



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 289 OF 2018

(Formerly Nakuru HCCC No. 156 OF 2008)

MAGETA ENTERPRISES LIMITED.....PLAINTIFF

VERSUS

TILAK COMPANY LTD.....DEFENDANT

J U D G M E N T

1. The plaintiff commenced the instant suit by way of an originating summons (OS). The plaintiff claims to have acquired title to land parcel Number **Nakuru Municipality Block11/195 (“the suit property”)** by way of adverse possession. The plaintiff by the Originating Summons has sought the determination of the following questions by the court:-

- 1. Whether the plaintiff has been in adverse possession, of all that piece of land registered in the name of the Defendant as **Nakuru Municipality Block 11/195** for the requisite period of 12 years?*
- 2. Consequently, whether the plaintiff is entitled under section 38 of the Limitation of Actions Act, Cap 22 Laws of Kenya to be registered as the proprietor of parcel No. **Nakuru Municipality Block 11/195** in place of the defendant.*
- 3. Whether this Honourable court should order that the plaintiff be registered as the proprietor of parcel No. **Nakuru Municipality Block11/195** in place of the Defendant?.*
- 4. Who should pay the costs of the suit?*

2. The originating summons was supported on the grounds set out on the body of the application and on the affidavit sworn in support of the same by Kenneth Maweu Kasinga a Director of the plaintiff company. The plaintiff/applicant averred that it entered onto the suit property pursuant to a sale agreement dated 6th November 1995 and completed payment of the agreed purchase price of Kshs4,500,000/= on 20th July 1996 but the defendant failed and/or neglected to effect transfer of the property to it. The plaintiff further averred that it remained in adverse possession of the suit property from 20th July 1996 when the final balance of the purchase price was paid upto the time of the institution of the suit on 8th August 2008, a period of more than twelve years. The plaintiff/applicant contended the defendant’s title over the suit land had become extinguished and that the plaintiff had become entitled to be registered as the owner of the suit property on account of prescription by reason of being an adverse possessor.

3. The defendant, Tilak Company Limited, filed a replying affidavit through Zaina Mukami Chelanga a director of the company in response to the originating summons. Inter alia in the reply the defendant averred that the court lacked the jurisdiction to entertain the matter by virtue of Section 4(1) of the Limitation of Actions Act, Cap 22 Laws of Kenya. The defendant’s position was that to the extent that the plaintiff’s suit was premised on the alleged sale Agreement dated 6th November 1995, the suit was statute barred by reason of having been instituted outside the period of limitation. The defendant further averred the plaintiff has not annexed a certified extract of title to the application; that the plaintiff has occupied the suit property as rent paying tenants with the permission of the defendant; and that the only resource the plaintiff had was to sue for a refund of the money paid towards the purchase of the suit property. The defendant did not make any express admission of the sale Agreement and/or receipt of the purchase price.

4. Munyao, J on 14th November 2018 gave directions that the originating summons be heard by way of viva voce evidence. The originating summons was deemed as the plaint and the Replying Affidavit was deemed as the defence. The suit was part heard before Munyao, J on 9th April 2019 when the plaintiff’s sole witness Mr. Kenneth Maweu Kasinga testified and the plaintiff’s case was closed. The defence case proceeded before me on 16th September 2019 after the parties agreed the matter proceeds from where Munyao, J had reached. On the said date I took the evidence of Ms Shamira Chepkemoi Chelanga who testified as the sole witness for the defendant.

EVIDENCE OF THE PARTIES

5. PW1 Kenneth Maweu Kasinga testified that he was a shareholder and director of Mageta Enterprises Ltd, the plaintiff herein. He stated he had since 1995 resided in Milimani Estate Nakuru land parcel No. **Nakuru Municipality Block 11/195** which the plaintiff purchased from the defendant. He stated the said land parcel **Nakuru Municipality Block 11/195** was registered in the defendant's name as illustrated in the copy of certificate of lease, certified abstract of title (white card) and copy of search exhibited as **PEX1, 2 & 3** respectively. He stated the plaintiff entered into an agreement of sale dated 6th November 1995 with the defendant to purchase the suit property from the defendant. He explained the Agreement was drawn by Ishmael Chelanga the then Provincial Commissioner Rift Valley Province who was a neighbour at Milimani Estate, Nakuru and also his friend. He stated the suit property was next to the Provincial Commissioner's residence and where he (the witness) resided.

6. PW1 testified that the sale agreement was executed in the Provincial Commissioner's residence in the presence of Mr. Chelang'a and his wife Zaina Mukami Chelang'a who were directors of the defendant. He stated the initial agreement was that the purchase price would be Kshs6.5 Million but that during the execution of the agreement, the purchase price was varied to Kshs.4.5 million. He explained the agreement varying the initial agreement was signed at the same time with the agreement which indicated the purchase price as Kshs.6.5 million. He stated him and his late mother Mrs. Tabitha Kasinga who was a Co-director of the plaintiff, attested the execution of the sale Agreement under seal. The Sale Agreement and the Variation to the Agreement were exhibited as **"PEX4 & 5"** respectively. The witness stated that the purchase price of Kshs4.5 million was paid in full as follows:-

(i) Kshs2,000,000/= upon execution of the agreement on 6th November 1996;

(ii) Kshs.800,000/= on 4th May 1996;

(iii) Kshs.500,000/= on 13th May 1996; and

(iv) Kshs1, 200,000/= on 20th July 1996.

7. PW1 explained that all the amounts were paid in cash and were acknowledged. The witnesses produced acknowledgments for the sum of Kshs800,000/= Kshs500,000/=; and Kshs1,200,000/= which were exhibited as **"PEX 6, 7 & 8"** respectively. He also produced two bank statements of the plaintiff company from Trust Bank Ltd for the month of May 1996 and month of July 1996 to illustrate the withdrawals of Kshs.800,000/=; Kshs500,000/=; and Kshs1,200,000/= on the dates indicated. The two Bank statements were exhibited as **"PEX 9 and 10"** respectively. The witness indicated the payment of the initial sum of Kshs2, 000,000/= was acknowledged on execution of the agreement of sale.

8. PW1 stated further in his evidence that Mr. Chelang'a passed away in a helicopter crash soon after he had completed paying the full purchase price and that stalled the completion of the sale transaction. The plaintiff however continued to be in possession of the suit property. The witness explained that he took possession of the suit property immediately after paying the initial deposit of Kshs. 2 million on signing of the sale agreement. He stated he carried out renovations on the property as it was rundown and not in a habitable state. He explained that since he entered into possession he has occupied the property peacefully and without any interruption from the defendant. He stated neither Mr. Chelang'a nor his wife Zaina interfered with his possession and occupation of the property during their lifetime. He stated at the time the suit was filed on 8th August 2008 he was in occupation and possession of the property.

9. Under cross examination by counsel for the defendant, the witness affirmed he was a director of the plaintiff Company. He stated his mother was a Co- director in the plaintiff Company died in 2005. He stated that after renovating the house on the property he resided there together with his family as a director and shareholder of the company. He stated the Company used to operate a hardware business on Biashara street in Nakuru but ceased operations in the year 2000 after it went bust.

10. The witness reiterated Mr. Chelang'a and his wife signed the agreement of sale and affixed the common seal of the defendant company. The witness stated that before the plaintiff entered into the sale Agreement to buy the suit property, he had written the letter dated 26th July 1995 to Mr. Chelang'a requesting to be allowed to occupy the suit premises as a tenant but indicated that once the sale agreement was entered into, the letter was overtaken by events. He maintained his occupation of the house was as a director and shareholder of the company and that the property belonged to the company.

11. DW1 Shamira Chepkemei Chelang'a gave evidence on behalf of the defendant. She testified that she became a director of the defendant in 2006. She stated her parents Ismael Chelang'a and Zainab Mukami Chelang'a who are now both deceased were before their death directors of the Company. She stated the defendant Company was the registered owner of land parcel **Nakuru Municipality/Block 11/195** and was issued title on 12th July 1995. The witness stated she knew PW1 Kenneth Kasinga, director of the plaintiff company through her parents. She stated PW1 rented the residential house on land parcel **Nakuru Municipality Block 11/195** and was a rent paying tenant. It was her position that Kenneth Kasinga entered into possession of the property with the permission of the defendant and denied his occupation could be adverse. She stated when Kenneth Kasinga stopped paying rent her mother sometime in 2002 sent her and her cousin to come to Nakuru to ascertain the status of the property and why PW1 was not paying rent. She stated on the occasion Mr. Kasinga became hostile and when they came back in 2003 they found no one at the property while in 2004 Mr. Kasinga was hostile and abusive.

12. The witness did not admit the Agreement of sale dated 6th November 1995 alluding to the fact that her parents signatures appearing on the document may have been forged. She stated there was an ongoing criminal case Nakuru CMCR Case No. 370 of 2018 which concerned alleged forgery of her late parents signatures on the said sale Agreement. The witness further stated that as far as she knew, Kenneth Kasinga was a rent paying tenant on the suit premises and there never was a sale agreement between the plaintiff and the defendant. The witness further testified that from 1996 there was a succession suit and the property the subject of this suit was included amongst the assets associated with the estate of her late father as illustrated in the copy of confirmation of Grant issued on 9th October 2006 under item No 78

(“DEX 2”). The witness additionally adopted her witness statement made on 14th December 2018 to form part of her evidence.

13. When cross examined by counsel for the plaintiff the witness stated the rent payable for the premises was Kshs18,000/= but stated there was no tenancy agreement. She stated the tenant was paying rent in cash and there was a time he was depositing the rent at National Bank in her late father's Bank account. The witness agreed that the letter by Kenneth Kasinga dated 26th July 1995 (**“DEX3”**) indicated he wanted to rent the house but that it also alluded to negotiations relating to sale of the property. The witness confirmed that the defendant's common seal was affixed to the Sale Agreement (**“PEX4”**) but denied the attesting signatures were those of the directors, stating that she knew their signatures and according to her the signatures on the sale Agreement and the acknowledgements did not belong to her parents.

14. The witness affirmed the defendant has never made a formal demand for rent from Mr. Kasinga and that she was not in a position to give an estimate of the rent arrears to date. The witness stated it was in 2017 that she became aware of the alleged agreement between the plaintiff and the defendant and it was then she commenced the process of verifying the genuineness of the Agreement for sale and that included verification of the signatures and that was what resulted in Mr. Kasinga being charged in a criminal case. The witness nonetheless administrated the Sale Agreement was annexed to the originating summons but alluded that since her mother was at the time sick, they may not have properly reviewed the annexures to the OS and therefore did not raise issue with the Agreement.

15. The witness affirmed that in 1995 she was 10 years old but said she knew her father's company owned the suit property. She agreed the plaintiff (Mr. Kasinga) had been in occupation of the suit property since 1995 but maintained it was as a tenant of the defendant.

16. After the close of the trial the parties filed their final written submissions as per the Court's directions. After a review and consideration of the pleadings, the evidence, and the submissions of the parties the following issues arise for determination:-

(i) Whether the plaintiff and the defendant entered into the sale agreement dated 6th November 1995?

(ii) Whether the occupation and possession by the plaintiff over land parcel Nakuru Municipality /Block11/195 constituted adverse possession?

(iii) Whether the plaintiff at the time of institution of the suit had acquired title to land parcel Nakuru Municipality/Block11/195 by adverse possession and hence entitled to be registered as owner in place of the defendants?

(iv) Who bears the costs of the suit?

17. There is no doubt that the defendant, Tilak Company Limited was the registered proprietor of land parcel **Nakuru Municipality Block 11/195** as at 8th August 2008 when the plaintiff instituted the instant suit. The plaintiff annexed to the originating summons a copy of the certificate of lease issued on 25th October 1995; a certified abstract of title dated 30th July 2008; and a copy of certificate of official search dated 2nd November 2005. All these documents showed the defendant was registered as the proprietor of the suit property on 25th October 1995 and that as at the time the title abstract was certified on 30th July 2008 there had been no change of ownership. In the premises the Court is satisfied that the defendant was indeed the registered owner of the suit property as at the date the originating summons was filed.

18. The plaintiff pleaded and led evidence to show that the plaintiff entered into an agreement with the defendant for the purchase of the suit property on 6th November 1995. The Agreement was exhibited as **‘PEX4’**. The defendant did not expressly admit the Agreement of sale dated 6th November 1995 in the replying affidavit to the originating summons dated 15th July 2009. However under paragraph 6 of the replying affidavit Zaina Mukami Chelang'a stated as follows:-

“That it is not true that the purchase price of the said property was revised downwards mutually either as alleged or at all...”

19. Under paragraph 7 the deponent further stated thus:-

“ That the applicant has failed to disclose that he took over the premises as a rent paying tenant on or about 26th July 1995 and that he has all along been paying rent to the defendant in view of the fact that he had failed to complete the sale herein”

20. Under paragraph 9 the deponent further stated as follows:-

“That paragraph 10 of the supporting Affidavit is not correct as the Applicant has been staying in the premises as a tenant after he had failed to complete the sale a fact which the applicant himself acknowledged.”

21. Again under paragraph 10 of the replying affidavit the deponent stated thus:-

“That in any event I am advised by my advocate which advice I verily believe to be true that since the Applicant took over possession of the premises pursuant to the Agreement of sale dated 6th November 1995, his occupancy over the subject premises was on the basis of the said Agreement and the period for Adverse possession if any could only commence after the Limitation period for the said agreement for sale had lapsed in terms of the Limitation of Actions Act which is 6 years and accordingly the time for adverse possession (if any) started to run from the 7th November 2001.”

22. I have set out in extenso the contents of the replying affidavit to illustrate the apparent variation between the said affidavit evidence and the oral evidence adduced by DW1 on behalf of the defendant. As per the affidavit evidence it is evident that DW1's mother who swore the

replying affidavit was at least acknowledging the agreement except she was insistent the plaintiff did not fulfill the terms of the Agreement. In contrast DW1 Shamira Chepkemoi Chelanga in her evidence denied there was any sale agreement between the plaintiff and the defendant suggesting all the documents produced by the plaintiff, the sale agreement and acknowledgments for payment were manufactured and were forgeries. In a sense the defendant appears to be approbating and reprobating in as far as the sale agreement was concerned. In that regard therefore the court needs to consider and make a determination whether infact there was a sale agreement between the plaintiff and the defendant.

Whether or not there was a sale agreement?

23. The background to the defendant's occupation and possession of the suit premises is the letter dated 26th July 1995 written by Ken Kasinga (PW1) to Mr. Chelang'a. I set out hereunder the contents of the letter:-

Dear Sir;

We have not been able to talk since our last meeting on Friday 21st. As I had explained to you earlier I am to vacate my current premises by the end of this month, which shall be this coming weekend. I am therefore in a dilemma as to what to do taking into account this busy schedule, and me and my young families current position.

I propose as a matter of urgency that we do the following:-

(a) Let me have the keys and start the internal cleaning up as we had agreed i.e painting and internal repairs.

(b) Let me have your letter of offer as to the sale of the property to enable me start working with savings & Loans.

(c) I could assist with the fencing and general cleaning up of the property as I have the people to do so.

Your most urgent response to this will be highly appreciated under the circumstances. I hope you also understand my current position. I do not mind paying your some rent after taking into account my input as we sort out the mortgage.

Kindly if possible give me an answer by the end of the day.

My best regards

Signed

K M Kasinga.

24. From the content of the letter it is evident there were discussions between Mr. Chelang'a and Mr. Kainga respecting the sale of the property belonging to Mr. Chelanga to Kasinga. According to the plaintiff the formal sale agreement was entered into on 6th November 1995 between Tilak Company Ltd, a Company where Mr Chelanga was a shareholder and director and Mageta Enterprise Limited a Company where Mr. Kasinga was a shareholder and director. The property the subject of the sale was **Nakuru Municipality Block 11/195**. As per the sale agreement the sale price was indicated as Kshs6,500,000/= but by an addendum signed on the same date as the agreement the purchase price was reduced to Kshs4,500,000/= . The Agreement of Sale was duly executed by the plaintiff company and the defendant company under their respective common seals and attested by their respective directors. The directors of the defendant company executed the addendum confirming the reduction of the purchase price of the property to Ksh 4.5 million.

25. In the letter of 26th July 1995 the plaintiff had indicated that the property purchase was to be financed by a mortgage from Savings and loan .At the time of executing the agreement a deposit of Kshs2, 000,000/= was paid to the vendor and the balance of the purchase price as provided under Special condition 'A' was to be financed by way of a loan from Savings & Loan Kenya Ltd Nakuru. The Agreement provided for completion by 31st December 1995. However, the plaintiff by a letter dated 7th December 1995 addressed to the defendant sought an extension of the completion date and a variation of the special condition that provided that the balance was to be financed by way of a loan from Savings & Loans Kenya Ltd Nakuru. The plaintiff indicated that the balance was to be paid in cash on or before the end of July 1996. The plaintiff testified that the balance of the purchase price was paid in cash and was received by Mr. Ishmael Chelanga on 4th May 1996 Kshs800,000/=; on 13th May 1996 Kshs500,000/=; and on 20th July 1996 Kshs1,200,000/= and acknowledgments of the sums where duly signed by Mr. Chelang'a on behalf of the defendant. The plaintiff stated that the full purchase price was paid when the last installment of Kshs1,200,000/= was paid on 20th July 1996. The two Bank Statement produced in evidence by the plaintiff supported the plaintiff's assertion that on the date the installments were paid in cash the plaintiff's Bank account was debited funds that supported the cash payments.

26. The defendant through DW1 in her evidence took the position that the defendant never entered into any sale agreement with the plaintiff and maintained that the plaintiff was merely a rent paying tenant. It is noteworthy that DW1 only referred to the letter by Mr. Kasinga dated 26th July 1995 where Mr. Kasinga sought to be permitted to enter into the property to reside therein with his family pending the formalization and completion of the sale transaction. The defendant (DW1) did not produce any tenancy agreement and/or any evidence of payment of rent to illustrate that indeed the plaintiff occupied the property as a tenant. What is clear is that the letter by the plaintiff (Mr. Kasinga) dated 26th July 1995 was indeed a precursor to the sale agreement. It was instructive to note that DW1 at the time the transaction is said to have taken place in 1995 was only 10 years and could not have been privy to the transaction or happenings.

27. DW1 additionally in her evidence denied the agreement was executed by the defendant and in particular denied the signatures of her parents attesting the affixing of the defendant's seal were signed by them. She denied the signatures attributed to her father, Mr Chelang'a on the acknowledgments were his. Earlier in the judgment I made reference to the replying affidavit sworn by Zaina Mukami Chelang'a (DW1's mother) in response to the originating summons. The Agreement for sale and the payment acknowledgments were annexed to the affidavit in support of the originating summons. The mother to DW1 did not deny that the defendant executed the sale agreement or that she attested the affixing of the company seal. What can be deduced from the replying affidavit is that Zaina Mukami Chelang'a was acknowledging there was a sale Agreement save that it was her position the terms were not met by the plaintiff.

28. Having carefully considered the evidence I am satisfied there is proof there was an agreement of sale entered into between the plaintiff and the defendant for the purchase of the suit property. That the initial agreement was that the sale price would be Kshs6.5 million but this price was varied to Kshs4.5 million as per the addendum signed on the same date as the sale agreement. The full purchase price of Kshs4.5 million was paid to the defendant as evidenced by the acknowledgments tendered in evidence. On the first issue I therefore find and hold that the plaintiff and the defendant entered into the sale agreement dated 6th November 1995.

Whether occupation by the plaintiff constituted adverse possession

29. There is no dispute that the plaintiff occupied the suit property sometime in 1995. The defendant has averred that the plaintiff entered the suit premises as a rent paying tenant and in support of this averment refers to the plaintiff's letter dated 26th July 1995 where Mr Kasinga requested that he be allowed to move into the house pending settlement on the terms of the sale agreement and he made an offer to pay some rent for the period before the sale. It was not clear whether the request was granted and/or if it was granted, what the terms of occupation were to be.

DW1 testified that the plaintiff was paying rent of Kshs.18,000/= but there was absolutely no evidence of this. What was evident is that on 6th November 1995 a sale agreement was entered into and a deposit of Kshs2,000,000/= paid towards the purchase price. The plaintiff henceforth became a purchaser in occupation and on payment of the last installment of the purchase price of Kshs1,200,000/= on 20th July 1996 the plaintiff henceforth continued in possession as the beneficial owner. The registered owner of the property after the full purchase price was paid, held the title to the property in trust. The plaintiff would have been entitled in a suit for specific performance to an order of specific performance if such a suit had been brought within the period of limitation. In the present suit the plaintiff is not seeking specific performance of the contract but is rather seeking to be declared as owner of the suit property by reason of having been in adverse possession for the requisite period of 12 years.

30. The court's understanding of the plaintiff's case against the defendant is that the plaintiff entered into an agreement to purchase the defendant's land parcel **Nakuru Municipality Block 11/195** on 6th November 1995 and pursuant to the sale agreement entered into possession of the land. The plaintiff completed payment of the purchase price on 20th July 1996 and owing to various reasons including the death of Mr. Chelang'a who was the principal shareholder and director of the defendant, soon after the payment of the final balance of the purchase price, the transaction was not completed. The plaintiff's submissions is that after paying the final balance of the purchase price, its occupation and possession of the suit property became adverse, and that after expiry of 12 years therefrom the registered owner's title became extinguished by operations of the law and the plaintiff became entitled to be registered as the owner thereof.

31. The defendant in their submissions have argued that where possession is pursuant to an agreement of sale, the possession cannot become adverse until the period for which permission to occupy has been given has elapsed. In the instant case the defendant contends the possession could only have become adverse after the limitation period of 6 years within which the plaintiff would have initiated action under the agreement had lapsed. The defendant placed reliance on the case of **Sisto Wambugu -vs- Kamu Njuguna (1983) eKLR and Samuel Miki Waweru -vs- Jane Njeri Richu (2007) eKLR**. The court of Appeal in the latter case expressed themselves as follows:-

*“It is trite Law that a claim for adverse possession cannot succeed if the person asserting the claim is in possession with the permission of the owner or in pursuance of an agreement for sale or lease or otherwise. Further as the High Court correctly held in **Jandu -vs- Kilpa (1975) EA 225** possession does not become adverse before the end of the period for which permission to occupy has been given. The Principle to be extracted from the case of **Sisto Wambugu -vs- Kamau Njuguna (1982-88) IKAR 217** relied on by Mr Gitonga, learned counsel for the appellant, seems to be that a purchaser of land under a contract of sale who is in possession of the land with the permission of the vendor pending completion cannot lay a claim of adverse possession of such land at any time during the period of validity of the contract unless and until the contract of sale has first been repudiated or rescinded by parties in which case adverse possession starts from the date of the termination of the contract .*

32. The plaintiff however in its submission argued that its possession though initially consensual and with the permission of the defendant pursuant to the sale agreement, that permission ended when the plaintiff paid the last installment of the purchase price on 20th July 1996. In support of this submission the plaintiff equally relied on the Court of Appeal case of **Wambugu -vs- Njuguna (1983) KLR 173** where the Court inter alia held under holding no.8 thus:-

“8. Where a claimant pleads the right to land under an agreement and in the alternative seeks an order on subsequent adverse possession, the rule is: the claimant's possession is deemed to have become adverse to that of the owner after payment of the last installment of the purchase price. The claimant will succeed under adverse possession upon occupation for at least twelve years after such payment”.

33. The plaintiff further placed reliance on the case of **Simon Ng'ang'a Njoroge -vs- Daniel Kinyua Mwangi (2015) eKLR** where the Court in applying the principle espoused in the case of **Wambugu -vs- Kamau** (supra) held as follows:-

*“Having found the plaintiff's testimony concerning the said sale agreements more believable, and taking note of the principle espoused in **Wambugu -vs- Njuguna** (supra) to the effect that where a claimant pleads the right to land under an agreement and*

in the alternative, seeks an order based on subsequent adverse possession, (Like the plaintiff herein has done) the rule is : the claimants possession is deemed to have become adverse to that of the owner after the payment of the last installment of the purchase price and that the claimant will succeed under adverse possession upon occupation for at least 12 years after such payment . I find and hold that, in the circumstances of this case, the plaintiff possession of the suit property became adverse from 6th June, 1994”.

34. Madan, JA echoed the same principle espoused in **Wambugu -vs- Kamau** (supra) in the case of **Public Trustee -vs- Wanduru (1984) KLR 314** where the court held that adverse possession commences in favor of the purchaser the date he completes payment of the purchase price. Madan JA at page 319 stated:-

“—that the full purchase price for the land having been paid on the same day, viz March 16, 1967 the learned judge ought to have held that the second appellant had completed adverse possession of the suit land for over twelve years before the institution of the suit on April 2, 1979”.

35. The judge went on to observe as follows:-

Of course, calculated from the date of payment of the purchase price on March 16,1967 and on the basis of it, the full span of twelve years adverse possession and more had already run when the suit was filed on April2, 1979. The true owner ceased to be in possession on March 16, 1967. His possession was discontinued on that day”

36. The judge further went on to state thus:-

*“ 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 under section 10(1) of the English Limitation Act, 1939 (closely akin to our section 7) as against the vendor. **Bridges -vs- Mees (1957) ICh 75 at 484; referred to with approval in Wamwangi Githui -vs- Livingstone Ndete and others, CA No.24 of 1979 (unreported).**”*

37. In the present case the court has found and held that there was a sale agreement and that the final installment of the purchase price was paid on 20th July 1996. The plaintiff was in possession of the suit property and applying the principle espoused in the case of **Wambugu -vs- Kamau** and the case of **Public Trustee -vs- Wanduru** (supra) the period of limitation started to run in favor of the plaintiff from 20th July 1996 so that as at 8th August 2008 when the suit was filed the plaintiff had been in adverse possession of the suit land for a period of over twelve years and had become entitled to be registered as the owner of the land.

38. The defendant conceded in evidence that the plaintiff’s occupation and possession was continuous and was uninterrupted. Although the defendant alleged the plaintiff was a tenant and that there had been demands to enforce payment of rent, there was no evidence tendered in support thereof and the court discounts the allegations. The defendant over all the period never took any legal steps to evict the plaintiff if he was in unlawful occupation of the suit premises.

39. Before I conclude this judgment I need to say something about the defendant’s allegation/assertion that the signatures of Mr. and Mrs. Chelang’a on the sale agreement were forgeries. There was no proof of this and even if it was established the signatures were forgeries (which it was not) I fail to see how that would have altered the position that the plaintiff had been in adverse possession. As I have stated there was no evidence that the plaintiff was a rent paying tenant in the suit premises and no attempt was made to evict him. The claims of forgery and tenancy relationship in my view appears to have been conceived as a weapon to be applied to attempt to thwart the plaintiff’s claim for adverse possession. DW1 only initiated investigations allegedly to verify the signatures in 2017, 9 years after the filing of the suit. The defendant in my respectful view was groping in the hope they could find anything that could help to scuttle the claim by the plaintiff. Unfortunately that was not to be.

40. In conclusion and taking into account the totality of the evidence I am satisfied that the plaintiff has proved its case against the defendant on a balance of probabilities and is therefore entitled to judgment in it’s favour . I accordingly enter judgment in favour of the plaintiff on the following terms:-

- 1. That the plaintiff has acquired title to land parcel Nakuru Municipality Block 11/195 by reason of being in adverse possession of the property for the requisite period of twelve (12) years.**
- 2. That the plaintiff, Mageta Enterprises Limited, is ordered to be registered as the owner of land parcel Nakuru Municipality Block 11/195 in place of the Defendant, Tilak Company Limited, whose title has become extinguished.**
- 3. The costs of the suit are awarded to the plaintiff.**

Judgment dated signed and delivered at Nakuru virtually this 17th day of December 2020.

J M MUTUNGI

JUDGE