

REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT
AT ELDORET
ELC OS NO.E004 OF 2023

**IN THE MATTER OF: LAND REFERENCE NO. TULWET/KESSES
BLOCK 2 (KETIBILONG)/69**

&

**IN THE MATTER OF: SECTION 38 (1) OF THE LIMITATION OF
ACTIONS ACT, CAP 22 LAWS OF KENYA**

BETWEEN

ANDREW CHESILUT

LAGAT.....APPLICANT

-VERSUS-

JOEL TUEI MARUSOI.....1ST RESPONDENT

CHIEF LAND REGISTRAR.....2ND

RESPONDENT

J U D G E M E N T

1. The Applicant herein filed an Originating Summons dated 14th March, 2023 (hereinafter referred to as **“the Present OS”**) against the 1st and 2nd Respondents seeking the following Orders; -
 - (i) **THAT the Applicant herein be declared to have become entitled by adverse possession of over 12 years to a portion of land measuring approximately 0.896 Acres as indicated and shown in the Survey Plan attached with respect to L.R. No. TULWET/KESSES BLOCK 2 (KETIBILONG)/69 with the 1st Respondent’s title to the portion thereof being extinguished.**

(ii) THAT the 1st Respondent herein do execute all necessary documents and acts for sub-division and transfer of the title by the 2nd Respondent to the Applicant with respect to the portion to enable him be registered as such and in default, the Deputy Registrar of this Court be authorized to sign the relevant papers on behalf of the 1st Respondent.

(iii) THAT the costs of this application be provided for.

2. The grounds in support of the orders above are contained in the body of the present OS as well as the Supporting Affidavit sworn by the Applicant on 14.03.2023 which can be summarised as follows: -

- i. The 1st Respondent is the bona fide and registered owner of the property known as L.R. No. TULWET/KESSES BLOCK 2 (KETIBILONG)/69 (hereinafter referred to as **“the suit property”**)
- ii. That the Applicant herein has been in occupation of a portion measuring 0.896 Acres of the suit property since 1980 without secrecy and has undertaken various development projects on the same.
- iii. That the Applicant’s occupation on a portion of the suit property has been in excessive of 12 years continuously, uninterrupted and exclusively.
- iv. Based on the Applicant’s occupation on a portion of the suit property, the 1st Respondent’s ownership is therefore extinguished by operation of law and the said portion should be registered in the name of the Applicant herein.

3. The present OS was duly served on the 1st and 2nd Respondents.
4. The 1st Respondent did file a Replying Affidavit dated 27.04.2023 in opposition of the same while the 2nd Respondent did not file any documents in reply.
5. In the Replying Affidavit by the 1st Respondent, the following facts were pleaded therein:
 - i. The 1st Respondent did confirm that he was the registered owner of the suit property measuring approximately 4.460Ha having been issued with a title deed on 09.01.1990.
 - ii. The 1st Respondent pleaded that the suit property was created out of a subdivision of a larger piece of land known as L.R. No. 9978 measuring 614.33Ha registered in the name of KETIPLONG FARM.
 - iii. The 1st Respondent confirmed that the Applicant herein owns the adjacent property L.R. No. TULWET/KESSES BLOCK 2(KETIBILONG)/72 (hereinafter referred to as **"PLOT NO.72"**)
 - iv. The 1st Respondent did state that the Applicant herein encroached or has been encroaching on a portion of the suit property.
 - v. Due to this encroachment on a portion of the suit property by the Applicant, a letter was done to the District Land Registrar by the 1st Respondent to resolve the dispute.
 - vi. On 27.01.2010, the Land Registrar Uasin Gishu wrote to both the Applicant and the 1st Respondent informing them

- of an existing boundary dispute and his intention to visit the ground on 08.06.2010 to resolve the same.
- vii. Unfortunately, the visit by the Land Registrar, Uasin Gishu did not materialise.
 - viii. Again, on or about 22.07.2014, the Assistant County Commissioner, Kesses wrote to the Land Registrar, Uasin Gishu registering a boundary dispute and requesting the Land Registrar, Uasin Gishu to come on the ground and resolve the same.
 - ix. In 04.11.2014, the Land Registrar, Uasin Gishu did respond and informed all parties that there would be a ground visit on 09.12.2014 to resolve the boundary dispute.
 - x. Unfortunately, on 09.12.2014 the dispute was not resolved as anticipated.
 - xi. Once again, on 14.09.2022 the Assistant Director, Land Survey Uasin Gishu County wrote a letter to the Area Chief Kesses Location to provide security for the intended site visit on 27.09.2022 with a view of resolving the boundary dispute.
 - xii. Unfortunately, this site visits also did not materialise as the Applicant failed to attend.
 - xiii. On 03.11.2022, the 1st Respondent again registered a boundary dispute with the Land Registrar Uasin Gishu County and paid all charges to facilitate a site visit and determination of the boundary.

- xiv. On 01.03.2023 the Land Registrar, Uasin Gishu wrote a letter stating that there would be a ground visit on 16.03.2023 for purposes of determining the boundary dispute.
- xv. The Applicant instead wrote a letter on 14th March, 2023 stating his unavailability for the site visit which resulted in the same not being undertaken.
- xvi. In essence, the 1st Respondent denied any occupation by the Applicant on the suit property.
- xvii. The 1st Respondent specifically objected to the Applicant's allegation that he had been in occupation of a portion of the suit property since 1980 stating that it was misleading.
- xviii. The 1st Respondent did plead that the dispute between the Applicant and the 1st Respondent relates to a boundary dispute which has never been resolved due to the non-attendance of the Applicant.
- xix. In essence, any occupation alleged by the Applicant cannot be open, regular or continuous for a period of 12 years because there is a boundary dispute.
6. The 1st Respondent's Replying Affidavit was served on the Applicant who did not file any further affidavits.
7. Consequently, the matter was listed down for hearing.

APPLICANT'S TESTIMONIES & DOCUMENTARY EVIDENCE

8. The first witness was the Applicant herein who was marked as PW 1.
9. The Applicant did confirm that he was familiar with the 1st Respondent.
10. The Applicant did proceed to adopt his witness statement dated 30.10.2023 as his evidence-in-chief.
11. In support of the evidence-in-chief, the Applicant produced the following documents; -

PW1 EXHIBIT 1 - Copy of the Title Deed to the suit property issued in the name of the 1st Respondent on 09.01.1990.

PW1 EXHIBIT 2 - A Copy of an official search of the suit property issued on 03.11.2020.

PW1 EXHIBIT 3 - Copy of Agreement for Sale between the Applicant and one Mr. Kipsang Samoei dated 06.02.1977.

PW1 EXHIBIT 4 - A copy of a receipt dated 03.01.1979 by Shaw & Carruthers to the Applicant for legal fees in respect of transfer of a share in Ketiplong Farm Limited.

PW1EXHIBIT5-A copy of a receipt dated 04.01.1990 issued by Lands Department to the Applicant for the transfer of PLOT.NO.72 & 38.

PW1EXHIBIT 6- A Copy of a Transfer of share between Kemeli Rugut and the Applicant.

PW1 EXHIBIT 7- Copy of a Letter of Consent from the Land Control Board Uasin Gishu in relation to transfer of LR No. 9978 between Kimeli Rugut and the Applicant.

PW1 EXHIBIT 8- A copy of a list of members of Ketiplong Farm Limited.

PW1 EXHIBIT 9-A copy of a letter dated 28.04.1989 from the Lands Department to Ketiplong Farm Limited.

PW1 EXHIBIT 10- A copy of an extract of the survey map showing Plot No. 69 and 68 within Ketiplong Farm Limited.

PW1 EXHIBIT 11- A Copy of an extract of the survey map for Ketiplong Farm Limited and in particular Plot No. 69 and 72.

PW1 EXHIBIT 12 (a)-(e)-Photographs of developments undertaken by the Applicant on the Plots no. 72 within Ketiplong Farm Limited.

PW1 EXHIBIT 13- A copy of the Title Deed of PLOT.NO.72 in the name Applicant's property issued on 09.01.1990.

PW1 EXHIBIT 14- A Copy of a letter dated 16.10.2022 to the Area Chief Kesses Location from SESLAW issued by the Applicant.

12. Upon production of the above documents, the Applicant re-confirmed that the original property belonged to Ketiplong Farm Limited.
13. In his evidence in chief, the Applicant did confirm that he was a member of Ketiplong Farm Limited together with the 1st Respondent herein.
14. During the demarcation and subdivision of the original property belonging to Ketiplong farm Limited, the Applicant's property known as PLOT.NO.72 and the suit property in the name of the 1st Respondent were demarcated adjacent to each other.
15. However, when the Survey Map was prepared, the Applicant did discover that a portion of land he was in occupation was within the 1st Respondent's suit property.
16. Despite the discovery of this fact, neither the Applicant nor the 1st Respondent took steps to correct the same.

17. In 2022, the Applicant confirmed that he was summoned by the Area Chief. Kesses and told to vacate the portion he was in occupation within the suit property registered in the name of 1st Respondent.
18. The Applicant obviously did object and instituted the present proceeding.
19. In essence, the Applicant was of the view that he had been in occupation of the portion within the suit property since 1980 and had satisfied the ingredients of adverse possession as sought in the present OS.
20. On cross-examination, the Applicant reiterated that he came to know about the boundary dispute registered by the 1st Respondent in the year 2022.
21. The Applicant was then referred to the 1st Respondent's List of documents dated 11.06.2024 and in particular Item No. 9.
22. The Applicant denied knowledge of the Letter identified herein above.
23. The Applicant stated that his name was inserted by hand and the letter is dated 27.01.2010.
24. According to the Applicant, the letter was in relation to a boundary dispute between Plots No. 69, 71 and 72.
25. Once again, the Applicant was referred to the 1st Respondent's List of Documents dated 11.06.2024 and specifically Item No. 10.

26. The Applicant identified that the letter dated 22.07.2014 from the Assistant County Commissioner addressed to him and the 1st Respondent with the issue being a dispute on Plot No. 72 69 and the suit property herein.
27. The Applicant was further referred to the 1st Respondent's List of Documents dated 11.06.2024 and in particular Item No. 11,12,13 and 14 thereof.
28. The Applicant identified the letters dated 08.10.2014, 04.11.2014, 29.08.2022 and 14.09.2022 respectively but denied receiving any of those letters.
29. On being referred to the 1st Respondent's List of Documents dated 11.06.2024 and specifically Item no. 15, the Applicant did admit receipt of the letter dated 20.09.2023.
30. The Applicant did inform the Court that he had never seen the Land Registrar on the ground.
31. The Applicant did testify that Plot No. 72 measured 6.5Ha and that there was an access road that ran through Plot No. 70.
32. The Applicant stated that Plot No. 70 was owned by Thomas Sang.
33. However, the access road passing through Plot No. 70 did not appear in the Survey Maps provided.
34. As a consequence, the Applicant had planted trees on a portion of the said Access Road.
35. The Applicant confirmed that subdivision of Ketiplong Farm happened in 1988 and everyone was issued with titles on 1990.

36. In essence, the Applicant was of the considered view that the 1st Respondent was aware of his occupation of the suit property but did anything.
37. The Applicant was referred to a statement by one John Kipkorir Sigirai dated 26.01.2024 which he denied the allegations therein.
38. The Applicant did reiterate that the access road was not provided for in the Survey Map and that the Access Road to Plot No. 70 was between Plot No. 72 and Plot No. 69.
39. On re-examination, the Applicant stated that the portion he is seeking in the present OS is within the suit property owned by the 1st Respondent.
40. The Applicant did reiterate that this fact was discovered in the year 1989.
41. As regards the Access Road, the Applicant stated that the road did not exist on the Survey Map although the same has been in use since 1985.
42. As regards the letter dated 22.07.2014, the Applicant stated that he never received the letter.
43. On being referred to the letter dated 08.10.2014, the Applicant admitted that Plot No. 70 belonged to Nicholas while 68 was his property but again he did not receive this letter.
44. The Applicant similarly denied being served with the letter dated 04.11.2014 or the one dated 29.09.2022.

45. The Applicant concluded his testimony by stating that he had been in occupation of a portion of the suit property since 1980 and therefore is entitled to an order of adverse possession.
46. At the end of this re-examination, the Applicant was discharged from the witness box.
47. The Applicant's second witness was DANIEL MALAKWEN LEITICH who was marked as PW2.
48. PW2 did confirm preparing a Witness Statement dated 14.03.2025 which he did adopt as his evidence-in-chief.
49. PW2 did not produce any documentary evidence.
50. On cross-examination, PW2 informed the Court that he was an elder in the area.
51. PW2 stated that he is the registered owner of Plot No. 181 within Ketiplong Farm Limited.
52. PW2 did aver that his property was a bit far away from the Applicant's and 1st Respondent's properties.
53. According to PW2, the 1st Respondent is the registered owner of the suit property and the Applicant is the owner of Plot No. 72 within Ketiplong Farm.
54. PW2 did state that the Access Road within Plot No. 70 is not there in the Survey Map.
55. PW2 admitted that whenever the area chief would write a letter he could deliver it to whoever it was addressed to.

56. However, PW2 informed the Court that he retired in 2002 and was not aware of the documents in the 1st Respondent's List of Documents.
57. On re-examination, PW2 denied knowledge of the dispute between the Applicant and the 1st Respondent before he retired in the year 2002.
58. PW 2 nevertheless concluded by stating that the portion in dispute is occupied by the Applicant.
59. At the end of this re-examination, PW2 was discharged from the witness box and the Applicant closed his case.

1ST RESPONDENT'S TESTIMONIES & DOCUMENTARY EVIDENCE

60. The first witness was the 1st Respondent who was marked as DW 1.
61. The 1st Respondent did introduce himself as a retired teacher who resides on Ketiplong Farm.
62. The 1st Respondent confirmed that he was familiar with the Applicant who is his immediate neighbour.
63. The 1st Respondent did inform the Court that he would adopt the Replying Affidavit dated 27.04.2023 and the Witness statement dated 11.06.2024 as his evidence-in-chief.
64. In support of his evidence-in-chief, the 1st Respondent produced the following documents: -

DW1 EXHIBIT 1- A copy of a title deed of the suit property issued on 09.01.1990.

DW1 EXHIBIT 2- A Certified Copy of the Register or Green Card of the suit property.

DW1 EXHIBIT 3- A copy of the Official Search of the suit property issued on 03.11.2022.

DW1 EXHIBIT 4- A copy of a Letter dated 20.04.1989 from the Land department to Ketiplong Farm Limited.

DW1 EXHIBIT 5- A copy of the Area Map of Ketiplong Farm Limited.

DW1 EXHIBIT 6- A copy of a letter by the 1st Respondent to the Land Registrar claiming an encroachment.

DW1 EXHIBIT 7(a) & (b)- A copy of the Boundary Dispute Form from the land registry dated 31.07.2014 and the Receipt dated 30.07.2014.

DW1 EXHIBIT 8- A copy of a Letter/Summons issued by the Land Registrar on 28.01.2010.

DW1 EXHIBIT 9- A copy of a Letter date 22.07.2014 from the Assistant County Commissioner Kesses to the Land Registrar, Uasin Gishu.

DW1 EXHIBIT 10- A copy of summons by the Land Registrar dated 08.10.2014.

DW1 EXHIBIT 11- A copy of the Summons by the Land Registrar dated 04.11.2014.

DW1 EXHIBIT 12- A copy of a Letter dated 09.08.2022 from the Area Chief Kesses, to the County Land Surveyor.

DW1 EXHIBIT 13- A copy of a letter dated 14.09.2022 from the County Land Surveyor to the Area Chief, Kesses.

DW1 EXHIBIT 14- A copy of a Letter dated 20.09.2022 to the Land Surveyor and copied to the Chief, Kesses and the 1st Respondent.

DW1 EXHIBIT 15- A copy of a letter dated 08.11.2022 from the Area Chief, Kesses to the County Land Surveyor.

DW1 EXHIBIT 16- A copy of a Dispute Registration Form dated 03.11.2022 relating to Plot No. 69.

DW1 EXHIBIT 17- A copy of a Dispute Registration Form dated 03.11.2022 relating to Plot No. 72.

DW1 EXHIBIT 18- A copy of a Dispute Registration Form dated 03.11.2022 relating to Plot. No. 68.

DW1 EXHIBIT 19- A copy of the Payment Receipt dated 11.11.2022.

DW1 EXHIBIT 20- A copy of the Summons dated 01.03.2023.

DW1 EXHIBIT 21- A copy of Letter dated 14.03.2023 from SESLAW.

65. Upon production of the above documents, the 1st Respondent denied the allegation that the Applicant was in peaceful and quiet occupation of a portion of the suit property.
66. The 1st Respondent stated that even if the Applicant was in occupation of any portion within the suit property, his occupation had been continuously challenged through the various letters to the Department of Lands and the Local administration.
67. As such, the present OS should not be granted.
68. On cross-examination, the 1st Respondent did admit that the Applicant encroached a portion of the suit property in the year 1990.
69. The 1st Respondent did confirm that in the statement dated 11.06.2024, he had stated that the Applicant had trespassed into the suit property way back in 1990.

70. The 1st Respondent indicated that the Applicant had fenced the access road and made it impossible for him to use the portion of land which was in contention.
71. The 1st Respondent did reiterate that he reported the dispute to both the Local Administration and the Lands Department.
72. The 1st Respondent referred to DW1 Exhibit 7 (a) and (b) which was the registration of a boundary dispute made against the Applicant herein.
73. The 1st Respondent in this Registration had stated that a dispute had arisen from as early as 1989 and was still ongoing as of 30.07.2014 when the application was made.
74. The 1st Respondent also disclosed that various efforts had been made to resolve the dispute through the Area Chief but did not include the District Officer or District Commissioner.
75. The 1st Respondent stated that he did not have any letter which he had written to the Area Chief between 1989 and 2014.
76. The 1st Respondent admitted that the Applicant was his neighbour for a long time but he had not written any demand letter for him to vacate the disputed portion.
77. On being referred to DW1 Exhibit 8, the 1st Respondent stated that the Applicant was Kiprotich Kipsang although he had been invited as well as the Applicant herein.
78. In this application, the name of the Applicant was handwritten and there were 2 dates for the site visit, with one being typed and the other handwritten.

79. On being referred to DW1 Exhibit 10 & 11, the 1st Respondent stated that he was the applicant therein.
80. In both the Applications dated 08.10.2014 and 04.11.2014, the name of the Applicant was included but his contact was not indicated.
81. Consequently, the 1st Respondent could not confirm if the Applicant had received those two summonses.
82. Similarly, the 1st Respondent stated that the Land Registrar never came to the ground.
83. The 1st Respondent did not have any evidence to show that there was a malicious scheme by the Applicant to avoid resolving the boundary dispute.
84. On being referred to DW1 Exhibit 10, the 1st Respondent stated that although there was a date for a ground visit, the ground visit did not happen because the Applicant was not present.
85. On being referred to PW1 Exhibit 10, the 1st Respondent stated that he owns the suit property while Plot No. 72 is owned by the Applicant.
86. The 1st Respondent stated that the portion which the Applicant is claiming in the suit property has never been measured and the size is not ascertained yet.
87. The 1st Respondent stated that the allocation of plots within Ketiplong Farm was done in 1989.
88. On being referred to PW1 Exhibit 8, the 1st Respondent confirmed that his name appears at Entry No. 49.

89. The 1st Respondent did inform the Court that he was allocated 21 Acres way back in 1970 and he has been in occupation of the same.
90. Thereafter, the titles were issued in 1990.
91. The 1st Respondent stated that under Entry No. 45 in PW1 Exhibit 8, the Applicant was allocated 20 Acres.
92. The 1st Respondent stated that there is a road between the suit property and Plot No. 72 belonging to the Applicant.
93. On re-examination, the 1st Respondent stated that the road exists on the Survey Map but not on the ground.
94. On the ground, the 1st Respondent stated that the access road is within the portion fenced by the Applicant as Plot. No. 72.
95. The 1st Respondent insisted that in Entry No. 49 of PW1 Exhibit 8, he had been allocated 21 Acres although he has fenced 20 Acres.
96. The remaining 1 Acre is within the Applicant's fence of Plot No. 72.
97. Consequently therefore, since 1990 when the titles were issued, there has been a dispute over the 1 Acre fenced by the Applicant.
98. The 1st Respondents referred to DW1 Exhibit 7(a) which is a complaint that is dated 30.07.2014 presented to the Land Registrar Uasin Gishu.

99. In this complaint, the 1st Respondent disclosed that he had made various attempts through the Local Administration to resolve the dispute with no success.
100. The 1st Respondent further referred to the letter dated 27.01.2014 to the Land Registrar as part of his evidence to dispute the Applicant's occupation.
101. In conclusion therefore, the 1st Respondent stated that the Applicant's occupation on the suit property has always been challenged and the present OS is not merited.
102. At the end of this re-examination, the 1st Respondent was discharged from the witness box.
103. The 1st Respondent's second witness was BARNABA KIRWA BARBORET who was marked as DW2.
104. DW2 did inform the Court that he was a farmer by occupation and a resident of Kesses.
105. DW2 stated that he had recorded a Witness Statement dated 11.06.2024 which he adopted as his evidence-in-chief.
106. DW2 did not produce any documentary evidence.
107. On cross-examination, DW2 informed the Court that he was the Secretary of Ketiplong Farm between 1978 and 1984.
108. DW2 testified that he was also the registered owner of Plot No. 88 on Ketiplong Farm but had not carried the title deed to Court.
109. DW2 admitted that both the Applicant and 1st Respondent herein were members of Ketiplong farm.

110. DW2 informed the Court that he was aware of a trespass and/or encroachment dispute between the Applicant and the 1st Respondent herein.
111. However, DW 2 could not ascertain when the trespass and/or encroachment by the Applicant on the suit property owned by the 1st Respondent began.
112. DW2 also admitted to not having any evidence to demonstrate that the Applicant is the one who frustrated a resolution of the dispute.
113. On re-examination, DW2 stated that during the survey, every member was shown his boundary.
114. DW2 concluded his evidence by stating that there were various reasons advanced by the Applicant for not attending the ground visits.
115. At the end of this re-examination, DW2 was discharged from the witness box and the 1st Respondent did close his case.

2ND RESPONDENT'S TESTIMONIES & DOCUMENTARY EVIDENCE

116. The 2nd Respondent having not entered appearance or file any response to the present OS, the Court did close their case.

GROUND REPORT

117. To enable the Court appreciate the occupation on the ground and the position of the access road, a Ground Report was ordered to be undertaken and indeed a Ground Report was duly filed on 29.07.2025.

118. Based on the pleadings filed by the Applicants, the response by the 1st Respondent, the testimonies of the witnesses and the documentary evidence produced in Court, the issues for determination are identified as follows; -

ISSUE NO. 1 - WHETHER OR NOT THE APPLICANT HAS PROVED A CLAIM OF ADVERSE POSSESSION?

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

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

119. The court having identified the above issues for determination, the same will now be discussed as provided hereunder.

ISSUE NO. 1 - WHETHER OR NOT THE APPLICANT HAS PROVED A CLAIM OF ADVERSE POSSESSION?

120. The first issue for determination is whether or not the Applicant herein has satisfied the ingredients of adverse possession to be able the Court declare him the lawful owner of approximately 0.4896 Acres on the 1st Respondent's suit property.

121. In the case of **MTANA LEWA-VERSUS-KAHINDI NGALA MWAGANDI (2015) eKLR**, the Court stated as follows in terms of the ingredients of adverse possession; -

“Adverse possession is essentially a situation where a person takes possession of land and asserts rights

over it and the person having the title to it omits or neglects to take action against such a person in assertion of his title for a certain period, in Kenya, it is twelve years (12) years.

The process springs into action essentially by default or inaction of the owner.

The essential prerequisites being that the possession of the adverse possessor is neither by force or stealth or under the licence of the owner.

It must be adequate in continuity, in publicity and in extent to show that possession is adverse to the title owner.

This doctrine in Kenya is embodied in Section 7 of the Limitation of Actions Act.

122. Based on the above authority, there are four key ingredients that the Applicant must satisfy to be entitled to a prayer of adverse possession.

INGREDIENT NO.1- ENTRY

123. The first ingredient in a claim of adverse possession is entry into the disputed land.

124. In the present OS, the Applicant states that he entered into a portion of the suit property way back in 1980.

125. At the time of his entry in 1980, the suit property herein had not been created but was in a larger piece of land known as LR No. 9978 measuring 614.33 Ha.
126. The large piece of property known as LR No. 9978 was the property of an entity known as Ketiplong Farm Limited.
127. Both the Applicant and the 1st Respondent confirm that they were members of Ketiplong Farm Limited by virtue of the shares they held.
128. In the years 1988 and 1989, the property known as LR No. 9978 belonging to Ketiplong Farm Limited was sub-divided into various portions.
129. Out of this subdivision, a mutation and/or survey map was prepared by the Department of Survey and subsequently, title deeds were issued in the year 1990 for each of the subdivisions.
130. According to the testimony of the Applicant, it was only after the title deeds were issued in the year 1990 when it became clear that the Applicant was in occupation and use of a portion within the suit property registered in the name of the 1st Respondent.
131. The 1st Respondent in his Replying Affidavit and testimony in Court did confirm that there is a portion of the suit property which has been occupied by the Applicant.
132. However, the Respondent did plead and present evidence that indeed the occupation has been contested from way back in the year 2010 up to date.
133. Looking at the evidence by the Applicant and the 1st Respondent, it is clear that the Applicant is in occupation and

use of a portion of the suit property registered in the name of the 1st Respondent.

134. The question that arises is defining the moment of entry is whether the entry was in 1980 or not.

135. It is not in dispute that the subdivision of LR No. 9978 registered in the name of Ketiplong Farm Limited was undertaken in the years 1988 and 1989.

136. Thereafter, the registration of the 1st Respondent as the owner of the suit property was done on 09.01.1990.

137. In other words, the entry of the Applicant into the 1st Respondent's suit property could only happen after the 09.01.1990.

138. If there was any occupation of the suit property prior to 09.01.1990, such an entry was not against the 1st Respondent but against Ketiplong Farm Limited who had given consent to the Applicant by virtue of the Shares held by its members therein.

139. In conclusion, this Court hereby makes a finding that the entry into a portion of the the suit property by the Applicant begun on 09.01.1990.

INGREDIENT NO. 2- NATURE OF OCCUPATION

140. The second ingredient is the nature of occupation and or use enjoyed by the Applicant.

141. The Applicant states that he has done various developments on a portion of the suit property.

142. The Applicant did further present a number of photographs containing the trees which he had planted on a portion of the sit property.
143. According to the Applicant, the nature of his occupation and use of the portion within the suit property was such that it was open and notorious against the 1st Respondent's ownership as is required by law.
144. The 1st Respondent on the other hand does not dispute the Applicant's occupation and use of a portion of the suit property.
145. However, the 1st Respondent pleaded and gave testimony to the effect that a boundary dispute had been reported to both the Local Authorities and the Department of Lands with a view of re-aligning the boundary between the Applicant's property known as Plot No. 72 and the suit property.
146. In other words, the 1st Respondent was of the view that the Applicant's occupation and use of a portion of the suit property could not be confirmed until the boundary dispute was resolved.
147. Further to that, the 1st Respondent stated that the occupation and use of a portion of the suit property by the Applicant is actually an encroachment which must be resolved by the re-establishment of the boundary.
148. Looking at the two diverging views, the Court under this ingredient is only limited to confirming whether the occupation was one which was open and notorious against the registered owner of the suit property.
149. As stated at Issue No. 1, the entry, occupation and use of the disputed portion of the suit property by the Applicant was not disputed.

150. Looking at the pictures produced by the Applicant during his examination-in-chief, this Court is satisfied that indeed the occupation and use of a portion of the suit property registered in the name of the 1st Respondent is one that is open and notorious in nature.

151. In conclusion, this Court hereby makes a finding that indeed, the Applicant's occupation and use of a portion within the suit property is one which is open and notorious, hence adverse to the ownership rights of the 1st Respondent.

INGREDIENT NO. 3- CONTINUOUS USE AND/OR OCCUPATION

152. The third ingredient is for the Applicant to demonstrate the continuous use and occupation of the portion within the suit property.

153. In Issue No. 1, the Court made a finding that the entry by the Applicant into a portion of the suit property could only start running from 09.01.1990.

154. However, according to the testimony of the Applicant and the 1st Respondent, the use and occupation of the disputed portion within the suit property was discovered after the sub-division of LR No. 9978 and creation of the Survey Maps thereafter.

155. Consequently therefore, any use and occupation of the disputed portion on the suit property by the Applicant prior to sub-division was on the basis that he is the lawful owner of the same.

156. During the examination chief of the Applicant, it was his testimony that it was upon issuance of the individual titles that he discovered the disputed portion had been included in the 1st Respondent's title.
157. The Applicant did admit in his evidence-in-chief that neither he nor the 1st Respondent took any steps to correct the mistake.
158. The Applicant did inform the Court that it is only in the year 2022 that he received summons informing him of a site visit for purposes of re-establishing the boundary.
159. On the other hand, the 1st Respondent did plead and testify that the Applicant's occupation and use of the disputed portion within the suit property had been challenged from way back in 2010.
160. The 1st Respondent produced numerous letters beginning with one dated 27.01.2010 up to 14.03.2023 demonstrating the fact that the Applicant's occupation was being challenged and a request for re-establishment of the boundaries had been made.
161. The Applicant in response denied receiving any of the letters from the one dated 27.01.2010 save for the letter dated 20.09.2022.
162. The question that needs to be answered is whether the 1st Respondent had challenged the Applicant's occupation of the disputed portion within the suit property, and if he had, when did it begin.
163. The 1st Respondent did produce a letter which is not dated but was addressed to the Land registrar informing the office

of a boundary dispute between Plot No. 72 owned by the Applicant, Plot No.70 and the suit property herein which was produced as DW1 Exhibit 6.

164. In response to the 1st Respondent's letter produced as DW1 Exhibit 6, the Land Registrar issued summons dated 27.01.2010 produced as DW1 Exhibit 8 to the Registered Owners of Plot Nos. 72, 71 and 69 informing them of the intention to visit the ground and resolve the dispute.
165. Looking at the evidence produced by the 1st Respondent, it seems that the site visit proposed by the Land registrar in DW1 Exhibit 8 did not materialise, and therefore the 1st Respondent made a second Application on 30.07.2014 in an effort to resolve the issue of encroachment as demonstrated in DW1 Exhibit 7(a) & (b)
166. Many other attempts to resolve the encroachment issue between the Applicant and the 1st respondent were undertaken, but for one reason or another, the boundary dispute has never been resolved to date.
167. The law requires that one must enjoy peaceful and quiet occupation or use of the suit property for at least 12 years prior to instituting a claim for adverse possession.
168. The Applicant denies receipt of the 1st Respondent's claim of encroachment or any summons that were issued by the Land Registrar regarding the boundary dispute between Plot No. 72 and Plot No. 69.
169. However, the Applicant did not challenge the existence of the documents produced by the 1st Respondent beginning with the undated letter produced as DW Exhibit 6 or all the other subsequent letters.

170. This Court is of the view that even if the Applicant was never served with any summons by the Land Registrar in relation to the boundary dispute, the 1st Respondent had lawfully lodged a boundary dispute with the relevant office and it was now upon the said office to ensure that the same is resolved

171. It is this Court's finding that the 1st Respondent indeed objected against the Applicant's use of the disputed portion of land within the suit property in the relevant offices from as way back as January, 2010.

172. The Applicant's quiet occupation and use of the disputed portion within the suit property was in essence interrupted in the year 2010 by the 1st Respondent's letter produced as DW1 Exhibit 6 and DW1 Exhibit 8.

173. Alternatively, the Applicant's quiet use and occupation of the disputed portion within the suit property was interrupted in the year 2014 by the Application for establishment of a boundary dispute and the receipt paying for the same produced as DW1 Exhibit 7(a)&(b).

INGREDIENT NO.4- OCCUPATION MUST BE FOR 12 YEARS CONTINUOUS.

174. In this ingredient, the Applicant must demonstrate and prove that he has been in quiet occupation and use of the suit property for at least 12 years prior to filing of the claim for adverse possession.

175. The Applicant herein did file the present OS on 05.03.2023.

176. Consequently, the Applicant was required to demonstrate that he had been in quiet use and occupation of the disputed portion on the suit property for the last 12 years before the date of filing the present OS.

177. However, the Court in Ingredient No. 3 did make a finding that the Applicant's occupation and use of the disputed portion within the suit property was challenged or interrupted in the year 2010 or in the alternative the year, 2014.

178. In other words, the Applicant's occupation and use of the disputed portion on the suit property had been disputed 13 years before the filing of the present OS, or at the very least, 9 years thereof.

179. Consequently, at the time of filing of the present OS on 15.03.2023, the Applicant was not enjoying peaceful and quiet use of the disputed portion within the suit property.

180. In conclusion, the Court hereby makes a finding that the Applicant herein has not enjoyed quiet and peaceful occupation of the disputed portion within the suit property for a continuous 12 years prior to filing the present OS and therefore fails to comply with this ingredient.

ISSUE NO. 2 - WHETHER THE PRESENT OS IS MERITED OR NOT?

181. Based on the findings at Issue No. 1, the Court is of the view that the Applicant was only able to successfully prove Ingredients 1 & 2 but failed to prove Ingredients 3 & 4.

182. As such, the Applicant fails to satisfy all the ingredients required in a claim for adverse possession.

183. Consequently, the present OS is not merited and cannot be allowed.

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

184. The Applicant having failed to prosecute the present OS successfully is condemned to pay costs.

CONCLUSION

185. In conclusion therefore, the Court hereby makes the following orders in determination of the present OS; -

A. THE ORIGINATING SUMMONS DATED 14TH MARCH, 2023 BE AND IS HEREBY DISMISSED.

B. THE APPLICANT IS CONDEMNED TO PAY COSTS TO THE 1ST RESPONDENT ONLY.

DATED, SIGNED and DELIVERED in ELDORET this 20TH DAY OF JANUARY, 2026.

**EMMANUEL.M. WASHE
JUDGE**

IN THE PRESENCE OF:
COURT ASSISTANT: Brian

COUNSEL FOR THE APPLICANT: Ms. Obiero holding brief for
Mr. Ogembo

COUNSEL FOR THE RESPONDENTS: Mr. Kigen for 1st
Respondent

Ms. Cheruiyot holding brief for Mr.
Kwame for 2nd Respondent