



**Kariuki v Muniu (Environment and Land Case Civil Suit  
642 of 2009) [2022] KEELC 3165 (KLR) (5 May 2022) (Judgment)**

Neutral citation: [2022] KEELC 3165 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE CIVIL SUIT 642 OF 2009**

**LC KOMINGOI, J**

**MAY 5, 2022**

**BETWEEN**

**SAMUEL NJUNG'E KARIUKI ..... PLAINTIFF**

**AND**

**FRANCIS MUTURI MUNIU ..... DEFENDANT**

**JUDGMENT**

1. This is the originating summons dated 16<sup>th</sup> December 2009 brought pursuant to section 37 and 38 of the Limitation of Actions Act (Chapter 22) of the Laws of Kenya and order XXXVI rule 3D of the Civil Procedure Rules Section 3A of the Civil Procedure Act and all enabling provisions of the law.
2. The Plaintiff seeks the following orders:-
  1. A declaration that the Plaintiff is entitled to be registered forthwith as the owner of Title Nos Kabete/Kibichu/1189, 1190 and 1192 which the Plaintiff has been in adverse possession since 1990 being more than 12 (twelve) years occupation preceding the presentation of this suit and, on which he used openly and continuously as of right and in adverse possession and without any and continuously as of right and in adverse possession and without any interruption from the Defendant and that the Defendant's title to Title Nos Kabete/Kibichu/1189, 1190, 1191 and 1192 has been extinguished in favour the Plaintiff under section 37 and 38 of the Limitation of Actions Act Laws of Kenya.
  2. An order for permanent injunction be issued restraining the Defendant, his employees, servants, agents or any other person claiming through him from evicting the Plaintiff from the parcel of land known as Title Nos Kabete/Kibichu/1189, 1190 and 1192 (the suit lands) or from fencing the suit



lands or interfering with the Plaintiff's possession of the same or alienating, transferring, disposing off and/or dealing with the suit lands in any manner whatsoever.

3. An order that the Defendant do transfer Title Nos Kabete/Kibichu/1189, 1190, 1191 and 1192 to the Plaintiff and in default the Deputy Registrar of this Honourable Court do execute all documents necessary to cause the suit lands to be transferred to the Plaintiff.
  4. A permanent injunction do issue restraining the Defendant, his servants, representatives, agents and/or anyone claiming under him from alienating, transferring, charging or in any manner whatsoever form interfering with the suit lands.
  5. An order for costs and interest thereon of this application.
3. The Originating Summons is supported by the affidavit of Samuel Njung'e Kariuki the Plaintiff herein sworn on the 16<sup>th</sup> December 2009. It is his case that Land Parcel Number Kabete/Kibichiku/660 belonged to his grandmother Grace Wanjiru Wangendo. That an acre out of the same was transferred without his knowledge. That it was later subdivided into parcel numbers 1099 and 1100 with 1099 being registered in the name of the Defendant. The Defendant later subdivided his portion into four parcels, numbers 1189, 1190, 1191 and 1192 respectively.
  4. It is also his case that he has always cultivated the entire parcel No Kabete/Kibichiku/660.
  5. In response the Defendant, Francis Muturi Muniu filed a replying affidavit dated 12<sup>th</sup> January 2010. It is the Defendant's case that he bought one acre out of Land parcel Kabete/Kibichiku/660 from Grace Wanjiru Wangendo and he became the registered proprietor on 19<sup>th</sup> January 1994. He further stated that his wife cultivated the said parcel until the Plaintiff and his family members became hostile upon the death of Grace Wanjiru Wangendo.
  6. The Originating Summons was canvassed by way of viva voce evidence.

### **The Plaintiff's Evidence**

7. PW1 Samuel Njung'e Kariuki the Plaintiff testified on 20<sup>th</sup> February 2012. He adopted his witness statement as part of his evidence in chief. He told the court that he resides on Land Parcel No Kabete/Kibichiku/1101 which was his mother's land. He told the court that he cultivates land parcel Numbers 1189, 1190, 1191 and 1192. He further stated that his grandmother was buried on the said land despite a protest from the Defendant. It is his case that he continued planting maize, sweet potatoes and vegetables on the suit parcels after his grandmother's demise.
8. He told the court that in 1992 he found beacons placed on the land. He went to lands registry at Kiambu and found that Kabete/Kibichiku/660 had been subdivided into two portions 1099 and 1101. That 1099 was later subdivided by the Defendant into four (4) portions.
9. It is his evidence that the Defendant wrote to the Chief asking them to vacate the suit property but they refused. That his uncle Leonard Ngugi died in 1998 and the Defendant protested his burial on the suit property. It is his case that they however buried the said Leonard Ngugi on Land Parcel No 1190. He stated that he has continued to plough the suit property even after the death of his uncle.



10. He stated that the Defendant has never utilized the land nor performed any ceremony on the land in 1993 or any other time. He prays that the title deeds issued to the Defendant be cancelled and the (Plaintiff) be registered as the owner of the suit property.
11. When he was cross examined by Mr. Kambaga for the Defendant, he told the court that he confirmed from Kiambu Land Registry that the land parcel No Kabete/Kibichiku/660 had been subdivided into two portions namely 1099 and 1101. He also stated that the well on the land was dug twelve (12) years ago. He admitted that the Deputy Registrar who visited the suit found the well under construction because the Defendant had damaged it.
12. PW1 was recalled on 22<sup>nd</sup> October 2018 and he stated that his claim is that of adverse possession. He stated that he was not a party to HCCC 2213 of 1999 hence he was not aware of the Decree in that case. He stated that he has never been asked to vacate the suit property. When cross examined by the Defendant's counsel he told the court that Decree in HCCC 2213 of 1999 has never been appealed against.
13. PW2 Walter Kabetu Bacha, told the court that the Plaintiff and his family are his neighbours. That he (PW2) resides on Plot No 32A. He confirmed that Grace Wanjiri Wangendo the Plaintiff's grandmother was buried on the land. He also told the court that the Defendant has never utilized the suit land as he has no access. He also told the court that Leonard Ngugi was buried on the land.
14. PW3, Ngugi Nganga told the court that the land belonged to the Plaintiff's grandmother Grace Wangendo. He told the court that he used to trap moles on the land. He also stated that he was aware that the Defendant was claiming the land and did not want Leonard Ngugi to be buried there as well. He told the court that the Defendant has never used the land as there is no access.
15. PW4, Elizabeth Wairimu Thairu, the Plaintiff's wife told the court that her husband is the one cultivating the land and has planted vegetables. She also stated that the Defendant has never utilized the land as there is no access to the suit land. When she was cross examined by the Defendant's counsel she told the court that the Defendant blocked the well in 2010.

### **The Evidence of the Defendant**

16. DW1 Victor Kibenu, the Defendant's son testified on 25<sup>th</sup> March 2015. He adopted his witness statement dated 23<sup>rd</sup> January 2012. He confirmed that his father bought one acre in Mwimuto, Kibichiku in 1984. He told the court that his mother started farming on the land in 1987. He stated that in 1993 his father conducted a ceremony to mark their initiation into adulthood on the suit land by slaughtering a goat.
17. He told the court that his mother cultivated the land until 1996/1997 when the Plaintiff and his family members turned hostile and insulted her, she was warned not to set foot on the suit land. He told the court that it was at this point that access to the suit land was closed using iron sheets.
18. He also told the court that they tried to stop the burial of Leonard Ngugi on the suit land but was buried by force after the chief left. He also stated that the Plaintiff had approached the Defendant in 2009 with the intention of buying the suit land for Kshs.1 Million. They could not agree as the Defendant wanted Kshs.2 million.
19. It is his evidence that the Plaintiff dug a borehole after filing this suit. DW1 said he mobilized people who assisted him fill the well which was about 40 feet deep. He told the court that there is no house on the suit land. He said him and his brothers were arrested after filling the well because the Plaintiff gave false information to the police at Kikuyu police station but they were released. He told the court that



- the Plaintiff later reported him on claims of assault at Kikuyu Police Station. He was again arrested and charged vide Criminal Case NO 146 of 2010.
20. When cross examined by the Plaintiff's counsel he told the court that his mother stopped going to the land in 1997 after she was threatened.
  21. DW2 Evans Ndungu Kiarie, testified on 23<sup>rd</sup> April 2015. He adopted his witness statement. He told the court that he has known the Defendant since their childhood as they come from the same area. He further stated that he served as the Chief of Kabete location from 1991 to 2002. He confirmed that the Defendant bought an acre out of land parcel no Kabete/Kibichiku/660. He told the court that the Defendant complained to him that the family wanted to bury Grace Wanjiru Wangendo on his land. He went and ordered the family not to bury her on the Defendant's land. This was in 1998. He came to learn that they had gone ahead with the burial. He confirmed that the Defendant's wife was cultivating the land.
  22. He confirmed he received complaints from the Defendant that he was experiencing disturbance from the Plaintiff's family. He also confirmed that the burial of Grace Wanjiru Wangendo on the land was not peaceful. He confirmed that in 1993 the Defendant undertook a ceremony on the suit land where he invited elders during an initiation ceremony of his sons.
  23. He also stated that one Leonard Ngugi was buried on the land at night without the Defendant's consent. He confirmed that the Plaintiff has not built a house on the suit property.
  24. When cross examined by the Plaintiff's counsel he stated that he gave orders that Leonard Ngugi should not be buried on the land but they went ahead.
  25. Dw3, Francis Muturi Muniu the Defendant, testified on 24<sup>th</sup> September 2015. He adopted his witness statement. He told the court he is the registered owner of Land parcels No 1189, 1190, 1191 and 1192 respectively. He stated that he was registered on 19<sup>th</sup> January 1994. He bought the portion from Grace Wanjiru Wangendo and her son. The transfer was handled by his advocate Mr. Nicholas Kiania Njau. He stated that he took possession of the land and his wife started cultivating it.
  26. He said later the Plaintiff's family started disturbing him. He filed HCCC 2213 of 1999 and got judgment in his favour. He said he sued the Plaintiff's mother as the Plaintiff was still young then.
  27. He confirmed that Grace Wanjiru Wangendo and Leonard Ngugi were buried on the land without his consent. He told the court that DW1 (his son) was arrested when he visited the suit land. He told the court that the Plaintiff has blocked access to the suit land.
  28. He told the court that he could not remember many things as he has since become sickly. He prays that the suit be dismissed so that he could utilize his land.
  29. DW4, Nicholas Kiania Njau, an advocate of the High Court testified on 22<sup>nd</sup> October 2018. He adopted his witness statement dated 10<sup>th</sup> November 2015. He told the court that in October 1983, the Defendant, Grace Wanjiru Wangendo and her son went to his office. Grace wanted to sell an acre of the land out of Land Parcel Number Kabete/Kibichiku/660 to the Defendant. He produced the sale agreement dated 8<sup>th</sup> October 1983 as an exhibit in this case.
  30. He confirmed that the purchase price of Kshs.60,000 was paid to the seller. He stated that the Defendant took possession of the portion and subdivided it into four (4) portions. He told the court that the family of the said Grace later complained about the sale but investigations yielded nothing. He told the court the Defendant instructed him to instituted HCCC 2213 of 1999 against four (4) Defendants among them the Plaintiff's mother.



31. The said suit was heard and judgment given. The decree was not appealed against. He produced all the documents in respect of the transaction and HCCC 2213 of 1999 as exhibits in this case.
32. When cross examined by the Plaintiff's counsel he admitted that land parcel Numbers 1189 to 1192 were subdivision of Land Parcel No 1099 and not 660. He also told the court that the said Defendants were not removed from the land and that the bodies were not exhumed.
33. When reexamined by the Defendant's counsel, he told the court that the order for exhumation of the bodies was not granted.
34. At the close of the oral testimonies parties tendered final written submissions.

### **The Plaintiff's Submissions**

35. They are dated 17<sup>th</sup> December 2018. They raise six issues for determination. They are:-
  1. Is the Defendant the Registered owner proprietor of the suit land?
  2. Is the Plaintiff in occupation of the suit land?
  3. Is the Plaintiff's occupation adverse to the Defendant's title?
  4. Was the occupation for more than 12 years before filing suit?
  5. Has the Defendant interrupted the Plaintiff's adverse possession?
  6. Should the prayers in Originating Summons be allowed?
36. The Defendant is the registered owner of the four parcels of land. The Plaintiff has adduced evidence to show that he is in occupation of the suit land and by a consent order dated 11<sup>th</sup> April 2011, the Defendant conceded that the Plaintiff is in possession of the suit land and that status quo should remain during the pendency of the suit.
37. It is the Plaintiff's evidence that he and his family have been in occupation of the suit land as it belonged to his grandmother. That it is only in 1990 when the grandmother died that he realized the Defendant was claiming ownership on the basis that he bought the land.
38. The Defendant attempted to stop the Plaintiff and other family members from burying the grandmother on the suit land but the burial proceeded. Further that the occupation became adverse in 1990 when the Plaintiff buried his grandmother on the suit property despite protest from the Defendant. All along from 1990, there is evidence that the Plaintiff's stay on the suit land was against the wish of the Defendant and the Defendant would have taken action except that all roads of access had been blocked. The Plaintiff's occupation has been adverse to the Defendant's title.
39. It is in evidence that the Plaintiff and his family buried their grandmother on the suit land. Again in 1998, the Plaintiff buried his uncle on the suit property. It is the Plaintiff's evidence that upon the death of his grandmother in 1990, he has been using the suit property exclusively save for the two short visits by the Defendants agents in attempt to stop the burial.
40. DW1, stated that his mother only farmed on the land for five years since 1987. DW3. Stated that they have not used the land since 1992 when the access was blocked. The plaintiff's occupation on the suit land has been open and continuous. It is adverse to the Defendant's title. The Defendant does not have a counterclaim against this suit.



41. He prays that judgment be entered in terms of prayers in the Originating Summons. He has put forward the case of *James Maina Kirunja vs Gerald Kwendaka* [2018] e KLR; *Jennifer Gikui Kiani vs Solomon Ndotono & Another* [2013] e KLR; *Tools and Paints Hardware Ltd vs Ramco Hardware Ltd* [2010] e KLR.

### **The Defendant's Submissions.**

42. They are dated 12<sup>th</sup> February 2019. The Plaintiff commenced the Originating Summons for determination that he has acquired title to the suit property being four parcels of land Kabete/Kibichiku/1189, 1190, 1191 and 1192 on the basis that he has been in adverse possession of the said parcel since 1990 and which he alleges is a period in excess of 12 years. That preceding the presentation of this suit and which occupation and use of the suit property he has been open continuous and without interruption from the Defendant.
43. The Defendant's submissions raises issues for determination:-
- i. How did the Plaintiff get into possession of the suit property.
  - ii. Whether the principles cited above extends in favour of the Defendant as the registered proprietor of the suit land.
  - iii. Has the Plaintiff established the legal requirements to sustain his claim for adverse possession?
44. The suit property is a derivative of subdivision of parcel of land originally known as Kabete/Kibichiku/660 which was owned by the Plaintiff's grandmother Grace Wanjiru Wangendo. The Defendant purchased a portion measuring one acre from the said Grace Wanjiru Wangendo pursuant to a sale agreement dated 8<sup>th</sup> October 1983 and DW4 Kiania Njau Advocate gave full details of the said sale transaction. The Plaintiff's entry to the suit property is therefore to the fact of him being the grandson of Grace Wanjiru Wangendo.
45. The question arises whether the Plaintiff qualifies to be an adverse possessor. He has put forward the case of *Wambugu vs Njuguna* [1983] KLR 172 the Court of appeal held that adverse possession means that a person is in possession in whose favour time can run.
- It was further stated that:-
- "No all persons in possession can have time run in their favour".
46. The Plaintiff is not in a position of a possessor in whose favour time can run for the reason that his entry into the land has its reference point to his grandmother. He has put forward the case of *Mbiru vs Gichohi* [2002] 1E.A. The Plaintiff's entry, possession, and user of the suit property being wholly attributable to the kinship as the grand child of Grace Wanjiru, cannot translate to his being an adverse possessor.
47. The Defendant's title traces to purchase from Grace Wanjiru Wangendo and was registered as proprietor of the suit property on 19<sup>th</sup> January 1994. In 1999 the Defendant, filed HCCC No 2213 of 1999 and got judgment in his favour against the Defendant in terms of Decree given in that suit on 1<sup>st</sup> August 2003.
48. The Plaintiff in that suit (the Defendant) herein was asserting his title to the suit property therein being Kabete/Kibichiku/1189, 1190, 1191 and 1192, the suit property herein. The suit herein was filed in December 2009 six years after the Decree in HCCC 2213 of 1999. The Plaintiff is the son of the 2<sup>nd</sup>



- Defendant (Wambui Kariuki) in that case and a nephew to the other Defendants. The Plaintiff fell under the description of their servants or agents by filial relationship. He further submits that on the basis of the Decree in HCCC No 2213 of 1999 the Plaintiff even if he uses the suit property cannot have time run in his favour to sustain a claim of adverse possession.
49. He further submitted that upon filing HCCC 2213 of 1999 the Defendant asserted his title to the suit property not only against the Defendants in that suit but against any persons claiming under them or any person linked to the Defendants by filial consanguinity and consequently and among whom such person s fell, the Plaintiff because of his relationship to the Defendants in that suit.
  50. The Plaintiff's alleged possession of the suit property is traceable to his kinship with Grace Wangendo who sold the suit property to the Plaintiff. The possessor must show that there was dispossession of the property which entails driving out the person in possession. There is no evidence of such dispossession in this suit. It is the evidence of the Defendant that his wife used to cultivate the land until 2008 when she passed on. It was only thereafter that the Plaintiff blocked the Defendant's access to the land and encroached the land. By the year 2009, the statutory period of 12 years to ascertain a claim of adverse possession had not lapsed as the suit was filed only a year after the death of the Defendant's wife.
  51. He further submitted that even if the Plaintiff has shown that he was in occupation of the suit property for 12 years, this fact alone is not sufficient to sustain a claim for adverse possession. He has put forward the case of *Christopher Kioi & Others vs Winnie Mukolwe & Others* [2018] e KLR. Mere possession of itself does not prove adverse possession. The commencement of HCCC 2213 of 1999 interrupted the running of time in favour of the Defendants to that suit but also against the Plaintiff in this suit whose alleged possession of the suit property was traceable directly to the fact of his being the son of Wambui Kariuki, the 2<sup>nd</sup> Defendant in HCCC 2213 of 1999.
  52. From the evidence on record it is clear that the alleged occupation of the suit property was never peaceful or quiet. The admission that there were disputes and physical confrontation between the Plaintiff and the Defendant's son is a clear confirmation that the Plaintiff's possession was not peaceful or quiet which is one of the requirements that an adverse possessor must establish.
  53. Since the Defendant did not have free access to the suit property he was not in a position to exercise his right of reentry and the fact that he may have abandoned the use of the suit property did not necessary translate to the Plaintiff being in adverse possession of the land. He prays that the Plaintiff's suit be dismissed with the costs to the Defendant.
  54. I have considered the pleadings and the evidence on record. I have considered the written submissions filed on behalf of the parties and the authorities cited. The issues for determination are:-
    - i. How did the Plaintiff get into possession of the suit property?
    - ii. Is the Plaintiff's occupation adverse to the Defendant's title?
    - iii. Has the Plaintiff established the legal requirements to sustain his claim for adverse possession?
    - iv. Who should bear costs of this suit?
  55. It is the Plaintiff's case that Land Parcel Number Kabete/Kibichiku/660 was registered in the names of his grandmother Grace Wanjiru Wangendo. It is further his case that the grandmother died in 1990 and she was buried there. That his uncle Leonard Ngungi died in 1998 and he was buried on the suit land. That there is no access road to the suit property without using Land Parcel No Kabete/Kibichuki/1101 belonging to the Plaintiff's mother and where the Plaintiff lives.



56. PW2 Walter Kabetu Bacha stated that his land neighbours the Plaintiff's land. He stated that the only access to the suit property is through the Plaintiff's other parcels as he (PW2) had won a case that effectively blocked the other road of access to the suit property and that case was HCCC 1143 of 1992 in which Defendant had sued (PW2). In the suit herein, PW2 claimed the Defendant had never used the suit property. I find that his evidence ought to be treated with a lot of caution as he had litigated with the Defendant in HCCC 1143 of 1992.
57. PW1, the Plaintiff told the court on cross examination that in 1992 he found beacons placed on the suit property but he did not know who had placed them there. He stated that he went to Kiambu land registry and realized land parcel number Kabete/Kibichiku/660 had been subdivided into 1099 registered in the Defendant's name and 1100 in the name of Leonard Ngugi Wangendo.
58. DW4 Kiania Njau, Advocate told the court that vide a sale agreement dated 8<sup>th</sup> October 1983 Grace Wanjiru Wangendo sold one acre out of Kabete Kibichiku/660 to Francis Muturi Muniu, the Defendant herein. He further told the court that the purchase price of Kshs.60,000/- was paid in full and the Defendant took possession of the said portion. He further subdivided the land into four portions 1189, 1190, 1191 and 1192 respectively. He attached documents to confirm the consent from Land Control Board was sought and that the sale was proper. He also confirmed that the Defendant instructed him to file HCCC 2213 of 1999 against the Plaintiff's mother and other Defendants. Judgment was granted and a decree issued. He further stated that the said judgment has never been set aside and or appealed against.
59. I agree with the Defendant's counsel submissions that the Plaintiff entry into the suit property is by fact of his being a grandson of Grace Wanjiru Wangendo. In the case of Mbira vs Gichuhi [2002] 1-EA Kuloba J states:-

c- "It is also elementary principle that possession and user of land for the requisite statutory period do not in themselves give rise to the defence or claim of adverse possession. It has always been the law that permissive or consensual occupation is not adverse possession.

e- "Possession may fail to be adverse by reasons of the rule that possession is never adverse if it can be referred to a lawful title. In accordance with this rule therefore, I hold that possession arising from permissive or consensual entry, occupation and user by virtue of lineal consanguinity and affinity, does not give rise to adverse possession after the statutory period of limitation".

It is clear from the evidence tendered herein that the Plaintiff entry, possession and user of the suit property is being wholly attributable to the kinship as the grand child of Grace Wanjiru Wangendo. It cannot translate to being an adverse possession.

60. It is also not in dispute that the Defendant was registered as the proprietor of the suit property on 19<sup>th</sup> January 1994. In 1999, he filed HCCC No 2213 of 1999 and got Judgment in his favour against the Defendants in terms of the Decree given in that suit on 1<sup>st</sup> August 2003. In that suit the Defendant herein was asserting his title to the suit property being Kabete/Kibichiku/1189, 1190, 1191 and 1192 which he is the subject of this suit.
61. I agree with the defendant's counsel submissions that the suit was filed in December 2009 six (6) years after the Decree in HCCC 2213 of 1999. The Plaintiff's mother was the 2<sup>nd</sup> Defendant in that case and the other Defendants were his uncles. The Plaintiff therefore fell under the description of their servants or agents by filial relationship. It was the Plaintiff's assertion that his mother was mentally unstable by the time HCCC 2213 of 1999 was filed. He however adduced no evidence to confirm this fact. He also



alleged that some of the Defendants were deceased by that time but this is neither here nor there as he did not adduce any evidence. DW1 in his evidence stated:-

“Samuel Njunge was not a party in HCCC No 2213 of 1999. I did not sue him because he was a small child and I did not know him at that time, he had not interfered with my land.

Samuel Njunge claimed to have occupied the suit land from 2009. It is not true”.

It is not in dispute that the Plaintiff does not reside on the suit property.

62. I agree with the Defendant’s counsel submissions that by virtue of HCCC 2213 of 1999 the Defendant asserted his title to the suit property not only against the Defendants in that suit but also against any person claiming under then including the Plaintiff herein because of his relationship to the Defendants in that suit.

63. It is the evidence of DW1, DW2 and DW3 that the Defendant’s wife used to cultivate the suit property before she passed on in the year 2008. That it was only after her death that the Plaintiff blocked the access to the suit property and encroached on the land. By 2009, the statutory period of 12 years had not lapsed. In the case of *Christopher Kioi & Others vs Winnie Mukolwe & Others [2018] KLR* the Court of Appeal stated thus:-

“The burden was on the appellants to prove on a balance of probabilities that they had been in adverse possession of the suit property (see *John Kinyua – vs Simon Gitau C.A 265 of 2005*.

Possession is a question of fact depending on the circumstances of each case. The Appellants were also obliged to prove not mere possession of the suit property but possession that was peaceful, open and continuous.”

64. I find that the Plaintiff has not been in quiet and peaceful continuous possession of the suit property. In his evidence he stated:-

“My uncle Leonard Ngugi died in 1998. Sons of the Defendant came and covered the grave and we found Aps who stopped us from burying.

The Defendant or the wife never used the land. That is because he had a dispute with a neighbour called Walter Kabetu over a road passage to these lands.

31A is where Kabetu lives.

The dispute was resolved in HCCC No 1143 of 1992 – that there was no road there.

At page...of the Plaintiff’s submissions the plaintiff in his testimony

“The Defendant never used the land. His sons have beaten me previously and they were charged in a criminal case”.

65. The Plaintiff never had quiet and peaceful possession. This was interrupted by filing of HCCC 2213 of 1999. He admitted that the two burials of his grandmother and uncle were conducted despite a protest from the Defendant. He also admitted that there were disputes and physical confrontation between him (Plaintiff) and the Defendant’s sons. DW1 told the court that he was charged with assaulting the Plaintiff at one point.

66. DW2 Evans Ndungu Kiarie the area Chief from 1991 – 2002 confirmed that the Defendant’s wife cultivated the suit property. He also confirmed that he instructed the Plaintiff and his family members



not to bury Leonard Ngugi on the suit property. I agree with the Defendant's submissions that the Defendant did not have free access to the suit property after PW2 denied him access and the fact that the Plaintiff blocked the other access to the suit property using iron sheets.

67. The Deputy Registrar visited the sit on 26<sup>th</sup> March 2010 and confirmed that there were crops planted by the Plaintiff. She also saw two graves on the land and a well that was being constructed. It is also not true as stated by the Plaintiff that the well had been constructed earlier.
68. In conclusion, I find that by virtue of the Decree in HCCC 2213 of 1999, I find that time cannot have run in the Plaintiff's favour to sustain a claim for adverse possession. I find that the Plaintiff has failed to establish the requirements to sustain a claim for adverse possession.
69. I find that he has failed to establish a prima facie case against the Defendant on a balance of probabilities. The Plaintiff's Originating Summons is without merit and the same is dismissed with costs to the Defendant.

It is so ordered.

**DATED, SIGNED AND DELIVERED NAIROBI THIS 5<sup>TH</sup> DAY OF MAY 2022.**

.....

**L. KOMINGOI**

**JUDGE**

**In the presence of:-**

Mr. Gichigi Advocate for the Plaintiff

Mr. Kingara for the Defendant

Steve - Court Assistant

