

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT & LAND COURT**  
**AT ELDORET**  
**ELC SUIT NO. 35 OF 2019**

**DANIEL KIMASE KIPSOI.....PLAINTIFF**

***VERSUS***

**PROTUS KIPLAGAT CHERUIYOT.....1<sup>ST</sup>DEFENDANT**

**ALVIN CHERUIYOT.....2<sup>ND</sup>DEFENDANT**

**VINCENT KIPKIRUI CHERUIYOT.....3<sup>RD</sup>DEFENDANT**

**JUNE JELIMO CHERUIYOT.....4<sup>TH</sup> DEFENDANT**

**J U D G E M E N T**

1. The Plaintiff herein moved the court by way of a Plaint dated 08.03.2019 against the 1<sup>st</sup> to 4<sup>th</sup> Defendants (hereinafter referred to as “**the Defendants**”) seeking the following orders against them: -

**a) A Permanent injunction restraining the Defendants, their agents and/or servants from entering into, occupying, interrupting, trespassing, transferring, wasting, encumbering and/or in any other way dealing with the Plaintiff’s quiet possession, use and enjoyment of the suit land and stop them from doing any other acts that are inconsistent with the Plaintiff’s rights as the legal and/or rightful owner of 13.97Acres of land known as TINGUA FARM PLOT NO. 133.**

**b) A Declaration that the Plaintiff is the lawful owner of 13.97 Acres of land parcel known as TINGUA FARM PLOT NO. 133.**

**c) Costs and interests incidental to the suit.**

**d) Any such other or further reliefs as this Honourable court may deem fit and just to grant**

2. The facts in support of the Plaintiff's reliefs sought hereinabove can be summarized in the following manner:-

- i. The Plaintiff pleaded that he purchased a portion of 13.97 Acres commonly known as TINGUA FARM PLOT NO. 133 (hereinafter known as "**the suit property**").
- ii. On diverse dates between 2014 and 2017, the Plaintiff intimated that he had paid a total of Kshs.4,521,000/= as consideration to the Defendants' father and Grandmother.
- iii. According to the Plaintiff, the Defendants' father and grandmother bought another parcel of land at flax and Timboroa, where the family currently resides.
- iv. The Plaintiff disclosed that the suit property had been passed down to the Defendants' grandmother from her husband Kipkogei Sigor, who had purchase it from Tingwa Cooperative Society.
- v. That the Defendants' deceased mother was subsequently buried on the suit property by virtue of being a daughter in-law to the original owner Kipkogei Sigor and whereas the Defendants are in occupation of 4 Acres purely on humanitarian grounds.
- vi. The Plaintiff pleaded that the defendants are in occupation of his house which is within the suit property and had been purchased together with the suit property and that they have refused to vacate the same.



## **PLAINTIFF'S TESTIMONY AND EVIDENCE DURING TRIAL**

6. The first witness in the plaintiff's case was Daniel Kimase Kipsoi, who is the plaintiff herein and was marked as PW1.
7. The Plaintiff introduced himself as a resident of Tingwa within Uasin Gishu County and a businessman by profession.
8. The plaintiff confirmed that he was familiar with the defendants who were before the court.
9. The plaintiff confirmed recording a witness statement dated 026.02.2020 and filed on 22.10.2020 which he adopted as his evidence in chief.
10. The plaintiff informed the court that on the 03.05.2014, he purchased a portion of 6Acres from one William Kipkemboi Kiprono at an agreed consideration of Kshs.1,500,000/= (agreement for sale dated 03.05.2014 produced as Plaintiff Exhibit 1).
11. Thereafter, the plaintiff purchased a further 4.77. Acres on 01.11.2014 from Eunice Aiyobei Rotich from the said suit property (Agreement for sale dated 01.11.2014 produced as Plaintiff Exhibit 2).
12. The plaintiff identified the person known as Eunice Aiyobei Rotich as the mother of William Kipkemboi Kiprono, who is the father of the defendants' and the grandmother of the defendants.
13. On 10.03.2017, the plaintiff bought a third portion of land measuring 1.7 Acres from both Eunice Aiyobei Rotich and William Kipkemboi Kiprono for a consideration of Kshs.510,000/= (Agreement dated 10.03.2017 was produced as Plaintiff Exhibit 3).

14. On 13.12.2017, the plaintiff further acquired a portion of 1.5 Acres within the suit property from Eunice Aiyobei Rotich at a sum of Kshs.108,000/= (Agreement for sale dated 13.12.2017 produced as Plaintiff Exhibit 4).
15. The plaintiff therefore testified that he had acquired a total of 13.97 Acres from Eunice Aiyobei Rotich and William Kipkemboi Kiprono.
16. Thereafter, the plaintiff engaged the services of a surveyor, who visited the suit property and hived off the suit property into 2 portions.
17. The first portion was marked as TINGWA FARM PLOT NO. 133A measuring 4.5 Acres which was to remain the asset of Eunice Aiyobei Rotich and William Kipkemboi Kiprono.
18. The other portion was marked to be 13.75 Acres instead of 13.97 Acres and it was marked as TINGWA FARM PLOT NO. 133B which was duly recorded in the name of the plaintiff.
19. The plaintiff thereafter took possession of the 13.75 Acres now identified as TINGWA FARM PLOT NO. 133B in the year 2014 by planting maize, potatoes, beans, trees and doing other agricultural activities on the same.
20. However, in the year 2018, the 1<sup>st</sup> Defendant in particular trespassed into the suit property and began cutting trees valued as Kshs.290,000/= and demolished the perimeter fence valued as Kshs.70,000/=.
21. The Defendants collectively then became hostile to the plaintiff by denying him access to the suit property which he had lawfully acquired and was in possession to his detriment.
22. The plaintiff stated that he tried to amicably resolve the matter but the defendants flatly declined to engage him.

23. The plaintiff therefore sought the court to grant him the prayers as sought in the plaint.
24. On cross-examination by the defence counsel, the plaintiff admitted that he is a resident of the neighbourhood where the disputed land is.
25. The plaintiff informed the court that the defendants' father had 2 wives.
26. The plaintiff admitted that the defendants' father was not the registered owner of the suit property and that the suit property belonged to the late Kipkosgei Arap Sigor.
27. In the Plaintiff's knowledge, there was a succession in respect to the estate of Kipkosgei Arap Sigor but the land was not transferred to the administrator of the estate.
28. The plaintiff indicated that at the time Kipkosgei Arap Sigor passed away, the title deed of the suit property had not been issued by the Cooperative Society.
29. The plaintiff stated that he was a member of Tingwa Cooperative Society and was aware out of his knowledge that the titled have not been issued so far.
30. The plaintiff nevertheless categorically informed the court that he visited the offices of Tingwa Cooperative Society to ascertain the owner of the sui property before he purchased the same.
31. The Plaintiff identified that in the first agreement dated 03.05.2014; the defendant's father was the vendor while Eunice Aiyobei Rotich witnessed the said agreement.
32. In the subsequent three agreements for sale dated 01.11.2014, 10.03.2017 and 13.12.2017, the vendor was the

Defendants' grandmother Eunice Aiyobei Rotich, who imprinted her thumb print on all the agreements.

33. Later on, the defendants' family raised an issue when one of the family members died and they claimed that they had no place to bury her.
34. The plaintiff admits that he allowed the defendants to use the house that was on his portion of land for burial arrangements but the defendants' mother was actually buried in the portion known as TINGWA FARM PLOT NO. 133A.
35. The plaintiff reiterated that the portion known as TINGWA FARM PLOT NO. 133B was purchased with some houses and structures which the defendants was staying in them.
36. The plaintiff indicated that the value of the trees cut down by the 1<sup>st</sup> defendant was assessed by the Forest Officer, although he did not provide the valuation report.
37. The plaintiff also complained that his fence had been destroyed by the defendants when they insisted to trespass into the suit property.
38. According to the plaintiff, the defendants' family remained with 4.5 Acres after his portion of 13.75 Acres was curved out.
39. The plaintiff concluded his cross-examination by stating that most of the plots in TINGWA FARM had issues with the acreages which at time had been overstated.
40. On re-examination, the plaintiff stated that he learnt that William Kipkemboi Kiprono had two wives.
41. However, the person who was staying in the house which was within the portion known as TINGWA FARM PLOT NO. 133B was William Kipkemboi Kiprono's sister called Naomi and not his wife.

42. In other word, the plaintiff clarified that he never met the defendants' mother and the defendants were also not staying on the portion he purchased.
43. The plaintiff reiterated that the defendants'' grandmother Eunice Aiyobei Rotich or Mugio Rotich was one and the same person, who was the mother to William Kipkemboi Kiprono and the grandmother to the defendants herein.
44. The plaintiff insisted that there had been no dispute at the point of purchase of the suit property.
45. The plaintiff further stated that the sketch plan as drawn by the surveyor, identifying his portion as 13.75 Acres was accurate and he was willing and ready to take the same.
46. The plaintiff testified that when the defendants' mother died, he was approached with a request to assist their family use the house which was on his portion to make burial arrangements and the defendants' mother was buried on the other portion known as TINGWA FARM PLOT NO. 133A close to the house.
47. The plaintiff reiterated that the costs of the trees cut down by the defendants was Kshs.290,000/= based on an assessment by the Forest Officer.
48. The plaintiff further indicated that he had made a report to the police station relating to the destruction of the perimeter fence around his property.
49. In concluding his re-examination, the plaintiff indicated that he had not gone back to the suit property since the year 2019 and there is a possibility that the defendants had taken over the house on his portion of land.

50. The second plaintiff's witness was William Kipkemboi Kiprono, who was then marked as PW2.
51. PW2 introduced himself as a resident of Chesagor within Uasin Gishu Count and a businessman by occupation.
52. PW2 informed the court that the defendants were his sons.
53. PW2 admitted that the plaintiff had purchased a portion of land from them.
54. PW2 then adopted his witness statement dated 06.02.2020 together with an Affidavit sworn on 29.05.2019 as his evidence in chief.
55. According to PW2, there was a succession cause known as Eldoret HCC Succession Cause No. 92 of 2003 which related to the estate of his father Kipkosgei Arap Sigor.
56. In the said Succession Cause, one of the assets listed was the property known Plot No. 133 (Ka Francis).
57. PW2 then produced the certificate of Confirmation of Grant dated 27.03.2006 as Plaintiff Exhibit 6.
58. PW2 indicated that the Plot No. 133 (Ka Francis) was bequeathed to him and it measured 20 Acres.
59. PW2 confirmed that the plaintiff herein bought a portion of 1.7 Acres at a consideration of Kshs.510,000/= which he paid in full.
60. In addition to the above portion, the plaintiff again purchased a portion of 6 Acres at a value of Kshs.1,500,000/= which he paid in full as agreed.
61. Later on, the plaintiff again purchased 4.77. Acres at a value of Kshs.1,431,000/= which purchase price was fully paid.

62. Lastly, the plaintiff again purchased 1.5 Acres at a value of Kshs.1,080,000/=.
63. In other words, PW2 confirmed that the plaintiff had bought a total of 13.97 Acres within the Plot No. 133 leaving a balance of 6.03 Acres.
64. PW2 informed the court that he sold these portions of land to the plaintiff to finance a trip for one of his sons who was travelling to Malaysia for Athletics.
65. In addition to the above need, PW2 had also sold the land to cater for hospital bills of his daughter in-law, who was the wife of Dickson Koech Cheruiyot.
66. PW2 indicated to the court that the remaining 6 Acres are occupied by Protus, who is the 1<sup>st</sup> Defendant although it does not have a title deed.
67. PW2 indicated that the other children live with him in Chepsegor.
68. PW2 therefore denied any allegation that he gave any portion of land purchased by the plaintiff to his children.
69. PW2 therefore requested the court to give the portion of land purchased by the plaintiff to him as he had no objection to the plaintiff getting his title.
70. PW2 indicated that he had not distributed any of his assets to his children and that there was sufficient land for him to allocate to all his children at that right time.
71. In concluding his examination in chief, PW2 stated that the house which the 1<sup>st</sup> defendant was occupying on the 6 Acres was built by him.
72. On cross-examination by the defendant's counsel, PW2 stated that his name was William Kipkemboi Kiprono although the

Certificate of Grant indicated the name William Rotich Kiprono.

73. PW2 nevertheless stated that this was a mistake but the two names referred to one and the same person.
74. PW2 confirmed to the court that he had 4 wives and the defendants are the children of the second wife.
75. PW2 stated to the Court that he had come to testify that indeed he sold 13 Acres to the plaintiff herein and it is the defendants who had refused the plaintiff to take over his property.
76. PW2 stated that when the surveyor visited Plot No. 133, it only measured 16 Acres and not 20 Acres although the Grant shows that it is 20 Acres.
77. According to PW2, the missing 4 Acres is a problem that will be sorted out by the surveyors from Tingwa Cooperative Society when demarcation will be done.
78. PW2 once again reiterated that the plaintiff had purchased 13.97 Acres and there is a portion of 2 Acres which has not been sold to anyone.
79. PW2 disclosed to the court that he resides with the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants who, some dropped out of school and one has just completed school.
80. PW2 stated that he was ready and willing to show the defendants where to construct their houses because he had not yet given them land.
81. On re-examination, PW2 stated that the names on the Certificate of Confirmation of Grant indicating William Rotich and William Rotich Kiprono all refer to one and the same person.

82. PW2 was of the view that the plaintiff sued the defendants because they did not allow him to take possession of the land he had purchased.
83. PW2 reiterated that Plot No. 133 measures 16 Acres on the ground but is indicated to measure 20 Acres on the Certificate of Confirmation of Grant.
84. PW2 denied knowledge of selling any land on Plot No. 133 apart from the one sold to the plaintiff.
85. PW2 denied the allegation that the 3<sup>rd</sup> defendant dropped out of school because he failed to pay his school fees.
86. PW2 stated that at the time he sold the land to the plaintiff, the defendants' mother who was the second wife had actually left the marriage and the property and instead it was his sister who came to occupy and stay on the house which had been constructed for the second wife.
87. Consequently, therefore, at the time the second wife of PW2, who is the mother of the defendants passed away, she was not staying on Plot No. 133.
88. PW2 stated when the second wife died, she was buried on a portion of Plot No. 133 which had not been sold.
89. However, the elders approached the plaintiff who had already bought the 13.97 Acres with a request that they temporarily use the house that had been built and purchased by the plaintiff for their burial arrangements.
90. In conclusion therefore, PW2 indicated that the plaintiff was entitled to the 13.97 Acres he purchased although the Title Deed had not been processed.
91. At the end of this re-examination, PW2 was discharged from the witness box.

92. The Plaintiff's third witness was Naomi Jepkosgei Kiplagat, who was marked as PW3.
93. PW3 introduced herself as a resident of Ka Francis within Uasin Gishu Count and a farmer by occupation.
94. PW3 confirmed to be familiar with the plaintiff as well as the defendants.
95. PW3 stated that she is the aunt of the defendants as they are her brother's children.
96. PW3 confirmed to the court that she had written a witness statement dated 06.02.2020 which she adopted as her evidence in chief.
97. On cross-examination, PW3 stated that the defendants are the children of PW2.
98. PW3 stated that the defendants also live in Ka-Francis.
99. PW3 stated that the suit property belonged to their late father and measured 16 Acres.
100. Upon the demise of their father, succession was done.
101. Out of the 16 Acres, a portion of 13 Acres was sold off to the plaintiff and the balance of 3 Acres was to be occupied by the father of the defendants and the defendants.
102. However, PW3 stated that the defendants' mother and their father PW2 separated.
103. In the year 2014, the defendants' mother passed away and was buried on a portion on the property known as Plot No. 133.

104. PW3 confirmed that the portion which was purchased by the plaintiff contained some houses which had already been built by PW2.
105. PW3 admitted that the defendants were living in the house which had been developed by PW2 within a portion purchased by the plaintiff.
106. PW3 nevertheless indicated that the defendant had many other plots which they could live and not necessarily only the house within the plaintiff's portion of land.
107. On re-examination, PW3 stated that she was chased from the suit property by the 1<sup>st</sup> defendant.
108. However, PW3 indicated that the defendants have many properties which they can live on belonging to their father PW2.
109. PW3 clarified that the portion which was purchased by the plaintiff included the house which the defendants currently occupy.
110. Lastly, PW3 insisted that succession proceedings in the estate of Kipkosgei Arap Sigor was done and concluded.
111. At the end of this re-examination, PW3 was discharged and the plaintiff closed his case.

### **Defence Testimony and Documentary Evidence at Trial**

112. The defence hearing began with the testimony of Protus Kiplagat Cheruiyot, who was marked as DW1.
113. The 1<sup>st</sup> Defendant introduced himself as a Police Officer and confirmed to have filed a witness statement dated 03.10.2022, which he adopted as his evidence in chief.

114. In support of his evidence in chief, the 1<sup>st</sup> defendant produced the following documents: -

**DW1 Exhibit 1 - A copy of the burial permit of Susan Rotich No. 1235575 issued on 18.10.2018**

**DW1 Exhibit 2 - Copy of the pictures of the burial of Susan Rotich.**

**DW1 Exhibit 3 - Copies of the pictures of the house in the disputed property.**

**DW1 Exhibit 4 - Copy of a letter dated 15.10.2014 by the Assistant Chief Burnt Forest to the Land Registrar**

**DW1 Exhibit 5 - a copy of a letter dated 26.02.2019 from the FIRM OF T. Cheruiyot and Co. Advocates to the Plaintiff's counsel.**

115. The 1<sup>st</sup> Defendant upon production of the above documents sought this court to dismiss the plaintiff's case with costs.

116. On cross-examination by the Plaintiff's counsel, the 1<sup>st</sup> Defendant admitted that the suit property belonged to his grandfather Kipkosgei Arap Sigor.

117. The 1<sup>st</sup> Defendant further admitted that there was succession which was done relating to the estate of the late Kipkosgei Arap Sigor and confirmed.

118. According to the 1<sup>st</sup> Defendant the suit property was vested to PW2 as the sole beneficiary.

119. The 1<sup>st</sup> Defendant was of the view that PW2 was not holding the property in trust of any of his sisters.
120. At the time when the succession was on-going, the 1<sup>st</sup> defendant was still a minor.
121. The 1<sup>st</sup> defendant denied the allegations that PW2 was to subdivide the suit property with his sisters.
122. The 1<sup>st</sup> defendant acknowledged that PW2 sold the suit property.
123. According to the 1<sup>st</sup> defendant, the suit property was supposed to be 20 Acres, out of which 2 Acres was to be for public utility, leaving a balance of 18 Acres.
124. However, when the suit property was later surveyed, it was found to be only 15 Acres.
125. The 1<sup>st</sup> defendant stated that he was not involved by PW2 when he was selling the land to the plaintiff.
126. However, the 1<sup>st</sup> defendant is aware that his grandmother Eunice Aiyobei Rotich and his aunties were involved.
127. The 1<sup>st</sup> defendant stated that the only agreement for sale which was executed by his father was the one dated 03.05.2014 selling 6 Acres only to the plaintiff.
128. As regards the other agreements for sale in particular; the agreement dated 01.11.2014, 10.03.2017 and 13.12.2017 were done by the grandmother and not the father who was supposed to be the vendor.
129. The 1<sup>st</sup> defendant further raised the issue that in the agreement for sale dated 13.12.2017, the grandmother had

sold the portion of 1.5 Acres together with the structures which included the house they occupy.

130. The 1<sup>st</sup> defendant nevertheless acknowledged that all the agreements had been witnessed by the aunties.

131. The 1<sup>st</sup> defendant did not have any letter written to the plaintiff objecting to the sale undertaken by PW2 or his deceased grandmother.

132. The 1<sup>st</sup> defendant confirmed that the plaintiff was seeking 13.9 Acres from the suit property and there could be 2 Acres remaining.

133. The 1<sup>st</sup> defendant further stated that he had no dispute with the plaintiff.

134. In concluding his cross-examination, the 1<sup>st</sup> defendant on being referred to DW1 Exhibit 3, indicated that the pictures did not have a date or the year which the burial had taken place.

135. On re-examination, the 1<sup>st</sup> defendant acknowledged the agreements for sale executed by his father PW2 and the grandmother, Eunice Rotich.

136. DW1 nevertheless insisted that apart from the portions sold in the agreements for sale by PW2 and his grandmother, there were 2 Acres still available.

137. The 1<sup>st</sup> defendant on being referred to the agreement dated 13.12 2017 confirmed that the structures on the suit property including the storage and the borehole were part of the assets sold to the plaintiff.

138. However, the 1<sup>st</sup> defendant admitted that they refused to move out of the house which had been purchased under the agreement for sale dated 13.12.2017.

139. The 1<sup>st</sup> defendant insisted that they had been in occupation of the house since the year 2014 with his siblings and had not been shown anywhere else to live.
140. At the end of this re-examination, the 1<sup>st</sup> defendant was discharged from the witness box.
141. The defence second witness was one Bernard Kepterer, who was marked as DW2.
142. DW2 introduced himself as a resident of Ainabkoi and a farmer by occupation.
143. DW2 then informed the court that he had prepared a witness statement dated 13.10.2022, which he adopted as his evidence in chief.
144. On cross-examination by the plaintiff counsel, DW2 stated that he is a cousin of the 1<sup>st</sup> defendant.
145. DW2 confirmed that PW2 was the father of the 1<sup>st</sup> defendant.
146. DW2 stated that PW2 was the only son to the late Kipkosgei Arap Sigor and had two sisters Dinah and Naomi.
147. DW2 identified Eunice Aiyobei Rotich as the mother of PW2.
148. DW2 admitted that the plaintiff was a neighbour to PW2.
149. However, DW2 did not know the full information about the transaction between the plaintiff and PW2.
150. DW2 could not even state the size of land purchased by the plaintiff from PW2 or the title number.
151. On re-examination, DW2 indicated that he stays in Tingua Area.

152. DW2 admitted that they only learnt that the Plaintiff had purchased the house in which they lived during the burial of the 1<sup>st</sup> Defendant's mother.
153. DW2 was therefore of the view that PW2 had sold land to the Plaintiff and left the Defendants who are his children as destitutes.
154. At the end of this re-examination, DW2 was discharged from the witness box.
155. The third and last defence witness was William K. Tanui, who was marked as DW3.
156. DW3 introduced himself as a resident of Tingua and Village Elder in Sinboi Village.
157. DW3 then confirmed to have written a witness statement dated 03.10.2022 of which he adopted as his evidence in chief.
158. On cross-examination, DW3 confirmed being familiar with PW2, who was the father of the defendants.
159. DW3 informed the court that PW2 had about 3 wives.
160. One of PW2's wives was Susan Rotich, who was the mother of the defendants and is since deceased.
161. DW3 insisted that the defendants mother died while residing on the suit property and was buried there.
162. However, before the burial took place, it was discovered that PW2 had sold the property to the Plaintiff.
163. DW3 stated that the suit property was registered in the name of Kipkosgei Arap Sigor, who is now deceased but was not aware if any succession had been done.

164. DW3 nevertheless admitted being familiar with the plaintiff but denied knowledge that he had purchased the suit property.
165. DW3 denied the existence of any public utilities on the suit property.
166. After this cross-examination, there was no re-examination and DW3 was discharged from the witness box and the defendants closed their case.
167. Parties were then directed to file their written submissions. The Plaintiff filed their submissions dated 10.07.2025 while the Defendants filed their submissions dated 28.07.2025.
168. The court has consequently taken time to go through the pleadings, the testimony by the parties, the documentary evidence produced as well as the submissions and identified the following issues for determination: -

**ISSUE NO. 1 - WHO IS THE RECOGNIZED OWNER OF THE SUIT PROPERTY HEREIN.**

**ISSUE NO. 2 - ARE THERE VALID AGREEMENTS FOR SALE BETWEEN THE PLAINTIFF AND THE LAWFUL OWNERS OF THE SUIT PROPERTY**

**ISSUE NO. 3 - IS THE PLAINTIFF ENTITLED TO ANY PORTION OF THE SUIT PROPERTY**

**ISSUE NO. 4 - IS THE PLAINTIFF ENTITLED TO THE RELIEFS SOUGHT IN THE PLAINT**

## **ISSUE NO. 5 - WHO BEARS THE COSTS OF THIS SUIT**

169. The court having identified the above issues for discussion, the same will now be analysed and discussed as below: -

### **ISSUE NO. 1 - WHO IS THE RECOGNIZED OWNER OF THE SUIT PROPERTY HEREIN**

170. The first issue for determination is to identify who is the original, recognized and bonafide owner of the suit property.

171. Based on the evidence of all the parties during the hearing, it is clear that the original recognized and bonafide owner of the suit property is the deceased Kipkosgei Arap Sigor.

172. It is not disputed that the original recognized and bonafide owner of the suit property passed away before the title deed of the suit property could be processed by Tingwa Cooperative Society.

173. Nevertheless, at the time the demise of Kipkosgei Arap Sigor, the beneficiaries of his estate were Eunice Aiyobei Rotich, who was his wife, PW2 who was the son and 2 daughters Dinah and Naomi.

174. Based on the testimonies of PW2, the sister Naomi, who was PW3 and the 1<sup>st</sup> defendant, confirmed that the suit property was wholly vested in PW2.

175. In essence therefore, this court makes a finding that the suit property is lawfully and legitimately the property of PW2, William Kipkemboi Kiprono.

**ISSUE NO. 2 - ARE THERE VALID AGREEMENTS FOR SALE BETWEEN THE PLAINTIFF AND THE LAWFUL OWNERS OF THE SUIT PROPERTY**

176. The second issue for determination is whether the agreements for sale produced by the plaintiff as Plaintiff Exhibits 1 - 4, are valid or not.
177. According to the testimony of the Plaintiff and PW2, who is the bonafide owner of the suit property confirmed that all the agreements for sale were valid and were completed.
178. PW3 also acknowledged that the agreements between the plaintiff and PW2 are legitimate and valid.
179. The 1<sup>st</sup> defendant also in his re-examination confirmed that the agreements between the plaintiff and PW2 were valid.
180. This court is therefore of the considered view and finding that the plaintiff's agreements for sale produced as Plaintiff's Exhibits 1 - 4 are lawful and binding between the plaintiff and PW2.

**ISSUE NO. 3 - IS THE PLAINTIFF ENTITLED TO ANY PORTION OF THE SUIT PROPERTY**

181. The court having made a finding that the agreements for sale produced as Plaintiff's Exhibits 1 - 4 are valid and binding, then it goes without saying that the plaintiff is entitled to 13.97 Acres on the suit property.
182. However, the actual acreage of the suit property seems to be unknown.
183. According to the letters of administration, the suit property is supposed to be 20 Acres while a survey done discovered that the suit property was only 16 Acres.

184. The 1<sup>st</sup> defendant believes that the suit property was 18 Acres.
185. However, the plaintiff states that during the survey, the portion he purchased was measured as 13.75 Acres and marked as TINGUA FARM PLOT NO. 133B while the remaining portion belonging to PW2 was marked as TINGUA FARM PLOT NO. 133A measuring approx. 4.25 Acres.
186. The court is of the considered view that even though the actual acreage of the suit property has not been ascertained through a proper demarcation, the fact that the beneficial owner has sold 13.97 Acres to the plaintiff, makes it inevitable that this portion regardless of the actual size of the suit property must be transferred and be for the exclusive use by the plaintiff.

**ISSUE NO. 4 - IS THE PLAINTIFF ENTITLED TO THE RELIEFS SOUGHT IN THE PLAINT**

187. The first relief sought by the plaintiff is a Permanent Injunction against the defendants, their agents, servants or any other person acting under their authority from interfering, occupying, use, transferring or wasting the portion of 13.97 Acres within the suit property.
188. According to the testimony by the plaintiff, it is clear that the 1<sup>st</sup> defendant in particular and in company of the other defendants and/or third parties are still in occupation of the house within the suit property.
189. The plaintiff has indicated that in the agreement of 13.12.2017, the portion purchased therein included the house and other structure which had been erected therein.
190. PW2 and PW3 also confirmed that this was the position.

191. The 1<sup>st</sup> defendant in his cross-examination, accepted that the house and the other structures had been sold as part of the land in the agreement dated 13.12.2017.
192. However, based on the 1<sup>st</sup> defendant own testimony, confirmed that since the year 2014, he has been in occupation of the said house within the portion purchased under the agreement for sale dated 13.12.2017 to date.
193. Based on this admission by the 1<sup>st</sup> defendant and in the absence of any written or express permission or consent of the plaintiff, the defendants' occupation of any portion contained in the agreements for sale produced as Plaintiff's Exhibits 1 - 4, amounts to trespass and forceful retainer.
194. The only available remedy to the plaintiff is an eviction order against the defendants and a permanent injunction as sought in prayer No. (a) of the plaint.
195. Similarly, the court having made a declaration that the agreements for sale produced as Plaintiff's Exhibits 1 - 4 are legal and binding, then a declaration must issue in line with prayer No. (b) in the plaint dated 08.03.2019.

#### **ISSUE NO. 5 - WHO BEARS THE COSTS OF THIS SUIT**

196. Costs usually follow the event, and in this instance, the plaintiff has successfully prosecuted his case and is entitled to costs.

#### **CONCLUSION**

197. In conclusion, the court hereby makes the following orders in determination of this suit.

**A. THE PLAINT DATED 08.03.2019 IS MERITED.**

**B. THE DEFENCE DATED 09.05.2019 IS DISMISSED.**

**C. A DECLARATION BE AND IS HEREBY MADE THAT THE PLAINTIFF, DANIEL KIMASE KIPSOI IS THE LEGITIMATE, BENEFICIAL OWNER OF A PORTION OF LAND MEASURING 13.97 ACRES WITHIN THE PROPERTY KNOWN AS TINGWA FARM PLOT NO. 133.**

**D. THE DEFENDANTS BE AND ARE HEREBY DIRECTED TO YIELD POSSESSION, OCCUPATION AND USE OF THE 13.97 ACRES WITHIN THE PROPERTY KNOWN AS TINGWA FARM PLOT.NO.133 INCLUDING THE HOUSE AND STRUCTURES THEREIN TO THE PLAINTIFF WITHIN 90 DAYS FROM THE DATE OF THIS JUDGMENT FAILURE TO WHICH AN AUTOMATIC ORDER OF EVICTION SHALL STAND ISSUED THEREAFTER BY THE DEPUTY REGISTRAR ELC ELDORET AGAINST THE DFEENDANTS HEREIN.**

**E. THE DEFENDANTS BY THEMSELVES, THEIR AGENTS, SERVANTS AND EMPLOYEES OR ANY OTHER PERSON CLAIMING ANY PROPRIETARY RIGHTS OR INTERESTS MANANTING FROM THE DEFENDANTS'HEREIN BE AND IS HEREBY INJUNCTED FROM INTERFERRING WITH THE PLAINTIFF'S QUIET POSSESSION, USE, WASTING, ALIENATING, OWNERSHIP AND/OR ENJOYMENT OF HIS PORTION OF LAND MEASURING 13.97 ACRES WITHIN THE PORPERTY KNOWN AS TINGWA FARM PLOT NO. 133.**

**F. COSTS OF THE SUIT BE BORNE BY THE DEFENDANTS JOINTLY.**

**DATED, SIGNED & DELIVERED** Virtually at **ELDORET ELC** on this **11<sup>TH</sup> DAY OF NOVEMBER 2025.**

**EMMANUEL.M. WASHE**  
**JUDGE**

**IN THE PRESENCE OF:**

COURT ASSISTANT: Brian

PLAINTIFF: Mr. Kiboi for the Plaintiff (N/A)

DEFENDANT: Ms. Mutai for the Defendant