

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT & LAND COURT**  
**AT ELDORET**

**ELC CASE NO. E019 OF 2022**

**MARY JERUTO KIPTANUI & PATRICK KIPLAGAT KIPTANUI**

(Suing as the Administrators of the Estate of

**ABRAHAM KIPSANG KIPTANUI - Deceased) .....**

**PLAINTIFFS**

**-VERSUS-**

**JOHN KIPSANG NGETICH ..... 1<sup>ST</sup>**

**DEFENDANT**

**HILLARY KIPSANG ..... 2<sup>ND</sup>**

**DEFENDANT**

**HENRY KURUI ..... 3<sup>RD</sup>**

**DEFENDANT**

**MIRIAM SOTE KIPNGETICH ..... 4<sup>TH</sup>**

**DEFENDANT**

**JUDGMENT:**

1. The Plaintiffs sued the Defendants through their Plaint dated 9<sup>th</sup> March, 2022 in which they sought the following orders:-
  - a. That a permanent injunction be issued against the Defendants/Respondents, their agents, servants and/or any other person claiming or acting on the Defendants' instructions restraining them from trespassing, further ploughing, cultivating, constructing, interfering, entering, disposing and/or in any other manner dealing with the parcel of land known as KAHUNGURA SETTLEMENT SCHEME/466.
  - b. Costs of this suit.

- c. Any other relief that this honorable court may deem fit and just to grant.
2. The Plaintiffs are the Administrators ad litem of the Estate of Abraham Kipsang Kiptanui. They claim that the deceased is the registered owner of the land known as KAHUNGURA SETTLEMENT SCHEME/466 (the suit property herein). The Plaintiffs aver that on or about February, 2022, the Defendants forcefully trespassed onto the suit land and, without any colour of right, ploughed the land using tractors with intentions to cultivate the same.
  3. The Plaintiffs accuse the Defendants of damaging the property including the perimeter fence and forcefully breaking the padlock on the gate to gain entry onto the suit land, after which they felled and uprooted mature trees that were on the land. The Plaintiffs aver that the Defendants' actions amount to intermeddling, damaging and/or wasting of property of the Estate of the deceased resulting in loss to the detriment of his beneficiaries, hence the prayer for an injunction. They claim that the deceased was in continuous peaceful occupation and use of the whole suit property and after his death, the Plaintiffs took over such possession in his stead.
  4. The Plaintiffs' alleged that the Defendants' actions were not only illegal, but also amounted to a calculated forcible eviction of the deceased's beneficiaries and acquisition of the land without following due process. The Plaintiffs averred that the Defendants intend to utilise the land for planting, which will deny them the opportunity to cultivate the land and gain from the harvest. That unless the orders sought are granted, they

are likely to suffer irreparable loss that cannot be monetarily compensated.

5. The 1<sup>st</sup> and 4<sup>th</sup> Defendants initially filed separate statements of Defence, but later filed a joint Memorandum of Defence dated 17<sup>th</sup> June, 2024 where they denied the averments set out in the Plaint. The 1<sup>st</sup> & 4<sup>th</sup> Defendants denied the allegation that the late Abraham Kipsang Kiptanui was, or is, the registered proprietor of the suit property. The Defendants also denied the allegation that they forcefully trespassed onto the suit land. They also denied the allegations that the Plaintiffs are in occupation of the suit land, as well as the claim of irreparable loss and damage. The Defendants averred that the Plaintiffs are not deserving of the orders sought and prayed that the suit be dismissed with costs.
6. The Defendants Memorandum of Defence included a counterclaim against the Plaintiffs, in which they claimed that the suit property was lawfully owned and or allocated to the late James Kipngetich Komen alias James Komen by the Settlement Fund Trust (SFT). The Defendants aver that the deceased complied with all conditions thereto and was issued with a discharge pending registration and issuance of title, and later the land was registered in favour of James Komen Kipngetich.
7. According to the Defendants, the late Abraham Kipsang Kiptanui procured registration of the suit land illegally, unprocedurally, through misrepresentation, fraud and or a corrupt scheme. The Defendants set out the particulars of the

alleged illegality, misrepresentation, fraud and or corruption, and relying on these facts, they prayed for orders that:-

- (i) The title deed issued over land parcel No. KAHUNGURA SETTLEMENT SCHEME/466 in favour of Abraham Kipsang Kiptanui (Deceased) be cancelled.
- (ii) An order that the land registrar do rectify the register of land parcel No. KAHUNGURA SETTLEMENT SCHEME/466 to read 16 Acres instead of 5 Acres.
- (iii) An order that the land registrar do rectify the register of land parcel No. KAHUNGURA SETTLEMENT SCHEME/466 to read and or revert to JAMES KOMEN.
- (iv) An order of permanent injunction against the respondents in the counterclaim Mary Jeruto Kiptanui and Patrick Kiplagat Kiptanui restraining them whether by themselves, their agents servants and or any other person be restrained from trespassing, entering, ploughing, leasing, cultivating fencing, alienating, remaining on or in any other manner interfering with plaintiff's use and or utilization of land parcel known KAHUNGURA SETTLEMENT SCHEME/466.
- (v) Mesne profits.
- (vi) Costs of the suit.

### **Hearing and Evidence:**

#### **The Plaintiffs' Case;**

8. This case was first fixed for hearing on 3<sup>rd</sup> March, 2025 but the court was informed that Mr. Tunoi, Counsel for the Plaintiff, was unwell. On that day, the matter was fixed for hearing on 15<sup>th</sup> October, 2025 in the presence of Mr. Matekwa Counsel holding brief for Mr. Tunoi for the Plaintiffs, and Mr. Korir for the

Defendants. On the date so fixed for hearing, neither the Plaintiffs nor their Advocates were present in court. The court confirmed that the hearing date had been taken by consent and on application by the Defendants, dismissed the Plaintiff's suit for non-attendance with costs to the Defendants.

**The Defendants' Case;**

9. On the same date, the court proceeded with hearing of the Defendant's case, where John Kipsang Ngetich testified on oath as DW1 in support of their counterclaim. DW1 adopted his witness statement dated 17<sup>th</sup> June, 2024 as his evidence-in-chief. DW1 produced the documents in the Defendants List of Documents dated 17<sup>th</sup> June, 2024 as DEXb 1-5 respectively.
10. In his statement, DW1 stated that he is a son and administrator to the Estate of late James Kipngetich Komen alias James Komen who died on 17/6/2003. He stated that his late father was the legal owner of land parcel No. Uasin Gishu Kahungura/466 measuring approximately 16 Acres. That his late father had fenced the said land and was utilizing the same by grazing and or keeping livestock until his death. That after his father's death, the land remained fallow and neighbours including Henry Kurui and Hillary Kipsang started grazing thereon.
11. DW1 stated that sometime in 2021, he and his mother located documents from SFT and they both visited the land and assumed possession thereof and have been cultivating it since then. DW1 stated that he visited the SFT Office and was advised by the SFT officer that all documents in the file confirmed that the land belonged to his late father, James Komen. That he then

applied for a copy of the register which reveals that the land was transferred to Abraham Kiptanui on 29/9/2005 who had even been issued a title to the land.

12. DW1 stated that the suit property was transferred to Abraham Kiptanui fraudulently, unlawfully and through a corrupt scheme considering that he was not an allottee from the S.F.T. Further, that the register of the suit land shows that the late James Komen was registered as proprietor on 23/3/2003. DW1 stated that the late James Komen died on 17/6/2003 at Kabarnet District Hospital, yet the register shows that the land was transferred from his late father James Komen to Abraham Kiptanui on 29/9/2005, more than 2 years after his father's death. DW1 pointed out that this demonstrates that the suit land was transferred fraudulently.
13. DW1 prayed that the title issued to the late Abraham Kiptanui be cancelled and the register be rectified to reflect and or revert to James Komen, to allow them pursue transmission of the same. He also prayed for mesne profits and damages for trespass, as well as costs of the suit. DW1 said that he was the one currently using the land, and he also prayed for an injunction.
14. Miriam Sote Kipngetich testified under oath as DW2. She chose to rely entirely on her witness statement dated 17<sup>th</sup> June, 2024 as her evidence-in-chief in this case. DW2's witness statement is an exact replica of DW1's statement summarised above. This marked the close of the Defendants' Case.

### **Submissions:**

15. At the conclusion of the hearing, the court directed the Defendants to file and serve their final written submissions. The Defendants complied by filing their written submissions dated 5<sup>th</sup> November, 2025. No submissions were filed on behalf of the Plaintiffs.

**The Defendants' Submissions;**

16. In the Submissions, Counsel submitted that the Defendants had produced the necessary documents to prove that the deceased was allocated the suit property by the SFT and that the land was registered in favour of James Komen on 23<sup>rd</sup> March, 2003. Counsel submitted that entry No. 3 of the register of the suit land shows that it was transferred to Abraham Kiptanui on 29<sup>th</sup> September, 2005. Counsel pointed out that the death certificate shows that the late James Komen died on 17<sup>th</sup> March, 2003. Counsel Submitted that the suit property was transferred to Abraham Kiptanui more than 2 years after the death of James Komen.

17. Citing Section 26(1) of the Land Registration Act (LRA), Counsel submitted that the Defendants sought cancellation of Abraham Kiptanui's registration as proprietor on grounds that the transfer was done fraudulently and illegally after the demise of previous title holder. Counsel submitted that the title deed furnished in the name of the late Abraham Kiptanui cannot be protected if obtained fraudulently, illegally and or through corrupt scheme and thus the plaintiffs could not assert rights over the same. He relied on the case of **Munyu Maina vs Hiram Gathiha Maina (2013) eKLR** and **Kericho ELC No. E002 of 2024; Philip Kamau Gachunu (Deceased) suing as beneficiary and**

***administrators of the estate of Kamau Gachunu vs Alice Wanjiru & 6 Others.***

18. Counsel urged the court to invoke its jurisdiction to order for rectification under Section 80(1) of the LRA since the suit property was transferred to the plaintiffs fraudulently. Counsel submitted that the Defendants had proved that their late father was the bonafide registered proprietor of suit property and entitled to the interests conferred by such registration set out at Section 24(a) of the LRA. He further urged this court to invoke the provisions of Article 40 of the Constitution which provides for the protection of the right to property and forbids any person from arbitrarily depriving another their property. Counsel submitted that the Defendants have proved to be bonafide proprietors of the suit land, thus the court ought to issue the order of permanent injunction sought.
19. Counsel also submitted that the 1<sup>st</sup> and 4<sup>th</sup> Defendants had in addition sought mesne profits in the nature of general damages for trespass. Counsel submitted that the Plaintiffs interfered with the Defendants quiet possession and use of the suit property to an extent they even sought orders restraining the defendants barring them from use of suit land. In this regard, Counsel proposed an award of KShs 15,000,000/- in favour of the Defendants on account of general damages. Counsel based his submissions on the case of ***Kericho ELC No. E002 OF 2024 (Supra), Philip Ayaya Aluchio vs Crispinus Ngayo (2014) eKLR, Nakuru Industries Limited vs S Mehta & Sons (2016) eKLR*** and ***Willesden Investments Limited Vs.***

**Kenya Hotel properties limited NBI H.C.C. NO. 367 of 2000.**

20. Counsel acknowledged that the exact value of the land before and after the alleged trespass is not proved hence the difference in the value of the Plaintiff's property immediately after the trespass or the costs of restoration is not known. In an interesting turn, Counsel expressed the view that a sum of KShs. 1,000,000/= as General Damages is adequate. Counsel also submitted that the register of the suit parcel erroneously reads 5 Acres (2.023ha) when the suit property actually measures 16 Acres (6.477 ha). Counsel explained that the area list prepared by SFT surveyors shows land parcel No. 466 measure 6.6 ha. Counsel therefore submitted that the entry showing the suit land measures 2.023 Ha is erroneous and ought be rectified pursuant to Section 80(1) of the LRA. Counsel further prayed that the Court to order the Plaintiffs to bear costs of the suit and the counterclaim.

**Analysis and Determination:**

21. I have carefully considered the pleadings by the parties herein, the evidence adduced as well as the submissions filed. The issues for determination are:-

- (i) Whether the acquisition of Kahungura Settlement Scheme/466 by the Plaintiff was irregular as pleaded in the defence and counterclaim;***
- (ii) Whether the Defendants are entitled to the reliefs sought in the Counterclaim;***
- (iii) Who shall bear the costs of this suit?***

**i. Whether the acquisition of Kahungura Settlement Scheme/466 by the Plaintiff was irregular as pleaded in the defence and counterclaim;**

22. The Estate of the Late James Kipngetch Komen through the 1<sup>st</sup> and 4<sup>th</sup> Defendants herein claim that the suit property belongs to his estate. They claim that the same was offered to James Komen, who upon satisfying the conditions of the offer was issued with a Discharge of Charge. They have produced a copy of the Letter of Offer from the Ministry of Lands, Settlement and Physical Planning, which has been certified as a true copy by the County Land Adjudication & Settlement Office at Uasin Gishu.
23. Also among the documents produced by the Defendants is the Discharge of Charge dated 2<sup>nd</sup> November, 2015 in the name of James Komen relating to the parcel of land known as Uasin Gishu/Kahungura/466. Similarly, the Defendants have produced a Transfer of Land in a Settlement Scheme relating to Uasin Gishu/Kahungura/466 also dated 2<sup>nd</sup> November, 2015 and signed in favour of the late James Komen.
24. Although the Defendants did not produce the title to the suit property, they have produced a certified True Copy of the green card which shows that the register for the suit parcel was opened on 25<sup>th</sup> January, 2000 in the name of the Settlement Fund Trustees. Thereafter, the land was on 23<sup>rd</sup> March, 2003 registered to James Komen, no doubt through the transfer above mentioned.
25. The register however shows that on 29<sup>th</sup> September, 2005 the land was transferred to Abraham K. Kiptanui and a title deed

issued to him on the same date. It is this very title deed that the Plaintiff presented in court claiming ownership of the suit land. It is also on the basis of this title that the Plaintiff sought a permanent injunction restraining the Defendants from dealing with the suit property.

26. The Defendants have challenged the Plaintiffs' title claiming that it was procured through fraud, illegality, misrepresentation and corruption. The basis of the Defendants claim is that the late Abraham Kiptanui got registered as proprietor of the land in the year 2005, yet the late James Komen, who is the original allottee from the SFT died in 2003, 2 years prior to the transfer and registration in favour of Abraham Kipsang Kiptanui.
27. Going by Section 26(1) of the Land Registration Act, these are valid grounds upon which the validity of a title document may be challenged. The said provisions is in the following terms:-

**26. Certificate of title to be held as conclusive evidence of proprietorship**

**(1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—**

**(a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or**

***(b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.***

28. The suit land herein was offered in the name of the late James Komen as the original allottee from the SFT. This is confirmed by the registration documents acquired from the Land Adjudication and Settlement Office. In further proof of this registration, the Defendants also produced the letter dated 1<sup>st</sup> October, 2021 from the County Director, Land Adjudication & Settlement, Uasin Gishu to the County Land Registrar Uasin Gishu. The letter confirms that the records at the Land Adjudication & Settlement Office in Nairobi as well as in Uasin Gishu County show that the land was discharged to James Komen.
29. There is also the letter dated 27<sup>th</sup> June, 2018 from the Assistant Director, Land Adjudication and Settlement Uasin Gishu certifying that Plot No. 466 Kahungura was discharged on 5<sup>th</sup> May, 2018 in favour of the Defendants herein. This letter also advised the defendants herein to appear before the land registrar for issuance of a title deed.
30. Another document from the Land Adjudication and Settlement Office confirming the records on ownership of the land is the letter dated 22<sup>nd</sup> January, 2019 addressed to the Area Chief, Kahungura. In this letter, the Assistant Director Land Adjudication and Settlement confirmed that they had received a Discharge document in respect of Plot No. 466 Kahungura Settlement Scheme belonging to James Komen. The letter

advised the chief to allow the Defendants herein, who had succeeded James Komen, to use and deal with the land.

31. All these documents together with the registration documents issued to the late James Komen by the SFT point towards the undeniable fact that he was the original allottee of the land from the SFT and the first registered owner. The Plaintiffs however claim that the land belongs to the late Abraham Kipsang Kiptanui, and was duly registered and issued with title to the land.
32. It is not clear how the late Abraham Kipsang Kiptanui came to be registered as proprietor of the suit property. Aside from the title presented in this suit, the Plaintiffs did not present any other document showing the process through which the late Abraham Kiptanui came to be registered as the owner of the land.
33. It is now well settled that a title or lease is an end product of a process. For a title to be valid and qualify for protection under the law, it must have been acquired legally and in compliance to both law and procedure. If the process that was followed prior to issuance of the title does not comply with the law or procedure at the time prevailing, then such a title is not indefeasible.
34. The Court of Appeal addressed itself on the issue in **Munyu Maina vs Hiram Gathiha Maina (2013) KECA 94 (KLR)**, where the court made the following finding: -

***“It is our considered view that the respondent did not discharge the evidential burden to rebut the testimony of the appellant that it was their deceased father who***

***put both of them into possession of the suit property and to occupy the same in equal share. We state that when a registered proprietor's root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which need not be noted on the register."***

35. It is therefore not enough for a party to allege ownership by relying on a title only, and expect to automatically open the doors to enjoying the interests conferred by such registration set out at Section 24 of the LRA or the rights of proprietorship laid out at Section 24 thereof. When in a situation such as this one arises, where the sanctity and/or validity of the title has been called into question, it is upto the title holder to demonstrate that their title was regularly and legally acquired.
36. The Plaintiffs however failed to defend their title over the suit land, and their predicament is made worse by the fact that they failed and/or refused to prosecute their case by testifying and adducing evidence in support of their title. In the face of the testimonies tendered and evidence adduced by the Defendants, it stands to reason that the root of the Plaintiff title was successfully challenged.

37. In the case of **Munyu Maina vs Hiram Gathiha (Supra)** which was cited with approval by the Supreme Court of Kenya in **Dina Management Ltd vs County Government of Mombasa & 5 others (Petition 8 (E010) of 2021) (2023) KESC 30 (KLR)**, the apex court further held:-

***“Article 40 of the Constitution entitles every person to the right to property, subject to the limitations set out therein. Article 40(6) limits the rights as not extending them to any property that has been found to have been unlawfully acquired. Having found that the 1<sup>st</sup> registered owner did not acquire title regularly, the ownership of the suit property by the appellant thereafter cannot therefore be protected under article 40 of the Constitution. The root of the title having been challenged, as we already noted above the appellant could not benefit from the doctrine of bona fide purchaser.”***

38. Owing to the above discussions, I am convinced that the Plaintiff’s title was not acquired legally or regularly. The Defendants have succeeded in proving to the required standard that the Plaintiffs’ title is not valid, and therefore not protected under article 40 of the Constitution.

**ii. Whether the Defendants are entitled to the reliefs sought in the Counterclaim**

39. The first relief the Defendants sought is the cancellation of the title deed issued over the suit of land in favour of Abraham Kipsang Kiptanui. The power of this court to cancel a title and

registration of a party as proprietor of land is donated under Section 80 of the Land Registration Act Cap 12A, which provides that:

**80. Rectification by order of Court**

**(1) Subject to subsection (2), the court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.**

**(2) The register shall not be rectified to affect the title of a proprietor, unless the proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by any act, neglect or default.**

40. Having determined that the Plaintiffs' title is not valid, there is no doubt that the same is impeachable under Section 26 of the LRA. Section 26 of the Land Registration Act provides only two instances for the challenge of title. The first is where the title is obtained by fraud or misrepresentation to which the person must be proved to be a party. The second ground is where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.
41. For the avoidance of doubt, for a title to be impeached under section 26, it is not necessary that the title holder must be shown to have participated in or contributed to the actions that led to his title being challenged in the first place. In this instance however, the circumstances of the acquisition and

registration of the suit land under the name of the late Abraham Kipsang Kiptanui are such that it could not have been done without his involvement.

42. The Plaintiffs' title has successfully been challenged on the grounds provided under Section 26 and therefore, the title of the Plaintiff is liable to be cancelled. I therefore proceed to cancel the title of the Plaintiffs' and their registration as proprietors of the suit property.
43. Secondly, the Defendants sought an order of rectification of the register of suit parcel of land on two fronts. The first is with regards to the acreage of the suit property, and the Defendants asked for an order directing the land registrar to rectify the register to read 16 Acres instead of 5 Acres.
44. Indeed, I note that from the green card, the suit land is currently indicated as measuring 2.023Ha. However, per the Final Area List for Kahungura Scheme produced before this court, Plot 466 is indicated to measure 6.6 Ha in size. This is confirmed by the letter dated 1<sup>st</sup> October, 2021 from the County Adjudication Office, which at page 2 states that the land measures 6.6 Ha, which is approximately 16.3 Ha, but it was registered as measuring only 5 Acres. In the said letter, the Director of Land Adjudication sought a clarification on whether the Land Registrar would uphold the 5 Acres title and release the remaining 11.3 Acres for registration in favour of the Defendants, or would ignore the 5 Acre title and register the whole parcel as per the discharge documents.
45. There is no doubt therefore that there was a mistake made with regards to the size of the suit land as indicated in the register.

Section 80(1) of the Land Registration Act allows a court to order the rectification of a register by directing any registration to be amended if it is satisfied that it was obtained by mistake. Since the size of the land as indicated in the green card is clearly a mistake, the Defendants' prayer for rectification to indicate the accurate size of the land as allocated at adjudication is merited.

46. The second aspect was for an order directing the land registrar to rectify the register to read and/or revert back to the late James Komen. This court has cancelled the registration of the late Abraham Kipsang Kiptanui as proprietor of the land. The cancellation means that the status of the land reverts back to the position it was in prior to the illegal transfer. Consequently, the register ought to be rectified and the land ordered to revert back to the names of the deceased James Komen to pave way for the Defendants to pursue transmission under the Law of Succession Act.
47. The Defendants equally sought an order of permanent injunction against the Plaintiffs in the main suit, Mary Jeruto Kiptanui and Patrick Kiplagat Kiptanui, restraining them from trespassing into or in any other manner interfering with Defendants' use of the suit land. In the case of **Kenya Power & Lighting Co. Limited vs Sheriff Molana Habib (2018) eKLR**, the court discussed the conditions under which an order of permanent injunction may be granted as follows:-

***“... A permanent injunction which is also known as perpetual injunction is granted upon the hearing of the suit. It fully determines the rights of the parties before***

***the court and is thus a decree of the court. The injunction is granted upon the merits of the case after evidence in support of and against the claim has been tendered. A permanent injunction perpetually restrains the commission of an act by the defendant in order for the rights of the plaintiff to be protected.”***

48. After hearing the testimonies and evidence in this case, it has become clear that the land belongs to the late James Komen, and upon his death, to his estate through the Defendants herein as administrators of the said estate. There is therefore need to issue the permanent injunction to protect the Defendants' interests over the land, as well as the interests of any other beneficiary of the Estate of the Late James Komen.
49. The Defendants also asked for Mesne profits. The Black's Law Dictionary, 11<sup>th</sup> Edition defines mesne profits as *“the profits of an estate received by a tenant in wrongful possession between two dates”*. In case law, a further definition of mesne profits was given in **Rajan Shah T/A Rajan S. Shah & Partners vs Bipin P. Shah (2016) eKLR**, where the court held that:-

***“A more useful description of mesne profits can be found in Halsburys Laws of England, which defines mesne profits as an action by a land owner against another who is trespassing on the owner's lands and who has deprived the owner of income that otherwise may have been obtained from the use of the land. The landlord may recover in an action for mesne profits the damages which he has suffered through being out of possession of the land. Mesne profits being damages***

**for trespass can only be claimed from the date when the defendant ceased to hold the premises as a tenant and became a trespasser. The action for mesne profits does not lie unless either the landlord has recovered possession, or the tenant's interest in the land has come to an end ... Mesne profits are awarded in place of rents, where the tenant remains in possession after the tenancy agreement has run out or been duly determined. A landlord claiming for mesne profits is claiming for the profits intermediate from the date the tenant ought to have given up possession and the date he actually gives up possession."**

50. Mesne profits therefore refer to the profits or income earned from a property by a person/tenant who is in wrongful possession of that property and they accrue from the date the tenant ought to have surrendered possession to the date they actually give up possession. No landlord and tenant relationship was claimed between the Plaintiffs herein and Defendants, and neither was one established. In addition, there was no proof provided by the Defendants demonstrating that any such profits were earned by the Plaintiffs on the suit land to justify an award in mesne profits.
51. Moreover, as explained above, mesne profits are damages to trespass. They can only be claimed from the date the Plaintiff ceased to hold the premises as a tenant and became a trespasser. No trespass has been established on the part of the Plaintiffs in the current suit. In any event, the Defendants cannot be claiming damages for trespass since they have

claimed that they have been in possession of the land to the exclusion of the Plaintiffs. Therefore, the claim for mesne profits must fail.

**iii. Who shall bear the costs of this suit?**

52. The costs of a suit are the expenses incurred by parties during litigation. Pursuant to Section 27 of the Civil Procedure Act, a court has wide discretion to either award, deny, or apportion costs as it sees fit. However, this discretion must be exercised judiciously. In addition, costs are generally awarded to the successful party pursuant to the general rule that costs follow the event.
53. The Defendants, being the successful party in this suit, are entitled to costs thereof in line with the principle that costs follow the event. No proper grounds have been demonstrated to warrant a departure from the general principle. Therefore, the Plaintiffs herein will bear costs of the suit as well as the counterclaim.

**Orders:-**

54. Accordingly, the Defendant's suit as set out in their Defence and counterclaim is found to have merit and therefore succeeds. The following orders shall issue with respect thereof:-
- i. The title deed issued over land parcel No. KAHUNGURA SETTLEMENT SCHEME/466 in favour of Abraham Kipsang Kiptanui (Deceased) be and is hereby cancelled.
  - ii. An order be and is hereby issued directing the land registrar do rectify the register of land parcel No.

KAHUNGURA SETTLEMENT SCHEME/466 to read 16 Acres instead of 5 Acres.

- iii. An order be and is hereby issued directing the land registrar do rectify the register of land parcel No. KAHUNGURA SETTLEMENT SCHEME/466 to read and or revert to JAMES KOMEN.
- iv. An order of permanent injunction be and is hereby issued against the Plaintiffs/Defendants in the counterclaim, Mary Jeruto Kiptanui and Patrick Kiplagat Kiptanui, restraining them whether by themselves, their agents servants and or any other person from trespassing, entering, ploughing, leasing, cultivating, fencing, alienating, remaining on or in any other manner interfering with Defendants use and or utilization of land parcel known as KAHUNGURA SETTLEMENT SCHEME/466.
- v. The Defendants in the main suit shall have the costs of this suit as well as the counterclaim, to be borne by the Plaintiffs.

55. Orders accordingly.

**DATED, SIGNED and DELIVERED** virtually at **ELDORET** on this **20<sup>TH</sup>** day of **NOVEMBER, 2025** vide Microsoft Teams.

**HON. C. K. YANO**  
**ELC, JUDGE**

In the virtual presence of;

Mr. Korir for Defendants.

No appearance for Plaintiffs.

Court Assistant - Laban.

ORIGINAL