Ngure (Suing as the Administrator of the Estate of Josphat Maina Ngure –Deceased) v Kimeu & another (Environment & Land Case 15 of 2019) [2022] KEELC 13264 (KLR) (6 October 2022) (Judgment)

Neutral citation: [2022] KEELC 13264 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MURANGA

ENVIRONMENT & LAND CASE 15 OF 2019

LN GACHERU, J

OCTOBER 6, 2022

BETWEEN

MERCY WANJIRU NGURE ..... APPLICANT

SUING AS THE ADMINISTRATOR OF THE ESTATE OF JOSPHAT MAINA NGURE –DECEASED

AND

PATRICK MATHEKA KIMEU ..... DEFENDANT

AND

MARTIN KARANJA ORUKO ..... RESPONDENT

JUDGMENT

1. Through an amended originating summons dated June 22, 2020, the plaintiff/applicant sought the following orders against the defendants/respondents herein;

    a. That thedefendants herein are resultant trustees for theplaintiff in title acquired over land parcel No. Kakuzi/Kirimiri/Block 9/1014, since subdivided to create parcels No. Kakuzi/ Kirimiri/2148, and Kakuzi/Kirimiri/4324, measuring 2.0 acres or thereabout by the Defendants through Thika Chief Magistrate's court Succession Cause No. 352 of 2013, had long been extinguished by way of adverse possession prior to the demise of the original owners Mutinda Kithuka and Oruko Akukhuma.

    b. That 2.0 acres out of Land Parcels No.Kakuzi/ Kirimiri/2148,and Kakuzi/Kirimiri/4324 should be partitioned and/or curved out and the same is registered in the name of the plaintiff as the absolute proprietor.

    c. That the costs of this suit be borne by the defendants.

2. The originating summons is supported by the supporting affidavit of the plaintiff's/applicant's sworn, on May 10, 2019, and the annexures thereto. It is the Applicant's contention that the subject matter of this suit is land parcel No. Kakuzi/Kirimiri/Block 9/1014, which was registered on June 27, 2001, in the names of Mutinda Kithuka & Oruko Okukhuma. That during the lifetime of the aforementioned registered owners of land parcel No. Kakuzi/Kirimiri/Block 9/1014, a portion of 2.0 acres was sold to her husband Joseph Maina Ngure, vide a Sale Agreement dated October 2, 1995, for a consideration of Kshs. 75,000/=. That after the aforementioned sale agreement, the said Josphat Maina Ngure, together with his family were put into exclusive possession and occupation of 2 acres out of land parcel No. Kakuzi/Kirimiri/Block 9/1014. That the said Josphat Maina Ngure died on 9th September 2016, leaving her and her children in exclusive possession of the suit land. That the registered owners of the suit land died on 16th July 2009, and 29th October 1999, and their respective families' filed succession causes.

3. Further, that she has been in exclusive possession of the aforementioned 2 acres of the suit land since 1995, together with her husband and children. That during the lifetime of the two registered owners, no steps were taken to evict, disposes, and or discontinue the plaintiff's/Applicant's exclusive possession. That the defendants/respondents hold the said 2.0 Acres out of land parcel No. Kakuzi/Kirimiri/Block 9/1014, as trustees for her family and they should be ordered to transfer the same to her as the legal representative of the late Josphat Maina Ngure. The plaintiff filed a Supplementary Affidavit dated 22nd June 2021 and averred;

    a. That originating summons dated 10th May 2019, deals with land parcel No. Kakuzi/Kimiriri/Block 9/1014 measuring 2.0 acres.

    b. That it came to her attention that the original mother title No. 1014, has since been subdivided and created new numbers to with Kakuzi/Kirimiri/Block 9/2148 and Kakuzi/Kirimiri/Block 9/4324(Annexed marked MWN 1(a) & (b) are copies of the new titles deeds.

    c. That land parcel No. 2148 measuring 0.808ha(2.02 acres) is now registered in the name of the 1st Defendant/Respondent whereof land parcel No. 4324 measuring 0.3712 ha(0.928 acres) is now registered in the name of the 2nd Defendant/Respondent.

    d. That despite the subdivision of the original title number, the resultant new numbers are still encumbered by the adverse possession.

4. The defendants/respondents opposed the suit vide a Defence dated June 27, 2019, and a replying affidavit sworn on the 25th October 2019. The defendants/respondents averred that they have no relation whatsoever with the plaintiff. That the suit land is family land, where the 1st Defendant resides with his family and has built a permanent house. That the Defendants/ Respondents acquired the suit land via transmission pursuant to Thika Succession Cause No. 352 of 2013. That the suit land was sub divided as per the Confirmed Grant and new title deeds, more specifically being Kakuzi/KirimiriBlock 9/2148, and Kakuzi/KirimiriBlock 9/2149, issued to the 1st and 2nd defendants/respondents respectively. That Kakuzi/Kirimiri Block 9/2149, was further subdivided and the 2nd defendant was left with Kakuzi/KirimiriBlock 9/4324.

5. In addition, the plaintiff and her family herein encroached on the Defendants' land and her occupation has been unlawful and encumbered with several cases and disputes as they tried to evict her from the suit land. The Defendants denied all the allegations made by the plaintiff and put her o strict proof of the same.

6. The matter proceeded by way of viva voce evidence. The plaintiff gave evidence for herself and called no witness. The Defendants too gave evidence for themselves and called no further witnesses.

plaintiff's Case

7. PW 1 Mercy Wanjiru Ngure, adopted her witness statement dated 30th September 2019, as her evidence in chief and produced the documents attached to her summons, which are dated 30th September 2019, and the list of documents dated 6th July 2020, as Exhibits. She also stated that her claim was for 2acres of land to be excised from the suit land held by the Defendants.

8. On Cross-examination, she testified that she had filed the suit on behalf of her husband Josphat Maina Ngure. That she lived on the suit property situate in Ithaga at New farm. That her husband bought the suit land from one 0ruko for Kshs 75,000.00/=. That he paid Ksh. 30,000/= at first and later paid Ksh.45,000/= to one Shadrack. That after the Ksh.45,000/= was paid, there was no outstanding balance. That she did not know when the balance was paid, but then the said Oruko had already passed on. That they entered the suit land as purchasers and there is a sale agreement to that effect.

9. Further, that she was present when the purchase price was paid by her husband. That land parcel No. Kakuzi/Kirimiri/Block 9/1014, was subdivided by the Defendants herein into Kakuzi/Kirimiri Block 9/2148, and Kakuzi/Kirimiri/Block 9/2149, while she was still in occupation and that the said Defendants had attempted to evict her. She further stated that she was claiming the land that her husband had purchased, which was two (2) acres to be excised from Kakuzi/Kirimiri Block 9/2148, and Kakuzi/Kirimiri/Block 9/1014. That the said 2 acres of land had been demarcated and the boundaries had been fixed before Mutinda died.

10. On re- examination, she stated that when her husband purchased the 2 acres of land in question, there was a sale agreement and she had produced the same as an exhibit in court. That the said sale agreement had indicated the acreage and she had lived on the said 2 acres from 1995 to date.

Defence Case

11. DW 1 Patrick Matheka Kimeu, adopted his witness statement dated 10th September 2020, and the Replying Affidavit sworn on 25th October 2019, as his evidence in chief. He also produced the documents attached to his Replying Affidavit aforementioned and the documents contained in his list of documents dated 10th September 2020, as exhibits.

12. On cross examination, he stated that Mutinda Kitheka and Oruko Akukhuma were the original registered owners of Kakuzi/Kirimiri/Block 9/1014, measuring approximately 4 acres. That both Mutinda and Oruko had since died and Kakuzi/Kirimiri/Block 9/1014, had been subdivided amongst their respective beneficiaries. That he started using the suit land in 2014, and he did not know when Karanja started using it. That when he came to the land, he found the plaintiff living there with her children and he did not know the acreage she occupied, but it was approximately 2 acres. That he was aware that Mercy the plaintiff herein had even built 3 houses on the portion that she occupied. That since they entered into the suit land, they have made no attempt whatsoever to evict the plaintiff.

13. Further, that the late Joseph Ngure, the plaintiff's husband was buried on the suit land after the 1st and 2nd Defendants were registered, and they did not attempt to stop the burial. That there was a clear demarcation of Kakuzi/Kirimiri//Block 9/1014, into two portions, one belonging to the 1st Defendant and the other to the 2nd Defendant. That the plaintiff occupied the portion belonging to the 2nd Defendant and that the 2nd Defendant had never lived on the suit land.

14. On re-examination, he stated that Mutinda Kitheka did not sell his land, but Oruko allegedly sold a portion of his land. That there were two title deeds for two acres each and the plaintiff had no title.

15. DW 2 Martin Karanja Oruko, adopted his witness statement dated 10th September 2020, and the Replying Affidavit sworn on 25th October 2019, as his evidence in chief. He also produced the list of documents attached to his Replying Affidavit aforementioned and the documents contained in his list of documents dated 10th September 2020, as exhibits.

16. DW 2 averred that he knew the plaintiff and that she entered into the impugned land after her husband purchased the same from Oruko (deceased). That he was the registered owner of the impugned land. That he had one acre and the other acre belonged to someone else. That he knew Shadrack, but he did not know if Mercy (plaintiff) had paid any money to him. That he had never sold any land to Mercy or her deceased husband.

17. On cross examination, he stated that his father (deceased) sold 2 acres of land to Josephat (deceased) in 1995, and the said Josephat was shown the land. That the plaintiff and her family were using the land and had built 3 houses. That he got a title deed for his portion of land in 2014. That they had given Josephat a notice, but the said notice was not in court. Further that he had not sued the plaintiff in court for eviction, but had made a complaint against her to the area chief.

18. On re-examination, he stated that the plaintiff and her late husband had entered into the land as purchasers. That neither the plaintiff nor her husband had processed the title deed for the portion they purchased. That though the plaintiff's husband had purchased the impugned land, he had not completed paying the Purchase price as per the sale agreement.

19. The court directed the parties to file and exchange their respective written submissions.

20. The plaintiff/Applicant filed her submissions dated 7th June 2022, through the Law Firm of Kirubi, Mwangi Ben & Co Advocates. In her submissions the plaintiff/Applicant reiterated her case and urged the court to find in her favour as she had established a case for adverse possession against the defendants/ respondents. She further submitted that she has been in exclusive and uninterrupted occupation of the suit land as required by section 17 of the Law of *Limitation of Actions Act*.

21. She invited this court to find that she has become adverse to the land by dint of her occupation for a period of over 12 years. She relied on a litany of cases including the cases *Wambugu vs. Njuguna* (1983) KLR 174 cited in *Raisi vs. M' Makinya* (2013) eKLR , the case of Titus Kigoro Munyi vs. Peter Mburu Kimani (2015) eKLR, and the case of Mwangi & Another vs. Mwangi (1986) KLR 328, where the courts found that for a claim for adverse possession to issue, an Applicant must demonstrate that he has been in occupation for over 12 years ,and also that he has occupied the land openly, without force, secrecy or license.

22. The defendants/respondents on the other hand filed their submissions dated 8th July 2022, through the Law Firm of Waweru Nyambura & Co Advocates. The Defendants/ Respondents challenged the Applicant's testimonies and submitted that she had failed to established case of adverse possession on a balance of probabilities. They relied on a litany of cases interalia the case of Mbira V. Gachuhi (2002) I EALR 137, wherein the court discussed the issue of adverse possession and held 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."

23. Further reliance was placed on the case of Wambugu Vs Njugunah (1983) KLR 173, where the court held on adverse and discontinuous possession. That the proper ways of assessing proof of adverse possession would be whether or not the title holder has been dispossessed and/or has discontinued his possession for the statutory period, and not whether or not the claimant has proved that he or she has been in possession for the requisite period of years.

24. The defendants/respondents based on the above, urged this court to dismiss the plaintiff's/Applicant's case with costs.

25. The court has carefully read and considered the pleadings, the evidence adduced, submissions, authorities cited and the relevant provisions of the law and finds that the issues for determination are;

    i. Whether the plaintiff/Applicant has met the threshold for grant of orders for adverse possession over land parcel No. Kakuzi/Kirimiri/Block 9/1014, since subdivided to create parcels No. Kakuzi/Kirimiri/2148, and Kakuzi/Kirimiri/4324.

    ii. Who should bear the costs of the suit.

i. Whether the plaintiff/Applicant has met the threshold for grant of orders for adverse possession over land parcel No. Kakuzi/Kirimiri/Block 9/1014 since subdivided to create land parcels No. Kakuzi Kirimiri/2148, and Kakuzi/Kirimiri/4324.

26. Adverse possession is a method of gaining legal title to real property by actual, open, hostile, and continuous possession of it to the exclusion of its true owner, for the period prescribed by law, which is 12 years as per the *Limitation of Actions Act*, Cap 22 of the Laws of Kenya.

27. According to Halsbury's Laws of England, 4th Edition Volume 28, paragraph 768 it stated as follows;

> " No right to recover land accrues unless the land is in the possession of some person in whose favour the period of limitation can run. What constitutes such possession is a question of fact and degree. Time begins to run when the true owner ceases to be in possession of his land."

28. The doctrine of Adverse Possession is one of the ways of land acquisition in Kenya. This court will highlight some of the Statutory provisions that underpin the doctrine as set out in the *Limitations of Actions Act*, cap 22 Laws of Kenya and the *Land Registration Act*, of No 6 of 2012;

    Section 7 of the *Limitation of Actions Act*, states that;

    > " 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"

    Further in Section 13 of the same Act states;

    > " (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".

Section 16 provides as follows;

" For the purposes of the provisions of this Act relating to actions for the recovery of land, an administrator of the estate of a deceased person is taken to claim as if there had been no interval of time between the death of the deceased person and the grant of the letters of administration."

Section 17 goes on to state;

" Subject to section 18 of this Act, at the expiration of the period prescribed by this Act for a person to bring an action to recover land (including a redemption action), the title of that person to the land is extinguished".

Finally, Section 38(1) and (2) states;

"(1) 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.

(2) An order made under subsection (1) of this section shall on registration take effect subject to any entry on the register which has not been extinguished under this Act."

29. The combined effect of these sections is to extinguish the title of the proprietor of the land in favour of the adverse possessor at the expiry of 12 years of occupation of the Adverse Possession on the suit land.

30. Section 28(h) of the *Land Registration Act* 2012, recognizes overriding interests on land, some of which are rights acquired or in the process of being acquired by virtue of any written law relating to the limitation of actions or by prescription. Under section 7 of the *Land Act*, 2012, prescription is one of the ways of acquisition of land.

31. However, this right to Adverse Possession, does not accrue automatically and section 38, of the *Limitation of Actions Act* gives authority to the claimant to apply to court for orders of adverse possession.

32. It is trite that the burden of proof, according to Sections 107, 108 and 109 of the *Evidence Act*, is placed on the person alleging the occurrence of an event. Undoubtedly, owing to the nature and extent of orders for adverse possession to wit extinction of the right to property, the burden is particularly high.

33. In the instant suit, the burden of proof squarely lies on the plaintiff herein who had a duty to demonstrate that she has met the requirements for the grant of an order of adverse possession. (See *Gabriel Mbui v Mukindia Maranya* [1993] eKLR, where the court stated as follows;

> " The burden of proving title by adverse possession rests upon the person asserting it. This is to say the burden of proof is upon the person setting up and seeking to prove title by adverse possession. He proves it on the usual standard of proof in civil cases namely, on a balance of probability. What does he prove? He proves three adequacies: continuity, publicity, and extent. For to prove title by adverse possession, it is not sufficient to show that some acts of adverse possession have been committed: the possession must be adequate in continuity, in publicity and in extent, to show that it is adverse to the rightful, paper title owner."

34. Further, in *Kasuve Vs Mwaani Investments Limited & 4 others* 1 KLR 184, the court of Appeal restated what a plaintiff in a claim for adverse possession has to prove;

> " In order to be entitled to land by Adverse Possession, the claimant must prove that he has been in exclusive possession of the land openly and as of right without interruption for a period of 12 years either after dispossessing the owner or by discontinuation of possession by the owner on his own volition".

35. Therefore, in order to determine whether the plaintiff's/Applicant's rights accrued, the court will seek to answer the following

    i. How and when did the plaintiff/Applicant acquire possession of the suit property?

    ii. What was the nature of her possession and occupation?

    iii. How long have the Applicants been in possession?

36. Having analyzed the legal provisions that provide for adverse possession, this court will now proceed to investigate if the plaintiff/applicant has proved the requisite elements to warrant the orders sought.

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

> " From all these provisions, what amounts to adverse possession? First, the parcel of land must be registered in the name of a person other than the Applicant, the Applicant must be in open and exclusive possession of that piece of land in an adverse manner to the title of the owner, lastly, he must have been in that occupation for a period in excess of twelve years having dispossessed the owner or there having been discontinuance of possession by the owner."

38 Further, in the case *Mbira v. Gachuhi* (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..."

39. It is not in doubt that the suit land was originally Kakuzi/Kirimiri/Block 9/1014, and was registered in the names of both Mutinda Kitheka and Oruko Akukhuma. Further that Kakuzi/Kirimiri/Block 9/1014, measured approximately 4 acres, and both the above original owners have since died. That upon the demise of the original owners Kakuzi/Kirimiri/Block 9/1014, devolved to the first and second Defendants herein by way of transmission.

40. Upon such transmission Kakuzi/Kimiriri/ Block 9/1014, was subdivided into Kakuzi/Kirimiri/Block 9/ 2148, and Kakuzi/Kirimiri/Block 9/2149, each measuring approximately 2 acres, and registered in the name of the 1st Defendant and 2nd Defendant respectively. It is also not in doubt that land parcel No. 2149, has since been subdivided further and one portion sold to a third party leaving the 2nd Defendant with one portion known as Kakuzi/Kirimiri/Block 9/4324.

41. It appears that Mutinda Kitheka and Oruko Akukhuma were tenants in common and that is why upon their demise, land parcel No. kakuzi/Kirimiri/ Block 9/1014, was subdivided into 2 equal shares and each share was eventually individually registered in the names of their respective beneficiaries.

42. The plaintiff now lays claim on two acres of land to be excised from Kakuzi/Kirimiri/Block9/2148 and Kakuzi/Kirimiri / Block 9/4324. It is her contention that, her husband, herself and their family gained entry into the suit land sometime in 1995, after her husband purchased 2 acres of land to be excised from Kakuzi/Kirimiri//Block 9/1014, from Oruko Akukhuma.

43. In support of her allegation, the plaintiff produced a sale agreement dated October 2, 2015, bearing the heading ' kununua shamba ya Oruko Okukhuma'. What begs the question is whether the said document meets all the qualifications for a contract for sale of land as outlined by section 3 of the *Law of Contract Act*.

> " Section 3 of the *Law of Contract Act* states to wit as follow; No suit shall be brought upon a contract for the 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 signing has been attested by a witness who is present when the contract was signed by such party"

44. Having perused the document dated October 2, 1995, thiscourt confirms that the same is compliant with the above provisions of the *Law of Contract Act*, and therefore it follows that the same is valid.

45. What follows after finding that the said contract is valid is to investigate if adverse possession can accrue where theapplicant gained entry and possession to the suit land subsequent to an agreement for sale of the property in question.

46. It is trite that a claim for adverse possession cannot succeed where the entry of theapplicant was permissive. In the case of *Sisto Wambugu -vs- Kamu Njuguna* (1983) eKLR and Samuel Miki Waweru

-vs- Jane Njeri Richu (2007) eKLR. The court of Appeal in the latter case expressed themselves as follows:-

> " "It is trite Law that a claim for adverse possession cannot succeed if the person asserting the claim is in possession with the permission of the owner or in pursuance of an agreement for sale or lease or otherwise. Further as the High court correctly held in Jandu -vs- Kilpa (1975) EA 225 possession does not become adverse before the end of the period for which permission to occupy has been given. The Principle to be extracted from the case of Sisto Wambugu -vs- Kamau Njuguna (1982-88) IKAR 217 relied on by Mr Gitonga, learned counsel for the appellant, seems to be that a purchaser of land under a contract of sale who is in possession of the land with the permission of the vendor pending completion cannot lay a claim of adverse possession of such land at any time during the period of validity of the contract unless and until the contract of sale has first been repudiated or rescinded by parties in which case adverse possession starts from the date of the termination of the contract.

47. This principle was further embraced in the case of *Simon Ng'ang'a Njoroge -vs- Daniel Kinyua Mwangi* (2015) eKLR, where the court in applying the principle espoused in the case of *Wambugu –vs- Kamau* (1983) KLR 173 held as follows:-

> " Having found the plaintiff's testimony concerning the said sale agreements more believable, and taking note of the principle espoused in Wambugu -vs- Njuguna (supra) to the effect that where a claimant pleads the right to land under an agreement and in the alternative, seeks an order based on subsequent adverse possession, (Like the plaintiff herein has done) the rule is: the claimants possession is deemed to have become adverse to that of the owner after the payment of the last installment of the purchase price and that the claimant will succeed under adverse possession upon occupation for at least 12 years after such payment . I find and hold that, in the circumstances of this case, the plaintiff possession of the suit property became adverse from 6th June, 1994".

48. As stated above, the plaintiff contends that she and her family gained entry and possession of the suit land pursuant to a sale agreement dated 2nd October 1995, executed between her late husband and the late Oruko Akukhuma, which this court has already found to be valid.

49. As per the said sale agreement, the consideration for the 2 acres sold was Kshs. 75,000/= and the plaintiff's husband Josphat Ngure Maina paid a deposit of Kshs. 30,000/= and he was left with a balance of Kshs. 45,000/=. The plaintiff contends that they gained entry in 0ctober 1995 and that her husband at a later date which she did not know paid the balance to one Shadrack. The said Shadrack was not called as a witness to confirm such payment.

50. The plaintiff's evidence was corroborated by DW 1, who testified that indeed the plaintiff has been living on the suit land for a long time and she had constructed three houses thereon. He also confirmed that indeed Oruko Akukhuma, had sold his portion of the suit land, to one Josephat, the plaintiff's late husband, for Kshs. 75,000/=. It was his further testimony that when the said Josephat died, he was buried on the suit land and that they had not in any manner attempted to evict the plaintiff from the suit land. DW 2 also testified as much, but denied that the balance of Kshs. 45,000/= was even paid by the Purchaser.

51. He testified that he knew Shadrack, but he did not know if any money was paid to him as alleged by the plaintiff. He confirmed that indeed his father had sold land to the late Josephat for Kshs. 75,000/=

but that the said Josephat after paying Kshs. 30,000/=, had not completed paying the entire purchase price as per the sale agreement on the record.

52. The onus of proving that indeed the entire purchase price was paid lay squarely upon the plaintiff. The plaintiff should have produced evidence of payment and/or called the said Shadrack to the stand to corroborate her evidence that indeed the balance of purchase price had been paid. It is evident that the plaintiff failed to discharge the said burden of proof to the required standard, of balance of probability.

53. The upshot of the above is that since the plaintiff has failed to proof that indeed the balance of Purchase Price was paid as anticipated in the sale agreement, time for purposes of computing adverse possession does not begin to run. It follows therefore that the plaintiff has failed on a balance of probability to establish all the requisite elements for grant of Orders of Adverse Possession.

ii. Who should bear the costs of the suit.

54. It is trite that costs shall follow the events, and that the successful party be awarded costs. It is not in doubt that the Defendants are the successful parties in the instant suit. However, the court takes into account the circumstances of this suit and directs that each party herein shall bear its own costs.

55. Consequently, the court finds and holds that the plaintiff/applicant herein has failed on a balance of probability to prove he claim for adverse possession against the defendants/respondents, as stated in her amended originating summons dated 22nd June 2020.

56. For the above reasons, the said claim is found unmerited and this court proceeds to dismiss the said Amended Originating Summons dated 22nd June 2020, with a further order that each party should bear its own costs.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 6TH OF OCTOBER, 2022.

L. GACHERU

JUDGE

Delivered virtually in the presence of;

Joel Njonjo - court Assistant

Mwangi for the plaintiff/Applicant

1st Defendant/Respondent – Absent

2nd Defendant/Respondent – Absent

L. GACHERU

JUDGE

6/10/2022