



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

CIVIL SUIT NO. 917 OF 2017

IN THE MATTER OF: THE LAND REGISTRATION ACT, 2012

THE MATTER OF: THE LIMITATION OF ACTION ACT CAP 22 LAWS OF KENYA

**IN THE MATTER OF: AN APPLICATION FOR DECLARATION THAT THE APPLICANT HAS OBTAINED OWNERSHIP
OF:**

- a) KAJIADO/ KAPUTIEI – NORTH/ 1844 (4.04) HA
- b) KAJIADO/ KAPUTIEI – NORTH/ 1845 (4.04) HA
- c) KAJIADO/ KAPUTIEI – NORTH/ 1846 (1.94) HA
- d) KAJIADO/ KAPUTIEI – NORTH/ 1847 (1.88) HA
- e) KAJIADO/ KAPUTIEI – NORTH/ 1848 (2.02) HA
- f) KAJIADO/ KAPUTIEI – NORTH/ 1849 (2.02) HA
- g) KAJIADO/ KAPUTIEI – NORTH/ 2143 (2.02) HA
- h) KAJIADO/ KAPUTIEI – NORTH/ 2144 (2.02) HA
- i) KAJIADO/ KAPUTIEI – NORTH/ 2145 (0.81) HA

BY WAY OF ADVERSE POSSESSION

BETWEEN

WILLIAM KOIPITAT MAYON.....PLAINTIFF

AND

LUCAS DAUDI MUTHAMIA.....1ST DEFENDANT

JAMES MUGAMBI.....2ND DEFENDANT

REUBEN SARUNI OLE NAKISO.....3RD DEFENDANT

LINER CHEBET.....4TH DEFENDANT

JOSEPH MULINGE MUNGUTI.....5TH DEFENDANT

JUDGEMENT

By an Originating Summons dated the 6th December, 2013 brought pursuant to Order 37 rule 7(1) and sections 3 & 3A of the Civil Procedure Act and section 7, 37 & 38 of the Limitation of Action Act (cap 22) the Applicant seeks for various orders against the

Respondents who claim to be the proprietors of land parcel number KAJIADO /KAPUTIEI-NORTH /1844;; KAJIADO /KAPUTIEI-NORTH /1845; KAJIADO / KAPUTIEI-NORTH /1846; KAJIADO/KAPUTIEI-NORTH /1847; KAJIADO /KAPUTIEI-NORTH /1848; KAJIADO /KAPUTIEI-NORTH /1849; KAJIADO /KAPUTIEI-NORTH /2143; KAJIADO /KAPUTIEI-NORTH / 2144; KAJIADO /KAPUTIEI-NORTH /2145 (hereinafter referred to as the 'suit lands'), currently registered as follows:-

<u>LAND NO.</u>	<u>REGISTERED OWNER</u>
1 KAJIADO/KAPUTIEI-NORTH/1844 (4.04 Ha)	LUCAS DAUDI MUTHAMIA
2. KAJIADO/KAPUTIEI-NORTH/1845 (4.04Ha)	JAMES MUGAMBI
3. KAJIADO/KAPUTIEI-NORTH/1846 (1.94 Ha)	REUBEN SARUNI OLE NAKISO
4. KAJIADO/KAPUTIEI-NORTH/1847 (1.88Ha)	REUBEN SARUNI OLE NAKISO
5. KAJIADO/KAPUTIEI-NORTH/1848 (2.02Ha)	REUBEN SARUNI OLE NAKISO
6. KAJIADO/KAPUTIEI-NORTH/1849 (2.02Ha)	LINNER CHEBET
7. KAJIADO/KAPUTIEI-NORTH/2143 (2.02Ha)	JOSEPH MULINGE MUNGUTI
8. KAJIADO/KAPUTIEI-NORTH/2144 (2.02Ha)	LUCAS DAUDI MUTHAMIA
9. KAJIADO/KAPUTIEI-NORTH/2145 (2.02Ha)	LINNER CHEBET

By way of adverse possession for the determination of the following questions:-

1. Is the plaintiff/applicant entitled to be declared as the proprietor of suit lands;
2. Is the plaintiff/applicant entitled to be registered as the owner of suit lands;
3. If the answer to 1& 2 above is yes, a declaration that the suit lands belong to the applicant by reason of adverse possession, and an order be issued to Land Registrar Kajiado to register the applicant as the owner of the suit lands.

The Respondents though duly served by way of substituted service in the Daily Nation Newspaper dated 27th August, 2014 failed to enter appearance nor file a Defence and interlocutory judgement was entered against them on 15th October, 2014 and endorsed by the Deputy Registrar on 16th October, 2014. This matter was listed for formal proof on 13th December, 2018 and following a court order issued on 22nd November, 2018, the applicant was allowed to serve the hearing notice for formal proof by substituted service which he did by publication in the Daily Nation Newspaper on 30th November, 2018 but the Respondents still failed to attend court for formal proof.

Evidence of the Applicant

The Applicant WILLIAM KOIPITAT MAYON testified as PW1 where he stated that he is a **resident of Lenchani Olopoloosat near Kitemgela Township** on plot number **7816**, which neighbors the suit lands where he has been staying and grazing for more than 20 years. He claims prior to 1992 his mother who could not read or write was the registered owner of land number KAJIADO/KAPUTIEI-NORTH/663 which was subdivided several times culminating in the suit lands. He insists despite the subdivisions and issuance of titles to the Respondents whom he does not know, he has continued to reside and graze on the suit lands. He explains that he is aged 30 years, and all his life he has been residing and grazing on this land, continuously, uninterruptedly for the last 20 years and it has not attracted any hostility, claim or any word from the 1st, 2nd, 3rd, 4th and 5th respondents. Further, that his mother who is said to have sold their family land to the Respondents subsequently died in 2002, and he has continued to reside and graze on the suit lands after his mother's death. He reiterates that he has created paths and easements through the suit lands without being hindered or interrupted by anyone or asked any question by the respondents and in fact all their neighbors consider the material plots as their land and have to seek permission from him to either pass through or graze their animals on them. He insists the Respondents who are the purported owners of the suit lands have never stayed thereon nor as he ever seen them and is surprised that the Land is registered in their names. He reiterates that he has no other place to call home together with his three brothers, one sister and their wives. The Applicant produced extracts of Green Cards and searches in respect of the suit land; subdivision map and Death Certificate of his mother as exhibits in court.

The Applicant thereafter filed his submissions, which I have considered.

Analysis and Determination

Upon consideration of the Originating Summons; supporting affidavit; exhibits and submissions as well as witness testimony, the following are the issues for determination:

- Whether Applicant is entitled to the orders sought in the Originating Summons.

- Who should bear the Costs of the suit

As to whether the Applicant is entitled to orders sought in the Originating Summons.

The Applicant has sought for orders of adverse possession in respect of the suit lands, which belong to the Respondents. He claims together with his family they have been residing exclusively and without any hostility grazing their cows, goats and sheep on the said lands for more than twenty (20) years. He proceeded to demonstrate that for the last 20 years or more, none of the defendants has issued any form of notice, verbal or otherwise to show or let the plaintiff know he has been residing on a land belonging to them. It was PW1's testimony that the suit lands were initially part of the larger piece of land parcel number Kajiado/ Kaputiei North/ 663 which was registered in his mother's name. He confirmed that the mother Nkiroine, subdivided and sold the parcels to Esther Njeri who subsequently sold to the Respondents.

Adverse possession is governed by Section 38 (1) and (2) Limitation of the Actions Act that provides as follows:

(1) Where a person claims to have become entitled by adverse possession to land registered under any of the Acts cited in [section 37](#) of this Act, or land comprised in a lease registered under any of those Acts, he may apply to the High Court for an order that he be registered as the proprietor of the land or lease in place of the person then registered as proprietor of the land.

(2) An order made under subsection (1) of this section shall on registration take effect subject to any entry on the register which has not been extinguished under this Act.

For adverse possession, to mature into title to land the following conditions must be fulfilled:

- (1) The trespasser has to demonstrate that he/she has been in *Continuous and uninterrupted* possession without the consent of the owner of the land;
- (2) The trespasser's interest has to be *inconsistent* to the interests of the true owner of the land;
- (3) The possession has to be *Open and notorious*, to enable the owner be on notice that there is a trespassing on his/her land;
- (4) The possession has to be *actual*, to enable the owner have a cause of action which if he/she fails to act on within the required legal period then he/she will be estopped by the law of Limitation to claim back the land.
- (5) The possession has to be *Exclusive*, to avoid confusion on who is entitled to obtain the title to the suit land once the limitation period lapses.

From the evidence of the Applicant which was not controverted by the Respondents, it is clear that even after the mother had sold the suit land to Njeri that transferred to the Respondents, he and the extended family never moved out of the said land. They continued to use the suit lands without permission from the registered proprietors by grazing their livestock openly without authorization or permission by the Respondents. As per the certified copies of the Green Cards which were produced as exhibits, it is evident that the Respondents were all issued with their respective title deeds in 1992. It was PW1's evidence that none of the Respondents ever utilized the suit lands and that the Applicant together with his larger family have been in open, continuous, uninterrupted possession and occupation for more than 20 years.

In the case of **AHMED ABDULKARIM AND ANOTHER –VS- MINISTER OF LANDS AND MINES** and another (1958) E.A. 436, that was cited by Ojwang –judge (as he then was) in the case of **KENYA TEA DEVELOPMENT AUTHORITY –VS- JACKSON GITHUI KARANJA & ANOTHER (2006) eKLR**. It was held that to establish a claim for adverse possession, the identity of the claim must be clear, the identity of the suit must be clear and it must be demonstrated that the plaintiff has been in open, exclusive continuous and uninterrupted possession or occupation. The Plaintiff must show he has been in occupation on the portion claimed for a period of 12 years or more.

In the case of **Wambugu Versus Njuguna 1983 KLR 174 cited in Karuntimi Raiji Vs. M'makinya (2013) eKLR**, the court of appeal held that **'in order for a person to acquire title by the operation of the statute of limitation to land which has a known owner, the owner must have lost his right to the land either by being dispossessed of it or by having discontinued his possession of it. Dispossession of the proprietor that defeats his title are acts which are inconsistent with his enjoyment of the suit for purposes for which he intended to use it. The Plaintiff is required to prove that he has dispossessed the defendant of the suit land or that the Defendant had discontinued possession of the suit land for a continuous period of 12 years so as to entitle the plaintiff to the title to the suit land by adverse possession.'**

Based on the evidence before me including the pleadings filed herein, I find that the Applicant has proved that together with his family, he has been in possession of the land exclusively for more than 12 years and his occupation has been open, continuous and uninterrupted and without the permission of the Respondents. Further, the occupation and use of the suit lands for more than 20 years was adverse to the rights of the Respondents who have never been in possession and it would follow the applicant's occupation as detailed above and in his pleadings, extinguishes the right of the defendants who hold various titles to the suit lands.

During the time of subdivision and transfer of the suit lands to the Respondents, the Applicant and his family were still in possession of the suit lands. I opine that the mere fact that the suit lands were transferred to the Respondents does not in any way interrupt the Applicant's right to adverse possession. On this point Madan Law and Porter JJA held in **Githu –vs- Ndeete (1984) eKLR** as follows:-

- 1. The mere change of ownership of land which is occupied by another under adverse possession does not interrupt such**

person's adverse possession.

2. Where the person in possession has already began and is in the course of acquiring rights under section 7 of the limitation of actions act (cap 22)those rights are overriding interests to which the new registered purchaser's title will be subject.

Based on the evidence adduced by the Applicant, I find that his occupation of the suit lands extinguishes the proprietary rights of its registered owners. Since the Respondents acquired title in 1992, I find that their titles to the suit lands extinguished in 2004 upon expiration of 12 years since the Applicant had been in possession thereof in 1992 when they obtained the same. Further, that from 2004, they were simply holding the land in trust for the Applicants. It is against the foregoing that I hold that the Applicant is indeed entitled to the orders sought in the Originating Summons herein.

On the issue of costs, I find that since this ordinarily following the cause, I will award the same to the Applicant.

It is in those circumstances and for the reasons I have given above, that I allow the Plaintiff's Originating Summons dated the 6th December, 2013, with costs.

I further proceed to make the following orders:

1. The Respondents **LUCAS DAUDI MUTHAMIA; JAMES MUGAMBI; REUBEN SARUNI OLE NAKISO; LINER CHEBET and JOSEPH MULINGE MUNGUTI** titles to land parcel numbers KAJIADO /KAPUTIEI-NORTH /1844;; KAJIADO /KAPUTIEI-NORTH /1845; KAJIADO / KAPUTIEI-NORTH /1846; KAJIADO/KAPUTIEI-NORTH /1847; KAJIADO /KAPUTIEI-NORTH /1848; KAJIADO /KAPUTIEI-NORTH /1849; KAJIADO /KAPUTIEI-NORTH /2143; KAJIADO /KAPUTIEI-NORTH / 2144; KAJIADO /KAPUTIEI-NORTH /2145 extinguished in 2004 upon expiration of 12 years since the Plaintiff had been in possession thereof in 1992 when they acquired their respective titles.

2. The Plaintiff be and is hereby declared to have acquired land title numbers KAJIADO /KAPUTIEI-NORTH /1844;; KAJIADO /KAPUTIEI-NORTH /1845; KAJIADO / KAPUTIEI-NORTH /1846; KAJIADO/KAPUTIEI-NORTH /1847; KAJIADO /KAPUTIEI-NORTH /1848; KAJIADO /KAPUTIEI-NORTH /1849; KAJIADO /KAPUTIEI-NORTH /2143; KAJIADO /KAPUTIEI-NORTH / 2144; KAJIADO /KAPUTIEI-NORTH /2145 which were resultant subdivision of Kajiado/ Kaputiei North/ 663, by way of adverse possession

3. The District Land Registrar Kajiado be and is hereby ordered to register the Plaintiff as the proprietor of land parcel number KAJIADO /KAPUTIEI-NORTH /1844;; KAJIADO /KAPUTIEI-NORTH /1845; KAJIADO / KAPUTIEI-NORTH /1846; KAJIADO/KAPUTIEI-NORTH /1847; KAJIADO /KAPUTIEI-NORTH /1848; KAJIADO /KAPUTIEI-NORTH /1849; KAJIADO /KAPUTIEI-NORTH /2143; KAJIADO /KAPUTIEI-NORTH / 2144; KAJIADO /KAPUTIEI-NORTH /2145 in place of **LUCAS DAUDI MUTHAMIA; JAMES MUGAMBI; REUBEN SARUNI OLE NAKISO; LINER CHEBET and JOSEPH MULINGE MUNGUTI.**

4. Costs of the suit is awarded to the Plaintiff/Applicant

Dated and Delivered in Kajiado this 30th day of May, 2019

CHRISTINE OCHIENG

JUDGE