



**Link Properties Limited & 10 others v Kenya Power & Lighting Company Ltd & 6 others;
Chege & 9 others (Interested Parties) (Environment and Land Case Civil Suit 114 & 615 of 2010
& 795 of 2007 (Consolidated)) [2022] KEELC 2571 (KLR) (12 July 2022) (Judgment)**

Neutral citation: [2022] KEELC 2571 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE CIVIL SUIT
114 & 615 OF 2010 & 795 OF 2007 (CONSOLIDATED)**

SO OKONG'O, J

JULY 12, 2022

BETWEEN

LINK PROPERTIES LIMITED PLAINTIFF

AND

KENYA POWER & LIGHTING COMPANY LTD DEFENDANT

AND

SIMON CHEGE INTERESTED PARTY

GEORGE MUHORO INTERESTED PARTY

SIMON MATHENGE INTERESTED PARTY

JULIA KAMUIRU INTERESTED PARTY

RICHARD AYUSA ONDIEKI INTERESTED PARTY

JACKSON MWELWA INTERESTED PARTY

PETER NJOROGE INTERESTED PARTY

STANLEY KAMAU INTERESTED PARTY

AS CONSOLIDATED WITH

ENVIRONMENT AND LAND CASE CIVIL SUIT 795 OF 2007

BETWEEN

NISHI KENT 1ST PLAINTIFF

UPASANA KENT 2ND PLAINTIFF



**BOTH SUING AS JOINT EXECUTRIXES OF THE ESTATE OF RANBIR
KRISHEN KEHARCHAND KENT**

AND

JOHN OYAWO NEKO 1ST DEFENDANT
STEPHEN GIKONYO MWANGI 2ND DEFENDANT
EZBON ONGORO ADIKA 3RD DEFENDANT
JOHN KAMANDE 4TH DEFENDANT

AND

SIMON CHEGE INTERESTED PARTY
GEORGE MUHORO INTERESTED PARTY
SIMON MATHENGE INTERESTED PARTY
JULIA KAMUIRU INTERESTED PARTY
RICHARD AYUSA ONDIEKI INTERESTED PARTY
JACKSON MWELWA INTERESTED PARTY
PETER NJOROGE INTERESTED PARTY
STANLEY KAMAU INTERESTED PARTY
ABUODHA JOSEPH ONGETE INTERESTED PARTY
LINK PROPERTIES LIMITED INTERESTED PARTY

AS CONSOLIDATED WITH

ENVIRONMENT AND LAND CASE CIVIL SUIT 615 OF 2010

BETWEEN

SIMON CHEGE 1ST PLAINTIFF
GEORGE MUHORO 2ND PLAINTIFF
SIMON MATHENGE 3RD PLAINTIFF
JULIA KAMUIRU 4TH PLAINTIFF
RICHARD AYUSA ONDIEKI 5TH PLAINTIFF
JACKSON MWELWA 6TH PLAINTIFF
PETER NJOROGE 7TH PLAINTIFF
STANLEY KAMAU 8TH PLAINTIFF

AND

NISHI KENT ALIAS NIDHI KENT 1ST DEFENDANT
UPASANA KENT 2ND DEFENDANT



**BOTH SUING AS JOINT EXECUTRIXES OF THE ESTATE OF RANBIR
KRISHEN KEHARCHANDKENT**

JUDGMENT

Introduction and pleadings by the parties:

1. This judgment is in respect of three (3) consolidated suits namely, ELC No. 114 of 2010, ELC No. 795 of 2007 and ELC No. 615 of 2010(O.S). The dispute between the parties concerns the ownership and use of all those parcels of land known as L.R No. 11531/8 and L.R No. 11531/14 (hereinafter together referred to as “the suit properties” and individually as “Plot No. 11531/8” and “Plot No. 11531/14” where the context so permits).
2. ELC No. 114 of 2010, was brought through a plaint filed on 16th March 2010. The plaint was amended on 16th December 2011. In its amended plaint, the plaintiff in the suit, Link Properties Limited averred that at all material times it was the beneficial owner of Plot No. 11531/8. The plaintiff averred that it acquired Plot No. 11531/8 through a sale agreement made on June 19, 2006 between the plaintiff and Upasana Ahmed and Nishi Kent who were the administrators of the estate of Ranbir Kent deceased and unregistered instrument of transfer executed in its favour by the said administrators.
3. The plaintiff averred that under the said agreement of sale, Upasana Ahmed and Nishi Kent (hereinafter referred to only as “the Kents” where the context so permits) as the administrators of the estate of Ranbir Kent deceased (hereinafter referred to only as “the deceased”) undertook to hold Plot No. 11531/8 in trust for the plaintiff. The plaintiff averred that as the beneficial owner of Plot No. 11531/8 it obtained and was entitled to rights and interests in Plot No. 11531/8 equivalent that of the registered owner thereof. The plaintiff averred that in that capacity, it also assumed all obligations in relation to the suit property.
4. The plaintiff averred that without its consent, the defendant in the suit, Kenya Power & Lighting Company Limited unlawfully entered Plot No. 11531/8 and erected thereon electric power lines. The plaintiff averred that the defendant had a legal duty to ascertain ownership of Plot No. 11531/8 before erecting and maintaining the said electric power lines on the same which it failed to do. The plaintiff averred that as a result of the defendant’s said act of trespass, the plaintiff was unable to develop the said property. The plaintiff averred that it had planned to put up medium income residential homes on Plot No. 11531/8 in partnership with Hass Consult Project Management Limited a project which it was unable to implement. The plaintiff averred that as a result of the defendant’s said acts of trespass, Plot No. 11531/8 had lost value for which the plaintiff was entitled to damages. The plaintiff assessed its loss of income at Kshs. 280,000,000/-.
5. The plaintiff sought judgment against the defendant for;
 - a) A permanent injunction stopping the defendant from transmitting or supplying electric power through the overhead electric power lines erected on L.R No. 11531/8.
 - b) A permanent injunction directed at the defendant to remove the overhead electric power lines and poles erected on L.R No. 11531/8.
 - c) Damages for unlawful erection and maintenance of power lines and poles on Plot No. 11531/8.
 - d) Costs of the suit.



- e) Loss of income in the sum of Kshs. 280,000,000/-.
 - f) Interest on costs and loss of income at court rates.
 - g) Any other or further relief the court may deem fit to grant.
6. The defendant amended its statement of defence dated April 8, 2010 on January 25, 2012. In its amended defence, the defendant denied that at all material times the plaintiff was the beneficial owner of Plot No. 11531/8. The defendant denied that there was any sale agreement between the plaintiff and the Kents as alleged or at all or that the Kents executed a transfer in favour of the plaintiff in respect of Plot No. 11531/8. The defendant denied that the alleged sale agreement and unregistered transfer was capable of conferring upon the plaintiff beneficial interest in Plot No. 11531/8.
 7. The defendant denied that the plaintiff was the beneficial owner of Plot No. 11531/8 or that the Kents held the property in trust for the plaintiff. The defendant denied that a beneficial owner of a property has the same rights as a registered owner and that the plaintiff was entitled to maintain the suit before the court. The defendant averred that the plaintiff had no legal interest in Plot No. 11531/8 and as such could not bring proceedings for injunction or damages for trespass.
 8. The defendant denied that it unlawfully and without authority erected electric power lines on Plot No. 11531/8. The defendant averred that at all material times it had no knowledge of the existence of the plaintiff which was neither the registered owner of Plot No. 11531/8 nor in occupation thereof and as such it could not have sought the plaintiff's consent while erecting the said electric power lines.
 9. The defendant denied that the plaintiff had entered into any agreement for the development of Plot No. 11531/8 or that the plaintiff was legally capable of entering into any such agreement. The defendant averred that if the plaintiff entered into such agreement, the plaintiff was incapable of carrying out development on Plot No. 11531/8 because of the large number of people who were in occupation of the property before and after the erection of the defendant's electric power lines.
 10. The defendant denied that the plaintiff had suffered any loss or damage. The defendant denied that any of its actions caused the plaintiff loss and damage or prevented it from developing Plot No. 11531/8 as alleged or at all. The defendant denied that the plaintiff served upon it a letter of demand before action. The defendant urged the court to dismiss the plaintiff's claim with costs.

ELC No. 795 of 2007, Nishi Kent and Upasana Kent (as executrices of the estate of Ranbir Krishen Keharchand Kent (deceased) v John Oyawo Oneko & others:
 11. ELC No. 795 of 2007 was filed in the High Court as HCCC No. 1502 of 2002 before it was transferred to the Environment and Land Division of the High Court and given its current case number. In their amended plaint filed on October 17, 2002, the plaintiffs in this suit, Nishi Kent and Upasana Kent (the Kents) in their capacity as the executrices of the estate of Ranbir Krishen Keharchand Kent (the deceased) averred that they were the daughters and the executrices of the estate of the deceased. The Kents averred that the deceased was the registered owner of Plot No. 11531/8 and Plot No. 11531/14 (the suit properties) and that as the executrices of the estate of the deceased, they were the owners of the said parcels of land.
 12. The Kents averred that the 1st to 3rd defendants in the suit were former employees of the deceased and that their employment contracts were terminated on the death of the deceased in 1997. The Kents averred that the 1st to 3rd defendants were permitted to remain in occupation of the suit properties while looking for alternative employment. The Kents averred that the 4th defendant was a squatter on



- the suit properties and that the 4th defendant had claimed that his grandmother was an employee of the deceased.
13. The Kents averred that on or about June 2002, the defendants started excavating building stones from the suit properties as a result of which the Kents terminated their license to occupy the suit properties. The Kents averred that the defendants thereafter started subdividing the suit properties into small portions and advertising the same for sale to unsuspecting members of the public.
 14. The Kents averred that the defendants had no lawful right to occupy or remain on the suit properties and that they were committing acts of waste by excavating building stones from the property. The Kents averred that it was necessary that the defendants be evicted from the suit properties and restrained permanently from committing any further acts of waste on the properties.
 15. The Kents sought judgment against the defendants for;
 - a) A mandatory injunction compelling and directing the defendants, their agents or anyone claiming through them to vacate the suit properties and handover vacant possession of the same to the Kents.
 - b) A permanent injunction restraining the defendants from committing any further acts of trespass or wastage on the said land.
 - c) An eviction order against the defendant and anyone residing on the suit properties.
 - d) General damages for trespass and wastage committed on the suit properties.
 - e) Costs of the suit.
 16. I have not seen on record any statement of defence by the original defendants in this suit. The 1st to 8th interested parties in the suit filed a defence and counter-claim on March 30, 2011. The 1st to 8th interested parties filed this statement of defence and counter-claim following their joinder in the suit as defendants through an order made on December 15, 2010. In their defence dated March 30, 2011, the 1st to 8th interested parties (hereinafter referred to only as “the interested parties) averred that the defendants in the suit were unknown to them and that all the allegations made against the said defendants in the plaint as concerns Plot No. 11531/8 were denied. The interested parties averred that they were representatives of over 2500 persons who were residing on Plot No. 11531/8 and had so resided for a period exceeding 30 years.
 17. The interested parties averred that unlike Plot No. 11531/14, Plot No. 11531/8 occupied by the interested parties did not have a quarry and as such the basis of the plaintiff’s claim as it relates to Plot No. 11531/8 was false and misleading. The interested parties averred that the amended plaint disclosed no cause of action against the interested parties.
 18. In their counter-claim, the interested parties averred that the interested parties and over 2500 persons whom they represented had continuously, openly and without interruption occupied, constructed residential houses and had resided and continued to reside on Plot No. 11531/8 for a period exceeding 30 years. The interested parties averred that the amendment that was made by the Kents in their plaint to include Plot No. 11531/8 to their claim herein was mischievous, wrongful and irregular in that the interested parties were not notified of the same.
 19. The interested parties averred that they had filed ELC No. 615 of 2010(O.S) against the Kents in which they were claiming Plot No. 11531/8 by adverse possession. The interested parties sought judgment against the Kents for;



- a) A permanent injunction restraining the Kents from interfering with the interested parties' occupation, quiet enjoyment and use of all that parcel of land known as Plot No. 11531/8.
 - b) The costs of the suit
 - c) Any other relief or reliefs the court may deem just and equitable to grant.
20. For reasons that were not made clear to the court, on July 30, 2013, the 1st to 8th interested parties' advocate applied orally to have the 1st to 8th interested parties' defence and counter-claim dated November 30, 2011 and filed on the same date struck out. In the absence of any opposition to the request, the court made an order expunging the said defence and counter-claim from the court record. The 1st to 8th interested parties never filed any other defence although they had been joined in the suit as defendants through an order made on December 15, 2010 as aforesaid.
21. I have not seen on record any response to ELC No. 795 of 2007 by the 9th and 10th interested parties. ELC No. 615 of 2010(O.S), Simon Chege & 7 others v Nishi Kent and Upasana Kent (as executrixes of the estate of Ranbir Krishen Keharchand Kent(deceased):
22. The plaintiffs in ELC No. 615 of 2010(O.S) are the interested parties in ELC No. 114 of 2010 and ELC No. 795 of 2007. The plaintiffs in this suit brought an Originating Summons dated 9th December 2010 seeking the determination of the following questions;
- a) Whether the plaintiffs have been in continuous, open and uninterrupted possession of Plot No. 11531/8 and should be declared and registered as the sole proprietors of the property in place of the executrixes of the estate of the deceased who is registered as the proprietor of the property.
 - b) Whether the defendants who are the executrixes of the estate of the deceased proprietor of Plot No. 11531/8 should be declared as holding the property in trust for the plaintiffs.
 - c) Whether the defendants should transfer the property to the plaintiffs within 60 days in default of which the Deputy Registrar of the court should be granted liberty to execute all documents necessary to transfer the property to the plaintiff and any processing costs to be paid by the plaintiffs.
 - d) Whether a declaration should issue that the defendants' title to Plot No. 11531/8 has been extinguished through adverse possession by the plaintiffs and that the plaintiffs have become entitled to the property.
 - e) Whether the defendants should be restrained from alienating, selling, disposing of, utilizing, charging, developing or in any manner using the title for Plot No. 11531/8 in any manner derogating from the plaintiffs' claim pending the hearing and determination of the suit.
 - f) Whether the defendants should meet the costs of the suit.
23. The Originating Summons was supported by the affidavit sworn by the plaintiffs on December 9, 2010.
24. The plaintiffs averred that they were residing at Chokaa, Ruai, Nairobi on Plot No. 11531/8. The plaintiffs averred that they brought this suit on their own behalf and in a representative capacity for and on behalf of other residents of Plot No. 11531/8 whose names appeared in the list that accompanied the Originating Summons.
25. The plaintiffs averred that Plot No. 11531/8 was registered in the name of the deceased who passed away on December 9, 1997 leaving the defendants as the executors of his will. The plaintiffs averred



that they were all born on Plot No. 11531/8 and that they had continued throughout their lives to occupy the property with their families over the years.

26. The plaintiffs averred that they had at all material times lived on the property openly and without permission from the defendants. The plaintiffs averred that they had not paid rent or any other charges to the defendants for occupying the property.
27. The plaintiffs averred that over 2500 people were occupying Plot No. 11531/8. The plaintiffs averred that over the years, they had subdivided the property into more than 1500 sub-plots on which they had constructed their residential homes. The plaintiffs averred that some of their houses were permanent and were connected to electricity.
28. The plaintiffs averred that in 2004 they registered an organization by the name Ruai Chokaa Settlement Self-Help Group (hereinafter referred to only as “the group”) as a vehicle for improving the welfare of the residents of Plot No. 11531/8. The plaintiffs averred that the City Council of Nairobi had laid water pipes and was supplying the residents of the property with water.
29. The plaintiffs averred that the group assisted them to develop community projects such as three schools for pre-primary education, a health clinic, electrification project, a church and a mosque. The plaintiffs averred that the Embakasi Constituency Development Fund had agreed to upgrade the access roads on Plot No. 11531/8 and had commenced the works.
30. The plaintiffs averred that they had resisted attempts to forcefully evict them from the property which they had occupied for over 30 years. The plaintiffs averred that they learnt that one, Rajesh Kent had entered into a sale agreement to purchase Plot No. 11531/8 from the defendants (the Kents) and had already paid to the defendants Kshs. 8,560,721.50 as a deposit.
31. The plaintiffs averred that the said Rajesh Kent had agreed to abandon his claim over Plot No. 11531/8 in consideration of being refunded the said sum of Kshs. 8,560,721.50 paid to the defendants. The plaintiffs averred that the defendants acting in cahoots with the said Rajesh Kent were ill bent on depriving them of the property. The plaintiffs averred that they stood to suffer irreparable loss and harm if they were evicted from the suit property.
32. The plaintiffs averred that they had acquired the property by adverse possession. The plaintiffs averred that they had made payment to Kenya Power & Lighting Company Limited(KPLC) for the installation of electricity in their houses and KPLC had laid cables and connected electricity in several houses.
33. I have not seen any response by the defendants or the interested party in the suit to the Originating Summons. The affidavits on record by the interested party are in respect of interlocutory applications that are spent.

The evidence tendered by the parties in proof of their respective cases:

34. At the trial, the parties agreed that Link Properties Limited and the Kents who are the plaintiffs in ELC No. 114 of 2010 and ELC No. 795 of 2007 shall give evidence as plaintiffs while the defendants and the interested parties in ELC No. 114 of 2010, the plaintiffs in ELC No. 615 of 2010 and the defendants and interested parties in ELC No. 795 of 2007 would give evidence in that order as defendants.
35. Rajesh Ranbir Keharchand Kent(PW1) gave evidence on behalf of Link Properties Limited, the plaintiff in ELC No. 114 of 2010. In summary, PW1 stated as follows: He was the Managing Director and a shareholder of Link Properties Limited (hereinafter referred to only as “Link”). He was a son of the late Ranbir Keharchand Kent (“the deceased”) and a beneficiary of his estate. He adopted his witness statement filed on May 22, 2015 as part of his evidence in chief. He produced Link’s bundle and supplementary bundle of documents filed on May 22, 2015 and November 8, 2017 respectively



- in ELC No. 114 of 2010 as PEXH.1 and PEXH.2 respectively. He also produced the annexures to an affidavit that was filed by Link in ELC No. 795 of 2007 as PEXH. 3.
36. He stated that he had sued Kenya Power & Lighting Company Limited (hereinafter referred to only as “KPLC”) because it had unlawfully connected electricity to the squatters on Plot No. 11531/8 that belonged to Link. He stated that when he complained to KPLC about its activities on the property, he was asked to prove his title to the property. He stated that he produced an agreement of sale and a certificate of title for the property. He stated that the property was registered in the name of the deceased. He stated that he purchased the property from his sisters (the Kents) but was unable to register the transfer in favour of Link because of a caveat that was registered against the title of the property by the defendants and the interested parties.
37. PW1 stated that Link was claiming damages from KPLC. He stated that connecting electricity to the structures put up by the squatters on the property had led to an increase in the number of squatters on the property and had also given the squatters a sense of entitlement to the property. He stated that none of the squatters had a title to the property. He stated that he incorporated Link to use it as a vehicle to put up houses on the property. He referred the court to the project proposal at pages 73 to 89 of PEXH.1. He stated that the anticipated profit from the project as at 2010 was Kshs. 280,000,000/-. He stated that the occupants of Plot No. 11531/8 who had no title over the same should not have been connected to electricity by KPLC.
38. PW1 stated that the interested parties in ELC No. 114 of 2010, the plaintiffs in ELC No. 615 of 2010 and the defendants and interested parties in ELC No. 795 of 2007 were illegally occupying Plot No. 11531/8 (hereinafter henceforth referred to only as “the suit property”) that belonged to Link. He stated that the adverse possession claim by the plaintiffs in ELC No. 615 of 2010 had no basis. He stated that the plaintiffs in ELC No. 615 of 2010 had not stated when they entered the suit property and started living therein. He stated that the photographs produced by the plaintiffs in proof of their occupation of the property were all taken in 2010. PW1 stated that the group by the plaintiffs in ELC No. 615 of 2010, Chokaa Settlement Self Help Group was formed in 2004 while the water supply invoices were dated 13th February 2004. He stated that none of the documents placed before the court was issued prior to 1997 when the title of the suit property was issued.
39. He stated that he was born on the suit property where he lived until 1973 when he moved briefly to the USA. On his return from the USA in 1977, he lived on the suit property until 1980 when he moved out to live elsewhere in Nairobi. He stated that he left his uncle on the property and that his uncle cultivated the suit property until 1996. He stated the deceased had no staff quarters on the suit property. He stated that the deceased’s workers used to come in the morning and would return to their homes in the evening.
40. He stated that the squatters moved into the suit property in 2002 and by 2005 there were a few of them on the property. He stated that the squatters who entered the property in 2002 were the ones who were sued by the Kents in ELC No. 795 of 2007 (formerly HCC No. 1505 of 2002) and against whom an eviction order was issued in 2003. He stated that the other squatters who were on the property in 2005 came in in 2004. He stated that in 2009 he sought the eviction of the additional squatters and when the eviction order was served upon them, they asked the then area MP Hon. Ferdinand Waititu to intervene and come up with a way through which they could purchase the suit property.
41. He stated that the squatters appointed a group of 4 people including Hon. Waititu to represent them and to negotiate on their behalf for the purchase of the suit property. Through these representatives, a purchase price of Kshs. 85,000,000/- was agreed upon and a sale agreement was drawn up. The agreement was produced in evidence as part of PEXH.3. PW1 stated that the squatters paid part



- of the deposit in the sum of Kshs. 7.5 million. He stated that they did not pay the balance of the deposit neither did they make any other payment for the property and as such the agreement was not completed.
42. PW1 stated the defendants and the interested parties in ELC No. 795 of 2007 and the plaintiffs in ELC No. 615 of 2010 had no genuine claim over the suit property. He urged the court to allow the claim in ELC No. 795 of 2007 and to dismiss the plaintiffs' claim in ELC No. 615 of 2007.
 43. In cross-examination by Mr. Burugu, he stated that when Link purchased the suit property from the Kents on June 19, 2006, it was aware that the same was occupied by squatters a fact that was captured in clause 4 of the agreement between them. He stated that Link paid the full purchase price for the suit property to the Kents and that the Kents no longer had any interest in the property. He stated that the Kents had executed a transfer of the property in favour of Links.
 44. In cross-examination by Mr. Fraser SC, he stated that the suit property was a subdivision of a hitherto larger parcel of land known as L.R No. 11531/4/4. He stated that the title for the suit property was issued on March 5, 1997. He stated that they had a home on the suit property where he was born and lived which home was demolished by the squatters a round 2008. He stated that the activities on the suit property ceased after the death of his father (the deceased) and the services of the workers were terminated. He stated that by 2006 there was a substantial number of squatters on the property. He stated that initially, there were only temporary structures on the property and that permanent buildings were put up later. PW1 admitted that the Grant in respect of the estate of the deceased had not been registered against the title of the suit property and that the transfer in favour of Link was neither dated nor stamped.
 45. PW1 stated that KPLC entered the property in 2004 before Link purchased the property. He stated that Link would have earned a profit of Kshs. 280 Million in 2010 based on the project proposal that Link had prepared. PW1 stated that in its proposal, Link had not factored in the costs of land and finance. He stated that Link was going to give land as its contribution to the project and was also going to advance a loan of Kshs. 100,000,000/- for the project. He admitted that Link had a share capital of Kshs. 100,000/- only.
 46. In cross-examination by Mr. Gatheru, PW1 stated that the land in dispute was Plot No. 11531/8(the suit property). He stated that the adjacent parcel of land which was Plot No. 11531/14 had been sold. He stated that the initial defendants who were sued in ELC No. 795 of 2007 were all evicted. He stated that as at 2004, only the 4 defendants in that suit were in occupation of the property in dispute. He stated further that he was aware that the property was fully occupied and that access roads had been constructed and residents connected to electricity. He stated that he was involved in the negotiations with the interested parties that was initiated by Hon. Waititu through which Link agreed to sell the property to the interested parties. He admitted that the interested parties paid Kshs. 7.5 Million to Link through Link's advocates as part of the agreed deposit but failed to pay the balance. He stated that Hon. Waititu was one of the purchasers of the property and was a party to the agreement for sale.
 47. He stated that the persons with whom Link entered into the said agreement were appointed by the interested parties to represent them. He reiterated that Link purchased the property from the Kents and paid the full purchase price. He stated that the purchase price was Kshs. 8,565,721/50. He stated that Link was yet to pay stamp duty on the transfer and had not been registered as the owner of the property because of the Caveats that had been registered against the title by the interested parties. PW1 stated that he relinquished his interest in the other properties of the estate of the deceased in exchange for the suit property and as such the sum of Kshs. 8,565,721/50 that he paid for the suit property was not its market value. He stated that Link agreed to sell the property to the interested parties at Kshs.



- 85,000,000/- which the interested parties failed to pay. He stated that due to non-payment of the agreed purchase price, Link was not willing to transfer the property to the interested parties. He reiterated that Link having paid the full purchase price had a beneficial interest in the property. He stated that the Kents were not complaining that they had not been paid the purchase price for the property. He stated that Link bought the property with the knowledge that it was occupied on the basis of the eviction orders that the Kents had obtained against those who were in occupation. He stated that the property was to be sold to Chokaa Residents who were to pay Kshs. 85,000,000/- of which they only paid Kshs. 7.5 Million as a deposit which was supposed to be Kshs. 8.5 Million.
48. The plaintiffs' last witness was Nishi Ranbir Kentalias Nidhi (PW2) who gave evidence on her own behalf and on behalf of her co-administrator of the estate of the deceased. PW2 told the court that she was one of the plaintiffs in ELC No. 795 of 2007 and a defendant in ELC No. 615 of 2010. PW2 stated that they brought ELC No. 795 of 2007 in their capacity as the administrators of the estate of the deceased. She adopted her witness statement filed in court on November 6, 2019 as part of her evidence in chief and the documents attached thereto as PEXH.5, PEXH.6 and PEXH.7 respectively.
49. In cross-examination by Mr. Nyiha for Link, PW2 stated that in 2002 they filed a suit against those who were in occupation of the suit properties (HCCC No. 1502 of 2002 now ELC No. 795 of 2007). She stated that in addition to the people who were actually sued, there may have been other people on the properties whose identities they did not know. She stated that when they filed the suit, there were only 4 people on the suit properties who were former employees of the deceased. She stated that if there were other people on the suit properties, they did not know them.
50. PW2 stated that they obtained eviction orders against the 4 occupants of the suit properties but they did not evict them because they (the Kents) sold Plot No. 11531/8 (the suit property) to Rajesh Kent (PW1) who purchased the same through Link Properties Limited(Link). He stated that PW1 paid the purchase price in full and they executed a transfer of the suit property in favour of Link and gave it the original certificate of title. PW2 stated that it was the duty of Link to remove the squatters who were in occupation of the property.
51. In cross-examination by Mr. Gathemia for the interested parties in ELC No. 795 of 2007 and plaintiffs in ELC No. 615 of 2010, PW2 stated that when they sold the suit property, the same was occupied by 4 people known to them and others they may not have known. PW2 denied that there were several people in occupation of the suit property at the material time. PW2 stated that since then the suit property had been fully occupied by squatters. PW2 stated that they wanted the occupants of the suit property evicted and vacant possession handed over to Link.
52. PW2 stated that she was not aware that Link had sold the suit property and was paid Kshs. 7,500,000/- as a deposit. She stated that those occupying the suit property were doing so illegally. She stated that the 4 initial occupants of the suit property were their deceased's father's employees and were permitted to occupy the property temporarily after the death of the deceased until they could get alternative land. She reiterated that when they filed ELC No. 795 of 2007, there were only 4 people in occupation of the property.
53. She stated that they were pursuing ELC No. 795 of 2007 because they wanted to transfer the property to Link. She denied that the transaction with Link was meant to mislead the court. She stated that she was not aware of the suit that Link had filed against KPLC. PW2 stated that she was aware of the adverse possession claim against them and that they had not responded to the claim by filing a replying affidavit. PW2 denied that the deceased had put up workers' houses on the suit property. She denied further that the deceased had settled his workers on the property.



54. In examination by the court, PW2 stated that when they filed ELC No. 795 of 2007, there was no member of their family that was in occupation of the suit property. She stated that the property was occupied by the 4 people whom they sued. She stated that the 4 were supposed to look after the property. PW2 stated that they noted that as days went by more and more people entered the property and that was when they decided to file a suit. She stated that as at 1997 when the deceased died, he was not in occupation of the suit property. He stated that the property was being used as a farm and that by the time of the death of the deceased, there were no squatters on the property.
55. The defendant (KPLC) in ELC No. 114 of 2010, called Michael Oluoch(DW1) as its sole witness. DW1 adopted his witness statement dated 2nd September 2015 filed in court on 4th September 2015 as his evidence in chief. DW1 produced the documents in KPLC's bundle of documents as DEXH.1 and DEXH.2. In cross-examination by Mr. Gathemia, DW1 stated that the plan that he produced in evidence as DEXH.1 showed houses on the property in dispute and the infrastructure on the ground. He stated that he visited the property between 2008 and 2010 when electricity supply requisition was made. He stated that the numbers on the plan were plot numbers that were given by the representatives of the occupants of the suit property.
56. In cross-examination by Mr. Nyiha for Links, DW1 stated that KPLC carried out a survey on the suit property in 2007. He stated further that he had not seen an official subdivision plan for the property and reiterated that the numbers given in their plan were given to them by the community leaders. He stated that the occupants of the suit property told them that the property had been given to them by the owner thereof as a gift.
57. DW1 stated that it was not their practice to investigate titles in all circumstances. He stated that they had individual applications for electricity connection and community applications. He stated that the application that was made by the occupants of the suit property was treated as community application. He stated that KPLC connected the residents on the suit property with electricity between 2010 and 2015 and the houses connected were between 1500 and 2000.
58. The interested parties in ELC No. 795 of 2007 who are also the plaintiffs in ELC No. 615 of 2010 called Simon Chege Ruku(DW2) as their first witness. DW2 adopted his witness statement filed in ELC No. 615 of 2010(O.S) as part of his evidence in chief. He told the court that he was born on 13th October 1969 on Plot No. 11531/8(the suit property). His parents were staying on the suit property at the material time. He was the chairman of Chokaa Ruai Settlement Self Help Group (the group). The group comprised of the residents of the suit property who were about 2400 in number.
59. He stated that members of the group were those who had occupied the suit property for a long time or those whose parents were occupants of the property. He stated that outsiders who had purchased land from the residents could also join the group. He stated that the group was registered in 2003 and that they were 9 officials. He stated that the group looked after the welfare of the members and that each member had his own parcel of land. He stated that the defendants in ELC No. 795 of 2007 were not members of the group and had never owned any part of the suit property.
60. DW2 stated that they surveyed the suit property and had a proposed subdivision scheme that was yet to be registered. He stated that their claim was in respect of Plot No. 11531/8(the suit property). He stated that the property had no quarry on it. He stated that the Kents obtained eviction orders in ELC No. 795 of 2007 that were served upon them but they were not evicted. He stated that when the eviction orders were issued the occupants of the suit property were about 1200.
61. He stated that they complained to the area MP Hon. Waititu about the threatened eviction by Rajesh Kent(PW1). He stated that the group's committee engaged in discussions over the matter that involved



- PW1, Hon. Waititu and the Provincial Administration. He stated that the group maintained during the discussions that they were not parties to the suit in which the eviction orders had been issued but their sentiments were ignored.
62. He stated that PW1 told the group that he had purchased the property from his sisters (the Kents) at Kshs. 8,500,000/- and that he wanted to be refunded this amount. He stated that the committee informed the members of the group of this demand and the group managed to raise Kshs. 7,700,000/- of which they paid to PW1 through his advocate Mr. Okeyo Kshs. 7,500,000/- and were issued with a receipt on 1st October 2009. DW2 referred the court to the group's statement of account and the receipt that formed part of their exhibits.
 63. DW2 stated that the said sum of Kshs. 7,500,000/- which they paid as part of the deposit for the purchase of the suit property was never refunded to the group. He stated that the said payment was made pursuant to an agreement that the group entered into with PW1. He stated that the said payment left a balance of Kshs. 1,000,000/- to be paid by the group to PW1. He stated that the sum of Kshs. 8,500,000/- that they had agreed to pay to PW1 was a refund of a similar amount that PW1 had paid to the Kents for the suit property.
 64. He stated that the draft agreement that was produced in evidence did not capture the terms of the agreement that the group entered into with PW1. He stated that the group was not a party to the said agreement. He admitted however that George Muhoro Wanderi and Lucy Wambui Gateri were members of the group and the group's committee. He stated that there was no indication in the agreement that the purchasers of the property would hold the same for the group.
 65. DW2 stated that the members of the group disagreed on the participation of Hon. Waititu who was not a member of the group in the purchase of the property. He stated further that the group was negotiating with PW1 directly and not with Link since Link did not own the property. DW2 stated that the group was claiming the property by adverse possession in ELC No. 615 of 2010. He stated that the group had not entered into any agreement with PW1, Link or the Kents in relation to the property. DW2 stated that the suit property was known as Chokaa and that the same was 95% occupied. He stated that the buildings put up on the property were of a permanent nature. He referred the court to the photographs in their exhibits. He stated that the buildings on the property included schools, a mosque and several churches. He stated that the property was served with well graded murrum access roads, water and electricity. DW2 stated that the rates payable for the property had accumulated to over Kshs. 100,000,000/-.
 66. DW2 stated that their claim in ELC No. 615 of 2010 was not defended as no replying affidavit had been filed. He urged the court to dismiss ELC No. 795 of 2007 and ELC No. 114 of 2010 and to allow their prayers in ELC No. 615 of 2010. DW2 produced a bundle of documents filed by them in ELC No. 615 of 2010 on October 21, 2015 as DEXH.3.
 67. In cross-examination by Mr. Fraser, DW2 stated that he was born on the suit property in 1969 and that construction of roads on the suit property started in 2005. He stated that water was also connected to the property in 2005 and that when KPLC surveyed the property in 2007 there were about 2000 occupants of the property. In cross-examination by Mr. Burugu, DW2 stated that his father was employed by the deceased as a gardener although he had no document to substantiate that fact. He stated that his father was occupying the property with the permission of the deceased since he was an employee. He stated that when the deceased died in 1997 his father who was deceased was still alive and was occupying the property with the permission of the deceased. He stated that the deceased had other employees numbering about 500 who were all residing on the property with the permission of the deceased. He stated that he did not know all the employees of the deceased.



68. In cross-examination by Mr. Nyiha, DW2 stated that he was born on 13th September 1969 and went to a Primary School at Mwiki. He stated that he completed class 7 in 2004 and joined Athi River Secondary School where he did Form 4 in 2008. He stated that he came from Muranga but had never lived in Muranga the same with his parents although they had a farm there. He stated that his father died in 2006 and was buried in Muranga and that as at the time of his death, both were residing on the suit property. He stated that his mother who was 61 years old was born in 1958 while his father was born in 1943.
69. DW2 stated that the deceased had put up houses for his farm workers who were occupying single rooms. He stated that there were no schools, churches or mosques on the suit property during the lifetime of the deceased. He stated that the Catholic Church was put up around 2005/2006 while the mosque was constructed in 2008. He stated that ELC No. 615 of 2010 was filed on 9th December 2010 and that he was one of those who swore the affidavit in support of the same. PW2 admitted that in the affidavit in support of the Originating Summons filed in ELC No. 615 of 2010, they had stated what was on the suit property when the suit was filed and that the authority that was given to them to file the suit was signed by 130 people only. DW2 admitted further that in the list of 2294 people which they claimed to be members of the group they had not indicated the parcels of land occupied by some of them. He also admitted that there were some instances where plots were indicated but without the names of the owners.
70. DW2 stated that they engaged a surveyor who subdivided the property and gave numbers to the subdivisions. He stated that this was done in 2008/2009. He stated that those in the list of members of the group were in occupation when the survey was done. He stated that water was connected to the property in 2000. He stated that they followed due process in applying for electricity and that they were paying for the electricity consumed. He stated that it would be unfair to grant the reliefs sought by Link against KPLC.
71. The next witness for the interested parties in ELC No. 795 of 2007 and ELC No. 141 of 2010 and the plaintiffs in ELC No. 615 of 2010 was John Mutungi Kanyithia(DW3). DW3 adopted his witness statement dated October 21, 2015 as part of his evidence in chief. He told the court that he was an employee of the deceased together with his father and that they used to live on the suit property on structures made of iron sheets. He stated that he was brought up on the suit property and used to be paid a salary of Kshs. 1,500/-. He stated that even after the death of the deceased, they continued in occupation of the suit property since their services had not been terminated and they had not been paid their dues.
72. DW3 stated that as at the time of the death of the deceased, the deceased had about 100 employees some of whom were staying on the suit property while the others were staying outside the premises. He stated that this number used to increase during harvesting. He stated that there was a quarry on a portion of the suit property but they were not engaged in the mining of stones. He stated that the suit property was fully occupied and that there were between 1000 to 2000 residents who were served with roads, schools, mosques, churches and health facilities.
73. In cross-examination by Ms. Obwangi, DW3 stated that he entered the suit property prior to 1960. In cross-examination by Mr. Nyiha, DW3 stated that he was unable to state exactly when he started working on the suit property for the deceased. He stated that he was born in 1951 although his Identity Card bears 1960 as his year of birth. He stated that he was employed as a watchman on the property. He stated that he was neither issued with a letter of employment or a pay slip.
74. DW3 stated that he worked for 3 years before the deceased went abroad in 1974 and did not come back. He stated that he was occupying a temporary house on land measuring 20 feet by 20 feet. He



- stated that he had children who were also residing on the suit property. He stated that he could not remember the names of the people who were employed by the deceased. He stated that many had died.
75. Joseph Ndirangu Kirumba(DW4) was the next witness for the interested parties in ELC No. 795 of 2007 and ELC No. 141 of 2010, and plaintiffs in ELC No. 615 of 2010. DW4 stated that the deceased was known to him as he was his employer. He stated that he worked for the deceased as a lorry driver and was being paid Kshs. 1,800/-. He stated that he was employed in 1969 and worked until the death of the deceased. He stated that he was staying on the suit property together with his father who was also employed by the deceased. He stated that he could not remember the reference number of the land on which they were staying.
76. He stated that the land had no quarry and that the quarry was in a neighbouring parcel of land that also belonged to the deceased. He stated that there was an order seeking their eviction but they were not evicted and instead they were asked to pay Kshs. 10,000/- for the land. He stated that the owner of the land wanted Kshs. 8,500,000/- and they managed to pay Kshs. 7,500,000/-. He stated that he paid for the land that he was occupying and that the payment had not been refunded.
77. In cross examination by Ms. Obwangi DW4 stated that he was born in 1950 and was employed in 1969. In cross-examination by Mr. Nyiha, DW4 stated that he got his driver's license in 1983 and that he was a driver from 1985 until the deceased died. He stated that he could not remember the number of lorries that were owned by the deceased. He stated that he worked with a number of assistants but could not remember their names.
78. He stated that when he was employed there were about 1500 on the property. He stated that that figure was given to him by one of his bosses whose name he could not remember. He stated that his work on the suit property continued after the death of the deceased and that he worked on the property until 2001 as a driver.

The submissions:

79. After the close of evidence, the parties made submissions in writing. Link filed submissions dated June 7, 2021. In respect of ELC No. 114 of 2010, Link framed the following as the issues arising for determination; whether Link was a beneficial owner of the property, whether KPLC's action of laying electricity cables over the property and connecting electricity to the occupants of the property without authority from Link amounted to trespass, whether Link was entitled to damages and if so, how much and, who should bear the costs of the suit?
80. With regard to ELC No. 795 of 2007, Link framed one issue for determination namely; whether the orders sought by the plaintiffs in that suit should also include Link. With regard to ELC No. 615 of 2010, Link framed the following issues for determination by the court namely; whether it was open for the plaintiffs in that suit to bring a claim for adverse possession by way of a representative suit, whether each of the plaintiffs in that suit proved the essential elements required for an action for adverse possession, whether the plaintiffs entered into an agreement to purchase the property from Link and if so, what was the effect of such agreement on a claim for adverse possession?
81. In its submissions in ELC No. 114 of 2010, Link submitted that it proved at the trial that it purchased the property from the Kents. Link submitted that it produced in evidence copies of the agreement between it and the Kents and an instrument of transfer that was executed in its favour by the Kents. Link cited among others Black's Law Dictionary for the definition of "a beneficial owner".
82. In the portion of Black's Law Dictionary, cited by Link, a beneficial owner is defined as follows "One recognized in equity as the owner of something because use and title belong to that person, even though



legal title may belong to someone else esp. one for whom property is held in trust”. Link also cited *Granton Daudi Woresha v Michael Mwoki Kilonzo*[2018]eKLR where it was held that a person who has paid for land, obtained original documents in respect thereof but for some reason has not been registered as the owner thereof is a beneficial owner of the land and can maintain an action against third parties. Link submitted that it was a beneficial owner of the property and as such had legal standing to institute an action against KPLC for trespass.

83. On whether KPLC trespassed on the property, Link submitted that section 46 of the *Energy Act*, 2012 prohibited KPLC from entering into private land for the purposes of laying or connecting electricity supply line or carrying out any survey of the land for the purposes of laying or connecting an electricity supply line without the consent of the owner of the land. Link submitted that the prohibition remains even where the owner of the land in question cannot be found.
84. Link submitted that the provisions of the *Energy Act* 2019 which provides for advertisement of KPLC’s intention to enter land where the owner cannot be found and for consent not to be unreasonably withheld by the land owner were not in force when the cause of action herein arose. Link submitted that KPLC did not dispute the fact that it entered the suit property without the consent of Link and the Kents who were the administrators of the estate of the deceased and laid electricity supply lines and connected the occupants with electricity. Link submitted that the acts of KPLC aforesaid were illegal and amounted to trespass on the property.
85. On whether it was entitled to damages, Link submitted that it placed before the court evidence of the project it intended to undertake on the suit property which failed to take off as a result of KPLC’s acts of trespass complained of. Link submitted that the income of Kshs. 280,000,000/- that was projected to be earned by it from the project was not speculative. Link submitted that the property measured 57 acres and that the project was feasible in view of the house demand in the area. Link submitted that it had the capacity to undertake the project and was only prevented from doing so as a result of KPLC’s aforesaid acts of trespass.
86. Link submitted that the illegal acts by KPLC legitimised an already illegal occupation of the suit property by the interested parties. Link submitted that the interested parties who had no titles to the suit property could not have continued with occupation of the same if they had not been supplied with electricity by KPLC. Link submitted that the acts by KPLC was linked directly to the interested parties’ refusal to vacate the property. Link submitted that KPLC was liable to compensate it for the losses incurred due to the illegal acts complained of.
87. On the issue of costs, Link submitted that it had demonstrated that KPLC acted illegally in entering the property and laying electricity supply lines. Link submitted that KPLC should be condemned to pay the costs of the suit.
88. With regard to ELC No. 795 of 2007, Link submitted that the reliefs sought by the Kents who are the plaintiffs therein should be extended to the interested parties who were not in occupation of the property when the suit was filed but brought themselves to the suit by seeking to be joined and were duly joined in the suit as defendants through an order made on December 15, 2010. Link submitted that the orders of eviction sought by the Kents should issue against the interested parties.
89. With regard to ELC No. 615 of 2010, Link submitted that an adverse possession claim cannot be brought by way of a representative suit. Link submitted that this suit was brought by the plaintiffs therein on their own behalf and on behalf of the residents of Chokaa Ruai some of whose names were set out in the list that was filed together with the Originating Summons. Link submitted that the said list contained names of 131 people whose interest in the suit property was not disclosed. Link



- submitted that there was also no indication as to when each of the 131 persons started occupying the property.
90. Link cited Section 13 of the *Limitation of Actions Act*, Chapter 22 Laws of Kenya and the cases of *Mombasa Teachers Co-operative Savings & Credit Society Limited v Robert Muhambi Katana & 15 others* [2018] eKLR and *Nancy J. Houghton & others v Linda Jean Johnson, trustee, 71 Mass App Ct. 825* and submitted that a right to adverse possession is an individual right that accrues to the person who claims land by adverse possession. Link submitted that in a situation where several people are claiming different portions of a property like in the present case, each must prove his right to the portion of the property being claimed by adverse possession.
 91. Link submitted that each claimant had to prove among others; that he made physical entry and was in actual possession of the land being claimed for the statutory period, the entry and occupation were being maintained under some claim or colour of right, the occupation was not with the permission of the owner of the land, the possession was continuous and uninterrupted for the statutory period and the occupation is of a defined or identifiable portion of the property.
 92. Link submitted that all the persons who gave evidence on behalf of the plaintiffs in ELC No. 615 of 2010 testified that they entered the suit property and occupied the same with the permission of the deceased who had employed them. Link submitted that this was consistent with the evidence of PW2 who told the court that after the death of the deceased, employees who were in occupation of the suit property were permitted to remain on the property as they looked for alternative places to move. Link submitted that the said employees remained in occupation of the property with the permission of the Kents until the permission was revoked when the Kents filed ELC No. 795 of 2007 in 2002. Link submitted that the plaintiffs failed to prove each of the foregoing elements required for a claim of adverse possession to succeed. Link submitted that time could start running for the purposes of limitation of actions only after the permission to occupy was revoked which in this case was in 2002. Link submitted that since ELC No. 615 of 2010 for adverse possession was filed on December 9, 2010, none of the plaintiffs had occupied the property for the statutory period.
 93. Link submitted that the plaintiffs had sought a general order that they had become proprietors of the suit property by way of adverse possession. Link submitted that the plaintiffs submitted to court a list containing 2500 names of people that they claimed to be residing on the suit property. Link submitted that against some names were plot numbers while many had no plot numbers. Link submitted that those in the list against whom there were no plot numbers were not in occupation of the suit property. Link submitted that there were also a number of plots with no named owners.
 94. Link submitted that the plaintiffs could not claim the whole of the suit property while they did not occupy the entire property. Link cited *Kweyu v Omutut* [1990] eKLR and *Gabriel Mbui v Mukindia Manyara* [1993] eKLR and submitted that the plaintiffs had failed to discharge the burden of proof of adverse possession claim.
 95. Link submitted further that the agreement that was entered into between the plaintiffs in ELC No. 615 of 2010 and Link to purchase the suit property and the payment of a deposit of Kshs. 7,500,000/- on October 1, 2009 as part of the purchase price rendered the plaintiff's adverse possession unmaintainable since that agreement and payment interrupted the period of occupation of the property by the plaintiffs without the permission of the proprietor. Link submitted that an adverse possession claim cannot co-exist with a claim based on purchaser's interest.
 96. In conclusion, Link urged the court to dismiss ELC No. 615 of 2010 and to allow the claims in ELC No. 795 of 2007 and ELC No. 114 of 2010.



97. The Kents filed their submissions dated June 30, 2021 in which they to a large extent adopted the submissions by Link. It is not necessary to reproduce the entire submissions here. The Kents submitted that they had proved their case against the defendants in ELC No. 795 of 2007 and urged the court to enter judgment in their favour against all the defendants therein and the interested parties. On the other hand, they submitted that the adverse possession claim brought against them in ELC No. 615 of 2010 was not proved and urged the court to dismiss the same.
98. KPLC filed submissions dated 28th June 2021. KPLC submitted that ELC No. 795 of 2007 was being prosecuted by the Kents on the basis that the estate of the deceased Ranbir Kent was the registered owner of the suit property. KPLC submitted that it was a contradiction that the Kents were claiming vacant possession of the property while Link was claiming damages from KPLC for trespass on the same property as the beneficial owner.
99. KPLC submitted that Link had no right to institute ELC No. 114 of 2010 against KPLC. KPLC submitted that the transfer in favour of Link had neither been stamped nor registered. KPLC submitted that even the Grant of Probate in respect of the estate of the deceased had not been registered against the title of the suit property. KPLC submitted that there was nothing stopping Link from registering the transfer in its favour from 2006 when it was executed until 2010 when an order of status quo was issued. KPLC submitted that Link failed to register the transfer out of choice since there was no Caveat registered against the title of the property by squatters as it claimed.
100. KPLC submitted that under Section 23(1) of the *Registration of Titles Act*, Chapter 281 Laws of Kenya (now repealed) under which the suit property was registered, a certificate of title is conclusive evidence that the person named in the certificate is the absolute and indefeasible owner of the property. KPLC submitted that under Section 32(1) of the same Act, unregistered instrument cannot pass land or any interest in land.
101. KPLC submitted that the Kents as the administrators of the estate of the deceased remained the owners of the suit property since the unregistered transfer did not pass any interest in the property to Link. KPLC submitted that the authority cited by Link on the definition of a beneficial owner was not produced and differed from the definition of the term in *Black's Law Dictionary*, 6th Edition which defines beneficial owner as "one who enjoys ownership of the trust or estate in equity, but not legal title which remains in the trustee or personal representative. Equitable as contrasted with legal owner." KPLC distinguished *Granton Daudi Woresha v Michael Mwoki* (*supra*) and submitted that the same was not applicable as it involved a purchaser of land enforcing his rights against the legal representatives of the estate of the deceased vendor. KPLC submitted that only a legal owner of a property can bring an action for trespass against a third party.
102. In support of this submission, KPLC cited *The Law of Real Property* by Meggery and Wade 5th Edition and *Halsbury's Laws of England*, 5th Edition (2019) Volume 98 paragraph 497. KPLC submitted that it is only where a trustee refuses to bring a claim that a beneficiary can sue and even in that case, the trustee must be joined in the suit as a co-defendant.
103. In further support of its submissions on the issue, KPLC also cited *Joseph Hayim Hayim v Citybank NA* [1987]AC 730 where the court held that a beneficiary has no cause of action against a third party save in special circumstances where there is a failure on the part of trustees to protect the trust estate or to protect the interest of the beneficiary in the trust estate. That decision was adopted in *Lawrence Gachau Kibu v Mary Wangui Maina and Kibu Maina* [2014]eKLR that was also cited by KPLC.
104. KPLC submitted that Link had no locus standi to bring a suit against KPLC for the alleged trespass. KPLC submitted that there was nothing preventing the Kents as the administrators of the estate of the



- deceased from bringing proceedings against KPLC as they had done in ELC No. 795 of 2007. KPLC submitted that since the deceased remained the registered owner of the suit property any proceedings touching on the same must be brought by his estate and not by Link. KPLC posited that failure on the part of Link to register the Grant of Probate in respect of the estate of the deceased against the title of the suit property and the instrument of transfer in its favour was to avoid incurring expenses relating to Stamp Duty and land rent and rates due on the property. KPLC submitted that the court should not come to the aid of a party with an equitable interest in a property when he is avoiding legal obligations that go with ownership. KPLC submitted that Link's claim should be dismissed for lack of locus standi to sue.
105. KPLC submitted further that the Electric Power Act, Chapter 314 Laws of Kenya referred to by Link in its submissions was repealed by the Electric Power Act 1997 and that Electric Power Act 1997 was in force between January 9, 1998 to July 7, 2007 when it was repealed by the [Energy Act](#) 2006. KPLC submitted that the statute that was in force when the request for supply of electricity to the suit property was made was the Electric Power Act 1997.
 106. KPLC submitted that under Section 28(1) of the *Electric Power Act* 1997, KPLC had an obligation to supply electricity to any owner of premises situated within 200 metres from any distributing main operating at low or medium pressure. KPLC submitted that DEXH.1 shows that there was an existing electricity line on the opposite side of the road from the suit property and as such the statutory obligation on KPLC applied.
 107. KPLC submitted that under the Electric Power Act 1997 either the owner or occupier of a property could seek supply of electricity. KPLC submitted that it was obliged to supply electricity to the occupiers of the suit property. KPLC submitted that that obligation was not subject to Link's consent. KPLC submitted that although Section 46 of the said Act required notice to be served upon the owner of land before an electric supply line is constructed on the land of a third party, such notice was not required where the supply line was over the same land that was being supplied with electricity. KPLC submitted that the legal position would remain the same even if the applicable law was the [Energy Act](#) 2006. In this regard, KPLC referred the court to Sections 46 and 57 of the said Act.
 108. KPLC cited Black's Law Dictionary 6th Edition on the definition of "owner" and submitted that owner includes one having possessory right to land or the person occupying or cultivating it. KPLC submitted that as at 2007, the property was registered in the name of the deceased who had died 10 years earlier on August 14, 1997. KPLC submitted that the Kents who were the administrators of the estate of the deceased did not bother to have the suit property transferred to their names. KPLC submitted that it would not have been expected to carry out investigations to trace the deceased who had died 10 years earlier or the administrators of his estate. KPLC submitted that there was nothing in the register of the suit property that could have directed it to Link. KPLC submitted that this may explain why under the Electric Power Act 2007 and the [Energy Act](#) 2006, KPLC was not required to go in search of an owner of land where land was adjacent to a distribution line.
 109. KPLC submitted that the evidence on record shows that the suit property was occupied by squatters when the same was purchased by Link and at the time that KPLC laid power supply lines thereon. KPLC submitted that since the squatters were the ones in possession of the property, they were entitled to give permission that was required by KPLC. KPLC submitted that it was not required to obtain any other permission other than that which it obtained from the squatters.
 110. On the issue of damages, KPLC submitted that there was no basis for Link's submission that the supply of electricity to the property attracted a large number of squatters to the property. KPLC submitted that there was already a substantial number of squatters on the suit property prior to Link's purchase



- of the same and the installation of power lines. KPLC submitted that prior to the supply of the suit property with electricity, water was already connected to the premises meaning that the property was already occupied by several people.
111. KPLC termed Link's Project Proposal of August 2007 a strange document. KPLC submitted that the document was not signed by the maker. KPLC submitted further that the document proposed extensive development on the suit property but made no reference to the squatters who were in possession. KPLC wondered how a consultant could make a proposal for a project on the property without taking into account the existence of the squatters who had to be removed before the project that had timelines could start. KPLC submitted further that although it was proposed that the project would commence with a loan of Kshs. 100,000,000/- there was no provision for finance costs. KPLC submitted further that there was also no provision for the suit property being transferred to Link or the cost of subdividing the property.
 112. KPLC submitted further that the provision for land acquisition is nil which means that it ignored the sum of Kshs. 8,565,721.50 which Link is said to have paid for the suit property. KPLC submitted that the proposal was superficial with many deficiencies and as such could not be a basis of proving the damages claimed. KPLC submitted that if there was any trespass on its part, the only damages that could be claimed would be the costs of removing the poles and electricity lines from the property in respect of which no evidence was tendered by Link. KPLC submitted that the only evidence of damage if Link could not recover land is the sum of Kshs. 8, 565,721.50 that it paid for the property.
 113. KPLC submitted that even if it had not supplied electricity to the property the evidence on record showed that there was already a substantial number of squatters on the property that Link had to remove before commencing any development on the property. KPLC submitted that it could not therefore be blamed for Link's inability to develop the suit property. KPLC urged the court to dismiss Link's suit with costs.
 114. The interested parties in ELC No. 114 of 2010 and ELC No. 795 of 2007 who are also the plaintiffs in ELC No. 615 of 2010(O.S) and those that they represent (hereinafter all referred to as "the squatters" for ease of reference only) filed their submissions dated July 12, 2021. The squatters submitted that they were the 1st, 2nd and 3rd generation residents of the suit property who had lived on the property as employees of the late Ranbir Krishen Kecharhand Kent (the deceased) from 1960s. The squatters submitted that they had openly, notoriously and uninterruptedly occupied and lived on the suit property with their families and had built homes and other premises for economic sustenance. The squatters submitted that Link purchased the suit property with knowledge that they were in possession thereof. They submitted further that since the instrument of transfer that was executed by the Kents in favour of Link was not registered, the same did not pass any interest in the suit property to Link.
 115. The squatters submitted further that PW1 and Link relinquished any right that they had in the suit property following an oral agreement for sale under which they sold to the squatters the property for Kshs. 8,560,721.50 of which the squatters paid Kshs. 7,500,000/-. The squatters submitted further that Link filed ELC No. 114 of 2010 to renege on the agreement for sale of the property that Link and PW1 had entered into with the squatters. The squatters submitted that Link and PW1 never rescinded the oral agreement of sale of the suit property with the squatters nor refunded to them the said sum of Kshs. 7,500,000/- that they paid for the property.
 116. The squatters submitted that the subsequent agreement for sale purportedly entered into between Link on one hand and Ferdinand Waititu, George Muhoro Wanderi and Lucy Wambui Gateri on the other hand under which the former purportedly sold to the latter the property at Kshs. 85,000,000/- was fatally defective. The squatters submitted that Link had no proprietary interest in the suit property the



- same having not been transferred to it. The squatters also took issue with the inclusion of Ferdinand Waititu and Lucy Wambui Gateri as purchasers of the suit property since they did not contribute the sum of Kshs. 7,500,000/- that was paid by the squatters as part payment for the property. The squatters submitted further that the said agreement was not on the terms that had been agreed upon between the squatters and PW1. The squatters submitted that the agreement by the parties was for a refund to PW1 of a sum of Kshs. 8,560,721.50. The squatters submitted further that they did not instruct the firm of Otieno Okeyo & Company Advocates to act for them in the transaction. Finally, they submitted that the agreement was neither dated nor executed by the parties thereto.
117. With regard to ELC No. 615 of 2010(O.S), the squatters submitted that the plaintiffs in the suit sought and obtained leave of the court to bring the suit on their own behalf and on behalf of other 2500 residents of Chokaa Ruai seeking to be registered as owners of the suit property by adverse possession in place of the administrators of the estate of the deceased (the Kents). The squatters submitted that they were put into possession of the suit property by the deceased and that their continued development and occupation of the property was acquiesced to by the Kents and allowed by PW1 through the oral agreement of sale that they entered into with PW1.
118. The squatters submitted that they had demonstrated that they had been in continuous possession of the property for a period exceeding 12 years and that such possession had been uninterrupted, open and notorious. The squatters submitted that they had asserted a hostile title to that of the deceased. The squatters submitted that neither the Kents nor Link filed any response to their claim. In support of their submission, the squatters cited *Maliamu Ncurubi M'ibiri v Francis M'imanyara M'ringera* [2011] eKLR, *Celina Muthoni Kithinji v Safiya Binti Swaleh & 8 others* [2018] eKLR and *Mtana Lewa v Kabindi Ngala Mwangandi* [2005] eKLR. The squatters submitted that they had satisfied the elements of adverse possession and as such were entitled to judgment as prayed.
119. With regard to ELC No. 795 of 2007, the squatters submitted that those who were sued as defendants in this suit were unknown to them and had never resided on the suit property. The squatters submitted that there was no evidence that the said defendants were served with summons. The squatters submitted that the Kents failed to amend their pleadings to join the squatters as parties to this suit. The squatters submitted that since they were only joined in this suit as interested parties and not as defendants, the reliefs sought therein could not issue against them. In support of this submission, the squatters cited *Isiolo County v Choke Construction Suppliers Co. Ltd. & 3 others* [2020] eKLR. The squatters submitted that they were not squatters on the suit property but were former employees of the deceased who had increased in number through procreation. The squatters submitted that the oral agreement that they entered into with PW1 for the purchase of the suit property did not have any effect on their adverse possession claim.
120. With regard to ELC No. 114 of 2010, the squatters submitted that that the suit was improperly before the court since Link which is the plaintiff in the suit had no interest in the suit property which was registered in the name of the deceased. The squatters submitted that their claim to the suit property was superior to that of Link. The squatters submitted further that under Section 21(1) of the Electric Power Act, Chapter 314 Laws of Kenya, KPL had a duty to supply electricity to the squatters. The squatters urged the court to find that they were entitled to the suit property by adverse possession.

Analysis of the parties' respective cases and determination of the issues arising:

121. The suits were consolidated for hearing together as they concerned the same property. In determining them however, I will consider ELC No. 795 of 2007 and ELC No. 615 of 2010(O.S) together and ELC No. 114 of 2010 separately. This is because ELC No. 795 of 2007 and ELC No. 615 of 2010(O.S) are



related. I am of the view that ELC No. 615 of 2010 is actually a response or a defence to ELC No. 795 of 2007. ELC No. 114 of 2010 on the other hand is a separate claim distinct from the two.

ELC No. 795 of 2007(formerly HCCC No. 1502 of 2002) and ELC No. 615 of 2010

122. At the beginning of this judgement, I have set out the reliefs sought by the claimants in these two suits. For reasons which are not clear from the record, the plaintiffs in ELC No. 795 of 2007(the Kents) who are the defendants in ELC No. 615 of 2010 (O.S) did not file a response or a replying affidavit to the Originating Summons for adverse possession in that suit. On their part, the plaintiffs in ELC No. 615 of 2010 (the squatters) who are defendants in ELC No. 795 of 2007 did not also file a defence to the claim by the Kents in that suit.
123. The squatters submitted at length and were at pains to explain to this court that they were not defendants in ELC No. 795 of 2007 and as such could not be subjected to the reliefs sought by the Kents in that suit. That position is not correct. As I mentioned earlier in the judgment, the squatters were joined in ELC No. 795 of 2007 as defendants on December 15, 2010 and even proceeded to file a defence and a counter-claim which was later expunged from the court record at their own request. As defendants in ELC No. 795 of 2007, the squatters are subject to the reliefs sought by the Kents against the defendants in that suit.
124. Since ELC No. 795 of 2007 and ELC No. 615 of 2010 are cross-claims, it makes sense to treat ELC No. 615 of 2010 as a defence to ELC No. 795 of 2007 and ELC No. 795 of 2007 as a defence to ELC No. 615 of 2010.
125. In my view, the issue arising for determination in ELC No. 795 of 2007 is; whether the squatters are trespassers on Plot No. 11531/8(the suit property) and should be evicted therefrom and condemned to pay the costs of the suit. On the other hand, the issues arising for determination in ELC No. 615 of 2010 (O.S) are; whether the squatters have acquired the property by adverse possession and as such should enjoy quiet possession thereof free from any interference by the Kents and should be registered as proprietors thereof in place of the Kents who are the administrators of the estate of the deceased, and whether the Kents should bear the costs of the suit.
126. I will deal with the foregoing issues in no particular order since I am considering the two suits together. I will deal first with the issue of adverse possession which I believe will determine the main issue in the two suits namely; whether the squatters are occupying the suit property as of right being the owners thereof or as trespassers.

Whether the squatters have established their adverse possession claim against the Kents:

127. In *Gabriel Mbui v Mukindia Maranya*[1993] eKLR, the court stated that a person claiming land by adverse possession must establish on a balance of probability the following elements;
1. The person claiming land by adverse possession must make physical entry and be in actual possession or occupancy of the land for the statutory period.
 2. The entry and occupation must be with, or maintained under, some claim or colour of right or title made in good faith by the stranger seeking to invoke the doctrine of adverse possession as against everyone else.
 3. The occupation of the land by the intruder who pleads adverse possession must be non-permissive use, i.e. without permission from the true owner of the land occupied.



4. The non-permissive actual possession hostile to the current owner must be unequivocally exclusive, and with the evinced unmistakable animus possidendi, that is to say occupation with clear intention of excluding the owner as well as other people.
 5. Acts of user by the person invoking the statute of limitation to found his title are not enough to take the soil out of the owner or his predecessors in title and to vest it in the encroacher or squatter, unless the acts be done which are inconsistent with the owner's enjoyment of the soil for the purpose for which he intended to use it.
 6. The possession by the person seeking to prove title by adverse possession must be visible, open and notorious, giving reasonable notice to the owner and the community of the exercise of dominion over the land.
 7. The possession must be continuous uninterrupted, unbroken for the necessary statutory period.
 8. The rightful owner or paper title holder against whom adverse possession is raised must have an effective right to make entry and to recover possession of the land throughout the whole of, and during, the statutory period.
 9. The rightful owner must know that he is ousted. He must be aware that he had been dispossessed, or he must have parted and intended to part with possession.
 10. The land, or portion of the land adversely possessed must be a definitely identified, defined or at least an identifiable portion, with a clear boundary or identification. The absence of a plot or title number need not present any difficulty, nor should it be a bar to establishing a claim of adverse possession.
128. In *Kimani Ruchine & Another v Swift, Rutherford Co. Ltd. & another* [1977] KLR 10 Kneller J. stated as follows at page 16:
- “The Plaintiffs have to prove that they have used this land which they claim as of right, necvi, nec clam, necplecario (no force, no secrecy, no evasion)The possession must be continuous. It must not be broken for any temporary purposes or by any endeavours to interrupt it or by any recurrent consideration.”
129. In *Wambugu v Njuguna* [1983] KLR 172 the court stated as follows:
- “First in order to acquire by the Statute of Limitations title to land which has a known owner, that owner must have lost his right to the land either by being dispossessed of it or by having discontinued his possession of it. Dispossession of the proprietor that defeats his title entails acts which are inconsistent with his enjoyment of the soil and for the purpose for which he intended to use it. The *Limitation of Actions Act* (Chapter 22) on adverse possession contemplated two concepts: dispossession and discontinuance of possession. The proper way of assessing proof of adverse possession would then 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 has been in possession for the requisite number of years.”
130. The burden was on the squatters to establish the elements of adverse possession set out above. It was not disputed that as at the time the squatters filed a suit against the Kents and during the hearing of the suit, the suit property was occupied. What was disputed were; whether the squatters who had



brought the suit were the ones in possession, the identification of the portions of the property that they occupied, the date of their entry, whether the entry and occupation was non permissive, the period of their occupation prior to filing suit and whether the occupation was continuous and uninterrupted.

131. ELC No. 615 of 2010 was brought by eight (8) plaintiffs (the squatters) on 9th December 2010. The squatters claimed to have brought the suit on their own behalf and in a representative capacity on behalf of “residents of Chokaa, Ruai” “some of whose names appear on the list filed alongside this plaint(sic)”. The squatters attached to the affidavit in support of the Originating Summons a list containing names of 131 people who were said to have given them authority to file the suit on their behalf.
132. On December 16, 2010, the eight plaintiffs (squatters) were granted leave to prosecute ELC No. 615 of 2010 on their own behalf and as representatives of “all the residents of Chokaa, Ruai, Nairobi”. In their affidavit in support of the Originating Summons, the squatters stated that the said residents of Chokaa, Ruai, Nairobi were over 2500. These are the people who were said to be occupying the suit property and on whose behalf the suit was brought.
133. At the trial, the squatters produced as part of DEXH.3 a list containing names of 2294 people (see pages 1 to 51 of the exhibit) who were said to be the residents of Chokaa, Ruai, Nairobi on whose behalf the adverse possession claim was brought. The list had several columns. The list was intended to capture, the name of the resident, his/her plot number, his/her identity card number, his/her phone number and development if any that he/she had done on the plot.
134. I have noted that several names on the list are repeated meaning that there are instances where one person is said to have several plots and his/her name appears repeatedly against each plot. Ignoring the repetition, my analysis of the list shows the following; at page 1 of DEXH.3, the names of 21 people had no plot numbers against them while none of the 24 plots on that page were developed; at page 2 of the exhibit, the names of 29 people had no plot numbers against them while none of the 18 plots on that page were developed; at page 3 of the exhibit, the names of 31 people had no plot numbers against them while none of the 16 plots on that page had been developed.
135. At page 4 of the exhibit, the names of 31 people had no plot numbers against them while none of the 16 plots on that page had been developed; at page 5 of the exhibit, the names of 26 people had no plot numbers against them while none of the 21 plots on that page had been developed; at page 6 of the exhibit, the names of 31 people had no plot numbers against them while none of the 16 plots on that page had been developed; at page 7 of the exhibit the names of 20 people had no plot numbers against them while none of the 27 plots on that page had been developed.
136. At page 8 of the exhibit, the names of 26 people had no plot numbers against them while none of the 21 plots on that page had been developed; at page 9 of the exhibit, the names of 26 people had no plot numbers against them while none of the 21 plots on that page had been developed; at page 9 of the exhibit, the names of 26 people had no plot numbers against them while none of the 21 plots on that page had been developed; at page 9 of the exhibit, the names of 26 people had no plot numbers against them while none of the 21 plots on that page had been developed; at page 10 of the exhibit, the names of 23 people had no plot numbers against them while none of the 24 plots on that page had been developed.
137. At page 11 of the exhibit, the names of 13 people had no plot numbers against them while none of the 34 plots on that page had been developed; at page 12 of the exhibit, the names of 24 people had no plot numbers against them while none of the 23 plots on that page had been developed; at page 13 of the exhibit, the names of 27 people had no plot numbers against them while none of the 20 plots on



- that page had been developed; at page 14 of the exhibit, the names of 26 people had no plot numbers against them while none of the 21 plots on that page had been developed.
138. At page 15 of the exhibit, the names of 21 people had no plot numbers against them while none of the 26 plots on that page had been developed; at page 16 of the exhibit, the names of 30 people had no plot numbers against them while none of the 17 plots on that page had been developed; at page 17 of the exhibit, the names of 9 people had no plot numbers against them while none of the 38 plots on that page had been developed. I also noted that on that page there were 10 numbers that had no names of people against them of which 7 had plots allocated to them;
139. At page 18 of the exhibit, none of the plots on that page had been developed. I also noted that on that page, 5 numbers had no names of people and 1 had a plot allocated to it; at page 19 of the exhibit, none of the plots had been developed. I also noted that 12 numbers had no names of people of which 10 had plots allocated to them. At page 18 of the exhibit, none of the plots on that page had been developed. I also noted on that page that 5 numbers had no names of people of which 1 had a plot allocated to it; at page 20 of the exhibit, none of the plots had been developed. I also noted that 14 numbers had no names of people 12 of which had plots allocated to them.
140. At page 21 of the exhibit, none of the plots had been developed. I also noted that 12 numbers had no names of people 11 of which had plots allocated to them; at page 22 of the exhibit, 30 people had no plot numbers against their names while none of the 17 plots on that page had been developed. I also noted that 14 numbers had no names of people; at page 23 of the exhibit, all the people had no plot numbers against their names and no plot had been developed. I also noted that 2 numbers had no names against them.
141. At page 24 of the exhibit, all the people named had no plot numbers against their names and none of the plots on that page had been developed. I also noted that 2 numbers had no names against them; at page 25 of the exhibit, all the people named had no plot numbers against their names and no plot on that page had been developed. I also noted that 1 number had no name against it; at page 26 of the exhibit, 3 people had no plot numbers against their names while 26 of the plots on that page were not developed. I also noted that 1 number had no name against it.
142. At page 27 of the exhibit, 32 of the plots on that page were not developed. I also noted that 10 numbers had no names against them of which 9 had plots allocated to them. At page 28 of the exhibit, 34 of the plots had not been developed. I also noted that 9 numbers had no names against them of which 7 had plots allocated to them; at page 29 of the exhibit, 23 of the plots had not been developed. I also noted that 11 numbers had no names against them of which 8 had plots allocated to them.
143. At page 30 of the exhibit, 9 of the plots had not been developed. I also noted that 10 numbers had no names against them of which 8 had plots allocated to them; at page 31 of the exhibit, 33 of the plots had not been developed. I also noted that 20 numbers had no names against them of which 18 had plots allocated to them; at page 32 of the exhibit, 25 of the plots had not been developed. I also noted that 10 numbers had no names against them of which 4 had plots allocated to them.
144. At page 33 of the exhibit, 14 of the plots had not been developed. I also noted that 9 numbers had no names against them of which 8 had plots allocated to them; at page 34 of the exhibit, 6 of the plots had not been developed. I also noted that 5 numbers had no names against them of which 3 had plots allocated to them; at page 35 of the exhibit, 35 of the plots had not been developed. I also noted that 10 numbers had no names against them of which 3 had plots allocated to them.
145. At page 36 of the exhibit, 13 people named had no plot numbers against their names while none of the 34 plots on that page had been developed. At pages 37, 38, 39 and 40 of the exhibit, 46 people named



had no plot numbers against their names and none of the plots had been developed. At page 41, 42, 43, 44, 45, 46, 47, 48, 49 and 50 of the exhibit, 47 people named on each page had no plot numbers against their names and none of the plots had been developed.

146. The list of Chokaa Ruai residents that was tendered in evidence by the squatters was not dated. It was however part of the bundle of documents that was filed in court by the squatters on October 21, 2015. It should therefore be taken as reflecting the squatters position as concerns possession and occupation of the suit property as at October 21, 2015. There is no doubt from what I have set out above that it is not possible to ascertain from the list where many of the squatters reside if they do on the suit property. A number of them have not been allocated plots on the suit property while some plots have been allocated to none existent persons. It is also worth noting that many of the plots had not been developed as at October 21, 2015 casting doubt on their occupation status as at December 9, 2010 when the adverse possession claim was brought to court. The list did not also indicate when each of the persons whose name appears in the list entered the property to enable the court determine whether or not the squatters had occupied the property for the statutory period prior to instituting the adverse possession claim.
147. As I have mentioned earlier, the burden of proof of adverse possession was on the squatters. I am not satisfied from the evidence on record that the squatters have discharged that burden. I am in agreement with the submission by Links that the procedure of a representative suit is not ideal for an adverse possession claim. The squatters assuming that they are all in possession of the suit property must have entered the property at different times and occupied specific portions thereof. Each of the squatters either by themselves or through their representatives in the suit had a duty to tell the court when each of them entered the property, the basis for such entry and the particular portion of the property occupied by each. Each squatter also had a duty to satisfy the court that the occupation of the property by each was open, continuous, uninterrupted and non-permissive.
148. From their pleadings, the evidence tendered in court and the closing submissions, the squatters made no attempt to satisfy the elements of an adverse possession claim. The squatters made generalised statements as concerns the date of their alleged entry into the suit property and occupation thereof. As submitted by Links, all the witnesses who gave evidence for the squatters claimed to have entered the property in 1960s as employees of the deceased Ranbir Krishen Keharchand Kent (the deceased). The squatters claimed that all the occupants of the property were either 1st, 2nd or 3rd generation of the first employees of the deceased.
149. The squatters did not tender any credible evidence showing that they or any of them were employees of the deceased. There was also no evidence tendered in court to prove that the alleged 2500 people in occupation of the suit property are related to each other by birth. The squatters led evidence that there were churches, mosques, hospitals, schools and a petrol station on the property. The existence of these institutions and a petrol station were not explained by the squatters. The court was not told whether the same belonged to the former employees of the deceased or not and when the same were put up.
150. The squatters whether they were employees of the deceased or the children of the employees must have occupied the property at a particular time. The squatters claimed to be consisting of three generations of employees of the deceased. A generation is about 25 to 30 years. The squatters must therefore have occupied the property within a span of between 50 to 60 years from the 1960s when the first generation of employees are alleged to have entered the suit property. The second generation should have occupied the land around 1985 and the third generation from about 2010. The squatters had a duty to tell the court who among the 2500 alleged occupants of the suit property entered in 1960s, 1980s and 2000s. In the absence of evidence as to when each of the squatters entered the property, the court is unable



to determine whether as at the time the squatters brought the adverse possession claim in 2010 each of them had occupied the property for 12 years.

151. Even if it is assumed that the squatters and their descendants were employees of the deceased which was not proved, they could not claim the property which they alleged to have occupied with the permission of the deceased by adverse possession. The deceased died on August 14, 1997. The Kents were appointed as the administrators of the estate of the deceased on December 9, 1997. There is no evidence that the Kents withdrew the permission that was allegedly given to the squatters by the deceased after the death of the deceased on August 14, 1997 until 2002 when they filed ELC No. 795 of 2010 (formerly HCCC No. 1502 of 2002) seeking to evict those who were in occupation of the property including the squatters.
152. It is from 2002 that the permission that was given to the squatters to occupy the property if any was withdrawn. That would be the date when the squatters' occupation of the property would have become adverse to the interest of the deceased. It follows therefore that for the purposes of limitation of actions, the time would not have started running from 1960s when the squatters are alleged to have occupied the property with the permission of the deceased as his employees but in 2002 when that permission was withdrawn by the administrators of the estate of the deceased.
153. The time having started running in 2002 for the purposes of Limitation of Actions, the squatters had not occupied the suit property for the statutory 12 years as at 2010 when they filed the adverse possession claim. The squatters claim therefore fails not only for want of proof of the elements of adverse possession but also on account of the same having been brought prematurely. The squatters submitted at length on the agreement for sale that they entered into with PW1 and Link over the suit property. I did not understand how this agreement fitted into the adverse possession claim. The squatters were at liberty to sue for breach of the said agreement. Having chosen to pursue an adverse possession claim, the agreement was of no assistance as no relief was sought under the same. The agreement was in fact an admission of PW1 and Link's interest in the property and as such a negation of the squatters' adverse possession claim.
154. It is my finding from the foregoing that the squatters' adverse possession claim is without merit. The squatters are therefore not entitled to any of the reliefs sought in ELC No. 615 of 2010. Their suit is for dismissal. I will however not condemn them to pay the costs of the suit since the defendants in the suit did not file a replying affidavit.
155. The disposal of that issue takes me to the second issue namely, whether the squatters are trespassers on the property and as such should be ordered to vacate the same. Trespass is defined as any intrusion by a person on the land in the possession of another without any justifiable cause. See, *Clerk & Lindsell on Torts*, 18th Edition, page, 923, paragraph, 18-01. In the case of *Gitwany Investments Limited v Tajmal Limited & 3 others* [2006] eKLR, it was held that title to land carries with it legal possession. From what I have held above, the squatters have not acquired the suit property by adverse possession. The suit property is therefore still owned by the deceased who is registered as the owner thereof. The suit property devolved to estate of the deceased upon his death. The lawful owners of the suit property are therefore the Kents who are the administrators of the estate of the deceased.
156. The squatters have no proprietary interest in the suit property. In the absence of any interest in the property, the squatters have no right to occupy the property. Their occupation is therefore without any justifiable cause. In the circumstances, the squatters are trespassers on the suit property. The Kents are therefore entitled to the reliefs sought against all the defendants in ELC No. 795 of 2010 including the squatters.



157. A number of issues arise for determination in this suit some of which are in the nature of preliminary objections. From the pleadings and submissions by the parties, the issues arising for determination in this suit are the following; whether Link was entitled to bring this suit against KPLC for the reliefs sought in the amended plaint, whether KPLC trespassed on Plot No. 11531/8 (the suit property), whether Link is entitled to the reliefs sought in the amended plaint and who is liable for the costs of the suit.
158. It is not disputed that the suit property is registered in the name of the deceased and that the Kents are the administrators of the estate of the deceased. It is also not disputed that through an agreement of sale dated 19th June 2006, the Kents in their capacity as the administrators of the estate of the deceased sold the suit property to Link at a consideration of Kshs. 8,565,721.50. Pursuant to that agreement, the Kents executed an instrument of transfer transferring the property to Link. The transfer is not dated but appears on the face of it to have been executed by the Kents in 2006.
159. It is not disputed that the said instrument of transfer was not registered. What the court has been called upon to determine is whether the said agreement of sale and instrument of transfer conferred upon Link a right or an interest in the suit property that it could enforce against KPLC through a suit for trespass and damages. I am in agreement with Link that upon entering into an agreement of sale with the Kents in respect of the suit property, paying the full purchase price and having an instrument of transfer of the property executed in its favour, it acquired a beneficial interest in the property which is an equitable right pending the transfer of a legal right upon registration of the transfer.
160. The suit property was registered under the Registration of Titles Act, Chapter 281 Laws of Kenya (now repealed). As correctly submitted by KPLC and the squatters, under section 32 of the said Act, unregistered transfer could not transfer any land or interest in land registered under the Act. It follows therefore that the instrument of transfer that was executed by the Kents in favour of Link did not transfer the suit property or any interest in the suit property to Link.
161. In the absence of a legal right in the suit property could Link maintain an action for trespass and damages against KPLC? I am in agreement with KPLC that it could not do so. I am in agreement with the authorities cited by KPLC that Link could only maintain an action against KPLC for trespass if the Kents who held the legal title to the suit property in trust for it failed or refused to do so and even in that case it had to join the Kents as defendants in the suit.
162. When Link brought the present suit, the Kents as the legal owners of the suit property had a pending suit (ELC No. 795 of 2007) for injunction and damages against those it claimed to have trespassed on the property. ELC No. 795 of 2007 is one of the suits the subject of this judgment. Link did not lead any evidence that the Kents had refused to join KPLC in ELC No. 795 of 2007. I am in agreement with KPLC that an untidy situation has arisen here where a legal owner of a property and an equitable owner (a trustee and a beneficiary) have filed separate suits against different parties seeking injunction and damages for trespass in respect of the same property. I am in agreement with KPLC that Link's suit is incompetent and should be struck out.
163. On the merit of the claim assuming that I am wrong on the above finding, the evidence before the court shows that the process of supplying electricity to the property started in early 2007 and by June 2007 KPLC had already entered and surveyed the property and identified the houses or premises that had to be supplied with electricity. The acts of trespass by KPLC if any started in early 2007. The statute regulating the supply of electricity at the material time was the Electric Power Act No. 11 of 1997 that commenced on 9th January 1998 and was in force until 7th July 2007 when it was repealed by the [Energy Act, 2006](#).



164. Section 45(2) and (3) of the Electric Power Act, 1997(the Act) provides as follows:

- “(2) A licensee who has obtained authorisation from the Minister and who intends to lay an electric supply line on the land of another person shall give notice in writing to the owner of that land of his intention, after the expiration of 14 days from the date of that notice on a specified day to enter upon that land for the purpose of fixing the location of the electric supply line, and within 14 days of entry shall serve the owner with a statement in writing containing full particulars of the description and proposed location of the electric supply line.
- (3) An owner, after receipt of the notice and statement of particulars under subsection 2 may assent in writing to the laying down of the electric supply line upon the payment of such compensation as may be agreed upon, and any assent so given shall be binding on all parties having an estate or interest in the land, subject to the following provisions:..”

165. There is no doubt that the law that was in force when the squatters applied to KPLC for the supply of electricity and when KPLC entered the suit property to survey and identify the locations for electricity supply lines required that the owner of the suit property be notified and his consent sought before any further action was taken. There is no dispute that at all material times the suit property had an owner and the owner was known. The fact that the registered owner of the property was deceased did not mean that the property had no owner. The deceased left a will in which he named the administrators of his estate. The property devolved upon his estate. At the material time the executrixes of the will of the deceased had already obtained a Grant of Probate.

166. I did not at all follow KPLC’s argument that since the owner of the suit property was deceased and the administrators of his estate were not known as they had not been registered as the new owners of the suit property, KPLC was not obliged to look for them and serve them with a notice as required by law. At the material time, KPLC had no knowledge of the death of the deceased. A search on the title would have given KPLC the name of the owner of the suit property and his postal address. A copy of the certificate of title for the property that was produced in evidence showed the name of the owner of the suit property and his postal address.

167. There is no evidence that KPLC made any attempt to notify the owner of the suit property of its intention to lay electricity supply lines on the suit property or to seek its permission before the said supply lines were laid. I am not in agreement with KPLC that section 28(1) of the Act absolved it from seeking the permission of the owner of the suit property before entering and laying electricity supply lines on the suit property. That section does not apply to the electricity supply that the squatters had applied for which was to be supplied to residences spread over 23.11 acres of land.

168. Section 46 of the *Energy Act* 2006 which came to effect on 7th July 2007 after KPLC’s entry into the suit property but before they laid the electricity supply lines also required permission of the owner of land to be obtained before any survey was conducted or electricity supply lines laid on land not belonging to KPLC. No permission was obtained from the owner of the suit property under this section either. KPLC’s argument that section 57 of the said Act absolved it from obtaining such permission has basis for the reasons I have given above.

169. I wish to add that the fact that Section 28(1) of the Electric Power Act 1997 and Section 57 of the *Energy Act* 2006 required KPLC to supply electricity to certain applicants did not mean that in case the supply lines were going to be laid on the land that did not belong to the applicants, permission of the land owners was not required.



170. Due to the foregoing, it is my finding that KPLC trespassed on the suit property having entered therein and laid electricity supply lines without the permission of the owner thereof.
171. On the damages claimed in the sum of Kshs. 280,000,000/-, I am in agreement with KPLC that the claim has no basis and the same was also not proved. Link claimed that it was unable to put up 350 residential houses and 10 shops on the suit property for sale as a result of the electric power lines that KPLC had laid on the property. From the evidence before me, as at 2007, the property was already in the occupation of several squatters. This means that Link would not have been able to carry out any project on the property until the said squatters were removed from the property. It is therefore not true that Link's inability to develop the property was due to the laying of electric power lines on the property by KPLC. I did not also find evidence showing that the laying of electric power lines on the property attracted more squatters to the property. No data was placed before the court showing the squatters who were in occupation prior to electricity installation and those who came in thereafter.
172. If I had found Link's suit competent which is not the case, I would have only awarded it nominal damages for trespass and not the claimed sum of Kshs. 280,000,000/-.
173. Due to the foregoing, Link is not entitled to any of the reliefs sought in its amended plaint in ELC No. 114 of 2010. The suit is for dismissal. I will however not award any costs to KPLC having found that they entered the property and laid electric power lines therein illegally.

Conclusion:

In the final analysis and for the foregoing reasons, I hereby make the following final orders;

- 1) ELC No. 114 of 2010 is dismissed with each party bearing its own costs.
- 2) ELC No. 615 of 2010 is dismissed with each party bearing its own costs.
- 3) Judgment is entered for the plaintiffs in ELC No. 795 of 2007 (formerly HCCC No. 1502 of 2002) (the plaintiffs) against the original defendants in that suit and the interested parties who were added to that suit as defendants on 15th December 2010 and those whom they represent pursuant to the leave that was granted to them by the court (hereinafter collectively referred to as "the defendants") as follows;
 - a) The defendants by themselves, their servants, agents or anyone claiming under or through them shall vacate and hand over possession of all that parcel of land known as L.R No. 11531/8 to the plaintiffs within One Hundred and Eighty days (180) days from the date hereof.
 - b) In the event that the defendants fail to vacate L.R No. 11531/8 within the period of 180 days given by the court, the plaintiffs shall be at liberty to apply for warrants for their forceful eviction from the property.
 - c) A permanent injunction is issued restraining the defendants by themselves, their servants, agents or anyone claiming under or through them from committing any further acts of trespass on L.R No. 11531/8 after vacating the same or upon their eviction therefrom should they fail to vacate.
 - d) In the event that forceful eviction of the defendants from L.R No. 11531/8 becomes necessary, the plaintiffs shall comply fully with the provisions of Section 152G of the Land Act.
 - e) The defendants jointly and severally shall pay to the plaintiffs a sum of Kenya Shillings One Million (Kshs. 1,000,000/-) as damages for trespass.
 - f) The plaintiffs shall have the costs of the suit to be paid by the defendants jointly and severally.

DATED AND DELIVERED AT NAIROBI THIS 12TH DAY OF JULY 2022



S. OKONG'O

JUDGE

Judgment delivered virtually through Microsoft Teams Video Conferencing platform in the presence of;

Mr. Banji h/b for Mr. Nyiha for the Plaintiffs in ELC No. 114 of 2010

Mr. Fraser S.C for the Defendant in ELC No. 114 of 2010

Mr. Burugu for the Plaintiffs in ELC No. 795 of 2010 and Defendants in ELC No. 615 of 2010

Mr. Mwangi for the Plaintiffs in ELC No. 615 of 2010 and Defendants in ELC No. 795 of 2010

Ms. C. Nyokabi - Court Assistant

