

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT BUSIA

ELC NO. E004 OF 2021 (O.S)

RAPHAEL OSODO PLAINTIFF

= VERSUS =

MARY SCHOLASTICA CHAUSIKU 1ST

DEFENDANT

PAUL WANYAMA KHADOLI 2ND

DEFENDANT

J U D G M E N T

1. This judgment was due on 13th November 2025. However following my transfer from Busia to Iten Court which was effective from 15th January 2026, I had to prioritize my part heard cases. This inevitably meant that the judgment would be delayed. The same is regretted.
2. **RAPHAEL OSODO** (the Plaintiff herein) has approached this Court vide his Originating Summons dated 8th February 2021 and predicated under the provisions of **Article 40** of the **Constitution**, **Order 37** of the **Civil Procedure Rules**, **Section 28(b)** of the **Land**

Registration Act, Sections 17, 18, 37 and 38 of the **Limitation of Actions Act** and **Sections 1A, 1B and 3A** of the **Civil Procedure Act**. He has impleaded **MARY SCHOLASTICA CHAUSIKU** (the 1st Defendant) and **PAUL WANYAMA KHADOLI** (the 2nd Defendant) seeking judgment as follows with respect to the land parcel **NO SAMIA/BUBURI/713**:

- a) **An order of injunction do issue stopping and/or restraining the sale, disposal and/or alienation of the whole or any part of the land comprised in SAMIA/BUBURI/713 by the 1st Defendant to the 2nd Defendant or any other person.**
- b) **A declaration that the 1st and 2nd Defendants are constructive trustees in respect of the land parcel SAMIA/BUBURI/713 for the benefit of the Plaintiff and other family members.**
- c) **A declaration do issue and the Court be pleased to assess the Plaintiff's and the rest of the family share of the said land as**

50% in light of his contribution to the purchase of the land parcel NO SAMIA/BUBURI/713.

d) The Plaintiff be declared to have become the legal owner entitled by adverse possession of over twelve (12) years since 2008 of all that parcel of land comprised in title number SAMIA/BUBURI/713.

The Originating Summons is premised on the grounds set out therein and is also supported by the Plaintiff's affidavit of even date.

3. The thrust of the Plaintiff's case is that his late brother **FRANCIS OSODO** and who was the husband to the 1st Defendant was the registered proprietor of the suit land holding the same in trust for the Plaintiff's family. That prior to the demise of his late brother, the family had a welfare scheme in which his late brother was fully in charge of all the investments including the suit land where the Plaintiff and his family have been in possession of since 2008 utilizing it for farming and a homestead. Their

occupation and possession of the suit land has been without interruption.

4. That upon the death of his brother **FRANCIS OSODO**, his wife the 1st Defendant secretly disposed off the suit land to the 2nd Defendant and embarked on the succession process without the knowledge of the family. That the 1st Defendant, upon obtaining Letters of Administration has abused those powers by intermeddling with the property of the deceased and secretly disposing it thus depriving the Plaintiff of his interest therein in violation of the law of succession and also abusing the trust. The 1st Defendant intends to disinherit the Plaintiff's family and the 2nd Defendant acquired the same with actual and constructive knowledge that the Plaintiff's family occupies it. The 2nd Defendant is now preparing to evict the Plaintiff and his family from the suit land which is held in trust and where the Plaintiff has lived all his life without any other alternative land. Further, the Plaintiff and his siblings have improved the suit land by developing it and therefore claim it by way of adverse possession and also trust. That the Plaintiff's interest in the suit land cannot be catered

for in **BUSIA HIGH COURT SUCCESSION CAUSE NO 72** of **2014** which is yet to be prosecuted. He adopted that supporting affidavit during the plenary hearing before **OMOLLO J** on 15th February 2022 during the plenary hearing.

5. And during the said plenary hearing, the Plaintiff stated that he lives in Mombasa and that the 1st Defendant is the wife of his elder brother **FRANCIS OSODO** now deceased. He does not know the 2nd Defendant. That they bought the suit land in 2008 because their ancestral land was small and they needed more land to cultivate crops for food. The said land was registered in the name of his deceased brother on behalf of their family but when the 1st Defendant obtained the Grant in respect to the deceased Estate, he sold the suit land to the 2nd Defendant yet according to Luhya culture, his elder brother was a representative of the family and so the suit land was family land. When the 1st Defendant took out a Grant of Letters of Administration, they had a meeting before their chief where the 1st Defendant agreed that the suit land was family land. He produced as a part of his evidence the

letters by the chief dated 11th November 2015. He also produced a sale agreement dated 10th May 2008. That the 2nd Defendant found the Plaintiff and his family using the suit land.

6. The Plaintiff also recorded the statement of his witnesses **FREDRICK TABU (PW2)** and **WILLY MWOYA OGWA (PW3)** both dated 11th August 2021.
7. In his statement, **FREDRICK TABU** who also introduced himself as **FREDRICK TABU OUMA (PW2)** when he testified before **OMOLLO J** on 8th June 2022, states that he is conversant with facts surrounding the ownership of the suit land as he was present during its acquisition and is a relative to the deceased **FRANCIS OSODO**. That the land was acquired as family land under a scheme after he was tasked with looking for it at the request of the Plaintiff who had told him to look for land to be purchased for farming. When the witness got the land, he informed the Plaintiff and they looked for the Plaintiff's elder brother **FRANCIS OSODO** whom they informed about the land. By that time **FRANCIS OSODO** and his wife the 1st Defendant had separated. A sale agreement was done and the land was

registered in the name of the deceased **FRANCIS OSODO** being the leader of the family so that he could hold it in trust for the rest of the family members. All this time, **FRANCIS OSODO** was living alone and was sick. That from the time the land was purchased, the Plaintiff and his family have been utilizing the suit land for farming. That the Defendants acquired the suit land knowing very well that it is family land held in trust.

8. When he testified before **OMOLLO J** on 8th June 2022, the said **FREDRICK TABU OUMA (PW2)** told the Court that the Plaintiff purchased the suit land in 2008 from one **GABRIEL** but the sale agreement was signed by the Plaintiff's elder brother **FRANCIS** who died in 2018. The suit land was purchased as family land belonging to the **OSODO** family who bought it in 2008. That the Plaintiff lives in Mombasa but his family uses the suit land for cultivation. That the Plaintiff's mother cultivates the suit land and also leased it until she died in 2020. That the Plaintiff had not taken out letters of Administration.
9. **WILLY MWOYA OGWA (PW3)** in his statement confirmed that he is conversant with the facts surrounding the

ownership of the suit land since he was present when it was acquired as family land by the late **FRANCIS OSODO** with whom he lived. That during his stay with the late **FRANCIS OSODO**, he never saw the wife of **FRANCIS OSODO** there. That he is the one who used to supervise the workers who worked on the suit land on behalf of the late **FRANCIS OSODO** who had separated with his wife. The only time he saw the wife was when **FRANCIS OSODO** died. The wife is therefore not conversant with how the suit land was acquired.

10. Upon the demise of **FRANCIS OSODO**, a meeting was held on 11th November 2015 chaired by the chief and it was agreed that the land parcels **NO SAMIA/BUBURI/625** and **713** be given to the Plaintiff family while the rest of the property be given to **FRANCIS OSODO'S** widow. That the Defendants however secretly connived to dispose off the suit land which is family land and the deceased **FRANCIS OSODO** held it in trust. Therefore, both Defendants hold the suit land in trust for the Plaintiff's family.

11. In his oral evidence during the plenary hearing before me on 15th July 2024, he confirmed that he is the cousin to **FRANCIS OSODO** who purchased the suit land in 2008.
12. The Plaintiff filed a list of documents dated 8th February 2021 and a further list of documents dated 11th August 2021.
13. The list dated 8th February 2021 had the following documents:
 - 1) Certificate of search for the land parcel **NO SAMIA/BUBURI/713.**
 - 2) Copy of title deed for the land parcel **NO SAMIA/BUBURI/713.**
 - 3) Copy of the Grant issued on 23rd June 2014 in **BUSIA HIGH COURT SUCCESSION CAUSE NO 72 of 2014** to the 1st Defendant in respect to the Estate of **FRANCIS OSODO.**
 - 4) Copy of Green card for the land parcel **NO SAMIA/BUBURI/713.**

The above documents are annexed to the Plaintiff's supporting affidavit dated 8th February 2021.

14. On his second list of documents dated 11th August 2021, the Plaintiff annexed the following documents:

- 1) Copy of sale agreement between **FRANCIS OSODO** and **GABRIEL KHADULI** for the land parcel **NO BUBURI/713**.
- 2) Copy of a letter dated 23rd March 2015 from the Office of the Chief Nanguba Location.
- 3) Copy of the letter dated 11th November 2015 from the Office of the Assistant Chief Ruambwa sub-location.
- 4) Copy of the minutes of the family meeting held on 5th November 2015 at the home of **PETER OSODO**.
- 5) Copy of affidavit dated 30th October 2019 and filed by the 1st Defendant in **BUSIA HIGH COURT SUCCESSION CAUSE NO 72 of 2014**.

The Defendants filed replying affidavits in opposition to the Originating Summons.

15. In the replying affidavit dated 6th May 2021, the 1st Defendant avers, inter alia, that she is the wife of the deceased **FRANCIS OSODO** who was the brother to the

Plaintiff and is also the Administrator to his Estate. That the issues being raised herein were comprehensively and conclusively dealt with in **BUSIA HIGH COURT SUCCESSION CAUSE NO 72 of 2014** where the Grant of Letters of Administration was issued to her on 23rd June 2014 and the confirmed Grant was issued by consent on 27th September 2018. That she acquired the suit land upon confirmation of the Grant and that the issue of a welfare scheme was brought up during the application for revocation of the Grant. That in her response to the application for revocation of the Grant, she also indicated that her father in law had 3 wives and several children and if there was any family welfare scheme, she would have known since she was married in the family for 21 years before her husband died. That on 28th February 2017, her advocate and the Plaintiffs advocate recorded a consent before Justice **KORIR** and the objection was withdrawn in terms that she gives the objector land parcel **NO SAMIA/BUBURI/625** during the confirmation of the Grant. That in his application for the revocation of Grant, the Plaintiff had provided 3 parcels of land being

SAMIA/BUBURI/625, 713 and **989** but is now only mentioning **SAMIA/BUBURI/713**. The issue of trust and welfare scheme was heard and determined in the High Court where both were represented by advocates and a settlement was reached. That the Plaintiff was in possession of the relevant documents relating to the property of the Estate and the Court had to summon him to produce them. That the suit property is in **SAMIA SUB-COUNTY** while the Plaintiff resides in **BUNYALA** sub-County and the suit land was vacant when the 2nd Defendant purchased it. The Plaintiff cannot therefore claim adverse possession against the 2nd Defendant and she does not understand why the Plaintiff is claiming the said land.

16. The following documents are annexed to the 1st Defendant's replying affidavit:

- 1) Copy of Summons for confirmation of Grant filed by 1st Defendant in **BUSIA HIGH COURT SUCCESSION CAUSE NO 72** of **2014** in Estate of **FRANCIS OSODO**.

- 2) Affidavit in support of Summons of confirmation of Grant filed by 1st Defendant in **BUSIA HIGH COURT SUCCESSION CAUSE NO 72 of 2014** in Estate of **FRANCIS OSODO**.
- 3) Copy of consent of confirmation of Grant filed by 1st Defendant in **BUSIA HIGH COURT SUCCESSION CAUSE NO 72 of 2014** in Estate of **FRANCIS OSODO**.
- 4) Copy of Summons for Revocation of Grant and Cross Petition for Grant of Letters of Administration filed by **RAPHAEL OSODO** and **MILLICENT OSODO** in **BUSIA HIGH COURT SUCCESSION CAUSE NO 72 of 2014**.
- 5) Copy of certificate of official search for the land parcel **NO SAMIA/BUBURI/713** in the name of **FRANCIS OSODO**.
- 6) Copy of certificate of official search for the land parcel **NO BUKHAYO/MUNDIKA/989** in the name of **FRANCIS OSODO**.
- 7) Copies of title deeds for the land parcels **NO:**
 - a) **BUTSOTSO/SHIKOTI/13122**.

b) BUSOTSO/SHIKOTI/12497.

c) BUKHAYO/MUNDIKA/625.

d) SAMIA/BUBURI/713.

e) BUSOTSO/SHIKOTI/15005.

f) BUKHAYO/MUNDIKA/989.

All the above titles are in the name of **FRANCIS OSODO.**

8) Copy of Police Abstract issued to the 1st Defendant by Kakamega Police Station for loss of various documents.

9) Copy of letter written by the 1st Defendant and addressed to the Permanent Secretary Ministry of State for Public service requesting for a transfer from Kakamega to Kisumu.

10) Copy of replying affidavit filed by the 1st Defendant in **BUSIA HIGH COURT SUCCESSION CAUSE NO 72 of 2014.**

11) Copy of transfer of Land parcel **NO SAMIA/BUBURI/625** from **FRANCIS OSODO** to **MILLICENT OSODO.**

12) Copy of transfer of Land parcel **NO BUTSOTSO/SHIKOTI/11322** from **FRANCIS OSODO to RAPHAEL KILO OSODO.**

13) Copy of **KRA PIN NO A009024279V** in the name of **MILLICENT NAMAMBA OSODO.**

14) Copy of Summons requiring attendance to Court addressed to **RAPHAEL OSODO.**

The 2nd Defendant filed a replying affidavit dated 14th December 2021 in response to the Originating Summons. He pleaded, inter alia, that he is the registered proprietor of the suit land having purchased it from the 1st Defendant for value without notice. That the 1st Defendant had acquired it by way of transmission from her late husband **FRANCIS OSODO** vide **BUSIA HIGH COURT SUCCESSION CAUSE NO 72 of 2014.** That the said **FRANCIS OSODO** had purchased it for value from one **GABRIEL KHADULI** who was not a relative to **FRANCIS OSODO** but was infact an uncle to the witness.

17. The suit land is therefore not ancestral or family land and neither did **FRANCIS OSODO**, the 1st Respondent nor himself hold it in trust from the Plaintiff or any other

person. That the Plaintiff's application in **BUSIA HIGH COURT SUCCESSION CAUSE NO 72** of **2014** was dismissed and this suit is an attempt to acquire the suit land in a clear manner which is an abuse of the Court process. That he is a stranger to the alleged welfare scheme which was conclusively dealt with in the Succession Cause. That the suit land was vacant when he purchase it and the Plaintiff has never been in possession or use of it in any manner. That the Plaintiff alleges that the suit land belongs to him as ancestral land and on the other hand, he alleges to have acquired it by the doctrine of adverse possession. The Plaintiff has not met the threshold of a claim by way of adverse possession and his Originating Summons should be dismissed with costs.

18. The trial commenced before **A. OMOLLO J** on 15th February 2022 who heard the evidence of the Plaintiff and **FREDRICK TABU OUMA (PW2)**. Thereafter, I took over the trial from 15th July 2024 and heard the evidence of **WILY OGWA MWOYA (PW3)** and that of the Defendants who did not call any other witnesses.

19. The parties and their witnesses adopted as their evidence the contents of their respective affidavits and statements, their oral testimonies and also produced as their documentary evidence the documents filed herein.
20. Submissions were thereafter filed both by **MR OMERI** instructed by the firm of **OMERI & ASSOCIATES ADVOCATES** for the Plaintiff and by **MR WERE** instructed by the firm of **FWAYA MASAKHWE WERE & ADVOCATES** for the Defendants.
21. I have considered the evidence by the parties both oral and documentary as well as the submissions by counsel.
22. The Plaintiff's claim to the suit land is three pronged; namely:-
- a) **An order of injunction to restrain the Defendants from selling or alienating the whole or any part of the suit land,**
 - b) **A declaration that the Defendants are constructive trustees holding the suit land for the benefit of the Plaintiff and his family being 50% share and,**

c) A declaration that the Plaintiff has acquired the legal title to the suit land by way of adverse possession having been in occupation and possession of the same for over twelve (12) years.

I shall start by considering prayers (b) and (c) because if they collapse, then there will be no need to consider prayer (a).

1. THAT THE DEFENDANTS ARE CONSTRUCTIVE TRUSTEES HOLDING THE SUIT LAND FOR THE BENEFIT OF THE PLAINTIFF AND HIS FAMILY AND WHO HAVE A 50% STAKE THEREIN:

23. In an attempt to prove that the suit land is held by the Defendants for his benefit and his family as trustees, the Plaintiff has pleaded that it is family land acquired by joint effort of himself and other family members but was registered in the name of his brother the husband to the 1st Defendant. This is what he has said in paragraphs 6 and 7 of his supporting affidavit:

6: “That the said property was acquired as per the wishes of my father and by the

joint contribution and effort of the Plaintiff, other family members and the registered owner of the family property.”

7: “That the said property was registered in the name of the Respondent’s husband as the head of the family to hold in trust for the family as agreed according to the wishes of our late father PETER OSODO.”

In paragraphs 28 and 29 of the said affidavit, he makes it clear that the trust he has in mind is a constructive trust.

He has pleaded thus:

28: “That the Applicant is entitled in law and equity to a share in the said property held by the Defendants under constructive trust and adverse possession.”

29: “That, it is in the interest of justice that I be granted what is mine from the share of the property we acquired together during the lifetime of the trustee who is the 1st Defendant’s deceased husband and was

passed to the 2nd Defendant to hold in trust for me.”

The Plaintiff has produced as part of his documentary evidence a copy of a sale agreement dated 10th May 2008 by which **FRANCIS OSODO** the 1st Defendant's late husband purchased the suit land from one **GABRIEL KHADULI** at a consideration of Kshs.105,000. His case is that he and his family contributed through a welfare scheme towards the purchase of the suit land. That suggestion has been rebutted by the 2nd Defendant who in paragraph 7 of his replying affidavit has averred thus:

7: “That I know of my knowledge that FRANCIS OSODO had purchased/acquired for value the land from GABRIEL KHADULI.”

The 1st Defendant on her part has averred in her replying affidavit that there was no such scheme by the family to purchase the suit land. Documents speak for themselves and ordinarily, no extrinsic or parole evidence is admissible in such documents. In the case of **FIDELITY & COMMERCIAL BANK LTD -V- KENYA GRANGE VEHICLE**

INDUSTRIES LTD 2017 eKLR, the Court of Appeal held as follows:

“Courts adopt the objective theory of a contract interpretation, and profess to have the overriding aim of giving effect to the expressed intentions of the parties when constructing a contract.

This is what sometimes is called the principle of four corners of an instrument which insists that a document’s meaning should be derived from the instrument itself without reference to anything outside of the document (extrinsic evidence), such as circumstances surrounding it’s writing or the history of the parties signing it.”

Further, in the case of **PRUDENTIAL ASSURANCE COMPANY OF KENYA LTD -V- SUKHWENDER SINGII JUTNEY & ANOTHER CIVIL APPEAL NO 23 of 2005**, the Court citing a passage in **ODGERS CONSTRUCTION OF DEEDS & STATUES 5TH EDITION** at page **106**

emphasized that in constructing the terms of a written contract;

“It is a familiar rule of law that no parole evidence is admissible to contradict, vary or alter the terms of the deed or any written instrument. The rule applies as well to deeds as to contracts in writing. Although the rule is expressed to relate to parole evidence, it does in fact apply to all forms of extrinsic evidence ...”

Although the Plaintiff claims that the suit land was acquired **“by the joint contribution and effort of the Plaintiff, other family members and the registered owner of the family property.”** (Paragraph 6 of his affidavit), no iota of evidence was led by him or his witnesses to demonstrate in what manner he or any of his family members contributed towards the purchase of the suit land. No evidence of the **“welfare scheme”** or **“investments”** was adduced to show what contribution, monetary or otherwise, was produced by the Plaintiff or any of the family members towards the acquisition of the

suit land. On the other hand, there is the evidence by the 2nd Defendant that the late **FRANCIS OSODO** purchased the suit land for value from **GABRIEL KHADULI** and that the same is neither ancestral nor family land. Most importantly, the sale agreement is clear that it was the late **FRANCIS OSODO** who purchased the suit land from **GABRIEL KHADULI**. Surely if there was a “welfare scheme” through which funds were channelled for the purchase of the suit land, even a rudimentary record of such a scheme would have sufficed to support the Plaintiff’s case that the suit land is indeed family property. To the contrary, the documentary evidence is clear that the suit land was purchased by the late **FRANCIS OSODO** alone. It was not therefore held by the late **FRANCIS OSODO** under any trust including a constructive trust as defined in the case of **TWALIB HATAYAN TWALIB HATAYAN & ANOTHER -V- SAID SAGGAR AHMED AL HEIDY & OTHERS 2015 eKLR** as follows:

“A constructive trust is an equitable remedy imposed by the Court against one who has acquired property by wrong-doing. ... it arises

where the intention of the parties cannot be ascertained. If the circumstances of the case are such as would demand that equity treats the legal owner as a trustee, the law will impose a trust. A constructive trust will thus automatically arise where a person who is already a trustee takes advantage of his position for his own benefit.”

From what I have already stated above, there is no evidence adduced by the Plaintiff to justify the invocation of a constructive trust or that the Plaintiff and his family are entitled to a share of 50% of the suit land. A share of 50% in land or any other property is a matter of mathematics to be proved by numbers. It is not a figure to be plucked from the air. The Plaintiff cannot just pick that figure and throw it at the Court yet he has not demonstrated what contribution he or any of his family member made towards the acquisition of the suit land.

24. This prayer must therefore be declined as not proved to the required standard.

2. A DECLARATION THAT THE PLAINTIFF HAS ACQUIRED THE SUIT LAND BY WAY OF ADVERSE POSSESSION.

- 25.** To sustain a claim to land by way of adverse possession, the Plaintiff was required to prove that he has been in exclusive possession thereof openly and as of right and without interruption for 12 years after dispossessing the registered proprietor - see **KASUVE -V- MWAANI INVESTMENTS LTD & 4 OTHERS 2004 I KLR, MATE GITABI -V- JANE KABUBU MUGA** alias **JANE KABURU MUGA & 3 OTHERS 2017 eKLR** and also **MTANA LEWA -V- KAHINDI NGALA MWAGANDI 2015 eKLR** among other cases. It is clear from the certificate of search that the suit land was registered in the name of the 2nd Defendant since 10th November 2020. A copy of the title deed shows that it was registered in the name of a **FRANCIS OSODO** on 22nd May 2008. It is the Plaintiff's case that he and his family settled on the suit land according to the wishes of their late father and as agreed **"and utilized the land for agricultural farming and as their family homestead"** - see paragraph 6 of the Originating Summons and paragraph 9 of the supporting

affidavit. In response to that claim, the 1st Defendant has averred in paragraph 14 of her replying affidavit that **“the suit property SAMIA/BUBURI/713 is situated in Samia sub-County and the Applicant resides in Bunyala sub-County, the property was vacant when Paul Wanyama Khaduli the 2nd Respondent herein came to purchase the same.”**

26. On his part, the 2nd Defendant averred in paragraphs 16 and 17 of his replying affidavit that when he purchased the suit land, it was vacant and the Plaintiff has never been in possession of the same. And although the Plaintiff pleaded that he has a **“homestead”** on the suit land, no evidence of such a home was availed. His own witness **FREDRICK TABU OUMA (PW2)** told the Court when he was cross-examined by **MR WERE** before **A. OMOLLO J** on 8th June 2022 that the Plaintiff **“has lived in Mombasa since 2008 to-date”**. The Plaintiff cannot therefore be telling the Court the truth when he avers in paragraph 10 of his supporting affidavit:

10: “That I have been living with my family, (mother and siblings) for over 12 years on

the suit land parcel known as L.R NO SAMIA/BUBURI/713 since 2008 to-date.”

Without any proof of the claim that he and his family live on the suit land, this Court must agree with the 1st Defendant's assertion that the Plaintiff infact lives in Bunyala sub-County yet the suit land is situated in Samia sub-County.

27. The Plaintiff also suggest that he has been left **“homeless and destitute”** see paragraph 17 of his supporting affidavit. Evidence has however been availed showing that when the Estate of the late **FRANCIS OSODO** was distributed vide **BUSIA HIGH COURT SUCCESSION CAUSE NO 72** of **2014**, he together with **PRISCILLAH OSODO** and **MILLICENT OSODO** acquired by transmission the land parcel **NO SAMIA/BUBURI/625**. The 1st Defendant has averred in paragraphs 6 and 7 of her replying affidavit that the orders confirming the Grant in that succession cause were infact issued by consent. This Court would therefore have expected that if indeed the Plaintiff and his family were living on the suit land from 2008 and upto the time this suit was filed in 2021, as he

has claimed, the earliest time to stake his interest should have been in 2014. I am of course aware that the succession Court would not have had the jurisdiction to determine a claim based on adverse possession. However the fact that the Plaintiff recorded a consent in the succession Court and settled on the land parcel **NO SAMIA/BUBURI/625**, casts doubt on his claim that he and his family have been “**living**” on the suit land since 2008 farming thereon without interruption for over 12 years. I am not persuaded, given those circumstances, that the Plaintiff has met the threshold of entitlement to the suit land by way of adverse possession. I must therefore dismiss that claim.

28. Having dismissed the above two claims, it follows that the claim for an order of injunction to issue restraining the sale of the suit land to any person does not fall for consideration by this Court. In any event, the suit land has already been sold to the 2nd Defendant and that transaction is now spent. It cannot be stayed as sought in paragraph (a) of the Originating Summons. It is for dismissal.

29. With regard to costs, the main protagonists in this suit are the Plaintiff and the 1st Defendant. They are family. In order not to further drive a wedge between them, the order that I make is that all the parties shall meet their own costs.

30. Ultimately therefore, and having considered all the evidence herein, I issue the following disposal orders:

- 1) The Plaintiff's suit is dismissed.**
- 2) The parties shall meet their own costs.**

BOAZ N. OLAO
JUDGE
9TH APRIL 2026

Judgment dated, signed and delivered on this 9th day of April 2026 by way of electronic mail with notice to the parties.

Right of Appeal.

BOAZ N. OLAO
JUDGE
9TH APRIL 2026