



**Labda Co-operative Credit and Savings Society Limited & 2 others v Ayieko & 3 others  
(Environment & Land Case 102 of 2016 & Environmental and Land Originating Summons  
E14 of 2020 (Consolidated)) [2024] KEELC 6863 (KLR) (17 October 2024) (Judgment)**

Neutral citation: [2024] KEELC 6863 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISUMU  
ENVIRONMENT & LAND CASE 102 OF 2016 & ENVIROMENTAL AND  
LAND ORIGINATING SUMMONS E14 OF 2020 (CONSOLIDATED)  
SO OKONG'O, J  
OCTOBER 17, 2024**

**BETWEEN**

**LABDA CO-OPERATIVE CREDIT AND SAVINGS SOCIETY  
LIMITED ..... PLAINTIFF**

**AND**

**LAWRENCE ODHIAMBO AYIEKO ..... 1<sup>ST</sup> DEFENDANT  
DOMINIC JAWA AJUS ..... 2<sup>ND</sup> DEFENDANT**

**AS CONSOLIDATED WITH**

**ENVIROMENTAL AND LAND ORIGINATING SUMMONS E14 OF 2020**

**BETWEEN**

**LAWRENCE ODHIAMBO AYIEKO ..... 1<sup>ST</sup> APPLICANT  
DOMINIC JAWA AJUS ..... 2<sup>ND</sup> APPLICANT**

**AND**

**LABDA CO-OPERATIVE CREDIT AND SAVINGS SOCIETY  
LIMITED ..... 1<sup>ST</sup> RESPONDENT  
THE NATIONAL LAND COMMISSION ..... 2<sup>ND</sup> RESPONDENT**



## JUDGMENT

1. LABDA Co-operative Credit and Savings Society Limited (hereinafter referred to only as “the Plaintiff”) brought this suit against Lawrence Odhiambo Ayieko and Dominic Jawa Ajus (hereinafter referred to only as “the Defendants”) by way of a plaint dated 12<sup>th</sup> May 2016. The Plaintiff averred that it was the registered proprietor of all that parcel of land situated at Mamboleo in Kisumu County known as L.R No. 18992, Grant No. 83633 measuring approximately 1.911 hectares (hereinafter referred to as “the suit property”). The Plaintiff averred that it was holding the suit property in trust for its members on whose behalf it had acquired the property.
2. The Plaintiff averred that on or about 12<sup>th</sup> April 2016 the Defendants entered the suit property accompanied by armed group of people numbering between 50 to 80 and unlawfully and illegally cleared the bushes on the property and damaged the beacons that had been placed thereon. The Plaintiff averred that a week after the said invasion, the Defendants illegally and unlawfully erected two temporary structures thereon thereby denying the Plaintiff the use of that part of the suit property.
3. The Plaintiff sought judgment against the Defendants for;
  1. A permanent injunction restraining the Defendants jointly and severally, whether by themselves, their officers, servants, society, grouping and/or agents or otherwise whatsoever and howsoever from entering, taking possession, trespassing, cultivating, evicting the Plaintiff from, dispossessing the Plaintiff’s members, selling, alienating, transferring, charging, pledging, leasing, wasting or in any manner dealing or interfering with the Plaintiff’s peaceful and quiet possession of L.R No. 18992, Grant No. 83633(the suit property) together with the developments thereon.
  2. General damages for trespass, detinue, conversion and mesne profits.
  3. Costs of the suit together with interest.
4. The Defendants filed a defence and a counter-claim against the Plaintiff on 20<sup>th</sup> June 2016. The Defendants denied that they illegally entered the suit property on 12<sup>th</sup> April 2016 and constructed houses thereon thereafter. The Defendants averred that the parcel of land which they were occupying and which they had occupied for over 40 years with their families was L.R No. 8478, Kisumu District (hereinafter referred to as “Plot No. 8478”). The Defendants averred that Plot No. 8478 was their ancestral land and that the same was yet to be surveyed, adjudicated, demarcated and titles issued in their favour. The Defendants denied that Plot No. 8478 which they were occupying belonged to the Plaintiff.
5. The Defendants averred that the suit property was part of Plot No. 8478 which was their ancestral land and the title issued to the Plaintiff in respect thereof was fraudulent and unlawful. The Defendants denied that they forcibly entered the suit property. The Defendants averred that they had occupied the property since they were born over 40 years ago. The Defendants denied that they constructed houses on the suit property a week after they invaded the property on 12<sup>th</sup> April 2016. The Defendants averred that they constructed the said houses over 20 years ago upon becoming adults and had kept repairing and refurbishing them occasionally whenever need arose. The Defendants averred that the Plaintiff had never occupied the suit property. The Defendants averred that the Plaintiff was attempting to acquire the suit property fraudulently through a corrupt scheme. The Defendants pleaded several particulars



of fraud against the Plaintiff. The Defendants averred that they were lawfully in occupation of the suit property and that the Plaintiff was not entitled to the reliefs sought against them.

6. In their counter-claim, the Defendants averred that they had lived on, used and occupied Plot No. 8478 Kisumu District which was their ancestral land for over 40 years. The Defendants averred that they had their homes on Plot No. 8478 and were also deriving their livelihood from the property. The Defendants averred that the Plaintiffs had unlawfully, irregularly and fraudulently obtained a grant of lease in respect of a part of Plot No. 8478 and were using the same to seek the removal of the Defendants from the property. The Defendants averred that the acquisition of the said portion of Plot No. 8478 by the Plaintiff was unlawful, null and void and could not confer upon the Plaintiff any lawful interest in the suit property.
7. The Defendants sought judgment against the Plaintiff for;
  1. A declaration that Grant No. 83633 in respect of L.R No. 18992 held by the Plaintiff was fraudulent, null and void.
  2. A declaration that the suit property was part of Plot No. 8478 Kisumu District which was part of the ancestral, family and community land belonging to the Defendants which had never been acquired by the Government of Kenya and that the Defendants were entitled to occupy and use a portion of the property which they were occupying to the exclusion of the Plaintiff and its members.

### **The Originating Summons**

7. On 21<sup>st</sup> October 2020, the Defendants brought an application against the Plaintiff and the National Land Commission (hereinafter referred to only as “the NLC”) by way of an Originating Summons dated 6<sup>th</sup> April 2020 in Kisumu ELC No. E14 of 2020(O.S) seeking the determination of among other issues; whether the Defendants had acquired Plot No. 8478 by adverse possession and whether the Plaintiff had acquired its title to the suit property subject to the overriding interest that the Defendants had on the property and whether the Plaintiff acquired a valid title to the suit property.
8. In the Originating Summons, the Defendants sought judgment against the Plaintiff and the NLC for;
  1. A declaration that the Plaintiff’s title regarding Plot No. 8478 was illegally acquired and as such the same was invalid.
  2. A declaration that the NLC illegally and unprocedurally conferred an invalid title to the Plaintiff.
  3. A declaration that the Kenya Gazette No. 3400 of 1976 was never implemented and the intended parcels of land transferred to Kisumu County Council or the same never remained the property of the Government of Kenya.
  4. A declaration that by virtue of the Defendants occupation, use, possession and peaceful enjoyment of the land known as Plot No. 8478 through their late fathers stretching through to their grandfathers and great grandfathers over accumulative period in excess of 70 years, the Defendants’ interest in the property override that of the Plaintiff.
  5. A declaration that the Defendants were the bona fide owners of Plot No. 8478 by virtue of adverse possession and the same should be transferred to them.
  6. The costs of the suit.



9. The Originating Summons was brought on the grounds that the Defendants and members of their families through the lineage of their fathers had been in active uninterrupted possession and use of Plot No. 8478 for over 70 years and that the Government of Kenya never compensated them for the compulsory acquisition of their land through Gazette Notice No. 3400 of 1976. The Defendants averred that as a result of lack of compensation, their interest in Plot No. 8478 was never terminated. The Defendants averred that the land was not available for allocation by the NLC to the Plaintiff. The Defendants averred that the title held by the Plaintiff was illegal and invalid. The Defendants averred that their claim for adverse possession could not be brought in the suit filed by the Plaintiff.
10. The Originating Summons was opposed by the Plaintiff through a replying affidavit sworn by Philip Elias Oloo Oriaro on 18<sup>th</sup> November 2020 filed on the same date. The Plaintiff averred that it was the registered proprietor of the suit property having acquired the same in 2017. The Plaintiff averred that it acquired the suit property on behalf of its members and that it had subdivided the same and allocated portions thereof to its said members two of whom were already in occupation of their respective portions of the property. The Plaintiff reiterated that the Defendants forcibly entered the suit property on 12<sup>th</sup> April 2016 and constructed houses thereon a week later. The Plaintiff reiterated that when they acquired the suit property, the same was vacant. The Plaintiff denied that the Defendants were in occupation of the suit property when the Plaintiff acquired the same. The Plaintiff denied that the suit property was part of Plot No. 8478 which the Defendants claimed to be their ancestral land. The Plaintiff averred that the NLC upheld its title in a determination published as Gazette Notice No. 6863 on the Kenya Gazette of 17<sup>th</sup> July 2017.

### **The evidence**

11. The Plaintiff's suit and the Defendants' Originating Summons were consolidated on 18<sup>th</sup> November 2020. At the trial, the Plaintiff called three witnesses. The Plaintiff's first witness was PHILIP ELIAS OLOO ORIARO(PW1). PW1 told the court that he was the chairman of the Plaintiff. He adopted his witness statement filed on 7<sup>th</sup> December 2022 as his evidence in chief and produced the documents attached to the Plaintiff's list of documents also filed on 7<sup>th</sup> December 2022 as a bundle as Plaintiff's exhibit 1. On cross-examination, PW1 stated that the Plaintiff acquired the suit property from two individuals who had been allocated the same by the National Land Commission. The Plaintiff's next witness was DAVID Joseph Onyango(PW2). PW2 adopted his witness statement filed on 7<sup>th</sup> December 2022 as his evidence in chief. The Plaintiff's last witness was Patrick Opiyo Adero(PW3). PW3 told the court that he prepared a ground report dated 22<sup>nd</sup> July 2016 in respect of the suit property.
12. After the close of the Plaintiff's case, the 1<sup>st</sup> Defendant, Lawrence Odhiambo Ayieko(DW1) gave evidence. DW1 adopted his witness statement filed on 23<sup>rd</sup> November 2021 as his evidence in chief and produced the documents attached to the said statement as exhibits. He stated that he had no title to the land that he was occupying. He stated that the land was supposed to be acquired compulsorily by the Government but he was not given compensation and that explained why he had not moved out of the land. He stated that his parents also lived on the same parcel of land. PW1 stated that the land he was occupying was ancestral land and that his parents and wife were buried on the land. He stated that the suit property was related to Plot No. 8478. He stated that he entered the land that he was occupying because the same belonged to his grandparents. The 2<sup>nd</sup> Defendant, Dominic Jawa Ajus (DW2) was the last to give evidence. DW2 adopted the evidence of DW1 as his evidence in chief.



## The submissions

13. After the close of evidence, the court directed the parties to make closing submissions in writing. The Plaintiff filed submissions dated 20<sup>th</sup> February 2024. The Plaintiff framed 5 issues for determination. The Plaintiff submitted that it had proved that it was the lawful registered owner of the suit property and that the suit property had no relationship with Plot No. 8478 which the Defendants claimed to be their ancestral land. The Plaintiff submitted that the Defendants did not produce any documentary evidence in support of their claim over the suit property. The Plaintiff cited Section 26 of the [Land Registration Act](#) 2012 and submitted that it was the absolute and indefeasible owner of the suit property. The Plaintiff submitted that the Defendants' claim that the Plaintiff had acquired the suit property fraudulently was not proved.
14. The Plaintiff submitted further that the Defendants did not prove that they had acquired the suit property by adverse possession. The Plaintiff submitted the Defendants did not prove that their parents and grandparents had occupied the suit property. The Plaintiff submitted that it demonstrated by the evidence of Patrick Opiyo Adero (PW3) that the Defendants entered and put up semi-permanent structures on the suit property between May 2015 and July 2016. The Plaintiff submitted that the Defendants had occupied the suit property for less than 5 months before the Plaintiff filed this suit seeking to restrain them from interfering with the property. The Plaintiff submitted that the Defendants did not also lead evidence as to the extent of their occupation of the suit property. The Plaintiff submitted that the Defendants' adverse possession claim did not meet the threshold set in the law.
15. The Plaintiff submitted that the Defendants' forceful entry into the suit property caused loss and damage to the Plaintiff. The Plaintiff submitted that Kshs. 5,000,000/- would be adequate compensation to the Plaintiff for the loss suffered due to the Defendants' trespass. The Plaintiff submitted that the Defendants should be condemned to pay the costs of the suit.
16. The Defendants filed submissions dated 11<sup>th</sup> March 2024. The Defendants submitted that the land on which their homesteads were situated was meant to be compulsorily acquired by the Government of Kenya on behalf of Kisumu County Council in 1976. The Defendants submitted that the land that was to be acquired by the Kisumu County Council was never set apart as was required by the law and as such compensation was not processed for the persons who were to be affected by the compulsory acquisition. The Defendants submitted that since no compensation was paid, the land was not acquired by the Government. The Defendants submitted that in any event, the land was to be acquired for the Kisumu County Council and as such the same could not be allocated by the Commissioner of Lands or the NLC to private individuals or entities. The Defendants submitted that the purported allocation was illegal. The Defendants submitted that they were never compensated for their land that was to be acquired and were also not given an alternative settlement. The Defendants submitted that they were in actual occupation of the suit property and their rights were superior to the rights claimed by the Plaintiff. The Defendants urged the court to dismiss the Plaintiff's claim and to allow their counter-claim against the Plaintiff and also their prayers in the Originating Summons.

## Analysis and determination

17. I have considered the pleadings and the evidence tendered by the parties in proof of their respective cases. I have also considered the submissions by the advocates for the parties. The issues arising for determination in the consolidated suits in my view are the following;
  1. Whether the Plaintiff is the lawful proprietor of the suit property.



2. Whether the Defendants unlawfully entered and occupied the suit property.
3. Whether the Plaintiff is entitled to the reliefs sought in the plaint.
4. Whether the Defendants are entitled to the reliefs sought in their counter-claim and Originating Summons in ELC No. E14 of 2020(O.S).
5. Who is liable for the costs of the two suits?

### **Whether the Plaintiff is the lawful proprietor of the suit property**

18. The suit property was registered under the Registration of Titles Act, Chapter 281 Laws of Kenya (now repealed). The Plaintiff produced in evidence a copy of Grant No. I.R 83633 in respect of the suit property. The said Grant was issued in favour of the Plaintiff on 17<sup>th</sup> May 2000 and was registered on 26<sup>th</sup> May 2000. It is common ground that the suit property is still registered in the name of the Plaintiff. Section 23(1) of the Registration of Titles Act, Chapter 281 Laws of Kenya (now repealed) that has been reproduced in section 26(1) of the *Land Registration Act*, 2012 provides as follows:

“The certificate of title issued by the registrar to a purchaser of land upon a transfer or transmission by the proprietor thereof shall be taken by all courts as conclusive evidence that the person named therein as proprietor of the land is the absolute and indefeasible owner thereof, subject to the encumbrances, easements, restrictions and conditions contained therein or endorsed thereon, and the title of that proprietor shall not be subject to challenge, except on the ground of fraud or misrepresentation to which he is proved to be a party”.

19. Section 26 of the *Land Registration Act*, Act, 2012, provides as follows:

“26.

- (1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—
  - (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or
  - (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.
- (2) A certified copy of any registered instrument, signed by the Registrar and sealed with the Seal of the Registrar, shall be received in evidence in the same manner as the original.”

20. I am satisfied from the evidence on record that the Plaintiff is the lawful proprietor of the suit property. In their defence and counter-claim, the Defendants claimed that the Plaintiff acquired the suit property fraudulently and through a corrupt scheme. The burden was upon the Defendants to prove the fraud



and the corrupt scheme. No such proof was placed before the court. The Defendants had also claimed that the suit property was part of their ancestral land known as Plot No. 8478 which they had occupied for over 70 years which land was to be acquired by the Government of Kenya compulsorily but was not so acquired since compensation was not paid to them. Again, the Defendants bore the burden of proving these allegations. The pictorial evidence placed before the court by both parties showed that the Defendants had just entered the suit property when the Plaintiff brought this suit against them on 12<sup>th</sup> May 2016. The evidence before the court indicated that the houses occupied by the Defendants had just been freshly put up. There was no evidence showing that these were old houses which were being, “renewed, repaired and refurbished” as claimed by the Defendants. The Defendants did not therefore convince this court that the suit property was part of their ancestral land. The Defendant did not also establish any connection between the suit property and Plot No. 8478 which they claimed to be their ancestral land. The Defendants had also claimed that they were part of the residents of Kanyakwar, Kajulu and Kolwa whose land was acquired compulsorily by the Government of Kenya through Gazette Notice No.3400 of 1976. Apart from a copy of the memorandum which the Defendants and others had presented to the NLC as members of KIKAKO Welfare Association, the Defendants placed no evidence showing that; the suit property was their ancestral land, the same was part of the land that was compulsorily acquired by the Government of Kenya through Gazette Notice No.3400 of 1976 and that they were not compensated for the land. In any event, the Defendants produced in evidence a copy of the Gazette Notice published in the Kenya Gazette on 1<sup>st</sup> March 2019 in which the NLC had published its determination on the claim that had been lodged with it by the residents of Kanyakwar, South Kajulu and Kolwa regarding their land which was compulsorily acquired. In the determination, the NLC recommended that a task force be formed to review the compensation process and identify the people who may not have been compensated or those not adequately compensated so that they may be fully compensated. The NLC also recommended that land be set aside for those found landless. At the trial, the 1<sup>st</sup> Defendant told the court that a task force had been formed and that it had started its work. Even if the Defendants had established that the suit property was their ancestral land and that the same was compulsorily acquired by the Government without compensation, I am unable to see how the Defendants would pursue compensation with the NLC and the recovery of the land at the same time.

21. The Defendants had also claimed that they had acquired the suit property by adverse possession. In *Mombasa Teachers Co-operative Savings & Credit Society Limited v. Robert Muhambi Katana & 15 others* [2018] eKLR, the Court of Appeal stated as follows:

“18. Likewise, it is settled that a person seeking to acquire title to land by of adverse possession must prove non-permissive or non-consensual, actual open, notorious, exclusive and adverse use/occupation of the land in question for an uninterrupted period of 12years as espoused in the Latin maxim, *nec vi nec clam nec precario*. See *Jandu vs. Kirplal & Another* (1975) EA 225. In other words, a party relying on the doctrine bears the burden of demonstrating that the title holder has lost his/her right to the land either by being dispossessed of it or having discontinued his possession of it for the aforementioned statutory period. See this Court’s decision in *Wambugu vs. Njuguna* [1983] KLR 173. Did the respondents discharge this burden?...

21. Even if we were to accept that the five respondents who testified had established that they had been in an open and uninterrupted occupation of the suit property in excess of 12 years after the appellant acquired title still their claim fell short. There is a further problem because none of them tendered any



evidence with regard to identifiable portion(s) of the suit property which they each occupied which was essential to their claim. More so, taking into account that there were allegations that apart from the respondents over 200 people were also in occupation of the suit property. In *Wilson Kazungu Katana & 101 Others vs. Salim Abdalla Bakshwein & Another* [2015] eKLR this Court observed: -“The identification of the land in possession of an adverse possessor is an important and integral part of the process of proving adverse possession. This was so stated by this Court in the case of *Githu vs. Ndete* [1984] KLR 776. The appellants did not discharge the burden of proving and specifically identifying or even describing the portions, sizes and locations of those in their respective possession from the larger suit premises that they sought to have decreed to them.”

22. The suit property measures 1.911 hectares (approximately 4.72 acres). I have made a finding earlier that from the structures that they had put up on the suit property, the Defendants entered and occupied the suit property shortly before the Plaintiff filed this suit against them in May 2016. This finding is supported by the Ground Report prepared by Patrick Opiyo Adero (PW3) dated 22<sup>nd</sup> July 2016 produced in evidence as part of PEXH. 1 in which he concluded that the Defendants' structures had been put up between May 2015 and 22<sup>nd</sup> July 2016. The Google Earth images that he annexed to the said report showed that the Defendants' houses on the suit property were not in existence on the property as at 20<sup>th</sup> November 2015. As of that date, only the two permanent houses put up by the members of the Plaintiff were on the suit property. The Defendants having entered the suit property in 2016, their adverse possession claim has not satisfied the statutory threshold. The evidence before the court also shows that the Defendants occupy only a portion of the suit property. The other portion is occupied by the members of the Plaintiff while the rest of the property is vacant. The Defendants did not prove that they occupy the entire property to be entitled to the same by adverse possession. I therefore find the Defendants' adverse possession claim not proved. For the foregoing reasons, the court finds that the Plaintiff is the lawful owner of the suit property.

#### **Whether the Defendants unlawfully entered and occupied the suit property.**

23. Trespass has been defined as any intrusion by a person on the land in the possession of another without any justifiable cause. See, *Clerk & Lindsell on Torts*, 18<sup>th</sup> Edition, page 923, paragraph, 18-01. I have made a finding that the Plaintiff is the lawful owner of the suit property. I have also made a finding that the Defendants entered the suit property and put up temporary structures thereon in 2016 shortly before the Plaintiff filed this suit. I have further found that the Defendants have no lawful claim or interest in the suit property. In the absence of evidence that the Defendants were allowed by the Plaintiff to enter the suit property and occupy the same, their entry was illegal and amounted to trespass.

#### **Whether the Plaintiff is entitled to the reliefs sought in the plaint.**

24. As the registered owner of the suit property, the Plaintiff was entitled to quiet possession and enjoyment thereof. The Plaintiff sought a permanent injunction restraining the Defendants from trespassing on the suit property or interfering with its proprietary interest in the suit property. The Plaintiff has established that the Defendants are trespassers on the suit property. A case has therefore been made for the grant of an order of injunction sought. The Plaintiff had also sought general damages



for trespass. In *Park Towers Ltd. v. John Mithamo Njika and 7 Others* 2014 eKLR, the court stated as follows:

“I agree with the learned judges that where trespass is proved a party need not prove that he suffered any specific damage or loss to be awarded general damages. The court in such circumstances is under a duty to assess the damages awardable depending on the unique circumstances of each case.”

25. In Halsbury’s Laws of England 4<sup>th</sup> Edition Volume 45 para. 26 1503 the authors have stated as follows on assessment of damages for trespass:

- a) If the Plaintiff proves the trespass, he is entitled to recover nominal damages even if he has not suffered any actual loss.
- b) If the trespass has caused the Plaintiff actual damage, he is entitled to receive such amount as will compensate him for his loss.
- c) Where the Defendant has made use of the Plaintiff’s land, the Plaintiff is entitled to receive by way of damages such an amount as would reasonably be paid for that use.
- d) Where there is an oppressive, arbitrary or unconstitutional trespass by a Government official or where the Defendant cynically disregards the rights of the Plaintiff in the land with the object of making a gain by his unlawful conduct, exemplary damages may be awarded.
- e) If the trespass is accompanied by aggravating circumstances which do not allow an award of exemplary damages, general damages may be increased.”

26. The Plaintiff has proved trespass to the suit property by the Defendants. The Plaintiff has however not proved that the Defendants’ trespass caused actual loss and damage. In the circumstances, I will only award the Plaintiff nominal damages for trespass.

**Whether the Defendants are entitled to the reliefs sought in their counter-claim and Originating Summons in ELC No. E14 of 2020(O.S).**

27. In their counter-claim, the Defendants had sought; a declaration that the Grant held by the Plaintiff in respect of the suit property was fraudulent, null and void. I have made a finding that the Defendants did not prove fraud against the Plaintiff. The Defendants are therefore not entitled to this relief. The Defendants had also sought a declaration that the suit property was part of Plot No. 8478 Kisumu District which was the Defendants’ ancestral land. Again, no evidence was produced of any connection between the suit property and Plot No. 8478. There was also no evidence that the said Plot No. 8478 was owned by the Defendants’ ancestors.

28. In their Originating Summons, the Defendants had sought similar reliefs as those sought in their counter-claim which I have found they are not entitled to. The Defendants had other reliefs related to those that I have rejected. I have stated earlier that the Defendants did not prove that the suit property was their ancestral land and that the same was to be compulsorily acquired pursuant to the Gazette Notice No. 3400 of 1976. I do not therefore need to express myself on whether or not the compulsory acquisition that was intended was completed. I have also found that the Defendants did not prove that there was a connection between the suit property and Plot No. 8478. There was even no evidence that Plot No. 8478 existed and its registration status. Since the Plaintiff had no claim over the said Plot No.



8478, I am unable to find that the Defendants' interest in the plot overrides that of the Plaintiff. The last relief was for a declaration that the Defendants had acquired Plot No. 8478 by adverse possession. I have given my opinion on the Defendants' adverse possession claim over the suit property. In the Originating Summons, the adverse possession claim is over Plot No. 8478. The Defendants did not place before the court a copy of the title for this Plot No. 8478 which they are claiming by adverse possession. As I have mentioned, the Plaintiff had no claim over this plot. The registered owner of the plot is not known. The Defendants' occupation of the same for the statutory period has also not been established. The Defendants' adverse possession claim whether directed at the suit property or Plot No. 8478 have not been proved and must fail.

#### **Who is liable for the costs of the two suits?**

29. The cost of and incidental to a suit is at the discretion of the court. The Plaintiff has succeeded in its claim against the Defendants. The Defendants' counter-claim and Originating Summons have been found to have no merit. I will award the Plaintiff the cost of the suit, the counter-claim and the Originating Summons.

#### **Conclusion**

30. In conclusion, I hereby make the following orders in the consolidated suits;
1. A permanent injunction subject to order No. 2 below is issued in favour of the Plaintiffs in ELC No. 102 of 2016 restraining the Defendants in that suit whether by themselves or through their agents, employees or servants from entering, taking possession, cultivating, selling, leasing, wasting or in any other manner howsoever dealing or interfering with the said Plaintiff's peaceful and quiet possession of all that parcel of land known as L.R No. 18992, Grant No. 83633.
  2. The Defendants in ELC No. 102 of 2016 shall have up to 31<sup>st</sup> December 2024 to vacate L.R No. 18992, Grant No. 83633 (the suit property) in default of which the Plaintiff in the suit shall be at liberty to apply for warrants for their forceful eviction from the property.
  3. The Plaintiff in ELC No. 102 of 2016 is awarded Kshs. 200,000/- as general damages against the Defendants in the suit for trespass together with interest at court rates from the date hereof until payment in full.
  4. The Defendants' counter-claim in ELC No. 102 of 2016 against the Plaintiff in that suit is dismissed.
  5. The Originating Summons in ELC No. E14 of 2020 dated 6<sup>th</sup> April 2020 is dismissed.
  6. The Plaintiff in ELC No. 102 of 2016 shall have the costs of that suit and the counter-claim, and the costs of the Originating Summons in ELC No. E14 of 2020.

**DATED AND DELIVERED AT KISUMU ON THIS 17<sup>TH</sup> DAY OF OCTOBER 2024**

**S. OKONG'O**

**JUDGE**

Judgment read virtually through Microsoft Teams Video Conferencing platform in the presence of;

Mr. Maube for the Plaintiff

N/A for the Defendants



Ms. J. Omondi-Court Assistant

