



**Ruttoh & 6 others v Chesumbai & 215 others (Environment & Land Case 57 of 2012) [2025] KEELC 4581 (KLR) (17 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4581 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT & LAND CASE 57 OF 2012**

**FO NYAGAKA, J  
JUNE 17, 2025**

**BETWEEN**

- PAUL KIPROTICH RUTTOH ..... 1<sup>ST</sup> PLAINTIFF**
- MILKA SOTE ..... 2<sup>ND</sup> PLAINTIFF**
- RACHEL CHESIRE ..... 3<sup>RD</sup> PLAINTIFF**
- SOPHIE SOTE CHEPKWONY ..... 4<sup>TH</sup> PLAINTIFF**
- IRENE CHESIRE ..... 5<sup>TH</sup> PLAINTIFF**
- STELLAH TURERE SOTE ..... 6<sup>TH</sup> PLAINTIFF**
- WINNIE KEMEI ..... 7<sup>TH</sup> PLAINTIFF**

**AND**

- IBRAHIM NAIBEI CHESUMBAI ..... 1<sup>ST</sup> DEFENDANT**
- SOLOMON BICHANGA MOFFAT NDEGE ..... 2<sup>ND</sup> DEFENDANT**
- JOSPHAT WANGILA WANYONYI ..... 3<sup>RD</sup> DEFENDANT**
- JOHN K. CHERUIYOT ..... 4<sup>TH</sup> DEFENDANT**
- WILSON KORIR ..... 5<sup>TH</sup> DEFENDANT**
- SILAS KEREMET BUKAN ..... 6<sup>TH</sup> DEFENDANT**
- WILLIAM KIPKEMOI CHEPKWONY ..... 7<sup>TH</sup> DEFENDANT**
- ROBINSON SAKATEKO NYASIMI ..... 8<sup>TH</sup> DEFENDANT**
- JOHN KEMBOI CHEMAGET & 207 OTHERS & 207 OTHERS & 207 OTHERS ..... 9<sup>TH</sup> DEFENDANT**



## JUDGMENT

### Introduction

1. The Plaintiffs commenced this suit vide a Complaint which they amended and filed an Amended one dated 9<sup>th</sup> October, 2018. In the Amended Complaint they sought the following orders against the Defendant:
  - a. An order of permanent injunction to restrain the Defendants by themselves, their servants and or agents from entering, taking possession, trespassing on all those properties known as Title Numbers Kimondo/Kimondo Block 1 (Chepsalei) 5, Kimondo/Kimondo Block 1 (Chepsalei) 6 and Kimondo/Kimondo Block 1 (Chepsalei) 7, and from harassing, evicting and or threatening the Plaintiffs, agents, employees and or from allowing their livestock to graze on the plaintiffs' said land and or carrying out farming activities in the said parcels of land or in any manner howsoever interfering with the plaintiffs' exclusive ownership, use and possession of the said parcels of land known as Title Numbers Kimondo/Kimondo Block 1 (Chepsalei) 5, Kimondo/Kimondo Block 1 (Chepsalei) 6 and Kimondo/Kimondo Block 1 (Chepsalei) 7.
  - b. An order of mandatory injunction compelling the Defendants by themselves, their servants or agents to forthwith vacate the said parcels of land and to remove all their equipment and or personal effects dumped and or stored in the Plaintiffs' parcels of land known as Title Numbers Kimondo/Kimondo Block 1 (Chepsalei) 5 Kimondo/Kimondo Block 1 (Chepsalei) 6 and Kimondo/Kimondo Block 1 (Chepsalei) 7.
  - c. Spent
  - d. General damages for trespass.
  - e. Costs of the suit.
  - f. Such further order which the court may deem fit to grant.
2. The 1<sup>st</sup> to 9<sup>th</sup> Defendants did not enter appearance or defend their suit and judgment was entered against them in default of Appearance. The suit proceeded against them by way of formal proof.
3. The 10<sup>th</sup> to 216<sup>th</sup> Defendants filed their Amended Defence and Counterclaim on 21<sup>st</sup> November, 2019. By it, they denied the allegations in the Amended Complaint. Besides seeking the dismissal of the suit they sought, in the Counterclaim, the following orders:
  - a. A declaration be made that the Defendants have proprietary and legal rights over the suit lands Title Numbers Kimondo/Kimondo Block 1(chepsalei)5, Kimondo/Kimondo Block I (chepsalei) 6 and Kimondo/Kimondo Block 1(chepsalei) 7, protected by the law and equity and the Plaintiffs have no rights whatsoever to interfere with the defendants' quiet possession and use and/or interest in portions of the suit lands Title Numbers Kimondo/Kimondo Block 1(chepsalei)5, Kimondo/Kimondo Block 1(chepsalei) 6 and Kimondo/Kimondo Block 1(chepsalei) 7, purchased and occupied by the interested parties.
  - b. An order of permanent injunction be issued to restrain the Plaintiffs by themselves, their servants and or agents from entering, taking possession, trespassing on all those portions occupied by the Defendants in those properties known as\_ Title Numbers Kimondo/ Kimondo Block — 1(chepsalei) 5, Kimondo/Kimondo Block I (chepsalei) 6 and Kimondo/ Kimondo Block I (chepsalei) 7, and or from harassing, evicting and or threatening the interested parties, their agents, employees and or in any manner howsoever interfering with



the Defendants exclusive ownership, use and possession of their respective portions in the said parcels of land.

- c. Costs of this suit and the counter claim be paid by the Plaintiff.

### **Plaintiff's Case**

4. Paul Kiprotich Ruto testified as PW1. He adopted his written witness Statement dated 14<sup>th</sup> December, 2011 as his evidence in-chief. He testified that he purchased 88 acres of the suit land and he had no issue with the other Plaintiffs save for the 2<sup>nd</sup> Plaintiff. It was his testimony that he bought the different portions of land from each of the 6 Plaintiffs. He testified that there was an Agreement dated 15<sup>th</sup> December, 2010. He went on to testify that he bought 13 acres from the 2<sup>nd</sup> Plaintiff, 16 acres from the 4<sup>th</sup> Plaintiff, 15 acres from the 5<sup>th</sup> Plaintiff, 15 acres from the 6<sup>th</sup> Plaintiff, 20 acres from the 7<sup>th</sup> Plaintiff and 13 acres from the 3<sup>rd</sup> Plaintiff. He testified that the total was 55 acres out of 120 acres.
5. His further testimony was that the Plaintiffs sold the rest to other parties. He produced the agreement dated 15<sup>th</sup> December, 2010 as P. Exhibit 1. He testified that he was involved in and facilitated the process of succession of the deceased owner. He testified that the Certificate of Confirmation of Grant dated 1<sup>st</sup> September, 2016 was in respect of the Estate of Samuel Chesire. He added that the other Plaintiffs were getting 20 acres each, making a total of 120 acres. He testified that there were other family members whom he never bought land from of whom Irene Chelagat owned 60 acres, Kennedy 30 acres and Kiprono 30 acres. He testified that he had no interest in the rest of the land.
6. By the consent of the Plaintiff and the Defendants all documents filed by the Plaintiff as per the two lists of Documents dated 11<sup>th</sup> April, 2012 and 17<sup>th</sup> December, 2017 were admitted as the Plaintiff's Exhibits.
7. PW1 testified further that there were 3 titles, Kimondo/Kimondo/Chepsalei/5 of 33.31 Ha, Kimondo/Kimondo/Chepsalei/6 of 33.31 Ha and Kimondo/Kimondo/Chepsalei/7 of 33/31 Ha all registered in the 2<sup>nd</sup> and 6<sup>th</sup> Plaintiff's as Administrators. He testified that they were registered on 17<sup>th</sup> December, 2014 as the Administrators. He testified that he was tasked to complete the Succession process and he got the titles issued in the names of the Administrators. He testified that he had all the 3 original titles. He went on to testify that some parties began invading the land and he reported to Endebess Police Station whereat they were summoned to. He testified that he did not manage to carry out the sub-division of the land as the said people could not allow the surveyor do his work. He testified that the land was demarcated as per the confirmation of grant. He also testified that he was still paying the loan from KCB which he used to pay the Plaintiff.
8. He added that the agreement was executed by the 2<sup>nd</sup> Plaintiff and that all family members including the ones he never bought from were present during execution. Further, the 2<sup>nd</sup> Plaintiff's change of mind was an afterthought. She had signed the verifying affidavit in this case. He further testified that the day they did the agreement, the names of those who had purchased land from his co-plaintiffs were given.
9. Upon being referred to the Defendants' Counterclaim he testified that the vendors did not sign the documents. He testified that they were all forgeries made after this suit was filed. He testified that only one person signed the agreements while this suit was pending. He was referred to page 108 of Defendants' bundle of which he testified that Wycliffe Kibet was the seller. He was not a beneficiary of the Estate of the deceased or a family member. The 2<sup>nd</sup> Plaintiff later came and sold to other people after she received her portion of land of the Estate. He testified that she was the only one who breached the agreement arrived at by the family.



10. Upon cross-examination by Teti for the Defendants, PW1 confirmed that he was Kiprotich and not Rotich. He was referred to P. Exhibit 1 about which he stated that the agreement was made before Confirmation of Grant. He stated that they never filed the Grant of Letters of Administration. He went on to state that the parties had agreed on the mode of distribution at the time of the agreement. He denied having filed any evidence in support. He stated that there was a first Grant issued, and P. Exhibit 2 was an amended Certificate of Confirmation of Grant. He admitted that the court could not know when the original Grant was issued. He stated that the Administrators were the 2<sup>nd</sup> and 6<sup>th</sup> Plaintiffs. He confirmed that the agreement had more than 2 vendors some of whom were not administrators. He confirmed that the agreement specified the portions sold to him. He stated that the agreement confirmed that he paid Kshs.3,000,000/= in cash. He stated that he paid all the co-plaintiffs who acknowledged in the agreement. He stated that there was no specific parcel for a particular person. He added that he bought portions that were to be ascertained at a later date.
11. He confirmed that none of the beneficiaries knew the portions they occupied at the time of the agreement. He stated that the names and acreages of the persons who had bought land from the co-plaintiffs were given at the time of the agreement. He added that there was no-one in occupation of the land by the time he purchased it. He also stated that he was leasing the land and that he was to buy 120 acres – 2 titles. He admitted he had never taken possession of the land.
12. He stated that he was on a lease until 2014 when interferences intensified. He further stated that other beneficiaries never signed since they never sold their land to him. He confirmed that they were present at the execution of the agreement and that subdivision had not been done. He admitted that there was no evidence to confirm that he was tasked to facilitate succession. He also admitted that he did not file any receipts for the fees paid. He stated that the 200 people came later. He admitted that he did not send any demand letter or demand to the 200 people. He added that the 9 Defendants he had sued were the only ones at first interfering with the land. He was referred to the heading of the Counterclaim bearing the names of Defendants No. 10-217 of which he denied that the said people were in occupation of the suit land. He stated that the names were brought in 2019 when he was out of the country.
13. He further stated that they got an eviction order against them in this court. He stated that there were criminal cases against some of the Defendants. He was referred to page 83 of Defendants' Bundle. He confirmed about it that the 2<sup>nd</sup> Plaintiff was the vendor. He further confirmed that the date of agreement was 25<sup>th</sup> August, 2010 regarding parcels Nos. 5, 6 and 7.
14. The witness was also referred to page 75 of Defendants' Bundle where he stated that the 2<sup>nd</sup> Plaintiff swore the affidavit. He confirmed that he had not reported the forgery of her signature to the police. He stated that the 2<sup>nd</sup> Plaintiff informed him that the signature on the affidavit was forged. He was referred to para. 8 of the Affidavit where he stated that he had not taken any step against her. He was also referred to page 86 of Defendants' Bundle where he confirmed that the 3<sup>rd</sup> Plaintiff was selling the same land. He stated that there were people who should not be affected by his case. He was referred to page 2 of Plaintiff - para 8 where he stated that he was not sure of the prayers except the people who properly bought the property. He was also referred to page 88 of Defendants' Bundle where he stated that some people had bought the land before. He admitted that he did not include the people's names in his statement.
15. PW1 was referred to the valuation Report dated November, 2018, P. Exhibit 5 - Page 1 where he admitted that he did not know the owners of the houses. He confirmed that they were on the suit land. He added that they were not beneficiaries of the estate. He stated that the houses were constructed after the filing of this case. He was referred to the prayers in Plaintiff where he stated that injunction and eviction was against all purchasers. He confirmed that he was a purchaser and not a beneficiary. He



- admitted that he had not completed payment of the purchase price. He stated that the land could not be transferred before partitioning. He added that it could not be partitioned due to the Defendants' actions. He stated that the other people who bought the land were trespassers.
16. PW1 stated that the initial grant was confirmed on 2<sup>nd</sup> December, 2009. He further stated that he had filed the said document as No. 3 in the list dated 11<sup>th</sup> April, 2012. He admitted that by the time he purchased the property, the grant had been confirmed. He stated that Kshs. 3,000,000/= was paid to the beneficiaries who sold their parcels. He referred to Clause No. 1B in the agreement dated 15<sup>th</sup> December, 2010. He stated that the balance was payable on partition and transfer to myself of the portion he bought. He referred to paragraph 1 B of the agreement. He added that the transfer was not effected and that the balance still pending. PW1 confirmed that the agreement has not been rescinded as they were awaiting subdivision, allocation of parcels to the beneficiaries and transfer. He stated that there was no dispute between him and the buyers. He stated that the reason they did not sign the agreement was that the grant had been confirmed and that they knew their portions. He admitted that by the time he bought the land, other persons had already bought it.
  17. PW1 added that in 2019 some people had built houses. He stated that in 2012, the 9 Defendants had trespassed the suit land. He stated that there was no building on the land. He admitted that from 2012, he could not use the land. He stated that from 2006, he had leased the land before he purchased it. He stated that he had planted maize and upon the frequency of the damage in 2012, he filed this suit. He stated that they all seek vacant possession. I pray to have the land in vacant possession and transfer to the parties who bought in the right way.
  18. Sophia Soti Chepkonga testified as PW2 where her statement filed on 23<sup>rd</sup> January, 2020 was adopted as her evidence in chief. She testified that Samuel Chesire was her late father. She testified that she was entitled to 20 acres out of her father's land. She added that each beneficiary was entitled to a portion. It was her testimony that she had sold part of her property to Joseph Mwangi and Wanyonyi. She also testified that she sold 16 acres to the 1<sup>st</sup> Plaintiff. PW2 testified that they never revoked the agreement dated 15<sup>th</sup> December, 2010. She testified that the Administrators were the 2<sup>nd</sup> and 6<sup>th</sup> Plaintiffs who are her elder sisters. PW2 was referred to the Defendants' Bundle where she testified that she was not aware of any land sale by Wycliffe, grandson to her father. She testified that he was not a beneficiary together with Christopher who was also the deceased's grandson. It was her testimony that they had no power to sell land belonging to the estate. She further testified she was not aware of the alleged sale to some 206 people, by herself or her sisters. She testified that she wants the 206 evicted in favour of the beneficiaries. It was her testimony that by the time the grant was confirmed, the 206 were not present. She added that they reported to Endebess police the invasion. She added that she was testifying on behalf of her sisters.
  19. She testified that from the parcel of land known as Chepsalei 5, 6 and 7, she had wanted 20 acres to be given to her but the same was not. She went on to testify that there were people who had occupied her portion in 2010 and she wanted them evicted. She testified that the grant was confirmed in 2007 and that by the time distribution was done, she had not occupied the land. She testified that she had been leasing the land before, she added that the subdivision of the 20 acres had not been done due to the strangers that had moved onto the land.
  20. She testified that she had sold part of her land to other people. She further testified that she wanted her 20 acres subdivided. She testified that she sold to the 1<sup>st</sup> Plaintiff who is in possession of the title. She added that as a family, they gave him the titles to keep.
  21. Upon cross-examination by Teti, she stated that the grant was confirmed on 2<sup>nd</sup> December, 2009. She was referred to D. Exhibit 6 where she stated that upon confirmation of the grant, some beneficiaries



- started selling their shares. PW2 was also referred to D. Exhibit 8 - Bundle of agreement where she stated that the agreement dated 25<sup>th</sup> August, 2010 between the 2<sup>nd</sup> Plaintiff and Rorina A. Ng'ania. She was referred to page 75 of Bundle, DMFI-4 where she stated that the 2<sup>nd</sup> Plaintiff swore an affidavit that she did not authorize the case. She went on to state that at paragraph 4, the 2<sup>nd</sup> Plaintiff swore that she never sold the land. PW2 stated that she was not aware of the same. She stated that she sold the land to some of the Defendants. She further stated that she filed a plaint on 18<sup>th</sup> April, 2012 which she has not amended.
22. PW2 stated that she sold to Moses Kipsiyoi Mwanga four acres and Joseph Wanyonyi one acre. She stated that they took possession with her permission. She was referred to prayer (b) of the Plaint where she stated that they sought for an order of injunction to vacate the land. She added that the same included the people she sold to. She further stated that as per paragraph 7 of the plaint, there was a claim of trespass but the people she sold to did not trespass onto the land. She stated that some of the remaining Plaintiffs sold portions to the Defendants. She was referred to the agreement dated 25<sup>th</sup> July, 2010 at page 3 of the Defendant bundle where she stated that the same was an agreement between her sister the 2<sup>nd</sup> Plaintiff and one Robina Alfred. She confirmed that the 2<sup>nd</sup> Plaintiff was an administrator.
23. She also stated that at page 86 of bundle was an agreement dated 28<sup>th</sup> October, 2010 between the 3<sup>rd</sup> Plaintiff and Tobias Juma. She stated that she received money from the buyers which was after confirmation of the grant on 2<sup>nd</sup> December, 2009. She went on to state that the grant they used to chase away the parties with was issued on 1<sup>st</sup> September, 2016. She explained that upon rectification of the grant in 2016, she has not been issued with a title deed. She added that no transmission or subdivision has taken place. She stated that none of the beneficiaries knew their title numbers. She admitted that she did not know which of the Defendants had trespassed onto her portion. She stated that they wanted to evict all the Defendants and then subdivide the land. She confirmed that she was not aware whether the purchasers had built homes. She confirmed that the Defendants live on the land and have homes on it. PW2 stated that the succession of the estate of her deceased's father was yet to be concluded because transmission had not been done. She confirmed that the plaint did not pray for refund of the monies paid to her.
24. Upon re-examination, she was referred to page 83 being the sale agreement between the 2<sup>nd</sup> Plaintiff and Alfred dated 25<sup>th</sup> August, 2010. She stated that she could not tell which parcel number she was selling from. She further stated that paragraph 5 of the agreement provided that she was to get the title after the succession cause was completed. She stated that she was to take possession after harvesting of maize crops. She further stated that the document was signed by the vendor. She added that the estate had two administrators being the 2<sup>nd</sup> and 6<sup>th</sup> Plaintiff. She confirmed that the 6<sup>th</sup> Plaintiff's signature was not there. She was referred to the agreement dated 28<sup>th</sup> October, 2010 between the 3<sup>rd</sup> Plaintiff and Juma. She stated that the agreement was subject to consent for subdivision and transfer being obtained within 6 months. She stated that the consent was never obtained. PW2 stated that the 1<sup>st</sup> grant was issued in 2009 and an amendment was done in 2016 to include the acreage of land to be sold. She stated that in the initial agreement, she was entitled to 20 acres.
25. She further stated that the estate did not get the titles since the Defendants' filed a claim on the land. She stated that all those who purchased the land were to address their grievances to whoever they purchased the land portions from. She added that for each of the beneficiaries to get their rightful share, they ought to be evicted first. She also stated that the 2<sup>nd</sup> Plaintiff sold a lot more than she had. She added that the sale by the 2<sup>nd</sup> Plaintiff was done without her authorization.
26. That marked the close of the Plaintiffs' case



## Defence Case

27. Koilege Kipruto Michael testified as DW1. His witness statement dated 2<sup>nd</sup> October, 2019 was adopted as his evidence in chief. He testified that they filed list of documents dated 2<sup>nd</sup> October, 2019 which documents between pages 54 and page 150 were produced as D. Exhibit 1-8. He testified that he had the written authority from the other Defendants produced as D. Exhibit 2. He testified that the Defendants resided on parcel Kimondo/Kimondo Block 1/Chepsalei/5, 6 and 7. He further testified that they bought the said parcels from the family of the late Samuel Cheruiyot Chesire. He went on to testify that the land was sold by the 2<sup>nd</sup> -6<sup>th</sup> Plaintiffs' and their children. He testified that there were other Defendants who bought from the family. He further testified that they paid the full purchase price for all the purchasers. He added that they reside on the parcels of land in issue. It was his testimony that he bought the land from Wycliffe Kibet Kobira and Christopher Kibet Chesire, the 3<sup>rd</sup> Plaintiff's son and son of John Chesire who was a son of the late Samuel Chesire respectively. He denied the Plaintiff's claim that they invaded the parcels of land. He was referred to D. Exhibit 3 an agreement dated 15<sup>th</sup> December, 2010 where he testified that he first saw the agreement when the 2<sup>nd</sup> Plaintiff informed them in 2018 that there was a case against them in court. He denied the authenticity of the agreement.
28. He testified that the 2<sup>nd</sup> Plaintiff denied making any agreement with the man. He testified that he also filed a Certificate of Confirmation of Grant in Nakuru High Court Succession Cause No. 1 of 2007 in the Estate of Samuel Cheruiyot Chesire (deceased) made on 2<sup>nd</sup> December, 2009. DW1 was referred to D. Exhibit 8 - Bundle of Agreements where he testified that the 1<sup>st</sup> one was between the 2<sup>nd</sup> Plaintiff and Rorina Alfred Ngania and dated 25<sup>th</sup> August, 2010. He testified that it was done after confirmation of grant. He added that the 2<sup>nd</sup> one was dated 28<sup>th</sup> October, 2010 between the 3<sup>rd</sup> Plaintiff and Tobias Juma Wekesa (Defendant No. 204). He testified that the same was also after the confirmation of grant. He went on to testify that the 3<sup>rd</sup> one was dated 21<sup>st</sup> December, 2009 between the 6<sup>th</sup> Plaintiff, 5<sup>th</sup> Plaintiff and Timona Wafula Mangeni (One of the defendants) done after confirmation of the grant. DW1 referred to the agreement between 5<sup>th</sup> and 6<sup>th</sup> Plaintiff on one part and John Wekesa Makhokha on the other part dated 21<sup>st</sup> December, 2009 which was done after confirmation of the grant.
29. It was his testimony that the Plaintiffs sold them the land and they paid them. He added that the agreements were all executed before the agreement produced by the 1<sup>st</sup> Plaintiff. He testified that the 1<sup>st</sup> Plaintiff's agreement was done after they had entered into agreements with the other Plaintiffs. He also testified that there were other Defendants who had bought land from the Plaintiffs' children No. 2 - 7. He also testified that there was an agreement dated 20<sup>th</sup> August, 2009 between Christopher Chesire, Kenneth Chesire and the 3<sup>rd</sup> Plaintiff on the one part and Peter Nyongesa Simiyu, being one of the Defendants. He added that there was another agreement dated 30<sup>th</sup> April, 2007 between Kenneth Chesire Kipsowe and Stephen K. Samoei. He urged the court to dismiss the prayers in the plaint and that their counterclaim be allowed as prayed. He added that they are on the land and that they should be left to reside on it. He testified that he bought the parcels of land in accordance with the agreement.
30. Upon cross-examination, he was referred to D. Exhibit 8 - page 124 where he confirmed that he bought his land in 2011. He added that before, 2011 he could not confirm who was in possession. He was referred to P. Exhibit 4(a), (b) (c) and 3(a), (b) and (c) where he stated that P. Exhibit 3(a) was a copy of the title to Kimondo/Kimondo Block 1/Chepsalei/5 in the 2<sup>nd</sup> and 6<sup>th</sup> Plaintiff's names. He stated that the land owned by the late Samuel Cheruiyot Chesire was in 3 Block titles. He was also referred to P. Exhibit 2 where he confirmed that the estate of Samuel was being administered by the 2<sup>nd</sup> and 6<sup>th</sup> Plaintiffs'. He stated that P. Exhibit 3(a), the title was issued on 17<sup>th</sup> February, 2014. He stated that the



date appearing on all the titles that is P. Exhibit 3(a), (b) and (c) prior to that, the titles were in the name of the deceased. He stated that there was no single agreement that has been filed by both administrators at the same time. He admitted that the Defendants have never been taken to the land control board for the transactions made. He referred to his agreement and stated that the people who sold him the land were not listed as beneficiaries in the grant.

31. He admitted that he had no authority to show that the parents consented or permitted the children to sell the land. He admitted that he was aware that the property related to a person who had died and that succession had been done. He also admitted that he was not shown the certificate of confirmation of grant. He confirmed that when he entered into the agreement, the beneficiaries had not been given their portions of land. He added that he was not aware of the same. He stated that he was not sure of the location of his parcel of land in relation to parcels No. 5, 6 and 7. He stated that his agreement was that he was buying land from 5, 6 and 7. He confirmed that they were not specific as to which parcel the buyers were buying from. He was referred to D. Exhibit 8 where he stated that the 3<sup>rd</sup> Plaintiff was a beneficiary but Christopher, Kiprono Chesire and Kenneth Chesire Kipsore were not beneficiaries.
32. He stated that the buyers bought land from sellers who were not beneficiaries thus they did not have the authority to sell on behalf of the beneficiaries. He stated that all the Defendants occupy a size of the land which he was not certain. He stated that the 7<sup>th</sup> Plaintiff was not on the land. He added that according to the confirmation of the grant, she was entitled to 20 acres. He confirmed that she had not sold any land to any of the Defendants. He stated that the only way the other buyers could get their portions was by the beneficiaries being given their portions first. He stated that none of the Plaintiffs have withdrawn their claim. He stated that the 2<sup>nd</sup> - 7<sup>th</sup> Defendants are the daughters of Samuel K. Chesire (deceased) thus entitled to a share of their father's estate. He stated that he was not aware of the 2<sup>nd</sup> Plaintiff's affidavit. He was referred to D. Exhibit 3 or P. Exhibit 1 where he stated that the persons who signed as sellers were six, the 2<sup>nd</sup> - 7<sup>th</sup> Plaintiffs. He confirmed that the agreement was signed by the beneficiaries themselves selling 88 acres. He stated that the bulk was being sold by non-beneficiaries. He stated that the agreements indicated the people who sold the land and the sizes they sold. He added that the agreements have clauses on when the purchasers were to take possession.
33. Upon re-examination, he referred to P. Exhibit of which he stated that the same was a Rectified Certificate of Confirmation of grant dated 1<sup>st</sup> September, 2016. He stated that the same was rectified twice. He stated that the original grant was issued on 2<sup>nd</sup> December, 2009. He further stated that the agreement at page 83 of the defence bundle was entered into after the confirmation of 2009. He referred to P. Exhibit 1 - the Sale Agreement by 2-7 Plaintiffs as sellers and 1<sup>st</sup> Plaintiff is for 88 acres out of the 120. He stated that the agreement does not show which of the titles the Plaintiffs are selling. He stated that completion of the sale was not done within the 120 days as per the agreement and the same was also not vacant as at 2010. He referred to his agreement at page 124 of bundle where he stated that Christopher was the son, John Chesire was the son of the deceased and Wycliffe was the son of the 3<sup>rd</sup> Plaintiff. He stated that the 3<sup>rd</sup> Plaintiff did not give him the written authority to sell. He stated that the affidavit by the 2<sup>nd</sup> Plaintiff was disowned the instant suit. He stated that the 2<sup>nd</sup> Plaintiff stated that the verifying affidavit purported to be signed by her was a forgery. She confirmed at paragraph 5 that she never signed the agreement dated 15<sup>th</sup> December, 2010.
34. That marked the close of the Defence case.

## Submissions

35. Counsel for the Plaintiffs filed his submissions dated 9<sup>th</sup> February, 2024 where he identified four issues for determination. The first and second issues were whether or not the Plaintiffs are entitled to the



- suit property and whether the 202 acquired an interest on the suit property capable of protection under Article 40 of *the Constitution*. It was counsel's submission that it was not in dispute that the suit property was registered in the 2<sup>nd</sup> to 7<sup>th</sup> Plaintiffs as administrators of the deceased's estate. He added that they are beneficiaries of the estate and the same had not been distributed to the individual beneficiaries. He relied on Article 40 of *the constitution* and three unreported cases and submits that the 207 did not acquire any interest on the suit property.
36. The third issue was whether an order of permanent injunction should be issued to restrain the Defendants and interested parties by themselves, their servants and or agents from entering, taking possession and trespassing on the suit property. He submits that the claim by the 207 Defendants to the suit property was unsubstantiated and in contravention of Section 45 *Law of Succession Act* and Section 3(3) of the *Law of Contract Act*. He submits that there was intermeddling with the suit land since confirmation had not been done. He relied on the case of Veronica Njoki Wakagoto (deceased) [2013] eKLR and In Re Estate of John Gakunga Njoroge (deceased) [2015] eKLR. It was his submission that the sale agreements were illegal since the beneficiary's shares had not been identified and registered. He also relied on the case in Chuka Succession Cause No. 560 of 2015 Estate of M'Muthamia Mwendwa (deceased) [2016] eKLR. Counsel submits that some of the interested parties did not produce sale agreements to show that they entered into a legal contract concerning the suit property.
37. He relied on Section 107 of the *Evidence Act* and submits that the interested parties did not produce any evidence that they sought the consent of the land control board thus making the transactions void. He relied on the case of David Sironga Ole Tukai V Francis Arap Muge & 2 Others [2014] eKLR.
38. On the final issue counsel urges the court to allow their prayers as sought in the plaint and dismiss the Defendants counterclaim with costs.
39. He also filed a supplementary submission dated 11<sup>th</sup> July, 2024 where he identified four issues for determination. The first issue was whether the suit sought remedies against the 10<sup>th</sup> to 216<sup>th</sup> Defendants. He submits that judgment in default of appearance was entered against the 1<sup>st</sup> to 9<sup>th</sup> Defendants after which the 10<sup>th</sup> to 216<sup>th</sup> Defendants were joined as Defendants. He submits that the prayers sought by the Plaintiff for vacant possession does not limit itself to the 1<sup>st</sup> to 9<sup>th</sup> Defendants. He further submits that the Defendants filed a counterclaim thus it is far-fetched for the Defendants to submit that there was no claim against them.
40. The second issue was whether or not the Plaintiff proved their case. He submits that the 2<sup>nd</sup> to 7<sup>th</sup> Plaintiffs are beneficiaries of the estate of Samuel Chesire (deceased). He argues that the grant confirmed that they are entitled to vacant possession. He submits that the Defendants proceeded on the wrong assumption that the claim was filed by the 1<sup>st</sup> Plaintiff alone. He submits that the Defendants sale agreements did not meet the legal threshold for grant of the orders sought. He submits that the Plaintiffs demonstrated that the purported sale agreements to the Defendants offends the mandatory provisions of the *Law of Succession Act* on the restriction of sale of immovable property under Section 82(b) (ii) of the *Law of Succession Act*. He submits that the said act provides that sale of immovable property of the estate before confirmation of grant is prohibited.
41. The third issue was whether or not all the Plaintiffs ought to have testified. It was counsel's submission that the suit is a joint action and that not all the Plaintiffs ought to have testified. He submits that the 2<sup>nd</sup> Plaintiff admitted to signing the verifying affidavit accompanying the Plaint and disowned the affidavit purporting to have disowned the suit. He relied on the case of Grace Samba & 27 Others V Christine Nyamalwa [2015] eKLR.



42. The final issue was on the duty of the Defendant to discharge the burden of proof on the claim. He submits that the alleged sale of the suit property was entered into before the grant of letters of administration to the deceased's estate was confirmed. He submits that the same amounted to intermeddling contrary to Section 45 of the Law of Succession Act. He submits that even if the agreement was after confirmation, it was entered into by strangers who had no capacity to bind the estate of Samuel Chesire rendering them void ab initio. He submits that some of the agreements did not meet the threshold of Section 3(3) of the Law of Contract Act. He submits that the Defendants did not prove their case on a balance of probabilities.
43. Counsel for the 10<sup>th</sup> to 216<sup>th</sup> Defendants' filed his submissions dated 15<sup>th</sup> July, 2024 where he gave a background of the case and identified six issues for determination. The first issue was whether the Plaintiffs proved their case on a balance of probabilities. While submitting in the negative, he relied on Section 107 of the Evidence Act and argues that the 2<sup>nd</sup>, 3<sup>rd</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Plaintiffs did not testify in order to prove their case.
44. The second issue was whether the Defendants had trespassed on the suit land for an eviction order and injunction to issue against them. Counsel submits in the negative and argues that the Defendants were on the suit land as purchasers for value. He submits that the grant of the estate of Samuel Cheruiyot Chesire was confirmed on 2<sup>nd</sup> December, 2009 hence the beneficiaries were free to sell their entitlement after that date to whomever they wished. He submits that the Defendants filed bundles of agreements to prove that the agreements were done after 2<sup>nd</sup> December, 2009. He submits that the 2<sup>nd</sup> to 7<sup>th</sup> Plaintiffs admitted to having sold the land to the Defendants who paid them in full. He argues that they can therefore not be evicted otherwise it would be an injustice. He further submits that the prayers sought in the Plaint cannot be granted since they seek to evict all the Defendants uniformly. He added that the Plaintiffs did not amend their plaint to include the names of those they did not want to evict from the suit land. He submits that in the absence of such amendment and the Plaintiff having already admitted to having sold portions of land to some Defendants, the prayers sought cannot legally obtain.
45. The third issue was the legal status of the sale agreement dated 15<sup>th</sup> December, 2010 which formed the basis of the Plaintiffs case. He submits that the exact location of the land purchased was unknown considering that PW1 informed the court that he did not purchase the entire land comprised in Kimondo/Kimondo Block 1(Chepsalei) 5, 6 and 7. He submits that the 2<sup>nd</sup> to 7<sup>th</sup> Plaintiffs sold to the 1<sup>st</sup> Plaintiff which they had already sold to the Defendants. He submits that on 15<sup>th</sup> December, 2010, there was no land which the 1<sup>st</sup> Plaintiff could have lawfully purchased from the 2<sup>nd</sup> to 7<sup>th</sup> Plaintiffs since they were already sold to the Defendants who already occupied their portions. He added that the 1<sup>st</sup> Plaintiff admitted that he never cleared the purchase price hence his rights over the suit land did not accrue over the suit land. He argues that the said agreement does not create any rights over the suit land since it is unenforceable having not been completed within the 120 days as provided under clause 2 of the agreement. He added that the sale agreement was also legally unenforceable for want of the Land Control Board Consent.
46. The fourth issue was whether the Defendants proved their counterclaim. While submitting in the affirmative, he submits that the subsequent amendment of the certificate of grant in 2016 did not affect the validity of the earlier agreements entered into between 2009 and 2016. He submits that Sections 45 and 82 of the Law of Succession Act does not apply in the instant case as the grant had already been issued and confirmed at the time the Defendants purchased their land.
47. The fifth issue was whether the Plaintiffs' case was premature. He submits in the affirmative and argues that the suit was based on the entitlement of the 2<sup>nd</sup> to 7<sup>th</sup> Plaintiffs in the estate of their deceased's father which they claimed to have sold to the 1<sup>st</sup> Plaintiff. He added that to the extent that placement



of the beneficiaries on the ground had not been done, the Plaintiffs case was premature. He submits that it was necessary for the Plaintiffs to identify which of the Defendants entered into their respective portions.

48. The final issue on the orders to issue, it was counsel's submission that the court ought to dismiss the Plaintiffs' case with costs and allow the Defendants counterclaim as prayed.

### **Analysis and Determination**

49. This court has carefully considered the pleadings, the evidence on record and submissions and is of the view that the issues for determination are:
- a. Whether the sale agreements between the 2<sup>nd</sup> to 7<sup>th</sup> Plaintiffs and the 1<sup>st</sup> Plaintiff on one part and the Defendants were valid.
  - b. Whether the Defendants' counterclaim was merited
  - c. Whether the doctrine of lis pendens applies.
  - d. Who should bear the costs of the suit.

### **Whether the sale agreements between the 2<sup>nd</sup> to 7<sup>th</sup> Plaintiffs and the 1<sup>st</sup> Plaintiff on one part and the Defendants were valid.**

50. It was PW1's testimony that he purchased a total of 88 acres of Kimondo/Kimondo/Chepsalei/5, Kimondo/Kimondo/Chepsalei/6 and Kimondo/Kimondo/Chepsalei/7 the suit lands being different portions from each of the 2<sup>nd</sup> to 7<sup>th</sup> Plaintiffs. It was his case that he bought the same from the administrators of the estate of Samuel Cheruiyot Chesire (deceased). Upon cross-examination, he admitted that he paid Kshs. 3,000,000 in cash and that at the time of purchase, the grant had already been confirmed but the beneficiaries did not know their exact portions. He also admitted that he had not paid the balance of the purchase price since as per the sale agreement, the same was to be done after the land had been partitioned. The 4<sup>th</sup> Plaintiff testified as PW2 where she confirmed that she had sold 16 acres to the 1<sup>st</sup> Plaintiff. Upon cross-examination, she admitted that transmission had not been done since the succession matter involving their deceased father's estate was still ongoing.
51. The Defendants on the other hand claim that they bought the suit land from the beneficiaries and the beneficiaries' children after which they immediately took possession. DW1 upon cross-examination, confirmed that at the time they bought the suit land, they were not certain of the exact location. He added that he had not been shown the certificate of grant at the time of purchase. DW1 confirmed that he bought his land from Wycliff and Christopher Kibet who were sons of the Plaintiffs'. It was his claim that the 1<sup>st</sup> Plaintiff bought the land after they had already purchased the same from the administrators. He admitted that there were some of the Defendants that had bought part of the suit land from persons who were not beneficiaries of the deceased's estate. Section 3(3) of the [Law of Contract Act](#) provides that:

- “(3) No suit shall be brought upon a contract for the disposition of an interest in land unless-
- (a) The contract upon which the suit is founded-
    - (i) Is in writing;
    - (ii) Is signed by all the parties thereto; and



(b) The signature of each party signing has been attested by a witness who is present when the contract was signed by such party”

52. It is not in dispute that the agreements as produced by both parties were all in writing and signed. It was also not in dispute that the initial grant for the deceased estate was confirmed on 2<sup>nd</sup> December, 2009 and the same rectified on 1<sup>st</sup> September, 2016. It is not in contention that the sale agreements by both the 1<sup>st</sup> Plaintiff and the Defendants were done after the grant had been confirmed. However, I have keenly perused the Certificate of Confirmation of Grant issued on 2<sup>nd</sup> December, 2009 and it is my view that the same contains certain discrepancies as to the date it was issued. I note that it indicates that the Grant was confirmed on 2<sup>nd</sup> December, 2010 but dated 2<sup>nd</sup> December, 2009. It is my opinion that in as much as one might conclude that it could have been a typo, the same was never clarified by the parties in court.
53. In view of the above, this court can only rely on the Certificate of Confirmation of Grant issued on 1<sup>st</sup> September, 2016. The question that needs to be answered at this juncture is whether the doctrine of lis pendens will apply in the circumstances.
54. In the case of *Naftali Ruthi Kinyua v Patrick Thuita Gachure & another* [2015] KECA 911 (KLR) the court held as follows:
- “Every man is presumed to be attentive to what passes in the courts of justice of the State or sovereignty where he resides. Therefore, purchase made of a property actually in litigation pendete lite for a valuable consideration and without any express or implied notice in point of fact affects the purchaser in the same manner as if he had notice and will accordingly be bound by the judgment or decree in the suit.”
55. The doctrine of lis pendens is based on sound policy and the concept of the rule of law which anticipates fine and fair adjudication. The law does not allow or encourage litigants to give rights which are still under dispute to others who are not litigants and in the process prejudice fellow litigants. It is important to note that the doctrine is intended to avoid conflicts between parties to a suit and innocent purchasers and also to stop those who want to circumvent the court’s jurisdiction by removing the subject matter from the court’s grasp. The aim is accomplished by enforcing the decree against any person who acquires property the subject of litigation. It is my opinion that in the present suit, the sale agreements entered into by the Plaintiffs and Defendants between 2010 and 2011 touching on the estate of Samuel Cheruiyot Chesire (deceased) were done during the pendency of the succession matter and therefore null and void. It is this court’s view that both parties ought to have awaited finalization of the succession matter and then proceed to purchase the same from the beneficiaries. It goes without saying that the end result of the said transactions brought about confusions such as the location of the suit portions which could have been avoided if the succession matter had been first concluded.
56. In view of the above, I find that the sale agreements between the 2<sup>nd</sup> to 7<sup>th</sup> Plaintiffs and the 1<sup>st</sup> Plaintiff on one part and the Defendants was invalid.

#### **Whether the Defendants’ Counterclaim was merited**

57. The 10<sup>th</sup> to 216<sup>th</sup> Defendants through their Amended Defence and Counterclaim dated 21<sup>st</sup> November, 2019 prayed, in summary for, a declaration they had proprietary and legal rights over the suit lands Title Numbers Kimondo/Kimondo Block 1(Chepsalei)5, Kimondo/Kimondo Block I (Chepsalei) 6 and Kimondo/Kimondo Block 1(Chepsalei) 7, which rights were protected by the law and equity hence the Plaintiffs should not interfere with their quiet possession and use and/or interest



of the portions of the suit lands. They also prayed for an injunction restraining the Plaintiffs, their servants and or agents from entering, taking possession, and trespassing on all those portions occupied by them (Defendants) in the suit lands, and costs of the suit and counterclaim. It was their pleading that they bought the portions of land they claim from the beneficiaries of the Estate of Samuel Cheruiyot Chesire.

58. In their evidence, as given by DW1 and supported by D. Exhibits 1 to 8, the 10<sup>th</sup> to 216<sup>th</sup> Defendants stated that they resided on parcel Kimondo/Kimondo Block 1/Chepsalei/5, 6 and 7. They bought the said parcels from the family of the late Samuel Cheruiyot Chesire. The land was sold by the 2<sup>nd</sup> -6<sup>th</sup> Plaintiffs' and their children. Further, there were other Defendants who bought from the family. They paid the full purchase price for all the purchasers. DW1 stated further that he bought the land from Wycliffe Kibet Kobira and Christopher Kibet Chesire, the 3<sup>rd</sup> Plaintiff's son and son of John Chesire who was a son of the late Samuel Chesire respectively. He added that other plaintiffs bought their parcels of land after the beneficiaries of the estate of the late Samuel C. Chesire got a Certificate of Confirmation over the land in Nakuru High Court Succession Cause No. 1 of 2007, In the Estate of Samuel Cheruiyot Chesire (deceased), on 2<sup>nd</sup> December, 2009. This was P.Exhibit 2. DW1, however, admitted that the Grant was rectified 1<sup>st</sup> September, 2016. Additionally, it was clear that the agreements the persons who entered into them after December 2009 were made before the distribution of the Estate.
59. It should be noted that Confirmation of the Grant before distribution of the Estate of a deceased person does not of itself give the beneficiary the right to sell property. The estate must be distributed first and each beneficiary receives his/her share. It is the share he/she will then sell. Otherwise, before distribution, the matter is still pending before the Court and subject to the doctrine of lis pendens. Section 45(1) of the Law of Succession Act provides that:
- “ Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.”
60. The Defendants who raised the Counterclaim ought to have awaited distribution of the Estate first before selling any portions to them. Their Counterclaim is not merited and is dismissed.

### **Whether the doctrine of lis pendens applies**

61. Having already established that the sale agreement entered into touching on the deceased's estate were done before conclusion of the Succession matter, the doctrine of lis pendens automatically applies in the present suit. The parties to the agreements were busy interfering and changing the character of the subject matter in the succession cause hence acting illegally. The doctrine forbids any actions by any of the parties that would change the nature and character of the subject matter before the court thereby depriving it of its jurisdictional power to effectively adjudicate on it. Thus, in the case of *Ruthi Kinyua v Patrick Thuita Gachure & another* [2015] eKLR, the Court of Appeal held;

“Black's Law Dictionary 9th edition, defines lis pendens as the jurisdictional, power or control acquired by a court over property while a legal action is pending.



Lis pendens is a common law principle that was enacted into statute by section 52 Indian Transfer of Property Act (ITPA)-now repealed. While addressing the purpose of the principle of lis pendens, Turner L. J, in Bellamy vs Sabine [1857] 1 De J 566 held as follows;

“It is a doctrine common to the courts both of law and equity, and rests, as I apprehend, upon this jurisdiction, that it would plainly be impossible that any action or suit could be brought to a successful determination, if alienation pendent lite were permitted to prevail. The Plaintiff would be liable in every case to be defeated by the Defendants alienating before the judgment or decree, and would be driven to commence his proceedings de novo, subject again to defeat by the same course of proceedings.”

62. The actions of the plaintiffs, and by extension the 10<sup>th</sup> to 216<sup>th</sup> Defendants were contrary to the doctrine of lis pendens. It follows that any proprietary interest acquired in the process is flawed, defective and of no effect: it is illegal.
63. The upshot of the foregoing is that both the Plaintiffs’ and Defendants’ cases on the counterclaim are hereby struck out.
64. Each party to bear its own costs.
65. It is so ordered.

**JUDGMENT DATED, SIGNED AND DELIVERED VIA THE TEAMS PLATFORM THIS 17<sup>TH</sup> DAY OF JUNE 2025.**

**HON. DR. IUR F. NYAGAKA**

**JUDGE**

In the presence of:

Tororei Advocate for the Plaintiff.

Teti Advocate for the 10<sup>th</sup> to 216<sup>th</sup> Defendants

