

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY
ENVIRONMENT AND LAND COURT APPEAL NO. E045 OF
2022

MARY ANYANGO OKWARO

**(Suing as the legal representative
of the Estate of**

Benjamin Okwaro Estika (Deceased).....
APPELLANT

VERSUS

JOSEPH ODONGO OPIYO.....
RESPONDENT

***(Being an Appeal from the Judgement and decree
delivered by Hon. Onzere E. M. (Principal Magistrate) in
Ndhiwa PMELCC No. 14 of 2022 on 28th September 2022)***

JUDGEMENT

- 1.** The judgment arose from Ndhiwa PMCELCC 14 of 2020 as consolidated with the parent suit, being Homabay CMELCC Case No. 40 of 2021 (OS), formerly Migori CMCELCC (OS) 38 of 2020 that was transferred to the said court for determination.
- 2.** By way of a Plaint in Ndhiwa PMCELCC No. 14 of 2020 dated 17th June 2020, the Respondent sought the following orders in the trial court;

1) An order of eviction against the defendant and/or his proxies and or his agents and/or his servants from that entire parcel of land known as Homa Bay/Kakwere Konyango Karading/3413 situate in within Homa Bay County.

2) An order of permanent injunction restraining the defendant and/or his proxies and or his agents and or his servants from interfering with, encroaching upon or dealing with the suit property in any manner inconsistent with or adverse to the plaintiff's proprietary rights therein.

3) Costs of this suit and interests.

4) Any further relief that the honourable court may deem fit and just to grant.

3. He pleaded that he was the registered owner of the suit land and that on March 1983, the defendant, without the consent of the plaintiff, encroached onto the suit land. Further, that the acts of the defendant amounted to trespass. He stated that he made complaints to the District Land Adjudication Settlement Officer who confirmed that he was the rightful owner to the property. Despite several demands and notice given to the defendant, he refused to vacate the said land.
4. The defendant filed a statement of defence dated 9th July 2020 where he stated that during the Adjudication and Demarcation process at K/K/KARADING ADJUDICATION SECTION, (now Registration Section), all that portion of land, which was hitherto known as PLOT NO. 311, K/K/KARADING ADJUDICATION SECTION, was registered in the name of one, OPIYO OTANA, Deceased, his father. That his father did not enter into any Sale Agreement and/or otherwise sell any portion of PLOT NO. 311, K/K/KARADING ADJUDICATION SECTION, to anyone, let alone the Plaintiff herein. To the

contrary, the Plaintiff herein entered into a land sale agreement with one OGADA OPIYO, who was also a Son of OPIYO OTANA, and thereafter, proceeded to and attended proceedings before the Land Adjudication Department, culminating into the excision of a portion of PLOT NO. 311 K/K/KARADING ADJUDICATION SECTION.

- 5.** Subsequently, a portion of PLOT NO. 311, K/K/KARADING ADJUDICATION was curved out and assigned as Plot no. 3413 K/K/KARADING ADJUDICATION SECTION now registered and known as LR NO. HOMABAY/KAWERE KONYANGO KARADING/3413, the suit property. He urged that the plaintiff never entered into the suit property or took possession after the sale agreement. Further, that he is in occupation of the suit property which the plaintiff has been aware of for a period of 35 years. He stated that therefore, the plaintiffs' rights over the suit land have been extinguished. He prayed that the suit be dismissed with costs.
- 6.** The Appellants, then the plaintiffs, filed a reply to defence dated 21st July 2020 where the denied the allegations in the defence and stated that he always tried to fence the suit land but the defendant was violent to the extent that the last efforts involved the chief land surveyor and the land registrar. He further stated that section 7 of the Limitation of Actions Act is not available to the defendant as the tort complained about is a tort of continuing trespass. He urged that he has always had issues with the defendant and further, that the defendant does not live on the suit land but

has invited other people to occupy the land for commercial purposes as it is situate at Maram Shopping Centre.

7. In the Originating Summons in the Homabay No. 40 of 2021 (OS), the defendant, but applicant therein, sought the following orders;

- 1) Declaration that the Defendant's right to recover the entire of L.R. NO. HOMA-BAY/KAWERE KONYANGO KARADING/3413, {hereinafter referred to as the suit property) is barred under the Limitations of Actions Act cap 22 of Laws of Kenya, and his title thereto Extinguished on the grounds that the Plaintiff herein has Openly, Peacefully and Continuously been in occupation and possession of the entire of the suit property for a period of more than 35 years and thus exceeding the Statutory timeline for recovery of immoveable property.**
- 2) There be an Order that the Plaintiff be registered as the Proprietor of the entire of LR NO. HOMA-BAY/KAWERE KONYANGO KARADING/3413 in place of the Defendant and/or the Register thereof be rectified to reflect the Plaintiff as the lawful and legitimate owner thereof.**
- 3) The Honourable court be pleased to Order and/or direct the Defendant herein to execute, the Application for Land control Board consent, the Transfer Instrument and/or such other Transfer Instruments, as may be necessary and/or**

appropriate, to facilitate the transfer and registration of the suit property in the name of the Plaintiff.

- 4) In the alternative and without prejudice to prayer 3 hereof, the Deputy Registrar/Executive Officer of the Honourable court, be mandated and/or authorized to execute the Transfer Instrument/Documents, touching on and/or concerning the suit property, to facilitate the transfer in respect of the suit property.**
- 5) There be granted an Order of Permanent Injunction, restraining the Defendant by himself, agents, servants and/or employees from interfering with the Plaintiff's peaceful possession and occupation of the suit property and/or any portion thereof, in any manner whatsoever and howsoever.**
- 6) Costs of this Originating Summons be borne by the Defendant.**
- 7) Such further and/or other orders be made as the court may deem fit and expedient, in the circumstances of this case.**
- 8.** In the summons, he basically pleaded the same facts as those in the defence in the lead suit and claimed that he had acquired the suit land by way of adverse possession.
- 9.** The matter then proceeded for hearing.
- 10. PW1** was the Plaintiff, **Benjamin Okwaro** who adopted his witness statement as evidence in chief and reiterated the

contents of his plaint in toto. During cross examination, he stated that he bought the land from the defendant's father and that he had filed the agreement in court. Further, that he has never occupied the land since he bought it as the defendant started cultivating it. He stated that he raised the objection proceedings in 1997 which was 17 years after he bought the land and the person who sold him the land had died by that time.

11. The plaintiff closed his case and the defendant then testified as **DW1**. He adopted his witness statement as evidence in chief and produced his documents as exhibits. He denied the allegation that the plaintiff purchased the land from his brother and denied that he is the owner of the suit land. He stated that the suit land belonged to his brother while 311 belongs to him and they share a common boundary. He stated that the land belongs to him even though it is registered in Okwaro's name. Additionally, that he is in occupation of the land since his childhood. He urged that the title of the plaintiff was fraudulently registered as it was transferred to him when Ogada was already dead.

12. During cross examination, he stated that Ogada Opiyo, his older brother, was still alive during adjudication. That he was given 3413 and the witness retained 311. He urged that he did not have the letters of administration for Ogada Opiyo and confirmed that the green card showed that the plaintiff was the first registered owner of the suit land.

13. Upon considering the testimonies and the pleadings, the trial court found that the plaintiff's claim was time barred

and further, that the defendant had acquired the suit land by way of adverse possession.

14. Being aggrieved with the decision of the trial court, the appellant instituted this suit vide a Memorandum of Appeal dated 29th September 2022 premised on the following grounds;

- 1) The Court went against the grain by making a finding for the Respondent whose evidence was that he was pursuing his brothers' estate yet he was not an administrator of such estate.**
- 2) The Honourable Subordinate Court ignored evidence that the Respondent had his own piece of land yet he was seeking adverse possession over the Appellant's parcel of land.**
- 3) The Court below failed to apply the law properly by ignoring several letters and previous cases that had been there over the suit parcel of land between the Appellant as the Respondent.**
- 4) The Honourable Court was selective on evidence that would otherwise support the illegal findings for the Respondent.**
- 5) The Subordinate court ignored the respondents own documents that otherwise did not support the claim under adverse possession.**
- 6) The honourable subordinate court failed to appreciate that the claim of the appellant was that of eviction from land but not a claim for land.**

7) The entire judgement was therefore null and void as it made illegal wards otherwise based on no known legal principles.

15. The parties prosecuted the appeal by way of written submissions.

Appellants' submissions

16. Counsel cited the provisions of Section 7 of the Limitation of Actions Act, and urged that in the present case, the Appellant's right of action accrued on 12th February 2002, following the adjudication decision in her favour. This date marked the formal and legal recognition of the Appellant's (or her predecessor's) right over the suit property. Most importantly, the respondent's continued occupation post-2002 was not adverse, as the Appellant took several steps to assert her rights, including: Issuing formal complaints to relevant authorities, Writing demand letters (e.g., dated 6th June 2005 and 5th July 2006) and pursuing enforcement through court in 2020 when the Respondent ignored all prior attempts.

17. He stated that in the circumstances, the limitation clock could not run continuously or uninterrupted from 2002, as the Appellant took active steps asserting ownership. He cited the case of Githu v Ndeete [1984] KLR 776 and urged that in this situation, the respondent's occupation was challenged continuously, negating the requirement of peaceful and uninterrupted possession.

- 18.** Counsel submitted that the adjudication proceedings concluded in 2002 with a determination in favour of the deceased. This process, conducted under the Land Adjudication Act, culminated in the creation of Parcel No. 3413 in the deceased's name. That decision was never appealed or challenged. He also cited the case of *Macharia Mwangi & 87 Others v Davidson Mwangi Kagiri* [2014] eKLR where the Court of Appeal held that an adjudication decision once made and not appealed becomes final, binding and enforceable. Counsel urged that the Respondent's continued occupation in defiance of that lawful decision cannot confer title, nor can it start time running anew for adverse possession.
- 19.** Counsel submitted that under Section 30(f) of the Registered Land Act (repealed) and its successor Section 28(h) of the Land Registration Act, 2012, overriding interests such as occupancy rights must still be subject to the legality of the occupation. Mere occupation does not create title.
- 20.** Counsel submitted that the respondent was required to prove a) Peaceful, open and continuous occupation; b) That the occupation was without force, secrecy, or permission; c) That the owner made no interruptions or attempts to assert ownership. He cited the case of *Kweyu v Omuto* [1990-1994] EA 284 where the Court stated that possession must be "open, notorious, and adverse."
- 21.** Counsel urged that in this case, the Appellant served several warnings and made efforts to remove the Respondent. Thus, occupation was not peaceful or

uninterrupted. Additionally, the suit property was only formally created and registered in 2002 which further contradicts the 1983 accrual date relied upon by the Respondent. Moreover, mere use of land for cultivation, where the owner continues to protest or demand return, does not support adverse possession. Counsel maintained that the Trial Court erred in finding the suit time-barred and further, that it erred by: a) Failing to appreciate that time stopped running each time the Appellant; asserted her rights; b) Misconstruing the effect of adjudication proceedings, which created a legal title; and c) Ignoring continuous acts of protest by the Appellant from 2002 to 2020.

22. Counsel cited *Public Trustee v Wanduru Ndegwa* [1984] KLR 314 where the court held that “where a party asserts rights over land, and the alleged trespasser fails to respond, it cannot be said that possession is adverse.” Further, that the Appellant’s delay was not inordinate, given the continuous assertion of rights and the complexity of land adjudication and enforcement mechanisms in rural Kenya.

23. Counsel urged the court to adopt a purposive and equitable approach. The Appellant, representing a deceased registered owner, should not be punished for attempting to enforce her rights through lawful means after years of administrative challenges.

24. He urged the court to allow the appeal.

Respondent’s submissions

- 25.** Counsel for the respondent submitted that the gravamen of the appellant's case in the Subordinate Court is that the respondent had unlawfully encroached on the suit property in 1983. It was his case that the encroachment had deprived him of the quiet possession and use of the suit property. It was his case that on or about the July 2006, same had made several complaints about the respondent over the suit property.
- 26.** Counsel cited Section 9(1) of the Limitation of Actions Act and urged that it was the Appellant's case that there had been a long standing land dispute between him and the Respondent over the suit from 1983 when the Respondent unlawfully encroached on his land and begun carrying out cultivating a portion of the suit property. Further, that despite several notices upon him, the respondent did not heed to end the offensive activities over the suit property and that around 2006, he lodged complaints to the District Land Adjudication/Settlement officer. Of importance in this discourse is the Letter dated the 29th August 997 and the subsequent Objection proceedings between the parties.
- 27.** Counsel submitted that the Objection proceedings pitting the Appellant against the Respondent over the suit property was allowed on the 12th February 2002. He urged that it is evident that the Respondent did not challenge the Land Adjudication Officer either on Appeal or Review. However, the Respondent did not vacate the portion of the suit property adjudged to and in favour of the Appellant and remained in occupation and the possession thereof, mainly

doing agricultural activities on the said portion of the suit property.

28. Counsel urged that the Appellant, on 6th June 2005, corresponded to him over the trespass of a portion of the suit property and that the Respondent did not vacate the portion of the suit property adjudged to and in favour of the Appellant in 2002. Yet again, the Appellant corresponded another letter dated the 5th July 2006 and the Respondent did not vacate the said portion. He urged that the status quo, so to speak, remained until 2020 when the Appellant lodged a case before the Trial Court at Ndhiwa vide Ndhiwa ELC 14 of 2020 seeking Permanent Orders and Eviction of the Respondent from the suit the portion of the suit property.

29. Counsel submitted that following the Objection Proceedings Decision of 12th February 2002 when the suit property was allowed to and in favour of the Appellant, the Cause of action accrued immediately in terms of Section 9(1) of the Limitation of Actions Act in 2002 and the Appellant had to lodge any case to recover the portion of the suit property within 3 years, noting that his case was on Trespass. However, the Appellant waited until 2020 when he lodged his case to recover a portion of the suit property same having been lodged way out of the timeliness and without any leave of the Court. That the appellant was indolent and went to slumber and only awakened from his deep slumber when the Respondent lodged an Originating Summons case vide Migori ELC. No. 40 of 2020(O.S). However, this was too little too late.

30. Counsel submitted that in the instant appeal, the supposed letters and/or correspondences being alleged to have been served upon the respondent in 2005 could not amount to assertion of rights. The appellant thus slept on his Based on the foregoing, it is the Respondent's considered take that the Appellant in seeking redress from the Trial Court in 2020 after the determination of the issues as back as 2002(roughly 3 decades) was rather indolent. Counsel placed reliance on the decision of the Court of Appeal Decision sitting in Nyeri Vide JENNIFER NYAMBURA KAMAU vs. HUMPHREY MBAKA NANDI CIVIL APPEAL NO. 342 OF 2010.

31. Counsel submitted that Section 7 of the Limitation of Actions Act prescribes for timelines within which a person can recover land. That Section 17 of the said Act prescribes that upon the expiry of 12 years, the title of the person ought to have brought an action to recover land is extinguished subject to Section 18 of the Act that prescribes for equitable rights. Further, that Section 7 of the Land Act 2012 provides that one of the ways in which land can be acquired is through prescription. He pointed out that at Paragraph 5 of the Plaint dated the 17th June 2020, the appellant stated that the respondent encroached onto the suit property sometimes in March 1983. Having correctly identified the timeliness which the respondent entered on the suit property; the appeal ant was duty bound to recover the suit property within 12 years pursuant to the provisions of Section 7 of the Limitation of Actions Act.

32. Counsel placed reliance on the decision of the Court of Appeal at Malindi - **MTANA LEWA V KAHINDI NGALA O MWAGANDI** [2015] ECLR and urged that the Trial Court was right in facts and law in finding and holding that the Appellant's Cause of action was filed 18 years after the Cause of action arose and without Leave of the Honourable Court. He urged that the Trial Court was right in finding and holding that indeed the Plaintiff's case was statute and/or time barred. He urged the court to dismiss the appeal.

Analysis and Determination

33. The duty of an appellate court was stated in **Abok James Odera T/A A.J Odera & Associates v John Patrick Machira T/A Machira & Co. Advocates** [2013] eCLR, where it was held-

“This being a first appeal, we are reminded of our primary role as a first appellate court namely, to re-evaluate, re-assess and re-analyse the extracts on the record and then determine whether the conclusions reached by the learned trial Judge are to stand or not and give reasons either way.”

34. In **Williamson Diamonds Ltd and another v Brown** [1970] EA 1, the court held that:

“The appellate court when hearing an appeal by way of a retrial, is not bound necessarily to accept the findings of fact by the trial court below, but must reconsider the evidence and make its own evaluation and draw its own conclusion.”

35. Further, in **PIL Kenya Limited v Oppong** [2009] KLR 442, it was held that:

“It is the duty...of a first appellate court to analyse and evaluate the evidence on record afresh and to reach its own independent decision, but always bearing in mind that the trial court had the advantage of hearing and seeing the witnesses and their demeanour and giving allowance for that”.

36. Similarly, in **Abok James Odera t/a A.J Odera & Associates v John Patrick Machira t/a Machira & Co. Advocates** [2013] e KLR, the Court of Appeal stated;

“This being a first appeal, we are reminded of our primary role as a first appellate court namely, to re-evaluate, re-assess and reanalyze the extracts on the record and then determine whether the conclusions reached by the learned trial Judge are to stand or not and give

37. I have considered the memorandum of appeal, pleadings and record of appeal and the following issues arise for determination;

1)Whether the trial court had jurisdiction to entertain a claim based on adverse possession

2)Whether the order of eviction against the defendants should have issued

Whether the trial court had jurisdiction to entertain a claim based on adverse possession

38. In In Owners of Motor Vessel “Lilian S” v Caltex Oil (Kenya) Limited (1989) 1 KLR the Court dealt with a court, jurisdiction thus:-

“Jurisdiction is everything. Without it, a court has no powers to make one more step. Where a court has no jurisdiction there would be no basis for a continuation of the proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion it is without jurisdiction.....where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before Judgement is given”.

39. In the case of Samuel Kamau Macharia & Another vs Kenya Commercial Bank Limited & Others (2012) eKLR it was held:

“A court’s jurisdiction flows from either the Constitution or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. the court must operate within the constitutional limits. It cannot expand jurisdiction craft or innovation.”

40. Article 169(2) of the Constitution directed parliament to enact legislation conferring jurisdiction, functions and powers on Magistrate’s courts. Consequently, the Magistrates’ Court

Act was enacted to define the jurisdiction of the various subordinate courts. Under Section 7(3) of the Magistrate's Court Act, the Civil jurisdiction of Magistrates Courts is set out as follows: -

(3) A magistrate's court shall have jurisdiction in proceedings of a civil nature concerning any of the following matters under African customary law—

(a) land held under customary tenure;

(b) marriage, divorce, maintenance or dowry;

(c) seduction or pregnancy of an unmarried woman or girl;

(d) enticement of, or adultery with a married person;

(e) matters affecting status, and in particular the status of widows and children including guardianship, custody, adoption and legitimacy; and

(f) intestate succession and administration of intestate estates, so far as they are not governed by any written law.

41. The jurisdiction of Magistrates over land disputes is further defined at Section 9(a) of the Magistrates' Court Act as follows: -

9. Claims in employment, labour relations claims, land and environment cases a magistrate's court shall: -

(a) in the exercise of the jurisdiction conferred upon it by section 26 of the Environment and Land

Court Act (Cap. 8D) and subject to the pecuniary limits under section 7(1), hear and determine claims relating to -

- i) environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;**
- ii) compulsory acquisition of land;**
- iii) land administration and management;**
- iv) public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and**
- v) environment and land generally,**

42. It is evident that there is no express statutory provision vesting the Magistrates' Courts with jurisdiction over claims on adverse possession. That jurisdiction is conferred on the High Court (read ELC) by virtue of Section 38(1) of the Limitation of Actions Act, which specifically provides that: -

38. Registration of title to land or easement acquired under Act

(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.

43. In the case of **Sugawara v Kiruti (Sued in her Capacity as the Administratrix of the Estate of Mutarakwa Kiruti Lepaso alias Mutaragwa Kiruti Lepaso alias Mutaragwa Kiroti Leposo and in her own Capacity) & 3 others (Civil Appeal E141 of 2022) [2024] KECA 1417 (KLR) (11 October 2024) (Judgment)**, the Court of Appeal held thus;

“It is our view that, if it was intended that claims for adverse possession be determined by the Magistrates’ Court, nothing would have been easier than for Parliament to have expressly enacted such a provision. So that in view of the express provisions of the law, a strict interpretation of section 38 would mean that hearing and determination of such matters is specifically limited to the Environment and Land Court to the exclusion of Magistrates’ Court.

We come to this conclusion also bearing in mind that the jurisdiction of Magistrates’ Courts is largely determined by the pecuniary interest designated for determination by each level of the Magistracy specified in the hierarchy of courts, in terms of section 7 of the Magistrates Courts Act.

In claims for adverse possession where the value of the land in question may be unknown, as in the instant case, it could be that by the time of filing, the value of the land subject of determination may be far in excess of the particular Magistrates' Court's pecuniary jurisdiction, which for all intents and purposes was not what was intended by the Act.

In the circumstances, in view of the express provisions of section 38 of the Limitation of Actions Act, as did the Environment and Land Court, we find that Magistrates' Courts do not have jurisdiction to determine the claims of adverse possession. As a consequence, the trial magistrate in the instant case rightly disregarded."

44. I note that this decision was delivered after the defendant had filed the originating summons. However, even before then, there were decisions from the high court, which are binding on the trial court, that held that the magistrates' court did not have the jurisdiction to entertain claims for adverse possession.

45. It was held in the case of **Jesee Njoroge Gitau v Kibuthu Macharia & another [2019] eKLR**, that:

"It is clear from the above provisions of the law that the Magistrate's court has no jurisdiction to try matters where a party is seeking adverse possession. Indeed, if both matters had been filed in this court, the best order suited to issue upon

this application would have been an order for consolidation of both the matters. However, this is not the case in question.”

46. In the case of **Michael Chebii Toroitich v Peter Mogin Yatich Chebii [2013] eKLR** M. Sila, J held:

“The matters in issue in Iten RMCC No. 9 of 1994 and in the land disputes tribunal, in my view, were whether the defendant holds a half share of the land in trust for the plaintiff.

The question whether the plaintiff is entitled to the suit land by way of adverse possession never arose in those proceedings. Indeed, they could not have arisen, as the Magistrate's court does not have jurisdiction to entertain a claim of adverse possession. Neither could adverse possession have been made a ground of attack or defence in those two proceedings. The issue of adverse possession could not have been raised and was never raised in those proceedings.

47. It is therefore my considered view that the trial court erred in determining that the defendant had acquired the suit land by way of adverse possession as it was not clothed with the jurisdiction to do so.

Whether the order of eviction against the defendants should have issued

48. The trial court aptly found that the suit land was a sub division of parcel no. 311 and that it was given to him through the objection proceedings that were concluded. If

the claimant had issued with the objection proceedings he ought to have challenged the same as required by law, by way of Judicial Review. He is estopped from raising such a claim and indirectly going around a process he ought to have done upon determination of the objection proceedings.

49. The question then that follows is whether eviction would arise if the owner had not claimed recovery of the possession of the land for a period of over twelve years. The respondent failed to prove in the lower court that the title of the appellant was obtained fraudulently. Given the evidence on the record and the law as applied to it, there was no merit in the Plaintiff's claim. It is also not disputed that the defendant entered the suit land and has been in occupation of the same. But the Court lacked jurisdiction to entertain a claim or adverse possession. The question of recovery of the land then is the issue.

50. Having found that the trial court did not have the jurisdiction to determine the claim based on adverse possession, and given that the trial court found that the plaintiff was rightfully registered as the proprietor of the suit land, I am of the considered view that the orders sought in the plaint ought to have been granted, subject to proof of the limitation period.

51. The upshot of the foregoing is that the appeal succeeds but in the following terms;

1) The judgement of the trial court delivered on 28th September 2022 is hereby set aside for reason of the court not having had jurisdiction over

adjudication of adverse possession claim, and substituted with judgment for the Plaintiff against the Defendant.

2) I hereby issue an order of eviction against the defendant and/or his proxies and or his agents and/or his servants from that entire parcel of land known as Homa Bay/Kakwere Konyango Karading/3413 situate in within Homa Bay County, but subject to proof that the Plaintiff would recover the land if not in his possession for over twelve years.

3) I hereby issue an order of permanent injunction restraining the defendant and/or his proxies and or his agents and or his servants from interfering with, encroaching upon or dealing with the suit property in any manner inconsistent with or adverse to the plaintiff's proprietary rights therein, subject to the Plaintiff fulfilling relief No. 2 above.

4) The Appellant is awarded half the costs to the Appeal.

Judgment dated, signed and delivered virtually via the Teams Platform this 11th day of December 2025.

**HON. DR. IUR NYAGAKA
JUDGE**

**From 12: 38 PM, in the presence of,
Mulisa for the Respondent**

Mr. Ogwe for the Appellant (absent);

NB: Mr. Ogwe was logged in here earlier but has left.

Mulisa: We pray for stay of execution for 30 days.

Court: Stay of execution of execution granted for 30 days.