



**Sigei v Cheruiyot (Environment & Land Case 124 of 2018)
[2024] KEELC 5984 (KLR) (19 September 2024) (Judgment)**

Neutral citation: [2024] KEELC 5984 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 124 OF 2018
LA OMOLLO, J
SEPTEMBER 19, 2024
IN THE MATTER OF SECTION 38 OF THE LIMITATION OF ACTIONS ACT
AND
IN THE MATTER OF LR NO. NAKURU/KIRENGET/TINET SOTIK/533
BETWEEN
EDINAH CHEPKURUI SIGEI PLAINTIFF
AND
PHILIP KOECH CHERUIYOT DEFENDANT**

JUDGMENT

1. The Plaintiff commenced the present proceedings vide an Originating Summons dated 23rd March, 2018.
2. The Originating Summons is expressed to be brought under Order 37 Rule 3, 7 and 8 of the Civil Procedure Rules.
3. The Plaintiff seeks the determination of the following questions;
 1. Whether the Plaintiff has been in continuous, open and adverse possession of that piece or parcel of land known as Nakuru/Tinet/Sotik/573 measuring approximately 5 acres for a period in excess of twelve years.
 2. Whether the Defendant (title to the said parcel of land measuring approximately 0.7760) Hectares has now been extinguished as a result of such continuous, open and adverse possession by the Plaintiff.



3. Whether the Plaintiff is entitled under Section 38 of the Limitation of Actions Chapter 22 Laws of Kenya to be registered as the absolute proprietor of the parcel of land Nakuru/Tinet/Sotik/573 measuring approximately 5 acres in place of Philip Cheruiyot Koech, who is now and presently registered.
4. Whether the Defendant should pay the costs of these proceedings.
4. The Application is supported by the affidavit of Edinah Chepkirui Sigei sworn on 23rd March, 2018.
5. She contends that she is a member of the Karandit clan who are beneficiaries of free allocation of government land that was given to members of the Ogiek Community and that she lives on plot 573 after she was allocated 5 acres of land.
6. She also contends that after allocation of the parcel of land, she fenced, it built a semi-permanent house and a store.
7. She further contends that she took possession of the land in the year 1997, planted trees and cultivated food crops and has been living on the said land to date.
8. It is her contention that an allotment had been carried out by the late Chief Rorogu and one Mr. Langat Tingoi who was the chairman of the Ogiek Community and explains that the Ogiek Community is made up of clans whose individual members had been registered.
9. It is also her contention that in the year 2006, one Philip Cheruiyot Koech started laying claim to her land and alleged that he had a title deed.
10. It is further her contention that she filed a case before the Land Dispute Tribunal in Olenguruone and the tribunal ruled in her favour.
11. She contends that the Defendant filed an appeal before the Rift Valley Appeals Tribunal in Land Dispute Appeal No. 128 of 2006.
12. She also contends that sometime in February, 2018 the Defendant entered her land, constructed a structure and cut down trees.
13. She ends her deposition by stating that she has lived on the land continuously and peacefully without any interruptions.

Defendant's Response.

14. The Defendant filed a Replying Affidavit sworn on 21st July, 2018.
15. He deposes that the Plaintiff and her husband Johana Sigei own the adjacent property which is land parcel No. Nakuru/Tinet/Sotik Settlement Scheme/574.
16. He also deposes that the Plaintiff has never been in possession of the suit property as he has been in exclusive possession.
17. He further deposes that the land is being managed by his sister Florida Chelangat Cheruto who has planted potatoes and cabbages on it.
18. It is the Defendant's deposition that the Plaintiff has sold their parcel of land No. Nakuru/Tinet/Sotik Settlement Scheme/574 and now want to claim his land.
19. It is also the Defendant's deposition that the Plaintiff lives in Chepseon and therefore her claim of adverse possession is unfounded.



20. It is further the Defendant's deposition that there have been a number of suits between him and the Plaintiff including Land Dispute Case No. 2 of 2007.
21. He deposes that he has annexed photographs that show the houses on the land and the other photographs show the Applicant's house in the adjacent land which she had sold.
22. He ends his deposition by seeking that the Plaintiff Originating Summons be dismissed with costs.

Factual Background.

23. On 17th February, 2020 the Court gave directions that the Originating Summons be heard by way of viva voce evidence. The Originating Summons was deemed as a Plaint while the response as a Statement of Defence.

Plaintiff's Evidence.

24. Edna Chepkurui Sigei testified as PW1. It was her evidence that she resides in Sotik, Tinet and is a farmer.
25. It was also her evidence that she knew the Defendant and that land parcel No. Nakuru/Tinet/Sotik/573 belonged to her.
26. It was further her evidence that she was given the land by the government which was allocating land to the members of the Ogiek Community.
27. She testified that she used to live in Karandit village in Tinet which was situated in a forest. She went on to state that she was a member of the Ogiek Community.
28. She explained that the Ogiek Community had many clans and testified that she belongs to the Karandit clan. She went onto testify that as a member of the said clan she was given land by the government in the year 1997 adding she was allocated a parcel of land in Kuber village measuring five acres.
29. It was her evidence that a committee comprising of the Chief, a surveyor and representatives of various clans was established and added that the committee was in charge of allocation of land.
30. It was her further Evidence that Joseph Roroku, who was the Chief at the time, together with Peter Langat and John Tirop showed her the suit property, she took possession and thereafter planted maize and potatoes on it.
31. It was also her evidence that the people that were settled on the land were natives but other people brought their relatives.
32. It was further her evidence that she used the land until the year 2005 when the Defendant showed up on the land and claimed that it belonged to him.
33. She testified that the Defendant showed her a Kenya Defence Force work Identity Card and threatened to take her land adding that when this happened, he was in the company of his brother whose nickname is Kabyanga.
34. She also testified that the Defendant had given his name for purposes of land allocation but on the day set for occupation, he was not present.
35. She further testified that the Defendant claimed that he had an allotment letter. It was her evidence that she informed the Defendant that her parcel No. was 573, his brother's parcel No. was 572 while parcel No. 574 belonged to her husband.



36. It was also her evidence that she went to the Chief who together with Peter and John advised them to go to the tribunal at Olenguruone and that she filed case No. 128 of 2006 against the Defendant.
37. It was further her evidence that before she went to the tribunal, she visited the District Officer Keringet in the year 2005 who then summoned the Defendant but he failed to appear before the District Officer.
38. She testified that when Philip did not show up, the District Officer sent the Chief to go to the land and establish what was happening. She went on to state that when the Chief visited the suit parcel, he found the Plaintiff in possession of it.
39. She also testified that at the Tribunal, the Defendant appeared together with his brother Kabyanga and that the Tribunal held that the suit property belonged to her.
40. She further testified that the Defendant filed an appeal in Nakuru and on appeal, it was held that the suit property belonged to the Defendant and that she subsequent to the said determination, filed the present suit.
41. It was her evidence that she was involved in an accident in the year 2017 and while she was in hospital, she was informed that the Defendant had taken possession of the suit property.
42. It was also her evidence that she had built a house on the suit property but it burnt down after which she built a grass thatched house and store which stand on the suit property.
She added that the said house has two rooms.
43. It was further her evidence that she has a green card which shows that the Defendant was issued with a title in the year 2005. She went on to state that the Court issued an order and a caveat was registered against the suit property. The green card was marked and produced as Exhibit P1.
44. She testified that her prayer is that the Court cancel's the title to the suit property because it is hers and added that she planted Cyprus and Blue gum trees.
45. She also testified that she had annexed photos to her supporting affidavit sworn on 23rd March, 2018 and explained that there is a photograph of a hut that was demolished and that the man the photograph is her husband. She further explained that the said hut was built in the year 1997.
46. PW1 further testified that the next photo shows trees that she planted on the suit parcel and particularly a big Cyprus tree.
47. It was her evidence that the next photo showed her husband standing next to the store she had built and also stated that there is another photo showing an unfinished house which belongs to her neighbor.
48. She asked the Court to look at all the other photos and grant her the orders sought in the Originating Summons adding that she had been in possession of the suit property measuring five acres since the year 1997.
49. Upon cross examination, she admitted that her affidavit in support of the Originating Summons does not have a date and month but it is of 2017.
50. She also admitted that in paragraph 11 of her Supporting Affidavit she deposed the Defendant entered the suit property in the year 2018 and yet he occupied the suit parcel in the year 2005.
51. PW1 further admitted that she was not issued with an allotment letter but knew that the suit parcel number 573 was even though she was not given any documents.



52. She confirmed that her husband was issued with an allotment letter and explained that the practice was that a married person was issued with an allotment letter for himself while his wife is given land.
53. She also confirmed that her husband, Joseph Sigei was allotted land parcel No. 574 while she was allotted land parcel No. 573. She further confirmed that her husband was issued with a title deed.
54. PW1 confirmed that she was not issued with a title deed and explained that the President presented title deeds to a few people and others were required to go to Nakuru.
55. She stated that the Defendant took her title deed and confirmed that when they were being given land, people were required to sign. She confirmed that she did not sign and that it was her husband who signed.
56. She confirmed that even though her husband signed, he did not collect his title deed and further confirmed that her husband sold a portion of his parcel of land to pay hospital bills.
57. She admitted that the person who purchased a portion of parcel No. 574 has built a house on his portion. She clarified that the photos she had produced were for land parcel No. 573 which was her parcel of land.
58. She admitted that even though she claimed that the Chief went to the suit parcel in the company of the Committee, she had no records to show that the said visit took place.
59. She confirmed that her husband went to the Lands office in the year 2018 and that she registered a caution on the land upon consultation with an Advocate. She explained that in the year 2007 they contacted an Advocate known as Kibet and instructed him to register a caution but she was not aware if such a caution was registered.
60. PW1 further confirmed that she lived on the suit property peacefully until the year 2005. She also confirmed that it had been seventeen years of not living in peace. The said period is between the year 2005 to 2022.
61. She admitted that the Defendant had had the title from 12th October, 2005. She stated that after the year 2005, she continued staying on the land until the year 2017.
62. She also admitted that there was a tribunal case in Olenguruone and before that, there was a case in Molo which was heard in the year 2006. She explained that subsequently, they went to the Tribunal in Nakuru.
63. She admitted that the Defendant did not attend the said hearings but instead sent his brother to appear on his behalf. She confirmed that the tribunal at Nakuru held that the suit property belonged to the Defendant adding that she was dissatisfied with the said determination and therefore came to Court.
64. She stated that what she filed in court is an appeal. She admitted that she is no longer in occupation and that it is the Defendant's sister who has built a house on the suit land.
65. She confirmed that her house still stands on the suit land and that her trees were cut down and another house built by the Defendant.
66. When referred to the photographs annexed to the Supporting Affidavit, she stated that the house on the first photo was built by the Defendant's sister and that she used her trees to build the house.
67. She confirmed that the suit land used to be part of a forest and that her land did not have big trees. She denied that she was the one trying to take away the land from the Defendant and reiterated that she was allocated the land in the year 1997.



68. Upon re-examination she stated that her husband had an allotment letter. She clarified that she did not get an allotment letter because the clan decided that if a person was married, the man and his wife would both get the land.
69. She reiterated that her house still stands on the land.
70. Upon clarification by the Court, she stated that she belonged to the Karandit Clan which clan the Defendant also belonged to.
71. Rhoda Cheron Langat testified as PW2. She stated that she had filed a witness statement dated 29th June, 2022. She prayed that the Court adopts the said statement as part of her evidence in chief which prayer the Court acceded to.
72. It was her evidence that she previously lived at Tinnet she testified that she had land in Tinnet adding that her parcel of land is No. 578 and that her child still lives on it.
73. It was also her evidence that the parcels around Tinnet were allocated by the government as it was a government settlement Scheme. She went on to explain that the people who live on the said parcels of land are the Kalenjini community but from different clans.
74. It was further her evidence that she knew the Plaintiff as she had also been given land. She testified that the land was in a forested area and that they became friends as they cleared the land and built houses together early in the year 1998.
75. She testified that she was not aware of the Plaintiff's parcel number but she was in block one while the Plaintiff was in block two and added that there was a feeder road between the said parcels of land.
76. She also testified that she came to know the Defendant in the year 2006 when she heard that the Defendant was claiming the Plaintiff's land.
77. It was her evidence that they were allocated the land in the year 1997 but they built houses in the year 1998. It was also her evidence that the Plaintiff had a very old house on the land.
78. It was further her evidence that the suit land belongs to the Plaintiff and that she did not see the Defendant during the process of allocation of land.

PARA 79.

In her witness statement dated 29th June, 2022 PW2 states that after they were allocated land, she met the Plaintiff's husband known as Johana Sigei who was also putting up a house.

80. She also states that after they finished constructing their houses, she moved to her home in the year 1998 and later in the same year the Plaintiff also moved into hers and they lived together as neighbours.
81. She further states that the Defendant was not present when the land was being allocated in the year 1997 and that she has always known the Plaintiff to be the owner of the suit property.
82. She states that in the year 2018 two semi-permanent houses were put up on land parcel No. 573. Upon inquiry from the Plaintiff she was informed that it was the Defendant's sister who was now living on the suit property.
83. Upon cross examination, PW2 confirmed that the statement filed is hers. She stated that she lives at Ngata Bridge but had another home at Tinnet where her son lives.
84. She admitted that at the time of allocation, they were each given five acres. She also admitted that the Plaintiff's husband was also given land.



85. She confirmed that her land was in block one which had 4 parcels of land.
86. She also confirmed that she was allocated land together with another lady but the said parcels were taken away from them. She admitted that she did not go to the Tribunal at Olenguruone.
87. She also admitted that she was not given an allotment letter and that all she knew was that her husband was issued with a title deed.
88. She admitted that for one to be allocated land, one needed to have an Identity Card. She confirmed that she had one because it was a requirement before a person could be allocated land.
89. She stated that there was a list of persons who had been allocated land and added that she did not see it. She reiterated that her family together with the Plaintiff's family met when they were building the houses.
90. She admitted that she was not present during allocation but added that everyone was building on their own land. She also admitted that there was a structure built on the suit property by the Plaintiff and that there was also another lady by the name Florida who was the Defendant's relative.
91. She confirmed that the Plaintiff stopped using the land but could not remember when she stopped using it. She admitted that she did not attend the Olenguruone Tribunal and that she only testified before the Tribunal in Nakuru. She confirmed that she was not aware of the outcome of the said case.
92. She stated that she did not know if the Plaintiff had been peacefully living on the suit land.
93. Julius Kiptoo Sitienei testified as PW3. It was his evidence that he lived in Tinet and was one of the Plaintiff's neighbors. It was also his evidence that he lived on land parcel No. 567 that the government gave him in the year 1997.
94. It was also his evidence that he came to know the Plaintiff in the year 1997 when she was allocated land. It was further his evidence that he did not know the Plaintiff's parcel number but from the statement, her parcel was number 573 at Tinet Scheme.
95. He testified that he recorded a statement dated 29th June, 2022. He also testified that the Plaintiff's property was five acres and that the Plaintiff had built on it.
96. He denied knowing the Defendant and testified that in his statement he had stated that Philip Koech Cheruiyot claimed the Plaintiff's land.
97. It was PW3's evidence that he became aware of the said claim in the year 2018 when the Defendant's sister went to the suit land and constructed a house.
98. He further testified that the Plaintiff was his neighbor and that they share a boundary.
99. Upon cross examination, he confirmed that the Plaintiff had been in possession of the suit property since the year 1997. He admitted that he took possession of his property in the year 2002 and found the Plaintiff already in occupation.
100. He confirmed that no one was given an allotment letter and that he was given his title deed in the year 2015 by President Kibaki.
101. He admitted that there was a list that was used in allocation of land which list was in a book. He admitted that he saw the list but only saw his name.



102. He confirmed that the Plaintiff was the lawful owner of the suit property because she started living on the in the year 1997. He confirmed that squatters are not lawful owners and added that the Plaintiff was not a squatter as he had found her on the land and had never seen anyone else on the parcel.
103. He further confirmed that at the time he was testifying, there were three houses on the suit land adding that someone had recently taken possession.
104. He stated that the Plaintiff had a house and a store on the land and that the store had collapsed.
105. He admitted that it was not too long ago when the said store collapsed and confirmed that even though he had not memorized the Plaintiff's parcel number, he knew it was land parcel No. 573.
106. He later clarified that he knew that the suit property had a number even though he had not memorized it.
107. Upon clarification by the Court, he confirmed that he was from the Kapcheruinet Clan and admitted that he did not know the Plaintiff's clan.
108. Richard Arap Tangus testified as PW4. He stated that he had filed the witness statement dated 29th June, 2022 and prayed that the Court adopts the said statement as part of his evidence in chief which prayer the Court acceded to.
109. It was his evidence that he is a farmer and that he lived in Tinnet. It was also his evidence that he knew the Plaintiff as she was his neighbor in Tinnet. He added that his parcel of land was no. 1231.
110. It was further his evidence that he was allocated the land in the year 1997 which was also the same year the Plaintiff was allocated land parcel No. 573.
111. He testified that when they were allocated the land, it was a forest and so they would assist one another as a group in clearing bushes. He explained that the group comprised of the Plaintiff's husband and PW3. He went on to explain that they would clear one parcel and move on to the next.
112. He also testified that the suit parcel was one of the parcels of land that they cleared. He explained that after they cleared the suit land, the Plaintiff planted trees and started cultivation.
113. He further testified that he was not an immediate neighbor to the Plaintiff and that after the Plaintiff took possession, she built a house on the land.
114. It was his evidence that the house the Plaintiff built was a grass thatched house which is still on the suit parcel to date. He went on to narrate that subsequently, he heard that someone else was claiming the land.
115. It was also his evidence that land was allocated according to clans. He explained that he belonged to the Lakwenan Clan while the Plaintiff belonged to the Karandit clan.
116. It was further his evidence that the land was allocated per clan and each clan was given a specific block. He testified that the allocation was for both husband and wife.
117. He also testified that the Ogiek were marginalized and that the government decided to give them land. He explained that the first step was allocation and that the allotment letters came later.
118. He further testified that not everyone received an allotment letter and reiterated that he had been the Plaintiff's neighbor since the year 1997.



119. In his witness statement dated 29th June, 2022, PW4 states that in the year 2006, the Plaintiff informed him that there was a person claiming the suit land and he advised her to pursue her claim in accordance with the law in order to avoid confrontation.
120. He also states that in the year 2018, the Plaintiff's trees were cut down and two semi-permanent houses put up despite the fact that this case was pending in Court.
121. He further states that he found out from the Plaintiff that it was the Defendant's sister who was living in the said house.
122. He states that the Plaintiff is the lawful owner of the suit property since she was allocated the land in the year 1997 when he was also allocated land parcel No. 1231.
123. Upon cross examination PW4 stated that he is over fifty years old and that in the year 1997 he was married. He admitted that his wife was given land and that the arrangement was that a husband and wife get land adjacent to each other.
124. He also admitted that his wife's land is parcel No. 1230 while his land was parcel No. 1231. He further stated that he got his allotment letter much later after following up.
125. He stated that even without the allotment letter one would have land. He admitted that he had a title deed and confirmed that the Plaintiff was not living on the suit property.
126. PW4 admitted that the Plaintiff was working in Kericho while part of her family was living in Tinet. He further admitted that her husband was also away for work.
127. He confirmed that the Plaintiff left the suit property two to three years before the date that he was testifying. He also confirmed that there was an old house and a store on the suit property.
128. He further confirmed that there was another house on the suit land which was on the side. He explained that the new structure was built around three years before he gave his evidence.(He gave his evidence in the year 2022.)
129. He admitted that he had seen a woman living in the new structure. He also admitted that he had never been a witness in any other case and denied having knowledge of any other case.
130. PW4 denied being paid to give evidence in favour of the Plaintiff and stated that he had come to Court to tell the truth.
131. Upon clarification by the Court, he stated that his wife was issued with a title deed to her parcel of land.
132. The Plaintiff's case was closed.
133. Philip Cheruiyot Koech testified as DW1. He introduced himself by stating that he lives in Eldoret and had retired from the army in the year 2017.
134. He was also stated that he had filed his witness statement dated 26th October, 2021 and prayed that the Court adopts the said statement as part of his evidence in chief which prayer the Court acceded to.
135. He also asked that the court to look at the documents attached to his list of documents dated 26th October, 2021.
136. It was his evidence that he was allocated land parcel No. Nakuru/Tinet/Sotik Settlement Scheme 573 and was issued with a title deed on 12th October, 2005 in Keringet. He produced a copy of the title deed as Exhibit D1.



137. It was further his evidence that after they were allocated the land, they were shown their portions but the title deeds came later.
138. He testified that he has been in occupation of the suit property since the year 2005 and that in 2006 the Plaintiff claimed the suit property and took him to the tribunal at Olenguruone. He went on to state that the tribunal at Olenguruone held that the land belonged to the Plaintiff.
139. It was his further testimony that after the tribunal awarded the suit property to the Plaintiff, he went to the Court in Molo and the Court asked them to file an appeal in the tribunal at Nakuru. The tribunal at Nakuru held that the land belonged to him. DW1 produced a copy of the determination by the Land Disputes Appeals Committee Rift Valley Province as Exhibit D2.
140. He further testified that after the appeals tribunal delivered its determination, he built a house on the suit parcel and added that his sister lives on the land. He produced photographs of the suit land as Exhibit D3(a), (b), (c) and (d).
141. It was his evidence that he is the only one living on the suit property. It was also his evidence that he grows maize and potatoes on the suit land.
142. DW1's further evidence was that the Plaintiff is his neighbor and her parcel of land was No. 574 which she has since sold to six different people. He stated that his prayer to Court is to find that the suit parcel belongs to him and not the Plaintiff.
143. In his witness statement dated 26th October, 2021, the Defendant states that he is a member of the Ogiek Community and was therefore allocated the suit property.
144. He also states that he appears as allottee No. 216 in the bluebook which is evidence that he was allocated the suit property by the government of Kenya.
145. He further states that the Plaintiff's husband, one John Kipkoskei Sigei, was allocated land parcel No. Nakuru/Tinet/Sotik Settlement Scheme 574 that borders his parcel of land.
146. He states that the Plaintiff was never allocated any parcel of land as she did not have an identity card at the time of allocation.
147. He also states that he met the Plaintiff in the year 1994 when he had gone to inspect the suit parcel and that he introduced himself as the owner of the neighboring parcel of land.
148. He further states that thereafter the Plaintiff encroached on the suit property and planted trees at one of the corners while claiming that the suit parcel belonged to her.
149. He states that the case filed by the Plaintiff before the Land Disputes Tribunal at Olenguruone was case No. Nakuru/Olenguruone/Ltd No. 2008 of 2006 where she had claimed ownership of the suit property.
150. He also states that the Land Disputes Tribunal delivered its ruling on 11th December, 2006 and declared the Plaintiff to be the owner of the suit property.
151. He further states that he appealed to the Land Dispute Appeals Committee which delivered its ruling on 13th November, 2007 and made a declaration that the suit property belonged to him.
152. In his witness statement, DW1 continues to narrate that the Plaintiff's husband went to the area chief and informed him that he was not interested in the case dealing with the suit property as it did not belong to him and neither did he have any interest in it.



153. He states that the Plaintiff and her husband later subdivided land parcel No. Nakuru/Tinet/Sotik Settlement Scheme 574 into four plots and sold them to other people.
154. He also states that after the Plaintiff and her husband sold their land, they moved to Kericho where they are living to date.
155. He further states that the Plaintiff has never lived or cultivated the suit property and that the suit land remained barren until he begun to develop it.
156. He narrates that in the year 2018, he constructed two semi-permanent houses on the suit property and asked his two sisters known as Caroline Chelangat and Florida Rono to move to the land where they have been cultivating and rearing animals.
157. He states that he has never allowed the Plaintiff to occupy the suit property or carry out any development. He also states that the Plaintiff only intends to frustrate him and illegally acquire the suit property that had been allocated to him by the government.
158. He further states that he is the legal and bonafide owner of the suit property and that the Plaintiff is not entitled to the prayers sought.
159. Upon cross examination, DW1 admitted that the Tinet parcels were given to the Ogiek Community who were living in the forest.
160. He also admitted that he was working in Eldoret but his family was in the forest. He further admitted that his wife was not living in the forest.
161. He confirmed that he was working in the army together with his wife. He also confirmed that the allocation Committee had three members. There was Mr. Kemei Rorok who was the chairman and Chief of the area. The other members were from the Karandit Clan which he is a part of. They were Josephat Langat and Sumani.
162. He admitted that he had forgotten the other members of the committee. He denied that the reason why he did not know the other members was because he was not living on the land.
163. He confirmed that the Chief's name is Rorok and his mandate was to ensure that only genuine people were given the land. He admitted that he was shown the land in the year 1998 but took occupation in the year 2005 and that the dispute started after his occupation.
164. He acknowledged that the Plaintiff had a house on her land but not on land parcel No. 573.
165. He admitted that out of the witnesses who testified in support of the Plaintiff's case he only knew PW3. He admitted that he was present in Court when he testified and that his parcel is next to the suit land . He added that PW3's testimony was not true.
166. He also admitted that he had seen PW4 in Court but denied knowing him. He stated that PW4 lives in Timboroa which is almost ten kilometers away from the suit property. He denied that his parcel of land was No. 1231 and stated that he had seen him in Court for the first time.
167. He admitted that he knew PW2 as her parcel of land was close to his land which was only four plots away. He confirmed that PW2 had built her house before him but stated that he did not agree with her testimony.
168. He admitted that at the time the dispute was before the Tribunal at Olenguruone, he was the one in occupation of the suit parcel. He also admitted that the Olenguruone Tribunal was comprised of elders from Olenguruone.



169. He confirmed that Olenguruone was about twenty kilometers from the suit parcel and that the Olenguruone Tribunal's decision was delivered on 15th November, 2006.
170. He also confirmed that the Appeal from the decision of the Olenguruone Tribunal was filed on 3rd April, 2007 and that it was filed after sixty days had lapsed.
171. He denied that the Court in Molo adopted the award of the tribunal as judgement of the Court as it had asked him go on appeal.
172. He admitted that his sister took occupation of the suit property in the year 2010 while his brother had gone to the suit property in the year 2005.
173. He confirmed that his brother did not build on the suit land and added that he is the one who built in the year 2010. He denied that the Plaintiff had lived on the suit property from the year 1997.
174. When he was shown the photographs annexed to the Supporting Affidavit of the Originating Summons, he confirmed that the first picture was of a wooden house that he had built for his sister.
175. He also confirmed that the third picture showed a grass thatched hut that was falling. He stated that the said photo was for land parcel No. 574 and not 573.
176. He further confirmed that the sixth photograph shows a grass thatched and wooden house. He acknowledged that there was a man standing next to the said structure and stated that the house was on land parcel No. 574 and not 573.
177. He admitted that the seventh photograph shows a frame of a house made of sticks which he stated was on land parcel No. 574 and not 573.
178. He also admitted that from the year 2005, he together with the Plaintiff attended meetings before the Chief as the Plaintiff had reported their dispute to him.
179. He confirmed that after the tribunal made its determination, the Chief stated that the land belonged to him. He denied the allegations that he together with his wife did not qualify for allocation of land because they were employed and not living in the forest.
180. DW1 admitted that he got his title in Olenguruone after people from the lands office brought the title to them. He denied having any knowledge that the Plaintiff had registered a caution on the suit property in June, 2007. He also denied that the caution had been removed without her knowledge.
181. Upon re-examination he stated that the first photograph showed his house which was on land parcel No. 573. He also stated that the third and sixth paragraphs were taken on land parcel No. 574.
182. He further stated that land parcel No. 574 belonged to the Plaintiff's husband. He reiterated that he took possession in the year 2005 and that since then, he has been the only one who has been in possession.
183. He reiterated that he is a member of the Ogiek Community and that the land was being allocated to members of the Ogiek Community.
184. He further reiterated that the Plaintiff together with her husband was given land parcel No. 574.
185. Michael Kiptanui Kabet testified as DW2. He stated that he had filed a witness statement dated 27th January, 2023. He prayed that the Court adopts the said statement as part of his evidence in chief which prayer the Court acceded to.



186. It was his evidence that he knew the Defendant since they live together at Kaber C village. He went on to testify that he owns land parcel No. 555 in the said village while the Defendant was on land parcel No. 573.
187. It was also his evidence that he started living in the village in the year 2000 and that he knew the Defendant the same year he moved to the village.
188. It was further his evidence that land parcel No. 573 was occupied by the Defendant's sister who did farming on the land.
189. He testified that he was not aware of any dispute with respect to the suit property and only knew that land parcel No. 573 was owned by the Defendant.
190. He also testified that he did not know the Plaintiff and added that the Plaintiff had never been occupation of land parcel No. 573. He further testified that from his parcel of land, he had a full view of land parcel No. 573 and went on to state that the Defendant is his neighbour.
191. In his witness statement dated 27th January, 2023, DW2 states that the Defendant's sister who is occupation of th suit property was known Florida Chelangat Cheruto.
192. He also states that he does not know the Plaintiff's husband and neither has he ever seen him or the Plaintiff in the area.
193. He further states that since he was appointed as a village elder, he had never received any complaint or dispute regarding the suit parcel.
194. He narrates that he never saw the Defendant cut down trees on the suit property and states that the suit property belongs to the Defendant.
195. Upon cross examination, he confirmed that he is a village elder. He also confirmed that the parcels of land were allocated by the government to the people who were living on the land.
196. He further confirmed that the suit property was at Tinet Scheme. He stated that the parcels were allocated to members of the Ndorobo Community who were living in the forest.
197. He admitted that he was living in the forest with his parents who also got land when he got land. His family had five people and each one of them got land.
198. He also admitted that he was from the Kibasemek Clan and that each clan had a chairman. The chairman of their clan was one Kemei.
199. He further admitted that the Defendant and him come from the same clan and that Kemei identified their clan members. He confirmed that he also knows the Karandit Clan.
200. He also confirmed that he could see one Tanguis in Court and stated that he was not a member of the Karandit Clan. He went on to state that the Defendant was living in the forest with them.
201. He further stated that he was not aware that the Plaintiff was away for some time and that when she got back she found the Defendant in occupation.
202. DW2 admitted that the Defendant's sister built a house on the suit property about 5 to 6 years before he gave his evidence in the year 2023. He confirmed that the Defendant did not build in the year 2000 as he was employed by the government and was at work.
203. He also confirmed that he got his land in the year 2000 and that the Defendant came later. He stated that the Defendant went to the land seven years before and built a house for his sister.



204. He disclosed that the Defendant had never lived on the suit property and that from his parcel of land he could see the suit parcel.
205. He confirmed that he never left the village and was also not aware that there had been a dispute before the tribunal between the Plaintiff and the Defendant.
206. He admitted that he knew Peter Langat and stated that he was not aware if he was the Chairman of the Karandit Clan or if he had given evidence before the tribunal.
207. He also admitted that he knew Tigo of Kibaserek Clan and not Tigo of Karandit clan. He denied being aware of the nature of his evidence before the tribunal. He insisted that he was only aware of the case before the Court.
208. He confirmed that he did not know Tungus as he had only heard about him. He admitted that he knew Rhoda Cheron who was his neighbor and that he did not agree with her evidence.
209. DW2 also admitted that he knew Julius Kiptoo and stated that he did not agree with the evidence that he gave before the Court. He denied that he was paid to attend Court and when he was shown photographs on page 8 of the trial bundle, he admitted that the said photos showed a demolished house that was on land parcel No. 574. He stated that the said house belonged to the Plaintiff's parents.
210. When referred to the photographs at the bottom of page 7 of the bundle, he admitted that the house in the photo belonged to the Plaintiff's mother. He confirmed that it is a mud house which was grass thatched. He admitted that he could not remember her name but she used to live on the suit property.
211. When referred to the photographs on page 6 of the trial bundle he confirmed that there was a person standing next to a house. He admitted that he could not recognize the said person but could identify the house. He confirmed that the said man was standing next to the house in the previous photograph.
212. He denied that he was in Court to give false testimony and also denied that the land belonged to the Plaintiff who had been evicted by the Defendant.
213. Upon re-examination he stated that the parcels of land were allocated to the Ndorobo Community by the Chairman of the clan.
214. He also stated that there were seven clans and that the Defendant was a member of the Ndorobo Community.
215. When referred to the photograph on page 8 of the Plaintiff's trial Bundle, he confirmed that the house was on land parcel No. 574 while the house on the photograph on page 6 was also on land parcel No. 574.
216. He stated that the Plaintiff's parents lived on land parcel No. 574 which does not belong to the Defendant and the house that was on the land does not also belong to him.
217. Johnson Kemei Kitembe testified as DW3. He stated that he had filed a witness statement dated 3rd February, 2023 and prayed that the Court adopts the said statement as part of his evidence in chief, which prayer the Court acceded to.
218. It was his evidence that he knows the Defendant who is a member of the Karandit clan. It was also his evidence that he was the Chairman of the Karandit Clan.
219. It was further his evidence that he was elected chairman in the year 1998 around which time they were allocated land by the government. He added that there were several clans.



220. He testified that his clan had 284 members and that the Defendant was listed as No. 216 on the register which register was also referred to as the blue book.
221. He went on to testify that they worked with surveyors and subsequently, the Defendant was given land parcel No. 573 and later issued with a title in the year 2005.
222. He further testified that the government allowed any persons with disputes to report them to the District Officer 1 within three months.
223. It was his evidence that after the period of three months had lapsed, the Plaintiff reported to the tribunal that land parcel No. 573 belonged to her.
224. It was also his evidence that he was not allowed to testify before the tribunal and that the tribunal ruled that the suit property belonged to the Plaintiff.
225. It was further his evidence that in the year 2007, the Defendant appealed to the Nakuru Tribunal which held that the suit property belonged to the Defendant.
226. He testified that he was present at the tribunal in Nakuru and that he still lived in the settlement scheme.
227. He also testified that Florida, the Defendant's sister, lives on land parcel No. 573 and added that he has only seen the house that Florida lived in and had not seen any other houses on the suit land.
228. He further testified that they were all squatters before the government allocated them land and that land parcel No. 573 belonged to the Defendant.
229. In his witness statement dated 3rd February, 2023 DW3 states that since the Land Dispute Appeals Committee delivered its ruling on 13th November, 2007 he has not seen the Plaintiff.
230. He also states that the Defendant has been in peaceful possession of the suit property and no dispute has been reported to him.
231. Upon cross examination, he admitted that he lived in the Tinet area which is a large settlement. He confirmed that the persons who were allocated land at Tinet were from the Ogiek clan that was previously known as Ndorobo. He stated that they no longer use the name Ndorobo.
232. He also confirmed that each clan had a chairman and that the Chairman of Karandit Clan was known as Langat and that he was appointed in the year 1997.
233. He further confirmed that he was a member of the clan and that his parcel of land is No. 2451. His land, is four kilometers away from the suit property.
234. He admitted that he did not know the Defendant's neighbors and denied knowing Rhoda Cheroni and Julius Kiptoo Sitienei.
235. He admitted that he knew Richard Tungus and added that he was not a member of their clan. He also admitted that he knew the Kibassek Clan and stated that the Defendant was not a member of the said clan.
236. He also stated that DW2's evidence was not true because he and the Defendant are members of the Karandit clan.
237. He admitted that he knew the Plaintiff and stated that she had not made any developments on the suit property but had only built on her husband's land.



238. He stated that it was not true that the first chairman of the clan had given land to the Plaintiff. He admitted that he knew Chief Rorogu and confirmed that he was a member of the committee allocating land. He explained that land was first identified before adjudication.
239. He admitted that the Chief gave evidence before the tribunal that the suit property belonged to the Plaintiff. He also admitted that he knew Tigu who was the interim chairman of the Karandit Clan and that even though his evidence was that the suit property belonged to the Plaintiff, it was not true.
240. He admitted that he became Chairman in the year 2004 and that they confirmed the Defendant as the owner of the suit property.
241. He stated that the Defendant built a house on the land in the year 1998 and that any other witness saying that he built a house on the land six years ago was not telling the truth.
242. He confirmed that even though the Defendant built a house on the land, he had never lived on it and added that it was his sister who was living there.
243. He stated that he knew the house on the suit property. When he was shown the photograph on page 8 of the Plaintiff's trial bundle he stated that the house was on land parcel No. 574 and not on the suit property.
244. He confirmed that he was the one who had allocated the Plaintiff's husband land parcel No. 574 and went on to state that that is where the Plaintiff is living.
245. He also confirmed that the Plaintiff's parents have never lived on the suit property and that anyone who stated that they had lived on the suit land was not telling the truth.
246. When referred to the first photograph annexed to the affidavit in support of the Originating Summons, he stated that he did not know the said house. He went on to state that it was not the house that the Defendant had built for his sister.
247. DW3 reiterated that the first chairman of Karandit clan did not allocate the suit land to the Plaintiff land and he further stated that the Defendant did not demolish the Plaintiff's house.
248. He further admitted that title deeds were issued in the year 2005 and that he was part of the Committee that processed the titles.
249. He denied that he engaged in any fraudulent re-allocation of land to the Defendant. He admitted that he was invited to give evidence at Olenguruone but was chased away. DW3 stated that he did not know why the Defendant did not mention that they were chased away.
250. Upon re-examination, DW3 stated that land parcel No. 574 was allocated to Sigei who was the Plaintiff's husband and added that the Plaintiff has been living on land parcel No. 574 and that she never lived on land parcel No. 573.
251. He also reiterated that Langat was present in the initial committee upon appointment by Chief Rurugu. He explained that his duty was to physically point out to the members of the clan their already subdivided parcels of land and document them as having been allocated and them having taken possession. He went on to explain that Langat's initial work in respect of the allocation of land to the Karandit clan was endorsed and that any person who did not belong to the Karandit clan was asked to go back to his or her clan.
252. He confirmed that land parcel No. 573 was allocated to the Defendant by the Langat Committee which allocation he confirmed with the surveyor and a title deed processed.



253. He also reiterated that the Plaintiff lived on land parcel No. 574 with her husband and that he had heard that they had since sold the said parcel of land.
254. He further reiterated that land parcel No. 573 belonged to the Defendant while land parcel No. 574 belonged to the Plaintiff's husband.
255. DW3 stated that the Plaintiff did not take any complaints to his office within three months as they had earlier been advised. He explained that the evidence tendered by Langat before the tribunal was false and added that he did not fraudulently allocate the suit land to the Defendant.
256. He also stated that he did not work alone as they worked with government officials in allocating the land before the titles were issued.
257. Samwel Kipngetich Sumuni testified as DW4. He stated that he had filed his witness statement dated 3rd February, 2023 in Court. He prayed that the Court adopts the said statement as part of his evidence in chief which prayer the Court acceded to.
258. It was his evidence that he was the Secretary of the Karandit Clan which was one of the clans of the Ogiek Community. He went on to explain that the Ogiek Community was allocated land in the year 1997 and that the said land was at the Tenet Settlement Scheme.
259. It was also his evidence that the Karandit clan was given 285 parcels and that each parcel measured five acres. He went on to testify that he knew the Defendant and that the Defendant was allocated parcel No. 573.
260. It was further his evidence that they had a register but he had not brought the register to court.
261. He testified that the Defendant's name was in the register and that before allocation of the land, the clan and the District Officer made confirmation because there were a lot of complaints by people who had not received land.
262. He also testified that he did not receive any complaint in respect of land parcel No. 573 and did not also hear of any dispute after the title deed of the said parcel had been given to the Defendant.
263. He further testified that after he issued the title deed to the Defendant, he heard about the Plaintiff. He met with the Plaintiff at the tribunal at Olenguruone when there was a dispute relating to land parcel No. 573.
264. It was his evidence that he was present during the hearing at the tribunal where the Plaintiff had registered her complaint and that the tribunal ruled in her favour.
265. It was also his evidence that the Defendant appealed the decision of the tribunal and on appeal the Defendant got a favorable award.
266. It was further his evidence that the person in occupation of the suit property was Florida who was the Defendant's sister. He testified that the Defendant was the owner of the suit property and denied that he knew the Plaintiff.
267. He also testified that as the secretary, his evidence was that the suit property was allocated to the Defendant.
268. In his witness statement dated 3rd February, 2023, DW4 states that the Defendant's name was registered as number 216 on sheet 15-16 of the blue book.



269. He also states that after the members of their clan were allocated land, the members of the public were given a three months window to raise any issues or disputes on the allocated land.
270. He further states that no dispute was raised regarding the suit property during the three months window.
271. He states that the case filed by the Plaintiff at the Olenguruone Tribunal was serialized as Nakuru/Olenguruone/ltd No. 2008 of 2006.
272. He also states that after the Land Disputes Appeals Committee delivered its ruling on 13th November, 2007 where it declared the Defendant the owner of the suit property, he has not seen the Plaintiff and that the Defendant has been in peaceful possession of his parcel of land.
273. Upon cross examination he confirmed that he was the secretary of the Karandit Clan having been elected in the year 1997.
274. He admitted that he attended the tribunal proceedings and that when the land was being allocated by the government, Mr. Kemei was the Chairman of the Clan.
275. He confirmed that he knew Mr Langat and stated that he, Mr. Langat was not the Chairman of the Karandit Clan.
276. He explained that when land was being allocated he was the secretary and stated that he did not have the register in court. He sought time to avail the register.
277. He stated that he attended the tribunal proceedings in Olenguruone where evidence was given that the Defendant was not in the Country when the land was being allocated and he stated that this evidence is not true.
278. He confirmed that he only came to know of the Plaintiff during the tribunal proceedings. He admitted that land was being allocated to people who were living in Tinet Forest.
279. He also admitted that the Defendant was living in Karandit Village within Tinet Forest with his mother and father. He further admitted that Florida was not living in the forest.
280. He confirmed that the Plaintiff was not allocated land and also confirmed that the Plaintiff's husband was allocated land but could not remember the parcel number.
281. He also confirmed that he was one of the Defendant's witnesses before the Tribunal at Olenguruone and further confirmed that he could not remember the Plaintiff's witnesses.
282. DW4 confirmed that the Defendant had called Mr. Kemei as one of his witnesses before the tribunal. He stated that if Mr Kemei's evidence was that the Plaintiff had been allocated land then such evidence was not true.
283. He admitted that he lives about 10 kilometers from the suit land and denied seeing any houses built by the Plaintiff.
284. He also admitted that he heard that the Defendant's sister, Florida, lives on the suit land and further stated that he did not know the kind of house she was living in.
285. DW4 also confirmed that the title was issued by the government and not the officials and that he got his title in the year 2005 which was also the year the Defendant got his title deed.
286. He admitted that the said parcels have a caveat and reiterated that the suit property was allocated to the Defendant and not the Plaintiff.



287. He confirmed that he had not seen any house built by either the Plaintiff or the Defendant.
288. Upon re-examination he stated that he was elected secretary of Karandit Clan between 1995 and 1996 and denied knowing the clan Mr. Langat came from.
289. He reiterated that the only people who were allocated land were those living in the forest and they included the Defendant who was also living in the forest.
290. He also reiterated that he knew that Plaintiff's husband who was allocated land and that his job as secretary was to prepare and compile the register of persons who had been allocated land.
291. The Defendant's case was then closed.

Issues for Determination.

292. The Plaintiff filed her submissions dated 19th April, 2024 while the Defendant filed his submissions dated 16th May, 2024.
293. The Plaintiff in her submissions gives a summary of each of the parties' evidence and while relying on Article 162 (2) of *the Constitution* of Kenya 2010, Section 13 of the *Environment and Land Court Act*, Section 38(1) of the *Limitation of Actions Act* submits that this Court has the jurisdiction to handle claims of adverse possession.
294. The Plaintiff submits that she acquired land parcel No. Nakuru/Tinet/Sotik/573 by way of adverse possession as she has been in possession from the year 1997 to 2018 when the Respondent built a structure on the suit property and burnt some of her houses.
295. The Plaintiff relies on the judicial decision of *Kimani Ruchine vs Swift, Rutherford Co. Ltd* [1980] KLR 10 and submits that by the time the Defendant was obtaining title in the year 2005, she was already in possession of the suit property and that the land was subject to an overriding interest. The Plaintiff relies on Section 28 of the *Land Registration Act* in support of her submissions.
296. The Plaintiff also submits that she has demonstrated and proved the elements of adverse possession as was set out in the judicial decision of *Kasuve vs Mwaani Investments Ltd & 4 Others* [2004] KLR 184.
297. The Plaintiff further relies on the judicial decision of *Peter Mbiri Michuki vs Samuel Mugo Michuki* [2014] eKLR and prays that judgement be entered in her favour and the Originating Summons dated 23rd March, 2018 be allowed with costs.
298. The Defendant in his submissions gives a brief summary of the facts and submits on the following issues;
 - a. Whether the Plaintiff can make a cause of action for adverse possession whereas by her own pleadings, testimony and depositions averred that the title deed the Defendant holds for the suit property was obtained through fraud and that she is the one who is the rightful owner of the suit property.
 - b. Whether the Plaintiff has proved on a balance of probability existence of all the elements and/or ingredients of adverse possession.
 - c. Whether the Plaintiff can claim adverse possession when she is not in actual possession of the suit property.
 - d. Whether costs should issue.



299. With regard to the first issue, the Defendant submits that the Plaintiff alleges that she is the rightful owner of the suit property having been allocated the same by the government.
300. The Defendant also submits that throughout the hearing of the case the Plaintiff alleged that the Defendant acquired the suit property fraudulently and yet her claim in the Originating Summons is different as she is seeking to be declared to have acquired the suit property by way of adverse possession.
301. The Defendant relies on Elizabeth Langat vs Stanley Kipkemboi Langat Nakuru ELC Case No. 342 of 2012 (O.S) 2023 (unreported), Haro Yonda Juaje vs Sadaka Dzenge Mbauro & another [2014] eKLR, Johnson Thiaka Nyaga vs James Kinyua Nyaga & 5 Others [2018]eKLR, Mwatando Mwagambo Wasanga v Ngaruko Mwangome & 10 Others [2014] eKLR and submits that in a claim of adverse possession, the Plaintiff must acknowledge the proprietorship of the Defendant.
302. It is the Defendant's submissions that where a Plaintiff challenges the ownership of the suit property, no claim of adverse possession can be sustained.
303. It is also the Defendant's submissions that since the Plaintiff is alleging that the Defendant does not have a good title to the suit property, she cannot seek for orders of adverse possession as her remedy lies under Section 26(1) of the [Land Registration Act](#).
304. On the second issue, the Defendant relies on the judicial decisions of Paul Kamande Gicheha v Jacob Kinyua Kiragu [2018] eKLR, Celina Muthoni Kithinji v Safiya Binti Swaleh & 8 Others [2018] eKLR, Mbira v Gachuhi (2002) I EALR 137, Jandu v Kirplal & another (1975) EA 225, Mtana Lewa vs Kahindi Ngala Mwangandi [2005] eKLR, Chevron (K) Ltd v Harrison Charo Wa Shutu [2015] eKLR and submits that the Plaintiff failed to prove the elements of adverse possession.
305. The Defendant submits that the Plaintiff has never been possession of the suit property since he acquired the title deed in the year 2005.
306. The Defendant also submits that a claim of adverse possession can only be against a registered owner of property and as such time only runs once a title deed has been obtained.
307. He submits that time could have only begun to run from the date he acquired the suit property which was on 12th October, 2005. He reiterates that Plaintiff has never been in possession of the suit property after he acquired the title deed.
308. On the third issue the Defendant relies on the judicial decisions of Kipketer Arap Marisin v Paul Kipkurui Kurgat [2005] eKLR, Charles Murage Njogo v Jane Wairimu Kimani (as the administrator of the estate of Daniel Kimani Muiruri) [2018] eKLR, [Joseph Gabumi Kiritu vs Lawrence Munyambu Kabura CA No. 20 of 1993](#) and submits that since the Plaintiff is not in possession of the suit property, she cannot claim adverse possession.
309. The Defendant relies on Section 27 of the [Civil Procedure Act](#), the judicial decision of Orix oil Limited vs Paul Kabeu [2014] eKLR and submits that he is the successful party herein and is therefore entitled to costs of the suit.
310. With regard to the Plaintiff's submissions, the Defendant submits that the Plaintiff has failed to demonstrate that she has met all the elements of adverse possession.
311. It is the Defendant's submissions that the Plaintiff's claim that time begun to run in the year 1997 is unsupported by the law because at that time, the land was owned by the government of Kenya and a claim for adverse possession cannot arise as against public land.



312. The Defendant submits that there is a valid award that is in favour of the Defendant in Nakuru LDAC Appeal No. 2 of 2007 Philip Koech Cheruiyot vs Edna Chepkurui Sigei that was delivered on 13th November, 2007 which the Plaintiff has never appealed against.
313. The Defendant also submits that the said award declared him the owner of the suit property and on that basis alone, this suit should be dismissed. The Defendant relies on the judicial decision of *Kiragu v Gicheba (Civil Appeal 138 of 2018)* [2024] KECA 61 (KLR) (2 February 2024) (Judgement) in support of his submissions.
314. It is the Defendant's submissions that the Plaintiff's suit is devoid of merit and should be dismissed with costs.

Analysis and Determination.

315. After considering the pleadings, submissions and testimonies of the Plaintiff, Defendant and their witnesses, the issues that arise for determination are as follows;
- a. Whether the Plaintiff has acquired land parcel No. Nakuru/Tinet/Sotik/573 by way of adverse possession.
 - b. Who should bear the costs of the suit.

A. Whether the Plaintiff has acquired land parcel No. Nakuru/Tinet/Sotik/573 by way of adverse possession.

316. It is the Plaintiff's case that she is a member of Karandit Clan of the Ogiek Community. It is also her case that they used to live in the forest and sometime in the year 1997, the government allocated them parcels of land.
317. It is further the Plaintiff's case that she was allocated land parcel No. Nakuru/Tinet/Sotik/573 in the year 1997 which she took possession and lived on peacefully until the Defendant began to claim it in the year 2005.
318. It is the Plaintiff's case that as a result of the Defendant's claims, she approached the Lands Disputes Tribunal at Olenguruone which held that the suit property belonged to her. It was her further evidence that the Defendant being dissatisfied with the said determination appealed to the Appeals Tribunal at Nakuru which set aside the decision of the Tribunal at Olenguruone and held that the suit property belonged to the Defendant.
319. It is also the Plaintiff's case that since the Defendant acquired the title deed to the suit property, she has not lived peacefully on the land as the Defendant demolished one of her houses and constructed another house for his sister.
320. The Plaintiff submits that she has acquired the suit property by way of adverse possession as she has been in peaceful occupation of the land between the year 1997 and the year 2005 when the Defendant acquired the title deed.
321. In support of her case, the Plaintiff produced a certified copy of the green card for land parcel No. Nakuru/Tinet/Sotik Settlement Scheme/573 (Exhibit P1). The green card was opened on 12th October, 2005 and it shows that the suit property measures approximately 2.00 Ha.
322. Entry 1 shows that on the same date the green card was opened, the suit land was registered to the Government of Kenya. Entry No. 2 shows that Philip Cheruiyot Koech was registered as the owner on the same date. Entry No. 3 shows that a title deed was issued on 12th October, 2005.



323. The Defendant's case on the other hand is that he was allocated land parcel No. Nakuru/Tinet/Sotik Settlement Scheme/573 by the government and issued with a title deed on 12th October, 2005.
324. It is also the Defendant's case that sometime in the year 2006, the Plaintiff lay claim the suit land and she filed a case before the tribunal at Olenguruone. It is further the Defendant's case that the tribunal awarded the Plaintiff the suit property but he was dissatisfied with the determination of the tribunal and therefore appealed to the Appeals Tribunal in Nakuru which held that the suit property belonged to him.
325. It is the Defendant's case that after the Appeals Tribunal made its determination, he started building a house on the suit property and that he also grows maize and potatoes on the land.
326. It is further the Defendant's case that the Plaintiff is his neighbour and she lives on land parcel No. 574.
327. The Defendant produced a copy of a title deed for land parcel No. Nakuru/Tinet/Sotik Settlement Scheme/573 measuring approximately 2.00 Ha. It was issued to him, Philip Cheruiyot Koech, on 12th October, 2005-(Exhibit D1).
328. A copy of the determination by Land Dispute Appeals Tribunal Appeal No. 2 of 2007 was produced. The case was between Phillip Koech Cheruiyot and Edna Chepkurui Sigei- (Exhibit D2).
329. The decision of the said tribunal is as follows;
- “Parcel No. Nakuru Tinet/Sotik/573 belongs to Philip Koech Cheruiyot ID No. 3830375.
- The Respondent is ordered to allow the appellant named above to enjoy the fruits of his sweat as awarded to him by the Karandit Ogiek Community.
- We have hereby set aside the ruling of NKU/Olenguruone/ltd No. 128 of 2006 DATED 11/12/2006”
330. Black and white photographs were produced by the Defendant. They are alleged to be of the suit property. (Exhibit D3 (a), (b), (c) & (d).
331. As this court proceeds to make a determination in this matter on the question of adverse possession, I note that there is an award of Land Dispute Appeals Tribunal Appeal No. 2 of 2007. This award was made on 13th November, 2007. There is no appeal on this award.
332. While evidence tendered attempted to point at the fact that the title was acquired illegally and/or fraudulently, this Court shall proceed on the assumption that the fact of ownership is not in dispute and to that extent, all evidence led on illegally and/or fraudulent acquisition of the suit land by the Defendant is inconsequential. The Plaintiff is claiming ownership by way of adverse possession. Needless to say, parties are bound by their pleadings.
333. A claim of ownership by way of adverse possession presupposes that ownership is not in dispute and it is for this reason that a person desirous that an order of adverse possession be made in his/her favour must attach and/or produce a copy of documents of title in respect of the suit land.
334. It is not disputed that land parcel No. Nakuru/Tinet/Sotik Settlement Scheme/573 is registered in the name of the Defendant. What is disputed is whether the Plaintiff has been in possession of the suit property, when she took possession of it, when she lost possession and whether the period that she was in possession totaled 12 years.



335. Section 38 (1) and (2) of the *Limitation of Actions Act* provides as follows:

- “(1) Where a person claims to have become entitled by adverse possession to land registered under any of the Acts cited in section 37 of this Act, or land comprised in a lease registered under any of those Acts, he may apply to the High Court for an order that he be registered as the proprietor of the land or lease in place of the person then registered as proprietor of the land.
- (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.”

336. The law relating to adverse possession is now settled. There are numerous decisions on the subject. In *Mtana Lewa v Kahindi Ngala Mwangandi* [2015] eKLR, the Court of Appeal held as follows;

“Adverse possession is essentially a situation where a person takes possession of land and asserts rights over it and the person having title to it omits or neglects to take action against such person in assertion of his title for a certain period, in Kenya is twelve (12) years. The process springs in to action essentially by default or inaction of the owner. The essential prerequisite being that the possession of the adverse possessor is neither by force or stealth or under the licence of the owner. It must be adequate in continuity, in publicity and in extent to show that possession is adverse to the title owner.” (Emphasis mine)

337. Also, the Court of Appeal in *Kasuve Vs Mwaani Investments Limited & 4 others* 1 KLR 184 held as follows;

“In order to be entitled to land by Adverse Possession, the claimant must prove that he has been in exclusive possession of the land openly and as of right without interruption for a period of 12 years either after dispossessing the owner or by discontinuation of possession by the owner on his own volition”. (Emphasis mine)

338. In the judicial decision of *Richard Wefwafwa Songoi v Ben Munyiwa Songoi* [2020] eKLR the Court of Appeal held as follows;

- “ 40. A person who claims adverse possession must inter alia show:
- (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.”

339. In the present case, the Plaintiff alleges that she took possession of the suit property in the year 1997 upon allocation by the government. She also alleges that she was in peaceful occupation of the suit property until the year 2005 when the Defendant lay claim on the suit land.

340. Her further evidence is that she has not lived peacefully on the suit land as the Defendant demolished one of her houses and constructed another house for his sister.



341. As stated in the previous paragraphs, the Plaintiff filed a complaint before the Tribunal at Olenguruone which held that the suit property belonged to her. The determination of the tribunal at Olenguruone was set aside by the Appeals Committee in Nakuru.
342. It is also the Plaintiff's evidence that she was in occupation until the year 2017 when she fell ill and the Defendant took possession of the suit property. However, upon cross-examination, she admitted that the Defendant took possession of the suit property in the year 2005 and not in the year 2018 as set out in her affidavit in support of the Originating Summons.
343. Upon further cross examination, the Plaintiff changed tune and stated that she was in possession of the suit property from the year 2005 to 2017.
344. PW2 could not confirm when the Plaintiff lost possession of the suit property while PW4's evidence is that the Plaintiff vacated the suit property two to three years before he gave evidence. It is important to note that he (PW4) testified in 2022.
345. The Defendant on the other hand alleges that he has been in possession since the year 2005 while his sister who is still on the land started living there in the year 2010.
346. DW3's testimony is that the Defendant built a house in the year 1998 but has never lived on the land and that it is his sister who is in occupation. He denied that the Plaintiff ever lived on the suit property.
347. The Plaintiff alleges that she took possession of the suit property in the year 1997 and lived peacefully on it for a period of eight years before the Defendant claimed ownership in the year 2005. Essentially, the Plaintiff was only in peaceful possession of the suit property until the year 2005.
348. It is important to note that between the year 1997 and 2005 when the Plaintiff alleges to have been in possession of the suit property, the suit land was not registered.
349. In the judicial decision of *Ravji Karsan Shanghani v Peter Gakumu* [2019] eKLR the Court held as follows;

“ 15. The Defendant was allocated the suit land on 23rd April 1986 following his application for allocation. At the time of allocation, the land was unsurveyed and it constituted part of Government land and that is how the Government could alienate it. It is trite law that adverse possession cannot accrue against land that is owned by the Government. The Plaintiff contended he occupied the suit land in 1979 and had since that time effected various developments thereon which demonstrated his occupation and possession was adverse to the rights and interests of the registered owner. Thus, even assuming the Plaintiff had during the period 1979 to 1986 occupied and possessed the land under circumstances that could amount to adverse possession, my view is the Plaintiff could not adversely possess the land against the Government such that the Government's rights and interest over the land could be extinguished. The doctrine of adverse possession is inapplicable where the land is public or trust land or is owned by the Government. Section 41 of the *Limitation of Actions Act* excludes Public Land from the application of the Act. Section 41(a) of the Act provides:-

41. Exclusion of public land

This Act does not -



- (a) enable a person to acquire any title to, or any easement over -
- i. Government land or land otherwise enjoyed by the Government;
 - ii. Mines or minerals as defined in the *Mining Act* (Cap. 306);
 - iii. Mineral oil as defined in the Mineral Oil Act (Cap. 307);
 - iv. Water vested in the Government by the *Water Act* (Cap. 372);
 - v. Land vested in the County Council (other than land vested in it by Section 120(8) of the Registered *Land Act* (Cap. 300)); or
 - vi. Land vested in the Trustees of the National Parks of Kenya; or” [Emphasis Mine]

350. The import of this judicial decision is that adverse possession cannot accrue against land that is owned by the government.
351. The Plaintiff alleges that she took possession of the suit property in the year 1997 upon allocation by the government. Between the year 1997 when the Plaintiff alleges to have taken possession and 2005 when the Defendant acquired title, the suit property belonged to the government and was therefore public land. This is as evidenced in the green card- (Exhibit P1)
352. Since adverse possession cannot accrue against land that is owned by the Government, the said period is excluded in computing time in this suit.
353. Having found that the Plaintiff cannot claim adverse possession between the years 1997 to 2005, my next task is to establish whether the facts, as presented, support a claim of adverse possession from the year 2005 until the filing of this suit.
354. In her evidence in chief the Plaintiff stated that she was involved in an accident in the year 2017 and while she was in hospital, she was informed that the Defendant had taken possession of the suit property.
355. In the affidavit in support of the originating summons, at paragraph 11, the Plaintiff deposes that the Defendant entered the suit property in February 2018. In cross-examination, she abandoned this position and stated that the Defendant entered the suit property in 2005 and not 2018. If that be the case, then the period of 12 years which is a condition attaching to a claim of adverse possession has not been met.
356. By and large, the Plaintiff's evidence is contradictory as to whether she was in possession of the suit land from the year 2005 and/or when she lost possession of it.



357. In the judicial decision of *Gatingu Njaumbe v Camiro Muthengi & another* [2020] eKLR the Court held as follows;

“ 17. Consequently, 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.” (Emphasis mine)

358. As was held in the above cited judicial decision, it is imperative for the person claiming adverse possession to prove that his/her possession was adverse to that of the owner and that it was for a period of twelve years.

359. In *Ravji Karsan Sanghani v Peter Gakunu* [2019] eKLR the Court held as follows;

“ 22. In the case of *Francis Gitonga Macharia -vs- Muiruri Waithaka* Civil Appeal No. 110 of 1997 [1998] eKLR which was cited with approval in the case of *Titus Kigoro Munyi -vs- Peter Mburu Kimani* Civil Appeal No. 28 of 2014 [2015] eKLR the Court of Appeal held that the limitation period for purposes of adverse possession only starts running after registration of the land in the name of the Respondent.” [Emphasis Mine]

360. In the judicial decision of *James Maina Kinya v Gerald Kwendaka* [2018] eKLR the Court held that time stops running when a suit is filed by the title owner. In instances where a suit is not filed by the title owner, time continues to run. The Court stated as follows;

“ It is trite law that time stops running the moment a suit is filed by the title owner. In this case time would have stopped running had the Defendant filed an independent suit or a counterclaim in the suit of the Plaintiff. He did not so. In the circumstances therefore, I find that time was running continuously notwithstanding the suit of the Plaintiff.”

361. From the foregoing, it is clear that the period within which the Plaintiff can claim that her occupation was adverse to that of the Defendant is from the year 2005, the proceedings before the Tribunals notwithstanding.

362. He who alleges must prove. The plaintiff has made the allegation that she has been in possession of the suit property for 12 years but has failed to lead evidence of the fact that she has been in continuous, open and peaceful possession of the suit land for 12 years from the year 2005; which is the year that the suit land was registered in the name of the Defendant.

363. The Plaintiff failed to avail evidence to this court, which evidence would have demonstrated how long she was in possession of the suit property from the year 2005 and/or when she ceased to be in possession of the suit property. As aforesaid, the evidence adduced is at best contradictory.

364. In *Wilson Njoroge Kamau v Nganga Muceru Kamau* [2020] eKLR where it was held that;

“ In deciding the issue of Adverse Possession, the primary function of a Court is to draw legal inferences from proved facts. Such inferences are clearly matters of law. Thus, whereas



possession is a matter of fact, the question whether that possession is adverse or not is a matter of legal conclusion to be drawn from the findings of facts” (Emphasis mine)

365. It is impossible for this court to find with certainty that the Plaintiff has been or had been in exclusive possession of the suit land, openly, as of right and without interruption for a period of 12 years from the year 2005.
366. Evidence tendered is that both the Plaintiff and the Defendant has/had put up structures on the suit parcel. The Plaintiff claims that her structures continue to stand on the suit parcel while the Defendant’s evidence is that the alleged structures are on a neighbouring parcel (No. 574) and not on the suit property. The Plaintiff’s witnesses gave evidence of her possession of the suit land as from 1997 and not the year 2005 which year is material for purposes of computing adverse possession.
367. The Plaintiff also acknowledges that the Defendant has his sister living on the suit land. In my view, this possession by the Plaintiff cannot be termed as exclusive.
368. Even assuming that the Plaintiff continued to be in possession from the year 2005 until this suit was filed, her evidence is that the Defendant took possession in the year 2017 while she was in hospital. It is also her evidence that she has not lived peacefully on the land as the Defendant demolished one of her houses and constructed another house for his sister. This testimony coupled with the fact of the disputes between her and the Defendant, which disputes were adjudicated upon at the Tribunals as from the year 2006 until 13th November, 2007 when the Land Disputes Appeal Committee made an award in favour of the Defendant, cannot in my view term her possession as peaceful.
369. I am of the view that the conditions necessary for grant of orders of adverse possession i.e that possession must be actual, open and continuous/uninterrupted must all be met before a Plaintiff can be granted an order of adverse possession. Simply put, it is not enough to show that a Plaintiff’s possession is continuous and for a period of 12 years. The other elements of possession being open and peaceful must also be met.
370. In *Grace Torome v Titus M Mbugua & another* [2016], the Learned Judge stated as follows;
37. Moreover, the 1st Defendant testified that the Plaintiff has only succeeded in keeping him away from the land by threats that he will spear him. These threats were reported by the 1st Defendant as demonstrated by his letter of 5 June 2009, written to the District Commissioner Narok, and copied to the OCPD Narok and the OCS, Nairekia Enkare Police Station.
38. Given the above, it cannot be said that any (sic) possession of the Plaintiff, of the suit properties has been quiet or peaceful. In fact, her current possession is one obtained by force and not by peaceful means. The Plaintiff has failed to satisfy the important criterion of being in open, quiet and peaceful possession.”

B. Who should bear costs of this suit?

371. The general rule is that costs follow the event. This is in accordance with the provisions of Section 27 of the *Civil Procedure Act*. (Cap 21). A successful party should ordinarily be awarded costs of an action unless the Court, for good reason directs otherwise.



Disposition.

372. In the result, I find that the Plaintiff has not demonstrated that she has been or was in peaceful, open and continuous possession of the suit property for a period of 12 years from the year 2005.

373. Consequently, the Plaintiff's suit is hereby dismissed with costs to the Defendant.

374. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 19TH DAY OF SEPTEMBER, 2024.

L. A. OMOLLO

JUDGE.

In the presence of: -

Mr. Kairu for Nancy Njoroge for the Plaintiff.

The firm of Mirugi Kariuki for the Defendant -Absent

Court Assistant; Mr. Joseph Makori.

