



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 156 OF 2012

JOSEPH MUYA NJURU.....PLAINTIFF

VERSUS

STEPHEN NJOROGE KUNDA.....1ST DEFENDANT

MWANGI KAMAU.....2ND DEFENDANT

LUCY GATHONI WANYEKI3RD DEFENDANT

NAFTALY NJOGU KINYANJUL.....4TH DEFENDANT

TERESIA WANJIKU.....5TH DEFENDANT

JUDGMENT

(Suit by plaintiff seeking eviction and a permanent injunction to restrain defendants from suit land; defendants raising a counterclaim that the same land was allotted to them or they are entitled to it by way of adverse possession; land formerly belonging to ADC; plaintiff having purchased the land from ADC allottees and later being issued with a letter of offer from the Government; three of the five defendants not having any document to demonstrate an allotment; the other two defendants having allotment letters to some plots but no demonstration that the said plots are on the same ground as that claimed by the plaintiff; neither there being proof of compliance with the terms in the letter of offer; defendants cannot claim the land as allottees; claim by adverse possession cannot hold as the land was under Government and 12 years not accumulated since the land came into private hands; counterclaim of defendants dismissed; judgment entered for the plaintiff)

A : INTRODUCTION AND PLEADINGS

1.This suit was commenced through a plaint that was filed on 22 February 2012, which plaint was later amended and further amended, culminating in the further amended plaint filed on 30 October 2015. The plaintiff has averred that he is the registered proprietor of the land parcel Naivasha/Ol Jorai II/1493, which is land measuring 28.33 Ha, or about 70 acres (the suit land). It is claimed that about the year 2000, the defendants encroached into this land and occupied it illegally without any colour of right. In the suit, the plaintiff wishes to have the following substantive orders :-

- (a) An eviction order against the defendants.
- (b) A declaration that the plaintiff is the lawful owner of the suit land.
- (c) An order of permanent injunction against the defendant to restrain them from the suit land.
- (d) Mesne profits.
- (e) General damages for trespass.
- (f) Costs.
- (g) Interest .

(h) Any other relief that the court may deem fit and just to grant.

2. The defendants filed a defence and counterclaim which they also amended on 4 April 2016. They have averred that the suit land is Government land owned by the Settlement Fund Trustee (SFT) and that being Government land, the plaintiff does not have a valid title. It is pleaded that the suit land was allotted by the SFT, to 21 families, each having 10 acres, and the defendants and 20 other families who were in possession at the time of allocation, and they still retain possession. They aver that the allotment letters given to them by the SFT have never been revoked and as such they have a valid claim over the suit land. It is pleaded that the defendants temporarily lost possession of the suit land during the post-election violence and upon return, the plaintiff started claiming ownership. In their counterclaim, they have pleaded that they were allotted the plots Nos. 212, 3039, 3767 by the Agricultural Development Corporation (ADC) between the years 1992 and 1994 by virtue of their long occupation of the land totalling over 15 years. It is pleaded that between 1992 and 1994, they took possession of the suit land and that they continuously cultivated it openly without any objection or interruption by the defendant. They aver that they have openly, peacefully and without interruption occupied the entire suit land since the time they took possession of it and that the plaintiff has never laid any complaint against their occupation. They aver that their occupation is in excess of 12 years. It is pleaded that during the years 2007-2008, they were dispossessed of the suit land and unlawfully evicted under the watchful eyes of the Chiefs and other administrative officials. The defendants, on return after the violence, found the plaintiff who was their neighbour with about 20 acres of land, encroaching and claiming possession of the defendants' 50 acre portion allocated to the defendants by the SFT. It is pleaded that in late February and early March 2012, the plaintiff came with the Chief, D.O and administration police to stop, and unlawfully stopped, the defendants' tractors from tilling and preparing the land for planting. It is pleaded that the plaintiff's acts of using the police and other administrative officials is calculated to make the defendants lack food and eventually move out of their own land which is a violation of the defendant's right to dignity and property. It is claimed that there are more than 20 families currently residing on the suit land but that the plaintiff has only chosen to sue five of the families thus guilty of material non-disclosure. In their counterclaim they have asked for the following substantive orders :-

(a) An eviction order against the plaintiff in respect of the 5 defendants' 50 acre portion of property in Ol Jorai Phase II- Kapkures Area (ADC).

(b) A declaration that the defendants are entitled to be registered as the proprietors of the suit land by way of adverse possession and that the plaintiff executes the relevant documents to facilitate the transfer thereof.

(c) A permanent injunction to restrain the plaintiff from interfering with the 50 acres defendants' portion of land.

(d) Any other relief as the court may deem just.

B : EVIDENCE OF THE PARTIES

3. The plaintiff testified as the sole witness. He stated that he is the owner of the suit land which is about 70 acres. He averred that he purchased this land in the year 1999 from 7 persons who had in turn been allotted land by the ADC. He wrote 7 agreements, one with every seller, when the land was in form of plots. He produced these agreements, which were dated 24 June 2010, as exhibits. These persons then handed over to him their allotment letters from ADC, which allotment letters he also produced as exhibits. The said allotment letters from ADC are dated 27 April 1993. He then proceeded to the SFT office and was given an allotment letter for 70 acres in his name. The allotment letter is dated 16 August 2010. He was asked to pay Kshs. 176,482/= which he paid. He produced both the allotment letter and the receipt which is dated 16 September 2010. Thereafter he was issued with a title deed which he again produced as an exhibit. The title deed shows that it was issued on 24 April 2012. He testified that the defendants came into the land in the year 2000 believing that it is empty land but he was owner at the time. He stated that they left in the year 2001, leaving only the 1st defendant, Stephen Njoroge. He testified that before coming to court, he had approached the Chief and D.O. In the year 2001, he went to ADC to verify whether the people who sold to him the land were allottees and ADC wrote to him a letter dated 15 March 2001 which he produced as an exhibit. Before filing suit, he had approached the D.O who wrote to him a letter dated 23 February 2010, which gives a brief of how the ADC land was allocated and sold to him, and he also wrote a demand letter to the defendants.

4. Cross-examined, he reiterated that the persons who sold to him land had allotment letters from ADC and the land was at that time described by plot numbers, and did not have parcel numbers although they had already been surveyed. He averred that the sellers had taken occupation in the year 1993. He denied that the defendants were among those affected by the post election violence (PEV) of the year 2007-2008 and contended that they have other land in the area. He denied that they were internally displaced people (IDPs).

5. DW-1 was Stephen Njoroge Ngunda, the 1st defendant. He testified that he came to know the plaintiff in the year 2000 as owner of the plots Nos. 1213 and 1214 each measuring 10 acres. He averred that he himself owns the Plot No. 212 and to prove ownership, he produced a letter said to be from the ADC dated 27 April 1992. He testified that he was advised to go to the Ministry of Lands to pay for the land, but before he could go there, ADC surrendered the land to the SFT. He testified that a settlement officer, a Mr. Mwilu, the D.O Ms. Ndeti, and the surveyor, a Mr. Mwangi (said to be deceased) came to the land and held a meeting where they directed that 3 men and 3 women be chosen to form a committee to verify occupants of the houses in the farm. Land was then allocated to these occupants. He stated that he himself got land which is what he occupies. He averred that the SFT allocated to him a Plot No. 3039 and he produced a letter dated 10 September 2008, said to be the allotment letter. He testified that he was allotted 5 acres of land and not the 10 that he had earlier been promised. He however took possession, and has continued living in it, although there was a promise that the land would be allocated afresh so that everyone gets their proper entitlement. He stated that he lived in peace until the year 2007 when PEV broke out and he fled to Elementaita Police Station. He however went back to his land in March 2008 and has continued living on it. He mentioned that in the year 2014, the plaintiff came and claimed to own several parcels of land and cultivated with a tractor. He complained about this, and the damage to his crops was assessed, but since then, he has not had peace. He claimed to have been on the land since the year 1984 and that the plots were given to squatters. He asserted that the plaintiff was allotted 20 acres, but after the PEV, he started claiming 70 acres. He believed that he is only entitled to 20 acres and the other 50 acres is what they (defendants) are entitled to. He was categorical that the SFT have not cancelled his letter of offer and that the plaintiff needs to be evicted from the extra 50 acres.

6. Cross-examined, he testified that he never paid any money for the land as the SFT promised to pay ADC. He however acknowledged that

his letter of offer was for 5 acres and the same asked him to pay Kshs. 24,000/= or 10% as deposit which he did not pay. He was not aware whether the plaintiff had purchased land from other people and did not know them. He contended that the Plot No. 212 in his allotment letter is the same land that the plaintiff also claims. He believed that the plaintiff got his title for 70 acres through corruption.

7. DW-2 was Mr. Joseph Mwangi Kariuki the 2nd defendant. He testified that he lives in Matasia in Kajiado where he works as a mason. He testified that the plaintiff is entitled to the plots Nos. 213 and 214 and that the 1st defendant is entitled to the plot No. 212 which neighbours the plaintiff's assigned plots. He stated that he himself is entitled to the plot No. 210. He is thus surprised that it is claimed that they are in the plaintiff's farm. He testified that the land was given to squatters and they could not be allowed to sell without first getting title. He testified that ADC gave land to the SFT in the year 2006 and the SFT officers identified those in occupation. They were then assigned 5 acres each though the plaintiff was assigned 20 acres. He stated that allotment letters were issued in the year 2008 after PEV, when he was in Kajiado, and that he was unable to travel to collect his allotment letter since he had no fare. He however believes that his land is now Plot No. 3037 of 5 acres. He stated that after the PEV, he came back to rebuild his house, and cultivated the land in the year 2008, but the plaintiff came and destroyed his house and ploughed the land. He has not been back to the land since then. He stated that the land was for squatters yet the plaintiff was not a squatter.

8. Cross-examined, he gave his history, that in 1991 he was a Form 4 student in Muranga. After completing school, he went to Ngong town where he was employed as a casual worker. In 1997, he came to live with his aunt in Elementaita, and he found people being given land by ADC. He occupied some land and was allotted 10 acres. He was however not given any allotment letter by ADC. He nevertheless asserted that he occupied a plot No. 2010, but he had no document of the existence of such a plot. In December 2007, he went back to Ngong with his family and settled there. He was aware that the Government was giving out money to resettle people but he could not uproot his family from Ngong. Nonetheless, he received Kshs. 26,000/=, which he used to put up a temporary structure on the land. He was never given any allotment letter and he has no allotment letter to the plot No. 3037 which he claims. He in fact did not have any document for the land that he claims, whether from ADC or the SFT. He also acknowledged that he never paid for the land.

9. DW-3 was the third defendant. She mentioned that she lives in Ol Kalou where she does casual work. She testified that she owns 5 acres of land which she identified as Plot No. 209B. She stated that she was given this plot by ADC in the year 1994 as Plot No. 209B measuring 5 acres. She averred that she was a casual worker at ADC and lived on this land from the year 1994, when she built her house, to the year 2007, when she left owing to violence. After the clashes, she was given Kshs. 25,000/= by the Government but this was not enough to enable her resettle and she took up casual work in Naivasha. She stated that she cultivated her plot in the years 2009, 2010, and 2011 when she developed another house on the land. She brought her children to live here until 17 April 2013. She had gone to Kiambu to bury her grandmother and the following day she was called by a neighbour and informed that her house has been destroyed by a tractor and the land cultivated by the plaintiff. She was categorical that out of the land owned by the plaintiff, 5 acres should be carved out for her, being where she occupied.

10. Cross-examined, on the claim that the plaintiff only has 20 acres of land, she acknowledged that she has never seen any beacons covering 20 acres and she revealed that her assertion that the plaintiff owns 20 acres is from information that she received from the settlement officer. She stated that in the year 2006, the settlement officers came to verify those on the ground and land was allotted on that day. She was however not given any allotment letter but was recorded in a book. She acknowledged that allotment letters were given in the year 2006 but she did not get one. She reiterated that the allotment letter given to her by ADC got burnt and so too a receipt of Kshs. 2000/= that she had paid ADC. She therefore did not have any documentation of her being allotted any land.

11. DW-4 was the 4th defendant. He testified that he lives in Wanjohi in Nyandarua. He stated that he came to the disputed land in the year 1994 and that he owns the plot No. 209A which was given to him by the ADC in the year 1994. At that time, he was working with the Forest Department in Nyandarua as a casual worker and he took possession, built a house, cultivated the land, and planted trees. He was given a letter of allotment but which he stated got burnt with everything else during the clashes of 2007. He then became an IDP at Elementaita police station. He received Kshs. 25,000/= from the Government to resettle and he went back and built a structure. It was in 2014 when he was told that he is cultivating somebody's land. He stated that in the year 2008, he was given a letter of offer from the director of settlement for the plot No. 3767 which he produced as an exhibit. The same shows an allotment of 1.0 Ha (about 2 ½ acres). He paid Kshs. 2,500/= of which he produced the receipt. He stated that the plaintiffs' land is only 20 acres and is fenced.

12. Cross-examined, he confirmed that in the year 1994, he was aged only 16 years. He stated that his father talked to ADC so that he may be allotted land and he was allotted some land. The ADC plot was described as Plot No. 209A which was 5 acres. He averred that he wants the 5 acres in the ADC allocation and not the 2 ½ acres in his letter of allotment. He acknowledged that the letter of offer required him to pay Kshs. 12,624/= in 90 days but he only paid Kshs. 2,500/=.

13. DW-5 was the 5th defendant. She testified that she lives in Kanyiriri in Nyandarua. She previously used to live in Kericho but she left in the year 1992 and came to live in Mutaita with her husband as a squatter in ADC land. In 1994, she was allocated by ADC 10 acres of land and was shown a plot No. 280. She settled in it until the year 2007 when she fled owing to PEV. Later she was given Kshs. 25,000/= to resettle but this was not sufficient and her husband decided that they go back to their ancestral home in Nyandarua. They did not live here for long and returned to their 10 acres but their crops were destroyed by a tractor. She has never gone back since. She claimed that she was given an allotment letter but it got burnt.

14. Cross-examined, she stated that their names were recorded in a book in the year 2006 by the settlement officer and no document was issued to them. She was told that she could get an allotment letter upon making payments but she did not make any payment and was thus not issued with any document. She mentioned that at the moment, it is only the 1st defendant who is resident in the locality of the land.

15. With the above evidence, the defendants closed their case, although to be fair to them, they did apply to introduce additional evidence, which I declined, as the same was coming too late in the day. I invited counsel to submit and they did file written submissions. I have taken note of these submissions before arriving at my decision.

C: ANALYSIS AND DECISION

16. The plaintiff's case is fairly simple, that he owns land of 70 acres of which he has title to, and therefore the defendants have no right to interfere with the same. The defendants on the other hand assert that the plaintiff is only entitled to 20 acres of land and that the extra acreage is supposed to be owned by them. In their counterclaim, they did plead that they were allotted by ADC, in the year 1992, the plots Nos. 212, 3039, and 3767. There is also the claim that they are entitled to the suit land by way of adverse possession. If I understand their case well, they have a two pronged claim for the land, the first based on the allegation that they were allotted this portion of 50 acres, and the second claim is that they are entitled to the land through adverse possession. For those reasons, they wish to have the plaintiff evicted from 50 acres of the suit land.

17. I have meticulously assessed the evidence of the defendants. First, they claim that the land of the plaintiff is comprised in the plots Nos. 1213 and 1214 each measuring 10 acres. They have however not provided any evidence of this. If indeed it was the case that the plaintiff was allotted such plots, there would have been nothing easier but to present an officer who could verify such an allegation, or adduce documentary evidence of the same, for land is not allocated without there being some form of record. I have nothing before me which would lead me to the conclusion that the plaintiff was only allotted 20 acres comprising of the plots Nos. 1213 and 1214.

18. On the claim that the defendants are entitled to 50 acres of the suit land by way of allotment by ADC and SFT, I have observed that of all the defendants, only the 1st and 4th defendants had some sort of documentation to support their alleged allocation of some land. The 2nd, 3rd, and 4th defendants had absolutely no document to prove that they were allocated any plot, either by ADC, or the SFT. The 2nd defendant stated in her evidence that he was allotted 10 acres by ADC identified as Plot No. 210 and later 5 acres by the SFT. I have no proof of such an allocation. As I mentioned, land is ordinarily allocated with some form of documentation. There was mention of the allocation documents having been burnt during the PEV of 2007-2008. That may be so, but the allocating authority must have retained the primary documentation and records used for allotting land. If indeed there was such allocation to them, as they have claimed, nothing would have been easier than to call an officer from ADC or SFT to prove that they indeed allotted land to them, and produce records to support the allegation. Without such documentary evidence being tendered, I cannot find that any plot was allocated to the 2nd, 3rd and 5th defendant. Their case, based on the claim of allocation of land, thus falls flat on the face. Indeed, I do note that in the pleadings of the defence, the only plots identified are plots Nos. 212, 3039, and 3767. The first two were said to be the same land claimed by the 1st defendant, whereas the last, was claimed by the 4th defendant as the plot that was allotted to him by the SFT. This buttresses the position that there is no proof of any plot allocation on the part of the 2nd, 3rd and 5th defendants. In short, the 2nd, 3rd and 5th defendants, have not proved that they are entitled to any land in the locality of the area where the land of the plaintiff is situated, nor have they demonstrated any evidence that they were allotted any land which comprises the suit land. There is absolutely no substance in the claim of the 2nd, 3rd, and 5th defendants, that they were allocated part of the suit land.

19. Let me now turn to the claim of allocation of land by the 1st and 4th defendants, and I opt to start with the case of the 4th defendant. He stated that he was allotted a Plot No. 209A by ADC in the year 1994, which plot he alleged measured 5 acres, but he had no proof of such allocation. I in fact doubt whether there could be such an allotment to him, as at that time, he was only aged 16 years, thus a minor. He however had a letter of offer from the Government for 1.0 Ha (or 2 ½ acres). The letter of offer is dated 10 September 2008 and allocates him the plot No. 3767. The same requires that he pays Kshs. 12,624/= in 90 days and he confirmed that apart from the sum of Kshs. 2,500/= paid on 1 December 2008, he did not make any additional payments. Now, of course there is some evidence of allocation of a plot No. 3767, but no survey plan or the Registry Index Map (RIM) was presented to me, so that the location of the plot No. 3767 in relation to the land claimed by the plaintiff, may be identified, and so that it may be clear where this plot No. 3767 is. Without such evidence, I cannot hold that the plaintiff's land parcel Naivasha/Ol Jorai II/1493, straddles the same land as the plot No. 3767 in the allotment letters. Moreover, I doubt whether the 4th defendant can still claim to own this land as he did not abide by the conditions of offer noted in the letter of allotment. Given the above, I also do not see merit in the counterclaim of the 4th defendant based on allocation of land and the same is dismissed.

20. On the case of the 1st defendant, he did display a letter dated 27 April 1992 said to be from ADC allocating him 10 acres of land in Ol Jorai. This letter, assuming that it is genuine, does not have on the body of it, the plot number allocated to the 1st defendant, and what I have seen is an endorsement of "Plot No. 212" by hand. Even assuming that this letter is authentic, we are not told where the location of this said plot No. 212 may be. The claim that the 1st defendant was allotted 10 acres is also not what is demonstrated in the letter of allotment from the Government, which shows an allotment of 2.0 Ha (about 5 acres) of a plot No. 3039. If there was promise to allot the 1st defendant 10 acres through the ADC letter, this must have been overtaken, for the Government only allotted him 5 acres of land. Just as it was with the 4th defendant, I have no evidence where the location of this plot No. 3039 may be, and no evidence that this plot is located within the confines of the plaintiff's land parcel Naivasha/Ol Jorai II/1493. Without such evidence, I cannot assume that the claim that the plaintiff's land also encompasses the 1st defendant's allotted land is true. Only a survey plan or RIM can attest to such allegation and none were provided. The 1st defendant also acknowledged that he never paid the amount of Kshs. 24,986.80/= noted in the letter of offer, and that being the case, I do not see how he can claim to be entitled to the 5 acres allotted to him, as he never complied with the terms of offer. I thus see no merit at all in his case based on allotment of land.

21. Apart from my individual assessment above of each defendant's case, a collective assessment of the case of the defendants reveals serious flaws. The defendants claim that the plaintiff is only entitled to 20 acres of land, and the balance, that is 50 acres, belongs to them. But when I total up the acreages that the defendants claim, they do not add up to 50 acres. This is so, even if I am to use what the defendants assert was given to them by ADC, which is more than the claimed SFT allotment. From the ADC, the 1st defendant alleged to have been given 10 acres, the 2nd defendant 10 acres, the 3rd defendant, 5 acres, the 4th defendant, 5 acres, and the 5th defendant, 10 acres. The total of this is 40 acres and not 50 acres. If I am to use what was actually given by the SFT, and assuming that the 3rd defendant was given 5 acres and the 5th defendant 10 acres as they alleged in their oral evidence, I only get 27 ½ acres (after adding the 5 acres allotted to the 1st defendant and the 2 ½ acres allotted to the 4th defendant by the SFT). Again this is far shy of the 50 acres that the defendants want this court to believe was wrongfully given to the plaintiff.

22. From what I can see from the documents tendered by the plaintiff, he holds a title deed to the land parcel Naivasha/Ol Jorai Phase II/493 which measures about 70 acres. The plaintiff explained that he purchased the 70 acres from persons who had been assigned the land by ADC. He was later given an allotment letter, which required him to pay Kshs. 176,482/= which he duly paid on 16 September 2010. He was then issued with a title deed. I see absolutely no problem with the manner in which the plaintiff got his title. It must be remembered that the law is very protective of title and title can only be impeached as provided in Section 26 of the Land Registration Act, which provides as follows :-

Section 26. (1) *The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—*

(a) *on the ground of fraud or misrepresentation to which the person is proved to be a party; or*

(b) *where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.*

23. The first thing that should strike any person when reading the above section, is that the law is generally protective of title. The above provision of the law indeed begins with the statement that a certificate of title is to be taken as prima facie evidence that the said title is a good title. Such title can only be impeached if a person can prove, the circumstances obtaining in (a) and (b), that is, that the title was acquired through fraud or misrepresentation to which the title holder is proved to be a party, or secondly, that the title was acquired illegally, unprocedurally or through a corrupt scheme.

24. I see no evidence of any fraud or misrepresentation in the manner that the plaintiff obtained title. I also see no evidence of any illegality or procedural impropriety or any corrupt scheme. Forgetting for a moment that the burden of proving such is on the person claiming that the title in issue is a bad title, the plaintiff has demonstrated how he got his title. He purchased some land from persons who had initially been allotted land by ADC. The sale agreements were produced. He then formally got allotted by the SFT the land that he had purchased from the original allottees. The allotment letter was produced. The plaintiff was supposed to pay some money to the SFT to be given title to the land. The receipt was produced and the payment was made within the time specified in the allotment letter. Title was then issued to the plaintiff. I see absolutely nothing untoward in the manner in which this title was granted to the plaintiff. The title of the plaintiff, to me, is a good title which needs to be protected. I have taken note of the submissions of Mr. Kipkoech for the defendants, that the plaintiff is an opportunist who took advantage of the absence of the defendants during the PEV to claim ownership of the land. I do not agree. It will be noted that the plaintiff purchased the land. Once he got title, he came to assert possession of the same and that culminated in the filing of this suit. I do not see anywhere that the plaintiff took advantage of the PEV. Indeed, the defendants themselves stated that the plaintiff assisted them while they were in IDP camps. I see no connection at all between the plaintiff's title and the claim that he took advantage of the post election violence.

25. I have also taken note of the reliance by counsel on the cases of ***Alice Chemutai Too vs Nickson Kipkirui Korir & 2 others (2015) eKLR*** and ***Daudi Kiptugen vs Commissioner of Lands (2015) eKLR***, which are authorities that demonstrate that a title that is illegally acquired cannot be protected. I have no problem with the reasoning in those cases, the only issue in this particular case, is that I am not persuaded that the title of the plaintiff is tainted by any fraud or other impropriety.

26. Clearly the defendants cannot succeed on the claim that the land was allotted to them or on the allegation that the plaintiff's title is a bad title. Let me now turn on whether they can succeed through the doctrine of adverse possession.

27. It is trite law that one needs to demonstrate continuous and notorious quiet possession for a period of 12 years. However, the time when land is registered under the Government cannot be computed by virtue of Section 41 of the Limitation of Actions Act, Cap 22, Laws of Kenya. The applicable provision is Section 41 (a) (i) which states as follows :-

Section 41 – This Act does not –

(a) *Enable a person to acquire any title to, or any easement over-*

(e) *Government land or land otherwise enjoyed by the Government;*

28. In our case, it is common ground that the land was previously under the ADC then later under the Government through the SFT. All this period, cannot be computed to accumulate time for purposes of adverse possession. The time for adverse possession started running in favour of the defendants after the Government relinquished interest in the land, and that, as may be seen from the title deed, is 24 April 2012, when the plaintiff was issued with the title deed. Time for adverse possession would therefore have started running from this day and there is certainly no way that anyone can assert that 12 years have lapsed before the claim for adverse possession was lodged, for indeed they have not even lapsed at the time of writing this judgment. On that ground alone, the claim for adverse possession fails.

29. As the title owner, the plaintiff is vested with the rights of a proprietor which are given in Section 24 of the Land Registration Act, which provides as follows :-

24. Interest conferred by registration

Subject to this Act—

(a) *the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and*

(b) *the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or incidents of the lease.*

30. Flowing from the above, it is the plaintiff who is entitled to enjoy the rights of a proprietor, including the right of ingress and egress, and the right of exclusive use. The defendants have failed to demonstrate that they have any right over the land of the plaintiff, and that being the

case, they have to keep off the land. If any of them is in possession, they have 30 days to vacate, and in default, such person will be forcefully evicted. The defendants are also permanently restrained from the suit land. There was the claim for mesne profits but no evidence was led by the plaintiff as to what he may have lost by the occupation of the land by the defendants. I will however award the plaintiff the sum of Kshs. 250,000/= as general damages, jointly and/or severally against the defendants in recognition of the fact that his rights were unfairly infringed by the defendants and also costs of the suit and of the counterclaim jointly and/or severally against the defendants.

31. I now make the following specific orders :-

(i) That as between the plaintiff and the defendants, the plaintiff is hereby declared to be the rightful owner of the land parcel Naivasha/OI Jorai Phase II/1493.

(ii) That it is hereby declared that the defendants have no right whether by way of allotment or by way of adverse possession over all that land comprised in the land parcel Naivasha/OI Jorai II/1493.

(iii) That the defendants, if they are in possession, are given 30 days within which to vacate the land parcel Naivasha/OI Jorai II/1493 and in default, they be forcibly evicted.

(iv) That an order of permanent injunction is hereby issued, barring the defendants and/or their servants/agents, from entering, being upon, cultivating, utilizing, or in any other way interfering with the quiet possession of the plaintiff of the land parcel Naivasha/OI Jorai II/1593.

(v) That an award of Kshs. 250,000/= in general damages for trespass is made in favour of the plaintiff jointly and/or severally against the defendants.

(vi) That the plaintiff shall have the costs of the main suit and of the counterclaim.

32. Judgment accordingly.

Dated, signed and delivered in open court at Nakuru this 11th day of July 2019.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of :-

Mr. Kimani holding brief for Mr. Kisilah instructed by M/s Sheth & Wathigo Advocates.

No appearance on the part of M/s Gordon Ogola & Kipkoech Advocates for the defendants.

Court Assistants: Nelima Janepher/Patrick Kemboi

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU