



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E&L NO. 110 OF 2014

**IN THE MATTER OF AN APPLICATION FOR ORDERS UNDER S.S 37 & 38 OF THE LIMITATION OF ACTION ACT, CAP 22
LAWS OF KENYA**

AND

IN THE MATTER OF APPLICATION FOR ORDERS BASED ON ADVERSE POSSESSION.

AND

IN THE MATTER OF LAND PARCEL NO. UASIN GISHU/KIMUMU/983

AND

IN THE MATTER OF LAND PARCEL NO. UASIN GISHU/KIMUMU/4441

BETWEEN

TAMUREI KOBILO CHEPKAITANY.....APPLICANT/PLAINTIFF

VERSUS

JOANES OCHIEL NYAWARA.....1ST RESPONDENT/DEFENDANT

CHEPKAITANY KAIMUGUL.....2ND RESPONDENT/DEFENDANT

JUDGEMENT

By an originating Summons dated 3rd April 2014, the Applicant/Plaintiff herein sued JOANNES OCHIEL NYAWARA and CHEKAITANY KAIMUGUL seeking for an order that she has acquired title to that parcel of land known as UASIN GISHU/KIMUMU SCHEME/4441 measuring 0.1Ha or thereabouts by adverse possession. The applicant listed the following issues to be determined by the court:

1. **Whether** the Applicant herein has acquired title to the said parcel of land known as UASIN GISHU/KIMUMU SCHEME/4441 measuring 0.1Ha or thereabouts by adverse possession
2. **Whether** the 1st respondent JOANNES OCHIEL NYAWARA holds the said title to the parcel of land in trust for the Applicant.
3. **Whether** the title of the respondent in respect of the said parcel of land got extinguished on the expiry of 12 years after the applicant took possession.
4. **Whether** the suit land herein measuring 0.1 Ha or thereabouts should be registered in the name of the Applicant herein.
5. **Whether** the 1st Respondent should be ordered to execute all such documents of transfer as shall facilitate the transfer of UASIN GISHU/KIMUMU SCHEME/4441 to the applicant
6. **Whether** the respondents should pay the costs of this suit.

The summons was supported by the affidavits of TAMUREI KOBILO CHEPKAITANY and SERAH MUTHONI CHEGE. The parties

complied with the pretrial procedures and when the matter came up for hearing Counsel agreed to canvass the same through affidavit evidence. Counsel also filed submissions in respect of their clients' cases.

Applicant's Case

It was the Applicant's case that on or about 25th May 1997, her now estranged husband, CHEPKAITANY KAIMUGUL (2nd Respondent/Defendant) purchased on her behalf, a $\frac{1}{4}$ of an acre of land comprised in that parcel of land then known as UASIN GISHU/KIMUMU SCHEME/ 983 from the 1st Respondent/Defendant and his wife SERAH CHEGE at a consideration of Kshs. One hundred and ten thousand only which sum was paid in full. It was further the applicant's case that immediately upon purchase, she took possession, fenced and developed the same by building rental houses and has been in possession since the late 90s' to date.

The applicant stated that in the course of time, the 1st Respondent subdivided Land parcel UASIN GISHU/KIMUMU/983 into 2 portions, as a result of which the portion bought for the applicant fell within the sub title registered as number UASIN GISHU/KIMUMU SCHEME/4441. It was her evidence that the 1st Respondent had the said sub title registered in his name and the late PRISCILAH WAITHERA in the year 2007 when he knew that a substantial portion of it had been sold.

The Applicant stated that her possession and use of the $\frac{1}{4}$ acre portion of the suit land was not interfered with but in the year 2012, the Applicant/Plaintiff learnt that the Respondents had colluded to dispose of the suit $\frac{1}{4}$ acre portion of land comprised in land parcel UASIN GISHU/KIMUMU SCHEME/4441 to a third party, without her knowledge.

The Applicant/Plaintiff avers that she has been in continuous, open and uninterrupted use of the suit portion of land for over 17 years and that she has now acquired prescriptive rights over the $\frac{1}{4}$ acre portion of land herein. She therefore prays for an order declaring that she has acquired ownership rights over the $\frac{1}{4}$ acre portion of land comprised in the suit land by operation of Doctrine of Adverse Possession.

Counsel for the applicant submitted that in response to the originating summons, the 1st respondent admitted that he sold $\frac{1}{4}$ of the land parcel UASIN GISHU/KIMUMU SCHEME/983 in 1997 to the 2nd Respondent/Defendant and that in 2007, the mother title number UASIN GISHU/KIMUMU SCHEME/983 was subdivided into UASIN GISHU/KIMUMU SCHEME/4440 and UASIN GISHU/KIMUMU SCHEME/4441. He further admitted that as between him and his wife SERAH MUTHONI CHEGE, land parcel UASIN GISHU/KIMUMU SCHEME/4441 was apportioned to him while his wife took the other.

The 1st respondent also admitted in his replying affidavit that the $\frac{1}{4}$ acre portion of land claimed herein falls within the suit land parcel No. UASIN GISHU/KIMUMU SCHEME/4441 whose boundary is clearly marked and developed. He further stated that in October 2013, he and the 2nd Respondent/Defendant jointly sold the $\frac{1}{4}$ acre portion of land claimed herein at Kshs. 1,400,000/ to a third party.

Counsel for the applicant submitted that the 1st respondent however denies knowledge of the Applicant, that she is in possession of the suit land, that she is the one who developed the land and that a Mr. Komen who is the applicant's witness was the area chief in the late 90s. The 1st respondent therefore stated that the applicant is not entitled to the prayers sought.

It was applicant's Counsel's submission that the 2nd Respondent admitted in his replying affidavit that the applicant is his 1st wife and that he purchased $\frac{1}{4}$ acre of the suit land from the 1st respondent in 1997. Counsel also submitted that the 2nd respondent admitted in his affidavit that 3 months prior to the purchase of the said portion of land, he had sold 10 acres of their Kaptagat Farm where the applicant lived in and that the applicant was a witness at the time of sale of 10 acres of the Kaptagat Farm which was annexed as an exhibit. The respondent also admitted that the suit portion of land herein is fenced, developed and that KIPLAGAT CHEPKAITANY the Applicant's son lives therein.

Counsel submitted that the 2nd respondent however denies that he bought the suit land for or on behalf of Applicant. He also denies that the applicant is in possession of the suit land hence not entitled to the prayers sought.

Counsel for the applicant therefore listed the following issues for the courts determination.

1. Whether land parcel UASIN GISHU/KIMUMU SCHEME/4441 is registered in the name of JOANNES OCHIEL NYAWARA — in the 1st Respondent/Defendant.
2. Whether CHEPKAITANY KAIMUGUL purchased from the 1st Respondent/Defendant 0.1Ha of the suit land for and on behalf of the Applicant/Respondent.
3. Whether the Applicant/Plaintiff took possession of the suit land and developed the same in 1997 or thereabouts.
4. Whether consent for transfer was obtained from the Land Control Board within prescribed time.
5. Whether the Applicant has been in open, continuous and uninterrupted occupation and use of the suit portion of land for a period not less than 12 years.
6. Whether the Applicant/Plaintiff is entitled to the portion of land measuring a $\frac{1}{4}$ of an acre comprised in land parcel UASIN GISHU/KIMUMU SCHEME/4441.

7. Whether the Respondents/Defendants objection to the Applicant's/Plaintiff's claim are valid.

8. Who will pay costs of this summon

Counsel submitted on the 1st issue as to whether the suit land parcel UASIN GISHU/KIMUMU SCHEME/4441 is registered in the name of JOANNES NYAWARA and stated in the affirmative that indeed the same is registered in the name of the 1st respondent as evidenced by annexure TKC3a. This is also pleaded in paragraph 25 of his Replying Affidavit sworn on 5th June 2014.

On the second issue as to whether the 2nd Respondent/Defendant bought for the Applicant/Plaintiff 1/4 of an acre comprised in UASIN GISHU/KIMUMU SCHEME/4441, Counsel submitted that it is the Applicant's case that in 1997, when the mother title UASIN GISHU/KIMUMU SCHEME/ 983 subsisted, the 2nd Respondent approached the 1st Respondent/Defendant with the request that he purchases for the applicant, a portion of the then UASIN GISHU/KIMUMU SCHEME/983.

That upon agreeing on the terms of the purchase, the 1st Respondent/Defendant and his wife SERAH MUTHONI CHEGE, sold 1/4 of an acre of land parcel UASIN GISHU/KIMUMU SCHEME/ 983 (erroneously written as 984 in agreement) at a price of Kshs. 110,000/ which sum was paid in full as per the agreement annexed as TKC 1.

It was further Counsel's submission that the applicant stated that the 2nd Respondent/Defendant purchased for the applicant the suit portion of land measuring 1/4 of an acre comprised in UASIN GISHU/KIMUMU SCHEME/4441 because of the following reasons:-

a) She lives in her land parcel UASIN GISHU/KIMUMU SCHEME/KONG'ASIS/KAPTAGAT BLOCK 1/4 which earlier measured 30 acres.

b) That she bought the Kaptagat land after saving wages paid to her for working for many years for her uncle the late Hon. Kamuren, former M.P, Baringo North constituency.

c) That although she singlehandedly acquired the 30 acre parcel of land, the 2nd Respondent/Defendant, being her husband, had himself registered as the proprietor.

d) That her husband recognized her right over the Kaptagat land.

e) That in 1997, he approached her with the request that she allows him sell a portion of it to offset a bank loan, buy her a plot to build rental houses in Eldoret town and apply the balance in funding his election campaigns in North Baringo constituency.

f) That the Applicant/Plaintiff acceded to her husband's request and an agreement for sale of 10 acres of her Kaptagat farm was drawn on 24th February 1997.

g) The Applicant/Plaintiff was a witness in the agreement for sale of the Kaptagat Farm.

(See annexure T 1 of her Supplementary Affidavit sworn on 3rd November 2017).

h) That 3 months after sale of the Applicant's/Plaintiff's Kaptagat land, the 1st Respondent/Defendant indeed purchased the present 1/4 of an acre in Kirumu estate within Eldoret town from the 1st Respondent/Defendant and his wife SERAH MUTHONI CHEGE.

i) SERAH MUTHONI CHEGE the 1st Respondent's/Defendant's wife has deposed in paragraph 5 and 7 of her supporting affidavit sworn on 3rd April 2014 that the 2nd Respondent/Defendant had made it clear at the time of purchase that he was buying the same for the Applicant.

Counsel therefore submitted that the above demonstrates that the 2nd respondent purchased the 1/4 acre portion of the suit land herein for the applicant.

On the third issue as to whether the applicant took possession of the 1/4 acre portion of the suit land upon purchase, Counsel referred the court to paragraph 3 of the supporting affidavit which states that she took possession of the suit portion of land in 1997 and has been in occupation since then to date. The applicant also averred in paragraph 6 of her Supporting Affidavit, that she fenced, built a home, rental houses, grew commercial and fruit trees and that one of her sons namely KIPLAGAT CHEPKAITANY is in occupation of one of the premises. The applicant also annexed photos of the developments on the suit land as TKC 4 a & b. Counsel also submitted that this position was reinforced by the supporting affidavit sworn by SERAH MUTHONI CHEGE on 3rd April 2014, whereby she deposed in paragraphs 6 & 7 that the applicant took possession of the suit portion of land in 1997.

On the fourth issue as to whether consent for transfer of the purchased portion of land herein was obtained from the Land Control Board, Counsel stated that it is a statutory requirement that transfer of interest in land under controlled tenancy such as the suit land herein shall be effected upon issue of Consent for transfer within 6 months from the date of purchase of such interest and it is clear that although the suit land falls within the operation of the Land Control Act, no consent for transfer in favour of the purchaser and or the Applicant/Plaintiff was obtained within the requisite time or at all. Counsel further submitted that in view of the foregoing, the agreement for sale signed on 21st May 1997 become voidable at the instance of the Vendor— 1st Respondent/Defendant as no Consent for Transfer of the 1/4 portion of land herein was obtained from the Land Control Board within the statutory period or at all.

On the fifth issue as to whether the Applicant/Plaintiff has been in open continuous and uninterrupted possession of the $\frac{1}{4}$ acre portion of the suit land for at least 12 years, Counsel stated that the same has been proven through the affidavit and the annexure of the photos of the development that she has done together with the fact that one of the sons is also in occupation of the suit land. It was Counsel's submission that the applicant's occupation has been open, peaceful continuous and uninterrupted since 1997 to date. This evidence was corroborated by the evidence of MRS. SERAH MUTHONI CHEGE, the 1st Respondent's wife, who stated that within 5 months of date of purchase of the suit portion of land herein, the Applicant/Plaintiff took possession of the 0.1 Ha portion of land, fenced it, built a house for herself and a rental unit. The applicant also exhibited the receipts for the rental income paid by the tenants on the plot. It was also Counsel's submission that the evidence was reinforced by the affidavit of the Area Chief one William Komen who stated that he has known the applicant as the owner of the $\frac{1}{4}$ portion of land herein, that she has been in possession since the late 90s and that he has helped her resolve rent disputes between her and her tenants.

Counsel submitted that one of the prerequisite ingredients in a claim for adverse possession is that an applicant must have been in continuous, open, uninterrupted possession and use of the claimed land for a period not less than 12 years and that the applicant had met this threshold. Counsel therefore submitted that the applicant is entitled to the prayers sought with costs of the suit.

Counsel cited several authorities to buttress his submission on behalf of the applicant.

One of the authorities cited was CHEVRON (K) LTD -VS- HARRISON CHARO WA SHUTU {2016} eKLR where the court held that time begun running in the year 1994 when the appellant was registered as proprietor of the suit land and the respondent's right to the suit land under the doctrine of adverse possession crystallized upon the lapse of 12 years from 1994. It was Counsel's submission that in the present case time begun running as from the year 1997 when the applicant herein took possession of the suit land.

Counsel also cited the case of PETER MBIRI MICHUKI -VS- SAMUEL MUGO MICHUKI [2014 eKLR where the Court of Appeal held that possession of land need not be physical. It can be constructive through claimant's licensee and that while computing the 12 years period, possession shall be open, uninterrupted and shall be either actual or constructive. The Court further held that adverse possession should be computed from date of payment of purchased price. While referring to the case of PUBLIC TRUSTEE -VS- WANDURU NDEGWA (1984) KLR 314 at 319, the court held that a purchaser in taking possession of the land purchased, after having paid the purchase price, is the person in whose favour the period of limitation runs and that a registered proprietor holds in trust for the person who by virtue of the limitation of Actions Act has acquired title against the proprietor.

Counsel therefore urged the court to find that the applicant has met the threshold of being declared owner by virtue of having acquired the suit land by adverse possession taking into consideration the evidence on record.

THE RESPONDENT'S CASE AND SUBMISSIONS.

Counsel for the respondents filed written submissions and gave a brief chronology of the pleadings which I have enumerated above. It was the respondent's Counsel's submission that the wife of the 1st respondent is not a party to this suit and that the claim of the applicant is based on the ground that the applicant has been in continuous, open, peaceful and uninterrupted occupation of the suit land for a period in excess of 12 years since 1997.

It was Counsel's submission that this suit was filed on 3rd April 2014 against the two respondents whose wives are behind the suit. He stated that the 1st respondent is sued both in his personal capacity and his capacity as the administrator of the estate of Pelisilah Waithira Waweru deceased. It was further Counsel's submission that the handwritten agreement dated 21/5/1997 between the 1st respondent and his wife Serah Muthoni Chege as the vendors/Sellers on one part and the 2nd respondent as the purchaser/buyer on the other part is also the basis of the applicant's claim against the respondents. Counsel reproduced the affidavits of the respondents as filed and listed the issues for determination by the court as follows.

- (a) Whether the 1st respondent should be ordered to execute documents of transfer and/or to facilitate the transfer of the suit land and/or the suit land should be registered in the name of the applicant.
- (b) Whether the applicant's claim on adverse possession is sustainable in the circumstances.
- (c) Whether the title to the suit land is held in trust for the applicant.
- (d) Whether the title in respect of the suit land got extinguished on expiry of twelve (12) years after the applicant allegedly took possession of the suit land.
- (e) Who should pay costs of this suit?

In response to the issues Counsel submitted that the date of the registration of and issuance of title to the 1st respondent and Pelisilah Waithira Waweru as the proprietors of the title No. UASIN GISHU/KIMUMU/983 approximate area 0.423 Ha and title No. UASIN GISHU/KIMUMU SCHEME/4441 approximate area 0.32 Ha under the Registered Land Act (Chapter 300) was on 29/5/97 and 22/11/07

respectively, and that all the registered proprietors are not parties in this suit.

It was Counsel's further submission that the respondents' handwritten agreement made in Kiswahili language on 21/5/97 which allowed the payment of the consideration of kshs 110,000/ in two instalments of 40,000/ and kshs 70,000/ did not have the parcel numbers of the sold titles. And the applicant was not a party to that agreement whose parties have no dispute between themselves to date.

Further that the agreement for sale made on the 26th October, 2013 is for the sale of $\frac{1}{4}$ acre of land out of title No. UASIN GISHU/KIMUMU/4441 to Kitum William Kirui a third party who is not a party to this suit and whose agreement with the respondent in this suit has no dispute to date. This suit was instituted after the respondents' agreement for sale dated 26/10/13 with the said Kitum William Kirui.

On the second issue as to whether the applicant's claim on adverse possession is sustainable in the circumstances, Counsel stated that the applicant has not established or proved the elements to support a claim of adverse possession. Counsel cited the case of **Mombasa Court of Appeal Civil Appeal No. 72 of 1982 Wanje-v- Saikwa (No. 2) (1984) KLR page 284-293** where the court held that :-

"1. In order to acquire by the statute of limitations a title to land to which has a known owner, that owner must have lost his right to the land either by being dispossessed of it or by having discontinued his possession of it.

2. What constitutes dispossession of a proprietor are acts done which are inconsistent with the purpose for which he intended to use it.

3. A person who occupies another person's land with that person's consent cannot be said to be in adverse possession as in reality he has not dispossessed the owner of the land and the dispossession is not illegal"

Counsel submitted that from the pleadings, the applicant's case and the respondents' case, the registered proprietors of the title No. UASIN GISHU/KIMUMU SCHEME/4441 a subdivision of title No. UASIN GISHU/KIMUMU/983 have not lost their right to the suit land by way of adverse possession. He stated that the circumstances of this case are clear that the applicant has not acquired title to the suit land by way of adverse possession which has not been proved.

On the third issue on whether the title to the suit land is held in trust for the applicant, Counsel relied on the case of **Mombasa High Court Commercial Civil case No. 56 of 2009 Kimemia -V- Miwana (2012) KLR page 532-542** in which it is held:-

' A trust, by definition, arises when a donor or grantor reposes a confidence in a person, who is termed a trustee, for the benefit of another who is called a cestui que trust, respecting property which is held by the trustee for the benefit of the cestui que trust. It was thus for the plaintiff to prove the existences of a trust. A mere allegation of its existence could not create one".

He stated that from the above definition of trust in the circumstances of this case, the applicant has not adduced evidence to prove that the 1st respondent has been holding the suit property in trust for the applicant.

Counsel further relied on the case of **Nairobi High Court Civil Suit No. 128 of 2006 Togom -V- Shingore (2012)KL** to respond to the issue of the 12 year limitation period in respect of adverse possession where the court held:-

1. The Respondent had to assert his right to title by physically entering onto the property and evicting and ejecting the trespasser from the suit property. Alternatively the respondent should have proceeded to institute legal proceedings in a court of law against the trespasser asserting his rights against the trespasser with prayer for his eviction and ejection from the property. Then only is there interruption to occupation and possession and then only does time stop running. Therefore the proceedings initiated or instituted by the plaintiff did not amount to interruption. The onus to file suit was upon the Respondent asserting his right to title as against the plaintiff. 2. The plaintiff had bought the land in issue from the mother of the Respondent and the plaintiff had had open, continuous occupation and possession of the land adverse to the interests of the respondent for a period of over twelve (12) years. The plaintiff had proved that he was entitled to the property by way of adverse possession".

Counsel submitted that from the foregoing the registered proprietors in respect of the title No. Uasin Gishu/Kimumu/983 and/or title No. Uasin Gishu/Kimumu Scheme/4441 would have asserted their right to title by way of eviction, ejection and/or by way of instituting legal proceedings against the trespassers to interrupt occupation and possession of the suit property, if any, had there been open, continuous occupation and possession of the suit land by the applicant adverse to the interests of the 1st respondent and/or the registered proprietors of the suit land for a period of twelve (12) years.

It was further submitted by Counsel for the respondent that the applicant in this suit has not proved that she is entitled to the suit property by way of adverse possession and that the title No. Uasin Gishu/Kimumu/983 was closed upon subdivision into titles No. Uasin Gishu/Kimumu Scheme /4441 and 4440. The title No. Uasin Gishu/Kimumu Scheme/4441 was registered on 22/11/07 which is less Seven (7) years ago prior to the institution of the suit on 3/4/14.

Counsel stated that there is no evidence by the applicant to prove as to when time of occupation and possession of the suit land started to run and/or that the title in respect of the suit land got extinguished on the expiry of twelve (12) years after the applicant's allegation of taking possession of the suit land. Counsel therefore urged the court to dismiss the applicant's suit with costs to the respondents.

Analysis and determination

This case is for a claim for adverse possession by the applicant/plaintiff herein. It was the applicant's case that the 2nd respondent who is her estranged husband bought for her the suit plot which she took possession of and developed the same. The issue for determination for the court is whether the applicant has proved her claim for adverse possession and whether she is entitled to the orders sought.

This doctrine in Kenya 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.”

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.”

Sections 37 and 38 of the Limitation of Actions Act stipulate that if the land is registered under one of the registration acts then the title is not extinguished, but held in trust for the person in adverse possession until he shall have obtained and registered a High Court Order vesting the land in him.

Section 37 provides that:-

“(1) Where a person claims to have become entitled by adverse possession to land registered under any of the Acts cited in section 37, to land or easement or land comprised in a lease registered under any of those Acts, 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 proprietor of the land.”

In order for the plaintiff to succeed in her claim for adverse possession, she has a duty to establish that she has been in open, continuous and uninterrupted possession of the disputed land for a period of at least twelve years prior to the filing of the present suit.

The Court of Appeal in the case of **Ndatho vs. Itumo & 2 others (2002) 2 KLR 637**, stated that in order to succeed in a summons for adverse possession:-

“The possessor(s) must show that the possession was adequate, continuous and exclusive. In other words, such possession, to be adverse, must be adequate in continuity, in publicity and in extent to show that the possession was adverse to the proprietor.”

It is not in dispute that the land in dispute is registered in the 1st respondent's name. The 2nd respondent admits that he bought the land but disputes that he bought it on behalf of the applicant. He also disputes that the applicant is in possession of the suit land. The sale agreement is not disputed and therefore Respondent's submission that the agreement did not indicate the plot being purchased is not sound with due respect to Counsel.

The respondents did not tender any evidence to counter the fact that the applicant resides on the suit land. The applicant produced receipts showing that she has been receiving rental income from the suit land. The respondents did not give their version of who is in occupation of the suit land.

On the issue of whether the applicant has been in open, continuous and uninterrupted occupation and use of the suit land for a period of 12 years. The applicant adduced evidence that to the effect that she has been residing on the suit land and no evidence was led to show that there has been any interruption with her possession or occupation.

The respondents annexed an agreement dated 5th May, 2013 between Joanes Ochiel Nyawara and Chepkeitany Kaimagut whereby it is indicated that the vendor who is the 1st respondent had sold ¼ acre out of parcel known as Uasin Gishu/Kimumu/4441 and a consideration of one hundred and ten thousand on or about the year 2006.

It is further stated in the agreement that the vendor has agreed to refund the purchaser the purchase price received in respect of the said property, together with the value of developments thereon a consideration of Kshs 14 Million. This is a confirmation that there are developments on the suit land which the respondents had denied. Who is the owner of the developments? Where is the person who spent his Kshs. 1.4 Million on a plot that is occupied by someone else? This seems to have been a ploy to defeat the applicant's claim. The respondent's evidence was contradictory and therefore not credible.

In respect to the issue whether the 1st respondent held the suit land in trust for the applicant I relied on the case of **PUBLIC TRUSTEE -VS- WANDURU NDEGWA (1984) KLR 314 at 319**, where the court held that a purchaser in taking possession of the land purchased, after

having paid the purchase price, is the person in whose favour the period of limitation runs and that a registered proprietor holds in trust for the person who by virtue of the limitation of Actions Act has acquired title against the proprietor. The applicant having taken possession of the suit land immediately after purchase which was corroborated by SERAH MUTHONI CHEGE the wife of the 1st respondent, time started running against the 1st respondent who is the registered owner of the suit land.

I find that the applicant has proved her claim for adverse possession against the respondents and therefore make the following orders.

1. That the Applicant herein has acquired title to parcel of land known as UASIN GISHU/KIMUMU SCHEME/4441 measuring 0.1Ha or thereabouts by adverse possession and should be registered in the applicant's name.
2. The 1st Respondent is hereby ordered to execute all such documents of transfer to facilitate the transfer of UASIN GISHU/KIMUMU SCHEME/4441 to the applicant within 30 days failure of which the Deputy Registrar shall execute the documents of transfer.
3. The respondents to pay the costs of this suit.

Dated and delivered at Eldoret this 21st day of June, 2018.

M. A ODENY

JUDGE

Judgment read in open court in the presence of Mr. Kiboi holding brief for Mr. Nyekwei for Applicant and in the absence of Mr. Cheptarus for the Respondent.

Mr. Koech; Court Assistant.