



Mutuma (Suing as the Chairman of EAPC Kaithe Church) & another v M’ambutu (Environment & Land Case 55 of 2015) [2022] KEELC 15155 (KLR) (30 November 2022) (Judgment)

Neutral citation: [2022] KEELC 15155 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE 55 OF 2015
CK NZILI, J
NOVEMBER 30, 2022**

BETWEEN

SAMUEL MUTUMA (SUING AS THE CHAIRMAN OF EAPC KAITHE CHURCH) 1ST PLAINTIFF

EAST AFRICAN PENTECOSTAL CHURCHES 2ND PLAINTIFF

AND

CORNELIOUS MWORIA M’AMBUTU DEFENDANT

JUDGMENT

1. Though an amended originating summons dated October 10, 2017 the plaintiffs suing as the chairman and through registered trustees of the 2nd plaintiff sought for the court to declare them as entitled to ¼ of LR No Nyaki/Kithoka/3942 by virtue of adverse possession and in the alternative, through constructive trust.
2. The summons was supported by an affidavit sworn by Samuel Mutuma accompanied by a sale agreement dated April 22, 2003, a copy of the green cards for LR Nos 390 & 3943, an acknowledgement receipt and authorization letter marked as annexures SM 1 – SM 6 respectively.
3. The defendant opposed the originating summons by a replying affidavit sworn on May 30, 2019. He acknowledged that on April 22, 2013 he sold the land to Kaithe Church an affiliate of Living Waters EAPC as per a sale agreement and a supplementary copy thereto marked as CMM “1” & “2”. He however denied that the 1st plaintiff was party to the said sale agreement and or had been authorized by the 2nd plaintiff to file the suit. The defendant denied that the plaintiff had any capacity to sue him since he did not sell and transfer Plot No Nyaki/Kithoka/3943 to them for it belonged to Living Waters EAPC Kithoka as per the consent from the Land Control Board and a letter thereto marked as CMM “3”.



4. The defendant denied that the plaintiffs were occupying the alleged land. The defendant further stated that he had constructed a shop with rooms at the back on land and that the plaintiffs were mere trespassers therein.
5. On the contrary, the defendant averred that Living Waters EAPC Kaithe Church were the owners of LR No Nyaki/Kithoka/3943 which they had developed but the plaintiffs did not sue them.
6. The defendant averred that initially the plaintiffs had filed Petition No 8 of 2014 which they withdrew on July 23, 2015 as per annexure CMMA “4” and had similarly lost the suit land in Court of Appeal no 211 of 2004 as per the ruling he attached as annexure marked as CMMA “5”. Further, he averred that there was also an order in Meru Chief Magistrates CC No 727 of 2004 as per his annexure marked as CMM “6”, hence an adverse possession claim could not be sustained.
7. The defendant averred that members of EAPC Living Waters Kaithe Church used to occupy and utilize his timber house on LR No Nyaki/Kithoka/3942 but vacated in 2012 as per letter marked as CMM “7” however the plaintiffs refused to vacate his land for no reasons at all.
8. In compliance with Order 11 *Civil Procedure Rules*, the plaintiffs filed a paginated bundle of records and a supplementary bundle dated May 16, 2019 & April 28, 2021 while the defendant filed two sets dated July 18, 2019 and June 22, 2021 respectively.
9. Samuel Mutuma, testified as PW 1. He relied on his affidavit sworn on July 16, 2015 and produced annexures thereto namely an agreement dated April 22, 2003 as P Exh No (1), copy of the green card as P Exh No (2). He told the court that Parcel No 390 was erroneously indicated as owned up at paragraph 3 of the defendant’s replying affidavit dated March 22, 2016, which was corrected as Parcel No 3942 as per a copy of the green card produced as P Exh No (3). PW 1 said that they paid for the land as per an acknowledgment note he produced as P Exh No (4).
10. Further, PW 1 testified that the church was built on the land as per the photographs which he produced as P Exh No 5. He produced an authorization from the trustees to the 2nd plaintiff to file the suit as P Exh No (6). PW 1 denied that the persons who bought the land belonged to Living Waters Church since the latter owned an adjacent land namely Parcel LR No 3943 belonging to the defendant. In addition, PW1 denied that their church members had ever vacated the premises since the time that they bought the land nor had the defendant tried to evict them from the said land. PW 1 also testified that the defendant’s land was having an encumbrance and he had told them to wait as he cleared, a loan so that a subdivision could be done. Unfortunately, after the loan was cleared the defendant failed to pass over the title to them falsely on account of the full payment.
11. PW1 testified that the sale agreement was witnessed by Mr Nyamu Nyaga advocate and a copy given to the parties and that he could not remember the defendant alleging that Living Waters Church had any agreement with him in 2003. PW 1 disputed the sale agreement dated February 9, 2008 attached to the defendant’s replying affidavit but clarified that P Exh (1) was witnessed by John Mbaria, Samuel Gikundi and John Mworira prior to the said Samuel Gikundi defecting to Living Waters church after the 2nd plaintiff split into two vacations.
12. PW 1 denied that the defendant had put Living Waters Church in P/No 3443 or the allegation that the plaintiffs ever moved out of Parcel No 3942. Cross examined by defendant’s counsel, PW 1 said that he joined the 2nd plaintiff into the suit as per the trust deed appearing on page 13 of the 1st bundle of documents.
13. PW 1 admitted that there were several cases pitting the two churches over the prayer houses and properties as per pages 12 & 17 of the defendant’s bundle of documents and the rulings thereto. PW



- 1 admitted that the sale agreement dated April 22, 2003 indicated the purchaser of the land as Kaithe Church and not EAPC at which time he had not been elected as an official to the 2nd plaintiff.
14. Regarding the sale agreement dated February 9, 2008, PW 1 denied that he was not party to the same. He insisted that the defendant declined to attend any land control board for a letter of consent to transfer the land. As regards page 32 of the defendant's bundle, PW 1 said it showed a registration certificate for Living Waters EAPC church.
 15. In Re-examination, PW 1 insisted that the letter dated February 25, 2015 was enough authority to him to file the suit on the land where the church was erected after the sale. Further insisted that the supplementary agreement dated February 9, 2008 was done after the registration of Living Waters Church in 2003 hence the church appearing there referred to the 2nd plaintiff.
 16. PW 2 adopted his affidavit sworn on July 16, 2015 as his evidence in chief. PW 3 adopted his sworn affidavit dated July 16, 2015 as his evidence in chief. As a witness to the sale agreements and the treasurer of the 2nd plaintiff, he testified that at the time the land was bought the defendant was chairman of the 2nd plaintiff until 2003. He denied that the defendant then was selling the land to Living Waters Church which was not in existence then. He was therefore doubling up as both a seller and buyer on behalf of the 2nd plaintiff.
 17. PW 3 clarified that at the time of the transaction, Living Waters Church was not in existence hence there could have been no doubt over which church the sale agreement was referring to at the time.
 18. PW 4 adopted his witness statement dated April 28, 2021 as his evidence in chief. As a member of Kaithe church, he confirmed that it was the 2nd plaintiff which was buying the land and that the purchase price was cleared in installments until the defendant was paid the balance in 2004.
 19. Further, PW 4 said that he signed the sale agreement at the time as chairman of the church between 2000 up to 2006. He denied that the land was bought for Living Waters Church since it was not in existence at the time. PW 4 clarified that the land was for the EAPC church and not meant for an individual. As regards the parcel number, PW 4 testified that they did not have an official search at the time but nevertheless, the defendant was given all the money as agreed but failed to transfer the land by the time he allegedly moved to another church.
 20. PW 4 said that after conducting an official search they established the parcel number given the time of executing the sale agreement was different. He said that the purchase amount was contributed by the church members and that the church officials were merely buying the land for and on behalf of the EAPC church.
 21. DW 1 told the court that he was a member of Living Waters EAPC. He adopted his replying affidavits sworn on March 22, 2016 and May 30, 2019 as his evidence in chief. Further DW 1 produced a sale agreement dated April 2, 2003 as D Exh No (1), supplementary agreement as D Exh no (2), land control board consent dated July 21, 2015 as D Exh No (3), withdrawal of suit as D Exh No (4), ruling at the Court of Appeal as D Exh No (5), Ruling in CMCC No 727 of 2004 as D Exh No (6) and a letter dated June 11, 2012 as D Exh (7) respectively.
 22. In addition, DW 1 insisted that he sold his land to Living Waters Church where Mutuma was a member and not a trustee for EAPC the 2nd plaintiff. He said P No 3942 had a shop which he closed after the case began. DW1 told the court that Living Waters Church was the one occupying Parcel Number 3943 in whose favor the land control board consent was issued and the two churches were tussling over. In his view, the 2nd plaintiff should have moved to LR No 3943 and should not be claiming Parcel No 3942. He insisted that the plaintiffs had no capacity to sue him even though he had nothing to prove



- that the 1st plaintiff was not the trustee of the 2nd plaintiff. DW 1 confirmed that Living Waters Church was registered on May 6, 2003 while the sale agreement was dated April 22, 2003. He admitted that he sold a quarter an acre of his land and was paid all the consideration.
23. Further, DW 1 clarified that after the Living Waters Church was registered, a fall out occurred with the 2nd plaintiff. He however insisted that the plaintiffs were trespassers to his land/shop since they should have moved into Parcel LR No 3943 from his Parcel LR No 3942 which he admitted they started utilizing in 1998 as indicated in the sale agreement. DW 1 admitted that he had not sued the plaintiffs for vacant possession. He clarified that the original sale agreement had an error over the parcel number hence the reason it was later on corrected before a lawyer by way of another supplementary agreement.
 24. DW 1 denied that he was involved in a double sale of the said land. He denied that there was in existence a prior decision declaring the suit land as belonging to the plaintiffs. DW 1 also clarified that the 2nd plaintiff was in existence for many years before Living Waters Church split from the 2nd plaintiff where he initially belonged.
 25. DW 1 admitted that Parcel LR Nos 3943 & 3942 were his subdivisions out of the initial Parcel LR No 1289 following the sale agreement in 2008. He told the court that his lawyers were in possession of both the mutation form and the survey report indicating the correct land he was selling.
 26. In re-examination, DW 1 claimed that the letters dated February 25, 2015 had been written by one Daniel though he had not seen a trust deed or an affidavit from the 2nd plaintiff over an authority to sue. He denied that the name of the 2nd plaintiff was appearing in the two sale agreements.
 27. DW 1 admitted that he had not made any transfer in favor of the plaintiffs who in his view deserved no land from him.
 28. Fredrick Rutere the DW 2 adopted his witness statement dated June 22, 2021 as his evidence in chief and clarified that the suit land was occupied by Living Waters EAPC neighbouring Parcel LR No 3942 occupied by the 2nd plaintiff. In his view the first plaintiff was a mere member of the church at the time the land was sold to Living Waters while he was a general secretary. DW2 produced no letters showing his accreditation as a national leader of Living Waters as at 2003. Similarly, DW 2 admitted that he was not a signatory of the sale agreements which should have been the case. However, he said that the sale agreement dated February 9, 2008 regularized the position though once again he was not a signatory. DW 2 admitted that the 2nd agreement lacked the signatures of the designated signatories of Living Waters Church.
 29. In his view, the members to the former church remained the same but under a different outfit, though at the time the 2nd plaintiff was a registered church. DW2 told the court the 2nd plaintiff has been on the land since 2000. He admitted that there were pending cases and appeals pitting the two churches among them ELC No 96 and 111 of 2008 though he did not produce the pleadings or any judgments from the courts. DW 2 admitted that the full purchase price was cleared.
 30. DW 2 also insisted that though the 2nd plaintiff was a registered church in 2003, it was not the purchaser of the suit land. He said he had delegated his authority to execute the sale agreements to the local church officials but the 1st plaintiff failed to indicate in the sale agreement that he was buying the land on behalf of the 2nd plaintiff.
 31. The plaintiffs have submitted that the defendant has not disputed the sale agreement and the only issue is which church bought and took possession of the land between the 2nd plaintiff and Living Waters Church.



32. The plaintiffs submitted that their witnesses were clear and consistent on who bought, took vacant possession and has continued to occupy the land. On the law, the plaintiffs have submitted that as per Sections 7, 13, 16, 34, 38 (1) & (2) of the Limitations of Actions Act, the ingredients of adverse possession as well of the doctrine of constructive trust, have been satisfied through pleadings and evidence tendered. Reliance was placed on Kasuve vs Mwaani Investments Ltd & 4 others (2004) eKLR, & ole Tukai vs Francis Arap Muge (2014) eKLR.
33. The plaintiffs submitted that the certificate of registration of Living Waters EAPC indicated it was registered on May 6, 2003 after the P Exh (1) was executed hence the sale agreement dated February 9, 2008 was an afterthought only meant to take away the 2nd plaintiff's land bought by its members in 2003.
34. Further the plaintiffs submitted that the replying affidavit by DW 1 was misleading at paragraph 5 as to when he was paid and who cleared Kshs 100,000/=. As to the alleged affiliation of Kaithe Church with Living Waters Church, the plaintiffs submitted it had not been proved.
35. The defendant on the other hand submitted that the three issues for determination are locus standi, evidence of occupation and the period of occupation. On the first issue, it was submitted that the 2nd plaintiff was an incorporated society registered under the Societies Act Cap 108 (LoK) which on its own has no legal capacity to sue the defendant under its name. Reliance was placed on Living Waters International vs City Council of Nairobi (2008) eKLR, African Orthodox Church of Kenya vs Rev Charles Omuroka & another (2014) eKLR citing with approval Kituo cha Sheria vs John Ndirangu Kariuki & another (2013) eKLR.
36. Further the defendant submitted the 1st plaintiff without the requisite authority as an alleged chairman of the 2nd plaintiff could not purport to act and file the suit since he was not a duly registered official or trustee of the 2nd plaintiff.
37. Regarding occupation, the defendant submitted that the plaintiffs were unable to dislodge his case that he had constructed a temporary timber house which he only allowed the members of Living Waters Church to temporarily occupy and who vacated it in 2012.
38. The defendant submitted that the plaintiffs have been unable to demonstrate occupation on Parcel LR No 3942 under adverse possession and given a plethora of cases for the last 12, years adverse possession could not arise.
39. The issues falling for my determination are:
 - i. If the plaintiffs have capacity to institute the suit.
 - ii. If the plaintiffs were the purchasers of the suit land.
 - iii. If the plaintiffs have proved the ingredients of adverse possession.
 - iv. If the plaintiffs have proved constructive trust.
 - v. Whether the plaintiffs are entitled to the prayers sought.
 - vi. What is the order as to costs?
40. The plaintiffs have described themselves as the chairman of EAPC Keitha church as EAPC churches suing through its registered trustees who have been in occupation of LR No Nyaki/Kithoka/3942 out of a permissive possession by virtue of a sale agreement dated April 22, 2003. The plaintiffs attached an authorization to sue dated February 25, 2015 signed by Daniel Kirogi Muturi the national trustee.



41. In the replying affidavit sworn on May 30, 2019 at paragraph 5, the defendant averred that the suit was defective and that the 2nd plaintiff had not authorized the filing of the suit. Similarly, in paragraph 19 thereof, the 2nd defendant averred that the plaintiffs lacked locus standi to sue.
42. During the hearing, the defendant admitted that the authorization letter foretasted had given the plaintiffs the mandate to bring the suit. DW 1 in cross examination admitted he did produce and or avail any documents to show that the 1st plaintiff was not a trustee or an official of the 2nd plaintiff. He also admitted that at the time of the sale agreement in 2003, Living Waters Church was not in existence and this only occurred after a fall out in the 2nd plaintiff with former members joining and registering a splinter church and moving to Parcel LR No 3943 from their initial land.
43. In the written submissions filed on September 23, 2022, the defendant has termed the 2nd plaintiff as an unincorporated society lacking legal capacity to sue and be sued under its name. He stated that the 2nd plaintiff was not a body corporate for it to sue as a legal personality and would only sue through its registered officials.
44. It is trite law that he who avers must prove under Section 107 of the *Evidence Act*. The burden of proof that the 1st plaintiff was not a chairman or trustee of EAPC Kaithe and or an authorized official of the 2nd plaintiff, that the 2nd plaintiff was not a registered church vested with the defendant to adduce evidence to the contrary.
45. The defendant produced nothing from the Registrar of Societies that the 2nd plaintiff was an unregistered society and or that the 1st plaintiff was not among the an authorized/registered official to lodge this suit.
46. In *EAPC Registered Trustees & 1754 others vs Samuel Muguna Henry & 4 others* (2015) eKLR, the court held that the petitioners had a right to bring the claim under their constitution. In *Josephat Ogoite Elegwa & 4 others vs Bernard Ayeka & 3 others* (2015) eKLR the court held that there was no evidence tendered that the registered trustee had been replaced. In *John Othenyo Amwayi & 2 others vs Rev George Abura & 2 others* Civil Appeal No 6339 of 1990, Bosire JA as he then was held that the *Societies Act* did not contain provisions with regard to the presentation and prosecution of suits by or against unincorporated societies. He held that in his view, parliament did not intend that a suit be brought by or against those societies in their own name.
47. In *Pius Watene D Maina (suing for and on behalf of the Baptist convention of Kenya) vs Director General KURA and 5 others* (2020) eKLR, the court cited with approval *African Orthodox Church of Kenya vs Charles Omuroka & another (supra)* where it was held that churches have no legal capacity to institute proceedings in court in their own names or in the names of their officials in a representative capacity. In *Peter Ngugi Geoffrey & 3 others vs Mithini SDA Church* (2019) eKLR the court held that a society can only be sued through its officials or trustees or the specific members of the church.
48. Given the foregoing persuasive cases, I am inclined to find the objection lacking merits given the 1st plaintiff and 2nd plaintiff have defined the capacity that they have brought the suit against the defendant and produced documents in support of that capacity.
49. Turning to the sale agreements produced as P Exh Nos 1& 2, the same were made on April 22, 2003.
50. The *Law of Contract Act* came into operation with effect from June 1, 2003. Prior to this, land contracts only required a memorandum or note in writing signed by a party to be charged or by some other person authorized by him, the performance of the contract by the taking of possession of the property or any part thereof and the furtherance of same act as per the contract.



51. In *Peter Mbiri Michuki vs Samuel Mugo Michuki* (2014) eKLR, the Court of Appeal held that there was actual and constructive possession of the suit property since 1964 and the possession was open, uninterrupted and continuous till the filing of the originating summons.
52. Coming to the said sale agreements, the subject matter was described as $\frac{1}{4}$ of an acre being part of LR No Nyaki/Kithoka/390 for Kshs 100,000/= payable on or before May 31, 2004. Parties were defined as Kaithe Church the purchaser. Vacant possession was to be handed over upon full payment of the sum. The property was being sold vacant and the parties were to attend the land control board for subdivision and transfer. In default of the agreement Kshs 50,000/= was to be paid to the innocent party.
53. The sale agreement was duly executed by the vendor and by Samuel Gikundi M'Rimbere, John Mworia and John Bariu for the church. Similarly, the sale agreement was duly witnessed by an advocate. Regarding the acknowledgement receipt, the defendant admitted the payment of Kshs 36,000 and a balance of Kshs 4,000/= was to be paid after the transfer to Kaithe church.
54. The plaintiffs have testified that the land they bought was for the 2nd plaintiff and could not have been for the Living Waters EAPC since at the time it was not in existence either in fact and or in law. The plaintiffs have also testified that they took vacant possession with effect from 1998 and later on paid the entire Kshs 100,000/= to the defendant. The defendant has also acknowledged receipt of Kshs 100,000/=.
55. The plaintiffs have testified that upon official search, they realized that the correct land they bought and were occupying was Parcel LR No 3942. The defendant has acknowledged this fact and admitted that he eventually made a second agreement with the plaintiffs before the same lawyer to correct the error.
56. What is at dispute is whether the land was sold to the 2nd plaintiff or the Living Waters Church as alleged by the defendant and his witnesses.
57. The defendant has produced D Exh No (1) the sale agreement dated April 22, 2003, a supplementary agreement dated February 9, 2009 as D Exh No (2), letters of consent as D Exh No (3) D Exh No 5 was a ruling from the Court of Appeal involving the 2nd plaintiff and the Living Waters Church dated November 19, 2004. At page 4 Kaithe EAPC church does exist. The same is clear at D Exh No (6) D Exh No 7 states that Living Waters premises is on Parcel LR No 3943 D Exh No 2 and 3 do not tally as regards to who the purchaser was. The supplementary agreement dated February 9, 2008 acknowledges receipt of Kshs 100,000/= and acknowledges the sale agreement dated April 22, 2003.
58. What is curious with D Exh's 2 & 3 is that it indicates the purchaser as Living Waters EAPC Kaithe church and talks of $\frac{1}{4}$ of an acre out of LR No Nyaki/Kithoka/1289. P No 2 & 3 on the other hand indicates that LR No Nyaki/Kithoka/3942 the suit land herein was opened on November 18, 2011 in favour of the defendant as a subdivision of LR No Nyaki/Kithoka/1289 and the defendant charged it on March 21, 2014.
59. The Living Waters Church EAPC came into existence after the sale agreement in 2003. Looking at the totality of the evidence and given that the defendant has also admitted that the plaintiffs have been in possession of the land to date though he terms them as trespassers, the court has no doubt that it was the 2nd plaintiff who bought and took vacant possession of the suit land. If at all the suit property was bought and belonged to the Living Waters Church, the defendant would have joined them to this suit, since he acknowledges that he has been a member thereof. The said Living Waters Church has not staked any claim on the suitland if at all they bought it. The defendant has also admitted that the split occurred in 2003 and soon after the transaction. If then the split occurred in 2003 and the splinter



group went to and adjacent land still belonging to the defendant, he could only have been selling and transferring the adjacent land to another and not the former church. Similarly, there is no evidence that the defendant revoked the earlier agreement and opted to refund the former purchasers the purchase price. He could not in law purport to keep the money and change the sale agreement as if the purchaser was a different person without revoking the earlier agreement and ordering the former purchaser to vacate the land.

60. My finding therefore is that the purchaser was Kaithe Church as it existed then as a branch of the 2nd plaintiff.
61. Adverse possession connotes dispossession and discontinuance of possession by the true owner.
62. In *Peter Mbiri Michuki supra* the Court of Appeal cited with approval *Kimani Ruchire vs Swift Rutherford & Co Ltd* (1980) KLR 10 where the court held that a party must prove that they have used the land as of right, with no force, no secrecy and no persuasion, with the knowledge of the defendant in a continuous manner, unbroken by any recurrent consideration.
63. The plaintiffs have testified that the entry into the land was permissive out of a sale agreement and that they cleared the Kshs 100,000/= with the defendant who acknowledged receipt of the same. So as at 2004 when the defendant acknowledged the balance the plaintiffs became adverse possessors of the land since the permission had terminated. The occupation became not only actual but also constructive in nature.
64. In his testimony and the replying affidavit sworn on March 22, 2016, the defendant admitted that Parcel LR No 3942 was his land and a subdivision of Parcel LR No 1298 which the plaintiffs and its members were trespasser since 1998. He averred that there have been cases over its ownership elsewhere
65. In cross examination, the defendant admitted that he had taken no action to evict the plaintiffs, given no notice to vacate his land and lastly, had made no effective entry to eject or retake possession since 1998.
66. The plaintiffs on the other hand have testified that they have been occupying and developing the land as a matter of right and in a manner inconsistent with the interests of the registered owner.
67. After the originating summons was commenced the defendant did not in his replying affidavit counterclaim for the land.
68. Other than saying that the land has been under litigation over the years, the defendant has not produced a single court order or decree where his rights to the land against the plaintiffs have been asserted, confirmed and pronounced by a court of law.
69. In *Mwinyi Hamisi Ali vs the Attorney General & another* [1997]eKLR, the court held that adverse possession cannot exist by consent and in a court of law sympathy takes a second stand as a court is governed by statutes. In *Wambugu vs Njuguna* (1983) KLR 172, the court held that possession becomes adverse after the license terminates.
70. The plaintiffs have testified that the defendant declined to transfer the land to them after the full purchase price was paid as agreed. Instead of transferring the land the defendant purported to sign a supplementary agreement with a new outfit presumably to defeat the rights of the plaintiffs.
71. Unfortunately, the 2nd agreement does not tally with the P Exh No (1) in so far as the land and owners are concerned. As at that time in 2009, the plaintiffs had been in occupation of the land for ten years. So, by the time this suit was filed in 2016, already 12 years' time had expired and the title of the defendant



extinguished on account of adverse rights of the plaintiffs. The change of title from Parcel LR No's 390 to 393, 3443 and 3442 did not in any way affect the accrued adverse rights of the plaintiffs.

72. Similarly, the plaintiffs were and have been in occupation of the land hence constructive trust had also accrued notwithstanding the failure to seek and obtain a land control board consent over Parcel LR No 3942 in favour of them by the defendant as held in *David Sironga Ole Tukai vs Francis Arap Muge & 2 others* [2014] eKLR, *Public Trustee vs Wanduru* (1984) KLR 314, *Mwangi & another vs Mwangi* (1986) KLR 328.
73. In sum therefore, I find the suit against the defendant proved to the required standards. I proceed to grant the orders that:
1. The plaintiffs have acquired $\frac{1}{4}$ of an acre of LR No Nyaki/Kithoka/3940 by both the virtue of adverse possession and through the doctrine of constructive trust.
 2. The defendant do excise the portion out of the suit land, apply for land control board consent and transfer the same to the plaintiff within two months, in default the Deputy Registrar of the court to effect the transfer forms.
 3. Costs to the plaintiff.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 30TH DAY OF NOVEMBER, 2022

In presence of:

C/A: Kananu

Miss Mukamburu for defendants

HON. C.K. NZILI

ELC JUDGE

