the company had knowledge (or the means of knowing actual or constructive) of the possession or occupation.”



122. In the case of *Samuel Kibamba-versus- Mary Mbaisi* (Kisumu Civil Appeal No. 27 of 2013) (2015) eKLR, the Court held as follows; -
- “Strictly for one to succeed in a claim for adverse possession one must prove and demonstrate that he has occupied the land openly, that is, without force, without secrecy and without licence or permission of the land owner, with the intention to have the land. The must be an apparent dispossession of the land from the land owner.”
123. With these principles in mind, the Court will attempt to understand the conduct of the Plaintiffs in dealing with the suit property.
124. The Court shall also apply the provisions of Section 107 (1) and (2) of the *Evidence Act*, Cap 80 laws of Kenya which provides as follows; -
- “(1) whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which she/he asserts must prove that those facts exist.
- (2) when a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”
125. In the period between the year 1988 when the Agreement For Sale dated May 12, 1988 was executed and the year 1997 when the Green Card of the suit property was opened, the Plaintiffs have not provided any evidence of either entry and/or occupation of the suit property.
126. What the Plaintiffs have placed before the Court are simply allegations of their occupation and/or use which this Court is unable to verify either by way of collaborated evidence witnesses and or documentary evidence including pictures of improvements, vegetation and/or fencing.
127. For the period between 1997 when the Defendant was duly registered in the Land Offices as the owner of the suit property and the year 2001 when first Agreement for Lease was executed, the Plaintiffs have similarly not produced any evidence of any improvements either permanent and or temporary and/or any other agricultural activities which make an inference that indeed the Plaintiffs were in occupation and/or using the suit property.
128. As to the period between the year 2001 and 2018, the Plaintiffs have placed before the Court various Lease Agreements of the suit property as Plaintiffs exhibits 1-5.
129. Looking at a copy of the Lease Agreement dated February 5, 2001, the same indicates that the Plaintiffs have leased their property Plot.329 for a period of five (5) years to one James Mathu Njoroge.
130. However, this Lease Agreement has not been executed by either the principal parties and/or the witnesses indicated therein.
131. Referring to the copy Lease Agreement dated April 10, 2007, the same relates to the Plaintiffs and one Nkoonene Ole Meet for a period of five (5) years over the suit property.
132. However, the said Lease Agreement is not signed by any party including the witnesses indicated therein.
133. The third Lease Agreement is dated March 10, 2016 between the Plaintiffs and one Kennedy Omanga Omare Abuya
134. The contents of the said Agreement are not comprehensible to the Court although the Plot No. 329 is mentioned somewhere.



135. Similarly, the Lease Agreement is not executed by any of the parties therein.
136. The Fourth Lease Agreement is dated December 11, 2016 again between the Plaintiffs and Kennedy Omanga Omare Abuya.
137. The Lease Agreement mentioned that it appertains the Plot No. 329.
138. Nevertheless, the said Lease Agreement is not executed by any party and/or the witnesses thereof.
139. The Last Lease Agreement was dated October 7, 2018.
140. This Agreement is between the Plaintiffs and one Kennedy Kenyatta Bosire for purposes of planting sugar-cane.
141. The Agreement is similarly not signed by the Parties and/or witnesses thereof.
142. Section 3(3) of the *Law of Contract* reads as follows; -
- “No suit shall be brought upon a Contract for disposition of an interest in land unless; -
- a. The Contract upon which the suit is founded; -
- i. Is in writing
- ii. Is signed by all the parties thereto; and
- b. The signature of each party has been attested by a witness who is present when the contract was signed by the party; provided that this sub-section shall not apply to a contract in the cause of public auction within the meaning of the *Auctioneers Act* (Cap 526), nor shall anything in it affect the creation of a resulting, implied and constructed trust.”
143. Looking at the above proviso, the mandatory ingredients of a valid contract are basically three; -
- a. The Contract must be in writing.
- b. The Contract must be signed by all the parties thereto.
- c. The signatures of each party must be attested by a witness who is present when the contract was signed by such a party.
144. Clearly therefore, all the Lease Agreements have not been executed and do not conform with the provisions of Section 3(3) of the *Law of Contract Act*.
145. To the Courts expectation, at least the Plaintiffs would have called one or two persons in the purported Lease Agreements to confirm their occupation and/or activities of the suit property but none was called to collaborate the Plaintiffs assertions.
146. Nevertheless, from the evidence on record, the Defendant confirms that the suit property currently has sugar cane planted on the same.
147. The Lease Agreement dated October 7, 2018 indicates that the Lessor secured the suit property for sugar-cane planting.
148. Consequently therefore, the Court at least on the last Lease Agreement can confirm the actual occupation and/or use of the suit property is taking place through persons assigned by the Plaintiffs.



149. Can the Plaintiffs actions to cultivate the suit property satisfy the requirement of occupation and/or use to the extent of disposing the Defendant?
150. In the Court's view, the actions of the Plaintiffs are required to be so notorious in nature that they would dislodge the Defendant's legal rights and/or hinder his occupation of the suit property at the time such rights are to be enforced.
151. The notorious actions should include the construction and/or development of either permanent or temporary structures, planting of long-life trees, burial sites and/or constructing a perimeter fence to signify your rights and ownership over the property that they occupy.
152. Unfortunately, in this case, none of these activities have been placed before the Court to persuade the Court of the Plaintiff's occupation.
153. On the issue of time, the Defendant has testified that he was unable to visit the suit property after he purchased the suit property and/or obtained the Title Deed thereof.
154. Consequently, the Defendant was unable to know of the Plaintiffs purported occupation and/or use of the suit property until the year 2021 when he discovered that the suit property had been leased by the Plaintiffs.
155. The Plaintiffs also have denied knowledge of the Defendant as the owner of the suit property until the year 2021 when they were summoned by the Area Chief.
156. The question therefore would be when did time start running for purposes of the *Limitation of Actions Act*, cap 22 Laws of Kenya?
157. Section 13 of *Limitation of Actions Act*, cap 22 Laws of Kenya reads as follows; -
- 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.
158. From the evidence adduced during the trial, the only time that can be confirmed that the suit property had been Leased by the Plaintiffs and put in actually use is from the year 2018.
159. The four (4) years period between 2018 – 2021 has not satisfied the Twelve (12) years period provided by Section 7 of the *Limitation of Actions Act*, cap 22 laws of Kenya.
160. In conclusion therefore, the Court hereby makes the following Orders; -
- a. The Originating Summons dated July 1, 2021 be and is hereby dismissed.
 - b. The Plaintiffs herein are hereby prohibited from entering any other Lease Agreements with any third party forthwith.
 - c. The Plaintiffs yield possession and/or hand over vacate possession of the property known as Transmara/mapashi/329 to the Defendants immediately the planted sugar cane plantation isharvested by the third party in occupation.



- d. The Plaintiffs are further permanently prohibited from entering, cultivating, leasing, letting out and/or interfering with the quiet occupation and possession of the property known as Transmara/mapashi/329 by the Defendant henceforth.
- e. The Plaintiffs shall bear the costs of this proceedings.

DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS ELC COURT ON THE 22ND SEPTEMBER 2022.

EMMANUEL.M.WASHE

JUDGE

In the presence of:

Court Assistant: Elisha

Advocates for the plaintiffs: Pion

Advocates for the Defendant:

