

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KERICHO**

**ELC CASE NO. E018 OF 2024**

**(FORMERLY NAKURU ELC CASE NO. E56 OF 2021)**

**RUTH CHELANGAT CHELULE**

**(Suing as legal representative of the estate of the late  
CHELULE CHEBUNYE-deceased)**

.....**PLAINTIFF**

**VERSUS**

**BEATRICE CHESANG.....1<sup>ST</sup>  
DEFENDANT**

**ESTHER SITONIK.....2<sup>ND</sup>  
DEFENDANT**

**FANCY TALAM.....3<sup>RD</sup>  
DEFENDANT**

**TERESIAH TOO.....4<sup>TH</sup>  
DEFENDANT**

**PHILISTER CHERUIYOT.....5<sup>TH</sup>  
DEFENDANT**

**PETER KIRUI.....6<sup>TH</sup>  
DEFENDANT**

**WILSON RONO.....7<sup>TH</sup>  
DEFENDANT**

**WILLIAM KOSKEI.....8<sup>TH</sup>  
DEFENDANT**

**BETTY SAMOEI.....9<sup>TH</sup>**  
**DEFENDANT**

**EDNAH BIWOTT.....10<sup>TH</sup>**  
**DEFENDANT**

**PRINCY MOSO.....11<sup>TH</sup>**  
**DEFENDANT**

**BETTY CHEPKOECH.....12<sup>TH</sup>**  
**DEFENDANT**

**SHARON CHEPNGETICH.....13<sup>TH</sup>**  
**DEFENDANT**

**AGNES KOSKEI.....14<sup>TH</sup>**  
**DEFENDANT**

**PHILIP TOO.....15<sup>TH</sup>**  
**DEFENDANT**

**PAUL SIGEI.....16<sup>TH</sup>**  
**DEFENDANT**

**ELIJA CHERUIYOT.....17<sup>TH</sup>**  
**DEFENDANT**

**GRACE CHEMUTAI.....18<sup>TH</sup>**  
**DEFENDANT**

**CHEPKURUI TESOT.....19<sup>TH</sup>**  
**DEFENDANT**

**ANN SANG.....20<sup>TH</sup>**  
**DEFENDANT**

**JOHN NGENO.....21<sup>ST</sup>**  
**DEFENDANT**

**SARAH CHEPKOECH KOECH.....22<sup>ND</sup>**  
**DEFENDANT**

**DAVID KOECH AND PAUL BORE (Sued as the officials of  
WORLDWIDE CHURCH).....23<sup>RD</sup>  
DEFENDANT**

**AND**

**DECCA CHEPKEMOI CHELULE.....INTERESTED  
PARTY**

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**JUDGEMENT.**

**INTRODUCTION.**

- 1.** The Plaintiff commenced the present proceedings vide the  
Plaint dated 2<sup>nd</sup> June, 2021.
- 2.** The Plaintiff avers that **Chelule Chebonye** (deceased) is the  
owner of Plot No. 144 which measures twenty acres and that  
it is situated on land parcel No. **Molo South Block 2/11323**  
**(Kirobon)** that measures 3972 acres.
- 3.** The Plaintiff also avers that that **Chelule Chebonye**  
(deceased) purchased the said parcel of land from Kirobon  
Farmers in the 1980's.

4. The Plaintiff further avers that **Chelule Chebonye** (deceased) was allocated the said parcel of land vide the letter dated 15<sup>th</sup> March, 1982.
5. It is her averment that the said parcel of land was initially referred to as Plot No. 36 but upon amendment of the map in the year 2005, the said parcel of land became Plot No. 144.
6. It is also her averment that **Chelule Chebonye** (deceased) immediately took possession of the said parcel of land and that he later died on 24<sup>th</sup> January, 1991.
7. It is further her averment that in the year 2016, the beneficiaries of his estate filed Kericho HC Succession Cause No. 87 of 2016 and adds that the Plaintiff and one **Rachel Chelangat** were issued with the Grant of Letters of Administration on 30<sup>th</sup> May, 2016.
8. The Plaintiff avers that the grant was confirmed and a Certificate of Confirmation of Grant issued on 12<sup>th</sup> November,

2018. The Plaintiff adds that in the Certificate of Confirmation of Grant, the suit parcel is described as land parcel No. **Molo South Block 2/11323 (Kirobon)** instead of Plot No. 144.

9. The Plaintiff also avers that she has not been able to distribute the said parcel of land amongst the beneficiaries because the Defendants are in occupation.
10. The Plaintiff further avers that the said parcel of land measures twenty acres and that she is in occupation of three acres while the Defendants are in occupation of 17 acres.
11. It is the Plaintiff's averment that the Defendants contend that they purchased portions of the suit parcel from **Joseph Chelule** (deceased) in the year 1994.
12. It is also the Plaintiff's averment that the said **Joseph Chelule** (deceased) is her brother in law.

- 13.** It is further the Plaintiff's averment **Joseph Chelule** (deceased) did not have the capacity to dispose of the suit parcel as he was not the administrator of the estate of **Chelule Chebonye** (deceased).
- 14.** She avers that the Defendants have developed the portions of the suit parcel that they are in occupation of to the detriment of the genuine beneficiaries of the estate of the deceased.
- 15.** She also avers that Kirobon Farmers Limited have confirmed that as per their records, **Chelule Chebonye** (deceased) is the owner of the suit parcel.
- 16.** The Plaintiff sets out particulars of illegality against the Defendants and prays for judgement against the Defendants for;

***a. A declaration that the estate of the late Chelule Chebonye (deceased) is the owner of Plot No. 144 (measuring 20 acres) and***

*situated on land parcel Molo South Block 2/11323 (Kirobon) measuring 3972 acres.*

*b. A declaration that the Defendants herein are trespassers and order of eviction does issue as against the Defendants.*

*c. An order of permanent injunction restraining Defendants by themselves, their agents, servants, and/or employees from interfering with the Plaintiff's quiet possession and use of the suit property.*

*d. General damages for trespass.*

*e. An order for costs.*

**17.** The 1<sup>st</sup> to 21<sup>st</sup> Defendants filed their Statement of Defence dated 28<sup>th</sup> October, 2021.

**18.** The 1<sup>st</sup> to 21<sup>st</sup> Defendants deny the averments in the Plaint and state that the letters of administration produced by the Plaintiff were illegally obtained. This is because **Section 71** of the Law of **Succession Act** and **Rule 26(1) & (2)** of the **Probate** and **Administration Rules** were not complied with.

- 19.** The 1<sup>st</sup> to 21<sup>st</sup> Defendants also state that the deceased had distributed his properties prior to his demise and there was therefore no requirement to seek and obtain letters of administration.
- 20.** The 1<sup>st</sup> to 21<sup>st</sup> Defendants further state that the Plaintiff is not living on a three-acre portion of the suit parcel.
- 21.** The 1<sup>st</sup> to 21<sup>st</sup> Defendants state that they purchased land from **Decah Chepkemoi Chelule** the daughter in law of the deceased.
- 22.** They also state that the late **Chelule Chebunye** was survived by the following sons and their wives;
- a. Joseph Chelule (deceased) married to Ester Chelule.**
  - b. Zakayo Chelule (deceased) married to Ruth Chelule.**
  - c. Samson Chelule (deceased) married to Deccah (Tecla) Chelule.**
  - d. John Chelule (deceased).**

- 23.** The 1<sup>st</sup> to 21<sup>st</sup> Defendants further state that they were given records of the family minutes (sic) and the list of registered members from Kirobon Farmers Limited.
- 24.** They state that from the said documents, upon the demise of the original shareholder and upon his prior instructions, **Deccah Chelule, John Chelule** and **Joseph Chelule** were to be registered as shareholders.
- 25.** They also state that **Deccah Chelule** was registered as a shareholder while the others disposed off their shares.
- 26.** They further state that the said registration as shareholders followed prior distribution by their late father who had divided his properties among his children and each child identified their share and took possession over thirty years ago.

- 27.** The 1<sup>st</sup> to 21<sup>st</sup> Defendants state that for the past thirty years there has not been any dispute over the suit parcel.
- 28.** The 1<sup>st</sup> to 21<sup>st</sup> Defendants also state that it is on this basis that they purchased their plots from **Deccah Chepkemoi Chelule**.
- 29.** The 1<sup>st</sup> to 21<sup>st</sup> Defendants further state that they have lived peacefully on the said parcel of land since they purchased it which parcel of land they have since developed.
- 30.** The 1<sup>st</sup> to 21<sup>st</sup> Defendants deny all the other averments in the Plaint and seek that the Plaintiff's suit be dismissed with costs.
- 31.** The 22<sup>nd</sup> Defendant filed an undated Statement of Defence on 25<sup>th</sup> January, 2022.
- 32.** She denies all the averments in the Plaint and states that she is the owner of land parcel No. Molo South/Keringet

Block 2/649 (Kirobon) measuring 120 x 50 ft and adds that she purchased the said parcel of land from **Robert Kipkemoi Too** who is the son to **Wilson Kiptoo Leitich**.

**33.** The 22<sup>nd</sup> Defendant also states that **Wilson Kiptoo Leitich** was the registered owner of land parcel No. **Molo South/Keringet Block 2/649 (Kirobon)** which measures one acre.

**34.** The 22<sup>nd</sup> Defendant further states that **Wilson Kiptoo Leitich** purchased the said parcel of land from **Chelule Chebonye** (deceased).

**35.** She states that after purchase, **Wilson Kiptoo Leitich** subdivided the parcel of land into plots. He sold some of the plots and gave other plots to **Robert Kipkemoi Too** and **Charles Kipyegon Too**.

**36.** She also states that **Robert Kipkemoi Too** developed his plot by constructing a social hall and a lodging. He later sold

the said plot and the developments made thereon to her (22<sup>nd</sup> Defendant) at a consideration of Kshs. 5,600,000/=.

- 37.** She further states that she paid the purchase price in installments and took possession of the said parcel of land on 2<sup>nd</sup> January, 2019.
- 38.** The 22<sup>nd</sup> Defendant states that the Plaintiff is a stranger to her and she prays that the Suit be dismissed with costs.
- 39.** The Interested Party filed her Statement of Defence dated 24<sup>th</sup> May, 2023. She denies the averments in the Plaint and states that **Chebunye A. Chelule** died on 24<sup>th</sup> January, 1991.
- 40.** She also states that **Chebunye A. Chelule** (deceased) was survived by four sons and their wives who are as follows;

***a. Joseph Chelule (deceased) who was married to Esther Chelule.***

**b. Zakayo Chelule (deceased) who was married to Ruth Chelule.**

**c. Samson Chelule (deceased) who married to the Interested Party herein.**

**d. John Chelule (deceased).**

**41.** She further states that in the Letters of Administration obtained by the Plaintiff that were confirmed on 12<sup>th</sup> November, 2018, one **John Chelule** (deceased) was not included.

**42.** She states that by the time **Chebunye A. Chelule** (deceased) died in the year 1991, he had subdivided his properties amongst his children and they took possession.

**43.** She also states that each of the children of the deceased were to process their respective titles from the land buying companies in cases where titles had not been processed.

**44.** She further states that the deceased had subdivided his parcels of land as follows;

- a. Joseph and Esther Chelule - A share of the farm at Chepsir.**
- b. Zakayo and Ruth Chelule - A share of the Sotik - Kimolwet Farm together with the entire tea plantation.**
- c. Samson and Decca (Teclah) Chelule - A share at Keringet (sic) together with John and Joseph Chelule.**
- d. John Chelule and Decca (Teclah) Chelule - A share at Ngata Nakuru (sic).**

**45.** She states that the children of **Chebunye A. Chelule** (deceased) have been in occupation of their respective parcels of land for a period of over thirty years without having any disputes.

**46.** She also states that since **Chebunye A. Chelule** (deceased) distributed his properties before his death, the respective land buying companies were instructed to amend their registers to reflect the persons who the deceased had distributed the land to.

- 47.** She further states that it is on this basis that the various parcels of land were subsequently registered in the respective names of the children of the deceased without obtaining Letters of Administration.
- 48.** The Interested Party states that the register for Kirobon Farmers Limited was amended before **Chebunye A. Chelule** (deceased) died to reflect the name of her late husband.
- 49.** The Interested Party also states that **Chebunye A. Chelule** (deceased) sold a portion of his land to third parties that are not sued herein and sold another portion to the government for the construction of the Molo - Olenguruone road.
- 50.** The Interested Party further states that she sold her share of the parcel of land to the Defendants herein. The transactions were done over twelve years ago and there are massive structures and developments made on the said parcel of land.

- 51.** The Interested Party denies that the Defendants bought their parcels of land from **Joseph Chelule** (deceased) and states that the said **Joseph Chelule** died in the year 1994.
- 52.** The Interested Party also states that the suit parcel as described by the Plaintiff does not exist as it has been subdivided into plots.
- 53.** The Interested Party further states that the said parcel of land forms largely part of the Keringet Shopping Center. It has on it two petrol stations, a banking institution, a supermarket, a church and various family residential homes.
- 54.** She states that since the demise of **Chebunye A. Chelule**, his family has not convened to discuss the need to apply for letters of administration because the deceased had distributed his parcels before his death.
- 55.** She also states that had they agreed to file the said letters of

administration, they would have included all the beneficiaries, all the properties of the deceased and sought the consent and participation of all the beneficiaries.

- 56.** She alleges fraud and states that the Plaintiff has gifted herself 11.5 acres of the suit parcel and given the other beneficiaries 1 acre without giving an explanation.
- 57.** She also alleges fraud on the excerpt list of members filed by the Plaintiff. She states that the at No. 144 of the said excerpts, the original name was erased and in its place the name of **Samwel Chelule Chebunye** included.
- 58.** She states that as at the year 2014, One **Chesulut** was not a director of Kirobon Farmers Company Limited and therefore the letter dated 4<sup>th</sup> September, 2014 is a forgery.
- 59.** She also states that the 19<sup>th</sup> Defendant purchased his land from her brother and father in law and she then denies knowing the 13<sup>th</sup>, 14<sup>th</sup> and 18<sup>th</sup> Defendants.

**60.** The Interested Party then seeks that the Plaintiff's suit be dismissed with costs.

**THE PLAINTIFF'S EVIDENCE.**

**61. Ruth Chelagat Chelule (Plaintiff)** testified as **PW1**. She testified that she obtained an authority from the Court to institute the suit on behalf of **Chelule Chebonye** (deceased).

**62.** She also testified that she was the daughter-in-law of **Chelule Chebonye** (deceased).

**63.** She stated that she had filed a witness statement dated 2<sup>nd</sup> June, 2021 and prayed that the Court adopts the said statement as part of her evidence in Chief, which prayer the Court acceded to.

**64.** It was her evidence that she had filed a list of documents. The documents were marked and produced as follows;

- a. **A copy of the Certificate of Confirmation of Grant as Exhibit P1.**
- b. **A copy of the extract of the register for Kirobon Farmers as Exhibit P2.**
- c. **A copy of the Certificate of Ordinary Shares dated 15<sup>th</sup> May, 1981 as Exhibit P3.**
- d. **Letter of allocation dated 15<sup>th</sup> March, 1982 as Exhibit P4.**
- e. **A copy of the Death Certificate of Chelule Chebonye as Exhibit P5.**
- f. **A copy of Grant of Letters of Administration dated 30<sup>th</sup> May, 2016 as Exhibit P6.**
- g. **Photographs of the suit parcel as Exhibit P7.**
- h. **A letter dated 4<sup>th</sup> September, 2014 written by the Chairman Kirobon Farmers Company Limited as Exhibit P8.**

**65.** It was her testimony that she had sued twenty-three Defendants and sought orders that they be removed from the suit parcel of land as it belonged to **Chelule Chebonye** (deceased).

- 66.** It was also her evidence that she did not know how the said Defendants got the land.
- 67.** It was her further evidence that **Chelule Chebonye** (deceased) did not subdivide his land before his death.
- 68.** She testified that the 1<sup>st</sup> to 22<sup>nd</sup> Defendants contend that they purchased their parcels of land from **Deccah Chepkemoi Chelule**.
- 69.** She also testified that **Deccah Chepkemoi Chelule** was the wife of **Samson Chelule** (deceased) who was her brother-in-law.
- 70.** She further testified that **Samson Chelule** (deceased) was the son of **Arap Chelule** (deceased).

- 71.** It was her evidence that she was married to **Zakayo Chelule** (deceased) one of the sons of the late **Chelule Chebonye** (deceased).
- 72.** It was also her evidence that the 1<sup>st</sup> to 22<sup>nd</sup> Defendants state that they purchased the said parcels of land between the years 1993 and 1994.
- 73.** It was further her evidence that at the time of purchase, **Chelule Chebonye** was dead and they had not commenced succession proceedings.
- 74.** She testified that even though she could not remember the year they commenced the succession proceedings, she had the grant.
- 75.** In her witness statement she states that Plot No. 144 is situated on land parcel No. **Molo South Block 2/11323 (Kirobon)**.

**76.** The rest of her witness statement regurgitates her averments in the Plaintiff.

**77.** Upon cross examination by Counsel for the 1<sup>st</sup> to 22<sup>nd</sup> Defendants, **PW1** confirmed that she was claiming Plot No. 144.

**78.** She also confirmed that she was claiming the entire parcel of land so that they can subdivide it.

**79.** She admitted that she was sure that the 1<sup>st</sup> to 22<sup>nd</sup> Defendants were in occupation of Plot No. 144.

**80.** She confirmed that she had an allotment letter that showed that the land belonged to the deceased.

**81.** She admitted that she was not the only one with an interest in the land and therefore, once she gets the land back, she will distribute it amongst the family members.

**82.** She confirmed that there were other members of their family who were;

**a. *Decla Chelule.***

**b. *Joseph Chelule***

**c. *Sarah Tanui***

**83.** She admitted that the Letters of Confirmation of Grant (**Exhibit P1**) had a schedule of distribution of assets.

**84.** She stated that she was not aware that the Defendants purchased the said parcel of land from **Decca** and confirmed that the said **Decca** will get a share of the suit parcel.

**85.** She admitted that she was in occupation of three acres of the suit parcel which she was given to use as she awaits the decision of this Court.

**86.** She confirmed that it was the District Officer who gave her the said portion of land.

- 87.** She also confirmed that she was the only family member living in Keringet and explained that the other family members lived in Ngata.
- 88.** Upon cross-examination by Counsel for the 22<sup>nd</sup> Defendant, she admitted that **Chelule Chebonye** (deceased) was her father since he was her husband's father.
- 89.** She confirmed that **Chelule Chebonye** (deceased) had eight children who are now deceased.
- 90.** She reiterated that she was married to **Zakayo Chelule** (deceased) and that she lived on three acres of the suit parcel.
- 91.** She stated that the suit parcel belonged to the estate of **Chelule Chebonye** (deceased) and was located at Keringet.

92. She confirmed that the present suit relates to the land located at Keringet and that she had produced documents in support of her case.
93. She also confirmed that Plot No. 144 only had an allotment letter and it did not have a title deed.
94. She further confirmed that initially Plot No. 144 was referred to as Plot No. 36.
95. She admitted that **Chebonye Chelule** died in the year 1991 and that in the year 2016, they commenced succession proceedings.
96. She also admitted that at the time they were commencing succession proceedings, they were not aware that the said parcel of land had problems.
97. She further admitted that the children of **Chebonye Chelule** (deceased) did not go to Court.

**98.** She confirmed that she was given a Grant of Letters of Administration jointly with **Rachael Chelangat** the daughter of **Chebonye Chelule** who was also deceased.

**99.** She also confirmed that when she filed the present suit, **Rachael Chelangat** was alive even though she did not sign the Court documents.

**100.** She stated that the late **Chelule Chebonye** had one wife and eight sons. The names of the sons (sic) were as follows;

- a. **Joseph Chelule**
- b. **Zakayo Chelule**
- c. **Rebecca Chepkorir**
- d. **Sarah Chepkemoi.**
- e. **Sophia Chepkorir.**
- f. **Rachael Chelangat.**
- g. **Samson Chelule.**
- h. **John Chelule**

**101.** She reiterated that all the sons of **Chelule Chebonye** (deceased) were deceased and that she was the wife of **Zakayo Chelule** (deceased).

**102.** She confirmed that **Joseph** was the husband of **Esther Chelule** while **Samson** was the husband of **Decca Chelule**.

**103.** She also confirmed that **John** was the husband of **Alice Chelule**.

**104.** She further confirmed that **Esther, Decca** and **Alice** were alive and added that they live in Ngata.

**105.** She stated that the family of **Chebonye Chelule** (deceased) sat down and agreed that she files the present suit.

**106.** She admitted that she was not calling any other member of her family to give evidence in the present matter.

**107.** When she was referred to the Certificate of Confirmation of Grant produced **Exhibit P1**, she admitted that the said grant was only issued in her name because **Rachael** was deceased.

**108.** She admitted that she did not have the death certificates of the other children of **Chebonye Chelule** (deceased).

**109.** She also admitted that the Certificate of Confirmation of Grant was with respect to land parcel No. **Molo South Block 2/11323 Kirobon** and not Plot No. 144.

**110.** She further admitted that the said parcel of land measures twenty acres and confirmed that she did not know why the Certificate of Confirmation of Grant stated that the said parcel of land measures 17 acres.

**111.** She stated that the Court gave her 8 ½ acres of the suit parcel and admitted that the Surveyor has not been to the

suit parcel because she first needed to have the Defendants evicted.

**112.** She also admitted that she did not have Letters of Administration Ad Litem.

**113.** She further admitted that there were twenty-six people on the land and confirmed that she did not know the 22<sup>nd</sup> Defendant.

**114.** She also confirmed that she did not know how long the 22<sup>nd</sup> Defendant had been in occupation of the suit parcel.

**115.** She further confirmed that before the death of **Chelule Chebonye**, there was no one on the suit parcel.

**116.** She admitted that when she got to the land, she found people living on it.

**117.** She also admitted that at the time the suit parcel was being developed she was living on a parcel of land at Kimolwet which parcel of land also belonged to the deceased.

**118.** She further admitted that the deceased lived in Ngata and that she was living at Kimolwet at the time of his death.

**119.** She stated that the deceased lived in Ngata for ten years and reiterated that the parcel of land she is claiming is situated in Keringet.

**120.** She admitted that she neither had a map nor a Certificate of Official Search for the suit land.

**121.** She confirmed that after she found people living on the land at Keringet she went to Court and the police and admitted that she did not have the OB number.

**122.** She also confirmed that the Defendants filed a case in Kericho before filing another suit in Molo and added that

after the Molo suit was concluded, they filed a suit in the High Court.

**123.** She reiterated that the District Officer allowed her to take possession of the three acres of land at Keringet.

**124.** She stated that it was not true that the 22<sup>nd</sup> Defendant purchased land from **Chelule Chebonye** (deceased) and further stated that he never sold the suit parcel.

**125. PW1** denied that she filed her claim late and also denied that she filed the suit without the authority of their family.

**126.** She admitted that they did not have the title deed for the suit parcel but they were following up on it.

**127.** Upon re-examination, she stated that **Rachael Chelang'at** (deceased) was her co-administrator but she could not remember when she died.

**128.** She reiterated that her claim was for land parcel No. 144 even though the documents she produced in Court referred to Plot No. 36.

**129.** She stated that initially the suit property was known as Plot No. 36 and after a survey was done, the number changed to Plot No. 144.

**130.** She also stated that the said parcel of land initially belonged to Kirobon Farmers Company Limited and from the documents produced in Court, the deceased was given Plot No. 144.

**131.** She further stated that the parcel of land in Ngata belonged to the deceased and that he had several other parcels of land.

**132.** She stated that in her witness statement she explained the nexus between Plot No. 36 and Plot No. 144 and reiterated that the Defendants were in occupation of the suit parcel.

**133.** She also stated that Plot No. 144 and land parcel No. **Molo South Block 2/11323** referred to same parcel of land.

**134.** The Plaintiff's case was then closed.

**THE 1<sup>ST</sup> TO 22<sup>ND</sup> DEFENDANTS EVIDENCE.**

**135.** **William Kiprotich Koskei ( 8<sup>th</sup> Defendant)** testified as **DW1.**

**136.** He testified that the Plaintiff was claiming Plot No. 144.

**137.** He also testified that the 1<sup>st</sup> to 21<sup>st</sup> Defendants purchased land parcel **No. Molo South Block 2/17** from **Tecla Chelule** on diverse dates in the year 2004.

**138.** He further testified that the name of **Tecla Chelule** was in the list of members of Keringet.

**139.** It was his evidence that he purchased his parcel of land on 20<sup>th</sup> August, 2004 and that he did not know the exact dates the other Defendants purchased their parcels of land.

**140.** He testified that it was the Plaintiff's evidence that the land belonged to **Chelule Chebonye** (deceased) and yet it belonged to **Samson Chelule** (deceased) who was **Tecla Chelule's** husband.

**141.** It was further his evidence that **Chelule Chebonye** (deceased) had other parcels of land in Ngata, Keringet, Chepsir and Kimolwet.

**142.** He testified that the Plaintiff was the daughter-in-law of the late **Chelule Chebonye**.

**143.** He also testified that **Tecla** was entitled to land in Keringet and Ngata as she was the late **Chelule Chebonye's** daughter-in-law.

**144.** He further testified that **Tecla**'s husband was gifted the said parcel of land when **Chelule Chebonye** (deceased) was still alive.

**145.** It was his evidence that the Court should dismiss the Plaintiff's suit as **Tecla** was a beneficiary of the Keringet Property.

**146.** It was also his evidence that they had filed a List of documents that he wished the Court to rely on as part of his evidence.

**147.** He produced copies of the sale agreements between **Decca** and the following Defendants;

- a. *Wilson Kipngetich***
- b. *William Kiprotich Koskei***
- c. *Alice Chepkurui Talam***
- d. *Philip Kipkoech Too***
- e. *Betty Chepkemai Samoei***
- f. *Rose Chelangat Tesut.***

**148.** He produced copies of the said agreements as **Exhibits D1(a) to (f)**.

**149.** He also produced a copy of an excerpt of the list of members of Kirobon Farmers which he testified was issued by the Directors of Kirobon as **Exhibit D2**.

**150.** Upon cross examination by Counsel for the 22<sup>nd</sup> Defendant, he admitted that he knew **Samson Chelule** (deceased) as he was the son of **Chebonye Chelule** (deceased) and that he had purchased land from them.

**151.** He reiterated that **Tecla Chelule** was the wife of **Samson Chelule** (deceased).

**152.** He stated that **Decca** acquired the land from her husband and sold it to him.

**153.** He confirmed that he purchased a portion of Plot No. 17 from Decca measuring three quarters of an acre. Plot No. 17 measured twenty acres.

**154.** He also confirmed that **Decca** did not have a title deed for Plot No. 17 and reiterated that they purchased the said parcel of land in the year 2004.

**155.** He further confirmed that he was in occupation of the three quarters of an acre parcel of land that he had purchased and explained that he fenced the land and cultivated it.

**156.** He admitted that the said Plot does not have a title deed.

**157.** He reiterated that he knew **Chelule Chebonye** (deceased) and that he had four sons who were deceased. He stated their names together with the names of their wives as follows;

**a. Joseph Chelule (deceased) husband to Esther Chelule**

**b. Zakayo Chelule (deceased) husband to Ruth Chelule**

**c. Samson Chelule (deceased) husband to Deccah Chelule**

**d. John Chelule (deceased).**

**158.** He confirmed that he did not know if **John Chelule** (deceased) was married.

**159.** He also confirmed that he knew the Plaintiff as she was the wife of **Zakayo Chelule** (deceased). He further confirmed that the Plaintiff filed the present suit seeking orders in respect of Plot No. 144.

**160.** He admitted that he did not know the acreage of Plot No. 144 and neither was he aware whether it had a title deed.

**161.** He stated that Plot No. 17 had no relationship with Plot No. 144 and that the Plaintiff had not shown them the title deed for Plot No. 144.

**162.** He admitted that he had been sued over land parcel No. Molo **South Keringet Block 2/11323 (Kirobon)** and

confirmed that he knew nothing about the said parcel of land.

**163.** He also confirmed that he did not know its acreage and neither had he seen its title deed.

**164.** He further confirmed that the Plaintiff did not sell to him any parcel of land.

**165.** When he was referred to the Certificate of Confirmation of Grant produced as **Exhibit P1**, he stated that he did not know that that was the strength of the Plaintiff's suit.

**166.** He stated that if the Plaintiff was the administrator of the estate of **Chelule Chebonye (deceased)** then his evidence was that the Defendants bought land before the grant was confirmed.

**167.** He confirmed that the Certificate of Confirmation of Grant showed that the Plaintiff together with **Esther, Decca** and

**Sarah Tanui** had been given land parcel No. **Molo South Keringet Block 2/11323 (Kirobon)**.

**168.** He also confirmed that the said parcel of land measured twenty acres. He admitted that he knew **Decca** and stated that the other persons were wives of the sons of **Chelule Chebonye** (deceased).

**169.** He confirmed that the Plaintiff stated that land parcel No. 11323 measured 3972 acres but the Certificate of Confirmation of Grant stated that the said parcel of land measured twenty acres.

**170.** He also confirmed that the Plaintiff wanted them to be evicted from the suit parcel but they should not be evicted because they are purchasers.

**171.** Upon cross examination by Counsel for the Plaintiff, he reiterated that he was testifying on behalf of 1<sup>st</sup> to 21<sup>st</sup> Defendants.

**172.** He also reiterated that he was the 8<sup>th</sup> Defendant and admitted that he did not have a letter of authority from the 1<sup>st</sup> to 21<sup>st</sup> Defendants.

**173.** He reiterated that Plot No. 17 measures twenty acres and it belonged to **Chelule Chebonye** (deceased).

**174.** He also reiterated that the deceased had other parcels of land at Kimolwet, Chepsir, Ngata and Keringet. He confirmed that the only land the deceased owned in Keringet measured twenty acres.

**175.** He admitted that **Chelule Chebonye** (deceased) got his parcel of land from Kirobon Farmers.

**176.** He reiterated that he purchased his parcel of land from **Decca** who was the daughter-in-law of **Chebonye Chelule** (deceased). He also reiterated that **Decca** got the said

parcel of land from her deceased husband one **Samson Chelule**.

**177.** He stated that before he purchased the said parcel of land he conducted investigations that revealed that **Samson Chelule** (deceased) was given the land by his father.

**178.** He admitted that he did not know the date when **Samson Chelule** (deceased) was given the said parcel of land and neither

did he know when **Chebonye Chelule** died.

**179.** He stated that **Decca** and **Joseph Chelule** (deceased) were the beneficiaries of the said parcel of land which information he got from the minutes of a meeting.

**180.** He admitted that he had nothing else apart from the minutes.

**181.** He stated that the Plaintiff's husband was given land in Keringet and Ngata but confirmed that he had no documents in support of his assertions.

**182.** He reiterated that he purchased his parcel of land in the year 2004.

**183.** He admitted that the sale agreement stated that **Decca** was the owner of the land and added that he inferred her ownership from her occupation of the land.

**184.** He also admitted that **Decca** did not show them her title deed and neither did she show them the share certificate issued by Kirobon Farmers.

**185.** He further admitted that **Decca** did not show them any will, deed of transfer or any written document to show ownership.

**186.** He was referred to the extract of the list of members of Kirobon Farmers Company Limited produced as **Exhibit D2**

and he confirmed that it was a list of members of Kirobon Farmers.

**187.** He also admitted that the said list was given to him by the directors of Kirobon Farmers. He further admitted that the said document did not have a seal, a stamp or a signature from Kirobon Farmers.

**188.** He confirmed that the said document did not also have a certification stamp that shows that it was issued by Kirobon Farmers.

**189.** He admitted that the Plaintiff stated that Plot No. 144 was within land parcel No. **Mau South Block 2/11323** which parcel of land measured 3972 acres. He also admitted that he had no knowledge of this.

**190.** He further admitted that he was shown a copy of a grant and confirmed that he did not know if **Decca** instituted succession proceedings.

**191.** He stated that his evidence was that the late **Chebonye Chelule** distributed his land when he was alive and then admitted that he was not present when that happened.

**192.** He also stated that he was born in the year 1968 and before he purchased the three quarter of an acre plot, he was living in Chesirikwa.

**193.** He admitted that before he purchased the said parcel of land, he did not know the **Chelule** family and he only got to know them in the year 2004.

**194.** He also admitted that in his witness statement, he gave a history of the **Chelule** family which history was narrated to him and he confirmed that he could not tell whether it was true or false.

**195.** Upon re-examination he reiterated that he did not have an authority from his co-Defendants to testify on their behalf.

**196.** He also stated that the Plaintiff was not given land at Keringet.

**197.** He reiterated that **Decca** was the owner of the land and that she got it from her deceased husband who got it from **Chebonye Chelule** (deceased).

**198.** The 1<sup>st</sup> to 21<sup>st</sup> Defendant's case was then closed.

#### **THE 22<sup>ND</sup> DEFENDANT'S EVIDENCE.**

**199. Sarah Koech** testified as **DW2**. It was her evidence that she did not know **Ruth Chelule** and neither did she know **Chelule Chebonye** (deceased).

**200.** She stated that she filed a witness statement dated 25<sup>th</sup> January, 2022 and prayed that the Court adopts the said statement as part of her evidence-in-chief, which prayer the Court acceded to.

**201.** It was her evidence that she did not know Plot No. 144 and land parcel No. **Molo South Block 2/11323 Kirobon.**

**202.** It was also her evidence that she was the registered owner of land parcel No. **Molo South Keringet Block 2/854.**

**203.** It was further her evidence that the Plaintiff was not claiming her land.

**204.** She testified that she purchased her parcel of land from **Robert Kipkemoi** for a consideration of Kshs. 5.8 million. She went on to state that began paying the purchase price in the year 2018 and completed payment in the year 2019.

**205.** She also testified that she had a sale agreement dated 3<sup>rd</sup> February, 2018 which she produced as **Exhibit D2 (1).**

**206.** She further testified that the payment of the purchase price was acknowledged by the vendor vide acknowledgement receipts dated 2<sup>nd</sup> January, 2019 and 10<sup>th</sup> August, 2018. She produced copies of the said documents as **Exhibits D2(2)** and **Exhibit D2 (3).**

**207.** She produced a copy of the title deed for land parcel No. Molo South Keringet Block 2/854 as **Exhibit D2 (4)**.

**208.** It was her evidence that her parcel of land measured 120 by 50 feet and she added that she has been in occupation of the said parcel since January, 2019.

**209.** It was also her evidence that she has made developments on the said parcel and that the said developments were both permanent and temporary.

**210.** It was further her evidence that she had three shops, nine lodging rooms and a social hall on the said parcel of land.

**211.** She testified that since she took possession of the said parcel, there has been no interference.

**212.** She also testified that she bought the said parcel of land together with the developments made thereon.

**213.** She further testified that the Plaintiff did not seek for the cancellation of her title.

**214.** In her witness statement, she denies the averments in the Plaintiff and stated that her parcel of land was one of the resultant subdivisions of land parcel No. **Molo South/Keringet Block 2/649 (Kirobon)** that was registered in the name of **Wilson Kiptoo Leitich**.

**215.** She also states that **Wilson Kiptoo Leitich** purchased the said parcel of land from **Chelule Chebonye** (deceased). He (**Wilson Kiptoo Leitich**) took possession of the said parcel of land and subdivided it into plots and gave one of the said plots to **Robert Kipkemoi Too**. The rest of her witness statement reiterates the contents of her Statement of Defence.

**216.** Upon cross-examination by Counsel for the Plaintiff she reiterated that she purchased her parcel of land from

**Robert Too** in the year 2018 and added that he executed the agreement for sale.

**217.** She admitted that the title was in the name of his (Robert Too) father one **Wilson Leitoo Letich** who was still alive as at the time of purchase.

**218.** She reiterated that her parcel of land was one of the resultant subdivisions of land parcel No. **Molo South Keringet Block 2/649** that was registered in the name of **Wilson Leitich**.

**219.** When she was referred to the sale agreement dated 3<sup>rd</sup> February, 2018 produced as **Exhibit D2 (1)**, she admitted that the agreement referred to land parcel No. 694 instead of parcel No. 649 and stated that it was an error.

**220.** She reiterated that the ownership documents in her possession were with respect to land parcel No. **Molo South**

**Keringet Block 2/854** which was the parcel of land she was in occupation of.

**221.** She confirmed that before she purchased the said parcel of land, she checked the records of Kirobon Farmers to see whose name was listed.

**222.** She explained that the said records were in a book and that the said book had a list of names of the members of Kirobon Farmers and the parcels of land they owned.

**223.** She confirmed that at the time of sale, **Wilson** had not picked up his title from the Lands office.

**224.** She admitted that in her statement, she stated that Wilson had purchased one acre of land from **Chelule Chebonye** (deceased).

**225.** She then confirmed that her parcel of land is a portion of the one acre of land purchased by **Wilson** from **Chelule** (deceased).

**226.** She stated that it was after the present suit was filed that she learnt about the said history because the records at Kirobon Farmers Limited showed that **Wilson** was the owner.

**227.** She admitted that she did not see any documents showing that **Wilson** purchased his land from **Chelule** (deceased).

**228.** She confirmed that **Wilson Kiptoo Leitich** did not sign the agreement and he only signed the consent to transfer at the time she was acquiring the title.

**229.** She also confirmed that the parcel of land she owned was in Keringet market/town.

**230.** She further confirmed that the Safaricom Mast was not near her parcel of land and even though she came from Keringet, she did not know the Plaintiff.

**231. Robert Kipkemoi Too** testified as **DW3**. It was his evidence that he lived in Keringet and stated that she did not know the Plaintiff.

**232.** It was also his evidence that he knew **Chelule Chebonye** (deceased) in the year 1990.

**233.** It was further his evidence that **Chelule Chebonye** (deceased) had a parcel of land in Kirobon and he sold an acre of the said land to his father one **Wilson Leitich Kiptoo**.

**234.** He testified that he did not know the purchase price but what he knew was that the sale was done in the year 1990.

**235.** He also testified that he did not have the sale agreement because the said parcel of land was sold over thirty years ago and added that upon purchase, his father established a saw mill on the land and subdivided it into eight plots.

**236.** He reiterated that the said parcel of land was purchased directly from **Chebonye** (deceased) who had a title deed.

**237.** He testified from the eight plots, his father gave him one plot and he (his father) gave his brother another plot.

**238.** He also testified that he built four shops, eight residential houses and a social hall on his plot and added that the said developments were permanent.

**239.** It was his evidence that he used the said plot for a period of thirteen years before selling it to **Sara Kerich**.

**240.** It was also his evidence that they entered into a land sale agreement dated 3<sup>rd</sup> February, 2018.

**241.** It was further his evidence that he connected the 22<sup>nd</sup> Defendant to his father and the title deed was processed in her name.

**242.** He testified that the said parcel of land is now registered as **Molo South Block 2/854 Kirobon.**

**243.** He also testified that the sale agreement referred to Plot No. 694, the acknowledgements also referred to Plot No. 694 but the title deed was for land parcel No. 854.

**244.** He further testified that the numbers were different because the parcel of land had not been subdivided.

**245.** It was his evidence that his father was in occupation of the said parcel of land for over thirty years after he purchase it.

**246.** He reiterated that he used the said parcel of land for a period of thirteen years and testified that there was no interference on either use and/or occupation of the land.

**247. DW3** also stated that he filed a witness statement dated 25<sup>th</sup> January, 2022 and prayed that the said statement be adopted as part of his evidence-in-chief which prayer the Court acceded to.

**248.** In his witness statement he states that his father had peaceful possession of the parcel of land he purchased from **Chelule Chebunye** (deceased).

**249.** He also states that he only knows the 21<sup>st</sup> Defendant as he purchased a plot from his brother **Charles Too**.

**250.** Upon cross examination by Counsel for the Plaintiff, he confirmed that his father purchased one acre of land from **Chelule Chebonye** (deceased) in the year 1990.

**251.** He admitted that he did not see the land sale agreement that they entered into.

**252.** He reiterated that he came from Keringet and that he knew **Chelule Chebonye** (deceased) but he did not know any of his children.

**253.** He stated that the parcel of land that his father purchased was land parcel No. **Molo South Block 2/649.**

**254.** He admitted that the land sale agreement referred to Plot No. 694 and clarified that this was the plot that he sold to the 22<sup>nd</sup> Defendant.

**255.** He also admitted that he did not know the current land parcel number of the plot he sold to the 22<sup>nd</sup> Defendant.

**256.** He further admitted that at the time he was selling Plot No. 694, the said parcel of land was registered in his father's name.

**257.** He admitted that his father did not sign the sale agreement.

**258.** The 22<sup>nd</sup> Defendant's case was then closed.

**ISSUES FOR DETERMINATION.**

**259.** The Plaintiff filed her submissions on 13<sup>th</sup> March, 2024 while the Defendants and the Interested Party did not file any submissions.

**260.** The Plaintiff submits on the following issues;

***a. Whether the Interested Party had capacity to enter into contract for the sale of the suit property.***

***b. Whether the Plaintiffs (sic) have proved their case on a balance of probabilities.***

***c. Whether the Defendants dispensed with their duty to prove what they alleged in the case.***

**261.** On the first issue, the Plaintiff submits that the suit parcel has been properly identified.

**262.** The Plaintiff also submits that the documents she produced as **Exhibits P2, P4 and P8** show that **Chelule Chebonye** (deceased) was a shareholder of Kirobon Farmers Limited and was allocated Plot No. 144.

**263.** The Plaintiff further submits that Plot No. 144 measured twenty acres and that the 8<sup>th</sup> Defendant identified the said parcel of land and confirmed that it measured twenty acres.

**264.** It is the Plaintiff's submissions that the 8<sup>th</sup> Defendant also confirmed that the said parcel of land belonged to the deceased and that the deceased had given it to the Interested Party.

**265.** It is also the Plaintiff's submissions that the 8<sup>th</sup> Defendant's evidence was to the effect that the 1<sup>st</sup> to 21<sup>st</sup> Defendants were in occupation of the suit parcel.

**266.** It is further the Plaintiff's submissions that given the evidence of the 8<sup>th</sup> Defendant, the suit parcel has been properly identified.

**267.** The Plaintiff submits that the 1<sup>st</sup> to 21<sup>st</sup> Defendant's evidence was that they purchased their parcels of land from the Interested Party who was a beneficial owner of the suit property.

**268.** The Plaintiff also submits that the said transactions were done before letters of administration were issued which fact was confirmed by the 8<sup>th</sup> Defendant during cross examination.

**269.** The Plaintiff further submits that a person having beneficial interest in land cannot transact on it until a grant is issued.

**270.** The Plaintiff relies on the judicial decision of **In the matter of the Estate of M' Ajogi M'Ikiugu alias Ikiugu Ajogi** (deceased) (citation not given) and submits that no person

had the capacity to deal with the suit parcel before letters of administration were issued.

**271.** The Plaintiff also submits that the Defendants entered the suit parcel before the estate of the deceased was administered.

**272.** The Plaintiff relies on the judicial decisions of **Peter Kim Baker & 2 Others v Sidi Katana Bongo & another [2019] eKLR, Virginia Mwari Thurania v Purity Nkirote Thurania [2017] eKLR** and **Wafula (Suing as the Personal and Legal Representative of the Estate of the Late Henry Wafula Masibayi Deceased) v Masinde [2023] KEELC 18897 (KLR)** in support of her submissions.

**273.** It is the Plaintiff's submissions that even though the Defendants contend that the Interested Party was gifted the suit parcel by the deceased, no evidence in support of the said contention was availed.

**274.** With regard to the second issue, the Plaintiff submits that the deceased owned the suit parcel since 15<sup>th</sup> March, 1982 till 24<sup>th</sup> January, 1991 when he died.

**275.** The Plaintiff also submits that the said parcel of land was not transferred by **Chelule Chebonye** (deceased) to any other person.

**276.** The Plaintiff further submits that she was given the grant of letters of administration with respect to the estate of the deceased vide Nakuru HC Succession Cause No. 87 of 2016.

**277.** The Plaintiff reiterates that at the time the Defendants allege to have transacted over the land, there was no grant of letters of administration and therefore no one had the capacity to sell it.

**278.** The Plaintiff therefore submits that the Defendants are trespassers on the suit parcel and relies on **Section 3(1)** of Trespass Act in support of her submissions.

**279.** On the third issue, the Plaintiff submits that the Defendants allege that they purchased their parcels of land from the Interested Party but they failed to call her to give evidence.

**280.** The Plaintiff also submits that he who alleges must prove and therefore the Defendants failed to prove their assertions.

**281.** The Plaintiff submits that the Defendants should have taken steps to prove the validity of the documents that they were relying on.

**282.** The Plaintiff relies on **Section 35(1)(b)** of the Evidence Act, the judicial decision of **Kenneth Nyaga Mwige v Austin Kiguta & 2 Others [2015] eKLR** and submits that the maker of a document should produce it in Court and therefore the Defendants should not be exempted from the said rule.

**283.** The Plaintiff sets out the 22<sup>nd</sup> Defendant's averments in her Statement of Defence and submits that she (22<sup>nd</sup> Defendant) admits that her parcel of land originally belonged to **Chelule Chebonye** (deceased).

**284.** The Plaintiff submits that the said assertion confirms that the suit parcel initially belonged to **Chelule Chebonye** (deceased) and it therefore belongs to his estate.

**285.** The Plaintiff concludes her submissions by stating that a void transaction is an incurable nullity and therefore the contracts entered into by the Defendants were void.

**286.** The Plaintiff relies on the judicial decision of **Macfoy v United Africa Co. Ltd [1961] 3 All ER 1169 at pg. 1172** in support of her submissions.

### **ANALYSIS AND DETERMINATION.**

**287.** After considering the pleadings, the evidence adduced by the Plaintiff and Defendants together with the Plaintiff's

submissions, it is my view that the following issues arise for determination;

- a. ***Whether Plot No. 144 situated on land parcel No. Molo South Block 2/11323 (Kirobon) belongs to the estate of Chelule Chebonye (deceased).***
- b. ***Whether the Defendants are trespassers on Plot No. 144 situated on land parcel No. Molo South Block 2/11323 (Kirobon).***
- c. ***Whether the prayers sought in the Plaintiff should be granted.***
- d. ***Who should bear costs of the suit.***

**A. Whether Plot No. 144 situated on land parcel No. Molo South Block 2/11323 (Kirobon) belongs to the estate of Chelule Chebonye (deceased).**

**288.** It is the Plaintiff's case that her father in law one **Chelule Chebonye** (deceased) was allocated Plot No. 144 by Kirobon Farmers Limited.

**289.** It is also the Plaintiff's case that succession proceedings with respect to his estate were conducted in the year 2016 when she filed Nakuru HC Succession Cause No. 87 of 2016.

**290.** It is further the Plaintiff's case that she has been unable to implement the confirmed grant because the Defendants are in occupation of the suit parcel.

**291.** The Plaintiff therefore seeks that the Defendants be declared to be trespassers and they be evicted from the said parcel of land.

**292.** The Plaintiff produced a copy of the Certificate of Confirmation of Grant issued in Nakuru HC Succession Cause No. 87 of 2016 In the matter of the estate of **Chelule Chebunye** (deceased) as **Exhibit P1**.

**293.** The Certificate of Confirmation of Grant is issued to **Ruth Chelang'at Chelule** on 12<sup>th</sup> November, 2018. The only

asset in its schedule is land parcel No. **Molo South Block 2/11323 (Kirobon)**.

**294.** A copy of an extract of the register for Kirobon Farmers was produced as **Exhibit P2**. At No. 144, the name of **Samwel Chelule Chebunye** of ID No. 7200091 is stated. Alongside his name is 5.987 Ha. The document is signed on 7<sup>th</sup> April, 2018 and it has a stamp of Kirobon Farmers Company Limited.

**295.** A copy of a Certificate of Ordinary Shares was produced as **Exhibit P3**. It is issued by **Kirobon Farmers Limited** to **Samwel Arap Chebunye** of P.O Box 1517 Nakuru on 15<sup>th</sup> May, 1981 for two hundred and fifty ordinary shares.

**296.** A copy of a letter dated 15<sup>th</sup> March, 1982 was produced as **Exhibit P4**. The subject of the letter is allocation of plots. The letter is addressed to **Chelule A. Chebunye**. It states that subject to the allocation of plots exercise conducted on 29<sup>th</sup> December, 1981, **Chelule A. Chebunye** was allocated

Plot No. 36 which was within LR No. 11323 measuring twenty acres. It is signed by **S.K Menjo** the Company Secretary. The letter bears the stamp of Kirobon Farmers Ltd P.O Box 1979 Nakuru.

**297.** A copy of Certificate of Death No. 217525 was produced as **Exhibit P5**. It states that **Chelule Chebunye** died on 24<sup>th</sup> January, 1991. The death was registered on 4<sup>th</sup> February, 1991 and on the same date the Certificate of Death was issued.

**298.** A copy of a Grant of Letters of Administration was produced as **Exhibit P5**. It is issued in Nakuru HC Succession Cause No. 87 of 2016 In the matter of the Estate of **Chelule Chebunye** to **Ruth Chelangat Chelule** and **Rachael Chelang'at** on 30<sup>th</sup> May, 2016.

**299.** Three coloured photographs were produced as **Exhibit P6**. One photograph is of a petrol station while the other two photographs appear to be of construction sites.

**300.** A copy of a letter dated 4<sup>th</sup> September, 2014 was produced as **Exhibit P8**. It is written by **Benjamin Chelulut** the Chairman of Kirobon Farmers Limited. It states that **Chelule A. Chebunye** (sic) was allocated a parcel of land at Keringet on LR No. 11323/144. The letter also states that the said parcel of land is yet to be divided amongst the siblings (sic) as they have not brought letters of administration to the company.

**301.** The 1<sup>st</sup> to 21<sup>st</sup> Defendants case on the other hand is that they purchased portions of land parcel No. **Molo South Keringet Block 2/17** on diverse dates in the year 2004 from **Tecla Chelule**.

**302.** It is also their case that the said parcel of land belonged to **Samson Chelule** (deceased) who was **Tecla Chelule's** husband and the son of **Chelule Chebonye** (deceased).

**303.** It is further their case that **Samson Chelule** (deceased) was gifted the said property by **Chelule Chebonye** (deceased) before his death.

**304.** In support of their case they produced a copy of a sale agreement between **Decca Chepkemoi Chelule** (vendor) and **Wilson Kipngetich Ronoid** (sic) (Purchaser) dated 21<sup>st</sup> August, 2006 (**Exhibit D1 (a)**). It is for purchase of a portion of Plot No. 17 Kirobon Farmers Company Limited measuring 50ft x 100ft for a consideration of Kshs. 75,000/= . The agreement is signed by **Deccah Chepkemoi Chelule, Wilson Kipngetich Rono** and **Wesley Kipkorir Ngetich**. The agreement is drafted by **W.R Kiprono** Advocate.

**305.** A copy of a Sale agreement dated 20<sup>th</sup> August, 2004 between **Deccah Chepkemoi Chelule** (vendor) and **William Kiprotich Koskei** (purchaser) was produced as **Exhibit D1(b)**. It states that the vendor is a beneficial owner of land parcel No. Molo South Keringet Block 2/17 Plot No. 17 Kirobon (sic) which measures twenty acres.

**306.** The agreement also states that it is for sale of  $\frac{3}{4}$  of an acre portion of land parcel No. **Molo South Keringet Block 2/17 Plot No. 17 (Kirobon) (sic)** for a consideration of Kshs. 420,000/= . The agreement is drafted by Kipchenger & Co. Advocates and signed by the purchaser and vendor.

**307.** A copy of Sale Agreement dated 16<sup>th</sup> September, 2003 was produced as **Exhibit D1(c)**. The agreement is between **Decca Chepkemai Chelule** (vendor) and **Alice Chepkirui Talam** (purchaser). It states that the vendor is a beneficial owner of land parcel No. **Molo South Keringet Block 2/17 Plot No. 17 Kirobon (sic)** which measures twenty acres.

**308.** The agreement also states that the purchaser is buying a 50 x 100 ft portion of land parcel No. **Molo South Keringet Block 2/17 Plot No. 17 (sic)** at a consideration of Kshs. 80,000/= . The agreement is drafted by Kipchenger & Co. Advocates and signed by the vendor and purchaser. It is also signed by **Joel Loibon** and **Isaac Kipkoech Langat** as witnesses.

**309.** A copy of a sale agreement dated 16<sup>th</sup> May, 2003 between **Decca Chepkemoi Chelule** (vendor) and **Philiph Kipkoech Too** (purchaser) was produced as **Exhibit D1(d)**. It states that the vendor is a beneficial owner of land parcel No. **Molo South Keringet Block 2/17 Plot No. 17 Kirobon (sic)** which measures twenty acres.

**310.** The agreement is for the purchase of a portion of land parcel No. **Molo South Keringet Block 2/17 Plot No. 17 (sic) measuring 50 X 100 ft** for a consideration of Kshs. 80,000/= . The agreement is drafted by Kipchenger & Co. Advocates and signed by both the vendor and the purchaser.

**311.** A copy an agreement dated 10<sup>th</sup> October, 2008 between **Deccah Chepkemoi Chelule** (vendor) and **Betty Chepkemoi Samoei** (purchaser) was produced as **Exhibit D1(e)**. The agreement states that the vendor is a beneficial owner of land parcel No. **Molo South Keringet Block 2/17 Plot No. 17 Kirobon (sic)** which measures twenty acres.

**312.** The agreement is for the sale of a portion of land parcel No. **Molo South Keringet Block 2/17 Plot No. 17 (Kirobon)** (**sic**) measuring 50 x 100 ft for a consideration of Kshs. 80,000/= . The agreement is signed by the vendor, purchaser and a witness one **Alice Chepkirui Talam**. The agreement is drafted by Kipchenger & Co. Advocates.

**313.** A copy of an agreement dated 2<sup>nd</sup> June, 2015 between **Deccah Chepkemoi Chelule** (vendor) and **Rose Chelangat Tesot** (purchaser) was produced as **Exhibit D1(f)**. The agreement states that the vendor is the owner of land parcel No. **Molo South/Keringet Block 2/17 (Kirobon)**.

**314.** The agreement also states that the vendor had sold a portion of the said parcel of land to the purchaser's husband one **Paul Kipsang A. Tesot** (deceased) but the agreement could not be traced. The agreement further states that land parcel No. **Molo South/Keringet Block 2/17 (Kirobon)**

was sold at a purchase price of Kshs. 1,000,000/=. The agreement is drafted by Ochieng Gai & Co. Advocates and signed by the vendor, purchaser and three witnesses. The vendor's witnesses are **Joshua Kipsigei Arap Sigila, Benard Kipketer Ngetich** while the Purchaser's witness is **Beatrice Chesant Tesot**.

**315.** A copy of a list was produced as **Exhibit D1(2)**. At No. 17 there is the name of **Deccah Chepkemei Chelule** ID No. 42900463. Her address is stated to be 7412 Nakuru. The 1<sup>st</sup> to 21<sup>st</sup> Defendants contend that the said list was of members of Kirobon Farmers Limited.

**316.** The 22<sup>nd</sup> Defendant's case on the other hand is that she purchased land parcel No. **Molo South Keringet Block 2/854** from **Robert Kipkemoi** for a consideration of Kshs. 5,600,000/= in the year 2018.

**317.** It is also her case that she purchased the said parcel of land together with the developments made thereon.

**318.** It is further her case that the parcel of land she purchased was a portion of land parcel No. **Molo South Keringet Block 2/649** that was registered in the name of **Wilson Leitoo Letich** the father of **Robert Kipkemoi**.

**319.** It was the 22<sup>nd</sup> Defendant's case that **Wilson Leitoo Letich** had purchased land parcel No. **Molo South Keringet Block 2/649** from **Chelule Chebonye** (deceased).

**320.** In support of her case, the 22<sup>nd</sup> Defendant produced a copy of a land sale agreement entered into between **Too Kipkemoi Robert** (vendor) and **Sarah Chepkoech Koech & Clare Chemutai** (purchasers) as **Exhibit D2 (1)**. It is for the purchase of half a plot of land parcel No. 694 at a consideration of Kshs. 2,700,000/= . The agreement is signed by the vendor and his three witnesses who are **James Kiplangat Kemei, Pricilla Chelangat** and **Charles Too**.

**321.** The agreement is also signed by the purchasers and their witnesses who are **Peter Kiptanui Langat, Daniel Kiprotich Langat** and **Cynthia Cherotich**. The agreement is further signed by **Nicholas Kering** the Chief Keringet Location on 3<sup>rd</sup> February, 2018.

**322.** A copy of an acknowledgement dated 2<sup>nd</sup> January, 2019 was produced as **Exhibit D2 (2)**. It states that **Too Kipkemoi Robert** received Kshs. 100,000/= from **Sarah Chepkoech Koech** as part of the purchase price for land parcel No. **Molo South/Keringet/Block 2/694 (Kirobon)**. The balance of kshs. 700,000/= was to be paid before 7<sup>th</sup> February, 2019. The acknowledgement is drafted by Omwenyo & Company Advocates. It is signed by **Sarah** and **Robert**.

**323.** A copy of an acknowledgement dated 10<sup>th</sup> August, 2018 was produced as **Exhibit D2 (3)**. It states that **Too Kipkemoi Robert** received Kshs. 500,000/= from **Sarah Chepkoech Koech** as payment of the balance of the purchase price for

land parcel No. **Molo South/Keringet/Block 2/694 (Kirobon)**. It is drafted by Omwenyo & Company Advocates and signed by **Sarah, Robert** and a witness one **Cynthia Cherotich**.

**324.** A copy of a title deed for land parcel No. **Molo South/Keringet Block 2/854 (Kirobon)** as **Exhibit D2 (4)**. It is issued to **Sarah Chepkoech Koech** on 15<sup>th</sup> August, 2023. The said parcel of land measures 0.070 Ha.

**325.** It is not disputed that **Chelule Chebonye** (deceased) was a member of Kirobon Farmers Company Limited.

**326.** It is also not disputed that **Chelule Chebunye** (deceased) was allocated land by the said company. What is disputed is:

**a. *The description of the said parcel of land and***

**b. *Whether Chelule Chebunye (deceased) sold and/or distributed the said land among his family members before his death.***

**327.**In the Complaint, the Plaintiff avers that **Chelule Chebunye** (deceased) was allocated Plot No. 36.

**328.**The Plaintiff also avers that the map was amended in the year 2005 and the parcel number changed to Plot No. 144.

**329.**This is the parcel of land that the Plaintiff contends that the Defendants are in occupation of.

**330.**Under prayer No. 1 in the Complaint, the Plaintiff seeks that the Court make a declaration that **Chelule Chebunye** (deceased) is the owner of Plot No. 144 measuring twenty acres situated on land parcel No. **Molo South Block 2/11323 (Kirobon)**.

**331.**The 1<sup>st</sup> to 21<sup>st</sup> Defendants on the other hand contend that they purchased their parcels of land from **Deccah Chepkemai Chelule** (Interested Party) who was the daughter in law of **Chelule Chebunye** (deceased).

**332.**The 1<sup>st</sup> to 21<sup>st</sup> Defendants produced copies of sale agreements entered between some of them and **Decca Chepkemoi Chelule** which show that they purchased portions of land parcel No. **Molo South Keringet Block 2/17 Plot No. 17 (Kirobon) (sic).**

**333.**The 22<sup>nd</sup> Defendant produced a copy of a title deed for land parcel No. **Molo South/ Keringet Block 2/854 (Kirobon)** which is alleged to be one of the resultant subdivisions of land parcel No. **Molo South Keringet Block 2/649.**

**334.**The 22<sup>nd</sup> Defendant contends that **Wilson Leitoo Letich** had purchased land parcel No. **Molo South Keringet Block 2/649** from **Chelule Chebunye** (deceased).

**335.**In the Complaint, the Plaintiff contends that **Chelule Chebunye** (deceased) was allocated Plot No. 36 by Kirobon Farmers Company Limited.

**336.** In support of this contention, the Plaintiff produced a copy of a letter dated 15<sup>th</sup> March, 1982 (**Exhibit P4**) which shows that **Chelule Chebunye** was allocated Plot No. 36. As per the said letter, Plot No. 36 was a portion of LR No. 11323 and it measured twenty acres. The said letter has a stamp of Kirobon Farmers Company Limited.

**337.** In the Plaint, the Plaintiff also contends that the map was amended and Plot No. 36 given a new number which was Plot No. 144.

**338.** The Plaintiff produced a copy of an extract of the list of members of Kirobon Farmers as **Exhibit P2**. It is signed by a director on 7<sup>th</sup> April, 2018 and it has a stamp of Kirobon Farmers Company Limited. The extract shows that **Samwel Chelule Chebunye** was given Plot No. 144 which measured 5.987 Ha.

**339.** The Plaintiff also produced a copy of a letter dated 4<sup>th</sup> September, 2015 (**Exhibit P8**) which confirms that **Chelule**

**Chebunye** (deceased) was allocated a parcel of land at Keringet known as LR No. 11323/144.

**340.** This evidence was not controverted by the Defendants.

**341.** It is therefore evident that **Chebunye Chelule** (deceased) was allocated Plot No. 144 which was a portion of LR No. 11323.

**342.** In the Plaint, the Plaintiff avers that Plot No. 144 was stated in the Certificate of Confirmation of Grant (**Exhibit P1**) as land parcel No. **Molo South Block 2/11323 (Kirobon)**.

**343.** This Court notes that the Plaintiff did not produce any title deed for land parcel No. **Molo South Block 2/11323 (Kirobon)**.

**344.** It is trite law that he who alleges must prove.

**345. Section 107** of the Evidence Act provides as follows;

***“(1) Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.***

***(2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”***

**346. Section 108** of the **Evidence Act** provides as follows;

***“The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.”***

**347. Section 109** of the Evidence Act Provides as follows;

***“The burden of proof as to any particular fact lies on the person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”***

**348.** In the judicial decision of **Antony Francis Wareham t/a AF Wareham & 2 others v Kenya Post Office Savings Bank**

**[2004] eKLR** the Court of Appeal held as follows;

***“We have carefully considered the judgement of the superior Court, the grounds of appeal raised against it and the submissions before us on those matters. Having done so we are impelled to state unequivocally that in our adversarial system of litigation, cases are tried and determined on the basis of the pleadings made and the issues of fact or law framed by the parties or the Court on the basis of those pleadings pursuant to the provisions of order XIV of the Civil Procedure Rules. And the burden of proof is on the plaintiff and the degree thereof is on a balance of probabilities. In discharging that burden, the only evidence to be adduced is evidence of existence or non-existence of the***

**facts in issue or facts relevant to the issue. It follows from those principles that only evidence of facts pleaded is to be admitted and if the evidence does not support the facts pleaded, the party with the burden of proof should fail. It also follows that a Court should not make any findings on unpleaded matters or grant any relief which is not sought by a party in the pleadings.** [Emphasis Mine]

**349.** The Plaintiff seeks that the Court issues a declaration that Plot No. 144 situated on land parcel No. **Molo South Block 2/11323 (Kirobon)** belongs to **Chelule Chebunye** (deceased).

**350.** After considering the evidence adduced in this matter, this Court is of the view that whereas, the Plaintiff has proved that **Chelule Chebunye** (deceased) was allocated Plot No. 144, she has failed to demonstrate that the said plot is situated on land parcel No. **Molo South Block 2/11323 (Kirobon)**.

**351.** That being the case, I decline to issue a declaration on this point.

**B. Whether the Defendants are trespassers on Plot No. 144 situated on land parcel No. Molo South Block 2/11323 (Kirobon).**

**352.** In answer to this first question, I will need to establish whether the Plaintiff and the Defendants are speaking of the same parcel of land, whether the Defendants are in occupation of the land subject of this suit and whether the Plaintiff can then be granted orders of eviction.

**353.** The Plaintiff contends that the Defendants have trespassed on Plot No. 144 which is situated on land parcel No. **Molo South Block 2/11323 (Kirobon).**

**354.** In response, the 1<sup>st</sup> to 21<sup>st</sup> Defendants contend that they purchased portions of land parcel No. **Molo South Keringet**

**Block 2/17 Plot No. 17 (Kirobon) (sic) from Decca Chelule** which they are in possession of.

**355.** The 22<sup>nd</sup> Defendant on the other hand contends that she is the registered owner of land parcel No. **Molo South Keringet Block 2/854 (Kirobon)** which she contends is one of the resultant subdivisions of land parcel No. **Molo South Keringet Block 2/649.**

**356.** The 1<sup>st</sup> to 21<sup>st</sup> Defendants produced copies of land sale agreements that demonstrate that they purchased portions of land parcel No. **Molo South Keringet Block 2/17 Plot No. 17 (Kirobon) (sic)** while the 22<sup>nd</sup> Defendant has a title deed for land parcel No. **Molo South Keringet Block 2/854 (Kirobon).**

**357.** The Court of Appeal in **Doshi v Chemutut & 7 others [2025] KECA 776 (KLR)** held as follows;

***“Trespass, as stated by this Court  
in the case of Charles Ogejo***

***Ochieng v Geoffrey Okumu [1995] KECA 169 (KLR), is an injury to a possessory right, and therefore the proper plaintiff in an action of trespass to land is the person who has title to it, or a person who is deemed to have been in possession at the time of the trespass. As for the ingredients of trespass, the Court in William Kamunge Gakui v Eustace Gitonga Gakui (Civil Appeal 16 of 2013) [2014] KECA 39 (KLR) stated that trespass is a violation of the right to possession, and that a plaintiff must prove that he has the right to immediate and exclusive possession of the land...*** (Emphasis mine)

**358.** In the above cited judicial decision, the Court of Appeal held that a proper Plaintiff in an action for trespass is a person who has title to it or is in possession of land.

**359.** Under issue (a) above, this Court has made a finding that the Plaintiff has failed to demonstrate the nexus between Plot No. 144 and land parcel No. **Molo South Block 2/11323 (Kirobon)**.

**360.** It is further this Court's view that in the issue under consideration, the Plaintiff has failed to establish the nexus between Plot No. 144 which she alleges belongs to **Chelule Chebunye** (deceased) and land parcel No. **Molo South Keringet Block 2/17 Plot No. 17 (Kirobon) (sic)** that the 1<sup>st</sup> to 22<sup>nd</sup> Defendants state to have purchased (they produced six agreements (**Exhibit D1 (a) to (f)** as proof of purchase) and admit to be in possession of.

**361.** The Plaintiff has also failed to establish the nexus between Plot No. 144 and land parcel No. **Molo South/ Keringet Block 2/854 (Kirobon)** that is registered in the name of the 22<sup>nd</sup> Defendant and which the 22<sup>nd</sup> Defendant is in possession of.

**362.** Taking into consideration the circumstances of this case, I find that the Plaintiff has failed to prove her claim for trespass.

**C. Whether the prayers sought in the Plaint should be granted.**

**363.** The other prayers sought by the Plaintiff are :

- a. An order of permanent injunction restraining Defendants by themselves, their agents, servants, and/or employees from interfering with the Plaintiff's quiet possession and use of the suit property.***
- b. General damages for trespass.***

**364.** Given my findings on issues (a) and (b) above, I decline to grant these prayers.

**D. Who should bear costs of the suit.**

**365.** The general rule is that costs shall follow the event. This is in accordance with the provisions of **Section 27** of the **Civil Procedure Act (Cap. 21)**. A successful party should ordinarily be awarded costs of an action unless the Court, for good reason, directs otherwise.

**DISPOSITION.**

**366.** In the result, I find that the Plaintiff's suit lacks merit and it is hereby dismissed with costs.

**367.** It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO  
THIS 16<sup>TH</sup> DAY OF OCTOBER, 2025.**

**L. A. OMOLLO  
JUDGE.**

**In the presence of: -**

**Mr. Langat for the Plaintiff.**

**Mr. Gai for the 21<sup>st</sup> and 22<sup>nd</sup> Defendants.**

**Miss Mweni for the 1<sup>st</sup> - 20<sup>th</sup> Defendants.**

**Miss Mweni for Kibet for the Interested Party.**

**No appearance for the 23<sup>rd</sup> Defendant.**

**Court Assistant; Mr. Joseph Makori.**

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