



Langat & 3 others (Suing as Legal Representatives of the Estate of the Late Jonah Kiplagat Kenduiywo) v Sigilai (Civil Appeal 54 of 2019) [2025] KECA 1039 (KLR) (5 June 2025) (Judgment)

Neutral citation: [2025] KECA 1039 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT ELDORET
CIVIL APPEAL 54 OF 2019
JM MATIVO, PM GACHOKA & GV ODUNGA, JJA
JUNE 5, 2025**

BETWEEN

**DICKSON KIPKOECH LANGAT 1ST APPELLANT
CALEB K LANGÁT 2ND APPELLANT
ALFRED K LANGÁT 3RD APPELLANT
EDWIN K LANG'AT 4TH APPELLANT
SUING AS LEGAL REPRESENTATIVES OF THE ESTATE OF THE LATE
JONAH KIPLAGAT KENDUIYWO**

AND

JOSPHAT KIPCHIRCHIR SIGILAI RESPONDENT

(An appeal from the Judgment of the Land and Environment Court at Eldoret (M. Odeny, J) dated 17th December 2018 in ELC Case No. 981 of 2012)

JUDGMENT

1. The respondent, Josphat Kipchirchir Sigilai, as plaintiff, by an originating summons dated 12th November 2012 sued Jonah Kiplagat Kenduiywo (deceased), as defendant, seeking for the following prayers:
 1. The Honourable court do declare that the defendant's interests in the 20 Acres (8.0 Ha) in the parcel of land known as Kiplombe/Kuinet Block 3 (Lalaginy) 4 is extinguished.
 2. Upon the declaration in paragraph 1 above, the proprietary interest for the 20 Acres be extinguished and the plaintiff be registered as the proprietor.



3. The land register be rectified to reflect the interest of the plaintiff and the deceased in their respective parcels as herein.
 - i. Josphat Kipchirchir Sigilai- Kiplombe/Kuinet/Block 3 (Lalaginy) 20 Acres (8.0 Ha).
 - ii. Jonah Kiplangat Kenduiyo- Kiplombe/Kuinet/Block 3 (Lalaginy) 4 75-95 Acres (30.35 Ha).
2. The respondent's case was that in 1973, together with two other people, one of them being the deceased, they bought land at Lalaginy. In 1976, they subdivided the land equally into 90.6 acres, his portion of land being registered as Kiplombe/Kuinet Block 3 (Lalaginy)/7 while the deceased's land was registered as Kiplombe/Kuinet Block 3 (Lalaginy)/4. However, between 1978 and 1997, the deceased leased to the respondent the whole of his land for purposes of cultivation when the deceased moved to Kericho. In 1997, the deceased approached the respondent and informed him that, due to financial constraints, he was desirous of selling to the respondent 20 acres of his land. An agreement was arrived at for the purchase of the said 20 acres at Kshs 45,000 per acre but with a possibility of the whole land being made available to the respondent for purchase in the future. The respondent and the deceased then proceeded to the land and the respondent was shown arable land which he accepted and a formal agreement for sale was entered into before an advocate. On 26th March 1997, the respondent handed over a banker's cheque to the deceased for the purchase price. According to the respondent, it was a term of the agreement that the respondent was to take possession upon execution of the agreement, which he did.
3. In 2005, the deceased went with his sons to the farm and the sons were shown portions where they were supposed to build. In 2011, following the respondent's persistent requests for the deceased to transfer his land to him, the deceased allocated to the respondent 18.8 acres which were on a swamp and 1.2 acres which were on a road reserve. When the respondent took issue with the said allocation, the deceased and his sons took steps to remove him from the land after he declined to take the swampy part.
4. According to the respondent, he reported the matter to the Chief and upon being summoned, it was resolved that the matter be referred to the District Officer who later referred the matter to the Land Disputes Tribunal (LDT). The LDT ordered that the respondent be given 15 acres of arable land and 5 acres of swampy land which award was forwarded to and adopted by the Chief Magistrates Court Eldoret vide case No 28 of 2011. That decision was however set aside by the High Court in Eldoret Judicial Review No. 2 of 2012.
5. According to the respondent, he had leased the land from 1978 to 1997 when he purchased it and there was no problem until 2011. It was his case that he did not file the case earlier since there was no problem between him and the deceased before then and the deceased kept on promising him that he would give him his land.
6. In support of his case, the respondent produced a copy of the agreement, receipts for payment, a copy of the map of the suit land, a copy of the extract of the green card and a copy of the title. He insisted that he had stayed on the suit plot peacefully for a period of more than 12 years until 2011 and that he was claiming the portion that was sold to him. He therefore urged the court to order the deceased to give him 20 acres plus costs of the suit.
7. PW2, one of the panellists on Land Dispute Tribunal, confirmed that there was a dispute between the respondent and the deceased and that the verdict was that the respondent be given 15 acres of arable land and 5 acres of swampy land. He stated that from the land sale agreement, it was evident that the respondent took possession immediately and that the dispute arose in 2012. He was, however, not aware of the verdict of the High Court that quashed the decision of the LDT.



8. Jonah Kiplangat Kenduiywo, the deceased's case was: that he was the registered proprietor of land parcel known as Kiplome/Kuinet Block 3 (Lalaginy) 4 measuring 38.38 hectares and that he sold 20 acres thereof to the respondent in 1997 and pointed out to the respondent the same on the southern part of his said land; that before then, the respondent used to lease the said land from 1976 at a consideration of Kshs 25,000 till 2004 and in 2005 and 2006, the respondent paid him Kshs 35,000 for the lease; that in 2007 his sons took occupation of the entire land after the respondent refused to occupy the portion that the deceased had shown him when they entered into the sale agreement in 1997 on the ground that it was swampy; that he was alarmed since by then the respondent had fenced the land on the southern part as he had been shown; that the respondent stopped ploughing his land in 2007 and had since then not been in occupation thereof; that since then, his sons were the ones who were in occupation of his entire land; that since the respondent instituted a suit before the Land Disputes Tribunal being Eldoret LDT No. 29 of 2011, his occupation was never peaceful or uninterrupted;

that the respondent went away and upon his return 17 years later, the deceased informed him that there was no land to give to him and that the only option is to refund the purchase price; that he was still willing to give the respondent land at the same place and if the respondent was not willing to take the said portion, then he would be ready to refund him his money.

9. DW2, Caleb Langat, testified that he together with his brother, Edwin Langat, had been occupying the suit land since 2007. He confirmed that the respondent bought the land on 26th March 1997 and continued to cultivate the land a fact his father knew of and that they did not interfere with the respondent. He also confirmed during cross-examination that the respondent had been on the suit land since 1978 although he was very young by then. He also stated that the tribunal case was about the 20 acres portion that was sold to the respondent.
10. In the judgement, the learned Judge identified the issues for determination as: whether the respondent acquired the suit land by way of adverse possession; when the time started running for purposes of determining these rights; and finally, whether or not the respondent was entitled to the prayers in the originating summons.
11. The learned Judge cited the case of *Maweu v Liu Ranching and Farming Cooperative Society* 1985 KLR 430 in determining the prerequisites for determining whether a claimant has acquired land by adverse possession. Reliance was also placed on the case of *Johnson Kinyua v Simon Gitura Rumuri* [2011] eKLR in highlighting the fact that adverse possession can only succeed against a proprietor of land and that proprietorship can be established by producing a copy of an official search certified by the Land Registrar or a certified copy of an extract of the green card which gives the details of the entries. The learned Judge found that in compliance of a requirement that a claimant must produce proof that the land being claimed is registered in the respondent's name, the respondent produced a copy of an extract of the green card, a copy of a title deed of the suit land, map and sale agreement between him and the deceased. She relied on the case of *Hosea v Njiru & Others* [1974] EA 526, for the position that once payment of the last instalment of the purchase price had been effected, the purchaser's possession became adverse to the vendor and that he thenceforth, by occupation for twelve years, was entitled to become registered as proprietor of it.
12. It was found by the learned Judge: that it was admitted by the deceased that he sold 20 acres to the respondent and that the respondent paid the full purchase price, the only disagreement between them being the location of the portion; that the respondent had been in uninterrupted possession, as a licensee from 1978 when he was leasing the land and thereafter as purchaser of the 20 acres from 1997 and took possession thereof; that even if the time was to be computed from 1997 when the respondent



entered into a purchase agreement for 20 acres and took possession, until 2011 when the dispute as to the location started, it would still be found that the respondent had been in occupation for a period of 14 years; that there was no evidence to support the allegation that the occupation was interrupted; that the respondent's case was on two fronts, firstly as a purchaser for value who had been in occupation and paid the full purchase price as evidenced by the agreement and admission by the deceased, and secondly that having been in continuous and uninterrupted occupation for a period in excess of 12 years, he was entitled to be registered as an owner; that on the authority of the case of *Mwangi & Another v Mwangi* (1986) KLR 328 the rights of a person in possession or occupation of land are equitable rights which are binding on the land hence the land is subject to those rights; that the deceased could not be heard to say that he wanted to refund the money because his sons were in occupation; that the deceased's sons aspirations to kick out the respondent, on the ground that there was no Land Control Board consent, was secondary; that on the authority of the case of *Jandu v Kirpal* [1975] EA 225, the respondent had proved that he had been in possession of the suit land and therefore was entitled to 20 acres of the portion that he had been in occupation and possession of and that the respondent proved adverse possession. The learned Judge, accordingly, entered judgment as prayed in the originating summons and made the following orders:

1. A declaration is hereby issued that the Deceased's interests in the 20 Acres (8.0 Ha) in the parcel of land known as Kiplombe/Kuinet Block 3 (Lalaginy) 4 is extinguished and the respondent be registered as the proprietor.
2. The land register be rectified to reflect the interest of the Respondent and the deceased in their respective parcels as herein as follows
 - i. Josphat Kipchirchir Sigilai- Kiplombe/Kuinet/Block 3 (Lalaginy) 20 Acres (8.0 Ha).
 - ii. Jonah Kiplangat Kenduiyo- Kiplombe/Kuinet/Block 3 (Lalaginy) 4 75-95 Acres (30.35 Ha).
- (ii) The deceased to pay costs of the suit.
13. Dissatisfied with the said judgement, the appellant filed this appeal which was grounded on the contentions: that the learned Judge erred in law and in fact in holding that a declaration be issued that the appellants' interests in the 20 acres (8.0 Ha) in the parcel of land known as Kiplome/Kuinet Block 3 (Lalaginy) 4 is extinguished and the respondent be registered as the proprietor without considering the evidence tendered; that the learned Judge erred in law and in fact in holding that the land register be rectified to reflect the interest of the respondent and the appellants in their respective parcels; that the learned Judge erred in law and in fact in failing to evaluate, consider and determine all the issues raised in the pleadings and in the evidence presented by the appellant; that the learned Judge erred in law and in fact in failing to consider and apply the provisions of the *Evidence Act* Cap 80 and in particular section 107, 108 and 109 thereof; that the learned Judge erred in law and in fact in failing to deal with and consider all issues raised in the pleadings and the evidence on record hence an erroneous judgement; that the learned Judge erred in holding that the respondent is in actual possession of the property yet in his evidence the respondent admitted having vacated from the suit property in the year 2007; and that the learned Judge erred in law and in fact in failing to hold that the respondent had not proved his case on a balance of probability as expected by the law.
14. When the appeal was called out for virtual hearing on 11th March 2025, learned counsel, Ms Chelimo Bungei, appeared for the appellants while learned counsel, Mr Kiboi, appeared for the respondent. Both counsels substantially relied on their written submissions with minimal highlighting.



15. On behalf of the appellants it was submitted: that since the respondent admitted that he had not been in possession of the 20 acres on his own basis, his claim over land through adverse possession, lacked merit; that since the respondent alleged that he had been in possession of the suit land from 1997 to 2007, his claim fell short of the required 12 years for continuous, uninterrupted possession necessary to uphold adverse possession claim; that the appellant did not satisfy the requirements necessary for one to succeed in a claim to land by adverse possession; that the proper way of assessing proof of adverse possession is whether or not the title holder has been dispossessed or has discontinued his possession for the statutory period, and not whether or not the claimant has proved that he or she has been in possession for the requisite number of years; that the respondent stated that he had paid a total of Kshs 900,000 to the appellant as consideration for the suit parcel in 1997, a purchaser cannot claim that he had been in a non- permissive possession of land; that from the evidence, the respondent did not prove that he was in possession after 2007 hence the appellant’s title could not have been extinguished through adverse possession; that the appeal ought to be allowed and the judgement of the trial court set aside with costs.
16. On behalf of the respondent it was submitted: that the Court should not interfere with the learned Judge’s findings of fact in the absence of demonstration that the Judge misapplied the law or that her finding was not based or founded on the evidence adduced at the hearing; that the respondent proved his claim of adverse possession over the suit land by virtue of having peacefully possessed, occupied and utilised the suit land openly with the appellant’s knowledge for a period of over fourteen (14) years (between 1997 to 2011) without interruption and with the intention of owning it; that DW2 admitted that after the sale of the suit land, the respondent continued cultivating the very portion that he had previously been leasing hence demonstrating his intention and desire of owning that portion from 1997 till 2011 when the appellant’s sons violently and unlawfully attempted to evict him from the suit land; that where a person purchases land and takes possession, time starts running from the time he occupies the land as was held in *Public Trustee v Wandera and Kiptanui A. Chuma v Kibor A. Kolil* [2014] eKLR; that the respondent established his claim for adverse possession having occupied and been in continuous and open possession of the suit land for the requisite statutory period; that the learned Judge arrived at her decision based on sound application of the law based on the facts that were placed before her; and that the appeal should be dismissed with costs.
17. We have considered the record of the proceedings and submissions placed before us.
18. Our mandate as a first appellate court was espoused in *Ng’ati Farmers’ Co-Operative Society Ltd. v Ledidi & 15 Others* [2009] KLR 331 in the following terms:

“An appeal to this Court from a trial by the High Court is by way of re-trial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that, this Court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witness and should make due allowance in that respect. In particular, this Court is not bound necessarily to follow the trial Judge’s findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence, or if the impression based on the demeanour of a witness is inconsistent with the evidence in the case generally.”



19. This mandate was reiterated in the case of Kenya Ports Authority v. Kuston (Kenya) Limited [2009] 2 EA 212 as follows:

“On a first appeal from the High Court, the Court of Appeal should reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in that respect. Secondly that the responsibility of the court is to rule on the evidence on record and not to introduce extraneous matters not dealt with by the parties in the evidence.”

20. Caution must, however be taken in the exercise of that jurisdiction since, as held in Peters v Sunday Post Ltd [1958] E.A 424:

“It is a strong thing for an appellate court to differ from the finding, on a question of fact, of the judge who tried the case and who has had the advantage of seeing and hearing the witnesses. An appellate court has, indeed, jurisdiction to review the evidence in order to determine whether the conclusion originally reached upon that evidence should stand. But this is a jurisdiction which should be exercised with caution. It is not enough that the appellate court might itself have come to a different conclusion.”

21. When it comes to findings of fact, in particular, the court ought to be slow in reversing the trial court unless it is shown that the trial Judge took into account facts or factors which should not have been taken into account, or that there was a failure to take into account matters which should have taken into account or that there was a misapprehension of the effect of the evidence or that in reaching the findings arrived at, it is demonstrated that wrong principles were acted upon. See Mohammed Mahmoud Jabane v Highstone Butty Tongoi Olenja [1986] KLR 661; [1986-1989] EA 183.

22. In our view, the only issue that falls for determination before us is whether, based on the evidence adduced before the trial court, the learned Judge erred in finding that the respondent proved that he was entitled to the suit land by way of adverse possession.

23. The starting point in claims to land by way of adverse possession is section 38(1) of the [*Limitation of Actions Act*](#), which provides that:

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

24. This section is to be considered alongside sections 7 and 13 of the same Act. Section 7 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.

25. Section 13, on other hand provides that:

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 section 9, 10, 11 and 12 of this Act 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.

26. In *Peter Kamau Njau v Emmanuel Charo Tinga* [2016] eKLR, this Court set out the circumstances under which a registered proprietor of land may be disposed of his interest therein, by a claim of adverse possession, in the following holding:

“A registered owner of land, may not, by the provisions of section 7 of the Limitation of Actions Act bring an action to recover land after the end of twelve years from the date on which the right of action accrued to him. At the expiration of that period the owner’s title will be extinguished by operation of the law. Section 38 of the Act permits the person in peaceful possession, without the land owner’s permission, for a continuous and uninterrupted period of 12 years, but who has also done acts on the land which are inconsistent with the registered owner’s enjoyment of the soil for the purpose for which he intended to use it, to apply to be registered as its owner.”

27. In *Ndolo v Kitutu & 8 others* (Civil Appeal 394 of 2018) [2022] KECA 1289 (KLR) (18 November 2022) (Judgment), the Court held that:

“For a claim founded on adverse possession to succeed, the person in possession must have a peaceful and uninterrupted use of the land. The physical fact of exclusive possession and the animus possidendi to hold as owner to the exclusion to the actual owner are important factors in a claim for adverse possession. The principles stated in the above holding are also encapsulated in the local legislation referred to elsewhere in this judgment. The direct import of these two provisions is, firstly, that a person dispossessed of land cannot bring an action to recover land after the expiration of twelve years from the date on which the right of action accrued, which is the date of dispossession. Secondly, after the expiration of the said twelve years the title of the registered owner shall be extinguished. Thirdly, the person in adverse possession is entitled to a title by possession.”

28. What constitutes ‘adverse possession’ was described in the case of *Jandu v Kirpal & Another* [1975] EA 225 in which the court, while relying on the case of *Bejoy Chundra v Kally Posonno* [1878] 4 Cal 327 at p 329, held that:

“By adverse possession I understand to be meant possession by a person holding the land on his own behalf, [or on behalf] of some person other than the true owner, the true owner having immediate possession. If by this adverse possession the statute is set running, and it continues to run for twelve years, then the title of the owner is extinguished and the person in possession becomes the owner.”

29. To determine the nature of possession, this Court is guided by the decision in *Samuel Kihamba v Mary Mbaisi* [2015] eKLR where it held:

“Strictly, for one to succeed in a claim for adverse possession, one must prove and demonstrate that he has occupied the land openly, that is, without force, without secrecy, and without license or permission of the land owner, 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 phraseology, *nec vi, nec clam, nec precario*. The additional requirement is that of *animus possidendi*, or intention to have the land.”



30. The case of *Wambugu v Njuguna* (1983) KLR 171 therefore, laid down the following guiding principles as regards adverse possession:
1. The general principle is that until the contrary is proved possession in law follows the right to possess.
 2. In order to acquire by the statute of limitation title to land 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. Dispossession of the proprietor that defeats his title are acts which are inconsistent with his enjoyment of the soil for the purpose for which he intended to use it.
 3. The *limitation of Actions Act*, in adverse possession contemplates two concepts, disposition and discontinuance of possession. The proper way of assessing proof of adverse possession would then be whether or not the title holder has been dispossessed or has discontinued his possession for the statutory period and not whether or not the claimant has proved that he has been in possession for the requisite number of years.
 4. Where the claimant is in exclusive possession of the land with leave and licence of the appellant in pursuance to a valid sale or agreement, the possession becomes adverse and time begin to run at the time the licence is determined. Prior to the determination of the licence, the occupation is not adverse but with permission. The occupation can only be either with permission or adverse; the two concepts cannot co-exist.
 5. The rule on permissive possession is that possession does not become adverse before the end of the period during which the possessor is permitted to occupy the land.
 6. Adverse possession means that a person is in possession in whose favour time can run.
 7. Where the claimant is a purchaser under a contract of sale of land, it would be unfair to allow time to run in favour of the purchaser pending completion when it is clear that he was only allowed to continue to stay because of the pending purchase because had it not been for the pending purchase the vendors would have evicted him. The possession can only become adverse once the contract is repudiated.
 8. Where a claimant pleads the right to land under an agreement and in the alternative seeks an order based on subsequent adverse possession, the rule is the claimant's possession as deemed to have become adverse to that of the owner after the payment of the last installment of the purchase price. The claimant will succeed under adverse possession upon occupation of at least 12 years after such payment.
31. From the above decisions, the ingredients of adverse possession can be distilled as follows: ownership of the land by the person against whom the claim is made; open, continuous and exclusive possession of the land by the claimant for at least 12 years; and assertion of right by the dispossessor which must be inconsistent with the rights of the owner. All these ingredients must be proved and where the claimant fails to prove any one of them, the claim to land, based on adverse possession, must fail.
32. In proving open, continuous and exclusive possession of the land by the claimant for at least 12 years, this Court held in *Mbira v Gachuhi* (2002) I EALR 137 that:
- “..... a person who seeks to acquire title to land by the method of adverse possession for the applicable statutory period must prove non-permissive or non-consensual actual, open,



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

33. It was therefore explained in *Mtana Lewa v Kahindi Ngala Mwamgandi* (2005) eKLR that:

“Adverse possession is essentially a situation where a person takes possession of land and asserts rights over it and the person having title to it omits or neglects to take action against such person in assertion of his title for a certain period, in Kenya, is twelve (12) years. The process springs into action essentially by default or inaction of the owner. The essential prerequisites being that the possession of the adverse possessor is neither by force or stealth or under the licence of the owner. It must be adequate in continuity, in publicity and in extent to show that possession is adverse to the title owner.”

34. The claimant must prove that he was in possession openly and that his possession was not through stealth or force. Possession arising from, example an order of the Court, does not, therefore, amount to adverse possession since, in those circumstances, the owner of the land is lawfully prevented from asserting his rights. The possession, however must be continuous and a break in the chain of possession such as where the owner asserts his rights midway creates a break in the running of time such that even if the owner again loses possession, the period prior to his regaining possession counts for nothing, in so far as adverse possession is concerned. As held by this Court in *Richard Wefwafwa Songoi v Ben Muniyifwa Songoi* [2020] eKLR:

“For a claim founded on adverse possession to succeed, the person in possession must have a peaceful and uninterrupted user of the land. Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are important factors in a claim for adverse possession.”

35. Exclusivity of possession must also be proved by the claimant and therefore where the land in question is under joint use by the claimant and other people, unless the claim is by all those in possession, the claimant cannot, on his own, unless he can identify a portion of the land exclusively occupied by himself, claim adverse possession of the whole land. Therefore, where only a portion of land as opposed to the whole land is occupied by the claimant, the claimant must identify that portion or part of the land which he claims by adverse possession. Regarding the need to identify the portions occupied, this Court in *Wilson Kazungu Katana & 101 Others v Salim Abdalla Bakshwein & Another* [2015] eKLR stated that:

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

36. It is however, not necessary that the claimant shows the exact area of the land in dispute and it does not help the defendant to argue that the exact area is not clear or that the exact boundaries defined are vague. As long as the land in question is ascertained, the claimant will have met this requirement. See *Peter Njau Kairu v Stephen Ndung’u Njenga & Another Civil Appeal No. 57 of 1997*.

37. The assertion of right by the dispossessor must be inconsistent with the rights of the owner. It does not suffice to simply aver that the claimant was in possession for more than 12 years. The claimant must adduce evidence of the steps or actions taken with a view to asserting rights which must be shown to be adverse to or inconsistent with the title of the true owner. In other words, there must be an adverse incident in the possession and that incident must be shown to be present right from the time the claimant takes possession of the land or from the time the claimant asserts possession that is contended



to be adverse to that of the owner. In *Ndolo v Kitutu & 8 others*, (supra) the decision of the Supreme Court of India in AIR 2008 SC 346 *Annakili v A Vedanayagam & Ors*, was cited in which it was held that:

“Claim by adverse possession has two elements:

- (1) the possession of the deceased should become adverse to the respondent; and
- (2) the deceased must continue to remain in possession for a period of 12 years thereafter. Animus possidendi as is well known is a requisite ingredient of adverse possession. It is now settled principle of law that mere possession of land would not ripen into possessory title for the said purpose. Possessor must have animus possidendi and hold the land adverse to the title of the true owner. For the said purpose, not only animus possidendi must be shown to exist, but the same must be shown to exist at the commencement of the possession. He must continue in the said capacity for the prescribed period under the Limitation Act. Mere long possession for a period of more than 12 years without anything more do not ripen into a title.”

38. Where therefore, the claimant’s entry into the land was as a licensee or lessee, there must be evidence of the incident or the point at which the licence or the lease was terminated and the continued possession became adverse to that of the owner. In *Alfred Welimo v Mulaa Sumba Barasa*, [CA No 186 of 2011](#), this Court expressed itself thus:

“It is trite that adverse possession is not established merely because the owner has abandoned possession of his land and ceased to use it; for as Robert Megarry aptly observed in his *Megarry’s Manual of the Law of Property*, 5th ed. page 490, the owner may have little present use for the land and that land may be used by others, without the users demonstrating a possession inconsistent with the title of the owner. So the mere fact that the appellant abandoned possession of the suit land and went to live at Ndalu scheme by and of itself does not establish adverse possession. The abandonment of possession must be coupled with the respondent taking possession of the land with animus possidendi (the intention to possess) and asserting thereon rights that are inconsistent with those of the appellant as the owner of the land....”

39. However, once the title holder loses title by way of adverse possession, it will not matter that a third party obtains title after the period of limitation has run its course. This is so since a party who has lost its interest in land through adverse possession cannot pass a better title than the one he has and if he has lost his title, he has none to transfer. The rationale for this is because adverse possession runs against the land rather than the owner. Therefore, a person who acquires land against which adverse possession has begun to run ought to take action to bring such possession to an end. *Platt, Ag. JA* (as he then was) in *Maweu v Liu Ranching & Farming Cooperative Society* [1985] eKLR therefore held that:

The significance of that situation is this, that the owner of registered land acquires an absolute and indefeasible title, to such an extent that he can immediately put any squatter or trespasser off the land. Any person else who has a right or interest in the land must be named as an encumbrancer. The adverse possessor stoutly possesses the land, but he has not the slightest interest until the twelve years has been completed. Now he emerges as the owner, and however absolute and indefeasible the title is, it is lost for ever. What logic is there in saying that this concept of the absolute and indefeasible title may only be lost, after twelve years of suffering adverse possession from the time of registration, but not for



shorter periods because the adverse possession commenced during the time of the owner's predecessor. How is it lost at all? Adverse possession is a fact to be observed upon the land. It is not to be seen in a title, even under cap 300. Any man who buys land without knowing who is in possession of it risks his title, just as he does, if he fails to inspect his land for twelve years after he had acquired it. If such title can be lost at all, its absolute and indefeasible nature obviously refers to other matters than adverse possession."

40. The case of *Githu v Ndeete* (1984) KLR 776 was even more explicit. This Court, in that case, held inter alia. that:-

1. The mere change of ownership of land which 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 purchasers' title will be subject.
3. Time ceases to run under the *limitation of Actions Act* either when the owner takes or asserts his rights or when his right is admitted by adverse possession assertion occurs when the owner takes legal proceedings or makes an effective entry into the land. Giving notice to quit cannot be effective assertion of right for the purpose of stopping the running of time under the limitations of Action Act.
4. A Title by adverse possession can be acquired under the *limitation of Actions Act* to a portion of the piece of land which the owner holds"

41. See also *Leonola Nerima Karani v William Wanyama Ndege* (supra); *Eliud Nyongesa Lusenaka & Another v Nathan Wekesa Omocha* Civil Appeal No. 134 of 1993 and *Peter Thuo Kairu v Kuria Gacheru* [1988] KLR 297; [1988-92] 2 KAR 111; [1986-1989] EA 215.

42. It is in light of the principles set out in the above cases that we now embark on re-evaluating the evidence that was placed before the learned Judge. It is not in doubt that initially the respondent went into occupation of the suit land based on a lease entered into between the respondent and the deceased. During that period, there was nothing adverse about the possession since it was not hostile. According to the respondent's evidence, which evidence was not contested, the period during which the respondent was in permissible occupation was between 1978 and 1997. DW2 also agreed with that position. It is also agreed that in 1997, an agreement for sale was entered into between the respondent and the deceased for the purchase of 20 acres of the suit land and the purchase price was duly paid and the respondent went into occupation of the agreed portion. The difference between the parties is as regards the period for which the respondent stayed in occupation. According to the respondent he was in occupation till 2011, when the deceased purported to allocate him the swampy part of the suit property and it was then that the dispute that was taken to the LDT arose.

43. The deceased's position, on the other hand, was that the respondent moved or was forced out by his sons from the suit property in 2007. In reconciling these two versions, the learned Judge held that:

"DW2 the son of the defendant advanced a line of evidence that they were staying in Kericho and moved to the suit land in 2007 and found the plaintiff on the suit land and tried to stop him from cultivating a certain portion of land. If this was true then why did the plaintiff file the complaint in 2011 and not 2007 if he had been affected by the sons of the defendant" This line was calculated to bring in the issue of time to deny the plaintiff the benefit of



the 2 years to make it 12 as required by law. Counsel also submitted that the plaintiff's occupation was interrupted in 2007 making the occupation 10 years which is 2 years short of the prescribed limitation period. This was not supported by any evidence."

44. It is worth repeating that the parties herein had been before the Land Disputes Tribunal. Although the decision of that Tribunal, as adopted by the Chief Magistrate's Court, was set aside for want of jurisdiction, the evidence that was given before the Tribunal was telling. Before the Tribunal, the deceased stated that:

"In 1997 I sold Sigilai 20 acres at Kshs 45,000 who paid me Kshs 900,000 at the advocate's office. I did not show him the part of the land like is now claimed. He was using the all (sic) piece of land 90.6 acres on leasing only. When he asked me that he wanted his land, I came and took the measurement for his 20 acres that I owed him that I had done it for he had refused to come and join us during the work. We decided with my sons on where we were going to give Sigilai for we had not done it before and he had been using in the whole farm for farming and grazing. My sons came and lived on the land in 2007 where they farmed 10 acres each while Sigilai farmed about four to five acres while grazing his animals in about 50 acres. When my sons came, I asked Sigilai to help them cultivate 5 acres for each of the two but he refused thus somebody else came who was ready to lease at Kshs 4000 different from the Kshs 2000 from Sigilai."

45. Before the Tribunal, the deceased never alleged that the respondent left the suit land in 2007. To the contrary, it was his position that when his sons went to stay on the land, they were using 10 acres each while the respondent farmed between four and five acres while grazing on 50 acres. Clearly, therefore the respondent remained on a portion of the suit land even after the deceased's sons went to the suit land. The learned Judge was therefore correct that the deceased's and the appellants' contention that the respondent left the suit land was not supported by evidence. The respondent's evidence was supported by PW2, a member of the LDT's panel who was an independent witness. We cannot therefore fault the learned Judge when, in the judgement, she found that:

"...the defendant's sons aspirations to kick out the plaintiff on the ground that there was no Land Control Board consent is secondary. The defendant seems to be driven by the hunger for more land or otherwise by his sons."

46. From the totality of the evidence, it is clear that the respondent only took up the issue with the Land Disputes Tribunal when it became clear that the deceased had reneged on his earlier promise to transfer to him a portion that was arable.. That was in 2011. By then the period of 12 years, from 1997 when the agreement for sale was made and he went into possession of the land in his own right as the purchaser, had run its course. If the consent of the Land Control Board was not obtained, as DW2 contended, then the respondent's possession of the suit land became adverse to that of the deceased after the period for which the consent ought to have been sought and granted lapsed. That was the position in *Peter Njau Kairu v Stephen Ndung'u Njenga & Another* (supra) and *William Gatuhi Murathe v Gakuru Gathimbi Civil Appeal No. 49 of 1996* where it was held that in case of a transaction for sale of land that is rendered void for want of the consent of the Land Control Board, adverse possession commences after the statutory period for obtaining that consent lapses.
47. In this case, all the ingredients of adverse possession were agreed to be present save for the period of possession. In our own re-evaluation, we agree with the learned Judge that, based on the evidence presented before the trial court, the respondent was in possession of the suit land for a period of more than 12 years. There is no basis upon which we can interfere with the learned Judge's finding on that



fact since we are not persuaded that the learned Judge took into account facts or factors which should not have been taken into account, or that there was a failure to take into account matters which should have taken into account or that there was a misapprehension of the effect of the evidence or that in reaching the findings arrived at it is demonstrated that wrong principles were acted upon.

48. In the premises, we find no merit in this appeal which we hereby dismiss with costs to the respondent.

49. It is so ordered.

DATED AND DELIVERED AT NAKURU THIS 5TH DAY OF JUNE, 2025.

J. MATIVO

.....

JUDGE OF APPEAL

M. GACHOKA C. Arb, FCIArb.

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JUDGE OF APPEAL

G.V. ODUNGA

.....

JUDGE OF APPEAL

I certify that this is the true copy of the original

Signed

DEPUTY REGISTRAR

