



REPUBLIC OF KENYA



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**Cherogony v Rono & 4 others (Environment & Land Case
212 of 2013) [2025] KEELC 2980 (KLR) (28 March 2025) (Judgment)**

Neutral citation: [2025] KEELC 2980 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 212 OF 2013**

**A OMBWAYO, J
MARCH 28, 2025**

BETWEEN

MATHEW CHEBON CHEROGONY PLAINTIFF

AND

KIPKURUI ARAP RONO 1ST DEFENDANT

**JOSEPH TANUI TINDIRET & 3 OTHERS & 3 OTHERS & 3
OTHERS 2ND DEFENDANT**

JUDGMENT

1. The Plaintiff commenced this suit by way of originating summons dated 22nd February, 2013 against the Defendants seeking determination of the following:
 - a. Whether the Applicant has acquired rights by adverse possession over land Reference Nos.Nakuru Municipality 29/1449, 29/1448, 29/1447, 29/1446. 29/1445, 29/1078. 29/1130 and1048 registered in the name of the Responded (sic) respectively.
 - b. Whether the Applicant should be so registered as the proprietors of the respective parcels referenced above.
 - c. Should the Respondents be ordered to execute the necessary and relevant conveyance documents to effect registration in favour of the Applicant as the proprietor of the respective parcels. d) Who should pay the costs of this application.
2. The 8th, 9th, 10th and 11th Respondents filed their replying affidavit in defence of the suit.

Plaintiffs' Case

3. Matthew Chebon Cherogony the Plaintiff herein testified as PW1 where his witness statement and the bundle of documents in the Plaintiffs bundle of documents was adopted as his evidence in chief. It was



his testimony that he resides on plot No. 29 Rhoda. No. Nakuru Municipality Block 29/1449 Rhoda, the suit land herein. He testified that he has been using the land form 1980 and is currently farming on the land. He further testified that the land was originally owned by Kalenjin Enterprises (now rift valley Enterprises). He added that the 2nd Defendant Joseph Tanui Tinderet was a coowner of the suit land together with the 1st Defendant. He testified that he sued the 3rd Defendant since he held a title to land parcel 1448 Rhonda. He testified that the 3rd Defendant never occupied the plot since the 1980s since he was already in occupation. He further testified that the 4th Defendant Benson Muchai held a title to land he occupied since the 1980s being plot No. 1447. It was his testimony that the title was registered in the names of the 4th- 6th Defendants but that they never occupied it. He went on to testify that the 7th Defendant also held the title for parcel block 29/1446 which he has been in occupation. He testified that when he filed the suit, the 7th Defendant approached him and he transferred the land to him. He testified that the 7th Defendant is deceased. He testified that he had no claim against his estate as the transfer was effected after he filed suit. He testified that he also sued the 8th Defendant for holding the title for land parcels Block 29/1445 and 1087 which he occupies. He added that he sued the 9th Defendant who held the title to land parcel 1078 which he has been in occupation since 1980. He also testified that he sued the 10th Defendant who held title to land parcel Block 299/1130. It was his testimony that he sued the 11th Defendant who held the title to land parcel Block 29/1048 he has occupied since 1980. He testified that the parcels of land combined were 4.6 acres.

4. PW1 testified that the Defendants never permitted him to reside or occupy on the said parcels of land Kalenjin Enterprises Ltd. He further testified that in the green card, the entry that showed the Government of Kenya was erroneous since the land was owned by Kalenjin Enterprises. He testified that the valuation report depicted the subject properties while the photographs showed the status of the properties. He further testified that he had buried his father who died in 2002 on land parcel 1445. PW1 was referred to the bundle of documents filed by 9th Defendant's photos filed on 19th August 2020 where he testified that the buildings belonged to him. It was his testimony that he relied on the documents exhibited on the bundle dated 30th January, 2020.
5. Upon cross examination by Oumo for the 8th and 11th Defendants, he confirmed that he was born in 1967. He stated that in 1980, he was about 13 years. He confirmed that at the time of filing the suit, he had stayed on the suit land for over a long time. He confirmed that the land initially belonged to Kalenjin Enterprises Co. Ltd with their original title LR No. 6273 before subdivision and conversion. He stated that as per Exhibit 1(a) green card, the 8th Defendant was the registered owner. He added that as per entry No.4, the 8th Defendant was registered on 17th November, 2011 but he was on the ground. He went on to state that as per Exhibit 19 green card, the 8th Defendant was registered as owner of title No. Nakuru Municipality/Block 29/1087 on 22nd March, 2011. He stated that in both cases, the 1st entry showed that the Government of Kenya was registered on 29th March, 2000 and that there was no encumbrance registered against the two titles. He stated that in 2015, the court ordered parties to maintain the existing status quo. PW1 was referred to Exhibit 1(b) green card for parcel 1446 where he stated that the land belonged to the Defendant at the time he filed suit. He added that as per entry 6, the title was transferred to him on 5th November 2014. He stated that he currently resided on land parcel 1048. He confirmed that the photos showed a mud house. He also confirmed that as per page 9 of the valuation report, the photographs showed some of his rental houses. He denied that he resided on parcel 1048. PW1 stated that he was a member of Kalenjin Enterprises and was allocated plot No.1153. He stated that he could not recall the date he joined the company. He was referred to DEx12 which was a letter from Kalenjin Enterprises which stated that his plots were 1153 and 1497. He denied that 1497 was his plot. He was also referred to PEX 1(h) plot 1048 where he confirmed that there was a semi- permanent house on the plot that belonged to him.



6. Upon cross examination by Ms Cheron for the 9th Defendant, he confirmed that he has been residing on the land since 1980. He further confirmed that Elijah Chelaite was the chairman of Kalenjin Enterprises Co. Ltd. He stated that Daniel Maina was a director at Kalenjin enterprises. He was referred to CR12 dated 17th November 2017 where he admitted that Daniel's name was not present. He stated that Daniel Maina was a director in 2008. He admitted that his name did not appear in the list of directors of 2008. He also admitted that members of Kalenjin enterprises were being issued share certificates. He stated that his claim was on adverse possession. He stated that he did a search and found that the 9th Defendants was registered. He added that the 9th Defendant had been allocated parcel 1078. He went on to state that the title was currently in the name of Jackson Kemboi from 16th May 2013. He admitted that he never made any complaint to the Land Registrar.
7. Upon cross examination David Mbugua, the 10th Defendant, PW1 stated that his land was 1130 but that he occupied a total of 10 parcels including parcel 1131. He stated that he has been farming on the said parcel since 1980 and that he has also planted trees
8. Upon reexamination, he stated that he was not aware that the government ever owned the land. He also stated that at the time the Defendants were issued title, he was already in possession of the parcels of land. He stated that none of the Defendants ever attempted to evict him. He stated that the 8th Defendant at one time attempted to evict him using the DCI. He stated that it was the 8th Defendant's case that the land had been sold to him by one Chumo. He stated that Julius Kibowen who allegedly sold land to the 8th Defendant was a committee member of Kalenjin Enterprises Ltd. He stated that he never claimed any land from him. He stated that the abstract of title showing the government of Kenya as its 1st entry was incorrect. He stated that he was allocated parcel 1153 by the company. He stated that Daniel Maina was a member of Kalenjin Enterprises since 2008. He added that Elijah Chelaite was a director of the company and that the directors have had wrangles. He was referred to the letter dated 22nd June, 2001 from Registrar of companies (8th Defendants bundle) where he confirmed that Zakayo Sitonik and Daniel Maina were directors. He stated that all the Defendants had parcels of land given to them by Kalenjin Enterprises Ltd. He added that the directors of the company were the ones who were executing the transfers in favour of the members Daniel Maina Kirungui testified as PW2 where his witness statement dated 16th December, 2019 was adopted as his evidence in chief. It was his testimony that he was a shareholder of Kalenjin Enterprises Limited and was allocated land parcels at Dundori Mugwaathi (Koile) 178 and Miti Mingi block 3. He testified that he had been elected as a director in 1998 where he served for 10 years until 2008. He further testified that the Plaintiff was a shareholder of the company and that he was in occupation of the disputed parcels of land since 1980. He also testified that subdivision was done and members allocated individual plots. He testified that where the Plaintiff had occupied, there was a portion that was not subdivided for allocation as it was sandy. He testified that the Plaintiff occupied the said portion and started cultivating and extracting sand. He testified that the company never took any action to recover the land. He further testified that he did not know how titles were issued in 2004 on the land the Plaintiff had occupied. He testified that the 10th Defendant was a shareholder was allocated a plot in Miti Mingi which was not in dispute. It was his testimony that he was involved in issuance of titles. He added that they confirmed from the Land Registrar who the members were and who was being allocated. He added that the company bought land from private persons. It was his testimony that the land never belonged to the government. He testified that the company bought 7 parcels where it then surrendered public utility plots. He further testified that the land was never designated as a public plot. He testified that the company transferred the land to the members and that the directors were the ones who signed the transfers. It was his testimony that the government did not issue any allotment letters. Upon cross examination by Oumo, he confirmed that he was a director of the company and also admitted that he had no documents to show. He further confirmed that he was allocated half an acre land after subdivision



- by Kalenjin Enterprises Ltd. He also confirmed that the entry number 1 of Government was not challenged by the company. He admitted that Elijah Chelaite was a director of the company and still is.
9. Upon cross examination by Cheronon, he confirmed that the 9th Defendant was a shareholder of the company and was allocated parcel 1078. He was referred to copies of CR12 where he confirmed that his name did not appear. He admitted that there were squabbles within the company. He confirmed that he was not certain why the government was registered under entry 1. He also confirmed that the government did not issue any allotment letters.
 10. Upon cross examination by David Mbugua the 10th Defendant he stated that the Defendants titles were issued on different dates. He further stated that the company lands were all surveyed. He admitted that the ½ acre plot at Rhonda had issues.
 11. Upon reexamination, he stated that he had sworn the affidavit dated 18th May 2018. He stated that court order issued 24th July 1998 confirmed that he had been elected as a director in HCCC Np. 544 of 1997 (OS). He was referred to the 8th and 11th Defendants further bundle of documents doc 5 where he stated that the letter was dated 22nd June, 2001. He confirmed that he was not a director when the company land was allocated. He stated that the company did not have allocation letters and that the shareholders had voted for the parcels of land. He stated that the Plaintiffs case was founded on adverse possession as he has been in occupation since 1980.
 12. Jane Gitari the Land Registrar, Nakuru testified as PW3. She testified that she was summoned by the court to bring the record for Nakuru/Municipality Block 29/1445,1078, 1087,130,1448, 1447,1446. She testified that she had certified records for Nakuru/Municipality Block 29/1087, 29/1078, 29/144, 29/1446, 29/1447, 29/1448 and 29/1448. She testified that she did not have any parcel file for the land though it was supposed to be there. She further testified that each parcel of land should have a parcel file. She added that the parcel file should have documents such as transfer forms, certificates and subdivisions that supported entries in the green card. She testified that the parcel of land was registered by transfer and the card was opened on 29th March, 2000 measuring 0.505 Ha. She testified that the 1st entry was the government of Kenya. She added that she did not know how it was transferred to Kiplagat and registered on 28th April, 2004. She testified that she did not know the block. She went on to testify that she had not interacted with the register for the company. She added that she had not signed the card. She testified that she never dealt with a land buying company. She testified that she was not familiar with the process of conversion of land and that she had only dealt with freehold and leases. She added that the land had been certified for leasehold and that it had been surrendered to the government of Kenya
 13. Upon cross examination by Ouma, she stated that the 7th Defendant had passed on. She referred to the green card for 1445, 1087,1448 and stated that the property was for Elijah Komen Kalia. She stated that the green card was opened on 29th March, 2000. She further stated that the 1st entry was the government while the 2nd entry was on 31st August, 2004 to Elijah Kamau Ketya. She stated that for 1445, the register was opened on 29th March, 2000. She further stated that the 1st entry- Government of Kenya, 2nd entry – Julius C Bowen on 28th June, 2004, entry no 4 dated 17th November, 2011 to John Wachira Chui. She also stated that for 1084, it was opened on 29th March,2000 with the 1st entry to the government, 2nd entry – Kiplugut A Chumo and the 4th Entry – 22nd March, 2011- John Waara Chiri. He added that it was an authentic record. He further stated that for 1048, it was opened on 29th March, 2000 with the 1st entry being the government, 2nd entry – John Ndungu on 28th June, 2004.



14. Upon cross examination by M/S Kipruto 1078 was opened on 29th March, 2000 with the 1st entry being GOK, 2nd entry for Mathew Kipyegon Sanga on 8th October, 2012 and the 4th entry on 16th May, 2013 for Jackson Kemosi.
15. Upon cross examination by Kome, she stated that she had no green card for 10.30. She further testified that 11.30 was registered in the name of David Mbugua Wahura. She stated that it was opened on 29th March, 2000 with the 1st entry under the government, 2nd entry David Mbugua Wahura. She added that the green card was not reconstructed.
16. Jacob Chepkurui Konga testified as PW4 where his witness statement was 16th December, 2019 was adopted as his evidence in chief. It was his testimony that the suit land was Block 29 Rhonda and he had his land nearby. He testified that he got the land from Kalenjin Enterprise. He added that the Plaintiff occupied the said land since 1980. He added that the Plaintiff farmed and has constructed houses.
17. Upon cross examination by Oumo, he stated that the Plaintiff's house was ½ a mile from his house.
18. He further stated that Block 29 was 766 acres. He added that the Plaintiff took number 1978 but that he was not given a title due to the case. He admitted that there was no clearance certificate. He further stated that the Plaintiff constructed on 1078 and ploughs plot no 1031. He stated that he was not aware that the 8th Defendant bought Chumo's plot. He also stated that Julius Bowen did not buy land in his presence. He confirmed that David Chumo was an official of Kalenjin Enterprises. He stated that he was not aware that he was the owner of 1087. He also stated that since the death of the chairman, the office has remained closed. He confirmed that John Wachira Chiri had no land at Block 29. He further confirmed that John Ndungu's wife was a shareholder and that she was given 3 acres equivalent of two plots, 1506 and 507.
19. Upon cross examination by Kipruto, he stated that shareholders were being given land and that the Plaintiff was a member. He stated that he was allocated No.1079 not 1078. He confirmed that the register showed 1078 belonged to the Plaintiff. He stated that the Plaintiff lives on land No.1052 and 1078. He added that the Plaintiff had the title of 1078 and has since constructed many houses. He confirmed that the houses were constructed after 2013. He further confirmed that the Plaintiff was mining the quarry. He stated that Mathew Sang and Jackson Kemboi have never been in possession of land No 1153. He stated that the register showed the owner of 1153 as the Plaintiff. He further stated that the register did not have the proper record. He stated that the Plaintiff had occupied the land for 17 years.
20. Upon cross examination by Koome, he stated that the houses were constructed on 1078. He further stated that there was no house on 1130. He also stated that he gave the land as a committee member. He however admitted that he had no document to show that he was a member. He also admitted that he had no evidence to confirm that the land belonged to Kalenjin Enterprises. He stated that he was given permission to enter 1078 and 1153. He admitted that they had no records.
21. He stated that the Plaintiff bought the land in Bomet where they are neighbors.
22. Upon reexamination, he stated that Block 29 belonged to Kalenjin Enterprises and the shareholders were its members. He stated that the Plaintiff was in plot 1078 and that the houses belonged to him.
23. He further stated that 1445 was occupied by the Plaintiff. He also stated that 1447, 1446 1448,1048/1130 were occupied by the Plaintiff since 1980. He added that the Plaintiff was excavating sand on the land. He stated that the quarry belonged to the Plaintiff and that he allowed people to construct in the quarry. He stated that the construction was in 1990 with semi-permanent houses. He further stated that the Defendant was not in possession of the land.



That marked the close of the Plaintiff's case.

24. A site visit was conducted where the Plaintiff stated that he has been in possession of 1153- half an acre. He also stated that 1078 had a dispute. He stated that he sold a portion and added that 1078 was half an acre. He stated that he has developed houses 8 houses with power and water near a river. He further stated that there was a site for sand harvesting. He stated that 1446 was registered under David Kandagor and 1078 under Jackson Kemboi He testified that he has lived there since 1992. He added that he had sold part of it to M. Onyango.
25. Upon cross examination, he confirmed that he was in possession of half an acre. He further confirmed that he sold the land to the 8 people during pendency of case. He added that the buyers constructed after filing of the case. He admitted that he sold the land without a title. He added that he used title of 1446 to sell. He stated that sand harvesting was not done by Kemboi
26. Upon reexamination, he stated that the land belonged to him and that he had given permission to the occupants. He stated that Kemboi's land was bought by the Plaintiff.

Defence case

27. Mr. Kemboi the 4th Defendant testified that the title for 1078 was registered on 16th May, 2013. He further testified that he had bought it from Kipyegon. He added that Kipyegon had registered it on 11th October, 2012. He testified that he constructed in 2012. He testified that he was the one harvesting sand and that the Plaintiff invaded. He testified that the houses were built in 2014. Upon cross examination by Waiganjo, he stated that the persons in possession of the suit land had been sold to by the Plaintiff. He confirmed that the Plaintiff was not in possession. He admitted that he had no structure. He admitted that he had not sued the person in possession. He stated that 1445 was registered in the name of John Wachira, the 8th Defendant. He further stated that he had been farming and added that there was a grave for the Plaintiff's father who died on 5th August, 2002. He confirmed that he had grown napier grass.
28. Upon cross examination by Oumo, he stated that the grave was in 1445 and added that 1446 had no dispute. He confirmed that he had not constructed on the land but that he was doing farming. Upon reexamination, he stated that there was a live fence of Euphorbia. He stated that the 8th Defendant never occupied the land.
29. Mr. Wachira the 8th Defendant testified that his land was 1445 and that it was ½ and acre. He further testified that the grave was in 1446 and not 1445. He testified that the claim was for a quarter of an acre. He added that he has been using the land and that he was the one that planted the maize.
30. Upon cross examination by Cherogony, he stated that the Plaintiff was his brother in law. He further stated that the grave was not in his land. He confirmed that the pumpkin and the maize on the other part belonged to him.
31. Mr. Richard Kimosop testified that the Plaintiff has been in possession and has been utilizing the land. He testified that he did not know the owner of the homes or the surrounding homes.
32. Upon cross examination by Waiganjo, he confirmed that the Plaintiff has tilled the land for 30 years. He further confirmed that parcels No.1087, 1130 and 1048 was a farm with maize and beans. He confirmed that he owned the fence and that there was a gate. He stated that his home was next to the land.



33. Upon cross examination by Oumo, he confirmed that he lived on 1048. He further confirmed that he had constructed the house in 1998
34. Upon reexamination, he stated that 1087 was fenced and that it had maize plantations.
35. The Plaintiff stated that the 8th Defendant had the title. The Plaintiff also stated that he owned the maize and that there was only once fence.
36. Upon cross examination by Oumo, he stated that the place was fenced in the year 1987 and that there was nothing other than farming. He stated that 1130 had no beacon.
37. The court confirmed that there were maize stalks. He further clarified to the court that he did not have any document for maize plantation. He also clarified that the fence was on 1048 and not on 11.30.
38. Upon reexamination, he stated that he has utilized the land for more than 12 years.
39. David Kandagor the 7th Defendant testified that he was the registered owner of 11.30. He testified that he farmed on the said land from 2002 to 2015 when he stopped due to a court order. He testified that he did not know the person who planted the maize. He testified that he used to enter through the fence. He added that the Plaintiff and other persons have been ploughing.
40. Upon reexamination, he stated that ploughing was done by ladies.
41. John Wachira the 8th Defendant testified that he had a title he acquired before 2011. He testified that the land was not possessed. He added that the Plaintiff had been banned from planting. He further testified that he had not ploughed since 2015. He testified that he did not plant the maize and added that the Plaintiff had disobeyed the court order.
42. John Ndungu the 11th Defendant testified that in 2004, he was the registered owner of 1048. He testified that the land was barren. He further testified that there was a small structure done by Kenya power. He testified that the same was on the road. He also testified that his land had no structure. He testified that the house was constructed after the case was filed.
43. Upon cross examination by Waiganjo, he stated that the Plaintiff was in occupation of all the land. He stated that 1048 had a mabati gate, mud house, poultry, vegetable garden, car shade (five years old) that was occupied by the Plaintiff, banana plantation off cuts fence.
44. Mr. Ndungu stated that most houses including the Plaintiff's were mud walled. He stated that the same was done in 2015. He stated that he had not filed an application for consent.

3rd Defendant's case

45. Elijah Komen Katya testified that his parcel of land was Block 29/1448. He testified that he had the Plaintiff on the land. He stated that he does not oppose the Originating Summons. He further stated that it was registered on 31st August, 2004.
46. Upon cross examination by Oumo, he confirmed that when he went to the ground, he found the land had been fenced. He confirmed that he went there on 7th September, 2004. He stated that he surrendered the title. He stated that he did not know John Wachira.

8th Defendant's case

47. John Wacira produced his affidavit filed on 9th May, 2023 which was adopted as his evidence in chief. He produced the title deed as 8th DEX 1 (29/1445). He also produced the second title deed as 8th



DEX 2, search as 8th DEX 3 and the letter dated 29th October, 2012 as 8th DEX 4. He also produced an OB No 10/04/02/2013 as 8th DEX 5.

48. It was his testimony that when he obtained the title, the land was vacant. He further testified that he bought the property from Boaz and Chumo. He added that no one was on the ground in 2011 and that was when he took possession. He testified that he planted maize on the land as well as on 1087. He went on to testify that he found the Plaintiff harvesting sand along the river bank. He testified that the Plaintiff was summoned and he stopped. He testified that in 2013, he engaged a surveyor who identified his beacons and he began to till. He added that his land portion was at the river bank. He testified that on 1445, he found all had planted crops. He further testified that the grave was on Block 29/1448 that belonged to the 3rd Defendant. He also testified that the Plaintiff was his relative and his neighbor. He urged the court to dismiss the suit.
49. Upon cross examination by Koome, he confirmed that his land was 1087 with the 10th Defendant as his neighbor. He denied having seen the Plaintiff.
50. Upon cross examination by Kipruto, he stated that the owner of parcel no 1078 was Jackson Kambui who had bought the land from the Plaintiff. He added that when the case was filed, there were no permanent structures.
51. Upon cross examination by Waiganjo, he stated that he wanted quiet possession of the property. He stated that the grave belonged to the Plaintiff's father. He further stated that the grave was there before he bought the land. He confirmed that he attended the burial. He also confirmed that demarcation was there before 2002. He added that he was not aware that the grave was in his land. He stated that he did not know who had claimed the land before Chumo. He confirmed that his parcel was number 1444 which he had purchased from Elijah Kiprono in 2008. He stated that everyone who owned a plot was a member of Kalenjin Enterprise. He went on to state that he bought 1087 from Kiplagat Chumo and admitted that he did not have the agreement here. He confirmed that he had not seen any share certificate for Chumo but he that he had the title. He admitted that there was no structure by the time he bought the land. He also admitted that 1445 was sold to him by Julius K Boen but that he did not have the sale agreement. He stated that Julius Boen had no structures. He added that he did not know when Kalenjin Enterprises acquired the land. He stated that Block 29 belonged to Kalenjin Enterprises. He also stated that the Plaintiff was his neighbor in plot number 1153, but that he sold the parcels. He also stated that the sand was harvested in the whole area upto the river. He confirmed that it did not form part of the case. He stated that 1078 was sold to Jackson Kambui by Mathew Sang. He admitted that he did not know how Mathew Sang acquired 1078. He stated that he did not know the person who developed the land. He further stated that the Plaintiff was claiming 1078. He confirmed that he was the one who planted the maize and pumpkins on parcel number 1445. He also confirmed that the grave was cemented and that there was a live fence between 1445 and 1448. There was a live fence.
52. Upon reexamination, he stated that 1078 belonged to Kemboi but that he was not in actual possession of the land. He further stated that there were several permanent structures. He stated that he was not shown any authority for the Plaintiff to stay on the land. He went on to state that they occupied the land after the case was filed in court. He admitted that the sale was not an issue not the validity of title. He also admitted that there was no document that showed the land was in the name of Kalenjin Enterprise.

9th Defendant's case

53. Matthew Kipyegon Sanga produced his replying affidavit sworn on 12th May, 2013 and witness statement filed on 19th March, 2019 which was adopted as his evidence in chief. He testified that he



had responded to the originating summons dated 22nd February, 2013. He produced a title deed dated 11th October, 2012 as 9th DEX 1, register as 9th DEX 2 and map as 9th DEX 3. He testified that parcel number 1078 had a dam. He further testified that he had two parcels 9th DEX 4a, 4b. He went on to testify that as at May 2013, the land was vacant and he had fenced it. He also produced the documents in his list of documents filed on 19th August, 2020 as 9th DEX 5 to 9th DEX 11(a). He testified that the title deed was in Jackson Kemboi's name issued on 15th May, 2013. He further testified that when the case was filed, the land was being occupied by Kemboi. He added that he used the land since 1990 and that he sold to Kemboi in 2012. He also testified that the land was used for sand harvesting. It was his testimony that he had no interest in the land. He added that he was harvesting sand with Mr. Kemboi.

55. Upon cross examination by Waiganjo, he confirmed that he was a shareholder of Kalenjin Enterprises and that he was given the land by the company. He stated that he lives on suit property is Block 29. He further confirmed that the suit land belonged to Kalenjin Enterprises. He further confirmed that he entered 1078 in 1990 and the title was in the name of Kalenjin Enterprises Ltd.
56. He stated that Kalenjin Enterprises Ltd have him a share in 1982 but not land.
57. He further stated that Kemboi lived on the land since 1990. He stated that he left Kemboi on the land. He stated that he was a committee member of the Kalenjin Enterprises and that his contribution was in Molo. He added that his land was 1078.
58. Upon reexamination, he stated that he bought shares before having the land. He also stated that he bought shares when he lived in the land. He stated that the Plaintiff was his neighbor. He confirmed that he had not seen a title for Kalenjin Enterprises. He stated that 1078 and 1079 belonged to him.

9th Defendant's case

59. Jackson Kemboi produced his statement dated 19th March, 2019 which was adopted as his evidence in chief. It was his testimony that he bought the land no 1028 from Mathew Sang and was given a title in 2013. He testified that Sang had left the land to his father. He further testified that they used to harvest sand from the land. He testified that he was the caretaker and that Mr. Sang came after every week to collect the money for sand harvest. He testified that the other part of land was used for grazing. He added that there was grass a house and a fence. It was his testimony that before he bought the land, they used the house as a store. He went on to testify that when the case was filed, the house was there but was later demolished by the Plaintiff. He testified that before the case was filed, there were no permanent structures. He added that there were permanent structures by the buyers. He testified that the Plaintiff sold to many people. He further testified that he had not sold his to anybody. He testified that his neighbors were Wachira, Mbugua and Machagu.
60. Upon cross examination by Koome, he confirmed that land no 1130 was owned by Mbugua. He further confirmed that he has been in Rhonda since 1976. He also confirmed that 1130 has never been ploughed by the Plaintiff or used for sand harvesting. He admitted that he did not have a license.
61. Upon cross examination by Oumo, he stated that John Wachira had 1087 while his land was 1078. He confirmed that the photos do not show any ploughed land. He also confirmed that during the site visit, he had not seen the mud house depicted in the photo. He stated that the demolished house belonged to Mathew Kipyegon Sang. He further stated that there were no permanent houses in the photo.
62. Upon cross examination by Waiganjo, he confirmed that the Plaintiff had no house on 1078. He stated that the permanent houses on the land belonged to other people. He confirmed that he had the title for 1078. He denied that Mathew Sang had a house. He stated that the land was left for his father and added that Mathew Sang lived in Molo. He stated that they did not need a permit to harvest sand. He



stated that he lives in plot no 1189. He also stated that he saw 1078 being constructed. He stated that the Plaintiff was their treasurer. He was referred to the valuation report where he stated that the 4.6 acres land had a value of 9.2 million and the same was occupied by the Plaintiff. He added that the place was called a dam but there was no dam. He stated that there was a river.

63. Upon reexamination, he stated that the Plaintiff harvested sand on his father's land and not 1078. He stated that the Plaintiff never did sand harvesting. He added that the valuation report was done when the case was active.

That marked the close of the 9th Defendant case.

10th Defendant's case

64. David Mbugua Kahuria produced his replying affidavit sworn on 14th June, 2013, a further supporting affidavit dated 24th February, 2020, supporting affidavit dated 19th June, 2023 and a further affidavit dated 12th July, 2022 which were all adopted as his evidence in chief. He testified that he owned 1130 which was allocated to him on 24th July, 2002. He produced the title as 10th DEX 1. He testified that 12 years from 2002 gave 24th July, 2014. It was his testimony that the case was premature. He testified that the 1st registered owner was the government. He further testified that he occupied the land in 2002 where he did farming until 2015. He testified that the Plaintiff never tilled the land. He went on to testify that in 2015, it was known that the Plaintiff developed the land after which the court stopped any development. He testified that he stopped farming. He testified that there was no evidence that Kalenjin Enterprises bought the land. He added that other than the government, there was no other proprietor. He testified that there were no sale documents, no sand harvesting, development or farming.
65. Upon cross examination by Oumo, he stated that his neighbors were John Wachira, plot 1087 and John Ndungu plot 1048.
66. Upon cross examination by Kipruto, he stated that 1078 was at the end of the road and that it belonged to Mathew Sang who later sold to Kemboi.
67. Upon cross examination by Waiganjo he stated that he was not certain when the houses were constructed. He stated that no one had been charged with contempt. He further stated that he had no house on 1130. He denied that the land belonged to the Plaintiff. He stated that the land belonged to Kalenjin Enterprises Ltd. He further stated that he had bought a share from Joseph K Soi and added that he bought the plots from the company in 1989. He stated that the Plaintiff did not claim the plots near him.
68. Upon reexamination, he stated that he had no evidence that the land belonged to Kalenjin Enterprises. He stated that he bought a shamba from Joseph Kibelion but he admitted that he had no sale agreement. He also admitted that there was no share certificate of No.1130. He stated that the Plaintiff had 2 parcels, 1131 and 1153.

11th Defendant's case

69. John Ndungu Macharia produced his replying affidavit filed on 14th June, 2013 which was adopted as his evidence in chief. He also produced a further deed 11th DEX 1. It was his testimony that he was a shareholder of Kalenjin Enterprises Ltd. He testified that he bought shares from Clinton Ogalo Omolo in 1985. He further testified that he occupied the land in 1985 where he tilled. He testified that he was given a plot at Baruti being Block 29/1048. He testified that he lived at Ponda mali. He also testified that there was a house done by Kemboi's father. He testified that the house does not belong to the Plaintiff.



70. Upon cross examination by Koome, he confirmed that he owned 1048. He further confirmed that 1130 belonged to David Kahiga. He admitted that he did not know the valuation.
71. Upon cross examination by Kipruto, he stated that Jackson Kemboi's land was 1078. He added that the Plaintiff never used the land before the case was filed. He stated that Kemboi used the land. Upon cross examination by Waiganjo, he stated that he has been a shareholder of Kalenjin Enterprises since 1985. He confirmed that he was present during subdivision. He stated that 1078 was a football field in 1980. He further stated that it was used for grazing and harvesting sand. He confirmed that his plot was 1048. He also stated that the house on 1048 was constructed in the year 2018 when the case was in court. He admitted that he did not come to court. He confirmed that there was no one in the plot. He also admitted that he did not have a sale agreement between himself and Omollo. He stated that they had an agreement for 1048 which was sold to Jacintah L. Ndungu. He stated that the Plaintiff buried the father in his land and not 1048. He stated that he occupied the land until 2002.
72. Upon reexamination, he stated that there was nothing on the land and that he had explained how the land belonged to him.

Submissions

73. Counsel for the Plaintiff filed his submissions dated 7th March, 2025 where he identified three issues for determination. The first issue was whether the Plaintiff is in occupation of Nakuru Municipality Block 29/1445, Nakuru Municipality Block 29/1078, Nakuru Municipality Block 29/1048 and Nakuru Municipality Block 29/1130. He submits that the Plaintiff was in actual and exclusive possession of the suit property since 1980. He submits that from the site visit, it was clear that the Plaintiff identified all the parcels in dispute and that the same were fenced with farming activities taking place. He submits that there was a grave on Nakuru Municipality Block 29/1445 belonging to the Plaintiff's father. He added that Nakuru Municipality Block 29/1078 was developed by the 3rd party's courtesy of the Plaintiff. He submits that there was evidence that the Plaintiff has been in occupation of the suit land.
74. The second issue was whether the Plaintiff's occupation of the suit land amount to adverse possession. He cited Section 7, 13 and 38 (1) and (2) of the *Limitation of Actions Act*. He also relied on a number of authorities including the Court of Appeal case in *Kasuve v Mwaani Investments Limited & 4 Others* 1KLR 184, *Tabitha Waitherero Kimani v Joshua Nga'ng'a* [2017] eKLR and *Wambugu v Njuguna* [1983] KLR 173. It was his submission that the evidence confirms that the suit parcels are subdivisions of Nakuru Municipality Block 29 which was originally known as L.R No 6273 originally owned by Kalenjin Enterprises Ltd. He argues that there was no evidence that the suit parcels were allocated to the Defendants by the government or from the Plaintiff. He submits that the Defendants claimed ownership through the company as shareholders. It was his submission that before subdivision, the suit parcels were registered as LR 6273 under RTA and later under RLA. The final issue on costs, counsel relied on Section 27 of the *Civil Procedure Act* and urged the court to award the Plaintiff costs of the suit.
75. Counsel for the 10th Defendant filed his submissions dated 14th March, 2025 where he identified two issues for determination. The first issue was whether there exist prescriptive rights against the government. While submitting in the negative and relied on exhibit 1 and 2 being the title and green card which confirmed that the title was issued on 24th July, 2002. He submits that the period of time between opening of the green card and date of transfer to the 10th Defendant that is 29th March, 2000 to 24th July, 2002 there was exclusion of government land from claims of adverse possession.



76. He relied on Section 41 (a) (1) of the *Limitation of Actions Act*. He relied on the case of Royal Media Services Ltd v AG & 2 Others [2013] eKLR which cited with approval the case in AG v Sudiji Trading as Crystal. He also relied on the case of Joseph Letuya & 21 Others v AG & 5 Others eKLR and submits that there was no prescriptive rights against government land.
77. The second issue was whether the claim of adverse possession is merited. Counsel submits in the negative and argues that considering the 12 years rule for a claim of adverse possession, the same could only be filed after 24th July, 2015. He submits that the claim was filed on 22nd February, 2013 being 2 years earlier thus premature and should be dismissed. He cited the case in Alice Wamugo Nyaga & 3 Others v Mbogo Njau [2019] eKLR and Ravji Karjam Sangani v Peter Gakuru [2019] eKLR. He submits that there was no evidence to prove exclusive, open and notorious occupation of the 10th Defendant's parcel of land. He further submits that the Plaintiff's occupation has not been continuous since women have attempted to farm on the land and the same was halted by the 10th Defendant. He urged the court to dismiss the suit with costs.

Analysis and Determination

78. I have considered the pleadings, evidence on record and submissions and I am of the view that the following issues arise for determination:
- a. Whether occupation and possession by the Plaintiff over the suit property constituted adversepossession.
 - b. Who should bear the costs of the suit.
79. The doctrine of adverse possession is founded under Section 7, 13, 37 and 38 of the *Limitation of Actions Act*. Further, in order for one to succeed in the claim for adverse possession, a party must prove he had uninterruptedly possessed and occupied the suit land continuously and the Defendant was aware of such. Section 7 of the Act provides as follows:
- “An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person. Section 13 “(1) A right of action to recover land does not accrue unless the land is in the possession of some person in whose favour the period of limitation can run (which possession is in this Act referred to as adverse possession), and, where under sections 9, 10, 11 and 12 of this Act a right of action to recover land accrues on a certain date and no person is in adverse possession on that date, a right of action does not accrue unless and until some person takes adverse possession of the land...”
80. In *Kasuve vs Mwaani Investments Limited & 4 others* 1 KLR 184, the Court of Appeal restated what a Plaintiff in a claim for Adverse Possession has to prove;
- “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”.
81. It was the Plaintiff's case that the suit land was originally owned by Kalenjin Enterprises Co. Ltd with their original tile LR No. 6273 before subdivision and conversion. The Plaintiff contends that the 1st entry in the green card P Exh 1(a) that showed the government of Kenya was erroneous. He also contends that he has been residing on the suit land since 1980. Upon cross examination, he admitted



that he was not aware that the land was owned by the government. He added that in both cases, the 1st entry showed that the Government of Kenya was registered on 29th March, 2000 and that there was no encumbrance registered against the two titles. The Plaintiff admitted that he could not recall the date he joined Kalenjini Enterprises Limited. It was also clear that the Plaintiff could not confirm the directors of the company. PW2 confirmed that entry number 1 on the green card was never challenged by the company. He also confirmed that the government did not issue any allotment letters. PW3, the Land Registrar on the other hand confirmed that the green card was first opened on 29th March, 2000 with the 1st entry as the government and the 2nd entry on 31st August, 2004 to Elijah.

82. The Plaintiff produced copies of the green cards for the suit properties to which he claimed adverse possession. It is not in dispute that the first entry was on 29th March, 2000 meaning that it was owned by the government. The Plaintiff only became the registered owner of Nakuru Municipality Block 29/1446 on 9th July, 2002.
83. In the case of *Chevron (K) Ltd v Harrison Charo Wa Shutu* [2016] KECA 248 (KLR) the court held that time does not run against land held by government and time could only start running upon registration of a proprietor as owner of land.
84. It is trite law that one cannot claim adverse possession against the government and therefore in the instant case time started running from 9th July, 2002. It is thus clear that a claim for adverse possession would be after the lapse of 12 years which in this case would be from 9th July, 2014. It is not in dispute that the Plaintiff filed the present summons on 22nd February, 2013 thus premature. It is this court's view that this period is short of the statutory period of twelve years required. It is also this court's view that the doctrine of adverse possession can only come into play against a known registered owner. It is noteworthy that prior to registration, time cannot start running but only upon issuance of titles and entry of the owner in the register which could then be used for computation as to when time starts running.
85. In view of the above, it is the finding of this court that the Plaintiff failed to prove his case of having acquire the suit parcels by adverse possession.
86. The upshot of the foregoing is that the Plaintiff's suit is dismissed. Each party to bear its own costs. It is so ordered.

SIGNED BY: HON. JUSTICE ANTONY O. OMBWAYO

THE JUDICIARY OF KENYA.

NAKURU ENVIRONMENT AND LAND COURT

ENVIRONMENT AND LAND COURT DATE: 2025-03-28 09:55:06

The Judiciary of Kenya

