



**Belyon (Suing as the Administrator of the Estate of Kibelion Arap Ngetich) v Kimetto & another (Environment and Land Case Civil Suit E026 of 2021) [2024] KEELC 576 (KLR) (8 February 2024) (Judgment)**

Neutral citation: [2024] KEELC 576 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KERICHO  
ENVIRONMENT AND LAND CASE CIVIL SUIT E026 OF 2021  
MC OUNDO, J  
FEBRUARY 8, 2024**

**BETWEEN**

**RICHARD KIPRONO BELYON (SUING AS THE ADMINISTRATOR OF THE ESTATE OF KIBELION ARAP NGETICH) ..... PLAINTIFF**

**AND**

**DAVID KIPKOECH KIMETTO ..... 1<sup>ST</sup> DEFENDANT**

**ROSEMARY CHEPKEMOI KIMETTO ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. Vide a Plaint dated 8<sup>th</sup> June, 2021 the Plaintiff herein sought for the following orders;
  - i. Declaration that the deletion and/or cancellation of the name Kibelion A. Mnetich from the register of the suit land Kericho/Roret/4 (sic) which name was duly registered on 20<sup>th</sup> August, 1971 as entry No. 3, and the subsequent registration and/or inclusion of the name John Bore as entry No. 4 on 19<sup>th</sup> December, 1973 is irregular, unprocedural, illegal, null and void ab initio.
  - ii. The court be pleased to order and/or direct the Kericho County Land Registrar to cancel the now joint registration of the names of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and to accordingly restore the name of Kibelion A. Mnetich being entry No. 2 of the proprietorship section of the register of land parcel Kericho/Kabartegan/4 In the alternative to prayers (a) and (b)
  - iii. A declaration that the now joint registration of the suit land in the names of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants is to hold in trust for the Plaintiff 2.83 hectares thereof, which portion the Defendants shall cause to be excised out of land parcel Kericho/Kabartegan/4 and be accordingly registered and in default, the court be pleased to issue orders directing the Deputy Registrar of the court to execute mutation and the instruments of transfer whereof the same



shall be deemed sufficient to effect transfer of the subject portion of the suit land in favour of the estate of Kibelion Arap Ngetich.

- iv. Mense profit as prayed in paragraph 14 of the Plaint
  - v. Costs of the suit plus interests at the current court rates from the time of filing the suit until payment in full.
  - vi. Any other and/or further relief the court deem fit to grant.
2. In their statement of defence dated 23<sup>rd</sup> November 2021, the Defendants denied the allegations contained in the Plaint putting the Plaintiff to strict proof thereof wherein they stated that their registration as joint owners of the suit land was procedural, regular and lawful thus the title they held was legal and absolute.
  3. The Defendants further stated that they were not aware of the Roret land Dispute Tribunal proceedings and the subsequent adoption of the award therein as an order of the court in Kericho Chief Magistrate's Court Miscellaneous Application No. 108 of 2010 since they were not parties to the said proceedings.
  4. That in the alternative, the Plaintiff's suit was incompetent, bad in law, frivolous or vexatious, fatally defective and/or an abuse of the court process since there was no privity of contract between themselves and the Plaintiff. That the Plaintiff's claim against them was unfounded and baseless and should be dismissed.
  5. Upon the parties complying with the Provisions of Order 11 of the Civil Procedure Rules, the matter had proceeded for hearing on 30<sup>th</sup> October, 2022 wherein the Plaintiff herein, Richard Kiprono Arap Belyon testified as PW1 to the effect that he lived in Kuresoi and was a farmer. He adopted his Witness Statement dated 8<sup>th</sup> June 2021 as his evidence in chief and proceeded to testify that land parcel number Kericho/Kebartegan/4, the suit land herein, belonged to his deceased father Kibelion Arap Ngetich
  6. That he obtained Letters of Administration Ad litem dated 30<sup>th</sup> October, 2020 for purposes of filing the instant suit which Letters ad litem, he produced as Pf exh 1. He also produced a copy of his father's death certificate as Pf exh 2.
  7. When he was referred to a Green card he had listed as one of his document, he stated that whereas entry No. 2 of the said document indicated that the land had been registered in his father's name on the 20<sup>th</sup> August 1971, the said name had been crossed out. He produced a copy of said Green card as Pf exh 3 and proceeded to testify that after his father had learned that his name had been crossed out of the Green card and instead the name of John Bore, who was his cousin had been inserted therein, he had lodged a complaint at the dispute land Tribunal.
  8. His evidence was that the dispute had been heard at the Roret Land Tribunal wherein his father had been awarded 7 acres and it had been agreed that John Bore gets a share of four (4) acres of the land which measured 11 acres into total.
  9. That subsequently, the Tribunal's award was adopted as an order of the court in the Chief Magistrates Court Miscellaneous Application Number 108 of 2010. He produced the proceedings as Pf exh 4. That after the adoption they had proceeded to the District Surveyor to survey the suit land where the land had been sub-divided into two portions. One portion measuring 4 acres while the other portion measured 7 acres. He produced copies of mutation forms for the suit land as Pf exh 5.
  10. That it had been after they had left the Tribunal, his father had fainted and passed away on the 1<sup>st</sup> April, 2009. That subsequently they had held a clan meeting after which he had constructed on the suit land.



- That incidentally, John Bore had sold the entire portion of land to the Defendants and later he had been arrested by the police from Litein, who detained them up to mid-night and later released them without recording any statement.
11. Apparently the Defendants herein had sued his mother vide Kericho HCCC 81 of 2012 where they had obtained orders of injunction in October 2012. He produced a copy of the said court's order as Pf exh 6 and a copy of Proceedings at Roret Divisional Land Dispute Tribunal as Pf exh 7. He also produced signed transfer forms, with regards to their portion of 7 acres as Pf exh 8.
  12. That later his mother, Martha Chepkemoi Ngetich had passed away on 9<sup>th</sup> December, 2019 as evidenced by her death certificate herein produced as Pf Exh 9.
  13. His assertion was that despite 7 acres of the suit land having belonged to his father, the Defendants had registered the entire land measuring 11 acres in their names. He urged the court to have the title sub-divided so that both parties get their respective share of the suit land. That no appeal had been lodged challenging the award by the Tribunal and therefore the Defendants were only entitled to 4 acres which John Bore had sold to them.
  14. On being cross-examined, he reiterated that the suit land was his father's and when he was referred to Pf exh 3, he confirmed that his father had been registered to the same in the year 1971. Upon being referred to Pf exh 2, he also confirmed that his father had died on 1<sup>st</sup> April, 2009, that John Bore was registered to the suit land on 19<sup>th</sup> December 1973 while the Defendants were registered to the said land on 1<sup>st</sup> August, 1996. He denied having testified that before his father died, there had been no dispute over the suit land.
  15. When he was referred to the Pf Exh 7, he confirmed that the parties to the proceedings therein were Martha Ngetich and Mary Bore and that the Defendants were not party to the said Tribunal proceedings. That his father was not also a party to the proceedings. He clarified that it was his mother who had gone to the Tribunal after the death of his father.
  16. That they did not know how John Bore was registered in the Green card. That whilst it was true that John Bore gave money to his father, his father did not sell the suit land to John Bore. On further being referred to the Pf exh 7, he testified that he did not sue Mary Bore but one Kimetto.
  17. The Plaintiff was also referred to the Pf Exh 4 during his cross examination whereby he confirmed that the parties therein were Martha Ngetich and Mary Bore and that the Defendants were not parties to the proceedings. He reiterated that at that time, the purchase price for 1-acre parcel of land was Kshs. 1000/= although he had not filed any document to that effect. That John Bore was refunded Kshs. 4000/= which money was sent to him through post office although he did not produce any documentary evidence to that effect.
  18. He corrected that the dispute over the suit land started after the death of his father in the year 2009 and not from the year 1973. On being probed further, he stated that they had gone to the Tribunal during his father's life time. That they had not been provided with any document at the police station. When he was referred to the Pf Exh 6, he stated that they were arrested by the police while on the suit land after the surveyor had measured it and that they had not been served with any court order beforehand. That it had been after the arrest that they had come to learn that Mr. Orina Advocate had filed a suit in court.
  19. He maintained that he did not get into the suit land after the orders were issued but had sworn to get it back. He confirmed that he was neither there during the Sale agreement between his father and John Bore nor when the said John Bore sold the suit land to the Defendants. That he lived on the suit land



- up to the year 1995 when he was evicted by the Defendants. He maintained that he was not aware that the land had been sold.
20. That he had known that his father's name had been removed when they went to the Tribunal just before his father died. That his mother did not know that his father had sold the suit land. That it was upon the money being refunded and they remained with Kshs. 4,000/= that his mother knew that the suit land was sold. He admitted that he had not produced any documentary evidence to that effect.
  21. In re-examination, he was referred to Pf Exh 2 whereby he confirmed that his father died on 1<sup>st</sup> April, 2009 and that the Tribunal proceedings were No. 18 of 1990 hence his father was alive when the Tribunal was on. That the Tribunal proceedings ended on 9<sup>th</sup> September, 2010 after his father had passed away.
  22. He explained that after the demise of his father, his mother Martha Ngetich proceeded with the Tribunal proceedings and that Martha Ngetich and Mary Bore were the parties to the proceedings because the land was to be sub-divided between John Bore and Kibellion Ngetich. That Martha Ngetich was Kibellion's wife while Mary Bore was John Bore's wife. That the said proceedings noted the demise of the claimant and the objector.
  23. When he was referred to Pf exh 6, he confirmed that the same was the court order that injunctioned them from using the suit land. He clarified that the said order was issued after the Tribunal had issued its award. He reiterated that it was after they had been arrested, that they were informed that there had been a court order.
  24. He was also referred to Pf Exh 4 whereby he confirmed that the order therein was of 27<sup>th</sup> September, 2012 which order was the one that empowered them to occupy the suit land while awaiting the Tribunal's award. He also confirmed that the Defendants had been registered to the land in the year 1996 while the Tribunal proceedings began in the year 1990 thus by the time the Defendants were being registered as proprietors of the suit land, the Tribunal proceedings were still ongoing.
  25. That the Defendants had already been registered as proprietors of the suit land by the time the Tribunal proceedings were determined in the year 2010. Further that by the time John Bore was selling the suit land to the Defendants, he knew very well that there were ongoing Tribunal proceedings with regards to the said land. That the proceedings at the Tribunal show how the money was paid.
  26. John Sigei, testified as PW2 to the effect that he was the Chairman of Kibangwonek clan, that he lived in Londiani and was a farmer. His evidence was that the suit land belonged to Kibellion Arap Ngetich but John Bore had "snatched" it. He explained that Kibelion and John were cousins and that John had told Kibellion that he was going to buy him a piece of land measuring 11 acres in Kitale and Kibellion agreed to the said arrangement. However, the agreement never materialized and when the clan was called to find out what had happened to the suit land since John had sold the same, it had been discovered that Kibellion had taken Kshs. 4,000/= from John. That at the time, one acre of land costed Kshs. 1,000/= and so John had been asked to return to Kibellion the remaining land which was about 6 to 7 acres.
  27. His evidence was that John Bore had fraudulently sold the entire suit land to the Defendants while his right over the said land was only with regards to 4 acres. That although he was not aware of the proceedings at the Tribunal regarding the suit land, he was aware that the matter had been returned to the elders to decide. His stand was that the Defendants should keep what they bought and return the rest to the rightful owner.
  28. On cross-examination, he stated that whereas he did not have any documentary prove, he was known as the Chairman of the whole clan. That John Bore wanted to buy land for Kibellion in Kitale hence Kibellion sold the suit land to John so that the said John could buy him land in Kitale. That although



- he was not there, he later heard that John Bore had sold the suit land to the Defendants. That whilst he had nothing to show that John Bore was a thief, the said John's death was because he had stolen the land whose reference number he did not now. But he was firm that him being over 70 years old he could not lie.
29. In re-examination, and when referred to the Pf Exh 3, he stated that he could not read the numbers. He confirmed that he was the chairman of Kibangwonek clan and that the land herein was situate in Bureti area and that the same belonged to Kibellion.
  30. PW3 one Isaak Kibet, testified to the effect that he was the County Surveyor for Kericho County and that he received summons to produce the Registry Index Map (RIM) pertaining Kericho/Kabartegan/4 (the suit land). He produced the said RIM as Pf exh 10 and explained that the section in question fell under Bureti Sub-County. That amendments were normally effected when the parcel of land has been sub-divided, mutation prepared and corresponding amendments carried out on the respective piece of land. That as per the said map, the suit land still read Number 4 since the amendment had not been effected.
  31. When he was referred to Pf Exh 5, he testified that he had no reason, at hand to explain why the amendments has not been effected, that only the Sub-County Surveyor could answer that. That ideally, the Bureti Sub-County was supposed to forward the mutation forms to them to enable them amend the RIM. That he could not tell from the mutation form whether a Mr. Wanjala was amongst the Sub-County Surveyors from Bureti.
  32. On Cross-examination, he confirmed that the Registry Index Map for Kericho/Kabartegan/4 (the suit land) had not been amended and that whether the same had been sub-divided or not was the prerogative of the Bureti Sub-County Surveyor. He explained that before an amendment could be effected the Registry Index Map, the Sub-County in charge of the said section would forward the requisite documentation for their action. That he could not comment on who had signed the mutation form as it was for the Sub-County Surveyor to check on the documents.
  33. That his work was to rectify and amend the Registry Index Map as per the documents forwarded to them but as per their records, no such documents had been forwarded to enable them amend the Registry Index Map hence at the moment the same had not been amended.
  34. Catherine Washuka testified as PW4 to the effect that she was the Kericho County Land Registrar and that she had served as a Land Registrar for 17 years. That she was summoned to produce documents concerning land parcel number Kericho/Kabartegan/4 (the suit land). She explained that a parcel file is the one that contained the documents that would support the entries made in the Green card. That she had the original Green card whose copy was produced as Pf Exh 3. That the same was opened on the 21<sup>st</sup> November, 1968 a copy thereof was produced as Pf Exh 3. That the same reflected an area of 4.65 hectares.
  35. She explained that the Map Sheet Number 2 on the right corner of the Green card showed that the adjudication fee of Kshs. 48/= was paid and a receipt No. 282459 dated 21<sup>st</sup> November, 1968 registered to one Chepkwony, Arap Ngetich of P. O Box 190 Kericho. She confirmed that all the dates were correct. That the adjudication section showed that the original owner of the block of land Kabartegan was the Settlement Fund Trustee which was under the Land Adjudication and Settlement Scheme. Therefore, at the time the Land Registrar would have noted the adjudication fee paid by the Allotee on the right hand corner of the Green card. That the receipt of the adjudication fee would be in the file at the Land Adjudication office.



36. Her evidence was that entry Number 2 in the Green Card was entered on 20<sup>th</sup> August, 1971 in the name of Kibellion A. Ngetich ID No. LBW 101203 P.O Box 190 Kericho and that correction of name was noted in the said entry. That entry number 3 which was connected to entry Number 2 was noted on 17<sup>th</sup> September, 1971 which indicated that the certificate was issued. However, entry numbers 1, 2 and 3 had been cancelled with a biro pen and that from her experience, at that time when they would register a transfer, they would cancel it to show that it was no longer in existence although that was no longer the practice.
37. She explained that the correction of name was of the registered owner from Chepkwony Arap Ngetich to Kibellion A. Ngetich. That he had a land adjudication ordinance certificate in the name of Chepkwony Ngetich for parcel Kabartegan Number 4 for the sum of Kshs. 48/= which Land Adjudication Ordinance Certificate she produced as Pf exh 11. That she also had the adjudication Register for Kabartegan Number 4 in the name of Chepkwony Arap Ngetich for an area of 11 acres which she produced as Pf exh 12. That she also found an application to correct the name in the register which application was received for registration on 20<sup>th</sup> August, 1971 whereby a registration fee of Kshs. 50/= was paid. That the same was in the presentation book No. 519 which application she produced as Pf exh 13.
38. That the said application for name correction was made by Chepkwony Ngetich who requested that his name be corrected to Kibellion Arap Ngetich. That the ID of the applicant was LBW101203 and the said application was registered in the registry on 20<sup>th</sup> August, 1971 after the consent was given by the Land Control Board on the 17<sup>th</sup> August, 1971. She also produced a signed and stamped letter dated 19<sup>th</sup> July, 1971 from the chief one Musa A. Chumo of Bureti Location as Pf exh 14. She explained that in the said letter, the said Chief confirmed that he knew the Applicant. She further produced a letter of consent for correction of name signed by the Chairman Bureti Land Control Board dated 17<sup>th</sup> August, 1971 as Pf exh 15.
39. Her further evidence was that she also had the application for consent of the Land Control Board for correction of name from Chepkwony Ngetich to Kibellion Arap Ngetich with regard to parcel numbers Kericho/Kabartegan/4 and Kericho/Kabartegan/6 dated 26<sup>th</sup> July, 1971 herein produced as Pf exh 16. That based on the documents in support of the correction of names, she confirmed that Chepkwony Arap Ngetich was also known as Kibellion Arap Ngetich. That the application for change was effected by the lands office hence the probable reason why the name Kibellion was cancelled on the Green card was because other entries were entered. That she also had a land certificate slip which confirmed that Kericho /Kabartegan Number 4 (the suit land) was changed to Kibellion A Ngetich of ID No LBW101203. That the said slip dated 17<sup>th</sup> September, 1971 showed that the correction of name was effected hence confirming entry Numbers 2 and 3 on the Green card. She produced the said Land Certificate Slip dated 17<sup>th</sup> September, 1971 as Pf Exh 17.
40. That she had an inspection form for internal use in the registry which referred to Kericho / Kabartegan/4 measuring 4.65 hectares wherein the registered proprietor was Kibellion A Ngetich of ID No.101203. That the said inspection form indicated that the nature of transaction was the land certificate and that the Adjudication fee was paid. That the same was also in support of entry numbers 2 and 3 of the Green card. She produced the said Form of Inspection for internal use dated 17<sup>th</sup> September, 1971 as Pf exh 18.
41. She further produced a document which referred to the encumbrance section of the Green card whereby entry number 1 dated 25<sup>th</sup> October, 1972 was a Charge to secure Kshs. 5,500/= to Kenya Commercial Bank Limited Kericho as Pf Exh 19 and proceeded to testify that entry number 2 dated



- 25<sup>th</sup> October 1972 indicated that Kenya Commercial Bank Limited was the proprietor as the Chargee while entry number 3 dated 25<sup>th</sup> October, 1972 indicated that all rights under Section 83 of the Registration of Land Act had been reserved to the Chargee.
42. She further produced a forwarding letter, in support of entry numbers 1, 2 and 3, from Kenya Commercial Bank dated 2<sup>nd</sup> October 1972 and addressed to the Land Registrar Kericho from the manager as Pf exh 20 and a charge Charge Form from the applicant Kibellion A Ngetich for the principle sum of Kshs. 5,500/= dated 2<sup>nd</sup> October, 1972 as Pf exh 21. She explained that the same was registered in their office on 25<sup>th</sup> October,1972.
  43. She then produced a letter of consent from Kibelion to Kenya Commercial Bank dated 2<sup>nd</sup> October, 1972 as Pf exh 22 and an application for consent of the Land Control Board dated 2<sup>nd</sup> October, 1972 bearing the signature of the Bank Manager and the Applicant Mr. Kibelion as Pf exh 23, and an official search reflecting the Charge on the Green card dated 25<sup>th</sup> October, 1972 which confirmed that the Charge was registered on the Green card as Pf exh 24.
  44. She proceeded to testify that entry Number 4 on the encumbrance section of the Green card was dated 15<sup>th</sup> December, 1973 indicating that there had been a Discharge of the Charge in entry Number 1 for Kshs. 5,500/=. That in support of the same, as per the Discharge of Charge application form dated 15<sup>th</sup> December, 1973 whereby Kenya Commercial Bank Limited had discharged the Charge in entry numbers 1, 2 and 3 of the encumbrance section and which Discharge of Charge she produced as Pf exh 25. The said Discharge of Charge was registered on 15<sup>th</sup> December, 1973.
  45. She also testified the proprietary section of the Green Card at entry Number 4 dated 19<sup>th</sup> December 1973 showed that that the suit land had been transferred to John Bore of P. O Box 2045 Litein for a sum of Kshs. 10,000/= while entry number 5 dated 28<sup>th</sup> December, 1973 contained the word "issued" meaning that the certificate of title had been issued. That she had the supporting documents being the Transfer of Land Form dated 15<sup>th</sup> December, 1973 which she produced as Pf exh 26. That the Presentation Book No. 1517 showed that the registration fee paid was Kshs.10/= and receipt No.383313 dated 15<sup>th</sup> December, 1973 issued (RL No.1). Further, that it was indicated that the title No. Kericho Kabartegan/4 in the name of Kibelion A. Ngetich for a consideration of Kshs. 10,000/= was transferred to John Bore of P. O Box 2045 Litein. The same was dated 15<sup>th</sup> December, 1973 and was registered on the equal date.
  46. She produced an application for consent to transfer from Kibelion A. Ngetich to John Bore as Pf Exh 27 and the Land Control Board Receipt No. 1618 as Pf exh 28. She explained that the application had been duly filed out but signed on 15<sup>th</sup> October, 1973. She produced a Letter of consent to transfer dated 15<sup>th</sup> Deember,1973 from Bureti Land Control Board as Pf Exh 29 and explained that the same was from Kibellion A. Ngetich to John Bore for a consideration of Kshs. 10,000/=.
  47. That entry number 5 had showed that the certificate was issued while the transfer of land form confirmed that the land was registered. That the encumbrance section number 5 was entered on 28<sup>th</sup> October, 1975 being a Charge dated 7<sup>th</sup> October, 1975 to secure a loan for Kshs. 12,000/= whereby the proprietor was Kenya Commercial Bank Limited. That the evidence she had in support of the same were;
    - i. Application for consent from the Land Control Board Reference No. 2436, Bureti Land Control Board which she produced as Pf exh 30 whereby the Applicant was John Bore while the proprietor of the Charged money was Kenya Commercial Bank Limited and that the same was dated 17<sup>th</sup> October, 1975.



- ii. Letter of consent to the application which was approved in the meeting of 21<sup>st</sup> October 1975 for the consideration of Kshs. 12,000/= produced as Pf exh 31.
  - iii. Charge Form for the Application from John Bore to Kenya Commercial Bank Limited dated 7<sup>th</sup> October, 1975 and registered in the registry on 28<sup>th</sup> October, 1975 which Charge Form Application she produced as Pf Exh 32.
48. She testified that in support of entry number 5 in the encumbrance section, for internal use they had the investigative form that gave them the details of the Charge and that the same was signed by a counter clerk and investigation clerk on 14<sup>th</sup> October 1975 which Investigation Form she produced as Pf exh 33. She also produced a certificate of official search dated 28<sup>th</sup> October 1975 as Pf exh 34 which confirmed that the Charge had been registered on the Green card.
49. Her evidence was that entry number 6 noted on the Green card on 23<sup>rd</sup> November, 1977 showed that there was a Discharge of the whole sum of 12,000/= contained in entry number 5. Her further evidence was that there was also a Charge in the same entry dated 21<sup>st</sup> July, 1977 to secure the sum of Kshs. 37,000/= from Kenya Commercial Bank Limited. Further that entry Number 8 dated 23<sup>rd</sup> September, 1977, stated that Charge Number 7 reserved the right to take further advances. That the supporting Evidence of entry numbers 6 7 and 8 were:
- i. Letter of consent from John Bore dated 16<sup>th</sup> August, 1977 referring to the application made on 21<sup>st</sup> July, 1977 from John Bore to Kenya Commercial Bank in lieu of the Charge of Kshs. 37,000/= produced as Pf exh 35.
  - ii. Charge Form known as LR No.9 dated 21<sup>st</sup> September, 1977 for Kshs. 37,000/=, in the presentation book No.147 with a registration fee of Kshs.150/= receipt No.706771 and registered on 23<sup>rd</sup> September 1977 which Charge Form was produced as Pf exh 36.
  - iii. Application for consent of Land Control Board for the Charge dated 21<sup>st</sup> July, 1977 which she produced as Pf exh 37.
  - iv. Certificate of Official Search dated 23<sup>rd</sup> September, 1977 which confirmed the registration of entry numbers 7 and 8 in the encumbrances section which she produced Pf exh 38
  - v. A booking Form for the Discharge of Charge dated 21<sup>st</sup> September 1977 produced as Pf exh 39.
50. She explained that entry number 6 was a discharge to John Bore for the Charge in entry number 5 and that the same was registered on 23<sup>rd</sup> September, 1977.
51. She proceeded to testify on the proprietorship section at entry number 7 that the same was entered on 1<sup>st</sup> August, 1996 in the names of David Kipkoech Kimetto and Rosemary Chepkemoi Kimetto of P O Box 59413 Nairobi. That entry number 8 dated 1<sup>st</sup> August, 1996 indicated that the title had been issued. In support of the said entry, she produced a Transfer of Land Form dated 1<sup>st</sup> August, 1996 in Presentation Book Number 3 of 1996 as Pf exh 40. That it was indicated therein that the fees paid for the title deed was Kshs. 125/=, registration fee was Kshs.250/= whereby a receipt number D321885 was issued. Further that the stamp duty paid for the said transfer was Kshs. 20,000/=.
52. Her evidence was that there was an extra fee of Kshs. 20,500 paid for the stamp duty. That there was a Transfer of Land Form from John Bore to David Kipkoech Kimetto and Rosemary Chepkemoi Kimetto for a consideration of Kshs.1,000,000/=. That the said transfer was effected by Advocate S. K. Kiplagat of P.O Box 57080 Nairobi and was registered in the registry on 1<sup>st</sup> August, 1996. That a receipt of payment for Kshs. 20,500/= No. D321885 dated 1<sup>st</sup> August, 1996 was issued and the



- same was received from David K. Kimetto & Rosemary C. Kimetto in lieu of the transfer of Kericho/Kabartegan/4. She produced the said receipt of payment dated 1<sup>st</sup> August, 1996 as Pf exh 41.
53. She produced an application for consent of Land Control Board, receipt number 3812 dated 4<sup>th</sup> July, 1996 as Pf exh 42 then testified that the same was in the name of David K. Kimetto and Rosemary C. Kimetto and that the size of the land being transferred was 4.65 hectares. She produced a photocopy of the Transfer of the Land Form as Pf exh 43. She further produced the Land Control Board letter of consent for the transfer dated 12<sup>th</sup> July, 1996 as Pf exh 44 before proceeding to testify that the same referred to the application dated 4<sup>th</sup> July, 1996 with regard to a transfer from John Bore to David K. Kimetto and Rosemary C. Kimetto for a consideration of Kshs.1,000,000/=. That the same was signed by the District Commissioner of Bureti one N. K. Mberia. She also produced a photocopy of the said letter of consent as Pf exh 45.
54. She further testified that they had the title deed in regard to Kericho Kabartegan/4 measuring 4.65 hectares in the name of John Bore of P. O Box 2045 Litein which was surrendered and which title she produced as Pf exh 46. She explained that the said title deed was issued at Kericho District Registry on 28<sup>th</sup> December, 1973 and that the same supported entry number 5 of the proprietorship section.
55. She was referred to entry number 3 on proprietorship section and she confirmed that the certificate of title deed was not in the parcel file. That the said title deed should have been in the parcel file but she could not explain why the same was not in the said parcel file. However, she stated that the title could be missing due to misfiling of documents although she did not want to speculate on what might have happened on the transfer from Kibellion A. Ngetich to John Bore as the said transfer was effected a few days after the discharge of the charge.
56. She explained that whilst a proprietor of land could appoint a power of attorney to transact on his or her behalf, in the instant case, there was no power of Attorney registered to that effect. She confirmed that the documents of transfer from John Bore to David K. Kimetto and Rosemary C. Kimetto were prepared by the firm of Kiplagat Advocate. She reiterated that there was no power of Attorney registered to have the suit land transferred in the favour of the Defendants.
57. When she was referred to the proprietorship section of entry number 7, she admitted that the same did not indicate who paid the fee for the letter of consent and that ideally the Land Control Board would have the receipt. She confirmed that the receipt they had for the said transaction was for Kshs. 20,500/= and a fee of Kshs. 125/=. That in the absence of a title deed which was to be surrendered, an applicant must apply for loss of title to enable gazettelement and re-issuance of the said title but in the instance case such application was not made.
58. That whereas subsequent entries had been made while a title deed was missing, it was not in her place to say that the same was an irregularly done. That it was probable that the title deed could have been misplaced as there was no proof that the said title was there in the first place, hence her hesitation to conclude that the subsequent registration was done irregularly. Further, that there were so many Charges that went to the banks which banks were thorough in knowing the ownership of title thus if the said banks would have sensed any irregularity, they would not have advanced loan facilities to Mr. Kibellion.
59. Upon being referred to the Pf Exh 3, she confirmed that the area of the suit land on the Green card was 11.5 acres but the same was cancelled and written 4.65 hectares. That there was a lot of history on the Green card but the area was defined in terms of acres that is 11.5 acres which when converted to hectares becomes 4.65 hectares thus the area of the parcel of land was constant.



60. On cross-examination, she was referred to Pf Exh 3 whereby she reiterated that the possible scenario why the title was not in the file may be that the same could have been misfiled but in addition, she referred to a slip that she mentioned in the production of documents that is, Pf exh 17, which slip confirmed the issuance of certificate of title to Mr. Kibellion. However, she maintained that the title deed must be surrendered or an explanation of its absence be given before a subsequent entry is done and that in the instant case, the slip was an explanation for the subsequent entries.
61. Her evidence was that no report or document of complaint was received from Mr. Kibellion regarding the subsequent entries. She confirmed that there was a transfer done by Kibellion which was paid for and registered and the said Mr. Kibellion affixed a thumb print. Further, that there was a Land Control Board consent before the said transfer from Kibellion to John Bore was done. That all the requisite fee was paid and there was even a receipt number hence the said transfer followed the due process of the law.
62. When she was referred to the crossing on entry number 2 in the Pf exh 3, she confirmed that the same was the practice before and that the said entry was not the only entry that was crossed. That before the suit land was transferred from Kibellion A. Ngetich to John Bore, there was a discharge of charge on 15<sup>th</sup> December, 1973 while the said land was transferred on 19<sup>th</sup> December, 1973. Further, that before the said land was transferred to David K. Kimetto and Rosemary C. Kimetto, there had been a discharge of charge on the very day that the transfer was registered.
63. She was further referred to entry number 9 in the Pf exh 3 dated 23<sup>rd</sup> October, 2012 whereupon she confirmed that there was a court order in Kericho High Court Civil Suit 81 of 2012 dated 17<sup>th</sup> October, 2012 which order had restrained the Defendants from interference. That they had never received an order lifting the said order of 17<sup>th</sup> October, 2012 hence the said entry still subsisted to date.
64. When referred to entry number 8 on the proprietorship section, she confirmed that a title deed was issued to David K. Kimetto and Rosemary C. Kimetto who were legally and lawfully registered as proprietors of the suit land.
65. In re-examination, she confirmed that in reference to the original title to Kibellion that was missing, the title deed was not similar to the slip produced as Pf exh 17. That whereas the said slip could not serve as a title deed, it confirmed that a title deed was issued. Further that in the year 1971, it could have been at the discretion of the Land Registrar to accept a slip. She reiterated that no application was made with regard to the missing title deed and that they could not rule out the possibility that the said title was ever surrendered.
66. By consent, the letter dated 16<sup>th</sup> October, 2012 from Bureti office was produced as Pf exh 46.

**The Plaintiff this closed his case.**

67. DW1, David Kipkoech Kimetto, the 1<sup>st</sup> Defendant herein testified to the effect that he lived at Kapitungu village Kabartegen location, Kericho District and was a farmer. That he was in court because of the estate of Kibellion whereby the son of the late Peter Ngetich, one Richard Kibellion had come to court claiming 7 acres of the suit land. That he and his wife bought the suit land in the year 1996 whereupon they were registered as the proprietors of the said land and issued with the title deed to that effect. That they did their due diligence and verified the existence of the suit land. That in January 1995 they visited the suit land and came to the house of Peter Ngetich Kibellion who was with his wife Martha and they were welcomed to his other shamba whereby they had been served with tea after which they had discussed with Kibellion the purpose of their visit.



68. His evidence was that Peter Ngetich took them to the suit land, showed them around and informed them that the proprietor of the said land which measures 11 acres was John Bore. That there was maize plantation on half portion of the said land while the other half portion had nothing on it. That they visited the suit land a second time in January 1996, and Peter Kibelion showed them the beacons of the land parcel No. Kericho/Kabartegan/4 (the suit land) and confirmed that the land belonged to John Bore.
69. That subsequently, they procured the services of Kipkenda Advocate who handled all their legal matters. That after their second visit to the suit land in January, 1996, they proceeded to the Land Registry, Kericho in April 1996 with the copy of the title given to them by John Bore and confirmed that the title was indeed valid.
70. That with that information, they instructed their counsel in May, 1996 to draft an Agreement for sale of the suit land. Consequently, an agreement dated 3<sup>rd</sup> June, 1996 between John Bore and themselves had been drafted whereupon they paid a sum of Kshs. 500,000/= upon signing the said agreement and were to clear the balance of the purchase price after the title had been transferred to their names. That afterwards their Counsel came to Kericho, they signed transfer forms and made payments to the County and the said transfer documents were submitted to the Land Control Board after their execution. That they paid the balance of the purchase price after they received the title deed in their names in August 1996.
71. He produced the Agreement for Sale dated 3<sup>rd</sup> June, 1996 as Df exh 1. He also produced the title deed issued to John Bore on 19<sup>th</sup> December, 1973 as Df exh 2 and then testified that after they got the land, they did a small ceremony with John Bore, himself, his wife, Peter Ngetich and Richard Belyon. That John Bore handed over the land to them while making remarks against Peter Kibellion to the effect that the said Kibellion had destroyed some of his properties.
72. That in August 1996, they took possession of the suit land and had since been living on it for the last 26 years. That for 13 years they had lived with Peter Kibelion Ngetich as their neighbor and who died in the year 2009 but he have never complained. That the said Peter Kibellion Ngetich lived in peace with them. That they stayed peacefully for 2 years after the demise of Peter then suddenly, people came to the suit land with the Chief and Askaris stating that the land was theirs. That the said people produced documents stating that they had been to Roret Land Tribunal although they (Defendants) were not aware of the same. That the Chief and two armed askaris were present.
73. When he was referred to the Pf Exh 4, he confirmed that the parties therein were Martha C. Ngetich & Mary C. Bore and that Peter Ngetich was not a party to the proceedings. Upon being referred to the Pf Exh 3 he confirmed that John Bore was registered as proprietor of the suit land in the year 1973 while they had been registered as the proprietors of the same land on 1<sup>st</sup> August, 1996 and Kibellion had been registered on 20<sup>th</sup> August, 1971. He maintained that they were the proprietors of the suit land having obtained a valid title in a regular way. He thus urged the court to dismiss the case with costs. He produced their title issued on 1<sup>st</sup> August, 1996 as Df exh 3 and a Certificate of Search dated 15<sup>th</sup> October, 2012 as Df exh 4 stating that he owned the suit land and had genuine document.
74. On cross-examination, he confirmed that after buying the suit land, he was invited by Peter and Martha Ngetich who were living on another land next to the suit land. That the said Peter and Martha were not occupying the suit land although he did not know the registration number of their land. He clarified that Peter Ngetich and Kibelion were one and the same person.
75. His evidence was that the sale agreement was prepared by Kipkenda Advocate in his office in Nairobi in their presence and in the presence of John Bore. When he was referred to Df Exh 1, he read paragraph



- 2 and confirmed that the same was what was the vendor had agreed to. That the money was received by John Bore as a stakeholder. That they paid Kshs. 500,000/- by banker's cheque as the vendor. That John Bore had sought them out and informed them that his children were suffering in India.
76. On being probed further, he testified that they did not pay John as a stake holder and that he did not know why he received the money as a stake holder. That it was not mentioned that he would get 4 acres and that he other stake holders were the estate of Kibelion. He confirmed that he visited the suit land for the first time in January 1995 and the second time in April 1996.
77. Upon reading clause 8 of the agreement, he testified that it was not true that he was entitled to 4 acres and that he was disputing that clause of the agreement. He confirmed that he had conducted due diligence whereby in April 1996 they saw the Green card and the big book since they wanted to verify everything about the suit land. That he had an opportunity to look at the Green card before he made the payment.
78. When he was referred to Df exh 3 he confirmed that the same was the Green card. Upon being referred to entry number 1, he confirmed that the suit land was registered to Kibellion Arap Ngetich and signed. He also confirmed that there was a crossing on the name of Kibellion. He reiterated that he had asked for the documents, went through them but the crossing was not there. When he was further referred to entry No. 4, he confirmed that the same was in respect to John Bore and that it was signed at the end. That there was no narration as to how John Bore came to be registered as proprietor.
79. When he was referred to entry number 7, he confirmed that the same showed that the suit land was registered to David Kipkoech Kimetto and Rosemary Chepkemoi Kimetto and that there had been a transfer at the end. He confirmed that there was no transfer for John Bore but stated that he was not there to know what happened. He maintained that he saw the big book and only saw Kshs. 1580/= as money owed by John Bore.
80. He reiterated that he met Peter Kibellion and Martha and they made him tea and that at that time, John Bore was in Nairobi with his family. He confirmed that John Bore and Peter Ngetich were cousins. That John Bore was not in occupation of the suit land and there was nobody occupying of the said land. That Mr. Ngetich sold the suit land to John Bore who sold the same to him.
81. He explained that John Bore did not show him the suit land as they wanted an elder from the village. That the said Ngetich was an elder in the village as he was about 80 years of age and knew what was happening in the village. That one time when he was on the suit land, the Plaintiff herein and a neighbor claimed the trees therein that were towards the rivers but John Bore confirmed that the said trees were his. He contended that he had paid for the trees.
82. When he was referred to the Pf exh 6, he confirmed that he had filed a case against Martha Kibelion when two chiefs, two police officers, Richard Kibelion and a surveyor went to the suit land seeking to survey the same. That they told the said people that the suit land was theirs but the said people did say anything about the 7 acres portion of the suit land. That it was after they called for the proceedings, that they learnt about the 7 acres prompting them to contact their lawyer Mr. Orina who filed a suit in High Court but they were later asked to go to the Environment and Land Court. That he was not aware that the matter was dismissed for want of prosecution because they were always there and neither was he aware whether the matter had been determined.
83. He reiterated that he took tea in Peter Ngetich's house. That they did not participate in the Tribunal proceedings but they gave all the papers to their lawyer. That John died in the year 1998, but since he had the title he did not see the need to join the said John in the proceedings although his wife could also



- confirm that he had bought the land. That before John died in the year 1998, he owed him nothing because the money had been paid to him by the lawyer.
84. He denied owning only 4 acres while the rest of 7 acres belonged to the Plaintiff because the title he had was for 11 acres. He reiterated that he had followed the due process, signed all documents and gave them to his lawyer. That he did not appear before the Land Control Board since he had paid his lawyer to appear on his behalf. That he had executed a power of Attorney hence the lawyer appeared before the Land Control Board on his behalf and on behalf of Rosemary Chepkemoi Kimetto. That the Plaintiff had sold 7 acres he had been given by his father in Londiani and had no claim over the 7 acres of the suit land.
  85. In re-examination, he was referred to Df exh 1 where he confirmed that John Bore had signed the agreement. Upon reading clause 1 of the said agreement, he testified that he had not heard the name of a stake holder in that clause. That the size of the suit land as per the agreement was 4.65 hectares which was about 11 acres. He explained that he was purchasing all the parcel of land written in the title. That there were neighbors bordering his land. That he identified beacons on the suit land and the same had never been changed. When he was referred to the Pf Exh 3 he confirmed that the Green card was signed by the Land Registrar and that he got the same from the Land Registry which is a government office.
  86. That in the year 1994, Mr. Bore went to his office in Jogoo house to discuss about the suit land but he had no money at the time. That when they got the money, he called Bore who took him to the suit land in the presence of Peter Ngetich. That John Bore did not raise an issue of non-payment since he was owing him nothing by the time he took possession of the suit land. That he had paid a total of Kshs. 2,000,040/= towards the purchase of the suit land.
  87. He reiterated that John Bore had showed him the title and that Plaintiff herein who was a son of Peter Ngetich. That when the people came to survey the land, it became a crisis, they did not stop them because they were violent hence the said people started surveying the suit land before showing them any order which prompted him to consult their Advocate.
  88. His testimony was that the said people did not complete the survey but by afternoon of the said day, they had started cutting down trees. That he had not been shown any document confirming that their case had been dismissed.
  89. Rosemary Chepkemoi Kimetto testified as DW2 to the effect that she lived at Kapturgo village Kabartegen Location Kericho County and was a farmer. That she was in court because the Plaintiff herein filed a suit against them claiming ownership of the suit land.
  90. She asserted that they were the owners of the suit land since they bought it from Mr. Bore. That the said Mr. Bore had approached them between the years 1974-1975 concerning the suit land wherein they had told him that they had no money. That after almost 2 years, when they got some money, they had called John Bore and even visited the suit land in the year 1995 wherein after in 1996, they had bought the land. That they had done due diligence and confirmed that the suit land was vacant and belonged to Mr. Bore. That they were even taken to Richard's house where they took tea and tPeter Kibellion told them that he had sold the suit land to John Bore who was like his brother.
  91. That the suit land was charged because it was used as a collateral to secure a loan and upon that loan being cleared, Mr. Bore had asked from DW1 some Kshs. 500,000/= to cater for his children in India. That they paid the Kshs. 500,000/= as the initial deposit and then paid the balance later.
  92. When she was referred to Df exh 1, she identified the same as the agreement dated 3<sup>rd</sup> June, 1996 where the size of the land they were purchasing was 4.65 hectares. She also confirmed that John Bore & she had signed the agreement. She read clause 1 of the said agreement and stated that the same confirmed



- that John Bore was the owner of the whole land and not a portion. That after Mr. Ngetich showed them where the boundaries were, they had fenced the suit land and taken possession of the same in 1996 where they had been residing todate.
93. Her evidence was that before the instant suit, nobody had raised any issue over the land. That they had co-existed peacefully before the death of the Plaintiff's father and mother. He confirmed that Peter Ngetich died in the year 2009 and the issues over the suit land started arising in the year 2012 after his demise.
  94. Upon being referred to Pf Exh 4, Proceedings in the Chief Magistrates Court Miscellaneous Application No. 108 of 2010, she confirmed that the parties therein were Mary C. Ngetich and Mary C. Bore and that Peter Ngetich was not a party to the said proceedings and neither she nor DW1 were parties to the said proceedings either but only came to know about them in the year 2012.
  95. When she was further referred to the Pf Exh 3, she confirmed that Kibellion Ngetich was registered as the proprietor of the suit land on 17<sup>th</sup> September 1971 while John Bore was registered as the proprietor of the said land on 19<sup>th</sup> December 1973. That she and DW1 were then registered as the proprietors the on 1<sup>st</sup> December 1996. She maintained that they had been staying on the suit land since the year 1996. That they were the current owners of the land since they had a title to it. She reiterated that John Bore had neither raised an issue in regard to their occupation of the land or payments therein. She thus urged the court to dismiss the instant suit with costs.
  96. On being cross-examined, she reiterated that John Bore approached them between the years 1974 – 1975 but they did not have money at the time. That in the company of her husband, DW1 herein, they had conducted a land search at the Land Registrar's office whereupon the land Registrar had produced a big book and informed them that he was the one who had registered the transfer of the suit land to Mr. Bore.
  97. When referred to the Pf Exh 3, she confirmed that the same was the Green Card. She confirmed that entry number 2 of the said Green Card had been crossed but at the time she saw the said Green Card, the said entry had not been crossed. She further confirmed that the name that appeared was Kibellion Arap Ngetich who had been the person that they had visited at his home. That he had even told them that the suit land had been sold to John Bore. That from the record, Kibellion was the first registered owner of the suit land who then transferred the same to John Bore. She confirmed that John Bore was present when they had appeared before Kipkenda Advocate for purposes of drafting a Sale Agreement which contained the terms between Defendants and John Bore.
  98. Upon being referred to read Clause 2 of the said agreement, she confirmed that they had paid Kshs. 500,000/= at first since John Bore told them that he had problems and needed the money urgently. He explained that John Bore was indicated as a stakeholder in the said agreement because they still owed him money. That it was not true that John Bore was only entitled to 4 acres of the suit land but rather the entire suit land belonged to Mr. Bore as confirmed to them by Peter Kibellion.
  99. That at the time they had gone to view the suit land, there had been very few trees and a simple fence surrounding it. That there were neighbors around with well demarcated boundaries. That there were no beacons but only a fence whereby Peter showed them where to put the fence. That they had cleared the balance of the purchase price being Kshs. 1,550,040/=
  100. On being referred to Pf exh 4, she confirmed that the case therein was filed in the year 2010. She further confirmed that Peter welcomed them to their home. That had he (Peter) or his wife raised any issue, they would have acted on the same. She reiterated that they only came to learn of Tribunal award in the year 2012.



101. That among the people who went to survey the suit land were askaris, the chief, the District Land Survey and the Plaintiff herein. That the said people did not inform them that they wanted to sub-divide the suit land, but only told them that the suit land belonged to the Plaintiff but neither she nor DW1 knew whether it was a portion or the whole parcel of land. That subsequently, they had filed a suit in the High Court then proceeded to the Land Registrar to confirm whether the land had been registered in their names.
102. Her evidence was that they were shown the disputes Land Tribunal proceedings from Roret but did not read it. She maintained that it was not true that they were only entitled to 4 acres of the suit land and that John Bore was entitled to the entire 11 acres of the said land. That Martha was Kibellion Arap Ngetich's second wife while Mary Bore was John Bore's wife. She confirmed that they were not part of the proceedings at the Tribunal.
103. She admitted that neither she nor DW1 appeared before the Land Control Board since their Advocate Kipkenda, who was representing them had told her that he would send somebody to the said Board on their behalf. She also confirmed that John Bore also did not appear before the Land Control Board although she later went and confirmed that the suit land belonged to John Bore. That they executed a power of Attorney in order for their Counsel to represent them but the said Power of Attorney was in Nairobi.
104. She further confirmed that they sued Martha C. Ngetich in Civil Suit No. 81 of 2012 because she and the Plaintiff herein wanted to sub-divide the suit land irrespective of the fact that they had bought and paid for the entire land. That the said suit had been dismissed for want of prosecution. She contended that they could not give the Plaintiff 7 acres of the suit land because they were the owners of the entire land thus the court should dismiss the suit with costs.
105. The witness was referred to Df Exh 1 in re-examination, and upon reading the first sentence of Clause 1, she confirmed that the size of the land they were purchasing was 4.65 hectares and that the same did not indicate that the vendor was a stake holder. She reiterated that there were neighbors living next to them. That they were identifying beacons in their land to know their boundaries. That neither John Bore nor Mary Bore raised issues on non-payment of the purchase price. She confirmed that John Bore died in the year 2010.
106. That she had not been shown any document on the dismissal of the case in the High Court. She clarified that they had been sued by Richard Kibellion and not John Bore. The Defence closed their case and parties were directed to file their written submissions to which I shall herein summarize as follows;

### **Plaintiff's Submissions.**

107. The Plaintiff, vide their written submissions dated 22<sup>nd</sup> January, 2024 summarized the factual background of the matter as well as the evidence adduced in court before framing his issues for determination as follows:
  - i. Whether the deceased Kibellion Arap Ngetich was the 1<sup>st</sup> registered proprietor of the suit property.
  - ii. Whether the deletion and/or cancellation of the name of Kibellion Arap Ngetich by crossing was procedural and/or unprocedural.
  - iii. Whether the registration, introduction and/or inclusion of the name of John Bore in the proprietorship section of the register as entry no. 4 on the 19<sup>th</sup> December 1973 conferred upon the said John Bore any proprietary interest in the suit property.



- iv. Whether the subsequent transfer and registration of the suit property in the joint names of the Defendants as entry no. 7 on 1<sup>st</sup> August, 1996 conferred any and/or absolute interest in the suit property upon them.
  - v. Whether the Defendants' hold the suit property as trustee for themselves and the estate of Kibellion Arap Ngetich.
  - vi. Whether the Plaintiff's claim is statute barred.
108. On the first and second issue, the Plaintiff reiterated his averments in paragraph 6, 8 and 17 of the Plaint and contended that the said averments were substantiated by the entries apparent on the register (Green card) of the suit property produced as Pf exh 3. That the said averments were further corroborated by the Kericho Land Registrar Ms Catherine Wasituka who testified as PW4 on the 20<sup>th</sup> September 2023. That the said Registrar demonstrated that the register for the suit land was opened on 21<sup>st</sup> November 1968 whereby the name Chepkwony Arap Ngetich was registered as the proprietor. However, the said Chepkwony later applied for correction of his name from Chepkwony Ngetich to Kibelion Arap Ngetich which change was duly effected on 17<sup>th</sup> September 1971 in accordance with the law as per documentary evidence produced in court.
109. That if indeed the application was for correction of the name by the proprietor, from Chepkwony Arap Ngetich to Kibelion Arap Ngetich, the crossing ought to have been against the name Chepkwony Arap Ngetich and not Kibelion Arap Mnetich. That subsequently, the deletion of the name Kibelion Arap Mnetich was erroneous and he urged the court to find that such crossing/deletion was an anomaly and/or error apparent on the register of the suit land which requires that rectification be done in accordance with the provisions of Section 80(1) of the Land Registration Act, 2012 which empowered the court to order that any rectification be cancelled or amended if the said rectification was obtained, made or omitted by fraud or mistake. Further reliance was placed on the decided case of Kenya Anti-Corruption Commission v Online Enterprises Limited & 4 others [2019] eKLR to urge the court to order for the reinstatement of the name Kibelion Arap Mnetich as was duly effected on 17<sup>th</sup> September, 1971.
110. On the third issue for determination, the Plaintiff submitted that it was apparent from the Green card that the entry was effected on 19<sup>th</sup> December, 1973 as evidence by the Transfer of land form dated 15<sup>th</sup> December, 1973 produced as Pf Exh 26, Presentation Book No. 1517 receipt for 10/= produced as Pf exh 26 and Application for consent to transfer produced as Pf exh 27. The Plaintiff further submitted that it was apparent from the register of the suit land on the encumbrance section that on 15<sup>th</sup> December 1973, the proprietor was also seeking the registration of discharge of charge No. 1 for the sum of Kshs. 5,500/=. That the said discharge of charge was registered as entry No. 4 on the encumbrance section of the register of the suit land as evidenced by the discharge of charge application form dated 15<sup>th</sup> December, 1973 produced as Pf exh 25.
111. That all the above-mentioned supporting documents were executed on 15<sup>th</sup> December, 1973, which date coincided with the time when the discharge of charge entry number 1 on the proprietorship section of the register was done and that the same could not be a coincidence in light of the claim lodged by the deceased Kibelion Arap Ngetich at the Roret Dispute Tribunal. Consequently, the Plaintiff submitted that John Bore took advantage of the deceased Kibelion Arap Ngetich and caused the suit land to be transferred and registered in his name at the time the registration of the discharge of charge was being done on 15<sup>th</sup> December 1973 and urged the court to so find.



112. On the fourth issue for determination, the Plaintiff urged the court to find that the alleged transfer and subsequent registration of the name John Bore as proprietor of the suit land did not confer to him any proprietary interest in law capable of being registered and/or transferred to the Defendants. He considered the Sale Agreement dated 3<sup>rd</sup> June, 1996 herein produced as Df exh 1 to submit that pursuant to the contents under clause 2 of the said Agreement which had referred to John Bore as a stakeholder, it had been clear that the Defendants were aware that John Bore was not the absolute owner of the suit land hence they cannot be heard to claim that they were innocent purchasers without notice of the defect in the title.
113. That the Defendants did not demonstrate by evidence the manner in which the balance of Kshs. 1,540,000/= was paid if at the whole payment was made as alleged. That further the no power of Attorney was adduced as evidence that they had given their Counsel consent to appear on their behalf before the Land Control Board to seek consent to transfer the suit property. To buttress on this issue for determination, the Plaintiff relied on the decisions in the case of Alice Chemutai Too vs. Nickson Kipkurui Korir & 2 Others [2015] eKLR. Chemei Investments Limited vs. The Attorney General & Others, Nairobi Petition No. 94 of 2005 and Dr. Joseph Arap Ngok v Justice Moiyo Ole Keiwua & 5 Others, Civil Appeal No. Nai. 60 of 1997 (sic).
114. That whereas entries numbers 1, 2 and 3 on the proprietorship section of the register of the suit property were clearly supported by documents contained in the parcel file, the Plaintiff submitted that the crossing of the name Kibelion A. Mngetich was erroneous. He further went on to submit that the Defendants' claim that they were bona fide purchasers for value without a notice of the ongoing proceedings before the Roret Land Dispute Tribunal was baseless. He relied on the Court of Appeal decision in Katende v Harida Limited [2008] 2 E.A. 173 to submit that the Defendants did not qualify as innocent purchasers for value without notice since John Bore had no authority to alienate the land for which he could not pass a good title to the Defendants.
115. On the fifth issue for determination as to whether the Defendants held the suit property as trustee for themselves and the estate of Kibellion Arap Ngetich, the Plaintiff urged the court to consider the proceedings before the Tribunal produced as Pf exh 7 alongside the proceedings in Kericho Chief Magistrate's Court Misc. Application No. 81 of 2012 produced as Pf exh 4 in which the court adopted the Tribunal award issued on 20<sup>th</sup> July 2012 as the order of the court and which order had not been set aside.
116. That it was also apparent that when the Plaintiff attempted to execute the said order, the Defendants sought and obtained injunctive orders in Kericho HCCC No. 81 of 2012 and consequently, the process of registration of mutation forms was temporarily stopped. Further that the Defendants' claim in respect of the suit land abated on 9<sup>th</sup> December 2020 as a result of the demise of Martha C. Ngetich who died on 9<sup>th</sup> December, 2019.
117. On the sixth issue for determination as to whether the Plaintiff's claim was statute barred, he hinged his reliance on the provisions of Section 4 (4) of the Limitation of Actions Act to submit that the adoption of the Tribunal award was made on 19<sup>th</sup> January, 2011 and execution thereof set in motion on 27<sup>th</sup> July, 2012. That the instant matter was filed on 8<sup>th</sup> June, 2021 which was a period of 10 years from the time of the said decree hence the execution of the decree in the alternative as sought by the Plaintiff herein was not time barred. Reliance was placed in the decided M'ikiara M'rinkanya and Another vs. Gilbert Kabeere M'mbijwe (sic).
118. The Plaintiff thus urged the court to find that he had established his case within the required standards in law and to find the Defendants' Defence without merit.



## Defendants' Submissions.

119. The Defendants summarized the brief background of the matter before framing their issues for determination as follows:
- i. Whether the Plaintiff's claim is statutorily time barred.
  - ii. Whether the cancellation and/or deletion of the name Kibelion A. Ngetich as entry No.3 and subsequent registration of the name of John Bore in entry No. 4 was irregular, unprocedural, illegal, null and void.
  - iii. Whether the Defendants are holding in trust for the Plaintiff 2.8 hectares of the suit parcel of land.
  - iv. Who bears the cost of the suit?
120. On the first issue for determination as to whether the Plaintiff's claim is statutorily time barred, the Defendants submitted that the Plaintiff under paragraph 14 of his Plaint admitted that they (Defendants) had been in occupation of the suit land for over 25 years. That the Plaintiff herein was seeking to reverse the transaction between John Bore and his father Kibelion A. Ngetich which took place in the year 1973 and subsequent transaction between John Bore and the Defendants herein that took place in the year 1996, a period of over 26 years.
121. On the limitation period in regard to an action to recover land, the Defendants' reliance was hinged on the provisions of Section 7 of the *Limitation of Actions Act* as well as a combination of decisions in the decided cases of Haron Onyancha vs. National Police Service Commission & Another [2017] eKLR, Gathoni v Kenya Co-operative Cremires Ltd 919820 KLR 104 (sic), Rawal vs. Rawal 91990 KLR 275 and Bosire Ogero vs. Royal Media Services [2015] eKLR to submit that the Plaintiff's suit was hopelessly out of time hence the same should be dismissed. They reiterated that the Plaintiff's father having not raised a complaint during his lifetime, it showed that he had acknowledged the disposing off of the suit land hence he had no problem with the subsequent purchasers. Further reliance was placed on the decided case of Lemita Ole Lemein vs. Attorney General & 2 Others [2020] eKLR, to submit that the Plaintiff's suit having been filed out of time, the court lacked the jurisdiction to entertain the same.
122. On the second issue for determination, the Defendants submitted in the negative and reiterated that PW4, the Kericho County Land Registrar's evidence in court and the supporting documentations adduced therein had indicated that the said entries were proper. That the Registrar noted that it was not just entry number 3 that was cancelled with a biro pen but also entries numbers 1 and 2 which, in the olden days, was a way of indicating that the entry no longer existed. That the correction of the name was done to change the name of the registered owner from Chepkwony A. Ngetich to Kibelion A. Mngetich and that the documents produced by PW4 confirmed that Chepkwony A. Ngetich was one and the same person as Kibelion A. Mngetich. That among the documents that PW4 produced in court was Land Certificate Slip that confirmed that the change of names had been affected and thus supported entries in numbers 2 and 3 of the Green card.
123. The Defendants further referred to the inspection form produced by PW4 that confirmed that land certificate and land adjudication were paid for hence the cancellation on entry number 3 and in extension entries numbers 1 and 2 were not illegal and/or un-procedural.
124. It was the Defendants' further submissions that the registration of John Bore as the proprietor of the suit land was equally lawfully and procedurally done since Kibelion A. Mngetich had secured a loan



- using the suit land which was discharged on 15<sup>th</sup> December, 1973 (Pf exh 25) after the said Kibelion made an application for discharge of charge for Kshs. 5,500/= that had been secured. That the suit land having no encumbrances was later sold to John Bore on 19<sup>th</sup> December 1973 and a Certificate of Title issued. That a Transfer form dated 15<sup>th</sup> December 1973 showing that Kibelion Mnetich was transferring the whole suit property to John Bore for a consideration of Kshs. 10,000/= was produced as Pf exh 26. Further that an application for consent from the Land Control Board and a letter of consent from Bureti Land Control Board allowing the said transfer was also produced in court. Consequently, the transfer was effected and John Bore was registered as the proprietor of the suit land.
125. They thus submitted that the allegations that the cancellation of entry number 3 and subsequent registration of John Bore as the proprietor of the land was irregular, did not hold any water hence the court should disregard the same.
126. On the third issue for determination as to whether the Defendants were holding 2.83 hectares of the suit land in trust for the Plaintiff, they (Defendants) reiterated the Plaintiff's evidence and submitted that apart from the Tribunal proceedings, there was also Miscellaneous Application 108 of 2010 and Kericho High Court Civil Suit of No. 18 of 2012 which proceedings were filed after the death of the Plaintiff's father one Kibelion A. Ngetich. That they were not a party to either the proceedings in the Roret Dispute Tribunal nor the subsequent adoption of the same in court despite the fact that all the transactions happened in the year 2010 when the Plaintiff knew that the Defendants were the registered proprietors of the suit land but did not include them in the proceedings so as to unlawfully evict them from the said land. That a party who would substantially be affected by a decision of the Court ought to be included in the proceedings to accord them a fair chance to respond and to be heard.
127. The Defendants assertion was that they had purchased the whole suit land being Kericho/ Kabartegan/4 measuring 4.65 hectares from John Bore in the year 1996 and this was after conducting due diligence where they had confirmed that the land belonged to the John Bore. That at the time, Peter Ngetich alias Kibelion Ngetich, the Plaintiff's father had also confirmed that the suit land belonged to John Bore. That there had been the production of documentation in support of the purchase and transfer of the suit land in their names. That they had enjoyed peaceful, uninterrupted and quiet possession of the suit land for over 25 years and the complaint by the Plaintiff had only begun after the death of the said Kibelion Ngetich.
128. That the registration of the suit land into their joint names was procedural, regular, lawful hence the title they held was regular and absolute. That from the foregoing, the issue of the Defendants holding the suit land in trust for the Plaintiff did not arise anywhere throughout the said transactions.
129. The Defendants placed reliance in a combination of the decision in the case of Njenga Chogera vs. Maria Wanjira Kimani & 2 Others [2005] eKLR, Peter Ndungu Njenga vs. Sophia Watiri Ndungu [2000] eKLR, Juletabi African Adventure Limited & another vs. Christopher Michael Lockley [2017] eKLR, and Moses Mbugu vs. Mary Nyambura Ngethe [2012] eKLR to submit that the Plaintiff failed to discharge his burden of proof as he did not produce any evidence in support of his allegations that the Defendants were holding the suit parcel of land in trust for him. That from the evidence adduced, the court would deduce that indeed Kibelion Ngetich disposed the entire suit land to John Bore who equally disposed the whole of the said land to the Defendants herein. There was no trust created and the court should decline the prayer as the same was unsubstantiated.
130. As to who should bear the cost of the instant suit, the Defendants submitted that it was trite law that costs follow event thus the Plaintiff having failed to discharge the onus placed on him to establish his claim, his suit be dismissed with costs.



## Determination.

131. In brief, the present matter revolves around parcel No. Kericho/Kabartegan/4 measuring 4.65 hectares to which the Plaintiff, being the son and legal administrator of the deceased Peter Ngetich alias Kibelion Ngetich lay claim that the same was un-procedurally and unlawfully sold to the Defendants by one John Bore who, according to an award passed by the Roret Land Dispute Tribunal in the proceedings of 2010, was only entitled to four acres, while his father was entitled to the remaining seven acres. The Plaintiff has thus sought for the cancellation of both the Defendants names from the register and the same be restored in the name of his father Kibelion A. Mnetich as its proprietor and or in the alternative there be a declaration that the Defendants hold in trust for him 2.83 hectares thereof.
132. The Defendants' defence on the other hand is to the effect that after having conducted due diligence, they had legally and procedurally purchased the suit parcel of land from John Bore in the year 1996. That they had even met the Plaintiff's father Peter Ngetich alias Kibelion Ngetich who had confirmed to them that the land belonged to John Bore. That their purchase and subsequent registration was evidenced by both oral and documentary evidence. That upon purchase of the land they had taken possession and occupation where they had enjoyed peaceful, uninterrupted and quiet possession of the same for over 25 years. That it had been after the death of the Plaintiff's father Kibelion Ngetich in 2009 that the issues over the suit land started arising in the year 2012. That they had not been parties to the proceedings in either the Roret Land Dispute Tribunal or the Chief Magistrates Court in Miscellaneous Application Number 108 of 2010 when the Tribunal's award had been adopted as an order of the court.
133. I have had the look at the proceedings by the Roret Land Dispute Tribunal herein produced as Pf exh 7 and noted that the parties in the dispute had been Martha C Ngetich and Mary C Bor wives to the late Kibelion Ngetich and John Bore respectively. I have also noted that the decision arrived at by the elders was that Mary C Bore compensates the family of the late Kibelion Ngetich, seven acres of the suit land. The question that comes to mind was whether Martha C Ngetich and Mary C Bore respectively had as at the 9<sup>th</sup> September 2010, the locus standi to deal with the parcel of land that had once registered to their deceased husband's without having obtained the requisite letters of administration. The answer to this question would be in the negative. This is because the provisions of Section 82(a) the *Law of Succession Act* provides as follows;
- "Personal representatives shall, subject only to any limitation imposed by their grant, have the following powers—
- (a) to enforce, by suit or otherwise, all causes of action which, by virtue of any law, survive the deceased or arising out of his death for his personal representative";
134. In *Trouistik Union International & Another vs. Jane Mbeyu & Another* (2008) IKLR (G&F) 730 it had been held as follows;
- "To determine who may agitate by suit any cause of action vested in the deceased at the time of his death, one must turn to section 82 (a) of the *law of succession Act*. That section confers that power on personal representatives and on them alone"
135. The next question to ask ourselves was whether Roret Land Dispute Tribunal had jurisdiction to determine disputes revolving around ownership of land, more so on matters under the Registered *Land Act*, Cap 300 (now repealed). Again the answer would be in the negative for this reason. The tribunal was established under the Land Disputes Tribunals Act No. 18 of 1990 (now repealed) (herein



referred to as the 'Act' )wherein Section 3(1) of the Act sets out the cases over which the tribunal had jurisdiction as follows:-

- (1) Subject to this Act, all cases of a civil nature involving a dispute as to—
  - (a) the division of, or the determination of boundaries to land, including land held in common;
  - (b) a claim to occupy or work land; or
  - (c) trespass to land, shall be heard and determined by a Tribunal established under section 4.(2).

136. Looking at the provisions of Section 3(1) of the Act above, the said provision of the law are the effect that the jurisdiction of the Tribunal, was only on matters related to the division or determination of boundaries; claims to occupy or work land; and trespass to land and therefore said tribunal had acted ultra vires and in excess of its jurisdiction as it was prohibited, by operation of the law, from undertaking a determination with respect to title to land. It therefor goes without saying that any orders and or proceedings arising from the said award would also have been a nullity since a decision made by a tribunal which had no jurisdiction to entertain the dispute before it, must of necessity be null and void and therefore subject to challenge.

137. Now when we turn to the sale agreement herein produced as Df exh 1, it is clear that the sale transaction between the Defendants herein and John Bore had been conducted on 3<sup>rd</sup> June, 1996 wherein the Defendants had been registered as proprietors of the said parcel of land on the 1<sup>st</sup> August 1996 as per the Green Card herein produced as Pf exh 3. The Documents regarding the transfer of the same from John Bore to the Defendants, including the consents herein for the Land control Board had been ably produced by PW 4 the Land Registrar Kericho who had confirmed that indeed the transaction had been legally effected.

138. Section 26(1) of the [Land Registration Act](#) provides as follows:

“The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer ... 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 that 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; or
- b. where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”

139. It will be seen from the above provisions that title is protected, but the protection can be removed and the title impeached, if it is found to have been procured through fraud or misrepresentation, by the person who is not necessarily proved to be a party; or where it is procured illegally, unprocedurally, or through a corrupt scheme. I find that the title held by the Defendants herein was procured procedurally.

140. The last issue that seeks determination is whether the Plaintiff’s suit is time barred. From the evidence on record the cause of action according to the Plaintiff occurred on the 19<sup>th</sup> December 1973 when John Bore was registered as the proprietor of land wherein he had subsequently sold it to the Defendants who registered themselves as the proprietor of on 1<sup>st</sup> August 1996. According to the Defendants they



had been in possession and occupation of the suit parcel of land from the time they had purchased it in 1996 to date.

141. A cause of action, is a set of facts sufficient to justify a right to sue to obtain money, property, or the enforcement of a right against another party. The term also refers to the legal theory upon which a Plaintiff brings suit.

142. Section 7 of the *Limitation of Actions Act* provides:

“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

143. 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 Plaintiff could only sue to recover the suit land from the Defendants within twelve years after the cause of action.

144. The plaintiff filed suit to recover the land from the Defendants vide a Plaint dated 8<sup>th</sup> June 2021. Quite clearly a period of about forty seven (47) years have lapsed since 1974 when John Bore was registered as the proprietor of on 19<sup>th</sup> December 1973 and about Twenty five years (25) since the Defendants were registered as proprietors of the said land on 1<sup>st</sup> August 1996.

145. 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.”

146. The Plaintiff 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 the Plaintiff filed this suit, the claim was already statute barred.

147. 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.

148. 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.’



149. Clearly, this Court lacks jurisdiction and the matter is at its end. I will have to down my tools and take no further step. Plaintiff's suit herein is dismissed with costs.

**DATED AND DELIVERED VIA MICROSOFT TEAMS AT KERICHO THIS 8<sup>TH</sup> DAY OF  
FEBRUARY 2024**

**M.C. OUNDO**

**ENVIRONMENT & LAND – JUDGE**

