



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT BUSIA

ELC CASE NO. 54 OF 2015 (O.S)

IN THE MATTER OF

SECTION 37 AND 38 OF THE LIMITATION OF ACTIONS ACT

CAP 22 OF THE LAWS OF KENYA

AND

IN THE MATTER OF

ORDER 37 RULE 7 OF THE CIVIL PROCEDURE RULES

GEORGE ODUYA NACHIBWETE PLAINTIFF

= VERSUS =

PROTUS OGOLA SITAWA 1ST DEFENDANT

CHARLES OMONDI ONYANGO2ND DEFENDANT

MATHEW ODUORI SIMALI3RD DEFENDANT

J U D G M E N T

1. The Applicant commenced these proceedings by way of the Originating Summons dated 28th May, 2015 and filed on the same date against the Respondents. The Applicant later amended the Originating Summons with leave of court and filed in court on 17th May 2019. The Applicant's claim that they have acquired by way of adverse possession rights over naught decimal naught nine (0.09) and naught decimal five (0.5) acres comprised in **L.R NO MARACHI/KINGANDOLE/1395 and 1490** or any other title derived therefrom as on the ground currently registered in the name of Protus Ogowa Sitawa and Mathew Oduori Simali. The Applicants posed the following questions for determination:

- a) *Whether the plaintiff is entitled under Section 38 of the Limitation of Actions Act CAP 22 of the Laws of Kenya to be registered as the proprietor of the entire portion or parcel of land L.R. NO. MARACHI/KINGANDOLE 1395 and 1490 measuring approximately naught decimal naught nine (0.09) and naught decimal five (0.5) hectares respectively.*
- b) *Whether the 1st and 3rd defendants are registered as proprietor of L.R. NO. MARACHI/KINGANDOLE 1395 and 1490 measuring approximately naught decimal naught nine (0.09) and naught decimal five (0.5) hectares respectively in trust for the plaintiff.*
- c) *Whether the court should order for cancellation of titles NO. MARACHI/KINGANDOLE 1395 and 1490 issued to the 1st and 3rd defendants and the same re-issued to the plaintiff.*
- d) *Whether the defendants should transfer the entire parcels of land being L.R. NO. MARACHI/KINGANDOLE 1395 and 1490 to the plaintiff failing which the Deputy Registrar of the High Court of Kenya at Busia be authorized to execute the transfer documents in favour of the plaintiff.*
- e) *Who pays the costs of this suit.*

2. The Applicant seeks to be granted the following ORDERS:

- a) **An order of declaration that the transfer of land parcels no. MARACHI/KINGANDOLE 1395 and 1490 to the 1st and 3rd defendants respectively was illegal and unlawful hence null and void and that the applicant is the rightful owner of the said parcels of land.**
- b) **An order cancelling title deeds for land parcels no. MARACHI/KINGANDOLE 1395 measuring 0.09 HA and 1490 measuring 0.5 HA issued to PROTUS OGOLA SITAIWA and MATHEW ODUORI SIMALI respectively and the same be re-issued and registered in the plaintiff's name.**
- c) **An order for rectification of the register of land parcel no. MARACHI/KINGANDOLE 1395 and 1490 to read the plaintiff's name and the rightful owner.**
- d) **Costs and interest of the suit.**
- e) **Any other further relief that this court may deem fit to grant.**

3. The Originating Summons was supported by the Applicant's supporting affidavit sworn on 15th May, 2019 together with the annexed copy of the land sale agreement, copies of the application for subdivision, mutation form and consent of transfer, copies of green card for L.R. NO. 1490 and 1395.

4. The defendants contested the claim by filing their respective replies to the originating summons. The 1st defendant filed his Replying Affidavit on 9th July 2015 in which he deposed that he has never sold land to the applicant and the applicant has no interest or rights in the subject matters. He deposed further that the late Francis Oduor Sitawa never sold any land to the applicant. He added that the purported sale agreements, L.C.B. letter of consent, mutation forms are forgeries. That he carried out the succession process to its end and there was no objection from the applicant. He also deposed that neither him or the late Francis Oduor Sitawa held the land in trust for the applicant

5. The 2nd and 3rd defendant filed their Replying Affidavit on 13th October 2015 which stated that they never sold land to the applicant leave alone L.R MARACHI/KINGANDOLE 1395 and 1490 and the late Francis Oduor Sitawa never sold any of his lands to the applicant. They deposed that the doctrine of adverse possession is not available to the applicant and both the originating summons lacks merit.

6. The hearing began on 22nd January 2020 with the Applicant calling three witnesses. GEORGE ODUYA NACHIBWETE, testified as **PW1** and relied on his pleadings and the statement he filed in court. He began by stating that sometimes between July and August 1987, a cousin of his approached him that he had land he wanted to sell. In October 1987, he agreed to buy ½ acre from him and they made an agreement for the ½ acre on 4th October 1987. When he came for the payment on 5th October 1987, the vendor decided to increase the portion sold by ¼ acre to make it ¾ an acre which he paid.

7. He was persuaded that the agreement for the ¼ acre stood which he agreed and later he paid him for the ¼ acre making the parcels to ½ acre and ¼ acre. He produced a sale agreement dated 4/10/1987 for sale of ¼ acre which was witnessed by village elder and Wandundi-deceased as PEX 1. He produced a sale agreement dated 5/10/1987 which increased the size of land to ½ acre and he paid the purchase price of Kshs.2,000/= as PEX2. He produced a sale agreement dated 9/11/1987 for Kshs.850 as PEX 3. He produced a sale agreement dated 2/8/1989 for the balance of Kshs.750 as PEX 4. In total he bought ¾ acre. PW1 went on to say that they went to the Land Control Board and obtained letter of consent. They did get the sub-division of his original land Marachi/Kingandole 1303 to Marachi/Kingandole 1490 and 1395. He produced a consent issued on 5/3/1991 as PEX 5(a, b). For parcel no.1490 they brought a surveyor and fully completed the transfer up to the letter of consent.

8. The witness continued in evidence that he left the documents with his father and could not trace them until after the death of both dad and aunt who apparently kept the documents. After getting the documents in April 2014, he met a surveyor by the name Silvester Silulu who said he could assist him in getting a title deed. In this process he discovered that the land he bought had been transferred to the 1st and 3rd defendants by way of transmission. The ½ acre was subdivided and transferred and he produced their green cards as PEX 6 (a, b). For parcel no. 1395, the plaintiff stated that had done subdivision and were in the process of filing the letter of consent to transfer when his cousin Francis Oduor Sitawa became sickly and thereafter died.

9. It is his further evidence that he has used the land for 33 years and none of the defendants have ever used the land. He asked the court to grant him the prayers sought in the originating summons.

10. During cross-examination, PW1 said the agreed purchase price for the ¾ acres was Kshs.3,200. He learnt that Charles, the 2nd defendant, had succeeded his father's estate when he went to check on the land as he did not know when he took out the letter of grant and he never saw the gazette notice. He stated that the people who knew he owned the land was Charles, his brother Peter Ouma Sitawa and Raphael Sitawa and the 1st defendant. He answered to not raising any claim during the funeral of the late Francis Oduor Sitawa because the sons knew. He did not get a title in his name but he took possession by farming maize, millet, groundnuts and beans. He went on to say that he learnt the 3rd defendant bought the land when he went to check the land's records.

11. On re-examination, PW1 stated that there were other brothers of Charles, the 2nd defendant herein, who knew of the sale. He admitted that he did not attend the funeral of Francis but was represented by his brother who gave them Kshs.6000.

12. WYCLIFFE BARASA NG'ONGA, **PW2**, adopted his witness statement filed in court on 15th November 2016. In the statement, he stated that he knew the late Francis Oduor Sitawa and PW1 as they are both his cousins. That sometime in October 1987, the late Francis Oduor Sitawa approached PW1 that he wanted to sell a piece of land and PW1 called him and asked him to accompany him and Francis Oduor and Emmanuel A. Wandundi to see the land and they did. On 4th October 1987, the parties drew an agreement for sale of ¼ acre of

the land reference no. MARACHI/KINGANDOLE 1303. He witnessed the agreement with the village elder Oresia Lukano and Emmanuel Wandundi who also signed as witnesses.

13. **PW2** stated that the purchase price was paid on 5th October 1987 and the seller agreed to increase the area by another ¼ acre to make it ½ acre and the vendor received Kshs.2000/= for the parcel sold. **PW2** added that he did not sign the agreement because he did not have his ID with him. He asserted that **PW1** took over the land and started cultivating. **PW2** reiterated **PW1**'s evidence that later a surveyor came and did a sub-division and later went to Busia with the late Francis Oduor where the application for sub-division was done and even consent to transfer was issued. That **PW1** has been cultivating the said parcel to date without interference. He further stated that in May 1987, the deceased further sold the plaintiff ¼ acre from the same parcel no.1303 and **PW1** paid a further sum of Kshs.1,200/=. He witnessed and signed the last agreement of 9/11/1987. As far as he is concerned **PW1** bought the land from the deceased and has been in continuous occupation to date.

14. During cross-examination, **PW2** testified that he did not know if the plaintiff was aware of the succession proceedings done by the 1st and 2nd defendants. He stated that the plaintiff has not built on the land but is ploughing food crops. He did not write the purchase price but the payment was in instalments ranging between Kshs.2000 -3000/=.

15. **POLYCARP MAKOKHA NDUBI, PW3**, adopted his witness statement filed in court on 15th November 2016. He stated that he remembered on 2nd May 1989, **PW1** called him as he was a resident of Iyabo village and informed him that he bought ½ acre land from the late Francis Oduor Sitawa and the deceased had agreed to sell to him a further ¼ acre in 1987 but he had paid some money and a balance of Kshs.750/= was remaining. He was called on 2nd May 1989 to witness the payment of Kshs.750/= which he agreed and a further agreement was drawn and **PW1** paid Kshs.750/= being final payment for the ¼ acre of Marachi/Kingandole/1303. After the said transaction, **PW1** requested him to help him with a surveyor and they brought the surveyor to the land to carry out the subdivision.

16. According to the witness, **PW1** took possession of the land immediately and has been cultivating it to date. He went on to say that he was surprised that the deceased's son and step-brother had transferred the land to someone else upon doing succession of their father's estate.

17. During cross examination, **PW3** asserted that the agreement was for sale of a portion of land no. 1340 and he had witnessed the sale of the ¼ acre. He did not know how much was paid in total. He was not aware the land was succeeded by Francis's children. He stated that the land is demarcated by sisal and euphorbia and that the plaintiff was not living on the suit land.

18. **PROTUS OGOLA SITAWA, DW1**, adopted his witness statement filed in court on 9th January 2019. He stated that the late Francis Odour Sitawa was his brother and that the suit land parcel MARACHI/KINGANDOLE 1395 and 1490 are ancestral land bequeathed and registered to the late Francis Odour Sitawa by their late Sitawa Ondiko Ondieke. When the late Francis Oduor Sitawa died on 7/4/1992, the 2nd defendant and **DW1** petitioned for grant of letters of administration of his estate and on 20/4/2014 they were issued with the same. When it was gazetted on 17/1/2014 there was no objection to the said grant by anybody. In the said succession, he was given land parcel no. Marachi/Kingandole/1395 and a portion of land parcel Marachi/Kingandole 1507.

19. **DW1** went on to say that as an administrator he had to execute his duties and transfer land to the buyers who had completed their part of the bargain of which the plaintiff was not one of them. He stated that he decided to sell land parcel 1490 to the 3rd defendant to enable him to get finances to carry out succession and he signed the documents which enabled the 3rd defendant to get title. He disputed the copies of land sale agreement annexed by the plaintiff as pure fabrication as they did not show the agreed purchased price and actual portion of land being disposed of and it does not show the ID number for the seller, buyer and the witnesses. He claimed that the plaintiff has never been in actual occupation of any of the land parcels and neither has he ever been in quiet, peaceful and uninterrupted occupation of the same. He further claimed that there is no demarcation on the ground on Marachi/Kingandole/1395 and 1490 as alleged and that the plaintiff only wants to grab their inheritance.

20. The 1st defendant produced the documents in his list of documents filed on 12/10/2020 as his exhibits DEX 1-6 in support of the defence. The documents produced include a copy of confirmation of grant dated 11/3/2015, copy of grant dated 20/2/2014, copy of gazette notice dated 17/1/2014, copy of land sale agreement dated 10/4/2014, copies of title deed for Marachi/Kingandole 1395 and 1490. He further stated that the plaintiff started using the land in 2015 after filing the suit and he learnt of the restriction placed by the plaintiff in 2015.

21. During cross-examination, **DW1** contend that he does not know the plaintiff though he had stated in his witness statement dated 20/2/2017 that he knew him. He had nothing to prove that the land control board documents produced by **PW1** were forgeries. When he sold the land to the 3rd defendant in 2014, it was registered in the name of Francis Odour Sitawa. He further stated that the grant was confirmed on 11/3/2015 though the sale agreement produced as DEX 4 was made on 10/4/2014. He claimed that before Francis was registered the land was in the name of Sitawa Ondimu though he did not have a green card to prove it. He admitted to knowing Andrew Wesonga who was a witness to the plaintiff's agreement.

22. On re-examination by his advocate, **DW1** stated that he never saw the plaintiff use the land from 1989 and that he only started using it in 2015. He further stated that he sold the land in 2014 after they had begun the process of succession which started in 2013.

23. **CHARLES OMONDI ONYANGO, DW2**, also adopted his witness statement filed in court on 9/1/2018 as his evidence in chief. He stated he is the only son of the late Francis Odour Sitawa and the co-administrator to the estate. He denied knowing the plaintiff or being aware of any transaction between him and his father. He claimed that when his father was alive he never mentioned to him or their mother anything to do with the transaction and the plaintiff never attended the funeral to make his claim known to the family. That prior to the issuance of the grant, the estate of his father was advertised via the Kenya Gazette on 17/1/2014 and nobody objected to the same.

24. The witness confirmed that his late father was the registered owner of Marachi/Kingandole 1395, 1490 and 1507. He went on to say that only one Benard Juma Wabushi and the 3rd defendant had purchased portions of land out of the estate of their late father and he executed his

duties as administrator and transferred the land to the buyers. That he learnt of the plaintiff's interest after they got title in 2015 and that the plaintiff has never been in actual possession of the suit land parcels and neither has it been quiet, peaceful and uninterrupted occupation of the same. He termed the purported copies of agreement between the plaintiff and his late father as a fabrication and prayed that the court dismisses the case with costs.

25. On cross examination, DW2 stated that in 1989 he could not sign any documents and he knew that his father sold the land to the church. When he sold the land to the 3rd defendant, the title was still in his father's name. He stated that he did not know Andrew Wesonga, Polycarp Ndubi, Wycliffe Barasa and Emmanuel Wandundi. He further stated that the plaintiff started using the land only in 2015 and not in 1987 as pleaded.

26. MATHEW ODUORI SIMALI, **DW3**, also adopted his witness statement dated 9/1/2018 as his evidence in chief. He admits knowing the plaintiff who is his area mate within Ikonzo sub-location and he also knows the 1st and 2nd defendants who come from the same village and as the people who sold him the land parcel no 1490. He stated that he is the beneficiary with purchaser's interest in the estate of the late Francis Odour Sitawa after entering into a land sale agreement on 10/4/2014 with 1st defendant for sale of land parcel no. 1490. That the agreed purchase price of Kshs.200,000/= was paid in full.

27. The 3rd defendant stated he did a search on the land and found that the land was in possession of 1st and 2nd defendants as legal representative of the late Francis Odour Sitawa. Further, he asked the assistant chief and the bigger family who all confirmed that the land belonged to the 1st and 2nd defendants. The land on the ground was free without any demarcation, trees or structure and had not been used for cultivation for long. He was subsequently issued with a title deed for L.R. 1490 on 19/3/2015 after paying all the fees and charges. He went on to say that sometime in June 2015 he was served with pleadings. He stated that the plaintiff without consent or knowledge and with force trespassed into his parcel of land no 1490 and began cultivating it despite his verbal protest. He has been unable to enjoy his right and privileges as the registered owner of the suit land due to the plaintiff's action.

28. During cross examination, DW3 stated that he deposited materials on the ground when the plaintiff brought a tractor to plough the land. That on 10/4/2014, the 1st defendant was not the registered owner of the land and he did not have a search to show the land was registered in the 1st defendant's name. He stated that if he was shown the agreement of the plaintiff he would not have bought the land. On re-examination by his advocate, he stated that he was not shown any agreement between the plaintiff and Francis Sitawa and he was not shown that the plaintiff had bought the land.

29. RAPHAEL MAKOKHA SITAWA, **DW4**, adopted his witness statements dated 22/10/2020 and 22/2/2017 as his evidence in chief. He stated that he is a brother to the 1st defendant and the late Francis Odour Sitawa. He stated Marachi/Kingandole/1303 is an ancestral land and their late father Ondiko Ondieke Sitawa left it to his children Francis and Protus. He went on to say that he does not know the plaintiff and he has never seen him live on Marachi/Kingandole 1303. He denied there being a sale of land parcel of L.R 1303 by his late brother to the plaintiff. At the funeral of his late brother no one made a claim against L.R 1303.

30. He further stated that there was no demarcation on the ground on the suit land parcel no Marachi/Kingandole 1395 and 1490 and there is no sub-division that was ever done on the ground regarding Marachi/Kingandole 1303. He claimed that the plaintiff has never been in possession of land parcel 1303 and has never been in quiet, peaceful and uninterrupted occupation of the same. He also claimed that the plaintiff started cultivating on the land in 2015 after he had already filed the suit. He further claimed that he knew the 3rd defendant whom they sold the land to get money to complete succession process and the 3rd defendant did not use the land as a result of interference by the plaintiff.

31. During cross examination, DW4 denied knowing the plaintiff and stated that he had no document to show that L.R. No. 1303 was registered in the name of Ondiko Sitawa. He was not aware that a portion of the land was sold and the church got land from Francis Sitawa. He stated that he knew Oresia Lukano who was the Liguru but he could not tell if he witnessed the sale agreement because he was not present. On re-examination by his advocate, he stated he was not aware that Francis had sold the land.

32. PETER OUMA SITAWA, **DW5**, adopted his witness statements dated 20/2/2017 and 22/10/2020 and stated that he is a brother to the late Francis Odwori Sitawa and the 1st defendant herein. He stated that the late Francis has never sold their ancestral land to anybody including the plaintiff. He called the plaintiff a stranger to him and the family. He stated that their late brother has never sub divided the parcel of land in question and there is no demarcation of Marachi/Kingandole/ 1395 and 1490. He further stated that the 3rd defendant bought a portion of L.R. No. 1490. He claimed that the plaintiff has never lived on any part of Marachi/Kingandole 1303 and he started cultivating on part of the land parcel after filing the suit against his brothers and nephews. He claimed that the plaintiff has never been in a peaceful, quiet and uninterrupted occupation of land parcels 1395 and 1490.

33. During cross examination, DW5 stated that in reference to paragraph 5 of his statement there is a church on a part of the land and he was making reference to parcel 1395 which is in dispute. He stated that the plaintiff has been using the land since 2015 and it is a lie that he has been ploughing the land since 1987.

34. Parties agreed to file written submissions. The plaintiff filed his submissions on 21st April 2021 where he stated that he has proved his case to the required standards and urged the court to grant the prayers as sought in the amended originating summons. He cited the decisions in **In re Estate of Isaac Kaburu Marete (Deceased) (2017) eKLR** and **Peter Gichuki Wanjohi v Juliah Mumbi Muturi (2021) eKLR**. The defendants filed their submissions on 19th April 2021 where they prayed that this honourable court does dismiss the suit and hold that the titles issued to the 1st and 3rd defendants were lawfully issued hence the 1st and 3rd defendants are entitled to land parcels MARACHI/KINGANDOLE/1395 and 1490 respectively. They cited the decisions in **Jandu v Kirpal & another (1975) E.A 225** and **Patrick Magu Mwangi v Joreth Ltd (2015) eKLR**.

35. After consideration of the pleadings, submissions and the applicable law, the issues which in my opinion arise for determination are as

follows:

- a) **Whether a sale agreement negates a claim under adverse possession;**
- b) **Whether the Applicant has been in occupation of the Suit Land for a period adverse to the interests of the Respondents; and**
- b) **Who bears the costs of this suit?**

36. To establish adverse possession of land, a claimant must demonstrate that he has been in peaceful, continuous, and uninterrupted occupation of the claimed parcel for a period of more than twelve (12) years. PW1, PW2 and PW3 have testified that the plaintiff, PW1, entered into a sale agreement for the purchase of $\frac{3}{4}$ acres of land from Francis Oduor Sitawa-deceased. PW2 and PW3 signed as witnesses to some of the sale agreements.

37. The defendants have however denied that the late Francis Oduor Sitawa entered into any sale agreement for the suit lands with PW1 and termed the documents relied upon by the Plaintiff as forgeries. They have further denied that the plaintiff lived on or cultivated the suit lands before the filing of this suit. The defendants have termed the plaintiff as a stranger and stated that he did not attend the funeral of the late Francis Oduor Sitawa where he could have made his interest in the suit lands known to the family. The defendants submitted that since the plaintiff's evidence is that he acquired land parcel Marachi/Kingandole/1490 by way of a sale agreement, his claim for adverse possession fails. They relied on the decision in **Patrick Magu Mwangi v. Joreth Ltd (2015) eKLR** which decision was set aside by the Court of Appeal.

38. The plaintiff's claim is on adverse possession and not specific performance of the sale agreements. In the case of **Public Trustee vs. Wanduru, Madan J A** stated as follows; -

"... that adverse possession should be calculated from the date of payment of the purchase price to the full span of twelve years if the purchaser takes possession of the property because from this date, the true owner is dispossessed off possession. A purchaser in possession of the land purchased, after having paid the purchase price, is a person in whose favour the period of limitation can run".

39. In **Kasuve Vs Mwaani Investments Limited & 4 others 1 KLR 184**, the Court of Appeal restated what a Plaintiff in a claim for Adverse Possession has to prove;

"In order to be entitled to land by Adverse Possession, the claimant must prove that he has been in exclusive possession of the land openly and as of right without interruption for a period of 12 years either after dispossessing the owner or by discontinuation of possession by the owner on his own volition".

40. The defendants alleged that the documents of sale produced by the plaintiff were forgeries so should not be relied upon. The impugned agreements were properly executed and witnessed. There was no evidence presented by the defence to prove their allegation of the forgery since standard of proof of forgery is higher than in civil cases. The burden was upon the defendants because they are the ones who alleged the fraud. I am satisfied that the plaintiff has proved purchasing the $\frac{3}{4}$ acres of the suit portion that gives him a basis to claim the land under adverse possession.

41. It is important to note that the continuous use of land does not necessarily refer only to physically living on the land. The plaintiff has testified that he took possession of the suit lands after the last sale agreement which was signed and witnessed by PW3 on 2/5/1989 and he uses the land to cultivate maize, millet, groundnuts and beans. The sale agreements and their translations which were produced as PEX 1(a-b) to PEX 4(a-b). The true owner being Francis Oduor Sitawa, ceased to be in possession of the suit properties when the plaintiff took possession.

42. PW1 stated further that he only found out about the transfer of the suit properties to the 1st and 3rd defendants when he was following up on the transfer of the suit lands to himself after finding the requisite documents which had been misplaced. His testimony is that the defendants have never used the land which the defendants have denied that allegation and stated that the suit land belonged to their late Francis Oduor Sitawa and thereafter transferred to DW1 and DW2 via transmission after the conclusion of the succession of the estate of the estate of Francis Oduor Sitawa. However, the defendants have not addressed who among them was using the suit land between 1989 to 2014 to counter the Plaintiff's evidence.

43. In countering the allegations on the period of user by the plaintiff the 1st defendant stated that the suit land has always been in vacant possession to date and the plaintiff only began using it in the year 2015. The 1st defendant denied knowing the plaintiff when he appeared before the court yet in his written witness statement filed in court he admitted to knowing the plaintiff as coming from Namwitsula sub-location where he lives. This portrays the 1st defendant not to be a truthful witness.

44. DW4 & DW5 written witness statements are similar word for word thus not adding much value to the defendants claim. The witnesses do state that the defendants have been using the land since they inherited it yet the 3rd defendant was a purchaser. They do not also specify how the defendants have been utilizing the land. In regard to the evidence of DW2, they swore a joint replying affidavit with the 3rd defendant. They denied the land was sold and denied occupation or use of the land by the plaintiff. The 2nd defendant does not depose that he has been using the land either. This contradicts the evidence of DW4 & DW5. When the 3rd defendant purchased the suit land in 2014, the rights of the registered owners had been extinguished. It therefore did not matter that there was no restriction registered on the title.

45. I find the evidence adduced by the plaintiff and his witnesses to be more consistent, credible and supported by documents than that

presented by the defendants. It is on this account that I find in favour of the plaintiff that he has proved his case on a balance of probabilities.

46. Consequently, I enter judgment as follows: -

a) The plaintiff has acquired by way of adverse possession L.R. No Marachi/Kingandole/1395 and 1490 measuring quarter $\frac{1}{4}$ an acre and $\frac{1}{2}$ acre respectively and which are in his possession.

b) An order be and is hereby issued cancelling the title deeds made in favour of the 1st and 3rd defendants for land parcels Marachi/Kingandole/1395 and 1490 measuring 0.09Ha and 0.5Ha respectively and the same be re-issued and registered in favour of the plaintiff.

c) An order be and is hereby issued for the rectification of the register of land parcels Marachi/Kingandole/1395 and 1490 in favour of the plaintiff.

d) The defendants to surrender the suit titles to the Land Registrar within 30 days hereof for the cancellation to be effected. In default, the Land Registrar to proceed to cancel and rectify the register irrespective on whether the titles are availed or not.

e) The costs of the suit is awarded to the plaintiff.

DATED, SIGNED AND DELIVERED AT BUSIA THIS 3RD DAY OF NOVEMBER 2021.

A. OMOLLO

JUDGE