



**Chepkuyeng v Chebiego (Environment and Land Appeal E009 of 2023)
[2025] KEELC 6232 (KLR) (18 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6232 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT AND LAND APPEAL E009 OF 2023**

**EM WASHE, J
SEPTEMBER 18, 2025**

BETWEEN

BARNABA CHEPKIYENG APPELLANT

AND

JOHN CHEBIEGO RESPONDENT

JUDGMENT

1. The Appellant herein filed a Memorandum of Appeal dated 04.05.2023 (hereinafter referred to as “the present Appeal”) against the Judgment and/or Decree issued in the proceedings known as Eldoret Chief Magistrates Court ELC Case No. 60 Of 2012 (hereinafter referred as “the Trial Court”) issued on the 06.04.2022 seeking the following Orders; -
 - a. The whole Judgment and Decree pronounced on the 06.04.2022 be set-aside.
 - b. Judgment be entered in favour of the Appellant in terms of the Defence and Counter-Claim dated 17.05.2018.
2. The grounds in support of the prayers sought in the present Appeal are outlined as follows; -
 - i. That the Trial Court erred in law and in fact by giving undue weight to the Respondent’s case with all the discrepancies and least weight to the Appellant’s case.
 - ii. That the Trial Court erred in law and in fact in totally disregarding the Appellant’s case.
 - iii. That the Trial Court erred in law and in fact in failing to give due regard to the testimonies of the witnesses that the suit land was purchased using the name of the Plaintiff who paid nothing for the consideration.
 - iv. That the Trial Court erred in law in failing to give weight to the testimonies of the witnesses to the fact that the land was purchased from Co-operative society where the Plaintiff’s name



had been registered as Interested Purchaser but later declined to pay for the parcel causing the Defendant's father and the Plaintiff's brother to contribute for the purchase price using the plaintiff's name.

- v. That the Trial Court erred in law by failing to consider evidence adduced by one of the Directors of Koitoror Cooperative Society that the Defendant's father and mother together with the Plaintiff's brother used to pay the purchase price in the name of the Plaintiff and at no time did the Plaintiff pay any money directly to them.
 - vi. That the Trial Court erred in law and in fact in disregarding the evidence that the Plaintiff had not stepped on then suit land and thus he was unable to name his neighbour on cross-examination yet he claims to have been on the land from the year 1975.
 - vii. That the Trial Court erred in law and in fact in disregarding the uncontroverted fact that the Defendant had entered into the land in the year 1997 without permission from the Plaintiff thus the statutory 12 years had lapsed and that the land had accrued to the Defendant by way of adverse possession.
 - viii. That the Trial Court erred in law and in fact in failing to appreciate and consider the fact that the Plaintiff never appeared on the suit land when the court made a site visit and no explanation was ever given.
 - ix. That the Trial Court erred in law in totally disregarding information from the Chief's representatives who confirmed that the Plaintiff was a stranger in the area and that the Defendant had stayed on the suit property for over 12 years and had made advanced developments on the suit parcel.
 - x. That the Trial Court in law and in fact by failing to consider the evidence adduced by the Plaintiff that it was only the Defendant residing on the land as opposed to the fact which proved negative during the site visit.
 - xi. That the Trial Court erred in law and in fact by failing to consider the Chief's representative information that two other persons live on the suit land, that is, the Plaintiff's nephews (his brother's sons) and that the parcel had been subdivided into two, the Defendant and the two Plaintiff's nephews.
 - xii. That the Trial Court erred in law in totally disregarding the Appellant's submissions filed by his advocates on record.
 - xiii. That the Trial Court erred in law and fact in ignoring that the Respondent failed to avail himself and stamp in authority on ownership during the court site visit.
3. The Record of Appeal was duly prepared and served on the Respondent who expressed an intention to oppose the same.
 4. The present Appeal was then admitted on the 30.05.2025 and the Court directed that it would be canvassed by way of written submissions.
 5. The Appellant duly filed his submissions dated 26.06.2025 in support of the present Appeal while the Respondent filed his submissions dated 07.07.2025 in opposition of the present Appeal.



6. The Court exercising its jurisdiction is guided by the authority of *Selle & Another-versus- Associated Motor Boat Co.ltd & Others (1968) EA 123* where the Court of Appeal stated as follows; -

“A first appellate court is mandated to re-evaluate the evidence before the trial court as well as the judgment and arrive at its own independent judgment on whether or not to allow the appeal. A first appellate court is empowered to subject the whole of the evidence to a fresh and exhaustive scrutiny and make conclusions about it, bearing in mind that it did not have the opportunity of seeing and hearing the witnesses first hand.”

7. Based on the guidance of the above authority, this Court is mandated to re-evaluate the pleadings and evidence adduced before the Trial Court and make its own determination before making conclusions as to whether the Trial Court erred in terms of facts and the applicable law.

8. To be able to achieve this objective, this Court will now proceed to re-evaluate the pleadings and evidence placed before the Trial Court to enable it identify the issues for determination and make its own findings thereof.

Respondent’s Case Before The Trial Court

9. The Respondent herein who was the Plaintiff before the Trial Court, filed a Plaint dated 21.03.2018 seeking the following Orders against the Appellant who was the Defendant in the Trial Court; -

- i. An order of Permanent Injunction restraining the Defendant by himself, his agents and/or servants from interfering, trespassing, intermeddling and/or in any other manner dealing with the Plaintiff’s use, occupation, possession and/or ownership of all that parcel of land known as Koitoror/Toiyoluk/ Block 1(Koitoror) 166.
- ii. Costs of this suit.
- iii. Any other or further relief that this Honorable Court shall deem fit to grant.

10. The facts in support of the prayers sought in the Plaint dated 21.03.2018 are given as follows; -

- a. The Respondent was the registered owner of the property known as Koitoror/Toiyoluk Block 1 (Koitoror)/166 hereinafter referred to as “the suit property”).
- b. The Appellant herein without colour of any legal right or ownership encroached onto and/or purported to occupy the Respondent’s suit property.
- c. The Respondent denied ever giving any authority and/or consent for the Appellant to enter and/or occupy the Appellant’s suit property.
- d. Based on the Appellant’s unlawful and/or illegal occupation of the suit property, the Respondent sought the Trial Court to grant a Permanent Injunction prohibiting the Appellant from entering, using, occupying and/or interfering with the Respondent’s ownership and occupation of the suit.
- e. Despite demand to sue being issued to the Appellant by the Respondent, the Appellant did not remedy the omission.

11. The present suit was duly served on the Appellant who opposed it by filing a Statement of Defence and Counter-Claim dated 07.05.2018.

12. In the Statement of Defence, the Appellants stated as follows regarding the Respondent’s Plaint; -



- a. The Appellant denied the allegations and facts pleaded in the Respondent's Complaint dated 21.03.2018 in toto.
 - b. The Appellant denied any allegations of encroaching onto or trespassing into the suit property that belongs to the Respondent.
 - c. The Appellant stated that it is the Respondent who had encroached and/or trespassed into the suit property which belongs to him.
 - d. The Appellant put the Respondent to strict proof on all the allegations contained in the Complaint dated 21.03.2018 against him.
13. In addition to the Statement of Defence, the Appellant filed a Counter-Claim dated 07.05.2018 against the Respondent seeking the following Orders; -
- i. An order for revocation of the title issued to the Respondent and a new one be issued in favor of the Respondent's father with his co-owner in equal shares.
 - ii. A Restraining Order against the Respondent, his agents, servants from making any claims over the suit property.
 - iii. In the alternative, a Declaration that the land has accrued to the Appellant or his father by adverse possession.
 - iv. A dismissal of the Respondent's case and costs be provided to the Appellant.
 - v. Any other relief that the court may deem fit to grant.
14. The facts in support of the Appellant's Counter-Claim were provided as follows; -
- a. According to the Appellant, his father Joseph Kamai and one Benjamin Chebiego purchased a portion of land measuring 10 acres from an organisation known as Koitoro Co-operative Society.
 - b. At the time of acquisition of the suit property by the Appellant's father Joseph Kamai And Benjamin Chebiego , the Respondent has also expressed an interested to purchase the same property but later on declined to do so and elected to purchase a property in a place known as PLateau.
 - c. The Appellant's father Joseph Kamai And Benjamin Chebiego duly paid the relevant consideration of the 10 acres amounting to Kshs.3,627 to the Vendor Koitoror Co-operative Society .
 - d. Upon successful purchase of the 10 acres from Koitoro Co-operative Society, the same was to be sub-divided into two equal portions of 5 acres each.
 - e. However, disputes arose with Koitoror Co-operative Society in the manner in which the sub-division was handled and therefore instead of being allotted 10 acres as they had purchased, the Appellant's father Joseph Kamai And Benjamin Chebiego was allocated a total of 5 acres only.
 - f. The Appellant pleaded that the Father Joseph Kamai and Benjamin Chebiego took possession of the 5 acres within Koitoror Co-operative Society and began living on the same as well as undertaking various agricultural activities.



- g. In 1997, the Appellant's father Joseph Kamai granted exclusive possession and use of 2.5 Acres on the suit property to the Appellant while the other owner Benjamin Chebiego also handed over possession and occupation of the other 2.5 acres to his two sons.
 - h. In essence therefore, the Respondent who is the registered owner of the suit property is simply holding the title in trust for the two original owners known as Joseph Kamai and Benjamin Chebiego who are the legitimate and true owners of the suit property.
 - i. The Appellant pleaded that during the dispute within Koitoror Co-operative Society , his father Joseph Kamai and Benjamin Chebiego handed over their payment receipts in court but after the determination of the litigation, the said payment receipts were never handed over back to them.
 - j. In conclusion therefore, the Appellant pleaded that based on the period of time he had been in occupation of the suit property, the Respondent's claim of ownership was extinguished by operation of law and the property should be registered in his name based on adverse possession.
15. The Statement of Defence and Counter-Claim dated 07.05.2018 was duly served on the Respondent but there was no Reply to Defence filed and/or a Defence to the Counter-Claim done.
16. The matter therefore proceeded for hearing.

Respondent's Case Before The Trial Court

17. The first Respondent's witness before the Trial Court was the Respondent (who was the Plaintiff before the Trial Court) was marked as PW1.
18. The Respondent introduced himself as a retired teacher who resides in Plateau.
19. The Respondent then adopted his written statement dated 21.03.2018 as his evidence in chief.
20. In a nutshell, the Respondent stated that he was the registered owner of the suit property measuring 4.5 Acres and was issued with a Certificate of registration on 07.02.2018 which was produced as Plaintiff Exhibit 1.
21. The Respondent informed the Trial Court that he was a member of Koitoror Farm Company Limited having obtained his shares in the year 1973.
22. A copy of the Registration Receipt dated 04.03.1973 was produced as Plaintiff Exhibit 2.
23. A second Registration Receipt dated 15.03.1975 from Koitoror Farm Company Limited was produced as Plaintiff's Exhibit 3.
24. The Respondent further made a payment towards his shares on the 22.03.1975 which was produced as Plaintiff's Exhibit 4.
25. The Respondent made another payment on 23.01.1976 whose Receipt was marked as Plaintiff Exhibit 5.
26. On 17.01.1981, the Respondent made a payment towards the Survey Fees of the suit property and the receipt dated 17.01.1991 was marked as Plaintiff's Exhibit 6.
27. The Respondent informed the Trial Court that after the Survey had been done and his portion identified, he took possession and commenced various development activities on the same.



28. However, the Appellant kept on encroaching and trespassing on the suit property by cultivating the same contrary to the Respondent's ownership rights.
29. The Respondent therefore sought for an order of a Permanent Injunction against the Appellant.
30. On cross-examination, the Respondent reiterated that he became a member of Koitoror Farm Limited in the year 1973 and has a title for his portion of land.
31. The Respondent admitted that initially, all the shareholders of Koitoror Farm Company Limited were to be allocated 10 Acres.
32. However, it was discovered that the membership was excessive and people would get only 5 Acres.
33. The Respondent confirmed that he had brought all the receipts relating to the purchase of the suit property which amounted to Kshs.3,127/= commensurate to the value that one had to pay in order to be allocated a plot.
34. The Respondent could not confirm where the Centre plot he was allocated went.
35. The Respondent insisted that upon purchasing the suit property, he left it to one Benjamin Cheruiyot to look after it in 1981.
36. By the time the Respondent was assigning the suit property to Benjamin Cheruiyot to look after it, he had planted trees and constructed a semi-permanent house.
37. The Respondent stated that he was shown the suit property in the year 1973, when he made the first payment but took possession in the year 1981 after he was shown his portion of land by the Surveyor.
38. The Respondent could not however remember the name of the Surveyor but confirmed that he had paid the necessary survey fees.
39. The Respondent stated that on one side of the suit property, it borders Elgeyo Boarder Scheme and on the other side, there was a neighbour known as Cheperem Chepyator, who is since deceased and the Respondent could not remember his plot number.
40. The Respondent admitted that he could not remember all the neighbours around the suit property because other people had sold their lands and he did not know his neighbours exactly.
41. The Respondent insisted that the Appellant has been cultivating on the suit property periodically and could not state the exact date when the trespass or encroachment began.
42. Nevertheless, the Respondent insisted that he took full possession of the suit property in March, 2018.
43. The Respondent denied that the structure in the pictures produced by the Appellant were of developments done by the appellant.
44. The Respondent stated that the Appellant was using about 1 Acre of the suit property while the rest of the acreage was in his possession.
45. The Respondent admitted that he knows Julius Kiptanui Kipchumba but denied he lives on the suit property.
46. The Respondent insisted that the house in the pictures produced by the Appellant does not belong to Julius Kiptanui Kipchumba but to his brother's son.
47. The Respondent further denied that one Micah Kiptanui lives on the suit property.



48. The Respondent confirmed to the Trial Court that one Joseph Kenei was his uncle and that he had lived in his house in his childhood.
49. The Respondent however denied the allegations that Joseph Kenei had paid his school fees or supported during his wedding or at any other time financially.
50. The Respondent confirmed that one Barnabas is the son of Joseph Kenei.
51. The Respondent denied any knowledge that the Appellant was allowed to live on the suit property by Joseph Kenei.
52. The Respondent averred that he had severally informed Joseph Kenei that his son had trespassed onto the suit property but there was no response and that is why he filed the case before the Trial Court.
53. On re-examination, the Respondent reiterated that he had paid the 1st amount in the year 1973 and the land was surveyed in the year 1981.
54. The Respondent further stated that he was a teacher in Burnt Forest.
55. The Respondent reiterated that the Appellant had unlawfully encroached and trespassed into his land without his consent.
56. The Respondent confirmed that Benjamin Kipyego was the one looking after the suit property and he had authorized him to look after the land.
57. The Respondent concluded his re-examination by stating that any other person on the suit property was a trespasser.
58. The second Respondent's witness was one Benjamin Chebiego , who was marked as PW2.
59. PW2 introduced himself as a farmer by occupation and a resident of Elgeyo Boarder in Uasin Gishu.
60. PW2 informed the Trial Court that he had prepared a witness statement dated 21.03.2018 which he adopted as his evidence in chief.
61. In a nutshell, PW2 informed the Trial Court that the suit property belongs to the Respondent.
62. PW2 categorically and expressly stated that he does not live on the suit or cultivates on the same.
63. On cross-examination, PW2 reiterated that he does not reside or use the suit property belonging to the Respondent.
64. PW2 further stated that it was not true he had occupied the suit property with the authority of the Respondent.
65. According to PW2, the Respondent had purchased the suit property way back in the year 1973 and paid all his instalment up to the year 1975.
66. PW2 confirmed that the acreage of the suit property was 4.7 Acres and the Respondent had paid Kshs.3,000/= for the same.
67. PW2 insisted that the Respondent had been tilling the property since the year 1975.
68. PW2 informed the Trial Court that the Appellant was his cousin and a son of Joseph Kemei Chepkinyeng.
69. PW2 further informed the Trial Court that the Appellant's father never visited the land.



70. According to PW2, the Appellant began occupying the suit property in the year 2007.
71. PW2 averred that one Justus, lives in Kapsowar and not the suit property.
72. PW2 confirmed that Joseph Kenei and himself were business partners for some time but Joseph Kenei never used the suit property.
73. PW2 concluded his cross-examination by indicating that if there is any allegation that Joseph Kenei used the suit property, such an allegation is false.
74. On re-examination, PW2 insisted that the respondent had purchased the suit property.
75. At the end of this re-examination, PW2 was discharged from the witness box and the plaintiff closed their case.

Appellant's Case Before The Trial Court

76. The Appellant's first witness was the Appellant himself who was marked as DW1.
77. The Appellant introduced himself as a farmer by occupation.
78. The Appellant then informed the Court that he had prepared a witness statement dated 07.05.2018 of which he adopted as his evidence in chief.
79. The Appellant denied the allegations that the suit property belongs to the Respondent.
80. The Appellant insisted that the Respondent had never lived on the land or occupied the same at any one time.
81. The Respondent stated that he was given the suit property by his father in the year 1997 when he took occupation and use of the same.
82. The Appellant confirmed to the Trial Court that he occupies the suit property with one Justus Kiptanui and Micah Kipkorir.
83. The Appellant clarified that the suit property measuring 5 Acres had been divided into two equal portions of which one portion is occupied by him while the other portion is occupied by Julius and Micah who are the children of PW 2.
84. The appellant disclosed that the Respondent and Benjamin Kipyego are brothers from the same mother and father.
85. The Appellant informed the Trial Court that the suit property was purchased by the family and registered in the name of the Plaintiff in trust of other family members.
86. In fact, the Appellant clarified that the Respondent never contributed any money towards the purchase price.
87. The Appellant explained to the Trial Court that during his occupation on the suit property, he had erected a functioning Biogas structure, a permanent toilet, a borehole and 2 semi-permanent houses and a garage.
88. The Appellant disclosed that the neighbours to the suit property are Bernard Koech to the East, Samuel Kibet and Aaron Koech Chesire to the North, Micah Kiptanui to the West and Francis Yator and Justus Kiptanui to the South.
89. On cross-examination, the Appellant admitted that the Respondent was his cousin.



90. The Respondent further stated to the Trial Court that in the year 1973 he was only 3 years old.
91. On being referred to Plaintiff's Exhibit 1, he confirmed that the registered owner is the Respondent.
92. On being referred to Plaintiff's Exhibit 2, the Appellant confirmed that the name in the receipt dated 03.03.1973 is the Respondent's.
93. The Appellant reiterated that he entered the suit property in the year 1997 after he was married in 1995 while living at his father's home.
94. The Appellant stated that his father John Kenei and PW2 were the ones who were using the suit property before he took possession in the year 1997.
95. In the Appellant's view, his father and the family of PW2 had purchased the land jointly in October 1972, when he was young.
96. The Appellant stated that the Respondent was living in their home as a first born and his father bought him 10 Acres in the Plateau are.
97. The Appellant stated that there was no written agreement between the Respondent and the Appellant's father over the suit property.
98. The Appellant insisted that there were many transactions done between his father and PW2 and was not aware of any land transaction where the purchase price was returned.
99. The Appellant reiterated that Justus and Micah live on the suit property.
100. The Appellant confirmed to the Trial Court that all the developments on the land were undertaken before 2018 and there has been no other developments thereafter.
101. The Appellant disclosed to the Court that his father lives at Kaptelel where he occupies 13 Acres.
102. The Appellant reiterated that his father was the elder brother to the Respondent and he was not registered on the suit property because the intention was to settle the Respondent on the land.
103. On re-examination, the Appellant stated that his father had contributed Kshs. 1,800/= to the purchase of the suit property while PW2 had contributed a similar amount.
104. The Appellant stated that the name of the Respondent was entered into the register of Koitoror Farm Company Limited because his father was paying through the Respondent's name.
105. The Appellant insisted that all receipts had been kept by PW2 during the proceedings relating to Koitoror Farm Company Limited in Kitale and had not been returned.
106. The Appellant concluded his re-examination by stating that the sons of PW2 are in occupation of one half of the suit property and not the Respondent.
107. After the re-examination, the Appellant was discharged from the witness box.
108. The second Appellant's witness before the Trial Court was Joseph Kipkiyeng Kumai who was marked as DW2.
109. DW2 introduced himself as a father to the Appellant.
110. DW2 then adopted his witness statement which is dated 07.05.2018 as his evidence in chief.
111. DW2 informed the Trial Court that he is the one who brought up the Respondent from a young age to maturity when he decided to send him back.



112. However, the respondent's family rejected him.
113. DW2 disclosed to the Trial Court that he secured a piece of land for the Respondent in Plateau.
114. DW2 stated that he took the identity of the Respondent and used it to register as a member of the Koitoror Farm Company Limited.
115. At that time, the Respondent was a teacher in Timboroa and it was the mother to PW2 and the Plaintiff who contributed half of the money to buy the land.
116. On the other hand, DW2 contributed the other half.
117. The intention was to acquire 10 Acres but the same was reduced to 5 Acres.
118. Upon taking possession of the 5 Acres, PW2 has been cultivating 2 Acres while DW2 has been cultivating 2 Acres while the other 1 Acres was consumed by the access roads.
119. DW2 confirmed that the Appellant was his son who occupies half of the suit property while PW2's sons occupy the other half of the property.
120. DW2 indicated that the Respondent had not sued the sons of PW2.
121. On cross-examination, DW2 confirmed that at the time he took the Respondent's ID and used it to register at the Cooperative, he already had his own ID.
122. DW2 admitted that he was not a member of the Koitoror Cooperative Society but insisted that he made payments using the Respondent's name.
123. DW2 denied any allegation that there is any land that PW2 and himself bought and the purchase price was refunded.
124. DW2 stated that he is the one who paid all the money that was used to buy the Respondent a piece of land in Plateau.
125. DW2 stated that everything was being done in trust and did not need a formal agreement between the PW2, the Respondent or himself.
126. On being referred to Plaintiff's Exhibit 2, DW2 denied that the Respondent was the one paying the money to Koitoror Farm although the receipts showed the Respondent's name.
127. DW2 reiterated that the Appellant began living on the suit property long time ago while himself lives in Kipkei on a 15 Acre farm.
128. DW2 stated that the first deposit of Kshs.400/= to Koitoror Farm was paid by PW2 although the title issued on 07.04.2018 was in the name of the Respondent.
129. In re-examination, DW2 informed the Trial Court that he used the ID of the Respondent to get land.
130. DW2 acknowledged that all the receipts relating to the suit property were in the name of the Respondent and that is why the title came out in his name.
131. DW2 concluded his re-examination by indicating that he had stayed with the Respondent since nursery school.
132. At the end of this re-examination, DW2 was discharged from the witness box.
133. The third appellant's witness was one Julius Kipkurui Toroitich who was marked as DW3.



134. DW3 introduced himself as a farmer and proceeded to adopt his witness statement dated 07.05.2018 as his evidence in chief.
135. On cross-examination, DW3 confirmed that the Respondent was his brother.
136. DW3 further stated that he is the owner of plot No. 179 within Koitoror Farm.
137. DW3 confirmed to the Trial Court that DW2 was the father to the Appellant.
138. DW3 averred that DW2 was a member of Koitoror Farm but had registered his interest through the Respondent's name.
139. DW3 stated that he was present when DW2 and the Respondent went to pay for the suit land.
140. DW3 insisted that the money used to purchase the suit property was produced by DW2.
141. However, DW3 denied seeing any receipt issued after payment of the suit property and was not aware of any case between Koitoror Farm and its members.
142. DW3 stated that it was agreed by members that each party was to get 5 Acres although he had paid for 20 Acres.
143. DW3 admitted that indeed the suit property had been registered in the name of the Respondent.
144. On re-examination, DW3 reiterated that he did not get all the acreage he had purchased and paid for.
145. DW3 also confirmed that the name registered in Koitoror Farm was that of the Respondent and the title issued bears the name of the Respondent.
146. At the end of the re-examination, DW3 was discharged from the witness box.
147. The fourth Appellant's witness was one Samuel Kiprop Kimilel who was marked as DW4.
148. DW4 introduced himself as a farmer and proceeded to adopt his statement dated 07.05.2018 as his evidence in chief.
149. On cross-examination, DW4 informed the Trial Court that the Appellant was his nephew.
150. DW4 confirmed to the Trial Court that only 5 Acres were allocated to members because the land was not enough based on the membership number.
151. DW4 denied any knowledge of any litigation or contention apart from the size of the land allocated.
152. DW4 stated that the suit property is in his neighbourhood but he does not know the registered owner.
153. On re-examination, DW4 stated that he was one of the people whose money was refunded because it did not reach the minimum amount required.
154. In closing his re-examination, DW4 stated that the Respondent, Appellant and some of the witnesses were of one family.
155. At the end of this re-examination, DW4 was discharged.
156. The appellant's fifth witness was one William Toroitich Kiprono who was marked as DW5.
157. DW5 introduced himself as a farmer who resides at Elgeyo Boarder.
158. DW5 proceeded to adopt the witness statement dated 31.10.2022 and sought to rely on the same as his evidence in chief.



159. On cross-examination, DW5 stated that he is not related to either the Respondent or the Appellant.
160. DW5 nevertheless stated that he was a shareholder in Koitoror Farm but not a director.
161. DW5 stated that DW2, who is the father of the Appellant, was one of the people who were not awarded land.
162. DW5 stated that their main issue before the Court in Kitale was that they paid money but were not awarded plots.
163. DW5 indicated that the Respondent and DW2 had jointly bought land but it was registered in the name of the Respondent.
164. DW5 stated that his piece of land is about 4 plots away from the suit property.
165. DW5 stated that the Appellant entered the suit property in the year 1997 although the property had been bought in the year 1973.
166. DW5 indicated that he was the secretary of the group of members that were not awarded plots and filed a case in Court.
167. DW5 stated that DW2 and PW2 had bought 20 Acres but were not given the land nor were they refunded.
168. On re-examination, DW5 stated that he only got $\frac{1}{4}$ of what he had paid for which also other people were given due to unavailability of land.
169. At the end of the re-examination, DW5 was discharged and the defence closed its case.
170. The parties upon completion of the hearing in the Trial Court were directed to file their final submission.
171. The Respondent filed his submissions dated 14.02.2023 while the Appellant filed his submissions on 07.03.2023.
172. As regards the present Appeal, the Appellant filed his submissions in support dated 26.06.2025 while the Respondent filed his submissions on 07.07.2025.
173. The Court has indeed perused the pleadings before the Trial Court, the testimonies of the parties, the documentary evidence adduced and the submissions thereof before the Trial Court and at this appeal stage and identifies the following issues for determination; -

Issue No. 1- Who is the registered owner of the suit property?

Issue No. 2- IS The Appellant In Occupation Of The Suit Property?

Issue No. 3- Is the appellant entitled to a prayer of adverse possession?

Issue No. 4- Is there any trust that has been established by the appellant on the suit property against the respondent?

Issue 5- Is the respondent entitled to the prayers sought in the plaint?

Issue 6- Is the appellant entitled to the prayers sought in the present appeal?



Issue No. 7- Who bears the costs of the present appeal?

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

Issue No. 1- Who is the registered owner of the suit property?

175. The first issue for determination is who is the registered owner of the suit property.
176. The Respondent during the hearing before the Trial Court stated that he is the registered owner of the suit property having purchased the same in 1973 through payment of shares.
177. The Respondent further testified that in 1981, he was able to pay for the Survey Fees and was pointed out the portion of land which he had purchased and later registered in his name.
178. The Respondent produced all the relevant receipts for the payments made to Koitoror Co-operative Society LIMITED as well as the Copy of the Title Deed and an Official Search to confirm his ownership.
179. The Appellant on the other hand did not dispute the fact that the Respondent is the owner of the suit property.
180. What the Appellant sought to challenge is the manner in which the registration of the Respondent was undertaken.
181. In essence therefore, this Court is of the considered view and finding that the suit property is currently registered in the name of the Respondent.

Issue No. 3- IS The Appellant Entitled To A Prayer Of Adverse Possession?

182. The second issue is who is actually in occupation of the suit property.
183. According to the testimony of the Respondent, he took possession of the suit property way back in 1973 upon payment of the first instalment to Koitoror Farm Limited.
184. At this time, the suit property had not been clearly demarcated until the year 1981 when the Surveyors were able to point the boundaries of the suit property.
185. The Respondent then continued to occupy the suit property but the brother known as Benjamin Cheruiyot is the one that was taking care of it.
186. However, the Appellant herein on or about March 2008 encroached into a portion of the suit property and began periodically cultivating the same.
187. The Respondent denied the allegation that the Appellant had developed various houses and over structures of the suit property.
188. The Appellant on the other hand testified that he had been in occupation of the suit property from the year 1997 when his father Joseph Kipkiyeng Kumai allocated him 2 acres.
189. The Appellant stated that the suit property had been purchased by two persons namely Joseph Kipkiyeng Kumai and Benjamin Chebiego on equal shares.
190. Consequently, the Appellant was in occupation of half the portion belonging to his father Joseph Kipkiyeng Kumai while two sons of Benjamin Chebiego occupied the other half of the suit property.



191. Based on the evidence of the Respondent and the Appellant herein, it is clear that there is occupation and/or use by the Appellant on the suit property either periodically or permanent.
192. In essence, this Court is of the considered view and finding that indeed the Appellant is in occupation and/or use of the suit property registered in the name of the Respondent herein.

Issue No. 3- Is the appellant entitled to a prayer of adverse possession?

193. The third issue for determination is whether the Appellant was entitled to a prayer of adverse possession against the Respondent.
194. The Appellant raised a Counter-Claim against the Respondent's ownership based on the number of years he has been in occupation of the suit property.
195. According to the Appellant, occupation of a portion of the suit property began in the year 1997 after his father granted him permission and/or consent to occupy the said suit property.
196. Since then, the Appellant and the children of Benjamin Chebiego have been in peaceful occupation and use of two equal shares on the suit property up to date.
197. Unfortunately, the Respondent did not file any Defence against the Counter-Claim filed by the Appellant before the Trial Court.
198. Nevertheless, based on the Appellant's own pleadings before the Trial Court, it is clear that at the time of taking possession in 1997, the suit property had not been registered in the name of the Respondent but was still in the name of Koitoror Farm Limited.
199. Consequently, in the mind of the Appellant, the suit property was the property of two persons namely Joseph Chepkuyeng Kumai and Benjamin Chebiego .
200. The Appellants entry into the suit property was with the consent of his father Joseph Chepkuyeng Kumai who is alleged to have been the owner of 2 acres on the said property.
201. At the point of entry in 1997, according to the Appellant's knowledge, the suit property belonged to Joseph Chepkuyeng Kumai and not the Respondent.
202. The question that this Court requires to answer is when did the Appellant discovered that the property actually belongs to the Respondent.
203. The answer is provided in the Respondent's title deed which was issued on 07.02.2018 which had been produced as Plaintiff Exhibit 1.
204. Based on the title dated 07.02.2018 issued to the Respondent, it was now clear that the suit property did not belong to his father Joseph Chekiyeng Kumi or Benjamin Chebiego .
205. It is the Court's considered view and finding that the twelve-year period prescribed in law for one to make a claim of adverse possession began running on the 07.02.2018 and at the time of filing the Counter-Claim against the Respondent, the same had not lapsed.
206. In addition to the above, the Counter-Claim filed by the Appellant seeking for adverse possession was filed before the Chief Magistrates Court.
207. It is now settled law that the Chief Magistrate's Court do not have jurisdiction to hear and determine any claims of Adverse possession.



208. In other words, this Court is of the considered view and finding that the claim of adverse possession contained in the Counter-Claim filed before the Trial Court was not merited and in fact bad in law hence could not be granted.

Issue No. 4- Is there any trust that has been established by the appellant on the suit property against the respondent?

209. The forth issue deals with a second issue raised by the Appellant in the Counter-Claim filed before the Trial Court.

210. The Appellant raised an issue of trust against the Respondent.

211. According to the Appellant, the suit property herein was purchased by two persons namely Joseph Chekiyeng Kumi or Benjamin Chebigio in equal shares.

212. However, due to some mismanagement by the officials of Koitoror Farm Limited, there was a litigation filed in Kitale and in the process of the hearing, the receipts confirming ownership by Joseph Chekiyeng Kamui And Benjamin Chebigio was presented to the Court and have never been returned.

213. The Appellant testified that it is through these receipts that the Respondent perpetuated the fraud and had the suit property registered in his name.

214. Consequently, the Appellant stated that even if the name appearing on the title of the suit property is that of the Respondent, then he is simply holding it in trust for the two families of Joseph Chekiyeng Kamui and Benjamin Chebigio .

215. The Appellant called his father Joseph Chekiyeng Kamui who testified as DW 2.

216. According to DW 2, the suit property had been purchased by two persons namely Benjamin Chebigio and himself in equal shares.

217. DW 2 insisted that upon purchase, each of them took possession and currently, his half is occupied by the Appellant while the other half is occupied by the sons of Benjamin Chebigio .

218. DW 2 denied any allegation that the purchase price of the property purchased jointly with Benjamin Chebigio was refunded.

219. DW 2 nevertheless admitted that all the receipts that had been produced by the Respondent were genuine although the monies paid therein were from Benjamin Chebigio and himself.

220. In other words, DW 2 testified that the Respondent was only a trustee of Benjamin Chebigio and himself during the acquisition of the suit property.

221. On the other hand, Benjamin Chebigio testified as PW 2.

222. According to PW 2, the Respondent was the lawful owner of the suit property herein.

223. PW 2 denied the allegations that he had purchased the suit property jointly with Joseph Chekiyeng Kamui and/or any of his sons were in occupation of one half of the suit property.

224. PW 2 confirmed to the Trial Court that the receipts produced by the Respondent were legitimate and paid for fully by the Respondent.

225. The evidence of DW 5 is also very crucial in the determination of this issue.



226. DW 5 informed the Court that he was the Secretary of the group of persons who had not been allocated land in Koitoror Farm Limited.
227. DW 5 confirmed to the Trial Court that in this group that had paid to Koitoror Farm Limited but were not allocated land was Joseph Chekiyeng Kamui and Benjamin Chebiego .
228. DW 5 stated that the persons who had not been allocated land filed a case before the Court in Kitale.
229. However, at the end of the case, both Joseph Chekiyeng Kamui and Benjamin Chebiego were not allocated land the 20 acres they had intended to purchase from Koitoror Farm Limited.
230. Based on the above testimonies and documentary evidence, this Court is of the considered view that there were two different transactions that happened involving the Respondent, Joseph Chekiyeng Kamui and Benjamin Chebiego .
231. The first transaction was one done by the Respondent on his own for the purchase of the suit property.
232. The basis of this observation is the fact that the Respondent holds all the receipts paying for registration as a member, paying for the shares of his land, paying the surveyor's fees and lastly, holding a title deed registered in his name over the suit property.
233. The second transaction was one which involved the appellant's father Joseph Chekiyeng Kamui and Benjamin Chebiego .
234. While the appellant's father Joseph Chekiyeng Kamui claims to have entrusted the Respondent to purchase the property in his name in trust for both the appellant's father, Joseph Chekiyeng Kamui and Benjamin Chebiego , there is no evidence adduced before the Trial Court to that effect.
235. In fact, the person who the Appellant's father Joseph Chekiyeng Kamui alleges to be the co-owner who is Benjamin Chebiego has denied that transaction or intention.
236. Benjamin Chebiego further denied taking possession of the suit property or handing it over to his two sons as alleged.
237. In fact, the testimony of Benjamin Chebiego categorically insisted that the suit property belongs to the Respondent only.
238. As earlier stated, DW5 provided crucial information regarding the proposed purchase by the Appellant's father Joseph Chekiyeng Kamui and Benjamin Chebiego .
239. According to DW5 who was the secretary of the group that was not allocated land confirmed that the Appellant's father Joseph Chekiyeng Kamui and Benjamin Chebiego were among the persons who were not allocated land.
240. In concluding his cross-examination, DW5 reiterated the fact that the Appellant's father Joseph Chekiyeng Kamui and Benjamin Chebiego were ultimately not allocated land nor given a refund.
241. Looking at the totality of this evidence, it is clear in the mind of the Court that the proposed transaction to purchase 20 Acres in Koitoror Farm Limited by the Appellant's father Joseph Chekiyeng Kamui and Benjamin Chebiego did not materialize.
242. In other words, the allegations that the Appellant's father Joseph Chekiyeng Kamui and Benjamin Chebiego own a portion of 5 Acres which is the suit property herein is misguided and not correct.
243. The issue that the Respondent is holding the suit property in trust for the appellant's father Joseph Chekiyeng Kamui and Benjamin Chebiego , cannot therefore be sustained.



Issue 5- Is the respondent entitled to the prayers sought in the plaint?

244. Based on the determinations in issues No. 1, 2, 3 and 4; it is clear that the suit property belongs to the Respondent and therefore the Appellant's occupation is without the consent and authority.
245. As such, the prayers sought in the Respondent's Plaint are merited and should be allowed.

Issue 6- Is the appellant entitled to the prayers sought in the present appeal?

246. Based on the determinations made hereinabove, this Court has considered the Judgment dated 06.04.2023 by the Trial Court and makes a finding that the Trial Court appreciated the correct facts of the case and applied the law correctly in arriving at its decision.
247. In essence, the present appeal is not merited and is therefore disallowed.

Issue No. 7- Who Bears The Costs Of The Present Appeal?

248. On the costs of the Appeal, the Appellant having been unsuccessful is condemned to pay costs.

Conclusion

249. In conclusion, the court hereby makes the following orders in determination of the resent appeal: -
- A. The memorandum of appeal dated 04.05.2023 be and is hereby disallowed and/or dismissed.
 - B. The judgment and decree pronounced on 06.04.2023 in the proceedings known as Eldoret Chief Magistrates Court Elc no. 60 of 2018, be and is hereby upheld.
 - C. That the appellant is condemned to pay costs of this appeal to the respondent.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 18TH DAY OF SEPTEMBER, 2025.

EMMANUEL M. WASHE

JUDGE

In the presence of:

Court Assistant: Brian

Advocate For The Appellant: Ms. Mutai Holding Brief For Mr. Cheruiyot

Advocate For The Respondent: Mr. SambU

