



Serem & 3 others v Tamalel alias Tamaliny (Environment and Land Appeal E028 of 2021) [2025] KEELC 6317 (KLR) (16 September 2025) (Judgment)

Neutral citation: [2025] KEELC 6317 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT AND LAND APPEAL E028 OF 2021**

EM WASHE, J

SEPTEMBER 16, 2025

BETWEEN

PATRICK SEREM 1ST APPELLANT
JOSEPH SEREM 2ND APPELLANT
KIMAIYO LETTING 3RD APPELLANT
JULIOUS KORIR 4TH APPELLANT

AND

MARY CHEPKEMBOI TAMALEL ALIAS TAMALINY
CHEPKEMBOI RESPONDENT

JUDGMENT

1. The 1st to 4th Appellants (hereinafter referred to jointly as “the Appellants”) filed a Memorandum of Appeal dated 19.07.2021 (hereinafter referred to as “the present Appeal”) against the Judgement pronounced on the 17.06.2021 in the proceedings known as Eldoret Chief Magistrate’s Court Environment & Land Case No. 100 of 2018 (hereinafter referred as “the Trial Court”) seeking the following Orders; -
 - a. The Judgment of the Sub-ordinate Court be set-aside and substituted with the proper finding by this Honourable Court.
 - b. Th Judgement and Decree of the Sub-Ordinate Court be substituted with an Order entering Judgement for the Appellants as prayed in the Defence and Counter-Claim.
 - c. The Judgement of the Sub-Ordinate Court be set-aside and an Order for the case to be heard afresh by the High Court.
 - d. Costs of the Appeal be awarded to the Appellants.



2. The prayers sought in the present Appeal are premised on various grounds in the body of the Memorandum of Appeal which can be summarised as follows; -
- i. The Appellants pleaded that the Trial Court failed in law and fact by not considering the Appellants Defence and Counter-Claim premised on the of adverse possession.
 - ii. Due to the failure by the Trial Court to consider the Appellants Defence and Counter-Claim, it also failed to appreciate the weight of the evidence produced by the Appellants during the hearing before the Trial Court.
 - iii. The Appellants further stated that the Trial Court erred in law and fact by rejecting and/or disregarding various documentary evidence that was produced during the hearing and which had not been objected to or controverted by the Respondent herein.
 - iv. It was further averred that in addition to the rejection and/or disregarding of the various documentary evidence produced by the Appellants, the Trial Court failed to consider the evidence of crucial witnesses including DW 3 and DW 4 which was crucial to the fair determination of the case.
 - v. As such, the Trial Court erred in law and fact by failing to consider the proper and significant evidence placed before it and thereby arriving at wrong inferences and/or conclusions.
 - vi. The Appellants stated that the Trial Court pronounced its Judgement based on irrelevant and extraneous matters hence arriving at the wrong conclusion.
 - vii. The Appellants pleaded that the allegations of forgery or fraud pleaded by the Respondent were never supported by any evidence and properly proved before the Trial Court.
 - viii. The Appellants were of the view that the Trial Court failed in law and fact by not properly applying the provisions of Section 107 and 109 of the *Evidence Act*, Cap 80 in the determination of issues before it hence arriving at a wrong conclusion.
 - ix. The Appellants insisted that the proceedings before the Trial Court were in contravention of Section 7 of the *Limitation of Actions Act*, Cap 22 and therefore bad in law.
 - x. In conclusion, the Appellants sought this Court to set-aside the Trial Court Judgement pronounced on 17.06.2021 and grant the prayers sought in the present Appeal.
3. The Record of Appeal was served on the Respondent and admitted for hearing on the 07.05.2025 and the Court directed that it would be heard by way of written submissions.
4. The Appellants duly filed their submissions 20.06.2025 while the Respondent filed here submissions 01.07.2025.
5. The Court exercising its jurisdiction as the first Appellant Court is guided by the findings in the case 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.”



6. The Court's duty therefore is to review the pleadings before the Trial court, the testimony of the witnesses and the documentary evidence and come up with its own conclusion to be able to evaluate whether the Trial Court misdirected on itself on issues of the law and/or facts in determination of the issues before it or not.
7. To achieve this objection, the Court will now proceed to recapture the pleadings before the Trial Court, the testimonies of the parties and the documentary evidence and identify the issues for determination thereafter.

Respondent's Pleadings Before the Trial Court

8. The Respondent in the present Appeal was the Plaintiff before the Trial Court.
9. The Respondent had moved the Court through a Plaint dated 19.04.2017 against the Appellants who were the Defendants in the Trial court.
10. According to the prayers sought before the Trial Court, the Respondent wanted Judgement as follows;
-
 - a. A permanent injunction restraining the Defendants/Respondents, their agents, servants, relatives and or assignees from trespassing, selling, cultivating, leasing or in any other whatsoever manner interfering with or any act which is inconsistent with the Plaintiff/Applicant's ownership of all that parcel of land known as PLOT.no.87 Mafuta Settlement Scheme measuring 5 acres.
 - b. Costs of the suit.
 - c. Interest on (b) above.
 - d. Any other relief that this Court may deem fit to grant.
11. The prayers sought hereinabove were supported by the following facts contained in the Plaint dated 19.04.2017; -
 - i. The Respondent stated that she was the legal owner of the property known as Plot.No.87 Within Mafuta Settlement Scheme (hereinafter referred to as "the suit property").
 - ii. The Respondent pleaded that she was allocated and/or acquired the suit property on the 21.03.1984 from the Settlement Land Trustee.
 - iii. Upon acquisition and/or allocation, the Respondent granted access to the sister Christine Chematia Tamurei to undertake farming activities.
 - iv. Upon the demise of the late Christine Chematia Tamurei, the Respondent re-entered the suit property and discovered that the Appellants herein who are the children of Christine Chematia Tamurei were also in occupation.
 - v. In addition to the above, the Respondent also discovered that the Appellants has procured a burial permit in her name on the pretence that she had passed away on the same date as her sister Christine Chematia Tamurei.
 - vi. The Respondent pleaded that based on the fake burial permit in her name, the Appellants sought to have the County Land Adjudication and Settlement Officer transfer the suit property in their names to her detriment.



- vii. Similarly, the Appellants presented themselves to the general public as the legitimate owners of the suit property and have even started to lease the suit property to strangers.
 - viii. The Respondent therefore sought the Trial Court to issue a permanent injunction against the Appellants from interfering and/or dealing with the suit property contrary to her ownership rights and/or occupation.
12. The Plaint dated 19.04.2017 was duly served on the Appellants who filed a Defence and Counter-Claim dated 09.05.2018.
13. The Appellants pleaded the following facts in their defence to the Respondent's Plaint dated 19.04.2017; -
- i. The Appellants denied the allegation that the suit property was allocated to the Respondent on the 21.03.1984.
 - ii. According to the Appellants, the suit property was in fact allocated to their mother Chekemboi Tamalin Serem and it measures about 7.2 acres and not 5 acres as alleged.
 - iii. The Appellants therefore denied the allegation that their mother Chepkemboi Tamalin Serem was in occupation and use of the suit property with the permission of the Respondent herein for the last 10 years.
 - iv. The Appellants further pleaded that the burial permit of their deceased mother Chepkemboi Tamalin Serem was not fake as alleged but a valid Burial Permit in accordance to the law.
 - v. The Appellants denied any intention to dispose the Respondent and lease out the suit property to strangers and/or third parties as alleged.
 - vi. The Appellants insisted that the 1st Appellant had been in occupation of the suit property since the year 1975 and therefore cannot be accused to be a stranger of the suit property.
 - vii. As such, the Appellants sought the Trial Court to dismiss the Respondent's case and restraining Orders cannot be issued against the lawful owner and/or occupier of the suit property.
14. In addition to the above Defence, the Appellants pleaded a Counter-Claim seeking the following Orders; -
- a. Judgement be entered in terms of the Defence and the Counter-Claim.
 - b. Costs and interest of the suit.
15. The Appellants pleaded various grounds in support of their Counter-Claim which can be summarised as follows; -
- i. The 1st Appellant is the legal owner of the suit property which measures 7.2 Acres and not 5 Acres as alleged by the Respondent.
 - ii. The Appellants stated that the suit property was owned by their mother Chepkemboi Tamalin Serem and not Christine Chematia Tamurei as pleaded by the Respondent.
 - iii. The Appellants pleaded that during the funeral arrangements, the Respondent gave identified their mother as Christine Chematia Tamurei and not Chepkemboi Tamalin Serem with an intention to disinherit them of the suit property.



- iv. The Appellants averred that the 1st Appellant was the one paying the outstanding loan to the Agricultural Settlement Fund and is in occupation of the suit property having taken possession in the year 1975 and developed it.
 - v. The Appellants therefore sought to claim for adverse possession in the event the suit property was declared to be the asset of the Respondent.
 - vi. The Appellants further disclosed that the suit property is now registered as LR.NO.575/87 in the Ministry of Land.
16. The Appellants Defence and Counter-Claim was duly served on the Respondent who filed a Reply to Defence and Defence to Counter-Claim dated 27.06.2018.
 17. In Reply to the Defence, the Respondent refuted the fact that the 1st Appellant has and is in occupation of the suit property since 1975.
 18. In essence, the Respondent sought the Appellants Defence to be dismissed with costs.
 19. As regards the Counter-Claim, the Respondent denied the allegation that the suit property was the property of one Chepkemboi Tamalin Serem.
 20. The Respondent stated that her names were Mary Chepkemboi Tamalin while the sister who was the mother to the Appellant was Christine Chematia Tamurei and at no time did she change the names of the Appellants mother to disinherit them.
 21. The Respondent reiterated that the 1st Appellant had not been in occupation of the suit property since 1975.
 22. The Respondent averred that she was the lawful owner of the suit property and the claim for adverse possession by the 1st Appellant was denied.
 23. In conclusion, the Respondent sought to have the Counter-Claim by the Appellants also dismissed for lack of merit.
 24. After the service of the Reply to Defence by the Respondent, pleadings closed and the matter was listed for hearing.

Respondent's Testimony & Documentary Evidence.

25. The Trial began on the 17.10.2019 with the testimony of one Tamalin Chepkemboi who is the Respondent herein.
26. The Respondent informed the Court during the introduction that she was a resident of Kipkabus Baharini area.
27. The Respondent confirmed to the Trial Court that she was the aunty to the Appellants herein.
28. The Respondent informed the Trial Court that the Appellants mother was Chemati Tamurei Also known as Christine.
29. The Respondent testified that the Appellants had unlawful dispossessed her of the suit property after their mother died.
30. According to the Respondent, the suit property was allocated to her after the white settlers left the area and the land was sub-divided and allocated to the locals which was in the year 1984.



31. The Respondent insisted that she had paid for the suit property in accordance to the Charge issued by the Settlement Trustees Fund.
32. The Respondent informed the Court that upon acquisition of the suit property, she granted permission to the sister Tamurei Chematia Christine to occupy the same and undertake farming activities.
33. During the occupation of Tamurei Chematia Christine on the Respondent's property, she was joined by the 1st Appellant on the suit property.
34. The Respondent could not remember the actual date when the sister Tamurei Chematia Christine died.
35. As regards the Burial Permit No. 0911560, the Respondent informed the Trial Court that it bears her names.
36. The Respondent stated that the Burial Permit bearing her names was created and/or forged with an intention of taking her land away.
37. The Respondent then produced a Copy of her Kenyan Identification Card and a membership Card for the political party known as KANU to confirm her true identity.
38. The Respondent further produced a number of medical documents bearing her true name to further confirm her identity.
39. The Respondent then stated that the Appellants are not her biological children but their mother was Chematet Taburei who is now deceased.
40. The Respondent further produced a letter dated 10.04.2018 from the Settlement Fund Trustees addressed to her in regards to the suit property.
41. The Respondent informed the Trial Court she only came to learn that the late sister was using her name at the time the radio announcements were being done.
42. The Respondent concluded her evidence in chief by stating that the Appellants had their own land in Chelugui Farm.
43. In support of her testimony, the Respondent produced the following documents; -
 - PLaintiff's exhibit 1- Copy of a Letter of Offer dated 21.03.1984.
 - PLaintiff's exhibit 2- Copy of a Charge over the suit property.
 - PLaintiff's exhibit 3- Copy of the Funeral Programme of one Christine Chematia Tamurei.
 - PLaintiff's exhibit 4 A- Copy of the Respondent's ID
 - PLaintiff's exhibit 4 B- Copy of a Membership Card of the political party KANU.
 - PLaintiff's exhibit 4 C- Copies of various Medical Notes bearing the Respondents true name.
 - PLaintiff's exhibit 5- Copy of a Letter dated 10.04.2018 from the Settlement Fund Trustees to the Respondent.
44. On cross-examination, the Respondent stated that she was married to one Kipkoech Arap Chuma.



45. The Respondent informed the Trial Court that Christine aka Chemalel Taburei was her younger sister who was married to one KipSerem Arap Choge.
46. According to the Respondent, their father was Kiptanui Arap Murgor.
47. The Respondent clarified to the Trial Court that the suit property was 7 acres and not 5 acres.
48. The Respondent in proving her ownership of the suit property stated that she had paid a sum of Kenya Shilling One Thousand (KShs 1,000/-) to the Settlement Fund Trustee and issued with a receipt but the same was burnt down in her house.
49. The Respondent insisted that she had purchased the suit property and recorded in the List of Members within Mafuta area.
50. On being referred to the Defence exhibits, the Respondent admitted that the documents the owner of the suit property to be one Chepkemboi T. Serem of Kenyan ID No. xxxxxxx.
51. However, the Respondent's Kenyan ID was xxxxxxx.
52. The Respondent was further referred to the Plaintiff's exhibit 4(b) and she confirmed that the ID number was xxxxxxx with the name Tamalel Chepkemboi.
53. The Respondent informed the Trial Court that she had sued the 2nd to 4th Appellants because they were brothers to the 1st Appellant who was in occupation of the suit property.
54. The Respondent confirmed before the Trial Court that she had never occupied the suit property.
55. Nevertheless, she disputed the allegation that the 1st Appellant had been in occupation since the year 1975.
56. The Respondent averred that the portion of land that she occupies belongs to her husband while the Appellants portion of land was in Chelugui.
57. On re-examination, the Respondent testified that she was lastly in the suit property about 6 years ago.
58. The Respondent further confirmed that the 2nd to 4th Appellants do not occupy the suit property.
59. The Respondent stated that the name Chepkemboi is her name while the sister was called Chematia.
60. The Respondent informed the Trial Court that the names on the Membership Card issued by the political party KANU were not written by her.
61. The Respondent concluded her re-examination by denying knowledge of the List of Members contained in the Appellants List of Documents, the Respondent denied knowledge of the same.
62. After the above re-examination, the Respondent was discharged from the witness box.
63. The Respondent's second witness before the Trial Court was PC Peter Kemboi who was marked as PW 2.
64. PW 2 introduced himself as a Police Officer working under the Directorate of Criminal Investigations and stationed in Eldoret West.
65. PW 2 informed the Trial Court that an Order dated 02.08.2018 was served on them to undertake investigations on the whereabouts of two persons.
66. PW 2 confirmed to the Trial Court that indeed investigations were done and an Investigation Report dated 07.10.2019 complied.



67. According to PW 2, their investigations revealed that the suit property is owned by one Chepkemboi Tamalel who is still alive.
68. PW 2 further informed the Court that the person died and was buried was one Christine Chametia Tamurei Serem and indicated in the Funeral Programme produced as PLaintiff's exhibit 3.
69. However, in the Burial Permit, the deceased person was one Chepkemboi Tamalel.
70. According to PW 2, the person known as Chepkemboi Tamalel is alive.
71. PW 2 stated that he visited the home of Chepkemboi Tamalel and found the biological brother Kipsung Samoei who provided the family tree of the late Christine Chematia (deceased).
72. PW 2 admitted that the Appellants herein were the children of the late Christine Chematia.
73. According to PW 2, the name Serem was inserted into the ownership documents of the suit property with an aim of dispossessing the same from the Respondent.
74. PW 2 reiterated that according to the Hospital Medical Notes and documents, the person who had been admitted to hospital and died was one Tamalin Chepkemboi and not the one stated in the Funeral programme.
75. PW 2 thereafter presented the Investigation Report dated 17.10.2019 before the Trial Court.
76. The documents that were produced by PW 2 before the Trial Court were as follows; -
PLaintiff's exhibit 6- A copy of the Order dated 02.08.2018.
PLaintiff's exhibit 9- A copy of the Investigation Report dated 17.10.2019.
77. On cross-examination, PW 2 informed the Trial Court that he was not aware of when the matter was filed in Court.
78. PW 2 testified that the documents obtained from the Hospital identified the person known as Tamalin Chepkemboi to be the one who had passed away on the 29.11.2017.
79. PW 2 admitted that a Burial Permit should only be issued upon the surrender of the ID belonging to the deceased person.
80. On being referred to PLaintiff's exhibit 4, PW 2 confirmed that the name appearing therein was Mary Chepkemboi Tamalel.
81. According to the records held by the office of Registrar of Persons, the ID No. of Mary Chepkemboi Tamalel is xxxxxxxx.
82. On the other hand, the deceased name that appears in the records held by the Registrar of Persons is Chepkemboi Tamalil Serem and the ID number is xxxxxxxx.
83. During the investigations, PW 2 summoned a number of persons including Jackson Kimaiyo Letting, Cornelius Serem, Grace Cherotich and recorded their statements.
84. PW 2 also summoned the area chief known as Jeremiah Kipruto Muge.
85. According to the testimony of the Area Chief, the suit property belongs to Tamalin Chepkemboi.
86. The Area Chief further disclosed that the only surviving brother to Tamalin Chepkemboi was Kipsung Samoei.



87. PW 2 stated that he did not inquire why the Respondent was not in occupation of the suit property because that was not the directives of the Court Order.
88. As regards the ID numbers of the two persons read out to the Trial Court, PW 2 clarified that wrong numbers.
89. PW 2 stated that the correct ID number for Mary Chepkemboi Tamalel was xxxxxxxx while that of Chepkemboi Tamalil Serem was 0xxxxxxx.
90. PW 2 confirmed to the Trial Court that these are the initial registration numbers and particulars of the two persons in the dispute.
91. On further cross-examination, PW 2 admitted that he did not include the last name Serem due to an omission on his part.
92. On being referred to the Appellants List of documents and in particular Document No. 5, PW 2 confessed that it was difficult to ascertain the true owner of the suit property.
93. PW 2 therefore disclosed that he had used the Funeral Programme produced by the Respondent as the basis of deciding that Christine is the one that had died.
94. PW 2 stated that in his Investigation Report, a recommendation had been made that the two ladies who were using the names Tamalil Chepkemboi should be charged as this amount to fraud.
95. PW 2 concluded his cross-examination by indicating that the only Charge document obtained from the Land Department over the suit property was in the name of Tamalil Chepkemboi.
96. On re-examination, PW 2 reiterated that the person who died on 29.11.2017 was Christine Chemalin Tamalel and was buried on the 06.12.2017.
97. PW 2 reiterated that Christine Chemalin Tamalel was the sister to Tamalil Chepkemboi who is still alive and had testified before the Trial Court.
98. At the end of this re-examination, PW 2 was discharged from the witness box.
99. The Respondent's third witness was Dan Mbuvi Ndove Kalamba who was marked as PW 3.
100. PW 3 introduced himself as the County Director of Land Adjudication and Settlement.
101. PW 3 informed the Court that Mafuta Farm is a settlement scheme within Uasin Gishu County.
102. PW 3 confirmed to the Trial Court that adjudication and documentation of Mafuta Farm started in the year 1984.
103. PW 3 stated that the process began with the creation of Register of Members to confirm the allottees therein.
104. According to the records held by the Land Adjudication and Settlement Office, the suit property was registered in the name of Chepkemboi Tamalil.
105. Consequently, Chepkemboi Tamalil was issued with a Letter of Allotment and a Charge dated 24.03.1984.
106. According to PW 3, none of the documents held in their offices has the name Serem.
107. PW 3 stated that name Serem appears only a copy of another Charge dated 1984.



108. PW 3 confirmed to the Court that on the 18.04.2018, the office of the Land Adjudication and Settlement Office wrote a Demand Letter to Chepkemboi Tamalil through the Area Chief.
109. However, there was no response from the owner Chepkemboi Tamalil.
110. PW 3 could not confirm whether the person known as Chepkemboi Tamalil was alive or dead.
111. PW 3 further stated that the original file held by the Department of Adjudication and Settlement did not have the original copies of the letter of Allotment and/or the Charge.
112. PW 3 then produced the following documents in support of his testimony; -

PLaintiff's exhibit 7- A Certified Extract of the Nominal Roll of Mafuta Farm.

113. On cross-examination, PW 3 averred that he had worked in the Department of Lands for over 30 years.
114. PW 3 confirmed that the Charge in their file was the one with the name Chepkemboi Tamalil Serem.
115. PW 3 informed the Trial Court that once someone is allocated land by the Settlement Fund Trustee, he or she has to pay for the same.
116. PW 3 further clarified that there is no monies paid to the Settlement Fund Trustee before the Charge is prepared and executed.
117. On being referred to the receipts contained in the Appellant's List of Documents, PW 3 confirmed only 1 receipt to bear the official stamp of the Chief Accountant, Nairobi.
118. The receipt issued by the Chief Accountant was in the name of Chepkemboi Tamalil Serem.
119. The other receipts which did not have the Official Stamp of the Chief Accountant were also in the name of Chepkemboi Tamalil Serem.
120. PW 3 disputed the allegation that the suit property had any double allocation.
121. PW 3 reiterated that according to the Nominal Roll, the suit property was in the name of Chepkemboi Tamalil and the Letter of Allotment was done in the name of Chepkemboi Tamalil Serem.
122. PW 3 was referred to the Charge contained in the Appellant's List of Documents and confirmed that it was similar to the one that had been produced by the Respondent as PLaintiff's exhibit 5.
123. PW 3 recommended that the only way to verify the true owner is through a verification by way of finger prints.
124. On re-examination, PW 3 referred to the Charge contained in the Appellant's List of Documents and confirmed that it was executed on the 21.03.1984 while the Estate Manager had executed the same on 02.02.1984.
125. PW 3 nevertheless clarified that the file in his possession did not have the original documents.
126. On being referred to the List of Members presented by the Appellants, PW 3 indicated that the same was typed and was not the original one.
127. According to PW 3, the original list is the one that he had produced.
128. In concluding his re-examination, PW 3 confirmed that the official receipt issued by the Chief Accountant, Nairobi was in the name of Chepkemboi Tamalil Serem.



129. At the end of this re-examination, PW 3 was discharged from the witness box and the Respondent closed her case.

Appellants Testimony and Documentary Evidence Before the Trial Court

130. The Appellants case began on the 13.11.2021 with the testimony of Patrick Kichoge Serem who is the 1st Appellant herein and was marked as DW 1.
131. The 1st Appellant introduced himself a farmer and resident of Mafuta Farm within Uasin Gishu County.
132. The 1st Appellant confirmed that he was familiar with the Respondent known as Mary Chepkemboi Tamalel alias Tamalil Chepkemboi.
133. The 1st Appellant stated that the Respondent was the elder sister of the mother Chepkemboi Tamalil Serem and therefore an aunty.
134. The 1st Appellant averred that the suit property was purchased by his mother Chepkemboi Tamalil Serem.
135. The 1st Appellant confirmed to the Trial Court that his mother Chepkemboi Tamalil Serem had a Copy of the Letter of Allotment, the Charge and various payment receipts made to the Settlement Fund Trustee.
136. In addition to the above documents, the 1st Appellant produced receipts issued by the Local Government in relation to the suit property in the name of the late Chepkemboi Tamalil Serem.
137. The 1st Appellant averred that his occupation on the suit property began in the year 1977 up to date.
138. The 1st Appellant informed the Court that the 2nd to 4th Appellants did not live on the suit property.
139. Similarly, the Respondent had never ownership and/or occupied the suit property.
140. The 1st Appellant informed the Court that he had a copy of the ID for the mother Chepkemboi Tamalil Serem as the original was surrendered back to the Government to facilitate issuance of the Burial Permit.
141. The 1st Appellant confirmed to the Court that upon the demise of Chepkemboi Tamalil Serem, the area chief had written various letters including the burial permit and the one bespeaking the succession proceedings.
142. The 1st Appellant further produced various medical treatment notes from Plateau Hospital in the name of Chepkemboi Tamalil Serem and the Mortuary Invoice.
143. In concluding his evidence in chief, the 1st Appellant produced a copy of the Limited Grant issued by the Court as regards the suit property.
144. The 1st Appellant reiterated that the suit property had been bequeathed to him by the deceased Chepkemboi Tamalil Serem.
145. The 1st Appellant then produced the following documents in support of his testimony; -

Defence exhibit 1- A Copy of the Charge of Plot. No. 87 within Mafuta Farm in the name of Chepkemboi Tamalil Serem.

Defence exhibit 2- A Copy of the Receipt No. B99556 dated 3.3.1982.



Defence exhibit 3- Copies of various Receipts issued by the County Council in favour of Chepkemboi Tamalil.

Defence exhibit 4- A copy of the Identification Card of Chepkemboi Tamalil Serem

Defence exhibit 5- A copy of the Death Certificate of Chepkemboi Tamalil Serem

Defence exhibit 6- A copy of the List of Members of Mafuta Farm.

Defence exhibit 7- A Copy of the Letter from the Area Chief confirming the Death of Chepkemboi Tamalil Serem to the Registrar of Death.

Defence exhibit 8- A copy of the Letter from the Area Chief confirming the Death of Chepkemboi Tamalil Serem for purposes of instituting Succession proceedings.

Defence exhibit 9- Copies of the Treatment Notes of Chepkemboi Tamalil Serem from Plateau Hospital.

Defence exhibit 10- A copy of the Burial Permit of Chepkemboi Tamalil Serem

Defence exhibit 11- A Copy of the Mortuary Charges relating to Chepkemboi Tamalil Serem.

Defence exhibit 12- A copy of the Limited Grant relating to the Estate of Chepkemboi Tamalil Serem.

146. On cross-examination, the 1st Appellant confirmed that the suit property belonged to his deceased mother.
147. The 1st Appellant admitted that indeed the Respondent was a sister to the deceased mother.
148. The 1st Appellant averred that according to Kalenjin culture, two sisters could not share the same name.
149. On being referred to the Funeral Programme which was produced as Plaintiff Exhibit 3, the 1st Appellant informed the Trial Court that the picture therein was of his deceased mother.
150. The 1st Appellant also agreed that the name in the Funeral Programme was Christine Chematia Serem and he had been named as one of the children.
151. The 1st Appellant informed the Trial Court that the office of Directorate of Criminal Investigation had contacted him.
152. However, the 1st Appellant was not aware of the outcome or recommendations made by the Directorate of Criminal Investigations.
153. The 1st Appellant disputed the evidence of the Respondent.
154. The 1st Appellant reiterated that the name of appearing in the Nominal Roll was that of Chepkemboi Tamalil and that although their List of Members of Mafuta Farm was typed, it was not forged and/or computer generated.
155. The 1st Appellant referred to the Plaintiff's exhibit 2 which was the Charge and stated that it also had the name of Chepkemboi Tamalil.
156. Similarly, the 1st Appellant insisted that the Charge produced by the Appellants was the genuine one and the letter dated 18.04.2018 produced as Plaintiff Exhibit 8 was done after the demise of their mother.
157. The 1st Appellant denied the allegation that the owner of the suit property was still alive.



158. The 1st Appellant informed the Trial Court that he was the one that gave the names of the deceased to the area chief as Chepkemboi Tamalil Serem.
159. According to the 1st Appellant, Funeral Programme and the announcements in Kass FM were not done by him.
160. On re-examination, the 1st Appellant referred to the Charge of the suit property which was produced as PLaintiff's exhibit 4 and Defence exhibit 1 and confirmed that the names are one and the same belonging to Chepkemboi Tamalil Serem.
161. The 1st Appellant disclosed to the Trial Court that the Funeral Programme and the announcements in KASS FM were done by his cousin Benson and he did not hear or see the name Christine until the date of the funeral.
162. On being referred to the List of Members of Mafuta Farm which was produced as Defence exhibit 6, the 1st Appellant denied the same to be forged or computer generated.
163. The 1st Appellant confirmed to the Trial Court that the Respondent's name Mary did not appear in the document produced as Defence exhibit 6.
164. The 1st Appellant reiterated that the original Identification Card of Chepkemboi Tamalil Serem had been surrendered to the Registrar of Death to facilitate the issuance of the Burial permit.
165. The 1st Appellant disputed the finding by the office of the Directorate of Criminal Investigations as the names of the Funeral Programme and those of the Burial Permit and the Death Certificate were different.
166. At the end of this re-examination, the 1st Appellant was discharged from the witness stand.
167. The Appellants second witness to testify was Janet Chelagat Kipkorir who was marked as DW 2.
168. DW 2 introduced herself as resident of Plot No. 91 within Mafuta Farm in Uasin Gishu Farm.
169. DW 2 informed the Trial Court that she neighbours the suit property which belongs to the deceased Chepkemboi Tamalil Serem.
170. DW 2 averred that the 1st Respondent who was the son to the late Chepkemboi Tamalil Serem is the one who has been in occupation.
171. On cross-examination, DW 2 admitted being familiar with the Respondent but had not heard any conversation with her.
172. DW 2 informed the Trial Court that she had been in occupation of her portion of land in Mafuta Farm since 1975.
173. On being referred to PLaintiff's exhibit 7, DW 2 admitted that her name appears as the owner of Plot.No. 91 within Mafuta Farm.
174. DW 2 insisted that both the deceased Chepkemboi Tamalil Serem and herself applied for the land within Mafuta Farm in the year 1975.
175. On re-examination, DW 2 reiterated that the suit property belongs to Chepkemboi Tamalil Serem.
176. DW 2 was then discharged from the witness box after this brief re-examination.
177. The Appellant's third witness was Purity Wanjiru Mwangi who was marked as DW 3.



178. DW 3 introduced herself as an Assistant Director in the Office of the Director of Land Adjudication and Settlement.
179. DW 3 further stated that she was the person in charge of the Settlement documents in the said Department.
180. DW 3 confirmed that her attendance was based on Court summons that had been issued to her as regards the suit property before the Trial Court.
181. According to the documents held by the Office of Director of Land Adjudication and Settlement, the suit property belongs to Chepkemboi Tamalil Serem of Kenyan ID No. xxxxxxxx/66 and measures 7.2 Acres.
182. DW 3 denied any possibility of double allocation in respect of the suit property.
183. DW 3 informed the Court that the Respondent does not appear in the records relating to the suit property.
184. DW 3 averred that the entire Mafuta Settlement Scheme is coded as 575 and the Register of the owners is available and intact.
185. According to the Register of Mafuta Settlement Scheme, the suit property is recorded in the name of Chepkemboi Tamalil Serem.
186. However, the name Tamalil is a misspelling of the name Tamalel.
187. DW 3 confirmed to the Trial Court that the suit property was charged to Chepkemboi Tamalil Serem on 21.03.1984 with the Charge having been drawn on 02.02.1984.
188. DW 3 therefore averred that the Register produced by the 1st Appellant was the legitimate and correct Register of Mafuta Settlement Scheme.
189. DW 3 concluded her evidence in chief by stating that a discharge in the name of Chepkemboi Tamalil Serem had already been done and sent to the County Land Adjudication Officer for registration.
190. On cross-examination, DW 3 was referred to Plaintiff Exhibit 2 and she confirmed that it was Charge of the suit property in the name of Chepkemboi Tamalin.
191. DW 3 informed the Court that the file of the suit property presented by the Respondent was opened in the year 1992.
192. Similarly, it shows that the Allottee was buried in 1992 although what was in the file are copies.
193. DW 3 stated that ideally, what is in the Court offices should be what is in the Directors office file.
194. On being referred to the Plaintiff Exhibit 1, DW 3 indicated that she could not comment on the same as she was not the author.
195. Nevertheless, DW 3 noted that the Charge referred was dated 1994 which the same date of the Letter of Allotment.
196. On being referred to the Plaintiff's exhibit 7, DW 3 clarified that the same was called a List Control hence hand written.
197. DW 3 confirmed that in 1984, there were no computers and therefore the handwritten List Control was to assist in collection of the loans outstanding from the registered owners.



198. DW 3 admitted that the name Serem was missing from the List Control.
199. DW 3 informed the Court that the owners of the properties are usually given the original while the government retains copies.
200. DW 3 averred that the normal practice is that a charge is filled by the local lands officer once the allottee is available.
201. According to DW 3, the Discharge of the suit property was done in the year 2019.
202. On being referred to the Plaintiff's exhibit 5, DW 3 indicated that the letter dated 18.04.2018 was seeking for the payment of KShs.56,000/- which was outstanding.
203. DW 3 confirmed to the Trial Court that a Discharge could not be issued where the outstanding loan had not been cleared.
204. DW 3 reiterated that the owner of the suit property had cleared the loan on 13.04.2018 although she could not confirm the person that paid the same.
205. DW 3 stated that all Discharges emanate from the offices in Nairobi and thereafter sent to the County offices to be signed by the owner and registered.
206. On re-examination, DW 3 reiterated that the lawful owner of the suit property was Chepkemboi Tamalil Serem.
207. DW 3 further affirmed that the original documents are usually given to the owner and the department retains copies.
208. DW 3 informed the Trial Court that she was not aware if the registered owner was alive or deceased.
209. DW 3 concluded her re-examination by stating that there have been no amendments done on the Charge.
210. DW 3 was thereafter discharged from the witness box.
211. The Appellants fourth witness to testify was one Gilbert Liwa who was marked as DW 4.
212. DW 4 introduced himself as a Registrar of Persons based in the office of Registrar of Births and Death in Nairobi.
213. DW 4 confirmed that he is a Finger Print Officer and produced a Staff Identification Card which confirmed that he was a Principal Fingerprints Officer.
214. DW 4 further stated that he was Gazetted as a Finger Print Officer through Gazette No. 44 dated 22.05.2009.
215. DW 4 informed the Trial Court that through a letter dated 29.10.2020, he received a letter from the firm of Birir & Company, Advocates seeking to confirm the particulars of finger print impression that appears on the Charge produced as Defence exhibit 1.
216. The finger print impression appearing on the Charge produced as Defence exhibit 1 was to be compared with the finger prints appearing on the Kenyan Identification Card No. xxxxxxxx belonging to Mary Chepkemboi Tamalel and those appearing in the second Kenyan Identification Card No. xxxxxxxx belonging to one Chepkemboi Tamalil Serem.
217. Upon subjecting the finger print impression on the Charge produced as Defence exhibit 1 to the finger prints contained to the particulars of the two Kenyan Identification Cards No. xxxxxxxx belonging to



- Mary Chepkemboi Tamalel and Identification Card No. xxxxxxxx belonging to Chepkemboi Tamalil Serem, it was found that the finger print impression on the Charge produced as Defence exhibit 1 belonged to Chepkemboi Tamalil Serem of Kenyan Identification Card No. xxxxxxxx.
218. DW 4 thereafter produced the Finger Print Report as Defence exhibit 12.
 219. On cross-examination, DW 4 stated that he never met the two persons whose particulars were being investigated.
 220. DW 4 confirmed that the request for verification and the documents relied upon were from the Defence Counsel.
 221. DW 4 denied knowledge whether or not there was any other charge apart from the one forwarded to him through the letter by the Defence Counsel.
 222. DW 4 was then shown a document which was a waiting card dated 20.06.1996 with the name Tamalil Chepkemboi for an Identification Card that was awaiting issuance.
 223. In the waiting card, the name Serem was not included.
 224. Referring to the Kenyan Identification Card of Chepkemboi Tamalil Serem, the same was issued on 23.08.1996.
 225. DW 4 clarified that the Serial Number in any Identification Card is different from Identification Card Number.
 226. Similarly, the finger prints of different people are not the same but different.
 227. DW 4 informed the Trial Court that it was possible for people to have the same names but will be issued with different Identification Cards.
 228. According to DW 4, it was rare for sisters to have similar names but there are cases where step sisters do have similar names.
 229. DW 4 averred that currently, there is a system to confirm that some has applied for an Identification Card before but that system was not available in 1996.
 230. DW 4 also pointed out to the Trial Court that from the particulars available in their office, the two persons in the centre of this dispute have different fathers and mothers and cannot be said to be sisters.
 231. DW 4 stated that in year 1978, the particulars of the parents when applying for an Identification Card was not captured until 1996 when the new generation Identification Cards were rolled out.
 232. On re-examination, DW 4 clarified the use of the Serial Number in verification would also assist.
 233. DW 4 reiterated that the Report produced before the Court was based on the documents availed and the particulars held by their office.
 234. DW 4 further clarified that the issue of which parents belonged to which lady was not within the request that was received in their offices.
 235. DW 4 concluded his evidence by reiterating that two persons can never have the same finger prints when if they share the same names.
 236. At the end of this re-examination, DW 4 was discharged from the witness box and the Appellants closed their case.



237. Parties thereafter filed their final submissions with the Respondent filing hers dated 17.02.2021 while the Appellants filed theirs dated 17.03.2021.
238. The Court in exercise of its Appellant jurisdiction has gone through the pleadings before the Trial Court, the testimonies of the parties and their witnesses as well as the documentary evidence and identifies the following issues for determination; -
- Issue No. 1- What are the legal and true names of the respondent and her sister who is the mother to the appellants?
- Issue No. 2- Is the respondent the lawful and legitimate owner of the suit property?
- Issue No. 3- Was the respondent entitled to the prayers sought in the plaint dated 19.04.2017?
- Issue No. 4- Were the appellants entitled to an order of adverse possession over the suit property against the respondent?
- Issue No. 5- Who was to bear the costs of the trial court proceedings?
- Issue No. 6- Is the present appeal meritorious?
- Issue No. 7- Who bears the costs of the present appeal?
239. The Court having identified the above issues for determination, the same will now be analysed and determined as herein below.

Issue No. 1- What are the Legal and True Names Of The Respondent and her Sister Who is the Mother to the Appellants?

240. The first issue for determination in the present Appeal is the legal and true names of the two persons namely Mary Chepkemboi Tamalel and Chepkemboi Tamalil Serem.
241. It is important for this issue to be decided because both persons claim to be the legitimate owners of the suit property.
242. This Court will first deal with the Respondent's name as she was the Plaintiff before the Trial Court.
243. In the pleadings before the Trial Court, the Respondent described herself as Mary Chepkemboi Tamalel alias TamalinY Chepkemboi.
244. The Respondent produced her Kenyan Identification Card No. xxxxxxxx as Plaintiff's exhibit 4 (a) before the Trial Court.
245. The Respondent's Kenyan Identification Card No. xxxxxxxx was again referred to by the Appellants' witness who was marked as DW 4.
246. DW 4 who is a Gazette Government Finger Print Officer within the Office of the Registrar of Persons within the Republic produced a Report marked as Defence exhibit 12 which contains the particulars of the Kenyan Identification Card No. xxxxxxxx.
247. According to the Report produced as Defence exhibit 12, the Kenyan Identification Card No. xxxxxxxx belongs to one Mary Chepkemboi Tamalel.
248. During cross-examination, the Respondent's Counsel presented a document that was issued in the year 1996 which DW 4 identified as a waiting card.



249. DW 4 stated that the waiting card is a document that a person is issued with awaiting the issuance of a substantive Identification Card.
250. In the said waiting card presented by the Respondent, the name that appears on it is Tamalil Chepkemboi.
251. The question that requires to be resolved is which of the two documents namely the Respondent's Identification Card No. xxxxxxxx bearing the name Mary Chepkemboi Tamalel and the waiting card issued in the year 1996 with the name Tamalil Chepkemboi is the lawful document with the right names.
252. During the hearing before the Trial Court and the pleadings filed therein including the Supporting Affidavit sworn on the 19.04.2018 seeking for an Injunction, the Respondent identified herself using the Kenyan Identification Card No. xxxxxxxx.
253. Similarly, during the cross-examination of DW 4 who is a Gazetted Government Finger Print Officer, there was no dispute that the Kenyan Identification Card No. xxxxxxxx bearing the name Mary Chepkemboi Tamalel is the official Identification Card of the Respondent.
254. The argument by the Respondent's Counsel that the name of the Respondent is Tamalil Chepkemboi based on the Waiting Card issued in the year 1996 cannot hold water.
255. First and foremost, the issuance of a waiting card is premised on various grounds like loss of the original Identification Card, defacing of the Original Card and other recognised instances that would require a replacement of an Identification Card.
256. This being the case, any person applying for a duplicate and/or second Identification card is required to report the circumstances leading application of the same with the Police and be issued with an abstract thereof.
257. Once an abstract is obtained from a Police Station, the person applying for a duplicate and/or second identification card is further required to prepare and execute a Statutory Declaration explaining the circumstances of the loss and/or destruction and confirm and confirm the facts therein.
258. At the point of applying for the duplicate and/or second Identification Card, a copy of the Abstract, the Statutory Declaration and the Copy of the Identification Card originally issued is retained by the Application together with the waiting card.
259. The reason why these documents are of utmost importance during the waiting period before a proper Identification Card is to give the true and correct particulars of the person holding the waiting card.
260. In the present instance, there is no dispute that the name contained in Kenyan Identification Card No. xxxxxxxx is Mary Chepkemboi Tamalel who is the Respondent.
261. The waiting card held by the Respondent can only bear the names Mary Chepkemboi Tamalel as is reflected in the Kenyan Identification Card No. xxxxxxxx.
262. The only time the names Mary Chepkemboi Tamalel appearing on her Kenyan Identification Card No. xxxxxxxx will lawfully change is upon the creation, gazette and/or registration of Deed Poll changing her name from Mary Chepkemboi Tamalel to TamalinY Chepkemboi.
263. In essence therefore, this Court is of the finding that the true and legal name of the Respondent is Mary Chepkemboi Tamalel and not TamalinY Chepkemboi as alleged.



264. The purported name TamalinY Chepkemboi is not recognised in law and cannot be used to identify and/or recognise the Respondent in any legal and statutory dealing in law.
265. On the other hand, the Kenyan Identification Card No. 0xxxxxxx is in the name Chepkemboi Tamalil Serem.
266. According to DW 4 who was the Gazetted Finger Print Officer, the name appearing on the said Identification Card No. 0336847 correctly identified the owner as Chepkemboi Tamalil Serem.
267. This fact was never disputed by the Respondent during the cross-examination thereof.
268. The Respondent position was that the Appellant's mother was known as Christine Chematia Tamurei Serem and not Chepkemboi Tamalil Serem.
269. The Respondent heavily relied upon the Funeral Programme circulated during the burial of the Appellants mother.
270. The Court indeed has perused the Funeral Programme produced by the Respondent and notes that the name appearing therein is Christine Chematia Tamurei Serem.
271. However, the said name Christine Chematia Tamurei Serem is not contained any legal document issued by the Registrar of Person or any other lawful entity for the purposes of identification.
272. All the documents presented by the Appellants including the copy of the Kenyan Identification Card, the Treatment Notes, the Burial Permit and the Death Certificate refer to the same and one person known as Chepkemboi Tamalil Serem.
273. The reasons and grounds upon which the authors of the Funeral Programme chose the name of Christine Chematia Tamurei Serem instead of the lawful and true name Chepkemboi Tamalil Serem is still puzzling even to this Court.
274. Nevertheless, this Court is of the considered view and finding that the lawful and true name of the Appellants mother was Chepkemboi Tamalil Serem and not Christine Chematia Tamurei Serem as printed in the Funeral Programme produced by the Respondent.

Issue No. 2- Is the Respondent the Lawful And Letigimate Owner of the Suit Property?

275. The Court having identified the true and lawful names of the two persons claiming ownership of the suit property, the next issue is to determine the legitimate and lawful owner of the suit property.
276. This being an Appeal from the Lower Court, then it is required to evaluate the Respondent's case who was the Plaintiff in the Lower Court first.
277. In the Plaint dated 19.04.2018 filed by the Respondent, the substantive prayer was an Order of Injunction against the Appellants herein.
278. The main reason for seeking the permanent injunction was the fact that the suit property belongs to the Respondent.
279. The Appellants on the other hand opposed the prayer for a permanent injunction by the Respondent on the fact that the suit property was not legally belonging to her but instead to their deceased mother Chepkemboi Tamalil Serem.
280. This disparity in the facts of who owns the suit property required that each party would provide documentary evidence and/or otherwise.



281. The Respondent in her testimony sought to rely on a Letter of Offer issued on the 02.02.1984 and accepted on the 21.03.1984 together with a Charge document dated 21.03.1984.
282. The Respondent testified before the Trial Court that she had made a payment of KShs.1,000/- towards the charges prescribed in the Charge but the Receipt had been burnt down when her house caught fire.
283. The 1st Appellant on behalf of the other Appellant also made a claim that the suit property had been acquired by their deceased mother Chepkemboi Tamalil Serem.
284. The 1st Appellant proceeded to produce the same Charge dated 21.03.1984 in the names of Chepkemboi Tamalil Serem and receipts from the Settlement Fund Trustee as well as the County Council of Uasin Gishu.
285. The Respondent challenged the ownership of Chepkemboi Tamalil Serem on the grounds that the name Serem had been fraudulently inserted in the copies before the Trial Court with a view of dispossessing her of the suit property.
286. On cross-examination, PW 2 confirmed to the Trial Court that the main document he relied upon in his investigations was the Funeral Programme of one Christine Chematia Tamurei Serem and the copies supplied to him by the County Land Adjudication and Settlement Officer.
287. According to PW 2, the Appellants had forged the Respondent's ownership documents by inserting the name Serem to the two names Tamalin Chepkemboi.
288. To collaborate the testimonies of the Respondent and PW 2, PW 3 who was the County Land Adjudication & Settlement Officer Uasin Gishu who testified in his examination in chief that the documents held in their office did not have the name Serem but on Tamalin Chepkemboi.
289. However, on cross-examination, PW 3 admitted that there were no originals in the file within the County Land Adjudication & Settlement Officers and therefore could not with certainty who the owner of the suit property was between Mary Chepkemboi Tamalel and Chepkemboi Tamalil Serem.
290. The Appellants in support of their case called two witnesses namely the Assistant Director in the Office of Land Adjudication and Settlement (DW 3) and the Government Finger Print Officer (DW 4).
291. DW 3 who is the custodian of the Settlement Record within the Republic of Kenya confirmed to the Trial Court that the lawful owner of the suit property and the Charge thereof was Chepkemboi Tamalil Serem and not Mary Chepkemboi Tamalel.
292. Due to the fact that the Charge had been executed by way of a finger print impression, the Appellants submitted the same for verification by the Office of the Registrar of Persons who is the custodian of the particulars and finger prints of citizens within the republic of Kenya.
293. In the Report presented by DW 4 as Defence exhibit 12, it was clear that the finger print that was in the Charge dated 21.03.1984 being relied upon by both Mary Chepkemboi Tamalel and Chepkemboi Tamalil Serem was actually that of Chepkemboi Tamalil Serem and not Mary Chepkemboi Tamalel.
294. Further to that, DW 2 who is a sister to both Mary Chepkemboi Tamalel and Chepkemboi Tamalil Serem collaborated the evidence of the 1st Appellant that the person who had been allocated the suit property was Chepkemboi Tamalil Serem and not Mary Chepkemboi Tamalel.
295. To resolve this dispute of whose name appears on the Charge executed on the 21.03.1984, the Court will begin by looking at the name that appears on the document.
296. The name that appears of the Charge dated 21.03.1984 over the suit property is Chepkemboi Tamalin.



297. On the part where the owner of the property has executed the same, the Identification Card Number has not been provided for.
298. The Charge dated 21.03.1984 was produced as PLaintiff's exhibit 2 and also as Defence exhibit 1.
299. The Respondent in her evidence in chief also produced a Letter of Allotment dated 02.02.1984 with a verification that it belonged to one Chepkemboi Tamalin being handwritten by PW 3.
300. This Letter of Offer dated 02.02.1984 and produced as PLaintiff's exhibit 1 has a section where the Allottee was required to accept the same.
301. In this section of acceptance, the particular of the Allottee is Chepkemboi Tanalin Serem of Kenyan Identification Card No.xxxxxxxx.
302. Clearly therefore, although the Charge executed on the 21.03.1984 had only the name Chepkemboi Tanalin, the same was premised on the Letter of Offer executed on the 21.03.1984 by Chepkemboi Tanalin Serem of Kenyan Identification Card No. xxxxxxxx.
303. This finding has been further confirmed and/or collaborated by the evidence of DW 4 produced the Report marked as Defence exhibit 12.
304. In the Report marked as Defence exhibit 12, it was confirmed that the finger print appearing in the Charge dated 21.03.1984 belonged to the late Chepkemboi Tanalin Serem and not Mary Chepkemboi Tamalel.
305. In essence, this Court is of the considered view that the Letter of Allotment issued over the suit property issued in the name of Chepkemboi Tanalin was accepted by Chepkemboi Tanalin Serem of Kenyan Identification Card No. xxxxxxxx and similarly the Charge dated 21.03.1984 was executed by the same person known as Chepkemboi Tanalin Serem.
306. This being the finding of this Court, the Respondent herein Mary Chepkemboi Tamalel of Kenyan Identification Card No. xxxxxxxx did not have any lawful executed documents over the suit property in terms of a Letter of Allotment and/or Charge to create any legal rights over the suit property.
307. In conclusion, this Court hereby finds that the suit property herein is the asset of Chepkemboi Tanalin Serem (deceased) and not Mary Chepkemboi Tamalel alias TamalinY Chepkemboi.

Issue No. 3- Was the Respondent Entitled to the Prayers Sought in the Plaint Dated 19.04.2017?

308. Based on the finding of this Court on Issue No. 2 hereinabove, the prayer for a permanent Injunction sought by the Respondent in the Plaint dated 19.04.2018 could not be granted as she did not any ownership rights and/or occupation rights over the suit property against the Appellants herein.
309. As such, the Prayers sought in the Plaint dated 19.04.2018 were not merited and should be dismissed.

Issue No. 4- Were the Appellants Entitled to an Order of Adverse Possession Over the Suit Property Against The Respondent.

310. The Appellants in their Defence before the Trial Court also filed a Counter-Claim against the Respondent.
311. The facts in support of the Counter-Claim was that if indeed the suit property belonged to the Respondent, then their occupation of the same amounted to a shield by way of adverse possession.
312. In other words, the Respondent's claim was a permanent injunction would be extinguished by the period of occupation by the Appellants herein.



313. The Appellants relied on the fact that the Respondent had never taken possession and/or occupation of the suit property since 1984 when the portion of land was alienated.
314. The Respondent on the other hand denied the claim of adverse possession on the grounds that the entry on the suit property was with her consent to their mother Christine Chematia Tamurei Serem.
315. Consequently, after the demise of Christine Chematia Tamurei Serem, the Respondent re-entered the land and the occupation by the Appellants who are children of Christine Chematia Tamurei Serem is unlawful and sufficient to grant the prayer of permanent injunction.
316. Be as it may, this Court in Issue No. 2 has made a finding that the suit property herein belongs to Chepkemboi Tanalin Serem and Christine Chematia Tamurei Serem or Mary Chepkemboi Tamalel.
317. Clearly, the claim of adverse possession against the Respondent Mary Chepkemboi Tamalel cannot legal stand as she is not the owner of the suit property.
318. As such, the prayer for Adverse Possession against the Respondent over the suit property is not merited and is dismissed.

Issue No. 5- Who was the Bear the Costs of the Trial Court Proceedings?

319. The Respondent being the party that instituted the proceedings and failed to success it its claim, the costs in the Trial Court should be awarded to the Appellants herein.

Issue No. 6- Is the Present Appeal Merit?

320. On the issue of whether or not the present Appeal is merited, this Court is of the considered view and finding that the Trial Court first and foremost filed to correctly identify the legal and true names of the parties in litigation.
321. This exercise was very crucial to facilitate the identification of the person recorded in the ownership documents of the suit property.
322. The Trial Court failed to verify the name of the person accepting the Letter of Allotment and the Charge documents.
323. In failing to undertake these two very important exercises, the Trial Court disregarded crucial and conclusive evidence produced by the Assistant Director of Land Adjudication and Settlement as well as the Government Finger Print Officer that clearly demonstrated the lawful and legitimate owner of the suit property hence arriving at a wrong conclusion.
324. In other words, this Court has not doubt that the determination of the Trial Court was erroneous and misguided both in facts and law hence the present Appeal succeeds.

Issue No. 7- Who Bears the Costs of the Present Appeal?

325. The present Appeal having been found successful, the costs are awarded to the Appellants payable by the Respondent.

Conclusion

326. In conclusion, this Court hereby makes the following final Orders in determination of the present Appeal; -
 - a. The memorandum of appeal dated 19.07.2021 is merited.



- b. The judgement of pronounced on the 17.06.2021 in the proceedings known as Eldoret Chief Magistrate's Court Environment & Land Case No. 100 of 2018 be and is hereby set-aside.
- c. The plaint dated 19.04.2018 by the respondent be and is hereby dismissed.
- d. The counter-claim dated 09.05.2018 by the appellants be and is hereby dismissed.
- e. The property known as plot.no.87 within Mafuta Settlement Scheme in uasin gishu county is the property of one Chepkemboi Tanalin Serem (deceased).
- f. The respondent is condemned to pay costs of the trial court proceedings as well as the present appeal to the appellants herein.

DATED, SIGNED & DELIVERED VIRTUALLY AT ELDORET ELC THIS 16TH DAY OF SEPTEMBER 2025.

EMMANUEL.M. WASHE

JUDGE

In the presence of:

Court Assistant: Brian

Advocates for the Appellants: Mr. Sambu

Advocates for the Respondent: Mr. Otieno Opiyo holding brief for Mr. Kariuki for the Respondent

