



REPUBLIC OF KENYA



KENYA LAW
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**Yano v Kosgei & 2 others (Environment & Land Case 68 of 2018)
[2023] KEELC 281 (KLR) (25 January 2023) (Judgment)**

Neutral citation: [2023] KEELC 281 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT & LAND CASE 68 OF 2018
FO NYAGAKA, J
JANUARY 25, 2023**

BETWEEN

PATRICK MAGOTO YANO PLAINTIFF

AND

PAUL KIPWAMBOK KOSGEI 1ST DEFENDANT

PAULINE WANJIKU WATHIKO 2ND DEFENDANT

JANE NASAMBU FWOTI 3RD DEFENDANT

JUDGMENT

1. By way of an Originating Summons dated 23/07/2018 and filed on the same day, the Plaintiff prayed for the following reliefs:
 - a. The Plaintiff has obtained the title to land parcel No. Makutano/suwerwa Block 1/bwake/191 by way of adverse possession.
 - b. The Defendants' title over land parcel No. Makutano/suwerwa Block 1/bwake/191 has been extinguished by lapse of time.
 - c. Pursuant to (a) and (b) above, the Land Registrar or the Registrar in charge of the Trans Nzoia County Land Registry or the Registrar where the register for land (sic) do delete the name of the 3rd Defendant and in lieu thereof enter the name of the Plaintiff with a title Deed to land parcel No. Makutano/suwerwa Block 1/bwake /191.
 - d. Pursuant to (a), (b) and (c) above, the Land Registrar Trans Nzoia District Land Registrar or the Registrar having lawful custody of the register for parcel No. Makutano/suwerwa Block 1/bwake/191 be ordered to issue a fresh title deed to the Plaintiff over the said land parcel No. Makutano/suwerwa Block 1/bwake/191.



- e. Costs be borne by the Defendants.
2. The Summons was supported by the annexed Affidavits of the Plaintiff and one Evans Cherutich, both deposed on 23/07/2018.
3. The suit was defended. Through the Affidavit of the 1st Defendant sworn on 27/07/2018 titled Supporting (sic) and filed on even date, he stated that he had the authority of the other Defendants to respond accordingly. Thus, all the Defendants opposed the Originating Summons. They prayed that the suit be dismissed with costs.
4. After the directions of this Court made on 02/06/2021, the Originating Summons was tried as though it was commenced by way of a Plaint. Further directions were that the Originating Summons and the Supporting Affidavit as well as any other Affidavits filed by the Plaintiff be deemed as the Plaintiff's pleadings in the matter while the Replying Affidavit of the Defendants' were deemed as their pleadings in the matter. That then paved way for hearing of the matter by way of viva voce evidence as further directed by the Court.

The Plaintiff's Case

5. The Plaintiff testified as PW1. He stated on oath that the 1st Defendant was the registered proprietor of all that parcel of land namely Makutano/suwerwa Block 1/bwake/191 measuring 0.0400 Ha. Further, he stated that he charged the property to the favor of Agricultural Finance Corporation whose notification was at a sum of Kshs. 27,000.00.
6. In 1995, the 1st Defendant sold the suit land together with liabilities on it to the 2nd Defendant on 22/01/1996. This included but was not limited to the charge registered in favor of Agricultural Finance Corporation.
7. Unable to meet the balance due and owing to the Agricultural Finance Corporation, the 2nd Defendant resolved to sell the suit land and the Plaintiff benefited from its sale. Under the terms of engagement, the proceeds of sale would be paid to the said Agricultural Finance Corporation.
8. Pursuant to a sale agreement dated 29/06/2001 which was produced as P. Exhibit 1, the 2nd Defendant sold the suit land to the Plaintiff at a sum of Kshs. 38,000.00. This said sum discharged both the 2nd Defendant and the suit land from any liabilities to Agricultural Finance Corporation. He was issued with a receipt as proof of settlement of the said sum. The receipt numbered 1877406 was produced and marked as P. Exhibit 2. The Plaintiff took immediate possession of the suit land upon that transaction.
9. In taking possession, the Plaintiff built a semi-permanent house on it. He resided thereon, upon completing building the house in November 2001. He also constructed other structures for rent.
10. From December 2003 to the date of filing the suit, the Plaintiff placed his younger brother, one Evans Kipkemboi Cherutich, who testified as PW2 as janitor of the suit land. PW2 adduced evidence that he attested to the sale agreement dated 29/06/2001. He added that he acquired plot No. 205 from the 1st Defendant subsequently which was sold to one Lameck Iroga Nyachiro. He denied that he was asked to vacate the suit land in 2006.
11. Sometime in April, 2017, the Plaintiff discovered that the 1st Defendant covertly sold the suit property to the 3rd Defendant who, irrespective of that, did not take possession thereof. As a result, a caution was registered by notification on 05/04/2017 which was produced as P. Exhibit 4 upon the 3rd Defendant. The Plaintiff produced the green card in respect of the parcel of land as P. Exhibit 3. It showed that the property was transferred in favor of the 3rd Defendant on 06/07/2010.



12. On 06/07/2018, the 3rd Defendant forcefully entered the suit premises. Using a tractor, she pulled down part of the entrance to the suit property and commenced the process of building a house that would have ultimately had the effect of enclosing the Plaintiff's entire house. When inquired as to her actions, the 3rd Defendant ran away and reported to Cherangany Police Station that she had been assaulted. He produced pictures of the suit land and marked them as P. Exhibit 5.
13. The Plaintiff computed that since 2001, he had been in occupation of the suit premises for over seventeen (17) years. As a result, irrespective of any other claims by the 1st Defendant, any title rights in favor of the 1st Defendant had been extinguished by 2013 when his right of adverse possession right had accrued, and that overrode rights against the title to the suit land.
14. Later, on 16/07/2018, the Plaintiff's caretaker received a notice in the form of a letter produced as P. Exhibit 7, from the area Senior Chief to vacate the suit premises. On the very same day, the Defendant destroyed his house on the strength of that vacation notice.
15. The Plaintiff now claims adverse possession over the suit land. He prays that the reliefs sought be granted as prayed.

The Defendants' Case

16. The 1st Defendant conceded that he sold several of his properties to the 2nd and 3rd Defendants as well as other third parties. He sold plots No. 196, 197, 198, 204, 205, 206, 207 and 210 as shown by a letter dated 06/03/2017 written to the 2nd Defendant on 22/01/1996 which was produced and marked as D. Exhibit 20. The sale agreement was produced and marked as D. Exhibit 11. He acknowledged receipt of the sum of Kshs. 51,000.00 from the 2nd Defendant by way of an acknowledgment note dated 05/05/1996, produced and marked as D. Exhibit 12.
17. The 1st Defendant denied that his loan was repaid. Nevertheless, the 2nd Defendant admitted that under their terms of engagement, she sold two (2) plots to settle the loan taken out by the 1st Defendant from his financier, the Agricultural Finance Corporation.
18. The 2nd Defendant admitted that she inadvertently sold plot No. 191 to the Plaintiff. She alleged that she did not know the exact position. The 1st Defendant equally concurred that the property was sold in error. The 2nd Defendant added that the accidental sale of the suit land emanated from the pressure to sell which was mounted from the 1st Defendant's financier to settle the loan.
19. The 2nd Defendant continued her evidence that she lived on that parcel since 1995 when she purchased the same from the 1st Defendant. During the sale to the Plaintiff thus, there was no case of mistaken identity. She clarified that the 1st Defendant never filed a claim against her on illegally selling land that did not belong to her.
20. Come the 04/03/2006, by a letter produced as D. Exhibit 7, PW2 was asked to vacate the suit premises by the chief for trespass. To this end, the 2nd Defendant offered on behalf of the Plaintiff, PW2 an alternative plot, that is plot No. 205. It is this plot that PW2, after taking possession, sold the same to Lameck Iroga Nyachiro in 2011, a transaction which the 1st Defendant was apprised of. It was this verbal agreement that the 2nd Defendant relied on to cancel the former agreement that she had entered with the Plaintiff. PW2 then agreed to vacate the suit premises but never left.
21. According to DW4, one Phillis Nyachiro Gechemba, plot No. 205 later changed to plot No. 206, was bought by her brother Lameck Iroga Nyachiro. A sale agreement was drawn in 2011 to that effect. DW4 testified that he then sold it to her husband, one James Onkundi Mamumi, on 02/01/2014 vide



- a sale agreement. She testified that she currently resides therein with her family. Both agreements were produced in evidence and marked as D. Exhibit 4 and D. Exhibit 5 respectively.
22. It was explained that title deed over plot No. 205 belonged to one Stephen Thigo hence the change of purchase to plot No. 206 subsequently owned by James Onkundi Mamumi both titles being produced and marked as D. Exhibit 8.
 23. Via two demand (2) letters dated 29/10/2012, one produced and marked as D. Exhibit 17 and the other dated 12/11/2012, produced and marked as D. Exhibit 15, PW2 was summoned to collect the balance of monies from the sale agreement he had entered with Lameck Iroga Nyachiro.
 24. Meanwhile, the confusion as to ownership of plot No. 191 necessitated the 1st Defendant to report to the area Chief and notify the 2nd Defendant of this error. The 1st Defendant then sold the suit land to the 3rd Defendant on 09/03/2010. The sale agreement was produced and marked as D. Exhibit 9. A title deed was then registered in the 3rd Defendant's favor on 06/07/2010. It was produced as D. Exhibit 8.
 25. The 3rd Defendant took possession and occupation without disturbance. She found a house that remained on the suit land up to the time of her testimony. Be that as it may, she constructed a mud house in 2010, lived there and later erected a permanent house in 2018 before the injunction order was issued. The construction was carried out on the strength of the Chief's letter dated 09/09/2011, produced as D. Exhibit 13. During construction, PW2 continued to live on the suit land.
 26. A dispute arose between PW2 and the 3rd Defendant. The 3rd Defendant testified that PW2 refused to remove the structures erected thereon. The matter was heard by the local administration in the absence of PW2 who failed to appear in spite of being summoned. The Chief decided in favor of the 3rd Defendant. He further ordered PW2 to vacate the suit land and move to the land showed to him by the 2nd defendant. The decision was captured in his letter dated 24/02/2017 produced and marked as D. Exhibit 16 and further followed up by the Chief's letter dated 08/10/2018 which was produced and marked as D. Exhibit 19.
 27. The dispute as to ownership over the suit land was further escalated to the Deputy County Commissioner who summoned the Plaintiff, PW2 and the 2nd Defendant. In the summons dated 02/07/2018, produced as D. Exhibit 18, it was remarked that the 2nd Defendant showed PW2 a land in exchange of the former plot. Consequently, the Plaintiff could only claim from PW2 for compensation.
 28. The 2nd Defendant conceded that notwithstanding the Court orders, the 3rd Defendant completed the construction of her house adjacent to the Plaintiff's abode. That she came onto the plot after a successful purchase. The 3rd Defendant testified that he was aware, in the meantime, that the Plaintiff had purchased the suit land from the 2nd Defendant vide a sale agreement.
 29. On the structures pulled down, the 3rd Defendant placed PW2 as the perpetrator. The Defendants denied that the suit property had maize plantation, stating that the pictures produced in evidence by the Plaintiff were photographs of their neighbour's plot. The Defendants relied on the following other documents to support their position. They were produced and marked in evidence as follows:
 - i. Area Map - D. Exhibit 1
 - ii. Area List - D. Exhibit 2
 - iii. Chief's letters dated 21/05/2011 and 12/11/2012 - D. Exhibit 3
 - iv. Photographs - D. Exhibit 6
 - v. Chief's letters dated 09/10/2012 - D. Exhibit 10



- vi. Chief's letters dated 09/10/2012 - D. Exhibit 14
30. Fundamentally, the Defendants urged this Court to dismiss the Plaintiff's claim with costs to them.

Submissions

31. After the close of both cases, the parties were directed to file and exchange their written submissions. The Plaintiff's submissions dated 14/04/2022 were filed on 19/04/2022. He argued that the change of title from the 1st to the 2nd Defendant in 2010 did not extinguish his rights of Adverse Possession that had already accrued. He opined that by admission of the 1st Defendant who left the suit land in 1995, or in the alternative in 2001 when the suit land was sold to him, time started running then. The said amount of time morphed and crystalized in 2013 when adverse possession accrued since his brother PW2 had been in occupation at his behest uninterruptedly. As a result, the acquisition of title by the 3rd Defendant was defeated. He cited several submissions fortifying his stance. He submitted that he had proved his case on a preponderance of the evidence adduced and prayed that the suit be allowed.
32. The Defendants on the other hand filed their joint submissions dated 20/05/2022 on 25/05/2022. They submitted that the suit land was never sold to the Plaintiff but the 3rd Defendant. That since PW2 took ownership of plot No. 205 in lieu of the suit land, the Plaintiff's relief lay in compensation from PW2 who sold plot No. 205 to a third party. They accused the Plaintiff of claiming adverse possession concurrently with a claim for purchaser's interest which they alleged, was not allowed in law and did not exist. Be that as it may, his peaceful possession was interrupted in 2006 when issues arose over ownership of the suit land. To them, resultantly, the Plaintiff failed to demonstrate that he had met the conditions precedent for a claim for adverse possession. They prayed that the suit be dismissed with costs.

Analysis and Disposition

33. I have carefully analyzed the pleadings, the evidence and the documents relied on. I have also considered the rival submissions and authorities relied upon.
34. The doctrine of adverse possession is a common law principle where a possessor acquires ownership of a parcel of land by ousting the registered proprietor of a particular property. Frowned on as it can be that it legitimizes an illegality in the sense that a person who is unlawfully (or without permission) occupying another's land as a trespasser finally acquires proprietorship of that land after passage of time, the law is in our books. It is thus good law.
35. A successful party must aptly demonstrate certain requirements embodied from the Latin maxim *nec vi, nec clam, nec precario*. That phrase is loosely translated to mean "without force, without secrecy, without permission" or as stated by Lord Hoffmann in *R. vs. Oxfordshire County Council ex p. Sunningwell Parish Council* [2000] 1AC 335 at 350, 'not by force, nor stealth, nor the licence of the owner'.
36. Several Acts of Parliament and Sections of those statutes holistically govern the doctrine of adverse possession in Kenya. Section 7 as read together with Section 13, 16, 17, 38 (1) and (2) of the *Limitation of Actions Act* Cap 22 Laws of Kenya provide that adverse possession morphs after the expiry of twelve (12) years. The effect of it all is to dispossess a title holder as proprietor in favor of the adverse possessor. Under Section 28 (h) of the *Land Registration Act* 2012, by dint of the wordings of Section 7 of the *Land Act* 2012, adverse possession is recognized as an overriding interest on land.



37. The Court of Appeal in *Kasuye vs. Mwaani Investments Limited & 4 others* 1 KLR 184 rehashed what a profunder claiming adverse possession must prove 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.”

38. Similarly, the Court of Appeal sitting in *Kisumu Civil Appeal no. 27 of 2013; Samuel Kihamba vs. Mary Mbaisi* [2015] eKLR reiterated the above principles as hereunder:

“Strictly, for one to succeed in a claim for adverse possession, one must prove and demonstrate that he has occupied the land openly, that is, without force, without secrecy, and without license or permission of the land owner, with the intention to have the land. There must be an apparent dispossession of the land from the land owner. These elements are contained in the Latin phraseology, *nec vi, nec clam, nec precario*. The additional requirement is that of *animus possidendi*, or intention to have the land”.

39. It is trite law that adverse possession proceedings can only be instituted against a title holder, that is to say, a registered owner (not necessarily the current registered holder) as set out by the Court of Appeal in *Chevron (K) Ltd vs. Harrison Charo Wa Shutu* [2016] eKLR. In it the Court held:

“It is a settled principle that a claim for adverse possession can only be maintained against a registered owner”.

40. The Plaintiff herein claims adverse possession against the Defendants. It is not disputed that the 1st Defendant obtained title to the suit land on 16/07/1998 while the same is presently registered in favor of the 3rd Defendant since 06/07/2010. Thus, the institution of the Plaintiff’s case meets the requirement of the *Chevron* case above.

41. Having ascertained that the Plaintiff has properly instituted the proceedings, I now proceed to determine whether he had been in absolute disclosed possession having occupied the land openly without interruption for a period of twelve (12) years. The occupation must have been done without force, without secrecy and without permission with the end goal of dispossessing the owner. Furthermore, it must be shown that there was intention to have the land. In other words, as held by the Court in *Gabriel Mbui vs. Mukindia Maranya* [1993] eKLR, the Plaintiff must demonstrate the following:

- I. continuous and uninterrupted possession of the land for at least 12 years;
- II. the possession has been open and notorious to the knowledge of the owner;
- III. the possession must be without the permission of the owner; and
- IV the plaintiff ought to have asserted a hostile title to the owner of the property.

42. The Plaintiff’s position was that the property was acquired from the 1st Defendant but through the 2nd Defendant. It was his testimony that the 1st Defendant registered a charge in favor of Agricultural Finance Corporation over the suit land. Unable to meet his liabilities, the 1st Defendant sold the property to the 2nd Defendant together with the liabilities accrued therefrom on 22/01/1996. The 2nd Defendant confirmed this as the accurate position.



43. The 2nd Defendant could not meet her financial obligations. Concurring with the Plaintiff's evidence, the property was by sale agreement dated 29/06/2001 sold to the Plaintiff. He further inherited her financial obligations which sum was paid in the sum of Kshs. 38,000.00. This amount was confirmed as received vide receipt No. 1877406. It is this payment that led him to take possession.
44. The Plaintiff proceeded to construct a semi-permanent house soon thereafter. The existence of this house was affirmatively confirmed by the 3rd Defendant who acquired absolute proprietorship over the parcel of land in 2010.
45. I must at this juncture point out that the fact of change of ownership does not clog or fetter the period running on the maturity of adverse possession. This was held by the Court of Appeal in *Githu vs. Ndeete* (1984) KLR 776 thus:
- “The mere change of ownership of land which is occupied by another person under adverse possession does not interrupt such person's adverse possession”.
46. The Plaintiff computed that since 2001, he had been in occupation by construction of his house for seventeen (17) years up to the time of filing suit. He furthered that the presence of his brother PW2 living on the suit land in December, 2003 retained his possessor rights for at least fifteen (15) years till the date of filing suit.
47. These above facts were not disputed save for the fact that the 1st Defendant denied that he sold the suit land to the 2nd Defendant and subsequently to the Plaintiff. He relied on a sale agreement dated 22/01/1996 to show that he sold several properties except the suit land to the 2nd Defendant for a consolidated sum of Kshs. 51,000.00. Amongst the plots sold to the 2nd Defendant included No. 205 and plot No. 206.
48. Interestingly, and to explain away the fact of its sale, PW2 testified that he acquired plot No. 205 from the 1st Defendant. In the absence of documentary evidence to prove the same, that argument is disregarded and dismissed as a conjecture.
49. At the heart of these proceedings lies the accusations, countermands and transpirations that occurred in 2006. While PW2 denied that he was asked to vacate the suit land in that year, the 1st Defendant testified that he discovered that the suit land had been erroneously placed under the ownership of the 2nd Defendant culminating to claim of ownership by the Plaintiff. She testified that the error arose as a result of the absence of the identification process of the suit land during its purchase from the 1st Defendant. So that she sold the wrong property to the Plaintiff.
50. Withal, she stated that she lived on that parcel since 1995 when she purchased the same from the 1st Defendant. During the sale to the Plaintiff thus, there was no case of mistaken identity. She had lived on the suit land after purchasing the same from the original owner. She added that the 1st Defendant never filed a claim against her on illegally selling land that did not belong to her.
51. Following this confusion, the 2nd Defendant offered her plot No. 205 to the Plaintiff in lieu of the suit land but through his caretaker PW2. Later, on 04/03/2006, the Chief asked PW2 to vacate the suit premises citing trespass. It is this plot and pursuant to an agreement that PW2 sold the same to one Lameck Iroga Nyachiro. PW2 did not explain how he acquired the said property. I thus find the Defendant's version of facts verifiable as to accrual of ownership rights by PW2. I find that the property was acquired by PW2 as testified by the 2nd Defendant.



52. While PW2 denied that he was asked to vacate, the 2nd Defendant testified that they verbally agreed as between PW2 and herself that he would vacate the suit premises and move into plot No. 205. The mere denials in the Plaintiff's case, coupled with a lack of a cogent argument to the Defendant's version of facts lead me to conclude that indeed in 2006, PW2, in his capacity as caretaker of the Plaintiff was asked to vacate the suit land and, in that stead, placed on plot No. 205.
53. It appears that during this period where parties were attempting to create harmony, PW2 did not fully disclosed to the Plaintiff that he had been offered an alternative property by the 2nd Defendant in his favor. The other possible scenario is that the Plaintiff was well aware of what had occurred but took the events lethargically obtusely unaware or disinterested of the repercussions, if any, it may have had on his ownership rights.
54. The Defendants argued that the doctrine of adverse possession did not accrue as a dispute arose in 2006. From the facts on record, I am persuaded to hold that a dispute as to ownership became prevalent in 2006 when the Chief asked PW2 to vacate the suit premises. The Plaintiff was by extension of PW2, who he testified was called upon to occupy the premises on his behalf, asked to leave on the strength of a verbal agreement that the 2nd Defendant had entered with PW2. What was the ultimate effect of this? Put differently, did these actions amount to interruption? The Court of Appeal in *Benson Mukuwa Wachira vs. Assumption Sisters of Nairobi Registered Trustees* [2016] eKLR affirmed the sentiments of the Court in *Amos Weru Murigu vs. Marata Wangari Kambi & Another*:
- “...as regards assertion of title, it is not enough for a proprietor of land to merely write to the trespasser (to vacate). A letter by the proprietor, even if it be through an advocate or the chief of the area does not amount to assertion of title in law and cannot therefore interrupt the passage of time for the purpose of computing the period of adverse possession. For there to be interruption, the proprietor must evict or eject the trespasser but because eviction is not always possible without breach of peace, institution of suit against a trespasser does interrupt and stop the time from running.”
55. In *Nyaga Rungu vs. Stanley Nyaga Kuvuta* [2020] eKLR, the court held:
- “The other aspect for consideration is whether or not the Plaintiff's possession was interrupted by the various legal proceedings between the parties. Interruption of possession is significant in that it stops time form running under the *Limitation of Actions Act*. In the case of *Githu Vs Ndeete* (supra) the court addressed the issue of interruption as follows:
- “Time ceases to run under the *Limitation of Actions Act* either when the owner asserts his right or when his right is admitted by the adverse possessor. Assertion of right occurs when the owner takes legal proceedings or makes an effective entry into the land. See *Cheshire's Modern Law of Real Property*, 11th Edition at p. 894. In my view the giving of notice to quit cannot be an effective assertion of right for the purpose of stopping the running of time under the *Limitation of Actions Act*...”
56. From the above authorities, interruption only takes place by the institution of legal proceedings to obtain an eviction order or by way of an effective entry.
57. In the present case, while the Chief asked PW2, and by extension the Plaintiff to vacate the suit premises, the Defendants failed to take further action to defeat the time running process to the favor of the Plaintiff. I observe that the 3rd Defendant constructed a mud house in 2010 but made no efforts to evict the Plaintiff. Suffice to say, she only effected construction in 2018 on the strength of a Chief's



letter dated 09/09/2011 while acknowledging the presence of the Plaintiff through PW2. She did not assert her rights as required by law by way of an eviction order through Court action or by effective entry that would have the effect of vacating the Plaintiff from the suit land thereby bearing no negative impact on the Plaintiff's acquired rights.

58. In the end, and on a preponderance of the evidence adduced, I find that the Plaintiff occupied the suit premises openly and as of right uninterruptedly for a period of more than twelve (12) years after dispossessing the registered owner who left the suit premises in 1996. He took possession and ownership of the suit land as his own exclusively. Since 2001, when he took possession by constructing a semi-permanent house and continuing further in 2003 through PW2, the Plaintiff has successfully demonstrated that he occupied the suit premises after entering into a sale agreement with the 2nd Defendant in 2001.

59. I am guided by the Court of Appeal in Peter Mbiri Michuki vs. Samuel Mugo Michuki [2014] eKLR who held as follows in making that conclusion:

“Possession of land or any property for that matter need not be actual and physical; possession can also be constructive. In the instant case, the record shows that the plaintiff entered the suit property in 1964; constructed a house thereon in 1970 and put his elder brother to live in the house and the plaintiff together with his wife occasionally visited and lived in the house. These facts on record not only prove actual possession but also constitute constructive possession of the suit property by the plaintiff. The elder brother of the plaintiff was in possession of the suit property by license and permission of the plaintiff. In law, actual possession of any property by a licensee is constructive possession thereof by the licensor.”

60. Consequently, I find that the Plaintiff's claim is successful. Accordingly, I enter judgment in his favour as against the Defendants as follows:

- a. A declaration that the Defendants' title in respect to land parcel No. Makutano/suwerwa Block 1/bwake/191 has been extinguished by the Plaintiff's Adverse Possession thereof for a period of more than 12 years in terms of the Limitations of Actions Act.
- b. A declaration be and is hereby made that the Defendants' title over land parcel No. Makutano/suwerwa Block 1/bwake/191 has been extinguished by lapse of time.
- c. The Plaintiff has become entitled by way Adverse Possession to being owner of land parcel No. Makutano/suwerwa Block 1/bwake/191 registered in the name of the 3rd Defendant.
- d. The relevant Land Registrar shall delete the name of the 3rd Defendant and register the name of the Plaintiff as absolute proprietor of land parcel No. Makutano/suwerwa Block 1/bwake /191.
- e. The relevant Land Registrar be directed that the order herein shall be an instrument of transfer of ownership of the whole suit land from the 3rd Defendant to the Plaintiff and does issue a fresh title deed to the Plaintiff over the said land parcel No. Makutano/suwerwa Block 1/bwake/191.
- f. The costs of the suit shall be borne by the Defendants.

61. Orders accordingly.

JUDGMENT DATED, SIGNED AND DELIVERED AT KITALE VIA ELECTRONIC MAIL THIS 25TH DAY OF JANUARY, 2023.



HON. DR. IUR FRED NYAGAKA
JUDGE, ELC KITALE

