



Kamau & others v Lendir & 36 others (Environment & Land Case 4 of 2022) [2024] KEELC 5060 (KLR) (28 June 2024) (Judgment)

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**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI
ENVIRONMENT & LAND CASE 4 OF 2022
AK BOR, J
JUNE 28, 2024
(FORMERLY NYERI ELC CASE NO. 505 OF 2014)**

BETWEEN

RICHARD MWANGI KAMAU & OTHERS PLAINTIFF

AND

LELEREKO LENDIRA & 36 OTHERS & 36 OTHERS DEFENDANT

JUDGMENT

1. The Plaintiffs filed Nyeri HCCC Numbers 18, 19, 21, 22, 23, 24, 25, and 26 of 2009 as well as Nyeri HCCC Numbers 31, 32, 33 34, 35 and 36 of 2012 which were consolidated into Nyeri ELC No. 505 of 2014. This suit was transferred to Nanyuki after the Plaintiffs had closed their case and became Nanyuki ELC No. 4 of 2022. In the plaints filed in court, the Plaintiffs claimed that they were the registered owners of various parcels of land which were excised from L.R No. 13543 within Nanyuki area. They claimed that the Defendants had jointly and severally invaded the Plaintiffs’ expansive land and settled on it to graze their animals claiming that they were exercising their pastoralist way of life.
2. The dispute is over the land which was formerly known as land reference number (L.R. No.) 13543, Laikipia measuring 16,000 acres or thereabouts which was subdivided to create L.R. Numbers 13543/4 Laikipia; 13543/5 Laikipia; 13543/6 Laikipia; 13543/7 Laikipia; 13543/8 Laikipia; 13543/9 Laikipia; 13543/10 Laikipia; 13543/11 Laikipia; 13543/12 Laikipia; 13543/13 Laikipia; 13543/14 Laikipia; 13543/15 Laikipia; 13543/16 Laikipia; 13543/17 Laikipia; 13543/18 Laikipia; 13543/19 Laikipia; 13543/20 Laikipia; 13543/21 Laikipia; 13543/22 Laikipia; 13543/23 Laikipia; 13543/24 Laikipia; 13543/25 Laikipia; 13543/26 Laikipia; 13543/27 Laikipia; and 13543/28 Laikipia (“the suit property”).
3. The Plaintiffs claimed that the Defendants’ unlawful action had denied them the use and the benefit of the suit property. They sought to have the Defendants evicted from the land. Further, they claimed that they had issued notices to the Defendants through the provincial administration to vacate the land but



the Defendants adamantly refused to comply. The Plaintiffs sought a declaration that the Defendants had no right to occupy and utilise the suit property. In addition, they sought a permanent injunction to issue to the Defendants to cease their unlawful occupation of the suit property, and in default that they be evicted from the land.

4. The Defendants filed their defences and counterclaims in which they averred that they had communally and collectively been in possession of the suit property for more than 30 years since 1978 or thereabouts and that during that period they lived, grazed their livestock, raised and schooled their children, voted, buried their dead and entirely depended on the suit property for their lives, livelihoods, sustenance and survival and continued to do so.
5. In the counterclaim, the Defendants were emphatic that they had a legitimate and legal claim and right over the suit property by virtue of inter alia, adverse possession, prescription, native title and overriding interest. They added that by the time the suit property was subdivided and registered in the Plaintiffs' names in the early 1990s, they were already in actual occupation and had been in such occupation for more than 12 years. They added that until recently when the Plaintiffs started using the provincial administration and the police to harass them, they enjoyed exclusive, peaceful, open, continuous and an interrupted possession of the suit property for more than 30 years.
6. They claimed that the Plaintiffs' titles to the suit land had been extinguished in light of Sections 7, 13, 17 and 38 of the *Limitation of Actions Act*. They maintained that the Plaintiffs should not have been registered as the owners of the suit property in the first place while urging that they were in lawful and rightful occupation of the land and that it was the Plaintiffs' actions of harassing them with the help of the police which was in fact illegal and unlawful. They added that the suit property was their only home and if they were evicted it would render them displaced and destitute which would cause them, their families, children and livestock untold hardship, misery and prejudice and would occasion them irreparable loss and damage.
7. They counterclaimed for a declaration that they were legally and rightfully in occupation of the suit property and that they were the legal owners. They sought an order to be registered as proprietors in common of the parcels of land which were subdivided from the land formerly known as L. R. No. 13543 Laikipia in place of the Plaintiffs. They also sought a permanent injunction to restrain the Plaintiffs from evicting them from the suit property and from entering upon, remaining on or otherwise, interfering with the suit property. They also sought the costs of the suit and the counterclaim in their defence dated 05/01/2011.
8. The hearing of the suit commenced on 11/06/2018 before Lady Justice L. N. Waithaka at the Nyeri ELC. Steven Ndirangu Kamamia gave evidence and told the court that he was a farmer living in Karatina, Nyeri County. He stated that in 1964, fifteen individuals purchased parcel numbers 2774, 8623, 7015, 7531/2, 9415/2, 2868/2, 2865/2, 2865/3 and 2865/4 from white settlers called Cassan and John Ladell with a loan from the Agricultural Finance Corporation (AFC) for purposes of livestock keeping. In 1970 the fifteen individuals listed below incorporated Kimugandura Farms Limited vide certificate number 8945 dated 02/03/1970 and the parcels of land were consolidated and transferred to the company in 1984:
 - i. Joseph Mugambi Kimotho
 - ii. C. Maingi Kamuhia
 - iii. Dedan Muriuki Kamwere
 - iv. Ellam Minju Kamwere



- v. Kihara Ngamau
 - vi. David Mwangi
 - vii. Naftaly Macharia
 - viii. Henry Gituanja Mwaniki
 - ix. Muriithi Wanjohi
 - x. Kamau Wangombe
 - xi. C. Maina Mwema
 - xii. Benson Mathenge
 - xiii. Ruua Kimotho
 - xiv. Muhota Kimotho
9. Kimugandura Farms Limited instructed Kamwere and Associates, a firm of surveyors to subdivide the land known as L. R. No. 13543 Laikipaia measuring approximately 15895 acres into 15 portions of 1000 acres each; one portion of 500 acres; another of 163 acres with a portion of 10 acres being reserved for the squatters on the land. Another portion of 30 acres was to be reserved for the trading centre while some land was to be set aside for two cattle dips. He stated that the 30acre portion was later planned and public purpose plots including a primary school, church, police station, dispensary, open air market, post office, nursery school, water point, slaughter house, light house, light industry, 16 residential plots, 16 business plots, public purpose plots, administration centre and social centre.
10. He averred that the squatters who were to benefit from 10 acres at the time of balloting supervised by the provincial administration on 14th September were;
- i. Kipserem A. Koech
 - ii. Kiprono A. Baiywa
 - iii. Meshack Wamiti
 - iv. Kiplagat Ali
 - v. Joseph Malakwen
 - vi. Samuel M'Twamwari
 - vii. Musa Lomare
 - viii. Mr. Githinji
 - ix. Rambas Lekilebu
 - x. Joshua Kibet
11. He stated that the subdivision of the land owned by the Kimugandura Farms Limited was completed in 1988 and the individual titles registered in 1993 by Oraro and Rachier & Co. advocates. He explained that the balance of the AFC loan was secured by a charge against each individual title for Kshs 140,000/= which the individual members cleared over a period of time and redeemed their titles. He denied that the Defendants had been on the land for over 30 years while arguing that if it were so they would have filed their claim for adverse possession and not waited to launch a counterclaim. He maintained



- that the counterclaim was misconceived and unsuitable in law and urged that the Defendants were trespassers who ought to be evicted from the land.
12. Further, he explained that they started off by purchasing 5000 acres and thereafter their neighbour offered them 10,000 acres which they also purchased bringing the total to 15,000 acres. He went further to clarify that when the suit property was subdivided, each member got 1000 acres, 10 acres surrendered to the government of Kenya was set aside to settle the employees whom the company inherited from the sellers, 30 acres was for a trading centre, 500 acres was payment to the surveyor in kind and 163 acres would be explained by the surveyor.
 13. He explained that the original members continued utilising the suit land as a ranch and a very bad drought came and the animals died. They allowed one of their members who later died by the name J. K. Mugambi to utilise the entire land and take care of the remaining animals. With time, the land was invaded and the invaders posted guards denying them access to their land. He added that a lot of destruction took place and trees were cut while sand was harvested from the land. They reported the matter to the provincial administration but did not make any progress until they filed the suit. He maintained that the Defendants went into the suit property violently in 2002 and they had settled in a large portion of the land and that their occupation was from season to season. He stated that only one member's portion was intact and although he was dead, his family operated a hotel on that land.
 14. On cross examination, Mr. Kamamia told the court that he was testifying on his own behalf and on behalf of other 8 – 10 Plaintiffs because their cases were similar and he had their authority to testify. He maintained that the employees whom they found on the suit property were given 10 acres and that other than those 10 squatters no other persons were occupying the suit property at the time they purchased it. When he was shown the newspaper cutting which mentioned 1000 families, he termed those as trespassers. He clarified that out of the entire suit property, his portion was no. 7 and that after the subdivision in 1986, he took possession of his portion and kept animals on the land but did not erect any structures on the land. He explained that there was a primary school which had been erected on his land illegally as well as a Baptist Church which was erected without his permission.
 15. He added that parcel number 4 owned by Julia Mwangi had a school and a Catholic Church erected on it. The school and church had permanent structures but the homestead were not permanent. According to him, the trading centre erected on parcel no. 7 had been erected illegally yet they had earmarked where the trading centre was to be located and had set aside land for that purpose.
 16. James Kamwere Muriuki gave evidence in court. He told the court that he had sued the Defendants for trespassing on his land No. 13543/28, Laikipia since 2002. They had also trespassed on land belonging to the other Plaintiffs. He stated that the suit properties being parcel numbers 2774, 8623, 7015, 7531/2, 9415/2, 2868/2, 2865/3 and 2865/4 were owned by white settlers called Cassan and John Ladell. His father and the fathers of the other Plaintiffs together with other persons purchased those parcels of land from the registered owners in 1964 and consolidated them.
 17. He reiterated what Mr. Kamamia told the court, that the fifteen purchasers formed Kimugandura Farms Limited and transferred the consolidated land to this company in 1984 and that after consolidation, L. R. No. 13543 comprised 15,895 acres. The company applied to transfer the land and the government gave its approval on certain conditions including setting aside land for public purposes and for the settlement of 10 squatters who were on the land at that time. He gave a similar breakdown of how the portions were to be allocated as that given by Mr. Kamamia including how the 30 acres comprised in L.R. No. 13544 was planned for public purposes. He also gave the list of the squatters who were to benefit from the 10 acres. He stated that the sub-division process, registration and issuance of titles was completed in 1983.



18. He also denied that the Defendants had been in occupation of the suit property for a period in excess of 30 years and maintained that they trespassed on the suit property in 2002 and refused to leave the land through persuasion. He added that the Defendants had not occupied the land peacefully, continuously and without interruption for a period of 12 years. That in any case, invading and occupying land on the basis of graves and ancestral claims did not confer legal ownership. He urged the court to evict the Defendants from the suit property.
19. Mr. Kamwere who testified on 20/06/2018 told the court that he was a licensed land surveyor in Nairobi. When he was commissioned to undertake the survey he found nine original parcels which were owned by the white settlers. His instructions were to consolidate the nine parcels then subdivide them. He prepared the scheme plans and presented them for approval by the Land Control Board, County Council and Director of Surveys. After the approval, he obtained the letter from the Commissioner of Lands giving conditions which the owners accepted and a final letter of approval was issued. He moved to the ground and established beacons to divide the parcels. He submitted his records and the deed plans to the Director of Surveys. They were approved and the land was given L.R. No. 13543. After subdivision, the parcels for public utility were surrendered to the Government in 1997. They also sub-divided two cattle dips and a trading centre while the squatters who were the labourers of the white settlers were given 10 acres. He clarified that the new grant showing the trading centre and cattle dips had not been registered.
20. He told the court that the sub-divisions were initially 22 portions, L.R. No. 13543/1 to 22. The initial shareholders were 15 and parcel No. 13543/8 measuring 500 acres was sold to him in lieu of his professional fees. He stated that he also purchased parcel No. 13543/22 measuring 163 acres from the company. He explained that parcel numbers 1 to 3 were for public utilities while parcel numbers 4 to 22 were allocated to shareholders and himself. Parcel no. 13543/14 initially allocated to Dedan Muriuki Kamere was further sub-divided to create parcel numbers 13543/22 – 28 while parcel No. 13543/9 registered in the name of Murithi Wanjohi was divided to create parcels 13543/29 and 30.
21. He completed the subdivision in 1988 and stated that the shareholders were using the land for large scale farming and grazing. He stated that the land was invaded by squatters around 2002. Before that one of the shareholders had an arrangement with Honourable Kaparo who would graze his cattle on his land. He had bought 300 acres from Honourable Kaparo who wrote to him in 11/07/1988 to tell him that Kaparo had vacated the land.
22. That after the original owners took possession, they divided the animals which they bought with the land. The squatters who invaded their land stole their animals and made it extremely difficult for them to go back to the suit property because they became violent and hostile. Their entry on the land was without the permission of the shareholders. They sought the assistance of the provincial administration but that did not yield any fruits prompting them to file the instant suits. He stated that the squatters were concentrated on parcel numbers 13543/8 and 13543/7 but that there were manyattas scattered in the other parcels. Their invasion had continued but with attempts to move them out.
23. He told the court that parcel no. 8 was registered in the name of Kimugandura Farm Limited. According to him, the invasion started around 2002 but more people came to the land after that. The squatters came in batches and individually. They got the details of the squatters from the provincial administration. He maintained that there were no squatters on the land in 1984 – 1986 when he subdivided the suit property. When referred to the letter dated 10/11/1987 which talked of illegal squatters, he explained that this was screened by the Chief who gave them a report of genuine squatters.



24. He stated that the land set aside for public utilities was still available and was for the benefit of the shareholders, their workers and the community. He confirmed that the squatters had set up a trading centre with shops comprising illegal structures on parcel no. 8 and that there were residential houses on that land. He added that the shareholders who owned parcel numbers 18- 20 managed to secure their parcels and that those who were not invaded. He clarified that the land set aside for a trading centre was not where the squatters were carrying out their commercial activities.
25. Francis Githira Maina gave evidence and told the court that they were not utilising the land that their late father, Cornelius Maina Mwema purchased because after the post-election violence in 2007 and 2008, some people invaded their land and settled on it together with the other neighbouring land. He added that they were evicted by the provincial administration in 2009 but they went back to the land after 2 years. They had caused a lot of destruction on the land by cutting down trees, overgrazing, burning charcoal and stealing livestock.
26. He stated that the invaders did not permanently stay on the suit property but they usually go back to the land during the rainy season and then go elsewhere during the dry season to look for pasture. At the time he gave evidence there was nothing being grown on the land and invaders were using the land without his consent. He told the court that a while back he had allowed them to graze on the land but he could not use or visit the land anymore because they became very hostile. He added that the land belonging to Kimugandura Farms was subdivided but the Defendants destroyed the beacons. He clarified that L.R. No.13543/6 belonged to his father Cornelius Maina Mwema and he was the administrator of his estate although the confirmation of his grant was not among the documents on the list filed in court on 10/02/2012.
27. He added that they were using their land for grazing and farming and some of the other portions had had squatters for different periods of time who were removed from time to time. He went further to explain that in the early 90s they had a problem with some squatters but that was resolved and they were resettled. He did not know the Defendants in this case. He told the court that the time they filed suit the persons who were in occupation were 11 but by the time he was giving evidence many other persons had occupied the suit property. Further, that the original squatters in the land were settled in the 10 acres as agreed by the shareholders of Kimugandura Farm and the provincial administration. He sued the Defendants because those were the names given to him by the provincial administrator who identified them when they went to collect relief food and they stated which parcel they had settled on.
28. George Maina Muriithi, the Plaintiff in Nyeri ELC No. 33 of 2012 gave evidence. He told the court that he lived on Kimugandura Farm. His land was parcel number 13543/30. He had occupied his parcel since 1995 but not the entire portion because the Defendants occupied about 400 acres. The squatters went to his land from neighbouring group ranches. Initially they were only grazing on the land but later they started claiming ownership of the land. He had built a school called Daraja school, formerly known as Baraka school on the land. The squatters did not have his consent to occupy his land and he sought an injunction against them. He denied that the Defendants had occupied his entire parcel and added that he had even put a fence around his school and his homestead. He stated that he was occupying 150 acres which he had fenced off. The Defendants put up 2 homesteads on his land. Although he had sued 9 Defendants, only two were occupying his land after the others moved away.
29. After the Plaintiffs had closed their case, the suit was transferred to the Nanyuki ELC on 1/2/2022. The hearing of the suit continued before this court on 24/05/2023 when Katuto Lemarai Kaparo gave evidence. He told the court that he was 55 years old, married and had five children. He is a village elder and the headman of Olgirigiri village located on the land formerly known as L.R. No. 13543, Laikipia which was divided into various parcels. He knew all the Defendants personally and described them as



his neighbours and friends. He told the court that the persons who lived on the suit property settled on L.R. No. 13543 Laikipia between 1978 and 1980 and those aged below 30 years were born on that land. He stated that he settled on the land around 1978 when he was a moran with braided hair called oltaika. He told the court that he had been on the land for so long until the shopping centre located in L.R. No. 13543 Laikipia was named after him as Saituku Centre which is the name he was commonly known by since childhood.

30. He recalled that in 1982 during the attempted coup, some soldiers stopped by the suit property and asked for food and they gave them milk because by then they had already permanently inhabited the suit property. He stated that there were at least 3000 persons comprising men women and children living on various sub-divisions of L.R. No. 13543. The community including the Defendants were mainly from the Laikipia section of the Maasai tribe who were historically the native owners of the Laikipia region.
31. At the time when he together with his family and the other residents including the Defendants settled on the suit property, the mzungu (white settler) who used to live on L.R. No. 13543, Laikipia had left the farm. He stated that the Defendants and other residents of L.R. No. 13543 Laikipia had made the suit property their permanent residence for more than 30 years. During that period, they had communally and collectively been in possession and occupation of L.R. No. 1354, grazed their livestock, raised and schooled their children, voted, buried their dead and entirely depended on the land for their lives, livelihood, sustenance and survival and continued to do so. He maintained that they had enjoyed exclusive, peaceful, open, continuous and uninterrupted possession of the suit property for nearly 30 years.
32. He stated that the subdivision of L.R. No. 13543 was done when they were in lawful occupation of the land and added that the purported subdivision was only done on paper without any demarcation ever being done on the ground. He argued that in their communal ownership and occupation of the suit property, they did not recognise the boundaries created during the subdivision and that there was nothing existing on the ground to demonstrate this. He added that they knew the boundaries and beacons of the land originally known as L.R. No. 13543 and that is what they continued to follow. He believed that the Plaintiffs acquired their titles unlawfully and irregularly and that the registration of the subdivision of the suit property was unjust, improper and irregular while urging that had that been done fairly, the Defendants and not the Plaintiffs would have been registered.
33. He mentioned the various developments to be found on the land previously known as L.R. No. 13543 as schools, houses, homesteads, churches and graves. He stated that there were three schools on the land with the main one being Olgirgiri Primary School which had a student population of 750 pupils as at January 2011. He went on to add that some of the classes in the school were built with Constituency Development Fund (CDF) money while others were built by World Vision. The other schools were Tumaini and Reteti pre-primary schools. The schools mainly served the children of the residents of L.R. No. 13543
34. Mr. Katuto told the court that the suit property was dotted by numerous homes and homesteads belonging to the residents including the Defendants. He confirmed that each of the Defendants had a home and other permanent developments on the land. On his part, he had a mabati house where he lived, a grass thatched hut where his 90-year-old mother lived and a 3000 litre water tank. He stated that there were three churches on the land, that is, Catholic mission, Full Gospel and the Baptist Church. He added that hundreds of graves could be found in different parts of the suit property and that his first wife who died in 2003 was buried on a portion of the suit property as was his father who died in 1994.



35. On cross-examination, he told the court that he lived on Olgirgiri and did not do any work. He did not know issues of title but that they stayed many on the suit property. He did not know the land reference number or who had the title over the suit property. He had cattle and was Maasai. He grazes his cattle on the land and takes them back home in the evening. During the dry spell they go elsewhere to look for pasture while the women and children were left in the homesteads. If there was rain, they stayed at home. During the dry spells they went away for varied periods ranging from one week to a month.
36. He showed the court photographs of the schools, the church and the Chief's office on the suit property. He explained that there was a borehole where they lived. The schools and church were all permanent. The county government built structures for the public on the suit property. He went to the land in 1979 and did not know when the Plaintiffs got their titles. They were given notice to vacate the suit property when they were sued. They had not seen the people who sued them. He was emphatic that there was no hotel where they lived and he did not know where it was. The land was about 16000 acres. They were only given a notice once. He adverted to the newspaper article mentioning the invasion of the land and explained that from 2008 attempts had been made to evict them from the suit property. According to him, the land belonged to a mzungu and was bushy although he did not have any documents to show that the suit property belonged to amzungu called Cassan.
37. He confirmed that he was the 6th Defendant in Nyeri HCCC No. 33 of 2012 and that he had the authority to represent the other Defendants. He was emphatic that the people they had counterclaimed against did not live on the suit property. He maintained that the Plaintiffs were not on the land when they entered it in 1979. The first time they had a problem with the Plaintiffs trying to evict them was in 2009. He told the court that there were about 5000 people living on the suit property. They did not know about titles and beacons as they lived in the wilderness. They had not seen anybody go to subdivide the suit property.
38. People lived on different parts of the suit property and there was a part not built where they grazed their livestock. Some of the dwelling houses were built of stone while others were made of mud. He had built a three roomed house. He explained that the schools were in different places. He told the court that Reteti school was 4 Km away while the Chief's Office was at Saituku centre. On being shown the photograph of his mother, he told the court she died the previous month and was buried on the suit property. Other people had also buried their relatives on that land. He emphasised that the Plaintiffs did not live on the suit property. They were seeking justice from the court because if evicted they would not have anywhere to go.
39. Oletipipi Ntarkus Sina gave evidence. He was 45 years old in 2011 and was married with 8 children. He carried on the business of livestock keeping and herding. He settled on the land between 1979 – 1980 and lived on the suit land with his 90-year-old father, brother, uncles and other relations. Together with the other Defendants they had made the suit property their permanent residence for more 30 years. He reiterated the facts stated by the other defence witness. When he was taken through the photographs he showed the court a photograph of the sign board for Olgirgiri primary school and nursery school which he said was called Ndonyo-are. the other photograph showed a shopping centre and graves. He claimed the photographs were taken in the 1980s and that the place had changed.
40. On cross-examination, he told the court he was a herder and a farmer and that he took care of the animals on the suit property. The photographs he produced did not show the farming he was undertaking on the land. When he was shown another photograph he gave the name of the school as Mara moja. He also mentioned another school called Ndonyo-are. The area was called Olgirgiri and the community lived all over the suit property.



41. David Kamais Ntaiya gave evidence for the defence along the same lines as the other witnesses. On cross-examination, he told the court that he was a teacher and the first school to be built in the area was Olgirgiri in 1990. The other schools were built later. There were permanent residences on the suit property built of stone, iron sheets and wood. One of the photographs showed a homestead in a place called Muruamoni. Other homes were made of iron sheets and were grass thatched. He told the court that he taught at Olgirgiri School which had 16 teachers. He stated that the Plaintiffs started laying claim to the land in 2009.
42. Parties filed submissions which the court has considered. The Plaintiffs submitted that they had led evidence to show that their fathers purchased the suit property from the initial owners in 1964 and consolidated the 9 parcels of land to form L.R No. 13543. That following a long drought, the Defendants moved into the suit property in 2002 and refused to move out. They relied on the certificates of title which they tendered in evidence as well as correspondence regarding the subdivision of the land and the maps.
43. They submitted that this court visited the locus quo and noted that the various parts of the suit property were well fenced except the few sections destroyed by the herders. They added that on the day of the site visit other sections of the fence were being repaired. They submitted that various parcels were not occupied by the Defendants who they claimed were concentrated in the area where the court saw with the only school and a shopping centre. The Plaintiffs relied on the newspaper reports in urging that the Defendants moved onto the land in 2002 and that their occupation was not exclusive, quiet and uninterrupted as they claimed. Further, that there was no evidence to show that the Defendants occupied the suit property before 2002 to support their claim for adverse possession. They argued that the Defendants did not show whether there was any resistance when the suit property was being surveyed or fenced which would confirm that they were not in occupation at that time.
44. The Plaintiffs maintained that they had proved their case to the required standard and that they had produced titles which are protected by Article 40 of *the Constitution* and Sections 24 and 25 of the *Land Registration Act*. They maintained that the Defendants had failed to prove the element of animus possidendi and that their claim only lay in merely being pastoralists. Further, that their claim of adverse possession was hedged on proper identification of an adverse possessor against an identified title holder in his/her individual capacity. They submitted that the suit parcels were 12 in number and there was no evidence against whom and by which Defendant the claim of adverse possession was based. They relied on *Wilson Kazungu Katana & 101 others vs Salim Adballa Bakshwein and Another* [2015] eKLR.
45. The Plaintiffs submitted that the totality of the Defendants' evidence merely pointed to a claim of easement and not adverse possession. That being Samburus they claimed they had a right to grass and to occupy the Plaintiffs land. That in any event, they failed to prove the claim through the appropriate evidence. The Plaintiffs concluded that their titles were protected under *the Constitution* and the Defendants belief that the suit property constituted ancestral land was immaterial. The Plaintiffs relied on various decisions including one made by this court.
46. The Defendants relied on Sections 7, 13, 18 and 38 of the *Limitation of Actions Act* on the legal ingredients for adverse possession. They also relied on Section 28 of the *Land Registration Act* which gives rights acquired or in the process of being acquired by virtue of the *Limitation of Actions Act* or by prescription as some of the overriding interests recognised by the law. They also relied on *Wilson Njoroge Kamau v Nganga Muceru Kamau* [2020] eKLR on the point that adverse possession is one of the ways of land acquisition in Kenya. They relied on *James Maina Kinya v Gerald Kwendaka* [2018] eKLR on the definition of adverse possession and that a person claiming adverse possession must show by clear and unequivocal evidence that his possession was not permissible, open, with the knowledge



- of the true owner and excluded the true owner from enjoyment of his property. The Defendants submitted that their entry, occupation, developments and activities on the suit property pointed to possession adverse to the titles held by the Plaintiffs.
47. Regarding the period of occupation, they submitted that the testimony of James Kamwere Muriuki confirmed that the Plaintiffs were grappling with the thorny issue of squatters as far back as 1987. Further, that the complaints filed contained averments that the Defendants had without any colour of right or legal justification invaded and settled on the suit property. The Defendants were emphatic that the Plaintiffs were bound by their pleadings. The Defendants invited the court to take into account the developments on the suit property that it saw during the site visit.
 48. On the question of eviction, the Defendants relied on *Pauline Muia Maingi & 3 Others v Attorney General & 3 Others* [2013] eKLR where the court noted that granting eviction orders would lead to eviction of squatters without alternative arrangements which would lead to violation of their rights. The Defendants urged the court to take judicial notice of the fact that there were 1000 families occupying the suit property which means there are more than 3000 people occupying the suit property.
 49. The court went on a site visit to the land on 27/10/2023. The first place where the court was shown did not have houses on it and was fenced. The second stop in the expansive land was at the Dikir centre occupied by the Defendants. The court was shown Olgirgiri Primary school which has permanent stone structures with a few old classrooms made of timber and iron sheets. The school was closed for the Kenya Certificate of Primary Examination. The court was informed that the children who attend this school were from 10 villages known as Mara Moja, Oloruko, Olgirgiri, Soit Narok, Ndigir, Ngambo A and B, Mpopongi, Murwa and Stima Village, all of which are on the suit property. Stima and Murwa were said to be furthest from Olgirgiri. The other villages were situated approximately 4 or 5 kms from the school. After crossing River Nanyuki, there were houses near the river and some settlements dotted the area. A member of the community told the court that there was a school called Reteti Primary School about 4 Kms away.
 50. The court was also told that Olgirgiri Primary School was on parcel number 7 as was Mara Moja Village. Further, that one manyatta could straddle two different parcels of land. The local people did not know the land by the numbers, but from the location of where they lived. The court was also told that the shopping centre was on parcels 22 and 8. The shopping centre which the Plaintiffs had incorporated in the subdivision plans measuring about 30 acres should have been on L.R No. 13543/44. That is the where the Soit Narok village was.
 51. Mr. James Super, a community leader gave the court information regarding the community. He told the court that they were livestock keepers and grew crops such as maize, beans, French beans, vegetables and tomatoes. Further, that they cultivated where the people stayed. They grazed their livestock on the other areas not built on. He added that they had women groups growing aloe vera for making lotion and soap. He stated that they also carry out businesses at the shopping centre and that they had water projects for the community with two boreholes on the suit property. Mr. Super told the court that his own house was in Loruko, on parcel 9. Mr. James Kamere supplied a survey plan to the court for ease of situating where the villages, shopping centre and homes were on the map.
 52. The two main issues for determination in this suit are, firstly, whether the Plaintiffs have proved their claims that the Defendants have no right to occupy the suit property and that they should be evicted from the suit property; or secondly, whether the Defendants have proved their counterclaim that they have a right over the suit property by virtue of adverse possession, prescription, native title and overriding interest.



53. The Plaintiffs' claim is that they are the registered owners of the parcels of land described in the plaints which were consolidated and which are collectively referred to as the suit property in this judgment. They claim they bought the land from the white settlers in 1964. Vide the letters dated 6/4/1983 and 6/6/1983, Kimugandura Farms Limited instructed Kamwere and Associates to subdivide its farm comprised in 9 parcels of land. The certificate of incorporation shows that this company was incorporated on 2/3/1970. The Land Control Board gave consent for change of user and subdivision on 27/6/1984. The Lands Department approved the subdivision of the land on certain conditions including setting aside land for a trading centre on 1/8/1984. The approval for the survey of L.R No. 13543 was given on 16/5/1986. The Plaintiffs also produced letters from the Ministry of Lands dated 19/4/1988, 20/4/1988, 27/7/1988, 23/8/1990 and 25/3/1997 relating to the suit property.
54. From the letter of Kimugandura Farms Limited dated 13/8/1985, the company allocated land to its shareholders around that time. The evidence led by the Plaintiffs' witnesses was that they purchased the suit property in 1964 and transferred it to the company in 1984. They claimed that they were using the suit property as a ranch and that after purchasing the land they continued keeping animals on the land until there was a severe drought and animals died. However, they did not give the exact dates when this happened. It is not clear when J.K. Mugambi was authorised to utilise the suit property while taking care of the remaining animals on the suit property.
55. The crux of the dispute is the precise time when the Defendants came to the suit property. The Plaintiffs contend that this happened in 2002 while the Defendants claim they went to the land in 1978. The Plaintiff's relied on the letter dated 27/5/2002 on the notepaper of United Insurance Company Limited requesting the Chief to stop the herders from grazing their animals and cutting down trees in Kimugandura. This was followed by a notice to vacate L.R No. 13543/134 to 136 Laikipia dated 7/2/2003 addressed to Mr. Poise Kingau. The letter written by James Kamwere Muriuki to the District Commissioner on 15/5/2008 mentions that the Kimugandura land was subdivided in 1986 and the third paragraph reads:
- “Since then illegal squatters have invaded the land for illegal grazing and settlement turning the once beautiful forested grazing land into an eyesore through wanton destruction of trees, widespread illegal charcoal burning, uncontrolled grazing and illegal sand harvesting.”
56. The newspaper article in the Daily Nation of 5/6/2008 mentioned that 1000 pastoralists invaded Camp David Ranch in Kimugandura. The newspaper article of 13/2/2014 referred to a court order and a plan to evict the 1000 families living on Kimugandura Farm. During the trial, the Plaintiffs produced copies of the titles for L.R No. 134543/4, L.R No. 134543/6, L.R No. 134543/7, L.R No. 134543/8, L.R No. 134543/9, L.R No. 134543/10, L.R No. 134543/11, L.R No. 134543/12, L.R No. 134543/23, L.R No. 134543/24, L.R No. 134543/25, L.R No. 134543/26, L.R No. 134543/27 and L.R No. 134543/28 to demonstrate their ownership of the suit property.
57. The Defendants mainly relied on photographs taken of the suit property in support of the claim for adverse possession besides copies of the titles for L.R No. 134543/12, L.R No. 134543/23, L.R No. 134543/24, L.R No. 134543/25, L.R No. 134543/26, L.R No. 134543/27 and L.R No. 134543/28 which they produced in court. They were emphatic that they had lived on the suit property for more than 30 years. The Defendants did not lead any lead any evidence to support the claim that the suit property was part of their native land.
58. According to the evidence adduced by the Plaintiffs' witnesses, parcel number 7 was invaded and is where both Olgirgiri Primary School and the Baptist Church are. Parcel number 4 was also invaded and had a school and church erected on it. Mr. Kamwere's evidence was that there were no trespassers on



- the suit property when he surveyed it in 1988. The Plaintiffs' witnesses confirmed that the Defendants and other people occupying the suit property had made it difficult for them to access the land. From the evidence adduced and the site visit, it is difficult to ascertain which specific parcels of the suit property are occupied by the Defendants and the other families who have settled on the suit property. If as the Plaintiffs contend, the Defendants are only concentrated in one area which the court saw during the site visit, then the Plaintiffs should be able to access and use the other portions of their land which are not occupied by the Defendants.
59. From the evidence of the Defendants' witnesses and the fact that Olgirgiri Primary School and the preschool had 700 students as at 2011 and the fact that children ordinarily spend 3 years in preschool and about 8 years in primary school, the court is persuaded that Olgirgiri Primary School was built before 2002 and that the Defendants and the other persons whose children attend this school must have settled on the suit property before 2002. The Defendants led evidence to show that CDF monies were used to build permanent structures in the school and that there are permanent houses erected by the Defendants on the suit land. By the time the Plaintiffs filed suit the Defendants had been on the suit property for more than twelve years.
 60. To succeed on a claim for adverse possession, the Defendants need to prove that their occupation of the suit property for twelve or more years was exclusive, uninterrupted and the element of occupying the land with the sole purpose of denying the Plaintiffs their proprietary rights over the land. The Plaintiffs led evidence to show that the Defendants grazed their animals on the suit property during the rainy season but they go elsewhere to look for grass for their animals during the dry spell. The evidence led by the defence was that when the men go to look for pasture and water during the dry spell they leave the women and children behind. The evidence adduced confirms that the occupation of the suit property by the Defendants and the other families has denied the Plaintiffs use of the land.
 61. The Plaintiffs submitted that the Defendants had failed to produce evidence against whom and by which Defendant the claim for adverse possession was based. The Plaintiffs witnesses told the court that they sued the Defendants after getting their names from the provincial administration. The Defendants sued are only about 37 yet from the evidence led it is apparent that more than 1000 people reside on the suit property. This is also buttressed by the number of school children attending Olgirgiri school.
 62. The Defendants failed to prove the claim that the suit property was their native land. The court finds that the Plaintiffs have established that they are the registered proprietors of the parcels of the land set out in the consolidated suits. However, the Defendants proved their claim for adverse possession of portions of the Plaintiffs' land where they have put up homes, homesteads, schools, churches and the shopping centre.
 63. The County Surveyor and Land Registrar for Laikipia County are directed to visit the suit property to survey and excise the specific portions of the suit property where the Defendants' homes, homesteads, schools, churches and the shopping centre are currently situated with a view to issuing titles for those specific portions to the Defendants. That exercise is to be undertaken within 90 days of today and a report filed in court. The County Commissioner is to arrange for security during the survey exercise.
 64. The Defendants are restrained from encroaching or interfering with the Plaintiffs' occupation of the other portions of the suit property beyond where the Defendants' homes, homesteads, schools, churches and the shopping centre are currently situated.
 65. Each party will bear its own costs.

DELIVERED VIRTUALLY AT NAIROBI THIS 28TH DAY OF JUNE 2024.



K. BOR

JUDGE

In the presence of: -

Mr. Anthony Nganga for the Plaintiffs

Mr. Kanchory Saitabao for the Defendants

Court Assistant- Stella Gakii

