



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KABARNET

CIVIL SUIT NO. E003 OF 2023

**LYNN CHEMUTAI (Suing as Legal representative
of the Estate of the late Prisca Chepkonga**

PLAINTIFF

= VERSUS =

SYMON KIPKOECH CHEMOIYWO 1ST

DEFENDANT

ELISHA CHEBII CHESIYNA 2ND

DEFENDANT

EZEKIEL CHMOIYWO 3RD

DEFENDANT

JUDGMENT

Introduction

1. This suit was instituted through an Originating Summons dated 12th October, 2006 and amended on 29th April, 2013.

The plaintiff seeks determination of the following issues/questions:-

- i) Whether she, the plaintiff, has become entitled to the parcels of land known as Baringo Serگونjun/1241 and Baringo Serگونjun/2028 (hereinafter referred to as the suit properties) on account of having been in adverse possession thereof;
- ii) Whether a declaration should issue that upon expiry of 12 years of her occupation of the suit properties, the defendants held the suit property in trust for her;
- iii) Whether an order should issue directing the 1st and the 2nd defendants to transfer to her the suit properties, failing which the Deputy Registrar of this court should be ordered to execute all such documents as would facilitate registration of the suit properties in her name;
- iv) Who should bear the costs of the suit?

2. The suit/application was supported by the supporting affidavit of the plaintiff/applicant in which she deponed that she had acquired prescriptive rights/interest in the suit

properties, in total measuring 4 acres, by virtue of having been in open, peaceful, continuous/uninterrupted possession and occupation of the suit property for a period exceeding 12 years, specifically 44 years, since 1962; that she has dwelling houses erected in the suit properties and that the suit properties and parcel number Baringo Sergonjun/686 (which belongs to her) are fenced together as a block of land measuring 8 acres or thereabout.

3. The plaintiff further deponed/contended that the defendants/respondents' interest in the suit properties was extinguished in 1974 or 12 years after 1992; that the defendants' titles over the suit properties are subject to an overriding interest in her favour and that the defendants hold the suit properties in trust for her.
4. The plaintiff attached to the affidavit she swore in support of her suit/application a copy of the register for parcel number Baringo Sergonjun/1241, measuring 2 acres (0.8 hectares) or thereabout showing that the parcel was registered in favour

of Symon Kipkoech A. Chemoiywo on 4th December 1992 and a title deed issued to him in respect thereof on 18th December 1992. The plaintiff/applicant also attached to the affidavit the register for parcel number Baringo Sergonjun/2028 showing that the parcel, measuring 2 acres (0.8 hectares) or thereabout was registered in favour of Elisha Chebii Chesiyana, on 20th February 1996 and a title deed in respect thereof issued to him on the same day.

5. The defendants did not file a response to the amended originating summons.
6. The court record shows that the 2nd defendant filed grounds of opposition, dated 26th February, 2007 in which he indicated that he would oppose the suit on the following grounds:-
 - i) The application ought not to be allowed but dismissed because he is the registered owner of Baringo Sergonjun/2028;

- ii) The applicant is guilty of non disclosure of material facts;
 - iii) The application is intended to circumvent justice;
 - iv) The application is frivolous, unmeritorious and otherwise an abuse of the court process;
 - v) The applicant had never been in possession of Baringo Sergonjun/2028.
7. From the court record, it appears directions were never taken concerning the manner of disposal of the originating summons as contemplated/required under **Order 37 Rules 16, 17** and **18** of the Civil Procedure Rules. Nevertheless, the court record shows that parties were directed to comply with **Order 11** of the Civil Procedure Rules.
8. In compliance with the direction given by the court, requiring parties to comply with **Order 11** of the Civil Procedure Rules, parties filed witness statements and lists of documents. The matter was then fixed for hearing orally.

EVIDENCE

Plaintiff's case

9. When the case came up for hearing the plaintiff, who testified as PW.1 testified as follows:-

“...I recorded a statement filed on 26/9/2012 which I wish to be adopted.

I also filed an affidavit dated 28/9/2012 in support of the amended originating summons. I further filed a supplementary statement dated 15/5/2018 which I wish to be adopted as my evidence before the court. I have sued the defendants herein. I filed a list of documents in support of my case in respect to the suit land.

A copy of the green card. The 1st entry made on 4/12/1992 in the name of J. K. Ezekiel Chemoiywo.

No. 2 - title deed issued on 3/7/1995.

No. 3 - 20/2/1996 in the name of Elisha Chesyna and a title issued on 20/2/96 entry No. 4.

I wish to produce a certified extract of title as

Exhibit No. 1.

The second extract of title Entry No. 4/12/92 in the name of Simon Kipkoech Chemoiywo.

I wish to produce it as PExh 2. The titles were issued on the same date.

I was married in 1962. I stayed on the suit land cultivating, planting coffee, napier grass and maize, built 2 houses, paddocking for the cows.

I still have 3 houses on one suit land. I do not know the exact acreage of the suit land. I fenced the suit land with posts and barbed wires.

My father-in-law had planted trees and I planted Cyprus trees. I cut some and made timber out of them.

The 2nd defendant has never stayed on the suit land. He has never done any developments. Ezekiel Chemoiywo and the 2nd defendant are cousins.

The 1st defendant has not developed any part of the land.

Recently, I found that the 2nd defendant had fenced my plot with wires. He put a wire on the middle of my parcel of land.

There are two fences. Nobody has ever claimed my land.

When I went to the lands office to pick my title, I found that the acreage had reduced. I knew in the year 2000 that titles had been taken. The 2nd defendant was working at the lands office.

I pray that my prayer be granted as prayed in the pleadings. That is all.

10. In cross examination, PW1 stated as follows:-

“I am the plaintiff in this case. I have sued Simon and Elisha Chesyna.

Plaintiff shown the amended originating summons filed on 28/9/2012. The 1st defendant is Chepkoech Chemoiywo. 2nd defendant is Elisha Chebii Chesyna, 3rd defendant is Ezekiel Chemoiywo.

I have not seen the name of Simon Chemoiywo.

I filed a supporting affidavit to the originating summons. It is true that Simon Chemoiywo is not in the originating summons.

It is not true that the land was community land.

My parcel was forest land. I do not know when they were degazetted.

Adjudication of the land was done in 1952. I got into the land in 1962 when I got married. I knew what was happening on the land.

There were no beacons in 1962. I do not know whether the adjudication was done in 1975.

My evidence is in respect of two parcels Nos. 2018 and 1241. I do not know about plot No. 686.

I have a title in my name but I cannot remember.

Plot No. 686 shows a boundary with 1241 and 2028. Plot No. 686 is registered in my name.

I lost a child and buried her on plot No. 686. I do not remember that my cow was struck by lightning while grazing on plot 2028.

I have 3 houses on the suit plots on plot No. 686.

I have not built houses on plot Nos. 2028 and 1241.

I have not planted anything on plot Nos. 2028 and 1241.

I do not have any evidence to show that I have done paddocking on plot No. 2028 and 1241.

I have 5 paddocks in 2028. The defendants fenced part of my land.

I have 6 cows, they have a cowshed on plot No. 686. There are neighbours who graze their cows.

I left the suit land in 1996. I have people on the ground and I go every weekend.

I have 3 tenants. They stay on my houses on 686.

There was no sketch or survey plan. That is all.”

11. In re-examination, PW1 stated as follows:-

“.....I do not know Chepkoech. I do not know the full names of Simon.

The land was adjudicated in 1952. The land was reserved as a forest.

I do not have a problem with Plot No. 686. My child died and was buried in plot No. 2028.

The plots No. 2028 and 1241 are not used by people in the village to graze. I have fenced all the parcels of land.

I stay in Nakuru but there are people staying in Osen in Baringo with my consent.

The tenants are staying in my houses. That is all.”

12. William Chepchieng Ruto who testified as (P.W.2), informed the court that he stayed in the plaintiff's land measuring approximately 8 acres for 7 years, from 1995; that he had been given 1 acre of land by the plaintiff to cultivate and that he was the caretaker of the land; that there are cypress and grivalia trees in the suit properties planted by the plaintiff

and that the defendants never occupied the land but only came to fence and dig trenches in the land in 2018.

13. PW2 further informed the court that there are two fences on the suit properties, one by the plaintiff and another by the 1st defendant; that the farm had 4 houses, maize, napier grass and coffee all within one fence, 4 to 5 acres; that the plaintiff's daughter was buried in the suit properties next to the fence.
14. PW2 was unable to tell the title number and acreage of the suit properties.
15. In re-examination, PW2 stated that cows could not enter the plaintiff's land because it was fenced.
16. Samuel Koros (PW3), informed the court that the plaintiff's land is 6 acres.

17. Joel Chepkonga (P.W.4), informed the court that he stayed in the suit properties since 1962; that the land was accessible for grazing; that the suit properties are about 7 acres; that it is fenced and paddocked; that there three houses in the suit properties and that the plaintiff's daughter was buried in the suit properties. He could not tell the title number for the suit properties or when the suit properties were fenced.
18. As to whether the suit properties were accessible for grazing, PW4 stated that the suit properties could not be accessed by outsiders for grazing.
19. P.W.4 informed the court that the plaintiff stays in Nakuru but she comes to the land as she has cows thereon.
20. Adrian Chesang (PW5), informed the court that the suit properties are used by the plaintiff; that the plaintiff's parcel is 686 and that he does not know the acreage the plaintiff is using.

21. PW5 further informed the court that the suit properties are fenced; that there are houses, coffee plantation and maize in the suit properties and that the whole parcel is cultivated.
22. In re-examination, P.W.5 stated that the whole land is fenced; that there two fences in the suit properties, a new one and an old one and that there a trees planted all round the suit properties.
23. Wesley Chelagat (PW6), informed the court that he stayed in the suit properties in 1970 to 1985; that there was coffee plantation, pyrethrum and maize; that the defendants have never stayed in the suit properties and that the plaintiff is the one in occupation of the suit properties. He could not tell the acreage of the land. He could also not tell who put up the fence on the land.
24. In cross examination, PW6 stated that plot No. 686 is for the plaintiff; that the plaintiff has fenced the whole plot, rectangular in shape; that there is a school and a forest next to the land and that there is nothing that can stop from

grazing on the suit properties. He further informed the court that plaintiff's daughter died and was buried on the suit properties near the house.

25. In re-examination, P.W.6 asserted what is in his statement that the suit properties are rectangular and clarified that the plaintiff's daughter was buried in the homestead. He also asserted that the entire suit properties are fenced. As to whether there is an official road in the suit properties, he stated that there is none but stated that school children use the open space to go to the school.

Defendant's case

26. The 2nd defendant, Elisha Chebii Chesaina, who testified as DW1, relied on his witness statement recorded on 1st April 2019 after it was adopted as his evidence in chief. He also relied on the documents contained in his list of documents. He informed the court that the land was transferred to him after he bought it from Cheboiywo in 1996; that when he bought Land Parcel 1241, there was no activity on it but

villagers were grazing on it; that the plaintiff had planted coffee and trees on her parcel of land, 686; that the plaintiff has been using her parcel of land, 686, and not his parcel of land.

27. In cross examination, DW1 stated that when he bought parcel No. 1241, there was no fence on it but he later on fenced it. He fenced his suit property in 2018. He stated that there is an old fence outside the new fence and that there are old trees in the old fence planted by the plaintiff.
28. He admitted that he has never put any development in the suit property or planted trees therein but stated that villagers grazed on it with his permission.
29. DW2 Simion Kipkoech Arap Chemoiywo, relied on his stated recorded on 1st April, 2019 after it was adopted as his evidence in chief. He informed the court that he was registered as the proprietor of land parcel 1241 in 1992; that at the time he was registered as the proprietor of parcel

number 1241, the parcel was not being used by anybody; that he is a neighbour to the plaintiff and that the plaintiff had planted coffee and trees and built a house on her parcel of land.

30. In cross examination, DW2 stated that he was given plot No. 1241 during land adjudication; that he has never cultivated it and could not tell when the fence in parcel No 1241 was put up.
31. Susan Chesyna (DW3), stated that her husband (DW1) bought the land; 2028 before she was married; that she was married in 1998; that her husband showed her the land there was nothing in the land but the land was fenced.
32. In cross examination, DW3 stated that she does not know anything about the land parcel 2028 before 1998. She stated that they fenced the land in 2018 during pendency of this suit; that there are trees planted alongside the old fence but she could not tell whether the trees were planted by the

plaintiff. Like DW1, she stated that they have never cultivated the land.

33. Hellen Tala Kiptoo (DW4), stated that the plaintiff is her neighbour; that there was nothing on the suit properties; that the 1st defendant (DW2) allowed them to graze on the land and that many people, including the plaintiff, used the land for grazing.
34. Lawrence Kipngetch (DW5), stated that the suit properties were used by many people for grazing, with the permission of DW1. He stated that he was hired by DW2 to construct the fence in the suit properties in 2018.
35. The court visited the scene and made observations. The Deputy Registrar also filed a report dated 17th March, 2025. See the following excerpts of the report which at the relevant part the Deputy Registrar stated as follows;

“(C) FEATURES OF BARINGO/SERGONJUN/1241

- i) Land parcel number BARINGO/SERGONJUN/1241 borders land parcel BARINGO/SERGONJUN/681 (Ossen Primary School) on the upper side. There is a 6m road between the two parcels of land which is currently not in use and fenced off as part of Baringo/Sergonjun/1241. There is a fence on the ground that is more than 6m inside BARINGO/SERGONJUN/1241.**
- ii) There is a 6m road between land parcel BARINGO/SERGONJUN/1241 and BARINGO/SERGONJUN/686 that gives access to land parcel number BARINGO/SERGONJUN/2028. The path on the ground is part of land parcel number BARINGO/SERGONJUN/686. The official path is currently fenced off as part of land parcel BARINGO/SERGONJUN/1241.**
- iii) On the lower side of land parcel BARINGO/SERGONJUN/1241 are 3 boundary features. The 1st is a barbed wire fence that was put up by the 2nd defendant. The same runs all**

the way through to land parcel

BARINGO/SERGONJUN/2028. The 2nd is a line of cypress trees that was planted by the plaintiff.

Last is a barbed wire fence put up by the plaintiff. This is next to the road and on the other side is land that is said to belong to Kenya Forest Service.

- iv) According to the land surveyor, the legitimate boundary of BARINGO/SERGONJUN/1241 on the lower side is the 1st barbed wire, the one put up by the 2nd defendant.**
- v) There is a boundary between land parcel BARINGO/SERGONJUN/1241 and BARINGO/SERGONJUN/2028 that is marked by live trees but the boundary is porous.**
- vi) There are no crops or any developments on land parcel number BARINGO/SERGONJUN/1241.**

FEATURES OF BARINGO/SERGONJUN/2028

- i) Land parcel BARINGO/SERGONJUN/2028 is accessible through the porous boundary with BARINGO/SERGONJUN/1241. There is an access road running from BARINGO/SERGONJUN/681 to BARINGO/SERGONJUN/2028 but the same is blocked off. There is a continuous boundary from BARINGO/SERGONJUN/1241 to BARINGO/SERGONJUN/2028 on the lower side. Land parcel BARINGO/SERGONJUN/686 borders land parcel BARINGO/SERGONJUN/2028 on 2 sides making an L shape.**
- ii) On the short side of the “L” shape is a boundary made of barbed wire. According to the measurements made by the land surveyor, there is a variance of about 7m on this side of the boundary. BARINGO/SERGONJUN/2028 has an extra 7m taken from BARINGO/SERGONJUN/686. On the longer side of the “L” shape are two fences, one made of barbed wire and the other made of live trees. The barbed wire fence was**

made by the 2nd defendant while the live trees were grown by the plaintiff. The barbed wire fence on the side of BARINGO/SERGONJUN/2028 is the correct boundary as per the measurements made by the land surveyor.

- iii) There are crops growing on land parcel BARINGO/SERGONJUN/2028 and there are no developments.
- iv) There is coffee growing on land parcel number BARINGO/SERGONJUN/686 and some structures on the land.”

36. At close of hearing, the plaintiff filed filed submissions on 16th July 2025 and the defnendants filed theirs on 5th August 2025 which I have read and considered.

SUBMISSIONS

Plaintiff's submissions

37. In her submissions dated 16th July 2025, the Plaintiff inter alia submits as follows:-

“...the defendants filed no defences or replying affidavits to the originating summons filed by the plaintiff. The 2nd defendant filed grounds of opposition way later into the proceedings on 26.02.2007 and the same was filed without leave. In any event grounds of opposition are not pleadings as contemplated under the Civil Procedure Act or rules. The plaintiff submits that it is a well settled precedent that parties are bound by their pleadings and that evidence that is not in line of the pleadings before court should be rejected...

From the above case law (Okumu v. Nyakinyi & another (Civil Appeal E378 of 2022) (2024) KEHC 7006 (KLR) (11th June 2024) (judgment), it is very clear that since the defendants herein did not file pleadings and/or responses to the originating summons filed by the plaintiff, then evidence adduced by them should not be considered at all as they find no foundation in any pleadings. The

defendants' witness statements are testimonies in the void and carry no evidential value in law.

It is the plaintiff's case that she has been in occupation of the suit parcels of land from 1962 till the date of filing the suit herein which was done way back on 12.10.2006 which is therefore a period of over 44 years and which was even before the suit parcels of land herein were registered and as such it is evident that the entry therein was without the consent of the defendants. They are in actual occupation to date. The cumulative period of occupation to date is 63 years. From the evidence before court, it is clear the plaintiff occupies and started using the suit parcels of land way before the same was even registered in the defendant's name and way after the same was registered in 1992.

The certified extracts of the titles clearly show that the parcels were registered on 4.12.1992 and since there had been no interference since

then. The defendant's rights were extinguished on 4.12.2004 which is when 12 years statutory period lapsed.

The 1st defendant admits that the parcel of land had been fenced off with an old fence separating the two suit parcels from the forest. He also admitted in cross exam that there are cypress trees along the western side of the suit lands and that the trees were planted by Prisca Chepkonga, the deceased plaintiff...

He clearly was aware that the land was under the occupation of the plaintiff but did not institute any proceedings to eject or remove her from the parcel. He admits that he did not give permission to the plaintiff to occupy the parcel...

The very material period of Limitation of interest in this matter is the period between 1992 when the land was registered and the year 2006 when this suit was filed in court. This period amounts to 14 years of occupation without consent of the

defendants. The 2nd defendant admits to not giving consent to the plaintiff to use the land.

The plaintiff herein has evidenced and testified that she has been in occupation of the suit parcels of land....

From the testimonies of the defendants herein, the suit parcels of land were registered in 1992 and even during that time the defendants herein have all confirmed that they were not in occupation of the land not did they use the land. It is therefore clear from the testimonies of both the plaintiff and the defendants that the plaintiffs have been in possession of the suit properties for over 44 years and that there has been no disruption and/or legal notice to vacate the land issued to the plaintiffs.

...the defendants' rights herein were extinguished on 4.12.2004 which is when the 12 year statutory period lapsed post registration..."

Defendants submissions

38. The 1st, 2nd and the 3rd defendants filed submissions on 5th August 2025. They submit as follows:-

“...It is the position of the defendants that the plaintiff has not been in occupation of the suit lands herein...We submit that it was not possible to have statutory period running from the year 1962 to 1975 as then the suit lands were community lands. Adverse possession is only applicable on private land interests. The suit parcels of land were adjudicated and gazetted in the year 1975. We submit that the plaintiff has not presented any evidence to demonstrate to the court that she has been in exclusive possession of the suit lands for a period over 12 years. In fact it is not disputed that the plaintiff majorly resides in Nakuru and lets her caregivers reside and maintain her alleged home located in parcel No. 686...

From the facts of this case, the Applicant gained entry and/or access into the suit properties, owned by the 2nd defendant through permission of the 2nd defendant to have the plaintiffs occasionally graze cattle on the suit properties. The suit land Baringo/Sergonjun/2028 was open to members of the Community for grazing of their cattle upto the year 2018 when the same was fenced...

We submit that at all times when the plaintiff accessed and used the suit properties herein, the same was only meant to graze her cattle which was on permission of the 2nd defendant. This privilege was not special to the plaintiff alone as the neighbours were equally permitted to use the suit properties to graze their livestock. The actions of the 2nd defendant constitute an easement and cannot therefore equate exclusive and hostile occupation of the suit parcels of land by the plaintiff required by the principles of

adverse possession...In a claim of adverse possession, the Applicant needs to demonstrate that his occupation of the land has dispossessed the registered owner of the land. The burden of proving this fact to the court lies with the Applicant. In addition, there must be facts showing a clear intention to hold adversely and under a claim of right. The plaintiff must therefore show that her possession and occupation of the land is not only adverse to the rights of the registered owner but also that his said possession is hostile and to the exclusion of the owner...

In the instant suit, the Applicant has claimed that she has been in actual and exclusive possession of the suit property since 1962. We submit that the plaintiff has not demonstrated any aggregate acts of ownership done by herself for the purpose of excluding or dispossessing the defendant from the suit land. Based on the site visit report dated

17th March 2025 conducted by the registrar it can be gleaned that there are no structures erected or any crops cultivated on parcel number Baringo/Sergonjun/1241 and Baringo/Sergonjun/2028 as alleged by the plaintiff in her pleadings.

Adverse possession rests on de facto use and occupation by an entrant. The rule is that a person's entry must be followed by possession and actual use...

It is submitted that the plaintiffs have not demonstrated any visible acts of ownership exercised over the subject land that would put any reasonable person that they own it. As submitted, there hasn't been a physical evidence on the land neither has their use of land been obvious to anyone. Thus, the plaintiff has not been in openness and notoriety of possession as alleged.

Any developments or structures present are those only on the parcel number Baringo/Sergonjun/686 which is registered in the name of the plaintiff. We therefore submit that the Plaintiff has failed to discharge her burden of proving to this Honourable Court that she has been in occupation and use of the suit parcels consequently dispossessing the defendants from the suit parcels hence we invite this court to dismiss her claim on that ground.

Hence the claim to adverse possession must fail. We submit that the plaintiff is not entitled to the prayers sought.

We submit that costs should follow events...”

Analysis and determination

39. The evidence adduced in this case shows that the despite being the registered proprietors of the suit properties, the defendants had no use or control of the suit properties. Witnesses from both the plaintiff and the defendants side

stated that the land was being used by villagers. The witnesses for the two sides only differed on the question of use of the land in that according to the defendants witnesses, the villagers used the suit properties with the permission of the defendants.

40. The totality of the evidence adduced in this case does not support a case of use of the land by villagers with permission of the owners/owner but either a case of acquiescence to the unauthorized use or a case of discontinuance of use of the land by the owners by their own volition leading to use of the land by other persons, who included the plaintiff.
41. Unlike the defendants witnesses and other villagers who might have had occasion to use the land on account of the conduct of the defendants described above, the plaintiff went ahead and demonstrated intention to use the land as her own by erecting a fence all round the suit properties, thereby demonstrating what in law is called *animus possedendi*.

42. In **M'Riria & 5 others v Muthomi (Civil Appeal No.253 of 2019) (2025) KECA 951 (KLR) (4 April 2025) (Judgment)**, the Court stated:-

“To determine theThe additional requirement is that of animus possidendi, or intention to have the land”.

The court further stated:-

“It was therefore explained in Mtana Lewa v Kahindi Ngala Mwamgandi (2005) eKLR that:

“Adverse possession is essentially a situation where a person takes possession of land and asserts rights over it and the person having title to it omits or neglects to take action against such person in assertion of his title for a certain period, in Kenya twelve (12) years. The action springs into action essentially by default or inaction of the owner. The essential prerequisites

being that the possession is not 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.”

43. The court further held.....

“Exclusivity of possession must also be proved by the claimant and therefore where the land in question under joint use by the claimant and other people, unless the claim is by all those in possession, the claimant cannot, on his own, unless he can identify a portion of the land exclusively occupied by himself, claim adverse possession of such land. It is also important that where the whole land is not occupied by the claimant, the claimant must identify what portion or part of the land is claimed by way of adverse possession”

44. The court further stated...

“...it was necessary for them to point out the boundary of the two parcels of land and then proceed to show that they were not only within the boundary of their land but had crossed over the suit land”

45. In the instant case, is the plaintiff's case that she was in possession and use of the suit properties way before they were registered in the name of the defendants, particularly from 1962. That allegation was supported by PW2, PW4 and PW6 but vehemently denied by the 1st defendant who stated that when she acquired the land it was not being used by anybody.

46. Having determined that by erecting a fence or fences all round the suit properties, the plaintiff demonstrated the requisite *animus possedendi*, the issue for determination is whether her possession of the suit properties met the legal threshold for being declared as the owner of the suit

properties on account of having been in adverse possession thereof.

47. From the totality of the evidence adduced in this case, comprised in mature trees admittedly planted by the plaintiff round the suit properties, I have no doubt that the possession and use of the suit property by the plaintiff was for a period exceeding 12 years.
48. Other than the statement by their witnesses that the suit properties were being used by villagers with the permission of the owners, the defendants neither pleaded that the plaintiff's use and occupation of the suit properties was on account of permission given to her by them or their predecessors in claim to the suit properties.
49. Taking into account that the suit properties are fenced, all round by the plaintiff, I do find the evidence adduced by the plaintiffs witnesses to the effect that the plaintiff was in exclusive use and control of the suit properties for a period

exceeding 12 years to be more plausible and believable than the account offered by the defendants witnesses that the suit properties were being used communally for grazing with permission of the defendants.

50. For the foregoing reasons, I find and hold that the plaintiff has made up a case for being declared the owner of the parcels of land known as 1241 and 2028. Consequently, I grant her the prayers sought in her originating summons, dated 29th April, 2013.

51. Orders accordingly.

Dated, signed and delivered virtually at Busia this 16th day of March, 2026 in the absence of the parties

L. N. WAITHAKA

JUDGE

Court Assistant; Tracy