



**Choge v Keter & 3 others (Environment and Land Case  
138 of 2014) [2025] KEELC 4866 (KLR) (1 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 4866 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT AND LAND CASE 138 OF 2014**

**EM WASHE, J**

**JULY 1, 2025**

**BETWEEN**

**NELSON KIPYEGO CHOGE ..... PLAINTIFF**

**AND**

**JAMES TUWEI KETER ..... 1<sup>ST</sup> DEFENDANT**

**PHILIP KIPKEMBOI KETER ..... 2<sup>ND</sup> DEFENDANT**

**ESTHER RUGUT ..... 3<sup>RD</sup> DEFENDANT**

**ERNEST KIBET (KAMILI) ..... 4<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. The Plaintiff herein filed a Plaint dated 02.05.2014 against the 1<sup>st</sup> to 3<sup>rd</sup> Defendants (hereinafter referred to as “the Defendants”) seeking for the following Orders; -
  - a. A declaration that the Plaintiff is the legal and rightful owner of all the piece of land known as Plateau/Kipkabus Block 4(Lelmokwo)
  - b. A permanent injunction to restrain the Defendants both jointly and severally and or their agents and or their servants from interfering and/or dealing in any way with the Plaintiff’s piece of land known as Plateau/Kipkabus Block 4(Lelmokwo)
  - c. An Order to all the Defendants both jointly and severally to vacate and or be evicted from the Plaintiff’s parcel of land number Plateau/Kipkabus Block 4(Lelmokwo)
  - d. Mesne profit from the year 2005 to date.
  - e. Costs and interest on this suit.
  - f. Any other relief this Honourable Court deems fit and just to grant.



2. The facts in support of the above prayers contained in the Plaint dated 02.05.2014 were as follows; -
  - i. The Plaintiff was and is the registered owner of the property known as LR.No.Plateau/ Kipkabus Block 4(Lelmokwo)/26 measuring approximately 9.71 Hectares (hereinafter referred to as “the suit property”).
  - ii. The Defendants fully being aware of the Plaintiff’s ownership over the suit property trespassed into the same and began cutting down trees, grazing cattle, cultivating and/or constructing semi-permanent structures.
  - iii. The Plaintiff pleaded that there was no Agreement and/or consent granted to the Defendants to enter and/or occupy the suit property which is for his exclusive use and occupation.
  - iv. Despite the Plaintiff demanding vacant possession of the suit property from the Defendants, the same has not been complied with.
  - v. The Plaintiff therefore has no other option but to seek for an eviction Order against the Defendants as well as a Permanent Injunction prohibiting them from re-entering and/or further trespassing to the suit property.
3. The Plaint dated 02.05.2014 was duly served on the Defendants who opposed the same by filing a Statement of Defence and Counter-claim dated 22.04.2015.
4. The Defendants Defence against the Plaint dated 02.05.2015 was premised on the following facts; -
  - i. The Defendants admitted that indeed the suit property had been registered in the name of the Plaintiff.
  - ii. However, the Defendants pleaded that there were various cautions and restrictions that had been recorded against its register by virtue of directions from the Chief Land Registrar.
  - iii. The Defendants further pleaded that the suit property was ancestral and/or family property and the same could be sold without the consent of all the beneficiaries therein.
  - iv. The Defendants stated that if any sale occurred in favour of the Plaintiff, then it was unlawful as the required consents either from the parties and/or government departments which were never obtained.
  - v. In essence, the Defendants challenged the registration of the Plaintiff as the lawful owner and pleaded that there was no lawful and/or legal ownership that was passed to the Plaintiff.
5. The Defendants in their Counter-Claim sought the following Orders against the Plaintiff herein
  - a. They are the lawful owners are entitled to the suit land as their ancestral/family and lawful property/land.
  - b. The registration and alleged ownership dealings by the Plaintiff over the suit land is irregular, fraudulent and ought to be cancelled forthwith.
  - c. Costs of the suit.
6. The Facts in support of the prayers in the Counter-Claim can be summarized as follows; -
  - i. The suit property was ancestral and/or family land and therefore, the Defendants had a right of occupation, use and entitlement on the same.



- ii. The Defendants pleaded that the process and/or procedure used by the Plaintiff to have the same registered in his name was unlawful, fraudulent, illegal and unprocedural hence incapable of passing any legitimate and lawful ownership of the suit property.
7. The Defence and Counter-Claim dated 22.05.2015 was duly served on the Plaintiff who responded by filing a Reply to Defence and Defence to Counter-Claim dated 24.05.2016.
8. In the Reply to Defence dated 24.05.2016, the Plaintiff reiterated the following facts;-
  - i. The Plaintiff was and is still the lawful registered owner of the suit property.
  - ii. The Plaintiff denied the allegation that the suit property had various cautions and/or restrictions recorded in its register and if any had been recorded, then the same were duly vacated through the proceedings known as Eldoret HIGH COURT E&L No. 973 of 2012.
  - iii. The Plaintiff pleaded that the suit property has never been a family property and that he acquired the title lawful after obtaining all the required consents and compliance with procedure.
  - iv. The Plaintiff stated that the Defendants did not give any particulars of the alleged fraud and/or illegalities of the procedure that was used to register the existing title.
  - v. According to the Plaintiff, the suit property was transferred to him through transmission and the Defendants did not object to the said process during the succession proceedings.
  - vi. In essence, the Plaintiff sought the Defendants Defence to be dismissed with costs.
9. As regards the Counter-Claim dated 22.04.2015, the Plaintiff filed a Defence to the Counter-Claim dated 24.05.2016 to which he pleaded as follows;-
  - i. The Plaintiff denied the facts pleaded in the Counter-claim dated 22.04.2015 in toto.
  - ii. The Plaintiff stated that the suit property has never been a family property and the Defendants were not related to him at all.
  - iii. The Plaintiff pleaded that the title to the suit property was procured lawful and in compliance with all the procedures therein and therefore the allegations of fraud, illegality and misrepresentation were baseless.
  - iv. The Plaintiff reiterated that the suit property was registered in his name by virtue of a transmission ordered by a Court of competent jurisdiction.
  - v. The Plaintiff therefore sought for the Counter-Claim to be dismissed with costs.
10. The Reply to Defence and Defence to Counter-Claim dated 24.05.2016 was duly served on the Defendants and pleadings closed thereafter.

### **Plaintiff's Case**

11. The Plaintiff evidence was taken on 27.02.2025 with the testimony of the first witness being Nelson Kipyego Chogo who was marked as PW 1.
12. PW 1 informed the Court that he was the Plaintiff in the matter.
13. PW 1 stated that he had prepared two witness statements dated 02.05.2014 and 26.02.2015 of which he sought to adopt as his evidence in chief.



14. In support of his evidence in chief, PW 1 produced the following documents thereof; -
  - PW 1 Exhibit1- A copy of the Demand Letter dated 24.02.2014.
  - PW 1 Exhibit2- A Copy of the Certificate of Confirmation of Grant in the Estate of Paul Malakwen Choge in the proceedings known as Eldoret Succession Cause No.48 of 2003 issued on the 16.02.2004.
  - PW 1 Exhibit3- Copy of the title deed of the suit property issued on the 04.02.2005.
  - PW 1 Exhibit4- A certified Copy of the Green Card of the property known as LR.No.Plateau/Kipkabus Block 4(Lelmokwo)/9.
  - PW 1 Exhibit5- A certified copy of the Green Card of Plateau/Kipkabus Block 4(Lelmokwo)/2.
  - PW 1 Exhibit6- A copy of an official Search of LR.No.Plateau/Kipkabus Block 4(Lelmokwo)/ 24 dated 22.02.2024.
  - PW 1 Exhibit7- A copy of an official search of LR.No.Plateau/Kipkabus Block 4(Lelmokwo)/13.
  - PW 1 Exhibit8- A Copy of an official search of LR.No. Plateau/Kipkabus Block 4 Lelmokwo)/ 4.
  - PW 1 Exhibit9- A copy of a Decree issued on the 02.03.2022 in the proceedings known as Eldoret ELC No. 973 of 2012.
  - PW 1 Exhibit10- Copy of a Grant of Letters of Administration for the Estate of Paul Malakwen Choge issued on the 05.06.2003.
  - PW 1 Exhibit11- Copy of a Judgement pronounced on the 15.04.2016 in the proceedings known as Eldoret ELC No.973 of 2012.
  - PW 1 Exhibit12- A copy of the Mutation and/or Registered Index Map of Block 4 (Lelmokwo).
15. In a nutshell, PW 1 informed the Court that the Defendants had trespassed into the suit property which was registered in his name in the year 2005.
16. PW 1 averred that upon the Defendants trespassing into his property, he tried to request them to leave but they refused, failed and/or neglected to do so.
17. PW 1 testified that the Defendants occupation on the suit property is through construction of semi-permanent houses, grazing, cultivating and cutting trees.
18. Consequently, PW 1 sought this Court to issue an eviction Order against the Defendants from the suit property and further prohibit their re-entry, use and occupation of the suit property.
19. As regards the Defence and Counter-Claim filed, PW 1 denied that the suit property was ancestral and/or family land.
20. According to PW 1, the suit property was registered in his name through a transmission emanating from the succession proceedings of one Paul Malakwen Choge.
21. On cross-examination, PW 1 reiterated that he was the lawful and registered owner of the suit property.
22. PW 1 confirmed that he acquired the suit property after succession from his deceased father Paul Malakwen Choge.
23. PW 1 averred that the suit property was a sub-division of the original property known as LR.No. Kipkabus Block 4 (Lelmokwo)/5798.



24. PW 1 stated that the original property had been purchased by about 9 people and the Defendants were beneficiaries of these members.
25. PW 1 informed the Court that he was not aware of the manner and criteria the 9 people had used to sub-divide the original property.
26. PW 1 averred that according to his knowledge, the original title must have been cancelled and its register closed upon sub-division.
27. PW 1 testified that he was about 30 years by the year 2000 and he was mostly in Eldoret town working.
28. PW 1 stated that he could not confirm if any Surrender Document of the Original property was ever done and who signed the same.
29. PW 1 denied any knowledge of any restrictions that had been recorded to prohibit any sub-division of the original title by some of the 9 original owners.
30. On being referred to PW 1 Exhibit11, PW 1 admitted that his name was in this suit and that he had participated in the said proceedings.
31. PW 1 informed the Court that his participation was to ensure the Restrictions which were on record had been removed.
32. PW 1 confirmed to the Court that he was challenging the manner in which the Restrictions had been registered on the suit property.
33. PW 1 pointed out that in the Judgement, the property in dispute was Plot. No.24.
34. PW 1 averred that the title to the suit property was issued in the year 2005.
35. Referring to PW 1 Exhibit11, PW 1 stated that the suit was filed in the year 2012.
36. In this suit, PW 1 did not disclose that he had only inherited Plot. No. 26.
37. On being referred to PW 1 Exhibit9, PW 1 confirmed that the Restrictions were on Plots 22,23,24,25,27,28,29 and 30.
38. PW 1 admitted that Plot. No.26 was not in the list.
39. PW 1 nevertheless reiterated that he was the owner of Plot. No.26.
40. PW 1 concluded his cross-examination by stating that he was not aware of any forged documents.
41. On re-examination, PW 1 stated that during succession, Plot No. 9 did not have any restrictions.
42. PW 1 further informed the Court that his father died in the year 2002 and the Succession was filed in the year 2003.
43. On being referred to PW 1 Exhibit11, PW 1 clarified that the case was to remove the Restrictions that had been indicated in the new titles issued.
44. At the end of this re-examination, PW 1 was discharged and the Plaintiff closed his case.

#### **Defence Case**

45. The Defence case proceeded on the 24.03.2025 with the testimony of Phillip Kipkemboi Keterwho was marked as DW 1.



46. DW 1 introduced himself as the 1<sup>st</sup> Defendant herein and who was testifying on behalf of the other two Defendants as well.
47. DW 1 informed the Court that he had prepared and signed two witness statements dated 08.03.2022 and 03.03.2025 of which he adopted both as his evidence in chief.
48. DW 1 also produced the following documents in support of his evidence in chief:-
  - DW 1 Exhibit1- A copy of Authority to Depone on behalf of the other Defendants dated 24.02.2025.
  - DW 1 Exhibit2- A copy of an order in Eldoret HCCC No.235 of 1998.
  - DW 1 Exhibit3- A copy of a letter dated 15.11.1999 from the firm of Berich & Co. Advocates to the Land Registrar, Eldoret.
  - DW 1 Exhibit4- A copy of a letter dated 06.12.1999 from Berich & Co. Advocates to the Land Control Board Eldoret.
  - DW 1 Exhibit5- A copy of a letter dated 15.07.2009 from Limo R.K & Co. Advocates to the Chief Land Registrar.
  - DW 1 Exhibit6- Copy of a Charge Sheet in Eldoret Criminal Case No.766 of 2001.
  - DW 1 Exhibit7- A copy of a letter dated 07.12.2004 from the Chief Land Registrar to the District Land Registrar, Uasin Gishu.
  - DW 1 Exhibit8- Copies of Death Certificates of David Kibet Samoei and Kipkosgei Moita.
  - DW 1 Exhibit9- Consent to Transfer dated 25.02.2000 relating to LR.No. 5798 Lelmokwo FARM.
  - DW 1 Exhibit10- A copy of a Lease dated 01.05.1963 over the property known as LR.No. 5798 in the names of the 9 members.
  - DW 1 Exhibit11- A copy of the Land Registrar's Report dated 16.07.2009.
49. In summary, DW 1 denied the allegation that the Defendants had trespassed into the Plaintiff's property.
50. DW 1 informed the Court that the portion they are in occupation is in the property known as LR.No.5798.
51. DW 1 insisted that the portion within which they are in occupation is where they were born and brought up by their parents.
52. DW 1 denied ever planting any trees, cultivating and/or constructing on the Plaintiff's property.
53. In essence, DW 1 sought for the Plaintiff to be dismissed with costs.
54. DW 1 further sought that if any sub-division of the original LR.No.5798 was done, then it should be cancelled and a fresh sub-division done.
55. DW 1 insisted that although there was a sub-division that was done, some of the original 9 members did not approve of it.
56. On cross-examination, DW 1 reiterated that the original members were 9 in number.
57. However, all the original 9 members are now all deceased.
58. On referring to DW 1 Exhibit2, DW 1 informed the Court that the 3<sup>rd</sup> and 4<sup>th</sup> Plaintiffs therein were still alive.



59. However, according to DW 1, the 3<sup>rd</sup> and 4<sup>th</sup> Plaintiffs were not among the original 9 members.
60. DW 1 confirmed that the 4<sup>th</sup> Defendant was his late father but as a family they are yet to file any succession proceedings.
61. DW 1 informed the Court that he did not give the Judgement of the proceedings.
62. On being referred to DW 1 Exhibit6, DW 1 did not also have the Judgement of that proceeding.
63. On being referred to DW 1 Exhibit8 (a &b), DW 1 stated that at the time the Surrender of the Original Title was being done, two of the original members had since died.
64. DW 1 could not confirm if the two deceased original members had appointed administrators to their estate.
65. DW 1 could not also tell if the family of David Kibet Samoei who was one of the original members had taken their title and even done succession.
66. On being referred to PW 1 Exhibit8, DW 1 denied knowledge of the owner.
67. On being referred to PW 1 Exhibit7, DW 1 stated the owner was one Kipkosgei Arap Moita.
68. On being referred to PW 1 Exhibit8 (B)- DW 1 confirmed that it was the same person that had collected the title deed.
69. DW 1 denied any knowledge that the original property known as LR.No. 5798 was ever sub-divided.
70. DW 1 confirmed to the Court that he did not know the number of sub-divisions that was assigned to his father.
71. Similarly, DW 1 could not identify the sub-division within which he is in occupation.
72. According to DW 1, all the original 9 members do not have any individual title deeds for their portions.
73. In other words, DW 1 denied being a trespasser on the Plaintiff's suit property.
74. DW 1 informed the Court that there was a time the area District officer and Government Surveyors visited the original property but the Defendants were not there.
75. Based on this visit, the suit property was sub-divided and the Defendants father was entitled to Plot.97.
76. DW 1 insisted that the father's portion of land as shown was 145 acres and not 97 acres.
77. However, DW 1 did not know the boundary of the original property known as LR.No.5798.
78. On re-examination, DW 1 reiterated that none of the Defendants had trespassed into the suit property.
79. At the end of this re-examination, DW 1 was discharged from the witness box and the Defence closed its case.
80. After the Defence case, the parties were directed to prepare, file and exchange their final submissions.
81. The Plaintiff duly filed his submissions dated 14.05.2025 while the Defendants filed their submissions dated 07.04.2025.
82. The Court has indeed perused the pleadings, considered the testimonies of the parties and documentary evidence adduced before it and identifies the following issues for determination.

Issue No. 1- Is The Plaintiff The Lawful Registered Owner Of The Suit Property?



Issue No. 2- Are The Defendants In Occupation Of The Plaintiff's Suit Property?

Issue No. 3- Are The Defendants In Trespass Of The Plaintiff's Suit Property?

Issue No. 4- Is The Plaintiff Entitled To The Orders Sought In The Plaintiff?

Issue No. 5- Is The Defendants Counter-claim Dated 22.04.2025 Merited?

Issue No. 6- Who Bears The Costs Of The Plaintiff And/or Counter-claim?

83. The Court having identified the above-mentioned issues for determination, the same will now be discussed herein below.

**Issue No. 1- Is The Plaintiff The Lawful Registered Owner Of The Suit Property?**

84. The first issue for determination is whether or not the Plaintiff is the lawful and legitimate owner of the suit property.

85. According to the Plaintiff, the Plaintiff was registered as the owner of the suit property in the year 2005.

86. To prove the above fact, the Plaintiff produced his Title Deed to the suit property issued on the 04.02.2005 as PW 1 Exhibit3.

87. The Plaintiff further informed the Court that the suit property was vested to him through the Succession proceedings of his deceased father known as Paul Malakwen Choge.

88. The Plaintiff once again produced the Certificate of Confirmation of Grant emanating from the Estate of the late Paul Malakwen Choge in the proceedings known as Eldoret Succession Cause No. 48 of 2003 as PW 1 Exhibit2.

89. The Plaintiff's father known as Paul Malakwen Choge was originally registered as the owner of the property known as LR.No.Plateau/Kipkabus Block 4(Lelmokwo)/9 on 29.03.2000 and the title produced as PW 1 Exhibit4.

90. According to the entries on PW 1 Exhibit4, the property known as LR.No.Plateau/Kipkabus Block 4(Lelmokwo)/9 was sub-divided on the 24.09.2004 and new sub-divisions known as LR.No.Plateau/Kipkabus Block 4(Lelmokwo)/20-33 created.

91. It is upon the sub-division of the property known as LR.No.Plateau/Kipkabus Block 4(Lelmokwo)/9 that the sub-division known as LR.No.Plateau/Kipkabus Block 4 (Lelmokwo)/ 26 was then registered in the name of the Plaintiff.

92. The Defendants on the other hand pleaded that the suit property was fraudulently transferred and/or registered in the name of the Plaintiff herein.

93. According to their pleadings and their testimony, the portion of land they are in occupation was their ancestral and/or family home having been beneficiaries of one of the 9 members that acquired the original property known as LR.No.5798.

94. The Defendants further pleaded and testified that the original property known as LR.No.5798 had not been sub-divided and if it was, then such a sub-division was unprocedural and without participation of all the original 9 members of MALEL FARM.

95. The Defendants during the hearing admitted that they were not familiar with the boundaries of the various sub-divisions that were created out of the original property known as LR.No. 5798.



96. To resolve this issue, it is not contested by the Defendants that the suit property was registered in the name of the Plaintiff pursuant to the Certificate of Confirmation of the Grant in the Estate of the late Paul Malakwen Choge issued on the 16.02.2004.
97. The Registration of the suit property in the name of the Plaintiff was done on the 04.02.2005 and the appropriate title deed issued.
98. The Defendants raise two points in challenging the Plaintiff's registration over the suit property.
99. The first issue is that the portion of land within which the suit property is contained was and/or is their ancestral home.
100. The provisions of Section 107 of the Evidence Act, Cap 80 places the burden of proving such a fact on the Defendants.
101. The first exercise in proving the fact that it was their ancestral home would have been to provide documentary evidence through photographs and statements from other government officers and/or senior members of the community to prove that indeed the Defendants occupation started with their forefathers and has since been passed to the current occupants including the Defendants.
102. It is also crucial to point out that during the hearing of DW 1, it was his admission that he was a beneficiary of one of the original 9 members that had acquired the property known as LR.No.5798.
103. Consequently, it goes without saying that any proprietary rights amongst the original 9 members who owned the property known as LR.No.5798 could only have been recognized after the acquisition of the said property and none of the beneficiaries of the original 9 members can claim ancestral rights superseding the ownership rights of the beneficiaries of the other remaining 8 original members.
104. As such, the Defendants claim that the portion they occupy on the original property known as LR.No.5798 is their ancestral and/or family land is misguided and does not hold any legal basis.
105. The second issue raised by the Defendants as regards the Plaintiff's registration is that the process is flawed as the documents used were fraudulent, forged and not procured lawful.
106. Once again, the burden of proving these facts lies on the shoulders of the Defendants are provided under Section 107 of the Evidence Act, Cap 80.
107. The expectation of the Court was that the Defendants would have taken time to obtain the documents which were allegedly forged and/or registered fraudulently from the Government offices and/or any other entity and thereafter present them in Court with a view of proving that either they were forged and/or registered in a manner that was contrary to the law and procedure.
108. Unfortunately, the Defendants never presented any document that was either prepared by the Plaintiff and any other person that was either forged and/or registered in a manner contrary to law.
109. The Certificates of Confirmation of Grant in the proceedings known as Eldoret Succession Cause No. 48 of 2003 dated 16.02.2004 (produced as PW 1 Exhibit2) which vested the suit property to the Plaintiff was never challenged as fraudulent and/or forged by the Defendants.
110. In other words, this Court is of the considered opinion and finding that the Defendants did not prove the facts that the suit property forms part of their ancestral and/or family home and/or that the process used by the Plaintiff to be registered as the registered owner of the suit property was fraudulent.
111. As such, this Court hereby makes finding that the Plaintiff is the lawful registered owner of the suit property herein.



### **Issue No. 2- Are The Defendants In Occupation of The Plaintiff's Suit Property?**

112. The second issue for determination is whether or not the Defendants are in occupation of the suit property.
113. According to the Plaintiff, the Defendants trespassed into the suit property in the year 2005 and have been in occupation of the said portion of land through cultivating, grazing and/or constructing semi-permanent houses.
114. The Defendants in their Defence and Counter-Claim dated 22.04.2015 did not dispute the fact that they are in occupation of the suit property.
115. The Defendants Defence pleaded that their occupation on the suit property was based on the fact that it was ancestral and/or family land and that the sub-division and transfer of the suit property to the Plaintiff was fraudulent and unlawful.
116. In essence therefore, it is this Court's finding that the Defendants are in actual occupation and use of the suit property as pleaded by the Plaintiff in his Plaint date 02.05.2014.

### **Issue No. 3- Are The Defendants In Trespass of The Plaintiff's Suit Property?**

117. The third issue is whether the Defendants occupation on the suit property amounts to trespass or not.
118. Based on the finding that the Plaintiff is the lawful registered owner of the suit property as provided in Issue No.1, Section 24 and 25 of the *Land Registration Act*, No. 3 of 2012 gives exclusive ownership and occupational rights over the suit property to the Plaintiff.
119. Any occupation of the suit property by the Defendants as found under Issue No. 2 without the consent and/or authority of the Plaintiff amounts to trespass in law.
120. The Plaintiff in the Plaint dated 02.05.2014 denied granting the Defendants any permission and/or consent to enter, occupy and/or use the suit property.
121. The Defendants on the other hand have also not pleaded and/or provided any proof that they entered, occupy and/or use the suit property with the consent of the Plaintiff.
122. Clearly therefore, this Court hereby makes a finding that the Defendants entry, occupation and/or use of the suit property contrary to the ownership rights of the Plaintiff without his consent amounts to trespass.

### **Issue No. 4- Is The Plaintiff Entitled To The Orders Sought In The Plaint?**

123. The fourth issue is whether or not the Plaintiff is entitled to the prayers sought in the Plaint dated 02.05.2014.
124. Based on the determinations in Issue No. 1, 2 and 3, this Court makes a finding that the Plaintiff is entitled to Prayers No. 1, 2 and 3.
125. However, as regards to Prayer No. 4 which is seeking for Mesne Profits, the Plaintiff did not table any documentary evidence to quantify the amount of loss and/or use that he has suffered since the Defendants trespassed into the suit property.
126. Consequently, the Plaintiff's claim for Mesne Profits is disallowed in toto.



### **Issue No. 5- Is The Defendants Counter-claim Dated 22.04.2015 Merited?**

127. As regards the Counter-Claim by the Defendants, the same was premised on the issue of ancestral and/or family land and the allegations of fraud.
128. However, the Court having made findings that none of these allegations were proved by the Defendants, then their Counter-Claim automatically fails.
129. The Court therefore makes a finding that the Counter-Claim dated 22.04.2015 is not merited and is disallowed.

### **Issue No. 6- Who Bears The Costs of The Plaintiff And/or Counter-claim?**

130. The last issue is who bears the costs of the Plaintiff and the Counter-Claim.
131. Costs usually follow the event and, in this case, the Plaintiff was successful to prosecute the Plaintiff and is entitled to the Orders sought therein while the Counter-Claim was dismissed.
132. As such, the Defendant is condemned to pay the costs of the main suit and the Counter-Claim as well to the Plaintiff herein.

### **Conclusion**

133. In conclusion, this Court hereby makes the following Orders in determination of the Plaintiff dated 02.05.2014 and the Counter-Claim dated 22.04.2015; -
  - A. The Plaintiff dated 02.05.2014 be and is hereby allowed.
  - B. The plaintiff is declared the lawful and legitimate registered owner of the suit property known as Ir.No.Plateau/Kipkabus Block 4(Lelmokwo)
  - C. The 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> defendants be and are hereby ordered to vacate, remove their cultivations, developments, cattle and/or yield vacate possession of the property known as Ir.No.Plateau/Kipkabus Block 4(Lelmokwo)/26 to the plaintiff within 30 days from the date of this judgement.
  - D. In the event of non-compliance with order No. c hereinabove within 30 days from the date of this judgement, an order of eviction be and is hereby issued against the 1<sup>st</sup> to 3<sup>rd</sup> defendants in person, through their agents, servants, employees and/or any other persons deriving their occupation from the interests of the defendants herein directing their eviction thereafter from the property known as Ir.No.Plateau/Kipkabus Block 4(Lelmokwo)
  - E. A permanent injunction be and is hereby granted to the plaintiff prohibiting the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants either jointly and/or severally either through their agents, servants, employees and/or other persons deriving their occupation from the interests of the defendants from re-entering, occupying, using, grazing, cultivating, constructing and/or in any other way interfering with the use, occupation and/or ownership of the property known as Ir.No.Plateau/Kipkabus Block 4(Lelmokwo)/26 belonging to the plaintiff.
  - F. The counter-claim dated 22.04.2015 be and is hereby dismissed.
  - G. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants are jointly and severally condemned to pay the costs of the main suit and the counter-claim to the plaintiff herein.

**DATED, SIGNED & DELIVERED VIRTUALLY AT ELDORET ELC THIS 1<sup>ST</sup> DAY OF JULY 2025.**



**EMMANUEL.M. WASHE**

**JUDGE**

In The Presenceof:

Court Assistant: Brian

Plaintiff:Mr. Mengich holding brief Mr. Murgor

Defendants:Ms. Akinyi

