



Tomno & another v Cheron & 3 others (Environment & Land Case 144 & 152 of 2019 (Consolidated)) [2023] KEELC 21766 (KLR) (23 November 2023) (Judgment)

Neutral citation: [2023] KEELC 21766 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 144 & 152 OF 2019 (CONSOLIDATED)
LA OMOLLO, J
NOVEMBER 23, 2023**

BETWEEN

**REBECCA CHEPKOECH TOMNO AKA REBECCA WESLEY
TOMNO PLAINTIFF**

AND

**ESLEEN TARKOK CHERONO 1ST DEFENDANT
LEAH MUKURU 2ND DEFENDANT
EDMOUND CHERONO 3RD DEFENDANT**

**AS CONSOLIDATED WITH
ENVIRONMENT & LAND CASE 152 OF 2019**

BETWEEN

**ESLEEN TARKOK CHERONO (SUING AS AN ADMINISTRATOR OF THE
ESTATE OF RAYMOND CHERONO TOMNO) PLAINTIFF**

AND

REBECCA WESLEY TOMNO DEFENDANT

JUDGMENT

Introduction

1. The Plaintiff commenced this suit vide a Plaint filed in court on 15th November, 2019.



2. In the Plaintiff she avers that on or about the 13th November, 1964, the Plaintiff was allocated Plot Number Ravine 399 by the Settlement Fund Trustees and also granted a loan Ksh 3,000/= to finance the purchase of dairy cows, fencing materials and maize cultivation.
3. She avers that she took possession of the said property in 1965 and built a grass thatched mud house for her workers and thereafter requested her brother in law, Kimosop Baritiram to manage the farm on her behalf.
4. It is her averment that in 1966 she engaged Chepkeitany Arap Chemwetich to work for her on the farm and that he fenced the land with the assistance of Kimosop Baritiram. She further avers that in 1989, she approached her other brother-in-law, Raymond Cherono to take over the management of the farm on her behalf and supervise Chepkeitany Arap Chemwetich. She avers that the said Raymond Cherono took the 3rd Defendant to reside on the suit land.
5. She avers that on or about the 23rd September, 2019, on full repayment of the loans, the suit property which is now known as Baringo/ Ravine-102/242 was discharged and transferred to the Plaintiff by the Settlement Fund Trustees.
6. The Plaintiff avers that she has cultivated the suit land and planted maize and beans but the 2nd and 3rd Defendants have continued to trespass on the suit land and have been interfering with her peaceful and quiet possession.
7. The Plaintiff avers that the 2nd and 3rd Defendants have trespassed onto and illegally occupied the suit land and her attempts to have them move out of the land peacefully have been violently resisted. She also avers that the 2nd and 3rd Defendants have embarked on wanton destruction and indiscriminate harvesting of trees on the suit land to the detriment of the Plaintiff and as a result of which the Plaintiff has suffered and continues to suffer loss and damage.
8. She further avers that on or about 25th September, 2019; the 1st Defendant without any justifiable cause lodged a caution on the suit land claiming interest as a beneficiary of the widow and dependant of the registered owner and the Plaintiff has suffered and continues to suffer loss and damage because of the said caution.
9. The Plaintiff prays for judgment against the Defendants and orders for:
 - a. A declaration that the Plaintiff is the lawful owner of all that parcel of land known as Baringo/Ravine-102/242.
 - b. An order compelling the 2nd and 3rd Defendants to grant vacant possession to the Plaintiff of all that parcel of land known as Baringo/Ravine-102/242 and in default they be forcibly evicted therefrom.
 - c. An order directing the 1st Defendant to remove the caution she has placed on all that parcel of land known as Baringo/Kabarnet-102/242 and in default the District Land Registrar- Kabarnet be ordered to remove the caution.
 - d. A permanent injunction restraining the Defendants either by themselves, their agents, servants, employees, tenants or otherwise howsoever from entering, occupying, charging, carrying on any development or dealing with all or any portion of that parcel of land known as Baringo/Ravine-102/242 in any manner whatsoever prejudicial to the interest of the Plaintiff.



- e. General damages for trespass and unlawful interference with the Plaintiff's property rights pursuant to the provisions of Section 75 of the Land Registration Act, 2012.
 - f. Costs of the suit with interest till payment in full.
 - g. Any other or further relief this Honourable court may deem fit to grant.
10. The 1st Defendant filed a Plaint on 4th December, 2019 in ELC case No 152 of 2019.
11. The 1st Defendant avers that the agreement entered into by her deceased husband and the Plaintiff was mutual to the extent that the Plaintiff was a mere trustee of the suit land and only held the same as a trustee.
12. The 1st Defendant further avers that the Plaintiff was therefore obligated to transfer the suit land from her name to that of the 1st Defendant's deceased husband's name upon completion of all payments of the loans which the 1st Defendant's husband had completely paid in December 2018 before his death.
13. The 1st Defendant also states that her late husband with the assistance of her son, the 3rd Defendant, paid the entire Settlement Fund Trustee loans until completion in December 2018 before the death of the 1st Defendant's husband and at no particular time did the Plaintiff or her children make any payments with respect to the loans over the suit land.
14. The 1st Defendant (plaintiff in ELC 152 of 2019) prays for judgment to be entered against the Plaintiff for:
 - a. An order of Permanent injunction restraining/baring the Plaintiff, her agents, employees and children from occupying, utilizing or in any other way from dealing with the suit land namely Baringo/Ravine Block102/242.
 - b. An order declaring that the Plaintiff holds the suit land namely BARINGO/ RAVINE BLOCK 102/242 in trust for the 1st Defendant who is the beneficial owner.
 - c. An order compelling the Plaintiff to execute all necessary transfer instruments to transfer the suit land herein to the 1st Defendant or to her assign, and if the Plaintiff fails to execute the requisite transfer instruments within 30 days, the Deputy Registrar to do so.
 - d. In addition to the above, an order be directed to the Land Registrar Koibatek/ Mogotio to register the 1st Defendant as the proprietor upon presentation of the requisite transfer instrument and payment of any requisite fees.
 - e. Costs of the suit.
 - f. Interest on e above at court rates.
 - g. Any other relief that this Honourable Court deems fit to grant.
15. An application dated 14th November 2019 was filed in ELC 144 of 2019 and another dated 25th February, 2020 was filed in ELC 152 of 2019. The Court issued the following orders:
 - a. That by consent of the parties this suit be and is hereby consolidated with ELC 144 of 2019 and both suits to be heard together.



- b. That ELC No 144 of 2019 shall be the lead file.
- c. That the Assistant County Commissioner or his duly authorized representative do visit the disputed land parcel and to prepare a report incorporating a sketch plan indicating the positions occupied by the disputing parties the report be filed in court within 30 days from today.
- d. That the status quo obtaining as of 8th July, 2020 be observed and respected by the parties.

Factual Background.

- 16. This suit came up on 18th January, 2022 for hearing. The counsel for the Defendants informed the court that he has filed an affidavit pursuant to the provisions of Order 9 Rule 2 of the Civil Procedure Rules. The said affidavit is dated 17th January, 2022, it is sworn by the 1st Defendant and it authorizes Erastus Kiptoo Cheronon to appear, make applications, testify and do such other things necessary in this suit on behalf of the 1st Defendant.
- 17. Counsel of the Plaintiff also informed the court that he also filed an affidavit sworn on 28th January 2021 by the Plaintiff, Rebecca Cheronon, authorizing Edwin Kipruto Tomno to appear and testify on her behalf. She cites her advanced age.

Plaintiff's Evidence.

- 18. During the hearing of the Plaintiff's case, Edwin Kipruto Tomno testified as PW1. It was his evidence that he lives in Baringo County and he is a retired Civil servant. He testified that he knows the Plaintiff being her mother and she is 87 years old.
- 19. He testified that he is aware of facts of this suit and stated that the Plaintiff recorded a statement dated 14th November, 2019 and signed it. He prayed that the same be adopted as part of her evidence in chief which prayer the court acceded to.
- 20. PW1 stated they have filed a list of documents in support of her case. They were marked and produced as follows: a letter of offer dated 13th November, 1964 as Exhibit P1, Minutes of a family meeting dated 22nd May, 2019 as Exhibit P2, Photographs of Felled trees as Exhibit P3, Funeral programme as Exhibit P4, Photographs of building materials recovered as Exhibit P5, Discharge of charge dated 22nd August, 2021 as Exhibit P6(a), Transfer of land in Settlement scheme as Exhibit P6(b), Letter of forwarding discharge and transfer as Exhibit P6(c), Receipt number 52968845 dated 23rd September, 2019 as Exhibit P6(d), Certificate of official search issued on 23rd, September, 2019 as Exhibit P6(e), Extract of title deed for Baringo/Ravine 102/242 as Exhibit P6(f), Caution Registered on 25th September, 2019 as Exhibit P 7(a), Statutory Declaration as Exhibit P7(b), Letter dated 25th September, 2019 addressed to Rebecca Tomno as Exhibit P8, Letter dated 10th October, 2019 to Esleen Targok Cheronon as Exhibit P9, Letter dated 5th January, 2019 to the Land Registrar as Exhibit P10, Medical examination report for Margaret Tomno as Exhibit P11, Medical examination report for Mary Mengech as Exhibit P12, Photograph of house built in 1965 as Exhibit P13, Copy of Death certificate as Exhibit P14, Bundle of Photographs of family meeting as Exhibit P15, Photographs of buildings currently on suit property as Exhibit P16, Letter dated 30th April 2019 to director Land Adjudication/Settlement Department as Exhibit P17, Letter dated 18th September 2019 addressed to the Director Land Adjudication and Settlement as Exhibit P18, Affidavit of particulars sworn on 18th September 2019 as Exhibit P19, Copy



of National Identity Card Number No 202748993 as Exhibit P20, Letter dated 3rd February, 2020 as Exhibit P22 and Letter dated 5th February, 2020 as Exhibit P23.

21. It was PW1's testimony that the Plaintiff does not have the original receipts to prove that in 1965, the Plaintiff's husband paid the Settlement Fund Trustees loan installment of Ksh 290 from his salary.
22. He further testified that their uncle Kimosop Bartiram had been requested to look after the land and he stayed on the land and was given the receipts for purposes of inspection by the Settlement Fund Trustee officers in the event that they visited the land. He testified that whenever payment was done, the receipts were given to him for purposes of showing to the officers when they came for inspection.
23. He further testified that in regard to the receipt dated 21st September 1989 produced as Exhibit 3 (a) and (b), the 1st Defendant's deceased husband came to their home to discuss progress of the loan repayment to the Settlement Fund Trustees. He testified that his father sold a cow and gave Ksh 10,000/= to the 1st Defendant's deceased husband to go and pay the loan.
24. PW1 went on to testify that the 1st Defendant's deceased husband took the money and said he would pay which he did and kept the receipt.
25. He testified that sometime in the year 2016, the Plaintiff asked the 1st Defendant's deceased husband to sell some things for her which included Cedar & Podo trees. He testified that when the 1st Defendant's deceased husband came to their home, he informed the Plaintiff that he had brought some money from the sale of trees. He testified that the amount he brought home was Ksh 200,000/=.
26. He testified that the Plaintiff gave the 1st Defendant's deceased husband Ksh 80,000/= from the 200,000/= to go and clear the loan.
27. PW1 testified that the Plaintiff gave him 20,000/= for appreciation for the good work in the presence of PW1 and he was given an additional Ksh 10,000/=. He testified that the 1st Defendant's deceased husband said that he would clear the loan and have a discussion on how to hand over the land to the Plaintiff because he was taking care of it for the Plaintiff.
28. PW1 testified that the receipts always stayed at the suit parcel and payments were made by the 1st Defendant's deceased husband who also retained the receipts so that they would be available for inspection by the Settlement Fund Trustees officials.
29. PW1 also testified that the 1st Defendant's deceased husband and the Plaintiff always acted and kept things between them and nobody would know what they discussed.
30. On Exhibit P22 and P23, PW1 testified that he has a letter dated 3rd February, 2020 which was written by the Plaintiff and she got a response to it and the response is in the letter dated 5th February, 2020. He testified that the letter of 5th February, 2020 confirms that the land belongs to the Plaintiff and added there was nothing wrong with someone making payments on her behalf.
31. PW1 ended by stating that he wants the court to declare the Plaintiff as the owner of the suit parcel and also issue any other orders as contained in the Plaintiff.
32. In the Plaintiff's witness statement dated 14th November 2019, she states that sometime in 1964, together with her mother Elizabeth Chesire (deceased), they travelled to Eldama Ravine to see the then District Officer of Eldama Ravine, Mr. Turere (deceased) who was registering people for allocation of Settlement Fund Trust land. She states that her request was granted and she was allocated the suit land in 1964. She states that the plot number then was 399 but it was subsequently changed to Baringo/Ravine Plot No 102/242.



33. She states that her husband, Wesley Tomno (deceased) used to work in the Office of the President as a District Officer and by virtue of his work he was often transferred from one work station to another within the Republic of Kenya.
34. She states that together with her family, they moved with her husband whenever the transfers took place.
35. She states that she was given a loan of Ksh 3000 to finance the purchase of dairy cows, fencing materials and maize cultivation. It is her statement that together with her late husband, Wesley Tomno, they took possession of the said property in 1965 and built a big round grass-thatched mud house for their workers who were to work on the property.
36. She states that since it was difficult for them to manage the suit property together with her husband, they requested her elder brother and the Plaintiff's brother in law, Kimosop Bartiram to look after the land for them which request Kimosop agreed to and he fenced and secured the whole land to take care of the property.
37. She states that in 1965, her husband paid the Settlement Fund Trust a loan instalment of Ksh 290 from her salary and the receipts were left in the custody of Kimosop Baritam to be shown to the Settlement Fund Trust officials as evidence of loan repayments whenever they visited the land.
38. She states that in 1966, she engaged Chepkeitany Arap Chemwetich to work for her who along with her brother in law, Kimosop Baritam, continued to work and fence the land. She states that the land was a forest and they had to clear a portion for cultivation.
39. She states that around the year 1967, her husband transferred to North Eastern Province and their family moved and lived in Garissa for some years. She states that Raymond Tomno regularly updated them on what was happening on the farm. She states that in appreciation for his assistance, they allowed him to cultivate a portion of the land and use the proceeds to pay school fees for his children.
40. She states that in 1975, her brother in law, Kimosop Baritam informed her that he was finding it difficult to manage the farm due to his other personal commitments and Chepkeitany Arap Chemwetich and his family remained to take care of the land alone.
41. She states that in 1989, due to the nature of her husband's work they approached his younger brother Mr. Raymond Cherono who accepted to take over the management of the farm on their behalf and supervise Chepkeitany Arap Chemwetich. She states that in the same year, Mr. Raymond Cherono took his son Edmund Cherono, who is a teacher at Kabiyet Primary School to stay on the farm. She states that Edmund Cherono stayed on the land with Chepkeitany Arap Chemwetich and his family while his father, Raymond Cherono resided in Marigat with his family and visited the land occasionally and has never resided on the land.
42. She states that she would accompany Raymond Cherono to the farm to inspect and familiarize herself on what was going on at the farm whenever she visited her home in Kituro. She states that the relationship between her family and that of Raymond Cherono was mutual and Raymond Cherono was grateful and appreciated their gesture of allowing him to cultivate the land.
43. She states that in 1989 together with her husband, they held a meeting with Mr. Raymond Cherono concerning the management of the land. She states that Mr. Raymond Cherono had visited them at their home in Kituro. She states that they discussed the issue of loan repayment to the Settlement Fund Trustees' which loan had accrued interest. She states that she and her husband believed and trusted Raymond Cherono and therefore they had no qualms with him making loan repayments and having custody of the original loan receipts on their behalf. She states that together with her husband, they



gave Mr. Raymond Cheronu Ksh 10,000/= being proceeds of sale of their bull at their Kituro home to repay the Settlement Fund Trustees loan.

44. She states that in October 1998, her husband, Wesley Tomno passed away and she moved back to their home in Kituro and settled there to look after her family on her own. She further states that in 1999, she contacted her brother in law, Mr. Raymond Cheronu with the sole purpose of taking over the management of her farm from him.
45. She states that he would always tell him to give him more time to make arrangements for the handover meeting and around this period, she began to battle ill health and frequently visited the hospital.
46. She states that Chepkeitany Arap Chemwetich died sometime in 2012 but his wife Talai and children continued to stay on the farm until sometime in 2013 when Edmund Cheronu, the 3rd Defendant, the son of Esleen Tarkok Cheronu, the 1st Defendant, chased them away and they left.
47. She states that in 2013, her brother in law Raymond Cheronu lost his son Douglas Kipsang whilst he was receiving medical care in Nairobi. She goes on to state that neither her nor any member of her family attended the funeral. She states that she learned later that her brother in law Raymond Cheronu had buried his son Douglas Kipsang on the suit land without her consent and she raised the issue with Raymond Cheronu severally but he never gave her any explanation.
48. She states that it is within her knowledge that sometime in 2014, the widow of the late Douglas Kipsang, Ms Leah Mukuru, the 2nd Defendant herein received compensation from the insurance company that had insured the car that claimed the life of her late husband.
49. The Plaintiff states that the 2nd Defendant then started to construct the foundation of her house, toilet and store near the burial site of her husband without express consent from either Raymond Cheronu or herself.
50. She also states that she was later informed by Edmund Cheronu that upon learning of the said construction forthwith, she then stopped construction and no further construction or development has been undertaken to date. She states that Ms Leah Mukuru, her late husband (Douglas Kipsang) and her children have never lived on the suit property to date.
51. She states that in 2017, her and her daughter Margaret visited Raymond Cheronu and his family at their home in Marigat Township for the sole purpose of taking over the management of the farm and he promised to call a family meeting for the handing over exercise.
52. She narrates that on 22nd May, 2019, a meeting convened by Raymond Cheronu was held at Koriema resort near Marigat Township and the meeting was attended by family members including herself and her children, Raymond Cheronu, his wife Esleen Tarkok Cheronu, their sons Erustus, Edmund, and two clan elders namely Silas Kigen and Andrew Chepkeitany.
53. She states that at the meeting, Raymond Cheronu informed his family and all the persons present that he intended to hand over the management of the farm to her as the rightful owner. She states that he said that the land, Eldama/ Ravine-102/242, belonged to her and that he was only looking after the property on her behalf. She goes on to state that it was agreed that the process of handover was to take effect immediately, but he be allowed to harvest that year's crops but at any rate not later than 31st December, 2019.
54. She states that on or about June 2019, she visited the farm and discovered that Mr. Edmund Cheronu (the 3rd Defendant) had been cutting down indigenous trees on the farm like Cedar and Podo, without



express permission from the Forest Department and the matter was reported to Eldama Ravine Police Station vide OB No 12/02/06/2019.

55. She states that Raymond Cheronu passed away on 15th June, 2019 and laid to rest at his farm at Kampi ya Moto.
56. She states that on 6th September, 2019, she visited the suit property and informed the 3rd Defendant of her intention to plant beans and to construct a house for her worker. She states that she subsequently deposited building materials and engaged a labourer who erected a two-roomed house made of iron sheets together with a store.
57. She states that on 18th September, 2019 the neighbours phoned her daughter, Mrs. Mary Mengech, at night at around 2100 hours that they had banging noises from their farm similar to house demolition. She states that immediately, her daughter phoned the area Chief to report the incident but the chief told her daughter that it was too late in the night and he would investigate the incident the following morning.
58. She states that she sent her children to check what was going on and the matter was reported to Eldama Ravine Police Station, vide OB No. 18/19/09/2019.
59. She states that her children visited the farm in the company of Police Officers on the morning of 19th September, 2019 to investigate the destruction of the newly constructed dwelling house. She states that most building materials which had been hidden in the bush on the farm were recovered by police, samples of which were taken to the police station as exhibits for possible prosecution.
60. She states that on 23rd September, 2019, the Discharge of Charge and Transfer by the Settlement Fund Trustees were registered and she is now the registered proprietor of all that parcel of land known as Koibatek/Ravine-102/242 the same having been lawfully allocated to her by the Settlement Fund Trustees.
61. In her witness statement, the Plaintiff goes on to state that on or about 25th September, 2019. The 1st Defendant without any justifiable cause lodged a caution on the suit land claiming interest as a beneficiary of the widow and dependent of the registered owner.
62. She states that she was notified of the existence of a restriction by a letter dated 25th September, 2019 by the land registrar even though no restriction has been placed on the suit land.
63. It was the Plaintiff's statement that she lodged a complaint with the Land Registrar that the caution had wrongfully and without reasonable cause been lodged and maintained by the 1st Defendant over all that parcel of land known as Baringo/Ravine-102/242. She states that the Land Registrar wrote a letter dated 10th October, 2019 informing the 1st Defendant that the restriction would be removed within 21 days.
64. She states that on 5th November, 2019, her advocates on record wrote a letter to the Land Registrar requesting her to issue a notice under Section 73(2) of the *Land Registration Act* but no action has been taken so far.
65. She further states that on 11th October, 2019, the 1st Defendant filed a case being Nakuru ELC Number 123 of 2019 against her claiming to have acquired title to the suit land by way of adverse possession but she raised a preliminary objection on the ground that the Originating Summons upon which the application for injunction was based is incompetent, bad in law, and an abuse of the

process of this Court because it offends the mandatory provisions of Order 37, rule 7 of the Civil Procedure Rules by failing to annex a certified extract of the title to the land in question to the affidavit



supporting the Originating summons. The Plaintiff states that the suit also offended provisions of Section 37 and 38 of the *Limitation of Actions Act* and Section 175 of the Agriculture Act to the effect that no claim of adverse possession can be maintained on land that is registered in the name of the Settlement Fund Trustees and time begins to run when the land is discharged and transferred to the person allotted the land. She states that the said objection is yet to be determined.

66. She also states that she has never dealt with or involved the 1st Defendant, Esleen Tarkok Cherono with any issues concerning her parcel of land. She states that Raymond Cherono worked as area Chief and Nominated Councilor in Marigat location for most of his life.
67. She states that Raymond Cherono and his family have a permanent residence in Marigat Township, Baringo County. She states that he has a homestead at Kampi ya Moto, Nakuru Country, comprising of 15.0 acres, with a permanent house, whereupon he was laid to rest in June 2019.
68. She states that other properties Raymond Cherono owned include: Chapchap/Kituro Plot No 220 of 3.34 Ha, Marigat Group Ranch of 50.0 acres, KAMCO Hotel Plot No 17 in Marigat Township, Residential Homes in Marigat Township with Rental income, Plot in Bogoria Junction of 5.0 acres plot, Land in Kitale acquired through Morop Farm land buying company of which he was the Chairman, Perkerra Irrigation Scheme LR 397 measuring two acres. She states that the 1st Defendant owns Perkerra Irrigation Scheme LR 349 measuring four acres and another plot measuring half an acre.
69. She states that Raymond Cherono was the Chairman of Morop Land buying company, an area Chief and a councilor who had the powers and opportunity to manipulate or change the ownership of Ravine Plot No. 242 from her to himself and/or to members of his family.
70. The Plaintiff states that he kept his integrity and told his family that he was only looking after the land for and on her behalf. She states that this was evident in the family meeting of 22nd May, 2019 in the presence of his wife, Esleen Tarkok Cherono at which meeting Raymond Cherono acknowledged and reaffirmed that the land did not belong to him, that he was only a custodian and was handing over the land management to her in the presence of his family members including clan elders.
71. She states that on 26th September, 2019, the 3rd Defendant assaulted her daughters who had gone to the farm and the matter was reported to Eldama Ravine police station under OB 18/26/10/2019 and OB 18/26/10/2019.
72. Upon Cross Examination, PW1 stated that the land was allocated to the Plaintiff in 1964. He denied it is the 1st Defendant's deceased husband who applied for the land.
73. PW1 denied that the Plaintiff was a trustee but confirmed that the Plaintiff is the sister-in-law of the 1st Defendant. He also confirmed that he does not have the original receipts for payments made in respect of the suit land since 1965 and added that the Plaintiff has never stayed on the land.
74. He stated that the Plaintiff built the houses on the land and confirmed that he had no proof that the Plaintiff took a loan to build the houses. He further confirmed that the 1st Defendant's deceased husband was to look after the land but the agreement was verbal.
75. PW1 confirmed that government officers were being allocated land under Settlement Fund Trustee and his father was allocated Baringo/Ravine Block 102/002 and the land is 20 acres. He stated that his brother one Kandie Tomno stayed on the land about twelve to fifteen years ago.
76. PW1 also confirmed that he has produced an allotment letter and added that there is no provision in the allotment for receipts to be left at the farm and it was a verbal arrangement.



77. PW1 stated that the Ksh. 290/= payment was from his father's salary but he had no proof of it. He explained that his father gave the Plaintiff money adding that they paid but gave him receipts. He further confirmed that the Plaintiff was paying Chepkeitany Arap Chemwetich but he did not know how much his salary was. He also stated that the Plaintiff never managed the land but hired people to manage the land for her.
78. He explained that Kimosop Baritam left management of the farm because he was growing old and wanted to go and rest. He stated that Kimosop Baritam is his father's brother and that he first managed the farm before the 1st Defendant's deceased husband took over.
79. He explained that in reference to Exhibit P2 Kimosop Baritam left because of his age. He stated that the minutes say that the 1st Defendant's deceased husband managed the farm after his death and the minutes have an error. He confirmed that 1st Defendant's deceased husband started management in 1989 and the arrangement was made verbally.
80. PW1 confirmed that the Plaintiff gave the 1st Defendant's deceased husband Ksh 10,000/= after the sale of a bull and it was sold to a butcher. He explained that they did not pay because the 1st Defendant's deceased husband was in Ravine near where payments were done and it is not true that the 1st Defendant's deceased husband was not given the money.
81. He stated that in regards to management, there was no family meeting and the request for the handover meeting was verbal. He further confirmed that the 1st Defendant's son (Douglas Kipsang) was buried on the suit parcel and there are photographs of the grave. PW1 confirmed that they did not object to the interment as they were not aware and they only knew about it in 2018.
82. PW1 explained that 1st Defendant's deceased husband is his uncle and for 6 years they did not know where he was buried despite being aware of his demise. He stated that the Plaintiff asked the 1st Defendant's husband the reason for the burial on the suit property but she did not receive an answer.
83. He further explained that when they met, they decided that the 1st Defendant's deceased husband takes over management of the farm on 22nd May, 2019 and it was also decided that he be given 10 acres of land and it would solve the problem of the burial of his son on the suit parcel.
84. He explained that the minutes only state that the land was to be given to the 1st Defendant's deceased husband but it does not say how much land. He confirmed that the 2nd Defendant is the wife to Douglas Kipsang and there was construction near the burial site. He added they knew that Douglas Kipsang had been buried there in 2014 and it is not true that they did not object because the land did not belong to the Plaintiff.
85. PW1 explained that he does not have proof that the 1st Defendant's deceased husband brought the Ksh 200,000/= or the sum of Ksh 80,000/=. When referred to the receipt dated 19th December, 2018, he explained that the money was given in 2016 but the payment was made in 2018. He clarified that in 2018 they did not give him any money.
86. PW1 was referred to the letter dated 20th November, 2019 and he explained that it makes reference to the receipt and confirms the payment was made by the 3rd Defendant who is the son of the 1st Defendant.
87. PW1 was referred to Exhibit P22 and P23 and confirmed that he wrote a letter to the Director of Land Adjudication and Settlement. He explained that Exhibit P22 is dated 5th February, 2020 and Exhibit P23 does not make reference to the letter dated 20th November, 2019 or whether it is true or false.



88. PW1 explained that the minutes were done by Mary Mengitch and she is PW1's sister and there were two independent persons who were not members of the family. He explained that the first page of the minutes say the minutes was in respect of Ravine/399/242 and it only states how the land was occupied. He confirmed that it was a handover meeting and the minutes were signed after the meeting.
89. He denied that the minutes were to transfer land to the 1st Defendant's deceased husband as alleged by the 1st Defendant and also denied that the minutes were signed before the meeting. He further denied that the 1st Defendant's deceased husband requested the Plaintiff to transfer the land to him.
90. PW1 informed the court that they went to the 1st Defendant's deceased husband funeral and it was agreed that what was discussed at a place known as Koriema would stand. He added that the 3rd Defendant occupied the land in 1982 and the 2nd Defendant occupied the land in 2014.
91. He denied that they were in occupation of the suit parcel because it belonged to the 1st Defendant's deceased husband. He explained that when the Plaintiff transferred land to her name and the 1st Defendant placed a caution on it. The caution is Exhibit P7(a). He stated that he was aware that the reason given was that the 1st Defendant a beneficiary of the land by virtue of being a widow to the proprietor, her husband), one Raymond Cheron Tomno.
92. PW1 was referred to a letter dated 28th November, 2019 and he explained that the letter confirms that children of the deceased are living on the land and it says they have been living on the land since 1964.
93. He explained that they never resisted occupation because they allowed them to stay there and it was with their permission. He further denied that the Plaintiff's name was used as a trustee. He explained that both the 1st Defendant and her deceased husband were government officers on account of which they could not hold land through Settlement Fund Trustee. He stated that the 1st Defendant never worked as a civil servant and the 1st Defendant's deceased husband worked as a civil servant from 1967.
94. He confirmed that the 3rd Defendant was arrested but he was not charged as they settled the dispute out of court. He also confirmed that the 1st Defendant's deceased husband owned all these properties and he was not bared from owning any other property.
95. Upon re-examination, PW1 reiterated that the first person to manage the farm was Kimosop Baritam. He testified that in 1966, Chepkeitany Arap Chemwetich was engaged to work alongside Kimosop Baritam. He further testified that Chepkeitany Arap Chemwetich died in 2012 and his wife continued to live there until 2013. He stated that in 2013, the 3rd Defendant chased them away.
96. PW1 further stated that Kimosop Baritam left the farm in 1975 as confirmed by the minutes. He stated that when Kimosop Baritam left, Chepkeitany Arap Chemwetich continued to take care of the farm until 1989 when the 1st Defendant's deceased husband came in and by then Kimosop Baritam had passed away. He testified that when the 1st Defendant's deceased husband came to manage the farm, Chepkeitany Arap Chemwetich was living on it.
97. PW1 stated that he came to know of the interment of Douglas Kipsang in 2018. The Plaintiff in her statement stated that in 2014, a house was constructed near the burial site and it was stopped. He testified that the Plaintiff knew in 2014 that Douglas Kipsang had been buried there.
98. Silas Arap Kigen testified as PW2 and it was his evidence that he lives in Eldama Ravine at the settlement scheme. His witness statement was adopted as part of his evidence.



99. He testified that he knows the 1st Defendant. He also stated that he knows the Plaintiff and the 1st Defendant. He explained that both of them are related. PW2 testified that he does not remember when he was born but was still in school as at 1934.
100. In his witness statement, PW2 states that it is within his knowledge that the suit land Baringo/Ravine Plot No 102/242 belonged to Lands and Settlement. He states that the said parcel of land was allocated to the Plaintiff after payment of the stamp duty and registration fee.
101. He stated that sometime in May 2019, he got an invitation from the late Raymond Cherono (through his son Esmound Cherono who is staying on the suit land since he is a teacher at a nearby school) to attend a meeting over an issue involving the suit land. He states that he also learnt that Andrew Chepkaitany, his clansman, had been invited to attend the meeting which was to take place on 22nd May, 2019 at Koriema Resort.
102. He states that the meeting was attended by Esleen Tarkok, Raymond Tomno, Esmond Tomno, Erastus Kiptoo, Andrew Chepkaitany, Silas Kigen, Bernard Kigen, Edwin Tomno, Mary Mengech, Rebecca Tomno, Margaret Tomno and Lucy Chebet.
103. It is PW2's statement that when the meeting was called to order, he was elected to chair it and the issue at hand was the management of the suit land.
104. He states that the Plaintiff confirmed that the parcel of land was hers and that it was not ancestral land. He states that the Plaintiff narrated how she acquired it and permitted Raymond Cherono to manage it after the death of Kimosop Baritam who was managing the parcel.
105. He states that Raymond Cherono was also given an opportunity to present his case and he stated that the land did not belong to him but belonged to the Plaintiff and that he was only requested to manage and take care of it.
106. He states that they requested Raymond Cherono and his family to go out as they deliberate on the issue. He states that the Plaintiff finally agreed to give them 10 acres of the land as a token of appreciation for having taken care of the land.
107. He states that Raymond Cherono and his family were called into the meeting and were informed of the decision by the Plaintiff. He states that Raymond Cherono stated that he was willing to accept any acreage given by the Plaintiff and he would nominate the person in whose name the land would be registered.
108. PW2 in his witness statement states that Mzee Chepkaitany requested that Raymond Cherono be given an additional 3 acres but there was no consensus and it was further agreed that Raymond Cherono should be allowed to harvest the crops for 2019 and wait for the land to be subdivided as agreed in the meeting.
109. He states that it was agreed that Raymond Cherono should stop any farming activities and wait for the land to be subdivided and they all had lunch together after the meeting and nobody raised any issue at all.
110. He further states that he was later requested by the Plaintiff to attend a meeting at the Assistant County Commissioner's office to shed light on what had transpired during the Koriema resort meeting. He states that after giving his explanation, Esleen Tarkok and her group walked away after saying that he had mixed up issues.



111. He states that the Assistant County Commissioner advised both parties to seek the court's intervention in resolving their dispute. He stated that the Chief and two Assistant Chiefs also attended the meeting.
112. Upon cross-examination, PW2 confirmed that he signed the statement and he does not remember the date as his eyesight is not very good.
113. He confirmed that he was at a meeting on 22nd May, 2019 at Koriema and that the Plaintiff and the 1st Defendant called for the meeting. He added that he was asked to go for the meeting by the 3rd Defendant.
114. PW2 confirmed being the chairman of the meeting and he did not remember the name of the secretary. He confirmed that his son (Bernard Kigen) was also at the meeting. He explained that at the meeting, they were talking about the Plaintiff's parcel of land and she asked for a parcel of land at the settlement scheme. He stated that the meeting was about a dispute between the 1st Defendant and the Plaintiff. He added that the meeting was not about management of the farm.
115. PW2 stated that when the minutes were recorded. He stated that he could read the decision at the meeting. He explained that the Plaintiff wanted to use the farm but the 1st Defendant refused. He informed the court that they found that the land belongs to the Plaintiff.
116. PW2 further explained that the 1st Defendant's deceased husband stated that his children were on the land and wondered if they would leave with nothing. He confirmed that the Plaintiff decided to give them 10 acres. He stated that after that decision, they called the 1st Defendant's deceased husband's people to ask them if they would accept the 10 acres. He stated that they accepted it and they were thankful for it.
117. PW2 also explained that they did not see any payment receipts and whoever paid should have receipts in his/ her name. He confirmed that he has land in Ravine Settlement and three others which are in his name.
118. He explained that the property under the name Ravine 102 was owned by Europeans and subsequently sold to the government. He explained that the resolution of the meeting was that the 1st Defendant was given 10 acres. He explained that the 1st Defendant was in occupation and she had agreed with the Plaintiff that they live on the land.
119. He also confirmed that he knew the 1st Defendant's deceased husband and heard that he lost a child who was buried on the suit parcel. He confirmed that he was not at the funeral and stated that if someone died, they can only be buried on his land if he agrees or gives permission.
120. He further explained that it is not true that Douglas Kipsang was buried there because the land belonged to the 1st Defendant's deceased husband. He stated that the registration was in the Plaintiff's name before Douglas Kipsang was born.
121. Upon reexamination, PW2 testified that meeting of 22nd May, 2019 was in Koriema and the dispute was between the 1st Defendant and her deceased husband on one side and the Plaintiff and her children on the other.
122. He testified that they asked the children of the 1st Defendant and her deceased husband to leave the meeting so that they could discuss what the 1st Defendant's deceased husband would be given. He testified that they asked the 1st Defendant's deceased husband if he could accept the little that had been offered and he accepted what had been offered. PW2 added that the 1st Defendant's husband never said that the parcel was his and they did not talk about payment at the meeting.



123. William Chesire testified as PW3. It was his evidence that he lives in Trans-Nzoia County in Kenya and he knows the 1st Defendant's deceased husband and the Plaintiff's deceased husband as his brothers in law. He also testified that the Plaintiff is his sister. He stated that he made a statement and prayed that it be adopted as part of his evidence.
124. In his witness statement dated 14th February, 2020, he states that he is aware that the Plaintiff was allocated land Eldama Ravine LR 242 in 1964.
125. He states that it was within his personal knowledge that when the Plaintiff went to apply for the allocation of the land, she was accompanied by their mother, the late Elizabeth Chesire. He also stated that the then District Officer, Mr. Turere who was settling people in Eldama Ravine was also their brother-in-law having married their sister Leah Turere.
126. He states that it is common knowledge that the Plaintiff's family owns the suit land and that Raymond Tomno was looking after the land for the Plaintiff.
127. Upon cross examination, PW3 explained that he is 64 years old and he was born in 1961. He confirmed that in 1964 he was 3 years old and he knew about the Plaintiff's parcel in 1977 after being told about it by his father one Cheptom Chesire.
128. He stated that his father told him because in 1977, they also had a parcel in the settlement scheme which they would visit while traveling from Kitale. He confirmed that he knows where the parcel is and when they visited the parcel in 1977, there was no one there.
129. He confirmed that the last time he was on the parcel was in 1979 and he did not see anyone there. He informed the court that he knew about the 1st Defendant's deceased husband when the case started and he does not remember when the case started.
130. PW3 further stated that the Plaintiff told him that the 1st Defendant's deceased husband was taking care of the land for her and the only thing he knows is what he has stated. He stated that does not know about the receipts for payment and he never saw them. He denied that the suit land belongs to the 1st Defendant's deceased husband.
131. Michael Rotich Chebii testified as PW4. It was his evidence that he lives in Kiamunyi and he is a farmer. He testified that he recorded a statement on 13th February, 2020 and prayed that it be adopted as part of his evidence in this case.
132. In his statement dated 13th February, 2020, he states that he knows the Plaintiff being her mother by virtue of being married to his uncle the Late Wesley Tomno who together with Raymond Tomno are his father's first cousins.
133. He states that he worked in Sabatia Forest Station as a forest guard between 1974 and 2005 years. He states that he recalled that sometime in 1989, he travelled to Marigat to meet Raymond Tomno to request him to allow him to reside in the suit property due to proximity of his workplace.
134. He states that informed him that the land did not belong to him Raymond Tomno but belonged to the Plaintiff. He further states that Raymond Tomno told him that his land was in Kampi ya Moto which was not near his place of work.
135. Upon cross examination, PW4 stated that he was a forest guard between 1974 & 2005 and he retired in 2005. He explained that Sabatia Forest Station is about 2 km from the suit parcel and that in 1989 he went to Marigat to meet with the 1st Defendant's deceased husband. He confirmed that the 1st Defendant's deceased husband is the brother to his father who is Kipkirui Chebii.



136. PW4 explained he was born in 1954 and that he went to meet the 1st Defendant's deceased husband to ask for land. He further informed the court that during this time he thought the land belonged to the 1st Defendant's deceased husband and he was told that the land does not belong to him. He stated that he was not given permission to stay on the suit parcel. He stated that he was told the land belonged to Plaintiff but he did not talk to the Plaintiff.
137. Upon re-examination, PW4 testified that he went to ask for the land so that his children and cattle would live there because it was close to the forest which was his working station.
138. John Kibiwott Kaitanny testified as PW5 and it was his evidence that he lives in Kabiyet in Baringo County and he is a casual labourer. He testified that he wrote a statement on 14th November, 2019 and prayed that it be adopted as part of his evidence.
139. He testified that he was born in 1981 and his father's name is Chepkeitany Chelal. It was also his testimony that his father lived on the Plaintiff's land and that is where he was born and he was living there until 2013.
140. He testified that he left because the 3rd Defendant asked him to leave and explained that they started living with the 3rd Defendant in 1993 when he was transferred to Benonin Primary School.
141. He further testified that his father Chepkeitany was living on the parcel of land and initially, there was one house and subsequently the 3rd Defendant built another one so they became two. It was his testimony that he knows the 1st Defendant's deceased husband and he would come to the suit land. He added that he first saw him in 2001 and that he subsequently took him to go work for him on his parcel.
142. He testified that in the suit parcel, he was together with his mother and his two sisters. He testified that his father had 2 homes.
143. PW5 in his witness statement dated 14th November, 2019 states that he was born on the suit property sometime in 1981 and when he was about 10 years old, his father told him that a man called Wesley Tomno brought him to the land to take care of the property. He states that he was also shown beacons to the land and his father asked him to take care of the parcel whenever he would be away.
144. He states that he knows that his late father started staying on the suit property sometime in 1967 way before he was born. He states that his parents lived in a big round grass-thatched mud house which had been built by Wesley Tomno.
145. He states that he knows Mzee Baritam who is the elder brother of Wesley Tomno who used to visit the farm regularly to ensure that the parcel of land and the property therein is taken care of properly.
146. He states that he knows that his father fenced off the property and used to take care of cows which were on the land and was taking care of the land in general.
147. He states that he knows that they lived on the land for a long period of time until sometime in 1993 when a man called Esmound Cherono, a teacher who was transferred to Benonin Primary School in the same year came to the property claiming that it belonged to his father.
148. He states that in early 2013, Esmound Cherono chased him and her mother (Talal Chelal) away from the suit property. He states that he told her and her mother to move out verbally and that he did not want to see them on the parcel of land anymore.
149. He states that they moved out and rented house near Benonin Centre. He states that he believes that the suit land belonged to Wesley Tomno.



150. Upon cross-examination, PW5 confirmed that he was born in Benonin and he was living with his father on the land. He explained that his father said that the land they were living in belongs to the Plaintiff's deceased husband (Wesley Tomno). He added that he does not know the plot number and the 3rd Defendant used to come to the parcel to plough and in 1993, he came to live there. He confirmed that he was growing maize.
151. PW5 explained that in 2013, the 3rd Defendant asked him and his mother to leave and his sisters were since married. He confirmed that in 2013, he was married and had children. He stated that he knew that the land belonged to someone else because his father said he was going to see the owner of the land.
152. He informed the court that he was about 10 years old and this was in 1991 and the 3rd Defendant told them that he was the child of the owner.
153. He states that when they were chased, they did not complain to the Plaintiff. He confirmed that the Plaintiff's deceased husband is the one who brought his father to the suit parcel.
154. PW5 further explained that he met the 1st Defendant's deceased husband in 2001 and he came to the suit parcel where he asked him if he had finished school and he took him to work at his other parcel in Muchongoi in Baringo.
155. He also explained that he knows the 1st Defendant's child was buried on the parcel and on the day of the funeral, he knew that his name is Douglas. He confirmed that he was at the funeral and he does not know if the Plaintiff's family attended. He also confirmed that he did not hear any objections or complaints on him being buried there.
156. He further stated that he heard that the land belonged to the Plaintiff's deceased husband and not the 1st Defendant's deceased husband. He clarified that on the issue of whether Douglas could be buried on the parcel that did not belong to the 1st Defendant's deceased husband, it depends on the agreement of parties and he does not know if there was an agreement.
157. PW5 explained that he knew the 2nd Defendant during the funeral and in the years he has lived there, he never saw the Plaintiff or her deceased husband and he also never saw the children.
158. Upon re-examination, PW5 testified that it was not possible for him to know 1st Defendant's deceased husband property as he was just a worker.
159. He also explained that before the funeral, he never saw the 2nd Defendant on the parcel.

Defendants' Evidence

160. Erastus Kiptoo Cheronno testified as DW1 based on the affidavit sworn on the 17th January, 2022 and the court order of 18th January, 2022.
161. He testified that he is a retired teacher and he is a son of the 1st Defendant. He confirmed that he heard the evidence by the Plaintiff including the documents produced and the oral testimony.
162. He testified that the statement by the 3rd Defendant responds in detail to the claims made in case No 144 of 2019. He testified that the 1st Defendant and the Plaintiff are ladies married to brothers and they are mothers. He testified that his grandfather whose name is Tomno had 6 children: Chebii Tomno, Kimosop Tomno, Beigong Sambu, Alexander Tomno, Wesley Tomno and Raymond Tomno.
163. He testified that there is a statement by the 1st Defendant which he prayed that it be adopted as part of his evidence. He stated that he has also filed documents dated 3rd December, 2019 in support of their case and prayed that the documents be produced in evidence.



164. The documents were marked and produced as follows: a limited grant of Letters of Administration Ad litem dated 31st October, 2019 as Exhibit D1, Letter to Land Register of Koibatek/Mogotio from Julius Nyakiangana & Company Advocates as Exhibit D2, Copy of the Green card dated 18th October, 2019 as Exhibit D3, Official receipt of Loan payment dated 16th December, 1965 as Exhibit D4, Statement of account dated 30th June, 1989 as Exhibit D5, Demand notice of arrears of loan repayment from the Ministry of Lands and Settlement dated 11th August, 1989 as Exhibit D6, Official receipt of loan payment dated 21st December, 1989 as Exhibit D7, Demand Notice of Arrears of loans from the Ministry of Lands dated 6th October, 2003 as Exhibit D8, Official receipt of loan payment dated 6th January, 2004 as Exhibit D9, Agricultural settlement fund dated 31st December, 2018 as Exhibit D10, Official receipt of loan payment dated 19th December, 2018 as Exhibit D11, Bank statement for 1st January, 2018 to 12th January 2019 dated 12th November, 2019 as Exhibit D12, Photographs of the suit land dated 6th September, 2019 as Exhibit D13, Letter from Kenya power to Esmond Cherono dated 24th August, 1999 as Exhibit D14, Supply contract from Kenya Power dated 31st August, 1999 as Exhibit D15, Electricity bills from Kenya Power and Lighting Company as Exhibit D16, Bundle of Receipts from Esmond Cherono as Exhibit D17, Letter to Chief Kabiyet Location from Esmond Cherono dated 6th September, 2019 as Exhibit D18, Summons from the Chief Kabiyet Location to Rebecca Wesley dated 13th September, 2019 as Exhibit D19, Summons from Chief Kabiyet Location to Esmond Tarkok dated 13th September, 2019 Exhibit D20, Caution dated 25th September, 2019 as Exhibit D21, Letter from the Department of Lands Districts Lands Office- Eldama Ravine to Rebecca Wesley Tomno dated 25th September, 2019 as Exhibit D22, Letter from Department of Lands District Lands Office Eldama Ravine to Esmond Tarkok Cherono dated 8th September, 2019 as Exhibit D23, Notice of objection of removal of caution dated 15th October, 2019 as Exhibit D24, P3 Medical Examination Report of Leah Mukuru dated 26th October, 2019 as Exhibit D25, P3 Medical Examination Report of Esmond Cherono dated 26th October, 2019 as Exhibit D26, Report from Eldama Ravine sub- county hospital dated 26th October, 2019 as Exhibit D27, Certificate of Official Search dated 28th November, 2019 as Exhibit D28. Letter to the Land Settlement Scheme drawn by Nyakianga Advocates dated 13th November, 2019 as Exhibit D29, Confirmation of payment of loans for Plot No 242 in Ravine Settlement Scheme from the Ministry of Lands to Julius Nyakianga & Company Advocates dated 20th November, 2019 as Exhibit D30 and a Letter from the office of Chief Kabiyet Location to Deputy Registrar Nakuru High Court dated 28th November, 2019 as Exhibit D31.
165. He testified that the suit land was acquired by the 1st Defendant's deceased husband on account of application from the government.
166. It was his testimony that the land was registered in the Plaintiff's name because they entered into an agreement that the Plaintiff holds the land in trust for the 1st Defendant's deceased husband since he was a government employee working as a field assistant at Perkerra Irrigation Scheme and he was later promoted to be senior chief in the same Perkerra area.
167. He testified that it was difficult to have the land registered in his name because the country had attained independence and the rules at the time were that a government officer was not allowed to own government property.
168. He testified that his mother, the 1st Defendant was working at Perkerra irrigation scheme and also a government institution and that's why his father opted to use his sister in law the Plaintiff and her deceased husband.



169. He testified that the Plaintiff was a house wife and his father and mother took occupation of the land in 1964. He testified that there was development on the land which were two grass thatched houses; one for himself and another for his workers.
170. DW1 testified that the workers living on the farm are: Stephen Chebii Tomno, Francis Kipsaina Kimosop, Chepkeitany Arap Chemwetich, Kiplagat Chemut, Susan Kiplagat and Dancun Lagat. He testified that the workers lived there and worked there at different time.
171. He testified that it is not true that the two grass thatched houses were built by the Plaintiff and her husband. He also testified that it is not true that Kimosop worked for her and he did not stay on the land and he never worked there.
172. He also testified that Chepkeitany Chemwetich was hired by the 1st Defendant's deceased husband in 1967 and it is not true that the Plaintiff and her deceased husband hired Chepkeitany Chemwetich. He testified that since 1964, they farmed and lived on the suit land without interruption.
173. It was his testimony that apart from occupation and possession, they were keeping dairy cattle, maize cultivation and potato farming. He testified that from 1964 to date the persons living on the land are the 1st Defendant, the 2nd Defendant and the 3rd Defendant.
174. He testified that when the payments were being made by the 3rd Defendant and the 1st Defendant's deceased husband, neither the Plaintiff nor her deceased husband made any payments.
175. When referred to Exhibit D4-D11, he testified that it is true that the receipts are in the name of the Plaintiff and her deceased husband because she was registered on the land as owner on account of that agreement between the 1st Defendant's deceased husband and the Plaintiff.
176. He further testified that it is not true that he is a mere custodian of the receipts and it is not possible to be a custodian of an original receipt. He testified that the receipts were kept from 1964 to 2018.
177. He also testified that he produced Exhibit D4 and it is not true that she paid Ksh 290 from her salary and as proof of payment, the 1st Defendant's deceased husband kept the original receipt. He also testified that the Plaintiff did not give Ksh 10,000/= to the 1st Defendant's deceased husband and he has the original receipt. He testified that the payment was made directly by the 1st Defendant's deceased husband.
178. He testified that it is not true that the 1st Defendant's deceased husband took Ksh 200,000/= to the Plaintiff and it is not true that the Plaintiff gave the 1st Defendant's deceased husband Ksh 80,000/= to go and pay. He also testified that on the receipt produced as Exhibit D11 dated 19th December, 2018 is for payment of Ksh 79,950/=.
179. It was his testimony that it is not true that Ksh 80,000/= was given to him in 2016 to be paid in 2018. He testified that the money that was used to settle the balance of Ksh 80,000/= was given by the 1st Defendant as evidenced in the Bank statement of Transnational Bank. He made reference to Exhibit D12 and he asked the court to look at the time of payment of the loan as evidenced in the receipt of 19th December, 2018.
180. He testified that the Ksh 80,000/= came from the 1st Defendant. He also made reference to Exhibit D30 and testified that the letter dated 20th November, 2019 confirms that the 3rd Defendant paid Ksh 79,950/= and this is supported by Exhibit D11.
181. DW1 testified that there are certain photographs which are Exhibit D13 which show the following; a maize plantation, structures and a toilet belonging to the 2nd Defendant. He testified that the structures



- are owned by the 1st Defendant's deceased husband and the 3rd Defendant, the 2nd Defendant and their children stay in them.
182. He also testified that there is a grave and it belongs to his brother (Douglas Kipsang) and it is in the suit property. He testified that his brother Douglas Kipsang was buried there because it is his father's land (the 1st Defendant's deceased husband) and he would not have been buried there if it wasn't his father's land. He also testified that there was no objection during the burial.
183. DW1 also testified that it is not true that the Plaintiff was not aware of the burial of Douglas Kipsang because during the burial, the entire family including the Plaintiff and her deceased husband were present as evinced in the photograph produced.
184. He further testified that since 2013 to date, they have not asked them why Douglas Kipsang was buried there. He testified that it is not true that the Plaintiff became aware of the burial of Douglas Kipsang in 2014 because her children were present.
185. He testified that some properties listed by the Plaintiff in paragraph 36 of his statement belong to his father. He also testified that the meeting of 22nd May, 2019 was about transfer of land from Plaintiff to the 1st Defendant's deceased husband having completed the payment to Settlement Fund Trustees in 2018. He testified that he wanted the land to be transferred to his father's name (the 1st Defendant's deceased husband) as agreed.
186. DW2 referred to Exhibit P2 which are minutes of the meeting and he testified that the purpose of the meeting was for transfer of the land from the Plaintiff to the 1st Defendant's deceased husband. He testified that there was disagreement and there was no resolution and the reason for disagreement was that the Plaintiff claimed that the land was hers.
187. He also informed the court that the 1st Defendant attended the meeting and the attendance sheet was signed as people were entering the meeting and it is not true that it was signed after as alleged by the Plaintiff.
188. It was DW'1 testimony that the land has not been transferred to his mother to date. He testified that he has sought prayers in ELC case No 152 of 2019 which he wants allowed. He further asks that the suit in ELC 144 of 2019 be dismissed.
189. The 1st Defendant, in her witness statement, states that sometimes in the year 1964, her late husband Wesley Kipkemei Tomno (deceased) applied for allocation of land by the Government.
190. The 1st Defendant states that in the same year, her husband was allocated Plot Number 399 (now Baringo/Ravine Block 102/242) but the same was registered in the name of the Plaintiff by the Land Adjudication and Settlement Officer at the request of her deceased husband who at that particular time was living and working in Marigat as a Field Assistant with National Irrigation Board Perkerra Scheme before later being appointed as the Area Chief of the then Larger Marigat Location.
191. She states that the agreement entered into by her deceased husband and the Plaintiff herein was mutual to extent that the Plaintiff was a mere trustee of the suit land who held the same on behalf of her deceased husband.
192. She states that under the said agreement, the Plaintiff was obligated to transfer the suit land herein from her name to her husband's name upon completion of the payments of all loans.
193. The 1st Defendant states that her husband and son namely Esmound Cherono single handedly paid all the Settlement Fund Trustee loans until completion in December 2018.



194. She states that together with her husband, all her family members have been in occupation of the suit land since 1964 uninterrupted. She states that neither the Plaintiff nor her children have lived on the suit land.
195. She states that in the same year 1964, her deceased husband built two thatched grass houses, one for himself where they lived in and the other one for his workers whom he had employed to work and manage his farm on the suit land. She states that the said structures are still there on the suit land.
196. The 1st Defendant states that it is not true that the Plaintiff's husband requested her deceased husband to manage a farm which belonged to them.
197. She states that for every loan payment her deceased husband and son namely Esmond Cherono made to Settlement Fund Trustee, they were issued with original receipts. She states that the receipts were issued in the name of the Plaintiff for the sole reason that the suit property was registered under her name in trust for her deceased husband.
198. It is the 1st Defendant's statement that since the year 1964, she has been cultivating the suit land together with her son namely Esmond Cherono and her daughter in law namely Leah Mukuru without any interruption and she has equally used part of the proceeds from the farm produce arising from the said farm in the suit land for part payments of the loan.
199. She states that together with her deceased husband, they have raised their children who are now grown on the suit land and some of her children have raised their family and children on the suit land.
200. She states that the Plaintiff and her husband namely Wesley Kipkemei Tomno (deceased) were allocated a separate land being Land Parcel Number BARINGO/RAVINE BLOCK/102/002 by the same Settlement Fund Trustee in the scheme which is four kilometers apart. She states that the Plaintiff and her family members together with their children and grandchildren have lived on the said land to date.
201. She states that sometimes in the year 1999, her son namely Esmound Cherono applied for supply of electricity on the suit property from Kenya Power and the same was granted since her son has been paying for electricity bills.
202. She states that in addition to the above, her son namely Esmound Cherono also applied for water connection from Benonin Water Project which was granted and since then he has been paying all the water bills in respect of the said land.
203. She states that as a family of Raymond Cherono (deceased), they have been in quiet, peaceful and uninterrupted possession and occupation of the suit land and she even buried her son namely Douglas Kipsang Cherono (deceased) on the suit property in the year 2013.
204. She states that during the funeral and burial arrangements of Douglas Kipsang Cherono (deceased) on the suit land, the Plaintiff together with her children and the extended family members attended the burial ceremony and no objection was raised.
205. It is the 1st Defendant's statement that the wife of Douglas Kipsang Cherono (deceased) namely Leah Mukuru and her five children together with her son namely Esmound Cherono and his Children are still in occupation of the suit property and that they have never known any other home other than the said land.
206. She states that she is aware that her daughter in law Leah Mukuru initiated a permanent construction for her house on the suit land in the year 2019 which stalled at the foundation stage due to lack of



- money and contrary to the Plaintiff's allegations in Nakuru ELC No 114 of 2019, her daughter in law was never stopped from constructing her house either by her husband or son as alleged.
207. She states that upon the death of her husband on the 15th June, 2019, the Plaintiff took advantage of the situation and through her agents and children constantly harassed, threatened and intimidated her son and daughter in law who have lived on the suit land from time immemorial with an eviction claiming ownership of the land.
208. She also states that due to constant harassment on various occasions, her son Esmound Cheronon reported the said dispute to the Area Chief-Kabiyet Location but the Plaintiff never honoured the summons which was issued to her by the Area Chief.
209. She states that sometimes in September 2019, the Plaintiff and/or her children caused the arrest of her son Esmound Cheronon on allegations that he had cut down trees on the suit land yet the said trees belonged to her. She states that her son was, however, never charged with any offence and was later released by the Police Officers citing no concrete evidence.
210. She states that the Plaintiff has since caused the suit property registered in her name on the 23rd September, 2019 but has refused to transfer the same to her in her capacity as the widow and personal representative of the estate of Raymond Cheronon Tomno (deceased) as she was obliged to do as per the trust.
211. Upon cross examination, DW1 confirmed that he was born in 1962 and his parents were staying in Marigat where they were working at the irrigation scheme.
212. He confirmed that he started school in 1969 to 1977 and he attended Marigat Primary School in Baringo. He stated that the suit parcel is about 70 kilometers from Marigat.
213. He explained that they started residing in the suit property towards the end of 1964 and from Monday to Friday, they were in Marigat and they would come to the suit property during the weekend. He added that the 1st Defendant left the parcel for the 3rd Defendant and now resides in Kampi ya Moto. He stated that she stopped coming to the suit parcel in 2013.
214. DW1 explained that prior to 2013, there were five houses, three thatched with grass, one with timber and iron sheets and another with stone and iron sheets adding that the first two houses were built in 1964 and the others were built as development took place on the land. The other three were built between 1967 and 1989.
215. He confirmed that he has produced photographs as Exhibit D13 which demonstrate that as at 2019, the five houses were intact. He explained that the house in the photo in the middle was built around 2011 and it belongs to the 3rd Defendant. He informed the court that it is not true that it was built in 2013.
216. He explained that the grass thatched house was built in the late 60's. He confirmed that the first is a dairy structure while the second and third are stores. He explained that the house appearing on page 22 of the bundle is a store, page 17 of the bundle has two houses, page 18 has one house, page 19 has one house and page 20 has one house.
217. DW1 went on to explain that from the houses he had identified, two are used for residential purposes while a worker stays in the grass thatched house. He confirmed that the house with the red/maroon roof belongs to the 3rd Defendant and added that the 2nd Defendant also resides on the land and she stays in the structure at page 22 in the bundle. He further denied that the 2nd Defendant resides on the Land and explained that she resides in Ravine.



218. DW1 also explained that when his parents went to the suit parcel, they stayed in the house at page 17, next to the one with the red roof. He added that prior to 2011, his parents lived on the structure appearing in the middle of page 19. He denied that his parents never resided in the suit parcel from 1964 to date. He also stated that it is not true that all developments apart from the grass thatched house were done in the year 2000.
219. He explained that his parents would travel from Marigat to Ravine as there were Land rovers at the time and also in the mid 1970's there were public transport vehicles purchased by teacher's groups.
220. He confirmed that he knows Chepkeitany but did not know when he was employed by his parents.
221. He further informed the Court that he knows Kimosop and he was employed by his father (the 1st Defendant's deceased's husband) to work in the farm. He explained that Kimosop and his father are brothers and stated that it is not true that a brother cannot employ his brother to work for him. He added that he did not know how much he was being paid.
222. DW1 confirmed that Stephen Chebii Tomno is a son of Chebii and that Chepkeitany Arap Chepwetich passed away in 1998. He added that he does not know PW5 having first seen him in 2013 during the burial of his brother and he realized during this case that he is the son of Chepkeitany Chemwetich.
223. He stated that he is not aware that PW5 lived on the suit parcel after the death of his father in 1998 until he was chased away by the 3rd Defendant in 2013.
224. He also stated that he was not aware that PW5 was born on the suit parcel. On the process of acquisition of the suit parcel, he stated that he does not have an application form but he believes the application was by writing and he thinks the application was in 1964.
225. He further added that he had no evidence of the request as set out in paragraph 5 of the statement and he has no agreement to support the statement in paragraph 6. He explained that there was a policy that government employees would not be given land at the settlement scheme and it is his father who told him that they had to use proxies.
226. He confirmed that he knew the Plaintiff's deceased husband and confirmed that he was a District Officer. He confirmed that he was not a government employee in Baringo. He denied that in 1964 when the land was allocated to the Plaintiff, she was a teacher and further stated that he is not aware that she resigned in 1967.
227. DW1 denied that his father (the 1st Defendant's deceased's husband) was not employed as at the time of allocation. When referred to Exhibit P4, he stated that it is a funeral programme. He explained that his father was a field officer adding that some field officers were surveyors and others were water guards. He confirmed that the funeral programme does not state the years when his father worked at the irrigation scheme.
228. DW1 confirmed that his father was a counsellor, a resident of Marigat and he qualified to be appointed as a chief. On the issue of the loan, he explained that the loan was for 3000/= and that a demand notice was issued which made it clear that non-payment would lead to the land being taken away.
229. He explained that it is not true that when persons were allocated land by Settlement Fund Trustee's, they were given a loan was Kshs. 5000/=, 2000/= being for purchase of dairy cows and another amount for Kshs. 3000/=.



230. DW1 was referred to Exhibit P1 and stated that it is not true that his father was not allocated the land because he is not aware of Ksh 2000/= that was initially given to the Plaintiff.
231. He added that he cannot explain why the Plaintiff has the letter of offer and the 1st Defendant has the receipts. He further stated that it is not true that the reason he has originals is that it's a requirement for a person in occupation to show the receipts. He stated that the Plaintiff has no single receipt for repayment of the loan.
232. He explained that the payment in the receipt of 16th December, 1965 is Exhibit D4 and it was paid by his father. He added that the fact of holding the original receipt is proof of payment. He explained that the next payment was in 1989 and it was for Ksh 9,545/= and there were no payments made between 1965 and 1989 because much of the work being done was clearing the land.
233. He denied that the reason for non-payment is because the land belonged to the Plaintiff and stated that he gave his father Kshs. 10,000/= to pay hence, Exhibit D7.
234. He explained that no payment was done between 1965 to 1989 and this is because the land was being cleared as it was a forest. He added that the land was also infested with Tsetse flies so they could not utilize the land.
235. He also denied that part of the land was arable and explained the cows were put there to destroy the rocky path and it took time for them to get 2 acres of arable land. He also stated that the rocks were used as a foundation for building.
236. He stated that after 1965, the next payment was in 1989 then 2004 and the last being in 2018. He stated that he is possession of the receipts and the 1965 receipt was made in Ravine and it is Exhibit D4, the one of 1989 was made in Nakuru and it is Exhibit D7 and the one made in 2004, the payment was made in Koibatek and it is Exhibit D9. He stated that the payments were to be made at any District Commissioner's office around the country.
237. He confirmed that he is aware that each land parcel has a file and the receipt for 2018 is Exhibit D11. He stated that the payment was made in Nairobi by the 3rd Defendant and he got the money from Transnational Bank, Marigat Branch. He further stated that Exhibit D12 is evidence of debiting of the amount of Ksh 180,000/= from the said account.
238. He went on to explain that the money was paid on 19th December, 2018 which was four days later. He stated that the reason for going to Nairobi is because of the demand notice which was previously issued for payment. He explained that for the 2018 payment, no demand notice was issued and the 3rd Defendant went to Nairobi to inquire on the balance and therefore make payment and he wanted to clear everything while in Nairobi.
239. He stated that it is not true that one has to inquire first and pay and they decided to first withdraw money to pay Settlement Fund Trustees and also do other things. He stated that they made a budget and it was to cover payment to Settlement Fund Trustees and other things. He also explained that had he found the money owing to be Kshs. 200,000/=, then he would have come back home to look for more money.
240. He confirmed that the 15th December, 2018 was a Saturday and banks on Saturdays. He further stated that it made sense for them to carry money rather than pay using the mobile money application called MPESA.



241. He stated that it is not true that Exhibit D11 and D12 are not related and that it is not true that the Ksh 80,000/= exhibited in Exhibit D9 had earlier been given to the 1st Defendant's deceased husband adding that there is no evidence to show that.
242. When referred to Exhibit P4 which is a funeral programme, DW1 stated that they were raised in Eldama Ravine and his father (the 1st Defendant's deceased husband) was not buried on the suit land because the family chose Kampi ya Moto. He confirmed that Exhibit P4 demonstrates that his father was buried at Kampi ya moto.
243. DW1 explained that during his father's funeral, he said that whatever arrangement his father had made in respect of his estate, would be followed by them. He stated that he remembers the Koriema meeting and denied that his father said that the suit land belongs to the Plaintiff.
244. He further explained that before filing of these two cases, he had filed another case being Nakuru ELC 123 of 2019 (OS) where they were claiming to have acquired the suit land by way of adverse possession. He stated that ELC 123 of 2019 was withdrawn as it was not representative of their claim and denied that it was withdrawn because land was registered in the name of the Plaintiff in 2019 and that a Preliminary Objection was raised on that point.
245. He clarified that their claim was for trust and not adverse possession. He stated that the change was made in 2019 and it is not true that he was in court on a fishing expedition as they have evidence to support their claim. He further explained that the 1st Defendant was misled to file a claim for adverse possession and it should have been equitable trust from the beginning.
246. DW1 referred to Exhibit 7 (b) which is a statutory declaration and it states that the 1st Defendant's deceased husband is the beneficial owner of the land and all family owners are living on the land. He stated that the 1st Defendant was misled by the advocate and it is not true that they were claiming beneficial ownership.
247. He reiterated that government officers were not supposed to be allocated land by the Settlement Fund Trustee. He stated that the Plaintiff's deceased husband was allocated land by the Settlement Fund Trustee land. He stated that he knows Richard Chepkaitany and he is his brother and he knows he was allocated land through Settlement Fund Trustee.
248. He further explained that he knows Francis Kaitany being his nephew and he was a District Officer employed in 1913 and he got Settlement Fund Trustee land as well. He explained that it is not correct to say government officials were not getting land and he wished to state that Richard Chepkaitany used other people's names.
249. DW1 explained that the 3rd Defendant was born in 1967 in Marigat, raised in Eldama Ravine and he went to school in Kabiet Nursery, Marigat Primary and Marigat High School. He went on to explain that he worked at National Cereals and Produce Board as an employee in 1987 then went to Thogoto Teachers Training College under P1 teacher training and after, he lived in Eldama Ravine.
250. He stated that immediately after training, the 3rd Defendant built his home on the suit land in 1989 and was posted to the primary school near the suit parcel.
251. When referred to Exhibit D13, he explained that House No 2 was built in 1978 and it is not true that they were built after 1989 and further explained that the 3rd Defendant only built his house in 1989 because that is when he had resources.
252. Upon re-examination, DW1 was referred to Exhibit P4 at page 3 of the funeral programme. He testified that the work life on the programme confirms that his father was a teacher in 1959 and also served in



- Perkerra as a Land surveyor and field assistant and finally a Chief in 1967. He stated that at the time the land was being allocated, his father (the 1st Defendant's deceased husband) was a government official.
253. He testified that the 1st Defendant's deceased husband did not acquire land in his name because government officers were not allowed to do so unless they acquired it through proxy. He stated that the application for the suit land was made by the 1st Defendant's deceased husband and registered in the name of the Plaintiff.
254. It was his testimony that the Plaintiff's deceased husband also applied and was allocated land and the land was registered in his name and he was allocated Baringo/Ravine/102/002. He testified that the land is within the same scheme and four kilometers away from the suit land and it is 20 acres. He testified that the 1st Defendants deceased husband and the Plaintiff's deceased husband were government officials.
255. He testified that the Plaintiff's deceased husband acquired land in his name because he was not working in Baringo District and the 1st Defendant's deceased husband was disqualified because he was working in Baringo. He testified that Richard Chepkeitany was a chief and he took over from the Plaintiff's husband. He stated that he was allocated land through his brother Zacharia Chepyegon who was not a government employee and Tarkok Chepkoitany (his mother). He stated that he had two parcels of land.
256. It was DW1's testimony that Francis Kiptany is his nephew and he was allocated land in 1964. He further testified that he was not employed so he got land and he became a government official in 1973. He testified that the middle house at page 19 of the Defendant's bundle was built in 1964.
257. He further testified that in 1964, they were living on the thatched house which appears on the last photograph on page 19 and the workers in the thatched house on the middle photograph. He testified that the 3rd Defendant was born in 1967 and he was living in the house at page 19.
258. He testified that before 1989, the 3rd Defendant was living in the house which is indicated as No2 on page 17 of the Defendant's bundle. He testified that it is true that payments could be paid at different District Commissioner's Officers and the payments were made by the 1st Defendant's deceased husband and the Plaintiff did not give them any money.
259. He testified that the Receipt which is Exhibit D11 dated 19th December, 2018 was made by the 3rd Defendant. He also referred to Exhibit D30 and testified that it confirms that the 3rd Defendant paid Ksh 79,950 and it is for plot number 242 and the reason was that he needed to clear the loan.
260. DW1 testified that the 3rd Defendant got the money from him on 15th December, 2018. He testified that the Ksh 180,000/= was for repayment of the loan and other things. He testified that it is not illegal to carry money for whatever number of days before use. It was his testimony that they preferred not to have the money on interest. He stated that it is not true that the Plaintiff gave her mother Ksh 80,000/=.
261. DW1 testified that Raymond Cherono was buried at Kampi ya Moto and he had many other properties and it is not true that he was not buried there because it's not his land. He testified that he withdrew the case of Nakuru ELC 123 of 2019 because of the way it was framed and it was not what they wanted. He stated that it was not withdrawn on account of a preliminary objection.
262. DW1 also testified that he registered a caution as a beneficial owner and he seeks the prayers in ELC Case No 152 of 2019 be granted.



263. Kiprop Kigen testified as DW2. His written statement dated 3rd December 2019 was adopted as part of his evidence-in-chief. He testified that the parcel Baringo/ Ravine Block 102/242 belongs to the 1st Defendant's deceased husband but is registered in the Plaintiff's name.
264. He testified that the 1st Defendant's deceased husband was a government employee and was not able to have the suit land registered in his name.
265. He further testified that Douglas Kipsang Cherono is the 1st Defendant's deceased husband son and there was no objection for him to be buried on the suit land. He went on to testify that from 1964 to date, the 1st Defendant's deceased husband's family has been living on the suit parcel.
266. In his witness statement DW2 states that the 1st Defendant together with her late husband Raymond Cherono took possession and occupation of Land Parcel Number BARINGO/RAVINE BLOCK 102/242 after they were allocated the same by Settlement Fund Trustee in the year 1964.
267. It was his statement that the 1st Defendant, her late husband together with her children and grandchildren have lived on the suit land since the year 1964 without any interference and/or interruption by any person.
268. He states that he is aware that the 1st Defendant together with her late husband raised their children on the suit land who are grown up and now some of her children have been raised and continue to raise their families on the said suit property.
269. He states that he is aware that in the year 1967, the late Raymond Cherono employed Chepkeitany Arap Chemwetich to work for him on the suit property between 1967 to 1977 and lived on one of the thatched grass houses that had been erected by the 1st Defendant and her husband.
270. He states that he is also aware that the 1st Defendant and her deceased husband together with her children have been cultivating the suit land from the year 1964 until now without any interruption and/or interference. He states that he is also aware that the 1st Defendant's son namely Esmound Cherono reared dairy cows on the said land.
271. He states that in the year 2013, when the 1st Defendant's son Douglas Kipsang Cherono died, he was buried on the suit land without any objection raised by the family members including the Plaintiff herein.
272. He states that he knows of his personal knowledge that if indeed the suit property belonged to the Plaintiff, she could have raised any objection and perhaps the deceased could have been buried elsewhere.
273. He states that the suit property belongs to the late Raymond Cherono and his family members and at no particular time has the Plaintiff or her children lived on the suit land or claimed ownership of the same for more than 55 years now.
274. Upon cross examination, DW2 confirmed that he was a chief of Kabiyet farm from 1989 to 2000 but was unemployed before working as a chief.
275. He stated that the suit land is about four kilometers from where he lives and further stated that he was born in 1940 and that the 1st Defendant and her deceased husband were given the land by Settlement Fund Trustees in 1964.
276. He explained that he has this knowledge because they were given numbers and he got his number in 1964. He also confirmed that the 1st Defendant, her deceased husband, the children and grandchildren lived on the land since 1964.



277. He explained that he does not know how many children the 1st defendant has but stated that the children who were living there since 1964 include the 3rd Defendant and Douglas Kipsang. He also stated that the 1st Defendant's deceased husband would visit the suit parcel and go to Marigat where he was working.
278. He explained that that since 1967 there were two grass thatched houses and other developments came up subsequently. When referred to Exhibit D13, he stated that that he does not know the specific house that the 1st Defendant's deceased husband lived in. He confirmed that during his tenure as the Chief, there were two grass thatched houses on the suit parcel.
279. He also states that he knows Chepkeitany and explained that he was the 1st Defendant's deceased husband employee. He added that he was not a chief in 1967 but he was conversant with information of the suit property because they were neighbours.
280. DW2 further explained that the 1st Defendant and her deceased husband have been cultivating the land and denied that he has he had been coached to give false evidence. He reiterated that from 1967, he was not the Chief but they live in the same location so he is conversant with the facts he has given evidence on.
281. Upon re-examination, he testified that what is in his statement is true and that the suit property is about four kilometers away from his home and that it is possible for him to know things that happen within a four kilometer radius.
282. Peris Talam testified as DW3. Her witness statement dated 3rd December, 2019 was adopted as part of her evidence- in-chief.
283. In her witness statement, she states that she knows the 1st Defendant, her late husband Raymond Cherono and her children. She also states that she is the immediate neighbour of the 1st Defendant as both their parcels of land are separated by a road.
284. She states that in the year 1964, she was allocated BARINGO/RAVINE BLOCK 102/73 (Formerly Plot Number Ravine 185) by the Settlement Fund Trustee.
285. She states that when she took occupation and possession of the said land in the year 1964, she met the late Raymond Cherono who was also issued with BARINGO/RAVINE BLOCK 102/242 (Formerly Plot Number Ravine 399).
286. She further states that she is aware that the late Raymond Cherono and his wife erected two thatched grass houses which they lived in together with their workers whom they had brought to assist them in the farm management.
287. It is her statement, she states that she first met Raymond Cherono (deceased) in the year 1964 when they were taken to their parcel of lands by the Settlement Fund Trustee through its Surveyor and were showed their lands and beacons.
288. She states that the 1st Defendant and her deceased husband together with her children have been in occupation and possession of the suit land since the year 1964 until to date uninterrupted.
289. She further states that for over 55 years that the 1st Defendant, her late husband and children have lived on the suit land, no one has ever claimed ownership including the Plaintiff.
290. She also states that she has been informed by the 1st Defendant that the Plaintiff is now claiming ownership of the suit land yet she has never lived on the suit land nor claimed ownership of the same



- at all since the year 1964 until to date. She questions, “If the suit property was hers, where was she for over 55 years?”
291. She goes on to state that she knows as of her personal knowledge that sometimes in the year 2013, the 1st Defendant’s son, namely Douglas Kipsang Cherono died and was buried on the suit land without any objection raised from the Plaintiff or her children.
 292. She states that she is aware since the year 1964, the 1st Defendant and her children have been cultivating on the suit land and at no particular time has the Plaintiff or her children cultivated the same.
 293. She states that she has been informed by the 1st Defendant, her children and the extended family that at the time of allocation of the said suit land, the 1st Defendant and her husband were not around as such they requested the Plaintiff to have her name used in the registration of the land on his behalf and in trust of the late Raymond Cherono (deceased).
 294. It’s her statement that she has also been informed that the Plaintiff under the said trust was obligated to transfer the suit land from her name to that of the late Raymond Cherono upon payment of all loans.
 295. She states that she has also been shown all the original receipts by the 1st Defendant and it is true that the late Raymond Cherono and her son namely Esmond Cherono paid all the loans single handedly.
 296. She states that she is informed that on the 23rd September, 2019 the Plaintiff caused the land to be registered on her name and has refused to transfer the same in the name of the 1st Defendant as the widow and personal representative of the estate of the late Raymond Cherono as per the trust.
 297. She states that for her entire life, she has never seen the Plaintiff on the suit land and she believes the reason why the Plaintiff and her children have never claimed ownership of the land for over 55 years is because she has never owned the suit land herein but only held the same as per the trust.
 298. Upon cross-examination, she stated that she only knows how to sign but does not know how to write. She stated that she can recognize her signature if it shown to her and confirmed that the signature on the witness statement is hers.
 299. DW3 explained that she gave her story and it was recorded when she went to the lawyer. She also confirmed that she is a neighbour and there is a road between her home and the suit parcel.
 300. DW3 further stated that she was allocated the parcel of land in 1964 but occupied it in 1965. She explained that by 1965, everyone had been allocated land. She stated that she knew the 1st Defendant’s deceased husband in 1965 and he would visit his home for five days, bring people and go away.
 301. She confirmed that she knew a worker by the name Kimwetich but cannot remember the exact years he worked there. She stated that it was approximately 20 years. She explained that she knows John Kibiwott Kaitany (PW5) whom she described as a young man and added that he worked at the suit land much later.
 302. DW3 confirmed that she remembers when PW5 went away and stated that it was about for about four years. She explained that there were grass thatched houses and the 3rd Defendant was staying in the grass thatched house. She confirmed that she knows the 3rd Defendant and he is now living in an iron sheet roofed house.
 303. DW3 referred to Exhibit D13 and confirmed the photographs to be the 3rd Defendant’s house. She stated that that in regard to the photographs on page 19 of the bundle, there is a grass thatched house and the picture in the middle at page 19 is where the 3rd Defendant was living before.



304. She stated that she knows that the 1st Defendant's deceased husband needed the land but it was registered in the Plaintiff's name. She further confirmed that they have been on the land since 1964 despite having come to her premises in November 1965. She stated that they were eating maize from the 1st Defendant's deceased husband parcel of land.
305. She explained that the 1st Defendant's deceased husband brought someone to stay on the land. She confirmed that she never saw anyone claim the suit land for over 55 years and also confirmed that she did not see a police land rover visit the suit land in the year 2020. She further confirmed that she would not know if there was a dispute.
306. Jonathan Chebii Barkutwo testified as DW4. He testified that he is retired and was previously an education officer. He stated that he knows the 1st Defendant's deceased husband as his uncle and the 1st Defendant being the wife to his uncle, the Plaintiff as his aunt and the Plaintiff's deceased husband as his uncle.
307. His testimony was that the Plaintiff's deceased husband and the 1st Defendant's deceased husband are brothers to his father. He explained that and his grandfather had six sons. He listed them from the first born to the sixth born as follows: Chebii Tomno, Kimosop Tomno, Beigong Tomno, Alexander Tomno, Wesley Tomno and Raymond Tomno.
308. He stated that he is the son of Chebii Tomno who is the first born. He went on to states that he was in court to testify about the land Baringo/Ravine/Block 102/242. His witness statement dated 3rd December, 2019 was adopted as part of his evidence-in-chief.
309. DW4 testified that the suit parcel belongs to the 1st Defendant's deceased husband and he knows because he was given the parcel in 1964 by the settlement scheme. He also testified that the 1st Defendant's deceased husband was in occupation of the suit land.
310. He testified that the Plaintiff was to hold the land in trust for the 1st Defendant's deceased husband because he was working in Marigat irrigation scheme where the 1st Defendant worked as well.
311. It was his testimony that the two could not register the property in their name because in those days the law was that if one worked in Baringo, they could not own land in the settlement scheme.
312. He testified that the 1st Defendant's deceased husband applied and it was not possible for the persons requiring the application to know whether he was working in Baringo or not.
313. He testified that the 1st Defendant's deceased husband trusted the Plaintiff to hold the land for him and after completion of the payment, the land was to revert to the 1st Defendant's deceased husband. He stated that the 1st Defendant's deceased husband paid all the money to Settlement Fund Trustee and the payment was completed in 2018 but the land was not returned to the 1st Defendant's deceased husband by the Plaintiff.
314. He stated that he visited the suit land and in 1967, after he joined the mission primary school in Eldama Ravine where his brother Stephen Tomno was a teacher. He testified that Stephen Tomno would send him to the land every weekend to get maize which they would use in school.
315. It was his testimony that when he went to the suit property, he found Chepkeitany Arap Chemwetich who was on the land and he was taking care of the parcel of land. He stated that he was employed by the 1st Defendant's deceased husband.



316. He further testified that he also found two houses built by the 1st Defendant's deceased husband and one belonged to him while the other was for the workers. He testified that the land has maize, cattle and sometimes potatoes.
317. DW4 stated that the 2nd Defendant and the 3rd Defendant live on the land. He stated that he has never seen the Plaintiff living on the farm. He further stated that Douglas Kipsang Cherono died and was buried in 2013 and the whole Tomno family attended the funeral and there was no objection to the burial.
318. He went on to state that Edwin Kipruto spoke at the funeral and Edwin is the son of the Plaintiff. He testified that if the land did not belong to the 1st Defendant's deceased husband, Douglas Kipsang would not have been buried there. He testified that the rest of the things he wanted to state are in his statement.
319. In his witness statement dated 3rd December, 2019, he states that his father the late Chebii Tomno (Deceased) was the elder brother to the late Raymond Cherono and Wesley Kipkemei Tomno.
320. He states that he is aware that his uncle the late Raymond Cherono was allocated land parcel number Baringo/Ravine Block 102/242 by the Settlement Fund Trustee in the year 1964. He states that the late Wesley Kipkemei Tomno was also allocated land parcel number BARINGO/RAVINE BLOCK 102/002 by the said Settlement and Fund Trustee.
321. He states that he is also aware that upon allocation of the said land, the late Raymond Cherono and his family including the 1st Defendant herein took occupation and possession of the same where they have lived and cultivated since the year 1964 to date without any interruption and/or interference.
322. He further states that he is also aware that at the time of allocation of the land, his uncle was working as a field assistant with National Irrigation Board Perkerra Scheme and requested the Plaintiff herein who is also his mother to have the suit land registered in her name in trust for him since he was on duty at Marigat.
323. He states that he is aware that pursuant to the said agreement, the Plaintiff became a trustee of the suit land on behalf of his uncle the late Raymond Cherono (Deceased) and was obligated to transfer the same in his name as per the trust and this was when the deceased had completed payments of all Settlement Fund Trustee loans which his uncle had completely paid in December, 2018.
324. He states that upon allocation of the suit land, the 1st Defendant and his uncle the late Raymond Cherono erected two thatched grass houses, one for themselves and the other for their workers whom they had employed and/or taken to assist in management of his farm.
325. He states that he is aware that his late uncle at one time took his elder brother, Stephen Chebii Tomno (deceased) to assist him with the fencing of the suit land. He states that he is also aware that in the year 1965 when his brother was preparing posts for the fencing he accidentally cut his leg and was admitted at Eldama Ravine Health Centre and later transferred to the then Kabarnet District Hospital where he was discharged after six months.
326. He states that in the year 1967, he joined Eldama Ravine Primary School (Mission) where the late Stephen Chebii Tomno was a teacher and every weekend he used to send him to go and pick the maize from the said farm as the late Raymond Cherono had allowed him.
327. He states that every time he visited the suit he would find Chepkeitany Arap Chemwetich who had also been hired by the late Raymond Cherono to manage the suit land on his behalf.



328. He states that he is aware that his uncle and his cousin namely Esmound Cherono have single handedly paid all the Settlement and Fund Trustee loans. He states that December 2018 is when they made the last payment.
329. He also states that he is aware that from the year 1964 to date, the 1st Defendant and her family members have cultivated the suit land by planting maize, beans, potatoes, tomatoes and they have even reared cows.
330. He states that in the year 2013, his cousin Douglas Kipsang Cherono passed away and was buried on the suit land without any objection. He states that he knows of his personal knowledge that if indeed the suit land belonged to the Plaintiff and her children, they ought to have raised an objection and deny his cousin's burial on the land which they did not.
331. He states that he is aware that perhaps the reason why the Plaintiff and her children did not interfere with the burial ceremony of his late brother or raise any objection to the same was because the Plaintiff was all aware that the suit land belonged to his late uncle and that the Plaintiff held the same in trust for him and was obliged to transfer the same to him upon full payments of the loan which the late Raymond Cherono and Esmound Cherono completed in December, 2018.
332. He states that he is well informed that on the 15th June, 2019 when his late uncle died the Plaintiff and her children visited the 1st Defendant and her children in the suit property and claimed that the land belonged to her. He states that he is also informed that the Plaintiff's children who are his cousins even threatened them with an eviction claiming ownership of the same.
333. He states that the suit land herein has never belonged to the Plaintiff in addition, she has never lived and/or even cultivated the same. He states that since the Plaintiff has caused the suit land to be registered in her name, she is now obligated under trust and the mutual agreement that they entered into with his late uncle to transfer the same to the 1st Defendant in her capacity as the widow and as she is the Personal representative of the estate of the late Raymond Cherono (Deceased).
334. Upon cross examination, DW4 stated that he was born 1950 and he started school in Kapeter Primary in 1961. He confirmed that in 1967, his brother was teaching in the mission school and he joined him at the said school as a student in standard 7.
335. He explained that he knew that the 1st Defendant's deceased husband got the land in 1964 because he was in Marigat and his father was neighbours with the 1st Defendant deceased husband. He stated that he was present when his father and the 1st Defendant's deceased husband were having a conversation.
336. He further stated that the 1st Defendant's deceased husband informed his father that he got land in Eldama Ravine and was going to Eldama Ravine to build two houses, one for his family and one for the workers.
337. He confirmed that he did not see any document that the 1st Defendant's deceased husband got the land and he did not see any receipts that he paid for the land.
338. He also confirmed that it is true that if a person worked in Baringo they could not get land at the settlement scheme and it was a law by the government but he did not specifically know the law.
339. He explained that the people receiving the application would not know but he did not apply in his name because he knew the law. He stated that he is not the only one and there were other people who worked in Baringo and used proxies to get the land.



340. He stated that Chelego Chepkaitany being a chief used a person by the name Zacharia Chepkaitany to acquire land despite the land being in Zacharia Chepkaitany's name. He also stated that one Weldon Chirchir used the name of Jacob Chewoiwo to acquire land.
341. DW4 stated that the Plaintiff is her mother/aunt and he is not aware that she was a teacher in Baringo in 1963-1964. He stated that the Plaintiff taught him in school in Kapopitia. He also stated that he knows Richard Chepkaitany and he was a chief where he was given land but it was registered in Zacharia's Chepkaitany's name and he later gave it back to Richard but did not have anything to confirm this.
342. He confirmed that Zacharia Chelego and Richard Chelego are brothers of the 1st Defendant. He stated that it is true that the land was registered in the name of the Plaintiff as a trustee for the 1st Defendant's deceased husband. He stated that he knows this because he was in Ravine and the 1st Defendant deceased husband informed him.
343. He confirmed that the Plaintiff was at the funeral of Douglas Kipsang adding that he was the master of ceremony at the said funeral. He denied that the Plaintiff was in hospital in Nairobi and reiterated that the plaintiff and her family comprising of Margaret, Chebet and Edwin were present at the funeral but had no proof. He further confirmed that all the Tomno relatives were present at the funeral, including one Steven who is his brother but now deceased.
344. He stated that he does not know about the meeting at Koriema and he has not heard about it. He further informed that court that at the Tomno meeting, he was the chairman but he fell ill in 2020. He stated that he was asked to take up the position when his brother passed.
345. He stated that just because he was not called to the Koriema meeting does not mean he does not know about the land. He also stated that he does not know if the 1st Defendant's deceased husband said that the land belongs to the Plaintiff.
346. He explained that the 1st Defendant showed him two receipts which showed the 1st Defendant's deceased husband finished paying the Settlement Fund Trustee loan when he went to visit her. He stated that he did not ask to be shown all the receipts and he did not go there to take accounts but it came up during their conversation. He confirmed that the land is in the Plaintiff's name.
347. Upon re-examination, DW4 testified that he was only shown two receipts by the 1st Defendant and it was not necessary that he sees all the receipts to know that the land had been paid for.
348. He reiterated that at the funeral of Douglas Kipsang, the Plaintiff was present and Edwin Kiprono spoke on behalf of the Plaintiff's family.
349. He testified that in 1967 when he was at Eldama Ravine mission school, the 1st Defendant's deceased husband informed him that the Plaintiff was holding the land in trust for him. He further testified that he was not in the Koriema meeting and it was not necessary for him to attend the meeting.
350. Leah Mukuru testified as DW5. It was her testimony that she is a farmer and is the 2nd Defendant in this suit. She- stated that she knows the Plaintiff and Esmond Cherono (the 3rd Defendant) who is the brother of her deceased husband, Douglas Cherono. She also testified that she knows the 1st Defendant as the mother of her late husband.
351. Her witness statement dated 3rd December, 2019 was adopted as part of her evidence. She stated that she lives on the suit property being Baringo Ravine Block 102/242. She went on to state that she married a son in that home and in 1994 she was taken to the suit property and it became their home.



352. She testified that she lived in the house in the middle at page 20 of the Defendant's bundle. It was her testimony that when she was married, the 1st Defendant's deceased husband being her father in law told her that her deceased husband and the 3rd Defendant had an interest in the suit property.
353. She further stated that the photographs on page 17 of the bundle are as follows: House 1 belongs to the 3rd Defendant, House No 2 is an extension of House No 1 and it belongs to the 3rd Defendant, House No 3 and 4 is where the parents would live whenever they visited and House No 5 is a store.
354. She went on to explain that the photograph on page 18 is a bathroom and a toilet and she is the one who built it in 2018. She testified that there is also a foundation for a house which appears as the first photograph at page 22 of the bundle which she built in 2018 and added that she has not finished building the house because she ran out of money after her husband died.
355. DW5 denied that she started building the foundation without the consent of the Plaintiff or the 1st Defendant's deceased husband and stated that she was never told to stop the construction by the 1st Defendant's deceased husband. She testified that her husband died in 2013 and denied that she built the house in 2014 using benefits from an insurance firm. She clarified that she began constructing in 2018 after she was paid by the insurance company.
356. She stated that the photograph on page 22 is a store and she was living on one side and it is the same photograph that appears in the middle photograph at page 18. She testified that the photograph on page 23 is her husband's grave and he was buried on the suit property on 23rd February, 2013.
357. She testified that the Plaintiff's family were present at the funeral and they never raised any objection. She testified that she had never met them before the funeral. It was her testimony that if the land did not belong to the 1st Defendant's deceased husband, then Douglas Kipsang would not have been buried there. She stated that she is not a trespasser.
358. DW5 testified that she has not been served with an order for exhumation by the Plaintiff and added that when she was married, her husband informed her that the land was in the name of the 1st Defendant's deceased husband and the reason was that in 1964, the law was that if a person was employed in the government and worked in Baringo, they could not be given land by the settlement trust.
359. She stated that the land was registered in the Plaintiff's name to hold in trust for the 1st Defendant's deceased husband. It was further her testimony that the rates to Settlement Fund Trustee were being paid by the 3rd Defendant who was her brother-in-law and the 1st Defendant's deceased husband- her father-in-law.
360. She stated that she was not present at the Koriema meeting of 22nd May, 2019. She explained that Exhibit D25, is a P3 form in her name which was filled because the Plaintiff and her children attacked her and the 3rd Defendant asking them to get out of the suit land.
361. In her witness statement, she states that she is the daughter in law of the late Raymond Cheron (Deceased) and Esleen Tarkok Cheron. She states that she was married to Douglas Kipsang Cheron (Deceased) the sixth born in the family of the late Raymond Cheron (Deceased) and Esleen Tarkok Cheron in the year 1994 through Tugen Customary Law.
362. She states that at the time of her marriage, her late husband Douglas Kipsang introduced her to the suit property Baringo/Ravine Block 102/242 as their home and family land.
363. She states that since her late husband was working as a procurement officer with Medical Services (Nakuru Provincial General Hospital), she and her children lived with him in Nakuru and occasionally



- they used to visit their parents in the suit property during weekends, Public Holidays and long holidays when their children closed school.
364. She states that her children and her have known the suit property as their home. She states that when she was married in the year 1994, she found her father in law, the late Raymond Cherono (deceased) and Esleen Tarkok Cherono, the 1st Defendant on the suit property cultivating the same where they planted maize, beans, cabbage, potatoes, tomatoes in large scale and even kept dairy cows.
365. She states that in the year 2013, she lost her husband through a tragic accident and he was buried on the same suit property and the Plaintiff never raised any objection.
366. She states that after her husband's death and burial in the year 2013, they relocated from Nakuru where she was living with her husband before his death and erected a semi-permanent structure as their home in the suit property where they have been living with her children without any interruption or interference.
367. She states that she is aware that her father in law was allocated land parcel number BARINGO/ RAVINE BLOCK 102/242 by the Settlement Fund Trustee in the year 1964.
368. She states that she is also aware that upon allocation of the said land, her parents in law took occupation and possession of the same and have lived on the suit land from the year 1964 to date without any interruption and/or interference.
369. She states that at the time of allocation of the land, her father in law, the late Raymond Cherono requested the Plaintiff who is his sister-in-law to have the suit land registered in her name in trust for him since he was away on duty at Marigat where he was working as a Field Assistant with the National Irrigation Board Perkerra Scheme.
370. She states that she is aware that pursuant to the said agreement, the Plaintiff became a trustee of the suit land on behalf of her father in law the late Raymond Cherono (deceased). She states that she is also aware that the Plaintiff herein was to transfer the suit land to her father-in-law's name who at all times was the beneficial owner pursuant to their agreement.
371. She states that she is aware that her father-in-law together with Esmound Cherono single handedly paid the entire Settlement and Fund Trustee loans and in each and every payment they made, they were issued with original receipts in the name of the Plaintiff for the sole reason that the suit property was registered under her name as a trustee on behalf of the late Raymond Cherono (deceased).
372. She states that in the year 1999 her brother-in-law; Esmound Cherono applied for connection and supply of electricity from Kenya power which was granted and he has been paying for the said electricity bills.
373. She states that she is also aware that the said Esmound Cherono also applied for water connection and supply from Benonin Water Project which was granted and he has continued to pay water bills.
374. She states that the Plaintiff herein and her children have never lived on this suit land at all. She states that on 15th June, 2019 when her late father-in-law died, the Plaintiff through herself and her children visited them in the suit property and claimed that the land belonged to her. She states that the Plaintiff's children even threatened them with an eviction claiming ownership of it.



375. She states that due to gross interference of their quiet occupation and possession of the suit land, they reported the matter to the Area Chief Kabiye Location who summoned the Plaintiff and her children because of the interference but they refused to honour the said summons.
376. She states that Esmound Cheronno was also arrested after the Plaintiff and her children claimed that he had cut down their trees on the suit land which allegations were unfounded since the trees belonged to them. She states that he was later released after the Police Officers found no concrete evidence against him.
377. She states that on 26th September, 2019, the Plaintiff's children again came to the suit land and assaulted her and her brother in law namely Esmound Cheronno and they reported the matter at Eldama Ravine Police Station and the same was booked under OB No. 16/26/10/2019.
378. She states that she has lived on the suit land since the year 2013 to date and she has even put up a permanent toilet, bathroom and store. She states that she has also erected a permanent house which stalled at the foundation stage due to lack of funds. She states that her five children do not know any other place as home other than the suit land.
379. She states that the allegations that her late father-in-law in a family meeting held on 22nd May 2019 acknowledged and reaffirmed that the suit land belonged to the Plaintiff are not true. She states that it is their father who due to his deteriorating health called the meeting and requested the Plaintiff to transfer the suit property into his name but the meeting turned chaotic and nothing came out of it.
380. She states that on 23rd September, 2019, the Plaintiff caused the suit land to be registered in her name and refused to transfer the same to the 1st Defendant in her capacity as the widow and as the Personal representative of the estate of her late father-in-law as she was obligated by the trust.
381. She states that she is aware that the 1st Defendant has lodged a restriction on the suit land as she is apprehensive that the Plaintiff might sell the same to third parties or equally interfere with the same at their expense.
382. Upon cross examination, DW5 explained that when she was married, her husband and father in law told her that he took possession of the suit land in 1964. She also confirmed that she was not shown any agreement for trusteeship but relies on what she was told by her father-in-law and husband.
383. She explained that she knows about the transfer because it was discussed at home all the time and the discussion was that on completion of the loan payment, which they did, the Plaintiff was to transfer the land to the 1st Defendant's deceased husband. She confirmed that the 1st Defendant's deceased husband and the 3rd Defendant paid and the 1st Defendant withdrew money for the last payment from the bank and gave it to the 3rd Defendant to go and pay.
384. She further confirmed that she first went to the land in 1994 when she was married and she started living there in 1994 and added that on page 17 of the bundle is a photograph of the first house which was built in 1989. She stated that by the time she got married, all the houses were there.
385. She stated that when she was married in 1994, the photograph in the middle at page 19 of the bundle being a grass thatched house was also there together with those appearing at page 17 of the bundle. She stated that the photographs of the two houses on page 18 of the bundle were built in 2018. She stated that in 1994, they lived in the middle house appearing at page 20 of the bundle and added that it had a kitchen.



386. She stated that she currently lives in Eldama Ravine and it is not true that she has never lived on the suit property. She stated that when her husband died, they were living in Nakuru but would visit the farm and after his death, they moved permanently to the farm in Eldama Ravine.
387. She confirmed that when she was married, she found the houses on page 17 of the bundle already there and that house one was built in 1989 and the extension in 2013. She stated the house appearing at page 20 of the bundle was built in 1994 belongs to her and it has a kitchen. She also stated that the grass thatched house at page 19 of the bundle was for the workers and the second house collapsed.
388. She explained that she was not present at the Koriema meeting and it is not true that the 1st Defendant's deceased husband agreed to give the Plaintiff back the land in 2019. She stated that she is not aware that on 30th April, 2019 people from the Settlement Fund Trustees visited the suit land.
389. Upon re-examination, DW5 stated that the issue of the suit property being held by the Plaintiff in trust for the 1st Defendant's deceased husband is something she knows. She testified that it is not true that she first went to the suit property when her husband died.
390. She reiterated that she found the house appearing on page 17 of the bundle on the suit property and was present when the extension was built in 2013. She testified that the Settlement Fund Trustee would be paid by her father-in-law (Raymond Tomno) and Esmond Tomno (brother-in-law).
391. She testified that when she got married, they lived in the house in the middle appearing at page 20 of the bundle and it was built in early 1994.
392. Esmond Cheronno testified as DW6 and it was his testimony that he is a teacher at Kaplombe Primary School and also a Defendant in this case. He testified that he knows the Plaintiff as a wife to his uncle Wesley Tomno.
393. He stated that he knows the 1st Defendant as his birth mother and the 2nd Defendant as the wife to his late brother Douglas Kipsang. His witness statement dated 3rd December, 2019 was adopted as part of his evidence in chief.
394. He testified that he was born in 1967 and lived in the suit property. He stated that the land belongs to his father (the 1st Defendant's deceased husband) and it does not belong to the Plaintiff.
395. It was his testimony that the land was allocated to her on 13th November, 1964 on payment of Ksh 3000/=. He testified that the Plaintiff was holding it in trust for the 1st Defendant's deceased husband and they agreed after full payment of the Settlement Fund Trustee loan that the Plaintiff would transfer it back to his father.
396. He testified that his father used to work for the National Irrigation Board between 1960-1967 before he became a chief. He testified that during that period, the government employees were not allowed to apply and be allocated land at the scheme. He testified that his mother was working with the National Irrigation Board as a water guard and could also not have the land registered in her name.
397. It was DW6's testimony that in 1964, his father applied for land from Settlement Fund Trustee and it was registered in the name of the Plaintiff because she was not a government employee. He testified that his father lived on the land until he died and added that they lived on it.
398. He stated that the two grass thatched houses were built by his father (the 1st Defendant's deceased husband).
399. He also testified that of the two thatched grass houses, only one still stands and can be seen on the photograph at the bottom of page 19 of the trial bundle. He testified that the maize plantation on page



- 17 of the bundle belongs to them. It was his testimony that the Plaintiff never tilled the land except on 2nd June, 2019 when the Plaintiff attempted to grow beans and he wrote a letter to the chief to complain that people known to him built a house on their land and planted beans on a quarter of an acre. He produced the letter as Exhibit D18.
400. He testified that the chief summoned them vide a letter dated 13th September, 2019 but the Plaintiff did not come to the meeting or any subsequent meeting. He produced the letter as Exhibit D19.
401. He testified that together with his father, they paid the Settlement Fund Trust loans in the name of the Plaintiff because the land was in her name. He testified that in accordance with the agreement, upon full payment she would transfer the land to his father.
402. He further produced Exhibit D11, Exhibit D12, Exhibit D29 and Exhibit D30 and testified that all these receipts were issued to them upon payment and they have the originals. He testified that the Plaintiff never paid or gave them money to pay. He testified that he went to Nairobi to make the last payment.
403. He explained that with regard to the last payment made in 2018, his mother went to the bank, withdrew money and gave it to him to go and pay. He testified that this happened on 19th December, 2018 and the payment was for Ksh 79,950/=.
404. DW6 referred to Exhibit D30 and stated that it is a letter dated 20th November, 2019 and the author is confirming that the payment was made by him. He further testified that Exhibit D13 is the receipt issued in the Plaintiff's name and her deceased husband's name.
405. He went on to explain that the receipts are in the Plaintiff's name because the 1st Defendant's deceased husband asked the Plaintiff to hold the land in trust for him until the money was fully paid. He testified that the Plaintiff did not transfer the land as agreed and after his father died on 15th June, 2019, the Plaintiff came to the suit land and demanded it.
406. DW6 testified that the land is the Plaintiff's name and it has not been transferred to his father as agreed and she got the title after his father died. He testified that he does not know the reason she did not transfer the title.
407. He also testified that he has developed the suit land by building houses that appears on page 19 of the bundle and page 17 of the bundle. He testified that there is an extension of a house, a store and workers' premises.
408. He testified that the bathroom and latrine at page 18 of the bundle belong to the 2nd Defendant as well as the store that appears in the middle of the photograph. He further testified that his parents built the structure that appears in the middle of the photograph in 1964.
409. He stated that at page 20 of the trial bundle is a dairy structure, the middle house belongs to the 2nd Defendant while the last photograph is a store. He testified that the photograph at page 22 of the bundle is the foundation to the 2nd Defendant's house while the second photograph is the 2nd Defendant's store.
410. It was his testimony that the 2nd Defendant was married in 1994 and lived in the middle house that is at page 20 of the trial bundle. He went on to explain that at page 23 of the trial bundle is a grave of his brother and it is on the suit property. He stated that he was buried on the suit land because it belongs to his father. He further testified that the suit land was given to him and Douglas Kipsang.



411. DW6 further testified that the Plaintiff and her family attended the funeral of Douglas Kipsang and they did not object to the interment. DW6 testified that Douglas Kipsang would not have been buried in his father's other parcel of land as claimed by the Plaintiff in her statement at paragraph 36.
412. DW6 stated that it is not true that his father was given land to manage it. He testified that no one claimed the land during the years they lived on it.
413. DW6 referred to Exhibit D14, Exhibit D15 and Exhibit D16 and stated that they are Kenya power and Lighting Company electricity bills and letters. He testified that he applied for electricity in 1999 and has been paying the bills.
414. He also referred to Exhibit D17 and testified that they are water bills and he made an application to the water project and has been paying the bills ever since.
415. He testified that Chepkeitany Arap Chemwetich was one of his father's employees. The others are Stephen Chebii Tomno, Francis Kipsaina Kimsop, Chepkeitany Arap Chemwetich, Kiplagat Chemut, Susan Teriki Kiplagat and Duncan Lagat.
416. He testified that he knows John Kibiwot who was PW5 and explained that he is the son of Chepkaitany Arap Cherotich and he was born on the suit property. He testified that Chepkeitany was employed by his father and was not employed by Wesley Tomno.
417. It was his further testimony that he was at Koriema meeting and explained that it was held on 22nd May, 2018 and was convened by his father. He went on to explain that the agenda was the transfer of the land from the Plaintiff to his father. He testified that it is not true that the agenda of the meeting was to hand over the suit land to the Plaintiff.
418. On Exhibit P2, which are minutes, he testified that no one was appointed to take them. He stated that they did not appoint Margaret to take the minutes and added that the said minutes are not a reflection of what was discussed at the meeting.
419. It was DW6 testimony that his father never stated that the land belonged to the Plaintiff. He reiterated that his father was not a trespasser. He further testified that between 1964 and 2018, the Plaintiff never claimed ownership of the suit parcel.
420. In his witness statement dated 3rd December, 2019, DW6 states that he is the son of the late Raymond Cherono (Deceased) and Esleen Tarkok Cherono. He also states that he is the fifth born in a family of eight having been born in the year 1967.
421. He states that he has been raised by his parents namely the late Raymond Cherono (Deceased) and Esleen Tarkok Cherono on Baringo/ Ravine Block 102/242 (Formerly Plot Number 399 (old number)).
422. He states that he has lived in the suit land since the year 1967 to date and he has not known any other home other than the suit land. He further states that he is aware that his father was allocated land parcel number BARINGO/RAVINE BLOCK 102/242 by the Settlement Fund Trustee in the year 1964.
423. He states that upon allocation of the said land, his parents took occupation and possession of the same and have lived on the suit land from 1964 to date uninterrupted.
424. He states that he is also aware that at the time of allocation of the land, his father was working as a field assistant with National Irrigation Board Perkerra Scheme before later being appointed as the Area Chief in charge of the larger Marigat Location.



425. He states that at time of allocation and/or registration of the land, his late father, Raymond Cheron, requested the Plaintiff who is his sister-in-law to have the suit land registered in her name in trust for him since he was away on duty at Marigat.
426. He states that he is aware that pursuant to the said agreement, the Plaintiff became a trustee of the suit land on behalf of his father the late Raymond Cheron (Deceased). He also states that it was an agreement between his father and the Plaintiff in the presence of his mother that upon completion of the payment of the said Settlement loans, the Plaintiff herein was to transfer the said land into his father's name who at all times was the beneficial owner.
427. He states that upon allocation of the suit land, his parents took occupation and possession of the suit land and even erected two grass thatched houses, one for themselves and the other workers whom they had employed to manage their farm.
428. He states that he and his father single handedly paid all the loans having made the last payment in December, 2018. He states that they were issued with the original receipts in the name of the Plaintiff when they paid the said loans because the suit property was registered under her name as a trustee on behalf of the late Raymond Cheron (deceased).
429. He further states that he is aware since the year 1964 to date, they have cultivated the suit land by planting maize, beans, potatoes, tomatoes and they have even reared dairy cows as per the conditions that were set out in the offer letter issued by the Settlement Fund Trustee to them.
430. He states that in the year 1999, he applied for connection and supply of electricity from Kenya power which was granted and since then, he has been paying for the said electricity bills.
431. He states that he also applied for the connection of water supply from Benonin Water Project which was granted and he has continued to pay water bills to date. He states that in the year 2023, his brother namely Douglas Kipsang Cheron passed away and was buried on the suit land without any objection.
432. He states that he is aware the Plaintiff, her children and the extended family at large attended the said burial and at no time did the Plaintiff raise any objection.
433. He also states that he knows as of his personal knowledge that if indeed the suit land belonged to the Plaintiff and her children, then they ought to have raised any objection and deny his brother's burial on the land which they did not. He states that his brother's remains have now rested in the suit land for over six (6) years.
434. He states that he is aware that perhaps the reason why the Plaintiff and her children did not interfere with the burial ceremony of his late brother was because they were all aware that the suit land belonged to his late father and that she held the same in trust for him and was obligated to transfer the same to him upon full payments of the loan which was completed in December 2018.
435. He states that since the year 1964 until the date of filing of Nakuru ELC 123 of 2019, the Plaintiff has never claimed ownership of the suit property.
436. He states that on 15th June 2019 when his late father died, the Plaintiff and her children visited them on the suit property and claimed that the land belonged to her. He states that the Plaintiff's children even threatened them with an eviction claiming ownership of the same.
437. He states that due to the interference of their quiet occupation and possession of the suit land, he reported the matter to the Area Chief Kabiyet Location who summoned the Plaintiff and her children but they refused to honour the said summons.



438. He narrates that he was also arrested after the Plaintiff and her children claimed that he cut down their trees on the suit land which allegations were unfounded as the trees belonged to them. He states that he was later released after the Police Officers found no concrete evidence against him.
439. It is also his statement that on 26th September, 2019, the Plaintiff's children visited the suit land and assaulted him and his sister in law Leah Mukuru. He states that they reported the matter at Eldama Ravine Police Station and the incident was booked under OB No 16/26/10/2019.
440. He states that they have lived on the suit land since the year 1967 to date and he has known the suit land as their home. He states that he and Leah Mukuru have put up her home on the said land and they have all lived with their children.
441. He states that it is not true that his late father in a family meeting held on the 22nd May, 2019 acknowledged and reaffirmed that the suit land belonged to the Plaintiff.
442. He states that it is their father who due to his deteriorating health called the said meeting requesting the Plaintiff to transfer the suit property to his name but the meeting turned chaotic and nothing came out of it.
443. He states that on 23rd September, 2019, the Plaintiff caused the suit land to be registered in her name and refused to transfer the same to the 1st Defendant in her capacity as the widow and as the Personal representative of the estate of his late father as she was obligated by the trust.
444. He states he was aware that the 1st Defendant has lodged a restriction on the suit land and is apprehensive that the Plaintiff might sell the same to third parties or equally interfere with the same at their expense.
445. Upon cross-examination, DW6 stated that he was born in 1967 and he started school in 1974. He confirmed that he was in Kabiet primary school which is near the suit property. He confirmed that he went to Marigat primary school in 1976 but denied that he started school in Marigat.
446. He explained that in 1974, his father was in Marigat as a chief and his mother was in Ravine. He confirmed that he was born in Marigat Hospital and sometimes they lived in Ravine and other times, they lived in Marigat with his mother living in both areas.
447. He stated that he knows what happened in 1964 in relation to the suit land from what he was told by his father. He confirmed that his father asked the Plaintiff to hold it for him because he was working for the government. He added that he was informed by his father that they started living on the land in 1964.
448. He further explained that the law was that government officials working in Baringo could not be allocated land in the settlement scheme and he does not know what the law currently is.
449. He stated that the land was only being given to natives of Baringo District but not under employment of the government. He stated that this was to help the natives who were not financially capable. He confirmed that his uncle Cheelgo Chepkeitany was allocated land through his brother.
450. He further confirmed that his uncle Wesley Tomno; the Plaintiff's deceased husband; was a District Officer and was allocated land which he got after 1964. He stated that he did not know that the Plaintiff was a teacher in 1963.
451. DW6 further explained that he was not shown any agreement and the agreement was oral with the witnesses being the Plaintiff's deceased husband and the 1st Defendant being her mother.



452. He stated that he was given this information by his father. He confirmed that the first employee at the suit land was John Kibiwot who is PW5 and he worked from 1964-1965. The other workers were Francis Kimosop who worked in the year 1966, Chepkeitany who worked from 1967 to around 1977 or 1978 and it was the statement of DW6 that he had two wives being Kibilio and Talai. He stated that Talai is the mother of PW5.
453. He further stated that it is not true that the Plaintiff employed Kimosop in 1965 and it is not true that Chepkeitany was employed by her in 1966. He also stated that it is not true that Chepkeitany brought him to the land in 1989 or that Chepkeitany left his son to take care of the farm. He confirmed that he is the one who employed Talai.
454. He also stated that it is not true that he chased away Talai and Kibiwot (PW5) and that he went away on his own volition. He stated that the Koriema meeting was requested by his father so that the Plaintiff could transfer the land back to his father.
455. He informed the court that the minutes are not true and that his father fell ill and wanted the two families to meet so as to transfer the land from the Plaintiff to his father.
456. He stated that he was told that his father wanted certain elders to be present so he called a person known as Cyrus and Chepkeitany to be present at the meeting. He stated that they accompanied their sick father to Marigat for the meeting.
457. He stated that Cyrus (PW2) offered to chair the meeting and his father talked stating that he wanted the land to be transferred which caused commotion and the meeting came to an end.
458. He stated that Cyrus is about 85 years old and he is about his father's age. He stated that it is not true that the purpose of the meeting was for his father to return the land to the Plaintiff.
459. He confirmed that he was at the meeting and it is not true that the Plaintiff offered to give them a portion of the land as a token of appreciation. He stated that they finished paying the loan in December 2018 but did not write to the Plaintiff to seek transfer.
460. He also stated that on 30th April, 2019 officers from the Settlement Fund Trust came to the land and his father informed him that the Plaintiff would transfer the land and so he did not inform the officers of any problem with the land. He referred to Exhibit P17 and stated that it's a letter dated 30th April 2019 and the letter states the land belongs to the Plaintiff.
461. He confirmed that he was assaulted and stated that he reported the matter to the police. He stated that he did not demolish the Plaintiff's house which was built by her agents. He further explained that it is not true that the Plaintiff took occupation as a result of the Koriema meeting.
462. He confirmed that he was the one who made the 2018 loan repayment. He stated that he went to Nairobi because he needed the accountants at Settlement Fund Trust to give him details of the final payment. He went on to explain that he carried excess money because he was not sure the exact amount that he would be expected to pay.
463. He referred to Exhibit D12 and explained that his mother (the 1st Defendant) withdrew Ksh 180,000/= on Saturday 15th December, 2018 and he made the payment on Wednesday, the week after. He stated that it is not true that the mentioned money withdrawal was for other things other than the Settlement Fund Trust Loan repayment. He added that it was almost Christmas and there were many other things to be done.



464. He explained that the payment was made to a cashier and he was not asked for his name or Identity Card number. He made reference to Exhibit D 2 (a) and stated that the cashier named Alber Kiarue knew him personally and he wrote the letter after confirmation from the cashier.
465. He clarified that it is not true that the letter was written to aid the case earlier filed. He also stated that that it is not true that the land belonged to the 1st Plaintiff or that she used to give his father money to pay Settlement Fund Trust.
466. He also stated that it is not true that Settlement Fund Trust required the person in occupation to have the receipts and they had the receipts nonetheless.
467. He also stated that it is not true that he is a trespasser and he only saw the Plaintiff on the suit property in 2013 during the funeral.
468. Upon re-examination, DW6 testified that he has been on the suit land since 1967 and was raised on the suit land by his parents.
469. He stated that he knows Zacharia and Richard Chepkeitany as his mother's brothers. He also testified that Richard got the land at the Eldama Ravine Scheme using a proxy by the name Chepyegon Arap Cheitany who was his brother.
470. He testified that Richard was a chief at Marigat and he used his brother because he was a government official and government officials were not allowed to get land. He testified that he has not produced documents to support this. He testified that this is what was expected of the Plaintiff.
471. He testified that he attended that Koriema meeting and the meeting was about the transfer of land from the Plaintiff to his father (Raymond Tomno). He testified that the minutes are not a reflection of what transpired at the meeting.
472. He testified that before the Koriema meeting when he finished payment of the loan in 2018, his father met with the Plaintiff to discuss the transfer.
473. He stated that he had produced Exhibit D12 to show that the payments were made. He stated that it shows Ksh 180,000/= was withdrawn on 15th December, 2018 to make the final payment to Settlement Fund Trust.
474. He reiterated that he made a payment on 19th December, 2022 with the receipt being at page 13 of the bundle. He confirmed that he held the money for four days before making the payment.
475. DW6 was referred to Exhibit D30 and he confirmed that it is a letter confirming that he is the one who made the payment as shown by the receipt produced as Exhibit D11.
476. He stated that it is not true that the person on the parcel was to keep the original receipts to show the Settlement Fund Trust officials. He testified that he has the original receipts because he was the one who paid the sum of money.
477. He stated that he has seen the allotment letter and there is no condition that the original receipts should be kept by the person on the land.
478. He stated that he had the original receipt because the land is theirs and they are the ones who paid.
479. DW6 was referred to Exhibit P17 which is a letter dated 30th April, 2019 and testified that Settlement Fund Trust officials never visited the suit land before 30th April, 2019 and the purpose of the visit was to help them process the title. He stated that the Settlement Fund Trust officials came for ground verification and he told them that the allottee is the Plaintiff.



480. He testified that the letter states that the Plaintiff lives in Kabarnet and it was for verification for the purpose of processing title.

ISSUES FOR DETERMINATION

481. The Plaintiff filed her submission's on 3rd May, 2023.

482. She identifies the following issues for determination:

- a. Whether the Plaintiff is the lawful owner of all that parcel of land known as Baringo/Ravine 102/242?
 - b. Whether there was a trust agreement between the Plaintiff and Raymond Cherono Tomno and whether there is a resulting trust in favour of Raymond Cherono Tomno over all that parcel of land known as Baringo/Ravine 102/242?
 - c. Whether the 1st and 2nd Defendants' should give vacant possession to the Plaintiff and whether Defendants' either by themselves, their agents, servants, employees, tenants or otherwise howsoever should be restrained from entering, occupying, charging, carrying on any development or dealing with all or any portion of that parcel of land known as Baringo/ Ravine -102/242 in any manner whatsoever prejudicial to the interest of the Plaintiff?
 - d. Whether the 1st Defendant should be ordered to remove the caution she has placed on all that parcel of land known as Baringo/Ravine 102/242 and in default the District Land Registrar-Kabarnet be ordered to remove the caution and whether the Plaintiff is entitled to General damages for trespass and unlawful interference with the Plaintiff's property rights pursuant to the provisions of Section 75 of the [Land Registration Act, 2012](#)?
 - e. Who should bear the costs of the two suits?
483. The Plaintiff relies on Section 26 (1) of the [Land Registration Act](#) and the judicial authorities of Republic vs City Council of Nairobi & 3 Others [2014] eKLR, Paul Victone Otieno v George Asuke & 2 others [2022] eKLR and Wreck Motor Enterprises v Commissioner of Lands & 3others [1997] eKLR. The Plaintiff submits that on 13th November, 1964, she was allotted all that parcel of land known as Plot number 399 which is now known as Baringo/Ravine 102/242 by the Settlement Fund Trustees after successful application.
484. She submits that the said allotment was supported an offer letter dated 13th November, 1964 which was produced as Plaintiff's Exhibit 1. She submits that she was given a loan of Ksh 2,000/= to assist with the purchase of dairy cows, fencing and maize cultivation. She submits that the property was then charged for a sum of Ksh 3,000/= at an interest rate of 6.5 percent per annum.
485. She also submits that some of the conditions of the allotment included: not to charge, transfer, lease of otherwise part with the possession of the land or any part thereof without the prior consent in writing of the Fund; to personally reside on the land; the allottee shall within six months of the date upon which he takes possession of the land, to the satisfaction of the Central Board, cultivate at least one acre of land, erect a dwelling house of suitable materials and erect a fence of suitable materials or plant a hedge around the perimeter of the land.
486. The Plaintiff submits that the letter of offer further provided that upon any breach of these conditions the land shall become liable for forfeiture to the Central Board but such forfeiture shall not be enforceable by re-entry, suit or otherwise unless a notice shall have been served on the proprietor of the



- land. She submits that this explains why the Plaintiff had to have a person permanently living on the suit land and also why the original receipts had to be kept on the land to show that payments were being made. She submits that she testified that together with her husband, they took possession of the said parcel of land and built one big round grass thatched mud house for the workers who were to reside on the land. She submits that she purchased dairy cows and engaged the services of her brother in law Kimosop Baritiram who fenced and secured the property and cultivated maize as required by the Fund.
487. PW1 testified on the Plaintiff behalf her behalf and stated that his father paid the first instalment of Ksh 290 from his salary and after full repayment of the loan to the Settlement Fund Trustees, the suit property was discharged as evidenced by the discharge of charge dated 22nd August 2019 which was produced as Plaintiff Exhibit 6 and registered in the Plaintiff's name.
488. The Plaintiff submits that the court should find and hold that the Plaintiff is the registered proprietor of all that parcel of land known as Baringo/Ravine 102/242.
489. The Plaintiff also submits that it is now a settled principle that the onus of proving the existence of a trust rests on the person alleging the existence of such trust. The Plaintiff relies on the judicial authorities of Peter Ndungu Njenga vs Sophia Watiri Ndungu [2000] eKLR, Twalib Hatayan Twalib Hatayan & Ano vs Said Saggah Ahmed Al- Heidy & Others [2015] eKLR, Juletabi African Adventure Limited & Another v Christopher Michael Lockley [2017] eKLR, Felista Muthoni Nyaga v Peter Kayo [2016] eKLR.
490. The Plaintiff further submits that for a court to hold a party is holding land in trust for another, the burden of proofing lies on the person making the assertion.
491. The Plaintiff also submits that in their pleadings, the Defendants' have alleged that there was an agreement between the Plaintiff's husband and the 1st Defendant's husband that the suit land be registered in the name of the Plaintiff who was to hold it in trust for Raymond Cherono. She submits that in their evidence the first defendant stated in her statement that: "The agreement entered into by my deceased husband and the Defendant was mutual to extent that the defendant was a mere trustee of the suit land herein who held the same on behalf of my deceased husband."
492. The Plaintiff submits that the Defendants' assertion that the Plaintiff was to hold the land in trust for Raymond Cherono Tomno is misplaced and unsubstantiated. She submits that throughout their pleadings and evidence,
there is no point where they have demonstrated that either the Plaintiff and Raymond Cherono Tomno or the Plaintiff's husband and Raymond Cherono Tomno had the intention of establishing any trust under which she was to hold the land in trust for Raymond Cherono Tomno.
493. She submits that no agreement was produced to support the above allegation and it is not clear whether the agreement was between the Plaintiff and the 1st Defendant's husband and no particulars of the trust were pleaded and proved and they urged the court to find and hold that in view of that glaring contradiction, there was no such agreement.
494. The Plaintiff submits that the Defendants' have given two contradictory reasons why the suit land was registered in the Plaintiff's name and one reason is contained in paragraph 5 of the 1st Defendant.
495. The Plaintiff submits that the Defendants' seemed to place emphasis that any government official working within Baringo District would not be allocated land. She submits that they did not adduce any evidence to demonstrate that government employees were not allowed to own land within the scheme. She submits that the Plaintiff Rebecca Tomno worked as a primary school teacher and was allocated land.



496. It is her submission that she was able to demonstrate that the assertion was not only false but also misleading. She submits that it came out of the evidence that there were persons who were working for the government who had been allocated land within the Ravine scheme.
497. She submits that no law was cited to support the said assertion and this was a miserable scheme of trying to show that there was an implied or express trust from the time the suit land was allocated. She urges the court to reject those assertions and find and hold that no plausible reason was given why the suit land was not registered in the name of the late Raymond Cherono Tomno at the time of allocation if indeed he had been allocated that parcel of land.
498. She defines a resulting trust based on paragraph 597 of Halsbury's Laws of England, 4th Edition Vol 48 and submits that it is not a resulting trust. She submits that it is not in dispute that the suit land was allocated to the Plaintiff after successful application in the year 1964. She submits that she was offered a loan vide a letter of offer dated 13th November 1964 and having repaid the Settlement Fund Trustee loan fully, she was registered as the proprietor of the suit property in 2019.
499. She submits that since the Defendants' claim is based on trust, the law places the burden and onus on them to provide the existence of such trust. She relies on Section 107 and 109 of the Evidence Act Cap 80 Laws of Kenya.
500. The Plaintiff further submits that DW1 only alleged that the suit property was registered in the name of Rebecca Tomno in trust for Raymond Cherono based on an agreement. She submits however, on cross examination he stated that he never saw the alleged agreement as he believed it to be oral. She submits that none of the witnesses called by the Defendant demonstrated to this court that there existed a trust agreement between the Plaintiff and Raymond Tomno. The Plaintiff submits that for all intents and purposes, the entire evidence adduced by the defendants is hearsay and incapable of being acted upon.
501. The Plaintiff submits that the parties are known to each other and in any event if such agreement existed it could have been communicated among the parties. She submits that there is also evidence of the Koriema meeting which chaired by PW2, Silas Arap Kigen. The witness was aged about 85 years old when he testified. He stated that the late Raymond Tomno admitted that the suit land belonged to the Plaintiff and he corroborated the Plaintiff's evidence on what transpired at the meeting. She urges the court to hold that the witness was truthful and consider his evidence as such. She states that when PW1 Erastus Cherono was cross examined, he did not give any explanation as to why he did not sign the minutes of the meeting.
502. The Plaintiff submits that the Defendants emphasized the fact that they lived on the suit land since 1964 and that the loan was repaid by Raymond Cherono and Esmond Cherono and their witnesses. She submits that the Defendants and their witness failed to demonstrate that the defendant's lived on the suit land.
503. She submits that the photographs produced showed that there was only one house where the workers lived and PW5 stated that the 3rd Defendant came to the suit land in 1989 and he eventually chased him and his mother in 2013. She submits that there was uncontroverted evidence that PW5 was born on the suit land and the Plaintiff gave detailed evidence how she acquired the land and how at all times she ensured that there was a person physically on the land in terms of the conditions of allotment.
504. She submits that DW6 confirmed that Settlement Fund Trustees officials visited the land on 30th April, 2019 and on the same day, the County Land Adjudication Officer wrote a letter to the Director Land Adjudication/Settlement Department Nairobi office which was produced as Plaintiff's Exhibit 18.



505. The Plaintiff submits that DW6 would not be able to explain why he told the officers that the Plaintiff had two sons, one deceased and the other one staying on the land. She submits that he also would not explain why Raymond Tomno was claiming the land as a beneficiary but did not indicate it so that it would be recorded in the file.
506. It is the Plaintiff's submission that the Defendants produced a letter dated 28th November, 2019 in which the Chief purported to confirm that Raymond Cheron and his family of 8 children lived on the suit land since 1964 and the chief was not called to testify the veracity of her allegations. The Plaintiff relies on Section 35 (1) (a) and (b) of the *Evidence Act* and submits that the production of the letter without the maker testifying renders the document of little or no probative value. She submits that contrary to the letter's allegation that Leah Mukuru resides on the land, Leah admitted during cross-examination that she is currently living at Ravine Town and she urged the court to disregard the letter.
507. The Plaintiff submits that the Defendants' alleged that it is Raymond Cheron and Esmond Cheron who paid the loan which had been granted to the Plaintiff. She submits that the Defendants' were not even aware that the loan granted was Ksh 5,000/= and it was their evidence that the loan which was granted was Ksh 3,000/=. She submits that she testified how the loan was repaid and the Defendant on the other hand testified that they are the ones who repaid the loan.
508. The Plaintiff submits that parties intending to create any trust should have clear intentions of creating the trust. She submits that courts should be slow in implying a trust in the absence of any intention to so do by the parties. The Plaintiff submits that the Defendants have not presented any material or evidence to demonstrate that a trust was created and therefore the court cannot presume that a trust existed or the Plaintiff held the suit land in trust for Raymond Cheron.
509. It is the Plaintiff's submission that the question of a resulting trust is controverted by the Koriema meeting further it is not in dispute that prior to filing of the suits herein, the Defendants had filed suit for adverse possession which was ultimately withdrawn. She submits that it is clear that the intention of the parties to create a trust which is a basic principle required for establishing a trust is missing.
510. She submits that the Defendants suit is clearly an afterthought and it is the prerogative of a party claiming a trust to prove a trust and as such the burden of proof solely lies on him or her as provided for under Section 107 and 109 of the *Evidence Act*. The Plaintiff urges the court to find and hold that no trust was created between Rebecca and the late Raymond Cheron Tomno.
511. The Plaintiff submits that she permitted the late Raymond Cheron to take care of the farm on her behalf. She submits that she did not at any time give permission to the Defendants' to be on the suit land. She submits that the Defendants' have attempted to show that they have all along stayed on the suit land and they did not have any place to call home.
512. She submits that she gave evidence of other several parcels of land owned by the late Raymond Cheron, one on which he was buried. The Defendants' also argued that since Douglas Cheron was buried on the suit land, that entitled them to ownership of the property.
513. The Plaintiff submits that the fact that a person has been buried on a particular parcel of land does not give his or her relatives title to the said parcel of land. She submits that the 1st and 2nd Defendants should be ordered to give vacant possession to the Plaintiff as she is the Registered proprietor of the suit land.
514. The Plaintiff submits that the Defendants' should be restrained from entering, occupying, charging, carrying on any development or dealing with all or any portion of that parcel of land known as Baringo/ Ravine- 102/242 in any manner whatsoever prejudicial to the interest of the Plaintiff.



515. The Plaintiff submits that it is not disputed that the 1st Defendant placed a caution over the suit property. It is also not disputed that the late Raymond Cherono never placed any caution on the suit land despite being aware that the Plaintiff had repaid the loan which was due to the Settlement Fund.
516. The Plaintiff submits that if indeed Raymond Cherono believed that she was holding the suit land in trust for him, he would have taken steps to recover the land or to have his interests noted on the register of the suit land and he did not do it. She submits that having failed to prove that she was holding the suit land in trust for Raymond Cherono, the Plaintiff does not have any right of maintaining the caution over the suit land.
517. She further submits that there is evidence that Raymond Cherono was supposed to move out of the suit land by the end of 2019 and the Defendants being Raymond Cherono's agents ought to have moved out of the suit land by December 2019 and their continued occupation of the suit land amounts to trespass and the Plaintiff is entitled to general damages.
518. The Plaintiff relies on Section 75 of the *Land Registration Act*, 2012 and submits that when assessing general damages in matters involving land, it has been held that the measure of damages for trespass is the difference in the value of the Plaintiff's property immediately after the trespass or the costs of restoration, whichever is less.
519. The Plaintiff submits that she did not give the value of the land before or after the trespass. She relies on the judicial authorities of *Nakuru Industries Limited v S S Mehta & Sons* [2016] eKLR, *Vincent E. Mukoko v Abdirahman Abdinur; Harun Omam Okal Okeyo (Interested Party)* [2021] eKLR and *Willesden Investments Limited v Kenya Hotel Properties Limited* [2006] eKLR.
520. The Plaintiff also submits that she is entitled to costs of the two suits and the costs awarded should attract interest at the rate of 14% per annum from the date of judgment until payment in full. She relies on the judicial decisions of *Jasbir Singh Rai & 3others Vs Tarlochan Singh Rai & 4 others* [2014] eKLR and *Jane Wanjiku Wambu Vs Anthony Kigamba Hato & 3others* 2017 eKLR.
521. The Plaintiff filed Further Submissions on 21st June 2013. She submitted that the main issue for determination as:
- a. Whether there is a resulting trust in favour of Raymond Cherono Tomno over all that parcel of land known as Baringo/Ravine 102/242.
522. She submits that on 11th October, 2019, the 1st Defendant filed Nakuru ELC number 123 of 2019 praying for orders that she be declared the owner of the suit property. She submits that she raised a preliminary objection citing many grounds most significantly that the Originating Summons offended the provisions of the Agricultural Act as well as the *Limitation of Actions Act* and as such was defective and bad in law.
523. She submits that this was the first call of action in the attempt of acquiring the suit property with the belief that the same would be achieved by a claim of adverse possession. She submits that the Defendants later filed Nakuru ELC case number 152 of 2019 claiming ownership through a resulting trust.
524. The Plaintiff submits that it is common ground that the intention of the parties must be clearly determined before a trust can be implied. She stated that from the foregoing, it is clear that the burden of proving an existing trust lay with the Defendants. She submits that indeed if there was an intention to create a trust between the parties, the first cause of action would have been to seek remedy through a claim under a trust instead of a claim under adverse possession.



525. She further submits that it is clear from the onset that the actions of the Defendants' together with their claim was purely a second thought. It is the Plaintiff's submission that the Defendants' attempt to latch on the prevailing circumstances is a clear indication that there was no intention from the beginning and if such intention or even knowledge of existent trust existed then the first cause of action would have been to claim the same through a trust and not adverse possession.
526. The Plaintiff submits that it is not in contention that the meeting of 22nd May, 2019 was convened. She submits that it is further not in contention that the parties who attended the meeting were family members and included PW2 who was the chairperson of the meeting.
527. It is her submission that the suggestion by the Defendants' that the meeting was chaotic is not true. She submits that the gist of the matter was that the Defendants' denied the existence of the meeting from the onset.
528. She submits that it is therefore illogical when the Defendants assert that the meeting was convened by the late Raymond Tomno and attempt to assuage the Court to believe that the meeting was for purposes of transferring the suit land to the Defendants while still denying the existence of the same.
529. She submits that as pertaining the minutes of the meeting, it is instrumental to note that PW2 the Chairperson of the meeting corroborated the contents of the minutes. The Plaintiff submits that he further confirmed that the Late Raymond Tomno confirmed that the land did not belong to him and that he took care of the land and would be grateful if he was awarded a portion for taking care of the suit property. She submits that it is important to note that no attempt was ever made by the Defendant to show or state that the signatures in the minutes did not belong to them neither did they insinuate that the signatures were forged.
530. She submits that PW1 testified that the minutes were signed after the end of the meeting and all parties present except DW1 signed the minutes including the Late Raymond Tomno. She submits that while the secretary of the meeting did not testify, PW2 who was the chairman testified and accounted for the contents of the meeting. She submits that it is inaccurate to suggest that the minutes were not the true reflection of the events of 22nd May, 2019 and in any case, the same is an afterthought and should be dismissed.
531. The Plaintiff relies on Section 107 (1) of the *Evidence Act* and submits that the Defendants have not satisfied the evidentiary burden of proving the assertion that the meeting was chaotic and the purpose of the meeting was to hand over the suit land to Mzee Raymond Tomno. The Plaintiff relies on the judicial decision of Raila Amolo Odinga vs IEBC & 2 others Presidential Election Petition No. 1 of 2017.
532. The Plaintiff submits that the burden of proving that the meeting was chaotic lay with the Defendant. She submits that no evidence was produced to support that claim and it is clear from the evidence of the parties that the main reason the Defendants' are trying to cast aspersions as to the contents and conduct of the parties in the meeting is because the meeting in Koriema of 22nd May, 2019 completely extinguished the intention of the parties to create a trust.
533. The Plaintiff submits that it is impossible for the Court to therefore proceed and imply a trust where it is clear from the evidence that there was no intention to create a trust. The Plaintiff relies on the judicial authority of Peter Ndungu Njenga vs Sophia Watiri Ndungu [2000] eKLR.
534. The Plaintiff submits that she allowed the late Raymond Tomno to use the suit land and that his occupation began around 1980. She submits that the amounts paid to Settlement Fund Trustees were



- not advanced for purposes of purchasing the land but rather a loan to improve the suit land after allocation. She further submits that the conditions of the loan were clear that the documents and receipts of the property were to remain in the suit land for purposes of inspection.
535. The Plaintiff submits that every party that resided in the land had to adhere to the said regulations in order to satisfy the conditions of allotment. She submits that this explains the reason why the receipts are in the possession of the Defendants’.
536. It is the Plaintiff’s submission that it is absurd for the Defendants’ to attempt to exploit the generosity, good deeds and integrity of the heart of the Plaintiff. She submits that the court should not be misled by circumstances of coincidence and punish the Plaintiff for her generosity.
537. The Plaintiff submits that the Defendants have attempted mention several instances where parties held land in trust for other parties. The Plaintiff submits that the law recognizes that there are such cases. She submits that however in this instance, there was no evidence that was produced to support their assertion.
538. It is the Plaintiff’s submission that in fact, all the averment made by the Erastus Kiprono DW1 as to the issue of the parties who held land in trust for others is hearsay. She submits that no direct evidence was produced to ascertain the veracity of the claim and the Court should dismiss those assertions.
539. The Plaintiff also submits that the Defendants’ claim that there was a regulation rule or law that forbade government workers or civil servants from acquiring such land and no evidence was produced either vide an indication of a legislation, a regulation or even a gazette notice to show that such a law existed. The Plaintiff further submits that if such a law or regulation existed, it would then mean that any attempt to acquire land through any means would be illegal from the onset.
540. The Plaintiff submits that no law or regulation existed that barred civil servants either in Baringo or Kenya at the time from acquiring land. She submits that there is evidence to show that the late Wesley Tomno who was the District officer at the time was allocated land in Ravine. She submits that the late Raymond Tomno, the husband and father to the Defendants consecutively acquired Land in Kambi ya moto, Ravine and Kitale while he was the area chief.
541. The Plaintiff submits that it is illogical to suggest that the late Raymond Tomno was able to acquire the rest of the land while the suit land was however somehow regulated by an unknown law. The Plaintiff submits that the Court should disregard such assertions as they are hearsay and are not supported by evidence.
542. The Plaintiff relies on Section 35 (1) (a) and (b) of *Evidence Act*. The Plaintiff further submit that the Defendants’ produced a letter dated 28th November 2019 and the letter purported to have been drafted by the area chief. The Plaintiff submits that the maker of the letter was not called to produce the letter. The Plaintiff submits that the contents of the letter are hearsay and as such the same is inadmissible without any probative value.
543. The Plaintiff submits that the issue of a trust is an afterthought and the parties had no intention of creating a trust and no evidence has been produced to show why the late Raymond Tomno and the Plaintiff had to create a trust. The Plaintiff submits that the suit land legally belongs to her and the court should assert her rights.
544. The Defendants’ filed their Submissions on 29th May, 2023.



545. They identified the following issues for determination:
- a. Whether or not the Plaintiff held the suit land Baringo/Ravine Block 102/242 on behalf of the late Raymond Tomno and or his assigns in trust under the doctrine of resulting trust?
 - b. Which orders to grant in the circumstances?
546. The Defendant's rely on Section 28 of the Registration of *Land Act*, Cap 300 which is repealed and submit that Section 25 of the Registration of *Land Act* has a similar provision. The Defendants also define a Trust based on the 10th Edition of the Black's Law Dictionary, the Concise Law Dictionary by P G Osborn and Snell's Equity at page 177.
547. The Defendants' on the following judicial authorities: Twalib Hatayan Twalib Hatayan & Another vs Said Saggah Ahmed Al- Heidy & Others [2015] eKLR, Gissing vs Gissing [1971] AC 886, Peter Ndungu Njenga vs Sophia Watiri Ndungu [2000] eKLR and Felista Muthoni Nyaga vs Peter Kayo Mugo [2016] eKLR.
548. The Defendants' submit that in the joint Statement of Defence dated 15th January, 2020 at paragraph 4 pleaded that the late Raymond Tomno was the beneficial owner of the suit property and that Rebecca Wesley only held the same on his behalf under the doctrine of resulting trust.
549. The Defendants' submit that they have demonstrated before this court that all the government officers working within Baringo District at the time of the allocation of land by Settlement Fund Trustee, acquired the land through proxies and in the instant case the late Raymond Tomno applied for the land and caused the same to be registered in the name of Rebecca Wesley, his sister-in-law who was to hold the same in trust.
550. The Defendant's submits that with regards to the payment of the loans to the Settlement and Fund Trustee, the Defendants have demonstrated that all payments were made by the late Raymond Tomno and Esmond Cheronu (DW3) without the assistance of the Plaintiff and or her children.
551. The Defendants' submit that they were also able to demonstrate that for every payment that they made to the Settlement and Fund Trustee, they were issued with original receipts in the name of the Plaintiff for the sole reason that the land was registered in her name. They submit that DW1 denied the Plaintiff's claim that the Defendants' had the original receipts in their custody for the reason that they were required to show the same to officials from the Settlement and Fund Trustee whenever they would visit the suit land.
552. The Defendants' submit that they have proved that all loan repayments to Settlement and Fund Trustee were solely advanced by the late Raymond Tomno, Esleen Tarkok and the 3rd Defendant.
553. The Defendants' submit that there is uncontested evidence that they have been in occupation of the suit land since the year 1964 to date uninterrupted. They also submit that the Plaintiff never sought to interfere with the Defendants' occupation for the last fifty-five years.
554. They also submit that there is uncontested evidence that the late Raymond Tomno built the two thatched grass house on the suit land in the year 1964 and other structures between 1967 and 1989 where the 2nd and 3rd Defendants have continued to live in. They submit that there is no doubt that the loan repayments to the Settlement and Fund Trustee were made by the late Raymond Tomno and the 3rd Defendant.



555. The Defendants' submit that there is uncontroverted evidence that the late Douglas Kipsang was buried on the suit land and in the suit filed by the Plaintiff in Nakuru ELC No 144 of 2019, the Plaintiff has not pleaded that the burial of Douglas Kipsang on the suit land was unlawful and sought order for exhumation.
556. The Defendants' submit that they have demonstrated that there was an intent of trust between the late Raymond Tomno and Rebecca Wesley (the Plaintiff) and they urged this Court to find that the Plaintiff, held the suit land in trust of the late Raymond Tomno under the doctrine of resulting trust and was thus obliged to transfer the same in the name of Raymond Tomno and/or his assign upon completion of loan repayments to Settlement and Fund Trustee which he did in December, 2018.
557. The Defendants' invite this Court to find that the Plaintiff in Nakuru ELC No 152 of 2019 had a right to register a caution on the suit land to protect her interest when it was clear that the Plaintiff was keen to dispose of the same to third parties to disinherit her. The Defendants' urged the court to dismiss the reliefs in Nakuru ELC No 144 of 2019 by the Plaintiff with costs.
558. The Defendants' submit that the relief for general damages for trespass does not arise as the Defendants' have demonstrated that Rebecca held the same in trust and have also lived on the suit land from the year 1964 and order of eviction equally does not arise.
559. The Defendants' submit that the Plaintiff has emphasized that he employed Raymond Tomno to manage the suit land on her behalf. They submit that no material evidence was adduced to prove this. The Defendants invite the Court to take judicial notice that no one would allow a stranger to be buried on his/her land without any legal recourse. The Defendants' submit that the reasons why Douglas Kipsang was buried on the suit land was because the same belonged to the late Raymond Tomno.

Analysis and Determination

560. After considering the pleadings, the rival submissions filed herein, the testimony of the Plaintiff, Defendants' and their witnesses and the documents produced in evidence, the following issues arise for determination:
- a. Whether or not the Plaintiff held the suit land Baringo/Ravine Block 102/242 on behalf of the late Raymond Tomno and or his assigns in trust under the doctrine of a resulting trust?
 - b. Who should bear the costs of the two suits?

A. Whether or not the Plaintiff held the suit land Baringo/Ravine Block 102/242 on behalf of the late Raymond Tomno and or his assigns in trust under the doctrine of resulting trust?

561. The Black's Law Dictionary 11th Edition defines a trust as:

“The right, enforceable solely in equity, to the beneficial enjoyment of property to which another holds legal title; a property interest held by one person (trustee) at the request of another (settlor) for the benefit of a third party (beneficiary).”

562. The Plaintiff called 5 witnesses. She testified as PW1. Her evidence is that she took occupation of the land in 1965 and paid the first instalment of Kshs 290 towards the loan due on the suit parcel. Her evidence is that subsequently, she gave the 1st Defendant's deceased husband Kshs. 10,000 and Kshs. 80,000 in the year 2016 to make the payments on her behalf. Her evidence is that she did not have the receipts for the said payments because the employees of the Settlement Trust Fund Required the receipts to be retained at the suit parcel for inspection.



563. The Plaintiff denies that she held the suit land in trust for the 1st Defendant's deceased husband but confirmed that she has never stayed on the suit parcel. She also confirmed that she did not have the original receipts in respect of loan repayments. Her evidence is that they entered into a verbal agreement with the 1st Defendant's deceased Husband to take care of the suit parcel. The Plaintiff case is that among the first employees at the farm was one Chepkeitany (his son testified as PW5) but she could not say how much she was paying him.
564. Her evidence is that she allowed her brother one Kimosop to look after the land and when he retired, Chepkeitany took over and finally, the 1st Defendant's deceased husband.
565. The Plaintiff's evidence is that a meeting was held to discuss the handover of the suit parcel to her. She denies knowledge of burial of the 1st defendant's son on the suit parcel.
566. By and large, the Plaintiff's evidence is that the land was allocated to her, she would give the 1st Defendant's deceased husband money to pay the Settlement Fund Trustee loan on her behalf, she allowed different groups of people to manage and live on the suit land over the years and that she finally had it registered in her name after she completed the loan repayment.
567. PW2 gave evidence in support of the Plaintiff's case. His evidence is that he chaired the Koriema meeting which he states was to resolve a dispute between the Plaintiff and the 1st Defendant. His evidence is that the plaintiff wanted to use the farm but the first Defendant refused. He states that the meeting resolved that the land belonged to the Plaintiff but that the plaintiff would give 10 acres to the 1st Defendant and her family.
568. PW3's evidence is that the Plaintiff told him that the 1st Defendant's deceased husband was taking care of the suit parcel for her and that he doesn't know anything about payment or receipts. He refutes claims that the suit parcel belongs to the 1st Defendant's deceased husband.
569. PW4's evidence is that he had always known that the suit parcel belonged to the 1st Defendant's deceased husband and that he met him to request that he be given a portion of the suit property but the 1st Defendant's deceased husband told him that the land belonged to the plaintiff.
570. PW5, the son of Chepkeitany (a long serving employee at the farm) gave evidence. He stated that his father lived on the Plaintiff's land and that is where he was born. His evidence is that he lived on the farm and in 1993 the 3rd Defendant joined them on the farm. His evidence is that there was one house and subsequently, the 3rd Defendant built two houses. He says that the 3rd defendant asked them to leave in 2013. His evidence is that the 3rd Defendant told him that he was the child of the owner. He also stated that he did not complain to the Plaintiff. He states that he met 1st Defendant's deceased husband in the year 2001 and he took him away to work in another farm.
571. PW5's evidence is that during the years that he worked at the suit parcel he never saw the Plaintiff, her husband or their children. He confirmed that the 1st Defendant's child was buried on the suit land and that he never heard complaints arising from his interment on the suit land.
572. It is the Defendants' case that the agreement entered into by the 1st Defendant's deceased husband and the Plaintiff was mutual and unwritten. The agreement was that the Plaintiff was a mere trustee of the suit land and only held the same as a trustee. The 1st Defendant further states that the Plaintiff was therefore obligated to transfer the suit land from her name to that of the 1st Defendant's deceased husband's name upon completion of all payments of the loans which the 1st Defendant's husband had completely paid in December 2018 before his death.



573. The Defendants' evidence is that Kenya had attained independence and the rules/policy at the time were that a government officer working in Baringo was not allowed to own land in the district within which he/she worked.
574. The Defendants case is hinged on the existence of a trust. They state that by virtue of the 1st Defendant and her deceased husband being government employees, they were not allowed to apply and be allocated land in Baringo and that they therefore had to use a proxy to acquire the suit land. The defendant's case is that though the suit land is registered in the name of the Plaintiff, they paid the loan due on the suit parcel and have also been in occupation since 1964.
575. The Defendants explain that this rule/policy is the basis upon which the suit parcel was registered in the Plaintiff's name to hold in trust for the 1st Defendant's deceased husband and further supports their defence of the creation and existence of a resulting trust.
576. The Defendants have also gone to great lengths to show that they have been in occupation of the suit land since 1964. The fact of their occupation is not in dispute. The plaintiff states that the occupation was with her permission.
577. DW2's evidence speaks to the existence of this rule/policy and also speaks to the Defendants' occupation since 1964. His evidence is that him together with the 1st Defendant and her deceased husband were allocated land in 1964 and that they got the plot numbers. He stated that his parcel of land is 4kn away from that of the Defendants.
578. DW3 also testified as a neighbour of the defendants. Her evidence is that she knew the 1st Defendants deceased husband in 1965 and that when she took occupation of her parcel they shared maize harvested from the Defendants' land and also stated that the 1st Defendant's deceased husband brought someone to stay on the suit parcel.
579. DW4 (a member of the family) also gave evidence that he would visit the suit parcel to take maize and whenever he did, he found one Cheipkeitany Chemwetich who he says was an employee employed by the 1st Defendant's deceased husband to take care of the suit land. His further evidence is that the 1st Defendant's son is buried of the suit parcel and the Plaintiff and her son, one Edwin Kipruto) attended the funeral. His evidence is that he was the master of ceremony and the Plaintiff's son spoke during the burial. He stated that if the land did not belong to the 1st Defendant's deceased husband, their son Douglas Kipsang Cheronon would not have been buried in it.
580. He also gives evidence of the fact that he knew that the Plaintiff was holding land in trust for the Defendants and that he was shown receipts of payment to the Settlement Fund Trustees by the 1st Defendant.
581. He also testified that there existed a policy that did not allow government employees to apply and be allocated land by the Settlement Fund Trustees. He gave examples one Richard Chepkeitany who used a proxy Zacharia Chelugu to acquire land and that Zacharia transferred it to Richard.
582. The Defendants have also given evidence that they are the ones who put up the various structures on the suit land and that their brother and son was buried on the suit land and that the Plaintiff did not object to the said interment and they submit that failure to raise an objection speaks to the fact that the suit land does not belong to her late husband.
583. The Plaintiff's evidence, however, is that they did not know about the interment which the Defendants refute. The evidence tendered is that the Plaintiff and her family attended the said funeral and a son of the Plaintiff spoke at the funeral.



584. With this background in mind, the Defendants state that even though the suit land was registered in the name of the Plaintiff, there exists a resulting trust.

585. In the judicial decision of *Kazungu Fondo Shutu & another v Japhet Noti Charo & another* [2021] eKLR at paragraph 31 it is stated thus:

“The law never implies, the Court never presumes a trust, but [only] in case of absolute necessity. The Courts will not imply a trust save in order to give effect to the intentions of the parties. The intention of the parties to create a trust must be clearly determined before a trust will be implied.”

586. Guided by the above judicial decision, the intention of the parties’ is a crucial in determining the existence of a trust.

587. In *Juletabi African Adventure Limited & another v Christopher Michael Lockley* [2017] eKLR, the Court dealt with the issue of trust at length. The Court made reference to the judicial decision of *Twalib Hatayan Twalib Hatayan & Anor v Said Saggat Ahmed Al-Heidy & Others* [2015] eKLR and restated the law on trusts as follows: -

“According to the Black’s Law Dictionary, 9th Edition; a trust is defined as

1. The right, enforceable solely in equity, to the beneficial enjoyment of property to which another holds legal title; a property interest held by one person (trustee) at the request of another (settlor) for the benefit of a third party (beneficiary).”

Under the *Trustee Act*, “... the expressions “trust” and “trustee” extend to implied and constructive trust, and cases where the trustee has a beneficial interest in the trust property...”

In the absence of an express trust, we have trusts created by operation of the law. These fall within two categories; constructive and resulting trusts. Given that the two are closely interlinked, it is perhaps pertinent to look at each of them in relation to the matter at hand. A constructive trust is an equitable remedy imposed by the court against one who has acquired property by wrong doing. ... It arises where the intention of the parties cannot be ascertained. If the circumstances of the case are such as would demand that equity treats the legal owner as a trustee, the law will impose a trust. A constructive trust will thus automatically arise where a person who is already a trustee takes advantage of his position for his own benefit (see Halsbury’s Laws of England supra at para 1453). As earlier stated, with constructive trusts, proof of parties’ intention is immaterial; for the trust will nonetheless be imposed by the law for the benefit of the settlor. Imposition of a constructive trust is thus meant to guard against unjust enrichment. ...

A resulting trust is a remedy imposed by equity where property is transferred under circumstances which suggest that the transferor did not intend to confer a beneficial interest upon the transferee ... (Emphasis mine)

This trust may arise either upon the unexpressed but presumed intention of the settlor or upon his informally expressed intention. (See Snell’s Equity 29th Edn, Sweet & Maxwell p.175). Therefore, unlike constructive trusts



where unknown intentions maybe left unexplored, with resulting trusts, courts will readily look at the circumstances of the case and presume or infer the transferor's intention. Most importantly, the general rule here is that a resulting trust will automatically arise in favour of the person who advances the purchase money. Whether or not the property is registered in his name or that of another, is immaterial (see Snell's Equity at p.177) (supra)." (Emphasis is mine)

588. The 1st Defendant states that her late husband with the assistance of her son, the 3rd Defendant, paid the entire Settlement Fund Trustee loans until completion in December 2018 before the death of the 1st Defendant's husband and at no particular time did the Plaintiff or her children make any payments with respect to the loans over the suit land.
589. The Plaintiff on the other hand avers that on or about the 13th November, 1964, the Plaintiff was allocated Plot Number Ravine 399 by the Settlement Fund Trustees and also granted a loan Ksh 3,000/= to finance the purchase of dairy cows, fencing materials and maize cultivation. She also states that she paid the first instalment of Kshs 290. The plaintiff has not produced this crucial piece of evidence. The plaintiff also failed to produce the application for allotment of land.
590. It is uncontroverted that the suit land was acquired and there were conditions attaching to the said acquisition, including a loan due to the Settlement Fund Trustees.
591. On one hand the Plaintiff avers about the 23rd September, 2019, on full repayment of the loans, the suit property which is now known as Baringo/ Ravine-102/242 was discharged and transferred to the Plaintiff by the Settlement Fund Trustees. The 1st Defendant, on the other hand, in her witness statement states that her husband and son namely Esmound Cherono single handedly paid all the Settlement Fund Trustee loans until completion in December 2018.
592. She states that for every loan payment her deceased husband and son namely Esmound Cherono made to Settlement and Fund Trustee, they were issued with original receipts. She states that the receipts were issued in the name of the Plaintiff for the sole reason that the suit property was registered under her name in trust for her deceased husband.
593. This court must now determine who between the Plaintiff and the Defendant paid the Settlement Fund Trustee loan. This is critical in determining the intention of the parties and whether indeed a resulting trust was in existence.
594. While discussing the burden of proving a trust, the Court of Appeal in the judicial decision of Heartbeat Limited v Ng'ambwa Heartbeat Community Children's Home & Rescue Center [2018] eKLR stated thus:

"Moving on to the pertinent issue of whether there was evidence of a resulting trust in favour of the respondent, we are cognizant that the onus lay with the respondent to prove the same through evidence." Emphasis mine.

595. PW1 testified in court that his father sold a cow and gave Ksh 10,000/= to the 1st Defendant's deceased husband to go and pay the loan. He testified that the 1st Defendant's deceased husband took the money and said he would pay which he did and kept the receipt. He testified that sometime in the year 2016, the Plaintiff asked the 1st Defendant's deceased husband to sell some things for her which included Cedar & Podo trees. He testified that when the 1st Defendant's deceased husband came to their home, he informed the Plaintiff that he had brought some money from the sale of trees. He testified that the



- amount he brought home was Ksh 200,000/=. He testified that the Plaintiff gave the 1st Defendant's deceased husband Ksh 80,000/= from the 200,000/= to go and clear the loan.
596. PW1 testified that the 1st Defendant's deceased husband was given 20,000/= for appreciation for the good work and that this gift was given in his presence. His evidence is that the 1st Defendant's deceased husband was also given an additional Ksh 10,000/=. He testified that the 1st Defendant's deceased husband said that he would clear the loan and have discussions on how to hand over the land to the Plaintiff because he was taking care of it for her. I have not seen any documentary evidence in support of money said to have been given by the plaintiff to the 1st Defendant's deceased husband or heard any evidence of any witness who saw the giving of money.
597. The 1st Defendant on the other hand testified that when the payments were being made solely by the 3rd Defendant and her deceased husband and that neither the Plaintiff nor her deceased husband made any payments.
598. He referred to Exhibit D4-D11 and testified that it is true that the receipts are in the name of the Plaintiff and her deceased husband because she was registered on the land as owner on account of that agreement between the 1st Defendant's deceased husband and the Plaintiff. He testified that the receipts were kept from 1964 to 2018. He also testified that he had in his possession the original and had produced a copy of Exhibit D4. Exhibit D4 is an official receipt of Loan payment dated 16th December, 1965 which was in the custody of the 1st Defendant's deceased husband. The 1st Defendant's evidence is, therefore, that it is not true that the Plaintiff paid Ksh. 290 from her salary towards the first instalment of the loan repayment. I have mentioned in the preceding paragraphs that this piece of evidence is crucial in the asserting the Plaintiff's claim over the suit land and failure to produce it together with the application for allotment is fatal.
599. The 1st Defendant also testified that the Plaintiff did not give Ksh 10,000/= to her deceased husband as alleged that she has the original receipt for payment. He testified that the payment was made directly by the 1st Defendant's deceased husband.
600. He testified that it is also not true that the 1st Defendant's deceased husband took Ksh 200,000/= to the Plaintiff and it is not true that the Plaintiff gave the 1st Defendant's deceased husband Ksh 80,000/= to go and pay. He also testified that on the receipt produced as Exhibit D11 dated 19th December, 2018 is for payment of Ksh 79,950/=.
601. It was his testimony that it is not true that Ksh 80,000/= was given to him in 2016 to be paid in 2018. He testified that the money that was used to settle the balance of Ksh 80,000/= was given by the 1st Defendant as evidenced in the Bank statement of Transnational Bank. He made reference to Exhibit D12 and he asked the court to look at the time of payment of the loan as evidenced in the receipt of 19th December, 2018.
602. He testified that the Kshs. 80,000/= came from the 1st Defendant. He also made reference to Exhibit D30 and testified that the letter dated 20th November, 2019 confirms that the 3rd Defendant paid Ksh 79,950/= and this is supported by Exhibit D11.
603. The 1st – 3rd Defendant have produced copies of original receipts as evidence of payments made to the Settlement Fund Trustee. They are dated 16th December 1965, 21st December 1989, 6th January, 2004 and 19th December, 2018. They are all in the name of the Plaintiff. The court had the opportunity to compare the copies with the originals. The defendants also produced a Bank statement for 1st January, 2018 to 12th January 2019 dated 12th November, 2019 as Exhibit D12. The import of this bank statement is to show that on 6th December, 2018 money was withdrawn from the 1st Defendants



- account which amount he states was used to do other things including payment of the loan on 19th December, 2018.
604. I have looked at the Bank statement (Exhibit D12) adduced by the 1st Defendant for the period 1st January 2018 to 12th November 2019 and this supports his evidence that the amount reflected on the receipt dated 19th December, 2018 was paid by using some of this money. Further, the director land adjudication and settlement wrote a letter dated 20/11/2019. The said letter confirmed that the 3rd defendant made a payment of Kshs. 79,950 towards loan repayment for Plot Number 242 in Ravine Scheme on 19th December, 2018. This letter was marked and produced as Exhibit D30.
605. In my view the Defendants have, on a balance of probability, proved that they paid money to the Settlement Fund trustee to offset the loan owing on the suit parcel.
606. I am further fortified in my view that it is more probable than not that the Plaintiff held the suit land in trust for the 1st Defendant's deceased husband for the reason that the Defendants have been in occupation since 1964. PW5, the Plaintiff's witness stated that he was born on the suit land and that his father was an employee therein. He goes on to state that he never saw the Plaintiff, her husband or her children on the suit land. He confirms that he attended the funeral of the 1st Defendant's deceased son and that he did not hear any objections on him being buried on the suit land. I have ignored the parts of his evidence that are hearsay.
607. The Defendants' witnesses also gave evidence of the fact of the deceased son, one Douglas Kipsang being buried on the suit land, that the Plaintiff and her family attended the funeral and did not raise any objection as to his interment on the suit land.
608. The 1st - 3rd Defendants' interest in the suit property is further demonstrated by the letter from Kenya power addressed to the 3rd Defendant dated 24th August, 1999, Supply Contract from Kenya Power dated 31st August 1999 and Electricity Bills from Kenya Power and Lighting Company.
609. The Plaintiff is registered as the owner of the suit land. This is not disputed and she has produced a Discharge of charge dated 22nd August 2021 as Exhibit P6(a), Transfer of land in Settlement scheme as Exhibit P6(b), Letter of forwarding discharge and transfer as Exhibit P6(c), Receipt number 52968845 dated 23rd September, 2019 as Exhibit P6(d), Certificate of official search issued on 23rd, September, 2019 as Exhibit P6(e), Extract of title deed for Baringo/Ravine 102/242.
610. The Plaintiff has, however, not been able to demonstrate that she made any payments towards its acquisition or that she has been in occupation or undertaken any developments in the suit land over the years. DW6 states that the Plaintiff attempted to grow beans in the year 2019 and also built a house and this was reported to the chief who in turn summoned the Plaintiff but she did not attend the meeting (Exhibit D18 and D19). There is no evidence linking her to the suit property apart from the incident referred to by DW6 and the aforementioned documents of ownership.
611. The Plaintiff has called various witnesses to support her case that on 22nd May, 2019, a meeting convened by Raymond Cherono was held at Koriema resort near Marigat Township and the meeting was attended by family members including herself and her children, Raymond Cherono, his wife Esleen Tarkok Cherono, their sons Erustus, Edmound, and two clan elders namely Silas Kigen and Andrew Chepkeitany. It is the Plaintiff's case that the 1st Defendant's deceased husband relinquished his interest in the suit property and acknowledged that the land belonged to the Plaintiff.
612. DW6 on the other hand testified that he was in the Koriema meeting of 22nd May, 2028 and the meeting was convened by his father with the agenda being the transfer of the land from the Plaintiff to his father. He testified that it was not true that the agenda of the meeting was to hand over the land to the Plaintiff.



613. DW6 (The 3rd Defendant) attended the meeting and his signature appears on the minutes. He states that he signed the attendance before the meeting. He states that no one was appointed to take minutes and that the minutes are not true as to the discussions had at the meeting.

614. The Koriema meeting has been highly contested. Each party to this suit has brought a witness to speak to what was discussed and I have heard conflicting accounts of whether the person who attended signed before or after the meeting, why the meeting was called and what was discussed at the meeting and whether minutes were taken at the meeting. In *Hellen Wangari Wangechi v Carumera Muthoni Gathua* [2015] eKLR it was held as follows;

“The standard of proof in civil and criminal cases is the legal standard to which a party is required to prove his/her case. The standard determines the degree of certainty with which a fact must be proved to satisfy the court of the fact. In civil cases the standard of proof is the balance of probabilities. In the case of *Miller vs Minister of Pensions*, Lord Denning said the following about the standard of proof in civil cases: -

‘The ... {standard of proof} ...is well settled. It must carry a reasonable degree of probability.... if the evidence is such that the tribunal can say: ‘We think it more probable than not’ the burden is discharged, but, if the probabilities are equal, it is not.’ (Emphasis Mine)

615. In my view the probability that the meeting was called to discuss the handing over of the suit property by the Defendants to the Plaintiff is equal to the probability that the meeting was called to transfer the suit property to the 1st Defendant’s deceased husband by the Plaintiff. With an equal probability, none of the parties has discharged its burden in proving what was discussed at the meeting. While it is not in dispute that a meeting was convened in Koriema on 22/5/2019, I am unable to rely on the fact of the meeting to make a determination in this matter.

616. In the judicial decision of *Peter Ndungu Njenga vs. Sophia Watiri Ndungu* (2000) eKLR the Court stated that;

“The concept of trust is not new. In case of absolute necessity, but only in case of absolute necessity, the court may presume a trust. But such presumption is not to be arrived at easily. The courts will not imply a trust save in order to give effect to the intention of the parties. The intention of the parties to create a trust must be clearly determined before a trust is implied.” Emphasis mine

617. This Court has analyzed the evidence adduced by both the Plaintiff and the Defendants’ and it is clear that there was an intention between the 1st Defendant’s deceased husband and the Plaintiff to create a trust by virtue of the 1st Defendant repaying the loan to Settlement Fund Trustee in respect of the suit property which was registered in the name of the Plaintiff.

618. Based on the foregoing, this court finds that there is a resulting trust in favour of the estate of Raymond Cherono Tomno over all that parcel of land known as Baringo/ Ravine 102/242.

B. Who should bear costs of the two suits?

619. The general rule is that costs follow the event. This is in accordance with the provisions of Section 27 of the *Civil Procedure Act*. (Cap 21). A successful party should ordinarily be awarded costs of an action unless the court, for good reason directs otherwise.



620. I note that the parties to this dispute are family members. In the spirit of burying the past and forging ahead, I shall make no order as to costs.

Disposition.

621. In the result, I find that the Plaintiff's claim as set out in this suit fails and is hereby dismissed.

622. 1st Defendant's claim as set out in the suit ELC No 152 of 2019, succeeds and judgment is entered in her favour in the following terms:

- a. An order of Permanent injunction is hereby issued restraining/baring the Plaintiff, her agents, employees and children from occupying, utilizing or in any other way from dealing with the suit land namely BARINGO/RAVINE BLOCK 102/242.
- b. A declaration is hereby made that the Plaintiff holds the suit land namely BARINGO/RAVINE BLOCK 102/242 in trust for the 1st Defendant who is the beneficial owner.
- c. The Plaintiff shall execute all necessary transfer instruments to transfer the suit land namely BARINGO/RAVINE BLOCK 102/242 to the 1st Defendant or to her assign. Should the Plaintiff fail to execute the requisite transfer instruments within 30 days, the Deputy Registrar of this court shall do so on her behalf.
- d. The Land Registrar Koibatek/Mogotio shall register the 1st Defendant as the proprietor of BARINGO/RAVINE BLOCK 102/242 upon presentation of the requisite transfer instrument and payment of requisite fees.
- e. Each party shall bear own costs

623. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 23RD DAY OF NOVEMBER, 2023.

L. A. OMOLLO

JUDGE

In the presence of:

Mr. Opar for the Defendants in the consolidated suit.

Mr. Mogire for the Plaintiff

Court Assistant: Ms. Monica Wanjohi.

