



Rorat v Kamoiro & another (Environmental and Land Originating Summons E010 of 2021) [2024] KEELC 3723 (KLR) (24 April 2024) (Judgment)

Neutral citation: [2024] KEELC 3723 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E010 OF 2021**

CG MBOGO, J

APRIL 24, 2024

IN THE MATTER OF LIMITATION OF ACTIONS ACT CAP 22

AND

**IN THE MATTER OF A CLAIM FOR ADVERSE POSSESSION
PURSUANT TO SECTION 38 OF LIMITATIONS OF ACTIONS ACT**

BETWEEN

DANIEL KASATUA RORAT PLAINTIFF

AND

KOIKAI OLE KAMOIRO 1ST DEFENDANT

TOTO ENE KAMOIRO 2ND DEFENDANT

JUDGMENT

1. On 5th November, 2021, the plaintiff herein filed an Originating Summons dated 25th October, 2021 expressed to be brought under Sections 17 & 38 of the *Limitations of Actions Act* Section 17 (d) of the *Land Act*, Order 37 Rule 7 of the *Civil Procedure Rules* and Section 3A of the *Civil Procedure Act* for determination of the following issues: -
 1. A declaration that the defendants' right to recover a portion measuring 16 acres of Cis-Mara/Olorropil/234 is barred under *Limitation of Actions Act* Cap. 22 of the Laws of Kenya, and their title over the suit property in occupation/use of the plaintiff thereto extinguished on the grounds that the plaintiff herein has openly, peacefully and continuously been in occupation/use and possession of the aforesaid parcel for uninterrupted period exceeding 12 years.
 2. That there be an order that the plaintiff be registered as the proprietor of the portion measuring 16 acres of the parcel no. Cis-Mara/Olorropil/234 in place of the defendants and or the Narok



Land Registrar be directed to rectify the register thereof to reflect the plaintiff's ownership of the aforesaid parcel.

3. That the defendants herein be ordered to execute all the requisite papers necessary to have the plaintiff be registered as the proprietor of the portion of parcel number Cis-Mara Olorropil/234 measuring 16 acres, decreed by the court, in default the Deputy Registrar be at liberty to execute all such necessary documents to give effect to the effect to the judgment and or decree of this honourable court.
 4. A declaration that the plaintiff has acquired the freehold interests of the parcel Cis-Mara Olorropil/234 by adverse possession thereof for a period of more than 12 years i.e. from at least 1996 to date.
 5. The cost of this originating summons be borne by the defendants.
 6. Such further or other orders be made as the court may deem fit and expedient in the circumstances of this case.
2. The Originating Summons is premised on the grounds on its face.
 3. The Originating Summons was supported by the affidavit of the plaintiff sworn on even date. The plaintiff deposed that on 4th December, 1995, he entered into a sale agreement with the defendants for the purchase of 16 acres of Cis-Mara Olorropil/234. The plaintiff further deposed that he took possession of parcel no. 822 now the suit land, and settled on the property pending the finalization of the adjudication process.
 4. The plaintiff further deposed that notwithstanding the lack of registration of the portion of the suit land, he entered and occupied the land with his family, and he has occupied the same 16 acres, peacefully, openly for a continuous interrupted period now stretching over 12 years. He deposed that he has developed on the suit land and cultivates, as well as rears livestock.
 5. The plaintiff further deposed that the sale agreement dated 4th December, 1995 between the parties was terminated by way operation of the law for lack of consent of the Land Control Board. He also said that his continued occupation of the suit land when the consent of the land Control Board to transfer ought to have been obtained and the parcel transferred to him became adverse to the defendants' title. That during this period, the registered owners have not interfered with his occupation in any way and nor has anyone ever approached him contesting his occupation of the suit land.
 6. The plaintiff deposed that his occupation and possession is visible, open and notorious to the extent that the registered owner and the community have notice of his occupation for the last 26 years. He also deposed that he has been enjoying quiet and peaceful possession of the suit land for over 26 years since the execution of the agreement, which he has developed extensively. That however, the defendants have refused or failed to transfer the suit land to him.
 7. The plaintiff deposed that he is destined to suffer forced eviction from the place he has occupied for decades and shall suffer irreparable loss and damage should this court fail to intervene and grant the orders sought.
 8. The Originating Summons was opposed by the undated replying affidavit of the defendants filed in court on 23rd November, 2021. The defendants deposed that the suit land was Cis-Mara/Olorropil/641 as per the letter dated 1st September, 1998 from the Director of Land Adjudication, Nairobi. They went to dispute that the agreement relied on by the plaintiff is not dated and they did not append their signatures to the said agreement. The defendants denied the said agreement and deposed



- that they acknowledge the second agreement dated 22nd December, 2007 where they appended their signatures.
9. The defendants deposed that the duration of 26 years is denied and that the plaintiff invaded their land illegally and continues to support his invasion by reporting to the DCIO Narok Police Station where the 1st Defendant was summoned.
 10. The defendants deposed that the peaceful occupation of the suit by the plaintiff is further denied, and that it is clear that when they entered into the agreement dated 22nd December, 2007, it was agreed by both parties that the full payment will be concluded early in January, 2008, which the plaintiff did not honour. They deposed that the plaintiff has tried to apply for consent in vain for the reason that he invaded the land illegally and also that he failed to complete the payment and the agreement was not signed by the 2nd defendant and so it should be voided.
 11. On the 17th April, 2022 the plaintiff filed a further affidavit sworn on 12th April, 2023 in response thereto. The plaintiff deposed that parcel no. 822 within Olorropil Adjudication Section belonged to the defendants, but when they started selling to other purchasers, the original number faded away and the new parcel emerged as Cis-Mara/Olorropil/234, which is a result of mutation of parcel no. 822.
 12. The plaintiff went on to depose that the defendants reneged from their obligations in the agreement of the year 1995, which frustrated the finalization of the transaction. He deposed that the letters dated 4th January, 2018, 2nd March, 2018 and 17th March 2021 disclose beyond doubt that he is in possession and occupation of the suit land.
 13. On 17th May, 2023, the defendants filed a sworn and undated further reply affidavit (sic) in response to the further affidavit by the plaintiff. The defendants reiterated the contents of their replying affidavit filed in court on 23rd November, 2021. The defendants deposed that in the meeting before the District Commissioner, the plaintiff and the officer misled the meeting by converting the matter into a pending appeal to the Minister which he lodged on 11th June, 1998 and further, they managed to forge an agreement which the plaintiff claim that his land was once registered as parcel no. 822. They went on to depose that the minutes of the meeting were converted into an agreement which was not dated and neither signed as the suit land was initially parcel no. 641 and not 822.
 14. By consent, the Originating Summons proceeded by way of viva voce evidence.
 15. On 21st June, 2023, the plaintiff's case proceeded for hearing. The plaintiff adopted his supporting affidavit sworn on 25th October, 2021 and a further affidavit sworn on 12th April, 2023 as his evidence in chief. The plaintiff testified that in the year, 1995, the 1st defendant went to see him at his home to enquire from him, if he was interested in purchasing a parcel of land and he answered 1st defendant in the positive. He testified that the 1st defendant told him that he had a 16-acre farm for sale, and he (the plaintiff) agreed to go to his home in Olokirikai in order to meet with his family.
 16. The plaintiff testified that he visited the 1st defendant with his late brother, one Rokita and on arrival, they met the 1st defendant in the company of his wife, Toto Kamoiro, and his late son, one Harun Kamoiro. He added that they negotiated the purchase of the farm at kshs. 12,000 per acre, and that they agreed on the modality of payment. It was also his evidence that they entered into a sale agreement dated 4th December, 1995 and that the 1st defendant pointed out the parcel of land to him. He went on to testify that the 1st defendant also pointed out the boundaries of the land to him and the 1st defendant allowed him to take possession of it. The plaintiff further testified that the land was covered in forest which he cleared, fenced, and started to make use of it.



17. The plaintiff further testified that on 22nd December, 2007, he paid the 1st defendant Kshs. 5,000/- as an instalment leaving a balance of kshs. 43,000/-. It was his testimony that before paying the 1st defendant Kshs. 5,000/-, he had already paid him some money the evidence of which was produced as P. Exhibit No. 2. He said that the suit land is in the joint names of the defendants as per the certificate of search dated 5th April, 2018 produced as P. Exhibit No. 3.
18. According to the plaintiff, in the year 1995, the land was not titled and therefore the 1st defendant could not transfer to him as it was at the stage of demarcation. He added that when the 1st defendant got the title, he declined to transfer it to him. It was also his evidence that the two defendants do not reside on the land as he is the one who is currently using it, and they do not carry any agricultural activities on it.
19. The plaintiff testified that as per the letter dated 6th May, 2003, (PEX No.4), the 1st defendant was informing the chief that his wife and his late son had agreed to the sale of land to him. That after the said letter, he continued to use the land, and when he insisted on the land being transferred to him, the 1st defendant started to avoid him. He pointed out that the remaining balance of the purchase price is Kshs. 17,000/-.
20. The plaintiff further testified that he occupied the suit land at the demarcation stage in the year 1998, and that there is no confusion as to the parcel of land that he occupies. He added that on 4th January, 2018, the 1st defendant wrote to the County Commissioner where he agreed that he had sold the land to him (plaintiff) in the year 1995. He said that the 1st defendant also claimed that he owed him the balance of purchase price.
21. On cross examination, the plaintiff testified that the 1st defendant did not sign the sale agreement of the year 1995, but that the 1st defendant showed him the land that he purchased from him. The plaintiff testified that it was not true that the 1st defendant's wife and children did not participate in the land sale agreement. He agreed that the chief wrote to him to inform him that the 1st defendant's wife and children had approached him to oppose the sale of land. The plaintiff admitted that he did not report the 1st defendant to the Directorate of Criminal Investigations but rather the District Commissioner was the one who referred them to the Criminal Investigations Office. He admitted that the District Commissioner told him to clear the purchase price of the land which he did not refuse to pay as it was that the 1st defendant who refused to accept the money from him. He testified that he had the money when they both appeared before the District Commissioner where the 1st defendant refused to receive the same. It was his evidence that the District Commissioner ordered him (plaintiff) not to enter into the suit land vide his letter dated 7th July, 2021.
22. On re-examination, the plaintiff testified that as at the time of receiving the letter dated 7th July, 2021, he was still in occupation of the suit land. He added that the defendants' letter of 6th May, 2003 acknowledges that the land was sold after a long discussion and that the 1st defendant wife and the late son agreed to the sale. He said that the purchase price for the 16 acres was Kshs. 192,000, and he only has a remaining balance of Kshs. 17,000/.
23. On 17th July, 2023, Simentei Ole Lemuiriri (PW1) adopted his witness statement dated 1st June, 2023 and filed in court on 20th June, 2023 as his evidence in chief. PW1 went on to testify that he witnessed the 1st defendant receiving money from the plaintiff in respect of a land sale. PW1 testified that he also witnessed the acknowledgment dated 27th December, 2007, but he does not remember the land parcel number that was the subject of sale. He added that both the plaintiff and the defendants are his neighbours. He added that the plaintiff took possession of the suit land and he cleared the forest in it,



and he started grazing sheep on it. It was also his evidence that the defendant's family does not reside in the suit land as it is the plaintiff who uses it.

24. On cross examination by the 1st defendant, PW1 testified that he witnessed the land sale agreement even though he does not know how to read and write. He went on to say that what he knows is that the 1st defendant was to be paid the balance of the purchase price as he transferred the land to the plaintiff. He testified that the plaintiff is the one who resides on the suit land and that there is a house on the said land. He pointed out that the plaintiff's cows graze on the land.
25. On further cross examination by the 2nd defendant, PW1 testified that he did not see the 2nd defendant during the preparation of the sale agreement.
26. On re-examination, PW1 testified that the plaintiff is the one who is in occupation of the land and uses it. He said that the 1st defendant and his brothers do not use the land.
27. Jackson Lemein Patu (PW2) adopted his witness statement filed on 20th June, 2023 as his evidence in chief. PW2 testified that he knows the plaintiff and the defendants herein. He went on to say that the plaintiff is like a brother to him while the 1st defendant is his in law who resides in Olokirrikai. PW2 further testified that the plaintiff resides in the suit land and that the plaintiff told him that he bought the suit land from the 1st defendant. He however added that he was not a party to the sale agreement and that the plaintiff is the one who makes use of the land.
28. On cross examination by the 1st defendant, PW2 testified that he does not know how the plaintiff came to be in possession of the land. He said that the plaintiff resides in a separate parcel of land and that the other land is divided by a road. It was his testimony that the suit land is not cultivated at the moment and that there is no house on it. According to him the 1st defendant's livestock and that of the plaintiff graze on the same land.
29. On further cross examination by the 2nd defendant, PW2 testified that he was not there when the suit land was sold. He admitted that the plaintiff and the 1st defendant graze their sheep on it.
30. On re-examination, PW2 testified that the plaintiff resides in a parcel of land that is separated from the suit land by a path and that the plaintiff is the one who uses the land. He testified that the Kamoiros who graze on the suit land are not the defendants herein.
31. The defendants case proceeded for hearing on 1st November, 2023. The 1st defendant testified that he entered into a sale agreement with the plaintiff and that he is the one who offered to sell the land to the plaintiff. The 1st defendant produced 15 documents as D. Exhibit Nos. 1 to 15 respectively.
32. The 1st defendant testified that the land was registered in the joint of his wife and himself. It was his testimony that he entered into a written sale agreement with the plaintiff dated 22nd December, 2007. He went on to say that they agreed that by January, 2008, the plaintiff was supposed to have finished paying for the purchase price. According to him, the plaintiff has not paid the full purchase price up to now. He added that the purchase price was kshs. 12,000/-per acre and that the size of the land was 16 acres. The 1st defendant testified that he expected over kshs. 190,000/-from the sale of the said land.
33. The 1st defendant further testified that he was paid kshs. 170,000/-, and that the remaining balance is about 17,000/- to kshs. 20,000/-. According to him, there was no agreement on how the land was to be used but that the plaintiff would have taken possession upon completing paying for the purchase price. He testified that the plaintiff first entered into the land in the year 2004 without his permission. He went on to say that in the year 1995, he had another agreement with the plaintiff, whereby the



plaintiff was supposed to pay the purchase price within 3 months to enable him purchase a plot but he did not do so.

34. The 1st defendant testified that the plaintiff later approached him with a request that he gives him the one-page agreement so that he could photocopy. The 1st defendant said that he gave the plaintiff the agreement in question but the latter did not return it to him. He testified that he now recognizes the 2007 agreement. He added that when the plaintiff entered into the land, the latter cut down trees and leased out the land to other people who cultivated on it.
35. He testified that the plaintiff remained in the land until the year 2018 when he was ordered by the District Commissioner to move out. He went on to say that the plaintiff had not built anything on the land apart from leasing it to people. It was the 1st defendant's testimony that he reported the matter to the District Officer and the District Commissioner (DC). He denied that the plaintiff entered into the land in the year 1995 as the latter had told the court. He pointed out the plaintiff entered into the land in the year 2004. He further denied that he did not take any action against the plaintiff after he moved into the land since the plaintiff reported him to the CID where he was summoned and coerced to admit that he had been paid the full purchase price.
36. The 1st defendant further testified that his wife was not a party to the sale agreement. It was his evidence that if the court were to move to the ground, it would not find any house as his wife is the one who is in charge of the land. He testified that his family members graze their livestock in the land, and that the plaintiff resides in land parcel number 227. The 1st defendant also prayed that the court do visit the suit land to ascertain what he has informed the court.
37. On cross-examination, the 1st defendant testified that there was a sale agreement of 1995, where he sold an acre at kshs. 12,000/-, for 16 acres bringing the total sum to kshs. 192,000/-. He went on to say that he indicated that the balance owned to him was kshs. 43,000/- but then he also agreed that the plaintiff paid him some money leaving the balance of kshs. 17,000/-.
38. The 1st defendant informed the court that the suit land was forested before the plaintiff cut the trees down and that he did to use the timber from the trees in the farm to fence it. According to him, the plaintiff started to cut down trees in the year 2004. The 1st defendant testified that he was using the land between the years 1995 to 2004 and that he used to harvest trees from it. It was his evidence that he would also allow his relatives to graze their livestock on it.
39. The 1st defendant testified that the dispute over the land arose before the year 2018 and that between the year 2004 to the year, 2018, he had cases against the plaintiff. He pointed out that the first complaint is through the letter dated 4th January, 2018, which he wrote to the District Commissioner but which he did not give Kasatua a copy. He testified that he had complained to the District Commissioner since the year 2004 when the plaintiff entered into the land. The 1st defendant admitted that the plaintiff used his land from the year 2004 up to the year 2017 without his permission and which land was allocated to him by the adjudication committee.
40. The 1st defendant testified that together with his wife, they were allocated the same parcel of land and that he offered to sell parcel number 234 to the plaintiff. He admitted that the plaintiff leased the land to persons who used to pay him but he does not know the year when those persons started to pay the plaintiff. It was his evidence that he found the people who had leased the land working on the land, and when he tried to find out how they came to be in the land, they told him that they had leased it from the plaintiff. The 1st defendant admitted that the agreement of 2007 shows that he acknowledged receipt of the balance of the purchase price from the plaintiff which also shows that there is a balance of kshs. 43,000/-. He agreed that the plaintiff had been in the land for 14 years from the year 2004 up



to the year 2018. He also agreed that during that period, he did not file any case against the plaintiff in court but that the plaintiff owes Kshs. 17,000/-, and that he is yet to transfer the land to the plaintiff. He further agreed that the plaintiff is the one who cut down the trees in his farm in the year 2004 and that he did not sue him for it.

41. On re-examination, the 1st defendant testified that he did not agree that the plaintiff occupies his land in the year 2004 since he barred him from doing so until the sale transaction was complete. He said that since the year 2004 up to the year 2018, persons who had leased the land from the plaintiff were the ones who were cultivating on the land. He added that he had an agreement with the plaintiff, but he is yet to fulfill his part of the agreement. It was his evidence that initially, he had the intention to sell the land but he is no longer interested in selling it now.
42. Toto Ene Kamoiro, the 2nd defendant adopted her affidavit filed in court on 23rd November, 2021 as her evidence in chief. The 2nd defendant testified that she has never entered into any sale agreement with anyone for the land in question. She went on to say that she was not aware of any land sale agreement between the 1st defendant and the plaintiff and that she only came to know of it when the 1st defendant went home one day while nursing some head injuries. She added that when she enquired, the 1st defendant told her that he had leased the land in question to the plaintiff. She testified that she has been using the land since September, 2023 and what she knows is that the land had been leased out to the plaintiff.
43. On cross examination, the 2nd defendant testified that her husband entered into a sale agreement with the plaintiff on 4th December, 1995. According to her, she knows that the plaintiff leased 16 acres of the land from 4th December, 1995, at kshs.12,000/-per acre. She admitted that she had agreed that the plaintiff could lease the land as per the agreement. That in Olorropil, land is leased at kshs. 12,000/-, and that was the price for leasing land in the year 1995. She agreed that the plaintiff has been using the land until 2023 and that he has leased out the land to other persons without their authority. She admitted that she did not file any case against the plaintiff but that one time, she ordered the persons who had leased land from the plaintiff to stop cultivating on it and this was in the year 2005.
44. On the 21st December, 2023 the plaintiff filed his written submissions dated 30th November, 2023 where he raised two issues for determination as follows: -
 - a. Whether there was a valid agreement between the plaintiff and the defendants.
 - b. Whether the plaintiff has met the threshold for the doctrine of adverse possession.
45. On the first issue, the plaintiff submitted that the agreement between the parties has not been disputed and that the same was in writing under the provisions of Section 3 (3) of the Law of Contract Act. He further submitted that the defendants gave him vacant possession and use of the land since the year 1995, which he has used for leasing, cultivation and grazing his livestock. He went on to submit that the defendants did not apply for consent of the Land Control Board for transaction to be finalized within the six months stipulated under Section 6 (1) of the Land Control Act thus making the agreement null and void by operation of law.
46. The plaintiff further submitted that the sale agreement was terminated by operation of the law and time started running immediately the sale agreement became null and void for lack of consent of the Land Control Board. The plaintiff relied on the cases of Ruth Wangari Muigai versus Edward Njuguna Mwangi [2015] eKLR, Walter Kipchirchir Koech versus Tapnyobii w/o Melil & Another [2021] eKLR and Public Trustee versus Wanduru (1984) KLR.



47. On the second issue, the plaintiff submitted that he took possession of the suit land without force, openly and without persuasion, upon the purchase of the same and erected a perimeter fence, cleared the forest, commenced cultivation and other activities on the land including leasing out for other agricultural purposes. The plaintiff further submitted that he has exceeded the period required for adverse possession having been in the suit land for 26 years. To buttress on this submission, the plaintiff relied on the cases of *Tabitha Waittherero Kimani versus Joshua Ng'ang'a* [2017] eKLR, *Francis Gicharu Kariri versus Peter Njoroge Mairu*, Civil Appeal No. 293 of 2002 (Nairobi), Kisumu Civil Appeal No. 27 of 2013; *Samuel Kihamba versus Mary Mbaisi* [2015] eKLR, *Stephen Mwangi Gatunge versus Edwin Onesmus Wanjau (Suing in her capacity as the administrator of the estates of Kimingi Wariera (Deceased) and of Mwangi Kimingi (Deceased))* [2022] eKLR, Malindi App No. 56 of 2014, *Mtana Lewa versus Kabindi Ngala Mwagandi* [2015] eKLR and *Mbira versus Gachuhi* (2002) 1 EALR 137.
48. The defendants did not file their written submissions. Be that as it may, I have considered the pleadings, the evidence tendered by the parties and their witness as well as the written submissions filed by the plaintiff.
49. The issue for determination is, in my view, whether the plaintiff is entitled to the orders of adverse possession.
50. Section 7 of the *Limitations of Actions Act* 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. Section 13 “(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
- (2) Where a right of action to recover land has accrued and thereafter, before the right is barred, the land ceases to be in adverse possession, the right of action is no longer taken to have accrued, and a fresh right of action does not accrue unless and until some person again takes adverse possession of the land.
- (3) For the purposes of this section, receipt of rent under a lease by a person wrongfully claiming, in accordance with section 12(3) of this Act, the land in reversion is taken to be adverse possession of the land”.
51. Section 38 of the Limitations of Actions Act further provides;
- “(1) 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.”
52. The Court of Appeal in Kisumu Civ App. No. 110 of 2016 *Richard Wefwafwa Songoi versus Ben Munyifwa Songoi* [2020] eKLR observed that a person claiming adverse possession must establish the following



- (a) On what date he came into possession.
 - (b) What was the nature of his possession?
 - (c) Whether the fact of his possession was known to the other party.
 - (d) For how long his possession has continued and
 - (e) That the possession was open and undisturbed for the requisite 12 years.
53. In this case, the plaintiff contended that he entered into the suit land in the year 1995 through a sale agreement entered into by himself and the plaintiff, and that he has been in occupation since then, for a period of over 12 years. In determining the nature of the possession, this court is guided by the decision in Kisumu Civil Appeal No. 27 of 2013 *Samuel Kibamba versus Mary Mbaisi* [2015] eKLR, where the court 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”
54. The plaintiff evidence was that having entered the land in the year 1995, his possession and occupation of the suit land has been open, continuous and without interruption. During trial, the plaintiff stated that he took possession of the land when it was at the demarcation stage and whereas the 1st defendant did not execute the sale agreement, the 1st defendant pointed out to him the suit land which he would occupy. It was his evidence that he paid the purchase price and there was a balance remaining which the 1st defendant has refused to receive. The plaintiff testified that the agreement was terminated by operation of the law owing to the failure of the defendants to obtain a consent to transfer the land from the Land Control Board. Indeed, the plaintiff admitted that there was no title to the suit land since it was still undergoing adjudication.
55. There is no documentary evidence of the plaintiff and the 1st defendant having entered into a land sale agreement in 1995. However, there is an acknowledgement by the 1st defendant about the sale of land through his letter (PEX No.3) dated 6th May, 2003 addressed to the chief of Olorropil Location. The evidence of Simentei Ole Lemoiri (PW1) points out to a sale transaction having taken place on December, 2007 where he witnessed the 1st defendant receiving money from the plaintiff. Of importance to note is that both the plaintiff and the 1st defendant acknowledge that there was indeed a land sale agreement between themselves in the year 1995.
56. The 1st defendant in his evidence told the court that he had abandoned the 1995 agreement in favour of the one of 22nd December, 2007. He maintained that the Plaintiff is yet to clear the balance of the purchase price, an issue which the plaintiff acknowledges. A close look at the agreement of 22nd December, 2007 shows that the 1st defendant acknowledges receipt of Kshs.5,000/= being part of the balance of what the plaintiff owed him. This agreement points to another agreement but as observed in this judgment, there is no documentary evidence of the said agreement. But according to the 2nd defendant, all what she knows is that the plaintiff leased land from the 1st defendant in 1995 at price of Kshs.5,000/= . I however do note that if this assertion by the 2nd defendant is true, there is no evidence to show that she and the 1st defendant continued to receive payment in furtherance of the lease from the plaintiff up to the time when the plaintiff filed this suit. Her evidence therefore cannot possibly be true.



57. Whereas the plaintiff asserts that he took possession of the suit land in 1995, the 1st defendant said that the plaintiff occupied the suit land in the year 2004 and that it was without his permission. However, the 1st defendant appears not to have taken any action to evict the plaintiff from the suit property. He admitted in his evidence in cross-examination that even though he had lodged several complaints against the plaintiff, the first complaint was in the year 2018 and he did not give the plaintiff a copy of the said letter.
58. From the evidence on record, the 1st defendant acknowledged receipt of Kshs.170,000/= from the plaintiff, the same being part of the purchase price of Kshs.192,000/= leaving a balance of Kshs.17,000/= to Kshs.20,000/= which the plaintiff is yet to pay. However, it is clear that there was no consent obtained from the relevant Land Control Board within 6 months as is provided for under section 6(1) of the Land Control Act thus rendering the transaction void. What is of importance to note is that both parties herein produced certificate of official search showing that the 1st and 2nd defendants were the registered proprietors of land parcel number CIS Mara/olorropil/234 on 5th July, 2007.
59. The letters dated 17th March, 2021 and 7th July, 2021 produced by the defendants as DEX Nos 8 and 9 respectively do point to the fact that the plaintiff has been cultivating on the suit property and also leasing it to third parties as late as the year 2021.
60. From the foregoing, it seems to me therefore that the plaintiff has been in open and notorious use of the suit property, has been in continuous use of the property from 2004 up to the time of filing this suit has had exclusive use of the property to the exclusion of the defendants and has been in actual possession of the said property. The defendants appear to have taken little or no action at all to assert their rights over the suit property.
61. On a balance of probabilities, I am satisfied that the plaintiff has a cause of action against the defendants. In the circumstances, I hereby proceed to enter judgement for the plaintiff and against the defendants jointly and severally as hereunder: -
1. A declaration that the defendants' right to recover a portion measuring 16 acres of CIS-Mara Olorropil/234 is barred under Limitation of Actions Act Cap 22 of the Law of Kenya, and their title over the suit property in occupation/use of the plaintiff thereto extinguished on the grounds that the plaintiff herein has openly, peacefully and continuously been in occupation/use and possession of the aforesaid parcel for uninterrupted period exceeding 12 years.
 2. That there be an order that the plaintiff be registered as the proprietor of the portion measuring 16 acres of the parcel No. CIS-Mara Olorropil/234 in place of the defendants and or the Narok Land Registrar be directed to rectify the register thereof to reflect the plaintiff's ownership of the aforesaid parcel.
 3. That the defendants herein be ordered to execute all the papers necessary to have the plaintiff be registered as the proprietor of the portion of parcel number CIS-Mara Olorropil/234 measuring 16 acres, decreed by the court, in default the Deputy Registrar be at liberty to execute all such necessary documents to give effect to the judgement and or decree of this Honorable court.
 4. The cost of this originating summons be borne by the defendants.

DATED, SIGNED & DELIVERED VIA EMAIL this 24TH day of APRIL, 2024.

HON. MBOGO C.G.

JUDGE



24/4/2024.

In the presence of :-

Mr. Meyoki Pere – C.A

