



**Kosinkir & another v Karaine (Sued as the administrator of the Estate of the Late Ipissi Kashinko Koisikirr aka Kashingo Ole Kosinkir - Deceased) & 5 others (Environmental and Land Originating Summons E010 of 2022) [2025] KEELC 660 (KLR) (20 February 2025) (Judgment)**

Neutral citation: [2025] KEELC 660 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E010 OF 2022  
LC KOMINGOI, J  
FEBRUARY 20, 2025**

**BETWEEN**

**SAKITA OLE KOSINKIR ..... 1<sup>ST</sup> PLAINTIFF**

**SAKITA OLE KOSINKIR ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**PURITY TOIYAN KARAIN (SUED AS THE ADMINISTRATOR OF THE ESTATE OF THE LATE IPISSI KASHINKO KOISIKIRR AKA KASHINGO OLE KOSINKIR - DECEASED) ..... 1<sup>ST</sup> DEFENDANT**

**TOIYAN KARAIN (SUED AS THE ADMINISTRATOR OF THE ESTATE OF THE LATE IPISSI KASHINKO KOISIKIRR A.K ..... 2<sup>ND</sup> DEFENDANT**

**KANAYO ENE KOTEE ..... 3<sup>RD</sup> DEFENDANT**

**KANAYO ENE KOTEE ..... 4<sup>TH</sup> DEFENDANT**

**MARY KATTITO ODAGE ..... 5<sup>TH</sup> DEFENDANT**

**MARY KATTITO ODAGE ..... 6<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. This suit instituted by way of Originating Summons dated 1<sup>st</sup> August 2022 is brought under Section 38 of the Limitation of Actions Act. The Plaintiff seeks to be registered as the proprietor of Loitoktok/ Ngama/210 measuring approximately 11.45 hectares owned by the late Kashingo Ole Koisikirr by way of adverse possession. He seeks that the following questions be determined;
  - i. Whether the Plaintiff and the deceased 1<sup>st</sup> Defendant Ipissi Kashingo Koisikirr a.k.a. Kishingo Ole Koisikirr (deceased) are biological siblings from the same parents?



- ii. Whether land parcel Loitokitok/Ngama/210 measuring 22.9 hectares was initially owned by the parents of the Plaintiff and deceased 1<sup>st</sup> Defendant Ipissi Kashingo Koisikir a.k.a. Kashingo Ole Koisikirr prior to its registration?
  - iii. Whether at the time of registration of the land parcel Loitokitok/Ngama/ 210 on 19<sup>th</sup> July 1966 the deceased 1<sup>st</sup> Defendant Ipissi Kashingo Koisikir a.k.a Kashingo Ole Koisikirr (Deceased) was registered therein to also hold the land in trust for the Plaintiff?
  - iv. Whether upon registration of the land parcel Loitokitok/ Ngama/ 210 on 19<sup>th</sup> July 1966, the Plaintiff continued residing and being in possession of an identified half a portion of the land measuring 11.45 Hectares?
  - v. Whether the Plaintiff's continued occupation of the 11.45 Hectares of the land parcel Loitokitok Ngama/ 210 been in actual, open, hostile, continuous and uninterrupted possession for now a period amounting to 56 years from the date of registration of the land?
  - vi. Whether during the stated period in issue five above, the Plaintiff has developed his portion by establishing a home therein, and further cultivates the remainder of the portion he occupies without resistance?
  - vii. Whether in the circumstances, the deceased 1<sup>st</sup> Defendant Ipissi Kashingo Koisikir a.k.a Kashingo Ole Koisikirr (Deceased) interests in half of Loitokitok / Ngama / 210 being a portion measuring 11.45 Hectares that is in the full possession and control of the Plaintiff was extinguished after 12 years of such possession/occupation by the Plaintiff from the date of its registration in 1966 and that the deceased 1<sup>st</sup> Defendant Ipissi Kashingo Koisikir a.k.a Kashingo Ole Koisikirr (Deceased) continued remaining registered against the title only as a trustee of the Plaintiff for the occupied portion?
  - viii. If the seventh (7) issue above is in the affirmative, whether the rights of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants as heir and / or beneficiaries of the Estate of the late Ipissi Kashingo Koisikir a.k.a Kashingo Ole Koisikirr (Deceased) in half of land parcel Loitokitok/ Ngama/ 210 is subject to the registrable interests of the Plaintiff which has since crystalized?
  - ix. Whether the Plaintiff should now be registered as the proprietor of the half portion measuring 11.45 Hectares of land parcel Loitokitok/ Ngama/ 210 having acquired the same by way of adverse possession and/or prescription.
2. The Plaintiff in his Supporting Affidavit dated 1<sup>st</sup> August 2022 states that the parcel of land known as Loitokitok/Ngama/210 measuring approximately 22.9 hectares was his parents land and upon their demise, he and his biological brother the late Kashingo Koisikir continued residing on it. He further deponed that during the adjudication and registration of the land on 19<sup>th</sup> July 1966 they agreed that the same be registered in Kashingo Koisikir's name and to hold it in trust for both of them and they each occupied half of the parcel which is equivalent to 11.45 hectares. They lived peacefully on the land with each bringing up their families thereon until Kashingo's demise on 22<sup>nd</sup> November 1973.
  3. Upon his demise he asked the 2<sup>nd</sup> Defendant who is the late Kashingo's daughter to take out letters of administration so as to subdivide the portions of land but she did not. On 12<sup>th</sup> July 2007 he lodged a caution to prevent any dealings on the land pending the hearing and determination of the succession cause. In 2021 the 1<sup>st</sup> Defendant who is the late Kashingo's granddaughter took out letters of administration in which named the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants as the sole beneficiaries and failed to recognise his interests on the land. He thus claimed that he had registrable rights over the parcel of land having lived there openly, continuously and uninterrupted for over fifty six (56) years.



4. The 2<sup>nd</sup> Defendant in her Replying Affidavit contested the Plaintiff's claim on grounds that the Plaintiff had on the numerous occasions tried to disinherit them of their father's property. She averred that on 5<sup>th</sup> July 2022, the Plaintiff filed a citation at the Magistrate's court at Oloitoktok claiming to be a beneficiary of the late Kashingo's Estate while she and her sister were the only beneficiaries. She also contested the claim that the Plaintiff was born and raised on the suit property stating that his parcel of land was in Rongai and they only allowed him to occupy two (2) acres of the suit property upon his request. It is her case that he occupies with their permission.
5. She states that the plaintiff's claim was an attempt to disinherit them of their father's land. It is also her case that if the Plaintiff had been in occupation of the suit property for as long as he claims, he ought to have filed the suit in 1978. She sought for dismissal of the suit.

### **Evidence of the Plaintiff**

6. PW1 Sakita Ole Koisikirr, the Plaintiff, adopted his witness statement dated 2<sup>nd</sup> November 2023 as part of his evidence and produced his bundle of documents which was marked as P. Exhibit 1 to 9. He stated that he was born and raised at Ngama area on the suit property together with his late brother Kashingo. He testified that he has lived on the suit property all his life and had never been asked to vacate because the land was given to them by their parents. He also stated that he had also buried four of his sons on that parcel.
7. On cross examination he confirmed that the 1<sup>st</sup> Defendant was his granddaughter, the 2<sup>nd</sup> Defendant was his niece but he was not familiar with the 3<sup>rd</sup> Defendant. He stated that he had two brothers, Tayai and the late Kashingo. He further stated that, he asked Kashingo to be the registered as the owner but to hold it in trust for him since he was illiterate. It is his case that, he was entitled to a portion of the land and the allegation that the entire land belonged to Kashingo was false. He indicated that he had buried four of his children on the suit property. And that he had also put a restriction against the title although he did not have evidence of this. He also informed court that there was a suit in the Loitoktok Court in respect of the suit property.
8. On re-examination he stated that he was only seeking to get his portion of the land and not his brother's.
9. PW2 Lekarokia Ole Nakoro, the village elder stated that he has known the Plaintiff since he was a young man of about 19 years and that he had been residing on the suit property. He stated that he heard that some of his children had passed away and were buried on the suit property. Although he did not attend the burials he had seen the graves.
10. On cross examination he stated that he resides at Ilasit and was aware that the Plaintiff had been on that land for over fifty (50) years. He re-stated that he was familiar with the Plaintiff's children who were alive but did not know the ones who had passed away.

### **Evidence of the Defendants**

11. DW1 Kanayo Ene Kotee the 2<sup>nd</sup> Defendant, adopted her witness statement dated 4<sup>th</sup> May 2023 as part of her evidence in chief. She informed the Court that the Plaintiff is her father's brother. She further stated that she was the eldest daughter of the late Kashingo, the registered owner of the suit property. She informed the Court that the Plaintiff began residing on the suit property when his wife fell ill and had been there ever since. She stated that since he was their uncle, they could not chase him away from the suit property. She stated that the Plaintiff's land is in Rongai and that none of his deceased children were buried on the suit property. It is her case that only her father and his siblings were buried on the suit property.



12. On cross examination she confirmed that the suit property belonged to her father and that all his brothers had their separate portions. She stated that the Plaintiff's land was in Rongai although she did not have evidence for this. While the Plaintiff was born and raised on the suit property, he only moved back when his wife fell sick upon the request of her grandmother.
13. On re-examination she confirmed that the suit property was given to her father by her grandfather and the Plaintiff was also given a portion of land in Rongai where he had been residing. And only went back to the suit property when her mother fell sick, but she could not recall the year.
14. DW2 Purity Toyian Karaine, the 1<sup>st</sup> Defendant also adopted her witness statement dated 4<sup>th</sup> May 2023 as part of her evidence in this case. She testified that she had always known that the land belonged to Kashingo (her grandfather) and the title was in his name. She stated that the Plaintiff, was also her grandfather and she had seen him on the suit property while growing up. She also informed court that the graves on the suit property belonged to the Plaintiff's parents and her grandfather (the late Kashingo). She confirmed that she was aware of the suit at Oloitoktok where the court held that the land belonged to Kashingo's children.
15. On cross examination she stated according to the information given to her by the elders, the land belonged to her grandfather, Kashingo and had inherited it from his parents. She confirmed that she was present when her grandmother was buried on the suit property but not the others.
16. DW3 Mary Katito Odage the 3<sup>rd</sup> defendant, told the Court that the Plaintiff was her father's brother and that the land belonged to the late Kashingo who gave it to them. She also stated that her grandfather had three sons and each was given a portion of land. Kashingo was given the suit property and the Plaintiff was given land in Rongai. She stated that when the Plaintiff's wife fell sick, their grandmother invited the Plaintiff to reside on the suit property and gave him a portion of the land to settle on because the land was close to the hospital. She stated that she could not remember the year but he was to leave when his wife got better. His wife unfortunately passed away and he never left. She also stated that her four children are the ones buried on the suit property, together with her great grandparents and her father. She stated that the Plaintiff's deceased children were not buried on the land.
17. On cross examination she stated that her father passed away when she was twelve (12) years old but she could not remember when the Plaintiff started residing on the suit property. She confirmed that the graves on the land were her grandparents, parents and her children.
18. DW4 Robert Ndobula Kinyanjui also adopted his witness statement dated 4<sup>th</sup> May 2023 as part of his evidence in this case. He stated that the Plaintiff was his uncle. He confirmed that he knew Kashingo and that the suit property was his. He testified that he was aware that his grandfather gave his sons portions of land and the Plaintiff's portion was in Rongai. He went on to state that once the sons were given land, they moved to their parcels and each parcel was registered in their names sometime in the year 1967. He also stated that upon the death of his grandparents, the Plaintiff showed intentions of taking possession of Kashingo's land. He confirmed that when the Plaintiff's wife fell ill, his grandmother gave him a portion on the suit property to live on as his wife was undergoing treatment. However, since that time he had never left. He also contested the allegation that the Plaintiff had buried his children on the land indicating that only the 3<sup>rd</sup> Defendant's children were buried on the suit property.
19. On cross examination he confirmed that the Plaintiff's land was in Rongai although he had no evidence in support.
20. At the close of the oral testimonies parties tendered final written submissions.



### **The Plaintiff's Submissions**

21. Counsel for the Plaintiff submitted that the sole issue for determination was whether the Plaintiff was entitled to ownership of the suit property by way of adverse possession.
22. Counsel submitted that it was the Plaintiff's case that he has been on the suit property from the year 1966 until the filing of this suit. Upon the demise of their parents, they agreed that the property would be registered in the 1<sup>st</sup> Defendant's name to be held in trust for the Plaintiff. And that customary trust was recognised in Kenya citing the Supreme Court in *Isaac M'Inanga Kiebia vs Isaya Theuri M'Lintari & another* [2015] eKLR. They two lived on half portions of the suit property until the year 1973 when the 1<sup>st</sup> Defendant passed on. His children would then refuse to undertake succession proceedings to transfer to the Plaintiff his rightful share of the property. The decision in *Loitoktok SRM Succession Cause No. E020 of 2021* also left him out as a beneficiary despite his claim over the property.
23. Counsel submitted that the Plaintiff had been on the suit property since its registration in the year 1966 until the filing of this suit as was corroborated by PW2. But, the Defendants claim that the Plaintiff was allowed to occupy the suit property on a temporary basis was unsubstantiated. Counsel also pointed out that DW2's evidence was hearsay based on what she claimed to have been told and was thus inadmissible as per Section 63 of the Evidence Act and should be disregarded as held in *Parkar & another vs NQ & 2 others* [2023] KECA 908 (KLR). Counsel also submitted that the claim that the Plaintiff's land was in Rongai and he only moved to the suit property to take care of his sick wife was also unsubstantiated. And that notwithstanding, they Defendants' did not controvert the fact that the Plaintiff had been on the suit property for a long time.
24. Therefore, the Plaintiff's possession was long, in open and continuous from the year 1966 and that the Defendants had not taken any steps to evict him from the land as confirmed by their testimonies citing *Gachuma Gacheru vs Maina Kabushwa* [2016] eKLR. In addition, there being no evidence of the alleged license of occupation between the Defendants and the Plaintiff meant that the Plaintiff had fulfilled the required elements of adverse possession.

### **The Defendants' Submissions**

25. On whether the suit property was held in trust for the Plaintiff, counsel submitted that the Plaintiff did not produce evidence to support the claim that the 1<sup>st</sup> Defendant was holding half of the property in his trust. Reference was made to the case of *Tony Justus Ongale vs Catherine Lorna Mariati* (2021) eKLR where the court held that for a Court to presume Trust, the intention of the parties to create a trust must be clearly determined. Counsel also added that at the time of his father's demise, he was mature and there was no basis as to why the portion he claims could not be registered in his name at the time. Reference was made to the following cases in which the Courts found that the element of trust was not proven: *Eunice Gathoni Wangombe vs Hellen Wacera* (2016) eKLR and *Robert Muriuki Mugo vs Moses Mbugi Gichu* (2008) eKLR.
26. On whether the Plaintiff had established a claim for adverse possession, counsel submitted that there was no evidence that the Plaintiff had been on the suit property for the claimed 56 years adding that the Defendants had adduced evidence that the Plaintiff was on the suit property with their permission on a temporary basis to take care of his sick wife. Counsel submitted that this was corroborated by the Plaintiff's photographic evidence which showed temporary structures. Reference was made to the cases of *Benjamin Kamau Murima & 3 others vs Gladys Njeri and Peter Thuo Kamau & another vs Lucy Wamaitha Kiarie & another* (2021) eKLR where the Courts held that land occupied by permission or agreement or grant was not adverse; and the cases of *Wanjiku Virginia Mwangi vs David Mwangi*



Jotham Kamau (2013) eKLR and Ngati Farmers Cooperative Society Ltd vs Councillor John Ledidi & 15 others on conditions necessary for prove of adverse possession. As such, the Plaintiff's claim was unmerited. Adding that it was strange that the Plaintiff could not remember the names of his children buried on the suit property.

27. Therefore, the Plaintiff had not established that the land was held in trust or that the portion he had was adversely held and was therefore not entitled to the reliefs sought.

### **Analysis and Determination**

28. I have considered the pleadings, the evidence on record, the written submissions and the authorities cited. The issues for determination are:
- i. Whether the land known as Loitokitok/Ngama/210 registered in the year 1966 in the name of Kashingo Ole Koisikirr was held in trust for the Plaintiff;
  - ii. Whether the Plaintiff had proved his claim for adverse possession;
  - iii. Whether the Plaintiff was entitled to the reliefs sought;
  - iv. Who should bear costs of this suit?
29. It is not in dispute that the Plaintiff and Ipissi Kashinko Koisikirr alias Kashingo Ole Koisikirr are brothers. This fact was admitted by all the parties and the witnesses who testified in this case.

### **Whether the suit property Loitokitok/Ngama/210 registered in the name of Ipissi Kashinko Ole Koisikirr alias Kashingo ole Koisikirr was held in trust for the Plaintiff.**

30. It is the Plaintiff's case that the deceased Ipissi Kashinko Ole Koisikirr alias Kashingo ole Koisikirr was registered as the owner of the suit property; Loitokitok/Ngama/210 as he was literate. The Plaintiff stated that he was illiterate. He further stated that they agreed that the deceased would hold a portion in trust for the Plaintiff. He therefore has a beneficial interest on the suit property arising from that trust.
31. It is not in dispute that the land is ancestral land which belonged to the Plaintiff's parents. This fact is admitted by all the parties and the witnesses who testified in court. The Plaintiff's claim is by way of customary trust which is recognised in law.

In the case of Mbui Mukangu Vs. Gerald Mutwiri Mbui (2004) eKLR the Court of Appeal held thus;

“It cannot be argued too strongly that the proper view of the qualification or proviso to Section 28 is that trusts arising from customary law claims are not excluded in the proviso. Such claims may stem from possession and occupation of part of the registered land which strictly it (sic) may not be an overriding interest under Section 30(g), it nevertheless gives rise to a trust which is capable of protection under the Act.”

32. The Supreme Court in the case of Isack M'Inanga Kiebia and Isaaya Theuri M'Lintari & Another (2018) eKLR stated thus;

“.....it is now clear that customary trusts, as well as other trusts, are overriding interests. These trusts, being overriding interests, are not required to be noted in the register. However by retaining the Proviso to section 28 of the Registered Land Act, (now repealed), in Section 25 of the Land Registration Act, it can be logically assumed that certain trusts can still be noted in the register. Once so noted, such trusts, not being overriding interests, would bind the registered proprietor in terms noted on the register. The rights of a person in possession



or actual occupation of land, as previously envisaged under Section 30 (g) of the Registered Land Act, have now subsumed in the “customary trusts” under Section 25 (b) of the Land Registration Act. Thus under the latter Section, a person can prove the existence of a specific category of a customary trust, one of which can arise, although not exclusively from the fact of rightful possession or actual occupation of the land.”

33. Section 28 of the Land Registration Act, 2012 provides that;

“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 their being noted on the register—

- (a) deleted by Act No. 28 of 2016, s. 11(a);
- (b) trusts including customary trusts;
- (c) rights of way, rights of water and profits subsisting at the time of first registration under this Act;
- (d) natural rights of light, air, water and support;
- (e) rights of compulsory acquisition, resumption, entry, search and user conferred by any other written law;
- (f) deleted by Act No. 28 of 2016, s. 11(b);
- (g) charges for unpaid rates and other funds which, without reference to registration under this Act, are expressly declared by any written law to be a charge upon land;
- (h) rights acquired or in process of being acquired by virtue of any written law relating to the limitation of actions or by prescription;
- (i) electric supply lines, telephone and telegraph lines or poles, pipelines, aqueducts, canals, weirs and dams erected, constructed or laid in pursuance or by virtue of any power conferred by any written law; and
- (j) any other rights provided under any written law.

Provided that the Registrar may direct the registration of any of the liabilities, rights and interests hereinbefore defined in such manner as the Registrar deems necessary.”

34. I agree with the Plaintiff’s submission that though the land was registered in the name of Ipissi Kashinko Ole Kosinkir, it was by a consent of the Plaintiff and he therefore held the land in trust for both of them.

The Plaintiff herein is of advanced age and illiterate and this could be the reason why the land was registered in his younger brother’s name.

**Whether the Plaintiff has proved his claim for adverse possession.**

35. Section 38 of the Limitation of Actions Act provides;

- “(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.

- (2) An order made under subsection (1) of this section shall on registration take effect subject to any entry on the register which has not been extinguished under this Act.
- (3) A proprietor of land who has acquired a right to an easement under section 32 of this Act may apply to the High Court for an order vesting the easement in him, and may register any order so obtained in the register of the land or lease affected by the easement and in the register of the land or lease for whose benefit it has been acquired, and the easement comes into being upon such registration being made, but not before.
- (4) The proprietor, the applicant and any other person interested may apply to the High Court for the determination of any question arising under this section.
- (5) The Minister for the time being responsible for Land may make rules for facilitating the registration of titles to land or to easements acquired under this Act.”

36. It is the Plaintiff’s case that he has been in continuous, open and exclusive possession of the portion of the suit property, he occupies for a period exceeding fifty six (56) years old hence he is entitled to ownership of the land by way of adverse possession. PW2 confirms this position.

37. The Defendants, however, have refuted this claim, contending that the Plaintiff’s occupation of the land was not adverse but permissive. The Defendants allege that the Plaintiff only began residing on a portion of the suit property with their express consent and that his stay was intended to be temporary. While the Defendants did not specify the exact year when the Plaintiff took up residence on the land, they acknowledged that it had been a considerable length of time. However, they asserted that they did not seek his eviction out of respect for his status as their uncle and family member.

38. The Court of Appeal in *Titus Mutuku Kasuve v Mwaani Investments Limited & 4 others* [2004] eKLR held that “... in order to be entitled to the land by adverse possession the claimant must prove that he has been in exclusive possession of the land openly and as of right and without interruption for a period of 12 years either after dispossessing the owner or by the discontinuation of possession by the owner on his own volition...” Further, that same Court in *Chevron (K) Ltd v Harrison Charo Wa Shutu* [2016] eKLR held that the burden of prove is on the person claiming adverse possession:

“... Therefore the critical period for the determination whether possession was adverse is 12 years and the burden is on the person claiming to be entitled to the land by adverse possession to prove, not only the period but also that his possession was without the true owner’s permission, that the owner was dispossessed or discontinued his possession of the land, that the adverse possessor has done acts on the land which are inconsistent with the owner’s enjoyment of the soil for the purpose for which he intended to use it...”

39. This Court acknowledges that claims of adverse possession within the context of family land disputes require careful consideration of the African family structure and the dynamics of family relationships. The Court of Appeal, in the case of *Samuel Kihamba v. Mary Mbaisi* [2015] eKLR, provided crucial guidance on the question of consent in such contexts. In that case, the Court underscored the importance of distinguishing between occupation that is permissive or based on familial ties, and occupation that is truly adverse to the rights of the registered owner as follows:



... Consent and such determination is the key consideration with regard to adverse possession among relatives. When and how does the court determine consent by a family member?

... the High Court in the case of *Rodgers Mwamboje v. Douglas Mwamboje* [2014]eKLR had occasion to make a determination as to whether a person staying on his brother's land for more than twelve years could claim ownership to the land under the doctrine of adverse possession. The Court determined that given African customs, the issue of consent in such a situation is a rebuttable presumption on the claimant. The High Court stated that;

“Indeed, if I was to feign ignorance of the African customs of people accommodating their kin on their land for long periods, I will be visiting calamity on the innocent. Taking a cue from the sentiments of the court in the *Mbui* case (*supra*), which I am in agreement with, this court cannot overlook the fact that in the African cultural set up, a brother will more often than not allow his brother or sister to stay on his land whenever necessary.

In my view, where a relative, like a brother, a sister, a father, a mother, or even an uncle lives on one's land, unlike in a case of a stranger, there is a rebuttable presumption that consent (*sic*) has given consent. The burden of proving that the consent or permission was not given will be on the person claiming the relatives land by virtue of the doctrine of adverse possession.”

40. I have considered the above authorities and find that the Defendants were not able to prove that the Plaintiff had been given permission or granted a licence to occupy the suit property. They were also not able to prove that the Plaintiff had been allocated a separate parcel of land in Rongai within Loitokitok. The claim that the Plaintiff relocated to the suit property to care for his ailing wife was not backed by any evidence.
41. The evidence by the Plaintiff that he has been on the land since 1966 has not been controverted. The defendants admit he has been on the suit property for a long time. The open, continuous and hostile occupation has not been broken from 1966 to date
42. There is no evidence tendered that the Plaintiff has ever left the land since he was born. The Defendants and their witness are not privy to what transpired when they were young but they all confirmed that the Plaintiff has been on the land for a long time and he is utilising the same.
43. The evidence of the Plaintiff's occupation from the photographs has not been rebutted at all.
44. I find that the Plaintiff has proved that he has been on the suit property ever from 1966 and has never left.
45. I find that he has proved his case on a balance of probabilities.
46. I find that he is entitled to a half portion of the suit property which he has occupied to the exclusion of the Defendants.
47. Accordingly Judgement is entered for the Plaintiff as against the Defendants as follows;
  - a. That a declaration is hereby issued that land parcel Loitokitok/Ngama/210 measuring 22.9 Ha registered to the name Ipissil Kashinko Ole Kosikirr a.k.a Kashingo Ole Koisikir (Deceased) was registered for his own benefit and also to hold in trust for the Plaintiff.
  - b. That the Plaintiff is entitled to be registered as the owner to a half portion of 11.45 Ha Parcel No. Loitokitok/Ngama/210 by dint of adverse possession.



c. That each party do bear own costs of the suit.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 20<sup>TH</sup> DAY OF FEBRUARY 2025.**

**L.KOMINGOI**

**JUDGE.**

In The Presence Of:

Ms. Kibiti for the Plaintiff.

Mr. Chacha for Ms. Khafafa for the Defendants.

Court Assistant – Mutisya.

