



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KISII**

**CASE NO. 1137 OF 2016**

**(FORMERLY HCC NO. 15 OF 2011)**

**IN THE MATTER OF LIMITATION OF ACTIONS ACT CAP 22 LAWS OF KENYA**

**AND**

**IN THE MATTER OF A CLAIM FOR ADVERSE POSSESSION PURSUANT TO SECTION 38  
OF LIMITATION OF ACTIONS ACT**

**AND**

**IN THE MATTER OF LR NO. SUNA EAST/WASWETA I/2554**

**BETWEEN**

**JECONIA ANGWEYO OMUODO..... PLAINTIFF**

**VERSUS**

**CHARLES OGEJO OCHIENG ..... DEFENDANT**

**J U D G M E N T**

1. The plaintiff/applicant commenced the instant suit by way of Originating Summons (OS) dated 4<sup>th</sup> February 2011. The applicant Jeconia Angweyo Omuodo instituted the suit as the legal representative of the estate of the late Charles Angweyo Omuodo and the claim was that the estate of the deceased had acquired title over land parcel **LR No. Suna East/Wasweta 1/2554** (hereinafter referred to as **“the suit property”**) by way of adverse possession. The applicant by the suit sought the following orders:

**1. A declaration that the defendant’s rights to recover the whole of LR No. Suna East/Wasweta 1/2554 is barred under the Limitation of Actions Act, Cap 22 Law of Kenya and his title thereto extinguished on the grounds that the plaintiff herein has openly, peacefully and continuously been in occupation and possession of the aforesaid parcel of land for a period exceeding 32 years as at the date of filing of the instant proceedings.**

**2. There be an order that the plaintiff be registered as the proprietor of the whole of LR No. Suna East/Wasweta 1/2554 in place of the defendant.**

**3. There be an order restraining the defendant either by himself, agents, servants and/or employees from interfering with the plaintiffs peaceful possession and occupation of the said**

**parcel of land LR No. Suna East/Wasweta 1/2554 in any manner whatsoever and/or howsoever.**

**4. Costs of the originating summons be borne by the defendant.**

**5. Such further and/or other orders be made as the court may deem fit and expedient in the circumstances of the case.**

2. The Originating Summons was grounded on the grounds set out on the face of the application and on the supporting affidavit of Jeconia Amollo Angweyo the plaintiff herein. The respondent filed a Memorandum of Appearance on 25<sup>th</sup> February 2011 but did not file a replying affidavit until 16<sup>th</sup> May 2013 when the hearing commenced before **Okong'o, J.** Directions respecting the disposal of the Originating Summons were taken before **Sitati, J.** on 4<sup>th</sup> July 2011 when the Judge directed inter alia as follows:

**(i) The matter shall proceed by way of viva voce evidence.**

**(ii) The Originating Summons dated 4<sup>th</sup> February 2011 shall be deemed as the plaint.**

**(iii) The respondent shall file and serve his replying affidavit within 14 days from today and the replying affidavit shall be deemed as the defence in this matter.**

**(iv) The applicant be at liberty to file a supplementary affidavit if deemed necessary within 7 days of service.**

**(v) Thereafter parties to comply with Order 11 of the Civil Procedure Rules.**

### **3. The Evidence of the Parties;**

The suit as earlier observed was part heard before Okongo, J. before whom the plaintiff and 3 other witnesses testified and the plaintiff's case was closed. The defendant and one of his witnesses also testified before Okongo, J. The defendant's other two witnesses (CPL Joseph Ongoki (DW3) and CI Geoffrey Chani testified before me.

4. The plaintiff (PW1) in his evidence basically reiterated the contents of his affidavit sworn in support of the Originating Summons and his witness statement dated 4<sup>th</sup> February 2011. He testified that his late father Charles Angweyo Omuodo (deceased) purchased the suit property from the defendant's father Mzee Ochieng Orwa who is also deceased in 1978 as per the copy of Memorandum of Agreement dated 28<sup>th</sup> April 1978 ("**PEx.1**"). The plaintiff further testified that after his father purchased the property he put up a building thereon which stands on the property to date. The building was rented out to Michael Knoll and William Oginga who operate a garage and welding business respectively on the premises. The witness further testified that the tenants have all along paid rent for the premises and that they are the ones who connected electricity to the property. He stated that Michael Knoll had the electricity account registered in his name and that the electricity bills are issued in his name as per the copy of the bill dated 30<sup>th</sup> December 2010 ("**PEx.2**"). The plaintiff produced a copy of the abstract of title for **LR No. Suna East/Wasweta 1/2554 ("**PEx.3**")** which shows that Ochieng Orwa was registered owner of the suit property on 15<sup>th</sup> July 1973 and that on 19<sup>th</sup> March 1991 the defendant as administrator of Ochieng Orwa's estate was registered as proprietor and title was issued to him on 13<sup>th</sup> September 2010. The plaintiff asserts that the defendant as at the time he processed title through succession he was aware that the plaintiff's family had purchased the suit property and were in possession of the same.

5. The plaintiff further testified that the defendant has attempted to evict the tenants and efforts to resolve the matter through the elders and the police have been unsuccessful. The plaintiff's position is that the defendant's acquisition of title to the suit property in the face of their possession was fraudulent and urged the court to grant the orders sought in the Originating Summons.

6. PW2 Julita Akinyi, the plaintiff's mother in her evidence related how her late husband purchased the suit property in 1977. She stated that she was present when her husband purchased the property at Migori situated near the road and a river. Her brother in law Dalmas Okeke and the wife of Ochieng who was selling the land were also present. She stated her husband bought the plot for kshs. 1500/= and that after they bought the plot they put up a building thereon which they completed save that funds ran out before they could fix the doors. She further stated that Michael Knoll who wanted to rent the premises agreed to fix the doors and to recover the expenses from rent. The said Michael and another tenant rented the premises and they still remain in occupation. PW2 reiterated that the property belonged to her husband although she admitted that the defendant at some point gave her kshs. 10,000/= so that she could talk to her children to agree to give him back the property but her children refused to sell the plot to him.

7. In cross examination by counsel for the defendant PW2 reiterated that she only received kshs. 10,000/= and not kshs.100,000/= from the defendant which she acknowledged by thumb printing. She denied accompanying the defendant to National Bank Awendo. She further stated she was alone when she received the money and her children were not present. She admitted she no longer receives rent from the tenants since the dispute started.

8. PW3, Michael Okoth Knoll testified that he rented the suit property in 1981 from one, Charles Angweyo who was a resident of Awendo. He stated that he had wanted to rent a place to put up a workshop and he identified the suit property where there was a house which was in a state of disrepair without doors and windows. He was informed the owner was in Awendo and he went and agreed with the owner that he fixes the doors and windows and puts a verandah. He occupied the premise at a rental of kshs.300/= and later around 1987 was joined in the premises by one, William Oginga Oloo who was carrying on welding business. The witness stated he was up to the time he was testifying using the premises. He stated further, that he was paying rent to the deceased before he died although he was at times paying rent to the deceased wife (PW2). After the death of Charles Angweyo he stated that he continued to pay the rent to his wife until April 2011 when the defendant came to the site and ordered them to vacate on the basis that he had purchased the property. The witness stated they did not vacate but rather reported the matter to the police who after inquiries informed the defendant he had no right to evict them. The witness stated they continue to occupy the premises though they are not paying rent as the question of who the lawful owner of the property is, has not been resolved.

9. PW4, William Oginga Oloo basically reiterated the evidence as given by PW3. He affirmed that he rented a portion of premises that was not being used by PW3 to carry out welding works. He stated that he was the one who installed electricity in the premises after agreement with the owner Charles Angweyo (deceased) although the metre was installed in the name of PW3. He further stated that he paid rent to Charles Angweyo (deceased), upto the time he died in 2002 and that thereafter he paid rent to the deceased's wife (PW2) upto 2011 when the defendant came to the premises and demanded that they vacate as he had purchased the property. The witness stated that they made a report to the police at Migori who directed them not to pay rent to any of the parties until the ownership dispute was resolved. PW4 in cross examination clarified that he was not a subtenant of PW3 and that he was not paying rent to him. He further stated that the defendant gave them notice to vacate from the property in April 2011 which prompted them to go to the police. He further affirmed that prior to this notice they never had any previous dispute with the defendant.

10. The defendant, Charles Ogeto Ochieng testified as DW1. He testified that the plaintiff's father purchased the suit property from his father but could not recall when the transaction took place. He stated that his father died in 1984 and that he did succession in regard to the estate and the suit property was transferred to his name in 1991. The defendant further stated that after the plaintiff's father purchased the suit property from his late father, he put up a small structure which was rented out as a garage. The defendant stated that PW3 and PW4 were the tenants in the premises and that when the plaintiff's father died he left them as tenants in the premises.

11. The defendant further testified that in the year 2008 the plaintiff and his mother went to see him to inquire if he could purchase the property as they wanted to raise money to pay dowry for the plaintiff and to buy a portion of land in their ancestral home. The defendant stated that as the plaintiff and the mother

had not come with the plaintiff's other brother George Otieno Angweyo he asked them to go and come back with the brother who was not there. The defendant stated that the three of them came back and they agreed he would purchase the property for kshs. 185,000/=. On 16<sup>th</sup> November 2008 he stated he went to the plaintiff's home where the plaintiff prepared an agreement and he paid kshs. 100,000/= leaving a balance of kshs.85,000/=. On 22<sup>nd</sup> September 2009 he stated he paid to the plaintiff and his mother kshs. 55,000/= at National Bank, Awendo which was acknowledged. The defendant further stated on 22<sup>nd</sup> September 2009 after payment of kshs. 55,000/= the plaintiff and the mother allowed him to collect rent from the property but PW3 and PW4 refused to pay rent to him prompting him to give them a notice on 15<sup>th</sup> September 2010 to vacate which they refused to do. PW3 and PW4 denied the defendant's brother access to the property and instead made a complaint to the police where the plaintiff had denied he had been paid any money by the defendant for the purchase of the suit property.

12. The defendant stated that at the police station the CID took the originals of the agreements dated 16<sup>th</sup> November 2008 and 22<sup>nd</sup> September 2009 for investigations. The defendant's position was that the plaintiff and his mother sold to him the suit property that the plaintiff's father had bought from his father and therefore the plaintiff has no valid claim over the suit property.

13. In cross examination by Mr. Jaoko advocate for the plaintiff, the defendant affirmed that he had never been in possession of the suit property and neither had he effected any developments on the property. The defendant further stated the suit property was registered in his name in 1991 as administrator of his deceased father. He further stated that he notified the plaintiff and his mother that the property was registered in his name and that they should pay some money to facilitate the transfer to themselves but they claimed they did not have money and instead requested him to purchase the property. He acknowledged that at the time he was purchasing the property, the plaintiff and his mother were the owners of the property though he was the one who was registered as proprietor. The defendant stated further that it was the plaintiff who reported to the police that he (the defendant) had not purchased the property from them and that was how the police came to investigate the purchase claims.

14. The evidence of DW2, John Ombego Ochieng, a brother to the defendant was merely to affirm that the defendant had requested him to fence the suit property for him in 2011 when the plaintiff resisted and made a complaint to the police. The witness acknowledged their father had sold the property to the plaintiff's father, one Angweyo, who had put a structure on the property. DW2 said he only came to know the plaintiff had sold the property to the defendant at the police station after the complaint had been lodged against him.

15. DW3 was the police officer who investigated the matter and his evidence was that he submitted the contested documents notably the alleged agreement dated 16<sup>th</sup> November 2008 and the acknowledgment of payment dated 22<sup>nd</sup> September 2009 to the handwriting expert for examination to determine authorship and authenticity of the same. DW4, the document examiner testified and his evidence was to the effect that the questioned documents were written and signed by the plaintiff. It was DW4's evidence that the documents were forwarded to him in 2011 and that he examined them on 27<sup>th</sup> December 2011 but was not aware when his report were filed in court.

#### **16. Submissions, analysis and determinations:**

Following the close of the trial the parties filed their final written submissions. The plaintiff's submissions were filed on 27<sup>th</sup> June 2017 and the defendant's submissions were filed on 25<sup>th</sup> September 2017. Having reviewed and considered the pleadings, the evidence and the submissions by the parties, the issues that arise for determination are as follows:-

**(i) Whether the plaintiff was prior to the institution of the instant suit in possession and occupation of the suit property?**

**(ii) If the plaintiff was in possession and occupation of the suit property whether such occupation and possession was adverse to the title of the defendant.**

**(iii) Whether the defendant's title has been extinguished by reason of adverse possession by the plaintiff so that the plaintiff has acquired title to the suit land and is entitled to be registered as the owner thereof.**

**(iv) Whether the defendant's alleged purchase of the plaintiff's interest in the suit property in 2008 effectively stopped the period of prescription from running.**

**(v) Who bears the costs of the suit?**

17. On the evidence adduced both by the plaintiff and the defendant, it is not disputed that the plaintiff's deceased father Charles Angweyo Omuondo in 1978 or thereabout purchased the suit property from the defendant's deceased father one, Ochieng Orwa. That after purchasing the property the plaintiff's father constructed a shop thereon which he rented to one, Michael O. Knoll (PW3) initially and later to one, William Oginga Oloo (PW4) who joined as a co-tenant in 1987 or thereabouts. The plaintiff's evidence is that PW3 and PW4 were their tenants and were paying rent for the premises on the suit property to the plaintiffs. PW3 and PW4 also in their evidence stated they were rented the premises by the plaintiff's father and were paying rent to him before he died and after his death they continued paying rent to the plaintiff and his mother upto April 2011 when the dispute as to ownership between the plaintiff and the defendant arose. Both DW1 and DW2 acknowledge PW3 and PW4 were tenants of the plaintiffs in the suit premises. They also acknowledged that the house constructed on the suit premises was constructed by the plaintiff's father.

18. The defendant (DW1) in his evidence before the court expressly admitted that the plaintiff's father bought the suit property from his deceased father. He also admitted that he never had possession of the suit property and that he never developed the property. In cross examination regarding PW3 and PW4 the defendant stated:-

**"...I knew PW3 and PW4 before the death of my father. They are tenants in the suit property. PW3 and PW4 were tenants of the plaintiff's father. They are still occupying the suit property. They are now tenants of the plaintiff and his mother."**

19. The defendant's father died in 1984 and the defendant obtained grant of letters of administration to his estate which he used to cause the suit property to be registered in his name on 19<sup>th</sup> March 1991 as per the abstract of title for land reference **Suna East/Wasweta I/2554** dated 26<sup>th</sup> January 2011 annexed to the Originating Summons. The defendant had not sought to recover the land from the plaintiff's father until his death on 15<sup>th</sup> November 2002. As at the time of his death, the plaintiff's father had been in possession (albeit constructively) of the suit property for well over 20 years he having purchased and taken possession in 1978 or thereabouts (as per memorandum of agreement dated 28<sup>th</sup> April 1978). The issue to determine is whether the possession was adverse to the interests and rights of the registered owner. My position is that once the plaintiff's father purchased the property and started utilizing the same as the owner thereof, the possession became adverse to the interest of the defendant's father who was then the registered owner.

20. The plaintiff's late father's act of constructing a commercial building on the suit property was not consistent with the ownership rights of the defendant's father. The plaintiff's father's act of constructing a house on the suit property constituted an assertion of ownership of the property on his part and was essentially a hostile act against the ownership rights of the registered owner. The further act of renting the premises to third parties (PW3 and PW4) is affirmation that he was occupying the property as the owner and was in fact exercising ownership rights. The tenants acknowledged and treated him as the owner of the property. The plaintiff's father therefore after purchasing the suit property openly took possession and started utilizing the same in a way and manner that was adverse to the interests and rights of the real owner. The plaintiff's deceased father was a purchaser who was in adverse possession as soon as he purchased the property and paid for it. He was an adverse possessor of the suit property as at 1984 when the defendant's father died and he was still an adverse possessor in 1991 when the defendant as administrator of his late father's estate was registered as owner. The plaintiff's deceased father continued in adverse possession until he died in 2002 by which time he had definitely acquired title to the property

through prescription as the registered owner's title had by then gotten extinguished. The registration of the defendant as owner did not interrupt the running of the period of adverse possession in favour of the plaintiff's late father. The Court of Appeal in the case of **Kairu -vs- Gacheru [1986-1989] E.A** held that a change of ownership where the period of adverse possession was running does not interrupt the running of time. The court held thus:-

**“The law relating to prescription affects not only present holders of the title but their predecessors (Section 7 Limitation of Actions Act).”**

21. **Apaloo, J.A** contextualized the issue in the leading judgment of the court when he stated as follows:

**“If the period the respondent was in adverse possession against Mwangi were to be excluded and the period of limitation reckoned only when the appellant became registered proprietor, an owner of land whose title was in danger of being lost by prescription can better his lot by the simple device of alienating the land just a day before the 12 year period had run out. But it is elementary that a grantor of land cannot grant better title than he has. The appellant took Mwangi's title subject to the rights of a prior purchaser in adverse possession. That the law relating to prescription affects not only present holders of title but their predecessors in title is shown by Section 7 Limitation of Actions Act.”**

Section 7 Limitation of Actions Act provides:-

**“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.”**

22. Nyarangi J.A in the **Kairu -vs- Gacheru** case [supra] was of the view that a purchaser who buys land where a right of adverse possession was accruing and does not dispossess the person in adverse possession before the period of prescription matures, purchases such land subject to the adverse possessor's rights and takes the property subject to the overriding interests then subsisting in terms of Section 30 of the Registered Land Act, Cap 300 Laws of Kenya (now repealed).

23. Section 28(h) of the Land Registration Act, 2012 acknowledges prescriptive rights as overriding interests requiring no registration. It provides as follows:-

**28. Unless the contrary is expressed in the register, all registered land shall be subject to the following overriding interests as may for the time being subsist and affect the same, without their being noted in the register -**

.....

.....

**(h) rights acquired or in the process of being acquired by virtue of any written law relating to the limitation of actions or by prescription.**

24. In an earlier Court of Appeal case of **Githu -vs- Ndeete [1984] KLR** the court more or less restated the position taken in the case of **Kairu -v- Gacheru** [supra] when it held:-

**1. The mere changes of ownership of land that is occupied by another person under adverse possession does not interrupt such persons adverse possession.**

**2. Where the person in possession has already begun and is in the course of acquiring rights under Section 7 of the Limitation of Actions Act (Cap 22) and by virtue of section 30(f) of the Registered Land Act (Cap 300), those rights are overriding interests to which the new registered purchaser's title will be subject.**

**3. Time ceases to run under the Limitation of Actions act either when the owner takes or asserts his right or when his right is admitted by the adverse possessor. Assertion occurs when the owner takes legal proceedings or makes an effective entry into land. Giving notice to quit cannot be effective assertion of right for purposes of stopping the running of time under the Limitation of Actions Act.**

25. Applying the test in the **Githu -vs- Ndeete** case [supra] to the facts and evidence in this case, I come to the irresistible finding that the plaintiff's deceased father was in adverse possession of the suit property from 1978 up to 2002 when he died and that the registration of the defendant in 1991 as owner of the property as administrator of his late father's estate was subject to the overriding interest of the plaintiff's late father as an adverse possessor. As at the time of his death in 2002, the plaintiff's late father had acquired title to the suit land by way of prescription and that the defendant was holding the registered title as a trustee of the plaintiff's late father and after his death as trustee for his estate.

26. The defendant (DW1) in his evidence agreed that the plaintiff's late father had purchased the suit property from the defendant's late father and had built a building on the property which he had leased to PW3 and PW4. The defendant even though he got registered in 1991 as owner of the suit property following the death of his father, did not make any attempt to repossess the property from the plaintiff's father. It does appear that the defendant indeed accepted the plaintiff's father had purchased the suit property and had acquired ownership as the defendant stated that in 2009 (nearly 18 years after being registered as owner) he agreed to purchase the plaintiff's ownership interest in the suit property for kshs.185,000/=. The plaintiff and his mother have however denied this agreement which according to the defendant was drawn by the plaintiff. DW4 Chief Inspector Chani, a forensic expert in his evidence stated that upon examination of the disputed sale agreement dated 16<sup>th</sup> November 2008 he formed the opinion that the same was written and was signed by the plaintiff. The plaintiff denied writing or signing the agreement. For some unexplained reason the defendant did not examine the plaintiff on the alleged agreement dated 16<sup>th</sup> November 2008 and neither was the same referred to the plaintiff when he testified.

27. I have considered the alleged agreement dated 16<sup>th</sup> November 2008 relied upon by the defendant to assert that he purchased the plaintiff's interest in the suit property and I am not satisfied that the defendant has proved there was such an agreement. It appears to me the making of the document was an afterthought on the part of the defendant in an attempt to wrestle the property from the plaintiff's family and that DW3 may have been used by the defendant to manufacture the document. The agreement at any rate would not have been sufficient to found an action relating to a disposition of an interest in land as it was in contravention of Section 3(3) of the Law of Contract Act, Cap 23 Laws of Kenya which provides thus:-

**3(3) No suit shall be brought upon a contract for the disposition of an interest in land unless:-**

**(a) The contract upon which the suit is founded-**

**(i) Is in writing**

**(ii) Is signed by all the parties thereto; and**

**(b) The signature of each party signing has been attested by a witness who is present when the contract was signed by such party.**

The alleged agreement of 16<sup>th</sup> November 2008 would have been unenforceable for want of compliance with Section 3(3) of the Law of Contract Act, Cap 23 Laws of Kenya.

28. The defendant in his filed submissions has argued that the plaintiff had not brought the suit as the administrator of his late father's estate and further that the plaintiff's possession was not continuous but had been interrupted and broken repeatedly by the defendant. Notably the defendant submits that prior to the filing of the suit, the defendant had taken possession and fenced off the property and the plaintiff had

no access to the property. The defendant thus contends he had wrestled possession from the plaintiff and consequently the possession of the plaintiff, even if it may have been adverse was broken and the doctrine of adverse possession was in the circumstances inapplicable.

29. The available evidence on record is that the defendant sometime in 2011 attempted to regain possession of the suit property. He sent his brother DW2 to fence the property but the tenants PW3 and PW4 resisted and refused to vacate the property claiming they were tenants of the plaintiff. PW3 and PW4 testified that the attempt to evict them was in April 2011 and that is when they reported to the police station and the defendant was restrained from evicting them. They continued to be in occupation of the suit premises. The tenants' version of when the attempted eviction occurred differs with DW3's version who states it is the plaintiff who reported entry by the defendant onto the property on 21<sup>st</sup> January 2011 and not PW3 and PW4. If the action by the defendant was in April 2011 as claimed by the tenants, it was after the plaintiff had filed this suit and after the defendant was served. My view is that it is PW3 and PW4 who were to be immediately affected by the defendant's action requiring them to vacate and I believe them when they state the defendant wanted to evict them in April 2011 and it is then they sought the intervention of the police. DW3 as I have observed elsewhere in this judgment may have been used to prod the defendant's case and that may explain the apparent tilt in favour of the defendant's case. Why for instance did he not record a statement from the defendant and/or the tenants when they reported the matter at the station? Be it as it may be, it is my finding that the defendant never at any time retook possession of the suit property from the plaintiff and there was therefore no interruption of the possession and occupation by the plaintiff.

30. On the submission that the plaintiff did not bring the suit as administrator of his father's estate, there is evidence that the plaintiff obtained an Ad Litem grant in Migori SRM's Court P&A No. 139 of 2010 which was issued on 4<sup>th</sup> January 2011 "**limited to the purposes of filing suit**" that grant was produced as "**PEx1**". The plaintiff therefore brought the suit as a legal representative of the estate of the late Charles Angweyo (deceased).

31. Having regard to the issues that I set out for determination, I have in the cause of my analysis and discussion above dealt with the said issues. I would answer issues (i) – (iii) in the affirmative and issue number (iv) in the negative.

32. In the result, it is my determination that the plaintiff has proved his case against the defendant on a balance of probabilities and I accordingly enter judgment in favour of the plaintiff on the following terms that:

**1. The plaintiff be and is hereby declared to have acquired title over land parcel number Suna East/Wasweta I/2554 by virtue of having been in adverse possession for a period in excess of 12 years.**

**2. The plaintiff Jeconia Angweyo Omuondo is ordered to be registered as the owner of land parcel number Suna East/Wasweta 1/2554 in place of the defendant Charles Ogejo Ochieng.**

**3. The land registrar, Migori is directed to cancel land title Suna East/Wasweta I/2554 registered in the name of Charles Ogejo Ochieng and instead to register Jeconia Angweyo Omuondo as the owner thereof.**

**4. An order be and is hereby issued restraining the defendant either by himself, agent, servants and/or employees from interfering with the plaintiff's peaceful possession and occupation of the said parcel of land that is LR No. Suna East/Wasweta I/2554 in any manner and/or howsoever.**

**5. Costs of the suit are awarded to the plaintiff.**

**JUDGMENT DATED, SIGNED and DELIVERED at KISII this 23<sup>RD</sup> DAY of FEBRUARY, 2018.**

**J. M. MUTUNGI**

**JUDGE**

**In the presence of:**

Mr. Mboya for Jaoko for the plaintiff

N/A for the defendant

Ruth court assistant

**J. M. MUTUNGI**

**JUDGE**