



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT ELDROET

ELC NO. 571 OF 2012

VALERIAN KIPNGETICH TORMOI.....PLAINTIFF

VERSUS

LINUS KIPKEMBOI KOR OS.....1ST DEFENDANT

GREGORY KIPCHUMBA KOROS...2ND DEFENDANT

ANDREW KIRWA ROTICH.....3RD DEFENDANT

PAULINE ROTICH.....4TH DEFENDANT

JUDGMENT

By an Originating Summons dated 8th October 2009 the Plaintiff herein sought for prayers that the court do declare that Fourteen (14) acres in parcels Numbers **Nandi/Chepterwai/849, 850,852, 853, 854, 855, 857 and 858** belongs to him having acquired the same from the Defendants by way of adverse possession.

The Originating Summons was amended to include the names of the Three (3) Defendants namely: - Linus Kipkemboi Koros, Gregory Kipchumba Koros, Andrew Kirwa Rotich and Pauline Rotich who was substituted in place of her deceased husband Benjamin Kimutai Rotich. This matter proceeded by way of viva voce evidence.

Plaintiff's Case

It was the plaintiff's evidence that his father Joseph Tormoi and Thomas Koros who are both deceased entered into a mutual agreement that they would exchange the unregistered parcel of land owned by the late Joseph Kipyator Tormoi in Chepterwai (Nandi/Chepterwai/79) with the parcel of land owned by the late Thomas Kiprotich Koros in Trans-Nzoia. It was agreed that the late Joseph Kipyator Tormoi could take over the land owned by the late Thomas Kiprotich Koros in Trans-Nzoia. The said Thomas Kiprotich immediately acquired registration of fourteen (14) acres of Nandi/Chepterwai/79 which registration was never addressed and reversed to date.

It was the plaintiff's evidence that his father and Thomas Koros had agreed that he would take possession of Chepterwai farm but Thomas died before this happened. The plaintiff further testified that the late Thomas Kiprotich Koros had land dispute with his father the late Joseph Kipyator Tormoi, who had both bought a parcel of land in Trans-Nzoia district in the late 1960's. The plaintiff's father the late Joseph Kipyator Tormoi had Fourteen (14) acres of unregistered parcel at Chepterwai herein Nandi/Chepterwai/79, and upon the demise of Thomas Kiprotich Koros, the widow Marcella Koros applied for letters of administration and obtained a Grant.

It was the plaintiff's evidence that the widow went ahead and sub-divided the said disputed parcel and transferred to Linus Kipkemboi Koros, Gregory Kipchumba Koros, Edward Rotich, Andrew Kirwa Rotich and Benjamin Kimutai Rotich husband to Pauline Rotich and the said sub-division resulted to Nandi/Chepterwai/849, 850,852, 853, 854, 855, 857 and 858 that amounts to a total of Fourteen (14) acres to Fifteen Decimal one seven (15.17) acres as per the amended originating summons.

The plaintiff stated that his father had told him to go to the disputed land but was met with hostility by the widow of Thomas Koros. He stated that they reported the matter to a panel of elders whereby several meetings were held chaired by Provincial Administration on several occasions. The plaintiff stated that they did several cases including before the District Commissioner and the land was awarded to the plaintiff's father Joseph Tormoi.

The plaintiff further testified that he is the one who has been staying on the suit land and that he became an administrator of his father's estate. He stated that when the parcel of land was subdivided by Marcella the widow of Thomas Koros who registered the parcels in her

sons' names and they acquired new titles namely Nandi/ Chepterwai/ 849 -858. The plaintiff produced an abstract of the green card and a map from the District survey office Kapsabet.

It was the plaintiff's testimony that nobody stays of the sub-divided plots. The previous parcel No. Nandi/Chepterwai/79 had been registered in the name of the late Thomas Koros. The plaintiff prayed that the court grants him 14 acres out of the suit parcel of land plus costs of the suit.

On cross-examination, the Plaintiff told the court that they have land in Saboti Kitale just like the defendants. He agreed that he knew Benjamin Singoei now deceased whom the Defendant claims to have bought the parcel of land from. He stated that he was not aware that the said Benjamin had sold the land to the defendants and not his father. The plaintiff also stated that he was not aware that the late Benjamin had filed a statement that he would give evidence on behalf of the defendants.

Further during cross- examination the plaintiff admitted that he did not have the exchange agreement and stated that it was Marcela the widow of Thomas Koros who had it. He also stated that when the Succession Cause No 25/83 was filed in Kapsabet Court they did not file objection proceedings. It was also his evidence that several cases had been filed over the same matter at several courts and tribunals and some are still pending.

The plaintiff also testified that he decided to sue the defendants as he is in occupation of between 0.2 to 0.4 acres of the suit land which is in the portion of land parcel No. 858 registered in the name of Linus Kipkemboi Koros.

The plaintiff also stated that he has a farm in Chepsaita which is approximately 5 acres where he cultivates and it is about 8 kms from the suit land. He also confirmed that the defendants stay on their parcel of land across the stream which he does not have a claim over. The plaintiff also stated that he got into occupation with the assistance of the provincial administration as when he took occupation the defendants demolished his structure prompting him to seek assistance.

On re- examination by Mr. Birech, the plaintiff stated that he was claiming 14 acres as he had not been given any land in exchange by the Koros family in Kitale. The plaintiff reiterated his earlier testimony and urged the court to grant the orders sought.

PW2 testified and stated that he knew the late Joseph Tormoi the plaintiff's father as he has stayed in Chepterwai since he was a young man. He further stated that they had stayed with the plaintiff's father both in Kitale and Cheptarwai Nandi County. It was PW2's evidence that he knew both the plaintiff's father and Koros together with the wife Marcela and children. He also stated that he knew about the relationship between the late Thomas Koros and Joseph Tormoi in respect of the exchange of the parcels of land.

PW2 further stated that he also bought shares in the Kitale farm where Joseph Tormoi bought land and that Thomas Koros talked the latter into exchanging land in Chepterwai Nandi County. He further testified that Joseph Tormoi was not given the Kitale land as promised as the company had not given them shares. It was PW2's evidence that the matter was reported to the PC, DC, and DO 1 for assistance and it was later agreed that each person to stay with his parcel of land and abandon the exchange. The elders also resolved that each person to stay on his own parcel of land. He further confirmed that the plaintiff is in occupation of the suit parcel of land but he did not know the exact acreage.

On cross- examination by Mr. Yego PW2 confirmed that he stays in Cheptilil a kilometer away from Chepterwai. He also confirmed that the plaintiff has land in Cheptaisa where he cultivates.

PW2 further stated on cross- examination that the suit land belonged to the plaintiff's father and that one Benjamin Sin'goei wanted to buy the land from Joseph Tormoi but he did not have enough money. He also stated that he was not a witness to the transaction but he is aware that the transaction for exchange collapsed midway and each person returned to their respective parcels of land.

On re- examination by Mr. Birech, PW2 reiterated his evidence and stated that it is the plaintiff who stays on the suit land.

PW3 testified and stated that he knows the plaintiff, the defendants and their deceased parents. He stated that the late Thomas Koros had a farm in Trans- Nzoia as they were members of Mokoyiet farm. He further stated that they had a case with the Mokoyiet farm and while the case was pending, Thomas Koros and Joseph Tormoi told the elders that they wanted to exchange farms in Nandi and Trans- Nzoia counties. It was PW3's evidence that in 1982 the DC Kitale ordered that the members be given the farm including the two and they were to be shown the land by DO.1

PW3 testified that Marcela, the widow of Koros refused Tormoi the plaintiff's father to build on the grounds that the Trans- Nzoia farm was 20 acres and the Nandi one was 14 acres prompting Tormoi to go back to Nandi to take up his parcel of land in 1982. He further stated that the plaintiff is in occupation and uses $\frac{3}{4}$ acre.

On cross- examination by Mr. Yego, he confirmed that he was a member of the Mokoyiet farm when the exchange was done between the plaintiff's father and the defendants' father. He also stated that the defendants do not live on the suit land but stay on plots adjacent to the suit land. He stated that he is not aware of the cases that have been litigated in respect of the suit land.

The plaintiff closed his case at this juncture.

Defendant's Case

The 1st defendant Linus Kipkemboi Koros testified on behalf of the other defendants and stated that he stays on plot No. 849 where he has a house but he uses plot Nos 854 and 858 for grazing. He stated that he knows the plaintiff who came to stay on their land forcefully with the

help of provincial administration in 1982.

In his evidence, the 1st Defendant stated that he is the registered owner of parcel No. NANDI/CHEPTERWAI/849, 854 & 858. He admitted that the Plaintiff is in occupation of parcel No. NANDI/CHEPTERWAI/858 measuring 0.3 acres having taken occupation in 1982 and by then the said portion was still part of land parcel No. NANDI/CHEPTERWAI/79 which measures 19.5 hectares.

DW1 denied that the Plaintiff is in occupation of 14 acres of the suit land parcel and maintained that he was in occupation of only 0.3 acres comprised in land parcel No. Nandi/Chepterwai/858 of which he utilized largely as a compound and a small garden. He further stated that that the Plaintiff's entry to the land parcel was forceful and his occupation has never been peaceful and as it has been interrupted by a series of court cases namely:

- a) Kapsabet PM Succession Cause No. 25 of 1983.
- b) Kapsabet PMCC 570 of 1989.
- c) Eldoret HCC No. 231 of 1991.
- d) Kapsabet PMCC No. 19 of 2008.
- e) Kapsabet Land Dispute Tribunal Award No. 9 of 2009.

He stated that the cases are still pending in court and he produced a bundle of documents in respect of the cases as exhibit No. 4. The defendant further testified that their father bought the entire land parcel known as NANDI/CHEPTERWAI/79 from one Benjamin Sing'oei, who left the suit land in 1969 and the said land parcel measuring 19.5 Hectares (approximately 48 acres). He also produced the sale agreement dated 3/7/69 for the sale of 12.2 acres He denied that that the said parcel comprised of 14 acres previously owned by the Plaintiff's father and that there was no land Control Board consent for the exchange. It was further his evidence that the parcels of land are being utilized by his brothers and sister in law who were given after their mother filed a succession cause for the distribution of the estate of their late father. He therefore prayed for the dismissal of the plaintiff's suit and an order for eviction of the plaintiff from parcel No. 858.

On cross – examination by Mr. Birech the defendant stated that the plaintiff is not entitled to the suit land as he is not a beneficiary. He however admitted that the plaintiff stays on parcel No. 858 and occupies 0.3 acres. He reiterated that there was no exchange agreement between their parents. He also confirmed that they did not report the matter to the police when the plaintiff took occupation of the suit land. He further testified that the disagreements arose after the death of their father.

On re -examination the defendant stated that there are cases that are still pending before the court and that the award of the Tribunal was adopted as the order of the court.

The defendant therefore closed his case. Parties filed their written submissions.

Plaintiff's Counsel's Submissions

The plaintiff's Counsel filed his written submissions and reiterated the plaintiff's evidence. He submitted that the defendants stated in paragraph 15 of the replying affidavit that that they had instituted several cases over the same issue in which one of the cases was referred to Lands Dispute Tribunal and that the decision of the tribunal was adopted as an Order of the court, however, the said Order was not availed in this court and therefore there is no evidence supporting the same. Counsel further submitted that the defendants admitted in paragraph 23 that there was no exchange of parcels of land between the plaintiff's father and their father hence everyone retained their own parcels of land.

Counsel listed the following issues for determination by the court:

1. Whether there was an agreement between the plaintiff's father and the Defendant's father to swap their parcels of land.
2. Whether the dispute of land Nandi/Chepterwai/79 was referred to arbitration.
3. Whether the Plaintiff has been in a quiet, uninterrupted possession of the disputed parcel of land for a period of not less than Twelve (12) years.
4. Whether the Plaintiff is in occupation of 14 acres comprised in the suit parcels or whether he is in occupation of 0.3 acres only comprised in land parcel No. Nandi/ Chepterwai/ 858?

Counsel submitted on the first issue as to whether there was an agreement for exchange between the late Thomas Kiprotich Koross and Joseph Kipyator Tormoi in the affirmative. He further submitted that upon the said agreement Thomas Kiprotich Koros caused himself to be the registered owner of Nandi/Chepterwai/79. However, due to misunderstanding the said agreement later aborted and Thomas Kiprotich

failed to re-transfer the parcel to Joseph Kipyator Tormoi until his untimely death.

On the second issue as to whether the land dispute of Nandi/Chepterwai/79 was referred to arbitration, Counsel submitted that the dispute between the Plaintiff's father and the Defendant's mother was on several occasions referred to arbitration which was chaired by the provincial administration and the minutes of a meeting held on 5th March 1985 by a panel of elders at the District Officers (D.O) office at Kabiyet unanimously agreed that a portion of land in dispute Nandi/Chepterwai/79 be transferred to the Plaintiff's father.

Mr. Birech further submitted that the minutes of a meeting held on 24th May, 1990 held at District Commissioner's (D.C) office at Kapsabet, the Plaintiff's father, admitted that he owed the Defendant's father Kenya Shillings Three Thousand Three Hundred and Fifty (Kshs 3, 350/+) which he was ordered to surrender Two (2) acres of Nandi/Chepterwai/779 as debt settlement to Defendant's mother since their father was then deceased and to retain the entire parcel as the agreement between the Plaintiff's father and Defendant's father to swap their parcels of land had aborted due to misunderstandings caused by the Defendant's mother.

Counsel further submitted that the allegation that that the Defendants' father bought the said parcel from one Benjamin Kipsoimo is not true as it is clear from the arbitration minutes in which Benjamin Kipsoimo in his statement stated that he had an interest in buying the said parcel Nandi/Chepterwai/79 however, he paid part of the purchase price but failed to raise the balance. It was submitted that from the Plaintiff's father refunded him what he had paid and the land reverted back to the plaintiff's father and therefore Benjamin Kipsoimo could not sell what he never owned. The Defendants failed to produce any evidence or sale agreement pertaining the said sale of Nandi/Chepterwai/79.

On the 3rd issue as to whether the Plaintiff has been in a quiet, uninterrupted possession of the disputed parcel of land for a period of not less than Twelve (12) years, Counsel submitted that a claimant must prove and demonstrate that he has occupied the land openly that is without force, without secrecy and without license or permission of the land owner as held in the case of Joseph Kimari Mucheru and Three (3) Others -vs- Sammy Kiyo Macharia and Four (4) others [2015] eKLR.

It was Counsel's submission that the Plaintiff has demonstrated to the court that he has been in occupation of Nandi/Chepterwai/79 since the year 1982 and that the Defendants too admitted the same and there is nothing to show that the Defendants attempted to dispose the plaintiff of the said parcel of land before and after subdivision, hence the plaintiff has been living in the said parcel for a period of Thirty Five (35) years.

Mr. Birech Counsel for the plaintiff stated that the Defendants claimed that the said possession was interrupted severally by filing of various suits whereas in Githu -vs- Ndeete (1984) eKLR it was held that proceedings do not amount to interruption nor do they put a stoppage to the running of time. The Defendant in this case had filed a succession cause seeking for a Grant of Letters of Administration with the plaintiff enjoined in the proceedings as Objector, also the Plaintiff had instituted proceedings in the Lands Dispute Tribunal and also filed an Application in the High Court for annulment and revocation of Grant.

Counsel further cited the case of Kipketer Togom -vs- Isaac Cipriano Shingore [2012] eKLR Mshila J. stated that....." *The Respondent must assert his right to title by physically entering into the property and evicting and ejecting the trespasser from the suit property.....Then only is there interruption to occupation and possession and only does the time stop running.....the proceedings initiated or instituted by the Defendant do not amount to interruption.*" In this case it was held that the Plaintiff had acquired title of the suit land by way of adverse possession and should be registered as the proprietor.

Counsel also cited the case of Francis Mungai Kimani -vs- Ngendo Kibogor [1988] eKLR where the the Honourable Judge stated that "*.....the filing suit does not interrupt adverse possession; in certain cases it may even amount to a re-affirmation of adverse possession.....neither had the reference of the dispute to the Assistant Chief of the local area affected the adverse possession.....*"

Justice T. Mbaluto in Francis Mungai Kimani -vs- Ngendo Kibogor [1988] eKLR reiterated that the position in law is that stated by the court of appeal in the case of the Public Trustee and Beatrice Muthoni -vs Kamau Wanduru (Court of Appeal Civil Appeal No. 73 of 1982) in which it was held that even a decree establishing the proprietor right to the suit land will not without successful execution interrupt adverse possession. And on the above reasons he found that the plaintiff was in a continuous uninterrupted adverse possession and therefore, entitled to be registered as the pro praetor of the suit land.

Counsel also submitted that the plaintiff's possession has not been interfered with as the plaintiff has never been evicted in those circumstances. He further submitted that it was held in Githu -vs- Ndeete (1984) eKLR 776 that it did not matter that the suit parcel was subdivided or that the parcel number changed description.

In the current case the subdivision, change of description, and change in proprietorship, did not constitute any interruption on the possession of the land by the plaintiffs and the Defendants. The possession of the land by the Plaintiff had been in excess of a period of Twelve (12) years, such possession was quiet and uninterrupted. That the possession was open for all to see and neither was it forceful, was not in secret and was exclusive in nature without permission of the Defendant.

It was Counsel's further submission that registration of one as proprietor does not affect the rights of one claiming to have acquired the suit parcel Nandi/Chepterwai/79 which was subdivided into Nandi/Chepterwai/852,853,854,855,856,857 and 858. Counsel relied on the case of Francis Mungai Kimani -vs- Ngendo Kibogoro [1988] eKLR where it was held that "*the Defendant on being registered as the proprietor of the land as successor in title to her husband acquired exactly the same rights and liabilities as her husband had held. She could not have acquired rights which were superior to her deceased husband...*"

Counsel therefore submitted that the plaintiff has been in possession of Nandi/Chepterwai/849,858,854 and 850,853,855 and 852 and 857 for a period of more than Twelve (12) years and is therefore entitled to be registered as the proprietor of the suit parcels by way of adverse

possession. He also prayed for the costs of the suit.

Defendant's' Counsel's Written Submissions

Counsel for the defendant filed written submission and reiterated the evidence of the defendant and a brief background to the case. He stated that the Plaintiff admitted that there have been various suits pending in court over the same subject matter.

It was further Counsel's submission that the Plaintiff bought this suit to forestall eviction from the suit land pursuant to orders granted in Kapsabet PMCC 19 of 2008 and that most of the said cases were active and pending in court particularly Eldoret HCC No. 231 of 1991 and Kapsabet PMCC 19 of 2008 which were admitted by the Plaintiff in the Originating Summons according to the defendants.

Counsel submitted that the Plaintiff admitted during cross-examination that he is in possession and occupation of a portion measuring about 0.3 acres comprised in the suit land. He further submitted that the plaintiff admitted that he was assisted by the Provincial Administration to take occupation of the suit land in 1982 and was accorded police surveillance and protection for about one week to enable him repulse defendant's resistance and to enable him settle on the land parcel.

Mr. Yego submitted that the plaintiff did not produce any sale agreement to prove that his father purchased 14 acres comprised within the suit land parcel from Benjamin Sing'oei. Counsel stated that the plaintiff seemed to be basing his claim to the said land to a purported exchange agreement between his father and the Defendant's father rather than on the doctrine of adverse possession which is anchored on a continuous, peaceful, uninterrupted exclusive possession of land.

It was Counsel's submission that the Plaintiff admitted that the Defendants occupy about 13.5 acres out of the portion of 14 acres that he is claiming and that the plaintiff has settled on a portion of 0.3 acres only. PW2 Alexander Kipler Keino testified on the purported exchange agreements and confirmed that the purported intended exchange aborted and both parties resumed occupation of their respective parcels.

Counsel therefore submitted that the Plaintiff's case lacks merit as he has not been in continuous, peaceful uninterrupted occupation of the suit land and therefore should be dismissed with costs.

I had combined the issues for determination of both Counsel. Counsel for the defendant in response to the issue of how many acres the plaintiff is occupying submitted that the plaintiff is only in occupation of 0.3 acres as earlier submitted.

Counsel cited the case of Wilson Kazungu Katana & 101 others v Salim Abdalla Bakshwein & Another (2015) eKLR, 18 where the court held as follows;

"The identification of the land in possession of an adverse possessor is an important and integral part of the process of proving adverse possession."

Section 107(1) of the Evidence Act, Cap 80, and Laws of Kenya provides that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

He submitted that the Plaintiff's claim for occupation of 14 acres comprised in the suit land parcels is therefore without any basis as no evidence was led to that effect. Any claim by the Plaintiff for adverse possession should therefore be based on 0.3 acres currently occupied by the Plaintiff.

It was further counsel's submission that the Plaintiff has been in occupation of 0.3 acres comprised in land parcel number Nandi/Chepterwai/858 since 1982 but the occupation has not been peaceful, continuous, exclusive and uninterrupted due to the various cases in court.

Counsel relied on the case of Gabriel Mbui v Mukinda Maranya [1993] eKLR, 12-13, Kuloba J, as he then was, pronounced himself as follows;

"Throughout the decided cases, the recurrent theme is that possession to be adverse must be actual, open, notorious, regular, continuously uninterrupted? hostile, exclusive occupancy held with a cherished animus possidendi under a claim of right held in good faith, without any form of permission from a knowing rightful owner entitled to immediate possession, for the statutory period.

Out of these cases, the typical formulation of the classical requirements for adverse possession to be claimed, has been, that in order to acquire title to land without buying or paying for it in the traditional sense, or through some other legal disposition such as by inheritance or trust, there must be proved or established the elements of (a) actual possession or occupancy of the land that is, (b) hostile to the current owner with a right to immediate possession, (c) which is visible, open, notorious, and exclusive, (d) exercised continuously and uninterrupted for a statutorily defined number of years, (e) maintain under some colour of right as against everyone else, (f) with an evinced unmistakable animus possidendi, (g) held in good faith, without fraud."

Counsel submitted that the evidence on record overwhelmingly point to evidence that the Plaintiff's occupation of the suit land parcel has not been open, notorious, peaceful, uninterrupted and exclusive. The Plaintiff's claim for adverse possession is therefore without any legal basis.

Analysis and determination

This is a case where the plaintiff prays that the court do declare that he has acquired the suit land by way of adverse possession. In cases of adverse possession, the major issue for determination by the court is as to whether the plaintiff has met the threshold to warrant the court to give such orders. It is trite law that the test of adverse possession is whether the plaintiff has been in open, exclusive, continuous and uninterrupted occupation of the suit land.

The law on adverse possession is now settled and we need not reinvent the wheel. Most of the cases in the Environment and land Court revolve around issues of adverse possession. The plaintiff herein claims to have been entitled by way of adverse possession of parcel of land previously known as Nandi/Chepterwai/79 which was sub divided and new titles issued as Nandi/Chepterwai/849/850, 852, 853, 854, 855, 857 and 858. The plaintiff gave evidence and stated that his late father entered into an agreement of exchange of land with the defendants' father. The evidence is as enumerated above.

PW2 and 3 corroborated the plaintiff's evidence that the plaintiff's father and Thomas Koros the defendant's father had entered into an agreement for exchange of land in Nandi and Kitale Trans – Nzoia. PW 2 confirmed that he also bought shares in the farm in Nzoia.

The issue that was raised during cross – examination that the late Benjamin Sin'goei had filed a statement indicating that he would give evidence in support of the defendant is not relevant as he died before he could give such evidence. Such evidence would be immaterial and therefore not relevant.

Both Counsel for the plaintiff and the defendant were in agreement that the issues for determination are as follows

1. Whether there was an agreement between the plaintiff's father and the Defendant's father to swap their parcels of land.
2. Whether the Plaintiff has been in a quiet, uninterrupted possession of the disputed parcel of land for a period of not less than Twelve (12) years.
3. Whether the Plaintiff is in occupation of 14 acres comprised in the suit parcels or whether he is in occupation of 0.3 acres only comprised in land parcel No. Nandi/ Chepterwai/ 858

Counsel further submitted that it was held in Githu -vs- Ndeete (1984) eKLR 776 that it did not matter that the suit parcel was subdivided or that the parcel number changed description.

In the current case the subdivision, change of description, and change in proprietorship, did not constitute any interruption on the possession of the land by the plaintiff and the Defendants. It is clear that the possession of the land by the Plaintiff had been in excess of a period of Twelve (12) years, such possession was quiet and uninterrupted. That the possession was open for all to see and neither was it forceful, was not in secret and was exclusive in nature without permission of the Defendant therefor making it adverse to the title of the Defendants. It is also established that registration of one as proprietor does not affect the rights of one claiming to have acquired the suit parcel Nandi/Chepterwai/79 which was subdivided into Nandi/Chepterwai/852,853,854,855,856,857 and 858.

It can be deduced that when the defendants were registered as the proprietors of the suit parcels of land, they acquired the same rights and liabilities as the first registered proprietor of Nandi/Chepterwai/79 as was in the case of **Francis Mungai Kimani -vs- Ngendo Kibogoro [1988] eKLR** where it was held that

“the Defendant on being registered as the proprietor of the land as successor in title to her husband acquired exactly the same rights and liabilities as her husband had held. She could not have acquired rights which were superior to her deceased husband...”

The subdivision and subsequent registration of the suit land in other names did not change the character of the suit land. It did also not amount to interruption of the possession of the plaintiff for purposes of adverse possession.

The defendants further stated that they were many cases filed in respect of the suit land. Defendant produced a bundle of documents of the proceedings of various case that had been filed by the defendant. One case Kapsabet Principal Magistrates Court No. 19 of 2008, The Court agreed with the current plaintiff who was the defendant in that case that the court did not have jurisdiction to entertain the case. The preliminary objection by the current plaintiff was upheld and the court referred the matter to the Land Disputes Tribunal.

Similarly, the LDT which had previously heard the matter resolved that the suit land belonged to the plaintiff's father Joseph Tormoi. The panel of elders went ahead to state that if at all the defendants father bought the land from the plaintiff's father then the widow Marcela was at liberty to claim the amount from them.

I also agree with the findings in the case of Francis Mungai Kimani -vs- Ngendo Kibogor [1988] eKLR where the the Honourable Judge stated that *“.....the filing suit does not interrupt adverse possession; in certain cases it may even amount to a re-affirmation of adverse possession.....neither had the reference of the dispute to the Assistant Chief of the local area affected the adverse possession’*

The filing of suits did not amount to interruption of adverse possession in the current case. From the evidence on record it is admitted that the plaintiff has been staying on the suit land since 1982. He has not been evicted by the defendants.

Further Kuloba, J, in following the case of Jandu v Kirpal and another [1 975] E A 225, 232 further held as follows;

"For a plaintiff to prove title by adverse possession, it is not sufficient to show that some acts of adverse possession have been committed: the possession must be adequate in continuity, in publicity and in extent, to show that it is adverse to the rightful, paper title owner. It must be actual, visible, exclusive, hostile, open and notorious."

This speaks to the actual possession and occupation of the plaintiff of the suit land. The possession was continuous, public, quiet and adverse to the paper title owners.

I have considered the evidence of all the parties and the submissions of the counsel together with the supporting documentation and find that the plaintiff has proved his case for adverse possession.

I therefore do declare that Fourteen (14) acres in parcels Numbers **Nandi/Chepterwai/849, 850,852, 853, 854, 855, 857 and 858** belongs to the plaintiff having acquired the same from the Defendants by way of adverse possession.

The defendants to pay costs of the suit.

Dated and delivered at Eldoret this 30th day of January 2018

M.ODENY

JUDGE

Judgment read in open court in the presence of Miss Tum holding brief for Birech for the Plaintiff and Mr. Mogambi holding brief for Yego for the defendants.

Koech – Court Assistant