



Joseph (Represented by Sammy Kirui Cheptoo as next friend) v Kigen & 3 others (Environment and Land Case 89 of 2016) [2025] KEELC 8500 (KLR) (3 December 2025) (Judgment)

Neutral citation: [2025] KEELC 8500 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND CASE 89 OF 2016**

**CK NZILI, J
DECEMBER 3, 2025**

BETWEEN

ANNA CHEPTOO JOSEPH (REPRESENTED BY SAMMY KIRUI CHEPTOO AS NEXT FRIEND) PLAINTIFF

AND

**ISAAC RUTTO KIGEN 1ST DEFENDANT
PAUL KIPLAGAT CHEPKWONY 2ND DEFENDANT
MARY NANGILA 3RD DEFENDANT
PATRICK A SHIOSO 4TH DEFENDANT**

JUDGMENT

1. The plaintiff, as the next friend of Annah Cheptoo Joseph, approached the court through an amended amended plaint dated 2/4/2025. He seeks:
 - a. An order that the encroachment by the defendants onto 4.7175 acres part of the old Kitale Municipality Block 15/(Koitogos 172 (old), now Kitale Municipality Block 15/(Koitogos 3169 and 3688 (new), the suit property, is illegal and for an order of eviction of the defendants, their agents, servants employees or anyone claiming under them from the suit property, through the assistance of the OCS Naisambu Police Station and the Assistant County Commissioner Waitaluk Division.
 - b. Permanent injunction restraining the defendants, their agents, servants, or employees, and any other claiming under them, from trespassing onto the suit property.
2. The plaintiff contends that the initial plaintiff is the registered owner of the suit land initially measuring 36 acres, which, unfortunately, is currently less by 4.7175 acres as per its current status. The



- plaintiff avers that the 1st defendant is the registered owner of parcel No. Kitale Municipality Block 15(Koitogos)/171, measuring 21 acres, which shares a common boundary with the suit property.
3. The plaintiff avers that out of the initial acreage, the initial plaintiff has since sold 5 acres to one Mogaka, 5 acres to one Museveni, 5 acres to Kamanda James, 1 acre to Kipsisei, and ½ an acre to Oscar, leaving a balance of 19½ acres, now Kitale Municipality Block 15(Koitogos)/3169 and 3688 measuring 14.1825 acres.
 4. The plaintiff avers that in 2006, the owner discovered that the 1st defendant had encroached or trespassed into her land by about 4.7175 acres, which he purportedly sold to 2nd - 4th defendants, who have since taken possession of 0.0959, 0.0099, and 0.0048 Ha, out of the encroached portion, without her consent or authority, or legal basis.
 5. The plaintiff avers that attempts to seek the intervention of the local or provincial administration and the Land Registrar to recover her land have been unsuccessful, hence this suit.
 6. The 1st defendant opposed the suit through an amended defence dated 20/3/2023.
 7. He denied that the plaintiff's portion measuring 4.7175 acres out of the suit land was missing. Further, the 1st defendant admits that he is the registered owner of Kitale Municipality Block 15(Koitogos)/171 but denies that his parcel of land has encroached onto the plaintiff's parcel of land, and or sold the encroached portion to the 2nd - 4th defendants as alleged or at all. The 1st defendant denied receipt of any demand letter from the plaintiff before the suit was filed, which he termed as bad in law.
 8. The 2nd - 4th defendants opposed the suit through a statement of defence dated 20/1/2023. The 2nd - 4th defendants denied that the plaintiff's suit land was initially 36 acres in size or that part of it was encroached upon by the 1st defendant. Whereas the 2nd - 4th defendants admit that the 1st defendant sold to them some portion of his land, they averred that the portion number sold to them was not indicated in the sale agreements, otherwise, it was true that they were sold some portions of the 1st defendant's land but were not privy to any previous adverse acts by the 1st defendant over the plaintiff's parcel of land.
 9. The 2nd - 4th defendants aver that they were not party or privy to the 1st defendant's alleged acts, but they have been demanding from him to transfer to them the portion which they bought from him, but he has become evasive.
 10. The 2nd - 4th defendants aver that the 1st defendant at the time of the sale did not disclose to them that he had a pending dispute over the subject portion with the plaintiff, until they were joined in this suit.
 11. The 2nd - 4th defendants aver that they have no claim against the plaintiff, but demand compensation and or be given an equivalent portion by the 1st defendant from his parcel No. 171.
 12. The 2nd - 4th defendants aver that they are ready and willing to move out so long as the 1st defendant undertakes to relocate them; otherwise, they were not aware that they were trespassers to the plaintiff's land, since it was the 1st defendant who put them into possession in the first instance.
 13. Further, the 2nd - 4th defendants aver that though the plaintiff and the 1st defendant attended to the chief's office regarding the dispute, they were not party to it. The 2nd - 4th defendants pray that they be exonerated from this suit, since they are innocent purchasers.
 14. The court record shows that this suit commenced hearing on 16/6/2021. After two witnesses testified, an order was made on 17/6/2021 that the County Surveyor visit the locus in quo, and do a survey,



indicate the current boundaries, and furnish the court with a report on parcels No. 171 and 172 and their new subdivisions in the shaded area in the earlier report dated 2/12/2020.

15. At the hearing, Sammy Kirui Cheptoo testified as PW1. He relied on a witness statement dated 25/5/2016 and a further witness statement dated 4/1/2025 as his evidence in chief. PW1 told the court that he is the son of Anna Cheptoo Joseph, the owner of Kitale Municipality Block 15(Koitogos)/172, which borders the 1st defendant's parcel No. Kitale Municipality Block 15(Koitogos)/171.
16. PW1 said that their mother's land initially was 36 acres, after which she sold 16 ½ acres, leaving a balance of 19 ½ acres. He said that they have had a long-standing boundary dispute with the 1st defendant after they discovered in 2006 that the ground was less than five acres due to the absence of a beacon on its lower side, leading the 1st defendant to encroach into their land by about five acres.
17. PW1 said that several attempts to resolve the issue over the years have been unsuccessful due to the resistance of the 1st defendant, who told his mother to file a case in court. PW1 said that intervention by the local provincial administration and the government surveyor was frustrated by the 1st defendant and the directors of Koitogos Farm, who became hostile. PW1 blamed the 1st defendant for relocating the boundary by putting up a fence.
18. PW1 confirmed that after the court order, the government surveyor visited the land. PW1 relied on a copy of the title deed for Kitale Municipality Block 15(Koitogos)/3169 and 3168 as P. Exhibit. No. 1(a) and (b), area map as P. Exhibit. No. (2), official search certificate dated 8/2/2026 as P. Exhibit. No. 3(a) and (b), demand letter dated 12/12/2014 and a reply as P. Exhibit. No. 4(a) and (b), bundle of the chief's letter as P. Exhibit. No. (5), letter dated 12/5/2006 from the Land Registrar as P. Exhibit. No. (5), a copy of the green card as P. Exhibit. No. (7), photos as P. Exhibit. No. (8), surveyor's reports dated 2/12/2020 and 3/8/2021 PMFI-No. (9) and (10), official search certificate dated 5/6/2023 as P. Exhibit. No. (11). Official search certificate dated 5/6/2023 as P. Exhibit. No. 12(a), (b), and (c), Assistant County Commissioner's letter dated 13/10/2015 as P. Exhibit. No. (13), assistant chief's letter dated 22/10/2015 as P. Exhibit. No. (14), a copy of the green card for Kitale Municipality Block 15(Koitogos)/171 as P. Exhibit No (15), a copy of the green card for plot No. 3699 as P. Exhibit No. (16).
19. In cross-examination, PW1 said that according to the green card, the suit property was supposed to be 36 acres as per P. Exhibit No. (7), meaning after part of it measuring 16.5 acres was disposed of, the balance on the ground should be 19 acres instead of 14.9 acres as shown in the title deed. PW1 said that the Land Registrar was unable to resolve the dispute after the 1st defendant became uncooperative.
20. PW1 said that the original green card for parcel No. 171 was showing 21 acres of land. PW1 did not produce the sale agreement or title deed for the persons who bought the 16.5 acres, since what was sold to them is not contested.
21. Shem Amai, a retired area chief, testified as PW2. He relied on a witness statement dated 5/5/2016 as his evidence-in-chief. PW2 told the court that he handled a land dispute between the plaintiff's mother and the 1st defendant, following the removal of the beacons by the 1st defendant. PW2 said that he handled the matter through convening several meetings, one of which was disrupted by the 1st defendant, after which he referred the matter to the Land Registrar. PW2 confirmed visiting the land alongside the Land Surveyor to ascertain interference with the beacon.
22. PW3 relied on a witness statement dated 25/5/2016 as his evidence-in-chief. He told the court that at one time, he was an official of Koitogos Farm, acting as a secretary. He said that he participated in the partition of plots No. 171 and 172 based on the register of shareholders at the time, showing the



- acreage of each parcel of land. PW3 said that based on the acreage, boundaries were fixed on the ground by the surveyor who undertook the survey works in 1972, and beacons were erected on the ground.
23. Violet Wasike testified as PW4. PW4 told the court that following a court order dated 4/3/2020, to go and establish the boundary between parcel No. 171 and 172, and indicate whether there was any encroachment, she visited the parcels of land on 25/11/2020, and found that parcel No. 172 had been encroached upon by the owner of parcel No. 171 by approximately 2.0 Ha, which is close to 4.9 acres. PW4 said that parcel No. 171 was approximately 10.62 Ha while its registered acreage is supposed to be 8.36 Ha.
 24. PW4 said that parcel No. 172 on the ground is 11.72 Ha, while the title deed shows 14.34 Ha. PW4 produced the drawing showing the shaded area as the one encroached upon, which report she produced as P. Exhibit. No. (9).
 25. Again, PW4 said that after filling the report, she was directed by the court to do another report by an order dated 24/1/2021, to which, on 27/1/2021, she re-visited the parcels of land and established that on the shaded area, the 2nd, 3rd, and 4th defendants and another person are partly in occupation of the plaintiff's parcel of land and partly in occupation of the 1st defendant's portion. She produced the report as P. Exhibit. No. (10).
 26. PW4 said that she had been an employee of the County Government since 2021, but was part of the team that visited the parcels of land in making P. Exhibit No. (9).
 27. Further, PW4 said that the Registry Index Map for the area had been annexed to the two reports; otherwise, the two parcels of land had pre-existing beacons before the site visits. PW4 said that the report had annexed drawings and a map showing that this was a general boundaries area. PW4 confirmed that there are about 20 subdivisions on the land with an access road.
 28. PW4 said that the two reports were made based on the RIM map, official search certificate, and copies of the title deeds, and they established that the ground measurements and the acreages on the respective title deeds were not the same. PW4 said that there was evidence on the ground that the correct boundary and the beacons had been tampered with.
 29. Isaac Rutto Kigen testified as DW1. He relied on a witness statement dated 16/9/2016 and 15/5/2023 as his evidence-in-chief. DW1 told the court that he is the registered owner of parcel No. Kitale Municipality Block 15(Koitogos)/171, before it was subdivided to Kitale Municipality Block 15(Koitogos)/3697, which neighbours the plaintiff parcel of land, part of which has been sold to several people, who have no new parcel numbers. DW1 denied the alleged encroachment onto the plaintiff's parcel of land; otherwise, he bought his land in 1972, took vacant possession, after which boundaries were marked and demarcated, which he has never interfered with. DW1 termed the plaintiff's claim as malicious.
 30. Further, DW1 relied on a copy of a title deed for parcel No. Kitale Municipality Block 15(Koitogos)/171 issued on 2/9/2020 as D. Exhibit No. (1), title deed for parcel No. Kitale Municipality Block 15(Koitogos)/3697, issued on 31/8/2015 as D. Exhibit No. (2), survey report dated 3/8/2021 as D. Exhibit No. (3).
 31. DW1 told the 2nd - 4th defendants that when the case between him and the plaintiff is over, he will process their title deeds for the portion which he had sold to them; otherwise, it was the plaintiff who stopped the exercise. DW1 denied that his parcel of land initially was 21 acres in size. DW1 could not explain why the title deed had less acreage than on the ground. DW1 insisted that the boundary



- between the two parcels of land was fixed during the adjudication and demarcation stage and has remained as such. He blamed the plaintiff for interfering with the original boundary.
32. DW1 said that he did not attend the Land Registrar's meeting since he never received any summons to attend the meeting. DW1 said that he was not aware of who removed the initial beacons.
 33. Emmanuel Kimtai Rutto testified as DW2. He relied on a witness statement dated 14/4/2024 as his evidence in chief. He associated his evidence with that of his father, DW1. DW2 said that the initial parcel No. 171 was 26 acres in size, on the ground, though the title deed was showing 21 acres.
 34. DW2 confirmed that the beacons between the two parcels of land were nonexistent. DW2 confirmed that he was aware that the 1st defendant was harassed by the former area chief in the company of a Land Surveyor when they visited the land. DW2 said that after the 1st defendant realised the title deed showed less acreage, he did not take the necessary steps to have it rectified.
 35. Paul. K. Arap Chepkwony, Many Nangila, and Patrick Shioso testified as DW3, DW4, and DW5. They all relied on written statements dated 21/2/2023 as their evidence-in-chief. They told the court that they bought portions of the 1st defendant's land by sale agreements dated 10/3/1995, D. Exhibit No. (4), measuring 0.7 acres, and a sale agreement dated 7/6/2021. D. Exhibit No. (5) and sale agreement dated 10/4/1992, D. Exhibit No. (6), and took vacant possession.
 36. DW3, 4, and 5 said that they were yet to be issued with title deeds by the 1st defendant or to be evicted from the respective portions by the plaintiff. DW3, 4, and 5 said that they discovered that there was a problem when the area chief visited the respective portions together with the Land Surveyor. DW3, 4, and 5 said that they did not engage any land surveyor when they were buying the portions. DW5 confirmed that the beacons showing the boundary between the two parcels of land on the lower side were missing.
 37. The plaintiff relies on written submissions dated 19/11/2025. It is the plaintiff's submissions that by dint of Section 107 Cap 60, of the oral and documentary testimony, he has established the encroachment on his land by the 1st defendant. Reliance is placed on John Sebastian Mbaya & Another -vs- Samuel Koskei Too ELC No. 539 of 2012 [2018] and Wanjiku -vs- Mwangangi ELC No. E127 of 2023, on the probative value of the survey reports.
 38. The plaintiff submits that mere denial of the facts by the defendants cannot outweigh the expert reports, which have not been challenged by a rival expert report as regards the current boundary.
 39. The 1st defendant relies on written submissions dated 18/11/2025. It is submitted that under Section 18(2) of the *Land Registration Act*, the court is ousted from entertaining a suit based on boundaries which have not been fixed or determined. Reliance is placed on Reuben Kioko Mutyaene -vs- Hellen Kiunga Miriti & Others [2021] KEELC 3262 [KLR], cited with approval Willis Ocholla -vs- Mary Ndege [2016] eKLR, Amunze & Another -vs- Adongo & Another KEELC 6808 [KLR], where the court cited Azzuri Ltd -vs- Pink Properties Ltd [2018] KECA 312 [KLR].
 40. The 1st defendant submits that the plaintiff, in cross-examination, confirmed that, despite noting the anomaly, he never made a report immediately either to the police or the Land Registrar to have the boundary identified and fixed.
 41. The 1st defendant submits that the letter dated 12/5/2006, P. Exhibit. No. (6) from the Land Registrar does not amount to a boundary determination, and to date, there is no Land Registrar's report to confirm if indeed he visited the parcel of land to determine and fix the boundary. The 1st defendant submits that in the absence of such a report, the court is divested of jurisdiction. Reliance was also placed on Kazi -vs- Makokha [2025] KEELC 7175 [KLR] and Willis Ochola (supra).



42. Further, the 1st defendant submits that the plaintiff did not attempt to call the Land Registrar to testify or shed light on whether the boundary was fixed or determined. Reliance is placed on George Kamau Macharia -vs- Dexka Ltd [2019] eKLR, as cited in Reuben Kioko Mutyaene (supra).
43. The 1st defendant submitted that this suit was prematurely filed in court before the issue of the 1st defendant's title deed could be rectified, which shows a lesser acreage than his land on the ground.
44. The court has carefully gone through the pleadings, evidence tendered, and written submissions. The issues calling for my determination are:
- (1) If the plaintiff has proved encroachment of parcel No. Kitale Municipality Block 15(Koitogos)/3169 and 3688, the resultant subdivisions of Title No. Kitale Municipality Block 15(Koitogos)/172, measuring 36 acres, by the 1st defendant, who is the owner of Title No. Kitale Municipality Block 15(Koitogos)/171.
 - (2) If the plaintiff has proved trespass to her land by the 2nd - 4th defendants, who are the alleged purchasers for value from the 1st defendant.
 - (3) If the 1st - 4th defendants have any justification to be occupying or utilising the plaintiff's land.
 - (4) Whether the plaintiff is entitled to the reliefs of eviction and permanent injunction.
 - (5) What is the order as to costs?
45. It is trite law that parties are bound by their pleadings, and issues for determination flow from the pleadings. In Independent Electoral and Boundaries Commission & Others -vs- Stephen Mutinda Mule [2014] eKLR and Raila Odinga & Another -vs- Independent Electoral and Boundaries Commission & Others [2017] eKLR, the court held that parties should not travel beyond their pleadings, which ensure that each party is aware of the questions likely to be raised by the opposite party, and that issues arise only when a material proposition of fact or law is affirmed by one party and denied by the other.
46. In this suit, the 1st defendant filed a statement of defence dated 20/3/2023. In paragraph 9, he admitted the jurisdiction of the court. In written submissions dated 18/11/2025, the 1st defendant, from paragraphs 6 - 36, which covers 95% of the submissions, has attacked the suit for lack of jurisdiction by dint of Section 18(1) of the *Land Registration Act*.
47. This suit was filed on 30/5/2016. The firm of Kigen & Co. Advocates entered an appearance on 8/6/2016. Eventually, a statement of defence was filed on 26/9/2016. At paragraphs 5 and 6, the 1st defendant denied the alleged encroachment or trespass to the plaintiff's parcel of land to the extent of four or so acres of land. At paragraph 9 thereof, jurisdiction of this court was admitted.
48. In a reply to the defence dated 16/3/2018, the plaintiff insisted that the issue of trespass and encroachment onto her land had been reported to the local administration and the Land Registrar for intervention, but in vain.
49. By an order of the court dated 4/3/2020, the court directed the Land Surveyor to visit the parcels of land in question to establish the extent of the encroachment. The two parties were to meet the cost of the survey equally. The 1st defendant declined to pay the costs as ordered. Nevertheless, a report dated 2/12/2020 was filed in court.
50. The report omitted the extent of the encroachment onto the plaintiff's land by the 1st defendant. Another order was issued on 24/7/2021 for the surveyor to revisit the locus in quo. A report dated



- 3/8/2021 was filed in court on 3/8/2021. It led to the amendment of the plaint to include the 2nd – 4th defendants since they were going to be affected by the outcome of this case.
51. In their joint defence dated 20/1/2023, the 2nd - 4th defendants admitted the trespass or encroachment courtesy of sale agreements with the 1st defendant, who had handed over vacant possession of the portions, claiming the land belonged to him. The 2nd – 4th defendants filed witness statements and a list of exhibits, among them sale agreements, produced as D. Exhibit. Nos. 4, 5, and 6, dated 10/4/1992, 53/1998, and 7/6/2021.
 52. Other than the amended defence dated 20/3/2023, the 1st defendant has not filed a reply to the issues raised by the 2nd - 4th defendants that they are in occupation of the disputed portion of land belonging to the plaintiff, as indicated in the two survey reports.
 53. Encroachment refers to intrusion on a person's land without permission or justification. Trespass under Section 3(1) of the Trespass Act and Black's Law Dictionary 10th Edition, is defined as an unlawful act committed against a person or property of another, especially wrongful entry on another's real property.
 54. In determining trespass or encroachment, the first step is whether the claimant has established ownership of the property or immediate exclusive possession of the same. See *M'ikiara M'rinkanya & Another -vs- Gilbert Kabeere M'Mbijiwe* [2007] KECA 115 (KLR).
 55. In this suit, the plaintiff had pleaded that the title deed for his land shows more acreage than it is on the ground, and that the extra acreage, approximately 5 acres, has been encroached upon by the defendants by removing the beacons for the boundary. Flowing from the pleadings, the court granted two orders for the surveyor to re-establish the extent of the encroachment. The 1st defendant did not object to those orders.
 56. Section 48 of the Survey Act provides that if a surveyor is required to re-establish a missing beacon, he shall submit his field notes, computation, and report to the Director. The plaintiff's case has never been on the determination or fixing of a boundary.
 57. Written submissions cannot replace pleadings or amount to evidence. See *D.T. Moi -vs- Stephen Muriithi* [2014] KECA 642 [KLR]. The evidence from the bar, which is relied upon by the 1st defendant to raise a preliminary objection, is misguided and lacking merit.
 58. In *Estate Sonrisa Ltd & Another -vs- Samuel Macharia & Others* [2021] eKLR, the court said that ascertainment and fixing of boundary in dispute involves the parties, the owners of the affected parcels, the surveyor, and the land registrar as per Sections 16-19 of the Land Registration Act. The court said that a land registrar does so with the assistance of the surveyor.
 59. In *Barmasai -vs- Rono & Others* [2025] KECA 1489[KLR], the court said that the Registry Index Map is a crucial cadastral document used to visually represent the location and boundaries of land parcels, and serves as the official record maintained by the Survey of Kenya. It is integral to the land registration and ownership system under the Land Registration Act. The court held that, unlike a title deed, which certifies ownership, a Registry Index Map provides a geographical context, mapping out the physical existence and the precise location of a property relative to its surroundings. The court said that a Registry Index Map complements other ownership documents like title deeds and green cards, offering a detailed layout of land parcels, their shapes, and their boundaries.
 60. Under Part V1 of Survey Regulations 2024, the placement of survey marks, referencing, placing boundaries, and missing beacons is covered. Rule 57 relates to the fixing of beacons.



61. In his paper, Peter K. Wanyoike, “The Role of Registry Index Map in Land Management in Kenya”, he says that a Registry Index Map is a very useful tool in registration and management of land in Kenya.
62. In *Ali Mohamed Salim -vs- Faisal Hassan Ali* [2014] eKLR, the court said a Registry Index Map is defined under Section 19(1) of the [Land Registration Act](#) as an approximate situation only of the parcels. In *Samuel Wanjau -vs- Attorney General & Others* [2009] eKLR, the court said that when and where a dispute arises as to the location and position of a boundary, unless the same is fixed, one has to go beyond the Registry Index Map in solving the dispute.
63. In this suit, the claim is about encroachment or trespass. The case law cited by the 1st defendant is distinguishable. The issues before the court are not about the boundary but encroachment. The plaintiff has produced copies of the title deed, green cards, and surveyor’s report to show that a portion of his land measuring 4.9 acres has been encroached upon or trespassed upon by the 2nd - 4th defendants, who claim that they were sold the portions by the 1st defendant as if the title belongs to him.
64. The defendants have not challenged the authenticity of the copy of the titles, green card, and survey reports relied upon by the plaintiff, showing the extent of the encroachment. In *Hamisi Mohamed Bakari & Others -vs- Thomas Sadiki & Others* [2020] eKLR, the court said that the defendants ought to have produced a contradicting report.
65. The survey reports relied upon by the plaintiff were produced in compliance with the [Evidence Act](#), which allows the court to adopt expert reports such as P. Exhibit No. (9).
66. Violet Wasike, who testified as PW4, is listed as one of the officers who was present at the site visit when the report was made. Expert testimony is to be taken alongside the other evidence. The court found no basis to disregard the same. See *Kagina -vs- Kagina & Others* [2021] eKLR and *Stephen Kirimi Wangondu -vs- The Ark Limited* [2016] eKLR.
67. Trespass is the unlawful interference with another’s property without the consent of the owner. See *Maina Mabuchwa -vs- Gachuma Gacheru* [2018] eKLR. Section 16(1) of the [Land Registration Act](#) provides that the office or authority responsible for the survey of land may rectify the line or position of any boundary shown on the cadastral map.
68. Section 21(1) of the [Land Registration Act](#) provides that it is an offence to deface, remove, injure, or otherwise impair a boundary feature or any part of it. In *Ali Mohamed Salim* (supra), the court distinguished between general boundaries and fixed boundaries. The two surveyors’ reports tendered before this court are clear that the 1st defendant’s parcel of land is less than what he has occupied on the ground through the 2nd - 4th defendants.
69. The 1st defendant, despite becoming aware of the alleged errors on the acreage of his title deed, did not see it fit, since obtaining a title to have it rectified, if at all, the mistake was on the part of the land surveyor or registrar. The defendants have not counterclaimed for the portion in this suit. The 1st defendant did not call the land surveyor or land registrar to substantiate or to support his assertion that his title has errors or that he had attempted to surrender or return the title for cancellation or rectification under Section 14 (a) and 79(2) of the [Land Registration Act](#). The 1st defendant did not tender evidence on the basis that his title deed should reflect more acreage than what is in it. My finding is that the 1st defendant has no justification to claim the plaintiff’s parcel of land.
70. As to the 2nd - 4th defendants, the doctrine of *nemo dat quod non habet* and Section 3(3) of the [Law of Contract Act](#), as read together with Section 38 of the [Land Act](#). The evidence available shows that the 1st defendant had no good title to pass to them. The ingredients of the cited two laws were not satisfied



in D. Exhibit. No. (4), (5), and (6). Courts do not rewrite agreements. A court may not be used to enforce an illegal contract or be used as an instrument of illegality.

71. I think the plaintiff has established his claim on a balance of probabilities. I proceed to allow the suit as follows:-

- a. The encroachment by the defendants on 4.7175 acres part of the old Kitale Municipality Block 15/(Koitogos 172 (old), now Kitale Municipality Block 15/(Koitogos 3169 and 3688 (new) is illegal.
- b. The defendants, their agents, servants, employees, or anyone claiming under them, to vacate the suit property within 90 days. In default, they shall be evicted in line with the law, with the assistance of the OCS Naisambu Police Station and the Assistant County Commissioner Waitaluk Division, at their cost and expenses.
- c. Permanent injunction restraining the defendants, their agents, servants, or employees, and any other claiming under them, from trespassing onto the suit property.
- d. Costs to the plaintiff.

72. Orders accordingly.

**JUDGMENT DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT
AT KITALE ON THIS 3RD DAY OF DECEMBER 2025.**

HON. C.K. NZILI

JUDGE, ELC KITALE.

In the presence of:

Court Assistant - Dennis

Parties present

Atieno Osewe for 1st defendant present

Chebii for plaintiff present

2nd – 4th defendants in person present

