



**Muthemba v Ouko (Environment and Land Case Civil Suit 315 of 2011)  
[2022] KEELC 13517 (KLR) (21 September 2022) (Judgment)**

Neutral citation: [2022] KEELC 13517 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE CIVIL SUIT 315 OF 2011  
SO OKONG'O, J  
SEPTEMBER 21, 2022**

**BETWEEN**

**ANDREW MUNGAI MUTHEMBA ..... PLAINTIFF**

**AND**

**JASON ATINDA OUKO ..... DEFENDANT**

**JUDGMENT**

1. This suit was commenced by way of an Originating Summons dated June 28, 2011. The Originating Summons was amended on December 5, 2011. In the amended Originating Summons, the Plaintiffs sought the following orders;
  1. The Plaintiffs be declared to have acquired title over Plot No 3589/6/H (now known as 3589/42) measuring 5 acres being a portion of LR 3589/6 - Lang'ata (hereinafter referred to only as "the suit property") by adverse possession.
  2. The Defendants do cease to be registered as proprietors of the suit property and the Plaintiffs be registered as the proprietors thereof.
  3. The Defendants be permanently restrained from entering the suit property.
  4. In the alternative to prayer 1 above, the Court do declare that the Plaintiffs are the beneficial owners of the suit property and do issue an order directing the Defendants to execute all necessary documents and to do all the necessary acts in order to ensure that the suit property is registered in favour of the Plaintiffs.
  5. In the alternative to prayer 1 above, the Court do issue an order of specific performance directing the Defendants to complete the sale transaction over the suit property in favour of the Plaintiffs.
  6. Costs be provided for.



## **The Plaintiffs' case:**

2. The Plaintiffs' case is set out in the affidavit sworn by the Plaintiffs jointly on June 28, 2011 and in the affidavit and supplementary affidavit sworn by one of the Plaintiff's, Jane Njeri Mungai on December 5, 2011 and February 6, 2020 respectively. The plaintiffs' case is as follows:

Andrew Mungai Muthemba, deceased (hereinafter referred to only as "Muthemba") bought the suit property from one, Donald Mutua (hereinafter referred to only as "Mutua") on December 6, 1978 at a consideration of Kshs 110,000/-. Jason Atinda Ouko, deceased (hereinafter referred to only as "Ouko") who was the registered proprietor of the parent parcel of land namely, LR 3589/6(hereinafter referred to as "the original parcel") of which the suit property is a portion was aware of the sale and was represented in the transaction by his agents House and Estates. Muthemba took possession of the suit property, fenced the same and erected thereon permanent houses on which he lived with his family with the knowledge of Ouko as the process of obtaining a title deed in respect thereof was ongoing. Muthemba paid the requisite land rates for the suit property to the City Council of Nairobi with the full knowledge of Ouko. Muthemba's occupation of the suit property was not forceful and was uninterrupted. Muthemba died on August 3, 2003 and the Plaintiffs who are his survivors and legal representatives of his estate continued to live on the suit property. After the death of Muthemba, the Plaintiffs commenced the process of obtaining a title for the suit property. Upon becoming aware of the Plaintiffs' intention, the Defendants threatened to demolish the Plaintiffs' structures on the suit property and to evict the Plaintiffs therefrom. Muthemba and his family had occupied and lived on the suit property from 1978.

3. In a letter dated November 24, 2010, the Defendants confirmed that Muthemba had purchased the suit property and that the suit property existed and a title in respect thereof would be issued. In a letter dated June 13, 1989 and another undated letter, Ouko confirmed that Muthemba's occupation of the suit property began around 1977.

Muthemba and the Plaintiffs occupied the entire land measuring five (5) acres comprised in the suit property which they had fenced as aforesaid. The portion of the suit property that was not built up had been used in the past and was still being used for farming purposes by the Plaintiffs. The Plaintiffs annexed to their affidavits various documents, photographs, and correspondence in proof of their entry, development and occupation of the suit property. The Plaintiffs contended that they had acquired the suit property by adverse possession having occupied and lived thereon for more than 12 years. The Plaintiffs denied that they were occupying only a portion of the suit property measuring 2 ½ acres.

4. At the trial, the 1<sup>st</sup> Plaintiff, Jane Njeri Mungai (PW1) testified on behalf of the Plaintiffs. PW1 adopted the contents of the affidavits she swore in support of the Originating Summons and her witness statement as part of her evidence in chief. In her testimony in court, PW1 stated follows in her evidence in chief: She was Muthemba's widow. Following the death of Muthemba in 2003 she and David Muthemba her co-Plaintiff were issued with a Grant of Letters of Administration in respect of his estate in 2004. The Defendants were the administrators of the estate of Ouko. Ouko was the registered owner of LR 3589/6(the original parcel). Her family had been occupying LR No 3589/42(the suit property) since December 6, 1978 when Muthemba bought the same from Mutua for Kshs 110,000/-. House and Estates acted as Ouko's agents in the transaction. Ouko died some time in 1996. From 1978 when the Plaintiffs occupied the suit property, Ouko never attempted to evict them therefrom. Ouko was aware of and acknowledged Muthemba's occupation of the suit property in a letter dated June 13, 1989 through which he also asked Muthemba to pay his share of land rates. The Plaintiffs had been paying land rates and had made payments of the same up to 2019.



5. The original parcel had been subdivided. Muthemba paid the full purchase price for the suit property. The allegation that Muthemba did not pay the purchase price to Ouko was an afterthought. Muthemba's family and Ouko's family enjoyed cordial relationship. This would not have been the case if the purchase price had not been paid in full. PW1 produced several documents as exhibits. PW1 urged the court to grant the prayers sought in the Plaintiffs' amended Originating Summons.

On cross-examination, PW1 stated as follows: House and Estates represented Ouko in the transaction between Muthemba and Mutua. The suit property was sold by Mutua. Muthemba paid to him a deposit. The balance of the purchase price was to be held by House and Estates in trust for Ouko. Ouko's name was not indicated in the agreement of sale between Muthemba and Mutua. Mutua had purchased the suit property from Ouko.

6. Fackson Kagwe who was Ouko's advocate assured PW1 that she did not owe Ouko any money. The Plaintiffs had put up three houses on a portion of the suit property measuring 1.5 acres.

On re-examination, PW1 stated that the suit property was also referred to as Plot No 17. She stated that the first of the three houses on the suit property was built between 1978 and 1979, the construction of the second house started when Muthemba was alive but was completed after his death while the third house was put up after his death.

#### **The defendant's case:**

7. The Defendants set out their case in the affidavits sworn by Aaron Tafari Ouko on October 21, 2011 and December 11, 2018 as follows: The suit property was registered in the name of the estate of Ouko as its absolute and indefeasible owner. The Plaintiffs had no intention to possess the suit property adversely as they entered the suit property following a sale agreement between Muthemba and Mutua. The Plaintiffs only occupied 2 ½ acres of the 5 acres claimed by the Plaintiffs. The LR No 3589/6 (the original parcel) had never been subdivided. The suit property did not exist and no cause of action could be founded on the same.

8. In 1978, there was an understanding between Mutua and Ouko that Mutua would purchase 5 acres out of the original parcel at Kshs 150,000/-. Mutua was however unable to make the payment. Sometime in 1979, Ouko realized that Muthemba was occupying the suit property following a sale agreement between him and Mutua. A meeting was held between Ouko and Muthemba at which Ouko agreed to allow Muthemba to continue occupying the suit property subject to Muthemba paying to him Kshs 150,000/- for the property.

9. While waiting for payment from Muthemba, Ouko allowed Muthemba to cultivate half of the said 5 acres while the rest was fenced off by Ouko. By the time of Ouko's death in 1996, he had not been paid the said sum of Kshs 150,000/-. The Defendants had no objection to the Plaintiffs occupying 2 ½ acres of the 5 acres claimed as long as they paid for the same at the prevailing market rate which the Defendants stated to be Kshs 70,000,000/- per acre. The Defendants claimed that it was unfair for the Plaintiffs who had failed to honour their part of the bargain for over 40 years to seek to retain the suit property.

At the trial, Aaron Tafari Ouko (DW1) who gave evidence on behalf of the Defendants adopted his affidavits sworn on October 24, 2011 and December 13, 2018 as part of his evidence-in-chief and produced the Defendants' bundle of documents as exhibits. He stated further as follows:

10. Ouko's estate asked the Plaintiffs to produce documents in support of their claim over the suit property but instead of doing so, the Plaintiffs filed this suit. The Plaintiffs should produce the said documents or pay for the 2 ½ acres portion of the suit property under their occupation. The Plaintiffs should pay



for the entire 5 acres of land comprised in the suit if they wish to retain the whole of the suit property. The Defendants had no intention of evicting the Plaintiffs from the suit property. What they wanted was payment for the property.

On cross-examination, DW1 stated as follows: Muthemba occupied a portion of the suit property measuring 2 ½ acres. The Defendants contacted the Plaintiffs in 2010 while the Defendants were fencing portions of the original parcel that were unoccupied. The Defendants had not taken any action to secure Ouko's estate since 1996 when Ouko died until 2010 because there were disputes over his properties. Ouko wanted to subdivide the original parcel and to issue Muthemba with a title. The original parcel was sub-divided in 1976. The Defendants had no evidence showing that Muthemba did not pay for land measuring 5 acres claimed by the Plaintiffs. DW1 admitted that the suit property measured 2.029 hectares and that the agreement between Muthemba and Mutua was over land measuring 5 acres.

11. DW1 admitted further that the Plaintiffs were up to date in their rates payment and that the Defendants were not paying rates for the suit property.

On re-examination, DW1 stated that Ouko was not a party to the agreement between Mutua and Muthemba. DW1 denied that Ouko was represented in the transaction by House and Estates. DW1 admitted that Kagwe advocate had been acting for Ouko in his land transactions. DW1 stated that although Muthemba took possession of the suit property neither him nor Mutua paid for the property.

### **The submissions by the parties:**

The Plaintiffs' submissions:

12. The Plaintiffs filed their submissions on October 14, 2021. The Plaintiffs framed several issues for determination by the court. The first issue framed by the Plaintiffs was whether Ouko held a valid title in respect of the suit property. The Plaintiffs cited Article 40 of the Constitution, Sections 25 and 26 of the *Land Registration Act 2012* and the case of *Charles Karathe Kiarie & 2 others v Administrator of the Estate of John Wallace Mathare (Deceased) & 2 others* [2013] eKLR and submitted that the suit property was part of the 87.5 acres of land (the original parcel) of which Ouko held an indefeasible title.

The second issue framed for determination by the Plaintiffs was whether the original parcel, LR No 3589/6 was subdivided. It was submitted by the plaintiffs that the original parcel was subdivided but the subdivision was not formally effected. The Plaintiffs submitted that this fact was confirmed by the survey plan and a letter dated 13<sup>th</sup> June 1989 that were produced by the Plaintiffs as exhibits. The plaintiffs submitted that Muthemba purchased a portion thereof known as parcel 3589/42, measuring 5 acres (the suit property).

13. The third issue framed by the Plaintiffs was whether there was a valid agreement of sale between Muthemba and Mutua. The Plaintiffs cited sections 3 of the *Law of Contract Act* Chapter 23 Laws of Kenya and the cases of *Nelson Kivuvani v Yuda Komora & Another*, Nairobi HCCC No 956 of 1991 and *William Kazungu Karisa v Cosmas Angore Chanjera* [2006] eKLR and submitted that the said agreement was valid as it was signed by the vendor and purchaser and the execution was witnessed by House and Estates who were Ouko's agents. The Plaintiffs submitted that Ouko was the only party to the said agreement that did not fulfil its obligations. On the issue of whether Ouko was privy to the contract, the Plaintiffs submitted that the fact that Ouko was part of the agreement between Muthemba and Mutua is discernible from the documents produced and the conduct of the parties. The cases of *Eldo City Limited v Corn Products Kenya Ltd & another* [2013] eKLR and *Aineab Liluyani Njirah v Agha Khan Health Services* [2013] eKLR were relied upon in support of this submission.



14. The fourth issue framed by the Plaintiffs was whether the Defendants should transfer the suit property to the Plaintiffs in performance of the said contract. Relying on the cases of *Manzoor v Baram* 2 EA Page 580 cited in *Thrift Homes Limited v Kenya Investment Limited* [2015] eKLR and *In Re the Estate of Thiong'o Nginyayu Muthiora – (Deceased)* [2013] eKLR, the Plaintiffs submitted that they had proved a valid and enforceable contract together with the payment of the purchase price. The Plaintiffs submitted that the Defendants did not prove that Muthemba purchased land measuring 2 ½ acres instead of the 5 acres claimed. The Plaintiffs submitted that they had been in occupation of the suit property since 1978 and had put up permanent houses thereon and as such the most appropriate order to issue was that of specific performance.

#### **The Defendants' submissions:**

15. The Defendants filed their submissions on January 26, 2022. Like the Plaintiffs, the Defendants also framed several issues for determination. The first issue framed by the defendants for determination was whether Ouko held a valid title over LR No 3589/6 (the original parcel). The defendants submitted that a copy of the Certificate of Title for the property was produced in evidence in proof of this fact. The second issue was whether the Plaintiffs had established that the suit property existed. Relying on the case of *Joseph Kamau Ngiria v Roselyn Dola Ouko & 2 others* [2019] eKLR which concerned a claim to a portion of LR No 3589/6, the defendants submitted that a copy of the Certificate of Title produced in evidence was proof that LR No 3589/6 (the original parcel) had never been subdivided. The Defendants submitted that the Plaintiffs did not prove the existence of the suit property to support either a claim for ownership or adverse possession.
16. The third issue that was framed by the Defendants was whether the Plaintiffs were entitled to possession and legal ownership of the suit property which measures 5 acres by adverse possession. Relying on the cases of *Samuel Miki Waweru v Jane Njeru Richu*, Civil Appeal No 122 of 2001, *Solomon Muathe Mitau & 787 others v Nguni Group Ranch* [2017] eKLR, *Maweu v Liu Ranching & Farming Cooperative Society* [1985] eKLR and Sections 7 and 13 of the *Limitation of Actions Act*, Cap. 22 Laws of Kenya, the defendants submitted that the plaintiffs had not met the threshold for adverse possession claim. The defendants submitted that plaintiffs did not put forward any meaningful arguments in support of their adverse possession claim choosing to focus only on specific performance.
17. The fourth issue framed by the Defendants for determination was whether Ouko was privy to the contract between Muthemba and Mutua. Relying on the cases of *Kenya National Capital Corporation Ltd v Albert Mario Cordeiro & another* [2014] eKLR, *Agricultural Finance Corporation v Lengetia Limited & Jack Mwangi* [1985] eKLR and *Savings & Loan (K) Limited v Kanyenje Karangaita Gakombe & Another* [2015] eKLR, the Defendants submitted that a contract cannot impose obligations on a person who is not party to it. They contended that the agreement dated December 6, 1978 was between Muthemba and Mutua. The Defendants submitted that clause 12 of the contract provided that the brokers, House and Estates were authorized to act on behalf of the purchaser and vendor who were Muthemba and Mutua. The Defendants submitted that the Plaintiffs did not prove that House and Estates had been appointed as the sole agent for Ouko in all the transactions he was involved in.
18. The fifth issue was whether the Plaintiffs were entitled to an order of specific performance against the Defendants. Relying on the cases of *Reliable Electrical Engineers (K) Ltd v Mantrac Kenya Limited* [2006] eKLR and *William Kazungu Karisa v Cosmas Angore Chanzera* [2006] eKLR, the Defendants submitted that the Plaintiffs had not paid for the suit property as agreed in a meeting that was held between DW1, Ouko and Muthemba. The Defendants submitted that the Plaintiffs could not enforce a contract which they were in breach of.



The sixth issue was whether a claim for adverse possession could arise in the absence of payment of the full purchase price. Relying on the cases of *Muchanga Investments Limited v Safaris Unlimited (Africa) Limited & 2 others* [2009] eKLR, *Samuel Miki Waweru v Jane Njeru Richu*, Civil Appeal No 122 of 2001, *Peter Mbiri Michuki v Samuel Mugo Michuki* [2014] eKLR and *Gabriel Mbui v Mukindia Maranya* [1993] eKLR, the Defendants submitted that the claim for adverse possession was untenable as the Plaintiffs were also claiming the suit property as purchasers thereof.

### **Analysis and determination of the issues arising:**

19. I have considered the Originating Summons together with the affidavits filed in support thereof. I have also considered the affidavits filed by the Defendants in opposition to the application. Finally, I have considered the evidence tendered by the parties and the submissions by the advocates for the parties and the numerous authorities that were cited in support thereof. From the reliefs sought by the Plaintiffs, I am of the view that only three issues arise for determination in this suit namely, whether the Plaintiffs have acquired title to the suit property by adverse possession, whether the Plaintiffs are entitled to an order for specific performance in the event that their adverse possession claim is unsustainable and finally, who is liable for the costs of the suit?

Whether the Plaintiffs have acquired the suit property by adverse possession.

In *Gabriel Mbui v Mukindia Maranya* [1993] eKLR, the court stated that a person claiming land by adverse possession must establish on a balance of probabilities the following elements;

1. The person claiming land by adverse possession must make physical entry and be in actual possession or occupancy of the land for the statutory period.
2. The entry and occupation must be with, or maintained under, some claim or colour of right or title made in good faith by the stranger seeking to invoke the doctrine of adverse possession as against everyone else.
3. The occupation of the land by the intruder who pleads adverse possession must be non-permissive use, i.e. without permission from the true owner of the land occupied.
4. The non-permissive actual possession hostile to the current owner must be unequivocally exclusive, and with the evinced unmistakable animus possidendi, that is to say occupation with clear intention of excluding the owner as well as other people.
5. Acts of user by the person invoking the statute of limitation to found his title are not enough to take the soil out of the owner or his predecessors in title and to vest it in the encroacher or squatter, unless the acts be done which are inconsistent with the owner's enjoyment of the soil for the purpose for which he intended to use it.
6. The possession by the person seeking to prove title by adverse possession must be visible, open and notorious, giving reasonable notice to the owner and the community of the exercise of dominion over the land.
7. The possession must be continuous uninterrupted, unbroken for the necessary statutory period.
8. The rightful owner or paper title holder against whom adverse possession is raised must have an effective right to make entry and to recover possession of the land throughout the whole of, and during, the statutory period.



9. The rightful owner must know that he is ousted. He must be aware that he had been dispossessed, or he must have parted and intended to part with possession.
  10. The land, or portion of the land adversely possessed must be a definitely identified, defined or at least an identifiable portion, with a clear boundary or identification. The absence of a plot or title number need not present any difficulty, nor should it be a bar to establishing a claim of adverse possession.
21. In *Kimani Ruchine & Another v Swift, Rutherford Co Ltd & another* [1977] KLR 10 Kneller J stated as follows at page 16:
- “The Plaintiffs have to prove that they have used this land which they claim as of right, necvi, nec clam, necpccario (no force, no secrecy, no evasion) .....The possession must be continuous. It must not be broken for any temporary purposes or by any endeavours to interrupt it or by any recurrent consideration.”
22. In *Wambugu v Njuguna* [1983] KLR 172 the court stated as follows:
- “First 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 entails acts which are inconsistent with his enjoyment of the soil and for the purpose for which he intended to use it. The *Limitation of Actions Act* (Chapter 22) on adverse possession contemplated two concepts: dispossession and discontinuance of possession. 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 for the requisite number of years.”
23. In *Githu v Ndeete* [1984] KLR 776 it was held that:
1. “Time ceases to run under the *Limitation of Actions Act* either when the owner takes or asserts his rights or when his right is admitted by adverse possessor. Assertion occurs when the owner takes legal proceedings or makes an effective entry into land. Giving notice to quit cannot be effective assertion of right for the purpose of stopping the running of time under the *Limitation of Actions Act*.
  2. A title by adverse possession can be acquired under the *Limitation of Actions Act* to a part of the parcel of land which the owner holds title.”
24. It is on the foregoing principles that the Plaintiffs’ adverse possession claim falls for consideration. The burden was on the plaintiffs to establish the elements of adverse possession set out in the above cases. I am satisfied from the evidence on record that the Plaintiffs have proved that they have acquired the suit property by adverse possession. It is not disputed that Muthemba entered the suit property in 1978. Muthemba purchased the suit property from Mutua. Mutua is said to have acquired the suit property from Ouko. The Plaintiffs have contended that Muthemba paid the full purchase price for the suit property. The Defendants have on the other hand contended that neither Ouko nor Muthemba paid for the suit property. The Defendants have contended that after the said agreement between Mutemba and Mutua, Mutemba had a meeting with Ouko attended by DW1 at which Muthemba agreed that he would pay to Ouko the purchase price for the suit property which promise Muthemba never honoured. The Plaintiffs have contended that Ouko was a party to the agreement between Muthemba



and Mutua to the extent that he agreed to transfer the suit property to Muthemba which he never did. The Defendants have denied that Ouko was a party to the said agreement.

25. There is no evidence that Ouko was a party to the agreement between Muthemba and Mutua. There is also no evidence that Muthemba made any payment on account of the purchase price for the suit property to Ouko. Muthemba however entered the suit property pursuant to the said agreement between him and Mutua. From the evidence before the court, Ouko was aware of Muthemba's occupation of the suit property. There is correspondence between the parties dating back to 1980s in which Ouko acknowledged that Muthemba was in occupation of the suit property and that he had been in occupation since 1970s. There is no evidence that Ouko took any step to evict Muthemba from the suit property. It is not in dispute that Muthemba put up several houses on the suit property and occupied the same for several years with the knowledge of Ouko until his death on 3<sup>rd</sup> August 2003. As at the time of his death, Muthemba had occupied the suit property for about 25 years. Mutua from whom Muthemba purchased the suit property was not the registered owner thereof. The suit property was part of a larger parcel of land that was registered in the name of Ouko. There is no dispute that the occupation of the suit property and the activities that were being carried out thereon by Muthemba were adverse to the proprietary interest of Ouko.
26. I am satisfied that Muthemba occupied an identifiable area of the larger parcel of land, LR No 3589/6(original parcel). From the evidence before the court, the original parcel had been subdivided on the ground and that what remained was for the subdivision to be registered. Muthemba purchased from Mutua the suit property which measured 5 acres. Muthemba entered and occupied land measuring 5 acres. Muthemba put up houses on a portion of the suit property and was using the remaining portion for other purposes. Muthemba had over the years been paying land rates for the entire land measuring 5 acres he had occupied since 1970s. There was no evidence placed before the court by the Defendants in proof of their allegation that Muthemba only occupied land measuring 2 ½ acres of the original parcel. The fact that Muthemba had not put up houses on a portion of the suit property did not mean that the same was not under his occupation. The evidence before the court shows that the whole of the suit property measuring 5 acres was under the control of Muthemba.
27. I am satisfied from the foregoing that the Plaintiffs have proved their claim over the suit property by adverse possession. I found the Defendant's argument that the Plaintiffs are not entitled to an order that they have acquired the suit property by adverse possession because they have also claimed the suit property as purchasers without merit. First, the prayer for specific performance is an alternative prayer and secondly, the Defendants had denied that there was an agreement between Muthemba and Ouko that could be enforced by the court through an order for specific performance. My answer to the first issue is therefore in the affirmative.

**Whether the Plaintiffs are entitled to an order for specific performance in the event that their adverse possession claim is unsustainable:**

28. In view of my findings above, it is not necessary for me to consider this issue. I wish to say however that if I was to consider the issue, I would have held that a case was not made out for an order for specific performance. There is no evidence that Muthemba entered into an agreement of sale with Ouko in respect of the suit property and that Muthemba fulfilled his part of the agreement. In the circumstances, there is no agreement that can be specifically enforced.

**Who is liable for the costs of the suit?**

29. Under section 27 of the *Civil Procedure Act*, Chapter 21 Laws of Kenya, costs of and incidental to a suit is at the discretion of the court. As a general rule, costs follow the event unless the court for good cause



orders otherwise. In the present case, the Plaintiffs have succeeded in their claim against the defendants. No reason has been given why the Plaintiffs should be denied the costs of the suit. The Plaintiffs shall have the costs of the suit.

**Conclusion:**

30. In conclusion, I hereby enter judgment for the Plaintiffs against the Defendants for:
1. I declare that the Plaintiffs have acquired title over Plot No 3589/6/H (now known as 3589/42) measuring 5 acres being a portion of LR 3589/6 - Lang'ata (hereinafter referred to only as "the suit property") by adverse possession.
  2. The Defendants shall transfer the suit property to the Plaintiffs after formal subdivision of LR 3589/6 in default of which the Deputy Registrar of this court shall be at liberty to execute all documents necessary for the transfer of the suit property to the Defendants.
  3. The Plaintiffs shall pay the requisite statutory fees and charges on the transfer.
  4. A permanent injunction is issued restraining the Defendants from entering the suit property.
  5. The Plaintiffs shall have the costs of the suit.

**DATED AND DELIVERED AT NAIROBI THIS 21ST DAY OF SEPTEMBER 2022**

**S. OKONG'O**

**JUDGE**

**Judgment delivered virtually through Microsoft Teams Video Conferencing Platform in the presence of:**

Ms. Matasi for the Plaintiffs

Ms. Ndete for the Defendants

Ms. C.Nyokabi-Court Assistant

Page 5 of 5

