



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAKURU**  
**CIVIL CASE NO. 154 OF 2010**

DANIEL LANGAT.....1<sup>ST</sup> PLAINTIFF

GEOFFREY LANGAT.....2<sup>ND</sup> PLAINTIFF

**VERSUS**

FRANCIS MAINA MWANGI.....1<sup>ST</sup> DEFENDANT

TERESIA MUTHONI MAINA.....2<sup>ND</sup> DEFENDANT

**JUDGMENT**

By an Originating Summons dated 5<sup>th</sup> July 2010, the Applicants (*hereinafter referred to as the Plaintiffs*), the Plaintiffs sought a declaration that the Plaintiffs are entitled to the land by adverse possession, having entered and remained in quiet, peaceful continuous and uninterrupted possession and occupation of 4 acres of the parcel of land known as MOLO SOUTH/LANGWENDA/BLOCK 8/5 CHEPTAGUM, and that such possession has been adverse to that of the Defendants Francis Maina Mwangi and Teresia Muthoni Maina (*the Respondents in the Originating Summons*).

2. The Originating Summons was opposed by the Replying Affidavit of Teresia Muthoni Maina sworn on 27<sup>th</sup> July 2010, and filed on the same day. The matter proceeded to hearing on the basis that the Originating Summons was treated as a Plaint and the Replying Affidavit as the Defence. Both Plaintiffs testified, and so did the Second Defendant. It was common ground that the First Respondent had disappeared and correspondence was brought to show that he was a missing person. Some reports suggested that he was hiding away in Mombasa after selling the suit land to the Plaintiffs.

3. The First Plaintiff's case is that he bought two acres of land from both the First and Second Defendants by a Sale Agreement dated 22.06.1995. The First Plaintiff paid the full purchase price of sh 66,000/= for the two acres @ sh 33,000/= each and moved into possession.

4. Later, on 10th April 1996 the Second Plaintiff paid Ksh 56,000/= to the Industrial and Commercial Development Corporation (ICDC) on account of the First Defendant. A receipt No. 003027 of that date was produced in evidence. In addition, PW3, a Debt Recovery Manager, testified to that effect, and also confirmed so by letter dated 27.12.2005, addressed to the District Officer Keringet on the question of such payment of loan on behalf of the First Defendant. It was the Second Plaintiff's testimony that he took possession of his parcel upon being shown by the First Defendant.

5. It was also the Plaintiffs' case that the dispute was referred to the Molo Land Disputes Tribunal who found as a matter of fact that the suit land had been sold by the Defendants (husband and wife) to the Plaintiffs. The lower court correctly declined to adopt the Award of the Tribunal as it had no jurisdiction

to arbitrate over contracts of sale of land. The matter consequently ended in this court.

6. It was the Second Defendant's case that there was no sale agreement between her and her husband and the plaintiffs. According to her the plaintiffs were invaders and trespassers who had no lawful right to enter upon her husband's land. She contended that the Sale Agreement was a forgery as she could not have signed it as she was away in Muranga having escaped the tribal clashes of 1992 with her children.

7. Having examined the sale agreement, the proceedings before the Molo Land Disputes Tribunal along with the evidence of the two Plaintiffs and PW3, the Rift Valley Manager from ICDC, I am persuaded on the balance of probability that **firstly**, the Defendants, (*husband and wife*) sold the first two acres to the First Plaintiff per the agreement of 22.06.1995, and a further two acres to the Second Plaintiff per direct payment of shs 56,000/= to ICDC on behalf of the First Defendant.

8. It is also clear that the Plaintiffs quite rightly took possession with the consent of the Defendants. The clashes of 1992 and 1997 (*Election periods*) were traumatizing to residents of those areas, and the First Defendant having disappeared from the area after selling the suit land, no effort was made to secure consent from the Land Control Board for sale and transfer of the suit land. The Defendants too took no effort to rescind the Agreement of Sale, and the plaintiffs continued to enjoy quiet, peaceful, continuous and uninterrupted possession of the respective two acres of land.

9. Though the Second Defendant put up a spirited denial of the two transactions, and referred to the plaintiffs as invaders and trespassers, I find that they were lawful in occupation of the said parcel of two acres each.

10. The suit herein is premised upon the provisions of Section 38(1) of the Limitation of Actions Act (*Cap. 22, Laws of Kenya*), which stipulates that -

***“where a person claims to have become entitled to adverse possession to land registered under any of the Acts cited in Section 37 or land comprised in a lease registered under any of those Acts, he may apply to the High Court for an order that he be registered as the proprietor of the land or lease in place of the person then registered as the proprietor of the land.”***

11. In the case of **ELIJAH IKOHA IKANZO VS JOSEPH ASUTSA [2006] eKLR**, the Court in granting the orders of Adverse Possession held that -

***“... the Applicant's occupation and possession of the suit land was adverse to the title of the Respondent ... it is my finding that the title of the Respondent to the suit land was extinguished by the applicant's adverse possession. Further the Respondent hold the title to the suit land in trust for the Respondent. Further to my finding, the Applicant is entitled to be registered, as the proprietor of the suit land in place of the Respondent.”***

12. This is exactly the position in this case. It is my finding that the title of the First Defendant to the four acres of the suit land was extinguished by the plaintiffs' adverse possession. I further hold that the Defendants hold the title in relation to the four acres in trust for the Plaintiffs. I also hold that the two Plaintiffs are entitled to be registered as the proprietors of the respective two acres in place of the Defendants.

13. I direct the Plaintiffs do commission the District Surveyor Nakuru to survey and demarcate the two respective acres within the next ninety (90) days, and the Deputy Registrar of this Court shall sign the Transfer to the Plaintiffs in respect of the respective two acre parcels of land.

14. The Plaintiffs having been successful in this suit, they shall also have their costs.

15. There shall be orders accordingly.

**Dated, signed and delivered at Nakuru this 7<sup>th</sup> day of November, 2013**

**M. J. ANYARA EMUKULE**

**JUDGE**