



Komen & 2 others v Amakalu & another (Environment and Land Appeal E053 of 2024) [2025] KEELC 7743 (KLR) (11 November 2025) (Judgment)

Neutral citation: [2025] KEELC 7743 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT AND LAND APPEAL E053 OF 2024**

EM WASHE, J

NOVEMBER 11, 2025

BETWEEN

PIUS CHELIMO KOMEN 1ST APPELLANT

**GEORGINA MBITHE MURKOMENT KITUM (AS THE ADMINISTRATORS
OF THE ESTATE OF ELIJAH MURKOMEN KITUM) 2ND APPELLANT**

**ELIZABETH JEMAIYO KIMAIYO (AS THE LEGAL REPRESENTATIVE OF THE
ESTATE OF DANIEL KIMAIYO KISANG) 3RD APPELLANT**

AND

DANIEL MBUTSA AMAKALU 1ST RESPONDENT

**JEPKEMBOI TECLA, KIPCHUMBA, CAROL & THE ORGANISATION
COMMITTEE FOR THE BURIAL OF THE EMILY KABON**

MURGO 2ND RESPONDENT

JUDGMENT

1. The 1st, 2nd and 3rd Appellants (hereinafter referred to as “the Appellants”) filed a Memorandum of Appeal dated 11.11.2024 (hereinafter referred to as “the present Appeal”) against the decision pronounced on 29.10.2024 in the proceedings known as Eldoret Chief Magistrate’s Court Elc NO. E190 OF 2023 (hereinafter referred to as “the Trial Court Judgement”) by Hon. peter Ileri, SPM (hereinafter referred to as “the Trial Court”) seeking the following Orders;-
 - a. The Appeal be allowed.
 - b. The Judgement dated and delivered on 29.10.2024 and the resultant Decree by the Honourable Senior Principal Magistrate Peter Ileri be set-aside.
 - c. This Honourable Court be pleased to make its own independent findings and conclusions on the issues raised.



- d. The Appellants be awarded the costs of this Appeal and costs of the Trial Court.
2. The grounds relied upon by the Appellants in the present Appeal are outlined as follows; -
- i. The Learned Trial Magistrate erred in law and in fact in pronouncing himself on the parcel of land L.R. No. Uasin Gishu/kimumu Scheme/1298 which was not the suit property.
 - ii. The Learned Trial Magistrate erred in law and in fact in pronouncing himself on issues not presented before the Court and submitted on as issues for determination.
 - iii. The Learned Trial Magistrate erred in law and in fact in pronouncing himself on issues the Trial Court had not itself raised as issues for determination in the suit.
 - iv. The Learned Trial Magistrate erred in law and in fact in pronouncing himself on issues not pleaded, sought for and submitted on in both the Plaintiff and the Counterclaim before the court.
 - v. The Learned Trial Magistrate erred in law and in fact in condemning the Appellants without affording them their unlimited right to fair trial.
 - vi. The Learned Trial Magistrate erred in law and in fact in pronouncing himself that the 1st Appellant be evicted from land parcel L.R. No. Uasin Gishu/kimumu Scheme/1298 when no party raised such an issue for determination.
 - vii. The Learned Trial Magistrate erred in law and in fact in condemning the 1st Appellant unheard contrary to the rules of natural justice and the spirit of the Kenyan Constitution.
 - viii. The Learned Trial Magistrate erred in law and in fact in failing to find that the title deed for land parcel L.R. Uasin Gishu/kimumu Scheme/1298 was beyond reproach having been approved by the Uasin Gishu District Land Disputes Tribunal and the award adopted as the court order/ judgment in CMCC Civil Award No. 61 of 2002.
 - ix. The Learned Trial Magistrate erred in law and in fact in overturning the decisions of a court of concurrent status yet the court was not sitting as an appeal court.
 - x. The Learned Trial Magistrate erred in law and in fact in sitting and pronouncing himself as an appellate court without such jurisdiction thus ultra vires.
 - xi. The Learned Trial Magistrate erred in law and in fact in directing that a survey be conducted on the original land parcel number Uasin Gishu/kimumu Scheme/249 contrary to the pleadings and submissions.
 - xii. The Learned Trial Magistrate erred in law and in fact in failing to appreciate the lapse of statutory timeline to challenge the title deed for parcel no. Uasin Gishu/kimumu Scheme/1298.
 - xiii. The Learned Trial Magistrate erred in law and in fact in failing to find and hold that the transaction between Oreu Memusa and Joshua Manoki and Jacob Cheboi had not been approved by the Land Control Board thus null and void.
 - xiv. The Learned Trial Magistrate erred in law and in fact in misunderstanding the facts as presented before the court thus arriving at an erroneous outcome.
 - xv. The Learned Trial Magistrate erred in law and in fact in failing to consider the totality of the evidence placed before him thus arriving as the wrong outcome.



- xvi. The Learned Trial Magistrate erred in law and in fact in rendering a decision that was/is not supported by law and facts.
3. The Appellants filed a record of Appeal dated 28.03.2025 which was duly served on the Respondents and admitted for hearing on 12.05.2025.
 4. The Appeal was canvassed by way of written submissions wherein the Appellant filed their submissions dated 04.07.2025 while the 1st Respondent filed their submissions on 21.07.2025.
 5. The Court herein is required to sit as the first Appellate court and in exercise of its jurisdiction is guided by the case of *Selle & Another vs Associated Motor Boat Co. Limited & Others* (1968) EA 123 where the Court stated as follows; -

“A first appellate court is mandated to re-evaluate the evidence before the trial court as well as the judgment and arrive at its own independent judgment on whether or not to allow the appeal. A first appellate court is empowered to subject the whole of the evidence to a fresh and exhaustive scrutiny and make conclusions about it, bearing in mind that it did not have the opportunity of seeing and hearing the witnesses first hand.”
 6. In essence, this court is required to evaluate the pleadings filed by the parties before the trial court, the evidence adduced therein, the documents tabled before it and identify the issues for determination.
 7. Most significantly, this Court sitting as the first appellate Court is required at the end of making its conclusions on the issues for determination before the Trial Court to pronounce itself as to whether the Trial Court appreciated the correct facts of the case and the applicable law and arrived at the correct decision or not.
 8. Based on the above perimeters, this court will now proceed to evaluate the pleadings, testimonies and documentary evidence placed before the trial court to be able to identify the issues for determination.

Pleadings Before The Trial Court

9. The 1st Respondent (who was the Plaintiff before the Trial Court) filed a Plaint dated 02.11.2023 against the 2nd Respondents in this Appeal (who are the Defendants in the Trial Court).
10. The 1st Respondent's reliefs against the 2nd Respondents before the Trial Court were as follows; -
 - a. A declaration that he is the sole registered owner and absolute owner of all that parcel of land known as Uasin Gshu/kimumu Schem/1296 and the 2nd Respondents were trespassers thereon and should be evicted.
 - b. The 1st Respondent also sought the 2nd Respondents by themselves, through their agents and/or servants be restrained by way of a permanent injunction from trespassing into, cultivating, utilising, remaining and or making any burial arrangements of Emily Kabon Murkomen or interring her remains or any other person on the parcel of land known as Uasin Gishu/kimumu Scheme/1296 and any structures erected thereon be demolished.
 - c. That the OCS Ainabtich/Kapsoya Police Station to assist in effecting the orders herein.
 - d. Any other reliefs the court deems fit and just in the premises.
 - e. Costs of the suit.



11. The 1st Respondent's suit before the Trial Court was served on the 2nd Respondents who filed a Defence and Counterclaim dated 14.11.2023.
12. In the 2nd Respondents' Statement of Defence dated 14.11.2023, the 2nd Respondents denied the allegation that they were in the process of planning to bury the late Emily Kabon Murkomen on the Plaintiffs' property known as Uasin Gishu/kimumu Scheme/1296 (hereinafter referred to as "the suit property.")
13. The 2nd Respondents pleaded that the suit property had been purchased by the late Emily Kabon Murkomen's husband known as Joshua Manoki Cheboi from the original owner who is the late Oreu Memura.
14. On 29.02.1989, the late Joshua Manoki Cheboi jointly purchased 1 ½ Acres with Jacob Kipsang Cheboi from the original property known as Uasin Gishu/kimumu Scheme/249 owned by the late Oreu Memura.
15. The 2nd Respondents contend that the late Emily Kabon Murkomen and her husband Joshua Manoki Cheboi took possession of the 1 ½ Acres purchased from parcel Uasin Gishu/kimumu Scheme/249 in the year 1989 and have been in occupation to date.
16. The 2nd Respondents further intimated in their pleadings that other family members and siblings have been buried on the 1 ½ Acre portion purchased within parcel no. Uasin Gishu/kimumu Scheme/249.
17. In essence therefore, the 2nd Respondents insisted that the portion of land that Emily Kabon Murkomen was to be interred was the property which her husband and other children had been buried.
18. The 2nd Respondents stated that if the 1st Respondent had been issued any title deed to the 1 ½ Acre portion within parcel no. Uasin Gishu/kimumu Scheme/249 and registered the same as the suit property, then the said acquisition had been done through a corrupt scheme, fraud and misrepresentation occasioned by the 1st Respondent and his late mother Josina Khaeri.
19. The 2nd Respondents outlined four particulars of the alleged corrupt scheme, fraud and misrepresentation perpetuated by the 1st Respondent and his mother Josina Khaeri at paragraph 11 of the Defence.
20. In concluding the 2nd Respondent's defence, the 1st Respondent's claim of ownership over the suit property was challenged as fraudulent, unlawful and therefore null and void.
21. In addition to the above, the 2nd Respondent filed a counterclaim against the 1st Respondent on the following grounds:
 - i. The 2nd Respondents pleaded that the late Emily Kabon Murkomen and her husband Josiah Manoki Cheboi bought the suit property from the original owners known as Oreu Memusa.
 - ii. Upon the death of Oreu Memusa the Original Owner, the suit property known as Uasin Gishu/kimumu Scheme/249 underwent succession vide Eldoret HCC P&A Succession Cause No. 155 of 2005.
 - iii. That according to the 2nd Respondent, the 1st Respondent's mother, Josinah Khaeri, through fraudulent means, duped and coerced the administrator of the estate of Oreu Memusa who was Christine Jepkemboi Oreu to subdivide, sign and transfer the original property known as parcel no. 249 in the following manner:-
 - a. Uasin Gishu/kimumu Scheme/1295 - Daniel Mbutsa Amakalu



- b. Uasin Gishu/kimumu Scheme/1296 - Josina Khaeri
 - c. Uasin Gishu/kimumu Scheme/1297 - Daniel Mbutsa Amakalu
 - d. Uasin Gishu/kimumu Scheme/1298 - Francis Kulavi
- iv. The 2nd Respondents, upon inquiring from their late mother Emily Kabon Murkomen on the manner in which the administrator Christine Jepkemboi Oreu had subdivided and transferred the original property known as Parcel no. 249, their mother Emily Kabon Murkomen informed them that the 1st Respondent's mother is the one who had colluded through corrupt schemes to unlawfully register and transfer the subdivision to their exclusion.
 - v. The 2nd Respondents upon realising this unfortunate turn of events filed a case known as Eldoret CM ELC E763 of 2021.
 - vi. The 2nd Respondents therefore outlined various particulars of fraud, misrepresentation and coercion on the part of the 1st Respondent in acquiring the registration of the suit property.
 - vii. In conclusion, the 2nd Respondents sought for the following orders in their counterclaim:
 - a. A declaration that the acquisition and transfer of the title known as Uasin Gishu/kimumu Scheme/1296 to the Plaintiff to the 1st Respondent is null and void.
 - b. An injunction restraining the 1st Respondent, his relatives, servants, assignees from interfering with the burial of the deceased Emily Kabon Murkomen, entering, trespassing, encroaching on the parcel of land known as Uasin Gishu/kmumu Shceme/1296 or in the alternative the 2nd Respondents do proceed to bury the remains of Emily Kabon Murkomen on the suit property hereinabove.
 - c. Cancellation of the tile in the name of the 1st respondent on the land known as Uasin Gishu/kimumu/1296
 - d. Costs of the suit and counterclaim.
 - e. Any other relief that this court may deem fit and just to grant.
22. Pursuant to an application dated 22nd April 2024, the Appellants joined in the suit as interested parties.
23. The Appellants in their supporting Affidavit sworn on 22nd April, 2024 stated as follows:
- i. That the 1st Appellant had instituted the trial court proceedings seeking declaratory and eviction orders on anybody occupying Uasin Gishu/kimumu Shceme/1296.
 - ii. The Appellants confirmed that the 1st Respondent's property known as parcel no. Uasin Gishu/kimumu Scheme/1296 was a subdivision emanating from the mother title known as parcel no. Uasin Gishu/kimumu Scheme/249.
 - iii. The Appellant pleaded and admitted that they were the registered owners of the property known as Uasin Gishu/kimumu Scheme/1298.
 - iv. The Appellants referred to a site visit conducted on 18th April, 2024 which recommended that the original property Uasin Gishu/kimumu Scheme/249 should be re-surveyed.
 - v. The Appellants stated that this recommendation by the Trial Court was done without an opportunity for them to comment on it keeping in mind that they had purchased Uasin Gishu/



kimumu Scheme/1297/1298 and 1299 from the original registered owner, Oreu Memusa or his administrator.

- vi. The Appellants therefore objected to any re-survey of the original property known as Uasin Gishu/kimumu Scheme/249 without their participation as it would directly infringe on their rights as the owner of parcel no. Uasin Gishu/kimumu Scheme/1298.
 - vii. It was on this basis that the Appellant sought to be joined as interested parties to this suit.
24. Upon joinder of the interested parties, they filed a Third Party Defence dated 15th May, 2024 on the following basis:
- i. The Appellants denied the 1st Respondent's ownership of the suit property known as Uasin Gishu/kimumu Scheme/1296 and put him to strict proof.
 - ii. The Appellants reiterated that the original property being parcel no. Uasin Gishu/kimumu Scheme/249 belonged to the late Oreu Memusa.
 - iii. The Appellants stated that the original property parcel no. Uasin Gishu/kimumu Scheme/249 was indeed subdivided during succession and created the properties known as Uasin Gishu/kimumu Scheme/1294-1300.
 - iv. The Appellants pleaded that they were the recipients of 3 subdivisions namely Uasin Gishu/kimumu Scheme/1297, 1298 and 1299 registered in the name of Elijah Murkomen Kitum, Pius Jelimo Komen and Daniel Kimaiyo Kipsang respectively.
 - v. The Appellants proceeded to confirm that the three properties were registered in the names of their respective owners on 22nd October, 1999.
 - vi. The Appellants therefore despite being aware of the demise of Emily Kabon Murkomen, were not involved in the burial arrangements being undertaken by the 2nd Respondents.
 - vii. The Appellants expressly pleaded that they had no interest whatsoever in the 1st Respondent's property known as Uasin Gishu/kimumu Scheme/1296.
 - viii. The Appellants' contention was that they should be involved in the re-survey of the mother title known as Uasin Gishu/kimumu Scheme/249 if it is so ordered.
 - ix. In conclusion, the Appellants were of the view that they had no dispute in the matter so long as the orders issued would not touch on their respective parcels of land.
25. In support of the Third Parties Defence, the Appellant filed two witness statements dated 15th June, 2024 by Georgina Mbithe Murkomen Kitum and Elizabeth Jemaiyo Kimaiyo and a third witness statement dated 15th May, 2024 by Pius Chelimo Komen.

1st Respondent's Evidence Before The Trial Court

26. The 1st Respondent's case before the trial court begun on 31st July, 2024 with the 1st Respondent being marked as PW1.
27. The 1st Respondent introduced himself as a resident of Kimumu area within Uasin Gishu County and a retired officer of the Municipal Council of Eldoret.
28. The 1st Respondent confirmed that he had prepared and filed a witness statement dated 2nd November, 2023 which he adopted as his evidence-in-chief.



29. In support of his testimony, the 1st Respondent produced a Title deed of his suit property known as Uasin Gishu/kimumu Scheme as Plaintiff Exhibit 1.
30. Thereafter he produced a green card for Uasin Sgishu/kimumu Scheme/249 in the name of Oreu Memusa as Plaintiff exhibit 2.
31. The 1st Respondent informed the Trial Court that his mother had purchased land from Oreu Memusa although he admitted that he did not have the purchase documents.
32. However, the wife of Oreu Memusa known as Christine Jepkemboi Oreu was aware that the 1st Respondent's mother had purchased land from her late husband Oreu Memusa.
33. Upon the demise of Oreu Memusa, the wife, Christine Jepkemboi Oreu transmitted the portion of land purchased by the 1st Respondent's mother and is the land contained in the property known as Uasin Gishu/kimumu Scheme/1296.
34. The proceedings that facilitated the creation and transmission of the 1st Respondents property known as Uasin Gishu/kimumu Scheme/1296 was Eldoret HC P&A No. 155 of 2005.
35. The 1st Respondent produced the Certificate of Confirmation of Grant emanating from Eldoret HC P&A No. 155 of 2005 as Plaintiff exhibit 4.
36. After the demise of the 1st Respondent's mother, the 1st Respondent filed a succession cause before the Eldoret Chief Magistrate's Court known as CMCC P&A No. 108 of 2020 and the certificate of confirmation of Grant therein was produced as Plaintiff exhibit 5.
37. The 1st Respondent then produced the demand letter issued to the 2nd Respondent as Plaintiff exhibit 6.
38. The 1st Respondent confirmed to the Trial Court that the original property known as Uasin Gishu/kimumu Scheme/249 had been subdivided into various portions namely: -
 - Uasin Gishu/kimumu Scheme/1294 in the name of the 1st Respondent
 - Uasin Gishu/kimumu Scheme/1295 also in the name of the 1st Respondent
 - Uasin Gishu/kimumu Scheme/1296 belonging to the late Josina Khaeri
 - Uasin Gishu/kimumu Scheme/1297 belonged to Elijah Kiptum
 - Uasin Gishu/kimumu Scheme/1298 belonged to Pius Kiptum
 - Uasin Gishu/kimumu Scheme/1299 to Daniel Kipsaina
 - Uasin Gishu/kimumu Scheme/1300 to Francis Kulavi
39. However, in the year 2005, the 1st Respondent discovered that the 2nd Respondents were occupying the property known as Uasin Gishu/kimumu Scheme/1296 belonging to his late mother Josinah Khaeri and which necessitated the surveyors to go and re-survey the boundaries.
40. The 2nd Respondents on being informed to vacate the property known as Uasin Gishu/kimumu Scheme/1296 filed a case before the Chief Magistrates' Court ELC 63 of 2021 which is still pending before that court.
41. The 1st Respondent insisted that he purchased 1 Acre through an agreement for sale dated 30th July, 1989 which he produced as Plaintiff's exhibit 7.



42. Later on, the 1st Respondent bought 3 ¼ Acres through an agreement dated 19th November, 1998 which was produced as Plaintiff's exhibit 8.
43. The 1st Respondent then produced the mutation of the property known as Uasin Gishu/kimumu Scheme/249 with the 7 subdivisions created therein.
44. The 1st Respondent confirmed that nobody objected to his administration in the proceedings known as P&A No. 56 of 2005 as well as the original succession No. 108 of 2020.
45. The 1st Respondent therefore urged the Trial Court to order that the 2nd Defendant not to bury their mother on parcel no. Uasin Gishu/kimumu Scheme/1296.
46. The 1st Respondent also asked the Trial Court to order the 2nd Respondent to vacate the suit property and ensure the police enforce the order.
47. The 1st Respondent denied the allegation that the 2nd Respondent's mother sold 1 Acre only to him.
48. The 1st Respondent referred to the Agreement for sale produced before the Trial Court which indicated that he had purchased 3 ½ acres.
49. The 1st Respondent insisted that he had seen the statement of Jacob Kipsang Cheboi who claimed to have purchased 2 Acres but sold ¾ of an acre to Elijah Maiyo.
50. The 1st Respondent stated that the Appellant could have bought land from Oreu Memusa and they were given their own title deeds before he died.
51. Consequently, therefore, the late Oreu Memusa's wife knew the people who had finished paying and duly subdivided the original property known as Uasin Gishu/kimumu Scheme/249 in accordance to how people had purchased the land.
52. On cross-examination by the 2nd Respondents, the 1st Respondent stated that he inherited Uasin Gishu/kimumu Scheme/1296 from his late mother.
53. The 1st Respondent however did not have the agreement for sale between his late mother and Oreu Memusa.
54. Be that as it may, he insisted that his late mother took possession of the property known as Uasin Gishu/kimumu Scheme/1296 in the year 1989 and lived there until her death in 2010.
55. Upon her death, the 1st Respondent's mother was buried on the 1st Respondent's parcel of land.
56. Nevertheless, the 1st Respondent's mother had occupation of the suit property and built a 2 bedroomed house and was cultivating on the same.
57. In the same suit property, there was the family of one Joshua Manoki who was staying on the lower side because the boundaries had not been established.
58. The 1st Respondent insisted that he owns Uasin Gishu/kimumu Scheme/1294 measuring 0.08 of a hectare and Uasin Gishu/kimumu Scheme/1293 measuring 0.38 Ha making a total of 1.15 Ha.
59. The 1st Respondent then referred to the certificate of confirmation in Eldoret HC P&A No. 155 of 2005 which shows that he was a beneficiary of Uasin Gishu/kimumu Scheme/1294 & 1295 and similarly that Josina Khaeri was also a purchaser.
60. The 1st Respondent stated that he did not file Eldoret HCC P&A No. 155 of 2005 and was not involved in issues of the other buyers.



61. After Eldoret HC P&A No. 155 of 2005 was completed, the late Josinah Khaeri was issued with a title deed of the suit land on 2nd August, 2010 which was again re-issued on 30th June, 2015.
62. The reason why the title deed of the late Josinah Khaeri was re-issued was because it had a spelling mistake.
63. The 1st Respondent indicated that his brother known as DC died while living on Uasin Gishu/kimumu Scheme/1296 but was buried on the boundaries between Uasin Gishu/kimumu Scheme/1298 & 1299 because they did not know the boundaries.
64. The 1st Respondent admitted that Uasin Gishu/kimumu Scheme/1298 belonged to Pius Komen while Uasin Gishu/kimumu Scheme/1299 belonged to Pius Kimaiyo Sang.
65. The 1st Respondent admitted that the demand letter written to the 2nd Respondent was done by the Chief in Kakamega, despite the fact there is a chief in Kimumu.
66. The 1st Respondent admitted that Josiah Manoki who died in 1994 was buried on the suit property, Uasin Gishu/kimumu Scheme/1296 because the boundaries had not been shown to the beneficiaries.
67. The 1st Respondent sought to clarify that he occupies the properties known as Uasin Gishu/kimumu Scheme/1294 and 1295.
68. The 1st Respondent further stated that although he owns Uasin Gishu/kimumu Scheme/1296, it is currently occupied by Josiah Manoki's Family.
69. Plot No. Uasin Gishu/kimumu Scheme/1297 is occupied by Jacob Cheboi, Uasin Gishu/kimumu Scheme/1298 is occupied by Pius Kimaiyo, Uasin Gishu/kimumu Scheme/1299 belong to Daniel Kimaiyo who has since passed away but his family is in occupation.
70. The last property known as Uasin Gishu/kimumu Scheme/1300 belonged to Lukari but he sold to Dorcas and Kiema.
71. The 1st Respondent stated that based on the green card of the suit property, the last entry was made on 30th June, 2015 but his name is not on the same.
72. The 1st Respondent reiterated that he would like an eviction order to issue against the 2nd Respondent because he was not in occupation of the land and would like to take possession.
73. On cross-examination by the Appellants, the 1st Respondent informed the Court that his Kenyan Identification Card was 1229871.
74. The 1st Respondent stated that the land in dispute was LR.NO.Uasin Gishu/kimumu Scheme/1296 which he had produced the Title Deed issued on 27.04.2023.
75. The 1st Respondent admitted that the suit property emanated from a sub-division of LR.NO.Uasin Gishu/kimumu Scheme/249 which was in the name of the late Oreu Memusa.
76. The sub-division of the original land known as LR.NO.Uasin Gishu/kimumu Scheme/249 was necessitated by the fact that the late Oreu Memusa had sold portions of it to other people.
77. According to the 1st Respondent, the sub-divisions known as LR.NO.Uasin Gishu/kimumu Scheme/1297,1298 And 1299 border the suit property.
78. The 1st Respondent stated that though LR.NO.Uasin Gishu/kimumu Scheme/1297 belongs to Elijah Kiptum, the same is occupied by Jacob Cheboi.



79. On the other hand, the property known as Uasin Gishu/kimumu Scheme/1298 is registered in the name of Pius Chelimo Komen but on the ground is occupied by Jennifer Nasambu who is a sister in law to the 1st Respondent.
80. The property known as Uasin Gishu/kimumu SchemeN/1299 is registered in the name of Daniel Kimaiyo Kipsang but on the ground it is also occupied in portion by Jennifer Nasambu.
81. The 1st Respondent averred that Jennifer Nasambu who is the sister in law was to reside on the suit property which was owned by his deceased mother but due to the absence of clear boundaries, she built her home in the other sub-divisions.
82. The 1st Respondent informed the Trial Court that he was making arrangements to have the said Jennifer Nasambu occupy on the suit property because he did not have any interest in the properties known as Uasin Gishu/kimumu Scheme/1297,1298 and 1299 belonging to the Appellants herein.
83. The 1st Respondent acknowledged and recognised the Appellants as bona fide purchasers of their portions of land and his immediate neighbours.
84. The 1st Respondent concluded his cross-examination by stating that he had no complaint against the Appellants herein.
85. On re-examination, the 1st Respondent reiterated that he was issued with a title deed to the suit property in the year 2023 but had not acquired the title in his name in the year 2021.
86. The 1st Respondent confirmed that the 2nd Respondents had initiated the legal proceedings known as Eldoret CM ELC NO. 763 OF 2021 but the same had not been concluded.
87. The 1st Respondent disclosed that he discovered the 2nd Respondents were occupying the suit property in the year 2015.
88. The 1st Respondent reiterated that his late mother acquired the suit property through transmission by the Estate of the late Oreu Memusa through the legally appointed Administrators.
89. The 1st Respondent completed his re-examination by seeking the Trial Court to grant the prayers sought in the Plaint filed therein.
90. At the close of the 1st Respondent's testimony, the 1st Respondent was discharged from the witness box and closed their case.

Testimony & Evidence By The 2nd Respondent Before The Trial Court.

91. The 2nd Respondent's case began with the testimony of Christine Jepkemboi who was marked as DW 1.
92. DW 1 introduced herself as a resident of Cheptiret and a farmer by occupation.
93. DW 1 stated that he had prepared a witness statement dated 28.11.2023 which she then adopted as her evidence in chief.
94. DW 1 admitted being aware that the family of Emily Kabon had purchased land from their father.
95. DW 1 confirmed that it was his husband Oreu Memura that had sold the land.
96. According to DW 1, the portion of land purchased was 1.5 acres through an Agreement For Sale dated 29.02.1989 which she produced as Defence Exhibit 1.



97. After the purchase of the portion of land, possession and occupation was handed over to the purchasers.
98. DW 1 further disclosed that the late Oreu Memura sold other portions of land to other people.
99. According to DW 1, the 1st Respondent's deceased mother was in occupation of a different portion of land to those purchased by the 1st Respondent.
100. DW 1 could not however identify the number of the sub-division which the late Joshua Manoki was buried.
101. DW 1 then denied that allegation that the estate of the late Oreu Memura had been administered in Court.
102. According to DW 1, the title to the Original property known as LR.NO.Uasin Gishu/kimumu Scheme/249 had been deposited with the chief.
103. However, one day, the 1st Respondent collected the title deed to the original land known as Uasin Gishu/kimumu Scheme/249 without the consent of the family.
104. DW 1 insisted that the late EMILY KABON had her own portion of land and that is where she should be buried.
105. DW 1 denied ever processing any titles for sub-division from the property known as Uasin Gishu/kimumu Scheme/249.
106. On cross-examination by Counsel for the 1st Respondent, DW 1 confirmed that her name was Christine Jepkemboi of Kenyan Identification Card No. 6674294.
107. DW 1 admitted that one Jackson Barsurai was a brother to her late husband Oreu Memura.
108. DW 1 stated that Jackson Barsurai is now deceased.
109. DW 1 did inform the Trial Court that she was aware a succession matter had been filed in the High Court relating to the estate of the late Oreu Memura but she did not participate in it.
110. DW 1 nevertheless admitted that the late JOsina Khaheri had purchased 0.5 acres from the original title known as Uasin Gishu/kimumu Scheme/249.
111. DW 1 also admitted that the 1st Respondent had purchased his own portion of land from the late Oreu Memura although the Agreement For Sale had been burnt in their house.
112. In addition to the two purchasers hereinabove, the late Oreu Memura had sold land to other persons including Francis Kulari who had purchased 1 acre.
113. According to DW 1, the late Oeru Memusa had processed the titles of Kiptum, Komen and another person before his demise.
114. DW 1 could not however identify the numbers of the sub-divisions that were processed by the late Oreu Memura before his demise.
115. DW 1 could not also identify the number of the sub-division that the late Josina Khaheri had purchased and/or was occupying or the one occupied by Emily Kabon.
116. DW1 stated that she was not present when the husband sold the land and it was possible that the husband had sold more land than existed.



117. DW1 nevertheless confirmed that Emily Kabon had built on a portion of the land before the subdivision had been done.
118. On further cross-examination by the Appellant's Advocate, DW1 reiterated that she was the widow of the late Oreu Memusa but did not know the number of the parcel in dispute.
119. DW1 informed the Trial Court that she was only called to testify and assist Emily Kabon.
120. DW1 informed the Trial Court that some portions were sold to other people by her late husband in her absence although she knew the Appellants herein.
121. DW1 specifically stated that all the Appellants lawfully purchased their portions of land and the late Oreu Memusa had given them their titles before his demise.
122. DW1 went further to state that Emily Kabon did not have any rights to infringe on the Appellant's properties.
123. DW1 averred that she no longer stays on the suit property and the house that had been built was demolished.
124. According to DW1, Emily Kabon, who is the wife of Joshua Manoki should be buried where her husband was buried.
125. DW1 insisted that the title deed of Plot No. Uasin Gishu/kimumu Scheme/249 was kept by the chief after his demise.
126. On re-examination, DW1 reiterated that the title deed of Uasin Gishu/kimumu Scheme/249 had been deposited with the area chief but the 1st Respondent went and collected it without the family's consent.
127. According to DW1 Emily Kabon had her own portion of land and Josina Khaeri had her own Portion of land.
128. At the end of this re-examination, DW was discharged from the witness box.
129. The second witness called by the 2nd Respondents before the trial court was Jacob Kisang Cheboi who was marked as DW2.
130. DW2 introduced himself as a resident of Kimumu who engaged in farming.
131. Thereafter, DW2 adopted his statement as his evidence-in-chief.
132. DW2 informed the court that he knew Emily Kabon.
133. DW2 stated that they bought a piece of land with one Joshua Manoki Cheboi who was the husband to Emily Kabon from the late Oreu Memusa.
134. According to DW2, they bought a ½ Acre portion of the original property known as Uasin Gishu/kimumu Scheme/249 around 29th February, 1989.
135. Later on, DW2 together with the late Joshua Manoki purchased another ½ Acre portion making it 2 Acres.
136. However, it was difficult to pay for the ½ Acre because they only paid KShs.2,000/- leaving KShs. 23,900/-.
137. Consequently, therefore, the second ½ Acre was returned to the late Oreu Memusa but he could still not get somebody to purchase the said portion.



138. DW2 admitted to selling 0.25 of an Acre to Elijah Kiptum.
139. DW2 confirmed that when they were purchasing the land, they found the 1st Respondent and his mother Josina Khaeri on the property.
140. DW2 clarified that by the time Elijah Kiptum and his friends were entering into the original property known as Uasin Gishu/kimumu Scheme/249, the 1st Respondent and the late Josinah Khaeri were already on the land.
141. DW2 nevertheless denied that Joshua Manoki was occupying the portion belonging to Josinah Khaeri.
142. DW2 stated that when Josinah Khaeri died, she was buried on the 1st Respondent's property, while the 1st Respondent's brother was buried on the portion owned by Josinah Khaeri.
143. DW2 was therefore shocked to learn that the 1st Respondent had restrained them from burying Emily Kabon on her portion of land.
144. On cross-examination by the 2nd Respondent's Counsel, DW2 stated that their agreements for sale indicated that they were buying 1 ½ Acres only.
145. The ½ Acre had been purchased through a second agreement with the late Oreu Memusa.
146. DW2 was of the view that it is the ½ Acre in the second agreement that was sold to Elijah Kiptum and his friends.
147. However, DW2 did not have any agreement for sale of the ½ Acre to Elijah Kiptum and his friends.
148. Nevertheless, DW2 confirmed that the late Oreu Memusa had issued titles to Elijah Kiptum and his friends.
149. DW2 denied knowledge of any mutation of the property known as Uasin Gishu/kimumu Scheme/249 or the sizes of the mutation.
150. DW2 admitted that they had nothing to show that they had paid for any portion of land on the original property known as Uasin Gishu/kimumu Scheme/249.
151. Consequently, the wife of the late Oreu Memusa did not involve them in the succession proceedings.
152. On cross-examination, DW2 stated that he had come to testify in support of the family of Emily Kabon.
153. However, he was of the considered view that Emily should be buried next to her husband Joshua Manoki.
154. DW2 stated that he was not familiar with the suit property but only knew he was in occupation of a portion of Uasin Gishu/kimumu Scheme/249.
155. DW reiterated that he had bought 1 ¼ Acres with Joshua Manoki
156. Out of the 1 ¼ Acres, they sold ¼ out of the one half to the Appellants herein.
157. DW2 denied knowledge of one Daniel Kimaiyo and Pius Kimaiyo Komen and only stated that he knew Elijah Kiptum.
158. DW2 referred to the proceedings known as Civil Award No. 61 of 2009 and confirmed that he was one of the interested parties but they lost the case.



159. DW2 stated that he is aware he resides on Uasin Gishu/kimumu Scheme/1297 which belongs to Elijah Kiptum and he had no objection to vacating the same.
160. DW2 insisted that he had an agreement for sale but the administrators of the estate of Oreu Memusa did not involve him in the succession proceedings for reasons unknown to him. Consequently, DW2 simply asked the court to allow the late Emily Kabon to be buried where her husband had been buried.
161. On re-examination DW2 stated that Joshua Manoki died in 1994 and was buried on the land.
162. DW2 denied any involvement in Civil Award No. 61 of 2002 or subsequent involvement in the succession of Oreu Memusa.
163. DW2 stated that he was not involved in any subdivision of the mother title known as Uasin Gishu/kimumu Scheme/249.
164. In conclusion, DW2 admitted that he had no title deed over any portion of land.
165. At the end of the re-examination, DW2 was discharged from the witness box.
166. The third witness called by the 2nd Respondents was Tom Shibiriti Shangara who was marked as DW3.
167. DW3 introduced himself as a resident of Kimumu and a farmer.
168. DW3 stated that he has been staying in Kimumu since 1966 and is a village elder.
169. DW3 adopted his witness statement as his evidence-in-chief.
170. On cross-examination by the 1st Respondent's counsel, DW3 stated that he knew Emily Kabon and her late husband but was not a witness when they were purchasing their portion of land.
171. DW3 stated that he does not know the consideration paid and how they came to reside on a portion of Uasin Gishu/kimumu Scheme/249.
172. DW3 stated that the property known as Uasin Gishu/kimumu Scheme/249 had been subdivided by the owner and a surveyor and he was not involved in the subdivision.
173. On re-examination, DW3 stated that he had seen Emily Kabon and the husband residing on the original property known as Uasin Gishu/kimumu Scheme/249 but at the time, the land had not been subdivided.
174. At the end of the re-examination, DW3 was discharged from the witness box.
175. The 2nd Respondent's fourth witness was Elijah Masiwai Cheruiyot who was marked as DW4.
176. DW4 stated that he was a resident of Kimumu and the assistant chief of the area.
177. Thereafter, DW4 adopted his witness statement as his evidence in chief.
178. According to DW4, the suit property belongs to Joshua Manoki.
179. DW4 stated that Joshua Manoki and Jacob Cheboi bought 1 ½ acres from the late Oreu Memusa.
180. The understanding was the family of Joshua Manoki would occupy 0.7 Acres while that of Jacob would occupy the other 0.7 Acres.
181. Joshua Manoki died and was buried on the 0.7 Acre portion now known as Uasin Gishu/kimumu Scheme/1296.



182. According to DW4, the 1st Respondent's mother Josinah Khaeri also had a portion on the original land known as Uasin Gishu/kimumu Scheme/249 which borders the land owned by Kulavi.
183. According to DW4 the late Josina Khaeri never stayed on Uasin Gishu/kimumu Scheme/1296.
184. DW4 denied knowledge of writing a letter in regards to the estate of Josinah Khaeri.
185. Nevertheless, DW4 admitted knowing Pius Komen, whose land was neighbouring that of Josinah Khaeri.
186. According to DW4, by the time Pius Komen was building his rental houses, Josinah Khaeri was already in occupation of her portion of land.
187. It was only after the demise of Emily Kabon that DW4 came to discover the dispute relating to the suit property.
188. In concluding his evidence in chief, DW4 indicated that Emily Kabon should be buried where her husband was buried.
189. On cross-examination by the 1st Respondent's Counsel, DW4 stated that he was appointed assistant chief in 1996.
190. DW4 stated that he knew the assistant chief known as Komen.
191. DW4 admitted that he was not present when the owner of Uasin Gishu/kimumu Scheme/249 was selling the same to people.
192. DW4 however insisted that according to the mutation of Uasin Gishu/kimumu Scheme/249, the late Emily Kabon Occupies the suit property.
193. DW4 stated that the suit property is 0.2 Ha which is just less than ½ an Acre
194. DW4 denied knowledge that any portion of the suit property was ever sold out, and if it was, he did not participate in the sale.
195. DW4 stated that he was not aware of any dispute between the late Emily Kabon and the first Respondent.
196. DW4 was not aware of any legal proceedings that had been initiated against the late Emily Kabon by the 1st Respondent before she dies.
197. According to the proceedings in Eldoret ELC 763 of 2021, the party who had filed was Emily Kabon Murkomen against the 1st Respondent.
198. DW4 stated that he was not aware of this case.
199. DW4 did not have any objection for letters of administration of the late Josinah Khaeri being issued by another chief because she was a Kenyan and she was staying on the land.
200. DW4 again denied any involvement in the subdivision of the mother title Uasin Gishu/kimumu Scheme/249 and did not know who had the title.
201. DW4 completed his cross-examination by saying that he could not challenge the title deeds held by different people on the land.
202. On re-examination, DW4 stated that the late Joshua Manoki and another person had bought 1 ½ Acre and shared it.



203. DW4 averred that he was not aware the 1st Respondent had a title to the suit property and had only seen it in court.
204. At the end of the re-examination, DW4 was discharged from the witness box.
205. The 2nd Respondent's fifth witness was one Naomi Jepkemboi who was marked as DW5.
206. DW5 introduced herself as a resident of Kimumu and business lady by occupation.
207. DW5 informed the Trial Court that she was the daughter of Joshua Manoki and Emily Kabon
208. According to DW5 her late father Joshua Manoki purchased the land in 1989 and was buried on the suit property when he died.
209. DW3 confirmed that she knew the 1st Respondent to be her neighbour.
210. The 1st Respondent's mother, Josinah Khaeri had her own portion where she stayed with another son called Francis and his wife Jennifer.
211. When Josinah Khaeri died, she was buried on the 1st Respondent's portion of land.
212. Later on, Francis, Josinah's other son passed on and was buried on his mother's portion.
213. DW5 testified that she was unaware of the succession cause filed in 2005.
214. However, no one had ever evicted them from the suit property.
215. DW5 acknowledged that her late mother had sued the 1st Respondent when she realised that he had a title to the suit property.
216. DW5 therefore asked the Trial Court to cancel the title issued to the 1st Respondent over the suit property and allow them to bury their mother Emily Kabon on the suit property,
217. On cross-examination by the 1st Respondent's counsel, DW5 admitted that they recently learnt that they were occupying the suit property.
218. DW5 further admitted that they did not know the actual portion of land they were occupying or the acreage.
219. DW5 conceded that she was not there when her late mother purchased the portion of land on which their father was buried.
220. DW5 stated that the case filed by her mother against the 1st Respondent was in 2021 before she died in 2023.
221. DW5 admitted that once a party purchases land they should follow up for a title deed.
222. DW5 stated that they entered into the original parcel known as Uasin Gishu/kimumu Scheme/249 based on an agreement made in 1989.
223. However, DW5 did not have any land control board consent issued by the late Oreu Memusa for the portion of land they had purchased.
224. DW5 stated that there has never been any challenge as regards the distribution of the estate of Oreu Memusa
225. On further cross-examination by the Appellants' counsel, DW5 stated that she was born in 1986 and her father was Joshua Manoki



226. At the time of purchase in 1989, DW5 was a minor and did not know the terms and conditions of the sale.
227. DW5 stated that they had no title deed to the property.
228. DW5 confirmed that the original property Uasin Gishu/kimumu Scheme/249 had been subdivided and the suit property was one of the subdivisions.
229. DW5 reiterated that her father had been buried on the suit property.
230. On re-examination, DW5 denied knowledge of any succession relating to Oreu Memusa as regards the property known as Uasin Gishu/kimumu Scheme/249.
231. DW5 confirmed that her parents did not get any title deed on the portion of land they occupied and she had not commenced any process to get the title deed.
232. At the end of the re-examination the 2nd Respondents closed their case before the trial court.

Appellants' Testimony And Evidence Before The Trial Court

233. The Appellants' first witness before the trial court was one Pius Chelimo Komen who was marked as Interested Party (IP1).
234. IP1 sought to rely on his witness statement and adopted it as his evidence-in-chief.
235. Upon adopting his statement, IP1 produced exhibits 1-12 in support of their case.
236. On cross-examination by counsel for the 2nd Respondent IP1 testified that his property was Uasin Gishu/kimumu Scheme/1298 which he bought in 1999.
237. IP1 confirmed expressly that he had no interest in the suit property.
238. However, later on, he came to learn that the 1st Respondent and his mother and Joshua Manoki had bought land on the original Uasin Gishu/kimumu Scheme/249.
239. IP1 nevertheless admitted that the 1st respondent's sister in law had built a house on his portion of land and she was aware of this fact.
240. IP1 could not state when Josina Khaeri and her daughter in law had encroached on Uasin Gishu/kimumu Scheme/1298.
241. IP1 stated that the property known as Uasin Gishu/kimumu Scheme/1298 is between Daniel Kisang and Elijah Kiptum's land.
242. On further cross-examination by counsel for the 1st Respondent, IP1 confirmed knowledge of the letter dated 2nd March, 2015.
243. According to the said letter, the subdivision known as Uasin Gishu/kimumu Scheme/1294 and 1295 belonged to the 1st respondent.
244. The subdivisions known as Uasin Gishu/kimumu Scheme/1296 belongs to Josinah Khaeri, Uasin Gishu/kimumu Scheme/1297 to Elijah Kiptum, Uasin Gishu/kimumu Scheme/1298 to Pius Komen Uasin Gishu/kimumu Scheme/1299 to Daniel Kisang and Uasin Gishu/kimumu Scheme/1300 to Francis Kunari.
245. IP1 confirmed that this letter was written by the assistant chief and addressed to the surveyors coming to subdivide Uasin Gishu/kimumu Scheme/249.



246. IP1 confirmed that after the mutation was drawn everybody was shown their boundaries including the suit property which was owned by Josinah.
247. On re-examination IP1 confirmed that he is in occupation of his property, save for the portion occupied by the 1st Respondent's sister-in-law.
248. IP1 informed the court that the 1st Respondent's sister-in-law had promised to vacate the land when called upon.
249. In concluding his evidence, IP1 stated that he was in agreement with the letter dated 2nd March, 2015 and had obtained his title deed from the late Oreu Memusa himself.
250. At the end of this re-examination the IP1 was discharged from the witness box and the Appellants closed their case.
251. Thereafter, parties were directed to file their written submissions wherein the 1st Respondent duly filed his submissions dated 16th September, 2024; the 2nd Respondents filed their submissions dated 13th September, 2024 and the Appellants filed their submissions dated 17th September, 2024.
252. The Court has taken time to peruse the pleadings by the parties herein, the testimonies and documentary evidence produced, the detailed submission by the parties and identifies the following issues for determination: -
- Issue No. 1 – Who Was The Lawful Registered Owner Of The Property Known As Uasin Gishu/kimumu Scheme/249
- Issue No. 2 – What Were The Subdivisions That Were Created From The Original Property Known As Uasin Gishu/kimumu Scheme/249
- Issue No. 3 – Who Is The Registered Owner Of The Suit Property
- Issue No. 4 – Was The Registration Of The Suit Property In The Name Of The 1st Respondent Done Through Corrupt Scheme, Fraud Or Misrepresentation Of Facts
- Issue No. 5 – Is The 1st Respondent Entitled To The Orders Sought In The Plaint
- Issue No. 6 – Is The Counterclaim Meritted
- Issue No. 7 – Was The Order For Re-survey Of The Land Justified
- Issue No. 8 – Is This Appela Meritted
- Issue No. 9 – Who Bears The Costs Of This Appeal
253. Guided by the above issues, the court will now proceed to discuss them as herein below.

Issue No. 1 – Who Was The Lawful Registered Owner Of The Property Known As Uasin Gishu/kimumu Scheme/249

254. The first issue for determination is to understand the ownership of the mother title known as Uasin Gishu/kimumu Scheme/249.
255. It is not in dispute either in the pleadings, the evidence produced and the testimonies of all the witnesses that Uasin Gishu/kimumu Scheme/249 belonged to the late Oreu Memusa.
256. It is therefore this court's finding that the original registered owner of the suit property known as Uasin Gishu/kimumu Scheme/249 was the late Oreu Memusa.



Issue No. 2 – What Were The Subdivisions That Were Created From The Original Property Known As Uasin Gishu/kimumu Scheme/249

257. The second issue deals with the subdivision of the mother title known as Uasin Gishu/kimumu Scheme/249 undertaken by the late Oreu Memusa.
258. According to the evidence of the 1st Respondent and the Appellants herein, the mother title known as Uasin Gishu/kimumu Scheme/249 was subdivided into the following pieces of land namely Uasin Gishu/kimumu Scheme/1294-1300.
259. In one of the Appellants documents produced in court is a mutation of the mother title known as Uasin Gishu/kimumu Scheme/249 which shows the total acreage to be 2.0 Ha which translates to approximately 5 Acres in total.
260. The captured sizes of the subdivisions emanating from the subdivision of the original plot Uasin Gishu/kimumu Scheme/249 were as follows
- Uasin Gishu/kimumu Scheme/1294 was 0.08ha
 - Uasin Gishu/kimumu Scheme/1295 was 0.38Ha
 - Uasin Gishu/kimumu Scheme/1296 was 0.20Ha
 - Uasin Gishu/kimumu Scheme/1297 was 0.58Ha
 - Uasin Gishu/kimumu Scheme/1298 was 0.28Ha
 - Uasin Gishu/kimumu Scheme/1299 was 0.6Ha and
 - Uasin Gishu/kimumu Scheme/1300 was 0.21Ha
261. The Mutation of Uasin Gishu/kimumu Scheme/249 was approved on 13th May, 1996.

Issue No. 3 – Who Is The Registered Owner Of The Suit Property

262. The third issue relates to the ownership of the suit property known as Uasin Gishu/kimumu Scheme/1296.
263. According to the 1st Respondent, the suit property was purchased by the late Josinah Khaeri from the late Oreu Memusa but no title was transferred to her before his demise.
264. Subsequently thereafter, the late Oreu Memusa passed on and the administrators who were DW1 and his brother Jackson Barsulai through a Certificate of Confirmation of grant dated 6th July, 2010 in HC Succession Cause No. 155 of 2005 transmitted the suit property in whole to Josinah Khaeri.
265. On 2nd August, 2010 the certificate of Confirmation of Grant was duly registered on the green card of the suit property and a title deed issued to the late Josinah Khaeri on the same day.
266. In furtherance of the entry made in the green card of the suit property on 2nd August, 2010, the Senior Assistant Chief of Chepkoilel Location wrote a letter dated 22nd March, 2015 to the District Land Surveyor, Uasin Gishu requesting for the boundaries of the properties known as Uasin Gishu/kimumu Scheme/1294 – 1300 be shown their boundaries as per the mutation.
267. In the letter dated 22nd March, 2015 the suit property is identified as belonging to the late Josinah Khaeri.



268. Section 24 of the *Land Registration Act* as read with Section 25 and 26 thereof expressly provide that the proprietorship of any parcel of land belongs to the person whose name appears in the certificate of title and the name in the said certificate of title is held as conclusive evidence of proprietorship.
269. It is not in doubt that the late Josinah Khaeri subsequently passed on and succession proceedings known as Eldoret CM Succession Cause No. 108 of 2020 transmitted the whole suit property to the 1st Respondent on 18th April, 2023.
270. Based on the certificate of confirmation of grant issued therein, a title deed was issued on 27th April, 2023 in the name of the 1st Respondent.
271. Consequently, therefore, unless and until the certificate of confirmation of grant issued in Eldoret CM Succ. Cause No. 108 of 2020 is challenged then the lawful owner of the suit property is the 1st Respondent in accordance to the title deed issued on 27th April, 2023.

Issue No. 4 – Was The Registration Of The Suit Property In The Name Of The 1st Respondent Done Through Corrupt Scheme, Fraud Or Misrepresentation Of Facts

272. Despite the court's finding on the above issue, Section 26 of the *Land Registration Act* gives 3 express grounds which a registration under Sections 24 and 25 can be challenged.
273. The three grounds are namely fraud, processing a title through corrupt means or through misrepresentation of facts.
274. The 2nd Respondents in their statement of defence and counterclaim challenged the registration of the 1st Respondent through all the three grounds provided under Section 26 of the *Land Registration Act*.
275. Section 107 of the *Evidence Act* CAP 80 placed the obligation to prove any acts of fraud, corrupt practices or misrepresentation of facts perpetrated by the 1st Respondent on the 2nd Respondents.
276. In the statement of defence and counterclaim, the particulars relied upon by the 2nd Respondents was that the 1st Respondent instituted succession proceedings in court to inherit the properties of the late Joshua Manoki Cheboi as part of the estate of the late Josinah Khaeri.
277. Secondly, the 2nd Respondents alleged that the 1st Respondent, secretly and with an intention to benefit as the registered owner of the suit property concealed the existence of other beneficiaries of the late Josinah Khaeri in the succession cause No. 108 of 2020.
278. Thirdly, the 2nd Respondents claimed that the chief's letter that initiated Eldoret Succession Cause No. 108 of 2020 was done by a chief from Kakamega County instead of the Chief of Chepkoilel location on Uasin Gishu, where the late Josinah was domiciled.
279. Fourthly was that the 1st Respondent misled the lands office as to the loss of the first title deed issued to the suit property and fraudulently sought a re-issuance of the same.
280. Lastly, the 2nd Respondents were of the view that the 1st Respondent's action of banning the burial of the late Emily Kabon on the suit property denied her a decent send off.
281. To begin with the fist ground alleged by the 2nd Respondent, there was need to present any grant instituted by the 1st Respondent in relation to the estate of the late Joshua Manoki Cheboi by the 1st Respondent.
282. Unfortunately, the 2nd Respondents did not attach any proceedings initiated by the 1st Respondent relating to the estate of Joshua Manoki Cheboi.



283. In the absence of such proceedings, there is no proof that the 1st Respondent petitioned for any grant relating to the estate of Joshua Manoki Cheboi.
284. On the second issue of concealing that there were other beneficiaries in the estate of Josinah Khaeri in Eldoret Succession Cause No. 108 of 2020, the court is of the view that this is a fishing expedition as the 2nd Respondent had no locus standi to participate in the succession proceedings relating to Josinah Khaeri.
285. In any event, the 2nd Respondents did not disclose these other beneficiaries or dependants who were not identified in Eldoret Succession Cause No. 108 of 2020 relating to the late Josinah Khaeri for the court to even entertain the thought.
286. Be as it may, the 2nd Respondents have no interest whatsoever in the manner in which the estate of Josinah Khaeri was administered in Eldoret Succession Cause no. 108 of 2020.
287. On the third issue relating to the chief's letter prepared in Kakamega instead of being prepared by the Chief of Chepkoilel, the Court is of the view that the letter was simply to facilitate the institution of the succession proceedings.
288. It does not matter whether the letter bespeaking the succession proceedings was done by a chief in Kakamega County or Uasin Gishu County.
289. It is important to take note that in the letter dated 22nd March, 2015 by the senior assistant chief Chepkoilel the suit property was still recognised as the asset of the late Josinah Khaeri.
290. In other words, whether the letter bespeaking the succession was written by the chief from Kakamega or Uasin Gishu, both recognised the late Josinah Khaeri as the owner of the suit property.
291. In essence therefore, the letter used in institution of the succession proceedings did not conceal or mislead the place of domicile or assets of the late Josinah Khaeri.
292. As regards the ground that the 1st Respondent misled the lands office to re-issue the title to the suit land, it is also misleading.
293. According to the green card of the suit property, the title deed was re-issued on 30th June, 2015 to correct the name Josinah Khayeri to Josinah KHAERI.
294. This change is one that can be deemed to be typographical and its rectification cannot be said to have been done with any ill-intention or malice as alleged by the 2nd Respondent.
295. In other words, this court is of the considered view that the particulars of corrupt practices, fraud or misrepresentation alleged by the 2nd Respondent in their defence do not hold any water and are not justifiable.
296. As such, the registration of the 1st Respondent as the owner of the suit property is legitimate and proper in law.

Issue No. 5 – Is The 1st Respondent Entitled To The Orders Sought In The Plaintiff

297. In this issue, the Court is required to address itself to the reliefs sought by the 1st Respondent in his Plaintiff dated 2nd November, 2023 before the trial court.
298. The first prayer is a declaration that the 1st Respondent is the lawful owner of the suit property herein.



299. The court having made a finding that the suit property belonged to the late Josinah Khaeri as of 2nd August, 2010 there is no doubt that this property forms part of the estate of the late Josinah Khaeri.
300. The 1st Respondent through the Certificate of Confirmation of grant 18th April, 2023 stated that he is the beneficiary of the whole suit property.
301. Based on the title deed issued on 27th April, 2023 recognising the 1st Respondent as the lawful owner of the suit property, then the 2nd Respondents have no locus standi or ownership rights on the same.
302. As regards the 2nd Prayer of a permanent injunction against the Defendants, this court is satisfied based on the documentary evidence produced by the 1st Respondent and in particular the certificate of title issued on 2nd August, 2010 and the Chief's letter from the Chief Chepkoilel location to the suit property dated 22nd March, 2015 that the land belongs to Josinah Khaeri.
303. This being the case, the 2nd Respondents have no locus standi or any rights to bury the late Emily Murkomen on the suit property whether her husband was buried there or not.
304. The allegation that Joshua Manoki was buried on the suit property is not a legal ground to impeach the ownership of Josinah Khaeri.
305. The mere burial of a body in another person's property does not nullify the legitimate ownership recognised under Section 24 and 25 of the *Land Registration Act*.
306. In essence therefore, the 1st Respondent is entitled to prayer no. (b) and (c) of the Complaint dated 2nd November, 2023 as drawn.

Issue No. 6 – Is The Counterclaim Merited

307. The 2nd Respondents filed a counterclaim dated 14th November, 2023 in which they challenged the registration of the suit property in the name of the late Josinah Khaeri.
308. In their counterclaim, the 2nd Respondents accused the late Josinah Khaeri of fraudulently coercing the Administrator Christine Jepkemoi (DW1) to sign or execute succession documents and transfer the subdivisions known as Uasin Gishu/kimumu Scheme/1296 to her name.
309. Further to the above allegation, the 2nd Respondents recaptured the particulars of fraud, misrepresentation and coercion on the part of the 1st Respondent verbatim from those alleged in the Defence.
310. It is critical to point out that in the defence by the 2nd Respondent, the allegation was that the 1st Respondent had instituted succession proceedings in relation the estate of Joshua Manoki and obtained the title deed of the original property Uasin Gishu/kimumu Scheme/249 without the consent of the estate or Oreu Memusa.
311. In the counter claim, the 2nd Respondents accused the late Josinah Khaeri of fraudulently duping DW1 to execute the transfer document of the suit property to her name.
312. According to the certificate of confirmation of grant dated 6th July 2010 issued in Eldoret HC P&A No. 155 of 2005, there were two administrators to the estate of Oreu Memusa.
313. In the certificate of confirmation of grant, both DW1 and Jackson Barsulai the 2nd Administrator confirmed that the suit property belonged to Josinah Khaeri.
314. Even if the allegation that the late Josinah Khaeri dupped DW1 to sign the transfer forms to the suit property in her names, the 2nd Administrator would not have consented to the transmissions.



315. In other words, this court is of the considered view that the certificate of confirmation of grant dated 6th July 2010 in HC P&A No 155 of 2005 depicts the true position that the two administrators transmitted the suit land to Josinah Khaeri lawfully.
316. As to the particulars of fraud, corrupt practises and misrepresentation the same have conclusively been discussed at Issue No. 4 above and a finding made therein.
317. In conclusion, this court makes a finding that the counterclaim dated 14th November, 2023 is not merited and is dismissed.

Issue No. 7 – Was The Order For Re-survey Of The Land Justified

318. In the trial court's judgment pronounced on 29th October, 2024 the court made an order that the land registrar Uasin Gishu and the County Surveyor do re-survey the original land Uasin Gishu/kimumu Scheme/249 and thereafter correct and rectify the register relating to Uasin Gishu/kimumu Scheme/1296 and 1298 to reflect the actual occupation of those parcels of land on the ground.
319. The Plaint dated 2nd November, 2023 did not seek for any orders of re-survey of any property.
320. Secondly, the counterclaim filed by the 2nd Respondent dated 14th November, 2023 also did not seek a re-survey of any property.
321. It is settled law that the issues for determination must strictly be in the pleadings submitted by the parties.
322. During the trial, there was clear evidence that parties started occupying the land before subdivision was done based on the subdivision approved on 13th May, 1996.
323. However, once the mutation was approved, and parties issued with title deeds, any re-survey ordered is prejudicial to the rights of the registered owners and must be handled carefully not to bring confusion on the ground.
324. It is this court's view that the trial court dived outside the pleadings that were before it and interfered with approved legal boundaries created by the mutation approved on 13th May, 1996.
325. This court therefore is of the view that the order of re-survey was not sought for by the parties and should not have been pronounced by the trial court.

Issue No. 8 – Is This Appeal Meritted?

326. Based on the determination of the issues hereinabove, this court is clear that this Appeal is merited for the reasons that the trial court failed to appreciate the facts presented before it and in particular the ownership of the suit property and misdirected itself in failing to appreciate the provisions of Sections 24 and 25 of the *Land Registration Act* which clearly pronounce the person recognised in the Certificate of title as the registered owner of the land.
327. The trial court further misdirected itself to the significance of the mutation approved on 13th May, 1996 creating the legal subdivisions within Uasin Gishu/kimumu Scheme/249 and the certificate of confirmation of grant issued in Eldoret HCC P&A 155 of 2005 which legally transmitted the suit property to Josinah Khaeri.
328. Thirdly, the Trial Court failed to appreciate the fact that burial of the late Emily Kabon Murkomen on the suit property belonging to the estate of Josinah Khaeri contravened the legal rights and ownership of the deceased Josinah Khaeri whether or not her husband had been buried on that property.



329. The fact that the late Emily Kabon Murkomen's husband, Joshua Manoki, having been buried on the suit property belonging to the late Josinah Khaeri is not a valid ground for that illegality to continue.
330. In essence therefore, this court makes a finding that indeed the present Appeal is merited I totality.

Issue No. 9 – Who Bears The Costs Of This Appeal

331. As to costs, the Appellants herein as indeed entitled to the costs of this Appeal.

Conclusion:

332. In conclusion therefore is determined in the following manner:
- A. The Memorandum of Appeal dated 11th November, 2024 is merited.
 - B. The whole judgment of the trial court pronounced on 29th October, 2024 by the trial court be and is hereby set aside and/or vacated.
 - C. That the suit property known as Uasin Gishu/kimumu Scheme/1296 is the property of the 1st Respondent as contained in the Certificate of Title issued on 27th July, 2023.
 - D. A permanent injunction be and is hereby issued against the estate of Emily Kabon Murkomen and the estate of Joshua Manoki or through their agents, servants, employees or any other relatives from trespassing into, cultivating, utilising, remaining and or making burial arrangements of the late Emily Kabon Murkomen or interring her remains or any other person on the suit property known as Uasin Gishu/kimumu Scheme/1296 and any structure erected thereon to be demolished.
 - E. That the OCS, Ainabtich/Kapsoya Police Station to assist in effecting the orders above.
 - F. That the 1st Respondent is awarded costs of the suit in the trial court against the 2nd Respondents only.
 - G. The Appellants are also awarded costs of this Appeal against the 2nd Respondents only.

DATED, SIGNED & DELIVERED VIRTUALLY AT ELDORET ELC ON THIS 11TH DAY OF NOVEMBER 2025.

EMMANUEL.M. WASHE

JUDGE

In The Presence Of:

Court Assistant: Brian

Plaintiff: Mr. Ogongo for the Appellant

Defendant: Mr. Nabonga holding brief Mr. Kinyanjui for 1st Respondent

Mr. Lilei holding brief Mr. Omboto for the 2nd Respondent

