



REPUBLIC OF KENYA



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**Githui v Joreth Limited & another (Environment & Land Case
213 of 2012) [2025] KEELC 413 (KLR) (6 February 2025) (Judgment)**

Neutral citation: [2025] KEELC 413 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 213 OF 2012
OA ANGOTE, J
FEBRUARY 6, 2025**

BETWEEN

CHRISTOPHER WACHIRA GITHUI PLAINTIFF

AND

JORETH LIMITED 1ST DEFENDANT

NYALI BEACH CYCADS LIMITED 2ND DEFENDANT

JUDGMENT

1. The Plaintiff has through a Re-Amended Plaintiff dated 27th September 2021, sought judgment as follows against the 1st and 2nd Defendants:
 - a. A declaration that the sale between the 1st Defendant and the 2nd Defendant in respect of Plot No, LR 13330/506 was null and void.
 - aa. A declaration that the Plaintiff had in 1987 acquired a beneficial interest in the suit property.
 - ba. A declaration that the title held by the 1st Defendant over LR No. 13330/506 in December 2011 had been extinguished by the doctrine of adverse possession and that the Plaintiff had acquired the said title to suit property by adverse possession and further that the said title was therefore not available for transfer by the 1st Defendant to the 2nd Defendant on 9th December 2011.
 - b. An order cancelling the transfer of Parcel No. L.R. No. 13330/506 from Joreth Limited to Nyali Beach Cycads Limited registered against the title on 9th December 2011.
 - c. An order for specific performance be issued against the 1st Defendant to specifically perform into conclusion the agreement made with the Plaintiff to process the title to the suit property in the name of the Plaintiff implied in the offer it gave to the Plaintiff vide its Notice carried out in the Daily Newspaper of 23rd July 2005.



- cc. An eviction order do issue to evict the 2nd Defendant from the suit property and for removal of any structures the 2nd Defendant has/ have put up on the suit property.
 - d. An order against the 2nd Defendant to pay the Plaintiff the sum of Kshs. 600,000/- in compensation of his destroyed house and the unlawfully restrained goods.
 - e. Costs of this suit.
 - f. Any other relief that the Honourable Court may deem fit to grant.
2. It is the Plaintiff's case that in September 1987, he purchased Plot No. 226 (LR No. 13330/506) situate at Thome Farmers No. 5 Company Limited along Thika Road from the then allottee of the plot, one Stanley Gichuki Maitho; that upon the purchase, he entered into the plot and constructed a permanent house where he kept an employee to take care of the plot; that he has at all times exercised full control and dominion over the suit property without any interference from the Defendants and that from the year 2000, he had been on the suit property for a period in excess of twelve years and had therefore acquired title to the suit property by adverse possession.
 3. The Plaintiff stated in his Complaint that at the time of purchase, both himself and Stanley Gichuki Maitho believed the suit property was part of the larger Thome Farmers No. 5 Estate owned by Thome Farmers No. 5 Company Limited and that it later transpired that the 1st Defendant was registered as proprietor of the mother title rather than Thome Farmers No. 5 Company Limited.
 4. However, the Plaintiff averred, by a resolution dated 26th February 1974 made by the directors of the 1st Defendant, it was resolved that the two parcels of land LR No. 4920/3/4 and LR No. 4921/3/1 were to be sold to Thome Farmers No. 5 Limited, and that the two parcels were later amalgamated to form LR No. 13330.
 5. Following the resolution, it was averred, the 1st Defendant sold and gave possession of the whole land of LR No. 13330 to Thome Farmers No. 5 Limited, who then engaged the firm of Kamwere & Associates who surveyed and subdivided the land into half acre plots, among them the suit property. Thome Farmers No. 5 Limited then sold and allocated the sub-plots to its members, among them Stanley Gichuki Maitho, who then sold the suit property to the Plaintiff.
 6. It was pleaded by the Plaintiff that in 2005, the 1st Defendant advertised in the newspaper that those residents/plot owners of Thome Farmers No. 5 Company who wanted to take advantage of a consent order recorded in court on 27th July 2003 in HCCC No. 6206 of 1992 Joreth Limited v Lewis Kibue and Others may do so by paying to the 1st Defendant, through its then Advocates Messrs. Kimani Kahiro & Co. Advocates, the sum of Kshs. 200,000 and transfer fees so that they could have their individual plots transferred into their names by the 1st Defendant. According to the Plaintiff, he paid to the 1st Defendant's advocates the sum of Kshs. 40,000/- and undertook to pay the balance while the title document for the suit property was being processed in his name.
 7. The Plaintiff averred that in making the said payment, it was clearly understood that the payments were made for the purpose of processing the Plaintiff's title documents and it was by implication, recognized by the 1st Defendant that the Plaintiff was the beneficial owner of the suit property.
 8. It was the Plaintiff's case that it was further agreed that the balance of the payment would be paid in due course and he was ready and willing to pay by early 2006. However, it was contended, despite several visits to Messrs Kimani Kahiro & Associates, there was no progress that had been made in preparing the said title document.



9. According to the Plaintiff, arising from the representations by the 1st Defendant and agreement between himself and the 1st Defendant's Advocates, there was created a legitimate expectation that he would be issued with title to the suit property.
10. The Plaintiff averred that in January 2011, he received a letter from Messrs. Chege Wainaina & Co. Advocates, addressed to one Kimani David Njoroge but with reference to the suit property; that the letter indicated that the property belonged to the 1st Defendant and that the Plaintiff had illegally entered into possession and he was given notice to vacate or be evicted.
11. It was averred by the Plaintiff that although he offered to settle the balance of Kshs. 160,000/- in exchange of title, the 1st Defendant did not respond to the offer and continued to threaten him with eviction, thus the filing of this suit.
12. It was further pleaded that on 31st October 2012, the 2nd Defendant, claiming to be the owner of the suit premises, sent auctioneers to the suit property purportedly to levy distress for rent amounting to Kshs. 300,000 owed to the 2nd Defendant and that the auctioneers in their pretense to levy distress destroyed the semi-permanent house and carted away assorted goods worth approximately Kshs. 600,000, which amount he claims from the 2nd Defendant.
13. The Plaintiff contends that if any such sale took place between the 1st and 2nd Defendants, the same was null and void ab initio because the 1st Defendant did not have the capacity to sell the suit premises to the 2nd Defendant and as such, the sale ought to be revoked and cancelled by this court.
14. It was averred that as at the time of the sale, the 2nd Defendant knew and was aware of his interest over the suit premises and he is therefore not a bona fide purchaser.
15. The 1st Defendant opposed the Plaintiff's suit through an Amended Defence and Counterclaim dated 23rd December 2021. The 1st Defendant denied that the suit property had ever been vested in Stanley Gichuki Maitho or Thome Farmers No. 5 Limited to enable them to pass any interest in the land to the Plaintiff.
16. The 1st Defendant deponed that it is the registered owner of the parcel of land known as Land Reference Number 13330, having been so registered on 19th December 2000 after the amalgamation and consolidation of the 1st Defendant's two titles, LR No. 4920/3 and 4921/3, which titles were held by the 1st Defendant since the early 1950.
17. According to the 1st Defendant, the suit property LR No. 13330/506, is a subdivision of LR No. 13330 and has never been registered in the name of Thome Farmers No. 5 Limited or any other person other than the 1st Defendant; that Thome Farmers No. 5 Limited does not own shares in the 1st Defendant's Company and that the shares bought by the Plaintiff in the company would not have a bearing in the 1st Defendant's Company.
18. While the 1st Defendant asserted that the Plaintiff has never been in possession of the suit property, it pleaded, without prejudice, that in the event there were any structures on the suit property belonging to the Plaintiff or his servants, employees or agents, the same were illegally erected.
19. The 1st Defendant contended that the Plaintiff cannot claim specific performance and adverse possession in the same suit and that the 2nd Defendant was at all material times been the first purchaser of the suit property having been given by the 1st Defendant vacant possession thereof subsequent to which the 2nd Defendant purchased the same for valuable consideration.



20. The 1st Defendant deponed that in 1992, it filed HCCC No. 6206 of 1992 against twenty-four identifiable persons and other persons who had trespassed onto what is now LR No. 13330 and the suit was determined by a consent order in 2002 and that the consent order provided, inter alia, that the Defendants would pay an all-inclusive sum of Kshs. 200,000 to the 1st Defendant whereafter the transfer of land would be done in favour of the individual defendant.
21. The 1st Defendant asserted that the amount indicated in the consent order to be paid to the 1st Defendant was the going market rate for the parcels of land at that time; that the payment of Kshs. 40,000 was in violation of the consent order which provided for payment in full of Kshs. 200,000 and that it was not the Plaintiff to determine or dictate how he would pay the sum without the consent of the 1st Defendant.
22. The 1st Defendant denied having any communication between itself and the Plaintiff regarding payment of the alleged balance thereof, and denied that there was any transfer of land to Thome Farmers No. 5 Limited at any time, whether amalgamated or sub-divided.
23. The 1st Defendant contends that the Plaintiff cannot claim legitimate expectation yet there is no evidence of sale whatsoever between the Plaintiff and itself with respect to the suit land. Further, it was argued, having failed to adhere to the terms of the consent order and to pay the sum of Kshs. 200,000, the Plaintiff has no locus before this court to claim to be the owner of the suit property, beneficial or otherwise.
24. It is the 1st Defendant's further argument that the Amended Plaintiff is defective as the Plaintiff ought to have sued Thome Farmers No. 5 Limited, with whom it contracted with because the property was sold to the 2nd Defendant for valuable consideration and therefore, the orders sought in this suit cannot stand.
25. In its counterclaim, the 1st Defendant contended that the Plaintiff is a trespasser on the suit property and if there are any structures or trespassers on the land, the same should be removed and the trespassers evicted because they are on the suit property illegally. The 1st Defendant has therefore sought judgment against the Plaintiff for the following orders:
 - a. An order of eviction removing the Plaintiff, its servants and/or agents together with any structures illegally erected on the 2nd defendant's parcel of land LR No. 13330/506;
 - b. A permanent injunction restraining the Plaintiff either by themselves, their agents or servants from trespassing or in any way interfering with the Defendant's rights to its property LR No. 13330/506.
26. In the Amended Reply to the 1st and 2nd Defendant's Defence and Defence to Counterclaim, the Plaintiff reiterated the facts asserted in its Re-Amended Plaintiff and urged that his primary claim is based on adverse possession and that the claim for specific performance is directed at the processing of the title which the Plaintiff has lawfully acquired.
27. It is the Plaintiff's argument that the 2nd Defendant did not acquire valid title from the 1st Defendant for the reason that the 1st Defendant did not possess valid and clean title to pass to the 2nd Defendant, because its title had been extinguished by operation of the law. Alternatively, the Plaintiff averred, the transfer of the suit property by the 1st Defendant to the 2nd Defendant was undertaken fraudulently.
28. The Plaintiff stated that he was not a party to the High court case because he was not served with the pleadings; that he was not bound by any orders given or recorded in that suit to which he was a stranger and that he never made any admission of the alleged consent order.



Hearing and Evidence

29. The first witness was the Plaintiff, Christopher Wachira Githui (PW1), who adopted his written statement as his evidence in chief. PW1 also produced a bundle of documents as PEXB1-20. PW1 reiterated his case as set out in the Re-Amended Plaintiff.
30. PW1 adduced an affidavit sworn by Joseph Wambua who deposed that Joreth Limited had sold the whole of the land on which the suit property is derived from to Thome Farmers No. 5 Limited, and that the suit property was then sold to Stanley Gichuki Maitho, and then to himself.
31. PW1 asserted that the subdivision of the land sold to Thome Farmers was with the full knowledge of Joreth Limited, and the charges for survey of the land were paid by members of Thome Farmers, as shown in his bundle of documents. He argued that the vesting of the plots by Thome Farmers to its members, including himself, was valid and was done with the full consent, express or implied of Joreth Limited.
32. PW1 stated that since he bought the property in 1987, and took possession and fenced it, the Defendant did not interfere or interrupt with his possession for twenty-five years, until 2012. He asserted that he sued Joreth because the title was in its name, and could not sue Thome because they delivered the plot he had bought and there is no dispute between himself and Thome.
33. PW1 stated that in 2005, the Defendant advertised in the newspapers that there was a ruling in court and those who resided or were plot owners at Thome Farmers No. 5 Limited and wanted their plots to be transferred by the 1st Defendant into their names should pay an agreed sum of Kshs. 200,000/- plus transfer and stamp duty fees.
34. He asserted that he saw the advertisement in July 2005, four years after the consent order had been recorded in 2002 and 18 years after he had taken possession of the plot and that it was pursuant to the advertisement that he paid the Defendant Kshs. 40,000 through his advocates and promised to pay the balance when his title was prepared.
35. He argued that it was clear that the timelines set out in the order of June 2002 of six months was clearly not followed because his payment was accepted in November 2005 and it was agreed that he would clear the balance prior to the issue of the title to himself and that there was therefore no question of his being late in payment.
36. In cross-examination, PW1 testified that he had purchased the suit property from Mr. Maitho through a sale agreement dated 15th September 1997; that Mr. Maitho showed him the beacons, and thereafter confirmed that he was a shareholder of Thome Farmers No. 5 and that the plot represented the share that he had in the Company and that he then paid the purchase price.
37. It was his evidence that they went to the offices of Thome Farmers and after they did the transfer, Mr. Maitho's name was cancelled from the register and replaced with his. He was then issued with a share certificate.
38. He stated that Thome Farmers told him to wait for titles; that he cultivated the land all through, until the 1st Defendant came into the picture and built a house made of timber and mabati and that his employee, Mutuku, had stayed on the land for twenty-four years with his family.
39. PW1 asserted that he saw the advertisement in the Daily Nation on 23rd July 2005; that he went to the offices of Kimani Kahiro Advocates who asked him to give them the share certificate, survey fees and other documents to confirm that he was a shareholder of Thome and that they then gave him the



- conditions and the amount to be paid. According to PW1, he agreed to pay the amount in six months as he did not have the amount. He then deposited the sum of Kshs. 40,000/-.
40. When he went back to the law firm in January 2006, PW1 stated that he was informed at the reception that they were not representing Joreth Limited and they directed him to the law firm of Chege & Wainaina Advocates. When he went to see Chege & Wainaina Advocates, they told him that they were not ready to receive the money.
 41. PW2, Stephen Mutuku Vavu, relied on his statement dated 29th May 2017. He deponed that he was employed by the Plaintiff to work for him on his land since 1987; that the plot was a half an acre plot, No. 226 which was undeveloped and that they cleared the bush, and fenced the land using mesh wire, barbed wire and an iron sheet screening on the road frontage
 42. He averred that they cultivated and grew beans, maize and subsistence crops; that they had a semi-permanent house on the land; that he later married in 2002 and lived with his family on the land and that he was on the land until 31st October 2012, when he was evicted by 12 people and the police.
 43. It was the evidence of PW2 that the people who evicted him dropped the water storage tank and took away his goods from the house. They then demolished the house and carried away the materials.
 44. PW3, John Ndindiri Gisho, testified that he knew the Plaintiff in 1987, when he bought the plot opposite his land, which is Plot No. 191; that when the Plaintiff bought the land, he fenced it and thereafter built the timber house; that the Plaintiff later connected water to the land and had a worker called Mutuku stay on the land and that he bought his land from Thome No. 5 and has a title in his name.
 45. The Defendants' witness, DW1, adopted his statement and produced a bundle of documents dated 5th July 2017 which was marked as DEXB1. In his statement, he restated the facts in the Defence, and stated that the suit property was registered in the name of the 1st Defendant and that the suit property has never been registered in the name of Thome Farmers No. 5 Limited or any other person other than the 1st Defendant.
 46. It was the evidence of DW1 that the 1st Defendant did not enter into a sale agreement with the Plaintiff for the purchase of the suit property; that despite the Plaintiff being aware of the consent order entered in HCCC 6206 of 1992 in which the Defendants were to pay a sum of Kshs. 200,000 to the 1st Defendant and the land would be transferred to the individual Defendant, the Plaintiff by his own admission did not comply with it.
 47. It was averred by DW1 that the payment of Kshs. 40,000, which is denied, was in violation of the consent order, which provided for the payment in full of Kshs. 200,000 and the Plaintiff therefore lacks the locus to claim to be the owner of the suit property.
 48. DW1 contended that the Plaintiff cannot claim to be a purchaser of the suit property and at the same time claim to have acquired rights of an adverse possessor in the same suit. He asserted that the 1st Defendant, being the sole and rightful owner of the suit property had the right to sell the suit property to the 2nd Defendant and that it lawfully transferred vacant possession of the suit property to the 2nd Defendant for valuable consideration.
 49. In cross-examination, DW1 testified that in 1974, the 1st Defendant had resolved to sell the two parcels of land which were later amalgamated into LR 13330; that Thome 5 later surveyed and sub divided the land into 600 plots and that the 1st Defendant never questioned the subdivision of the land and the same was done with the authority and consent of Joreth Limited.



50. According to DW1, they later filed HCCC No. 6206 of 1992, against 23 Defendants who had purchased the plots from Thome 5; that the 1st Defendant sought to evict the purchasers from the land because Thome 5 had failed to complete the transaction and that the consent order was entered into between Joreth and six of the Defendants, and the Plaintiff was not one of the Defendants. DW1 denied knowing Stanley Gichuki.
51. DW1 acknowledged that the Plaintiff paid the money to their lawyer in 2005, which payments were for Plot 226. He denied knowledge of Kimani Advocate declining to receive payments from the Plaintiff or whether the Plaintiff approached the firm of Chege Advocates, as it is not documented, and that he later tried to pay for the land in 2011. DW1 stated that they never consummated the agreement between Joreth Limited and Thome 5.
52. The second witness, DW2, was Nderitu Wachira, a Director of the 2nd Defendant, who adopted his statement and further statement as his evidence in chief. DW2 stated that the 2nd Defendant bought the land from the 1st Defendant; that he had previously worked as a manager for the 1st Defendant and that when he bought the land, there was a small temporary kiosk and the land was vacant.
53. DW2 informed the court that it was only after he obtained his title that he learnt that the Plaintiff was claiming the land. He testified that he filed a case after he got a title and asked for the occupant of the kiosk to vacate the land; that Court orders for eviction were later issued in Magistrates Misc. Application Case No. 849 of 2012 and that the OCS was directed to assist in levying of distress.
54. DW2 argued that levying distress should be interpreted in its full context, because it allows one to take whatever is there and that he made a demand for payment of rent because the Plaintiff was occupying the land after the 2nd Defendant had been issued with the title.

Submissions

55. Counsel for the Plaintiff filed written submissions dated 25th October 2023. Counsel submitted that the evidence of PW2 and PW3 confirm that the Plaintiff took possession and occupied the suit property from 1987, and that his occupation was open, continuous and peaceful for 25 years. Counsel submitted that the Defendants conceded that they were aware of the Plaintiff's presence on the suit property, and that the Plaintiff was on the property until 18th October 2012, when the miscellaneous application was filed in the lower court.
56. Counsel submitted that the Plaintiff's claim for adverse possession is well grounded having fully satisfied the required legal ingredients in a claim for adverse possession.
57. It was Counsel's submissions that the Defendants having acknowledged the Plaintiff's occupation and possession, they are barred by the doctrine of estoppel from denying such occupation and that the filing of Misc. Application No. 849 of 2012 did not constitute interruption as it was limited to the levying of distress. Counsel sought to rely on the Court of Appeal case of Ndathi vs Itumo & 2 Others (2002) 2 KLR where it was held that assertion of a right by a proprietor occurs when the owner takes legal proceedings or makes an effective entry into the land.
58. Plaintiff's Counsel submitted that there is no evidence of payment of the purchase price by the 2nd Defendant; that there is no evidence that the 1st Defendant retook possession or that there was effective entry by any of the Defendants into the suit property and that the running of time in favor of the Plaintiff for the purposes of adverse possession has never been interrupted.
59. Counsel asserts that the fact that there was a change of ownership by the transfer of the suit property from the 1st Defendant to the 2nd Defendant by the transfer dated 7th February 2012 did not affect the



- Plaintiff's claim. Counsel relied on the Court of Appeal's determination in *Githu vs Ndeete*, 1984 KLR 776.
60. According to Plaintiff's Counsel, the 1st Defendant's suit No. 6206 of 1992 has no relevance in this matter because the Plaintiff was not a party to that suit; that the said suit was never fully determined on merits and that the consent order dated 27th June 2000 shows that it was between Joreth Limited and six of the Defendants in that suit.
 61. Counsel relied on the Court of Appeal case of *Peter Njau Kairu vs Stephen Ndungu Njenga & Another* (1998) eKLR where the court held that a person claiming to be entitled to adverse possession may be in possession through his wife, offspring or a person appointed by him in that respect. They also relied on *Gatimu Kinguru vs Muya Gathangi* [1976] eKLR where the court held that planting a boundary or tufts of napier grass is the best evidence like fencing off, and that cultivation of land has been held to be sufficient to prove adverse possession.
 62. Counsel relied on Section 28(b) of the *Land Registration Act* under which a claim for adverse possession is recognized as an overriding interest. They also relied on the case of *Munyu Maina vs Hirma Gathiha Maina* [2013] eKLR; *Dina Management Limited vs County Government of Mombasa & Others* Supreme Court Petition No. 8 (E010 of 2021); *Patrick Magu Mwangi vs Joreth Limited* [2015] KECA 363 (KLR) and *Mbogo vs Joreth Limited* [2022] KEELC 2514 (KLR).
 63. Counsel for the 1st and 2nd Defendants filed Written Submissions dated 7th October 2024. Counsel submitted that the Plaintiff's prayer for specific performance was not sustainable as the Plaintiff willfully violated the terms of the consent order recorded on 27th July 2003 in HCCC 6206 of 1992, which required parties to pay Kshs. 200,000 for their respective plots within a period of six months.
 64. Counsel contended that the Plaintiff became bound by the terms of the consent order the moment he undertook to purchase the suit land following the advertisement placed in the Daily Nation newspaper on 23rd July 2005.
 65. Counsel relied on the definition of 'specific performance' as set out in the Oxford Law dictionary. They also relied on the definition of 'specific performance' in *Kilifi Resorts Limited vs Northern Lights Limited* [2013] KEHC 4208 (KLR) and the principles elucidated in *Gurder Singh Birdi v Marinder Singh Ghators vs Abubakar Madhubuti Civil Appeal No. 165 of 1996*, cited with approval in *QPKA vs Kenyatta Hospital Association (KHA) t/a Nairobi Hospital and Reliable Electrical Engineers Ltd v Mantrac Kenya Limited* [2006] eKLR.
 66. On the second issue of the transaction between the 1st and 2nd Defendants, Counsel submitted that in 2011, five years after the timeline of six months within which the Plaintiff was to pay the purchase price of Kshs. 200,000/- had lapsed, the 2nd Defendant got information that the suit property was available for purchase; that the 2nd Defendant conducted due diligence and took all necessary steps before purchase of the suit property and that a search revealed that the 1st Defendant is the registered owner of the suit property.
 67. It was submitted that the suit property was transferred in favour of the 2nd Defendant on 9th December 2011; that the sale of the suit land to the 2nd Defendant was valid and the 2nd Defendant is the absolute and indefeasible owner of the suit land in accordance with Section 23(1) of the Registration of Titles Act Chapter 281 Laws of Kenya.
 68. While the Plaintiff alleged fraud in his Re-amended Plaintiff, Counsel submits that the Plaintiff failed to prove the same against the Defendants during the hearing and has not submitted on this issue.



69. With respect to the Plaintiff's claim of adverse possession, counsel submitted that the right to land does not accrue unless the person in whose favor such right has accrued takes action, and time stops running the moment a suit is filed by the title holder. Counsel relied on the case of *Mtana Lewa vs Kahindi Ngala Mwangandi* [2015 eKLR].
70. Counsel also relied on the case of *Mbira vs Gachuhi* (2002) 1 EALR 137 where it was held that the statutorily prescribed period of twelve years must run continuously without interruption. Counsel submitted that while the Plaintiff asserts that he took possession in 1987, five years later in 1992, the 1st Defendant instituted a suit HCCC No. 6206 of 1992 against all trespasses; that the statutorily prescribed time of twelve years stopped running after five years of the Plaintiff's alleged occupation of the suit land and that the Plaintiff's claim of ownership by dint of adverse possession is without merit. Counsel relied on the case of *Kimani Ruchine vs Swift Rutherford & Co. Ltd* (1980) KLR.
71. Counsel submitted that the Plaintiff failed to prove that the 1st Defendant had knowledge that he was in possession or occupation of the suit land. He relied on the case of *Karnataka Board of Wakf vs Government of India & Others* (2004) 10 SCC 779.
72. It was submitted that a claim for purchaser's interest cannot coexist with one of adverse possession by virtue of the factual evidence that is required to be adduced for each claim. He submitted that this was the position taken in *Muchanga Investments Ltd vs Safaris Unlimited (Africa) Ltd & 2 others* [2009] eKLR, *Samuel Miki Waweru vs Jane Njeri Richu* C.A. No. 122 of 2001, *Hyde vs Pearce* [1982] 1 ALL ER 1029.
73. As to whether the Plaintiff is entitled to compensation for the destroyed house and unlawfully distrained goods, Counsel contended that the Plaintiff failed to adduce evidence of the alleged distrained goods or photographs of the destroyed house, and that the Plaintiff's claim is in the nature of special damages which must be specifically pleaded and strictly proved. They relied on the case of *Hahn vs Singh* Civil Appeal No. 42 of 1983 (1985) KLR.

Analysis and Determination

74. This court has taken into consideration the pleadings filed by the parties, the evidence adduced and the submissions filed in this matter. The issues for determination are as follows:
 - a. Whether the Plaintiff is entitled to orders of specific performance.
 - b. Whether the Plaintiff has established the claim of adverse possession over the suit property.
 - c. Whether the 2nd Defendant acquired good title to the suit property.
 - d. Whether special damages should be awarded to the Plaintiff.
 - e. Whether the Defendants' Counterclaim has merit.
 - f. Orders which this court should issue
75. The history of the parcel of land known as LR No. 13330 and its resultant subdivisions has been plagued by a myriad of disputes in this court. Okong'o J chronicled the genesis of these suits in *Richard Nyamwange & Monica Nyamwange vs Samuel Kimani Gathemba, Daniel Gathemba Kiiru, Kimani Kahiro t/a Kimani Kahiro & Co Advocates, Chege Wainaina t/a Chege Wainaina & Co Advocates, Peter Mungai, Vema Agencies Limited, Livingstone Gitonga Muchungi, James Musau Kimeu, Charles*



Kamari, Joreth Limited & Registrar of Titles and Commissioner of Lands [2020] KEELC 2640 (KLR) as follows:

“This is one in a series of cases involving Joreth Limited and the shareholders of a company known as Thome Farmers No. 5 Limited over the ownership of portions of land that originated from L.R. No. 4290/3/1 and L.R. No. 4921/3/2 which were later consolidated to form L. R. No. 13330. According to one of the cases between the parties that went up to the Court of Appeal namely, *Patrick Magu Mwangi Kimunyu v Joreth Limited, Nairobi Court of Appeal, Civil Appeal No. 52 of 2012*, Joreth Limited was at all material times the registered owner of L.R. No. 4290/3/1 and L.R. No. 4921/3/2. Joreth Limited sold L.R. No. 4290/3/1 and L.R. No. 4921/3/2 to Thome Farmers No. 5 Limited. Thome Farmers No. 5 Limited was a land buying company with several shareholders.

Thome Farmers No. 5 Limited took possession of L.R. No. 4290/3/1 and L.R. No. 4921/3/2 and subdivided the same into several half (½) acre plots which it allocated to its shareholders. Some of the shareholders of Thome Farmers No. 5 Limited developed their plots while others sold their plots to third parties. The said third parties became shareholders of Thome Farmers No. 5 Limited by virtue of such purchase. Joreth Limited did not however transfer to Thome Farmers No. 5 Limited L.R. No. 4290/3/1 and L.R. No. 4921/3/2 which it later consolidated to form L.R. No. 13330. In the circumstances, neither Thome Farmers No. 5 Limited nor its shareholders acquired legal title over L.R. No. 13330 and its subdivisions.

Sometimes in 1992, Joreth Limited filed a suit at the High Court in Nairobi namely, HCCC No. 6206 of 1992 against Thome Farmers No. 5 Limited and 23 others seeking vacant possession of the portions L.R. No. 13330 that Thome Farmers No. 5 Limited had allocated to some of its shareholders that Joreth Limited referred to as trespassers. In the said High Court suit, a consent was recorded between Joreth Limited and some of the defendants in the suit to the effect that the said defendants would pay to Joreth additional sum of Kshs. 200,000/- after which Joreth Limited would transfer to them the said portions of L.R. No. 13330 that had been allocated to them by Thome Farmers No. 5 Limited. It is not clear as to what became of that suit as far as the defendants who never subscribed to the said consent were concerned. A number of shareholders of Thome Farmers No. 5 Limited who were allocated portions of L.R. No. 13330 were not parties to that suit.

From the date of that consent that Joreth Limited applied to all those who were allocated portions of L.R. No. 13330 by Thome Farmers No. 5 Limited, the shareholders of Thome Farmers No. 5 Limited who paid Kshs. 200,000/- in accordance with the terms of the consent, retained their plots and had the same transferred to them by Joreth Limited while those who refused to pay had their plots sold by Joreth Limited to third parties. It is this state of affairs that has generated several suits before this court one of which is the present case.”

76. This suit is another in the series of cases that branched from the above events. The facts in this matter are that in 1987, the Plaintiff purchased the suit property, Plot No. 226 (LR No. 13330/506) from Stanley Gichuki Maitho, who had acquired the property from Thome Farmers No. 5 Limited. Mr. Maitho deposited his share certificate with the Plaintiff and the Plaintiff paid the transfer fees to Thome Farmers No. 5 Limited. The Plaintiff asserts that after he purchased the suit property, he took possession, fenced it, and built a semi-permanent structure on it, in which his employee, Mutuku, lived in from 1987 to 2012.



77. The Plaintiff later came to learn that his plot had been registered in favour of the 1st Defendant. In July 2005, he saw an invitation in the newspaper inviting owners of plots in LR No. 13330 to take advantage of a consent order recorded on 27th July 2003 in HCCC 6206 of 1992 Joreth Limited v Lewis Kibue and others to have the titles of their plots registered in their names.
78. The Plaintiff stated that he was not party to the suit. However, he still attempted to regularize the sale as per the consent order by paying to the 1st Defendant's advocates Kshs. 40,000/- out of the purchase price of Kshs. 200,000 and undertook to pay the balance within six months. He asserts that the payment was on the understanding that he would be issued with a title to the suit property.
79. However, when he approached the said advocates six months later, they declined to receive the balance of the purchase price. He argues that he has at all times been willing and ready to pay the balance of the purchase price, and has on this basis sought for orders of specific performance against the 1st Defendant.
80. The Plaintiff argues that he was in possession of the suit property between 1987 and 2012 when he was unjustly evicted from the land by the 2nd Defendant, who through orders obtained in Misc. Application 849 of 2012, sent auctioneers to the suit property purportedly to levy distress for rent amounting to Kshs. 300,000 owed to the 2nd Defendant.
81. It is his case that the auctioneers destroyed the semi-permanent house on the land and carted away assorted goods worth approximately Kshs. 600,000, which amount the Plaintiff claims from the 2nd Defendant.
82. The 1st and 2nd Defendants have opposed the Plaintiff's case. They assert that the mother title LR N0. 13330 at all times was registered to the 1st Defendant, who amalgamated and consolidated the two properties it had owned since the 1950s, LR No. 4920/3 and 4921/3.
83. It is their position that although 1st Defendant resolved in 1974 to sell the two plots to Thome Farmers No. 5 Limited, the land was never transferred to Thome Farmers No. 5 Company Limited. It asserts that the plot number 226 was never owned by Stanley Gichuki Maitho and therefore, he had no good title that he could pass to the Plaintiff. Rather, they depone, the suit property was lawfully transferred by the 1st Defendant to the 2nd Defendant.
84. With respect to the offer that was made in the newspaper, the 1st Defendant asserted that by failing to pay the Kshs. 200,000 and instead only paying Kshs. 40,000, the Plaintiff was in violation of the consent order. Furthermore, the 1st Defendant denied that the Plaintiff has established the claim of adverse possession, because the HCCC No. 6206 of 1992 was filed five years after the Plaintiff entered possession of the land and filing of the said suit stopped time from running.
85. The Plaintiff has sought that this court issue orders of specific performance, pursuant to the agreement made with the 1st Defendant to process the title for the suit property in the name of the Plaintiff implied in the offer it gave to the Plaintiff vide its notice carried out in the Daily Newspaper of 23rd July 2005.
86. The said notice invited individuals who wished to take advantage of the consent order recorded on 27th June 2002 in HCCC 6206 of 1992 and have their respective plots registered in their names to contact the advocates of the 1st Defendant within 30 days effective from the date of the notice, failure to which the offer contained therein shall be deemed to have been unreservedly withdrawn.
87. The Plaintiff has asserted that it made payment of Kshs. 40,000 in November 2005, which was received by the 1st Defendant's Advocates, Messrs Kimani Kihoro & Associates Advocates.



88. It is trite that specific performance, like any other equitable remedy, is discretionary and the Court will only grant it on well settled principles. The jurisdiction of specific performance is based on the existence of a valid, and enforceable contract. As expressed in the case of *Reliable Electrical Engineers Ltd vs Mantrac Kenya Limited* [2006] eKLR;

“Specific performance like any other equitable remedy is discretionary and the Court will only grant it on well laid principles ... The Jurisdiction of specific performance is based on the existence of a valid enforceable contract. It will not be ordered if the contract suffers from some defect, such as failure to comply with the formal requirements or mistake or illegality, which makes the contract invalid or enforceable. Even when a contract is valid and enforceable, specific performance will however not be ordered where there is an adequate alternative remedy. In this respect damages are considered to be an adequate alternative remedy where the claimant can readily get the equivalent of what he contracted for from another source. Even when damages an adequate remedy specific performance may still be refused on the ground of undue influenced or where it will cause severe hardship to the defendant.”

89. A party seeking the relief of specific performance must show that he performed and/or is willing to perform his part of the bargain under the agreement. This was aptly stated by the Court of Appeal in *Gurdev Singh Birdi & Narinder Singh Ghatora as Trustees of Ramgharia Institute of Mombasa vs Abubakar Madhubuti* [1997] eKLR as follows:

“When the appellants sought the relief of specific performance of the respondent's property...they must have been prepared to demonstrate that they had performed or were ready and willing to perform all the terms of the agreement...which ought to have been performed by them and indeed that they had not acted in contravention of the essential terms of the agreement....”

90. The evidence before this court shows that on 27th June 2002, Joreth Limited and six out of the 24 Defendants entered into a consent which was adopted by the court. The terms of the consent were that the six Defendants would pay a sum of Kshs. 200,000/- each to the Plaintiff (1st Defendant herein) for each of the respective Defendants within the suit premises, within six months from the date of the court's ruling. All the other plot owners were subsequently allowed to ride on the consent, thus the notice in the newspaper.

91. The Plaintiff contends that there was an implied agreement when he paid the sum of Kshs. 40,000 and maintains that he was at all times ready to fulfill the terms of the agreement. It is however trite that an agreement for the sale of land must be in writing. The Plaintiff has not provided any written agreement between itself and the 1st Defendant with respect to the suit land.

92. Section 3(3) of the [Law of Contract Act](#) provides that:

“ 3

(3) 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.”

93. The implied agreement is therefore not enforceable by this court. Further, the Plaintiff having not abided by the terms that were set in the consent order, which was extended to them by way of a notice in the Daily Nation newspaper by paying the entire sum of Kshs. 200,000 within six months, it is the finding of the court that he is not entitled to an order of specific performance, moreso when the title has already been issued to the 2nd Defendant.

94. Adverse possession is provided for under Section 7 of the *Limitation of Actions Act* as read with Sections 13, 17 and 38 of the *Limitation of Actions Act*. Section 7 provides 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.”

95. Section 13 further prescribes as follows:

“(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 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), the land in reversion is taken to be adverse possession of the land.”

96. Section 17 of the Act states as follows:

“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.”

97. Finally, Section 38(1) and (2) provides as follows:

“(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.”

98. Read together, these provisions establish that a person who enters possession of another person’s land and remains on the land for twelve consecutive years, without interruption and adverse to the ownership of the registered proprietor, becomes entitled to such land by adverse possession, and extinguishes the title of the proprietor.

99. The nature of the doctrine of adverse possession was expounded upon by the Court of Appeal in the case of *Mtana Lewa vs Kahindi Ngala Mwangandi* (2015) eKLR where the court stated as follows:

“Adverse possession is essentially a situation where a person takes possession of land, asserts rights over it and the person having title to it omits or neglects to take action against such person in assertion of his title for a certain period, in Kenya 12 years. The process springs into action essentially by default or inaction of the owner. The essential prerequisites being that the possession of the adverse possessor is neither by force or stealth or under the licence of the owner. It must be adequate in continuity, in publicity and in extent to show that possession is adverse to the title owner.”

100. The Court of Appeal similarly stated in *Wines & Spirits Kenya Limited & another vs George Mwachiru Mwangi* [2018] eKLR that:

“...It therefore follows that the onus is on the person or persons claiming adverse possession to prove that they have used this land which they claim as of right. This is the Latin maxim of *nec vi, nec clam, nec precario* (which means that the occupation of the land must have no force, no secrecy, no evasion). Accordingly, the respondent herein was beholden to not only show his uninterrupted possession, but also that the 1st appellant had knowledge (or the means of knowing) actual or constructive of the possession or occupation. The possession must be continuous. It must not be broken for any temporary purpose or by any endeavours to interrupt it or by any recurrent consideration.”

101. The Court of Appeal in *Richard Wefwafwa Songoi vs Ben Munyifwa Songoi* [2020] eKLR further laid out the elements that must be established in a claim for adverse possession as follows:

- i. On what date he came into possession;
- ii. What was the nature of his possession;
- iii. Whether the fact of his possession was known to the other party;
- iv. How long his possession continued; and
- v. That the possession was open and undisturbed for the requisite period of 12 years.

102. Comprehensive detail as to the above elements is provided by the Court in *Gabriel Mbui vs Mukindia Maranya* [1993] eKLR as follows:

- a. 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.



- b. 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.
 - c. The occupation of the land by the intruder who pleads adverse possession must be non-permissive use, ie without permission from the true owner of the land occupied.
 - d. 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.
 - e. 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.
 - f. 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.
 - g. The possession must be continuous uninterrupted, unbroken for the necessary statutory period.
 - h. 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.
 - i. 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.
 - j. 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.”
103. Guided by the foregoing, I now turn to consider whether the Plaintiff has proved the elements of adverse possession. The Plaintiff has asserted that he took possession of the suit property in 1987, after he purchased the same from Stanley Maitho, who had purchased it from Thome Farmers No. 5 Company Limited.
104. The Plaintiff has adduced into evidence a copy of the sale agreement between himself and Stanley Gichuki Maitho, a copy of the share certificate and a receipt for the payment of the transfer fees. The 1st Defendant has denied any knowledge of the said Mr. Maitho. The sale of the land to the Plaintiff was therefore adverse to the title of the 1st Defendant.
105. The Plaintiff stated that he built a semi-permanent house for his employee, Mutuku, and a fence around the land, and that through the years, he made use of the land by planting vegetables and selling them. He testified that he was on the suit property until 2012 when he was unlawfully evicted by the 2nd Defendant.
106. The Plaintiff's employee, Mutuku Vavu (PW2) confirmed that he was resident on the land between 1987 and 2012; that he used to till the land and plant beans, maize and subsistence crops; and that



he married his wife in 2002 and continued to live on the farm with his family. This evidence was not rebutted by the Defendants.

107. The Plaintiff also asserted that his occupation of the suit land was open, notorious, and with the knowledge of the 1st Defendant. PW3, the Plaintiff's neighbor, testified that the Plaintiff was in possession of the land from 1987 to 2012.
108. He confirmed the assertions by the Plaintiff and PW2 that the suit property was fenced in 1987; that a timber house was built thereon and that the Plaintiff's employee was resident on the land from 1987. His testimony was neither challenged nor disproved.
109. In support of the Plaintiff's claim that the 1st Defendant had knowledge of his possession of the suit property, the Plaintiff produced letters from the 1st Defendant's advocates demanding that he vacate the said premises. These letters are dated 2nd December 2010 and 23rd March 2012.
110. The 1st Defendant has asserted that the occupation of the Plaintiff was interrupted by the institution of HCCC No. 6206 of 1992. In the said case, the 1st Defendant instituted proceedings against 23 shareholders of Thome Farmers No. 5 Limited whom the 1st Defendant claimed had trespassed upon its property, being LR No. 4920/3 and 4921/3 (later amalgamated into LR No. 13330).
111. The Plaintiff has denied being a party to that suit and denied knowledge of its existence. The 1st Defendant's witness, DW1, also admitted that the Plaintiff was not a Defendant in that suit. As the said suit did not challenge the Plaintiff's ownership of the suit property, the filing of the suit did not interrupt the Plaintiff's possession. This position was upheld by the Court of Appeal in Patrick Magu Mwangi Kimunyū v Joreth Limited [2015] KECA 363 (KLR) where it adjudicated a similar claim concerning LR No. 13330. The court held as follows:

“The testimony of the appellant glaringly points to the fact that the appellant did not know of the suit that had been filed by the respondent; he was not a party to it, and there was no evidence tendered in court as to the disposition of that suit. This was not an assertion of the respondent's rights to the suit property as against the appellant and ultimately, did not amount to an interruption of the possession of the appellant.”
112. It cannot, therefore, be said that the institution of HCCC No. 6206 of 1992 interrupted the Plaintiff's possession of the land between 1987 until 2012, when he was removed from the land by dint of the actions of the 2nd Defendant.
113. Indeed, the 1st Defendant did not inform this court it did not join the Plaintiff, who was a known shareholder with Thome Farmers 5 Limited in the matter, despite its acknowledgement that he had been on the property since 1987. At the very least, the 1st Defendant had the means of finding out that the Plaintiff was in possession of the suit property in 1992, when it instituted the suit. The 1st Defendant, however, neglected to take any step or measure to assert its ownership of the said property.
114. Consequently, this court is satisfied that the Plaintiff has established that it had open and notorious possession of the suit property, for twenty-five years without interruption by the 1st Defendant before his caretaker was evicted in 2012. The Plaintiff has established to the required standards the claim of adverse possession as against the 1st Defendant.
115. There is then the issue of the transfer of title of the suit property to the 2nd Defendant. The Defendants claim that the 2nd Defendant lawfully acquired title to LR 13330/506 through an agreement of sale dated 15th February 2011. The Defendants have adduced a copy of the said sale agreement, as well as a copy of the transfer dated 16th September 2011 from Joreth Ltd to Nyalī Beach Cycads Limited.



116. Pursuant to Section 17 of the *Limitation of Actions Act*, the 1st Defendant's title to the suit property became extinguished upon the expiry of the statutory period of 12 years. Considering that the Plaintiff was in possession of the land since 1987, the statutory period of twelve years expired in 1999.
117. Even if an argument were to be made that the 1st Defendant could only have had knowledge of the Plaintiff's ownership of the land in 1992, when it filed the suit against several trespassers of the larger LR 13330, the twelve years statutory period expired in 2004.
118. Either way, by the time the 1st Defendant purported to sale the suit property to the 2nd Defendant, its title to the suit property had already been extinguished by the Plaintiff's interest in the land. The 1st Defendant therefore had no title to pass on to the 2nd Defendant.
119. The 2nd Defendant did not also establish that it was a bona fide purchaser for value without notice of the Plaintiff's interest in the land. By its own admission, it was aware of the Plaintiff's occupation of the suit property as at the time it purchased the land. This position is further exacerbated by the 2nd Defendant's actions of evicting the Plaintiff under the guise of levying distress for rent and obtaining orders from the court based on falsehoods.
120. In the Miscellaneous Application 849 of 2012, auctioneers averred that they had received instructions from the 2nd Defendant to levy distress against the Plaintiff who they purported to be a defaulting tenant. They sought to recover rental arrears amounting to Kshs. 300,000. These dispositions by the auctioneer were not only false, but were meant to evict the Plaintiff from the suit land through the backdoor.
121. I say so because the remedy of distress for rent is provided for by section 3 of the *Distress for Rent Act*. It stipulates as follows:
- “Subject to the provisions of this Act and any other written law, any person having any rent or rent service in arrears and due upon a grant, lease, demise or contract shall have the same remedy by distress for the recovery of that rent or rent services as is given by the common law of England in a similar case.”
122. It is however plain that the Plaintiff has never been a tenant of the 1st or the 2nd Defendants. No rental agreement between the said parties has been availed. These proceedings were therefore an abuse of court process by the 2nd Defendant.
123. It has been held time and again that special damages must be specifically pleaded and proved. This was held by the Court of Appeal in *Hann vs Singh* (1985) KLR 716, which was quoted in *Abok James Odera T/A A.J Odera & Associates vs John Patrick Machira T/A Machira & Co. Advocates* [2013] KECA 208 (KLR) as follow:-
- “Special damages must not only be specifically claimed but also strictly proved. The degree of certainty and the particularity of proof depend on the circumstances and the nature of the acts themselves”
124. In this matter, while the Plaintiff has asserted that he incurred losses during the eviction unlawfully undertaken by agents of the 2nd Defendant and the police on 31st October 2012, the Plaintiff failed to lead any evidence as to the goods that were distrained and their value. The Plaintiff also did not present evidence of the value of the destroyed house.
125. This court must then find that the sum of Kshs. 600,000/- prayed for by the Plaintiff is without any basis and has not been proved to the required standard of proof.



126. Having found that the Plaintiff is entitled to the suit property by adverse possession, the Defendants' counterclaim, which sought to evict the Plaintiff and prevent him from accessing the suit property, is without merit.
127. In conclusion, the Plaintiff's suit is found to be partially merited and is allowed as follows:
- a. A declaration be and is hereby issued that the Plaintiff, Christopher Wachira Githui, has acquired title by adverse possession of the suit property known as LR 13330/506.
 - b. A declaration be and is hereby issued that the sale between the 1st Defendant and the 2nd Defendant in respect of Plot No, LR 13330/506 was null and void as the said title was not available for transfer by the 1st Defendant to the 2nd Defendant on 9th December 2011.
 - c. An order be and is hereby issued that the Chief Land Registrar cancel the registration of the 2nd Defendant, Nyali Beach Cycads Limited, as proprietor of LR. No.13330/506 and or any other person deriving title from the 2nd Defendant and rectify the register by entering the name of the Plaintiff as the registered proprietor of the suit property LR.No.13330/506, and thereafter issue the Plaintiff with a title in his name.
 - d. An eviction order be and is hereby issued against the 2nd Defendant from the suit property.
 - e. An order of removal of any structures that the 2nd Defendant has put up on the suit property be and is hereby issued.
 - f. The Defendants' counter claim is dismissed with costs.
 - g. Costs of this suit shall be borne by the 1st and 2nd Defendants jointly and severally.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 6TH DAY OF FEBRUARY, 2025.

O. A. Angote

Judge

In the presence of;

Mr. Kingara for Plaintiff

Ms Mwanza holding brief for Bhanji for Defendants

Court Assistant: Tracy

