



REPUBLIC OF KENYA



Koske & 2 others v Kitur & 23 others (Environment & Land Case 51 of 2013 & 9 of 2011 (Consolidated)) [2025] KEELC 359 (KLR) (6 February 2025) (Judgment)

Neutral citation: [2025] KEELC 359 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ENVIRONMENT & LAND CASE 51 OF 2013 & 9 OF 2011 (CONSOLIDATED)
MC OUNDO, J
FEBRUARY 6, 2025

BETWEEN

CECILIA CHEPKIRUI KOSKE 1ST PLAINTIFF
SAMMY KIPYEGON KOECH 2ND PLAINTIFF
DAVID KIBET LANGAT (SUING AS THE LEGAL REPRESENTATIVE OF THE
ESTATE OF KIPLANGAT KOGETKE (DECEASED)) 3RD PLAINTIFF

AND

ERIK KITUR 1ST DEFENDANT
CHARLES KORIR 2ND DEFENDANT
WESLEY CHERUIYOT 3RD DEFENDANT
GEOFFREY ROTICH 4TH DEFENDANT
CHRISTOPHER TONU 5TH DEFENDANT
CHARLES KOSIMBEI 6TH DEFENDANT
JACKSON KOECH 7TH DEFENDANT
STEPHEN MUTAI 8TH DEFENDANT
JULIUS MUTAI 9TH DEFENDANT
DAVID KOECH 10TH DEFENDANT
PATRICK KOECH 11TH DEFENDANT
JACKWES NGETICH 12TH DEFENDANT
P. PATEL 13TH DEFENDANT
M. MIMAMI 14TH DEFENDANT



| | |
|---|----------------------------|
| RAYMOND METETE | 15 TH DEFENDANT |
| PHILIP KIRUI | 16 TH DEFENDANT |
| STANLEY ROP | 17 TH DEFENDANT |
| JOSWA TONUI | 18 TH DEFENDANT |
| CHARLES KORIR | 19 TH DEFENDANT |
| A.I.C HOSPITAL LITEIN T/A ANNEX CHEMIST | 20 TH DEFENDANT |
| LYDIA BUSES | 21 ST DEFENDANT |
| JOSEPH CHEPKWONY | 22 ND DEFENDANT |
| REUBEN CHEPKWONY | 23 RD DEFENDANT |
| JOEL CHEPKWONY | 24 TH DEFENDANT |

JUDGMENT

1. This is a matter wherein vide a Ruling dated 27th March 2015, two suits being ELC Case No. 51 of 2013 in which the 1st and 2nd Plaintiffs had instituted suit against the 1st to 20th Defendants vide a Plaint dated 1st August 2013, was consolidated with ELC No. 9 of 2011 whereby the Plaintiff therein had sued the 21st to 24th Defendants.
2. Subsequently vide an Amended Plaint dated 1st April, 2016, the 1st and 2nd Plaintiffs sought for the following orders against the Defendants:
 - i. An order compelling the Defendants whether by themselves, their agents, employees, servants and/or any other person whomsoever to forthwith vacate the suit parcels of land known as Kericho/Chemoiben/20 and 24 in Litein and in default eviction to issue.
 - ii. A permanent injunction restraining the Defendants, their agents, employees, servants, and/or any other person from trespassing, entering or in any manner dealing with those parcels of land known as Kericho/Chemoiben/20 and 24 in Litein town.
 - iii. Mesne profits the exact amount to be assessed by the court.
 - iv. Interest on mesne profits.
 - v. Costs of the suit be awarded to the Plaintiffs.
 - vi. Interest
 - vii. Any other relief.
3. The 1st to 20th Defendants filed their Amended Joint Statement of Defence dated 5th April, 2016 denying the allegations contained in the Plaint while putting the Plaintiffs to strict proof. Their assertion was that the 1st Plaintiff was not the registered proprietor of L.R No. Kericho/Chemoiben/20 and neither was the 2nd Plaintiff a legal Administrator to the deceased proprietor of parcel L.R No. Kericho/Chemoiben/24. That they did not invade the suit premises nor put up illegal structures on the same and therefore the 1st to 20th Defendants were lawful tenants of the 21st to 24th Defendants who



were the legal and/or beneficial owners of the parcel of land known as L.R No. 8869/61 Litein, their tenancies having been created separately over a period of time.

4. Their defence was that the parcels of land referred to as L.R No. Kericho/Chemoiben/20 and Kericho/Chemoiben/24 claimed by the Plaintiffs did not exist. That they were in occupation of the parcel of land known as L.R No. 8839/61 (Grant No. I.R 4758) measuring 0.0575 hectares and situate in Litein Trading Centre. That the Plaintiffs' suit was fundamentally and fatally defective and bad in law hence it ought to be struck off for misjoinder and effluxion of time.
5. In response, the Plaintiffs reiterated the Contents of their Amended Plaint stating that the Defendants Defence was a sham, full of mere conjectures and should be struck out with costs.
6. The second Plaint dated 11th February, 2011 was by the 3rd Plaintiff David Kibet Langat (Suing as the Legal Representative of the estate of Kiplangat Kogetke (Deceased) suing the 21st to 24th Defendants wherein he sought for the following orders.
 - i. A declaration that Land Parcel No. Kericho/Chemoiben/24 belongs to the absolute registered owners being;
 - a. Kiplangat Kogetke (Deceased)
 - b. Dickson Kirui (Deceased)
 - c. Kipkoech Nyige (Deceased)
 - d. Kibomet Munai (Deceased)
 - i. A permanent injunction restraining the Defendants, their servants and agents from entering into the suit parcel of land, trespassing, selling, subdividing and/or in any manner dealing with land parcel No. Kericho/Chemoiben/24 against the wishes/interest of the registered owners/legal representative.
 - ii. An eviction order to remove the Defendants, their servants and/or agents from land parcel No. Kericho/Chemoiben/24 henceforth.
 - iii. Mesne profit for trespass, illegal occupation and unjust enrichments.
 - iv. Costs of the suit and interest.
 - v. Any other/further relief that the court may deem just and fit to grant.
7. The Defendants therein also filed their Joint Statement of Defence dated 30th March, 2011 denying the allegations contained in the Plaint while putting the Plaintiff to strict proof. They argued that No. Kericho/Chemoiben/24 claimed by the Plaintiff did not exist. That they were in the occupation of L.R No. 8839/61 (Grant No. I.R 4758) containing by measurements 0.0575 hectares and situate in Litein Trading Centre. That the said parcel of land had been in full and exclusive possession of Joshua Chepkwony Buses (Deceased), their father, from the year 1988 to the date of his demise upon which they and their siblings had taken up possession of the same by virtue of their relationship with the deceased.
8. That the deceased became the registered owner of L.R No. 8839/61 (Grant No. I.R 4758) in the year 1991 and had openly been in occupation of the same wherein he had made substantive and extensive developments thereon. That the title in respect to L.R No. Kericho/Chemoiben/24 had been extinguished in or about the year 1973 when the Government had acquired the same for purposes of the construction of Kericho-Sotik road and had duly compensated the registered proprietors thereof.



9. That in any case, they had been in quiet and peaceful occupation of the land, wherein they had committed acts of ownership over the same for a period exceeding 20 years thus the Plaintiff's claim was statutorily time barred. That the Plaintiff's suit was inchoate, fundamentally and fatally defective for failure to disclose a reasonable cause of action and therefore it ought to be struck out with costs.
10. In response, the Plaintiff denied that allegations contained in the Joint Defence reiterating the contents of his Plaint and further stating that it had been No. L.R 8839/61 (Grant No. 4758) that was non-existent for lack of supporting documents and that if at all it had existed, then the same had been acquired fraudulently. That the Defendants' continued stay on land parcel No. Kericho/Chemoiben/24 had amounted to historical injustice and a denial of his legally and constitutionally recognized right.
11. He prayed that the Joint Defence be struck out/dismissed with costs for being a sham and full of mere denials and allegations without proper supporting documents contrary to the provisions of Order 3 Rule 2 of the Civil Procedure Rules 2010.
12. Subsequently the matter had proceeded for hearing on 12th February, 2018 wherein Cecilia Chepkurui Koskei, the 1st Plaintiff testified as PW1 to the effect that land parcel No Kericho/Chemoiben/20 (suit land) had belonged to her father Kipsigei Arap Chelule but was currently registered in her name. She produced the title deed and a certificate of official search dated 19th July, 2013 as Pf exh 1 and 2 respectively.
13. She proceeded to testify that she had sued the 1st to 20th Defendants herein because they had constructed temporary Kiosks on her land and had refused to vacate therefrom despite her asking them to do so. That despite their claim of having been authorized to put up the said Kiosks by one Arap Buses, there had been no documents confirming that the said Arap Buses owned the suit land.
14. She further testified that the District Surveyor had written a letter dated 21st June, 2013 to the Chief regarding a boundary dispute over land parcel Nos. Kericho/Chemoiben/20 and 24 which letter she marked as PMF1 3 and sought for an eviction order, mesne profits and costs of this suit against the Defendants.
15. On cross-examination, she confirmed that the title to the suit land had been issued to her in the year 2012 although the same had been ready before then. That the suit land touched on the Kericho/Sotik highway wherein part of it had been acquired in the year 1972 for purposes of constructing the said road. That whereas she was aware that the said acquisition had been captured in the records at the lands office, she was not aware that after the compulsory acquisition, part of the land had been allocated to Joshua Chepkwony Arap Buses.
16. She also confirmed that she was aware that the land was situated within Litein Municipality and that when she learnt that Joshua Arap Buses had been claiming it, she had conducted a search and confirmed from the Lands office that it was still registered in her name. She reiterated that she was not aware that Joshua Buses had been allocated the land on 1st January, 1991 for a term of 99 years.
17. When she was referred to a copy of the title issued to Joshua Arap Buses in respect of title No.8839/61 also known as grant No. LR/4758, she confirmed that the said title did not relate to the suit land. She also confirmed that she knew Peter Kipkoech Maritim who was her neighbor. Her evidence was that the Defendants had trespassed upon her land in the year 1972 immediately after the construction of the Kericho Sotik Highway and that she had taken long to institute her claim because she had no money.
18. In re-examination, she confirmed that her land bordered the Kericho-Sotik Highway. That whereas a small portion of the land had been compulsorily acquired for purposes of constructing the road, she



was not aware of any payment that had been made to her late father in that respect. She reiterated that these were different parcels of land in that whereas Joshua Arap Buses's title deed showed that his land measured 0.00575 hectares, her land measured 0.035 hectares.

19. She confirmed the letter of allotment issued to Joshua Arap Buses showed that his land measured 0.06 hectares which had been different from what had been indicated on her title deed. She also acknowledged that the Defendants' Kiosks had been in existence since the year 1974.
20. On being cross-examined by the Counsel for the Plaintiff in Case No. 9 of 2011, she testified that did not know all the 19 Defendants in ELC Case No.51 of 2013, but that they were Joshua Arap Buses tenants in relation to land parcel No. Kericho/Chemoiben/20. She also confirmed that she had no claim against the 3rd Plaintiff and 21st to 24th Defendants. That the 3rd Plaintiff was not the only one in occupation of land parcel No. Kericho/Chemoiben/24 since he was in occupation of a portion of it. She also confirmed that she did not know whether the other occupants were legally on land.
21. PW2 Sammy Koech, the 2nd Plaintiff testified that land parcel No. Kericho/Chemoiben/24 belonged to his late father Kipkoech Nyige who had owned it jointly with Kipbomet Munai, Kiplangat Kogetke and Dickson Kirui. That after his father's death in the year 2002, he had been issued with the Limited Grant herein produced as Pf exh 4.
22. That he had sued the 20 Defendants because they were illegally occupying his late father's land. He produced a certificate of official search in respect of Kericho/Chemoiben/24 as Pf exh 5 and proceeded to testify that the Defendants had invaded their land in the year 2012. That despite a notice having been served upon them through his Advocate, they had refused to vacate from the land. He stated that he did not know how the number of Defendants had increased to 24.
23. His evidence was that the District Surveyor had fixed a boundary between land parcel Nos. Kericho/Chemoiben/20 and 24. That he neither knew Joshua Chepkwony Arap Buses nor was he aware that they both lay claim to the same parcel of land. When he was referred to a copy of the green card in respect of land parcel No. Kericho/Chemoiben/24, he confirmed that the owners were Kipkoech Nyige and 3 others. That his parcel of land measures 0.05 hectares.
24. His evidence was that the Defendants had trespassed upon his land in the year 2012 as tenants and therefore should be evicted therefrom and that the costs of the suit be awarded to him.
25. On being cross examined by the Counsel for the Defendants, he confirmed that land parcel No. Kericho/Chemoiben/24 was registered in the name of Kipkoech Nyige and 3 others. He confirmed that the green card at entry No.2 showed that there had been a restriction placed on the land. That whilst their land bordered the Kericho-Sotik Highway, he did not know if part of the same had been acquired for purposes of constructing the said road. He reiterated that he did not know Joshua Arap Buses who also laid claim to their land.
26. His further response was that although there were some temporary structures on their land that had been constructed around the year 2012, he did not know how the land had been utilized before the year 2012. He confirmed that he was 40 years old.
27. He proceeded to testify that he knew the 1st Plaintiff who was his neighbor and whose parcel of land was Kericho/Chemoiben/20. That his parcel of land was agricultural land although it was situated closer to a town for which he had not been aware that it had been converted to a commercial property and allocated to another person.



28. When he was cross-examined by the Counsel for the Plaintiff in Case No. 9 of 2011, he confirmed that his father was jointly registered with 3 other persons to the land and hence they all had an equal claim to the land.
29. In re-examination, he confirmed that he had not been shown any document evidencing that the Defendants had been allocated their land by the County Government.
30. James Kirui a businessman and a village elder in Litein town testified as PW3 adopted his witness statement dated 11th February, 2014 as his evidence in chief and then proceeded to confirm that the parties to the suit were known to him and that the Plaintiffs had sued the Defendants for trespass on land parcels No. Kericho/Chemoiben/20 and 24.
31. On being cross-examined by the Counsel for the Defendants, he confirmed that Kericho-Sotik road passed besides the suit property. That the road had been curved out of the suit property in the year 1972 and which curving had affected parcels of land in the area including parcel No. Kericho/Chemoiben/26.
32. His evidence was that whereas there were some temporary houses on the suit property, he did not know the people who had claimed to have acquired the suit land and that whereas he knew the family of Joshua Buses, he did not know if he owned land in Litein.
33. When he was referred to DMF1, his response was that he was not familiar with the registration section for Litein. That whereas he had seen a title deed issued to Joshua Buses in respect of one of the town plots, he could not tell whether the said Joshua owned any land in Litein town. That he also did not know whether the owners of the suit properties had been compensated after their parcels of land had been acquired for the purpose of constructing the road. He confirmed that the temporary houses on the suit lands had been constructed in the year 2012.
34. His response on cross-examination by the Counsel for the Plaintiff in case No. 9 of 2011 was that land parcel No. Kericho/Chemoiben/24 belonged to Dickson Kirui while land parcel No. Kericho/Chemoiben/20 belonged to the 1st Plaintiff. He however admitted that he did not know all the people who owned land in Litein and that the Land Registrar was in a better position to testify about land ownership in Litein.
35. PW4 one Peter Kipkoech Maritim a businessman who lives in Litein Township, Kericho County testified that land parcel Nos. Kericho/Chemoiben/20 and 24 belonged to the 1st Plaintiff and Kipkoech respectively. He then adopted his witness statement dated 11th February, 2014 as his evidence in chief.
36. Upon being cross-examined by the Counsel for the Defendants, he testified that the land had been hived off to create the Kericho-Sotik road although he was not sure when the same had been done. He also stated that he had not been around when the buildings were demolished although owing to the confusion after the demolitions of structures to pave way for the road, some people had trespassed onto the suit land and had constructed temporary structures. He also confirmed that there had been earlier acts of trespass in the year 1970 or thereabout.
37. That whilst he did not know the full names of the trespassers, one of them had been Joshua Buses who had constructed a permanent house in the year 2012 before which he had constructed a semi-permanent house on the suit property. That whereas he was aware that the 1st Plaintiff had a title, he did not know if Joshua had a title over the same land.



38. When he was cross-examined by the Counsel for the Plaintiff in Case No. 9 of 2011, he confirmed that his statement did not concern land parcel No. Kericho/Chemoiben/24
39. Hellen Mutai the County Land Registrar testified as PW5 to the effect that she had certified copies of the green cards in respect to Kericho/Chemoiben/20 and 24 (suit land) for which the current registered owner to parcel No. Kericho/Chemoiben/20, was Cecilia Chepkurui Koskei, the 1st Plaintiff wherein registration had been effected after a Succession Cause. That the land had initially been registered in the name of Kipketer Chelule.
40. That on the other hand, land parcel No. Kericho/Chemoiben/24 was currently registered in the name of Baseline Kiprono Mutai for the estate of Dickson Kirui one of the initial registered proprietors. That there had been 4 joint registered properties being Dickson Kirui, Kipkoech Nyige, Kiplangat Kogetge and Kibomet Munai. She produced the green cards for Kericho/Chemoiben/20 and 24 as Pf exh 3 and 4 (sic) respectively.
41. On cross-examination by the Counsel for the Defendants, she confirmed that land parcel No. Kericho/Chemoiben/20 was registered to the 1st Plaintiff on 8th May, 2012 as entry No. 2 and 3. That there was a restriction that part of Sotik main road passed through the land wherein the land had been reduced as per the surveyor's letter.
42. That initially the acreage of the said land had been 0.04 hectares but the same had now been reduced to 0.0035 hectares being less by 0.05 hectares. She explained that it was not regular to transfer a property which was subject of restriction.
43. When she was referred to a copy of extract of the green card issued in the year 2013 herein marked as DMFI 1, she confirmed that the same had not shown that the acreage of the property that had been rectified. That from Pf exh 1, she could only see a reference letter dated 2nd May, 2012 but she could not tell when the same had been effected. That she was not aware whether a letter to the restrictions had been made in their records and neither could she tell why the acreage was being rectified.
44. She explained that an application ought to have been made to rectify the register. That whereas in the instant matter she did not know who had originated the rectification, the same was normally originated by an interested party. That she neither knew the location of the suit lands and neither did she know if Litein town comprised of lease hold or free hold properties. She however admitted that she was the custodian of all records in Kericho County.
45. When she was referred to a copy of grant No. IR No. 4758 that is DMFI 2, she confirmed that property therein had been granted to one Joshua Chepkwony Buses for 99 years from 1st January, 1991. That the same was supported by a Deed plan No. 15663 and that with such a deed plan one would presume that the property's dimensions had been registered. That whereas the Grant was backed up by a search dated 28th June, 2013 that had been conducted in the land's office, she was not a custodian of an RTA title since such records were in Nairobi, the said Grant having not been converted into the Registered Land Act Cap 300 (repealed).
46. That she was not aware that the parcel of land on the Grant overlapped land parcel Nos. Kericho/Chemoiben/20 and 24. That whereas the restriction that prevailed in land parcel No. Kericho/Chemoiben/20 had prevailed in land parcel No. Kericho/Chemoiben/24, the acreage in land parcel No. Kericho/Chemoiben/ 24 had not been rectified. She confirmed that land parcel No. Kericho/Chemoiben/ 24 had been transferred and registered to Baseline on 14th September 2017 while the restriction was subsisting which was not lawful. That whereas it had not been shown when the restriction had been placed, it had never been lifted.



47. She was referred to Pf exh 4 on cross-examination by the Counsel for the 3rd Plaintiff wherein she confirmed that the current registered owner of land parcel No. Kericho/Chemoiben/24 was Baseline Kiprono Mutai for the estate of Dickson Kirui who had been one of the registered owners jointly with Kipkoech, Kiplangat Kogetke and Kibomet. That there had been succession with respect of the estate of the said Dickson Kirui. That the other three owners were deceased and their names should have remained on the register as joint owners however the name of Kiplangat Kogetke had been deleted alongside that of Dickson Kirui but she did not know if the said deletion had been an error since she had not been there at the time.
48. She however explained that a person's name could be deleted only through transfer, succession or sale wherein a new name would be written. She thus sought that the court allows her to relook at the register to find out whether the deletion had been an error.
49. She confirmed that Baseline had been registered in the name of Dickson. She asserted that unless a Grant had been registered, the names of the previous owners could not be deleted. She confirmed that their records should reflect what was on the ground thus land parcel No. Kericho/Chemoiben/24 existed on the ground since they had its record. That whereas the register reflected what was on the map, the map on the other hand reflected what was on the ground.
50. In re-examination, she was referred to the Pf exh 3 and 4 wherein she confirmed that the restriction had no entry, had not been signed and that she did not know who had made it. In reference Pf exh 4, she confirmed that whereas some names had been crossed out, the names of Kipkoech Migei, Kebomet Munai and Baseline Kiprono had not been crossed out hence they were the known owners of land parcel No. Kericho/Chemoiben/24.
51. PW6 one Paul Rugut, a District Surveyor, Bureti testified that he was in court pursuant to summons to attend and testify in respect of land parcel Nos. Kericho/Chemoiben/20 and 24
52. He confirmed that the current registered owner of land parcel No. Kericho/Chemoiben/20 measuring 0.035 hectares approximately 0.09 acres was the 1st Plaintiff while the registered proprietor of land parcel No. Kericho/Chemoiben/24 measuring 0.05 hectares approximately 0.12 acres was Baseline. That the searches had been obtained from the Land Registry, Kericho.
53. That the map was in regard to Kericho/Chemoiben sheet no. 6 which had been published by the Survey of Kenya in August, 1970 and that the date of issuance of the said map by Survey of Kenya, Kericho was 8th February 2022. He confirmed that land parcel Nos. Kericho/Chemoiben/ 20 and 24 had existed on the map. That he had not visited the suit lands since he had not been ordered to do so. He produced the map sheet no. 6 as Pf exh 5.
54. On cross-examination by the Counsel for the Defendants, he confirmed that the map did not contain RTA titles. That both properties were within Litein Township thus the same were lease hold properties.
55. He confirmed that although a restriction had been placed on land parcel No. Kericho/Chemoiben/ 24, the same had not been elaborated. He proceeded to testify that the Kericho-Sotik road had not been indicated on the map which had been published in August 1970. That whereas amendments were indicated on the map, Pf exh 5 had no amendments or mutations. That further, whilst he was not aware of when Kericho-Sotik Highway had been constructed, he was aware there it was a new road.
56. When he was cross-examined by the Counsel for the Plaintiff in Case No. 9 of 2011, he stated that the map was a duplicate of what had been in their office and that one needed a sum to pay Kshs. 300 to get a copy. He confirmed that land parcel No. Kericho/Chemoiben/24 existed on the map and that there had been no indication according to the map, that another parcel had overlapped the said land.



That the search had meant that the land existed on the map hence if there had been no amendments, the land had existed subject to a survey. That whereas several roads had been indicated on the map, the Kericho-Sotik road had not been indicated against the suit lands and therefore he was not aware if the said road touched on the suit lands.

57. When he was examined by court, he explained that amendments to maps by the Survey of Kenya were normally done instantly after a mutation form had been raised.

The 1st and 2nd Plaintiffs thus closed their case.

58. The 3rd Plaintiff's case had proceeded for hearing with the testimony of PW7, Rachel Langat who adopted her Witness Statement dated 18th September, 2013 as her evidence in chief and proceeded to testify that her father was called Kipkoech Mibei. She whereas she did not know Lydia Buses since it had been a long time, she knew her daughter called Dina. That she also did not remember Joseph Chepkwony although Reuben Chepkwony was related to Lydia. That the family of Buses used to live in Rugut
59. That her late father Kipkoech owned a piece of land in Samguet and another one at Litein being Kericho/Chemoiben/24 jointly with other parties. That she had lived peacefully on the said parcel of land for many years since she had been born there. That in the year 1954, she had moved out of the land but had seen some houses built on the land which she had presumed belonged to her children.
60. Her evidence was that the land belonged to Kipkoech Nyige, Kiplagat Kogetke, Dickson Koketge and Kibomet Kirui and that the same had not been sold. She denied having attended any meeting involving a dispute of the land.
61. On cross examination by Counsel for the 1st and 2nd Plaintiffs, she confirmed that her father was Kipkoech Nyige and that she was an only child. That she knew Sammy Kipkoech Nyige, the 2nd Plaintiff who was her step mother's son and that he did not live on the suit land. That she was aware that Sammy was in court seeking a share of the land for which he had filed a suit against Joshua.
62. She confirmed that land parcel No. Kericho/Chemoiben/24 had been registered to her father and 3 others around the year 1940's when they had been told to build permanent houses. That whereas they had gone to look for money, they had not been successful. She confirmed that she had last been on the land in the year 1972 when her mother had passed away. That the people who had built houses and were residing therein were Joshua Arap Buses and sons.
63. Her response on cross-examination by the Counsel for the Defendants was that she only knew Mr. Nyige, her father and the other old man who was her uncle, as the owners of land but did not know Kiplangat Kogetke. She also confirmed that whereas her father had passed away in the year 2002, she did not know whether the family had taken out Letters of Administration because she had not been informed of the same.
64. That she had filed the case on behalf of the estate of Kipkoech Nyige since there was an adopted child called Joseph. That the 2nd Plaintiff was her step brother. She maintained that she had last visited the land in the year 1972 when Kericho-Sotik Highway had been under construction and that had been when the instant claim had started. That land parcel No. Kericho/Chemoiben/24 was beside the road, the said road did not pass through it and no part of the said land had been affected by the road.
65. She confirmed that there were houses that had been constructed on the land between the years 1944 to 1945 immediately after her father had gone to look for money. That whereas she had never counted the



- said houses, they were permanent houses built with stones and iron sheets and that they had belonged to the four old men. That she however did not know who was in occupation or in use of the same.
66. That she had sued Lydia Buses because she had heard that she had grabbed the land in the year 1954. That nevertheless, she had delayed in filing the case because she had believed that the houses had belonged to her brothers although she knew that the land belonged to the 4 old men. She however did not know that Joshua Buses also held title to the land and neither could she remember him as it had been long since she saw him.
 67. When she was examined by the court, she confirmed that she was 88 years old. She asked the court to assist the old men and their children to get back their land.
 68. David Kibet Langat, the 3rd Plaintiff testified as PW8 to the effect that Kiplangat Kogetke (Deceased) was his father. He adopted his witness statement as his evidence in chief and proceeded to testify that his late father had been registered to land parcel No. Kericho/Chemoiben/24 alongside three other persons being Kiplangat Kogetke, Dickson Kirui, Kipkoech Nyige, Kibomet Munai and that they were all deceased. He produced their death certificates as Pf exh 1 (a-d) as well as the Limited Grant Ad litem dated 18th October, 2010 as Pf exh 2.(not in the file)
 69. He then testified that he had sued the Defendants because they had constructed houses on his father's land. That he had a Certificate of Search and a map as proof that the land belonged to his father. That the search had showed that the land belonged to the 4 people that he had mentioned. He produced the said search as Pf exh 3 and confirmed that the old men had not been issued with a title deed. His testimony was that the Defendants had their land parcel No. Kericho/Chemoiben/26 which bordered their land as per a search Certificate herein produced as Pf exh 4.
 70. He testified that after he had discovered that the Defendants had invaded his father's land, they had gone to the Chief's office to find out who the Defendants had been wherein they had then held a meeting and talked about the said issue. He confirmed that Lydia, the 21st Defendant had attended the meeting wherein she had claimed that the land belonged to their late father Joshua Buses who was the owner of land parcel No. Kericho/Chemoiben/26. He produced the Land Dispute Arbitration dated 12th July, 2010 and Minutes of the dispute dated 14th July, 2010 as Pf exh5 (a) and (b).
 71. That he had a map to prove that both land parcel Nos. Kericho/Chemoiben/24 and 26 had existed on the ground and that they were two distinct parcels of land hence it was not correct to say that land parcel No. Kericho/Chemoiben/26 had been superimposed on parcel No. Kericho/Chemoiben/24. He had the map marked as PMFI 6.
 72. That he had given the Defendants a notice before filing the instant suit which Demand Letter dated 13th August, 2010 he had produced as Pf exh 7 His evidence was that the Defendants had illegally trespassed on his father's land around the year 1995 wherein they had tried to resolve the matter out of court first through the Chief's office and then the District Officer's Office but when the same became unsuccessful, they had approached the court.
 73. That the Defendants' occupation of the land had denied them income since there was money that they were earning from the houses which the children of Buses claimed their father had built. He sought that the Defendants be evicted from the land and ordered to pay damages and costs of the suit.
 74. On cross-examination by the Counsel for the 1st and 2nd Plaintiffs, he confirmed that he knew Sammy Kipyegon Koech, the 2nd Plaintiff who was a son of Kipkoech Nyige one of the owners of land parcel No. Kericho/Chemoiben/24. He confirmed that there were houses on the said land claimed to have been built by Joshua Buses although he did not witness the same being built.



75. That whereas he had never gone to the land since the institution of the instant case, he was sure that there were people living therein since he could see the doors of the said houses open. He confirmed that the Buses family had their parcel of land No. Kericho/Chemoiben/26 which was separated from land parcel No. Kericho/Chemoiben/24 by land parcel No. Kericho/Chemoiben/25 although he did not know the owner of the said land parcel No. Kericho/Chemoiben/25.
76. His response on being cross-examined by the Counsel for the Defendants was that they had never used land parcel No. Kericho/Chemoiben/24 and that the same had been used by the 4 deceased persons. That Joshua Buses's children had claimed that it had been their father who had first been in occupation of the same. That he could not remember when the encroachment had occurred since they had just discovered that the Defendants had constructed the houses in the year 1995. That he knew Johana Kimutai Terer who was a son to the late Dickson Kirui, who was one of the owners of land parcel No. Kericho/Chemoiben/24, however, he could not tell if his assertion that the encroachment had occurred in the year 1990 had been a lie.
77. That he did not know if land parcel No. Kericho/Chemoiben/24 had been compulsorily acquired for the construction of Kericho – Sotik road in the year 1972. He however testified that the road neither passed near the said land nor touched on it. When he was referred to PMFI 6, he testified that whereas he could not tell how far the Kericho – Sotik road had passed from land parcel No. Kericho/Chemoiben/24, it was roughly about 10 meters from the said land. Further, that whilst he may not be able to understand the signs on the map, he could see land parcel No. Kericho/Chemoiben/24 on the map.
78. In re-examination, he confirmed that Kericho–Sotik road did not pass through land parcel No. Kericho/Chemoiben/24 but passed about 10 meters from the land. That however, from the map, he could not tell where the road passed.
79. Paul Kibet Rugut, the District Surveyor Bureti Sub-County testified as PW9 to the effect that he had been summoned again to attend court to testify on Chemoiben map sheet No. 6. That however, the court's order did not specify any parcel number. That nonetheless land parcel Nos. Kericho/Chemoiben/20 and 24 were on the said map which reflected what had been registered in the land's office. That the parcels were intact and existed as per the map. He produced the said Map Sheet as Pf exh 6.
80. On cross-examination by the Counsel for the Defendants, he testified that whereas land parcel Nos. Kericho/Chemoiben/ 20 and 24 had existed on the map, he had not visited the ground to confirm their status hence he was not aware that they existed on the ground. This notwithstanding, the said parcels of land existed in the land records.
81. He confirmed that there had been a restriction on land parcel No Kericho/Chemoiben/24 and not land parcel No. Kericho/Chemoiben/20 and that the said restriction had not been specified. That however, he was not aware whether or not the Kericho Sotik road passed through any of the two parcels of land. That whereas the map had captured Litein town where the Kericho-Sotik road cut through, he could not specify which parcels of land the said road had cut through.
82. That further whilst the map showed that the Kericho –Sotik road had passed across the town, part of the road had not been shown on the map. The further, whereas the map was 132nd Edition, he could not tell when the same had been amended since he did not have the amendment dialogue box. That nevertheless, the topographical map was one that could have captured the Kericho-Sotik road.
83. He confirmed that it was not proper that the road had not been shown on the RIM. That to capture what was existing on the ground and for the surveyor's office to capture any amendment, a mutation



form ought to have been raised and thereafter the consent of the Land Control Board sought. That subsequently, they could not amend the RIM without mutation.

84. That whereas the map had been published in the year 1970 he did not know when the Kericho-Sotik road had been constructed. He confirmed that the map had shown the situation as it had been in the year 1970. That nonetheless, from the year 1970 to-date, they had been capturing developments save for the said map which was a 132nd Edition.
85. In re-examination, he confirmed that the map had come from their offices in Kericho thus it represented the position on the ground. That lack of amendment did not confirm that the land had not existed.

The 3rd Plaintiff thus closed its case.

86. The Defence case opened with the testimony of Reuben Kipng'eno Arap Chepkwony, the 23rd Defendant who testified that they had been sued by the Plaintiff on a claim that they had “snatched their shamba” land parcel Nos. Kericho/Chemoiben/20 and 24.
87. That he knew the 3rd Plaintiff and that land parcel No. Kericho/Chemoiben/26 had been issued to their late father Joshua Arap Buses in the 1970s during the survey. He confirmed that land parcel Nos. Kericho/Chemoiben/20 and 24 belonged to the Plaintiffs. That they had a certified copy of the Register in relation to land parcel No. Kericho/Chemoiben/26 which was jointly owned by 4 people including his father. That there had been a restriction to the effect that part of Kericho- Sotik road passed on the said land. He produced a certified copy of the register of proprietorship certified on 9th July, 2015 as Df exh 1.
88. He then proceeded to testify that the title to the said land was currently not in existence since the Government had taken over the land in the year 1970 and marked it as restricted Government land and thereafter, the ministry of works had undertaken a road construction of Sotik–Kericho Tarmac Road. That land parcel Nos. Kericho/Chemoiben/20 and 24 had also been affected by the said restriction.
89. That an allotment letter had been issued by the County Council to his father Joshua Buses and thereafter, he had been issued with a letter by the Commissioner of Land No. 8839/61 on 1st January, 1991. He produced a copy of the Certificate of lease to LR 8839/61 and a search issued on 28th June, 2013 as Df exhs 2 (a) and (b).
90. His evidence was that the government had taken over land parcel Nos. Kericho/Chemoiben/ 20, 24 and 26 in the year 1969 wherein it's proprietors had been compensated and asked to vacate the same. They had all vacated and demolished their houses. That the construction of Kericho-Sotik road had begun in the year 1970 by which time the said land parcels had been vacant. The said road had been completed in the 1974.
91. That nonetheless, a piece of land which had not been utilized had remained vacant for many years wherein it had become a dumping site. That his father had then asked the officials who were in the county council of Litein to allow him to build a small “uji” kiosk therein. That he had been allowed and told to build the same with temporal material as it could be pulled down at any time.
92. That when his father made an application to the County Council, it had been rejected wherein he had been advised to write to the Ministry of Works at the headquarters. That accordingly, he had written to the said headquarters wherein he had been granted permission by the County Council to utilize the land hence his application had been approved. He produce the letter to the Ministry of Lands dated 1st August, 1988 as Df exh 3.



93. That upon the County council of Litein confirming that his father had complied with the allotment, they had sent surveyors to mark the area wherein his father had started building permanent buildings. That he had paid for the allocation and continued paying rates. That a letter from the County Council of Litein dated 23rd January, 1991 had confirmed that his father had complied with the conditions of allotment. He marked the said letter as DMF1 4 and then he proceeded to testify that after his father had paid the allotment fees, he had taken possession of the said land in the year 1991 wherein he had started building permanent buildings, including shops and flats in the year 1992.
94. He confirmed that his father who passed away in the year 2004, had been in occupation of the land as at the time he passed away. That currently, there were different types of tenants on the land including shops and timber workshops. That whereas the said tenants had been his father's tenants, they were currently under their supervision. He confirmed that he was the eldest son of his deceased father.
95. That they had been collecting rent and issuing receipts to their tenants as could be seen from the landlord Notice to terminate tenancy issued to various tenants which notice had indicated the property in question as being No. 8839/61. He produced a bundle of 10 Notices dated 23rd April, 2013 as Df exh 5 (a - j).
96. He explained that by the time they had been sued in the year 2011, they had not taken out a Grant of Letters of Administration. He confirmed that his co-Defendants being the 21st 22nd and 24th were his siblings. That on the other hand, the 1st to 20th Defendants were their tenants. That whereas the 1st and 2nd Plaintiffs were the people claiming the land, they had not known them before the instant suit and neither had he seen them on the land.
97. His evidence that they had subsequently obtained letters of Administration after the case had been filed although he could not remember exactly when the same had been obtained. He however confirmed that in the instant matter, he had been sued in person. He maintained that the land had belonged to his father who had followed all the regulations while seeking for a title deed and therefore the suit herein ought to be dismissed. That in any case, the land had been advertised in the newspaper seeking for any objection but nobody had objected hence the title deed had been issued.
98. When he was cross-examined by the Counsel for the 1st and 2nd Plaintiffs, he testified that whereas there had been compensation for the portions of land that had been acquired by the Ministry of roads, he did not have the documents on compensation that had been given to his father. When he was referred to Df exh 3, he maintained that his father had received a reply from the Ministry of Roads but that he did not have the documents to that effect since the same had disappeared upon his father's death.
99. That land parcel No. Kericho/Chemoiben/26 was jointly registered with about 5 other people. His response on being referred to Df exh 1 was that he was not aware that the land still existed at the Ministry of Lands and neither did he know the status of land parcel No. Kericho/Chemoiben/26.
100. He confirmed that he had been sued in two cases. That whereas that in ELC Case No. 51 of 2013 the people who had been sued were tenants, he and his siblings had not requested to be joined. That he also did not know about land parcel Nos. Kericho/Chemoiben/20 and 24 but only knew about the plot that they had been given.
101. That he neither knew Erick Kitur nor Charles Korir, the 1st and 2nd Defendants. That whereas some of the Defendants' were their tenants, he would not know them save for the 20th Defendant, which was a hospital. He also stated that he did not know the exact amount of rent paid by the tenants since the same was paid to their brother Simeon Chepkwony.



102. He confirmed that he had a tenant on the land whose name was Eric but who was different from the 1st Defendant and who paid him a sum of Kshs. 2,000/= per month. That Joseph Chepkwony, the 22nd Defendant was his brother who lived in America. That Lydia Buses, the 21st Defendant was his sister while Joel Chepkwony, the 24th Defendant was also his brother.
103. When he was referred to Df exh2 (a), he confirmed that the land that had been given in August 1991 and measured approximately 0.0575 hectares. He further confirmed that his father had written to the Ministry of Transport in the year 1988 enquiring if the land had been vacant. Upon being referred to Df exh3 at Page 2, he read the same and confirmed that the people listed therein were the joint owners of land parcel No. Kericho/Chemoiben/26 together with his father
104. On further being referred to Df exh2 (a) he confirmed that the title had been issued in the year 1991. That whereas the parcels of land had been acquired by the Ministry of Transport to construct the road, he did not have the documents in support since he did not know where they were. His response on being referred to DMFI 4 was that the said letter did not mention the parcel of land to which it was referring to.
105. When he was referred to Df exh5 (a - j), he maintained that land parcel No. Kericho/Chemoiben/26 had been occupied with the road and that the Notices had been in reference to land Ref. 8839/61 although he did not know whether they had been issued with the same. That the area map had been in their file and that their Advocate had known about it.
106. Upon being cross-examined by the Counsel for the 3rd Plaintiff, he testified that his father had participated in the process of repossession of the land. That after the land had been repossessed, they had received allotment letters which letters were in the file.
107. He confirmed that the Plaintiffs' land was land parcel Nos. Kericho/Chemoiben/20 and 24 while his father's land that had been taken over by the Ministry of Roads was land parcel No. Kericho/Chemoiben/26, measuring 0.04 Hectares. That after the Government had taken over the said land, his father had been issued with plot No. 8839/61. That whereas the owners of land parcel No. Kericho/Chemoiben/26 including his father had been given money as compensation and asked to re-locate, that the 21st to 24th Defendants had been young hence they had only seen the old men sharing the money.
108. That the map showing land parcel No. 8839/61 on the ground did not show adjacent parcels of land. When he was referred to Pf exh 6, he confirmed that he had not seen the said map. That there was no need to call the surveyor as the said surveyor had shown them where land parcel No. 8839/61 had been located.
109. In re-examination, he confirmed that he had showed Counsel a map attached to the lease where LR No. 8839/61 and three other parcels of land had been indicated therein. That he could see parcel No. 8839/56, 8839/59 and 8839/60. That it was thus wrong to say that L.R 8839/61 was the only one on the ground, since the other parcels existed too.
110. He confirmed that compensation had been made in the year 1969 and after the Notice had expired the old men had been compensated wherein they had demolished their buildings and had gone away with no complaints, before the construction started.
111. DW2, Colister Kibet Langat confirmed that he knew the 21st to 24th Defendants since he was a tenant of their father, one Joshua Arap Buses who had rented him a shop in the year 1990. That he had used the said shop for 3 years as a hotel wherein he prepared porridge-“üji” and food.



112. He however stated that he did not know whether the said Joshua had title to the land since he had only been given the shop on mutual oral agreement. He explained that at the time, the land had just been a field hence he had constructed a temporal mabati structure which was in existence to date. That he had left the shop to Jonathan Mutai (Deceased) who had only stayed there for about 3 months. That the shop was still in use as a hotel called “Stage View Hotel”.
113. That Christopher, the 5th Defendant was using the hotel as a tenant to the family of the late Joshua Buses. That at the time he was using the hotel, nobody had claimed the land. That Joshua Buses had also started building a flat on the land in the year 1992 which flat was still incomplete. His evidence was that other people had come and started building temporary shops on the land while he was still on the land which shops were still on site and in use.
114. On cross-examination by the Counsel for the 1st and 2nd Plaintiffs, he confirmed that he was Joshua Arap Buses deceased’s tenant and that they had entered into an oral agreement. That he did not know the number of the land and that the deceased Buses was an old man to whom he used to pay a monthly fee Ksh. 300/= for which he was not given a receipt.
115. His response on being cross-examined by the Counsel for the 3rd Plaintiff in was that he had taken occupation of the land in the year 1990. That Mr. Buses had been the owner of the said land. That whereas he knew Reuben, the 23rd Defendant when he got onto the land, the old man, Joshua Buses had been in possession. That the tenants had built the structures upon obtaining permission from the old man.
116. In re-examination, he confirmed that the tenants had built the temporal structures after obtaining permission from the old man who had been busy with the construction of a story building.
117. Edmond Korir Siele, a valuer for Kericho County Government testified as DW3 to the effect that his duty as a county valuer was to assess properties for rating purpose, purchase of land for the county, rental assessment and advising the CEC members on the matters pertaining land and property. That he had been summoned to attend court and produce a certain document which unfortunately, he could not be traced since it was an old record that had been placed in the archives and therefore he needed time to trace it.
118. That nonetheless, according to their records, land parcel No. 8839/61 was registered under Joshua Buses with an annual payment of 2,600/= which has been paid to date with an excess of Ksh 900/=.
119. On cross examination by the Counsel for the 1st and 2nd Plaintiffs, he confirmed that he did not have any document in court.
120. His response upon being cross-examined by the Counsel for the 3rd Plaintiff was that he had not produced any document in court because of the reason he had earlier stated. He also admitted that he had not produced any document to demonstrate the annual payment and/or excess that he had talked about.
121. In re-examination he confirmed that whereas the records pertaining a letter to the Commissioner of Land had been placed in the archives, the documents pertaining payments were on the records that they possessed.

The Defence thus closed their case and parties filed their respective submissions which I shall summarize as hereinunder.



1st and 2nd Plaintiffs Submissions

122. The 1st and 2nd Plaintiffs vide their submissions dated 8th April, 2024 summarized the factual background of the matter as well as the evidence adduced in court and then framed their issues for determination as follows:
- i. Whether the Plaintiffs have locus to sue the Defendants over the subject parcels of land.
 - ii. Who is the lawful registered owner (s) of the subject parcels of land.
 - iii. Upon determining issues (i) and (ii) above, whether the Plaintiffs have proved their claim against the Defendants for trespass or not.
123. They then proceeded to submit that their evidence in regard to the registration of the subject parcels had been uncontroverted to the effect that the 1st Plaintiff was the registered proprietor of land parcel No. Kericho/Chemoiben/20 while the 2nd Plaintiff's deceased father was a joint registered owner of land parcel No. Kericho/Chemoiben/24. That the 2nd Plaintiff had obtained grant ad litem issued on 12th July 2013 to institute the instant suit thus the Plaintiffs had demonstrated and proved that they had locus to sue.
124. That indeed, the District Land Registrar had produced in evidence certified copies of green cards, official searches as well as a map which had not been amended in support of their case. Reliance was hinged on the provisions of Section 26 of the [Land Registration Act](#) to submit that the Defendants having not challenged their titles to the suit lands, that they had the right of possession, use and enjoyment of the same. That whereas DW1 had testified that their late father had been allotted the suit parcels, they had no title deed to the same.
125. That since PW5 and PW6 had confirmed that the suit parcels had been in existent both in the records at the lands office and on the ground, the Defendants' allegations that the land was not in existence had been displaced and/or was false. That in any case, the Defendants had annexed copies of the 2 green cards confirming that the 1st Plaintiff and the 2nd Plaintiff's deceased fathers had been the registered proprietors of the suit parcels of land.
126. It was their submission that Joshua Chepkwony Buses and his partners never owned land parcel Nos. Kericho/Chemoiben/20 and 24 but land parcel No. Kericho/Chemoiben/26 as had been admitted by DW1 which then confirmed that the Defendants were trespassers on land parcel Nos. Kericho/Chemoiben/20 and 24.
127. As to whether their claim had been extinguished by effluxion of time, their submission was that the Defendants did not prove the same since the act of the Defendants' trespass which had occurred in the year 2012 or thereabout was a continuous act. That notwithstanding, 12 years of continuous, peaceful and uninterrupted occupation had not lapsed and therefore they could not claim ownership by adverse possession without proof.
128. That there having been sufficient evidence provided that the Defendants were trespassers, and had deprived and denied then quiet enjoyment of the parcels of land as well as their right to the suit properties, that Plaintiffs were entitled to compensation. That since the suit properties were prime land and situated within Litein town, a sum of Kshs. 2,000,000/= would be reasonable.
129. The 3rd Plaintiff on the other hand vide his submissions dated 17th September, 2024, also summarized the factual background of the matter as well as the evidence as had been adduced in court before submitting that parties were bound by their pleadings. Reliance was placed on the decision in the case



- of Raila Amolo Odinga & Another v IEBC & 2 Other [2017] eKLR amongst others to urge the court not to grant prayers that had not been pleaded.
130. That the Defendants' Statement of Defence had only contained denials of the contents of the Plaintiff and had neither raised new issues, addressed any prayer nor sought any orders. That there had also been no counter-claim filed.
 131. That the testimonies of the Plaintiff's witnesses had been consistent with the evidence and pleadings filed by the Plaintiff. That there had been chronological evidence adduced on how the Plaintiff had acquired the parcel of land No. Kericho/Chemoiben/24 and how the same had come to be registered in his name, which testimonies had been in tandem with the documentary evidence produced as exhibits. That since a party could only obtain a better title from a good title, the title that had been obtained by the Plaintiff had been a good title which was indefeasible pursuant to the provisions of Sections 24, 25 and 26 of the *Land Registration Act*. That accordingly, he had proved his case on a balance of probability and was entitled to a judgement.
 132. He placed reliance on the provisions of Article 40 of *the Constitution*, Sections 24, 25 and 26 of the *Land Registration Act* and the decision in the case of Ali Wanje Ziro v Abdulbasit Abeid Said & Another [2022] eKLR to submit that his title was protected under the above provisions of law and hence the court should enter judgment in his favour.
 133. That whereas the Defendants had testified that they were entitled to his parcel of land, their claim and cause of action against him was not pleaded in their Pleadings. That further, whilst a cause of action needed to be clear and emanating from a point of law, the Defendants' pleadings had not been anchored on the law. He maintained that no prayer to defeat his title had been pleaded by the Defendants as the basis upon which their testimony/evidence could be anchored.
 134. That the Defendants had neither pleaded fraud nor illegality hence the Plaintiff's title could not be impugned. That subsequently, the said title needed protection pursuant to the provisions of Articles 40 and 162 of *the Constitution* for which it would only be fair that an eviction order be issued against the Defendants.

Defendants' Submissions.

135. The Defendants via their submissions dated 12th June, 2024, also summarized the factual background of the matter as well as the evidence adduced in court in detail before framing their issues for determination as follows; -
 - i. Whether the parcels of land known as Title Nos. Kericho/Chemoiben/20 and 24 exists as claimed by the Plaintiffs.
 - ii. Whether the Defendants are trespassers on the Plaintiff's parcels of land known as Kericho/Chemoiben/20 and 24.
136. On the first issue for determination as to whether the parcels of land known as Title Nos. Kericho/Chemoiben/20 and 24 (suit properties) existed, it was the Defendants' submission that ownership rights guaranteed under Sections 25 and 26 of the *Land Registration Act* were not absolute as they were subject to overriding interests, easements, restrictions and/or any other conditions as may be noted in the register. That indeed, the registers in respect of the suit properties contained a restriction to the effect that the Kericho-Sotik road passed through them. That the parcel of land known as Title No. Kericho/Chemoiben/26 claimed by the 21st to 24th Defendants had equally been affected by the said restriction.



137. That the evidence adduced by PW5, PW6 who had later been recalled as PW9, being the Country Land Registrar and Bureti Sub-Country District Surveyor, respectively, in support of the Plaintiffs' registration had left glaring gaps on the status of the suit properties.
138. That indeed whereas the County Land Registrar had confirmed that there had existed a restriction on the suit properties to the effect that Kericho-Sotik road passed through them, the District Surveyor had also confirmed that the map that had been produced with respect to the said titles had showed the situation as it had been in the year 1970. That the foregoing coupled with PW1 and PW4's concession that portions of the suit properties had been compulsorily acquired sometime in the early 1970's for purposes of constructing Kericho-Sotik road had clearly implied that the Plaintiffs had not been holding absolute rights over the suit properties to sustain their respective claims. Secondly, there had been no indication of the extent of the restriction that had been placed on the suit properties hence one could not tell the extent of the suit properties that had been excised for purposes of construction of the said road.
139. The Defendants thus submitted that the Plaintiffs' respective claims over the suit properties had not only been speculative but was also fraudulent as confirmed through the evidence of PW5 who had noted that there had been a transfer of land parcel No. Kericho/Chemoiben/20 and 24 despite the subsistence of a restriction and therefore the same had been unlawful.
140. That going by the evidence that had been adduced by PW1, PW4, PW7 and PW8, the Plaintiff's cause of action arose between the years 1954 and 1995 hence even if computation of the limitation period had been reckoned from the year 1995, the Plaintiffs claim would still be time barred as set out under the provisions of Section 7 of the *Limitation of Actions Act*. That further, ELC Case No. 9 of 2011 had also been filed in the year 2011, about 16 years after the cause of action had arisen.
141. It was thus their submission that the Plaintiffs had agitated a stale claim for recovery of land disguised as a claim under the tort of trespass to avoid the wrath of the *Limitation of Actions Act*. That the evidence of PW7 to the effect that the suit properties had been grabbed in the year 1954 and that of PW1's concession that part of their land had been compulsorily acquired had been instructive in that regard. They thus urged the court to dismiss the Plaintiffs' claim for recovery of land conveniently presented as though the same had been purely premised on the tort of trespass.
142. On the second issue for determination as to whether they were trespassers on the suit properties, the Defendants reiterated evidence adduced by DW1 and DW2's on the chronological detail of how DW1's father had been allocated property known as L.R No. 8839/61 on 1st January 1991 after the government had compulsorily acquire land parcel Nos. Kericho/Chemoiben/20, 24 and 26 for purposes of the construction of Kericho-Sotik road. That whereas the said property had been left vacant for many years, in the year 1988 the County Council of Litein had allowed DW1's father to utilize the same upon payment of the allotment fees. That subsequently he had developed the land by constructing permanent buildings thereon from the year 1992. That it was thus evident that the Defendants were in occupation of a property known as L.R No. 8839/61 to which DW 3, the County Valuer had confirmed that they were collecting rent.
143. That from the foregoing, one would have expected the Plaintiffs to submit cogent evidence in proof of their assertion that the Defendants were in possession of their properties as claimed. That instead, the Plaintiffs had chosen to only rely on certified copies of the registers in respect of the suit properties and an outdated map which showed the status as had been in the year 1970. That further, both the County Land Registrar and the District Surveyor had admitted that they had not visited the ground to ascertain the position of the suit properties. Reliance was placed in the decided case of Mohammed Kahiya Osman v Abdi Farah; Sahara Hassan Dikir (Interested Party) [2021] eKLR.



144. Their submission was that none of the Plaintiffs and their witnesses had led compelling evidence on the veracity of their titles and the use and occupation of the suit properties. That the Plaintiffs had not led any evidence impugning the Defendants' title to L.R No. 8839/61. Their evidence had been that they were not aware that Joshua Chepkwony Buses held a title pertaining to the same. Their argument was that the suit properties had been a subject of a restriction to the effect that Kericho-Sotik road passed through them, which restriction had never been lifted.
145. The Defendants thus submitted that the Plaintiffs had totally failed to discharge the burden of proving their allegations of absolute ownership and trespass contrary to the provisions of Section 107 of the *Evidence Act*.
146. Reliance was hinged in the decided case of Cecilio Murango Mwenda & 6 others v Isaac Kimathi Ikunga [2019] eKLR to submit that in so far as no evidence had been led to ascertain the actual position of the Plaintiffs' purported titles on the ground vis-à-vis the Defendant's, no claim of trespass could be sustained by the Plaintiffs especially in light of the fact that their purported titles were subject of a restriction, the extent of which had not even been defined.
147. They thus prayed that the Plaintiffs' consolidated claims be dismissed with costs.

Determination.

148. I have considered the parties case as pleaded and the evidence as adduced in support of their respective case proof thereof, the submissions by Counsel for the parties, the law and the authorities cited.
149. It is to be noted that pursuant to a Ruling dated 27th March 2015, ELC No 51 of 2013 in which the 1st and 2nd Plaintiffs had instituted suit against the 1st to 20th Defendants vide a Plaint dated 1st August 2013 and ELC No. 9 of 2011 wherein the Plaintiff had sued the 21st to 24th Defendants were consolidated.
150. The main subject matter in both the suit was that the Plaintiffs therein lay claim of ownership to parcels of land registered as LR No Kericho/Chemoiben/ 20 and 24. That the Defendants herein were trespassers into the said parcels of land who ought to be ordered to vacate therefrom or be evicted and thereafter an order of permanent injunction be issued against them restraining them from dealing in any manner whatsoever with the said parcels of land against the wishes/interest of the registered owners/legal representative. The Plaintiffs also sought from the Defendants, Mesne profit for trespass, illegal occupation and unjust enrichments.
151. The Defendants' joint defence in response was that the parcels of land No. Kericho/Chemoiben/20 and 24 claimed by the Plaintiff did not exist. That they were in the occupation of L.R No. 8839/61 (Grant No. I.R 4758) situate in Litein Trading Centre which land was registered to Joshua Chepkwony Buses (Deceased) in the year 1991 but who had been in occupation of the same from the year 1988. That they were in occupation and possession of the said suit land by virtue of them being his children and tenants respectively. That the title in respect to parcels of land L.R No. Kericho/Chemoiben/20 and 24 had been extinguished in or about the year 1973 when the Government had acquired the same for purposes of construction of Kericho-Sotik road wherein the registered proprietors had duly been compensated. That further, the Plaintiffs' claim was statue barred having been extinguished by effluxion of time. They had sought for the dismissal of the Plaintiffs' case.
152. The 1st Plaintiffs case was that land parcel No Kericho/Chemoiben/20 once belonged to her father Kipsigei Arap Chelule but was currently registered in her name wherein a title had been issued in the year 2012. Her complaint was that one Joshua Chepkwony Arap Buses had authorized the 1st to 20th Defendants to trespass on her land in the year 1972 immediately after the construction of the Kericho



- Sotik Highway, wherein the trespassers had constructed temporary Kiosks and had refused to vacate on a claim that they were Arap Buses' tenants.
153. She had confirmed that the suit land touched the Kericho/Sotik highway and that part of the land had been acquired in the year 1972 for purposes of constructing the said road. She denied knowledge of allocation of part of the land as title No.8839/61 also known as grant no. LR/4758 to Joshua Chepkwony Arap Buses on 1st January, 1991 for a term of 99 years after the compulsory acquisition stating that the two parcels of land were different.
 154. The 2nd Plaintiff's case on the other hand had been that land parcel No. Kericho/Chemoiben/24 belonged to his father Kipkoech Nyige who had owned it jointly with Kipbomet Munai, Kiplangat Kogetke and Dickson Kirui. That by virtue of the Limited Grant of Letters of Administration issued to him 12th July 2013, he had sued the 1st to 20th Defendants for illegally occupying his late father's land in the year 2012 claiming that they were one Joshua Chepkwony Arap Buses' tenants.
 155. He confirmed that the land bordered the Kericho-Sotik Highway, although he did not know if part of the same had been acquired for purposes of constructing the said road although the green card at entry No.2 showed that there had been placed a restriction on the land.
 156. His evidence was supported by his 88 year old step sister who testified as PW7 and who had recalled that Kericho/Chemoiben/24 belonged to their father Kipkoech Nyige jointly with other parties namely Kipkoech Nyige, Kiplangat Kogetke, Dickson Koketge and Kibomet Kirui but had stated that the road did not pass through the land.
 157. She confirmed that there were houses that had been constructed on the land between the years 1944 to 1945 immediately after her father had gone to look for money. That whereas she had never counted the said houses, they were permanent houses built with stones and iron sheets and that they had belonged to the four old men. That she had heard that Lydia Buses had grabbed the land in the year 1954. That nevertheless, she had delayed in filing the case because she had believed that whereas the land belonged to the 4 old men, the houses had belonged to her brothers.
 158. The 3rd Plaintiff's case on the other hand was that land parcel No. Kericho/Chemoiben/24 was registered to his father Kiplangat Kogetke (Deceased), jointly with Kiplangat Kogetke, Dickson Kirui, Kipkoech Nyige and Kibomet Munai who were also all deceased.
 159. He confirmed that although the old men had not been issued with a title deed, yet their land bordered the Defendants' land parcel No. Kericho/Chemoiben/26 and that the two parcels of land were separated by parcel No. Kericho/Chemoiben/25. That around the year 1995, the Defendants had illegally trespassed on his father's land. That they had then tried to resolve the matter out of court first through the Chief's office and the District Officer's Office in vain.
 160. That he did not know if land parcel No. Kericho/Chemoiben/24 had been compulsorily acquired for the construction of Kericho-Sotik road in the year 1972 which road neither passed near the said land nor touched on it but passed about 10 meters from the land. He however, could not tell, from the map, where the road passed. His assertion had been that the houses on parcel No. Kericho/Chemoiben/24, had been illegally built there by Joshua Buses.
 161. The Plaintiffs' case had been supported by the evidence of PW3 a village elder to the effect that the Defendants had trespassed on land parcels No. Kericho/Chemoiben/20 belonging to the 1st Plaintiff and No. Kericho/Chemoiben/24 belonging to Dickson Kirui. He had also confirmed that Kericho-Sotik road passed besides the suit properties having been curved out of the suit properties in the year 1972 thus affecting the parcels of land in the area including parcel No. Kericho/Chemoiben/26.



162. Peter Kipkoech Maritim who testified as PW4 also supported PW3's evidence in as far as the ownership of the land and the hiving off of the land to create the Kericho-Sotik road was concerned although he was not sure when the same had been built. His evidence had been that after demolitions of structures to pave way for the road had been completed, some people had trespassed onto the suit land whereby they had constructed temporary structures in the year 1970 or thereabout, one of them had been Joshua Buses who had constructed a semi-permanent house on the suit property and later permanent house in the year 2012.
163. PW5, County Land Registrar confirmed that the current registered owner to parcel No. Kericho/Chemoiben/20, was Cecilia Chepkurui Koskei, the 1st Plaintiff whose registration had been effected on 8th May, 2012 as entry No. 2 and 3 after a Succession Cause, the land having initially been registered in the name of Kipketer Chelule.
164. That land parcel No. Kericho/Chemoiben/24 was currently registered in the name of Basaline Kiprono Mutai for the estate of Dickson Kirui one of the initial registered proprietors. That there had previously been 4 joint registered properties being Dickson Kirui, Kipkoech Nyige, Kiplangat Kogetge and Kibomet Munai. That although there had been a restriction placed on the suit land where part of the Sotik main road was to pass, the land had been transferred and registered to Baseline on 14th September 2017 during the subsistence of the restriction which was not lawful.
165. Her testimony had been that vide a Grant No. IR No. 4758, the property had been granted to one Joshua Chepkwony Buses for 99 years from 1st January, 1991 as supported by a Deed plan No. 15663 thereby assuming that the property's dimensions had been registered. That she was not a custodian of Registered Titles Act (RTA) titles and that the said Grant had not been converted to the Registered Land Act Cap 300 (repealed).
166. The evidence of PW6 the District Surveyor, Bureti who also testified as PW9 was to the effect that Kericho/Chemoiben sheet No. 6 had been published by the Survey of Kenya in August, 1970 and therefore showed the situation as it had been in the year 1970. That the map was a 132nd edition for which he could not tell when the same had been amended since they did not have the amendment dialogue box. That an amendment to the RIM could not be done without mutation being raised and thereafter the consent of the Land Control Board sought.
167. He however confirmed that whereas land parcel Nos. Kericho/Chemoiben/ 20 and 24 had existed on the map, he had not visited the ground to confirm their status hence he was not aware if they existed on the ground or whether or when Kericho-Sotik Highway had been constructed. That whereas several roads had been indicated on the map, the Kericho-Sotik road had not been indicated against the suit lands therefore he was not aware if the said road touched on the same or not. He had also confirmed that whereas there had been a restriction placed on land parcels No Kericho/Chemoiben/24 the same had not been specified. That there had been no restriction on land parcel No. Kericho/Chemoiben/20.
168. The Defendants' case, which was prosecuted by the 23rd Defendant one Reuben Kipng'eno Arap Chepkwony, was to the effect that the 21st, 22nd and 24th Defendants were his siblings. That whereas he acknowledged that land parcels No. Kericho/Chemoiben/20 and 24 had belonged to the Plaintiffs, land parcel No. Kericho/Chemoiben/26 had belonged to his late father Joshua Arap Buses jointly with Elijah Misoi, Kiptoo Maina and Timothy Bii (now deceased).
169. That the title to the said parcels of land was not in existence after the Government had taken over the parcels of land in the year 1969 and marked them as restricted government land for the construction of the Sotik-Kericho Tarmac Road. That the proprietors of the parcels of land had been compensated



in the year 1969 and asked to vacate wherein their houses had been demolished. That the construction of Kericho-Sotik road had then begun in the year 1970 and completed in the 1974.

170. That after the completion of the road, there had remained a piece of land which then became a dumping site for which his father Joshua Buses had sought for allocation of the same vide a letter dated 1st August, 1988. His application had been approved and after complying with the allotment conditions, he had been issued with a Certificate of lease to LR 8839/61 for 99 years with effect from the 1st January, 1991 for land measuring approximately 0.0575 hectares, by the Commissioner of Land. That the area was marked after which his father had taken possession of the said land in the year 1991 wherein he had started building permanent buildings, including shops and flats in the year 1992. That currently, there were different types of tenants on the land including the 20th and 21st Defendants, shops and timber workshops. He confirmed that their father's tenants had been sued in ELC Case No. 51 of 2013.
171. That in the year 2011 when the suit was filed, they had not taken out a Grant of Letters of Administration.
172. DW 2 had confirmed to having been an ex tenant to the deceased Mr. Joshua Buses who had taken occupation and possession of the land in the year 1990 and had allowed his tenants to build temporal the structures therein while he himself had had been busy with the construction of a story building which he had started in the year 1992.
173. DW3, Edmond Korir Siele, a valuer for Kericho County Government also confirmed that although he had no documents in court, yet according to their records, land parcel No. 8839/61 was registered under Joshua Buses with an annual payment of 2,600/= which had been paid to date with an excess of Ksh 900/=.
174. After summarizing the evidence adduced in court, the issues that I find herein arising are as follows:
- i. Whether the Plaintiffs have proved their case on the required standard of a balance of probabilities.
 - ii. Whether the Plaintiff's suit is time barred.
175. The provision of section 24(a) and 25(1) of the [Land Registration Act](#) No. 3 of 2012 outlines the interests and rights of a registered proprietor as follows;
176. Section 24 of the [Land Registration Act](#) provides as follows
- Subject to this Act—
- the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and
177. Section 25 of the [Land Registration Act](#) provides as follows
- The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject—
178. It will be seen from the above provisions that by virtue of being registered owner of the suit land a person is with vested rights and privileges therein and which no person should interfere with it.



179. Having found as about, have the Plaintiffs in this case proved that they are the proprietors of the suit parcels of land being Kericho/Chemoiben/20 and Kericho/Chemoiben/24 in Litein town and therefore deserving the protection of the law. In so stating it must be remembered as was held by the Court of Appeal in the case of Munyu Maina vs. Hiram Gathiha Maina [2013] eKLR, that it is not sufficient to dangle the instrument of title as proof of ownership but the registered proprietor must go beyond the instrument and prove the legality of how (s)he acquired the title more so if the said title has been impugned.
180. In the case before me, the Plaintiffs herein have sought that being the proprietors of the suit parcels of land No. Kericho/Chemoiben/20 and Kericho/Chemoiben/24 in Litein town, the Defendants who have trespassed on the same and remained in occupation, should vacate therefrom or eviction orders to ensue. In so seeking, the 1st Plaintiff has adduced evidence that land parcel No. Kericho/Chemoiben/20 belonged to one Kipsigei Arap Chelule the deceased father to the 1st Plaintiff but which land was currently registered in her name. On the other hand the 2nd and 3rd Plaintiffs' evidence was that land parcel No. Kericho/Chemoiben/24 was jointly registered to their deceased fathers Kipkoech Nyige and Kiplagat Kogetke and two others respectively but was currently registered in the name of Basaline Kiprono Mutai for the estate of Dickson Kirui one of the initial registered proprietors. As proof of ownership the 1st Plaintiff produced a title deed to No. Kericho/Chemoiben/20 as Pf exh 1. No title deed had been produced for No. Kericho/Chemoiben/24.
181. However the evidence of the Land Registrar, the custodian of all records in Kericho County and who testified as PW5 thereby producing the green cards for both Kericho/Chemoiben/20 and 24 as Pf exh 3 and 4 (sic) respectively was that there had been a restriction placed on Kericho/Chemoiben/20 on the 29th August 2007 as part of Sotik main road passed through the land wherein the acreage had now been reduced to 0.0035 hectares being less by 0.05 hectares. That although the land was now registered to the 1st Plaintiff on 8th May, 2012 vide entry No. 2 and 3 the same was not a regular transfer to a property which was a subject of restriction.
182. That in relation to LR Kericho/Chemoiben/24, there had been 4 joint registered properties being Dickson Kirui, Kipkoech Nyige, Kiplangat Kogetge and Kibomet Munai however there had also been a restriction on the sale placed on it on the 29th August 2007. That the subsequent registration of Baseline Kiprono Mutai for the estate of Dickson Kirui on the 14th September 2017 while the restriction was subsisting was also unlawful.
183. It is trite that the registration of land with a restriction in Kenya has several effects to wit that the land cannot be dealt with in a way that is inconsistent with the restriction. This means that the same cannot be transferred altogether until the restriction is lifted or modified so as to provide a safeguard to ensure that the interests protected by the restriction are not compromised.
184. Although the law is clear that restrictions are supposed to endure for a particular time or until the occurrence of an event, or the making of a further order and therefore should not remain in force indefinitely, however the removal and variation of restrictions may either be done by the Registrar at any time and on application by any person interested or at the Registrar's own motion, and after giving the parties affected by the restriction an opportunity of being heard, order the removal or variation of a restriction or upon the application of a proprietor affected by a restriction, and upon notice to the Registrar, the court may order the restriction to be removed, varied, or make other order as it deems fit. See Sections 76, 77 and 78 of the [Land Registration Act](#).



185. The law is very clear on the position of a holder of a title deed in respect of land. Indeed Section 26(1) of the [Land Registration Act](#) provides as follows:

“the Certificate of Title issued by the Registrar upon registration, to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of the proprietor shall not be subject to challenge, except –

- a. On the ground of fraud or misrepresentation to which the person is proved to be a party
- b. Where the Certificate of Title has been acquired illegally un-procedurally or through a corrupt scheme

186. It will be seen from the above, that title to land is protected, but the protection can be removed and title impeached, if it is procured through fraud or misrepresentation, to which the person is proved to be a party; or where it is procured illegally, un-procedurally, or through a corrupt scheme. In the present case, no evidence had been adduced that the said restrictions had been removed or varied in any of the above captioned ways before the suit parcels of land were subsequently transferred to either the 1st Plaintiff and to Baseline Kiprono Mutai respectively.

187. Secondly, it is not disputed that upon the completion of the Kericho-Sotik highway, which had affected several parcels of land including LR Kericho/Chemoiben/20, 24 and 26 herein, there had remained a piece of land for which the 21st, 22nd, 23rd and 24th Defendants’ deceased father one Joshua Buses had sought for and had been issued with a lease Certificate to LR 8839/61 for 99 years with effect from the 1st January, 1991 for land measuring approximately 0.0575 hectares by the Commissioner of Land.

188. The question then arises as to whether this was the same portion of land as that claimed by the Plaintiffs. The best evidence therefore ought to have come from the land surveyor who testified as PW6 and later recalled as PW 9. His evidence however was based on a Kericho/Chemoiben sheet No. 6 which had been published by the Survey of Kenya in August, 1970 and therefore showed the situation as it had been in the year 1970. Secondly he had confirmed that he had not visited parcels of land to confirm their status hence he was not aware if they existed on the ground or whether or when Kericho-Sotik Highway had been constructed and further if said road touched on the suit lands. His evidence therefore left a glaring gap in the Plaintiff’s claim and was of no assistance at all. I therefore concur with the Defence that in so far as no evidence had been led to ascertain the actual position of the Plaintiffs’ purported titles on the ground vis-à-vis the Defendant’s, no claim of trespass could be sustained by the Plaintiffs especially in light of the fact that their purported titles were subject of a restriction, the extent of which had not even been defined.

189. The Court of Appeal sitting in Nyeri in Jennifer Nyambura Kamau v Humphrey Mbaka Nandi [2013] eKLR, had observed as follows:

“...We have considered the rival submissions on this point and state that section 107 and 109 of the [Evidence Act](#) places the evidential burden upon the appellant to prove that the signature on these forms belong to the Respondent. Section 107 of the [Evidence Act](#) provides that “whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.”



Section 109 stipulates that the burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence. If an expert witness was necessary, the evidential burden of proof was on the appellant to call the expert witness.”

190. In the present case, I find that the Plaintiffs did not discharge the burden placed on them as provided for by the law.

191. Lastly, the evidence of PW1 had been that the Defendants had trespassed upon her land No. LR Kericho/Chemoiben/20 in the year 1972 immediately after the construction of the Kericho Sotik Highway. There had also been unrebutted evidence that the deceased Joshua Chepkwony Buses having been issued with a lease for L.R No. 8839/61 (Grant No. I.R 4758) had taken possession and occupation of the same in the year 1991 wherein he had put up permanent buildings, including shops, timber workshops and flats hence renting out some spaces to different types of tenants including the 20th and 21st Defendants, the institution of the present suits, which suits were disguised as claims under the tort of trespass but which in the actual sense were seeking to recover land, ran afoul the provisions of Section 7 of the *Limitation of Actions Act* which provide as follows;

. “An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person

192. Section 7 of the *Limitation of Actions Act*, provides that an action to recover land may not be brought after the end of twelve years from the date on which the right accrued. This means that Plaintiffs could only sue to recover the suit land from the Defendants within twelve years after the cause of action.

193. I find that the Plaintiffs filed suits in disguise to recover the land from the Defendants vide Plaints dated 11th February, 2011 and 1st August 2013 herein amended on the 1st April, 2016 which suits were later consolidated. Quite clearly a period of more than 12 years had lapsed since the year 1972 or 1991 when the deceased Joshua Chepkwony Buses took possession and occupation of L.R No. 8839/61 (Grant No. I.R 4758) which has not been proved to form part of either LR Kericho/Chemoiben/20 or LR Kericho/Chemoiben/24.

194. The Court of Appeal in *Mukuru Munge vs. Florence Shingi Mwawana & 2 others* [2016] eKLR held that:

“The purpose of the law on limitation of actions is to avoid stale claims, based on the sensible and rationale appreciation that over time memories fade and evidence is lost. The law of limitation therefore seeks to compel claimants not to sleep on their rights and to bring their claims to court promptly. Secondly, the law on limitation of actions ensures that claims are instituted within reasonable time after the cause of action has arisen, so as to secure fair trial when all the evidence is available and to ensure that justice is not delayed. In our minds, those are important constitutional values and principles, which are underpinned by legislation on limitation of actions.”

195. The Plaintiffs needed to commence his claim within the time prescribed under Section 7 of the *Limitation of Actions Act*. It follows therefore that by the time they filed their respective suits, the claim was already statute barred.

196. In the case of *Bosire Ongero vs Royal Media Services* [2015] eKLR the court had held that the issue of limitation goes to the jurisdiction of the court to entertain claims and therefore if a matter is statute barred the court has no jurisdiction to entertain the same.



197. The locus classicus on jurisdiction is the celebrated case of Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] KLR 1 where Justice Nyarangi of the Court of Appeal had held as follows;

‘I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.’

198. Clearly, I find that not only have the Plaintiffs failed to prove their case on the required standard of balance of probabilities, but this Court also lacks jurisdiction and the matter is at its end. I will have to down my tools and take no further step. Plaintiffs’ suits are herein dismissed with costs.

It is so ordered.

**DATED AND DELIVERED VIA MICROSOFT TEAMS AT NAIVASHA THIS 6TH DAY OF
FEBRUARY 2025**

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE

