



REPUBLIC OF KENYA



In re Estate of the Late Joshua Kipkorir Bitok - Deceased (Environment and Land Case E008 of 2022) [2025] KEELC 6640 (KLR) (2 October 2025) (Judgment)

Neutral citation: [2025] KEELC 6640 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

ENVIRONMENT AND LAND CASE E008 OF 2022

CK YANO, J

OCTOBER 2, 2025

IN THE MATTER OF THE ESTATE OF THE LATE JOSHUA KIPKORIR BITOK - DECEASED

BETWEEN

SALINA JEPMWETICH MUTAI 1ST PLAINTIFF

JACKSON KIPKORIR TUEI 2ND PLAINTIFF

JOAN JELIMO ROTICH 3RD PLAINTIFF

AND

JULIUS KIPCHIRCHIR BITOK 1ST DEFENDANT

PHILEMON YEGO 2ND DEFENDANT

ADMINISTRATORS OF THE ESTATE OF JOSHUA KIPKORIR BITOK

JUDGMENT

1. This suit was instituted by way of a plaint dated 1st February, 2022 seeking the following reliefs against the defendants: -
 - a. A declaration that the plaintiffs are the legal and lawful owners of the suit land as per paragraphs 4, 10 and 13 of the Plaint.
 - b. An order of permanent injunction against the defendants, their servants, agents and or assigns from in any way interfering with the plaintiff's quiet possession, use and or in any way engaging in acts inconsistent with the Plaintiffs rights as the owners of part of the parcel of land known as Plot 77 Sosiani Settlement Scheme as per paragraphs 4, 10 and 13 of the plaint.
 - c. An order directing the Land Registrar Uasin Gishu County to directly transfer to the plaintiffs their portions of land as per paragraphs 4, 10 and 13 of the Plaint and issue them with title deeds in their favour.



- d. Costs of this suit.
2. The 1st Plaintiff alleged that she purchased a parcel of land measuring 11.5 Acres of Plot No. 77 Sosiani Settlement Scheme (hereinafter “the suit property”) vide agreements dated 9th July, 1998 and 7th September, 1998 from Joshua Kipkorir Bitok (Deceased) for which she paid a total of KShs. 747,500/-. She avers that Philemon Yego was one of the witnesses to the agreement of 9th July, 1998. She also avers that she immediately took possession of the land and has developed part of it while using that remaining portion for farming.
 3. The 2nd Plaintiff alleges that vide an agreement dated 7th January, 2001 he was to buy 8 Acres of the land known as I.R. Uasin Gishu/Sosiani/77 from the late Joshua Kipkorir Bitok for KShs. 560,000/-. He claims that he paid a down payment of KShs. 300,000/- and was to complete the balance in two instalments. The 2nd Plaintiff allegedly paid KShs. 100,000/- in cash on 18th June, 2001 which was acknowledged by the Deceased. It is the 2nd Plaintiff’s case that vide agreement dated 13th August, 2002 he and the deceased agreed to revoke the earlier agreement and reduced the acreage from 8 Acres to 7 Acres, and he was to only add KShs. 85,000/- to the amount already paid upon the execution of the said agreement. That he immediately took possession of the land and developed it by planting commercial trees for sale. He alleges that Philemon Yego was one of the witnesses to the two agreements and was present when they were executed.
 4. The 3rd Plaintiff on her part avers that she purchased 5 Acres of PLOT NO. 77 SOSIANI SCHEME from Joshua Kipkorir Bitok for KShs. 355,000/-. That she paid the amount in full in the presence of five of the Vendor’s sons including Julius Kipchirchir Kosgei and other witnesses upon execution. She avers that she immediately took possession of her land, fenced it and is currently still in possession of it. The 3rd Plaintiff claims that she has built structures on the land and lives thereon with her family as well as uses part of it for farming. She further avers that at some point, Philemon Yego entered her land without authority and destroyed her property leading to a conviction for one year and was released on presidential pardon.
 5. The Plaintiffs jointly aver that they are the owners of their various portions measuring 11.5, 7 and 5 Acres that they bought from the registered owner and have been living thereon peacefully. That the ownership dispute only arose after Joshua Kipkorir Bitok died and his children were asked to pursue succession in order to effect transfer in the Plaintiffs’ favour. The Plaintiffs aver that a succession cause has been filed and is awaiting confirmation of the proposed administrators, but the Defendants have refused to let the Plaintiffs participate in the proceedings or acknowledge them as liabilities to the estate.
 6. The Plaintiff’s termed the Defendant’s acts as malicious and fraudulent and a plot to defeat their interests yet they know that the Plaintiffs paid the full purchase price to the deceased in his lifetime. The Plaintiffs seek to be declared owners of their respective portions of land to protect their interests from any loss that may be occasioned by the Defendants’ malicious acts. The Plaintiffs aver that they stand to be prejudiced if the Defendants are not compelled to do their part as required by law.
 7. The 1st and 2nd Defendants entered appearance on 1st March, 2022 and filed a joint statement of Defence on 9th March, 2022 where they denied the allegations set out in the Plaint. According to the Defendants, the 1st Plaintiff only paid KShs. 300,000/- and refused to settle the balance of KShs. 350,000/-. Further, that there was no agreement for the additional 1.5 Acres as alleged and that the 1st Plaintiff moved to a portion not allocated to her. The 1st and 2nd Defendant denied knowledge of any agreement made between the Late Joshua Kipkorir Bitok and the 2nd Plaintiff. They further averred that the signature of Philemon Yego on the said agreement does not belong to him as he was not present during the said agreement.



8. The 1st and 2nd Defendants averred that the 3rd Plaintiff moved to a place that does not belong to her, but was actually awarded to the 2nd Defendant, Philemon Yego, who was the deceased's son. They alleged that the 3rd Plaintiff's claim that she took possession of and fenced her land is baseless and has no merit. The 1st and 2nd Defendants claimed that the Plaintiffs have been possessing and cultivating the suit land without considering the beneficiaries herein. The 1st and 2nd Defendants state that the Plaintiffs are aware that payment was not made as agreed, making the agreements null and void.
9. The 1st and 2nd Defendants claim that there has been a previous case, being Tribunal Case No. 21 of 2011. That they then moved to the Chief Magistrate's Court vide Award No. 22 of 2011, where the court determined that the tribunal had no authority to distribute the estate of the deceased, as that is the preserve of the High Court. The 1st and 2nd Defendants opposed the prayers sought in the Plaint, and further claim that there is currently Succession Cause No. 52 of 2018 filed between the same parties. According to the 1st and 2nd Defendants, the instant suit lacks merit, is misplaced and the same should be dismissed with costs to them.
10. On 20th September, 2022 the Plaintiffs filed a Reply to Defence reiterating the contents of their Plaint in its entirety. They averred that the contents of the 1st and 2nd Defendants' Statement of Defence is a sham and an abuse of the court process and prayed that the same be dismissed and judgment be entered in their favour as prayed for in the Plaint.

Hearing and Evidence:

11. The matter initially proceeded before Hon. E. Obaga –J who took the evidence of PW1, PW2, PW3, PW4 and DW1 before he was transferred. Pursuant to the provisions of Order 18 Rule *(1) of the Civil Procedure Rules, I proceeded with the matter and took the evidence of DW2.

Plaintiffs' Case;

12. At the hearing, the 1st Plaintiff testified under oath as PW1. She adopted her statement as her evidence-in-chief. She then added that she purchased her land on 9th July, 1998 from the late Joshua Kipkorir Bitok. That she first purchased 10 acres for KShs. 650,000/- and paid KShs. 300,000/- and the balance was to be paid on 2nd September, 1998. She testified that she paid KShs. 279,000/- as shown in the addendum dated 7th September, 1998 and the balance of KShs. 75,000 was to be paid on 30th September, 1998. She testified that the agreements were duly signed by the seller, his wife and other witnesses.
13. PW1 testified that Joshua later sold her another 1½ Acres, therefore she cleared the balance of KShs. 75,000/- and paid an additional KShs. 97,500/- for the 1½ Acres. PW1 testified that this amount was paid at Turbo AFC on instructions from the seller. PW1 explained that this agreement was signed by the Seller, John Birech and herself. She further testified that the agreement dated 9th July, 1998 was signed by Philemon Yego, Joshua's son. PW1 told the court that due to wrangles with the Deceased's sons, she has the land but has no title, as a result of which they approached the Uasin Gishu Land Disputes Tribunal. PW1 produced the agreement dated 9th July, 1998 as PEXb1, the agreement dated 2nd September, 1998 as PEXb2 and the Land Disputes Tribunal Proceedings as PEXb3.
14. PW1 was cross-examined by the 1st Defendant and she testified that she cleared the whole amount as evidenced by the agreements produced in court. PW1 testified that the 1st Defendant was not present when the payments were made. PW1 testified that she did not forge the agreements, and reiterated that Philemon was present when the agreements were signed. She testified that she is the one who made the payments at Turbo under the deceased's name.



15. PW1 was also cross-examined by the 2nd Defendant and reiterated that the 2nd Defendant was present when she paid KShs. 300,000/- She reiterated that she had instructions from the seller to pay the money at Turbo where he had outstanding loans. She could not tell why the deceased brought different witnesses to the subsequent agreement.
16. She was re-examined by Ms. Rop and testified that the Defendants' father signed for every money he received. She testified that David Korir, Joshua's elder brother was present when payments were made. PW1 further testified that Philemon was only present for the payment of the first instalment but was not present during subsequent payments. PW1 told the court that she is utilising 11.5 Acres and no complaints were made by Joshua's sons until after his demise.
17. The 3rd Plaintiff testified on oath as PW2 and also adopted her witness statement as part of her evidence-in-chief. PW2 testified that she bought 5 Acres vide an agreement for sale dated 4th September, 2000 at KShs. 75,000/- per Acre and paid KShs. 355,000/- in total. She testified that she paid the full purchase price at once. That the agreement was signed by Joshua Bitok, and her witnesses were Rotich, Kiprono Serem and Samson Too. She stated that a surveyor came and curved out the 5 Acres which she then fenced. She added that she has utilised her 5 Acres since 2000 to date and asked the court to give her title to the land. PW2 produced the Agreement dated 4th September, 2000 as PEXb4.
18. On cross-examination by the 1st Defendant, PW2 testified that the 1st Defendant was present when she purchased her 5 Acres. She testified that the deceased showed her a portion that had a house worth KShs. 40,000/- but she was not interested in the house and she was then shown an alternative site. She explained that she did not know that the place was meant for Philemon. She denied causing Philemon's arrest but testified that Philemon was charged and convicted for demolishing her fence and was later released on presidential pardon. She denied destroying Philemon's house while he was in prison.
19. PW2 was also cross-examined by the 2nd Defendant and testified that a surveyor curved out the 5 Acres that were shown to her by the deceased. She added that the deceased informed her that he would talk to the 2nd Defendant on the demolition of a house that stood on the portion he showed to her. PW2 testified that she was given road access by the deceased, which access road serves several people beside her.
20. On re-examination, PW2 testified that she bought her 5 Acres legally together with the small trees growing thereon, and that there is no contention about the amount she paid for the land.
21. The 2nd Plaintiff also testified under oath as PW3 and adopted his witness statement as his evidence-in-chief. He added that he bought land that is part of Uasin Gishu/Sosiani/77 and entered into an agreement dated 7th January, 2001. He testified that he was initially buying 8 Acres at KShs. 560,000/-. PW3 testified that on signing the agreement he made the first payment of KShs. 300,000/-. Later, Joshua Bitok asked for 1 Acre back and in 2002, they went back to the advocate and drafted an agreement for sale of 7 Acres for KShs. 485,000/-. He explained that by that time, he had paid a total of KShs. 400,000/-. He states that he paid the last instalment on 13th February, 2002. He testified that the Agreements were drafted by Mr. Ngigi Mbugua and Philemon Yego was one of the witnesses. PW3 produced the two agreements as PEXb 5 and 6 respectively.
22. PW3 was cross-examined by the 1st Defendant and he reiterated that he had initially purchased 8 Acres, but it was reduced to 7 Acres. PW3 testified that there was a house within the 8 Acres, but upon the reduction, the house was left outside the 7 Acres. He testified that he was aware the deceased wanted to refund his money.



23. PW3 was also cross-examined by the 2nd Defendant and testified that it is the 2nd Defendant who approached him to go buy land because his father was sick and needed medication for his renal problem. PW3 testified that the 2nd Defendant was present when the 2nd Agreement was signed and refuted the allegation that the 2nd Defendant's signature was forged. PW3 also denied fencing 13 Acres.
24. When he was re-examined, PW3 clarified that he was not utilising 13 Acres, and stated that he was using 7 Acres. He testified that he planted trees on his 7 Acre portion and had harvested them. PW3 testified that the 2nd Defendant has never reported anything to do with his signature in the agreement.
25. PW4 was Allan Rimui Mbugua Ngigi, an advocate of the High Court of Kenya. He recalled preparing the agreement dated 7th January, 2001 between Joshua Kipkorir Bitok and Jackson Kipkorir Tuwei, for sale of 8 Acres to be curved out of L.R. No. Uasin Gishu/Sosiani/77. The purchase price was KShs. 560,000/-, with a down payment of KShs. 300,000/- to be paid by banker's cheque and the balance of KShs. 260,000/- paid in instalments. PW4 testified that the first instalment of KShs. 100,000/- was to be paid on or before 3rd August, 2001 and the second of KShs. 160,000/- on 31st January, 2002. PW4 testified that the agreement was drafted and signed by the seller and purchaser as well as their respective witnesses.
26. PW4 also testified to having prepared another agreement between the same parties that reduced the acreage from 8 Acres to 7 Acres. PW4 explained that the parties agreed that the second agreement would substitute the earlier agreement, and it further reduced the purchase price to KShs. 485,000/-. PW4 testified that the deposit of KShs. 300,000/- remained and the balance reduced to KShs. 185,000/-. That the Parties also agreed that KShs. 100,000/- had been paid on 18th June, 2001 and he witnessed the parties exchange the remaining balance of KShs. 85,000/- in his office. PW4 testified that he prepared the second agreement and produced it as PEXb7.
27. PW4 was cross-examined by the 1st Defendant and testified that he did not know why the acreage was reduced. He testified that one witness is enough to witness an agreement. PW4 testified that Joshua was sick and that Philemon Yego was Joshua's witness. PW4 testified that the purchase price was arrived at on a willing buyer willing seller, and he reduced the agreement into writing.
28. PW4 was also cross-examined by the 2nd Defendant and he testified that the 2nd Defendant was his father's witness. That he was a witness to the second agreement, and that the price may have reduced due to the reduced acreage.
29. PW4 was not re-examined, and after his testimony, the Plaintiffs closed their case.

1st and 2nd Defendants' Case;

30. The 1st Defendant testified on oath as DW1. He testified that the 1st Plaintiff owes his father's estate KShs. 350,000/-. That she purchased 10 Acres and paid KShs. 300,000/- leaving a balance of KShs. 350,000/-. DW1 testified that he was not present during the signing of the second agreement. He testified that the 1st Plaintiff went to his older brother and asked him to write an agreement stating that she had purchased 11.5 Acres, and he disputed this agreement. He further testified that his late father did not show the 1st Plaintiff where the 10 Acres were, and instead she went and built on the land his father had shown to him.
31. Regarding the 3rd Plaintiff, DW1 testified that she had cleared her payment but did not built where his late father had shown her, instead she built on Philemon Yego's land. With regards to the 2nd Plaintiff, DW1 testified that he did not know when he purchased land, but he saw him going round his portion. DW1 testified that the 2nd Plaintiff has never taken possession of his portion. DW1 denied being present



- when his father sold land to the 2nd Defendant, and stated that his father intended to refund the KShs. 300,000/- to the 2nd Plaintiff but died before he could do it.
32. DW1 was cross-examined by Ms. Rop and conceded that the 2nd Plaintiff's money was not refunded. He testified that the 2nd Plaintiff had however cut trees that were equivalent to KShs. 300,000/-, although he admitted that the said trees were planted by the 2nd Plaintiff himself. He reiterated that he was not present when his father sold land to the 2nd Plaintiff. DW1 was referred to the Agreement dated 20th June, 2013 in the Defendants' documents and testified that it was the agreement done by the family. DW1 reiterated that the 3rd Plaintiff had paid all the purchase price, but refused to go where his father had shown her. DW1 testified that the 3rd Plaintiff's portion is occupied by her son. DW1 said that he was not aware that the 1st Plaintiff had added 1.5 Acres. He was referred to PEXb2 and testified that he was not aware of that case.
33. The 2nd Defendant testified as DW2 and gave a sworn testimony. He adopted his witness statement filed on 16th March, 2022 as his evidence-in-chief. DW1 testified that 1st Plaintiff's agreement is not dated. DW1 testified that he was aware of one of the 2nd Plaintiff's agreements, but did not understand the second agreement that claimed to revoke the first one. He felt wronged by the people who included him in the second agreement. DW2 testified that his father paid AFC and not the 1st Plaintiff.
34. With regards to the 3rd Plaintiff, DW2 refuted the allegation that 5 witnesses signed the agreement. DW2 testified that the proceedings known as Award No. 22 of 2011, the case was dismissed. DW2 testified that the agreements were not genuine as they failed to list all their developments on the land including the digging of a borehole. He asked the court to remove the Plaintiffs from the suit land.
35. Upon cross-examination by Ms. Rop for the Plaintiffs, DW2 confirmed that the land known Uasin Gishu/Sosiani/77 is in his father's name. He conceded that under the agreement dated 9th July, 1998 his father sold land to the 1st Plaintiff, but said that he was not present when this was done. He denied that his father sold land again on 7th September, 1998 and denied the sale of 1.5 Acres. DW2 confirmed that the 1st Plaintiff's family lives on the suit land but he did not know the acreage they occupy. DW2 admitted to being a witness when his father sold 8 Acres on 7th July, 2001, but he was not aware that this agreement was revoked by the one dated 13th February, 2002.
36. DW2 testified that the 2nd Plaintiff had neither fenced nor planted trees on the land. He denied knowledge of any sale between his father and the 3rd Plaintiff, but confirmed that the 3rd Plaintiff also lives on a portion of the land measuring 5 Acres which she entered by force. DW2 further clarified that in Award No. 22 of 2011, it was decided that the award be left in abeyance. DW2 however denied that the monies received by his father as consideration is what he paid to AFC. DW2 also told the court that the succession court ruled that the land should not be surveyed first, pending the determination of this case.
37. DW2 was not cross-examined by the 1st Defendant, and after his testimony, he closed his case.

Submissions:

38. After the hearing, the court directed the parties to file their final submissions. The parties complied and filed their respective submissions.

The Plaintiffs' Submissions;

39. In the Plaintiffs' submissions dated 15th May, 2025, Counsel argued the case along four issues. The first issue was whether the plaintiffs purchased land from the deceased, and counsel submitted that the



Plaintiffs had produced the agreements for sale, some of which were witnessed by the 2nd Defendant as well as other children of the deceased. Counsel submitted that there can be no dispute that the Plaintiffs purchased land from the deceased on diverse dates between 1998 and 2001 and took possession of their various parcels.

40. Counsel submitted that having discharged their burden of proof, the same then shifted to the Defendants to show that the sale did not take place, and cited Presidential Election Petition No. 1 of 2017 between Raila Amolo Odinga & Another vs IEBC & 2Others (2017) eKLR. Counsel submitted that the Defendants had failed to discharge the said burden by disproving the Plaintiff's claim or producing evidence to show the Plaintiffs' documents are fraudulent or forged.
41. Counsel for the Plaintiffs submitted that the Defendants being the legal representatives of the deceased, assumed all the assets and liabilities, including making good the agreements he made with the Plaintiffs as they were binding on the Defendants. Counsel submitted that as a consequence, the Plaintiffs are entitled to have the parcels of land that they occupy transferred to them. Counsel relied on the case of Samuel Ngugi Nganga vs Elena Chepkugat Kiptalam (Suing as the Administratrix of the Estate of Kiptalam Arap Kogo (Deceased)(2020) KEELC 2144 (KLR).
42. The last issue was with regards to costs of the suit. Counsel submitted that costs follow the cause, and are meant to reimburse of the amounts expended on the case. Counsel relied on Joseph Oduor Anode vs Kenya Red Cross Society, Nairobi High Court Civil Suit No. 66 of 2009 (2012) eKLR, and Chamilabs vs Lalji Bhimji & Shamji Jinabhai Patel, High Court of Kenya, Civil Case No. 1062 of 1973.

The Defendants' Submissions;

43. The Defendants' filed joint submissions dated 26th May, 2025 which summarised the facts of their case and their testimonies. The Defendants then submitted that the 2nd Defendant is only aware of the first sale agreement between his father and the 2nd Plaintiff, which was later revoked. The Defendants' submitted that the 2nd Plaintiff defaulted in paying thus the agreement is null and void. They denied the second agreement of the 2nd Plaintiff arguing that it was not in order as neither they nor any other family member was aware of it. Further, they submitted that the 2nd Defendant denied witnessing the said agreement, hence it amounts to forgery.
44. Turning to the 1st Plaintiff, the Defendants claimed that there was no proof at all of any payment by instalments. They also submitted that the 1st Plaintiff went to occupy the land after their father died, and is in fact occupying the 1st Defendant's portion. With regards to the 3rd Plaintiff, the Defendants submitted that she entered the suit property by force and ensured that the 2nd Defendant was arrested and held in the cell so she could occupy his land. The Defendants submitted that the 3rd Plaintiff also refused the portion she was shown by the deceased and instead went into the 2nd Defendant's portion, and they submit that the 3rd Plaintiff admitted to this in her testimony.
45. In conclusion, the Defendants submitted that the agreements of the three Plaintiffs are null and void for failure to obtain land control board consent within 6 months. They submitted that the Plaintiffs objected to the succession proceedings but the succession court ruled in favour of the Defendants. The Defendants urged that the suit therefore lacks merit and ought to be dismissed with costs to them.

Analysis and Determination:

46. I have considered the pleadings filed herein, the witness testimonies and evidence adduced in court, as well as the submissions filed by the respective parties. It is my considered view that the following issues arise for determination: -



- i. Whether the Plaintiffs entered into valid Agreements for Sale of their various parcels of land with the deceased
- ii. What is the extent of the Plaintiffs' entitlement over the suit property?
- iii. Whether the court should issue the reliefs sought in the Plaintiff
- iv. Who shall bear the costs of this suit?

a. Whether the Plaintiffs entered into valid Agreements for Sale of their various parcels of land with the deceased

47. In the present suit, there can be no dispute that the plaintiffs' suit is predicated on the various agreements of sale entered into between 1998 and 2002 as can be deciphered from the pleadings and material they placed before this court. The question then is whether the agreements of the plaintiffs are valid. Under Section 3(3) of the Law of Contract Act, a contract for sale of land must be in writing and signed by the parties. The said Section 3(3) provides that

3. Certain contracts to be in writing.
 - (1) ...
 - (2) ...
 - (3) No suit shall be brought upon a contract for the disposition of an interest in land unless —
 - (a) the contract upon which the suit is founded—
 - (i) is in writing;
 - (ii) is signed by all the parties thereto; and
 - (b) the signature of each party signing has been attested by a witness who is present when the contract was signed by such party:

Provided that this subsection shall not apply to a contract made in the course of a public auction by an auctioneer within the meaning of the Auctioneers Act (Cap. 526), nor shall anything in it affect the creation of a resulting, implied or constructive trust.

48. However, this current version of Section 3(3) of the Law of Contract Act, commenced on 1st June, 2003. Since the agreements were made before the year 2003, the applicable law is what was in operation prior to the 2003 amendment of Section 3(3) of the Law of Contract Act, which read as follows:

- (3) No suit shall be brought upon a contract for disposition of an interest in land unless the agreement upon which, the suit is founded, or some memorandum or note thereof, is in writing and is signed by the party to be charged or by some person authorized by him to sign it;

Provided that such a suit shall not be prevented by reason only of the absence of writing, where an intending purchaser or lessee who has performed or is willing to perform his part of a contract-

- (1) has in part performance of the contract taken possession of the property or any part thereof; or



(11) being already in possession, continues in possession in part performance of the contract and has done some other act in furtherance of the contract.”

49. All the three Plaintiffs have produced Sale agreements with respect to their various portions. The 1st Plaintiff has produced two agreements, one dated 9th July, 1998(PEXb1) and the second one dated 2nd September, 1998(PEXb2). The second Plaintiff similarly has produced two agreements. The first is dated 7th January, 2001(PEXb5) and it was eventually revoked by the second one which is dated 13th February, 2002(PEXb6). The 3rd Plaintiff produced one agreement dated 4th September, 2000(PEXb4).
50. The law then required the agreement to be signed by the parties to the sale, and indeed, the agreements produced by the Plaintiffs were all duly signed by the seller, Joshua Kipkorir Bitok and the respective Plaintiffs as well as other witnesses. On the part of the 3rd Plaintiff, he went the extra mile and ensured that both his current agreement, and the one revoked were attested to by an advocate.
51. Although the Defendants have raised issue with the subsequent agreements entered between the deceased and the 1st and 2nd Plaintiffs, claiming that they were forged, no evidence was tabled before this court to prove these allegations.
52. Without any evidence to the contrary, it is clear that the sale agreements relied on by the Plaintiffs do comply with the mandatory provisions of Section 3(3) of the Law of Contract Act. Consequently, the only outcome here is that the Plaintiffs had valid sale agreements with the deceased for the sale and/or purchase of their various parcels.

b. What is the extent of the Plaintiffs’ entitlement over the suit property?

i. The 1st Plaintiff

53. On the part of the 1st Plaintiff, she purchased 10 Acres of Plot No. 77 Sosiani Settlement Scheme for the price of KShs. 65,000/- an Acre vide an agreement dated 9th July, 1998 (PEXb1). The total purchase price was therefore KShs. 650,000/-, out of which she paid Kshs. 300,000/-. She left a balance of KShs. 350,000/- that was to be paid on 2nd September, 1998. The said agreement was signed by Joshua Kipkorir Bitok (the Seller), his wife Selly Bitok and the 1st Plaintiff as the Purchaser. It was also signed by a total of 5 witnesses, among them David Korir and Philemon Yego, the Seller’s sons.
54. On the 2nd September, 1998, the Seller was paid KShs. 275,000/- which he acknowledged by signing the agreement dated 2nd September, 1998(PEXb2) that was witnessed by his son David Korir. In the said agreement, it is indicated that there was still a balance of KShs. 75,000/- which was to be paid on 30th September, 1998. However, at the bottom of the said acknowledgement note, it is indicated that the total land sold is 11.5 Acres for a total of KShs. 747,500/-. The Seller and the purchaser signed this addition and it was witnessed by David Korir and John Birech.
55. The Defendants issues with the 1st Plaintiff is with regards to the payment of the purchase price, and the size of the portion claimed. The 1st Defendant in his testimony said that the 1st Plaintiff only paid KShs. 300,000/- leaving an outstanding balance of KShs. 350,000/-. DW1 alleges that the additional note on the agreement dated 2nd September, 1998 was not done by his father, but that it is between the 1st Plaintiff and his brother, and for this reason they dispute the additional 1.5 Acres. The Defendants assert that the 1st Plaintiff only purchased 10 Acres and not the 11.5 Acres claimed in this suit. There is no evidence to prove the allegation that the sale of the additional 1.5 Acres was not done by the deceased.



56. Going by the 1st Plaintiff's evidence, as at 2nd September, 1998, the total payment made by the 1st Plaintiff was 575,000/- out of a total of KShs. 747,500/-, meaning that the balance including the consideration for the additional 1.5 Acres was KShs. 172,500/-.
57. The 1st Plaintiff testified that the balance of the purchase price for the initial 10 Acres and the additional 1.5 Acres was paid at the Agricultural Finance Corporation (AFC) in Turbo on instructions of the Seller. In the initial List of Documents filed by the Plaintiffs at the commencement of this suit, they included two receipts from the AFC, which though vague and ineligible, were never produced as evidence before this court.
58. However, the Plaintiffs did produce a copy of the Proceedings before the Uasin Gishu Land Disputes Tribunal in Claim No. 21 of 2011. In its findings, the Tribunal at page 15 of those proceedings noted that the payment for the 1.5 Acres was done directly to AFC through John Birech, the 1st Plaintiff's sister (sic). The Tribunal held that:
- “The Payments are:-
- a) Folio No. 66 amounting to Kshs. 32917.00 (thirty-two thousand nine hundred and seventeen only) - Marked as Exhibit 4
 - b) Folio No. 67 amounting to Kshs. 128039.00 (one twenty-eight thousand, thirty nine only) - Marked Exhibit 5
 - c) Government Receipt Serial No. 144272 for KShs. 4,300 dated 1/2/1999 – Marked Exhibit 6”
59. These payments add upto a total of KShs. 165,256/-. In the same proceedings, the 1st Defendant testified before the Tribunal that his father intended to sell his land to settle an AFC Loan, and similarly in these proceedings, the Defendants have not contested that their father had an outstanding loan with the AFC. Although they claim that their father settled the loan on his own, they have given no evidence of this fact.
60. From the evidence before this court, it appears that the 1st Plaintiff indeed purchased 11.5 Acres and paid for that land leaving a balance of only KShs. 7,244/-. She is therefore entitled to the said land upon payment of this balance, or to a portion equivalent to the amount she has so far paid for.

ii. The 2nd Plaintiff

61. The 2nd Plaintiff purchased 8 Acres of the suit property vide an agreement for sale dated 7th January, 2001 (PEXb6) from Joshua Kipkorir Bitok, for an agreed purchase price of KShs. 560,000/-. On the date of executing the agreement, the 2nd Plaintiff paid KShs. 300,000/- by Cheque No. 000041 and the same was acknowledged. The balance was to be paid in two instalments with the first one of KShs. 100,000/- due on 31st August, 2001 and the second one of KShs. 160,000/- due on 31st January, 2002. This agreement was drawn by the firm of Ngigi Mbugua & Company Advocates, and attested to by Allan Mbugua Advocate who testified to this effect as PW4. Notably, this agreement expressly placed the obligation to acquire the LCB Consent on the Seller, who's witness was Philemon Yego.
62. The 2nd Plaintiff also produced an agreement dated 13th February, 2002 (PEXb7) between him and Joshua Bitok, the Seller. This agreement reduced the acreage from 8 Acres to 7 acres, and the purchase price herein was agreed at KShs. 485,000/-. The Agreement acknowledged the down payment of KShs. 300,000/- paid under the earlier agreement vide Cheque No. 000041. It also acknowledged payment of the second instalment of KShs. 100,000/- which was paid in cash to the vendor on 18th June, 2001.



Being that the purchase price had been reduced, with the two payments above-mentioned, the balance now stood at KShs. 85,000/- which was paid on the execution of this second agreement.

63. PW4 testified that he drafted this agreement, and he witnessed the parties exchange the said balance of KShs. 85,000/- in his office, which means that the 2nd Plaintiff had paid in full for the 7 Acres he purchased from the deceased. Once more, this agreement was witnessed by Philemon Yego.
64. The 1st Defendant testified that he does not know when his father had sold land to the 2nd Defendant and that he was not present when it happened. Interestingly, he also testified that he was aware his father intended to refund KShs. 300,000/- to the 2nd Plaintiff but died before doing so. This means that contrary to his persistent denials of the 2nd Plaintiff's agreement, he was in fact aware all along that his father had sold land to the 2nd Plaintiff.
65. To my understanding, the Defendants seem to be disowning the 2nd Plaintiff's transaction on the basis that they, as a family, were not aware of the second agreement. I do not for one believe the 2nd Defendant when he argues that he never signed the second agreement as a witness and is not aware how his signature got on the said document. PW4, the Advocate who drafted the agreement and attested it testified that it is the 2nd Defendant who was a witness for his father. Be that as it may, I see no evidence that the 2nd Defendant ever reported the alleged forgery of his signature on the 2nd Plaintiff's second agreement. The 2nd Defendant had the option of calling a document examiner to prove that his signature was forged, but he did not do so.
66. As to the Defendants' contention that they were not made aware of the sale to any of the Plaintiffs hence they are null and void, I am persuasively guided by the words of Justice Munyao Sila in *Oganga & another v Orangi & 3 others (Environment & Land Case 466 of 2015) [2023] KEELC 16348 (KLR)*, where he held that:-
- “ 33. The 2nd and 3rd defendants of course complain that they were not involved in the sale. Was the 1st defendant under any legal obligation to involve them in such a sale? I do not think so, and Mr. Nyamurongi did not refer me to any law or any authority which asserts that a parent must consult and obtain consent of his children before disposing of his/her free land. In fact, it is despicable, if not outrageous, for a child to assert that his father or mother, must subdivide his land in a particular way, and proceed to sue his parent because he/she does not wish to deal with the land in the way proposed by the child...
36. ... Neither can they purport to attempt to reverse a sale that was freely entered into by their late father. The property was never held in their trust. I regret to tell the defendants that they have to live with the fact that their father changed his mind and decided to sell the land. He was the owner of the land and nothing barred him from selling the land.”
67. Similarly, in this suit, there has been no claim that the suit land herein was held under any customary trust so as to require their consents as beneficiaries thereto. The parties herein agree that the land belonged to the late Joshua Kipkorir Bitok, which means he could freely deal with the land as he wished, and he did so by selling it to the Plaintiffs.
68. That being the case, with regards to the 2nd Plaintiff, the first agreement was revoked by the Agreement dated 13th February, 2002 and this is the agreement that is operational. Under this agreement, the 2nd Plaintiff purchased and is entitled to 7 Acres, which he paid for in full.



iii. The 3rd Plaintiff

69. This brings us to the 3rd Plaintiff, who produced an agreement dated 4th September, 2000 (PEXb4) showing that she purchased 5 Acres from Joshua Kipkorir Bitok. The agreed purchase price was KShs. 71,000/-per Acre making the total consideration for the 5 Acres KShs. 355,000/-. The agreement was signed by the Seller and the Buyer, and one of the witnesses on the part of the seller was his son, Julius Kosgei.
70. The 3rd Plaintiff testified that she paid the entire purchase price at once. This was confirmed by DW1 who in his testimony told the court that the 3rd Defendant cleared payment. There is no dispute to the fact that she did purchase 5 Acres of the suit land from the deceased and paid for them in full. The only issue the Defendants seem to have is the portion of land she is occupying.
71. What I gather from the Defendants' testimony, is that the Plaintiffs all reside on the land, either in person or through people claiming through them. The Plaintiffs have testified that the parcels they occupy were shown to them by the deceased who sold the land to them. All the Plaintiffs seek is ownership over the portions they currently possess.
72. To be clear, the allegations by the Defendants that the Plaintiffs occupy their portions is unfounded and not at all based on any evidence. The argument that the land was already distributed to the children of the deceased is also false. In their List of Documents dated 9th March, 2022, the Defendants had included an agreement by the family dated 20th June, 2013. In it, they detailed the distribution of the deceased assets to his children as dictated by the deceased on 5th July, 1998.
73. This document was not formerly produced as an exhibit in this case, but even if it had been so produced, it would be of no impact since it is not a will, and neither does it bear the deceased's signature. It was clearly drafted in 2013, 11 years after the demise of Joshua Bitok in 2002. In any event, I have not heard the Defendants claim that they currently live on the suit land, and even if they do, they clearly occupy other parcels aside from those currently occupied and/or utilised by the Plaintiffs herein.
74. That aside, DW2 testified before this court that the succession court had ruled that the suit property should not be surveyed pending the determination of this suit. For these reasons, there can be no claim that the Plaintiffs herein are occupying the Defendants' portions or any portions belonging to the beneficiaries of the deceased's estate since the suit land was never distributed to the deceased children.
75. The only logical outcome from the above discourse is that the Plaintiffs did in fact purchase the portions of land they occupy on the suit property from the deceased through valid and binding Agreements for Sale thereof.
76. With the exception of the 1st Plaintiff who still owes the balance of KShs. 7,244/- the rest paid in full for their portions of land and are the legal and lawful owners of those parcels. The 2nd and 3rd Plaintiff are therefore entitled to the 7 Acres and 5 Acres portions that they purchased in their agreements.
77. On the part of the 1st Plaintiff, she has the option of settling the outstanding balance and getting the full 11.5 Acres purchased, or in the alternative, being allocated a portion commensurate to the amount so far paid.

c. Whether the court should issue the reliefs sought in the Plaint

78. This court has found that the Plaintiffs are entitled to their various portions of the suit property that they purchased from the deceased. Therefore, they are entitled to be declared as the legal and lawful owners of their various portions as above directed by this court.



79. Secondly, the Plaintiffs seek a permanent injunction to bar the Defendants or anyone acting under them from interfering with their quiet possession and use of the land, or engaging in any acts inconsistent with their rights as owners. On permanent injunction, it was held in the case of *Mburu v Kibara & 2 others* (Environment & Land Case 237 of 2021) [2022] KEELC 3226 (KLR) that:-

“... permanent injunction fully determines the right of the Parties before the Court and is normally meant to perpetually restrain the commission of an act by the Defendant in order for the rights of the Plaintiff to be protected. This Court has the powers to grant the Permanent Injunction under sections 1A, 3 & 3 A of the Civil Procedure Code if it feels the right of a Party has been fringed, violated and/or threatened as the Court cannot just seat, wait and watch under these given circumstances ...”

80. Having proved that they are so entitled to their portions of land, the Defendants have no legal mandate to use the Plaintiff's portions on the suit land in any manner. As to whether they stand to suffer irreparable harm, it is evident that there has already been clashes with regards to the occupation and use of the land by the Plaintiffs, one of which resulted in the 2nd Defendant being charged with an offence and allegedly convicted. The Defendants also allege that they and their family members have been attacked by the Plaintiffs.

81. For peace to reign, and for the Plaintiffs to be able to enjoy quiet and peaceful possession of their portions of land, without any threat of injury or actual loss from the Defendants, it is prudent that the Defendants be restrained from accessing and/or utilising the Plaintiffs' portions of the suit land. As such this prayer is meritorious.

82. The third prayer was for the Land Registrar, Uasin Gishu to be directed to transfer to the Plaintiffs their portions of land and issue them with title deeds. In any other circumstances, this prayer would automatically issue. However, the suit property is subject of a succession cause wherein this court was duly informed by the 1st Defendant, who was appointed an Administrator therein, that the court ruled that the land would not be subdivided pending the determination of this suit. It appears that the succession court only issued the Grant of Letters of Administration but the same is yet to be confirmed.

83. Since the ownership and entitlement of the Plaintiffs has been determined herein, it is only prudent that the succession court be allowed to proceed with confirmation of the grant, taking into account the entitlement of the Plaintiffs herein to the suit land. Thereafter, the Plaintiffs can pursue registration of their respective parcels in their favour.

d. Who shall bear the costs of this suit?

84. Ordinarily, costs follow the event and Section 27 gives the Court the discretion to award costs. This means that the successful party is entitled to the Costs of the suit, unless it can be shown that there is good reason to depart from this general rule.

85. In the instant suit, the plaintiffs have demonstrated to this court that they deserve to be declared the rightful proprietors of their respective portions of the suit properties. The Defendants have failed to defend their claim. For this reason, the court shall exercise its discretion to award the Plaintiffs the costs of the suit.

Orders:-

86. Consequently, the Plaintiffs claim in the Plaint dated 1st February, 2022 hereby succeeds in the following terms:-



- a. A declaration be and is hereby issued that the 1st, 2nd and 3rd Plaintiffs are the legal and lawful owners of their respective portions of land within the parcel of land known as Uasin Gishu/Sosiani/77.
- b. An order be and is hereby issued that the 1st Plaintiff shall upon payment of the balance of KShs. 7,244/- to the estate of the late Joshua Kipkorir Bitok, be entitled to 11.5 Acres of the land known as Uasin Gishu/Sosiani/77, in the alternative, the 1st Plaintiff be allocated a parcel of land commensurate with the amount paid under the agreement dated 9th July, 1998 and 2nd September, 1998.
- c. An order be and is hereby made that the 2nd and 3rd Plaintiffs are entitled to portions measuring 7 Acres and 5 Acres respectively, which they paid for in full.
- d. An order of permanent injunction do hereby issue against the defendants, their servants, agents and or assigns restraining them from in any way interfering with the plaintiffs quiet possession, use and or in any way engaging in acts inconsistent with the Plaintiffs rights as the owners of their respective parcels of land within the property known as Uasin Gishu/Sosiani/77.
- e. The Plaintiffs shall have the costs of this suit.

87. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT ELDORET ON THIS 2ND DAY OF OCTOBER, 2025 VIDE MICROSOFT TEAMS.

HON. C. K. YANO

ELC, JUDGE

In the presence of;

Ms. Rop for Plaintiffs.

Defendants present in person.

Court Assistant - Laban.

