



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT ELDORET**

**E & L CASE NO. 244 OF 2016 (OS)**

**SAMUEL BARTINGEI.....1<sup>ST</sup> APPLICANT**

**DINAH CHEPTOO KENEL.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**KIPLAGAT CHEBET.....1<sup>ST</sup> RESPONDENT**

**SAMUEL LAGAT.....2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

**Samuel Bartingei and Dinah Cheptoo Kenei (*hereinafter referred to as the plaintiffs*)** have brought this suit against **Kiplagat Chebet and Samuel Lagat** claiming that they have acquired the title to the property known as **Tarakwa Languise Block 1 (Arusen) 15** by adverse possession and pray for determination of the following:

- 1. Whether the 1<sup>st</sup> applicant herein has acquired title of a portion measuring approximately 5 acres to the said land by adverse possession.*
- 2. Whether the respondent Kiplagat Chebet his heirs, agents, assigns and or successors hold the title of a portion measuring 4 acres to the said land in trust for the 1<sup>st</sup> applicant.*
- 3. Whether the 2<sup>nd</sup> applicant herein has acquired title of a portion measuring approximately 5 acres to the said land by adverse possession.*
- 4. Whether the respondent Kiplagat Chebet his heirs, agents, assigns and or successors hold the title of a portion measuring 4 acres to the said land in trust for the 1<sup>st</sup> applicant.*
- 5. That the title held by respondent in respect of the said parcel of land got extinguished on the expiry of 12 years after the applicants took possession thereof.*

The suit is grounded on facts that:

- 1. The applicants have been in occupation of the respective portions of the suit land since 2003 continuously, openly, peacefully and uninterrupted which is in excess of 12 years.*
- 2. The applicants have always lived on the said parcel of land since the stated duration.*
- 3. The applicants have continued to openly utilize the suit land without any objection from the respondent.*

In the supporting affidavit, the 1<sup>st</sup> plaintiff states that on 23<sup>rd</sup> December, 2003 he purchased a portion measuring 4 acres of that property known as Tarakwa/Languise/Block 1 (Arusen) 15 from one Sammy Ngelel who in turn had purchased the same from the 1<sup>st</sup> respondent.

That immediately upon executing the said agreement he took possession of the portion measuring 4 acres whereof he has since established his home where he and his family have been living since then.

That since then, he has occupied the said parcel of land openly, continuously, without force without secret and without permission.

That he upon conducting a search at the land registry he learnt that the property herein is in the name of Kiplagat Chebet who is the respondent herein.

That he is counselled by his advocates, which counsel he verily believes to be true that having continuously, openly, without secrecy and without permission for over 12 years, then the respondent is holding the title on my behalf and my co-applicant.

That he swears this affidavit in support of his application to be declared and be registered as proprietor of a portion measuring 4 acres of that parcel of land known as Tarakwa/Languise/Block 1 (Arusen) 15.

Dinah Cheptoo Kenei states that on 23<sup>rd</sup> December, 2003, she purchased a portion measuring 4 acres of that property known as Tarakwa/Languise/Block 1 (Arusen) 15 from the registered owner Kiplagat Chebet who is the 1<sup>st</sup> respondent.

That immediately upon executing the said agreement she took possession of the portion measuring approximately 8.5 acres whereof she has since established her home where she and her family have been living since then.

That since then, she has occupied the said parcel of land openly, continuously, without force, without secret and without permission.

That she upon conducting a search at the Land Registry, she learnt that the property herein is in the name of Kiplagat Chebet who is the respondent herein.

That she is counselled by her advocates, which counsel she verily believes to be true that having continuously, openly, without secrecy and without permission for over 12 years, then the respondent is holding the title on her behalf and her co-applicant.

That she swears this affidavit in support of her application to be declared and be registered as proprietor of a portion measuring 8.5 acres of that parcel of land known as Tarakwa/Languise/Block 1 (Arusen) 15.

The respondents were served but failed to file replying affidavits and failed to attend the hearing. The plaintiffs testified that they have been in continuous, open non-permissive occupation of the land in dispute for 12 years. The evidence is not controverted. I do find that the plaintiffs have been in adverse possession of the suit property. I do grant orders that:

- 1. The 1<sup>st</sup> applicant herein has acquired title of a portion measuring approximately 5 acres to the said land by adverse possession.*
- 2. The respondent Kiplagat Chebet his heirs, agents, assigns and or successors hold the title of a portion measuring 4 acres to the said land in trust for the 1<sup>st</sup> applicant.*
- 3. The 2<sup>nd</sup> applicant herein has acquired title of a portion measuring approximately 5 acres to the said land by adverse possession.*
- 4. The respondent Kiplagat Chebet his heirs, agents, assigns and or successors hold the title of a portion measuring 4 acres to the said land in trust for the 1<sup>st</sup> applicant.*
- 5. The title held by respondent in respect of the said parcel of land got extinguished on the expiry of 12 years after the applicants took possession thereof.*

Costs of the suit to the plaintiffs. Orders accordingly.

**Dated and delivered at Eldoret this 10<sup>th</sup> day of September, 2019.**

**A. OMBWAYO**

**JUDGE**