



Muindi & 3 others (Suing on Their Own Behalf and as Officials of Village D Welfare Association Ngelani) v Aldus Limited & 3 others (Environment & Land Case E029 of 2021) [2025] KEELC 1022 (KLR) (4 March 2025) (Judgment)

Neutral citation: [2025] KEELC 1022 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE E029 OF 2021
CA OCHIENG, J
MARCH 4, 2025**

BETWEEN

**RICHARD NZIOKA MUINDI 1ST PLAINTIFF
CONSOLATA MWATHI 2ND PLAINTIFF
MARY MUSYIMI 3RD PLAINTIFF
DANIEL MBAU ELIJAH 4TH PLAINTIFF
SUING ON THEIR OWN BEHALF AND AS OFFICIALS OF VILLAGE D
WELFARE ASSOCIATION NGELANI**

AND

**ALDUS LIMITED 1ST DEFENDANT
GULF EMIRATES HOLDING LIMITED 2ND DEFENDANT
HIGHWAY INDUSTRIAL PARK LIMITED 3RD DEFENDANT
NATIONAL LAND COMMISSION 4TH DEFENDANT**

JUDGMENT

1. By a Complaint dated the 2nd March 2021, the Plaintiffs pray for judgment against the Defendants for:
 1. A declaration that the Plaintiffs are the rightful owners of LR No. 12610/1- 5 and an order that the said land or portions thereof be registered in favour of the Plaintiffs and their families.
 2. An order for the Plaintiffs to continue possessing and occupying the suit premises pending determination of each person's share.



3. In the alternative an order that the Plaintiffs are entitled to the land parcel by way of adverse possession against the 1st to 3rd Defendants.
 4. Damages against the 1st to 3rd Defendants for unlawful, illegal and forceful eviction and demolition.
 5. A permanent injunction restraining the 1st to 3rd Defendants, their servants, agents, employees and anybody acting under them from entering, interfering, fencing, evicting, developing and in any other way dealing with the suit premises.
 6. Costs of this suit and interest.
2. The 1st, 2nd and 3rd Defendants filed their Statement of Defence and Counterclaim dated the 12th November 2021 where they denied the averments in the Plaint except the descriptive. They contended that LR Number 12610 Ngelani originally comprised of thousands of acres and was registered under I.R. 38728. Further, that the said land was subdivided into five smaller portions being LR No. 12610/1, 12610/2, 12610/3, 12610/4 and 12610/5 respectively. They explain that on 23rd September 1985, a transfer in respect to LR No. 12610/5 comprising 199.1 Hectares was registered in favour of Kando Enterprises Limited. Further, on 19th December, 1991, Kando Enterprises Limited, subdivided the said land into sixty five (65) smaller plots, out of which the Defendants purchased forty seven (47) plots. They averred that at the time they purchased their respective plots, the land was vacant. They insisted that, it is the Plaintiffs' agents who have harassed them, denying them the right to enjoy occupation and development of their plots. They confirmed that they filed Mavoko Senior Principal Magistrates Court Civil Case No. 5 of 2017 and obtained eviction orders against the trespassers, which orders were duly and properly executed and the said trespassers evicted.
3. In the Counterclaim, they sought for Judgement against the Plaintiffs jointly and/or severally for:
1.
 - a. The Plaintiffs and all other members of the Village D Welfare Association be restrained whether by themselves, their servants, agents and all others claiming under or through them from interfering in any manner with the 1st, 2nd and 3rd Defendants' possession and use of and access to and/or quarrying, invading, constructing any structures, carrying on or continuing any quarrying construction or other works on the properties known as Land Reference Numbers 15050/2, 15050/12, 15050/13, 15051/14, 15050/21, 15050/22, 15050/23, 15050/24, 15050/25, 15050/26, 15050/27, 15050/28, 15050/30, 15050/35, 15051/2, 15051/4, 15051/5, 15051/6, 15050/7, 15051/8, 15051/9, 15051/10, 15051/11, 15051/12, 15051/13, 15051/14, 15051/15, 15051/16, 15051/18, 15051/19, 15051/22, 15051/23, 15050/15, 15050/17, 15050/18, 15050/20, 15050/31, 15050/32, 15051/21, 15050/3, 15050/4, 15050/5, 15050/6, 15050/7, 15050/8, 15050/9 and 15051/17;
 - b. The Plaintiffs and all other members of the Village D Welfare Association be compelled and directed to allow the 1st, 2nd and 3rd Defendants their agents and servants free and unfettered access to and use of the properties known as Land Reference numbers 15050/2, 15050/12, 15050/13, 15051/14, 15050/21, 15050/22, 15050/23, 15050/24, 15050/25, 15050/26, 15050/27, 15050/28, 15050/30, 15050/35, 15051/2, 15051/4, 15051/5, 15051/6, 15050/7, 15051/8, 15051/9, 15051/10, 15051/11, 15051/12, 15051/13, 15051/14, 15051/15, 15051/16, 15051/18, 15051/19, 15051/22, 15051/23, 15050/15, 15050/17,



15050/18, 15050/20, 15050/31, 15050/32, 15051/21, 15050/3, 15050/4, 15050/5, 15050/6, 15050/7, 15050/8, 15050/9 and 15051/17;

- c. The Plaintiffs and all other members of the Village D Welfare Association be restrained whether by themselves, their servants, agents and all others claiming under or through them from interfering with the 1st, 2nd and 3rd Defendants' quiet and peaceful possession and enjoyment of their properties known as Land Reference Numbers 15050/2, 15050/12, 15050/13, 15051/14, 15050/21, 15050/22, 15050/23, 15050/24, 15050/25, 15050/26, 15050/27, 15050/28, 15050/30, 15050/35, 15051/2, 15051/4, 15051/5, 15051/6, 15050/7, 15051/8, 15051/9, 15051/10, 15051/11, 15051/12, 15051/13, 15051/14, 15051/15, 15051/16, 15051/18, 15051/19, 15051/22, 15051/23, 15050/15, 15050/17, 15050/18, 15050/20, 15050/31, 15050/32, 15051/21, 15050/3, 15050/4, 15050/5, 15050/6, 15050/7, 15050/8, 15050/9 and 15051/17;
 - d. The Inspector General of the Kenya Police be directed to take all necessary steps to enforce the orders granted by the Court herein and to ensure and secure the safety and protection of the 1st, 2nd and 3rd Defendant's agents and servants so as to prevent or deal with the occurrence of any breach of the peace during the enforcement of the orders granted herein.
2. An order of permanent injunction restraining the Plaintiffs whether by themselves, their servants, agents and all others claiming under or through them from interfering in any manner with the 1st, 2nd and 3rd Defendants' possession and use of and access to and/or quarrying, invading, constructing any structures, carrying on or continuing any quarrying construction or other works on the properties known as Land Reference Numbers 15050/2, 15050/12, 15050/13, 15051/14, 15050/21, 15050/22, 15050/23, 15050/24, 15050/25, 15050/26, 15050/27, 15050/28, 15050/30, 15050/35, 15051/2, 15051/4, 15051/5, 15051/6, 15050/7, 15051/8, 15051/9, 15051/10, 15051/11, 15051/12, 15051/13, 15051/14, 15051/15, 15051/16, 15051/18, 15051/19, 15051/22, 15051/23, 15050/15, 15050/17, 15050/18, 15050/20, 15050/31, 15050/32, 15051/21, 15050/3, 15050/4, 15050/5, 15050/6, 15050/7, 15050/8, 15050/9 and 15051/17;
 3. An order of permanent injunction compelling the Plaintiffs and all other members of the Village D Welfare Association to allow the 1st, 2nd and 3rd Defendants their agents and servants free and unfettered access to and use of the properties known as Land Reference Numbers 15050/2, 15050/12, 15050/13, 15051/14, 15050/21, 15050/22, 15050/23, 15050/24, 15050/25, 15050/26, 15050/27, 15050/28, 15050/30, 15050/35, 15051/2, 15051/4, 15051/5, 15051/6, 15050/7, 15051/8, 15051/9, 15051/10, 15051/11, 15051/12, 15051/13, 15051/14, 15051/15, 15051/16, 15051/18, 15051/19, 15051/22, 15051/23, 15050/15, 15050/17, 15050/18, 15050/20, 15050/31, 15050/32, 15051/21, 15050/3, 15050/4, 15050/5, 15050/6, 15050/7, 15050/8, 15050/9 and 15051/17;
 4. An order of permanent injunction restraining the Plaintiffs and all other members of the Village D Welfare Association whether by themselves, their servants, agents and all others claiming under or through them from interfering with the 1st, 2nd and 3rd Defendants' quiet and peaceful possession and enjoyment of their properties known as land reference numbers 15050/2, 15050/12, 15050/13, 15051/14, 15050/21, 15050/22, 15050/23, 15050/24, 15050/25, 15050/26, 15050/27, 15050/28, 15050/30, 15050/35, 15051/2, 15051/4, 15051/5, 15051/6, 15050/7, 15051/8, 15051/9, 15051/10, 15051/11,



15051/12, 15051/13, 15051/14, 15051/15, 15051/16, 15051/18, 15051/19, 15051/22, 15051/23, 15050/15, 15050/17, 15050/18, 15050/20, 15050/31, 15050/32, 15051/21, 15050/3, 15050/4, 15050/5, 15050/6, 15050/7, 15050/8, 15050/9 and 15051/17;

5. An order ejecting and evicting the Plaintiffs and all their servants, agents and/or assignees who may be upon or in possession of the properties known as Land Reference Numbers 15050/2, 15050/12, 15050/13, 15051/14, 15050/21, 15050/22, 15050/23, 15050/24, 15050/25, 15050/26, 15050/27, 15050/28, 15050/30, 15050/35, 15051/2, 15051/4, 15051/5, 15051/6, 15050/7, 15051/8, 15051/9, 15051/10, 15051/11, 15051/12, 15051/13, 15051/14, 15051/15, 15051/16, 15051/18, 15051/19, 15051/22, 15051/23, 15050/15, 15050/17, 15050/18, 15050/20, 15050/31, 15050/32, 15051/21, 15050/3, 15050/4, 15050/5, 15050/6, 15050/7, 15050/8, 15050/9 and 15051/17;
 6. An order directing the Inspector General of Police to assist the 1st, 2nd and 3rd Defendants to remove eject and evict all the Plaintiffs, their servants, agents and/or assignees from the properties known as Land Reference Numbers 15050/2, 15050/12, 15050/13, 15051/14, 15050/21, 15050/22, 15050/23, 15050/24, 15050/25, 15050/26, 15050/27, 15050/28, 15050/30, 15050/35, 15051/2, 15051/4, 15051/5, 15051/6, 15050/7, 15051/8, 15051/9, 15051/10, 15051/11, 15051/12, 15051/13, 15051/14, 15051/15, 15051/16, 15051/18, 15051/19, 15051/22, 15051/23, 15050/15, 15050/17, 15050/18, 15050/20, 15050/31, 15050/32, 15051/21, 15050/3, 15050/4, 15050/5, 15050/6, 15050/7, 15050/8, 15050/9 and 15051/17;
 7. The Inspector General of the Kenya Police be directed to take all necessary steps to enforce the orders granted by the Court herein and to ensure and secure the safety and protection of the 1st, 2nd and 3rd Defendant's agents and servants so as to prevent or deal with the occurrence of any breach of the peace during the enforcement of the orders granted herein.
 8. Damages for trespass.
 9. Costs of this suit and counterclaim on an Advocate/Client basis;
 10. Interest on prayers 8 and 9 above at Court rates from the date of judgment until payment in full;
 11. Such further or other reliefs which this Honourable Court may think fit to grant.
4. The Plaintiffs filed a reply to Defence and Defence to Counterclaim denying the averments contained therein. It sought for the said Defence and Counterclaim to be struck out.
 5. The matter proceeded for hearing where each party called one witness.

Plaintiffs' Case

6. PW1 Richard Nzioka Muindi confirmed he was the Chairman of the Plaintiff. Further, that the plaintiff had about five hundred (500) members. He testified that the Plaintiffs' members reside on a portion of LR No. 12610/1 – 5, hereinafter referred to as the 'suit lands'. The Plaintiffs claim that their forefathers including parents entered the suit lands and they have been thereon for a long time. Further, that the said suit lands were initially owned by a White Man who died. PW1 contended that an Asian man came to the suit lands in 2016 and informed them that the said lands belonged to him. Further, in 2017 the Asian Man together with police officers descended upon the suit lands with bull dozers, lorries and other earth moving equipment in a bid to evict them. PW1 denied knowledge of the aforementioned lawsuit filed in Mavoko nor the Court Order. He said the titles presented by the



1st to 3rd Defendants were different from their title. He disputed that the Defendants own the land they occupy. It was his further testimony that the National Land Commission advertised the suit lands for allocation and invited objections. Further, through their lawyers, they wrote to the National Land Commission informing them, that they were the original inhabitants of the suit lands and reside in a portion of LR No. 2610 and should hence be given priority on allocation. They sought to be allowed to continue living on the suit lands pending determination of their allocated shares by the 4th Defendant or pending their rights on adverse possession against the 1st to 3rd Defendants. The Plaintiffs produced the following documents as exhibits: Certificate of Registration of Self-Help Group/Project for Village D SHG dated 16th January, 2017; unidentified map; Letter from PN Musila & Company Advocates to Assistant Chief Ngelani Sublocation dated 20th December, 2016; Letter dated 23rd December, 2016 from Senior Assistant Chief Ngelani Sublocation to PN Musila & Company Advocates; Plaint and Court Order dated the 6th February, 2017 from Mavoko SPMCCC No. 5 of 2017; Photographs; Court Order dated 11th April, 2017 in Machakos ELC Misc. Civil Cause No. 35 of 2017; Letter dated 13th April, 2017 from Sheila Mugo & Co. Advocates to the Inspector General of Police; Charge Sheet; Newspaper Notice by National Land Commission; Letter dated 23rd March, 2018 from Sheila Mugo & Company Advocates to the National Land Commission; and an online Article.

7. Defendants' Case

The 1st to 3rd Defendants confirmed owning land parcel numbers 15050/2, 15050/12, 15050/13, 15050/14, 15050/21, 15050/22, 15050/23, 15050/24, 15050/25, 15050/26, 15050/27, 15050/28, 15050/30, 15050/35, 15051/2, 15051/4, 15051/5, 15051/6, 15051/7, 15051/8, 15051/9, 15051/10, 15051/11, 15051/12, 15051/13, 15051/14, 15051/15, 15051/16, 15051/18, 15051/19, 15051/22, 15051/23, 15050/15, 15050/17, 15050/18, 15050/20, 15050/31, 15050/32, 15051/21, 15050/3, 15050/4, 15050/5, 15050/6, 15050/7, 15050/8, 15050/9 and 15051/17 respectively, which they purchased from KANDO ENTERPRISES LIMITED. They insisted that they purchased the suit lands when they were vacant. They claimed that they have been harassed by gangs, thugs and hooligans in the vicinity of the suit lands, who have been interfering with their use of and access to their respective plots, and have used violence including intimidation, as well as preventing the Defendants from carrying out works or developments on said plots. They confirmed filing a suit at the Mavoko Chief Magistrate's Court being Case No. 5 of 2017 wherein they obtained eviction orders against the trespassers, which orders were duly served and executed. They reiterated that the Plaintiffs have also undertaken illegal quarrying activities on the suit lands without their consent. The 1st to 3rd Defendants produced the following documents as exhibits: Agreements for Sale for 1st, 2nd and 3rd Defendants; Transfers for the 1st, 2nd and 3rd Defendants; Titles to Land; Searches for the 1st, 2nd and 3rd Defendants' Companies; Certificate of Title Number I.R 40081; Google Earth Image Showing the extent of Plot LR No. 12610/5; Schedule showing the locations of the Defendants' plots and Schedule and photographs showing the quarrying activities.

Submissions

8. Plaintiffs' Submission

The Plaintiffs' in their submissions provided a background of the dispute herein, highlighted the evidence tendered and contended that they had proved their claim for adverse possession. Further, that the Defendants herein only instituted a suit in Mavoko Senior Principal Magistrate's Court, when the twelve (12) years contemplated by statute had lapsed and as such barred from claiming ownership as they never took any steps from the time of purchase to assert their ownership rights. They argued that they have been in open, continuous, uninterrupted, peaceful, exclusive possession of the suit lands with the knowledge but without permission of the registered owner, for the prescribed period of 12



years. Further, that their right of adverse possession was not terminated by reason of transfer of the suit lands from the original registered owners to the 1st to 3rd Defendants. To support their averments, they relied on sections 7, 13 and 17 of the *Limitation of Actions Act* as well as the following decisions: James Maina Kinya v Gerald Kwendaka (2018) eKLR; Mtana Lewa v Kahindi Ngala Mwangandi (2015) eKLR; Maweu v Liu Ranching & Farming Cooperative Society (1985) KLR 430; James Obande Wasui v Jeremiah Ochwada Musumba (2002) eKLR and Daniel Kimani Ruchine & Others v Swift Rutherford Co. Ltd & Another (1977) eKLR.

9. 1st to 3rd Defendants' Submissions

The 1st to 3rd Defendants in their submissions highlighted the evidence tendered and challenged the competency of the instant suit. They insisted that the instant suit violated the provisions of Order 1 Rule 13 of the Civil Procedure Rules, as no consent or permission of the five hundred (500) persons being represented herein, was filed. It was their submission that since the claim was on adverse possession, the suit should have been commenced through Originating Summons and not Plaint. They argued that the Plaintiffs have not been in actual possession of the suit lands as LR No. 12610 referred to, comprised of thousands of acres of land, out of which they only own a small portion. Further, there is no evidence tendered to demonstrate how the Plaintiffs' resided on the suit lands. They further submitted that there was no demonstration of uninterrupted possession. They contended that since the Plaintiffs stated that they were in the land due to permission by 'Kalekye', then their possession was permissive. They insisted that they have never been dispossessed from the suit lands, as they even reported the matter to the Police. Further, that the Plaintiffs never tendered evidence on when they commenced possession of the suit lands. They reiterated that out of the five hundred (500) persons, only one person testified and he failed to present documents on behalf of the other members. It was their further submission that the Plaintiffs' failed to attach a Certified Copy of Title as required in a claim for adverse possession. To buttress their averments, they relied on the following decisions: Gabriel Mbui v Mukindia Maranya (1993) eKLR; Celina Muthoni Kithinji v Safiya Binti Swaleh & 8 Others (2018) eKLR; Wines & Spirits Kenya Limited & Another v George Mwachiru Mwango (2018) eKLR; John Imbaiza Vodoye v Anne Chebet & Another (2017) eKLR; M'mbaoni Mithara vs James Mbaka (2019) eKLR and Mtana Lewa v Kahindi Ngala Mwangandi (2015) eKLR;

Analysis and Determination

10. Upon consideration of the Pleadings, testimonies of the witnesses, exhibits and submissions, the following are the issues for determination: Whether the Plaintiffs have acquired the suit lands through adverse possession. Whether the Plaintiffs are entitled to the orders as sought in the Plaint. Whether the 1st to 3rd Defendants are entitled to the orders as sought in the Counterclaim.

As to whether the Plaintiffs have acquired the suit lands through adverse possession.

11. The legal provisions governing the doctrine of Adverse possession are contained in sections 7, 13, 17 and 38 of the *Limitation of Actions Act*.

Section 7 of the said Act stipulates 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.'

12. While Section 13 (1) of the *Limitation of Actions Act* states thus:

'(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.’

13. Further, Section 17 of the *Limitation of Actions Act* provides thus:’

‘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.’

14. Yet, section 38 (1) of the *Limitation of Actions Act* provides that:’

‘(1) Where a person claims to have become entitled by adverse possession to land registered under any of the Acts cited in section 37, 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.’

15. It is trite that for a party claiming land through adverse possession, there are various legal requirements he/she is supposed to fulfill. The said requirements are well described in *Wambugu v Njuguna* (1983) KLR 173 where the Court of Appeal stated thus:

‘Adverse possession contemplates two concepts: Possession and discontinuance of Possession. It further held that the proper way of assessing proof of Adverse Possession would 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 or she has been in possession for the requisite number of years.’

16. While in *Haro Yonda Juaje V Sadaka Dzengo Mbauro & Another* (2014) eKLR the Judge also described the tenets on adverse possession as follows:

- ‘a) That one has made physical entry on the land and is in actual possession of the land for the statutory period;
- b) That the said occupation is non permissive;
- c) That the occupant has the clear intention of excluding the owner from the property (*animus possidendi*);
- d) The acts done by the claimant are inconsistent with the owners enjoyment of the land for the purpose which he intended to use it; and
- e) that the possession was continuous, uninterrupted and unbroken for the statutory period.’

17. In this instance, PW1 Richard Nzioka Muindi who was the Chairman of Village ‘D’ Welfare Association Ngelani, testified that it comprised of five hundred (500) members. He claimed that their forefathers and parents had been on the suit lands for a long time. I note PW1 never furnished court with a list of members of the Village ‘D’ Welfare Association Ngelani, to confirm if they were indeed five hundred as claimed. PW1 produced photographs of the suit lands to confirm that they had been thereon. It emerged in evidence that the suit lands were very expansive. From perusal of the photographs, it shows three different ladies standing next to heaps of iron sheets. Further, there is one showing an Asian man standing next to a car. There is no photograph produced to confirm settlements nor cultivation by the five hundred persons on the suit lands as claimed. PW1 further claimed they had been in exclusive possession of the suit lands but failed to demonstrate with evidence on which



portion, they were indeed occupying. It is worth noting that PW1 who was the star witness did not even produce photographs of his own home or land that he was personally occupying. The Plaintiffs did not produce any copies of Certificate of Titles or a search to confirm the portions of the land they were claiming. DW1 Amjad Abdul Rahim in his testimony provided a history of the suit lands and how they acquired their respective portions. He produced the various Sale Agreements and Certificates of Title to that effect. DW1 confirmed that they purchased the suit lands, when they were vacant and had been harassed by gangs, thugs and hooligans in the vicinity of the suit lands, who have interfered with their access and use of the said lands. I note the 1st to 3rd Defendants had previously filed Mavoko Chief Magistrate's Court being Case No. 5 of 2017 whose fulcrum revolved around the suit lands, obtained eviction orders against the trespassers, which orders were duly served and executed. It further emerged that the Plaintiffs had even undertaken illegal quarrying activities on the suit lands, without the 1st to 3rd Defendants' consent. This court takes judicial notice of the fact that, in a related matter being Machakos ELC E046 of 2021 George Gichuki Githua Vs Joseph Mwangi Kimaru; Richard Nzioki Muindi; Consolata Mwathi; Mary Musyimi (Defendants) & Kimatu Mutuku (Suing On Their Own Behalf And As Officials Of Village D Welfare Association Members)... Interested Party; a witness from the said Village D Welfare Association Ngelani confirmed that they had leased the land for quarrying. Further, that a group called KIMWAA entered the suit lands, were violent and this culminated in their members moving out of the said suit lands and proceeded to rent houses in Mlolongo, Ngelani and Kinanie.

18. On possession, I wish to refer to the case of Daniel Kimani Ruchine & Others versus Swift Lothorford & Co. Ltd and Anor (1977) eKLR where the court held that:

'The Plaintiffs have to prove that they used the land as of right, nec vi, nec clam, nec precario (no force, no secrecy, no evasion)'

19. Further, in the case of Chevron (K) Ltd V Harrison Charo Wa Shutu (2016) eKLR the Court of Appeal held that;

'We are equally satisfied from the evidence that, by building structures on the suit premises without obtaining permission from the appellant, as described earlier in this judgment, the respondent manifested animus possidendi, a clear mind and intention of dealing with the suit premises as if it was exclusively his and in a manner that was in clear conflict with the appellant's rights. The appellant was, as such dispossessed of the suit premises by those acts. The respondent's acts were nec vi, nec clam, nec precario (that is, neither by force, nor secretly and without permission).'

20. In associating myself with these quoted decisions and applying them to the circumstances at hand, I find that the Plaintiffs have failed to demonstrate animus possidendi. Further, that they had clearly dealt with the suit lands as if it was exclusively theirs and in a manner contrary to the Defendants rights. In my view, the evidence that was tendered by the Plaintiffs was insufficient since they failed to demonstrate how the five hundred (500) persons were occupying the said suit lands. Further, there were no photographs presented to prove there were settlements on the suit lands. PW1 except for claiming a white lady called 'Kalekye' allowed them to occupy the suit lands, did not provide the exact dates nor year when members of the Plaintiffs', entered thereon. I opine that the photographs provided were insufficient to prove their claim that they had continuously been on the suit lands and indeed discontinued the real owners therefrom.

21. Based on my analysis above, I opine that the Plaintiffs are indeed not entitled to claim the suit lands by way of adverse possession as they had already been evicted therefrom, by dint of a court order and



not thereon as claimed. In the circumstances, I find that the Plaintiffs are not entitled to the orders as sought in the Plaint and will proceed to dismiss their suit.

22. As to whether the 1st to 3rd Defendants are entitled to the orders as sought in the Counterclaim. The 1st to 3rd Defendants have sought for various orders, which I have enumerated above. I note DW1 in his testimony produced the Certificate of Titles proving ownership of the suit land, which was not challenged. Further, DW1 confirmed that the Plaintiffs' members had denied them peaceful possession and occupation of the suit lands as they kept attacking their representatives. He explained that they obtained eviction orders from the aforementioned Mavoko Matter which culminated in the eviction of trespassers from their land. They sought for damages for trespass but from the evidence tendered, it seems they were not sure of the identities of the persons on their land. In the foregoing, I find that the 1st to 3rd Defendants are indeed entitled to the orders as sought in the Counterclaim, except for the award on damages.
23. As to who should bear the costs of the suit, since the 1st to 3rd Defendants are the inconvenienced parties, I find that they are indeed entitled to the costs as sought.
24. In the circumstances, I find that the 1st to 3rd Defendants have proved their case on a balance of probability and will proceed to enter judgment in their favour as against the Plaintiffs and make the following final Orders:
 - a. The Plaintiffs and all other members of the Village D Welfare Association be and are hereby compelled and directed to allow the 1st, 2nd and 3rd Defendants their agents and servants free and unfettered access to and use of their properties known as Land Reference numbers 15050/2, 15050/12, 15050/13, 15050/14, 15050/21, 15050/22, 15050/23, 15050/24, 15050/25, 15050/26, 15050/27, 15050/28, 15050/30, 15050/35, 15051/2, 15051/4, 15051/5, 15051/6, 15051/7, 15051/8, 15051/9, 15051/10, 15051/11, 15051/12, 15051/13, 15051/14, 15051/15, 15051/16, 15051/18, 15051/19, 15051/22, 15051/23, 15050/15, 15050/17, 15050/18, 15050/20, 15050/31, 15050/32, 15051/21, 15050/3, 15050/4, 15050/5, 15050/6, 15050/7, 15050/8, 15050/9 and 15051/17;
 - b. The Plaintiffs and all other members of the Village D Welfare Association whether by themselves, their servants, agents and all others claiming under or through them be and are hereby permanently restrained from interfering with the 1st, 2nd and 3rd Defendants' quiet and peaceful possession and enjoyment of their properties known as Land Reference Numbers 15050/2, 15050/12, 15050/13, 15050/14, 15050/21, 15050/22, 15050/23, 15050/24, 15050/25, 15050/26, 15050/27, 15050/28, 15050/30, 15050/35, 15051/2, 15051/4, 15051/5, 15051/6, 15051/7, 15051/8, 15051/9, 15051/10, 15051/11, 15051/12, 15051/13, 15051/14, 15051/15, 15051/16, 15051/18, 15051/19, 15051/22, 15051/23, 15050/15, 15050/17, 15050/18, 15050/20, 15050/31, 15050/32, 15051/21, 15050/3, 15050/4, 15050/5, 15050/6, 15050/7, 15050/8, 15050/9 and 15051/17;
 - c. An order of permanent injunction be and is hereby issued restraining the Plaintiffs whether by themselves, their servants, agents and all others claiming under or through them from interfering with, invading, constructing any structures, carrying on or continuing any quarrying construction or other works on the properties known as Land Reference Numbers 15050/2, 15050/12, 15050/13, 15050/14, 15050/21, 15050/22, 15050/23, 15050/24, 15050/25, 15050/26, 15050/27, 15050/28, 15050/30, 15050/35, 15051/2, 15051/4, 15051/5, 15051/6, 15051/7, 15051/8, 15051/9, 15051/10, 15051/11, 15051/12, 15051/13, 15051/14, 15051/15, 15051/16, 15051/18, 15051/19, 15051/22, 15051/23,



15050/15, 15050/17, 15050/18, 15050/20, 15050/31, 15050/32, 15051/21, 15050/3, 15050/4, 15050/5, 15050/6, 15050/7, 15050/8, 15050/9 and 15051/17;

- d. An order be and is hereby issued ejecting and evicting the Plaintiffs and all their servants, agents and/or assignees who may be upon or in possession of the properties known as Land Reference Numbers 15050/2, 15050/12, 15050/13, 15050/14, 15050/21, 15050/22, 15050/23, 15050/24, 15050/25, 15050/26, 15050/27, 15050/28, 15050/30, 15050/35, 15051/2, 15051/4, 15051/5, 15051/6, 15051/7, 15051/8, 15051/9, 15051/10, 15051/11, 15051/12, 15051/13, 15051/14, 15051/15, 15051/16, 15051/18, 15051/19, 15051/22, 15051/23, 15050/15, 15050/17, 15050/18, 15050/20, 15050/31, 15050/32, 15051/21, 15050/3, 15050/4, 15050/5, 15050/6, 15050/7, 15050/8, 15050/9 and 15051/17;
- e. An order be and is hereby issued directing the Inspector General of Police to assist the 1st, 2nd and 3rd Defendants to remove eject and evict all the Plaintiffs, their servants, agents and/or assignees from the properties known as Land Reference Numbers 15050/2, 15050/12, 15050/13, 15050/14, 15050/21, 15050/22, 15050/23, 15050/24, 15050/25, 15050/26, 15050/27, 15050/28, 15050/30, 15050/35, 15051/2, 15051/4, 15051/5, 15051/6, 15051/7, 15051/8, 15051/9, 15051/10, 15051/11, 15051/12, 15051/13, 15051/14, 15051/15, 15051/16, 15051/18, 15051/19, 15051/22, 15051/23, 15050/15, 15050/17, 15050/18, 15050/20, 15050/31, 15050/32, 15051/21, 15050/3, 15050/4, 15050/5, 15050/6, 15050/7, 15050/8, 15050/9 and 15051/17;
- f. The Inspector General of the Kenya Police be and is hereby directed to take all necessary steps to enforce the orders granted by the Court herein and to ensure and secure the safety and protection of the 1st, 2nd and 3rd Defendant's agents and servants so as to prevent or deal with the occurrence of any breach of the peace during the enforcement of the orders granted herein.
- g. Costs of this suit and counterclaim awarded to the 1st to 3rd Defendants.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 4th DAY OF MARCH 2025

CHRISTINE OCHIENG

JUDGE

In the presence of:

Zainab holding brief for Sarvia for 1st, 2nd and 3rd Defendants

Ms Mugo for Plaintiff

Court Assistant: Joan

