Narankaik v Ahmed (Administrator of the Estate of Ahmed Abdi Murasa) & another (Civil Appeal 245 of 2019) [2024] KECA 648 (KLR) (7 June 2024) (Judgment)

Neutral citation: [2024] KECA 648 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT NAKURU

CIVIL APPEAL 245 OF 2019

FA OCHIENG, LA ACHODE & WK KORIR, JJA

JUNE 7, 2024

BETWEEN

KONENE NARANKAIK ..... APPELLANT

AND

REHEMA AHMED (ADMINISTRATOR OF THE ESTATE OF AHMED ABDI MURASA) ..... 1ST RESPONDENT

ZAKARIA NJENGA KAMITI ..... 2ND RESPONDENT

(Being an appeal from the Judgment of the Environment & Land Court of Kenya at Narok (M. Kullow, J.) dated 19th July 2019 in ELC Cause No. 16 of 2015 (O.S))

JUDGMENT

1. The 1st respondent herein was the plaintiff before the trial court.

   He sued the 2nd respondent and the appellant as the 1st and 2nd defendants respectively. The 1st respondent's claim was over land parcel number LR Narok/Township/163, hereinafter, "the suit property". The 1st respondent prayed for the following orders:

   a. A declaration that he had acquired rights to the suit property as against the 2nd respondent, who was the registered proprietor of the said land, by adverse possession, and that the 2nd respondent's rights over the suit property were extinguished under the provisions of the *Limitation of Actions Act*.

   b. A declaration that the 2nd respondent had no title or rights of proprietorship to pass to the appellant, and that the subsequent sale and transfer of the suit property to the appellant did not extinguish the 1st respondent's rights of adverse possession.

c. A declaration that the 1st respondent's adverse possession rights over the suit property were overriding interests in terms of Section 30(f) of the Registered *Land Act* (repealed), and provided for under Section 28(h) of the *Land Registration Act*.

d. A declaration that pursuant to Section 17 of the *Limitation of Actions Act*, the appellant's title as the registered proprietor of the suit property was extinguished.

e. An order that pursuant to Section 38 of the *Limitation of Actions Act*, the suit property registered in the appellant's name be registered in the 1st respondent's name as the proprietor, having acquired the land by adverse possession.

f. A permanent injunction to restrain the appellant and the 2nd respondent from interfering, occupying, or controlling the suit property.

2. The 1st respondent's case before the trial court was that his father, Abdi Murasa, had occupied and possessed the suit property since 1936. The suit property had been allocated to him by the colonial government in 1936 for purposes of trading. An annual rent of Kshs. 30 was to be paid, failure of which licence would be forfeited. Receipts for payment of annual rent for the years 1924, 1958, 1959, 1963, 1964, and 1965 were produced.

   His father had raised his family on the suit property, and the father was also buried thereon.

3. The 1st respondent stated that, after his father died in the 1950s, he took possession of the suit property. He continued to stay on the suit property without any interference. In a letter dated 4th July 1985, he applied to the County Council of Narok to formally allocate him the suit property, give him a new plot number, and issue him with an allotment letter, in respect to the plot that had been allotted to his father in 1936. However, he realized that the suit property had already been allocated to the 2nd respondent through an allotment letter dated 2nd June 1983 and registered on 22nd April 1985. A certificate of title had also been issued. He submitted that the allocation was irregular, yet the County Council proceeded to issue a title of the suit property to the 2nd respondent.

4. The 1st respondent stated that the 2nd respondent had filed Nairobi RMCC No. 4887 of 1986 for trespass and sought to evict him from the suit property. This suit was later withdrawn by the consent of the parties on the understanding that the 1st respondent would be allocated another property by the County Council of Narok.

5. The 1st respondent also produced a certificate of lease running from the year 1983 and valid for 99 years bearing the names of the 2nd respondent.

6. The 1st respondent informed the court that although he was pursuing the matter on behalf of his siblings with their consent, he had not taken out letters of administration. However, his sister who testified as PW4, informed the court that they had not given the 1st respondent the authority to institute the suit on their behalf and that it was their mother who used to collect rent from the tenants.

7. The 1st respondent also told the court that he did not have title to the suit property or any document to show that plot 1 appearing on the documents that had been issued to his father, was later registered as the suit property.

8. PW2 stated that she was the 1st respondent's neighbor living near the suit property. As far as she was concerned, the suit property belonged to the children of Mohammed and Mama Aisha.

9. PW3 informed the court that he knew that the 1st respondent had inherited the suit property from his father. He used to visit the 1st respondent on the suit property where he lived. In 1988, the 1st respondent demolished the houses on the suit property.

10. In his defence, the 2nd respondent testified that he was lawfully allocated the suit property by the County Council of Narok in 1983, and the same was registered in 1985. He produced a list of plot allocations by the County Council of Narok showing that the 1st respondent had been allocated plot No. 319, as a result of the withdrawal of the suit he had filed against the 1st respondent. This evidence was not rebutted by the 1st respondent. He further stated that he had been paying rates and rent in respect of the suit property until 2012 when he sold the suit property to the appellant.

11. The 2nd respondent stated that at the time when he sold the suit property to the appellant, there was no caution on the said land as claimed by the 1st respondent. He produced a certificate of search showing that he was the owner of the suit property as of 1st September 2011.

12. The 2nd respondent pointed out that he had sued the 1st respondent's father and not the 1st respondent himself. When he applied for allocation, he was allocated the suit property and not plot No. 1. He informed the court that the Criminal Investigations Department had conducted investigations into the ownership of the suit property, and his name was cleared.

13. To his knowledge, the person who was living on the suit property was Jeremiah Gathogo, who vacated after he sold it to the appellant.

14. DW2 informed the Court that the 2nd respondent, his father, had allowed Jeremiah Gathogo to use the suit property until 2012 when it was sold. He never saw anyone else live on the suit property or pay rent.

15. The appellant's case was that he had been in continuous occupation of the suit property after he had purchased the same from the 2nd respondent in 2012 for a consideration of Kshs. 10,000,000. Prior to the purchase, he conducted a physical inspection of the suit property and conducted a proper search. There was no caution on the suit property. At the time, there were temporary wooden structures at the corner of the suit property which the 1st respondent was ordered to remove by the Narok Town Council.

16. After being issued with a certificate of lease, the appellant started developing the suit property in 2013 to the tune of Kshs. 80,000,000. There was no one occupying the suit property at the time.

17. The learned Judge held that the suit having been filed in 2012, the 2nd respondent ought to have raised the issue of capacity to sue earlier on in the proceedings, and in any event, the 2nd respondent had sued the 1st respondent in Nairobi SRMCC No. 497 of 1998 knowing that he was the person in occupation of the suit property; therefore, the 1st respondent had the capacity to sue.

18. The learned Judge held that the witnesses testified that the 1st respondent's family occupied the suit property until they were evicted by the 2nd respondent when he acquired title. Therefore, the 2nd respondent's attempt to extinguish the 1st respondent's claim was not lawful as the eviction was not sanctioned by the court.

19. The learned Judge held that the 1st respondent had discharged the burden of proof by proving all the ingredients for a claim under adverse possession. The learned Judge held thus:

> " 1. That the Plaintiff/Applicant had acquired title to Land Parcel No. LR NAROK/TOWNSHIP/163 by adverse possession.

2. That the 1st Defendant had no title or rights to sale and transfer the suit land to the 2nd Defendant.

3. That the allocation and registration of the suit land to the 1st Defendant was illegal and unlawful and there be a rectification of the register in the name of the Plaintiff and in the alternative and in the interest of justice, since the 2nd Defendant has developed the suit land, the 2nd Defendant do pay the Plaintiff the value of the suit land at the time when the same was sold and transferred to him.

20. Aggrieved by the judgment of the court, the appellant appealed to this Court raising the following grounds:

a. The learned Judge erred in finding that the 1st respondent had locus standi to sue having been sued in Nairobi SRMCC 497 Of 1998 and that the appellant had failed to raise the issue in good time.

b. The learned Judge erred in holding that the 1st respondent had been sued in Nairobi SRMCC 497 Of 1998 whereas Mohammed Murasa had been sued in the said case.

c. The learned Judge erred in arriving at a conclusion not based on evidence.

d. The learned Judge erred in his analysis of the law relating to adverse possession, especially when the 1st respondent's claim was based on legal ownership of the suit property through inheritance and not adverse possession.

e. The learned Judge erred in finding that the 1st respondent had been in exclusive occupation of the suit property when the evidence adduced was contrary.

21. When the appeal came up for hearing on 6th March 2024, Ms.Lyonah, learned counsel holding brief for Mr. Maina appeared for the appellant, Mr. Thuita appeared for the 1st respondent, and there was no appearance for the 2nd respondent. Counsel relied on their written submissions which they had briefly highlighted when the matter first came up for hearing on 26th June 2023.

22. Mr. Maina submitted that the 1st respondent lacked locus having approached the court based on being an heir of his late father. He had not taken out letters of administration. The 2nd respondent's notice of preliminary objection dated 17th October 2012 was heard and determined by Waithaka, J. who, in a ruling dated 20th September 2013, directed that the issues were a mixture of law and facts and ought to be determined as part of the main hearing.

23. In his written submissions, the appellant cited the case of Alfred Njau v City Council of Nairobi [1983] eKLR in submitting that a person who has no locus standi has no right to appear or be heard in proceedings.

24. While relying on the Rajesh Pranjivan Chudasama v Sailesh Pranjivan Chudasama [2014] eKLR case, the appellant pointed out that since the 1st respondent had admitted that he had not taken out letters of administration, he was not entitled to bring any action on behalf of his late father as such action was incompetent from the date of its inception.

25. Counsel faulted the learned Judge for holding that the 1st respondent had been sued earlier in another suit by the 2ndrespondent, however, the 2nd respondent had sued the 1st respondent's father.

26. Counsel was of the view that since the 1st respondent had claimed ownership of the suit property through inheritance, the learned Judge ought not to have held that the 1st respondent was entitled to the suit property due to adverse possession given that adverse possession was not an issue at the trial.

27. In his written submissions, the appellant referred to the provisions of Sections 7, 13, 17 and 38(1) & (2) of the *Limitation of Actions Act*; the cases of Mtana Lewa v Kahindi Ngala Mwagandi [2015] eKLR, and Chevron (K) Limited v Harrison Charo wa Shutu [2016] eKLR in submitting that the threshold of adverse possession is that one must demonstrate that they have had peaceful and uninterrupted possession as of right of the land in dispute for a period of at least 12 years; the possession must be open and without violence or secrecy; and one must also demonstrate that he had the requisite intention to acquire the land.

28. The appellant pointed out that a claim for adverse possession must be brought against the registered proprietor. The 1st respondent claimed to have taken possession of the suit property after the death of his father. The 1st respondent in prayer (b) of the originating summons stated he did not recognize the appellant and the 2nd respondent as either the registered owner or the buyer of the suit property respectively. The appellant also submitted that the 1st respondent had stated that he was not aware that a title had been issued to the 2nd respondent. Therefore, it was his opinion that the learned Judge erred in holding that the 1st respondent acquired the suit property by way of adverse possession.

29. Citing the case of Ndiema Samburi Soti v Elvis Kimtai Chekeses [2010] eKLR, the appellant pointed out that a person who occupies land with the consent of the owner cannot be said to be in adverse possession because in reality he has not dispossessed the owner, and the possession is not illegal. In this case, the 2nd respondent had sought to dispossess the 1st respondent of the suit property, through the suit filed in 1986. The said suit was withdrawn following an understanding between the parties and the County Council of Narok.

30. Counsel pointed out that although the 1st respondent claimed to have been in possession of the suit property, the evidence adduced proved that the 2nd respondent had been in possession of the suit property from 1988 to 2012 when he sold the same to the appellant.

31. Counsel submitted that the appellant was a bonafide purchaser for value, without notice. In 2012, he purchased the suit property for Kshs. 10,000,000 from the 2nd respondent, who was the registered owner. The appellant has since built a five-story building on the suit property. The suit property is now valued at Kshs. 80,000,000.

32. Opposing the appeal, Mr. Thuita submitted that the issue of locus was not raised before the trial court. The preliminary objection referred to by the appellant was filed by the 2nd respondent and had nothing to do with the appellant. It was dismissed in its entirety and nothing was deferred to the main hearing as alleged.

33. In his written submissions, the 1st respondent submitted that the issue of inheriting the suit property from his father was part of the narration on how he came to be in possession of the suit property as his occupation of the suit property was distinct from that of his father having continued to stay on the premises long after his father died in the 1950s. In any event, he did not file the suit on behalf of his siblings, children, or other family members. The claim was based on his possession of the suit property and therefore, he could bring a claim of adverse possession.

34. Counsel pointed out that the 1st respondent's father died in the 1950s while the claim herein arose in 1985. Nairobi SRMCC 497 of 1998 was not against the 1st respondent's father.

35. Counsel submitted that the 1st respondent's claim was based on adverse possession. Counsel stated that the dispute regarding possession was that the 2nd respondent had not been in possession of the suit property. In any event, seven witnesses proved that the 1st respondent had been in possession of the suit property.

36. While citing the case of Peter Mbiri Michuki v Samuel Mugo Michuki [2014] eKLR, the appellant argued that actual possession was not necessary for adverse possession to occur. He said that even if one allowed licencees on his land, that was an affirmation of his rights. He also relied on the case of Peter Njau Kairu v Stephen Ndung'u Njenga & Another [1998] eKLR in stating that the possession can be done through other family members or persons appointed by him, and therefore, the presence of his family members on the suit property gave him the locus.

37. Counsel contended that the appellant cannot be an innocent purchaser for value; and that the 1st respondent has rights arising from adverse possession, which had crystallized.

38. Counsel submitted that in 2012 the suit property had not been developed and the Court issued an order to stop development. The house was built while the appeal was pending. Nonetheless, the court directed that the 1st respondent be given either the suit property or the value thereof. The 1st respondent is not interested in the building.

39. The 1st respondent submitted that while it was true, that the suit property had been allocated to his father by the colonial Government, the title was never issued, and he died before independence. He made attempts to obtain ownership documents but the 2nd respondent obtained the same first.

40. The 1st respondent was of the view that time started running on 22nd April 1985 when the 2nd respondent was registered as the owner of the suit property. Since the removal of the temporary injunction in 1986, he continued to stay on the suit property uninterrupted, peacefully, and openly and used the property for another 24 years.

41. The 1st respondent pointed out that his eviction was unlawful as the 2nd respondent had failed to institute a claim for recovery of land. To his mind, the eviction was of no consequence. He relied on the case of Joseph Gachumi Kiritu v Lawrence Maunyambu Kabura, Civil Appeal No. 20 of 1993 (unreported) to buttress this submission.

42. We have carefully and anxiously considered the record of appeal, the grounds thereof, the rival submissions, and the law. The two main issues for determination are; whether the 1st respondent had the locus standi to institute the suit before the trial court, and whether the 1st respondent was entitled to the suit property, by adverse possession.

43. This being a first appeal, it is our mandate to re-evaluate the evidence tendered before the trial court and come up with our own findings and conclusions, bearing in mind that we did not have the occasion to see or hear the witnesses and make due allowance for the same. In the case of Abok James Odera & Associates v John Patrick Machira t/a Machira & Co.Advocates [2013] eKLR the court restated this requirement as follows:

> "This being a first appeal, we are reminded of our primary role as a first appellate court namely, to re-evaluate, re-assess and reanalyse the extracts on the record and then determine whether the conclusions reached by the learned trial Judge are to stand or not and give reasons either way. See the case of Kenya Ports Authority v Kusthon (Kenya) Limited [2000] 2EA 212 wherein the Court of Appeal held, inter alia, that: - "On a first appeal from the High Court, the Court of Appeal should consider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind 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."

44. It is common ground that the 1st respondent's family was in occupation of Plot No. 1. It is also common ground that no document had been produced to show that the said plot had been converted into the suit property. It is the testimony of the plaintiff's witnesses, that placed the 1st respondent and his siblings on the suit property.

45. In his Originating Summons, the 1st respondent sought a declaration that he had acquired rights to the suit property through adverse possession. He also sought a declaration that the 2nd respondent did not have a title to pass to the appellant.

In support of these prayers, the 1st respondent pointed out that the suit property had been acquired by his deceased father in 1936 from the colonial government, and that he and his siblings had inherited the said property from their father upon his death, and taken possession thereof. It follows, therefore, that for the 1st respondent to take any legal action over the suit property, he ought to have taken out letters of administration, if his claim is founded upon inheritance.

46. In his written submissions, the 1st respondent stated that the issue of inheritance was just a narration of how he came to be in possession of the suit property. He refuted his earlier assertion that he had filed the suit on behalf of his siblings, children, or other family members. He claimed to have instituted the suit based on his possession of the suit property.

47. However, in his testimony during cross-examination, the 1st respondent informed the Court that he had filed the suit with authority from his siblings although he had not taken out letters of administration. His sister, PW4, refuted the 1st respondent's claim that they had given him authority to sue. She also informed the court that it was their mother who used to collect rent from the rental houses.

48. From the record, the receipts for payment of annual rent that was paid after the 1950s, show that the rent was remitted in the name of the 1st respondent's father. Also, some of the letters between the 1st respondent and the County Council of Narok show that the said letters were addressed to Mohamed Abdi, the 1st respondent's father.

49. According to PW2, the suit property belonged to the 1st respondent and his siblings, and according to PW3, the 1st respondent inherited the suit property from his father.

50. From the foregoing, we find that the evidence adduced points to the fact that the 1st respondent and his siblings were on the land by virtue of being their father's children.

51. It is a well-established legal principle that in order to initiate legal action and proceedings with regard to the estate of a deceased person, the applicant must have the proper legal capacity (locus standi) to do so. Therefore, one has to apply for either a limited grant or the Special Ad Litem Ad Colligenda bona under Sections 54 and 55 of the Laws of Succession Act, or for a full grant of letters of administration.

52. In this instance, it is not in dispute that at the time of institution of the said originating summons, the 1st respondent had not obtained a grant of letters of administration. In the Rajesh Pranjiran Chudasama v Sailesh Pranjivan Chudasama [2014] eKLR case, this Court held thus:

"...But in our view, the position in law as regards locus standi in succession matters is well settled. A litigant is clothed with locus standi upon obtaining a limited grant or a full grant

of Letters of Administration in cases of Intestate Succession. In Otieno v Ougo (supra) this Court differently constituted rendered itself thus:

"...an administrator is not entitled to bring any action as administrator before he has taken out letters of administration. If he does, the action is incompetent as of the date of inception."

53. To our minds, the 1st respondent did not have the locus standi to file the Originating Summons because he had not obtained a grant of letters of administration to represent the estate of his deceased father.

54. It follows, therefore, that even though the 1st respondent might have had a cause of action over the suit property, he did not have the capacity to sue. This Court in the case of Alfred Njau & Others v City Council of Nairobi [1982] KAR 229 stated as follows:

> " Lack of locus standi and a cause of action are two different things. Cause of action is the fact or combination of facts which give rise to a right to sue whereas locus standi is the right to appear or be heard, in court or other proceedings; ...To say that a person has no cause of action is not necessarily tantamount to shutting the person out of the court but to say he has no locus standi means he cannot be heard, even on whether or not he has a case worth listening to."

55. Whether or not he had a cause of action is immaterial. The court ought to have downed its tools once this issue cropped up. It did not matter that the 2nd respondent had previously sued the 1st respondent as the learned Judge held. The issue of locus having been raised, ought to have been determined on merit. In the result, we find that the 1st respondent had no locus standi to institute the summons or seek relief from the Court without first obtaining letters of administration.

56. However, the 1st respondent argued that time for adverse possession started running after he took possession of the suit property. However, he did not place any evidence before the court to show when he took possession of the suit property.

57. Article 40 as read with Article 64 of *the Constitution* allows citizens to acquire and own property; land, through a freehold or a leasehold tenure. Article 65 on the other hand allows non- citizens to acquire and own land, through a leasehold tenure. However, one can also acquire land through the doctrine of adverse possession.

58. The appellant contended that the trial court erred in finding that the 1st respondent was in adverse possession of the suit property for the statutory period of 12 years. The 1st respondent contended that they had been in possession of the suit property since childhood and that he had only moved out when he was forcefully evicted.

59. The Black's Law Dictionary, Ninth Edition defines "adverse possession" thus:

> " 1. The enjoyment of real property with a claim of right when the enjoyment is opposed to another person's claim and is continuous, exclusive, hostile, open and notorious.
>
> 2. The doctrine by which title to real property is acquired as a result of such use or enjoyment over a specific period of time."

60. The term "adverse possession" has a specific legal definition. It doesn't mean that anyone who occupies land belonging to someone else for a certain period automatically becomes the owner through adverse

possession. The law prohibits unlawful occupation of private, community, or public land, and gives the owner the right to evict such individuals, while also stipulating the procedure for such eviction.

61. In the case of Elphas Cosmas Nyambaka v Charles Angucho Suchia [2020] eKLR, this Court held 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 period of 12 years or more. The process spirals into action fundamentally by default or inaction on the part of the registered owner of the parcel of land. The essential requirements being that the possession of the adverse possessor is neither by force or secrecy nor 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 registered owner." Emphasis ours.

62. Section 13 of the Limitations of Actions Act states 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 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."

63. It is common ground that the 2nd respondent became the registered proprietor of the suit property on 22nd April 1985 when the 99-year certificate of lease running from 1st July 1983 was registered. At the time, the 1st respondent was in occupation of the suit property, the same having been allocated to his deceased father in 1936. However, his father was never registered as the proprietor of the said land.

64. In 1986, the 2nd respondent sued the 1st respondent's father for trespass. However, the suit was withdrawn in 1988 when the parties agreed with the City Council of Narok to have the 1st respondent allocated another parcel of land. According to the record, the 2nd appellant produced a list of allocations done by the City Council of Narok showing that the 1st respondent had been allocated Plot No. 319. This evidence was not rebutted. The 1st respondent claimed to have been in occupation of the suit property while the 2nd respondent alleged that he had allowed one Jeremiah Gathogo to stay on the suit property until the time when he sold the same to the appellant.

65. It is not in dispute that the 1st respondent was not in possession of the suit property at the time of filing the summons. He had been evicted by the appellant, who has been in possession thereof since 2012 when he bought it from the 2nd respondent, and he has since developed the said property.

66. Section 38(1) of the *Limitation of Actions Act* states 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 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."

67. In the case of Mate Gitabi v Jane Kabubu Muga & Others,Civil Appeal No. 43 of 2015 (unreported) this Court held that:

> "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 secrecy, without force, and without license or permission of the land owner, with the intention to have the land."

68. It follows, therefore, that there must be an apparent dispossession of the land from the landowner. These elements are contained in the Latin maxim nec vi, nec clam, nec precario. The burden was upon the 1st respondent to prove that he had been in exclusive possession of the suit property openly and as of right without interruption for 12 years either after dispossessing the appellant or by discontinuation of possession by the appellant on its own volition. (See also: Kasuve v Mwaani Investments Limited & 4 others 1 KLR 184).

69. The law and requirements for adverse possession were reiterated in the case of Mbira v Gachuhi, [2002] IEALR 137 where it was held 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...."

70. A person who claims adverse possession must inter alia show; on what date he came into possession, what was the nature of his possession, whether the fact of his possession was known to the other party, for how long his possession has continued, and that the possession was open and undisturbed for the requisite 12 years.

71. In the present appeal, the 1st respondent in his pleadings claimed that he had inherited the suit property from his father. Until 1983, the suit property was un-alienated government land and as such the 1st respondent could not claim adverse possession over the 2nd respondent before the latter became the registered proprietor. Section 41 of the *Limitation of Actions Act* stipulates that adverse possession could not have accrued against government land. The 1st respondent could not have advanced a sustainable claim of ownership of the suit property before the registration of the appellant as a proprietor.

72. Once the 2nd respondent obtained title, he sought to evict the 1st respondent from the suit property. This was resolved when the City Council of Narok agreed to allocate the 1st respondent another parcel of land. In 1988, the 1st respondent demolished the structures he had on the said property, and in 2012 he was evicted by the appellant.

73. It follows, therefore, that from his actions, the 1st respondent did not establish that he was in occupation of the suit property without the permission of the 2nd respondent, and that he had a clear dealing with the suit property as if it was exclusively his, and in a manner that was in clear conflict with the 2nd respondent's rights. In any event, the claim against the 2nd respondent was moot given that he was no longer the registered owner of the suit property.

74. Our analysis and appreciation of the facts established on the record leads us to the inevitable conclusion that the learned Judge erred in finding that the claim for adverse possession had been proved.

75. From the foregoing, we find that the appeal succeeds.

Consequently, the judgment of the trial court is set aside and we issue the orders that:

a. The 1st respondent did not have the locus standi to institute the summons against the appellant and the 2nd respondent.

b. The appellant is the lawful and registered owner of the suit property

c. The 1st respondent did not acquire title to the suit property by adverse possession.

d. The 2nd respondent had a legitimate right to sell and transfer the suit property to the appellant.

Costs of the appeal as well as of the trial are awarded to the appellant.

Orders accordingly.

DATED AND DELIVERED AT NAKURU THIS 7TH DAY OF JUNE, 2024.

F. OCHIENG

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JUDGE OF APPEAL

L. ACHODE

.....

JUDGE OF APPEAL

W. KORIR

.....

JUDGE OF APPEAL

I certify that this is a True copy of the original

Signed

DEPUTY REGISTRAR