Kakuzi Limited v Makuyu Club (Suing through Joel Wanoike, Irungu Ndirangu & SK Kirubi as Trustees of the Club) (Civil Appeal 78 of 2020) [2024] KECA 1607 (KLR) (8 November 2024) (Judgment)

Neutral citation: [2024] KECA 1607 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT NAIROBI

CIVIL APPEAL 78 OF 2020

SG KAIRU, JW LESSIT & GWN MACHARIA, JJA

NOVEMBER 8, 2024

BETWEEN

KAKUZI LIMITED ..... APPELLANT

AND

MAKUYU CLUB (SUING THROUGH JOEL WANOIKE, IRUNGU NDIRANGU & SK KIRUBI AS TRUSTEES OF THE CLUB) ..... RESPONDENT

(Being an appeal from the Judgment and Decree of the Environment and Land Court at Thika (Angote, J.) delivered on 18th October 2019 in ELC Suit No. 115 of 2017)

JUDGMENT

1. Before this Court is an appeal from the Judgment and decree of the Environment and Land Court at Thika (Angote, J.) delivered on 18th October 2019 in ELC Suit No 115 of 2017.

Background

2. The respondent instituted the suit against the appellant by way of Originating Summons (OS) dated 18th September 2002, to wit Civil Case No 158 of 2002 at the High Court of Kenya at Nyeri. The OS was premised on the provisions of section 38 of the *Limitation of Actions Act* ('LAA') and the issues sought to be determined therein were:

    i. whether the appellant's title in a portion of land, 70 acres or thereabouts out of their land LR No 11574 I.R. 20386/2 had been extinguished by the respondent's adverse possession thereof for a period of more than 12 years in terms of section 38 of the *Limitation of Actions Act*;

    ii. whether the respondent had acquired title to the said land by adverse possession thereof for a period of more than 12 years from 1934;

iii. whether the respondent ought to be registered as absolute owner of the said land;

iv. whether the Registrar of Titles, Nairobi should be ordered to register the said land in the name of the respondent as absolute proprietor;

iv. whether the appellant should not be condemned with costs of this suit; and,

v. in all circumstances of the case which other orders are just and expedient to make.

Respondent's case

3. In the supporting affidavit sworn on even date by Mr. Joel Wanyoike, trustee of the respondent, the respondent contends that 70 acres or thereabouts out of the appellant's land known as LR No 11674 I.R. 20386/2 was donated to it by White settlers in the year 1934 for the use of a golf course long before the appellant existed. That the said portion was given to Makuyu Sisal, the fore bearer of the appellant for the use of a golf club by the respondent's members. It was contended that from the year 1934, the respondent had always exclusively used the said portion of land, and that it had landscaped the land, constructed the tee boxes greens and had made a makeshift shed for the bar, dug a pit latrine, sank a borehole and had installed a pump to irrigate the golf course. It contended that its occupation was open, without force and without any interference from the appellant. Further, that having been in occupation and utilization of the said portion of land for more than 68 years, it had acquired title by way of adverse possession, and it was therefore just for it to be registered as absolute proprietor of the said portion of land.

Appellant's case

4. The appellant filed grounds of opposition dated 26th September 2002 challenging the respondent's application on grounds that the respondent's application was misconceived and bad in law; the respondent had never had exclusive use or possession of any part of the appellant's property; the appellant had made use of the portion of its property as a golf course, for its agricultural activities e.g. grazing of cattle and cutting grass for hay, use of the track through the property for its various activities without having to seek any consent from the respondent and or without any hindrance whatsoever from the respondent; the appellant had since the club was formed to sometime in 1999 contributed towards the maintenance of the golf course by supplying manpower, fuel for the tractors and other financial support; in July 1998, the appellant erected a fence along Sagana road without any hindrance from the respondent; and that the respondent had no capacity to hold immovable property and cannot in law maintain the suit.

5. In its replying affidavit, Mr. Jeremy Hulme, the appellant's Managing Director adopted the above mentioned grounds of opposition. The appellant stated that by way of Grant No I.R. 21211 issued under the Registration of Titles Act, Sisal Limited was granted the parcel of land known as LR No 11674 for a term of 941 years and 2 months from 1st June 1966. The said land was transferred to Kakuzi Fibrelands Limited and the transfer registered on 8th December 1967 and that on 29th July 1971, a Certificate of Change of Name of Kakuzi Fibrelands Limited to Kakuzi Limited was registered.

6. The appellant deposed that the respondent's club house sat on 4 acres of land situate on LR No 10738 and which was owned by the respondent which was distinct from the land upon which the golf course was situated and that the latter occupied 72 acres of land which were part of LR No 11674. More importantly, the appellant averred that members of the Makuyu Club had been using the 72 acres as a golf course with the express knowledge and consent of the appellant and the appellant's predecessor in title, and that the latter had supported the Club and helped in maintenance of the golf course

by supplying diesel oil, petrol lubricants; lending of tractors and lawnmowers; paying of wages for clubhouse watchmen; paying of wages of the golf course employees; providing items of equipment to watchmen such as coats and torches; and, providing of building and maintenance materials.

7. As regards the exclusive use of the 72 acres by the respondent, the appellant contended that this allegation was untrue and that in fact the appellant had from time to time used the said portion of land for activities such as grazing its livestock and collecting hay therefrom.

8. It was contended that the appellant had taken various steps to assert its title over the said portion of land and therefore its title could not be said to have extinguished. In sum, the appellant contended that the respondent's claim of title over the said portion of land through adverse possession was unmerited as it had occupied the lands with its express consent and permission and that in any case, the appellant was utilizing the said land for its benefit from time to time.

Hearing before the ELC

9. The suit was filed at the Nyeri High Court but later transferred to Thika Environment and Land Court and registered as ELC Suit No 115 of 2017.

10. At the hearing of the suit, Mr. John Muchiri Mukuha, the Secretary of the club testified on behalf of the respondent. He testified that the golf course which is situated on L.R No 11674 was donated by the White Settlers to the respondent in 1934 and that since then, the respondent's members had exclusively used the golf course to play golf. He informed the court that other than the golf course that the respondent's members had been using since 1934, there were also permanent buildings on the golf course housing a borehole with a pump, a bar and a store; that they had used the 72 acres of LR No 11674 since 1934 and that they had acquired a portion of LR No 11674 measuring 72 acres by adverse possession.

11. Mr. Sammy Chege Gichui, the Senior Estate Manager, Forestry Division testified on behalf of the appellant. He testified that the respondent owned a parcel of land which had a Club house and that the said land was distinct from the golf course measuring 72 acres and situated on LR No 11674. Further, that the appellant and its predecessors in title consented to the use of the golf course by the respondent's members and that the appellant always supported the Club and helped it maintain the golf course by lending it with tractors and mowers, paying of wages of the golf course employees and maintenance of buildings and materials. His further testimony was that the appellant had continuously taken various steps to assert its title and that when the respondent attempted to connect electricity to the golf course, the appellant objected by writing to the Kenya Power and Lighting Company notifying it that the land belonged to the appellant.

12. The leaned ELC Judge, after considering the case allowed the respondent's Originating Summons dated 18th September, 2002 as follows:

    a. The Defendant's title in a portion of land measuring approximately seventy (70) acres or thereabouts out of their land LR No 11674 I.R. 20386/2 has been extinguished by the Plaintiff's adverse possession thereof for a period of more than twelve (12) years in terms of Section 38 of the *Limitation of Actions Act*.

    b. The Plaintiff has acquired title to the said land by its adverse possession thereof for a period of more than twelve (12) years from 1934 to date.

    c. The Plaintiff to be registered as absolute owner of 70 acres, being a portion of LR No 11674 I.R 20386/2.

d. The Defendant to pay the costs of the suit.

13. Dissatisfied with the above noted decision, the appellant preferred this appeal. The appellant contends that the learned judge erred in law and in fact by inter alia:

a. failing to appreciate that the respondent had not acquired any rights pursuant to section 7 and 13 of the *Limitation of Actions Act*;

b. finding that the appellant's title to a portion of land measuring 70 acres had been extinguished by the respondent's adverse possession thereof to a period of more than 12 years;

c. finding that the respondent had acquired title to the said portion of land by its adverse possession thereof for a period of 12 years from 1934;

d. directing that the respondent be registered as the absolute owner of 70 acres; and,

e. failing to consider evidence that the appellant had taken steps to assert title over the said portion of land and that occupation thereof was with the knowledge and consent of the appellant.

Hearing before the Court of Appeal

14. The appeal came up for hearing through this Court's Go To virtual platform on 8th April 2024. Present was learned counsel Mr. Peter Njeru appearing alongside Mr. Wycliffe Oyoo for the appellant, whereas learned counsel Ms. Njoroge held brief for Mr. Mereka for the respondent.

15. Mr. Njeru highlighted the appellant's written submissions dated 19th October 2020. He stated that he wished to collapse the nine (9) grounds of appeal raised in the memorandum of appeal into two (2) broad issues. The first issue being whether the respondent satisfied the conditions necessary to acquire title to the suit property by way of adverse possession, thereby extinguishing the appellant's title to the suit property. The second issue he urged was whether the learned judge exercised his discretion judiciously. It was Mr. Njeru's contention that the learned judge failed to exercise his discretion judiciously by failing to consider the appellant's evidence and submissions to the effect the appellant had taken steps to assert its right over the suit property, thus making findings that were not supported by the evidence adduced.

16. Ms. Njoroge on her part submitted that the respondent relies on section 38 together with section 7 of the *Limitation of Actions Act* (LAA). Counsel highlighted only three issues as raised in the respondent's written submissions dated 14th December 2022. The first issue being whether the respondent satisfied the conditions necessary to acquire title by adverse possession. The second issue whether the learned judge failed to consider the appellant's evidence and submissions which also included the question as to whether the learned judge considered issues that had not been pleaded. The last issue was whether this Court should interfere with the finding of the trial court.

Analysis and determination.

17. This is a first appeal. In the case of *Kenya Ports Authority v Kuston (Kenya) Limited* [2009] 2EA 212 this Court espoused the mandate or duty of the Court 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."

18. We are also aware that we must give deference to the findings of fact by the trial court and can only depart from them if they were not based on the evidence on record; or where the said court is shown to have acted on wrong principles of law as held in *Jabane v Olenja* [1986] KLR 661; or if its discretion was exercised injudiciously as held in *Mbogo & another v Shah* [1968] E.A.

19. We have considered the appeal in accordance with our mandate by considering the submissions by counsel and the authorities relied upon, and have re-evaluated, re-assessed and re-analyzed the evidence on record to determine whether the conclusions reached by the learned trial Judge should hold. We find that the appeal can be disposed of through determination of two issues; whether the learned trial court erred when he found that the respondent met the threshold of establishing that it was in adverse possession of the appellant's land for a period over of 12 years as required by statute, and that consequently it's adverse possession of the requisite portion of the suit property extinguished the appellant's title. Second is the issue whether the learned Judge failed to consider that the appellant asserted its right over the suit property.

20. We have set out the background facts of this case, which are largely not in dispute. It was the respondent's case, and the same was not disputed, that 72 acres or thereabouts out of LR No 11674 I.R. 20386/2 was donated to it by White Settlers in 1934, for use as a golf course. We have also set out in this judgment how the title to the suit land, measuring 12,705 acres changed hands from Sisal Limited which had purchased it and was registered as such on 5th July, 1966 as title No I.R 21211/1, under the Registration of Titles Act. As is discernable from the Grant exhibited in court the original number of the suit land was LR Numbers 10721 and part of LR No 3592. The ownership of the suit property between 1934 to1966 is however not clear. Sisal Limited transferred the suit property to Kakuzi Fibrelands Limited on 8th December, 1967. The latter changed its name from Kakuzi Fibrelands Limited to Kakuzi Limited, and the change registered against the title in 1971.

21. The burden of proof of adverse possession lies with the one claiming entitlement under adverse possession. In the case of *Celina Muthoni Kithinji v Safiya Binti Swaleh & 8 others* [2018] eKLR, the Court stated as follows:

> " It is also a well settled principle that a party claiming Adverse Possession ought to prove that this Possession was "nec vi, nec clam, nec precario," that is, peaceful, open and continuous. The Possession should not have been through force, not in secrecy and without the authority or permission of the owner."

22. What constitutes adverse possession is well settled. It is defined in *Halsbury's Laws of England* Volume 24 3rd Edition at page 252 thus:

> " To constitute dispossession, acts must have been done inconsistent with the enjoyment of the soil by the person entitled for the purpose for which he had a right to use it; fencing off is the best evidence of possession of surface of land; but cultivation of the surface without fencing off has been held sufficient to prove possession."

23. The suit property in issue in this appeal is [utilized] as a golf course, spanning an acreage of 72 acres, and is part of the appellant's portion of land spanning over 12,000 acres. The golf course is a fact to be observed on the land and cannot be ignored or wished away. In that context, the fact that the portion of 72 acres is maintained as a golf course, with the landscaped land and constructed tee boxes greens meant exclusively for golf is sufficient proof of the fact of occupation and possession, subject to the

respondent satisfying the threshold of establishing adverse possession within the meaning of section 38 of the *LAA*. As this Court stated in *Maweu v Liu Ranching & Farming Cooperative Society* [1985] eKLR:

> " 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." [Emphasis added]

24. The appellant raised an issue that the respondent had no capacity to own land and thus the suit was a non-starter. That argument is not tenable as the appellant was on record stating that the respondent owned a four (4) acre portion registered in its name in the same area, which it utilized for construction of a club house and other structures related to the golf course. Secondly, the appellant urged that in order to succeed in its claim for adverse possession, the respondent should have caused its interest to be noted in the register of the suit land. Section 30 (f) of the repealed *Registered Land Act*, the land law applicable to the suit property then, provide an answer to that issue.

> " Section 30 provides;
>
> "Unless the contrary is expressed in the register, all registered land shall be subject to the following overriding interests as may for the time being subsist and affect the same without them being noted on the registers;
>
> a. .....
>
> b. ....
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> c. .....
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> d. .....
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> e. .....
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> f. Rights acquired or in process of being acquired by virtue of any written law relating to the Limitation of Actions or by prescription; Under the doctrine of adverse possession, a Claimant's claim to the land runs against the title and not necessarily the current holder of the title in that period of limitation begins to run from the date of granting of the Certificate of title for that is when the title holder is prima facie entitled to possession and therefore, entitled to take action against any intruder to the land."

25. We shall get back to this at a later stage, the point to note here being that adverse possession is an overriding interest, running against the title, without the need to note them on the register.

26. The *Limitation of Actions Act* (LAA) is the primary statute providing for claims of adverse possession, and in particular Sections 7 and 38. Section 7 of the Act provides as follows:

> " 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."

27. Section 38(1) of the same Act provides as follows:

> "(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."

28. The suit was brought by the respondent, and rightly so, under section 38 of the *LAA*. The pertinent issue is when time started running. It is clear in this case that the respondent was in occupation and possession of the 72 acres out of the suit property since 1934. There is no dispute that it came into the land as a donee, the portion of land having been donated to it by White Settlers. By 1967 when the appellant bought the land and had it registered in its name, the respondent had been on the land, utilizing the same as a golf course. As section 30 (f) of the *RLA* prescribes, the claim to land based on adverse possession runs against the title, not the current registered owner of the land.

29. The respondent entered the land in 1934 and exclusively used it as a golf course, and remained on the land up to (and beyond) 1967 when the appellant bought the suit property and had it registered in its name. The time can be considered to have started running in 1934, however, there was evidence, though vague, that the Sisal Ltd was getting payment from the respondent for the use of the land. If that be the case, the time started running in 1967 and continued running until 2002 when the respondent filed the suit in the ELC. That is a period of 35 years. During that period the respondent was in possession of the suit property, and utilized it as a golf course, openly, peacefully and without interruption.

30. Mr. Njeru for the appellant urged that at all material times up to December 2023 when the status quo orders were issued by this Court, the respondent was utilizing the appellant's property with express consent and knowledge of the appellant and the appellant's predecessor. That the respondent and the appellant were using the suit property jointly, and that the appellant had always utilized it for its agricultural activities which, a fact, he urged, was admitted by the respondent during cross examination at the trial court. Counsel relied on the case of *Wambugu v Njuguna* [1983] KLR 172, and submitted that the law on adverse possession is settled.

31. The appellant posited that it interrupted the respondent's possession through several acts. These acts were testified to by the appellant's first witness, the Senior Estate Manager, Forestry Division. He testified that the appellant took various steps to assert its title, for instance when the Plaintiff attempted to connect electricity to the golf course, the Defendant objected by writing to the Kenya Power and Lighting Company notifying it that the land belonged to the Defendant. He testified that the appellant was helping the respondent maintain the golf course by supplying it with water, providing tractors to cut the grass and paying workers who maintained the golf course. The appellant also contended that it utilized the land by grazing its cattle and cutting hay for its animals.

32. In *Mtana Lewa v Kahindi Ngala Mwagandi* (above),Asike-Makhandia, JA. explained that:

> "Adverse position is essentially a situation where a person takes possession of the land and asserts rights over it and the person having title 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 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. This doctrine in Kenya is embodied in Section 7 of the *Limitation of Actions Act*." [Emphasis added]

33. In 1967 when the appellant bought the suit land, it found the respondent on the suit property in occupation that was open, without force and one that was continuance, having entered in 1934. The appellant contends that it asserted its right of ownership over the suit property and gave instances when it did so. Even though the appellant's witness at the trial testified that the appellant continuously asserted its right taken various steps to assert its title, the only action it testified to was one, where the respondent attempted to connect electricity to the golf course and the appellant objected by writing to the Kenya Power and Lighting Company notifying it that the land belonged to the appellant.

34. We have perused the judgment of the ELC and note that the learned Judge was of the view that the allegation by the appellant that the respondent was not in exclusive use of the golf course was captured in the letter dated 26th March, 1996. We have seen the letter. All the appellant was informing the respondent was that it would, going forward, not offer the support it had hitherto given it. The assistance is listed in the letter thus:

> "With immediate effect I am stopping all support of Makuyu Club by Kakuzi Limited to include such items as:
>
> The supply of diesel oil, petrol, lubricants, etc
> The lending of tractors, lawnmowers etcThe payment of wages for Club House watchmenThe payment of wages for Golf Course employeesThe provision of items to watchmen such as coats, torches, etcThe provision of building and maintenance materials...
>
> 4. Before discussing any further donation by Kakuzi Limited, I would like to have a better understanding of the profitability and viability of the various sections of the Club ..."

35. In the learned Judge's view (of the letter herein above), to quote him verbatim:

> "The letter of 26th March, 1996 clearly shows that the Defendant was not in occupation or possession of the golf course, but was only "supporting" the Plaintiff by supplying it with diesel oil, the lending of tractors, lawn mowers, the payment of wages for the golf employees and maintenance of the buildings."

36. The pertinent question to ask is: How can the registered owner of land assert his right to the title to the land, or what constitutes acts of assertion of ones right to land? There are several decisions dealing with that issue. What is apparent from these decisions is that the action taken must be one that interrupts the possession and/or occupation of the suit property.

37. In *Kipketer Togom v Isaac Cipriano Shigore* [2012] eKLR the Court of Appeal held thus:

> "The Respondent must assert his right to title by physically entering onto the property and evicting and ejecting the trespasser from the suit property. Then only is there interruption to occupation and possession and only does the time stop running. The proceedings initiated or instituted by the Defendant do not amount to interruption."

38. And in *Situma v Cherango* [2007] 2 KLR 84 the court cited with approval an excerpt from Megary & Wade, *the Law of Real Property* 6th Edition at paragraph 21- 078 at page 1309 which states that:

> "Once factual possession has been established, it will not be terminated merely because the true owner sends a letter to the squatter requiring him to vacate the premises. Time

will continue to run in favour of the squatter unless and until he vacates the premises or acknowledges the true owners title."

39. As the Court held in *Githu v Ndeete* [1984] KLR 776:

> " Assertion of right occurs when the owner takes legal proceedings or makes an effective entry into the land; see Cheshire's Modern Law of Real Property, 11th edition at p 894. In my view the giving of notice to quit cannot be an effective assertion of right for the purpose of stopping the running of time under the *Limitation of Actions Act*."

40. In *Mount Carmel Investments Ltd v Peter Thurlow Ltd & another* [1988] 3AII ER 12g, the Court of Appeal, in England held:

> " The mere assertion by the true owner of a claim to possession of land in a letter sent to a squatter was not sufficient to prevent the squatter obtaining title by adverse possession. Accordingly, the letter sent to the defendants by the plaintiff's solicitors did not have the effect of causing the defendants to cease to be in possession for the purposes of acquiring title by adverse possession."

41. It is clear from these cases that to assert ones right to the land, the action must be one that causes the trespasser to cease possession of the property. The acts of assertion will include physical entry into the property and ejecting the trespasser (*Kipketer Togom v Isaac Cipriano Shigore*, supra); where the trespasser acknowledges the true owners title (*Situma v Cherango*, supra). Likewise, what does not constitute acts of assertion includes the giving of notice to quit sent by the owner (*Githu v Ndeete*, supra) or through letter written by the owners' advocate, (*Mount Carmel Investments Ltd v Peter Thurlow Ltd & another*, supra).

42. We have carefully considered the steps allegedly taken by the appellant to assert its right over the suit property as presented by it. It is clear that what the appellant claims was asserting its right as owner do not qualify as same. The appellant did not assert its right over the land as owner by taking over the land from it, neither did it demand payment for its use. It did not formalize its relationship with the respondent, and the only attempt to formalize it, in the appellant's own admission was in 1999, but which did not succeed.

43. What the appellant contended was its act of asserting its right to the suit property, by writing to the Kenya Power and Lighting Company, informing it not to supply electricity to the respondent over the suit property as the land belonged to it, and preventing the respondent from fencing the land did not amount to assertion of right as envisaged. First, in regards to KPLC the appellant wrote a letter passing information to a third party. Secondly, writing the letter did not have the effect of dispossessing the respondent of the suit property, nor did it have the effect of terminating the possession or interrupting the respondent's possession. The other acts of supplying water to the respondent, grass mowers, paying workers and supporting through donations and such like activity do not qualify as asserting ones right to property, as it did not have the effect of interrupting the respondent's possession, nor of dispossessing it of the suit property.

44. The learned Judge after considering the evidence and submissions of counsel in the matter concluded thus:

> " Considering the evidence before me, I am satisfied that the Plaintiff's use of approximately 72 acres of L.R No 11674 as a golf course has been continuous, exclusive and without the

permission of the Defendant for a period of twelve (12) years. The Defendant's title in respect of the said land has therefore been extinguished by effluxion of time."

45. The appellant's complaint was that the learned Judge erred for failing to appreciate that the respondent had not acquired any rights pursuant to section 7 and 13 of the *Limitation of Actions Act*; finding that the appellant's title to a portion of land measuring 70 acres had been extinguished by the respondent's adverse possession thereof to a period of more than 12 years; finding that the respondent had acquired title to the said portion of land by its adverse possession thereof for a period of 12 years from 1934; directing that the respondent be registered as the absolute owner of 70 acres; and, failing to consider evidence that the appellant had taken steps to assert title over the said portion of land and that occupation thereof was with the knowledge and consent of the appellant.

46. In our own assessment of the evidence, the submissions and the judgment of the learned Judge, we find that the learned Judge considered all the issues in the case and gave his finding on each of them. The learned Judge considered that time started running in 1934. We have shown why time may not have run between the years 1934 and 1966. Nevertheless, whether time is considered to have run from 1934 or 1967 to 2002, either way, the time required by statute as sufficient to support a claim for title to land by adverse possession was met.

47. We have said enough in this appeal. We have come to the conclusion that the learned Judge's judgment cannot be disturbed, that it was well articulated and that the learned Judge came to the correct conclusion of the case. The order that commends itself to us to make is as follows:

    1. The appellants appeal lacks in merit and is dismissed in its entirety;
    2. The judgment of Angote, J., in ELC Suit No 115 of 2017 is upheld and confirmed; and,
    3. The appellant shall meet the costs of this appeal.

DATED AND DELIVERED AT NAIROBI THIS 8TH DAY OF NOVEMBER, 2024.

S. GATEMBU KAIRU, FCIArb.,

.....

JUDGE OF APPEAL

J. LESIIT

.....

JUDGE OF APPEAL

G.W. NGENYE-MACHARIA

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR