



**Sireo v Seriani & 3 others (Environment & Land Case E006 of 2022)
[2024] KEELC 662 (KLR) (15 February 2024) (Judgment)**

Neutral citation: [2024] KEELC 662 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENT & LAND CASE E006 OF 2022
EM WASHE, J
FEBRUARY 15, 2024**

BETWEEN

JOEL LESHAN SIREO PLAINTIFF

AND

JACKSON SERIANI 1ST DEFENDANT

NKAMINI HILARY SIWA 2ND DEFENDANT

FREDRICK SERIANI 3RD DEFENDANT

KILGORIS RESORTS LIMITED 4TH DEFENDANT

JUDGMENT

1. The Plaintiff herein has filed the Originating summons dated 9.11.2022 (hereinafter referred to as “the present O.S”) against the Defendants seeking for the following Orders; -
 - a. A declaration that the Defendants and in particular the 4th Defendant’s right to recover a portion measuring 35 acres out of LR.NO.Transmara/Poroko/107 is barred under the Limitation of Actions Act, Chapter 22 Laws of Kenya and the title thereto extinguished on the grounds that the Plaintiff herein has openly, peacefully and continuously been in occupation and possession of the aforesaid portion of the suit property for a period of 41 years.
 - b. There be an order that the Plaintiff be registered as the proprietor of the portion measuring 35 acres out of LR.NO.Transmara/Poroko/107 in place of the 4th Defendant.
 - c. There be an order restraining the Defendants and in particular the 4th Defendant, either by herself, agents, servants and/or employees from interfering with the Plaintiff’s peaceful possession and occupation of the portion measuring 35 acres out of the suit property that is LR.NO.Transmara/Poroko/107 in any manner whatsoever and howsoever.



- d. The Deputy Registrar and/or executive officer of the Environment and Land Court or such other authorised officer be directed and/or ordered to execute the application for Consent of Land Control Board, the Mutation and the Transfer Instruments and all other attendant documents to facilitate the transfer and registration of a portion of 35 acres out of the LR.NO.Transmara/Poroko/107 in favour of the Plaintiff.
2. The grounds upon which the above prayers are premised are contained in the body of the present O.S and further expounded in the Supporting Affidavit of the Plaintiff sworn on the 08.11.2022 which are summarised as follows; -
 - a. The property known as LR.NO.Transmara/Poroko/107 originally belonged to the 1st, 2nd and 3rd Defendant's father known as CHEMOIYWA OLE SIRIANI.
 - b. During the lifetime of CHEMOIYWA OLE SIRIANI, the Plaintiff's father purchased a portion of the said property known as LR.NO.Transmara/Poroko/107.
 - c. Upon purchase of a portion of LR.NO.Transmara/Poroko/107 by the Plaintiff's father possession was subsequently handed over to him.
 - d. After the demise of the late Chemoiywa Ole Siriani, the property known as LR.NO.Transmara/Poroko/107 was vested and registered in the name of the 1st, 2nd and 3rd Defendants.
 - e. However, during all this time, the Plaintiff continued to occupy the portion measuring 35 acres within the property known as LR.NO.Transmara/Poroko/107 without interruption from the 1st, 2nd and 3rd Defendants.
 - f. Consequently therefore, the Plaintiff's occupation on the portion of 35 acres within LR.NO.Transmara/Poroko/107 has been for a period of over 12 years and therefore the Defendants collectively are barred from recovering the same.
 - g. The Plaintiff is of the view that the Agreement For Sale entered between his deceased father and the 1st, 2nd and 3rd Defendants deceased father is binding and enforceable for a portion of 35 acres within the property known as LR.NO.Transmara/Poroko/107.
 - h. In the alternative, the Plaintiff claims for prescriptive rights over the sold portion of 35 acres within the property known as LR.NO.Transmara/Poroko/107.
 3. The present OS was duly served on the Defendants who duly filed a Replying Affidavit sworn on 22.11.2022 by one Eric Kivuva who is a director of the 4th Defendant.
 4. The Defendants in their Replying Affidavit opposed the present O.S on the following grounds; -
 - a. The 4th Defendant is indeed the registered owner of the property known as LR.NO.Transmara/Poroko/107.
 - b. The property known as LR.NO.Transmara/Poroko/107 measuring approximately 65 acres was sold to the 4th Defendant by the 1st, 2nd and 3rd Defendants.
 - c. Currently, the property known as LR.NO.Transmara/Poroko/107 has been charged to Family Bank Kenya Limited for a debt of KShs 3,000,000/-.
 - d. Similarly, there has been another proceeding known as Narok ELC Originating Summons No.286 Of 2017 Between Michael Lekakeny Ole Kisasy-versus- Jackson Seriani & Others



which suit was determined on the 30.06.2018 by a declaration that a portion of 35 acres within LR.NO.Transmara/Poroko/107 be registered in the name of the Plaintiff therein.

- e. The Defendants herein being aggrieved by the Judgement pronounced on the 30.06.2018 in the proceedings known as Narok ELC Originating Summons No.286 Of 2017 Between Michael Lekakeny Ole Kisasy-versus- Jackson Seriani & Others filed an application for stay pending appeal which Stay Orders were issued on the 30th of June 2021.
 - f. Subsequently therefore, the substantive Appeal is pending the hearing and determination before the Court of Appeal in Nakuru.
 - g. In the meantime, the property known as LR.NO.Transmara/Poroko/107 remains intact and without any sub-division.
 - h. The Defendants denied that the Plaintiff was in occupation of any portion measuring 35 acres on the property known as LR.NO.Transmara/Poroko/107 as alleged for a period of 12 years are envisaged by the law.
 - i. Consequently therefore, the Defendants sought to have the present O.S dismissed with costs.
5. At the close of pleadings, the matter was listed for hearing on the 30.10.2023.

PLAINTIFF'S CASE.

6. The first Plaintiff's witness was Joel Leshan Sireo (PW1).
7. PW 1 introduced himself as a farmer and resident of Poroko.
8. PW 1 stated that he occupies a portion of 35 acres within the property known as LR.NO.Transmara/Poroko/107.
9. According to PW 1, their occupation on the property known as LR.NO.Transmara/Poroko/107 began in the year 1981 when his late father Lenguët Mangat purchased a portion of land measuring 22 acres from Chemoiywa Ole Siriani.
10. PW 1 informed the Court that the purchase price in the Agreement For Sale was 12 cows which were duly received by the deceased Chemoiywa Ole Siriani.
11. PW 1 confirmed that the Agreement For Sale was not written but it had witnesses including JAMES SIRAIYO and JACKSON TORISI who are still alive.
12. Upon the demise of the Plaintiff's father and mother, both of them were buried on the portion they occupy on LR.NO.Transmara/Poroko/107.
13. PW 1 also produced a number of pictures which had homes and fully-grown trees and testified that these were developments undertaken during their occupation on a portion of LR.NO.Transmara/Poroko/107. (Plaintiff Exhibit 1)
14. PW 1 testified that the property known as LR.NO.Transmara/Poroko/107 is currently registered in the name of the 4th Defendant and produced an official Search dated 07.11.2022. (plaintiff Exhibit 2.)
15. In concluding his evidence in chief, PW 1 sought for the Court to declare him the lawful owner of a portion of land measuring 22 acres within the property known as LR.NO.Transmara/Poroko/107.



16. The Plaintiff was of the view that he had occupied the portion measuring 22 acres on the property known as LR.NO.Transmara/Poroko/107 for the last 41 years.
17. PW 1 also acknowledged that there was a neighbour known as MICHAEL OLE KISASI who is also on a portion the property known as LR.NO.Transmara/Poroko/107.
18. On cross-examination, PW 1 stated that he was born on the property known as LR.NO.Transmara/Poroko/107.
19. PW 1 reiterated that his deceased father had purchased a portion of the property known as LR.NO.Transmara/Poroko/107 and took possession with his family.
20. However, PW 1 could not produce any evidence that he was a biological son of Lenguat Mangat.
21. PW 1 stated that he was simply demanding for what his father had purchased from the 1st, 2nd and 3rd Defendant's father although he did not have any letters of administration to demonstrate such authority.
22. PW 1 reiterated that he is in occupation of about 22 acres of the property known as LR.NO.Transmara/Poroko/107.
23. PW 1 informed the Court that he was not aware of any steps that his deceased father took to enforce his purchaser's rights over the property known as LR.NO.Transmara/Poroko/107.
24. PW 1 insisted that the person known as Michael Ole Kisasi was a neighbour but had no relationship with him or the 1st, 2nd and 3rd Defendants herein.
25. According to PW 1 recollection, there was a meeting on the ground to establish the actually acreage occupied but he did not agree with the resolution and therefore the land is still not sub-divided.
26. In essence therefore, the PW 1 should be awarded the 22 acres which he is in occupation on the property known as LR.NO.Transmara/Poroko/107.
27. On re-examination, PW 1 insisted that he was born in 1979 and had been living on the property known as LR.NO.Transmara/Poroko/107 since 1981.
28. PW 1 further informed the Court that a Government Surveyor visited the property known as LR.NO.Transmara/Poroko/107 and confirmed that indeed 22 acres was occupied by his family.
29. After this re-examination, PW 1 was discharged from the witness box.
30. The second Plaintiff's witness was Olodaru Sireo (PW2).
31. PW 2 introduced himself as a farmer and resident of Poroko area.
32. Further to that, PW 2 informed the Court that he was an elder step brother to the Plaintiff herein.
33. PW 2 confirmed that he knew where the Plaintiff resides within Poroko.
34. PW 2 stated that the portion which the Plaintiff resides was purchased by their deceased father long time ago.
35. Consequently therefore, the Plaintiff was raised on the said portion of land within LR.NO.Transmara/Poroko/107 since he was a toddler.
36. PW 1 informed the Court that he was present when his deceased father purchased the portion of land measuring 22 acres within the property known as LR.NO.Transmara/Poroko/107.



37. According to PW 2 recollection, the purchase price was 12 cows which were duly paid.
38. Upon the demise of the Plaintiff's father and mother, both were buried on the portion they occupy on the property known as LR.NO.Transmara/Poroko/107.
39. PW 2 reiterated that the Plaintiff's occupation has never been interrupted and continues up to date.
40. In concluding his evidence in chief, PW 2 confirmed that the Plaintiff had been in occupation of the portion measuring 22 acres for over a period of 40 years.
41. On cross-examination, PW 2 could not confirm when the houses contained in the pictures produced as Plaintiff Exhibit 1 were constructed.
42. Secondly, PW 2 stated that the portion which the Plaintiff's father purchased in 12 acres not 22 acres.
43. On re-examination, PW 2 stated that the acreage purchased was 22 acres which is what the Plaintiff has been in occupation of within the property known as LR.NO.Transmara/Poroko/107.
44. At the end re-examination of PW 2, the Plaintiff closed his case.

DEFENCE CASE.

45. The first defence witness was Fredrick Seriani (DW 1).
46. DW 1 identified himself as the 3rd Defendant in the present suit.
47. DW 1 introduced himself as a teacher.
48. DW 1 stated that the 1st and 2nd Defendants were his brothers.
49. To begin with, DW 1 confirmed that the original owner of the property known as LR.NO.Transmara/Poroko/107 was Chemoiywa Ole Siriani.
50. Upon his demise, the property known as LR.NO.Transmara/Poroko/107 was subjected to succession and thereafter vested in the names of the 1st, 2nd and 3rd Defendants.
51. A title to confirm the 1st, 2nd and 3rd Defendants ownership was issued on the 26/10/2004.
52. In the year 2015, the 1st, 2nd and 3rd Defendants sold the property known as LR.NO.Transmara/Poroko/107 to the 4th Defendant herein.
53. DW 1 acknowledged that indeed a number of people had occupied portions of the property known as LR.NO.Transmara/Poroko/107.
54. DW 1 testimony was that the person known as MICHAEL OLE KISASI is the one whose houses are contained in the Plaintiff's Exhibit 1.
55. DW 1 stated that since 2004 when they were registered as the legal owners of LR.NO.Transmara/Poroko/107, there has been no objection and/or legal proceedings by the Plaintiff against them.
56. DW 1 reiterated that the property known as LR.NO.Transmara/Poroko/65 was still intact both in the title held by the 4th Defendant and also on the ground.
57. DW 1 then produced the following documents as exhibits in support of his testimony.
 - a. Defence Exhibit 1- Copy of the Title Deed in the name of the 4th Defendant dated 14/05/2015.
 - b. Defence Exhibit 2- Copy of Agreement For Sale dated 30/03/2015.



- c. Defence Exhibit 3- Copy of the Title in the name of the 1st, 2nd and 3rd Defendant.
 - d. Defence Exhibit 4- Charge over the property known as LR.NO.Transmara/Poroko/107 dated 22/12/2015.
 - e. Defence Exhibit 5- Copy of an official search dated 22/12/2015.
 - f. Defence Exhibit 6- Copies of pleadings in Narok ELC OS NO. 286 OF 2017.
 - g. Defence Exhibit 7- Copy of the judgement in Narok ELC OS NO.286 OF 2017 pronounced on the 30/07/2018.
 - h. Defence Exhibit 8- Copy of a Stay Order issued on 19/11/2021 against the judgement pronounced in NAROK ELC OS NO.286 OF 2017.
 - i. Defence Exhibit 9- Record of Appeal relating to Appeal No. 112 of 2021.
58. On cross-examination, DW 1 informed the Court that he had prepared and filed a witness statement dated 25/10/2023.
 59. According to DW 1, the witness statement was for the 1st, 2nd and 3rd Defendant although he did not have any authority from the 1st and 2nd Defendant presented in Court.
 60. DW 1 stated that they were raised on the property known as LR.NO.Transmara/Poroko/107.
 61. However, DW 1 insisted that his late father had taken possession of the property known as LR.NO.Transmara/Poroko/107 by grazing cattle on it.
 62. DW 1 admitted that there was no evidence of any development done by their father and/or themselves to confirm occupation.
 63. DW 1 further admitted that the parents of the Plaintiff were buried on a portion of LR.NO.Transmara/Poroko/107.
 64. DW 1 confirmed that at the time the 1st, 2nd and 3rd Defendants were registered and took possession, the house on Page 20 was already existing.
 65. However, the House on page 21 came much later but is on the ground.
 66. DW 1 testified that some of the trees that were cut on a portion of the property known as LR.NO.Transmara/Poroko/107 belonged to his late father but were cut by the Plaintiff.
 67. In concluding his evidence in chief, DW 1 admitted that they had never interrupted the occupation of the Plaintiff.
 68. On re-examination, DW 1 reiterated that he was not raised on the property known as LR.NO.Transmara/Poroko/107.
 69. DW 1 insisted that the property known as LR.NO.Transmara/Poroko/107 was mainly used for agricultural activities.
 70. Upon the 1st, 2nd and 3rd Defendants registration, they leased out the property for farming.
 71. DW 1 denied knowledge of any graves on the property known as LR.NO.Transmara/Poroko/107 as at 2015.
 72. DW 1 stated that he only came to know about the graves on the portion occupied by the Plaintiff through a Baraza in the year 2022.



73. At the end of this re-examination, DW 1 was then discharged from the witness box.
74. The second Defence witness was Erick Kivuva (DW 2)
75. DW 2 introduced himself as an Advocate of the High Court of Kenya and a director of the 4th Defendant.
76. DW 2 then informed the Court that he had prepared and signed a witness statement dated 25.10.2023 of which he adopted as his evidence in chief.
77. DW 2 stated that the 4th Defendant was registered on the 30/05/2015 and produced the Certificate of Incorporation thereof. (Def Exhibit 1).
78. DW 2 confirmed that in the year 2015, the 4th Defendant purchased the entire property known as LR.NO.Transmara/Poroko/107 measuring approximately 65 acres.
79. However, after the registration of the property known as LR.NO.Transmara/Poroko/107 by the 4th Defendant, it was not possible to take possession due to threats from one Michael Ole Kisasi.
80. The person known as Michael Ole Kisasi then filed a suit known as NAROK ELC OS NO.286 OF 2017 and obtained a judgement in his favour on the 30/07/2018.
81. However, the Defendants in Narok ELC OS NO.286 OF 2017 being dissatisfied by the judgement pronounced on 30/05/2018 applied for a stay of execution which orders were issued on the 30/06/2021 pending the hearing and determination of the substantive appeal.
82. On cross-examination, DW 2 reiterated that he was a director of the 4th Defendant although he did not have a copy of any CR 12 or authority to act on behalf of the other directors and/or company.
83. As regards DW 1 Exhibit 8, DW 2 admitted that the suit therein related to one Michael Ole Kisasi.
84. However, the judgement issued on the 30/07/2018 in favour of Michael Ole Kisasi was stayed on the 30/06/2021 and therefore the entire property is still intact.
85. DW 2 admitted that at the point of purchase in the year 2015, there were some people in portions of the property known as LR.NO.Transmara/Poroko/107.
86. On re-examination, DW 2 reiterated that he signed the Replying Affidavit and the witness statements as a director of the 4th Defendant.
87. DW 2 stated that according to the judgement pronounced on the 30/05/2018 in NAROK ELC OS NO.286 OF 2017, the 35 acres awarded to Michael Ole Kisasi were to be excised from the 65 acres.
88. However, after issuance of the Stay Orders on 30/06/2021, the entire property known as LR.NO.Transmara/Poroko/107 is still intact.
89. DW 2 insisted that he only came to know about the Plaintiff in the year 2022 during a baraza to discuss the issue of Michael Ole Kisasi.
90. DW 2 informed the Court that during the inspection of the property known as LR.NO.Transmara/Poroko/107, they only found OL KISASI who had two houses on the ground.
91. At the end of this re-examination, the Defendants also closed their case.
92. Parties were then directed to prepare, file and exchange their submissions in support of their cases.



93. The Plaintiff indeed filed his submissions on 04.12.2023 while the Defendants filed their submissions on 14.12.2023.
94. The Court has thoroughly perused the pleadings, the evidence adduced in Court, the exhibits produced as well as the submissions therein.
95. The issue for determination is whether or not the Plaintiff has satisfied the ingredients of adverse possession.
96. In the Case of *Mtana Lewa-versus- Kahindi Ngala Mwangandi (2015) eKLR*, the ingredients of adverse possession were stated to be as follow; -

“For one to succeed in a claim of adverse possession, one must prove and demonstrate that he has occupied the land openly, that is without secrecy, without force, and without license or permission of the land owner, with the intention to have the land. There must be an apparent dispossession of the land from the land owner. These elements are contained in the latin maxim *nec vi, nec cla, nec precario.*”
97. The principles of adverse possession outlined hereinabove were against reiterated by the Court of Appeal in Civil Application No.110 Of 2016 Between Richard Wefwafwa Songoi-versus- Ben Munyifwa Songoi (2020) eKLR where the Court stated that the following principles must be demonstrated successfully to order an order of adverse possession; -
 - a. On what date he came into possession.
 - b. What was the nature of his possession.
 - c. Whether the fact of his possession was known to the other party.
 - d. For how long his possession has continued and
 - e. That the possession was open and undisturbed for the requisite 12 years.
98. Similarly, a party seeking for adverse possession must prove his or her claim as provided under Section 107 of the *evidence Act*, Cap 80.
99. Consequently therefore, the ingredients mentioned hereinabove shall be discussed hereinbelow on the facts of the facts and evidence adduced during the hearing.

Ingredient NO.1- On What Date Did He Come Into Possession?

100. The first ingredient for the Plaintiff to satisfy is the date upon which he actually came into possession of the property and/or portion of land he seeks to acquire.
101. In the instant case, the Plaintiff testified that he moved into the property known as LR.NO.Transmara/Poroko/107 in the year 1981 after this deceased father purchased the same.
102. It was also the testimony of the Plaintiff that he was born in the year 1979 and therefore at the time of getting into the property known as LR.NO.Transmara/Poroko/107, he was only two years old.
103. The question therefore is whether the Plaintiff at the age of 2 years would have had the capacity and intention to enter the property known as LR.NO.Transmara/Poroko/107 with an intention of dispossessing the registered owner thereof.



104. In the Court's view, this Plaintiff in the year 1981 was still a minor who can not be said to have entered the property known as LR.NO.Transmara/Poroko/107 with an intention of taking occupation and/ or possession of any portion with a view of dispossessing the registered owner.
105. In essence therefore, the allegation that the Plaintiff entered the property known as LR.NO.Transmara/Poroko/107 in the year 1981 with a view of dispossessing the registered owner therein is unsustainable.
106. The only time that the Plaintiff can be said to have actually taken possession is upon the death of his father and him being left to continue with the use and possession of the portion they occupied.
107. This is because at the demise of the Plaintiff's father, the Plaintiff who was a beneficiary of the portion allegedly purchased would elect to either proceed with the father's claim under the Agreement For Sale or in the alternative claim occupation on his own right as the person left on the land by the deceased purchaser.
108. In the former scenario, the Plaintiff would then enforce his deceased father's rights on behalf of the estate of the deceased including the claim of adverse possession.
109. The claim for adverse possession on behalf of the estate of his deceased father would begin from the date when the purported Agreement For Sale was entered and possession taken therein.
110. In the latter scenario where the Plaintiff is seeking adverse possession in his own capacity as an owner, then time can not run before the demise of the father because it would mean that the portion in dispute is being claimed by two persons at the same time.
111. According to the Plaintiff's evidence and that of his brother PW 2, there was no doubt that the portion in dispute was owned by the father and the possession thereof derived from the Agreement For Sale entered between the Plaintiff's deceased father and the 1st, 2nd and 3rd Defendant's deceased father.
112. The Plaintiff in his testimony in court stated that his father passed away in the year 1991.
113. At this time, the Plaintiff was about 12 years old and therefore still a minor and still had not capacity to take possession of the portion purportedly owned by his deceased father.
114. The only time this Honourable Court is satisfied that the Plaintiff had the capacity to take possession was at the age of majority which in the Kenyan law is 18 years of age.
115. In essence therefore, the Plaintiff can only have in his own capacity taken possession of any portion of land from the year 1997 thereof.
116. In other words, this Honourable Court is of the considered view that the date upon which the Plaintiff took possession of any portion of the property on LR.NO.Transmara/Poroko/107 is the year 1997.

b.What was the nature of his possession.

117. The second ingredient that the Plaintiff needs to satisfy is the nature of the possession.
118. When interrogating this ingredient, the Plaintiff's possession must be one that is open and notorious that it amounts to a dispossession of the registered owner's rights.
119. According to the pleadings and in particular the present O.S, the Plaintiff is alleging occupation of 35 acres within the property known as LR.NO.Transmara/Poroko/107.



120. However, in the Plaintiff's testimony, the acreage being claimed reduced to 22 acres on the property known as LR.NO.Transmara/Poroko/107.
121. The evidence produced as Plaintiff Exhibit 1 which are two houses and a number of trucks of trees cut produced as Plaintiff Exhibit 1.
122. Looking at these photos produced as Plaintiff Exhibit 1, they only show the area within which the houses are built which in in this Court's considered view is less than an acre.
123. In addition to the above, the Plaintiff alleges to have taken over the portion of land that was purchased by his deceased father in the year 1981 which measured approximately 22 acres.
124. However, the Plaintiff and/or the witness failed to either furnish an Agreement For Sale or even a sketch map of the portion his deceased father occupied amounting to their the 35 acres pleaded or the 22 acres occupied.
125. In other words, there is no evidence placed before this Honourable Court that the Plaintiff is actually in possession of either 22 acres as testified in Court or 35 acres as pleaded in the present O.S.
126. Section 107 of the Evidence Act, Cap 80 demands that he alleges must prove.
127. In this particular case, the Plaintiff has failed to prove that he is in possession of either 22 acres as stated in his testimony or 35 acres as pleaded and therefore fails to satisfied such possession to be open and notorious to dispossess the 4th Defendant of his ownership rights.

c. Whether the fact of his possession was known to the other party.

128. The next ingredient is whether his possession was known to the other party and in particular the registered owner thereof.
129. According to the Plaintiff and the witness, their possession on the property known as LR.NO.Transmara/Poroko/107 began in the year 1981.
130. The Plaintiff stated that both his father who died in the year 1991 and the mother who died in the year 2018 were buried on the portion they occupied on the property known as LR.NO.Transmara/Poroko/107.
131. Consequently therefore, the Plaintiff's occupation was one which was open and within the knowledge of the 1st, 2nd and 3rd Defendant and by extension the 4th Defendant.
132. On the other hand, the 1st to 4th Defendant denied the Plaintiff's occupation of the property LR.NO.Transmara/Poroko/107 until the recent past.
133. According to the 4th Defendant, the Plaintiff and/or his family was not on the property known as LR.NO.Transmara/Poroko/107 by the year 2015 when he inspected the same with a view of purchasing it.
134. The 4th Defendant admitted that during the said inspection in the year 2015, the only person who was on the ground was MICHAEL OLE KISASI who was ultimately awarded 35 acres thereof.
135. The 4th Defendant further identified the two of the houses contained in the Plaintiff's Exhibit 1 to be for Michael Ole Kisasi and his son.
136. The 4th Defendant states in his testimony that he only came to learn about the Plaintiff in the year 2022 when a Baraza to discuss the issue of Michael Ole Kisasi was convened.



137. The question therefore that needs to be addressed is what manner of occupation or possession did the Plaintiff demonstrate to notify the Defendants of his presence.
138. Again, the only evidence produced by the Plaintiff are the two houses and cut trees contained in the Plaintiff's Exhibit 1.
139. The fact that the two houses produced as Plaintiff's exhibit 1 are in dispute, the only remaining evidence would have been the burial sites of the Plaintiff's father and mother.
140. Unfortunately, the photos produced as Plaintiff Exhibit 1 do not show any burial sites of either the Plaintiff's father and/or mother's burial sites.
141. The Plaintiff therefore does not have any evidence before this Court that would have either notified or made the 1st, 2nd, 3rd and/or 4th Defendant to be aware that the Plaintiff was in occupation of a portion of land measuring approximately either 22 acres or 35 acres as pleaded in the present O.S.

d.For how long his possession has continued.

142. The next ingredient is to how long the Plaintiff has been in possession of the 22 acres claimed during the testimony or the 35 acres pleaded in the present O.S.
143. According to the determination in ingredient C, there is no evidence that the Plaintiff has been in occupation of either 22 acres and/or 35 acres pleaded in the present O.S and therefore the period of such occupation cannot be computed as envisaged in this ingredient.

e.That the possession was open and undisturbed for the requisite 12 years.

144. The last ingredient in a claim of adverse possession is that the Plaintiff should have enjoyed open and undisturbed possession for a period of 12 years.
145. The claim that the Plaintiff is in occupation and/or possession of either 22 acres or 35 acres on the property known as LR.NO.Transmara/Poroko/107 has not be proved.
146. In essence therefore, the Plaintiff is not in possession of either the 22 acres or 35 acres as pleaded in the present O.S capable to enabling this Court to declare such occupation to be open and undisturbed for a period of 12 years.

CONCLUSION.

147. In conclusion therefore, this Court hereby makes the following Orders as appertains the Originating Summons dated 09.11.2022; -
 - A. The originating summons dated 09.11.2022 is not merited and therefore dismissed forthwith.
 - B. The plaintiff shall meet the costs of the originating summons dated 09.11.2022.

DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS ELC COURT ON 15TH FEBRUARY 2024.

EMMANUEL.M.WASHE

JUDGE

In the presence of:

Court Assistant: Mr. Ngeno



Advocate for the Plaintiff: Ms. Mireri

Advocate for the Defendants: Ms. Muriranja

