



REPUBLIC OF KENYA



**Mukhwana & 34 others v Ortum Talc Limited & another (Environmental and Land Originating Summons 40 of 2020) [2025] KEELC 5603 (KLR) (22 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5603 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 40 OF 2020**

**FO NYAGAKA, J**

**JULY 22, 2025**

**BETWEEN**

**FRANCIS BARASA MUKHWANA ..... PLAINTIFF**

**AND**

**GABRIEL WATUA ..... 1<sup>ST</sup> APPLICANT**

**MOVIN WAFULA SIMIYU ..... 2<sup>ND</sup> APPLICANT**

**PRIPHER WEKESA WAULUKHANA ..... 3<sup>RD</sup> APPLICANT**

**MARTIN NYONGESA ..... 4<sup>TH</sup> APPLICANT**

**EUGENE JUMA KHAEMBA ..... 5<sup>TH</sup> APPLICANT**

**CHARLES ASEMBO SIKHUBARI ..... 6<sup>TH</sup> APPLICANT**

**FRANCIS WANJALA WAKHATELI ..... 7<sup>TH</sup> APPLICANT**

**ALEX WANJALA MORRIS ..... 8<sup>TH</sup> APPLICANT**

**JOSHUA ORIEK ONDIEK ..... 9<sup>TH</sup> APPLICANT**

**STEPHEN TINDI MABONGA ..... 10<sup>TH</sup> APPLICANT**

**ZACHARIA NDICHU REMUI ..... 11<sup>TH</sup> APPLICANT**

**FRANCIS MACHESO WAKHONGOLA ..... 12<sup>TH</sup> APPLICANT**

**JOSEPH MWASAME ..... 13<sup>TH</sup> APPLICANT**

**JOHN NGONI WANASWA ..... 14<sup>TH</sup> APPLICANT**

**JOSHUA MUTOTO WERUNGA ..... 15<sup>TH</sup> APPLICANT**

**CHRISPINUS WAMALWA KIKECHI ..... 16<sup>TH</sup> APPLICANT**

**ANITA LWIKI WAKOLI ..... 17<sup>TH</sup> APPLICANT**



SIMON KAPCHANGA MUGANDA .....	18 <sup>TH</sup> APPLICANT
SAMWELI CHESOLI BUSHURU .....	19 <sup>TH</sup> APPLICANT
SIMON PETER KHAOYA .....	20 <sup>TH</sup> APPLICANT
DAVID WAFULA WEKESA .....	21 <sup>ST</sup> APPLICANT
JOHN GODWIN WANWASI .....	22 <sup>ND</sup> APPLICANT
HASSAN KADEI WEPUKHULU .....	23 <sup>RD</sup> APPLICANT
JANET WAFULA WAMOCHA .....	24 <sup>TH</sup> APPLICANT
ISAAC WANGILA WAKHATELI .....	25 <sup>TH</sup> APPLICANT
EMMANUEL WASWA SIMIYU .....	26 <sup>TH</sup> APPLICANT
ROSE NANJALA WANYONYI .....	27 <sup>TH</sup> APPLICANT
HUMPHREY WANJALA MUZEE .....	28 <sup>TH</sup> APPLICANT
WILBERFORCE WANJALA MASIKA .....	29 <sup>TH</sup> APPLICANT
JOHN WEKESA BENERD .....	30 <sup>TH</sup> APPLICANT
CHRISTINE CHEPWAMBOKE SAMOEI .....	31 <sup>ST</sup> APPLICANT
JOSEPH KIPROP ARAP SAMOEI .....	32 <sup>ND</sup> APPLICANT
NYONGESA MASINDE .....	33 <sup>RD</sup> APPLICANT
ORGANIZATION (CBO .....	34 <sup>TH</sup> APPLICANT

AND

ORTUM TALC LIMITED .....	1 <sup>ST</sup> DEFENDANT
SKYVIEW INVESTMENT LIMITED .....	2 <sup>ND</sup> DEFENDANT

## JUDGMENT

1. By way of Originating Summons dated 18<sup>th</sup> March 2020, the Applicants seek the following orders;
  - a. A declaration that the Applicants have acquired their respective portions of land parcel Number 2116/841 within Kitale Municipality by way of adverse possession as hereunder;
    1. Francis Barasa Mukhwana.....0.09 Hectares
    2. Gabriel Watua .....,0.06 Hectares
    3. Movin Wafula Simiyu.....0.12 Hectares
    4. Pripher Wekesa Walukhkana.....0.11 Hectares
    5. Martin Nyongesa.....0.26 Hectares
    6. Eugene Juma Khaemba.....0.11 Hectares
    7. Charles Asembo Sikhubari.....0.13 Hectares



8. Francis Wanjala Wakhateli.....0.1 Hectares
9. Alex Wanjala Moris.....0.09 Hectares
10. Joshua Oriek Ondiek.....0.09 Hectares
11. Stephen Tindi Mabonga.....0.09 Hectares
12. Zacharia Ndichu Remui.....0.09 Hectares
13. Francis Macheso Wakhongola.....0.08 Hectares
14. Joseph Mwasame.....0.08hectares
15. John Ngoni Wanaswa.....0.10hectares
16. Joshua Mutoto Werunga.....0.10 Hectares
17. Chrispinus Wamalwa Kikechi.....0.10 Hectares
18. Anita Lwiki Wakoli.....0.10 Hectares
19. Simon Kapchanga Muganda.....0.11 Hectares
20. Samweli Chesoli Bushuru.....0.06 Hectares
21. Simon Peter Khaoya.....0.05 Hectares
22. David Wafula Wekesa.....0.09hectares
23. John Godwin Wanwasi.....0.09 Hectares
24. Hassan Kadei Wepukhulu.....0.09hectares
25. Janet Wafula Wamocha.....0.07hectares
26. Isaac Wangila Wakhateli.....0.07 Hectares
27. Emmanuel Waswa Simiyu.....0.16 Hectares
28. Rose Nanjala Wanyonyi.....0.07hectares
29. Humphrey Wanjala Muzee.....0.07 Hectares
30. Wilberforce Wanjala Masika.....0.05 Hectares
31. John Wekesa Benerd.....0.08hectares
32. Christine Chepwamboke Samoei....0.10 Hectares
33. Joseph Kiprop Arap Samoei.....0.14 Hectares
34. Nyongesa Masinde.....0.13 Hectares
35. Sudi Community  
Based Organization [CBO].....0.12 Hectares.

2. After directions were taken, all the Applicants became Plaintiffs and the then Respondent the Defendant. The 2<sup>nd</sup> Defendant applied to be joined as an Interested Party but on 18<sup>th</sup> May 2021 the Court granted leave for the said party to be added as a 2<sup>nd</sup> Defendant.



3. In their initial pleadings, the Applicants filed supporting affidavits individually. All the affidavits were sworn on 18<sup>th</sup> March 2020. Then they gave authority to one of them to testify on their behalf.

### **The Plaintiffs' claim**

4. The 1<sup>st</sup> Applicant was Francis Barasa Mukhwana who deponed that sometimes around 2002, he took possession of 0.09 hectares out of Land Reference No. 2116/841, Kitale Municipality, measuring 4.0 hectares, that is, 10 acres or thereabouts, situated at Bidii Location, Kwanza Sub County, Trans Nzoia County. Further, that the said land is registered in the names of Ortum Talc Limited. He annexed a copy of the Lease and marked it as FBM-1.
5. He urged that upon taking the said possession, he fenced off the 0.09 hectares and took actual occupation and established a home as can be seen from the photograph which he annexed and marked as FBM-2. Additionally, that his occupation of the 0.09 hectares has been peaceful, open, continuous and uninterrupted since 2002. He produced a copy of the local chief's letter annexed and marked as FBM-3.
6. He testified that all the other applicants in the proceedings were also in occupation various portions of land out of Land Reference Number 2116/841. He produced a subdivision plan for the land LR N0.2116/84 into 36 portions as annexure FBM-4 which they had obtained.
7. He stated that he had therefore acquired the portion of 0.09 hectares by way of adverse possession and prayed that the Respondent's registration over title No. Land L. R. Number 2116/841 be cancelled, the parcel be subdivided and he be registered as owner of the 0.09 hectares portion thereof.
8. The 2<sup>nd</sup> Applicant, Gabriel Watua, deponed that around 2002, he took possession of 0.06 hectares out of Land Reference No. 2116/841, Kitale Municipality, measuring 4.000 hectares, that is, 10 acres or thereabouts, situated at Bidii Location, Kwanza Sub County, Trans-Nzoia County. Further that the said land is registered in the names of Ortum Talc Limited, annexing a copy of the Lease as annexure GW-1.
9. He further deponed that upon taking the said possession, he fenced off the portion and took actual occupation, planted trees and has been planting maize thereon every year as can be seen from the photograph he annexed and marked as GW-2. He contended that his occupation had been peaceful, open, continuous and uninterrupted since 2002 and produced a copy of the local chief's letter annexed and marked as GW3. He urged that there is a subdivision plan for the suit land which he annexed and marked as GW-4. He maintained that he had acquired the portion of 0.06 hectares by way of adverse possession and prayed that the Respondent's registration over the suit land be cancelled, the parcel be subdivided and he be registered as owner of the 0.06 hectares portion thereof.
10. The 3<sup>rd</sup> Applicant, Movin Wafula Simiyu, deponed that around 2002, he took possession of 0.12 hectares out of Land Reference No. 2116/841, Kitale Municipality. Further, that the said land is registered in the names of Ortum Talc Limited, annexing a copy of the Lease as annexure MWS-1. He further deponed that upon taking the said possession, he fenced off the portion and took actual occupation, established a home and a church, and has been planting maize thereon every year as can be seen from the photograph he annexed and marked as MWS-2.
11. He testified that his occupation has been peaceful, open, continuous and uninterrupted since 2002 and produced a copy of the local chief's letter annexed and marked as MWS-3. He urged that there is a subdivision plan for the suit land which he annexed and marked as MWS-4. He maintained that he had acquired the portion of 0.12 hectares by way of adverse possession and prayed that the Respondent's



- registration over the suit land be cancelled, the parcel be subdivided and he be registered as owner of the portion thereof.
12. The 4<sup>th</sup> Applicant, Pripher Wekesa Walukhana, deponed that she took possession of 0.11 hectares out of the suit land which land is registered on the name of the Respondent. Further, that upon taking the said possession, she fenced off her portion and took occupation of the same. She annexed proof of the same as annexure PWW-2. She stated that her occupation has been peaceful, open continuous and uninterrupted since 2002 and annexed a copy of the local chief's letter marked as PWW-3. She urged that she has acquired her portion of the suit land by way of adverse possession. She prayed that the Respondent's registration over the suit land be cancelled, the parcel be subdivided and she be registered as owner of the portion.
  13. The 5<sup>th</sup> Applicant, Martin Nyongesa, deponed that around 2002, he took possession of 0.26 hectares out of Land Reference No. 2116/841, Kitale Municipality, measuring 4.000 hectares, that is, 10 acres or thereabouts, situated at Bidii Location, Kwanza Sub County, Trans Nzoia County. Further that the said land is registered in the names of Ortum Talc Limited, annexing a copy of the Lease as annexure MN-1.
  14. He further deponed that upon taking the said possession, he fenced off the portion and took actual occupation, constructed rental units as can be seen from the photograph he annexed and marked as MN-2A and MN-2B. He urged that his occupation has been peaceful, open, continuous and uninterrupted since 2002 and produced a copy of the local chief's letter annexed and marked as MN-3. He urged that there is a subdivision plan for the suit land which he annexed and marked as MN-4. He maintained that he had acquired the portion of 0.06 hectares by way of adverse possession and prayed that the Respondent's registration over the suit land be cancelled, the parcel be subdivided and he be registered as owner of the 0.06 hectares portion thereof.
  15. The 6<sup>th</sup> Applicant, Eugene Juma Khaemba, testified that around 2002, he took possession of 0.11 hectares out of Land Reference No. 2116/841, Kitale Municipality, measuring 4.000 hectares, that is, 10 acres or thereabouts, situated at Bidii Location, Kwanza Sub-County, Trans Nzoia County. Further, that the said land is registered in the names of Ortum Talc Limited, annexing a copy of the Lease as annexure AMW-1. He further deponed that upon taking the said possession, he fenced off the portion and took actual occupation, planted trees and has been planting maize thereon every year as can be seen from the photograph he annexed and marked as AMW-2. He urged that his occupation has been peaceful, open, continuous and uninterrupted since 2002 and produced a copy of the local chief's letter annexed and marked as AMW-3. He urged that there is a subdivision plan for the suit land which he annexed and marked as AMW-4.
  16. He maintained that he had acquired the portion of 0.06 hectares by way of adverse possession and prayed that the Respondent's registration over the suit land be cancelled, the parcel be subdivided and he be registered as owner of the 0.06 hectares portion thereof.
  17. The 7<sup>th</sup> Applicant, Charles Asembo Sikhubari testified that around 2002, he took possession of 0.13 hectares out of Land Reference No. 2116/841, Kitale Municipality. Further that the said land is registered in the names of Ortum Talc Limited, annexing a copy of the Lease as annexure CAS-1. He further deponed that upon taking the said possession, he fenced off the portion and took actual occupation, planted trees and has been planting maize thereon every year as can be seen from the photograph he annexed and marked as CAS-2. He urged that his occupation has been peaceful, open, continuous and uninterrupted since 2002 and produced a copy of the local chief's letter annexed and marked as CAS-3.



18. Further, he urged that there is a subdivision plan for the suit land which he annexed and marked as CAS-4. He maintained that he had acquired the portion by way of adverse possession and prayed that the Respondent's registration over the suit land be cancelled, the parcel be subdivided and he be registered as owner of the portion thereof.
19. The 8<sup>th</sup> Applicant, Francis Wanjala Wakhateli, the Chairperson of the 36<sup>th</sup> Applicant, deponed that sometimes around 2002, he took possession of 0.10 hectares out of Land Reference No. 2116/841 Kitale Municipality. Further, the 35<sup>th</sup> Applicant is in occupation of 0.12 Hectares meant for an ECD Centre. He urged that the land is registered in the names of Ortum Talc Limited, and a copy of the Lease was annexed and marked FWW-1. He further deponed that upon taking possession, he fenced off the 0.10 hectares and took actual occupation, established a home, planted trees and have been growing beans every year thereon since then as can be seen from the photograph annexed and marked FWW-2.
20. He urged that his occupation of the 0.10 hectares portion has been peaceful, open, continuous and uninterrupted since 2002. He stated that he had therefore acquired the portion of 0.10 hectares by way of adverse possession. He prayed the court cancel the Respondents' title and the same be subdivided and he be registered as owner of the 0.10 hectares portion thereof.
21. The 9<sup>th</sup> Applicant, Alex Wanjala Morris deponed that around 2002, he took possession of 0.06 hectares out of Land Reference No. 2116/841, Kitale Municipality. Further that the said land is registered in the names of Ortum Talc Limited, annexing a copy of the Lease as annexure AWM-1. He further deponed that upon taking the said possession, he fenced off the portion and took actual occupation, planted trees and has been planting maize thereon every year as can be seen from the photograph he annexed and marked as AMW-2. He urged that his occupation has been peaceful, open, continuous and uninterrupted since 2002 and produced a copy of the local chief's letter annexed and marked as AMW3.
22. He urged that there is a subdivision plan for the suit land which he annexed and marked as AMW-4. He maintained that he had acquired the portion of 0.06 hectares by way of adverse possession and prayed that the Respondent's registration over the suit land be cancelled, the parcel be subdivided and he be registered as owner of the 0.06 hectares portion thereof.
23. The 10<sup>th</sup> Applicant, Charles Omondi Bitoyo deponed that around 2002, he took possession of 0.06 hectares out of Land Reference No. 2116/841, Kitale Municipality. Further that the said land is registered in the names of Ortum Talc Limited, annexing a copy of the Lease as annexure JOO-1. He further deponed that upon taking the said possession, he fenced off the portion and took actual occupation, planted trees and has been planting vegetables thereon every year as can be seen from the photograph he annexed and marked as JOO-2.
24. He urged that his occupation has been peaceful, open, continuous and uninterrupted since 2002 and produced a copy of the local chief's letter annexed and marked as JOO-3. He urged that there is a subdivision plan for the suit land which he annexed and marked as JOO-4. He maintained that he had acquired the portion of 0.09 hectares by way of adverse possession and prayed that the Respondent's registration over the suit land be cancelled, the parcel be subdivided and he be registered as owner of the portion thereof.
25. The 11<sup>th</sup> Applicant was Stephen Tindi Mabonga. He deponed that around 2002, he took possession of 0.09 hectares out of Land Reference No. 2116/841, Kitale Municipality, measuring 4.000 hectares, that is, 10 acres or thereabouts, situated at Bidii Location, Kwanza Sub-County, Trans Nzoia County. Further, that the said land is registered in the names of Ortum Talc Limited, annexing a copy of the Lease as annexure STM-1. He further deponed that upon taking the said possession, he fenced off the



- portion and took actual occupation, planted trees, constructed rentals thereon as can be seen from the photograph he annexed and marked as STM-2.
26. He urged that his occupation has been peaceful, open, continuous and uninterrupted since 2002 and produced a copy of the local chief's letter annexed and marked as STM-3. He urged that there is a subdivision plan for the suit land which he annexed and marked as STM-4. He maintained that he had acquired the portion of 0.09 hectares by way of adverse possession and prayed that the Respondent's registration over the suit land be cancelled, the parcel be subdivided and he be registered as owner of the 0.06 hectares portion thereof.
  27. The 12<sup>th</sup> Applicant, Zachariah Ndichu, deponed that around 2002, he took possession of 0.09 hectares out of Land Reference No. 2116/841, Kitale Municipality, measuring 4.000 hectares, that is, 10 acres or thereabouts, situated at Bidii Location, Kwanza Sub-County, Trans Nzoia County. Further, that the said land is registered in the names of Ortum Talc Limited, annexing a copy of the Lease as annexure ZNR-1. He further deponed that upon taking the said possession, he fenced off the portion and took actual occupation, planted trees and has been planting maize thereon every year as can be seen from the photograph he annexed and marked as ZNR-2.
  28. He urged that his occupation has been peaceful, open, continuous and uninterrupted since 2002 and produced a copy of the local chief's letter annexed and marked as ZNR-3. He urged that there is a subdivision plan for the suit land which he annexed and marked as ZNR-4. He maintained that he had acquired the portion of 0.09 hectares by way of adverse possession and prayed that the Respondent's registration over the suit land be cancelled, the parcel be subdivided and he be registered as owner of the portion thereof.
  29. The 13<sup>th</sup> Applicant, Francis Macheso Wakhongola, deponed that around 2002, he took possession of 0.08 hectares out of Land Reference No. 2116/841, Kitale Municipality, measuring 4.000 hectares, that is, 10 acres or thereabouts, situated at Bidii Location, Kwanza Sub-County, Trans Nzoia County. Further, that the said land is registered in the names of Ortum Talc Limited, annexing a copy of the Lease as annexure FMW-1. He further deponed that upon taking the said possession, he fenced off the portion and took actual occupation, planted trees and has been planting bananas thereon every year as can be seen from the photograph he annexed and marked as FMW-2.
  30. He urged that his occupation has been peaceful, open, continuous and uninterrupted since 2002 and produced a copy of the local chief's letter annexed and marked as FMW-3. He urged that there is a subdivision plan for the suit land, which he annexed and marked as FMW-4. He maintained that he had acquired the portion of 0.08 hectares by way of adverse possession and prayed that the Respondent's registration over the suit land be cancelled, the parcel be subdivided and he be registered as owner of the portion thereof.
  31. The 14<sup>th</sup> Applicant, Joseph Mwasame, deponed that around 2002, he took possession of 0.08 hectares out of Land Reference No. 2116/841, Kitale Municipality. Further, that the said land is registered in the names of Ortum Talc Limited, annexing a copy of the Lease as annexure JM-1. He further deponed that upon taking the said possession, he fenced off the portion and took actual occupation, planted trees and has been planting maize thereon every year as can be seen from the photograph he annexed and marked as JM-2.
  32. He urged that his occupation has been peaceful, open, continuous and uninterrupted since 2002 and produced a copy of the local chief's letter annexed and marked as JM-3. He urged that there is a subdivision plan for the suit land, which he annexed and marked as JM-4. He maintained that he had acquired the portion of 0.08 hectares by way of adverse possession and prayed that the Respondent's



- registration over the suit land be cancelled, the parcel be subdivided and he be registered as owner of the portion thereof.
33. The 15<sup>th</sup> Applicant, John Ngoni Wanaswa, deponed that around 2002, he took possession of 0.08 hectares out of Land Reference No. 2116/841, Kitale Municipality. Further, that the said land is registered in the names of Ortum Talc Limited, annexing a copy of the Lease as annexure JNM-1. He further deponed that upon taking the said possession, he fenced off the portion and took actual occupation, planted trees and has been planting maize thereon every year as can be seen from the photograph he annexed and marked as JNM-2. He urged that his occupation has been peaceful, open, continuous and uninterrupted since 2002 and produced a copy of the local chief's letter annexed and marked as JNM-3.
  34. He urged that there is a subdivision plan for the suit land which he annexed and marked as JNM-4. He maintained that he had acquired the portion of 0.08 hectares by way of adverse possession and prayed that the Respondent's registration over the suit land be cancelled, the parcel be subdivided and he be registered as owner of the portion thereof.
  35. The 16<sup>th</sup> Applicant, Joseph Mwasame deponed that around 2002, he took possession of 0.10 hectares out of Land Reference No. 2116/841, Kitale Municipality. Further that the said land is registered in the names of Ortum Talc Limited, annexing a copy of the Lease as annexure JMW-1. He further deponed that upon taking the said possession, he fenced off the portion and took actual occupation, and established a home as can be seen from the photograph he annexed and marked as JMW-2. He urged that his occupation has been peaceful, open, continuous and uninterrupted since 2002 and produced a copy of the local chief's letter annexed and marked as JMW-3.
  36. He stated that there is a subdivision plan for the suit land which he annexed and marked as JMW-4. He maintained that he had acquired the portion of 0.10 hectares by way of adverse possession and prayed that the Respondent's registration over the suit land be cancelled, the parcel be subdivided and he be registered as owner of the portion thereof.
  37. The 17<sup>th</sup> Applicant, Chrispinus Wamalwa Kikechi, deponed that around 2002, he took possession of 0.10 hectares out of Land Reference No. 2116/841, Kitale Municipality. Further, that the said land is registered in the names of Ortum Talc Limited, annexing a copy of the Lease as annexure CWK-1. He further deponed that upon taking the said possession, he fenced off the portion and took actual occupation, planted trees and bananas as can be seen from the photograph he annexed and marked as CWK-2.
  38. His evidence was that his occupation has been peaceful, open, continuous and uninterrupted since 2002 and he produced a copy of the local chief's letter annexed and marked as CWK-3. He urged that there is a subdivision plan for the suit land which he annexed and marked as CWK-4. He maintained that he had acquired the portion of 0.10 hectares by way of adverse possession and prayed that the Respondent's registration over the suit land be cancelled, the parcel be subdivided and he be registered as owner of the portion thereof.
  39. The 18<sup>th</sup> Applicant, Anita Lwiki Wakoli, deponed that around 2002, he took possession of 0.10 hectares out of Land Reference No. 2116/841, Kitale Municipality. Further, that the said land is registered in the names of Ortum Talc Limited, annexing a copy of the Lease as annexure ALW-1. He further deponed that upon taking the said possession, he fenced off the portion and took actual occupation, planted trees and has been planting maize thereon every year as can be seen from the photograph he annexed and marked as ALW-2. He urged that his occupation has been peaceful, open, continuous and uninterrupted since 2002 and produced a copy of the local chief's letter annexed and marked as ALW-3.



40. His testimony was that there is a subdivision plan for the suit land which he annexed and marked as ALW-4. He maintained that he had acquired the portion of 0.10 hectares by way of adverse possession and prayed that the Respondent's registration over the suit land be cancelled, the parcel be subdivided and he be registered as owner of the portion thereof.
41. The 19<sup>th</sup> Applicant, Simon Kapchanga Muganda deponed that around 2002, he took possession of 0.11 hectares out of Land Reference No. 2116/841, Kitale Municipality. Further that the said land is registered in the names of Ortum Talc Limited, annexing a copy of the Lease as annexure SKM-1. He further deponed that upon taking the said possession, he fenced off the portion and took actual occupation, planted trees and established a home thereon as can be seen from the photograph he annexed and marked as SKM-2.
42. He emphasized that his occupation has been peaceful, open, continuous and uninterrupted since 2002 and produced a copy of the local chief's letter annexed and marked as SKM-3. He urged that there is a subdivision plan for the suit land which he annexed and marked as JM-4. He maintained that he had acquired the portion of 0.11 hectares by way of adverse possession and prayed that the Respondent's registration over the suit land be cancelled, the parcel be subdivided and he be registered as owner of the portion thereof.
43. The 20<sup>th</sup> Applicant, Samwel Chesoli Bushuru, deponed that around 2002, he took possession of 0.06 hectares out of Land Reference No. 2116/841, Kitale Municipality. Further, that the said land is registered in the names of Ortum Talc Limited, annexing a copy of the Lease as annexure SCB-1. He further deponed that upon taking the said possession, he fenced off the portion and took actual occupation, planted trees and has been planting maize thereon every year, as can be seen from the photograph he annexed and marked as SCB-2. He urged that his occupation has been peaceful, open, continuous and uninterrupted since 2002 and produced a copy of the local chief's letter annexed and marked as SCB-3.
44. His evidence was that there is a subdivision plan for the suit land which he annexed and marked as SCB-4. He maintained that he had acquired the portion of 0.06 hectares by way of adverse possession and prayed that the Respondent's registration over the suit land be cancelled, the parcel be subdivided and he be registered as owner of the portion thereof.
45. The 21<sup>st</sup> Applicant, Simon Peter Khaoya, deponed that around 2002, he took possession of 0.05 hectares out of Land Reference No. 2116/841, Kitale Municipality. Further, that the said land is registered in the names of Ortum Talc Limited, annexing a copy of the Lease as annexure SPK-1. He further deponed that upon taking the said possession, he fenced off the portion and took actual occupation, planted trees and has been planting maize thereon every year as can be seen from the photograph he annexed and marked as SPK-2.
46. He urged that his occupation has been peaceful, open, continuous and uninterrupted since 2002 and produced a copy of the local chief's letter annexed and marked as SPK-3. He urged that there is a subdivision plan for the suit land, which he annexed and marked as SPK-4. He maintained that he had acquired the portion of 0.05 hectares by way of adverse possession and prayed that the Respondent's registration over the suit land be cancelled, the parcel be subdivided and he be registered as owner of the portion thereof.
47. The 22<sup>nd</sup> Applicant, David Wafula Wekesa, deponed that around 2002, he took possession of 0.09 hectares out of Land Reference No. 2116/841, Kitale Municipality. Further, that the said land is registered in the names of Ortum Talc Limited, annexing a copy of the Lease as annexure DWW-1. He further deponed that upon taking the said possession, he fenced off the portion and took actual



- occupation, planted trees and has been planting maize thereon every year as can be seen from the photograph he annexed and marked as DWW-2. He urged that his occupation has been peaceful, open, continuous and uninterrupted since 2002 and produced a copy of the local chief's letter annexed and marked as DWW-3.
48. He urged that there is a subdivision plan for the suit land which he annexed and marked as DWW-4. He maintained that he had acquired the portion of 0.06 hectares by way of adverse possession and prayed that the Respondent's registration over the suit land be cancelled, the parcel be subdivided and he be registered as owner of the portion thereof.
  49. The 23<sup>rd</sup> Applicant, John Godwin Wanwasi, deponed that around 2002, he took possession of 0.09 hectares out of Land Reference No. 2116/841, Kitale Municipality. Further, that the said land is registered in the names of Ortum Talc Limited, annexing a copy of the Lease as annexure JDW-1. He further deponed that upon taking the said possession, he fenced off the portion and took actual occupation, planted trees and has been planting maize thereon every year as can be seen from the photograph he annexed and marked as JDW-2.
  50. He urged that his occupation has been peaceful, open, continuous and uninterrupted since 2002 and produced a copy of the local chief's letter annexed and marked as JDW-3. He urged that there is a subdivision plan for the suit land which he annexed and marked as JDW-4. He maintained that he had acquired the portion of 0.09 hectares by way of adverse possession and prayed that the Respondent's registration over the suit land be cancelled, the parcel be subdivided and he be registered as owner of the portion thereof.
  51. The 24<sup>th</sup> Applicant, Hassan Kadei Wepukhulu, deponed that around 2002, he took possession of 0.09 hectares out of Land Reference No. 2116/841, Kitale Municipality. Further, that the said land is registered in the names of Ortum Talc Limited, annexing a copy of the Lease as annexure HKW-1. He further deponed that upon taking the said possession, he fenced off the portion and took actual occupation, planted trees and has been planting maize thereon every year as can be seen from the photograph he annexed and marked as HKW-2.
  52. He urged that his occupation has been peaceful, open, continuous and uninterrupted since 2002 and produced a copy of the local chief's letter annexed and marked as HKW-3. He urged that there is a subdivision plan for the suit land which he annexed and marked as HKW-4. He maintained that he had acquired the portion of 0.09 hectares by way of adverse possession and prayed that the Respondent's registration over the suit land be cancelled, the parcel be subdivided and he be registered as owner of the portion thereof.
  53. The 25<sup>th</sup> Applicant, Janet Wafula Wamocha, deponed that around 2002, he took possession of 0.07 hectares out of Land Reference No. 2116/841, Kitale Municipality. Further, that the said land is registered in the names of Ortum Talc Limited, annexing a copy of the Lease as annexure JWW-1. He further deponed that upon taking the said possession, he fenced off the portion and took actual occupation, planted trees and has established a home as can be seen from the photograph he annexed and marked as JWW-2.
  54. He urged that his occupation has been peaceful, open, continuous and uninterrupted since 2002 and produced a copy of the local chief's letter annexed and marked as JWW-3. He urged that there is a subdivision plan for the suit land which he annexed and marked as JWW-4. He maintained that he had acquired the portion of 0.07 hectares by way of adverse possession and prayed that the Respondent's registration over the suit land be cancelled, the parcel be subdivided and he be registered as owner of the portion thereof.



55. The 26<sup>th</sup> Applicant, Isaac Wangila Wakhateli, deponed that around 2002, he took possession of 0.07 hectares out of Land Reference No. 2116/841, Kitale Municipality. Further, that the said land is registered in the names of Ortum Talc Limited, annexing a copy of the Lease as annexure IWW-1. He further deponed that upon taking the said possession, he fenced off the portion and took actual occupation, established a home, planted trees and has been planting bananas thereon every year as can be seen from the photograph he annexed and marked as IWW-2.
56. He urged that his occupation has been peaceful, open, continuous and uninterrupted since 2002 and produced a copy of the local chief's letter annexed and marked as IWW-3. He urged that there is a subdivision plan for the suit land, which he annexed and marked as IWW-4. He maintained that he had acquired the portion of 0.06 hectares by way of adverse possession and prayed that the Respondent's registration over the suit land be cancelled, the parcel be subdivided and he be registered as owner of the portion thereof.
57. The 27<sup>th</sup> Applicant, Emmanuel Waswa Simiyu deponed that around 2002, he took possession of 0.16 hectares out of Land Reference No. 2116/841, Kitale Municipality. Further that the said land is registered in the names of Ortum Talc Limited, annexing a copy of the Lease as annexure EWS-1. He further deponed that upon taking the said possession, he fenced off the portion and took actual occupation, established a home, planted trees and has been planting bananas thereon every year as can be seen from the photograph he annexed and marked as EWS-2. He urged that his occupation has been peaceful, open, continuous and uninterrupted since 2002 and produced a copy of the local chief's letter annexed and marked as EWS-3.
58. He urged that there is a subdivision plan for the suit land which he annexed and marked as EWS-4. He maintained that he had acquired the portion of 0.16 hectares by way of adverse possession and prayed that the Respondent's registration over the suit land be cancelled, the parcel be subdivided and he be registered as owner of the portion thereof.
59. The 28<sup>th</sup> Applicant, Rose Nanjala Wanyonyi, deponed that around 2002, he took possession of 0.07 hectares out of Land Reference No. 2116/841, Kitale Municipality. Further, that the said land is registered in the names of Ortum Talc Limited, annexing a copy of the Lease as annexure RNW-1. He further deponed that upon taking the said possession, he fenced off the portion and took actual occupation, planted trees and has been growing bananas thereon every year as can be seen from the photograph he annexed and marked as RNW-2. He urged that his occupation has been peaceful, open, continuous and uninterrupted since 2002 and produced a copy of the local chief's letter annexed and marked as RNW-3.
60. He urged that there is a subdivision plan for the suit land which he annexed and marked as RNW-4. He maintained that he had acquired the portion of 0.07 hectares by way of adverse possession and prayed that the Respondent's registration over the suit land be cancelled, the parcel be subdivided and he be registered as owner of the portion thereof.
61. The 29<sup>th</sup> Applicant, Humphrey Wanjala Muzee deponed that around 2002, he took possession of 0.07 hectares out of Land Reference No. 2116/841, Kitale Municipality. Further that the said land is registered in the names of Ortum Talc Limited, annexing a copy of the Lease as annexure HEWM-1. He further deponed that upon taking the said possession, he fenced off the portion and took actual occupation, planted trees and has been growing bananas thereon every year as can be seen from the photograph he annexed and marked as HWM-2. He urged that his occupation has been peaceful, open, continuous and uninterrupted since 2002 and produced a copy of the local chief's letter annexed and marked as HWM-3. He urged that there is a subdivision plan for the suit land which he annexed and marked as HWM-4.



62. He maintained that he had acquired the portion of 0.06 hectares by way of adverse possession and prayed that the Respondent's registration over the suit land be cancelled, the parcel be subdivided and he be registered as owner of the portion thereof.
63. The 30<sup>th</sup> Applicant, Wilberforce Wanjala Masika deponed that around 2002, he took possession of 0.05 hectares out of Land Reference No. 2116/841, Kitale Municipality. Further that the said land is registered in the names of Ortum Talc Limited, annexing a copy of the Lease as annexure WWM-1. He further deponed that upon taking the said possession, he fenced off the portion and took actual occupation, planted trees and has been growing bananas every year as can be seen from the photograph he annexed and marked as WMM-2.
64. He urged that his occupation has been peaceful, open, continuous and uninterrupted since 2002 and produced a copy of the local chief's letter annexed and marked as WMM-3. He urged that there is a subdivision plan for the suit land which he annexed and marked as WMM-4. He maintained that he had acquired the portion of 0.06 hectares by way of adverse possession and prayed that the Respondent's registration over the suit land be cancelled, the parcel be subdivided and he be registered as owner of the portion thereof.
65. The 31<sup>st</sup> John Wekesa Bernard deponed that around 2002, he took possession of 0.08 hectares out of Land Reference No. 2116/841, Kitale Municipality. Further, that the said land is registered in the names of Ortum Talc Limited, annexing a copy of the Lease as annexure JWB-1. He further deponed that upon taking the said possession, he fenced off the portion and took actual occupation, planted trees and has been planting maize thereon every year as can be seen from the photograph he annexed and marked as JWB-2. He urged that his occupation has been peaceful, open, continuous and uninterrupted since 2002 and produced a copy of the local chief's letter annexed and marked as JWB-3.
66. He urged that there is a subdivision plan for the suit land which he annexed and marked as JWB-4. He maintained that he had acquired the portion of 0.08 hectares by way of adverse possession and prayed that the Respondent's registration over the suit land be cancelled, the parcel be subdivided and he be registered as owner of the portion thereof.
67. The 32<sup>nd</sup> Applicant, Samwel Chesoli Bushuru, deponed that around 2002, he took possession of 0.10 hectares out of Land Reference No. 2116/841, Kitale Municipality. Further, that the said land is registered in the names of Ortum Talc Limited, annexing a copy of the Lease as annexure CCS-1. He further deponed that upon taking the said possession, he fenced off the portion and established a home as can be seen from the photograph he annexed and marked as CCS-2. He urged that his occupation has been peaceful, open, continuous and uninterrupted since 2002 and produced a copy of the local chief's letter annexed and marked as CCS-3.
68. He urged that there is a subdivision plan for the suit land which he annexed and marked as CCS-4. He maintained that he had acquired the portion of 0.10 hectares by way of adverse possession and prayed that the Respondent's registration over the suit land be cancelled, the parcel be subdivided and he be registered as owner of the portion thereof.
69. The 33<sup>rd</sup> Applicant, Joseph Kiprop Arap Samoei, deponed that around 2002, he took possession of 0.14 hectares out of Land Reference No. 2116/841, Kitale Municipality. Further, that the said land is registered in the names of Ortum Talc Limited, annexing a copy of the Lease as annexure JKAS-1. He further deponed that upon taking the said possession, he fenced off the portion and took actual occupation, and established a home as can be seen from the photograph he annexed and marked as JKAS-2.



70. He urged that his occupation has been peaceful, open, continuous and uninterrupted since 2002 and produced a copy of the local chief's letter annexed and marked as JKAS-3. He urged that there is a subdivision plan for the suit land which he annexed and marked as JKAS-4. He maintained that he had acquired the portion of 0.14 hectares by way of adverse possession and prayed that the Respondent's registration over the suit land be cancelled, the parcel be subdivided and he be registered as owner of the portion thereof.
71. The 34<sup>th</sup> Applicant, Nyongesa Masinde, deponed that around 2002, he took possession of 0.06 hectares out of Land Reference No. 2116/841, Kitale Municipality. Further, that the said land is registered in the names of Ortum Talc Limited, annexing a copy of the Lease as annexure NM-1. He further deponed that upon taking the said possession, he fenced off the portion took actual occupation, and established a home as can be seen from the photograph he annexed and marked as NM-2. He urged that his occupation has been peaceful, open, continuous and uninterrupted since 2002 and produced a copy of the local chief's letter annexed and marked as NM-3.
72. He urged that there is a subdivision plan for the suit land which he annexed and marked as NM-4. He maintained that he had acquired the portion of 0.12 hectares by way of adverse possession and prayed that the Respondent's registration over the suit land be cancelled, the parcel be subdivided and he be registered as owner of the portion thereof.
73. The 1<sup>st</sup> Respondent never entered appearance and never filed any documents. Thus, the case against it proceeded by way of formal proof.
74. The 2<sup>nd</sup> Respondent filed a replying affidavit dated 15<sup>th</sup> October 2021 sworn by Limo T. Kipkorir. He stated that she is a director of Skyview Investment Limited and that the 1<sup>st</sup> Respondent was the initial owner of the land parcel Reference Number 2116/841 within Kitale Municipality. He annexed and marked as "LTK. - 1" a copy of the Certificate of Lease in the name of the Respondent for the said land parcel. Further, that Dr. Benjamin Kipkorir spoke to the then Town Clerk of Municipal Council of Kitale who clarified that the Council had no hand in the interference. He deponed that on 2<sup>nd</sup> March 2006, the Mr. C.K. Yano wrote to the said Town Clerk to inform him of, inter alia, that Dr. Benjamin Kipkorir had resumed his activities on the said land and did not anticipate any further unnecessary hindrance. He annexed and marked as "LTK -2 a copy of the said letter dated 2<sup>nd</sup> March 2006.
75. The deponent averred that on 25<sup>th</sup> May 2011, the 2<sup>nd</sup> Respondent was issued with a demand notice by the said Municipal Council of Kitale, under the *Rating Act* [Cap 267], of Kshs.8,653,809/=. He annexed and marked as 'LTK 3' a copy of the said demand notice issued on 25<sup>th</sup> May 2011. He stated that on 20<sup>th</sup> July 2011, the 2<sup>nd</sup> Respondent was issued with another demand notice by the Municipal Council of Kitale of Kshs, 9,176,191/=. He annexed and marked as 'LTK' 4 a copy of the demand notice issued on the 20<sup>th</sup> July 2011.
76. Further, that on 26<sup>th</sup> September 2011, the 2<sup>nd</sup> Respondent was issued with another demand notice by the said Municipal Council of Kitale of kshs.9,735,021/=. He annexed and marked as 'LTK5' a copy of the demand notice. Upon receipt of the said demand notice of 26<sup>th</sup> September 2011, the 2<sup>nd</sup> Respondent went to discuss the issues of outstanding rates and rent with the said then advocate Mr. C.K. Yano who was also given instructions to institute legal proceedings against the said Mr. Ronald Walubengo Sawenja, the Councilor, for eviction as he had now moved into the said land with persons said to be Kenya Police Reservists [KPR].
77. He stated that on or about 8<sup>th</sup> December 2011, the firm of C.K. Yano & Company advocates, then acting on behalf of the Applicant, issued him with a demand letter dated the same day, demanding that the said Mr. Ronald Walubengo Sawenja together with the people he brought on the land to vacate



forthwith. He annexed and marked as 'LTK – 6' a copy of the Demand Letter dated 8<sup>th</sup> December 2011. The Respondent was issued with another demand notice from the said Kshs. 9,947,359/=, which was annexed and marked as 'LTK-l'.

78. That was the last demand notice issued in 2016, the said Director of the 2<sup>nd</sup> Respondent, who was ploughing, the said land, Dr. Benjamin Kipkorir, passed on. He annexed as 'LKT 8' a copy of the Certificate of Death. That the said Dr. Benjamin Kipkorir having been a prominent person, and the Applicants knowing that he was the person utilizing the said land, they moved into the said land and forcefully occupied through proxies who were mainly Kenya Police Reservists. He stated that the Applicants are mostly senior politicians and senior government officials in Trans Nzoia County who want to illegally take away the 2<sup>nd</sup> Respondent's land.
79. He urged that in January 2018, a public notice was issued by the Trans-Nzoia County Government that the Applicant now owed the County Government Kshs.75,610,949/= and Kshs.26,185,492. He annexed and marked as 'LTK - 9' a copy of the public notice by the County Government of Trans Nzoia. Further, some of the Applicants now work with the said County Government of Trans Nzoia.
80. He deponed that on or about the 9<sup>th</sup> January 2021, he came across another notice in a daily newspaper indicating that the said 2<sup>nd</sup> Respondent had been sued in this matter and immediately contacted his advocate to peruse the court file and establish what it was all about. He was then informed about the Originating summons filed on 2<sup>nd</sup> July 2020.

#### Hearing of the suit

81. PW1 was the 16<sup>th</sup> Applicant, Joshua Mutoto Werunga, who adopted his supporting affidavit as evidence in chief. It was his testimony that as the Bidii-based community organization [CBO], they were given a parcel of Kitale Municipality and further, that it was Hon. Kijana Wamalwa who assisted them to look for it. He made them settle on Land Parcel No. LR 2116/841 Kitale Municipality which measured about 10 acres.
82. Further, the land is situated in Bidii Area/Ward behind St. Monica Girls High School. He further testified that it was in the year 2002 and they have been in actual possession since then. He stated that people started developing portions since 2002 to date. As they did not have title, they moved the court so that they could have a title deed. After that Sky View Investment Limited started claiming the land in or about 2020. The land was initially registered in the name of Ortum Talc Limited and they were surprised that Sky view Limited could also claim the land.
83. The witness stated that they had never been in contact with the Respondent company and when they took possession, the land was forested and had no occupants. They never had any opposition or claim by anyone and the land is still registered in the name of Ortum Talc Limited. He prayed that the originating summons be allowed. He produced a copy of the lease document to show that Ortum Talc Limited is the registered owner as Pexh-1. Further, their area chief wrote recognizing them as the occupants of the area all along. He produced the letter dated 23/12/2019 as Pexh-2. He stated that when they took possession, they proposed how the land would be subdivided into 37 portions. He produced the plan and a photo of a gate of the compound where he resides. The photo was produced as Pexh-3. Additionally, he stated that he has resided on plot number 16 for over 20 years.
84. PW2 was Stephen Tindi Mabonga, the 11<sup>th</sup> Applicant. He adopted his affidavit dated 18<sup>th</sup> March 2020 as evidence in chief and stated that he sued over LR No. 2116/841, Kitale Municipality which he has been occupying 0.09 hectares. Further, that as SCBO members, they have been on the land since 2002 but when they wished to obtain a title deed, the company known as Sky view Investment Limited started claiming it was their land so they sued to obtain the land by adverse possession. When they



occupied the land, it was empty but when they searched, they found that the land was registered in the name of Ortum Talc Limited. He testified that they have been on the land since 2002 and have built on it. Further, that they are not Kenya Police Reservists. I am not aware of Kenya Police Reservists. He prayed that the claim for adverse possession be allowed. He annexed a copy of a photograph of his home he built on the land. He produced a copy of the lease certificate for LR 2116/841, Kitale municipality produced as Pexh 1 which is the same as Pexh 1 for PW1. His photograph marked as STM2 was produced as Pexh 4.

85. PW3 was Chrispinus Wamalwa Kikechi, testified that he was a member of the Sudi Based Community Organization which had 35 people whose names are as pleaded in the plaint. He added that they gave him written authority to plead on their behalf. He gave the names of his fellow Applicants as per the pleadings urging that they have sworn their respective affidavits in support of this case. He adopted each of the affidavits as their evidence in Chief except for the other witnesses who testified already before him.
86. He stated that they came to claim LR. No. 2116/841, Kitale Municipality which is approximately 10 acres. That they had been residing on it for over 21 years and in 2021, they wanted titles issued. They filed this case and thereafter, Skyview Investments Limited started claiming the parcel. It was his testimony that all the members of the group entered the land in 2002. Further, that they had never seen Skyview Investment Limited on the land and they [Skyview] never come to court. He stated that the land is registered in the name of Ortum Talc Limited which company they have never seen or know of, and that the company has never claimed the land. It was his testimony that the area Chief wrote that they were residents of the parcel of land and each of them has photographs to show how they have built. He produced the photographs of the 32 Applicants as evidence marked as Pexh-5[a] - [z] and 5[a] [i] - [vi]. He prayed that their claim for adverse possession be allowed.
87. Learned counsel sought leave for the witness file a further affidavit to include a proper plan of the area and also, the extract of title. The court granted leave to do the same. He did.
88. The witness continued with his testimony on a later date, stating that he filed a supplementary affidavit sworn on 10<sup>th</sup> March 2022 which he adopted as evidence in chief. He also produced the documents annexed to it as evidence to wit; the authority to plead marked as CWK -1 was produced as Pexh-6. PW3 stated that he had the extract of the title marked as CWK-2 which was produced as Pexh-7. He produced a copy of the sub-division plan of the same parcel as P-exh 8. He prayed that they be issued with titles to the land and costs of the suit.
89. During cross examination, he stated that they were not advised on the type of case before Court and were informed the case is an adverse possession one. That the land was owned by Ortum Talc Limited and the claimants have no relationships with the Respondents. They all entered the land at the same time in 2002 although he could not recall the exact date. They were not informed as to what developments the Part Development Plan required and he had never heard that the land was set aside for building factories. He was shown Pexh-8 which was the sub-division plan of the area and stated that the plan shows that it was “proposal sub-division and change of user” of LR No. 2116/841 into 36 portions. He stated that he had no evidence as to which user was to be changed and that the change of user was put in the Gazette or advertised. He stated that the advert was in the Daily Nation but he could not remember which year that was. He further testified that in the subdivision plan [Pexh-8], the client was shown as Ortum Talc Limited. He stated that they are not related to Ortum Talc.
90. He testified that when they were following up on the sub-division of the plan, the sitting in-charge planner of Trans-Nzoia was one Beatrice. They came to the ground and took measurement and confirmed the 36 families or persons on the ground. Further, that the 18<sup>th</sup> Applicant is a member of



- their group but he did not know which position she held in the County Planning Office at the time of sub-division plan. He stated that they only learnt of the 2<sup>nd</sup> Respondent when they sued. He further stated that it is not true that as at 2006 there was nobody occupying the land or that on 1<sup>st</sup> March 2006, there was a dispute on the land between Dr. Benjamin Edgar Kipkorir and Councilor Sawenja.
91. When shown DMFI-4 he stated that he was not aware that on 2<sup>nd</sup> March 2006, a lawyer wrote to the Municipal Council about the use of the land by councilor Sawenja. He denied any knowledge that Sky View was asked by the Municipal Council to pay Kshs. 8,653,809 when shown 2DMFI-5. He denied knowing whether the 2<sup>nd</sup> Respondent was required to pay Kshs. 9,176,109 in 2011 or that on 8<sup>th</sup> December Councilor Ronald Sawenja was 'demanded' to vacate the land. He denied knowledge of any demands from the County Council and denied that the land was being guarded by KPR [Kenya Police Reservists].
  92. It was his testimony that in 2018 they took steps to get documents to show the sub-division because they were only planning to process titles. That 2018 is the time they had gotten enough money. He stated that they have been paying land rates as the occupants of the land and that they visited the office of the Physical Planner who sent an officer to the ground. He checked on the occupation, made measurements and then went to the office to make the map. That is how the sub-division plan was brought into existence and they wrote for the sub-division plan to be made.
  93. When the matter came up for hearing on 12<sup>th</sup> October 2023, Counsel for the Applicant intimated to the court that they had withdrawn the suits by the 18<sup>th</sup> and 28<sup>th</sup> Applicants. The court then marked the case of the 18<sup>th</sup> and 28<sup>th</sup> Applicant as withdrawn with costs to the 1<sup>st</sup> Respondent.
  94. Additionally, it came to light that the 10<sup>th</sup> Applicant, Joshua Oriek Ondiek died in the course of the proceedings and was not substituted before the lapse of twelve months or soon thereafter. Thus, as at 22<sup>nd</sup> May 2023 his counsel moved the Court to mark his suit as having abated. It was marked as such.
  95. PW4 was John Godwin Wanwasi who adopted his affidavit sworn on 18<sup>th</sup> March 2020 adopted as evidence in chief. He stated that he entered in occupation of the land in 2002 and was given the land through an allotment letter by the Municipal Council. That the land in issue is LR 2116/841 Kitale Municipality and he occupied 0.09Ha. Further, that he has resided on the land for over 20 years and still resides there. He prayed for adverse possession against Ortum Talc.
  96. During Cross-examination, he stated that he was given the land by the Trans Nzoia Municipality as an individual. That he was given 0.09Ha and that he has built a house on the land which he attached to his affidavit. He however, could not recall the officer who gave him the allotment. Further, he has not seen the defence by Skyview Investment Limited. Further, he pays rates of Kshs. 5,540 and is up to date.
  97. The Applicants closed their case and the 2<sup>nd</sup> Respondent called one witness in support of its case.
  98. DW1 was Limo Taboi Kipkorir who adopted the response dated 15<sup>th</sup> October 2021 as evidence in chief. He also produced the documents attached to the Affidavit. A copy of a faxed copy of a lease was produced as 2Dexh-1, a Letter dated 2.3.2006 was produced as 2Dexh-2 and a Demand notice issued on 25<sup>th</sup> May 2011 as 2Dexh-3. A Copy of demand notice issued on 20<sup>th</sup> July 2011 was produced as 2Dexh-4 and a Demand notice [original] dated 8<sup>th</sup> December 2011 was produced as 2Dexh-5. The Demand notice [copy] of 25<sup>th</sup> May 2012 as 2Dexh-6, Certificate of death of late Benjamin Edgar Kipkorir as 2Dexh-7, Public Trustee [a copy] by County Government of Trans Nzoia dated 9<sup>th</sup> January 2021 as 2Dexh-8, a Copy of Grant for LR No. 38513 as 2Dexh-9, Public notice for advertisement of the suit against the 1<sup>st</sup> Respondent as 2Dexh-10.



99. During cross-examination he stated that the 2<sup>nd</sup> Respondent is a company that was incorporated on a date he did not have in court. He stated that there is a certificate of incorporation, but he did not have a copy of it with him. Further, the company has directors and he is one of the directors. He conceded that he had not provided a resolution of the company and that he swore at paragraph 3 3}} that the initial owner of the land was the 1<sup>st</sup> Respondent while at paragraph 27 27}} he stated that the suit land belonged to the 2<sup>nd</sup> Respondent. It was his testimony that the owner of the land is Skyview Investment Limited who brought it from Ortum Talc and there was an incomplete transfer of the land of November 1990 when the purchase was done.
100. He conceded that he did not have an agreement to show there was a purchase in 1990. When referred to Dexh-1, the Certificate of Lease, he stated that it was in the name of Samuel Mwaura Mukura for Kitale Municipality Block 5/158. Further, that he was the owner and director of Skyview Investigate Limited and at the time his father bought the land he was a farmer. He stated that among the 34 Applicants, there are those in the Kenya Police Reservists but he couldn't confirm. He did not see any senior politician among the 34 but believed some were at one time a councilor. When referred to 2 Dexh-2 he stated that it was a letter from Yano and Company Advocates but did not have a letterhead. That 2Dexh-6 was another demand letter from Yano and Company Advocates that was not signed.
101. When the witness was referred to D.exh 3, 4, 5 and 7 he stated that they were demand notices and that 2Dexh 3 was a letter of 25<sup>th</sup> May 2011. The plot number was 841 location market is section 6 block no. 2116. When referred to 2Dexh-4, he stated that it was another demand for plot 841 market section 6 Block no. 2116. When referred to 2Dexh-5, he stated that the plot number was 954 location market and Milimani Block No. 2116/7.
102. The witness was referred 2Dexh-8 and stated that it was a public notice where Skyview Investment Limited appears. That on the notice the Block number is 2116/ plot No. 841. The customer's name was Skyview Investments Limited, and the physical address was Maziwa Road. He stated that the documents relate to the one in dispute but in 2 Dexh-5 the plot No. is 954. He maintained that it is the land in dispute and they do not know what has changed in the Municipality about plots.
103. He further testified that when they moved into the land, it was reported to the police and the Municipality. He knew that a report was done but he was not sure it was attached to the affidavit. That the land is still occupied. He conceded that he had no evidence other than the attempt to plough in 2006 that the company took possession.
104. In response to a question by the court, the witness stated that he had not produced a copy of the agreement and that there was an incomplete transfer of the land. Further, the land is still in the name of Ortum Talc Limited.
105. The 2<sup>nd</sup> Respondent closed its case and the parties were directed to file submissions.

### **Applicant's submissions**

106. Learned counsel for the Applicant filed submissions dated 30<sup>th</sup> September 2024. He urged that it is not in dispute that Ortum Talc Limited is registered as the owner of Land Reference Number 2116/841, IR Number 117925, measuring 4.000 hectares within Kitale Municipality, by virtue of a Grant made on 1st August 1983 under the Registration of Titles Act. Further, that it was the respective Applicants' cases that around the year 2002 they took actual possession of their respective portions within the said parcel of land which they have since retained openly, continuously and uninterrupted until the filing of this suit and to date. Further, that the evidence produced by the Applicants indeed confirms that they



have undertaken various permanent developments, including establishment of homes, which evidence was not controverted by the Respondents.

107. Counsel cited the case of *Mtana Lewa v Kahindi Ngala Mwangandi* [2015] eKLR and urged that this doctrine of adverse possession in Kenya is embodied in section 7 as read with section 38 of the *Limitation of Actions Act*. Further, that by section 7 of the said Act an owner of land may not recover the land after the lapse of 12 years. He additionally stated that Section 38 [1] confers jurisdiction on this court.
108. On whether the Applicants have had possession of the respective portions in Land Reference Number 2116/841, Kitale Municipality for over twelve [12] years, counsel submitted in the affirmative. That the same possession has been open, peaceful, and continuous and un-interrupted. He cited the case of *Maweu vs. Liu Ranching and Fannins Cooperative Society* 1985 KLR 430 in this regard. Counsel submitted that in the present case, it is clear that the Applicants have in fact established homes on their respective portions. The local administration corroborated this by a letter from the Chief Bidii Location in whose area the land is situated. Further, that the Applicants have subdivision plan with clearly defined boundaries of their portions.
109. Regarding whether the Applicants had acquired ownership of the respective portions in Number 2116/841, Kitale Municipality by way of adverse possession, counsel submitted that from the evidence on record, it is not in dispute that the Applicants have been in occupation of their respective portions of land from around the year 2002 and before. This Originating Summons was filed in court on 2<sup>nd</sup> July 2020, a period of 18 years since 2002. Additionally, he urged that the Applicants have established homes on the land and the local administration confirms that the Applicants are in fact in such possession. Counsel posited that in this regard, it cannot be controverted that the Applicants' occupation has been open. On the other hand no evidence was forthcoming from the Respondents to controvert this fact. Further, he submitted that there was no evidence from the Respondents that they had initiated any proceedings against the Applicants within the period of 12 years beginning 2002.
110. He prayed the Courts find this suit merited and grant the prayers sought in the said Summons.

### **Respondents' Submissions**

111. Learned counsel for the Respondents filed submissions dated 17<sup>th</sup> December 2024. Counsel urged that the Applicants have relied on, inter alia, the Lease/Grant No. I.R. 38513 for all that piece of land situate in Kitale Municipality in the Trans Nzoia District containing by measurement 4.000 hectares of thereabouts that is to say L.R. No. 2116/841 which said piece of land is delineated on the plan annexed thereto and more particularly on Land Survey Plan Number 117905 deposited in the Survey Records Office at Nairobi to hold for a term of ninety nine [99] years from 1<sup>st</sup> day of August 1983. He stated that the Lease is subject to the Special Conditions contained on the face of the lease document, totaling to 16 in number. From the same, there are two said conditions relevant to the proceedings i.e. special conditions 5 and 9 which he reproduced.
112. Counsel urged that in Kenya, the doctrine of adverse possession allows individuals to claim ownership of land they have openly, continuously, and without permission. However, when it comes to land designated by law for specific uses, such as industrial purposes, courts have been cautious about granting adverse possession claims that conflict with zoning laws and public policy, which regulate land development and societal welfare. He urged that zoning laws in Kenya outline permissible uses for different parcels of land, helping to maintain organized development and prevent land-use conflicts. He gave an example of land designated for industrial use is meant for activities that support economic functions like factories or manufacturing facilities, urging that constructing a residential property on



such land would contravene these zoning laws and could not be used to claim adverse possession under public policy protections.

113. Counsel urged that if a claimant constructs residential buildings on industrial land and then seeks adverse possession, the claim is to be denied on grounds of public policy. Further, that the doctrine of adverse possession does not override statutory requirements established to safeguard the public interest in structured land use. He cited section 56 of the *Physical and Land Use Planning Act* No. 13 of 2019 and further, urged that section 57 of the same Act prohibits any development within a county that without a proper authorization from the County Government, requiring development permission to ensure compliance with approved land use.
114. Counsel cited section 66[1] [b] of the *Land Act* No.6 of 2012 and urged that Article 40[6] of *the Constitution* of Kenya protects property rights but explicitly excludes property acquired, unlawfully, reinforcing that adverse possession cannot apply when land use violates zoning regulations or statutory restrictions. He urged that the Kenyan Courts have consistently upheld zoning laws and public policies that prevent unauthorized development from transforming the purpose of the land.
115. That even if someone has occupied the land continuously for 12 years, adverse possession cannot override lawful land use designations, as this would disrupt land use planning and public interest. Further, that in the case of *Mtana Lewa v. Kahindi Ngala Mwangandi* [2015] eKLR, the Court of Appeal emphasized that adverse possession must align with constitutional values and public policy. He stated that he would find a law that gives a land owner a period of 12 years to assert his right to land, which he has allowed to be occupied by another person, openly, peacefully as of right and with clear intention of dispossessing him [animus possidendi], to be in conflict with the purpose, values and principles of *the Constitution*. He prayed the Court to find that the claim by the Applicants for adverse possession is an affront to express provisions the law and a much cannot stand.
116. On elements of Adverse Possession, counsel urged that while the Applicants were claiming to have been in peaceful, continuous, uninterrupted occupation of the suit land since the beginning of the year 2002, the 2<sup>nd</sup> Respondent has adduced evidence through the Replying Affidavit by Limo T. Kipkorir that disrupts such allegations by the said Applicants. He reproduced the contents therein and urged that it is clear that the Applicants have not demonstrated the elements of adverse possession as provided by law. He prayed that the same be dismissed with costs to the 2<sup>nd</sup> Respondent.

### **Analysis & Determination**

117. This Court has considered the claim and response, the law, the evidence and the submissions of the parties. It is of the view that three issues arise for determination in this matter. They are:
  1. Whether the 2<sup>nd</sup> Respondent has locus standi
  2. Whether the 2<sup>nd</sup> Defendant could recover the land after twelve years of non-occupation
  3. Whether the Applicants have acquired possession of land parcel Number 2116/841 within Kitale Municipality by way of adverse possession
  4. Who to bear the costs of the suit.
118. The Court begins its analysis by looking at each of them sequentially. One is,



## 1. Whether the 2<sup>nd</sup> Respondent has locus standi

119. In the case of *Law Society of Kenya v Commissioner of Lands & Others*, Nakuru High Court Civil Case No.464 of 2000, the court held as follows:-

“Locus Standi signifies a right to be heard, A person must have sufficiency of interest to sustain his standing to sue in Court of Law”. Further in the case of *Alfred Njau and Others v City Council of Nairobi* [1982] KAR 229, the Court also held that:-

“the term Locus Standi means a right to appear in Court and conversely to say that a person has no Locus Standi means that he has no right to appear or be heard in such and such proceedings”.

120. The 2<sup>nd</sup> Respondent being a company, there are certain requirements that must be fulfilled by a party. Order 4 Rule 4 of the Civil Procedure Rules provides;

“Where the Applicant sues in a representative capacity the plaint shall state the capacity in which he sues and where the Respondent is sued in a representative capacity the plaint shall state the capacity in which he is sued, and in both cases it shall be stated how that capacity arises”.

121. In *Makupa Transit Shade Limited & another v Kenya Ports Authority & another* [2015] eKLR, the Court of Appeal held that:

“In our view, the Authority, as with other corporate bodies, has its affidavits deposed on its behalf by persons with knowledge of the issues at hand who have been so authorized by it. It was therefore sufficient for the deponents to state that “they were duly authorized.”

...

It was then up to the appellants to demonstrate by evidence that they were not so authorized”.

122. The same position was echoed in the persuasive authority in the case of *Eye Company [K] Limited v Erastus Rotich T/a Vision Express* [20201] eKLR where Ngetich J held that:-

“In view of the above, it is clear that it was sufficient for the authorized person to depose that he or she was duly authorized, but in the event of a complaint that such person was unauthorized, it was up to the disputing party to demonstrate with evidence that the deponent did not have the requisite authority.”

123. I have perused the pleadings. I have taken note of the 2<sup>nd</sup> Respondents’ witness’ concession that he did not have a resolution to depone the affidavit in response to the Summons. The outcome of the same can only be that the 2<sup>nd</sup> Respondent failed to provide any evidence that the deponent had the capacity to swear the affidavit in response to the summons. There ought to have been produced written Minutes of the Company by which a specific resolution was made to give the deponent authority to plead and also swear the affidavits in that behalf.

124. I am cognizant of the fact that the 2<sup>nd</sup> Defendant/Respondent did file a written authority dated 9<sup>th</sup> February 2021 which was done on 12<sup>th</sup> February 2021. By it, one George Oraro SC stated that he is the sole director of Skyview Investment Limited and gave authority to one Limo T. Taboi to plead, appear and act generally in the matter. The question that begs an answer is whether the document



is a Resolution of the Company which authorizes the person named to act for and on behalf of the company.

125. Section 262 of the *Companies Act* requires that a resolution of the Company be made in writing upon a meeting having been called for such. And how does the Resolution get passed and communicated? The Act provides for the procedure of doing this. In the instant case, the document signed and dated 9<sup>th</sup> February 2021 does not in any way purport to be a resolution of the company made at a meeting called to discuss that fact of representation in the suit. It is a mere document signed by an individual who states that he is the sole director of the company. It is not even sealed by the company seal to conform that indeed such a company gave such an authority in a resolution. There is and ought to be a distinction between a sole proprietorship and a company as was enunciated in the seminal case of *Salomon v. Salomon & Co Ltd* [1897] AC 22. It appears to me that the document relied on by the 2<sup>nd</sup> Defendant as authorizing Limo T. Taboi to act is drawn by an individual who is a sole proprietor and not the company itself. Even its wording is clear on this as it reads, “Mr. George Oraro SC, Director Skyview Investment”. It does not in any way purport to emanate from the Company and out of a Resolution of the company. This Court does not regard it as a Resolution authorizing the said Limo T. Taboi to represent the company.
126. The 2<sup>nd</sup> Respondent cannot be said to have a reasonable defence to their claim for that matter. The 2<sup>nd</sup> respondent therefore lacks locus standi in this suit and any defence it raised was of no value against the claim by the Plaintiffs.

## **2. Whether the 2<sup>nd</sup> Defendant could recover the land after twelve years of non-occupation**

127. In any event, even if the said Defendant had an agreement that it bought the land from the 1<sup>st</sup> Defendant or established the fact that it indeed was the owner, it could not succeed in the defence to the plaintiffs’ case because the said Plaintiffs had resided on the land for a period longer than twelve years. Therefore, in terms of Sections 7, 13 and 17 of the *Limitation of Actions act* as explained below, the 2<sup>nd</sup> Defendant’s title, if ever it existed, stood extinguished after that period and it could not recover the land from the Plaintiffs.

## **3. Whether the Applicants acquired possession of land parcel Number 2116/841 within Kitale Municipality by way of adverse possession**

128. The doctrine of adverse possession is embodied in Section 7 of the *Limitation of Actions Act*, which is in these terms:-

“An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.”

129. The *Limitation of Actions Act* makes further provision for adverse possession at Section 13 that:

“[1] A right of action to recover land does not accrue unless the land is in the possession of some person in whose favour the period of limitation can run [which possession is in this Act referred to as adverse possession], and, where under sections 9, 10, 11 and 12 a right of action to recover land accrues on a certain date and no person is in adverse possession on that date, a right of action does not accrue unless and until some person takes adverse possession of the land.



[2] Where a right of action to recover land has accrued and thereafter, before the right is barred, the land ceases to be in adverse possession, the right of action is no longer taken to have accrued, and a fresh right of action does not accrue unless and until some person again takes adverse possession of the land.

[3] For the purposes of this section, receipt of rent under a lease by a person wrongfully claiming, in accordance with section 12 [3], the land in reversion is taken to be adverse possession of the land.”

130. Under section 38 of the *Limitation of Actions Act*, a party may approach the court for a declaration that the property devolved to it in accordance with the doctrine of adverse possession. Section 38[1] of the Act states as follows;

“Where a person claims to have become entitled by adverse possession to land registered under any of the Acts cited in section 37, or land comprised in a lease registered under any of those Acts, he may apply to the High Court for an order that he be registered as the proprietor of the land or lease in place of the person then registered as a proprietor of the land.”

131. In the locus classicus of *Mtana Lewa v Kahindi Ngala Mwangandi* [2015] eKLR, the court said;-

“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, 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 nor under the license of the owner. It must be adequate in continuity, in publicity and in extent to show that possession is adverse to the title owner”.

132. It follows that in order for a claim of adverse possession to succeed there are certain conditions that must be fulfilled. The Court of Appeal in the case of *Chevron [K] Ltd v Harrison Charo Wa Shutu* [2016] eKLR stated as follows:-

“At the expiration of the twelve-year period the proprietor’s title will be extinguished by operation of the law and section 38 of the Act permits the adverse possessor to apply to the High Court for an order that he be registered as the proprietor of the land.

Therefore the critical period for the determination whether possession was adverse is 12 years and the burden is on the person claiming to be entitled to the land by adverse possession to prove, not only the period but also that his possession was without the true owner’s permission, that the owner was dispossessed or discontinued his possession of the land, that the adverse possessor has done acts on the land which are inconsistent with the owner’s enjoyment of the soil for the purpose for which he intended to use it. See *Littledale v Liverpool College* [1900]1 Ch.19, 21.”

133. In *Mbira v Gachuhi* [2002] 1 EALR 137 it was held that:

“..... a person who seeks to acquire title to land by the method of adverse possession for the applicable statutory period must prove non-permissive or non-consensual actual, open,



notorious, exclusive and adverse use by him or those under whom he claims for the statutory prescribed period without interruption....”

134. In the instant case, the facts are now compared with the law before drawing a conclusion on the analysis.

**a. Whether the Applicants have been in possession of the land for 12 years**

135. The Applicants’ swore affidavits that they entered the said land in the year 2000 or thereabout. The suit having been filed in 2020, it follows that the period of 12 years has passed. The affidavits and testimonies of the Applicants were sufficient proof that there was long occupation of the suit land. There was no evidence provided to the contrary and therefore this evidence of possession remained uncontroverted and cogent.

**b. Whether the possession was without the owners’ permission**

136. The true owner of the suit land was as per the title of the land which was produced as annexure PEXh-1. The Applicants served the registered owner by way of substituted service pursuant to Order 5 Rule 7 of the Civil Procedure Rules in the newspaper of 9<sup>th</sup> January 2021. The registered owner of the land, being the 1<sup>st</sup> Defendant did not enter an appearance. There was no evidence tendered that proved that the owner of the suit land allowed the Applicants into the land, or that they even ever came into contact with the owner of the suit land. It follows that the possession was therefore without the owners’ permission.

**c. Whether the Applicants’ possession was continuous, uninterrupted, notorious and exclusive**

137. By way of affidavits, each of the respective Applicants have provided evidence of their possession of the suit land. It is apparent that they have respectively erected homes, fenced off the properties and used the land for quite some time, at least more than twelve continuous years. There is no evidence that has been tendered to prove that their possession was interrupted at any one time. Suffice it to say, the fact that the registered owner did not file a defence or enter appearance is enough proof for this court that the possession has been uninterrupted for the last over 12 years.

138. It is the finding of this Court that the Plaintiffs have acquired the respective portions of land by way adverse possession, having proven all the elements as required by law. I therefore find that the Originating Summons is merited.

139. However, given that the 18<sup>th</sup> and 28<sup>th</sup> Applicants withdrew their suit, and the 10<sup>th</sup> Plaintiff’s case abated upon his demise, I allow the originating Summons as prayed, save for the 10<sup>th</sup>, 18<sup>th</sup> and 28<sup>th</sup> Applicants. I hereby declare and issue orders that

a. A declaration be and is hereby made that the Applicants, except those I have acquired excluded, have acquired title over land parcel Number 2116/841 within Kitale Municipality by way of adverse possession, and they are entitled to be registered forthwith as owners, upon conducting a survey at their own cost to ascertain the exact measurements and positions to be entered in the mutation form, as hereunder;

Francis Barasa Mukhwana.....0.09 Hectares  
Gabriel Watua.....0.06 Hectares  
Movin Wafula Simiyu.....0.12 Hectares  
Pripher Wekesa Walukhana.....0.11 Hectares  
Martin Nyongesa.....0.26 Hectares



Eugene Juma Khaemba.....0.11 Hectares  
 Charles Asembo Sikhubari.....0.13 Hectares  
 Francis Wanjala Wakhateli.....0.1 Hectares  
 Alex Wanjala Moris.....0.09 Hectares  
 Stephen Tindi Mabonga.....0.09 Hectares  
 Zacharia Ndichu Remui.....0.09 Hectares  
 Francis Macheso Wakhongola.....0.08 Hectares  
 Joseph Mwasame.....0.08 Hectares  
 John Ngoni Wanaswa.....0.10 Hectares  
 Joshua Mutoto Werunga.....0.10 Hectares  
 Chrispinus Wamalwa Kikechi.....0.10 Hectares  
 Simon Kapchanga Muganda.....0.11 Hectares  
 Samweli Chesoli Bushuru.....0.06 Hectares  
 Simon Peter Khaoya.....0.05 Hectares  
 David Wafula Wekesa.....0.09 Hectares  
 John Godwin Wanwasi.....0.09 Hectares  
 Hassan Kadei Wepukhulu.....0.09 Hectares  
 Janet Wafula Wamocha.....0.07 Hectares  
 Isaac Wangila Wakhateli.....0.07 Hectares  
 Emmanuel Waswa Simiyu.....0.16 Hectares  
 Humphrey Wanjala Muze.....0.07 Hectares  
 Wilberforce Wanjala Masika.....0.05 Hectares  
 John Wekesa Benerd.....0.08 Hectares  
 Christine Chepwamboke Samoei...0.10 Hectares  
 Joseph Kiprop Arap Samoei.....0.14 Hectares  
 Nyongesa Masinde.....0.13 Hectares  
 Sudi Community Based Organization[cbo].....0.12 Hectares.

- b. The Deputy Registrar of this Court shall forthwith sign the respective instruments of subdivision and transfer to each of the parties accordingly, upon the land being surveyed at the cost of the respective parties and the specific sizes of each of the adverse possessors of the parcels being ascertained.
- c. The successful Plaintiffs shall have the costs of the Originating Summons as against the Defendants.

140. Orders accordingly.



**JUDGMENT DATED, SIGNED AND DELIVERED VIA THE TEAMS PLATFORM THIS 22<sup>ND</sup> DAY OF JULY 2025.**

**HON. DR. *IUR* F.NYAGAKA**

**JUDGE**

At 11:53 AM in the presence of:

Ms. Lichuma for Plaintiffs

No appearance for the Defendants [though served]

