



**Oseur & 7 others v Proactive Air Services Limited & another (Enviromental and Land Originating Summons E014 of 2021) [2025] KEELC 6734 (KLR) (2 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 6734 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E014 OF 2021  
LC KOMINGOI, J  
OCTOBER 2, 2025**

**BETWEEN**

- ATETO ENE OSEUR ..... 1<sup>ST</sup> PLAINTIFF**
- RANKANAU ENE LEPERIPERE ..... 2<sup>ND</sup> PLAINTIFF**
- STANLEY SUNKUYA OLOLKWARRI ..... 3<sup>RD</sup> PLAINTIFF**
- JULIUS OREYIO LEPERIPERE ..... 4<sup>TH</sup> PLAINTIFF**
- SANE OLE LEPERIPERE ..... 5<sup>TH</sup> PLAINTIFF**
- LAANOI OLE LOSHIRO ..... 6<sup>TH</sup> PLAINTIFF**
- NTENUE SANKOK ENE PERIPERE ..... 7<sup>TH</sup> PLAINTIFF**
- PAINI ENE ORKWARI ..... 8<sup>TH</sup> PLAINTIFF**

**AND**

- PROACTIVE AIR SERVICES LIMITED ..... 1<sup>ST</sup> DEFENDANT**
- AGNES KIORO MUUNGANIA (SUED AS THE ADMINISTRATOR OF THE ESTATE OF M’MUUNGANIA M’MURIRA) ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. This suit instituted by way of Originating Summons dated 9<sup>th</sup> March 2021 and Amended Originating Summons dated 30<sup>th</sup> March 2023 is brought under Section 38 of the *Limitation of Actions Act*, Order 37 Rule 7(1) and (14) of the Civil procedure Rules, Section 3A of the *Civil procedure Act* and other enabling provisions. The Plaintiffs claim to have acquired parcel Kajiado/Loodariak/1183 by way of adverse possession and are entitled to be registered as proprietors in common upon determination of the following questions:



- i. Whether the Plaintiffs herein acquired title Kajiado/Loodariak/1183 measuring approximately 20.23 hectares and have thus become the proprietors by virtue of the doctrine of adverse possession.
  - ii. Has the defendants proprietorship of parcel Kajiado/Loodariak/1183 been extinguished upon expiration of 12 years since the Plaintiffs took possession of the said land on diverse dates.
  - iii. Are the Plaintiffs entitled to be registered as proprietors in common of parcel Kajiado/Loodariak/1183.
  - iv. Should the Deputy Registrar be directed to sign requisite documents to facilitate the registration of the suit property Kajiado/Loodariak/1183 in favour of the Plaintiffs as proprietors in common.
  - v. Whether the District Land Registrar Kajiado North should be ordered to register the Plaintiffs as owners in common of property Kajiado/Loodariak/1183.
  - vi. An order that the Defendants by themselves, agents, and / or servants be restrained from entering the suit land or interfering with the peaceful occupation of the Plaintiffs and their families in respect to the suit property.
  - vii. Who should bear costs of the suit.
2. The Plaintiffs through the Affidavits sworn by Stanley Sunkuyia Olokwari averred that the suit property was first registered in the 2<sup>nd</sup> Defendant's name in 1992 and he was never in possession of the property because the same was occupied by the Plaintiffs way before the registration which they claim was irregular was undertaken. They indicated that a restriction was put on the property between 27<sup>th</sup> April 1994 to 8<sup>th</sup> April 2009 due to the irregularities during the adjudication process of the Loodariak Adjudication Section.
  3. They also indicated that the transfer effected to the 1<sup>st</sup> Defendant in 2012 by M'Mungania was fraudulently undertaken because M'Mungania passed away in 2005 and could not have effected any transaction in 2012 and succession process had neither been initiated nor concluded at this time. Nonetheless, even if the transaction was regular, change of ownership did not stop time from running against them and by 2012, the previous owner's title had already been extinguished.
  4. The 1<sup>st</sup> Defendant's Managing Director Elijah Mwangi Njuguna in his Replying Affidavits dated 12<sup>th</sup> April 2021 and 24<sup>th</sup> February 2023 stated that he together with other Directors registered the Company in 2010 to offer flying lessons and other associated services. After incorporation they looked for a piece of land to set up an airstrip. In 2012 they identified the suit property Kajiado/Loodariak/1183 belonging to the 2<sup>nd</sup> Defendant and conducted due diligence before they purchase. They visited the suit property with a surveyor to identify the boundaries and there were no structures on the suit property neither were any persons residing thereon. Once they confirmed that the suit property was without encumbrances, they began the process of obtaining requisite documents such as the Land Control Board consent which was issued on 3<sup>rd</sup> July 2012, a sale agreement was entered on 5<sup>th</sup> July 2012, transfer undertaken and a title deed in favour of the 1<sup>st</sup> Defendant issued on 20<sup>th</sup> July 2012. On 24<sup>th</sup> October 2013 the 1<sup>st</sup> Defendant went to acquire another adjacent piece of land Kajiado/Loodariak/704 measuring approximately 80 hectares. All this time, the properties were vacant and the 1<sup>st</sup> Defendant got a letter of no objection from the Deputy County Commissioner dated 14<sup>th</sup> June 2013 to proceed with the project.



5. Sometime in 2015, the 1<sup>st</sup> Defendant purchased fencing poles to fence the properties so as to begin the project, but a group of about 15 men attacked them, chased them away and destroyed the poles. Since then, any efforts to access the property were thwarted by group of young men on motorcycles coming from far and wide but were not in occupation of the suit property. A report was made at the Kiserian Police Station on 15<sup>th</sup> February 2019 and investigations conducted showed that some people had illegally occupied the suit property and were putting up structures without the owner's consent or authority illegally dispossessing the rightful owner. The Plaintiffs were then arrested and charged with the offence of forcible detainer in Ngong' Criminal Case No. 504 of 2019.
6. The Plaintiffs allegations that they have been on the suit property by way of adverse possession from the year 1992 was therefore false. He also pointed out that there were no persons and/or graveyards on the suit property.
7. The 2<sup>nd</sup> Defendant in her Replying Affidavit dated 11<sup>th</sup> July 2023 stated that the late M'Mungania acquired the suit property in the 1990's after meeting requirements laid out by the Land Adjudication Officers. She claimed that if there were any irregularities in the allocation of the suit property, then the Plaintiffs should have commenced the suit through a Complaint against the officials or seek judicial review to quash the decision of the adjudication officers. She also pointed out that the restriction placed on all parcels emanating from Loodariak adjudication section by the Government was lifted meaning that the process was regular and the Plaintiffs were estopped from claiming any irregularity 3 decades later.
8. She added that since the acquisition of the property, the late M'Mungania frequented the property and at no point was the parcel occupied by the Plaintiffs. And after his demise in 2005, the property was still frequently visited by friends to ascertain its status. And up to 2014, the property was vacant, and if there was any occupation, then the same began in 2015. Therefore, the claim for adverse possession had not been satisfied and any squatters on the land should be evicted stating that photographs of temporary structures and animals grazing on some piece of land was not proof of occupation of the suit property.
9. She also indicated that her father passed away in 2005, therefore any claim that the property was sold or transferred to anyone else in the year 2012 was fraudulent and illegal and the registration in favour of the 1<sup>st</sup> Defendant should be cancelled.
10. In responding to this defence, the Plaintiffs in the Replying Affidavit dated 2<sup>nd</sup> August 2023 stated that the suit was not on determination of irregularities of the adjudication process but whether the Plaintiffs had acquired the suit land by way of adverse possession stating that neither the late M'Mungania nor his beneficiaries were ever in possession of the suit property. The Plaintiffs also argued that if the 2<sup>nd</sup> Defendant was aware of the existence of the suit property, she would have moved Court to dispute the irregular transfer undertaken in 2012 and the property would equally have been listed in the properties under succession. Their claim to the suit property should therefore be granted.

### **Evidence of the Plaintiffs**

11. PW1 Stanley Sunkuya, the 3<sup>rd</sup> Plaintiff adopted his Affidavits as part of his evidence and produced the bundle of documents which was marked as P. Exhibit 1 to 6. He stated that he was livestock farmer and had been residing on the suit property from 1989 when he was born together with his family. He stated that the 8<sup>th</sup> Plaintiff was his mother but his father had passed away and buried on the suit property. He stated that the 2<sup>nd</sup> Defendant's family had never occupied the suit property.
12. On cross examination he stated that he had been on the suit property since birth and had photographs as evidence although he confirmed that the photographs were not proof that the parcel of land was



- the suit property. He stated that there were people living on adjacent parcels of land who could verify this claim although they had not been called as witnesses. He indicated that he had a brother who also occupied the suit property but was not a party to the suit. He added that one of his wife's passed away and was buried on the suit property but did not have proof of this. He indicated that he had the death certificate but did not have his father's death certificate. On being questioned about Ngong' Criminal Case No. 501 of 2019 he confirmed that he was one of the accused persons and the complainant was the 1<sup>st</sup> Defendant although he had never been on the suit property. He indicated that there was a restriction placed on the suit property's title but it was later lifted.
13. During re-examination he stated that one of his wives passed away during the pendency of the suit. On the issue of the restriction, he stated that while the restriction was lifted, the issue of irregular allocation of land was never resolved.
  14. PW2 Paini Ene Olokware adopted her Affidavit as her evidence in chief and produced documents marked as P. Exhibit 8 to 12 as evidence. She stated that she got married while her husband was residing on the suit property but she could not recall the year although it had been for over 45 years. She stated that PW1 was one of her children. She stated that when she got married, the land had not been subdivided. When the subdivision was done, the land was unfairly allotted and her husband passed away following up on issuance of the title deed.
  15. On cross examination she stated that he husband passed away thirty years ago and was buried on the land but she did not have anything to prove this. She indicated that she had seven children and while three of them resided on the property, only PW1 was a party to the suit. She confirmed that some people were arrested for occupying the land. She indicated that she filed a complaint with the adjudication committee over the adjudication process but did not have anything to prove this. She stated that when she started living on the property, they lived in a manyatta, but later constructed an iron sheet home.
  16. On re-examination she confirmed that while the restriction on the title was removed, the issue of unfair allotment was never resolved.
  17. PW3 Rakanau Ene Leperipere testifying in the Maa language adopted her Affidavit as her evidence in chief and produced documents marked as P. Exhibit 13-16 as her exhibits. She stated that she entered the suit property a long time ago and had all her children there, with her first born being about 43 years old. She stated that she found PW2 on the property and it had not been subdivided at the time. Upon subdivision, her husband tried to follow up on the total and it was discovered that there was a restriction on the title.
  18. On cross examination she re-stated that she entered the property when she got married and when her husband passed away, he was buried on the suit property but did not have anything to prove this. She indicated that her firstborn was 43 years although the documents produced showed that he was 34 years. She also indicated that the birth certificates produced were her children's but upon being asked the mother's name indicated on them, she confirmed that, that was not her name. She also confirmed that she was an accused person in a criminal case but was not aware why she was arrested pointing out that she had never seen the Defendants on the suit property.
  19. PW4 Ntenu Sankok Ole Peripere, PW5 Atete Ene Oseur, PW6 Laanoi Ole Loshiro, PW7 Sane Ole Leperipere, and PW8 Julius Oreyio Leperipere all adopted their Affidavits as their evidence in chief and produced documents marked as P. Exhibit 17 to 31.
  20. They stated that they had been residing on the suit property from years ranging in 1975 and their relatives including parents and spouses who had passed away were buried on the suit property. They stated that they were not familiar with the Defendants because they never visited the suit property.



Some of them stated that they only met him when they were arrested or in Court during the proceedings of this suit. PW4 indicated that she first met the 1<sup>st</sup> Defendant when she was arrested but had never seen either him or the family of the 2<sup>nd</sup> Defendant on the suit property. PW5 stated that she was born on the land in 1975 and when her parents passed away, they were buried on the suit property. She stated that she was not familiar with the 1<sup>st</sup> Defendant and saw him for the first time in Court. She indicated that she was unmarried and used a neighbour's Identification document to acquire birth certificates for her children. PW7 on examination in chief stated that his father passed away in 2000, but on cross examination he stated that he passed away in 1995.

21. PW9, Luke Ole Shululu, a 75 years old man adopted his Affidavit as his evidence in chief. He stated that he was a member of the adjudication committee and his home was about 10 kilometres away from the suit property. He stated that during the land demarcation, members were allotted land based on their area of residence. However, during the adjudication process, some people such as the Defendants were given land and other members of the community such as the Plaintiffs parents (Ole Shiro, Ole Sankok, Ole Leperipere and Ole Kwarri) who were on the suit property were not allotted land.
22. On cross examination he indicated that he neither produced any documents to prove he was a member of the adjudication committee nor the committee records of the adjudication process. But insisted that the late M<sup>3</sup>Mungania should not have been allocated land. He stated that the allotment was process was by application and the committee members would then confirm that the applicants were on the members list and then they would be allotted land. He confirmed that Ole Shiro, Ole Sankok, Ole Leperipere and Ole Kwarri also applied for allotment of land and the same was given to them. He went on to state that during the adjudication process, some people who ought not to have been given land were allotted. They complained to the area Member of Parliament who formed a committee to address this issue but they were threatened. He stated that those dissatisfied with the adjudication were to file their objections within 60 days but none of the four mentioned persons filed an objection.
23. Following a site visit to confirm occupation of the suit property and the report by the Deputy Registrar, PW1 was recalled. He stated that all the houses on the suit property were over 25 and 12 years but had been renovated constantly. On the issue of the grave sites, he stated that as per their culture, the grave sites so that they are not easily identifiable but the families were aware where they had buried their loved ones. He also indicated that on the day of the site visit, there were no animals on the suit property because they had gone out to graze.
24. On cross examination he confirmed that he together with the other Plaintiffs were present when the surveyors visited the site. He contested the report on grounds that he had been on the suit property since birth and his house was more than 10 years. He re-stated that they do not mark grave yards but if dug up, there would be stones as evidence. On being asked about the size of the land he was claiming, he stated that it was 10 acres but was not aware how much each of the other Plaintiffs were claiming.
25. On re-examination he stated that his house was about 15 years old and had lived on the suit property for 36 years.

### **Evidence of the Defendants**

26. DW1 Elijah Mwangi Njuguna, the director of the 1<sup>st</sup> Defendant, adopted his Affidavit and produced his documents which were marked as D. Exhibit 1 to 7.
27. On cross examination, he stated that he purchased the suit property in 2012 having learnt about the sale from one Erastus, the registered owner's brother. He stated that he was given a copy of the title deed and the sale agreement executed before an advocate. He did not call the said Advocate as a witness. He also stated that the said Erastus had a Power of Attorney although he did not sign the agreement. He



was not aware the registered owner was deceased. The said Power of Attorney was also not presented in evidence. He stated that he paid Erastus the purchase price in three instalments. Counsel pointed out that there was no evidence of payment of stamp duty as well as the consent from the Land Control Board. He stated that he visited the suit property severally in 2012 prior to the purchase and a surveyor also pointed out the beacons and on these occasions, the land was vacant. Upon the purchase, he tried to fence it, but his efforts were thwarted by some people. He filed a complaint and arrests as well as charges were preferred against some of the Plaintiffs. The case is still pending. As such, he did not have free access to the property and also stated that the houses on the property were not older than ten (10) years.

28. On re-examination he stated that they tried to fence the suit property in 2016 and there were no structures on the property by this time.
29. DW2 Rufus Kithinji, adopted his Affidavit as his evidence in chief.
30. On cross examination he stated that in 2001, 2002 and 2003, he together with the deceased would visit the suit property when he was on holiday. He stated that there was a semi-permanent structure where the deceased would stay when he was purchasing livestock for business but never kept any livestock on the property. Upon his demise in 2005, he continued visiting the suit property until 2014 when he stopped. He stated that no fence had been put up.
31. DW3 Agnes Kioro M'Mungania adopted her Affidavit as her evidence in chief and produced her documents marked as D. Exhibit 8 and 9. She stated that her father passed on, in 2005 and could not have transacted on the suit property in 2012. She further stated that the signature on the agreement was neither his nor did they receive the Kshs. 12,500,000 alleged to have been paid as the purchase price. She stated that she was present during the site visit conducted on 29<sup>th</sup> July 2024 and the structures on the land looked like newly constructed structures and not older than seven (7) years. She went on to state that DW2 would visit the property and in his last visit in 2014, the property was vacant.
32. On cross examination she stated that she was the administrator of the Estate of the late M'Mungania. That her father was registered as the owner of the suit property in 1992 and upon his demise in 2005, Grant of letters of administration were issued in 2017. She stated that the suit property was not part of the schedule of properties listed because its title was lost and she could not undertake a search. She did not make a report of the missing title. She confirmed that DW2 who was her nephew kept visiting the suit property to ascertain its status. The last time he visited was in 2014 and there were no people on it. She also indicated that whereas the alleged sale by the 1<sup>st</sup> Defendant was fraudulently undertaken, he could not have purchased the land in 2012 if there was anyone in occupation. She further stated that all the structures on the land at the time of the site visit looked like new constructions not older than seven (7) years. When being asked about her allegation that the title was fraudulently acquired, she stated that she had not made a report regarding this and she was not aware whether her uncle the late Erastus had a power of attorney donated to him by her late father.
33. On re-examination she restated that the 1<sup>st</sup> Defendant's title was acquired fraudulently.
34. At the close of the oral testimonies, parties tendered final written submissions.

### **Submissions of the Plaintiffs.**

35. On whether the Plaintiffs had acquired title by dint of adverse possession, counsel submitted that some plaintiffs had testified that they had been on the suit property for over 45 years and had buried their family members on the property. That the Deputy Registrar's observation that the houses were less than 10 years old was wrong and this was because some of them had been renovated. Counsel also



contested that the Deputy Registrar's report did not capture some houses as well as some livestock structures. Counsel also argued that the 1<sup>st</sup> defendant acknowledged that he could not access the suit property because the Plaintiffs were in occupation. Counsel also contested evidence of DW2 and DW3 who indicated that they had been visiting the suit property from time to time until 2014 arguing that there was no proof of this or evidence of neighbours to ascertain these visits. As such, the Plaintiffs reliefs should be granted as sought together with costs.

36. To support the claim of adverse possession and their right to it, reference was made to the following cases: *Mtana Lewa v Kahindi Ngala Mwangandi* [2015] KECA 532 (KLR), *Tabitha Waitherero Kimani v Joshua Ng'anga* (2017) eKLR, *Mayiani v Ndisi* [2024] KEELC 441 (KLR), *Chevron (K) Ltd v Harrison Charo Wa Shutu* [2016] KECA 248 (KLR) and *Kasha v Ole Tonkei* [2023] KEELC 20414 (KLR).

### **Submissions of the 1<sup>st</sup> Defendant.**

37. Counsel submitted that he who alleges must prove as per Section 107 and 108 of the *Evidence Act* but the Plaintiffs had not proved their case on the required threshold. It was argued that some witnesses such as PW5 and PW7's testimony could not be believed because the birth certificates showed that they were parents to the same set of children, a fact that they denied saying that they only borrowed each other's identification documents. Counsel also raised questions on the years alleged by the Plaintiffs and the site visit proved that the Plaintiffs had not been on the suit property for more than 10 years if at all.
38. The suit and their claim for adverse possession should therefore be dismissed.

### **Submissions of the 2<sup>nd</sup> Defendant**

39. On whether the Plaintiffs had proved their case, counsel outlined the discrepancies in their testimonies, birth certificates produced as well as paternity of the children as per the names on the certificates and asked, if the Plaintiffs were capable of lying under oath on the paternity and maternity of their own children, can this court expect them to tell the truth regarding their duration of occupation of the suit land? Counsel submitted that the Deputy Registrar's report as an officer of the Court should speak for itself and it had been noted that the houses were not more than 10 years old adding that this was the same testimony for DW1, DW2 and DW3. As such the Plaintiffs had failed to prove their claim for adverse possession on a balance of probabilities and the suit should be dismissed.
40. Counsel also submitted on the legality of the 1<sup>st</sup> Defendant's purchase of the suit property.

### **Analysis and Determination**

41. I have considered the pleadings, the evidence on record, the written submissions and the relevant authorities cited and find that the issues for determination are:
- i. Whether the Plaintiffs have proved their claim for adverse possession;
  - ii. Whether the Plaintiffs are entitled to the reliefs sought;
  - iii. Who should bear costs of this suit?
42. The Plaintiffs in this suit have approached Court seeking a declaration and registration as the legal owners of property Kajiado/Loodariak/1183 on grounds that they have been in possession and occupation since birth with some witnesses stating that they had been on the suit property since 1975.



That the registered owner's interest in the property had since been extinguished. They also claimed that their family members who had passed away were buried on the suit property.

43. Before delving into the issues, it is worth noting that the Court is alive to the issue of fraud and illegality in the transfer of the suit property to the 1<sup>st</sup> Defendant in 2012 while the registered owner had passed away in 2005. This should however be canvassed at a different forum because the issue for determination in this suit is whether the Plaintiffs had proved that they were entitled to be registered as owners of the suit property by way of adverse possession.
44. To succeed in a claim of adverse possession claim, the claimant must prove they have possessed the land openly, continuously, exclusively, and without the owner's consent for the statutory period of 12 years as held in *Mtana Lewa v Kahindi Ngala Mwangandi* [2015] KECA 532 (KLR) where the court stated thus;

“... Adverse possession is essentially a situation where a person takes possession of land and asserts rights over it and the person having title to it omits or neglects to take action against such person in assertion of his title for a certain period, in Kenya, is twelve (12) years. The process springs into action essentially by default or inaction of the owner. The essential prerequisites being that the possession of the adverse possessor is neither by force or stealth or under the licence of the owner. It must be adequate in continuity, in publicity and in extent to show that possession is adverse to the title owner...”
45. The Plaintiffs produced documents such as photographs and identification documents such as birth certificates to prove that they had their families on the suit property. It was noted that some of the birth certificates had discrepancies in important features such as age and name of parents. Some identification cards of the Plaintiffs also had discrepancies in the age indicated vis a vis the age some Plaintiffs claimed.
46. The 1<sup>st</sup> defendant in contesting the claim for adverse possession, stated that he purchased the suit property in 2012 and conducted due diligence including visiting the site. During his site visits, he found the property vacant until sometime in 2015 when he attempted to fence it and was accosted by a rowdy youth who torched the fencing poles and made it difficult to access the suit property thereafter.
47. The 2<sup>nd</sup> Defendant while contesting the purchase and transfer of the suit property to the 1<sup>st</sup> Defendant in 2012 stated that her father passed away in 2005 and could not have transacted in 2012. She further stated that her nephew, DW2 visited the suit property in 2014 and it was vacant. She stated that if at all there was any occupation, the same took place from the year 2015. While contesting the sale and transfer to the 1<sup>st</sup> Defendant she stated that the allegation that the Plaintiffs had been in occupation of the property since birth was could not be true because if the 1<sup>st</sup> defendant purported to purchase the land in 2012, he must have undertaken due diligence and found that the property was vacant.
48. Adverse possession being an action of taking a person's land by force, Courts have a duty to ensure that this only succeeds where there is no iota of doubt that the claim is indeed valid. I would dare say that a claim of adverse possession should be weighed on a balance higher than the balance of probability. We live in a country where land is a measure of wealth and some people acquire land not for any development purposes but either for prospective sale at a profit, or for future use by their kin.
49. In *Kimani Ruchure & Another Vs. Swift Rutherford Co. Ltd & Another* (1977) KLR 10 Kneller J stated as follows at page 16.

“The plaintiffs have to prove that they have used the land which they claim as of right, nec vi, nec claim, nec precario, no force, no secrecy, no evasion).



.....The possession must be continuous. It must not be broken for any temporary purposes or by any endeavours to interrupt it or by any recurrent consideration.”

50. Similarly in *Wambugu Vs. Njuguna* (1983) KLR 172 the court stated as follows;

“First in order to acquire by the statute of Limitations title to land which has a known owner; that owner must have lost his right to the land either by being dispossessed of it or by having discontinued his possession of it. Dispossession of the proprietor that defeats his title entails acts which are inconsistent with his enjoyment of the suit and for the purpose for which he intended to use it. The *Limitation of actions Act* (Cap 22) on adverse possession contemplates two concepts, dispossession and discontinuance of possession. The proper way of assessing proof of adverse possession would then be whether or not the title holder has been dispossessed or has discontinued his possession for the statutory period and not whether or not the claimant has proved that he has been in possession for the requisite number of years.”

The plaintiffs concede that there have been two transactions on 7<sup>th</sup> September 1992 in favour of the 2<sup>nd</sup> defendant and on 20<sup>th</sup> July 2012 in favour of the 1<sup>st</sup> defendant. These transfers could not have been done if the plaintiffs were in alleged open and continuous occupation of the suit property.

51. The plaintiffs in their evidence were not able to explain how this could be possible. The only explanation is that they were not on the suit property until a few years ago.

52. The extract of Green Card shows that the Restriction was placed by the Chief Land Registrar on 27<sup>th</sup> April 1994 after the 2<sup>nd</sup> defendant had been registered as the owner. It was removed on 8<sup>th</sup> April 2009 by the said Chief Land Registrar. From this time until 2012, the land was in the name of the deceased M’Mungania M’Murira. No reasons are given for the restriction and for removal of it.

53. The plaintiffs’ claim that the suit property had been allocated to persons outside the community was neither here nor there.

It should be noted that there’s a pending criminal case being Criminal Case No. 504 of 2019 at Ngong Law Courts where some of the plaintiffs are the accused persons.

54. To ascertain occupation of the Plaintiffs on the property, a site visit was ordered by this Court and the same was conducted on 1<sup>st</sup> July 2024 by the Deputy Registrar in presence of the parties and their surveyors. The Deputy Registrar filed a report dated 29<sup>th</sup> July 2024 following the visit in which while confirming that the Plaintiffs were on the suit property she observed, that the structures on the suit property looked like they had not been on the property for over ten (10) years. She also observed that the grave sites pointed out had no clear markings and she could not ascertain their existence. She also observed that there was no livestock on the property. PW1 contested these observations stating that some manyattas had been renovated which would be why they looked less than ten (10) years old. He also stated that they do not mark graves but relatives could easily identify the grave sites and that the animals were not on the suit property because they were out in the fields grazing.

55. It should be noted that the findings of the Honourable Deputy Registrar who visited the land were not controverted even by the testimony of PW1 who was recalled to testify after the site visit. The findings of the Deputy Registrar were not shaken by his testimony.



56. In Mtana Lewa case (supra), the Court held:

“... before one can claim title to land by adverse possession and a part from proving 12 years of uninterrupted, open and peaceful possession, certain strictures must be satisfied. Those strictures are summarized in the Latin maxim, nec vi, nec clam, nec precario, that, one’s possession has not been through use of force, not in secrecy and without the authority or permission of the true owner ...”

57. Taking this into consideration, it is also on record that despite the question on legality of the 1<sup>st</sup> Defendant’s purchase of the suit property in 2012, I would agree with DW3’s observation that if DW1 alleges to have purchased the suit property in 2012, then this could only have been possible upon ascertaining that he was indeed getting vacant possession of the property.

58. This Court is therefore not convinced that the Plaintiffs have proved that they had open, uninterrupted, peaceful and continuous occupation of the suit property for over 12 years and are entitled to be declared the lawful owners under the doctrine of adverse possession.

59. It therefore follows must that the plaintiffs are not entitled to the reliefs sought in the Amended Originating Summons.

60. In conclusion, I find that the plaintiffs have failed to prove their case as against the Defendants on a balance of probabilities. The suit is hereby dismissed.

I order each party to bear own costs.

61. In addition the plaintiffs are hereby directed to vacate the suit property within Ninety ((90) days from the date of this Judgement.

In Default the Defendants do use lawful means to evict them.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 2<sup>ND</sup> DAY OF OCTOBER, 2025.**

**L. KOMINGOI**

**JUDGE.**

In The Presence:

Ms. Kyeva for Ms. Thiongo for the Plaintiffs.

Mr. Machina for the 1<sup>st</sup> Defendant.

Mr. Njeru for the 2<sup>nd</sup> Defendant.

Court Assistant – Peter.

