

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KITALE**  
**ELC NO. 61 OF 2018**

**MARTIN LOKITE**  
**KORWA-----PLAINTIFF**

**VERSUS**

**LOMUTE PUSIKWANG-----**  
**1<sup>ST</sup> DEFENDANT**

**THE COUNTY LAND ADJUDICATION**  
**& SETTLEMENT OFFICER, WEST POKOT-----2<sup>ND</sup>**  
**DEFENDANT**

**COUNTY LAND SURVEY,**  
**WEST POKOT COUNTY-----3<sup>RD</sup>**  
**DEFENDANT**

**COUNTY LAND REGISTRAR,**  
**WEST POKOT COUNTY-----4<sup>TH</sup>**  
**DEFENDANT**

**THE ATTORNEY GENERAL-----5<sup>TH</sup>**  
**DEFENDANT**

**JUDGMENT**

1. The initial plaintiff, before he passed on and was replaced with the current plaintiff, had approached the court through an amended amended plaint dated **1/2/2021**, pursuant to a power of attorney dated **8/10/2018**. He seeks:
  - (a) **Declaration that the 1<sup>st</sup> defendant's title to Land Parcel No. West Pokot/Chepareria/558 was fraudulently acquired.**

- (b) An order directing the Land Registrar, West Pokot, to cancel the 1<sup>st</sup> defendant's title deed for West Pokot/Chepareria/558 and issue two separate titles, one capturing the deceased plaintiff's acreage and the other capturing the 1<sup>st</sup> defendant's acreage.**
- (c) An order directing the County Surveyor, West Pokot, to amend Sheet Nos. 40 and 41 Chepareria Adjudication Section by removing the ground for Title No. 490 from Sheet Map No. 41 and placing it on Sheet No. 40, particularly on the ground currently occupied by the deceased plaintiff under Sheet No. 40, which was its original position.**
- (d) An order directing the Land Registrar, West Pokot County, to issue a new title deed No. 490 in the deceased plaintiff's name as per the acreage currently occupied by him on the ground, according to the County Surveyor's findings as to the acreage occupied by each on title deed No. West Pokot/Chepareria/558, and for the court also to direct the Land Registrar, West Pokot, to recall and cancel Title No. West Pokot/Chepareria/558 and issue a new title deed measuring 62 acres as forming part of the title No. 558 in the name of the deceased plaintiff, as he has been occupying and using for many years.**

2. The plaintiff contended that the 1<sup>st</sup> defendant is a son of the original plaintiff's deceased brother, known as Kalomongin Pusikwang Merkor, who, together with the original plaintiff's families in the early **1950s**, settled on land now known as **West Pokot/Chepareria/558** measuring approximately **47.01 Ha**.
3. The plaintiff averred that during the land adjudication process in the **1974** or thereabout, the land committee members visited the land occupied by the two brothers now deceased, and clearly marked the boundary between them to which the original plaintiff was demarcated parcel **No. 490**, while his late brother was demarcated through the consent of their late father, parcel **No. 558**, according to the land adjudication records at the time as per the ground location, being the upper part, while the 1<sup>st</sup> defendant's late father was occupying the lower part.
4. The plaintiff averred that the two suit parcels of land are distinct and separated by a boundary with clear physical features that have been maintained to date. He maintained that all the initial owners of the land parcels had lived peacefully without any interferences until they, together with their wives, passed on and their remains were interred in their separate but distinct portions of land, the 1<sup>st</sup> defendant's residence

being about a kilometer away from the common boundary.

5. The plaintiff averred that at all material times since the demarcation process ended in **1974**, parcels **No. 489, 490** and **491** have been neighbours and are supposed to fall in Sheet **No. 40** on the survey map, and at no time has the deceased plaintiff occupied land which is allegedly indicated as parcel No. **490** on Sheet **No. 41** on the survey map, otherwise his actual occupation has always been on the lower side of the suit land since **1950s**. He insisted that title **No. 490**, on Sheet **No. 41**, has been under the use and occupation of the occupant of parcel **No. 435** on the same sheet since time immemorial, separated by a permanent feature, namely, River Chepinyiny, with land parcel **No. 558**.
6. The initial plaintiff averred that while the foregoing has been the known facts, in **January 2018**, he visited the lands office in Kapenguria to check the status of his land title, only to be told that parcel **No. 490** does not exist on the ground, where he has been occupying to date, otherwise from the land records, his parcel **No. 490**, was sharing a common boundary with parcel **No. 435** and parcel **No. 558**.

7. The plaintiff averred that the original plaintiff was further told that parcel **No. 490** measured **12 acres** instead of the **60 acres** he had been occupying, under parcel **No. 558**.
8. The plaintiff averred that the original plaintiff also discovered that the 1<sup>st</sup> defendant had gone ahead and taken the entire title deed for land No. **West Pokot/Chepareria/558** without his knowledge. Upon approaching the 1<sup>st</sup> defendant and informing him of the status at the land office concerning the two parcels of land, the plaintiff averred that the 1<sup>st</sup> defendant told the original plaintiff that the issue could amicably be resolved, hence went to the area chief, who summoned the parties in the presence of village elders to look into the issues, who visited the site and found the boundary marks intact, as were placed during the demarcation exercise in **1974**, including a barbed wire fence,
9. The plaintiff averred that after the site visit, the 1<sup>st</sup> defendant wrote to the original plaintiff a demand letter, giving him **30 days** to move out of his land, hence this suit.
10. The plaintiff averred that during the process of mapping in the area, and compiling a list for the title deeds, the 1<sup>st</sup> and 3<sup>rd</sup> defendants fraudulently

conspired to shift title deed **No. 490** from its ground location that he currently occupies on Sheet **No. 40** into Sheet **No. 41**, hence, giving room for the 1<sup>st</sup> defendant to be registered as the owner of title deed **No. 558**, currently occupied by the plaintiff.

- 11.** The plaintiff averred that the 1<sup>st</sup> defendant knew the correct occupant and owner of the suit land but did not include it while he was secretly processing and acquiring the title to the land, as if he were the sole owner.
- 12.** The plaintiff averred that the 3<sup>rd</sup> defendant failed to follow the boundary marks placed on the two parcels of land in **1974**, interfered with the sequence of the numbering on the ground, and instead shifted parcel **No. 490** from Sheet **No. 40**, where it is supposed to be, to Sheet **No. 41**, hence giving the 1<sup>st</sup> defendant room to extend his acreage for title **No. 558** to include the ground where title **No. 490** is supposed to be and which he has, since time-immemorial been occupying.
- 13.** As a consequence of the 1<sup>st</sup> and 3<sup>rd</sup> defendants' fraudulent acts, the plaintiff averred that the deceased plaintiff has been misplaced from his original position on the ground which has occasioned him to suffer great financial loss.

- 14.** The 1<sup>st</sup> defendant opposed the suit through a statement of defence dated **13/9/2018**, terming the suit brought by the initial plaintiff as misconceived and bad in law. While conceding that he was a nephew of the initial plaintiff, the 1<sup>st</sup> defendant insisted that his late father had his own land presently comprised of title No. **West Pokot/Chepareria/483**, while the plaintiff's present land is comprised of title No. **West Pokot/Chepareria/490**, while the 1<sup>st</sup> defendant's own land is presently comprised of title No. **West Pokot/Chepareria/558**, which three parcels of land located separately, approximately three kilometers from each other.
- 15.** The 1<sup>st</sup> defendant averred that when the adjudication records were prepared, he was recorded as the owner of parcel **No. 558**, the plaintiff as the owner of parcel **No. 490**, and the 1<sup>st</sup> defendant's father as the owner of parcel **No. 483**.
- 16.** Further, the 1<sup>st</sup> defendant averred that the adjudication process set in place under the Land Adjudication Act Cap **284**, as regards the Adjudication Section in question, was followed to the letter and at no time did the plaintiff lay any claim on parcel **No. 558**, until the adjudication register was prepared without anyone including the plaintiff

lodging any objection, until the adjudication register was finalized and forwarded to the Chief Land Registrar for registration, hence the plaintiff is estopped from challenging the register at this point.

- 17.** The 1<sup>st</sup> defendant averred that his father had only one son, being him, for whom he came to live with, upon whose death in **1997**, he was buried on his land, namely parcel **No. 558**, which has solely been under his utilization.
- 18.** The 1<sup>st</sup> defendant averred that the plaintiff moved and settled in different places within the adjudication section, but while still cultivating in parcel **No. 490**, and that finally, with the permission of the 1<sup>st</sup> defendant he settled on the latter's land, cultivated part of the same as a family member but still went on cultivating on his own parcel **No. 490**, otherwise the 1<sup>st</sup> defendant was registered as the proprietor of title No. **West Pokot/Chepareria/558**, with effect from **1/7/1998**.
- 19.** The 1<sup>st</sup> defendant averred that subsequently, three sons of the plaintiff namely Moses Korwa, Samson Korwa and Martin Korwa moved out of his land **No. 558**, and settled on their father's land in parcel **No. 490**, while around **2004**, the plaintiff's wife committed suicide and with his permission she was

buried therein, whereby the initial plaintiff demolished his home, moved out of parcel **No. 558** and went to live with his son Moses Korawa in Naivasha.

- 20.** The 1<sup>st</sup> defendant averred that due to the **2008** tribal clashes, the initial plaintiff and his son, Moses Korwa, the current plaintiff, came back to parcel No. **490** and subsequently settled in his son's land in Kapengurai, while some of his children remained in parcel No. **490**.
- 21.** Again, the 1<sup>st</sup> defendant averred that from the foregoing, the plaintiff moved out of parcel No. **558** in **2004** or thereabouts, and has never returned to the said land, hence the alleged claim based on adverse possession is not only premature but misconceived, for he was a mere licensee on his land. Further, the 1<sup>st</sup> defendant averred that one of the sons of the plaintiff by the name William Korwa was still on his land, and legal measures are underway to evict him.
- 22.** The 1<sup>st</sup> defendant averred that it was not possible for three different parcels of land, No. **483, 490, and 558**, which are located in different places, to be on the same sheet number No. **40**, where parcel No. **558** is placed on the map.

- 23.** The 1<sup>st</sup> defendant denied that the plaintiff and his sons have been occupying any part of parcel No. **558** since **2004**; otherwise, the claim is made in bad faith.
- 24.** The 1<sup>st</sup> defendant reiterated that the three parcels of land allocated above have at all times been located in different places as per the adjudication record and register, to which no objection was ever made by the plaintiff; otherwise, the plaintiff's family and that of the 1<sup>st</sup> defendant have been occupying parcels No. **490** and **483**, respectively.
- 25.** The 1<sup>st</sup> defendant averred that he was not in any way involved and had never colluded with the 3<sup>rd</sup> defendant or anybody else in the adjudication process, or even in the compiling of the list for the title deed, as alleged or at all. The 1<sup>st</sup> defendant denied that parcel No. **490** has ever been shifted from Sheet No. **40** to Sheet No. **41** as alleged or at all.
- 26.** Equally, the 1<sup>st</sup> defendant averred that to the extent that the plaintiff's claim is based on adverse possession, then it means that the plaintiff acknowledges that he has a good title to parcel No. **558**; hence, the claim based on fraud to be entitled to the cancellation of the said title is contradictory, otherwise the two causes of action cannot be pleaded together.

- 27.** The 1<sup>st</sup> defendant termed the plaintiff's reliefs sought on the amended amended plaint as legally untenable, as they are a backdoor attempt to alter, or change a finalized adjudication register contrary to the provisions of the Land Adjudication Act. The 1<sup>st</sup> defendant termed the claim based on adverse possession as bad in law.
- 28.** The 2<sup>nd</sup> - 5<sup>th</sup> defendants opposed the suit by a statement of defence dated **23/2/2023**. The defendants denied the contents of paragraphs 8A, 10A, 11A, 12A, 13A, 18, and 19 of the amended plaint.
- 29.** The plaintiff through reply to defence by the defendants dated **26/9/2018** and **31/10/2023**, insisted that his family has been staying on the lower part of parcel No. **558** since time immemorial which position was affirmed in the boundaries erected in **1974** during the adjudication process, where also parcel No. **490** should be situated, otherwise the Sheet No. **41** has misplaced it, for it is supposed to share a common boundary namely a river with parcel No. **558**.
- 30.** The plaintiff maintained that the numbering of the three parcels of land as per the adjudication records for parcels No. **489**, **490** and **491**, but as per Sheet Map No. **40**, the parcel sequence is **489**, **558** and

then **490**, which does agree with the adjudication records, otherwise it is not possible for parcel No. **558** to come between parcel No. **489** and **490**, which would have been reflected in the adjudication records.

- 31.** The plaintiff averred that during the adjudication process, he was allocated parcel No. **558**, which has a distinct boundary with the 1<sup>st</sup> defendant, where they have lived for over **50** years.
- 32.** Further, the plaintiff averred, however, that he would have not have complained during the adjudication process for he knew that parcel No. **490** shared a common boundary with what is now called parcel No. **558** at the middle, as it was shown to him by the land adjudication office in **1974**, only for the said parcel after many years to appear misplaced from the records as existing in map Sheet No. **41** for a different locality from the ground location, where he has been occupying.
- 33.** The plaintiff averred that he had been notified of the said facts of shifting or misplacement, and he would have complained about the irregularities on time. The plaintiff termed the developments as secretly or fraudulently effected by the 1<sup>st</sup> and 2<sup>nd</sup> defendants, when the ground status of occupation has never changed, since time immemorial, based on the known

boundary of the upper and lower parts, where he has been occupying and utilizing almost half of what now turns to be parcel No. **558**.

**34.** The plaintiff averred that he has been in darkness about the registration of parcel No. **558** in favour of the 1<sup>st</sup> defendant and its alleged location on the ground as if replacing his parcel No. **490** until **2018**, otherwise, from **1998** when the 1<sup>st</sup> defendant became the registered owner, he never for **12** years bothered to inform him that his parcel No. **490** had been shifted from its ground locality under his occupation since **1990s**, hence the doctrine of adverse possession is applicable.

**35.** The plaintiff averred that the misplacement of parcel No. **490** from Sheet Map **40** discloses an element of fraud or error on the part of the 1<sup>st</sup> and 2<sup>nd</sup> defendants, as parcel Nos. **489** and **558** seem to be on Sheet Map No. **40**, while parcel No. **490** is on Sheet No. **41**, instead of Sheet No. **40**, where the plaintiff has been occupying, and not on plot No. **490** on Sheet No. **41**.

**36.** The plaintiff averred that his son has been a beneficiary of the land for many years and insists that his family has been occupying it since **1950**, on the ground that nearly half of what is now parcel No. **558**.

**37.**As regards the defence by the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> defendants, the plaintiff's reply to the defence is that the 5<sup>th</sup> defendant's own agent, the County Surveyor, has already made a report confirming that both he and the 1<sup>st</sup> defendant live on parcel No. **West Pokot/Chepareria/558**, separated by a barbed wire; none of his family members live on parcel No. **490**, that the mapping of parcel No. **West Pokot/Chepareria/490** is not in conformity with the ground position on the map, that the 1<sup>st</sup> defendant occupies approximately **65** acres, while the plaintiff occupies about **62.8** acres, of parcel No. **West Pokot/Chepareria/558**, that instead of parcel No. **West Pokot/Chepareria/490** and **558** sharing a common boundary on the ground, the position on the ground is that one Daniel Takei, the owner of **West Pokot/Chepareria/1435**, is the one on the southeastern side, contrary to the map.

**38.**The plaintiff averred that the facts raised in paragraph **7** by the 2<sup>nd</sup> - 5<sup>th</sup> defendants were not within his knowledge; they were not part of the proceedings between him and the 1<sup>st</sup> defendant.

**39.**The plaintiff averred that the defence that the area index map and the adjudication record are at variance

with the ground position was a clear indication that a mistake was committed during the mapping process.

**40.** At the trial, **Martin Lokite Korwa** testified as **PW1**.

He relied on a witness statement dated **1/2/2021**. His testimony was that the initial plaintiff was Kaboyi Merkor, his late father, and now represented the estate as per the limited grant, while the 1<sup>st</sup> defendant is a son of his uncle and brother to his father, one Kalomongin Pusikwang Merkor.

**41.** PW1 said that the two brothers, as early as **1950**, settled on the suit land before the adjudication process started in the area in **1974**, whereby a common boundary was erected to separate the two parcels on both lower and upper parts, with his father being demarcated owner of parcel No. **558**, while the 1<sup>st</sup> defendant's father was given parcel No. **490**.

**42.** PW1 said that the two families have been staying peacefully and uninterrupted in their respective positions on the ground until title deeds were issued to them, only for a discovery to be made in **January 2018** at the lands office, and later, the report of a government survey dated **7/6/2019** about the misplacement of parcel No. **490**.

**43.** PW1 said that after visiting the land office, he was shocked to be told that his acreage is approximately

**12** acres, parcel No. **490** had been shifted from the ground occupation and was now across the river, currently occupied by Daniel Tukei, owner of parcel No. **435** and that parcel No. **558** was now approximately **47** Ha, covering his entire lower part of the land, contrary to the ground position and occupation since **1950s**.

**44.** PW1 said that all these discoveries were confirmed by the government survey that the titles to these parcels, positioning, and the locality do not tally with the position on the ground and the immense developments made by him.

**45.** PW1 said that after all these, he approached the 1<sup>st</sup> defendant on the way forward, who initially told him that they could resolve the matter amicably, and they held a family meeting in the presence of elders and the area chief, later revisited the boundary, and confirmed that it was intact since **1974**.

**46.** PW1 said that after the foregoing confirmation, he was served with a demand letter by the 1<sup>st</sup> defendant to vacate the portion he has been occupying as if it is parcel No. **490** on the lower side now registered as parcel No. **558** and more across to where his parcel No. **490** ought to be as per the Sheet No. 40, across

the river, which apparent is occupied by David Tukei as parcel No. **435**.

**47.** PW1 urged the court to find that the title held by the 1<sup>st</sup> defendant has become extinguished by virtue of prescription.

**48.** PW1 relied on a copy of the limited grant ad litem dated **12/10/2020**, certificate of official search for title No. **West Pokot/Chepareria/558**, adjudication records for Chepareria area, survey index map, photographs showing his homestead, chief's letter dated **10/4/2018**, proceedings for the meeting held at the chief's office on **24/4/2018**, elders resolution dated **2/5/2018**, burial permit dated **19/10/1993**, as P. Exhibit No. 1, **2(a)** and **(b) 3, 4 (a) and (b), 5(a) - (I) 10, PMFI -5(b)** (Showing the occupation as of **1950 - 1976**), and the current homestead since **2000** todate (**P. Exhibit. No. 5(a) (I) - (10)**).

**49.** PW1 said that his late father made the discoveries in **2018** from the report of the land register when he went to collect his title deed, and was referred to the survey office for further clarification.

**50.** PW1 said that it was at the survey office that he was given the survey map (RIM) Sheet Nos. **41** and **40** showing the locality of parcel No. **490**, which

confirmed the anomalies **P. Exhibit No. 4(a)** and **(b)**.

- 51.** PW1 also relied on the chief's letter and minutes **PMFI- 7** and **8**. PW1 said that the 1<sup>st</sup> defendant participated in all the burials of his late father and mother in **1993** and **2004** as per **P. Exhibit. No. 9(a)** and **(b)** burial permit, the subject land, knew all along about their occupation of the lower side of what is now parcel No. **558**.
- 52.** PW1 said that he has never been evicted from the land and that they had never lived where parcel No. **490** is alleged to be situated across the river or stayed on the current locality without permission from the 1<sup>st</sup> defendant.
- 53.** PW1 said that he was born in **1969** but only left parcel No. **558** after he got married in **1999** to live on parcel No. **1407**. PW1 said that he went to school in Ortum High School between **1986 -1989** after his formative primary school in Chetombai Primary School between **1978** and **1985**.
- 54.** PW1 contended that his late father died on **30/5/2020** and was buried on parcel No. **1407** as per **P. Exhibit No. 5(a) (10)**. PW1 said that his brother William Korwa was the one currently living on parcel No. **558**.

- 55.** PW1 said that the demand letter dated **2/7/2018** to vacate the land was served after this suit was filed. PW1 said **that P. Exhibit No. 5(a) (10)** are developments belonging to him and his relatives on the suit land.
- 56.** Following directions under **Order 18 Rule 81(1)** of the Civil Procedure Rules, PW1 was cross-examined further on **22/9/2025**. He told the court that his late father was not buried on the suit land due to the court order, though he had a homestead there as shown in the photographs. PW1 said that he was not an adult during the adjudication process.
- 57.** PW1 said that the common grandfather of the 1<sup>st</sup> defendant passed on in **1947**, before the adjudication process started. PW1 said that the barbed wire separating the two parcels of land has been in existence since **1974**. PW1 said that though they discovered the fraud or mistake in **2018**, no report was made to the police for investigation regarding the misplacement of his plot by the surveyor across the river, and for the 1<sup>st</sup> defendant's land to encroach on their current land.
- 58.** PW1 said that even the 1<sup>st</sup> defendant's late father and uncle did not know about the misplacement until he passed on or until **2018**, otherwise they would have

been sued for trespass. PW1 said that the owner of parcel No. **435** was not a party to this suit but a witness.

**59. Mathias Langat Chespar** testified as **PW2**. He confirmed that he is the area chief, the dispute between the plaintiff and the 1<sup>st</sup> defendant was brought to his attention as the area chief, Senetwo, as per **P. Exhibit. Nos. 7 and 8**.

**60.** PW2 confirmed that the two families had lived together and peacefully since the demarcation process took place in early **1974**. Further, PW2 confirmed the existence of the common boundary between the two late brothers as per the ground location and occupation, and developments therein until the dispute arose in **2018**. PW1 confirmed visiting the suit parcels of land and ascertaining the said developments and the common boundary in the presence of village elders and the parties herein.

**61.** PW2 said that the adjudication records, survey map, and the title deeds to the two parcels of land did not tally with what was the ground position since the adjudication process was started and completed.

**62. Daniel Tukei** testified as **PW3**. He confirmed that he was the owner of parcel No. **435**. Further, based on his witness statement dated **1/2/2021**, PW3

confirmed that the plaintiff and the 1<sup>st</sup> defendant have been his neighbours since demarcation of their three parcels of land in **1974**, sharing a common boundary, until the dispute arose in **2018** in relation to misplacement of parcel No. **490** from its ground location alleged showing that parcel No. **490** is supposed to be where his parcel No. **435** is situated.

**63.** PW3 confirmed attending a meeting called by PW2 to resolve the issue where village elders were able to locate the common boundary of the 1<sup>st</sup> defendant's land and that of the plaintiff since the demarcation time in **1974**, and where each of the two families has been occupying and living peacefully.

**64. Pkite Lokorinyang** testified as **PW4**. Relying on his witness statement dated **1/2/2025**, he associated himself with the evidence of PW1 - 3.

**65. Lomuke Psikwang** testified as **DW1**. He relied on a witness statement dated **6/12/2019** as his evidence in chief. His testimony was that his late father, Kalomongin, died in **1997**. DW1 told the court that he was the owner of title No. **West Pokot/Chepareria/558**, while the plaintiff owns title No. **West Pokot/Chepareria/490**, and his late father was the owner of title No. **West**

**Pokot/Chepareria/483**, which are located in different positions.

**66.** DW1 told the court that the three parcels of land during the demarcation process were never shared or divided between him and the plaintiff, and if there was such a claim, the plaintiff should have followed the processes of objecting at the adjudication stage as per Cap **284**.

**67.** DW1 said that up to the finalization of the adjudication register, no objection was filed by the plaintiff; hence, he is estopped from challenging the registration of his title to the land. DW1 said that the initial plaintiff who is his uncle had moved and settled in different places within the adjudication section, but remained cultivating on his own parcel No. **490**, as and within his permission due to a close family relationship, he was alleged to settle on the suit land together with his family until DW1 became the registered owner of parcel No. **558** on **1/7/1998**.

**68.** DW1 told the court that three of the plaintiff's sons, namely Moses Korwa, Samson Korwa, and Martin Korwa, had moved out of his land and settled on parcel No. **490**, to which, when the initial plaintiff's wife committed suicide, he permitted his wife to bury her on the suit land.

- 69.** DW1 said that his late uncle thereafter demolished his structures on the land and went to live in Naivasha with his son PW1. DW1 said that his late uncle lived in Naivasha until the **2008** post-election clashes arose, came back to the land and moved out again, never to come back, leaving his son Wilson Korwa, who currently occupies approximately **10** acres of the suit land, where he has erected a homestead.
- 70.** DW1 told the court that the occupation of Martin Korwa on the land was out of his permission, which he has since withdrawn the licence. DW1 said that in **2018**, the plaintiff mobilized some village elders, claiming entitlement to the suit land, who had no jurisdiction to handle the dispute, yet they purported to award the plaintiff part of his land by also erecting a barbed wire fence on the land, without his consent or approval.
- 71.** DW1 termed the claim for adverse possession as misconceived because the plaintiff has never been in occupation of the land.
- 72.** DW1 denied the alleged fraud or conspiracy with the 2<sup>nd</sup> defendant to shift parcel No. **490** to another position; otherwise, he obtained title to the land regularly, as was the case with the plaintiff's parcel

No. **490**, and since the death of his father, the owner of parcel No. **483**.

**73.** DW1 relied on a title for **West Pokot/Chepareria/558** as **D. Exhibit. No. 1**, adjudication records for parcel No. **490** as **D. Exhibit. No. 2**, adjudication records for parcel No. **558** as **D. Exhibit. No. 3**, official search dated **23/10/2019** as **D. Exhibit No. 4**, an official search dated **23/10/2019** as **D. Exhibit No. 5**, surveyor's report dated **20/10/2019 (DMFI-6)**, photographs as **D. Exhibit. No. 7(a), (b), (c), (d), (e), and (f)**, RIM for parcels No. **490** and **558** as **D. Exhibit. No. 8(a) and (b)**, chief's letter dated **10/4/2018** as **D. Exhibit. No. 9** and a demand notice dated **2/7/2018** as **D. Exhibit. No. 10**.

**74.** In cross-examination, DW1 told the court that he was born on 1/1/1958 and became the registered owner of the parcel No. **558** during the adjudication process. He admitted that he was the one who permitted the late Kaboyi to enter into the suit land. DW1 said that as of **1974**, he was **14** years old, hence he had no ID card. He denied that the existing boundary between the two parcels of land was erected in **1974** during the adjudication process.

- 75.** DW1 admitted to acquiring a title deed over the subject land in **1998**. As to why he has not evicted the plaintiff from the land, DW1 said that though the plaintiff's houses are on the lower part of the suit land where some of their relatives were buried, he did not notify the Land Registrar that part of his land had illegal occupants.
- 76.** DW1 confirmed that a land surveyor divided the land as per the surveyor's report he had produced before the court dated **20/10/2019**, but failed to fix the boundary. DW1 admitted that William Korwa, a brother of the plaintiff, was occupying the disputed land and had approximately four houses erected therein, one of which belongs to the plaintiff. DW1 insisted that as of **1974**, he had the legal capacity to become a demarcated owner of the suit land.
- 77.** DW1 acknowledged that he occupies the upper part while the plaintiff occupies the lower part of parcel No. **558**, whose boundary is a live sisal plant fence. DW1 said that according to him, the land for Mzee Kaboyi should be across the river; otherwise, as a mere licensee, whose licence he had terminated, making them forceful occupants on his land, following the notice to vacate the land.

**78.** Again, DW1 admitted that the plaintiff had erected illegal houses and a barbed wire fence on the disputed land slightly before the area chief and the surveyors visited the land. DW1 said that William Korwa was occupying approximately 6 acres of his land.

**79. Simiyu Edmunds David Wekesa** testified as DW2. He told the court that in **2019**, the defendant instructed him to visit the parcels No. **558** and **490**, after which he prepared a report dated **20/10/2019**. DW2 told the court that his findings were that parcel No. **558**, based on the RIM Sheet Map No. **40** (**produced as D. Exhibit No. (6)**), falls apart from parcel No. **490**, which is on Survey Map Sheet No. **41**.

**80.** In cross-examination, DW2 told the court that his credentials were not attached to his report and that he was not a licensed surveyor. DW2 confirmed that there was a barbed wire fence separating the upper and the lower side of the parcel No. **558**. DW2 confirmed that the photos of his had no certificate of electronic production, now were the parameters were met, and keys were indicated in his report.

**81. Immanuel Mtage**, a government surveyor, testified as **DW3**. He told the court that he relied on a report dated **20/10/2019** produced as **D. Exhibit No. 6** in which, after a site visit, it was established that the

plaintiff occupies approximately **62.8** acres of parcel No. **558** on the lower side, which is both under cultivation, grazing and has some houses or buildings.

**82.** DW3 said that he observed that there was also a homestead on the upper side, separated by a barbed wire fence whose age he did not estimate. DW3 said that he relied on both the PIDs done by the Survey of Kenya in **1997**, as well as the adjudication records for both parcels Nos. **490** and **558**.

**83.** DW3 said that on the ground, there is also a seasonal river bordering the two parcels of land on the southeastern side, as per the RIM. DW3 said that parcel No. **435** is situated across the river, but on the ground, it is not identifiable.

**84.** DW3 said that the plaintiff was occupying almost half the size of the ground, which is supposed to be parcel No. **558** on the map and not parcel No. **490**. DW3 confirmed that what is on the record does not tally with what is on the ground occupation or positions; otherwise, Daniel Tukei, the owner of parcel No. **435**, occupies what ideally should be parcel No. **490**, while the plaintiff occupies half of parcel No. **558** as if it is parcel No. **490**.

**85.** DW3 therefore said that the adjudication record and the ground position do not conform; otherwise, both

the plaintiff and the 1<sup>st</sup> defendant are occupying parcel No. **558** on the ground.

**86.** At the loss of the defence case, parties were directed to put in written submissions. The plaintiff relies on written submissions dated **22/10/2025**. After rehearsing the pleadings and evidence tendered by PW1, PW2, PW3 and PW4, DW1, DW2 and DW3, the plaintiff isolated four issues for determination namely, if the plaintiff or the 1<sup>st</sup> defendant have a common boundary, if he was a licensee of the 1<sup>st</sup> defendant, if there was fraud during the mapping and the registration of title to parcel No. **558**, if his family has ever stayed on parcel No. **490** and if the plaintiff is entitled to adverse possession on the **62.8** acres belonging to the 1<sup>st</sup> defendant under **Section 28** of the Land Registration Act.

**87.** The plaintiff submitted that his evidence has been consistent on uninterrupted use, occupation, possession, and developments on the suit land since the **1970s** to date, on the lower side of what is now parcel No. **558**, until discoveries made in **January 2018** that his parcel No. **490** had been misplaced during the adjudication process.

**88.** On fraud, the plaintiff submits that it was not possible for the 1<sup>st</sup> defendant at the age of **14** years to be

adjudicated as the owner of parcel No. **558**. The plaintiff submits that there are also other procedural irregularities on plot No. **490**, akin to fraud or concealment of material facts until **1998**, when the anomalies were detected.

**89.** The plaintiff submits that, notwithstanding the aforesaid anomalies, the 1<sup>st</sup> defendant never evicted him from the land, hence has acquired a prescriptive right guided by the case of **Agnes Nyang'anyi Omwamba -vs- Samuel Bosire Nyaruna Kitale ELC No. 8 of 2021 (OS)**.

**90.** The 1<sup>st</sup> defendant relies on written submissions dated **24/10/2025**, isolating **7** issues for the court's determination.

**91.** On impeachment of title on account of fraud, the 1<sup>st</sup> defendant submits that he became the registered owner on **1/7/1998** of parcel No. **West Pokot/Chepareria/558**, alongside the plaintiff's title No. **West Pokot/Chepareria/490** as per the copies of official search certificates produced without any objection by the plaintiff under the elaborate dispute resolution provision of the Land Adjudication Act under **Sections 13-26** thereof.

**92.** The 1<sup>st</sup> defendant submits that once the adjudication process is finalised and the adjudication record

forwarded to the Chief Land Registrar for registration and issuance of titles, the process cannot be reopened or the register rectified under **Section 143(1)** of the repealed Registered Land Act Cap **300**. Reliance is placed on **Noah Onyango Amwayo -vs- Syvanus O. Otumba & Another, Civil Appeal No. 332 of 2010 [2013] KECA 76 [KLR], Hannah Wangui Ithebu & Another -vs- Joel Ngugi Magu & Others, Nairobi HCCA No. 86 of 1999 [2005] KEHC 2882 [KLR], Ambale -vs- Masolia [1975] eKLR, and Mbogo Ochola -vs- Joseph Gor Obet, Nairobi HCCA No. 253 of 2002.**

**93.** On fraud, the 1<sup>st</sup> defendant submits that though paragraph No. 18 of the amended plaint listed the particulars of fraud, the burden of proof was not discharged at the hearing by calling any of the witnesses who participated in the adjudication process, and the show rival information that there was superimposition and or interference with the demarcation records, and at what stage.

**94.** The 1<sup>st</sup> defendant submitted that fraud must be pleaded and proved what was missing in this matter, going by the evidence of DW3, to the required standard as held in **Vijay Morjaria -vs- Nansingh Madhusingh Darbar & another [2000] eKLR.**

95. The 1<sup>st</sup> defendant submitted that the cause of action, based on adverse possession and fraud, cannot be sought together, as held in **Kimoi Ruto & Another - vs- Samuel K. Keitany & Others, Eldoret ELC No. 378 of 2012[2024] eKLR** and **Alfeen Mehdi Mohammed -vs- Basil Feroz Mohamed & 223 Others [2016] eKLR**.
96. As to the ingredients of adverse possession, the 1<sup>st</sup> defendant submitted that the 1<sup>st</sup> defendant has pleaded and proved permissive entry and being close relatives, there is a rebuttable presumption that consent was given as held in **Alfeen Mehdi Mohammed (supra)**, which presumption the plaintiff has not rebutted. Reliance is also placed on **Rodgers Mwamboje -vs- Douglas Mwamboje (supra)** and **Samuel Kihamba -vs- Mary Mbaisi [2015] eKLR**.
97. As to when the time for adverse possession begins to run, the 1<sup>st</sup> defendant submitted that registration of the title to parcel No. **West Pokot/Chepareria/558** arose on **1/7/1998**, hence the **12** years lapsed on **30/6/2010**.
98. It is submitted that evidence was tendered that the initial plaintiff moved out in **2004** to Naivasha, and as per the ruling delivered on **15/11/2018**, the initial plaintiff was not on the land but William Korwa, hence

the **12** years with effect from **2004** had not elapsed on and of the initial plaintiff.

**99.** The court has carefully gone through the pleadings, evidence tendered by the parties, and the written submissions. The issues calling for the court's determination are:

- (1) If the plaintiff has proved continuous, open, and uninterrupted occupation of land Title No. West Pokot/Chepareria/558 to be entitled to adverse possession.**
- (2) If there was a mistake, error, or fraud on the part of the 2<sup>nd</sup> and 3<sup>rd</sup> defendants in mapping and registering on the adjudication or survey records, regarding the location of parcel No. West Pokot/Chepareria/558 and 490.**
- (3) If the 1<sup>st</sup> defendant was party to the mistake, error, or fraud in the alleged shifting, mapping, and or registration of parcels No. West Pokot/Chepareria/558 and 490.**
- (4) Whether the plaintiff was aware of and or had objected to the aforementioned mistake, error, or fraud during the adjudication process and or registration of title.**
- (5) If the plaintiff is entitled to the reliefs sought.**
- (6) What is the order as to costs?**

- 100.** The plaintiff brings this suit as the legal representative of the estate of his father Kaboyi Merkor (deceased), who was the initial plaintiff in this matter before he passed on, as per the plaint dated **28/6/2019**, and the demarcation, later registered owner of Title No. **West Pokot/Chepareria/490**, which on the ground is now covered as part of title No. **West Pokot/Chepareria/558**, registered in the name of the 1<sup>st</sup> defendant.
- 101.** The plaintiff moved to this court following an official search certificate issued on **16/1/2018**, showing that the 1<sup>st</sup> defendant's title No. **West Pokot/Chepareria/558** issued on **1/12/1998** was measuring **47.01** Ha, while his title No. **West Pokot/Chepareria/490** is **12** acres only, and was in a different sheet map, yet on the ground, it is **62.2** acres and shares a common boundary with the 1<sup>st</sup> defendant's parcel of land.
- 102.** The plaintiff averred that the 1<sup>st</sup> defendant, following the discoveries and preliminary attempts to amicably resolve the issue, issued him a demand letter dated **2/7/2018**.
- 103.** Following an application dated **12/2/2019**, which the 1<sup>st</sup> defendant had opposed, the court granted an order dated **10/5/2019**, for the County

Surveyor to visit the two parcels of land and to ascertain the occupants, physical marks and boundaries, acreages for each as occupied by the two parties and to confirm whether the mapping of the two title deeds agreed with the adjudication records as far as the ground position is concerned. In compliance with the order, DW3 visited the *locus in quo* on **6/6/2019** and prepared **D. Exhibit No. 11**.

**104.** DW2, a private surveyor, on the other hand, relies on a survey report dated **20/10/2019** produced as **D. Exhibit No. 6**. He confirmed that the lower part is **64** acres while the upper part is **62** acres. The report indicates that there are two homesteads on parcel No. **558** occupied by the plaintiff and the 1<sup>st</sup> defendant, respectively. According to DW2, the two parcels of land are approximately **1.1km** apart and fall under separate and distinct RIM sheet maps.

**105.** In the demand letter dated **2/8/2018**, the 1<sup>st</sup> defendant termed a son of the initial plaintiff a licensee on title No. **West Pokot/Chepareria/558**, occupying **10** acres. He admitted that the alleged land dispute was brought to his attention in April 2018, when village elders were summoned to handle the dispute, who found in favour of the plaintiff.

**106.** The 1<sup>st</sup> defendant termed the said attempts to re-establish the boundary as illegal. The 1<sup>st</sup> defendant termed the acts of the chief as amounting to trespass. In the amended plaint dated **16/8/2018**, the plaintiff introduced the 2<sup>nd</sup> - 5<sup>th</sup> defendants to the suit, initially based on fraud or mistake to plead that the boundary to the two parcels of land was set on the ground in **1974** by the 2<sup>nd</sup> defendant and he remained therein to date and further that the occupation of the two parcels of land by the plaintiff and the 1<sup>st</sup> defendant's late parents had remained the same on the ground since **1950s**, hence the entries to the adjudication and survey records as to the position of the three parcels of land was not in tandem with the reality on the ground. It is at this point that the plaintiff introduced the relief based on adverse possession that he had been occupying the land since **1974**, part of title No. **West Pokot/Chepareria/558** belongs to the 1<sup>st</sup> defendant.

**107.** The plaintiff pleaded the particulars of adverse possession under paragraphs **8A, 9A, 10A, 11A, 12A, 13A, 14, 15, 16, and 17** of the amended plaint dated **16/8/2019** and asked for reliefs No. **(B), (C)** and **(D)** to align the ground locality with the survey and registration records.

- 108.** The 1<sup>st</sup> defendant responded to the amended plaint through a defence dated **13/9/2018**, admitting that William Korwa was the only one on the land and not the initial plaintiff or their families. Equally, he termed the claim based on adverse possession as improperly filed.
- 109.** It is trite law that parties are bound by their pleadings, and issues for the court's determination flow from the pleadings. In **General & Another -vs- Hussein & Others Civil Appeal No. 100(Eldoret No. 32 of 2018 [2025] KECA 1022 [KLR] (5<sup>th</sup> June 2025) (Judgment)**, the court said that the law of evidence revolves around two cardinal things: facts and proof, which, when combined, form evidence.
- 110.** The court held that under **Section 3(2) and (3)** of the Evidence Act, facts are proved when considering all matters before it, a court believes them to exist, or their existence is so probable that a court ought to act on the supposition that they exist.
- 111.** In **Barmasai -vs- Rono & Others Civil Appeal E068 OF 2023 [2025] KECA 1489 [KLR] (19<sup>th</sup> September 2025) (Judgment)**, the court underscored the vital role a RIM as a crucial cadastral instrument used in land registration plays to visually represent the location and the boundaries of land

parcels, as the official record maintained by the Survey of Kenya.

**112.** The court said that, unlike a title deed, which certifies ownership, a RIM provides the geographical context, mapping out the physical existence and the precise location of a property in relation to its surroundings. The court said that a RIM is a comprehensive tool that complements other ownership documents like title deeds and green cards, offering a detailed layout of land parcels, their shapes, and their boundaries as held in **Kitonga & Another - vs- Nzioka [2024] KEELC 1667 [KLR]**.

**113.** A cause of action is defined as the acts on the part of the defendant that give rise to a complaint on the part of the plaintiff. See **D.T. Dobie & Company (Kenya) Limited -vs- Joseph Mbaria Muchina & another [1980] KECA 3 (KLR)**. What the plaintiff simply initially pleaded is that he went to ascertain the status of his title deed for land on the ground measuring **62.2** acres bordering his relative's land since the **1950s**, or the adjudication time in **1974**

**114.** The plaintiff averred that he was shocked to be told that the locality of his land is elsewhere across the river, as per the RIM, map, and was **12** acres in size as opposed to **62.2** acres, and where he was

actually occupying was part of the 1<sup>st</sup> defendant's title No. **West Pokot/Chepareria/558**. The plaintiff says that the County Surveyor's report dated **1/6/2019** has confirmed the errors or anomalies that the 1<sup>st</sup> defendant was not even aware of; otherwise, he could have evicted him from the land since **1998**, when he acquired the title.

**115.** In ***Wandaka & 2 Others -vs- Mwangi Civil Appeal No. 36 of 2019 [2025] KECA 83 [KLR] (24<sup>th</sup> January 2025) (Judgment)***, the court said that under **Sections 7 and 26** of the Limitation of Actions Act, where a party pleads fraud, time starts to run from the time the fraud is discovered.

**116.** In this suit, the plaintiff pleaded that he discovered the fraud in **January 2018**, when he visited the land office to enquire about his title, and that is also when the 1<sup>st</sup> defendant was notified of the status of the two parcels of land. Fraud is defined as the concealment or misrepresentation of material facts to lead one to act to the detriment of another. See *Black's Law Dictionary, 10<sup>th</sup> Edition*.

**117.** In this suit, the burden of proof was on the plaintiff to prove that there were errors, mistakes, or irregularities in both the locality, size, and the

mapping of his parcel of land vis-à-vis that of the 1<sup>st</sup> defendant.

**118.**      **Sections 18** and **19** of the Land Registration Act bestow the power to verify and ascertain boundaries on the Land Surveyor and Land Registrar. In this suit, DW3 confirmed that he visited the two parcels of land and ascertained that the RIM did not conform to the ground position of the two parcels of land. The irregularities are clear from **D. Exhibit No. 11** as well as **D. Exhibit No. 16**.

**119.**      The two survey reports are in agreement that both the plaintiff and the 1<sup>st</sup> defendant occupy title No. **West Pokot/Chepareria/558** on separate sides and have permanent developments therein. The findings by DW3 have not been challenged by the 1<sup>st</sup> defendant under **Section 79** of the Land Registration Act. The 2<sup>nd</sup> - 5<sup>th</sup> defendants have also admitted the existence of the said errors.

**120.**      The whole purpose of pleadings is to bring the parties to an issue and to prevent its enlargement to diminish the expenses and delay, especially the number of testimonies to be called on either side at the hearing. See **Thorp -vs- Holdsworth [1886] 3 CH. D. 637.**

- 121.** In **Mberia -vs- Mbui Civil Appeal 102 of 2020 [2025] KECA 954 [KLR] (9<sup>th</sup> May 2025) (Judgment)**, the facts as pleaded by the parties pointed to the issue of whether each of their portions of land lay adjacent to each other. The suit had been filed after the Land Registrar's verdict resolving the boundary dispute.
- 122.** The trial court had made a finding that the Land Registrar's verdict could not be disregarded and therefore dismissed the suit for lack of jurisdiction. The Court of Appeal upheld the verdict.
- 123.** Expert evidence is governed by **Section 48** of the Evidence Act. In **Mbuthi & Another -vs- Mweti ELC Appeal No. 20 of 2022 [2022] KEELC 12 [KLR] (28<sup>th</sup> April 2022) (Judgment)**, the court cited **Kagina -vs- Kagina & Another [2016] eKLR** that the duty of an expert is to provide independent assistance to the court. Expert evidence as held in **Stephen Kanini Wangondu -vs- The Ark Ltd [2016] eKLR**, can only be challenged by another expert. DW2 had no credentials to show that he was a licensed surveyor under the Surveys Act. The quality of his testimony in terms of the statutory and internal consistency taken in relation to all other available evidence is wanting. His report did not adhere to the

Survey Regulations **1994** and the Survey Act Cap **299**. The law is that only a licensed surveyor can undertake such survey works to be competent to testify in that profession before a court of law.

**124.** The 1<sup>st</sup> defendant has attacked the plaintiff's suit as an attempt to reopen an adjudication register, many years after the adjudication section was published, registered, and title deeds issued, yet he had an opportunity but did not utilize the same to object to the demarcation under **Sections 24, 26, 27, 28, 29, and 30** of the Land Adjudication Act Cap **284** Laws of Kenya.

**125.** The law is that, once title deeds are issued for land after adjudication, the suit land automatically becomes titled land. Any disputes after that fall outside the purview of the Land Adjudication Act and are governed under the Land Registration Act. See *David Muriithi & Others -vs- Kengen Ltd [2020] eKLR* and *Chrispus Chengo Masha & Others -vs- Daniel Ricii [2017] eKLR*.

**126.** What the plaintiff is simply seeking before the court, based on the surveyor's report, is that errors exist such that there is a mismatch between the acreage, locality, and the placement of his title No. **West Pokot/Chepareria/490** and **483**. The errors or

mistakes, according to the plaintiff, are not only glaring but self-evident. A court of law cannot aid a party to benefit from a mistake or illegality. This is simply what the 1<sup>st</sup> defendant in his statement of defence is asking the court to do by ignoring the preexisting circumstances from **1974** to the present, as far as the ground location of each portion of the three parcels of land is concerned.

**127.** In **Frank Logistics Limited -vs- Golden Lion Real Estate Company & 6 Others [2025] KECA 1471 (KLR)**, the court cited **Kiruga -vs- Kiruga [1988] KLR 348**, that proof as a legal concept is discoverable either by logic or analysis, and is a conclusion that a tribunal draws on any given set of facts or evidence.

**128.** In this suit, there is evidence that has not been challenged by the 1<sup>st</sup> defendant of the existence of mistakes or contradictions in the survey and the registration records, vis-à-vis ground locality. The Hon. Attorney General has pleaded and admitted those facts. The ground position of the beacons and the correct boundaries between the two parcels of land have been clarified by the County Surveyor's report. It is recommended that the alignment of the ground

with the land records be undertaken to correct those errors.

**129.** **Section 79** of the Land Registration Act allows for the amendment of the RIM where the title deed acreage differs from its ground locality. **Section 80** grants the court powers to order the rectification of the register by way of cancellation or amendment where any registration was obtained or made through mistake. See **Kibuchi -vs- Githinji ELC Appeal 620 of 2021 [2924] KEELC 6229 KLR**. The court finds the plaintiff has proved that there was a mistake in the registration and the Mapping of the two parcels of land that requires an alignment.

**130.** As regards adverse possession, this is a concept where an intruder moves into the land of another who omits or neglects to take remedial action for a period of **12** years, following which his title becomes extinguished under **Section 38 (1)** of the Limitation of Actions Act. A party to be entitled to adverse possession must prove open, actual, hostile, continuous, and uninterrupted possession for a period of **12** years, with the knowledge of the true owner. See **Mtana Lewa -vs- Kahindi Mwangandi [2005] eKLR**.

**131.** Two concepts must be proved, namely, dispossession of the land and or discontinuation of the possession of the land, as held in **Wambugu -vs- Njuguna [1983] KLR 173**, by an act inconsistent with the true owner's enjoyment of the soil for which purpose he intended to use the land.

**132.** In **Mwalimu & Others -vs- Halal & Another [2025] KECA 1166 [KLR] (4<sup>th</sup> July 2025)**, the court said that there must be more than just mere occupation of the land. A permissive occupation does not amount to adverse possession. The court went on to say that a person cannot claim adverse possession while simultaneously disputing the validity of the registered title; otherwise, the two causes of action are not mutually exclusive and cannot co-exist in the same cause.

**133.** A claimant for adverse possession must also prove non-permissive or non-consensual, actual, notorious, exclusive, and adverse use of the land for a period of **12** years. Adverse possession must also be with the knowledge of the true owner. In **M'Ririka & Others -vs- Muthoni, Civil Appeal 253 of 2019 [2025] KECA 951 [KLR] (4<sup>th</sup> April 2024) (Judgment)**, the court cited **Peter Kamau Njau -vs- Emmanuel Charo Tinga [2016] eKLR** and **Ndolo -**

**vs- Kitutu & Others, Civil Appeal No. 394 of 2018 [2022] KECA 1289 [KLR] (18<sup>th</sup> November 2022) (Judgment)**, that the physical act of exclusive possession and use of the land must be accompanied by animus *possidendi* to hold as owner to the exclusion of the actual owner.

**134.** As to the nature of adverse possession in **Samuel Kihamba -vs- Mary Mbaisi [2015] eKLR**, the court said that the claimant must prove and demonstrate that occupation was without a license or permission of the true owner, with the intention to own the land. Assertion of title by the true owner or effective entry, breaking the running of time, as held in **Richard Wafwafwa Songoi -vs- Ben Munifwa Songoi [2020] eKLR**.

**135.** Again, the identification of the land in possession of an intruder is not only an important consideration, but is an integral part of the process of proving adverse possession, as held in **Wilson Kazungu Katana & 101 others -vs- Salim Abdalla Bakshwein & another [2015] eKLR**. In **Mbasa -vs- Mbasa & Another, Civil Appeal No. E034 of 2021 [2025] KECA 1420 [KLR] (31<sup>st</sup> July 2025) (Judgment)**, the court said that a claim based on

customary trust and one based on adverse possession are mutually exclusive.

**136.** In **Njami -vs- Njami Civil Appeal 34 of 2018 [2025] KECA 492 [KLR] (14<sup>th</sup> March 2025) (Judgment)**, the court said that adverse possession is question of fact or law, established through cogent and credible evidence by proving on what date one came into possession, nature of the possession, knowledge of the possession by the other party, length of possession and if the possession was open and undisturbed.

**137.** In **Gichomo -vs- Kiiru Civil Appeal 109 of 2021 [2025] KECA 124 KLR (7<sup>th</sup> February 2025) (Judgment)**, the court cited **Thika Garage Road Developers Ltd -vs- Mwangi & 4 Others [2023] KECA 269 [KLR]**, the court said by building structures, farming and even harvesting sand on the suit land without obtaining permission from the appellant manifested animus *possidendi*, a clear mind and intention of dealing with the suit land as if it was exclusive theirs and in a manner that was in clear conflict with the appellant's right.

**138.** In **Maruti -vs- Maruti ELC No. E002 OF 2024 [2025] KEELC 6179 [KLR] (24<sup>th</sup> September 2025) (Judgement)**, the court cited **Rodgers Mwamboje -**

**vs- Douglas Mwamboje** (*supra*) and **Mbui -vs- Maranya [1993] KLR 726**, on a rebuttable presumption of consent, among close relatives based on the spirit of the African milk of generosity and kindness in allowing relatives to live on one's parcel of land, and turning out to claim adverse possession.

**139.** Having in mind the foregoing case law, the question is whether the plaintiff has proved adverse possession. First and foremost, the plaintiff cannot rely on the two causes of action for as held by the Court of Appeal, the two are mutually exclusive. Secondly, adverse possession runs with the land, which is registered. The suit land became registered in **1998** in favour of the 1<sup>st</sup> defendant.

**140.** The plaintiff has testified that he did not know until 2018 that he was occupying land belonging to the 1<sup>st</sup> defendant and not his own, title No. **West Pokot/Chepareria/558**. *Animus possidendi* is a condition precedent. Knowledge by the true owner that the land was occupied by the plaintiff since **1998** was not parcel No. 490, but his own parcel is equally missing.

**141.** In **Samwel Nyakenogo -vs- Samwel Orucho Onyaru [2010] KECA 307 (KLR)**, the court said that the land must have a known owner, who has lost it by

either dispossession of it or having discontinued possession of it. Time could not therefore start running in the plaintiff's favour until he knew the land was his as of it due to registration and not out of adversity. Equally, both the plaintiff and the 1<sup>st</sup> defendant only came to know about the status of the two parcels of land in **January 2018**. So by the time the plaintiff filed the suit, **12** years had not lapsed.

**142.** Furthermore, both the plaintiff and the 1<sup>st</sup> defendant are first cousins. Close relatives, as held in **Mbui -vs- Maranya [1993] eKLR**, where there was permissive entry by or with love of the owner, cannot amount to adverse possession. Grounds of charity, and where there is such a close relationship, courts have been slow to declare the existence of adverse possession, since the African way of living has always been dependent on one another for mutual survival and progress.

**143.** In **Mwamboje -vs- Mwamboje** (*supra*), the court said that the burden of proof that the consent or permission was not given will be on the person claiming the relative's land by virtue of adverse possession.

**144.** The plaintiff failed to file an originating summons under **Order 37** of the Civil Procedure

Rules, which is the known procedure of seeking adverse possession. See **Kariuki -vs- Mica, Civil Appeal No. 196 of 2018 [2025] KECA 31 [KLR] (17<sup>th</sup> July 2025) (Judgment)**. Consequently, my finding is that the plaintiff has only succeeded on account of mistakes or irregularities in the registration, mapping, and placement of the suit parcels of land, to align with their ground locality.

**145.** The upshot is prayers **B1, C, and D** are granted as;-

**(B1).** An order directing the Land Registrar, West Pokot, to cancel the 1<sup>st</sup> defendant's title deed for West Pokot/Chepareria/558 and issue two separate titles, one capturing the deceased plaintiff's acreage and the other capturing the 1<sup>st</sup> defendant's acreage

**(C).** An order directing the County Surveyor, West Pokot, to amend Sheet Nos. 40 and 41 Chepareria Adjudication Section by removing the ground for Title No. 490 from Sheet Map No. 41 and placing it on Sheet No. 40, particularly on the ground currently occupied by the deceased plaintiff under Sheet No. 40, which was its original position.

**(D).** An order directing the Land Registrar, West Pokot County, to issue a new title deed No. 490 in the deceased plaintiff's

name as per the acreage currently occupied by him on the ground, according to the County Surveyor's findings as to the acreage occupied by each on title deed No. West Pokot/Chepareria/558, and the Land Registrar, West Pokot, to recall and cancel Title No. West Pokot/Chepareria/558 and issue a new title deed measuring 62 acres as forming part of the title No. 558 in the name of the deceased plaintiff, as he has been occupying.

**146.** Each party is to meet its own costs.

**147.** Orders accordingly.

**Judgment dated, signed, and delivered** via **Microsoft Teams/Open Court** at **Kitale** on this **12<sup>th</sup>** day of **November 2025**.

**In the presence of:**

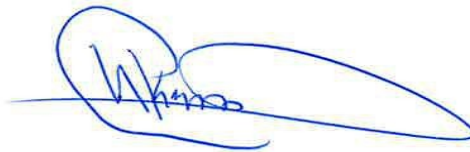
Court Assistant - Dennis

Parties present

Mr. Kiarie for the plaintiff present

Ayieko and Kaosa for the 1<sup>st</sup> defendant present

No appearance for the Attorney General



**HON. C.K. NZILI  
JUDGE, ELC KITALE.**