



Mbwiria v Reuben; Attorney General (On behalf of the District Land Adjudication & Settlement Officer Igembe District) & another (Third party) (Environment & Land Case 128 of 2012) [2024] KEELC 6468 (KLR) (3 October 2024) (Judgment)

Neutral citation: [2024] KEELC 6468 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE 128 OF 2012
CK YANO, J
OCTOBER 3, 2024**

BETWEEN

JACOB MBWIRIA PLAINTIFF

AND

MISHECK KANAKE REUBEN DEFENDANT

AND

**THE HON ATTORNEY GENERAL (ON BEHALF OF THE
DISTRICT LAND ADJUDICATION & SETTLEMENT OFFICER IGEMBE
DISTRICT) THIRD PARTY**

THE DISTRICT LAND REGISTRAR IGEMBE DISTRICT THIRD PARTY

JUDGMENT

Introduction

1. The plaintiff commenced this suit vide a plaint dated 25th March, 2011 and filed in court on 28th March 2011 seeking for orders of eviction against the defendant from land parcel No. 129 and 131 Kiengu/ Kanjoo Adjudication Section, general damages, costs and interests. The suit was initially filed in the Chief Magistrates court Maua before it was transferred to this court for hearing and disposal.
2. The defendant entered appearance and filed a statement of defence and counter claim dated 27th April 2011 and filed in court on 28th April 2011. Later, the defendant applied and was granted leave to issue third party notice dated 30th July, 2015 to the third party herein.
3. The Honourable Attorney General entered appearance on 24th August 2015 on behalf of the 3rd party. In response, the 3rd party filed a preliminary objection dated 28th July, 2017 and another dated 17th



November, 2017. Briefly it was the 3rd party's contention that the suit offends the provisions of Section 3 (1) of the *Public Authorities Limitation Act* Cap 39 Laws of Kenya.

4. Pursuant to leave granted by the court on 26th November, 2018 another 3rd party notice was issued to the African Independent Pentecost Church of Africa (AIPCA) but the name of the said 3rd party was later struck out from the case. Further no 3rd party proceedings were conducted in regard to the other 3rd party since the defendant did not take action as directed by the court.
5. The defendant also filed an amended statement of defence and counter claim dated 30th August 2018 and a further amended statement of defence and counterclaim dated 13th January, 2023. The defendant denied the plaintiff's claim and prayed for the same to be dismissed. In his counterclaim, the defendant prayed for judgment against the plaintiff and the third parties for a declaration that he is the lawful owner of land title Nos. Kiengu/Kanjoo/129 and Kiengu/Kanjoo/131, and in the alternative, an order that he is entitled to those parcels by virtue of adverse possession, an order of declaration that the decision of the Land Arbitration Board dated 4th November, 2008 and the decision of the Land Adjudication Officer dated 20th July, 2009 regarding ownership of parcels 129 and 131 Kiengu/Kanjoo Adjudication Section are unlawful, unreasonable, unjust, null and void and an order setting aside the said decisions, an order for revocation and/or cancellation of the title deeds for the said parcels of land issued to the plaintiff and the 3rd party respectively, an order directing the Land Registrar, Igembe District to amend and/or rectify the Land Register in respect of the said parcels of land so as to reflect the name of the defendant as the registered owner thereof, and costs and interests.

Plaintiff's Case

6. The plaintiff's case is that in 1982, he bought a parcel of land measuring 14 acres from one Peter M'Kabira which parcel of land was later registered as three distinct, but neighboring land parcel Nos. Kiengu/Kanjoo/adjudication Section 129, 130 and 131. That he transferred parcel No. Kiengu/Kanjoo/130 to his son, Joseph Kithinji who later sold the same to the defendant herein.
7. The plaintiff avers that in 1986, the defendant laid a claim to the plaintiff's original parcels, claiming that he had also bought the same from the said Peter M'Kabira, and as the plaintiff was already in possession of the said parcel of land, the defendant made a report to the police and the said Peter M'Kabira was arrested and charged in Meru Senior Resident Magistrate's Court Criminal case No. 1493 of 1986. That on 28th April 1986, the defendant withdrew the said criminal case after confirming to the court that Peter M'Kabira had given him an alternative land, thus leaving the plaintiff at peace within the suit land. That in the year 2000, the defendant illegally and forcefully took over and occupied the plaintiff's land purporting to have bought the same from other third parties.
8. The plaintiff accused the defendant together with others, including Joseph M'Mithea, and Daniel Mbiti for colluding to grab the plaintiff's land. That following several land arbitration tribunal hearings and appeals the plaintiff was found to be the actual and true owner of the suit lands, but the defendant has without any color of right, refused to allow the plaintiff into the property.
9. The plaintiff pleaded that the two suit parcels of land Kiengu/Kanjoo Adjudication Section/129 and 131 which are measuring approximately 8 acres would each earn mesne profits in excess of Kshs. 400,000/= per year which amount the plaintiff claims from the year 2000. It is the plaintiff's contention that the defendant's actions have caused him to suffer great loss and damages which he listed as loss of income, loss of user, psychological torture and anguish and denial of constitutional guarantee to enjoyment of private property.



10. At the hearing, the plaintiff's son, Joseph Kithinji Mbwiria, testified as P.W 1. It was his evidence that his father bought the land in 1982 from Peter Kabira and by then there was no one else on the land. That the defendant who he knows as a neighbour is among people who have trespassed on the land which is registered in the plaintiff's name. PW 1 adopted his statement dated 25th March 2011 as his evidence-in-chief and was cross-examined and re-examined.
11. PW 1 testified that the said lands were given numbers 54 and 55 before the same were registered in the lands book. That his father gave him one portion which was later registered as No. Kiengu/Kanjoo/130 while the other two portions given numbers Kiengu/Kanjoo/129 and 131 were given out by the land committee to strangers, namely Joseph M'Mithea and Daniel Mbiti. PW 1 stated that they filed a case before the committee but they lost. That they appealed to the Land Board (sic) which ruled in the plaintiff's favour. That Joseph M'Mithea and Daniel Mbiti filed another case before the A/R and the ruling was again in favor of the plaintiff. That in the year 2000, the defendant herein occupied all the three portions of land, claiming that he bought the same from those two people. PW 1 stated that he decided to sell his portion No. 130 to the defendant herein to avoid a case. He produced a letter of consent to file suit, certificate of confirmation of registration, sketch plan, demand notices, Arbitration proceedings and proceedings in criminal case No. 1493/1986 as exhibits 1-6 respectively.
12. When he was cross examined by Ms Ungu, learned counsel for the defendant, PW 1 stated that he was not present when his father bought the land and did not know if the agreement is part of the documents produced. He was also not aware if a surveyor went to survey the land in 1982 when the plaintiff bought it. He also did not know whether adjudication in Kiengu/Kanjoo begun in 1982. He stated that the clan used to give people land before adjudication. That Peter Kabira was given land by the land committee and sold 13 acres to the plaintiff.
13. PW 1 stated that the defendant has been in possession of parcel Nos 129 and 131 since 2011. PW 1 was also re-examined by Mr. Anampiu learned counsel for the plaintiff and he reiterated that he was given Parcel No. 130 after the subdivision of the original parcel. That he sold the said parcel to the defendant who took possession. That the same is measuring 6 acres. He further reiterated that the Arbitration Board returned the two parcels Nos 129 and 131 to the plaintiff. The witness stated that he was not aware if Joseph M'Mithea and Daniel Mbiti appealed.
14. Jacob Mbwiria, the plaintiff testified as PW 2. He adopted his statement dated 26th March 2011 as his evidence in chief and was cross examined and re-examined. The plaintiff stated that he bought the land measuring 14 acres from Peter R. Kabira in the year 1982, and the same was registered in his name in three plots Nos 129, 130 and 131 Kiengu/Kanjoo Adjudication Section. The plaintiff stated that he transferred parcel No. 130 measuring about 6 acres to his son (PW 1 who later sold it to the defendant.
15. PW 2 stated that at one point, the defendant claimed that he also bought the land from Peter Kabira which resulted with Mr. Kabira facing criminal charges in Meru Magistrate's court Criminal case no. 1493 of 1985 which was however withdrawn after the defendant was given an alternative land in the year 1986. That the defendant left him in peace until the year 2000 when he illegally entered the suit parcels of land and begun utilizing the same. It is the plaintiff's evidence that although the tribunal awarded the land to the defendant, the plaintiff was successful on appeal, and the defendant was ordered to vacate therefrom, but has refused, hence this suit. The plaintiff relied on the documents produced as exhibits.
16. When he was cross examined, the plaintiff reiterated that he bought the whole land measuring 14 acres from Peter Kabira who was an assistant chief. That the sale agreement was not among the documents he produced as exhibits. He stated that in 1982, there was no land adjudication done in the area. That Peter Kabira showed him the boundary and he trusted him.



17. PW 2 stated that in case No. 3/92 between him and Daniel Mbiti Mugambi, the land committee found that in 1992, land belonged to the community. That in 1992, the land was community land. That he knew that Peter Kabira was given the land by Kiengu clan. He stated that he was not aware that one could not be given more than 8 acres.
18. The plaintiff in re-examination stated that in the Arbitration Board he had sued Joseph M'Mithea and Daniel Mbiti and not the defendant. That the Arbitration Board in case no. 3/92 and 4/92, ruled that the two parcels be returned to the plaintiff. That there has never been an appeal to the minister.

Defendant's Case

19. The defendant denied the plaintiff's claim but admitted purchasing land parcel No. 130 Kiengu/Kanjoo Adjudication section from the plaintiff's son Joseph Kithinji M'Mbwiria who testified as PW 1. It is the defendant's contention that the criminal proceedings alluded to by the plaintiff did not deal with or determine the issue of land ownership and did not confer any rights and/or interest in the subject parcels of land to the plaintiff. The defendant further contended that the plaintiff's claim over the suit properties is misconceived, baseless, has no merit and actuated by sheer greed and jealousy towards the defendant. That the plaintiff has never been in occupation of the suit parcels of land, adding that he is the one who has been in actual and peaceful possession thereof since the time he bought them from Joseph M'Mithea and Daniel Mbiti Mugambi who were the initial owners of the properties. The defendant pleaded in the alternative that he is entitled to the said parcels of land by way of adverse possession for having been in continuous, uninterrupted and peaceful possession and occupation for a period exceeding 12 years.
20. In his counterclaim, the defendant avers that he is the lawful owner of the two suit properties, title numbers 129 and 131 within Kiengu/Kanjoo Adjudication Section as a bona fide and innocent purchaser for value having bought the same from Joseph M'Mithea and Daniel Mbiti Mugambi in 1998 and 2000 respectively. That he has since the time of purchase developed the properties extensively. That the parcels of land were not transferred to him due to the negligence of officers at lands office.
21. The defendant avers that during the pendency of the suit, the process of land adjudication was completed and title No. Kiengu/Kanjoo 129 measuring 1.94 hectares was registered in the name of the plaintiff while title No. Kiengu/Kanjoo/131 measuring 1.39 hectares was registered in the name of the African Independent Pentecost church of Africa (AIPCA).
22. The defendant avers that in March 2009, he discovered that his name had been cancelled from the adjudication register for parcel No. 129 and substituted with that of plaintiff. That upon making inquiries, he was informed that the plaintiff had been awarded the two parcels by the Land Arbitration Board. The defendant states that on 4th March 2009, he filed an AR objection case numbers 759 and 760 against the plaintiff which were heard together with objection Nos 460 and 721 on 19th June 2009, and in his decision dated 20th July, 2009 the Land Adjudication Officer dismissed the said objections. The defendant avers that as objectors they were neither summoned nor informed of the delivery of the decisions by the Land Adjudication Officer, hence could not file and appeal to the minister and got to learn of the decisions after time for filing an appeal had already lapsed. The defendant states that he applied for copies of the proceedings and decisions of the Land Adjudication Officer, the Land Arbitration Board and the Land Committee regarding the subject parcels in January, 2011 and upon obtaining the same, he discovered that the plaintiff had earlier filed committee cases No. 3/92 and No. 4/92 against Daniel Mbiti Mugambi and Joseph M'Mithea respectively before the Land Adjudication Committee claiming ownership of the two subject land parcels which were dismissed



- vide the committee's decision dated 19th January, 2007 and who decided that Daniel Mbiti Mugambi and Joseph M'Mithea were to own their respective land parcels as demarcated.
23. The defendant further states that he learnt that the plaintiff appealed the said decision of the Land Adjudication Committee vide Arbitration Board case Nos. 38 and 39 against Daniel Mbiti Mugambi and Joseph M'Mithea which appeals were heard by the Land Arbitration Board on 16th February, 2007 and allowed vide the Arbitration Board's decision dated 4th November, 2008 which awarded the plaintiff land parcel Nos. 129 and 131 Kiengu/Kanjoo Adjudication Section. It is the defendant's contention that the aforesaid decision of the Land Arbitration Board dated 4th November, 2008 and the Land Adjudication Officer dated 20th July, 2009 are unlawful, unreasonable, injudicious, unfair and biased in favor of the plaintiff. That the board members and officers at the Land Adjudication Office did not objectively consider the evidence tendered before them due to a conflict of interest which was not disclosed and were hell bent on assisting the plaintiff to get the defendant's land by hook or crook. The defendant avers that the plaintiff has no valid or lawful claim of ownership in land parcels Nos 129 and 131 Kiengu/Kanjoo Adjudication section which are now registered as title No. Kiengu/Kanjoo/129 measuring approximately 1.94 hectares and title No. Kiengu/Kanjoo/131 measuring approximately 1.39 hectares respectively and which were owned by Kiengu clan land committee as trust land before the process of land demarcation and adjudication started and that the said committee subsequently allocated the said land parcels to Joseph M'Mithea and Daniel Mbiti Mugambi respectively who demarcated the same when the process of land demarcation started in the area and later sold them to the defendant.
24. The defendant states that he has peacefully and continuously occupied and developed the two parcels without any interference from the time he bought the same in 1998 and 2000 respectively until February, 2011 when the plaintiff started to demand the land from him. It is the defendant's contention that he is the lawful owner of the said two land parcels and that the plaintiff was illegally recorded as the owner thereof in the adjudication register pursuant to the unlawful decisions of the Land Arbitration Board and the Land Adjudication Officer referred to hereinbefore and thereafter registered as the proprietor thereof. In the alternative, the defendant claims to be entitled to the said parcels of land by way of adverse possession.
25. At the hearing, the defendant testified as DW 1. He adopted his statement dated 27th April 2011 as his evidence in chief. He produced a letter dated 12th August 1988, agreement for sale dated 4th March 1998, letter dated 24th September, 2002, proceedings and decision of the land committee in committee case No. 3/92 and 4/92, receipt dated 18th January, 2011, A/R objections proceedings and decisions of the Land Adjudication Officer in Objection No. 760, 460, 721 and 759, letter dated 22nd November, 2010, consent letter dated 1st March 2011 to institute legal proceedings and letter dated 2nd March 2011 as D exhibit 1 – 13 respectively. He was then cross examined and re-examined.
26. The defendant reiterated that he bought the two parcels of land and was given possession and started using it and has been using it to-date. That he never found the plaintiff on the land. He stated that there was an appeal filed to the minister which has never been resolved due to restrictions registered. He confirmed that he filed an A/R objection against the plaintiff which was heard, but he argues he was not informed of its decision. The defendant states that he had no claim against the people who sold him the land because they gave him possession.
27. DW 2 was Joseph Mwereria who adopted his statement dated 30th July, 2014 as his evidence in chief. He stated that he was a member of Kiengu clan land committee who were allocating land to clan members. That he was also a member of the land adjudication committee which allocated land to Joseph M'Mithea and Daniel Mbiti Mugambi as well as Peter Kabiria. He referred to the proceedings



in case No. 3/92 and 4/92 in which his name appears. He stated that he knew that the defendant was sold land by two people.

28. DW 2 stated that they ruled that one land goes to M'Mithea while the other goes to Mbiti. DW 2 testified that he did not know of the Arbitration Board, but was aware that it was superior to the committee. He stated that M'Mithea and Mbiti sold land to the defendant while Peter Kabiria Kiragu sold land to the plaintiff. He was not aware if the defendant appealed to the minister. He was however aware that Joseph M'Mithea and Daniel Mbiti never appealed. DW 2 disowned the signature in his statement, though when he was re-examined, he stated that he went to the advocates office and signed it. He stated that Peter Kabiria sold a different parcel to the plaintiff. That all the three parcels are adjacent to one another. He stated that the defendant is occupying the parcels that were given to Joseph M'Mithea and Daniel Mbiti Mugambi while the plaintiff is on a different parcel.
29. DW3 was Joseph Njoro. He also adopted his witness statement dated 30th July, 2014 as his evidence-in-chief. He stated that he was familiar with the Land Committee Proceedings, but not aware of Arbitration Board Proceedings or the A/R objections.
30. DW3 testified that Land adjudication process in that area started in the year 2000. That the whole land was bushy and it was clan land. He testified that they were vetting people who were to be given land and that they settled and gave land to Joseph M'Mithea and Daniel Mbiti.
31. DW3 stated that the maximum area of land one could get was 8 acres and the minimum was 2 acres. That the people were given land wherever they occupied and that they found Peter Kaberia and others where they were and they allocated them land. He stated that numbers were given out during the adjudication process. That the land was only known by boundary markings, not acreage. That they were working with the Adjudication officer of the area.
32. DW3 testified that the plaintiff was not occupying parcel No. 129 or 131. That he knew Peter Kaberia whom they gave land at clan committee and adjudication stage. DW3 stated that he was aware that the defendant bought land from Joseph M'Mithea and Daniel Mbiti. He was then cross examined and re-examined.
33. DW3 stated that if one was not satisfied with land committee decision, they were to go to Arbitration Board and then A/R and finally appeal to the Minister. That he was not aware if Joseph M'Mithea and Daniel Mbiti were satisfied with the Arbitration Board decision. He stated that he had seen the register but the acreage of each of the allottees is not shown numbers. DW3 stated that the numbers were given by Adjudication officer. That he did not know if the defendant filed A/R objection. That he could not remember when Joseph M'Mithea and Daniel Mbiti sold land to the defendant.
34. DW3 further stated that he could not remember when the title process began. That in his statement, he stated that the name of Misheck Kanake had been cancelled from the land records and register in respect of parcel number 129 and replaced with Jacob Mbwiria and that parcel number 131 had been altered by replacing Daniel Mbiti with that of Jacob Mbwiria.
35. When he was re-examined by Ms Ungu DW 3 stated that as a Land Adjudication committee member, they visited the demarcation officer from time to time. That the demarcation officer is the executive person who records changes. That immediately the defendant bought the land, he took possession and is still using the land.
36. DW3 stated that there were complaints by the plaintiff. That he knew parcel No.130 which was sold by the plaintiff to the defendant. He stated that all the 3 parcels are adjacent to each other. He stated that after the A/R, people were asked to go and verify their records. That one appeals to the Minister



- after A/R objections. DW3 stated that the District Land Adjudication officer is the custodian of the register and demarcation records.
37. DW4 was Osman Hassan, the Land Adjudication and Settlement Officer in charge of records at the DLASO. He attended court Pursuant to summons to produce records in relation to parcels Nos.128 and 131 Kiengu/Kanjoo Adjudication section. He filed his report dated 24th November 2023 in which he attached a copy of the R.E.R(Record of Existing Right), demarcation Book, proceedings of A/R, Copy of a map and consents. He however did not attach proceedings of the land committee case and the Land Arbitration Board case.
 38. DW4 testified that the adjudication in that section started around the year 2000. He stated that before that, the land was under the clan. That as per the demarcation book, land parcel No.129 was demarcated in the name of Meshack Kanake Reuben, the defendant herein. He stated that the defendant's name was deleted and that of the plaintiff inserted. That that was due to the implementation of the Arbitration Board case No.38 of 2007 and 39/07.
 39. DW4 stated that parcel No.130 was demarcated to Joseph Kithinji Mbwiria while No.131 was demarcated to Daniel Mbiti Mugambi, but the current person recorded in the record is the plaintiff herein. This was due to the implementation of Arbitration Board case No. 38/07.
 40. DW4 stated that the map shows how the land parcels are on the ground. That the parcels share common boundaries with 129 and 131 bordering each other and are on the lower side while 130 is on the upper side of the road. That under Cap 284 they do not provide acreages. DW 4 testified that they demarcated under Cap 284 and just pick the boundaries already fixed by the clan. That when they are visiting the ground they communicate to the people that they would be going to the ground to pick the existing boundaries made by the clan. That when they are going to the ground they are accompanied by the land committee selected by the clan members. That at that time the clan's role ceases. DW4 testified that they first create a demarcation book (R.E.R). That they take the details of the person in occupation and chain and tape measure to pick the boundaries. They then record the person in the demarcation book starting from number 1.
 41. DW4 stated that for parcel No.129, they initially picked the defendant who was in occupation while for parcel No. 130 they found Joseph Kithinji Mbwiria and parcel No.131 was Daniel Mbiti Mugambi who were in occupation. That at the time of initial demarcation the plaintiff was not recorded. That the name of Peter Kirau was also not recorded nor that of Peter Ntokabira.
 42. DW4 stated that the clan stated verbally that they were allocating a maximum of 8 acres per person. However, there were no measurements. That they only recorded but parties may measure their respective parcels.
 43. DW4 pointed out that in the objection proceedings by Arbitration Board for case No.38 & 39 in respect of parcel No. 129 and 131, the appellant was the plaintiff herein and the respondents were Daniel Mbiti Mugambi and Joseph M'Mithea That the defendant was not a party, but he was the one recorded after the case. That a committee case is done first, followed by Arbitration Board case and then objection(A/R), then an Appeal to the Minister.DW4 pointed out the findings and decisions. That according to the findings, the Appellant Jacob Mbwiria stated that he bought the land from Peter Kirau who does not appear in the original R.E.R (the demarcation book). He further stated that the findings also state that the C.I.D verified that the land was his. That the findings do not support what is in R.E.R. That the decision was implemented and the names changed after 4th November 2008. DW4 made reference to the exhibits and pointed out that in the proceedings of the committee in case No. 3/92, the parties were Jacob M'Mbwiria and Daniel Mbiti Mugambi over parcel No.131.That according to the findings Daniel Mbiti Mugambi was the owner. DW 4 stated that the committee



- dismissed case No.3/92 and ordered Daniel Mbiti Mugambi to own the land as demarcated. DW4 stated that the committee found that the land had no individual rights, but each person was to get a maximum of 8 acres.
44. DW4 stated that in case No.4/92 between Jacob Mbwiria and Joseph M'Mithea over parcel No.131(129), Misheck Kanake was not a party. DW4 stated that according to the RER parcel No.129 was recorded under Misheck Kanake Reuben, though the case was against Joseph M'Mithea. That according to the findings of case No. 4/92 the land in dispute in 1992 had no individual rights but the clan owned it. That parcel No.131 was not recorded to Joseph M'Mithea. P.W 4 testified that he did not know who was currently in occupation of parcel Nos.131 and 129. He was also cross examined and re-examined.
 45. DW4 stated that the plaintiff's case was dismissed at the committee stage, but he went to the Arbitration Board which was his right and he won the case over parcel No.129 and 131.He stated that the defendant filed A/R objection against the plaintiff and all the objections were dismissed on 20th July 2009. That the defendant was given 60 days to appeal to the Minister but he did not appeal.
 46. DW4 stated that according to their records parcel No.129 and 131 belong to the plaintiff and that that registration is lawful. He further stated that he did not know why the defendant did not appeal to the Minister. That if one is given consent he can file a case in court. That the plaintiff got consent dated 24th November, 2011 and another dated 1st March 2011.
 47. DW4 stated that in 2011 when the case was filed, the adjudication process had been completed and they forwarded the documents to the Director of Adjudication. He stated that the area is now under the land registrar because the adjudication was completed. That title deeds over the suit properties could not be issued because there was a note to the effect that there was a pending dispute.

Plaintiff's Submissions

48. The plaintiff filed his submissions dated 26th January, 2024 through the firm of Gikunda Anampiu & Co. Advocates where he gave a background of the matter. It was submitted on behalf of the plaintiff that the suit parcels of land have been the subject of numerous disputes which have been resolved according to the laid down procedure provided under the [Land Adjudication Act](#). The plaintiff submitted that initially, the suit parcels of land were the subject of the land committee objection case No. 4/92 and 3/92 in which the objector was the plaintiff herein while the defendants were Joseph M'Mithea and Daniel Mbiti Mugambi respectively. That the plaintiff lost both objections and the matters went to Arbitration Board as case Nos 38 and 39 which were heard on 16th February, 2007. That the Arbitration Board allowed the objections and awarded both parcels to the plaintiff.
49. The plaintiff further submitted that when the Arbitration process was declared complete the two parcels were the subject of various A/R objections, namely, objection No. 246/2009 on parcel No. 131 between Daniel Mbiti Mugambi and Jacob M'bwiria Kaari and in which the former lost to the latter, and objection Nos. 460, 721 and 759 on parcel No. 129 (M'Mceke M'Etirikia, Joseph M'Mithea and Misheck Kanake Reuben Vs Jacob M'Bwiria Kaari). That these objections were dismissed and the land remained registered to the plaintiff herein. It is the plaintiff's submission that there is no indication that the appellants appealed to the Minister as required by the [Land Adjudication Act](#) despite having been given the mandatory sixty days (60) to appeal. That from the foregoing it is clear that all parties involved were accorded all rights as provided in the Act. The plaintiff submitted that the evidence on record vide a certificate of confirmation of registration dated 24th February, 2011 by the District Land Adjudication Officer confirm that the Land parcel Nos. 129 and 131 in Kiengu/Kanjoo Adjudication Section were demarcated and recorded in his name.



50. It is the plaintiff's submissions that the powers and functions of the DLASO is to oversee the completion of the adjudication process which include and not limited to resolving disputes arising in the process of adjudication through the various dispute resolution mechanisms available. That having done so, the appellants failed to appeal the decision to the minister which ought to have concluded the process. It is the plaintiff's submission that the process of ascertainment of rights was concluded when the adjudication register was transmitted to the Chief Land Registrar for issuance of title deeds ascertaining that the plaintiff was and is the registered proprietor of the suit properties. The plaintiff cited section 24, 25 (1) and 26 of the Land Registration Act No. 3 of 2012, and submitted that it will be seen from those provisions that title is protected, but the protection is removed and title can be impeached if it is procured through fraud or misrepresentation to which the person is proved to be a party or where it is procured illegally, unprocedurally or through a corrupt scheme.
51. It is the plaintiff's submissions that he is the registered owner of L.R No. Kiengu/Kanjoo 129 and 131. That the defendant and his witness insinuated that the said titles to the suit properties were acquired fraudulently, but they did not adduce any evidence to the effect that the title to the suit land was procured illegally, unprocedurally or through a corrupt scheme. The plaintiff cited Section 107, 108 and 109 of the Evidence Act. The plaintiff submitted that he is entitled to protection of the said titles as provided for under the Land Registration Act No.3 of 2012. The plaintiff also cited Article 40 (3) of the Constitution. The plaintiff submitted further that the defendant has not proved that the plaintiff obtained the titles to the suit parcels of land through fraud and therefore the same belong to him absolutely.
52. The plaintiff further submitted that no documentary evidence was produced to ascertain the defendant's averment that he bought the suit lands from Joseph M'Mithea and Daniel Mbiti Mugambi. That in the absence of any documents, the said vendors were never the recorded owners of the suit lands. That if at all there were any transactions with regard to the said parcels of land, then the vendors did not have a good title to pass to the defendant and he should therefore lay a claim against the two individuals for the refund of his monies.
53. Regarding the defendants counterclaim that he is entitled to the suit properties by virtue of adverse possession having been in continuous, uninterrupted and peaceful possession and occupation thereof for a period exceeding 12 years, the plaintiff relied on the case of Wilson K. Chepgengon Vs Kimosop Chepyegon (2002) eKLR, Celina Muthoni Kithinji Vs Safiya Binti Swaleh and 8 others (2018) eKLR, Mbira Vs Gachuhi and Mtana Lewa Vs Kahindi Ngala Mwangani (2005) eKLR, and submitted that the defendant's claim is fallacious, misconceived and unfounded in that no adverse possession can attach and or is known under the Land Adjudication Act. That moreover, the litigation between the parties started during and after adjudication where the defendant forcefully and violently entered and refused to vacate the plaintiff's land prompting the filing of this suit after the determination of the adjudication process. The plaintiff reiterated that the defendant trespassed onto his land and started constructing illegal and unapproved developments on the said property without the consent or authority of the plaintiff and has adamantly refused to remove them. The plaintiff relied on the case of Nyangeri Obiye Thoms Vs Yunuke Sakagwa Nyoiza ELC No. 277 of 2018. The plaintiff argued that he has proved his case and is entitled to the reliefs sought.

Defendant's Submissions

54. The defendant filed submissions through the firm of C.K Ungu and Company Associates. The defendant gave a detailed background of the matter and identified ten issues for determination. The first issue as submitted by the defendant is whether the plaintiff bought the suit parcels of land from one Peter M'Kabala in 1982. The defendant referred to the evidence of DW 4 (a Land Adjudication



- Officer) who filed a report dated 24th November, 2023 and produced the records. The defendant also referred to the joint report dated 15th February, 2024 by the County Surveyor and the Land Registrar, Meru North.
55. The defendant submitted that when a person's ownership to property is called into question, it is trite that the said proprietor has to show the root of his ownership. It is the defendant's submission that true ownership of land can be proven by tracing the history of the land by examining the chain of title/ownership from the original owner to the current owner to ensure there are no gaps or irregularities. The defendant relied on the cases of *Wainana v Murai & Others* (1976-80)1 KLR 276 and *Munyuu Maina vs Hiram Gathiha Maina*, Civil Appeal No.239 of 2009.
56. The defendant submitted that he is the lawful owner of the land parcels in question and that the ownership is supported by evidence of purchase from the previous owners as well as long term possession and development of the land from 1998 and 2000 respectively up to date. The defendant relied on the case of *Lawrence P. Mukiri v Attorney General & 4 others* (2013) eKLR. It is also the defendant's submission that he is an innocent purchaser for value and he provided documentation and witness testimony demonstrating a continuous and unbroken chain of ownership from the original owners the Kiengu clan to Joseph M'Mithea and Daniel Mbiti Mugambi and to himself. The defendant further submitted that the chain of ownership confirms his claim to the land parcels thereby reinforcing his position as the rightful owner. That the documents presented and produced before court validate the transactions that led to the transfer of ownership to the defendant. That that evidence coupled with the defendant's uninterrupted occupation and development of the land further substantiates his claim. The defendant relied on the case of *Katende v Haridas & Company Limited* (2008)2 EA 173 and *Elizabeth Wambui Githinji & 29 others v Kenya Urban Roads Authority & 4 others* (2019) eKLR. The defendant also relied on the case of *Koinange & 13 Others v Koinange* (1968) KLR 23 to underscore the necessity of providing clear and convincing evidence to prove ownership. It is the defendant's submission that the plaintiff's case is mere assertions without solid proof and is insufficient to establish ownership. The defendant relied on the case of *Mwangi & Another v Mwangi* (1986) KLR 328 which emphasized that the burden of proof lies with the party asserting ownership and that the plaintiff has not met that burden due to inconsistencies and lack of substantial evidence. The defendant also relied on the case of *Gichuki v Gichuki* (1982) eKLR in which it was held that a party must provide a clear and continuous chain of title to prove ownership. That the plaintiff's failure to provide such chain weakens his claim. That the defendant has met the criteria by providing evidence of purchase, continuous possession and development while the plaintiff has failed to do so.
57. The defendant also submitted on the issue of the validity of the Land Arbitration Board and the Land Adjudication officer decisions. It is the defendant's submission that he is challenging the decision made by the Land Arbitration Board and the Land Adjudication officer. That the decisions are unlawful, unreasonable, unfair and biased. The defendant argued that the Arbitration Board and the Land Adjudication Officer did not objectively consider the evidence tendered before them. That they did not at all consider the earlier findings of the Land Adjudication Committee and that their decisions were not based on the historical facts relating to the ownership and occupation of the suit land parcels. The defendant relied on the case of *Municipal Council of Mombasa v Republic & Umoja Consultants Ltd* (2002) eKLR which highlights that administrative decisions can be quashed if they are found to be unlawful or unreasonable.
58. Regarding the issue of adverse possession, it is the defendant's submission that the doctrine of adverse possession allows a person to claim ownership of land if they have occupied it openly, continuously and without interruption for a period exceeding twelve years. The defendant argued that he has peacefully and continuously occupied and developed the suit properties without any interference from the time



he bought the same in 1998 and 2000 respectively to date. That the plaintiff started to demand the land from him in February 2011 a month before the institution of the suit. The defendant further submitted that upon taking possession of the said parcels of land which were developed with several agricultural crops such as miraa plants, banana plants, assorted young and mature trees, arrow roots and sugar cane, he continued using and developing the land peacefully. That he planted more trees, miraa and bananas, fenced the lands with barbed wire and installed a piped water system with a water storage tank and built several houses thereon and also put a lockable metal gate. It is the defendant's submission that his development on the suit land parcels are confirmed by the joint report of the County Surveyor and District Land Registrar, Meru North dated and filed in court on 15th February 2024. The defendant submitted he is entitled to suit parcels of land by virtue of adverse possession having been in continuous, uninterrupted and peaceful possession and occupation thereof for a period exceeding twelve years. The defendant relied on the case of *Wambugu v Njuguna* (1983) KLR 172.

59. Regarding the issue whether the title deeds issued can be revoked and the register rectified the defendant relied on the cases of *Gitwany Investment Ltd Vs Tajmal Ltd & 3 others* (2006) eKLR and *Epaphrus Muturi Kigoro V William Mukui Nyaga* (2015) eKLR, and submitted that the court has jurisdiction to order for cancellation of title.
60. The defendant submitted that costs follow the event and urged the court to award him costs of the suit and interest at court rates and relied on the case of *Supermarine Handling Services Ltd Vs Kenya Revenue Authority* (2010) eKLR.

Analysis and Determination

61. The court has considered the pleadings, the evidence adduced and the submissions filed. The issues for determination as I can deduce are :-
- i. Whether the plaintiff is entitled to orders of eviction.
 - ii. Whether the defendant has acquired the suit properties by adverse possession.
 - iii. Who bears the costs.

Whether the plaintiff is entitled to orders of eviction.

62. In this case, the plaintiff pleaded that he bought 14 acres piece of land from One Peter R. Kabira in 1982. That the same was later registered in his names as three distinct plot Nos 129, 130 and 131 Kiengu/Kanjoo Adjudication Section. That he transferred Parcel No. 130 which was 6 acres to his son Joseph Kithinji who sold the same to the defendant. The plaintiff pleaded that the defendant left him in peace until the year 2000 when the defendant illegally entered into the land and begun utilizing the same. On his part, the defendant claims the suit properties by adverse possession.
63. I have perused the Arbitration Board proceedings and I note that in its decision the board allowed cases No. 38 and 39 and awarded the plaintiff P/Nos 129 and 131. I have also perused the record and note that there is a letter dated 24th February, 2011 from the District Land and Adjudication & Settlement Officer, Igembe District which confirms that P/Nos 129 and 131 Kiengu/Kanjoo Adjudication section was demarcated and recorded in the name of the plaintiff herein.
64. The defendant admitted that he bought land parcel No. 130 Kiengu/Kanjoo Adjudication Section from Joseph Kithinji M'Mbwiria who is the plaintiff's son and who testified as PW 1. It is also the defendant's contention that land parcels No. 129 and 131 are his. He stated that he purchased the same from M'Mucheke M'Etirikia and Joseph Mithea respectively. The defendant's evidence was that when the sellers sold him the land, they immediately gave him permission to enter the land and use it. That



- he went with them to the adjudication office and confirmed that they were the owners. The defendant states that they went before the committee and it was approved. That he immediately entered the land and that he has used it to date. That he never found the plaintiff when he took possession.
65. The defendant further states that the plaintiff has never stopped him from developing the land. That he had bought the land long before the Arbitration Board decided. That the sellers had also carried out some development before he bought and had clear boundaries. The Defendant states that Kithinji sold to him parcel No.130 much later. That his A/R Objection were heard on about 20th September, 2010 and they were dismissed. The defendant further states that he was not satisfied with the decision of the Adjudication Board. That he filed an appeal to the Minister which has never been resolved as there are restrictions.
66. From the defendant's evidence it is clear that there was a decision by the Arbitration Board that allowed the two cases No. 38 and 39 and awarded the plaintiff P/Nos 129 and 131. That decision has not been appealed against which therefore means that the plaintiff is still the lawful owner of parcels Nos. 129 and 131. If the defendant was dissatisfied with the decision of the Board, he should have appealed as the law provides. I am not persuaded that the defendant can challenge those decisions through this case since the court is not sitting on appeal over the same.
67. During the hearing, DW 2 testified that he was not aware of the Arbitration Board but he later heard about the matter. DW 2 further testified that he was aware that the Arbitration Board is superior to the committee. That M'Mithea and Daniel Mbiti sold land to the defendant. DW 2 was not aware whether the defendant appealed to the minister.
68. DW 4 was Osman Hassan who is the Land Adjudication and Settlement Officer and is in charge of records at the DLASO. DW 4 filed a report dated 24th November, 2023 in which he has attached a copy of the RER (Record of Existing Right), demarcation book, proceedings of A/R, copy of a map and consents. DW 4 testified that the land in dispute is registered under Cap 284 Laws of Kenya. That adjudication in that section started around the year 2000. He further stated that before that, the land was under the clan. That according to the demarcation book, land parcel No. 129 was demarcated in the name of Mesheck Kanake Reuben, the defendant herein. He testified that the name of Mischeck Kanake Reuben was deleted and the name of Jacob Mbwiria Kaari inserted. That that was due to the implementation of the Arbitration Board case No. 38 of 2007 and 39/07.
69. DW4 further stated that parcel No.130 was demarcated to Joseph Kithinji Mbwiria who is still the owner. That parcel No. 131 was demarcated to Daniel Mbiti Mugambi, but the current person recorded in the record is Jacob Bwiria Kaari the plaintiff herein, due to the implementation of Arbitration Board case No. 38/07.
70. Having analyzed the evidence and material on record I conclude that the plaintiff is the rightful owner of parcel No.129 and 131 on the strength of the Arbitration Board proceedings/decisions which were never appealed against. Unless and until those decisions are set aside, they remain in force and are valid. The plaintiff remains the owner as per those decisions.
71. The law is very clear on the position of a holder of a title in respect to the land. Section 24(a) of the [Land Registration Act](#) provides for the interest conferred by registration. It provides;
- “Subject to this act the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all the rights and privileges belonging or appurtenant thereto.”



72. Section 26(1) of the [Land Registration Act](#) provides as follows:

“The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer shall be taken by all the courts as prima facie evidence that the person named as the proprietor of the land is absolute and indefeasible owner and the title of that proprietor shall not be subject to challenge except;

- a) On the ground of fraud or misrepresentation to which the person is proved to be a party or;
- b) Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”

73. The plaintiff has proved that he is indeed the registered owner of the suit properties and therefore the rightful owner having purchased the same lawfully from Peter M’Kabira. The plaintiff’s ownership was confirmed through a legal process, that is through decisions made under the resolution mechanisms under the [Land Adjudication Act](#). According to the plaintiff, the defendant has refused to vacate from the land. I opine that the defendant has no business remaining thereof. The defendant must be ordered to vacate the suit parcels of land to enable the plaintiff enjoy his proprietary right peacefully and without interruption. I find that the plaintiff is entitled to all the rights, interest and privileges that pertain to the land. The plaintiff is therefore entitled to an order of eviction. I am however, not persuaded that the plaintiff is entitled to general damages. No evidence was led to support that claim.

Whether the defendant has acquired the suit properties by adverse possession

74. The defendant is claiming the suit parcels of land by virtue of adverse possession for having been in continuous, uninterrupted and peaceful possession and occupation thereof for a period exceeding twelve (12) years.

75. Adverse possession is a common law doctrine under which a person in possession of land owned by someone else may acquire valid title to it. In Kenya this doctrine is alive in Section 7 of the [Limitation of Actions Act](#) that states:-

“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.”

76. In Alfred Welimo Vs Mulaa Sumba Barasa C.A No. 186 of 2011 the Court of Appeal expressed itself thus:

“It is trite that adverse possession is not established merely because the owner has abandoned possession of his land and ceased to use it, for as Robert Megarry aptly observed in his Megarry’s Manual of the Law of property, 5th edition page 490, the owner may have little present use for the land and that land may be used by others, without the users demonstrating a possession inconsistent with the title of the owner. So, the mere fact that the appellants abandoned possession of the suit property and went to live at Ndalua Scheme by and of itself does not establish adverse possession. The abandonment of possession must be complied with animus possidendi (the intention to possess) and asserting thereon rights that are inconsistent with those of the appellants as the owner of the land...”



77. The court further held that, for a claim founded on adverse possession to succeed, the person in possession must have a peaceful and uninterrupted user of the land. Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are important factors in a claim for adverse possession.
78. In *Wambugu Vs Njuguna* (1983) KLR 173 the Court of Appeal held that adverse possession contemplates two concepts: Possession and discontinuance of possession. It was further held that the proper way of assessing proof of adverse possession is 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.
79. The ingredients were recently discussed by the Court of Appeal in the case of *Mutana Lewa Vs Kahindi Ngala Mwangandi* [2015] eKLR where it was stated -:
- “Adverse possession is essentially a situation where a person takes possession of land and 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 is twelve (12) years. The process springs into action essentially by default or inaction of the owner...”
80. The defendant has to prove that he has used the suit premises as of right *nec vi, nec clam, nec precario*. It must be shown that the registered owner of the land had knowledge (or means of knowing, actual or constructive) of the possession or occupation. Further, the possession must be continuous.
81. In the instant case, the defendant has stated that he has been in exclusive open and continuous possession and occupation of the suit land since 2000 which is a period in excess of 12 years. However, it is evident from the history of the case that in this matter, there have been numerous cases in regard to the suit lands from the Land Committee case to the Arbitration Board. There is even an appeal pending before the Minister. The final decision was in favour of the plaintiff. I am therefore not persuaded that the defendant has proved adverse possession. The defendant has not brought himself within the confines of adverse possession since his possession and occupation, if any was marred by those numerous previous disputes. The same was not peaceful.

Final Orders

82. From the above analysis, it is my findings that the plaintiff has proved his case on a balance of probabilities. On the other hand, the defendant has not proved his counterclaim. In this regard judgment is entered in favour of the plaintiff and against the defendant. The defendants counter claim is dismissed. Consequently, the court makes the following final orders-;
- a. An eviction Order be and is hereby issued directed to the defendant ordering him to vacate from the plaintiff's parcel of land known as Kanjoo/Kiengu 129 and 131 within sixty (60) days from the date hereof, failure to which the plaintiff will be at liberty to evict him forcefully.
 - b. That the officer commanding police station (O.C.S) of the area be and is hereby ordered to offer security and supervision in carrying out the exercise and to maintain law and order.
 - c. The defendant's counterclaim is dismissed.
 - d. The plaintiff is awarded costs of the suit to be paid by the defendant.
83. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MERU THIS 3RD DAY OF OCTOBER, 2024.



In the presnce of

Court assistant – Tupet.

Gikunda Anampiu for plaintiff

C.K YANO

JUDGE

