

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

ELC. CASE 266 OF 2012

VICTORIA KIPCHIRCHIR RUTO and TALLAY JEPKOSGEI

ROP (Suing as the Legal Representative of the Estate of

MARGRET JEPKOSKEI ROP -DECEASED).....

.....PLAINTIFF

VERSUS

ISABELLA WANGUI WAWERU

(Suing as the Legal Representative of the Estate of

NELSON N. WAWERU -DECEASED)

.....1ST DEFENDANT

FLORENCE JEPKEMOI SILAH.....2ND DEFENDANT

JUDGMENT

1. By an Amended Complaint dated 30th September 2019, the Plaintiff herein, sued the Defendants seeking the following orders:
 - a) *An order directing the defendant to vacate that entire premise known as Nakuru/Municipality Block 12/297.*
 - b) *An order of eviction.*
 - c) *An order for payment of rent and/or mesne profit of Kshs 40,000 per month from June, 2001 to date.*
 - d) *Costs of the suit.*

2. The 1st Defendant filed an Amended Statement of Defence and Counterclaim dated 13th October, 2022, where he denied the contents of the Complaint and sought the following orders:
 - a) *A declaration that the Plaintiff has acquired title to all that piece of land known as Nakuru/Municipality Block 12/297*

or in the alternative 0.3999 hectares of all that parcel of land formerly known as Nakuru/Municipality Block 12/130 where the house is located by adverse possession. That the Plaintiff's suit be dismissed with costs.

- b) A permanent injunction restraining the Defendants either by themselves, their agents, servants, employees, or otherwise, however, from entering, wasting, trespassing onto, or interfering with the Plaintiff's peaceful and quiet occupation and possession of all that piece of land known as Nakuru/Municipality Block 12/297 or 0.3999 hectares of all that parcel of land formerly known as Nakuru/Municipality Block 12/130 where the house is located.*
- c) A temporary injunction restraining the Defendants either by themselves, their agents, servants, employees, or otherwise, howsoever from entering, wasting, trespassing onto, or interfering with the Plaintiffs peaceful and quiet occupation and possession of all that piece of land known as Nakuru/Municipality Block 12/297 or 0.3999 hectares of all that parcel of land formerly known as Nakuru/Municipality Block 12/130 where the house is located.*
- d) In the alternative an order directing the Defendant to refund the Plaintiff in the 1st counterclaim the sum of Kshs. 641,000 together with interest at commercial rates from 5th October 1999 until payment in full.*

e) *Costs of this counterclaim.*

3. The 2nd Defendant filed a Defence to the Counterclaim by the 1st Defendant and prayed that the Plaintiff's suit and the 1st Defendant's counterclaim be dismissed with costs and orders against the Defendants in her counterclaim jointly and severally for:

a) *A declaration that the Plaintiff has/is the owner of all that parcel of land known as Nakuru Municipality Block 12/230 with a house standing on it.*

b) *A declaration that the subdivision on land parcel No. Nakuru Municipality Block 12/230, was illegal null and void and the resultant title be cancelled.*

c) *An order of eviction against Defendants to the 2nd Counterclaim from the parcel of land known as Nakuru Municipality Block 12/230.*

d) *A permanent injunction restraining the Defendants either by themselves, their agents, servants, employees, or otherwise, howsoever from entering, wasting, trespassing onto, or interfering with the Plaintiffs peaceful and quiet occupation and possession of all that piece of land formerly known as Nakuru/Municipality Block 12/130 with a house standing.*

e) *Costs of this counterclaim.*

PLAINTIFF'S CASE

4. PW1, Talai Kipkorir Rop, the daughter of the late Margaret Jepkoskei Rop adopted her witness statement dated 3rd November, 2022, together

with her mother's witness statement dated 6th December, 2012, as her evidence in chief, and produced the documents in the list of documents as Pex. No. 1 to 10.

5. It was her testimony that her late mother was issued with a title deed on 27th June, 2002, and the initial property, Block 130 was subdivided into Block 12/297, and Block 12/298, respectively as per the letter dated 8th April, 2002, (Pex. No.3.) It was her evidence that they paid all the necessary costs in the acquisition of the suit property, and urged the court to grant the orders sought in the plaint.
6. Upon cross-examination by Mr. Mogire, PW1 stated that her late father was allotted the suit parcel after which it was then registered in her late mother's name through transmission. She admitted that she did not have the documents that were used to process the title, and that her mother never occupied the land as the Defendant was already in occupation. She further stated that the Defendant lived in their house and claimed that he paid rent to the 2nd Defendant.
7. It was her testimony that they had letters from the Commissioner of Lands dated 8th April, 2002 and 5th January, 2001 which referred to the subdivision of Block 12/130, but did not have an allotment letter to Block 12/130. She added that they had not paid the land rates because of the present case and that the receipts were for payment of Block 12/129, which belonged to her father.

8. Additionally, PW1 stated that they had a letter, which showed that it was for replacement of Block 12/129, and confirmed that they were allocated Block 12/130, and had the certificate of lease. Further, that the premium paid for Block 12/129 was transferred to Block 12/130, and the payment receipt.
9. Upon further cross-examination, PW1 stated that they never chose to go to Block 12/130, but the government made that decision and that they were allocated Block 12/129 and since there was a dispute, the government split the plot into 2 and allocated them 12/130. She also confirmed that they were given a ground report by the Ministry of Lands.

DEFENDANTS' CASE

10. DW1, Isabela Wangui Waweru, adopted her witness statement dated 10th November, 2022, as her evidence in chief, and produced her list of documents as Dex No. 1 to 20. She testified that her husband was given a government house in 1983, where he lived until 1994 when he heard that it had been allocated to the 2nd Defendant.
11. She further testified that after allocation, they did not move out, but discussed with the 2nd Defendant that she would sell part of the property to them, of which they paid the 2nd Defendant Kshs.491,000/= and that the purchase price was supposed to be Kshs.1.5million. It was her evidence that they did not have a written sale agreement and that she was not a tenant in the house, which she had occupied.

12. Upon cross-examination, she stated that the suit property belonged to the government, having been allocated through the Commissioner of Lands, and that the payment for the plot was to be made to the Commissioner of Lands and not individuals. DW1, further stated that they had not expressed any interest to the government to purchase the suit property since they knew it had already been sold to the 2nd Defendant.
13. Additionally, she stated that she did not know whether the 2nd Defendant had complied with the terms of the allotment letter. Further, the 2nd Defendant had consented to them staying on the suit land, and added that the 2nd Defendant had paid her dues but had not gotten the title.
14. DW1 was referred to the letter dated 24th November, 2008, which was a demand notice for illegal occupation of Plot No. Nakuru Municipality Block 12/297, and confirmed that they had not paid the rent of Kshs.40,000/= since they were paying the same to the 2nd Defendant.
15. It was DW1's testimony that she was not aware whether the 2nd Defendant had paid the premium when she sold them the land. She also stated that the 2nd Defendant vide a letter dated 10th April, 2000, acknowledged receipt of Kshs.491,000/= as part payment of the suit plot, and that the property was subdivided into 2 and demarcated.
16. Upon re-examination, she confirmed that in 1994, the property had been allocated to the 2nd Defendant and that they were in occupation on one

part while the 2nd Defendant stayed on the other part. She admitted that she had not paid the balance of the purchase price due to the ongoing case.

17. DW2, Florence Chepkemoi Sila, testified that she had applied for allocation of Plot No. 12/130 which plot had 9 government houses and that she found the 1st Defendant on the ground. It was her testimony that she had paid for the house and the 1st Defendant was interested in purchasing the land to which they paid Kshs.491,000/= being part payment.
18. DW2 added that they neither entered into a sale agreement nor agreed on the purchase price, as they were to agree after she had gotten a title deed. It was her testimony that she made follow-ups in Nairobi but was informed that the title was lost, but continued paying rates. She confirmed that subdivision was done but that there was no demarcation.
19. Upon cross-examination by Mr. Mogire, she stated that when she was allocated Block 12/130 in 1994. The 1st Defendant was in occupation of the house. She confirmed that she did not have the title to the house but an allotment letter for Block 12/130, as Margaret Rop (deceased) had the title.
20. On cross-examination by Mr. Kibet, DW2 stated that she had filed a case against the Attorney General and Margaret Rop (deceased) since she wanted to evict Nelson Waweru (deceased), but did not have the judgment

from the subordinate court. She also stated that the 1st Defendant did not pay the purchase price.

PLAINTIFF'S SUBMISSIONS

21. Counsel for the Plaintiff filed submissions dated 4th September, 2025, and submitted that the Plaintiff is the registered proprietor of land parcel No. NAKURU MUNICIPLITY BLOCK 12/297 following an allotment from the Commissioner of Lands.
22. Counsel submitted that the Defendant upon being sued by the Plaintiff brought in FLORENCE JEPKEMOI SILA by way of counterclaim wherein she claimed a purchaser's interest in the suit property.
23. Counsel identified the following issues for determination:
 - a) *Whether the Estate of Nelson Waweru has any interest known in law against the title holder the Estate of Margaret Jepkosgei Rop and whether eviction order should be issued.*
 - b) *Whether a holder of an unperfected allotment letter can pass an interest in land.*
 - c) *Whether an unperfected allotment letter can defeat a title (document)*
24. On the issue of title and indefeasibility of proprietorship, counsel relied on Section 26 of the Land Registration Act and the cases of **Le Pleidi Investment Limited V Director of Survey, Ruaraka Nairobi & 6**

Others; CECM Lands, Kilifi County & Another (Interested Parties) KEELC 3267 (KLR), and Torino Enterprises Limited V Attorney General (Petition 5 [E006 of 2022] (2003) KESC (KLR), where the court held that an allotment letter was incapable of conferring interest in land being nothing than an offer, awaiting the fulfilment of conditions stipulated. Counsel therefore submitted that the 1st Defendant's claim on land parcel Nakuru/Municipality Block 12/297 cannot hold, as an allottee could not pass a valid title to a third party unless and until she acquired title to the land through registration.

25. Mr. Kibet submitted that the 1st Defendant's claim of adverse possession, against the Plaintiff and one FLORENCE JEPKEMOI SILA, cannot stand as the property was government land prior to allotment. He submitted that the Plaintiff fulfilled the conditions of the allotment and obtained her title on 27th June, 2002. He further submitted that by 24th November, 2008, the Plaintiff had already written to the Defendant to vacate the suit property, and demanded Kshs 2,880,000/= being rent and mesne profits.
26. Counsel submitted that at the time of filing the present suit against the Defendants, on 31st December 2012, a claim for adverse possession had not matured. He submitted that from the Defendant's testimony, she was in occupation of the land as a civil servant before the property was disposed by the government.
27. Additionally, counsel submitted that the Plaintiff holds a valid certificate of lease over the suit parcel which has not been challenged, and that the 2nd Defendant FLORENCE JEPKEMOI SILA has failed to prove any

fraud or illegality on the part of the Commissioner of Land and the estate of Margaret Jepkoskei Rop in the acquisition of the title deed. He relied on the cases of **Joseph Arap Ng'ok V Justice Moiwo Ole Keiwua & 5 Others [1997] eKLR** and **Arthi Highway Developers Limited V West End Butchery Limited & 6 Others [2015] eKLR**.

28. On the issue of *mesne* profits, counsel submitted that the Plaintiff having proved that she is the registered owner of the suit land, the occupation by the Defendant was without basis hence the Plaintiff is entitled to Kshs. 40,000/= monthly rent payment from June 2002.
29. Counsel relied on **Section 27 (1) of the Civil Procedure Act** and the case of **Francis Gathungu Githaiga & another V Nicholas Njenga Githuku [2022] eKLR** and submitted that costs follow the event.

1ST DEFENDANT'S SUBMISSIONS

30. Counsel for the 1st Defendant filed his submission dated 16th January, 2026, and identified the following issues for determination:
- a) *Whether the Plaintiffs are the lawful and beneficial owners of the suit property?*
 - b) *Whether the Plaintiffs are entitled to Mesne profit of Kshs 40,000 per month from June 2001 to date as alleged?*
 - c) *Whether the 1st Defendant's claim of adverse possession is merited?*
 - d) *Whether the 2nd defendant's counter claim is merited?*
 - e) *Whether Plaintiff in first counterclaim alternative prayer for a refund from the 2nd Defendant the sum of Kshs. 641,000*

together with interest at commercial rates from 5th October 1999 until payment in full is merited?

f) *Who should bear the cost of this suit and the counterclaim?*

31. On the first issue, as to whether the Plaintiffs are the lawful beneficial owners of the suit property, counsel submitted that the 1st Defendant pleaded that the suit land herein was allotted to Florence Jepkemoi Rop, on 9th December 1994 and met all the required conditions prescribed therein, hence the allocation of land through an allotment letter was a valid way to convey proprietary interests to the allottee as long as the conditions for allotment are met. Counsel further stated that at the time the land was allotted to the 2nd Defendant, the 1st Defendant was in occupation as a government employee, and relied on the cases of **Republic V City Council of Nairobi & 3 Others (2014) eKLR** and **Rukaya Ali Mohamed V David Gikonyo Nambachia & another Kisumu HCCA.9/2004**, on the issue of validity of an allotment letter to confer interest in land if the conditions are met.
32. Counsel submitted that the Plaintiff failed to prove the root of her title, as she only presented a lease certificate for the said parcel without demonstrating how the said lease certificate was obtained and relied on the cases of **Munyu Maina V Hiram Gathiha Maina [2013] eKLR** and that of **Caroline Awinja Ochieng & another v Jane Anne Mbithe Gitau & 2 others [2015] eKLR**.

33. Mr. Mogire further submitted that the Plaintiff's allegation that the suit land was split into two, being Plot Nos. 12/297 and 12/298 were never substantiated, and stated that the Plaintiff's claim of ownership is far-fetched and a scheme to deprive the 1st Defendant the suit land.
34. On the second issue as to whether the Plaintiffs are entitled to *mesne* profit of Kshs. 40,000/= per month from June 2001 to date, counsel submitted that having established that the Plaintiff failed to demonstrate how she obtained her title, her claim for mesne profits cannot hold. Counsel relied on the cases of Attorney **General V Halal Meat Products Limited [2016] eKLR** and **Rajan Shah T/A Rajan S. Shah & Partners v Bipin P. Shah [2016] eKLR**.
35. On the third issue as to whether the 1st Defendant's claim of adverse possession is merited, counsel submitted that the suit parcel was government land until the year 1994, when it was allotted to the 2nd Defendant. Counsel argued that since the year 1994, the suit land has been private land owned by the 2nd Defendant who consequently entered into an agreement for the sale of half the suit land where the house is erected. He also submitted that the 1st Defendant's occupation has been open and known to the Plaintiff and the 2nd Defendant.
36. Mr. Mogire relied on **Section 7, 13, 17 and 38 of the Limitation of Actions Act** and the Court of Appeal cases of **Wambugu V Njuguna (1983) KLR 172** and **Kasuve V Mwaani Investments Limited & 4 Others 1 KLR 184**. Counsel further submitted that the 1st Defendant has

been in occupation and has utilized the property openly and with the knowledge of both the Plaintiff and the 2nd Defendant.

37. It was his submission that the 1st Defendant having been utilizing the property openly and uninterrupted for a period of over 12 years, acquired 0.3999 hectares of all that parcel of land known as Nakuru Municipality Block 12/130 where the house is located through adverse possession.
38. On the fourth issue, as to whether the 2nd Defendant's counterclaim is merited, counsel submitted in the negative and argued that having demonstrated that the 1st Defendant has acquired title to the suit land through adverse possession and her being in occupation to date, the title held by the 2nd Defendant has been extinguished by operation of law.
39. On the fifth issue, it was counsel's submission that in the event the court finds that the 1st Defendant's prayer for adverse possession is merited, that she be refunded a sum of Kshs. 641,000.00 which was paid to the 2nd Defendant being a deposit for the purchase of the said portion.
40. In conclusion, counsel relied on **Section 27 of the Civil Procedure Act** and submitted that the 1st Defendant having proved her case on a balance of probabilities, is entitled to costs of the suit.
41. Counsel for the 2nd Defendant told the court that they would not be filing any submissions and urged the court to grant them a judgment date.

ANALYSIS AND DETERMINATION

42. The issues for determination are as follows:

- a) *Who is the lawful owner of the suit property?*
- b) *Whether occupation of part of the suit property by the 1st Defendant constituted adverse possession.*
- c) *Whether the Defendants' Amended Defence and Counterclaim is merited.*
- d) *Whether the Plaintiff is entitled to mesne profits.*
- e) *Who is to bear the costs of the suit?*

43. It is the Plaintiff's case that her late mother Margaret Jepkosgei Rop, acquired land parcel No. Nakuru/Municipality Block 12/297, the suit property herein through transmission from her late husband Issac K. Rop, who had been allotted the same by the government. It was their case that their deceased mother thereafter after payment of the requisite fees; she was issued with a Certificate of Lease dated 27th June, 2002.
44. The 2nd Defendant on the other hand claimed that she acquired land parcel No. Nakuru/Municipality Block 12/130, vide an allotment letter dated 9th December, 1994. It was her case that without her knowledge, the said property was subdivided into two being Nakuru/Municipality Block 12/297 and Nakuru/Municipality Block 12/298.
45. It is also her case that she paid the requisite fees and upon establishing that the 1st Defendant was in occupation of the house on the suit parcel, she agreed to sell to Nelson Waweru (deceased), but the purchase price was not paid in full and that they never executed a sale agreement.

46. It was the 1st Defendant's case that they were in occupation of the house on the suit land and the 2nd Defendant agreed to sell to them the land whereby they were to pay Kshs. 1.5Million but they only paid Kshs. 641,000/= and that the balance was to be paid upon getting the title to the suit land.
47. This is a case where three parties are claiming ownership of the same suit land. The Plaintiff claimed ownership and produced a lease dated 17th June 2002, a letter dated 5th November 2001, showing the subdivision of Block 12/130 into two, plan showing the particulars of the subdivision, a letter to the Director of Survey dated 8th April 2002 confirming the subdivision, demand from Municipal Council of Nakuru, receipts in support for Rates payment, a confirmation of grant and a Certificate of lease.
48. The 1st Defendant's claim is hinged on their agreement with the 2nd Defendant to sell to them the suit land which was not reduced into writing. The 1st Defendant claimed that they paid the 2nd Defendant Kshs. 641,000/= which the 2nd Defendant acknowledged as party payment of the purchase price of the suit land. She further claimed that they have been residing on the suit land for over a period of 12 years hence has acquired the land by way of adverse possession.
49. The 1st Defendant pleaded an alternative prayer for the refund of the money paid to the 2nd Defendant as part payment of the purchase price. The Plaintiffs and the Defendants who filed counterclaims are under a

duty to prove their claim to ownership of the suit land in whatever capacity.

50. Section 107 of the Evidence Act provides that:

“Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.”

51. Similarly, Section 109 of the same Act provides that:

“The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of the fact shall lie on any particular person.”

52. Starting with the Plaintiff’s claim, the Plaintiff gave a detailed chronology of how her late husband was allocated the suit land, the subdivision into two plots by the Ministry of Lands through the Director of Survey, issued with a lease and subsequently with a Certificate of lease registered in her name.

53. She produced the lease dated 17th June 2002, a letter dated 5th November 2001, showing the subdivision of Block 12/130 into two, plan showing the particulars of the subdivision, a letter to the Director of Survey dated 8th April 2002 confirming the subdivision, demand from Municipal Council of Nakuru, receipts in support for Rates payment, a confirmation of grant and a Certificate of lease.

54. Equally, the 2nd Defendant produced a copy of an allotment letter dated 9th December 1994, which required her to fulfil the stipulated conditions of payment within 30 days failure to which the offer would lapse. It is not in dispute, that the 2nd Defendant made payment of the premiums as stipulated in the allotment letter in the year 1999, way beyond the 30-day period, as per the payment receipts which she produced in court.
55. In the case of **Mako Abdi Dolai v Ali Duane & 2 Others (2019) eKLR**, the court held that a letter of allotment becomes operative once the allottee has complied with the conditions set out therein, which includes the payment of stand premium, ground rent and other charges within the prescribed timeframe. The catch phrase is paid within the prescribed period of 30 days unless extended by the issuing authority upon request in writing.
56. There is no evidence on record that the 2nd Defendant applied for extension of time within which to make payment outside the 30 days period. In the case of **Torino Enterprises Limited V Attorney General (Petition 5 (E006) of 2022) [2023] KESC 79 (KLR)** the Supreme Court held that:

“So, can an allotment letter pass good title? It is settled law that an allotment letter is incapable of conferring interest in land, being nothing more than an offer, awaiting the fulfilment of conditions stipulated therein...”

Suffice it to say that an Allottee, in whose name the allotment letter is issued, must perfect the same by fulfilling the conditions therein.

These conditions include but are not limited to, the payment of a stand premium and ground rent within prescribed timelines. But even after the perfection of an allotment letter through the fulfillment of the conditions stipulated therein, an allottee cannot pass valid title to a third party unless and until he acquires title to the land through registration under the applicable law. It is the act of registration that confers a transferable title to the registered proprietor, and not the possession of an allotment letter.”

57. The 2nd Defendant entered into an oral sale agreement with the 1st Defendant for the sale of the suit land on the strength of having been allotted the suit plot before securing a title to show that she had absolute ownership of the land. The 2nd Defendant chose to ignore or was oblivious of the principle that an allotment letter is incapable of conferring interest in land as it is a mere offer and a party must fulfil the conditions within the set timelines.

58. The Supreme Court in the **Torino case (supra)** also affirmed that, even after the perfection of an allotment letter through the fulfilment of the conditions stipulated therein, an allottee cannot pass valid title to a third party unless and until he acquires title to the land through registration under the applicable law. This is exactly what the 2nd Defendant attempted to do by selling land to the 1st Defendant and yet she had not acquired the title to the suit land through registration under the applicable law.

59. In the case of **Dr. Joseph N.K. Arap Ng'ok V Justice Moiyo Ole Keiyua & 4 others C.A.60/1997**, the Court of Appeal held as follows:

“It has been held severally that a letter of allotment per se is nothing but invitation to treat. It does not constitute a contract between the offerer and the offeree and does not confer interest in land at all. It cannot thus be used to defeat a title of a person who is the registered proprietor of the said parcel of land.”

60. Further, in the case of **Ravji Karsan Sangani V Peter Gakunu [2019] eKLR**, the court held:

“It is registration of title that confers rights of ownership to a proprietor of land. A letter of allotment does not confer rights of ownership but is merely a conditional offer of the land to the allottee subject to the allottee satisfying the terms and conditions of the allotment. The allotment can be revoked and/or cancelled before the title to the land is processed and issued in the name of the allottee. It is only after one has adhered to the requirements set out in the Letter of Allotment and is subsequently registered and issued with title that one acquires an absolute and indefeasible proprietary interest in the land.”

61. The 2nd Defendant having not fulfilled the terms and conditions in the allotment letter within the 30 days, and having not sought and obtained an extension, it follows that the offer lapsed and was not capable of selling any interest in the suit land to the 1st Defendant.

62. Furthermore, from the evidence on record, that the subdivision of Nakuru/Municipality Block 12/130 took place after the offer in the allotment letter issued to the 2nd Defendant had already lapsed, hence it was procedurally backed by the letters and approval from the Ministry of Lands through the Director of Survey.

63. **Section 26(1) of the Land Registration Act** provides that:

“...the certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—

a) on the ground of fraud or misrepresentation to which the person is proved to be a party

b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”

64. The Plaintiff having been issued with a Certificate of lease which is not disputed, it is trite that a certificate of title issued by the Registrar upon registration shall be taken by all courts as *prima facie* evidence that the named person is the proprietor and absolute owner of the suit land. I find that the Plaintiffs have proved that they are the owners of the suit land on a balance of probabilities.

65. The 2nd Defendant having failed to prove the ownership of the suit land vide the letter of allotment, it follows that her counterclaim fails and since the 1st Defendant's claim was hinged on the 2nd Defendant's ownership of the suit land, her claim also fails apart from the alternative prayer for the refund of the part payment of the purchase price to the 2nd Defendant.

66. On the issue as to whether the 1st Defendant's occupation of part of the suit constituted adverse possession, the doctrine of adverse possession is provided under **Sections 7, 13, 37 and 38** of the **Limitation of Actions Act**. Further, in order for one to succeed in the claim for adverse possession, a party must prove he had uninterruptedly possessed and occupied the suit land continuously and the Defendant was aware of such. **Section 7** of the Act provides as follows:

“An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person. Section 13 “(1) A right of action to recover land does not accrue unless the land is in the possession of some person in whose favour the period of limitation can run (which possession is in this Act referred to as adverse possession), and, where under sections 9, 10, 11 and 12 of this Act a right of action to recover land accrues on a certain date and no person is in adverse possession on that date, a right of action does not accrue unless and until some person takes adverse possession of the land...”

67. In the case of **Kasuve Vs Mwaani Investments Limited & 4 others 1 KLR 184**, the Court of Appeal restated what a Plaintiff in a claim for Adverse Possession has to prove:

“In order to be entitled to land by Adverse Possession, the claimant must prove that he has been in exclusive possession of the land openly and as of right without interruption for a period of 12 years either after dispossessing the owner or by discontinuation of possession by the owner on his own volition.”

68. It was the 1st Defendant’s case that she utilized the property openly and uninterrupted for a period of over 12 years since Nelson Waweru (deceased) took occupation of the government house in 1994. She claimed that she acquired 0.3999 hectares of Nakuru Municipality Block 12/130 which was where the house was located through adverse possession. The 1st Defendant admitted that they were residing on a government house on the suit land because the late husband was working as a Civil Servant. This was government land which was subsequently sold. The 1st Defendant claims adverse possession on the ground that the land was allocated to the 2nd Defendant in 1994 and that she has been in occupation since then.

69. It is trite law that one cannot claim adverse possession against the government and therefore in the instant case the 12-year period started running from 27th June 2002, when the Plaintiff was issued with the Certificate of Lease. It is not in dispute that the Plaintiff filed the present suit in 2012, and a computation of the years from 2002 to 2012, is a period of 10 years, which does not fit the statutory period of twelve years.

70. In the case of **Chevron (K) Ltd V Harrison Charo Wa Shutu [2016] KECA 248 (KLR)**, the court held that time does not run against land held by the government and time could only start running upon registration of a proprietor as owner of land.
71. It is not clear whether the 1st Defendant is claiming adverse possession against Plaintiff or the 2nd Defendant, if so, it is trite that a party can only claim adverse possession against the title holder who is the Plaintiff in this matter.
72. The 1st Defendant has not acknowledged the Plaintiff's title which she wants the court to order that she has acquired by way of adverse possession. The 1st Defendant also admitted that after they knew that the land had been sold, they negotiated with the 2nd Defendant to buy the property and were paying her. They were on the suit land with the permission of the 2nd Defendant and the Plaintiff at one point wrote to them a demand letter to pay rent leading to the filing of this suit for vacant possession.
73. In the case of **Haro Yonda Juaje vs Sadaka Dzengo Mbauro & Kenya Commercial Bank (2014) eKLR**, the court held that:
“One cannot succeed in a claim for adverse possession before conceding that indeed the registered proprietor of the land is the true owner of the said land. It does not lie in the mouth of a claimant to aver that the title held by the registered proprietor was fraudulently

acquired and then claim the same parcel of land under the doctrine of adverse possession.”

74. In view of the above, I find that the 1st Defendant cannot succeed in a claim of adverse possession if she has not acknowledged that the Plaintiff is the true owner of the suit land. The claim therefore fails, together with the prayers in the Defendants’ counterclaims apart from the prayer for refund of the money paid as part of the purchase price by the 1st Defendant to the 2nd Defendant.

75. On the issue whether the Plaintiff is entitled to *mesne* profits, **Section 2 of the Civil Procedure Act** defines *mesne* profits as follows:

“mesne profits”, in relation to property, means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but does not include profits due to improvements made by the person in wrongful possession;”

76. The Court of Appeal in the case of **Peter Mwangi Mbuthia & another v Samow Edin Osman [2014] eKLR** held that:

“We agree with counsel for the appellants that it was incumbent upon the respondent to place material before the court demonstrating how the amount that was claimed for mesne profits was arrived at. Absent that, the learned judge erred in awarding an amount that was neither substantiated nor established.”

77. The Plaintiff claimed that they were entitled to a monthly rent of Ksh. 40,000/= being the rate of the house on the suit parcel unlawfully occupied by the Defendant from June, 2001. The Plaintiff failed to adduce any evidence to substantiate the said amount. The claim fails.
78. The 1st Defendant prayed for an alternative relief against the 2nd Defendant for the refund of the amount paid as part of the purchase price of Kshs 641,000/= which was acknowledged by the 2nd Defendant. The 1st Defendant also produced evidence of payment to the 2nd Defendant. I find that she is entitled to the refund together with costs to be paid by the 2nd Defendant.
79. I have considered the pleadings, the evidence on record, the submissions by counsel and the relevant judicial authorities and find that the Plaintiffs have proved their case on a balance of probabilities and therefore make the following specific orders:
- a) ***An order is hereby issued directing the 1st Defendant to vacate the entire suit land known as Nakuru/Municipality Block 12/297, within 45 days failure to which an order of eviction to issue.***
 - b) ***An order is hereby issued against the 2nd Defendant to refund the 1st Defendant Kshs. 641,000/ being the money paid as the purchase price of the suit land with interest from the date of the Judgment.***

c) Costs of the suit to be paid by the Defendants to the Plaintiff.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 27TH DAY OF
FEBRUARY 2026.**

**M. A. ODENY
JUDGE**