



Case Number:	Environment and Land Case 124 of 2012 (O.S)
Date Delivered:	03 Oct 2019
Case Class:	Civil
Court:	Environment and Land Court at Kwale
Case Action:	Judgment
Judge:	Francis Mwangi Njoroge
Citation:	Alice Chemandan Siyoi v Joel Kiptoo Ng'eno & 3 others; John Thuo Gakuru(Interested Party)
Advocates:	Wanyama for plaintiff Samba for defendants
Case Summary:	-
Court Division:	Environment and Land
History Magistrates:	-
County:	Trans Nzoia
Docket Number:	-
History Docket Number:	-
Case Outcome:	Plaint ordered
History County:	-
Representation By Advocates:	One party or some parties represented
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
<p>The information contained in the above segment is not part of the judicial opinion delivered by the Court. The metadata has been prepared by Kenya Law as a guide in understanding the subject of the judicial opinion. Kenya Law makes no warranties as to the comprehensiveness or accuracy of the information.</p>	

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 124 OF 2012 (O.S)

ALICE CHEMANDAN SIYOI.....PLAINTIFF

VERSUS

JOEL KIPTOO NG'ENO.....1ST DEFENDANT

RODAH CHEBET NG'ENO.....2ND DEFENDANT

FRANCIS KIPRONO NG'ENO.....3RD DEFENDANT

BRIAN KIPTANUI4TH DEFENDANT

JOHN THUO GAKURU.....INTERESTED PARTY

JUDGMENT

Introduction

1. The plaintiff filed the Originating Summons dated **3rd October, 2012** on the same date. In that Originating Summons she seeks the determination of the following questions:

- (1) Whether the plaintiff has been in adverse possession of land parcel No. Kitale Municipality Block 15/Koitogos/1011.**
- (2) Whether the 1st defendant's title to the land extinguished at the expiry of 12 years from the date the plaintiff took possession.**
- (3) Whether the 1st defendant's title to the land had extinguished hence had no title transfer to the 2nd, 3rd and 4th defendants.**
- (4) Whether a declaration should be made that the 2nd, 3rd and 4th defendants are holding title to land parcel No. Kitale Municipality Block 15/Koitogos/1011 in trust for the plaintiff.**
- (5) Whether an order should be made for the 2nd, 3rd, and 4th defendants to transfer land parcel No. Kitale Municipality Block 15/Koitogos/1011, in in default the court do make an order authorizing the Deputy Registrar of the Court to sign the necessary documents to effect transfer of the aforesaid land to the plaintiff.**
- (6) That the court do make further orders or grant any relief it may deem just to grant in the circumstances.**
- (7) That the defendants pay the costs of this summons to the plaintiff.**

2. The summons is supported by the sworn affidavit of the plaintiff dated **3/10/2012**. In that affidavit the plaintiff avers that she and her late husband purchased **5 acres** (hereinafter referred to as the suit land) out of 1st defendant's farm then known as **plot No. 9 Koitogos Farm** in **1988**, paid **Kshs.210,000/=** and took possession thereof immediately and developed it; that upon subdivision of plot No. 9 - Koitogos Farm the 5 acres parcel of land was subsequently assigned **LR No. Kitale Municipality Block 15/Koitogos/1011** and an application for land control board consent was prepared and her late husband and the 1st defendant took up the task of pursuing consent; that the plaintiff and her family have occupied and exercised acts of ownership over the suit land

openly, quietly, uninterruptedly and without disturbance since **1988** to date and have never lost possession thereof; that however a demand letter written on behalf of the 2nd, 3rd and 4th defendants was served on her on **6/8/2012** demanding that she vacates the land; that soon thereafter she conducted a search and discovered that the 2nd, 3rd and 4th defendants were registered as owners of the suit land on **23/12/2011** and title issued to them on the same date. It is her case that the 1st defendant fraudulently and without her consent and knowledge transferred the suit land to the three defendants. It is further averred that the 1st defendant and the 2nd, 3rd and 4th defendants who are his children knew the suit land had been hers since **1988**. She averred that as at **1988** she fenced the land and constructed some houses thereon and planted trees. Further she interred the remains of her late son thereon. For the foregoing reasons she opines that she has acquired adverse title to the suit land against the 1st defendant who was the registered owner before registration of the rest of the defendants and that the 1st defendant had no good title to the land to transfer to the other three defendants as his title was extinguished after she took possession, hence the prayers of declaration that the 2nd, 3rd and 4th defendants hold title to the suit land in trust for her.

3. The 1st defendant filed replying affidavit in response dated **19/11/2012**. In summary the 1st defendant's affidavit admits that an agreement was made, but states that the agreement was between him and the plaintiff's husband and not the plaintiff; that the plaintiff's husband defaulted in payment of full consideration and the 1st defendant terminated the sale agreement and deposited the purchase price paid so far with an advocate's firm in **1991** for onward transmission to the plaintiff's husband as a refund; that the plaintiff's husband having declined to collect the refund, the said monies remain with said advocate to date; that no structures were erected on the suit land by the plaintiff's husband and the plaintiff built the structures on the land only three years ago; that the plaintiff's husband has never been in occupation of the land continuously and uninterruptedly or in a manner hostile to his title; that the plaintiff commenced her acts of trespass on the suit land after the land was transferred to the 2nd, 3rd and 4th defendants; that he has never signed any application for land control board consent in favour of the plaintiff and the exhibited application is a forgery; that the land was transferred to the 2nd defendant for valuable consideration and the suit has no merit and it should be dismissed.

4. The 2nd defendant filed replying affidavit dated **24/1/2013** on her own behalf and on behalf of 3rd and 4th defendants. She depones that she associates herself with the depositions of the 1st defendant's set out above; that the transfer of the land to her was in appreciation of her support which she had rendered in educating her siblings and settlement of medical bills; that a search she conducted in respect of the suit premises at the time of transfer revealed that the 1st defendant was still the owner and that the plaintiff's husband having died before instituting any proceedings against the 1st defendant, and the plaintiff having not lived on the suit land, has no *locus standi* to bring this action.

5. The interested party successfully applied to be enjoined to these proceedings vide a motion dated **19/1/2017** and this court, besides enjoining him as an interested party ordered him to file his papers within 14 days from 17/3/2017 whereupon he filed a replying affidavit dated **4/4/2017**.

The Plaintiff' Evidence

6. **PW1**, the plaintiff testified on **11/10/2016**. In summary her evidence is that her husband and the 1st defendant entered into an agreement for the sale of the suit land in **1988** and that the suit land was sketched; that they had intended to buy **10** acres but were compelled to restrict themselves to **5** acres due to financial constraints and an application for land control board consent was made in **1996** and was signed by the two contracting parties but not pursued; that she is still resident on the land and has been doing so openly and without interruption and with the knowledge of the defendants; that she approached this court upon receiving the demand to vacate the land and she conducted a search soon thereafter and discovered that the 2nd, 3rd and 4th defendants were the new owners; that she has a permanent house on the land in which his son stays; that her husband died in **2012** and was buried on the suit land without any demur from any party and that no proceedings have ever been filed by the 1st defendant.

7. On cross-examination **PW1** concurred with the 1st defendant that only half of the full purchase price **Kshs. 420,000/=** for 10 acres was paid by her husband; that she was not present when the agreement was drawn and signed; that her husband died on **5/4/2009**; that she put up her house in **2006**; that she has her matrimonial home elsewhere in the same area while the 1st defendant lives in Turbo; that she was not aware of the rescission of the agreement between the 1st defendant and her husband or of the deposit of the intended refund of **Kshs.210,000/=** deposited with the 1st defendant's advocate. With that evidence the plaintiff closed her case on **11/10/2016**.

The Defence Case

8. **DW1, Joel Kiptoo Ngeno**, the 1st defendant, gave evidence on **6/12/2017** and adopted the contents of affidavit dated **19/11/2012**.

His evidence is that the full purchase price was not paid and there was no subsequent agreement to reduce the acreage being bought from **10** to **5** acres; that the balance was to be paid on **30/6/1989** but was never paid; that he made a decision on **9/5/1991** resolving not to sell the land and asked the plaintiff's husband to collect his refund but the latter refused whereupon he deposited it with his advocate; that the advocate called the plaintiff's husband but he still declined to go and collect the refund and to date that refund is still held by those advocates; that the plaintiff does not live on the land now; that he does not know when the structures on the land were built or when the plaintiff's son was buried on the land and that he does not have any relationship with the plaintiff who should go and collect her money from his advocate.

9. On cross-examination he stated that he does not live on the suit land but in Turbo; that he has never met the plaintiff on the land and that his three children the 2nd, 3rd and 4th defendants do not also live on the land. He averred that he does not know the interested party. With that evidence the defendants closed their case.

10. The Interested Party testified on **27/3/2019**. He adopted the contents of his sworn affidavit dated **4/4/2017** as evidence-in-chief in this matter. He produced a copy of a title deed for **Kitale Municipality Block 15/ Koitogos/4080** and a copy for the title deed for **Kitale Municipality Block 15/Koitogos/4139** which titles he stated are charged with the Kenya Commercial Bank. **Plot No 4139** measures **2** acres. He also produced an agreement dated **26/4/2016** vide which he apparently bought the land for **Kshs.3,000,000/=** from the 2nd, 3rd and 4th defendants. He produced a second agreement for purchase of 2 acres of land for **Kshs.6,000,000/=** from the same defendants. He produced a certificate of official search showing that he is the sole owner of the suit land; it also shows that the 3 defendants owned the land prior to purchase.

11. On cross-examination he averred that there was no caution registered over the suit property and that he never knew that the plaintiff had any claim or interest over the suit land. On further cross-examination by Mr. Wanyama he averred that by the time he purchased the land he did not know of the existence or pendency of this case. He averred that only a small house was visible on the land by the time of purchase and the sellers informed him that it belonged to someone who they had allowed to utilize the land. He admitted to not having taken possession of the land; that when he bought the land there was maize crop on it which he was informed belongs to one Alice. Subsequently they went to the Chief and there he was informed that there is a case pending in court. He finally admitted that he found the plaintiff on the land but he did not know when she took possession of the land, a statement he retracted soon thereafter in re-examination by Mr. Bisonga.

12. The defendants filed written submissions on **4/6/2019**. It would appear the plaintiff and the interested party never filed any submissions as there are none on the record.

DETERMINATION

Issues for determination.

13. It is common ground that the plaintiff is in possession of the suit land; that the land was sold to the plaintiff's husband by the 1st defendant on **22/11/1988**; that half of the purchase price for 10 acres was paid to the 1st defendant; that the land was subdivided and a portion of **5** acres created and named **Kitale Municipality Block 15/Koitogos /1011**; that the 1st defendant transferred the said **Kitale Municipality Block 15/Koitogos /1011** to the 2nd, 3rd and 4th defendants who were registered as proprietors on **23/12/2011** and that they subsequently subdivided the land serially and sold two portions thereof to the interested party; and that the interested party has not been able to take possession of the portions so purchased.

14. The issues that arise for determination are as follows:

(a) Was there a valid agreement between the plaintiff's husband and the 1st defendant and if so, was it effectively rescinded by the 1st defendant"

(b) Whether the agreement is defective for want of compliance with Section 3(3) of the Law of Contract Act Cap 23.

(c) Was there need for a land control board consent in respect of that agreement and if so is the agreement null and void for want of consent"

(d) Whether the plaintiff has established that the land subject matter of the agreement is the same as LR Kitale Municipality

Block15/Koitogos/11.

(e) Has the plaintiff established that she is entitled to the suit land by virtue of adverse possession''

(f) What orders should issue''

(a) Was there a valid agreement between the plaintiff's husband and the 1st defendant and if so, was it effectively rescinded by the 1st defendant''

15. On the basis of the material on record, this court is satisfied that the agreement dated **22/11/88** is admitted by both parties.

16. The 1st defendant claims that owing to failure of the plaintiff's husband to pay the full purchase price and payment of what he called "*small and unacceptable instalments*" he unilaterally rescinded the sale agreement between them in **1991**.

17. The only evidence of alleged termination and refund of the purchase price so paid is a letter by his advocates copy of which is exhibited in his replying affidavit. It appears to inform the plaintiff's husband that the agreement had been terminated and that he should collect **Kshs 210,000/=** from the advocate's office.

18. There is a great gap that has not been filled in by the 1st defendant's evidence: what happened between the date of the purported rescission (**1991**) and the date of transfer to his children, the 2nd 3rd and 4th defendants (December **2011**) He only avers that the plaintiff's husband never took possession of the suit land. He terms the application for land board consent as a forgery; he does not state or establish by credible evidence that the date on which the plaintiff first took possession of the suit land.

19. It must be emphasized that the agreement entered into by the parties appears to have been severable into two principal parts; the first part which comprised of 5 acres to be fully paid for by **31/12/88** and the balance of 5 acres to be fully paid for by **30/6/1989**. Of the 10 acres, 5 were effectively paid for and occupied as at **9/5/1991**.

20. In this court's view evidence on the record shows that the plaintiff's husband paid for and occupied 5 acres out of the 1st defendant's land and failed to pay for the balance of 5 acres. However he also never took up what he had not paid for.

21. To satisfy this court that there was rescission and to fend off the claims of adverse possession, it was also incumbent on the 1st defendant to table evidence other than a termination letter, showing that funds had really been deposited with the advocates for collection by the plaintiff's husband; he also needed establish that the letter that he exhibits in his reply marked "**JKN1**" was received by the plaintiff's family, and that they received the funds, or were granted sufficient opportunity and information to enable them do so.

22. It was also incumbent upon the 1st defendant to show that he had taken action to evict the plaintiff and her family, or that he had had them evicted on a certain date after the purported rescission and that their possession had been interrupted had returned to the land on a specific date. These things he failed to do. In this court's view, there is not sufficient evidence to support the allegation of rescission and therefore the agreement was not proved to have been wholly rescinded by the alleged letter of termination.

(b) Whether the agreement is defective for want of compliance with Section 3(3) of the Law of Contract Act Cap 23

23. The defendants aver that the agreement is defective as it was not attested to or executed in view of **Section 3(3)** of the **Law of Contract Act Cap 23**. The provisions of that section are as follows:

“(3) No suit shall be brought upon a contract for the disposition of an interest in land unless-

(a) the contract upon which the suit is founded-

(i) is in writing;

(ii) is signed by all the parties thereto; and

(b) the signature of each party signing has been attested by a witness who is present when the contract was signed by such party:

Provided that this subsection shall not apply to a contract made in the course of a public auction by an auctioneer within the meaning of the Auctioneers Act (Cap. 526), nor shall anything in it affect the creation of a resulting, implied or constructive trust."

24. The prime question that arises in dealing with this issue is: is the suit herein founded on contract? The answer lies in the terms of the Originating Summons dated 3rd October 2012. No contract is mentioned therein. Even though the entry into the suit land was by virtue of the terms of the agreement dated 22/11/88, that agreement only features in the evidence; the basis of the claim as framed in the Originating Summons is solely the doctrine of adverse possession. I find that the objection to the suit on the basis of non-compliance with **Section 3(1) of Cap 23** has no merit.

(c) **Was there need for a land control board consent in respect of that agreement and if so is the agreement null and void for want of consent?**

25. I have already stated as above that the agreement between the parties appears to have been in the form of two severable parts. The plaintiff's family had paid in full for and taken possession of the five acres that they were able to, and that the instant claim is premised on the doctrine of adverse possession.

26. The defendants aver that there was no land control board consent and the application form exhibited by the plaintiff is a forgery. Nevertheless, no evidence to support that claim of forgery was presented to court by the defendants and the plaintiff did not also exhibit any land control board consent showing that the transaction had been approved as per the relevant law. However, it is clear that the land in question is agricultural user. Even assuming this suit is premised on the agreements which it is not, would the lack of a Land Control Board consent defeat the agreement?"

27. In my view it would not. There is a string of decisions that have been rendered on this matter to that effect including Court of Appeal decisions (see the cases of **Willy Kimutai Kitilit -vs- Michael Kibet (2018) eKLR**. and **Joseph Mathenge Kamutu -vs- Joseph Maina (2015) eKLR**, **Macharia Mwangi & 87 Others -vs- Davidson Kagiri (2014) eKLR**.

28. This ground is not therefore of any aid to the defendants and it must be dismissed.

(d) **Whether the plaintiff has established that the land subject matter of the agreement is the same as LR Kitale Municipality Block15/Koitogos/11.**

29. The Originating Summons speaks of **LR Kitale Municipality Block15 /Koitogos/11**. The agreement speaks of **plot number 9 Koitokos Farm**. Parties must be taken to rely on their pleadings. This issue was not raised in the pleading of the defendants; there was no specific denial that the land in the agreement was the same as the land in the Originating Summons.

30. To allow that issue to arise now is to allow an ambush upon the plaintiff. Practice frowns on ambush. The court stated as follows in the case of **Mumo Matemu -vs- Trusted Society of Human Rights Alliance [2013] eKLR**:

"Procedure is also a handmaiden of just determination of cases. Cases cannot be dealt with justly unless the parties and the court know the issues in controversy. Pleadings assist in that regard and are a tenet of substantive justice, as they give fair notice to the other party. The principle in Anarita Karimi Njeru (supra) that established the rule that requires reasonable precision in framing of issues in constitutional petitions is an extension of this principle. What Jessel, M.R said in 1876 in the case of Thorp v Holdsworth (1876) 3 Ch. D. 637 at 639 holds true today:

"The whole object of pleadings is to bring the parties to an issue, and the meaning of the rules...was to prevent the issue being enlarged, which would prevent either party from knowing when the cause came on for trial, what the real point to be discussed and decided was. In fact, the whole meaning of the system is to narrow the parties to define issues, and thereby diminish expense and delay, especially as regards the amount of testimony required on either side at the hearing."

31. In the instant suit, I do not find any denial in the replies of the defendants on the basis of which the court can find that the burden of proof was by virtue of denial by the defendants, shifted onto the plaintiff's shoulders to establish that the two references were in regard to the same land. In the circumstances I dismiss that ground.

(e) **Has the plaintiff established that he is entitled to the suit land by virtue of adverse possession"**

32. The definition of adverse possession is aptly captured in **Malindi Land Case No 108 Of 2011 (OS) Kahindi Ngala Mwangandi Vs Mtana Lewa eKLR** as follows:

"Adverse possession is the process by which a person can acquire a title to someone else's land by continuously occupying it in a way that is inconsistent with the right of the owner. If the person in adverse possession continuous to occupy land, and the owner does not exercise his right to recover it by the end of the prescribed period of 12 years, the owner's remedy as well as his title to the land are extinguished by virtue of the provisions of sections 7,9,13,37 and 38 of the Limitation of Actions Act."

33. To qualify for a declaration of adverse possession in his favour, a claimant must demonstrate that he has been in continuous open and uninterrupted of land for a period of not less than **12** years and that he has over the period of time engaged in acts in relation to the property which are inconsistent with the rights of the true owner.

34. For the purposes of adverse possession, time begins to run when the true owner of the land ceases to be in possession of the land and, as held in **Githu -vs- Ndeete [1984] KLR 776** time ceases to run under the **Limitation of Actions Act** either when the owner takes or asserts his right or when his right is admitted by the adverse possessor. Assertion of right occurs when the owner take legal proceedings or makes an effective entry into the land.

35. To establish adverse possession the claimant must demonstrate that he has been in peaceful open and continuous possession. In **Josinter Atieno Ouma & Another V Joshua O. Omiti & Another [2018] eKLR**, Mutungi J stated as follows:

"23. The possession by the adverse possessor must be continuous open and uninterrupted for a period of not less than 12 years and the adverse possessor must over the period engage in acts in regard to the property which are inconsistent with the rights of the true owner. The acts have to be hostile to the rights and interests of the real owner. In the case of Githu -vs- Ndeete [1984] KLR 776 the Court of Appeal held that:-

"Time ceases to run under the Limitation of Actions Act either when the owner takes or asserts his right or when his right is admitted by the adverse possessor. Assertion of right occurs when the owner take legal proceedings or makes an effective entry into the land; (See Cheshire's Modern Law of Real Property, 11th Edition at p. 894). Giving of notice to quit cannot be an effective assertion of right for purposes of stopping running of time under the Limitation of Actions Act."

As regards to what would constitute dispossession, it is stated in **Volume 24 Halsbury's Laws of England, 3rd Edition at page 252 thus:-**

"To constitute dispossession, acts must have been done inconsistent with the enjoyment of the soil by the person entitled for the purpose for which he had a right to use it. Fencing off is the best evidence of possession of surface land; but cultivation of the surface without fencing off has been held sufficient to prove possession."

24. **The sum total is that in order for the plaintiffs to succeed in their claim in this suit, they have to prove that they have used the lands as of right: *nec vi, nec clam, nec precario* (with no force, no secrecy, no evasion) and their possession has been continuous and has not been broken or interrupted (See **Kimani Ruchine & Another -vs- Swift, Rutherford Co. Ltd & Another [1976-80] 1 KLR 1500.**)**

36. The facts of the instant case are that the plaintiff's deceased husband purchased the land and took possession thereof immediately. The only evidence of the date of taking up of possession that is credible comes from the plaintiff. The defendants have no clue, at least going by their evidence as to when the plaintiff or her husband took up possession of the suit land. The response to the demand letter (**PEXh3**) seeking vacant possession claims that the plaintiff's family has been in occupation of the land since **1988**. The demand letter itself (**PEXh 2**) shows there were already structures on the land by the year **2012**.

37. This court is persuaded that “possession” does not necessarily imply that the possessor has to reside on the land. In the case of **Peter Mbiri Michuki v Samuel Mugo Michuki [2014] eKLR** the Court of Appeal stated as follows:

“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.”

38. Therefore, the fact that a possessor fences off the land and grows crops thereon amounts to possession. The interested party testified that he was informed that the maize crop present on the land at the time of purchase belonged to one “Alice” whom this court believes to be the plaintiff. The fact that a structure was on the land shows that someone had stamped their mark of possession onto the suit land. The defendants and the interested party did not own up to that structure and neither did they prove that they had taken possession which in my view would have interrupted the plaintiff’s possession. On the basis of the evidence on the record, this court is persuaded that the plaintiff’s family took possession of the land in **1988**.

39. In the case of **Peter Mbiri Michuki (supra)** the Court Of Appeal held that:-

“A purchaser in possession of the land purchased, after having paid the purchase price, is a person in whose favour the period of limitation can run.”

40. The defendants raise a seductive argument to the effect that first, the plaintiff was not party to the agreement and never met the 1st defendant and can not be therefore entitled under the doctrine of adverse possession. The argument is premised on the principle of *animus possidendi* whereby in adverse possession one has to have an intent to hold the land in a manner adverse to the interest of the paper title holder. However that argument can be easily disposed of by the fact that both the agreement and the plaintiff’s status as the deceased purchaser’s wife are not disputed. In my view, possession while her husband was alive having been established, there can not be any distinction between what the husband owned and what she owned as her entitlement originated from the same agreement.

41. In my view, the agreement having been entered into on **22/11/1988**, the defendant’s right to bring an action based on that agreement, at least in respect of the 5 acres occupied by the plaintiff’s family, was extinguished by effluxion of time on **21/11/2000**, that is, **12** years later. Even assuming that time began to run after the letter dated **9th May 1991**, 12 years from that date would elapse on **8th May 2003**. No suit was brought for eviction before these two dates. In my view the requisite period of 12 years of occupation has been proved by the plaintiff.

42. As to whether the possession was peaceful, without force and without secrecy, the question has been partly answered by the foregoing discourse. However, I would summarize this point by stating here that there was knowledge on the part of the 1st defendant that the plaintiff’s family was in possession of his land. Their possession has been peaceful and uninterrupted to date and, it having been obtained by way of the sale agreement dated **22/11/1988**, was without secrecy.

43. I therefore find that the plaintiff has proved that she is entitled to the land by virtue of adverse possession.

(f) **What orders should issue**”

44. The subdivision of the land comprised of in **Kitale Municipality Block 15/Koitogos/1011** was therefore irregular and it must subserve to the plaintiff’s rights under the doctrine of adverse possession. It is notable that the 1st-4th defendants and the interested party conducted transactions over the said land while this suit was pending. The orders I give in this suit must also adversely affect the interested party.

45. In the final analysis I hereby enter judgment for the plaintiff against the defendants jointly and severally and I issue the following orders:

(a) **A declaration that the plaintiff has been and is in adverse possession of land parcel No. Kitale Municipality Block**

15/Koitogos/1011.

(b) A declaration that upon the expiry of 12 years from 1988, the date the plaintiff took possession of the suit land the 1st defendant held the title to the land in trust for the plaintiff and had no title of his own to transfer to the 2nd 3rd and 4th defendant.

(c) A declaration that the actions of the 1st defendant of transferring land parcel No. Kitale Municipality Block 15/Koitogos/1011 to the 2nd, 3rd and 4th defendants and the subdivision of the suit land and transfer to the interested party are illegal null and void.

(d) An order that the subdivision of Kitale Municipality Block 15/Koitogos/11 and the mutations filed thereupon are cancelled and the title do revert to its former status as land parcel No. Kitale Municipality Block 15/Koitogos/1011.

(e) An order that the 2nd, 3rd, and 4th defendants to transfer land parcel No. Kitale Municipality Block 15/Koitogos/1011, to the plaintiff and in default the Deputy Registrar of the Court do sign the necessary documents to effect transfer of the aforesaid land to the plaintiff.

(f) The defendants shall bear the costs of the suit.

It is so ordered.

Dated, signed and delivered at Kitale on this 3rd day of October, 2019.

MWANGI NJOROGE

JUDGE

3/10/2019

Coram:

Before - Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Ingosi holding brief for Wanyama for plaintiff

Mr. Karani holding brief for Samba for defendants

COURT

Judgment read in open court at 2.45 p.m.

MWANGI NJOROGE

JUDGE

3/10/2019



While the design, structure and metadata of the Case Search database are licensed by [Kenya Law](#) under a [Creative Commons Attribution-ShareAlike 4.0 International](#), the texts of the judicial opinions contained in it are in the [public domain](#) and are free from any copyright restrictions. Read our [Privacy Policy](#) | [Disclaimer](#)