

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT ELDORET**  
**ELC OS NO. 346 OF 2016**

**JEREMIAH KIPTUM KIMAIYO .....1<sup>ST</sup>**  
**APPLICANT**  
**STANLAUS MUTAI .....2<sup>ND</sup>**  
**APPLICANT**

***-VERSUS-***

**RAI PLYWOODS (K) LTD .....1**  
**RESPONDENT**

J U D G E M E N T

1. The Applicants herein did file an Amended Originating Summons dated 13.05.2019 (hereinafter referred to as **“the present OS”**) seeking the following Orders against the Respondent; -
  - a. **That the Applicants have obtained title over land parcel ELDORET MUNICIPALITY BLOCK 14/1165 by way of adverse possession.**
  - b. **That the Respondent’s title over land parcel has been extinguished by lapse of time.**
  - c. **That pursuant to (a) and (b) above, the land registrar in charge of the Uasin Gishu Land Registry where the register for Land Parcel No. ELDORET MUNICIPALITY BLOCK 14/1165 do delete the name of the Respondent and in lieu thereof enter the names of the Applicants and issue the Applicants with a title deed to Land Parcel ELDORET MUNICIPALITY BLOCK 14/1165.**
  - d. **Pursuant to (a), (b) and (c) above, the Land Registrar Uasin Gishu Land Registrar or the**

**registry having lawful custody of the register for parcel No. ELDORET MUNICIPALITY BLOCK 14/1165 be ordered to issue a fresh title deed to the Applicants on the said Land Parcel ELDORET MUNICIPALITY BLOCK 14/1165.**

**e. Costs be borne by the defendant.**

2. The grounds in support of the prayers above were contained in the body of the present OS as well as the Supporting Affidavit attached therein and can be summarised as follows;
- 
- i. The Applicants herein have been the occupants and in use of the property known as LR.NO.ELDORET MUNICIPALITY BLOCK 14/1165 measuring 1.60 Hectares (hereinafter referred to as **“the suit property”**) since the year 1991.
  - ii. Upon their entry into the suit property, the Applicants have developed various structures including houses and kept livestock on it.
  - iii. The Applicants plead that their occupation on the suit property has been peaceful and uninterrupted for a period of 25 years.
  - iv. Based on the peaceful and uninterrupted occupation of the suit property for a period of over 25 years by the Applicants, the Respondents ownership rights have been extinguished by operation of law through the doctrine of adverse possession.
  - v. Despite the foregoing, the Respondent has threatened to forcefully evict the Applicants from the suit property by demolishing their houses and even went ahead to remove the crops that had been planted by the Applicants herein.

- vi. Due to these unlawful acts by the Respondent, the Applicants did engage the services of the Agricultural officer to assess the damages relating to the crops destroyed by the Respondent.
  - vii. The Applicants did further plead that the Respondent has began construction of a perimeter wall around the suit property which would result to their dispossession of their lawful property in breach of their constitutional rights provided under the law.
  - viii. In conclusion thereof, the Applicants sought to have this Court declare that the present OS as merited and grant the Orders sought therein.
3. The present OS was duly served on the Respondent who did oppose the same through a Replying Affidavit sworn on 14.03.2017.
  4. According to the Replying Affidavit dated 14.03.2017, the present OS was opposed on the following grounds; -
    - i. To begin with, the Respondent did admit that it is the registered owner of the suit property having acquired the same through a Certificate of Lease dated 07.02.2006.
    - ii. Upon acquisition of the suit property, the Respondent did take occupation of the same and developed various houses for the use and benefit of its employees.
    - iii. The Respondent did deny the allegation that the Applicants herein have been in occupation of the suit property for the last 25 years as alleged in the present OS.
    - iv. The Respondent did admit that as at the year 2015, there were two occupants on the suit property who had been in occupation prior and after the acquisition of the suit

property who are namely DAVID MUTURI KOGE and MARTHA CHEBET RONO.

- v. However, both occupants namely DAVID MUTURI KOGE and MARTHA CHEBET RONO did vacate the suit property in the year 2016.
  - vi. The Respondent did plead that upon the two occupants namely DAVID MUTURI KOGE and MARTHA CHEBET RONO vacating the suit properties, the Applicants herein sought to encroach suit property by constructing some temporary structures and undertaking some cultivation.
  - vii. The Respondent did aver that it had begun constructing a perimeter wall around the suit property but the exercise had not been complete to date.
  - viii. The Respondent did further aver that the cultivation undertaken by the Applicants is not on the entire suit property but small portions of land next to the temporary structures that had been erected in the year 2016.
  - ix. In essence therefore, the Respondents did state that the Applicants had not occupied the suit property for a period of 25 years prior to filing the present OS and are not entitled to the prayers sought therein.
  - x. To this end, the Respondent sought the Court to dismiss the present OS.
5. In addition to the Replying Affidavit dated 14.03.2017, the Respondent did file a Further Affidavit dated 27.04.2018 which did reiterate the contents of the Replying Affidavit dated 14.03.2017.
  6. Both the Replying Affidavit and the Further Affidavit were duly served on the Applicants but there was no Further Affidavit filed therein to respond to facts pleaded therein.

7. The present OS was thereafter listed down for hearing.

**APPLICANTS TESTIMONIES AND DOCUMENTARY EVIDENCE**

8. The first witness on behalf of the Applicants was the 2<sup>nd</sup> Applicant known as STANLAUS MUTAI who was marked as PW 1.

9. The 2<sup>nd</sup> Applicant did introduce himself as a resident of Uasin Gishu County.

10. The Applicant did further state that he would rely on the Supporting Affidavit sworn on the 10.03.2017 as his evidence in chief.

11. In support of the evidence in chief, the 2<sup>nd</sup> Applicant did produce the following documents; -

**PW1 EXHIBIT 1- A Copy of a Letter from the Chief dated 16.04.2012 to Raiply Woods.**

**PW1 EXHIBIT 2- A Copy of a letter from the Chief to the Area Agricultural Officer informing him of the destruction of their crops and trees.**

**PW1 EXHIBIT 3- A Copy of a Letter dated 01.10.2012 from the Divisional Agricultural Officer to the Chief.**

**PW1 EXHIBIT 4 - Copy of the Green Card of the suit land.**

**PW1 EXHIBIT 5 (a) -(g) - bundle of photographs taken on 02.12.2016**

12. The 2<sup>nd</sup> Applicant did inform the Court that his claim for adverse possession was for the entire suit property.

13. The 2<sup>nd</sup> Applicant did state that they took possession and occupation of the suit property way back in the year 1990 in the company of the late JOSEPH KIPTUM KIMAIYO.
14. The 2<sup>nd</sup> Applicant did testify that at the time of entry, the entire suit property was vacant and bushy.
15. The 2<sup>nd</sup> Applicant did inform the Court that it was him and the late JOSEPH KIPTUM KIMAIYO that cleared the bush and began constructing structures on the suit property, keeping cattle and even dug a borehole.
16. The 2<sup>nd</sup> Applicant did confirm to the Court that at the time of entry, no consent was obtained from the Respondent herein and their occupation was open and peaceful until the year 2016 when the Respondents agents did forcefully enter the suit property and began constructing houses for their workers.
17. In addition to the foregoing, the Respondent herein through its agents did demolish the Applicants structures which were on the suit property.
18. However, the 2<sup>nd</sup> Applicant did insist that both Applicants did successfully re-enter the suit property and are still in occupation of the suit property.
19. As such, the 2<sup>nd</sup> Applicant sought this Court to grant the prayers in the present OS.
20. On cross-examination, the 2<sup>nd</sup> Applicant did deny the allegation that he was an employee of one Kibunguchy who had instructed him to work in the suit property.
21. The 2<sup>nd</sup> Applicant however did admit that he had no evidence or photographs to demonstrate that he took possession of the suit property in the year 1990.

22. The 2<sup>nd</sup> Applicant did state that from the year 1990, both the 2<sup>nd</sup> Applicant and the late JOSEPH KIPTUM KIMAIYO did occupy the suit property peacefully until the year 2012 when the Respondent tried to enter the suit property.
23. The 2<sup>nd</sup> Applicant did admit that there was a perimeter wall on a portion of the suit property which had been constructed by the Respondent in the year 2016 as well as some permanent houses of its employees.
24. On being referred to PW 1 EXHIBIT 4, the 2<sup>nd</sup> Applicant did confirm that the suit property was registered in the name of the Respondent in the year 2006.
25. On re-examination, the 2<sup>nd</sup> Applicant did inform the Court that the letter produced as PW 1 EXHIBIT 1 was done in the year 2012 which was over 20 years since taking possession of the suit property.
26. The 2<sup>nd</sup> Applicant did inform the Court that in the year 2016, the Court did issue an injunction against the Respondents from interfering with the suit property and as such, there has been no interruption thereof.
27. At the end of this re-examination, the 2<sup>nd</sup> Applicant was discharged from the witness box.
28. The second witness called by the Applicants was one PHILLIP KIPLAGAT CHEMNGOK who was marked as PW 2.
29. PW 2 did introduce himself as a resident of Uasin Gishu and the Area Chief of Pioneer Location.
30. PW 2 did inform the Court that he had prepared a witness statement dated 19.02.2017 of which he did adopt it as his evidence in chief.

31. PW 2 further did produce the following document in support of the Applicants case herein; -

**PW2 EXHIBIT 1 - Copy of a Letter dated 16.12.2016**

32. According to PW 2, the 2<sup>nd</sup> Applicant had been in occupation of the suit property located within Elgon View for the last 25 years.

33. Nevertheless, in the year 2016, the Respondent herein did enter the suit property and did demolish the Applicants structures thereon as well as the crops that had been planted thereon.

34. PW 2 did confirm that the incidence was duly reported to the Police Station and is what precipitated the present OS.

35. In concluding his evidence in chief, PW 2 did insist that the Applicants herein had been on the suit property for a period of over 25 years and therefore entitled to the prayers sought in the present OS.

36. On cross-examination, PW 2 did reiterate that the period of 25 years of which the Applicants had been in occupation of the suit property was more that the required 12 years prescribed by law.

37. On being referred to his Witness Statement dated 19.02.2017, PW 2 did admit that in his statement, it was indicated that the Applicants have been in occupation of the suit property for a period of 19 years although he did insist that the actual period is 25 years.

38. PW 2 did inform the Court that he was appointed the Area Chief in the year 2009 but there had been various attempts by his predecessor to resolve the dispute.

39. On being referred to PW 2 EXHIBIT 1, PW 2 did point out that the subject matter was a land dispute between squatters that were on the Respondent's property and the Respondent.
40. PW 2 did admit that in the year 2016, the Applicants structures were demolished by the Respondent who took possession of the suit property and even began erecting a perimeter fence around it.
41. PW 2 did confirm that it was in the year 2016 that he became aware that the suit property had been registered in the name of the Respondent herein.
42. On re-examination, PW 2 did reiterate that the Applicants herein had been in occupation of the suit property for a period of 25 years.
43. Consequently, the fact that the witness statement did mention a period of 19 years was a minor discrepancy which should not create confusion.
44. When referred to PW2 EXHIBIT 1, PW 1 did state that the intervention being mentioned had happened in the year 2013 but the actual letter was done in the year 2016.
45. PW 2 further did reiterate that the Respondents herein had re-entered the suit property in the year 2016 through the demolition of the Applicants structures and construction of the perimeter wall but the Applicants did re-enter the suit property thereafter.
46. At the end of this re-examination, PW 2 was discharged from the witness box and the Applicants did close their case thereafter.

## **RESPONDENT'S TESTIMONIES & DOCUMENTARY EVIDENCE**

47. The Respondent's first witness was one DAVID MUTURI KOGE who was marked as DW 1.
48. DW 1 did introduce himself as a resident of Elgon View within Uasin Gishu County.
49. DW 1 did proceed to inform the Court that he had filed a Replying Affidavit dated 29.11.2016 of which he did adopt as his evidence in chief.
50. To begin with, DW 1 did inform the Court that he was one of the persons that was in occupation of the suit property after the Respondent was registered as the lawful owner.
51. However, after many discussions with the Respondent, DW 1 did vacate the suit property in the year 2015.
52. DW 1 did testify that during his occupation on the suit property, there were other persons namely JOSEPH MAYUNGU, BABA MARY, KARIUKI and himself.
53. The person known as Martha was the wife of Joseph Kiptum Maiyo.
54. DW 1 did confirm to the Court that the occupation of the four persons hereinabove was with the consent of the Respondent who had requested them to look after the portion of land.
55. DW 1 did inform the Court that after he had vacated the suit property in the year 2015, the person known as Joseph Kiptum Maiyo and his wife did remain on the suit property until the year 2016 when they did also vacate the same.
56. According to DW 1, their occupation on the suit property was for about 4 years after the Respondent had been registered.

57. DW 1 did further admit that it was during their occupation that the Respondent did erect the perimeter wall and did construct the permanent houses for its employees.
58. DW 1 did inform the Court that the 2<sup>nd</sup> Applicant herein was not present during his occupation on the suit property but only entered the same after the year 2015 when he had left.
59. On cross- examination, DW 1 did reiterate that the late Joseph Kiptum Maiyo used to live with his wife Martha and their two children on the suit property.
60. DW 1 did testify to the Court that after he had vacated the suit property, he was informed that the late Joseph Kiptum Maiyo had erected another house with a person known as MUTAI.
61. On being referred to PW 1 EXHIBIT 5 (d), DW 1 did confirm that the two persons in the picture were Joseph Kiptum Maiyo and Mutai standing on the same place that had been occupied by Joseph Kiptum Maiyo before he had vacated the suit property.
62. On being referred to PW 1 EXHIBIT 5 (e), DW 1 did state that the house in the picture was not the one which Joseph Kiptum Maiyo and his wife Martha had occupied but a new one that had been built on the same place as the previous one.
63. DW 1 did testify that he had been paid to vacate the suit property but not to be a witness in this suit.
64. Lastly, the DW 1 did aver that the persons in occupation of the suit property were the 2<sup>nd</sup> Applicant and a lady that is suspected to be the second wife of the late Joseph Kiptum Maiyo.
65. On re-examination, DW1 stated that during their occupation, they knew that the suit land belonged to the Respondent as it was the one that had given them the consent to occupy.

66. DW 1 did reiterate that everyone's occupation on the suit property was only 4 years before they all vacated the same.
67. DW 1 did insist that before the year 2015, the 2<sup>nd</sup> Applicant was not in occupation of any portion of the suit property and at the time he was vacating it, it was Martha the wife of Joseph Kiptum Maiyo that was in occupation of a portion of the suit property.
68. At the end of the re-examination, DW 1 was duly discharged from the witness box.
69. The second Respondent's witness was one SAMUEL GACHOKA who marked as DW2.
70. DW 2 did introduce himself as a resident of Shauri Moyo within Uasin Gishu County.
71. In addition to the above, DW 2 did inform the Court that he was a Supervisor in the Respondent's Civil Department.
72. DW 2 did further inform the Court that he had prepared a witness statement dated 29.11.2016 of which he did adopt as his evidence in chief.
73. According to DW 2, he was not familiar with either the 1<sup>st</sup> and/or the 2<sup>nd</sup> Applicants herein.
74. DW 2 did testify that his visits for purposes of developing the suit property had begun in the year 2011.
75. DW 2 did confirm that during his visit to the suit property, there were 4 persons who was residing therein and these were Baba Mary, Muturi, Kariuiki and Martha.

76. However, all these people did vacate the suit property in the years between 2013 and 2016.
77. DW 2 did further testify that the 4 persons who were in occupation of the suit property but have since vacated knew the same to belong to the Respondent and their occupation was with the consent of the Respondent.
78. DW 2 did conclude his evidence in chief by stating that after the departure of the persons who were in the suit property, the Respondent did commence erecting a perimeter wall around it.
79. On cross-examination, DW 2 did clarify that his duties within the Respondent includes maintenance of its assets including clearing of bushes and erecting of the fence.
80. DW 2 however did not have any Employment Card to confirm that he was an employee of the Respondent.
81. Nevertheless, DW 2 did reiterate that the 4 persons who had been in occupation of the suit property did vacate the same and had in fact demolished all their structures on their own accord.
82. However, DW 2 did indicate that he had passed through the suit property recently and noticed another house which he could not tell whom it belongs to.
83. On being referred to PW 1 EXHIBIT 5 (d), DW 2 could not identify the persons that were in the said picture.
84. DW 2 did testify that the last time he was on the suit property was in the year 2016 when Martha was vacating the suit property.

85. On re-examination, DW 2 did insist that the 4 occupants of the suit land left on their own accord.
86. DW 2 did further maintained that from the 4 original occupants of the suit land, none of them is currently in the suit land.
87. At the end of the re-examination, DW2 was duly discharged.
88. The Respondent's third witness was one JOSEPH KIMANI MUNGAI was marked as DW3.
89. DW 3 did introduce himself as a Resident of Elgon View within Uasin Gishu County and the Operations manager of the Respondent.
90. DW 3 did inform the Court that he had prepared and signed a witness statement dated 15.05.2025 which he did adopt as his evidence in chief.
91. In support of his evidence in chief, DW 3 did produce the following documents; -

**DW3 EXHIBIT 1 - A copy of the Resolution dated 13.05.2025 from the Respondent.**

**DW3 EXHIBIT 2- A Copy of the Certificate of Lease dated 07.02.2006 for L.R. ELDORET MUNICIPALITY BLOCK 14/1165 in the name of the Respondent.**

**DW3 EXHIBIT 3 - A Copy of the Green Card of Block 14/1165 in the name of the Respondent.**

**DW3 EXHIBIT 4 (a & b) - Copies of photos showing the structures that were in the property previously occupied by the original owners and the one showing the perimeter wall by the defendant.**

92. In concluding his examination in chief, DW 3 did inform the Court that the Applicants herein were not among the persons that had been in occupation of the suit property prior to the year 2016.
93. On cross-examination, DW 3 did inform the Court that he had worked for the Respondent for over 30 years mostly within the operations department.
94. DW 3 did confirm that he was familiar with most of the Respondents assets and/or properties.
95. DW 3 did testify that initially, the person who was dealing with the property was one Phillip Varghase but he was also present most of the time.
96. According to DW 3 recollection, the person known as MARTHA was one of those who were in occupation of the suit property before the year 2016.
97. DW 3 did further admit that he was not aware of the person that had been in occupation of the suit property prior to 2015.
98. At the end of this cross-examination, there was no re-examination and DW 3 was subsequently discharged from the witness box.
99. The Respondent then did proceed to close its case thereafter.
100. At the end of the hearing, parties were directed to file their final submissions.
101. The Applicants in compliance did file their submissions dated 03.12.2025 while the Respondent did file its submissions dated 17.09.2025.

102. The Court has duly and carefully perused the pleadings herein, the testimonies of the parties, the documentary evidence tabled and the submissions and identifies the following issues for determination; -

**ISSUE NO. 1 - WHETHER THE PLAINTIFFS HAVE SUFFICIENTLY PROVED THE ELEMENTS OF ADVERSE POSSESSION?**

**ISSUE NO. 2 - WHETHER THE PLAINTIFFS ARE ENTITLED TO THE RELIEFS SOUGHT?**

**ISSUE NO. 3 - WHO SHALL BEAR THE COSTS OF THE ORIGINATING SUMMONS?**

103. Having identified the above issues for determination, the same will now be discussed as provided below.

**ISSUE NO. 1 - WHETHER THE PLAINTIFF HAS SUFFICIENTLY PROVED THE ELEMENTS OF ADVERSE POSSESSION?**

104. The first issue for determination is whether or not the Applicants have satisfied the ingredients and/or elements of adverse possession against the Respondent herein.

105. To begin with, it is not in doubt that the suit property herein was registered in the name of the Respondent on the 07.02.2006.

106. Sections 7,13, 17 and 38 (i) and (ii) of the Limitation of Actions Act, section 28 (h) of the Land Registration Act as well as Order 37 Rule 7(2) provides the statutory framework for the doctrine of adverse possession.

107. In the celebrated case of **MTANA LEWA-VERSUS- KAHINDI NGALA MWAGANDI (2015) eKLR**, the Court of Appeal did pronounce itself as follows; -

***“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, it is twelve (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....."***  
*(emphasis mine)*

108. From the above, the requirements for a claim of adverse possession may be summarized as follows; -
- i. The land in question must be registered in the name of a person other than the Plaintiffs**
  - ii. The Plaintiffs must demonstrate that they took possession of the parcel of land, asserted their rights over it in an adverse manner to the title of the land owner**
  - iii. The Plaintiffs must also demonstrate that their possession and occupation of the said land was not by force or under the licence of the land owner and that the said possession was open, in continuity for an uninterrupted period of over 12 years.**
  - iv. Lastly, that the title holder of the subject land did not take any precipitate action against the said Plaintiff for a period of 12 years.**
109. Based on the above perimeters, the Court will now proceed to evaluate each and every one of them to satisfy itself whether the Applicants did prove the same or not.

## **INGREDIENT 1- REGISTRATION**

110. The first ingredient is to confirm whether or not the Applicants have instituted the claim against the proper registered owner of the suit property.
111. In the present OS, the Applicants are seeking for a claim of adverse possession against the Respondent.
112. The Applicants did produce a Certified Copy of the Register commonly known as the Green Card relating to the suit property as PW 1 EXHIBIT 4.
113. Based on the Certified Copy of the Register relating to the suit property, it is clear that the same was registered in the name of the Respondent on the 07.02.2006.
114. The first ground to be proved is that the suit land is registered in the name of a person other than the Plaintiff.
115. In essence therefore, it is clear that the present OS has been instituted against the rightful registered owner of the suit property.

## **INGREDIENT 2- ENTRY**

116. The second ingredient and/or element in a claim of adverse possession is entry and occupation of the property in issue.
117. To begin with, the Applicant must clearly demonstrate the time and/or period within which entry into the suit property was undertaken.
118. The entry by an Applicant must be one that dispossesses the registered owner of the right to use the property in issue.
119. Similarly, the entry into the property in dispute must be one that is without the consent of the registered owner.

120. In the present OS, the Applicants did plead and testify that their entry into the suit property was in the year 1990.
121. The Respondent on the other hand did plead and testify that the Applicants entry into the suit property was in the year 2016 and/or thereafter.
122. Clearly, the date of entry by the Applicants is one that requires to be ascertained by this Court.
123. To be able to achieve this, Section 107 of the Evidence Act, Cap 21 places the burden of proving a fact in dispute on the person that has made the allegation.
124. In this instance, the burden to convince the Court that the Applicants did enter the suit property in 1990 falls with the Applicants.
125. During the testimonies of the 2<sup>nd</sup> Applicant and the other witness called by the Applicants, there is no evidence that was tabled to show any entry in the year 1990.
126. During the cross-examination of the 2<sup>nd</sup> Applicant, he did admit that no evidence had been tabled to demonstrate entry into the suit property in the year 1990.
127. The only documentary evidence which states that the Applicants did enter the suit property in the year 1990 was the Letter dated 13.07.2017 by the Area Chief, Pioneer Location.
128. Although the Court takes note of the contents of this letter with a lot of seriousness, it also respectfully disagrees with its contents.

129. The reason is that while the Area Chief states that the Applicants did enter the suit property in the year 1990, the Register of the suit property produced as PW 1 EXHIBIT 4 clearly states that the suit property was created on the 01.03.1992 and registered in the name of the Respondent on the 07.02.2006.
130. In other words, the suit property was not in existence in the year 1990 when the Applicants allege to have entered into the same.
131. It is therefore not possible that the Applicants did enter the suit property in the year 1990 as has been alleged in their pleadings and/or testimonies.
132. The Applicants did produce a bundle of photographs with the structures as PW 1 EXHIBIT 5(a-e).
133. However, the bundle of photographs shows that the pictures were taken on the 02.12.2016.
134. In essence, these photographs have no evidence to show that the structures contained therein were erected in the year 1990.
135. As such, this Court is of the considered view and finding that the Applicants have not provided any evidence to demonstrate that their entry into the suit property was in the year 1990 as alleged in their pleadings and/or testimonies before the Court.

### **INGREDIENT NO.3- OCCUPATION & USE**

136. The third ingredient that an Applicant for adverse possession must demonstrate is occupation and use of the disputed property.

137. In the present OS, the Applicant did plead and testify that they have been in occupation and use of the suit property since 1990.
138. The Applicants did plead and testify that their occupation on the suit property was premised on the structures which were erected thereon as well as the various agricultural activities that were being undertaken.
139. The Applicants once again did rely on the bundle of photographs produced by the 2<sup>nd</sup> Applicant as well as the various letters that were written by the Area Chief Pioneer Location.
140. Based on the bundle of photographs produced by the 2<sup>nd</sup> Applicant, it is clear that there are structures built on portions of the suit property presumably by the 2<sup>nd</sup> Applicant.
141. Similarly, based on two Letters by the Area Chief Pioneer Location dated 28.09.2012 and 01.10.2012, the Applicants are of the view that the same clearly show their occupation on the suit property.
142. The Respondent on the other hand disputes the Applicants occupation on the suit property.
143. The Respondents did plead and testify that if there was any occupation by the Applicants, then such occupation was in the year 2016 and/or thereafter.
144. Clearly, the issue of occupation is one that requires a determination of this Court.
145. To begin with, the Court did already make a finding that the Applicants herein did not enter into the suit property in the year 1990 as pleaded and testified.

146. Having made this finding, the next question is when did the Applicants actually enter the suit property and take occupation thereof.
147. According to the bundle of photographs presented by the Applicants, the same were taken on the 02.12.2016.
148. If the said photographs are legitimate, then it can be said that as at 02.12.2016, the Applicants were in occupation of some portion of the suit property.
149. Going back to the Letters from the Area Chief produced by the 2<sup>nd</sup> Applicant, it is clear that the same were being addressed in regards to the occupation of the late JOSEPH MAIYO and not the 1<sup>st</sup> and/or the 2<sup>nd</sup> Applicant herein.
150. None of the Letters written by the Area Chief Pioneer Location did refer to the occupation and use of the suit property by the 1<sup>st</sup> and 2<sup>nd</sup> Applicants herein.
151. As such the letters produced by the Applicants do not demonstrate any occupation of the suit property prior to the year 2016.
152. Having arrived at this inference, this Court is of the considered view that if the Applicants herein are in occupation of any portion of the suit property, such occupation can only have occurred in the year 2016 and thereafter.

#### **INGREDIENT 4- PEACEFUL & CONTINUOUS OCCUPATION**

153. The fourth ingredient is whether the Applicants did enjoy peaceful and continuous occupation of the disputed property.
154. Based on the finding in Issue No.3 hereinabove, if the Applicants did have any occupation of the suit property, the

same can only be deemed to have began in the year 2016 or thereabout.

155. This being the scenario, then there was no peaceful and continuous occupation by the Applicants in view of the threat and re-entry by the Respondents herein on the suit property.

### **INGREDIENT NO 5- WHETHER PEACEFUL & CONTINOUS OCCUPATION HAS BEEN FOR 12 YEARS**

156. The last ingredient is whether there has been a peaceful and continuous occupation of the disputed property by the claimant for a period of 12 years prior to institution of the claim for adverse possession.

157. To begin with, the present OS was filed 21.11.2016 before this Court.

158. At this time based on the finding in Issue No. 3 and 4 hereinabove, the Applicants herein had just either entered into the suit property or exercised a re-entry into the suit property after their structures being demolished by the Respondent.

159. As such, the period of their occupation on the suit property at the time of filing the present OS had not been for a period of 12 years.

160. In addition to the foregoing, it is important to note that the Respondent herein was registered as the owner of the suit property on the 07.02.2006.

161. Prior to the 07.02.2006, the suit property was the asset of the Government of Kenya and the law prohibits any claim of adverse possession against the Government of Kenya.

162. In essence, any claim for adverse possession can only be raised against the Respondent after the 07.02.2006.

163. Even if the Court was to assume that indeed the Applicants were in the suit property on the 07.02.2006 when the Respondent was registered as the owner of the suit property, by the 21.11.2016 when the present OS was filed, the period of 12 years has not lapsed.

164. As such, this Court is of the considered view and finding that the present OS was pre-mature and not in compliance with this ingredient.

**ISSUE NO. 2 - WHETHER THE PLAINTIFFS ARE ENTITLED TO THE RELIEFS SOUGHT?**

165. Based on the findings in Ingredients No.2 to 5 hereinabove, this Court is of the considered view that the present OS is not merited and the reliefs sought cannot be granted.

**ISSUE NO.3-WHO SHALL BEAR THE COSTS OF THE ORIGINATING SUMMONS?**

166. Costs are usually awarded to the winning party.

167. In this instance, the winning party is the Respondent and the Applicants are therefore condemned to pay the costs.

**CONCLUSION**

168. In conclusion, the Court hereby makes the following Orders in determination of the present OS; -

**A.THE AMENDED ORIGINATING SUMMONS DATED 13.05.2019 IS NOT MERITED AND THEREFORE DISMISSED.**

**B.THE APPLICANTS ARE HEREBY CONDEMNED TO PAY THE COSTS OF THIS SUIT TO THE RESPONDENT HEREIN.**

**DATED, SIGNED and DELIVERED at ELDORET this on this 9<sup>TH</sup> DAY OF APRIL,2026.**

**EMMANUEL.M. WASHE**  
**JUDGE**

**IN THE PRESENCE OF:**

Court Assistant: Brian

Advocate for Applicants: Mr. Kibii

Advocate for Respondent: Mr. Cheptirim