

**REPUBLIC OF KENYA**  
**IN ENVIRONMENT & LAND COURT**  
**AT ELDORET**  
**ELC OS NO. E008 OF 2024**

**IN THE MATTER OF: THE LIMITATION OF ACTIONS ACT, CAP  
22 LAWS OF KENYA**

**&**

**IN THE MATTER OF THE LAND KNOWN AS ELDORET  
MUNICIPALITY BLOCK 21 (KINGONGO)/2309**

**&**

**IN THE MATTER OF AN APPLICATION FOR ORDERS OF  
ADVERSE POSSESSION**

*BETWEEN*

**ANDREW MARUTI**

**WANYONYI.....APPLICANT**

*-VERSUS-*

**THOMAS SEUREY MISOI.....**

**RESPONDENT**

**JUDGEMENT**

1. The Applicant herein filed a Originating Summons dated 23.09.2024 (hereinafter referred to as **“the present OS”**) against the Respondent seeking the following Orders;-

**a) A declaration be issued declaring that the Applicant and his agents have been in peaceful and continuous occupation of a portion of land measuring 1/8 of an Acre out of the Land Reference ELDORET MUNICIPALITY BLOCK 21 (KINGONGO)/2309 for a**

period in excess of 21 years and that he has therefore acquired title by way of adverse possession.

- b) A declaration be issued holding that upon the expiry of 12 years, the Respondent held a portion of land measuring 1/8 of an acre of Land Reference ELDORET MUNICIPALITY 21 (KINGONGO)/2309 in trust for the Applicant.**
  - c) An Order be issued directing the County Surveyor and the Land Registrar, Uasin Gishu to cancel the Defendant's Title Deed issued on 26.06.2000 over Land Reference ELDORET MUNICIPALITY 21 (KINGONGO)/2309 and proceed to sub-divide the land into two portions and register the Applicant as the proprietor of a portion measuring 1/8 of an acre.**
  - d) The Respondent be ordered to execute all such documents as shall facilitate transfer of an 1/8 of an acre out of the parcel of land known as ELDORET MUNICIPALITY 21 (KINGONGO)/2309 to the Applicant's name and in default, the Deputy Registrar to this Honourable Court shall execute all the relevant documents on behalf of the Respondent to facilitate the said transfer.**
  - e) An Order that the Defendant shall bear the costs of the suit.**
2. The facts in support of the reliefs sought were pleaded in the Supporting Affidavit dated 23.09.2024 which was filed with the present OS and can be summarised as follows;-
- i) The Applicant entered into an Agreement For Sale dated 26.04.2003 with one PHILIP KIPRONO CHEROP over a portion of 1/8 Acres on the property known as ELDORET

MUNICIPALITY 21 (KINGONGO)/2309 (hereinafter referred to as **“the suit property”**) for a consideration of Kenya Shillings One Hundred and Fifteen Thousand (KShs.115,000/-).

- ii) Based on the Agreement For Sale dated 26.04.2003, the Applicant paid a sum of Kenya Shillings One Hundred Thousand (KShs.100,000/-) leaving a balance of Kenya Shillings Fifteen Thousand (KShs.15,000/-) payable on or before 15.08.2003.
- iii) According to the Applicant, the ownership of the suit property by PHILIP KIPRONO CHEROP emanated from a previous Agreement For Sale dated 20.07.1994 with one ANDREW KOTUT who had purchased a portion of 1/2 an Acre within the property known as ELDORET MUNICIPALITY 21 (KINGONGO)/2309.
- iv) The Applicant stated that before execution of the Agreement For Sale dated 26.04.2003, a ground visit was undertaken by ANDREW KOTUT, PHILIP KIPRONO CHEROP and himself and the suit property was duly pointed out to him.
- v) Unfortunately, the Applicant did not conduct a search of the property known as ELDORET MUNICIPALITY 21 (KINGONGO)/2309 based on the trust he had built with ANDRE KOTUT and PHILIP KIPRONO CHEROP who were both Government employees and Civil Servants.
- vi) Be as it may, the Applicant pleads that he moved into the suit property and developed the same.
- vii) The mutual understanding between the PHILIP KIPRONO CHEROP, ANDREW KIBET KOTUT and the Applicant was that the property known as ELDORET MUNICIPALITY 21

(KINGONGO)/2309 would be sub-divided into two portions with one going to Respondent and 1/8 begin registered in the name of the Applicant.

- viii) As fate would have it, both PHILIP KIPRONO CHEROP and ANDREW KIBET KOTUT passed away before the Sub-division of the property known as ELDORET MUNICIPALITY 21 (KINGONGO)/2309 would be completed and suit property transferred to the Applicant.
  - ix) Later on in the year 2023, the Applicant discovered that the Respondent who was entitled to only a portion of the property known as ELDORET MUNICIPALITY 21 (KINGONGO)/2309 had colluded with the late ANDREW KIBET KOTUT and registered the entire property known as ELDORET MUNICIPALITY 21 (KINGONGO)/2309 including the suit property belonging to the Applicant herein.
  - x) It is on this basis that the Applicant seeks for an Order of Adverse possession against the Respondent for the suit property which he has been in occupation and use for more than the prescribed period of 12 years by law.
  - xi) The Applicant stated that his occupation on the suit property was open, adverse to the Respondent's ownership and continuous for 12 years hence the prayers sought in the present OS.
3. The present OS was duly served on the Respondent who opposed the same by filing a Replying Affidavit dated 07.01.2025.
4. The Respondent in opposition of the present OS pleaded the following facts; -

- i) The Respondent pleaded that he was the lawful registered owner of the entire property known as ELDORET MUNICIPALITY 21 (KINGONGO)/2309.
- ii) The Respondent further pleaded that he had purchased the entire property known as ELDORET MUNICIPALITY 21 (KINGONGO)/2309 from one ANDREW KIBET KOTUT procedurally and acquired a legitimate title deed on 26.06.2000.
- iii) Consequently, the Respondent was of the view that his registration as the lawful owner of the property known as ELDORET MUNICIPALITY 21 (KINGONGO)/2309 was protected by the Constitution and other Statutory provisions including the Land Registration Act, No.3 of 2012.
- iv) The Respondent stated that the Applicant's allegation was that the entire property known as ELDORET MUNICIPALITY 21 (KINGONGO)/2309 had been illegally or fraudulently registered in his name including the suit property belonging to the Applicant.
- v) If this was the true position, then the Applicant did not have a claim under Adverse possession but one which falls under the provisions of Section 26 of the Land Registration Act, No. 3 of 2012.
- vi) As such, the Applicant's claim under Adverse possession is misguided and cannot be granted as sought.
- vii) The Respondent further pleaded that there was no privity of contract with the Applicant based on the Agreement For Sale dated 26.04.2003 and therefore the Court cannot grant the reliefs sought.

- viii) As to the occupation by the Applicant, the Respondent stated that there has been numerous instances where the Applicant has been directed to vacate the property and therefore his occupation therein cannot be deemed to have been without interruptions.
- ix) The Respondent therefore sought the Court to dismiss the present OS.
5. Upon filing of the above response by the Respondent, the matter was set down for hearing.

### **APPLICANT'S TESTIMONY & DOCUMENTARY EVIDENCE**

6. The first witness was the Applicant who was marked as PW 1.
7. The Applicant introduced himself as an employee of MOI TEACHING & REFERRAL HOSPITAL and a resident of Uasin Gishu County.
8. The Applicant then proceeded to adopted his witness statement dated 14.02.2025 as well as the Supporting Affidavit dated 23.09.2024 as his evidence in chief.
9. The Applicant's prayer was that the Court do issue an Order of Adverse possession for the portion known as the suit property from the property known as ELDORET MUNICIPALITY 21 (KINGONGO)/2309.
10. The Applicant reiterated that he took possession of the suit property based on the Agreement For Sale within PHILIP KIPRONO CHEROP dated 26.04.2003. (Copy of Agreement For Sale dated 26.04.2003 produced as **PLAINTIFF EXHIBIT 1**).
11. The Applicant testified that prior to executing the Agreement For Sale dated 26.04.2003 with PHILIP KIPRONO CHEROP, he

had been shown another Agreement dated 20.07.1994 between PHILIP KIPRONO CHEROP and ANDREW KIBET KOTUT. (Copy of the Agreement For Sale dated 20.07.1994 produced as **PLAINTIFF EXHIBIT 2.**)

12. The Applicant then proceeded to produce the Register and/or Green Card of the entire property known as ELDORET MUNICIPALITY 21 (KINGONGO)/2309. (Copy of the Register and/or Green Card was produced as **PLAINTIFF'S EXHIBIT 3**).
13. The Applicant reiterated that even before execution of the Agreement For Sale dated 26.04.2003, he visited the suit property in the presence of both PHILIP KIPRONO CHEROP and Respondent who both pointed out the same to him.
14. During this ground visit, the suit property was confirmed to belong to the Applicant while the remaining portion owned by PHILIP KIPRONO CHEROP was the property of the ANDREW KIBET KOTUT.
15. After this ground visit, the Applicant executed the Agreement For Sale dated 26.04.2003 and paid a sum of Kenya Shillings One Hundred Thousand (KShs.100,000/-).
16. On the other hand, PHILIP KIPRONO CHEROP upon receipt of the initial Kenya Shillings One Hundred Thousand (KShs.100,000/-) gave vacant possession of the suit property to the Applicant.
17. The Applicant denied knowledge of the Respondent or having any conversation with him over the suit property. (Copies of various photographs of the developments made on the suit property produced as **PLAINTIFF'S EXHIBIT 4.**)

18. However, in the year 2023, the Applicant received a letter dated 01.08.2023 from the Respondent's Advocates. (Copy of the Letter dated 01.08.2023 produced as **PLAINTIFF'S EXHIBIT 5**)
19. The Applicant informed the Court that the Respondent's Demand letter dated 01.08.2023 was responded through a Letter dated 16.08.2023 by the Applicant's Counsel. (Copy of the Letter dated 16.08.2023 produced as **PLAINTIFF'S EXHIBIT 6**).
20. The Applicant was of the view that the suit property was to be created from a property known as ELDORET MUNICIPALITY BLOCK 21 (KINGONGO)/36. (A Copy of the Mutation of ELDORET MUNICIPALITY BLOCK 21 (KINGONGO)/36 was produced as **PLAINTIFF'S EXHIBIT 7**).
21. The Applicant informed the Court that he had never done any case with the Respondent over the suit property.
22. In concluding his testimony in chief, the Applicant sought the Court to grant him the prayers sought in the present OS.
23. On cross-examination, the Applicant reiterated that he purchased the suit property from one PHILIP CHEROP within the property known as ELDORET MUNICIPALITY 21 (KINGONGO)/2309.
24. On being referred to PLAINTIFF EXHIBIT 1, the Applicant admitted that the size written as 1/8 did not indicate whether its in Acres or Hectares.
25. The Applicant informed the Court that he had never sued the Vendor PHILIP CHEROP.

26. The Applicant stated that he instituted these proceedings against the Respondent because he was the one with the title deed.
27. On being referred to PLAINTIFF'S EXHIBIT 2, the Applicant was of the view that the validity of an Agreement For Sale is not the same as that of a title deed.
28. The Applicant admitted that he never undertook a search of the property known as ELDORET MUNICIPALITY 21 (KINGONGO)/2309 before he purchased the suit property.
29. The Applicant insisted that he purchased the suit property based on the trust he had for PHILIP CHEROP and ANDREW KIBET KOTUT.
30. The Applicant denied the claim that he had been conned because he was in occupation.
31. The Applicant did inform the Court that he did a search of the suit property only in the year 2023.
32. The Applicant stated that he paid the full purchase price based on the Agreement dated 26.04.2003 but on different dates.
33. The Applicant confirmed that he had developed permanent and semi-permanent structures on the suit property.
34. The Applicant admitted that PHILIP CHEROP was never the registered owner and could not therefore transfer any ownership of the suit property to him.

35. On re-examination, the Applicant reiterated that he had paid the full purchase price in the Agreement For Sale dated 24.04.2003.
36. The Applicant stated that he was not conned by PHILIP CHEROP and ANDREW KIBET KOTUT.
37. According to the Applicant, PHILIP CHEROP had lawfully purchased the suit property from ANDREW KIBET KOTUT.
38. At the end of this re-examination, the Applicant was duly discharged from the witness box.
39. The Applicant's second witness was GEOFFREY KAMENJUI KAMAU who was marked as PW 2.
40. PW 2 introduced himself as a resident of Road Block Area within Uasin Gishu and a businessman.
41. PW 2 then proceeded to adopt his witness statement dated 14.02.2025 as his evidence in chief.
42. PW 2 informed the Court that he was born in 1969 in the same area within which the suit property was located.
43. PW 2 stated that he came to know the Applicant way back in 2003.
44. PW 2 testified that the Applicant herein had been in occupation of the suit property and had developed the same.
45. PW 2 admitted that he did not know the Respondent in this present OS.

46. PW 2 therefore concluded his testimony in chief by stating that the Applicant was entitled to an Order of Adverse possession having occupied the suit property from the year 2003.
47. On cross-examination, PW 2 stated that he had not carried any identification documents to Court.
48. PW 2 reiterated that he did not know the Respondent herein.
49. PW 2 stated that he did not know PHILIP CHEROP.
50. PW 2 informed the Court that he did not ask the Applicant how he came into possession of the suit property.
51. PW 2 could not however tell if the Applicant had been conned or not.
52. At the end of this cross-examination, there was no re-examination and PW 2 was discharged from the witness box.
53. The Applicant's third witness was WASIKE WEKESA who was marked as PW 3.
54. PW 3 introduced himself as a resident of Tereson and a businessman by occupation.
55. PW 3 informed the Court that he came to know the Applicant in the year 2003 when he was looking for a portion of land to buy.
56. Later on, the Applicant informed PW 3 that he had succeeded to purchase a portion of land.
57. PW 3 could not however know who the Vendor was.

58. Nevertheless, PW 3 visited the Applicant as he was developing the same way back in 2003.
59. PW 3 informed the Court that he did not know the Respondent herein.
60. On cross-examination, PW 3 stated that he purchased his portion of land way back in 1991.
61. PW 3 was of the view that the Applicant's portion of land was about 1 Kilometre from his land.
62. PW 3 stated that he could not identify the Respondent herein.
63. PW 3 informed the Court that he was never a witness in the Agreement For Sale done by the Applicant and did not even know the property that had been purchased.
64. However, PW 3 stated that the Applicant is in occupation of 1/8 of an acre because this is what he had been told.
65. PW 3 could not also tell if the Applicant paid rates to the County Government.
66. On re-examination, PW 3 stated that he comes from Kakamega County although he had not brought any Identification documents with him to Court.
67. At the end of this re-examination, PW 3 was discharged from the witness box and the Applicant closed his case thereafter.

## **RESPONDENT'S TESTIMONIES & DOCUMENTARY EVIDENCE**

68. The Respondent's hearing began with the testimony of the Respondent who was marked as RW 1.
69. The Respondent introduced himself as a resident of KIPSOMBA in Soy Sub-County and a farmer by occupation.
70. The Respondent then proceeded to adopt the Replying Affidavit dated 07.01.2025, the witness statement dated 08.01.2025 and Further Statement dated 25.03.2025 as his evidence in chief.
71. In support of his testimony, the Respondent produced the following documents; -

**RW 1 EXHIBIT 1- Copy of the Title Deed of the property known as ELDORET MUNICIPALITY BLOCK 21 (KINGONGO)/2309 issued on the 26.06.2000.**

**RW 1 EXHIBIT 2- Copies of Receipts of Land Rates dated 07.12.2012,13.03.2018,04.12.2012,24.06.2016,11.05.2022,15.01.2021,25.03.2019.**

**RW 1 EXHIBIT 3- Copy of a Consent to Transfer dated 18.05.2000 from Andrew Kibet Kotut to the Respondent.**

**RW 1 EXHIBIT 4- Copy of a Demand Letter dated 01.08.2023 from the Respondent's Counsel to the Applicant.**

**RW 1 EXHIBIT 5- Copy of the Application for Consent to Transfer**

**RW 1 EXHIBIT 6- Copy of an Affidavit of Service dated 03.08.2023.**

**RW 1 EXHIBIT 7- A bundle of Treatment Notes dated 25.03.2025 from Moi Teaching & Referral Hospital.**

**RW 1 EXHIBIT 8- Treatment Notes from Eldomatt Medical Plaza dated 22.07.2009 and other treatment notes.**

72. The Respondent's prayer was that the present OS be dismissed and the Applicant evicted from the suit property.

73. The Respondent informed the Court that in the year 1994, he was involved in an accident which rendered him unable to visit the suit property.

74. In 2023, the Respondent sent his son to the suit property but found that someone had developed on the suit property.

75. Based on this discovery, the Respondent wrote a demand letter to the Applicant.

76. The Respondent stated that he did not know the Applicant until the day he testified in Court.

77. On cross-examination, the Respondent stated that he purchased the entire property known as ELDORET MUNICIPALITY 21 (KINGONGO)/2309 while it was vacant.
78. The Respondent could not tell the actual size of land which the Applicant was in occupation.
79. The Respondent denied the allegation that his son was the one cultivating the other portion of land within the property known as ELDORET MUNICIPALITY 21 (KINGONGO)/2309.
80. The Respondent could not tell who sold the suit property to the Applicant.
81. The Respondent reiterated that since the year 1994, he was unable to visit the property known as ELDORET MUNICIPALITY 21 (KINGONGO)/2309 due to the nature of his injuries.
82. The Respondent denied the allegation that in the year 2004, he was on the ground with the person known as ANDREW KIBET KOTUT.
83. The Respondent insisted that he did not know of the Applicant's occupation since 2003 to 2023 because of his illness.
84. On re-examination, the Respondent denied knowledge of the person known as PHILIP KIPRONO CHEROP who is alleged to have sold the suit property to the Applicant.
85. Similarly, the Respondent denied being familiar with the Applicant herein.
86. At the end of this Re-examination, RW 1 was discharged from the witness box and the Respondent's case was closed.

87. The Court then directed the parties to file their final submissions.
88. The Applicant's submissions were duly filed and dated 18.07.2025 while the Respondent's submissions were filed and dated 22.07.2025.
89. The Court has gone through the pleadings, testimonies of the parties, the documentary evidence adduced at trial and the submissions of the parties and identifies the following issues for determination; -

**ISSUE NO.1- HAS THE APPLICANT SATISFIED THE INGREDIENTS OF ADVERSE POSSESSION?**

**ISSUE NO.2- IS THE PRESENT OS MERITED?**

**ISSUE NO.3- WHO BEARS THE COSTS OF THE PRESENT OS?**

90. The Court having identified the above-mentioned issues for determination, the same will now be discussed below.

**ISSUE NO.1- HAS THE APPLICANT SATISFIED THE INGREDIENTS OF ADVERSE POSSESSION?**

91. The issue for determination is whether the Applicant has demonstrated and proved the ingredients of Adverse possession against the Respondent over the portion measuring 1/8 Acres on the property known as ELDORET MUNICIPALITY 21 (KINGONGO)/2309.

92. In the case of **TABITHA WAITHERERO KIMANI-VERSUS-JOSHUA NGANGA (2017) eKLR**, the mandatory requirements of adverse possession were identified and expounded as follows; -

**“(A) OPEN AND NOTORIOUS USE OF THE PROPERTY.** *For this condition to be met the adverse party’s use of the property is so visible and apparent that it gives notice to the legal owner that someone may assert claim. The occupation and use of the property by the adverse party must be of such character that would give notice to a reasonable person that someone would claim. If a legal owner has knowledge, this element is met. This condition is further met by fencing, opening or closing gates or an entry to the property, posted signs, crops, buildings, or animals that a diligent owner could be expected to know about.*

**(B) CONTINUOUS USE OF THE PROPERTY -** *The adverse party must, for Statute of Limitations purposes, hold that property continuously for the entire limitations period, and use it as a true owner would for that time. This element focuses on adverse possessor's time on the land, not how long true owner has been dispossessed of it. Occasional activity on the land with long gaps in activity fail the test of continuous possession. If the true owner ejects the adverse party from the land, verbally or through legal action, and after some time the adverse party returns and dispossesses him again, then the statute of limitation starts over from the time of the adverse party return. He cannot count the time between his ejection by the true property owner and the date on which he returned.*

**(C) EXCLUSIVE USE OF THE PROPERTY -** *The adverse party holds the land to the exclusion of the true owner. If, for example, the adverse party builds a barn on the owner's property, and the owner then uses the barn, the adverse party cannot claim*

***exclusive use. There may be more than one adverse possessor, taking as tenants (i.e. owners) in common, so long as the other elements are met.***

***(D) ACTUAL POSSESSION OF THE PROPERTY - The adverse party must physically use the land as a property owner would, in accordance with the type of property, location, and uses. Merely walking or hunting on land does not establish actual possession.***

93. The Court having duly identified the above mandatory ingredients of a claim of Adverse possession, the same will now be applied to the facts of the present OS.

### **INGREDIENT 1- OPEN & NOTORIOUS USE OF THE SUIT PROPERTY**

94. The first ingredient in a claim of adverse possession is whether or not the occupation of the Applicant was one which was open and notorious that the owner of the property became aware of the entry.

95. To be able to correctly answer this issue, it is important to first identify the property which the Applicant is seeking to claim under Adverse possession.

96. The Applicant in his pleadings and in particular PLAINTIFF'S EXHIBIT 3 states that the suit property is a portion of land measuring 1/8 of an Acre on the property known ELDORET MUNICIPALITY BLOCK 21 (KINGONGO)/2309.

97. However, the Applicant testified and pleaded that the portion of land measuring 1/8 of an Acre was to be a sub-division of the property known as ELDORET MUNICIPALITY BLOCK 21 (KINGONGO)/36 and produced the MUTATION as PLAINTIFF EXHIBIT 7.

98. Looking at the Mutation produced as PLAINTIFF'S EXHIBIT 7, is it clear that the property known as ELDORET MUNICIPALITY BLOCK 21 (KINGONGO)/2309 was a sub-division of ELDORET MUNICIPALITY BLOCK 21 (KINGONGO)/36.
99. According to the Mutation produced as PLAINTIFF'S EXHIBIT 7, the owner of the original property known as ELDORET MUNICIPALITY BLOCK 21 (KINGONGO)/36 was ANDREW KIBET KOTUT.
100. In essence, the original owner of the property known as ELDORET MUNICIPALITY BLOCK 21 (KINGONGO)/2309 after its creation was ANDREW KIBET KOTUT as at 03.10.1997.
101. The Applicant states that he entered into the suit property in the year 2003 and took possession thereof.
102. The manner in which the Applicant entered the suit property was by construction of both semi-permanent and permanent houses which he produced a bundle of pictures as PLAINTIFF EXHIBIT 4.
103. However, at the time of entry, the Applicant was of the understanding that he was the lawful owner of the suit property based on the Agreement For Sale dated 26.04.2003.
104. Consequently, despite the Applicant's occupation being open and notorious, it did not serve as a notice to the registered owner who is the Respondent that a claim of adverse possession might be asserted.
105. The Applicant in his testimony confirmed that he did not know the Respondent physically or that he was the registered owner of the suit property until the year 2023 when he received a Demand Letter and undertook a search.

106. The Respondent on the other hand testified that he also had not gone to the suit property since the year 1997 when he had an accident and became unwell.
107. The Respondent produced before the Court various treatment notes that confirm his inability to undertake normal day to day chores due to the injuries sustained in the accident.
108. Either way, it is clear that the Applicant's occupation on the suit property despite being open and notorious in use never came to the knowledge of the Respondent until 2023.
109. As such, this Court is of the considered view and finding that the Applicant's occupation on the suit property was not of such a character as to give notice to the Respondent of a possible claim of adverse possession.

## **INGREDIENT NO.2- CONTINUOUS USE OF THE SUIT PROPERTY**

110. In the second ingredient, the Court is directed to evaluate the manner in which the occupation by the Applicant against the Respondent was undertaken.
111. The expectation of this ingredient is that the Applicant must continuously use the portion of land without any interruption from the legal owner prior to institution of the claim for adverse possession.
112. The Applicant herein pleaded and testified that he took possession of the suit property in the year 2003 and developed semi-permanent houses as well as permanent houses.

113. The Applicant produced various pictures of the developments on the suit property as PLAINTIFF'S EXHIBIT 4.
114. The Applicant also called two witnesses who stated that the occupation of the suit property began way back in 2003 and has been on going until the institution of the present OS.
115. The Respondent admitted that he was not aware of the date when the Applicant entered into the suit property but confirmed that in 2023 when his son visited it, the Applicant had developed various structures therein.
116. Based on the testimonies of the Applicant and his witnesses as well as the pictures produced as PLAINTIFF'S EXHIBIT 4, this Court hereby makes a finding that indeed the Applicant's occupation on the suit property as been continuous since 2003 to date which is more than 12 years.

### **INGREDIENT NO.3- EXCLUSIVE USE OF THE PROPERTY**

117. In the third ingredient, the Applicant is required to demonstrate that he/she has been in exclusive possession of the suit property for a period of 12 years.
118. The Applicant herein pleaded and stated that he has been in exclusive possession of the suit property since 2003.
119. However, as stated earlier, the exclusive use of the suit property was on the basis of the Agreement For Sale dated 26.04.2003 when the Applicant was the beneficial owner of the suit property.
120. The Applicant's exclusive use of the suit property was not intended to dislodge the legal ownership of the Respondent herein.

121. The Applicant only came to learn about the Respondent's ownership of the suit property in the year 2023 on being served with a Demand Notice to vacate the same.

122. In other words, this Court is of the considered view and finding that the Applicant's exclusive possession of the suit property between the year 2003 up to 2023 was not consistent with dispossessing it from the Respondent as expected in a claim of adverse possession.

#### **INGREDIENT NO.4- ACTUAL POSSESSION OF THE SUIT PROPERTY**

123. The last ingredient is whether or not the Applicant was in actual possession of the suit property.

124. Based on the finding in Issue No. 2, this Court is of the considered view and finding that the Applicant was in actual possession of the suit property since 2003.

125. However, the actual possession of the suit property by the Applicant was not intended to dislodge the ownership of the Respondent based on the fact that it was premised on the Agreement For Sale dated 26.04.2003.

126. The Applicant did not have knowledge that the suit property belonged to the Respondent and/or his actual possession was meant to dislodge the legal rights of the legal owner.

127. As such, this Court is of the view and finding that the Applicant's was not of the character of dislodging the Respondent's ownership of the suit property.

#### **ISSUE NO.2- IS THE PRESENT OS MERITED?**

128. In conclusion, this Court is of the considered view and finding that the present OS is not merited and cannot be granted.

**ISSUE NO.3- WHO BEARS THE COSTS OF THE PRESENT OS?**

129. Costs usually follow the event.

130. The Applicant having failed to successful prosecute the present OS, then it goes without saying that he is condemned to pay the costs of this litigation.

**CONCLUSION**

131. The Court hereby makes the following Orders in determination of the present OS; -

**A. THE ORIGINATING SUMMONS DATED 23.09.2024 IS NOT MERITED AND THEREFORE DISMISSED.**

**B. THE APPLICANT IS CONDEMNED TO PAY THE COSTS OF THIS PROCEEDING TO THE RESPONDENT.**

**DATED, SIGNED and DELIVERED in ELDORET this 17<sup>TH</sup> DAY OF NOVEMBER, 2025.**

**EMMANUEL.M. WASHE  
JUDGE**

**IN THE PRESENCE OF:**

Court Assistant: Brian

Plaintiff: Mr. Murgor for the Applicant

Defendant: Ms. Nafula holding brief Mrs. Lagat for the  
Respondent