



Kisang (Suing as the Legal Representative of the Estate of Kiroitich Chelanga) v Chelimo & another (Environment and Land Case E005 of 2024) [2025] KEELC 5804 (KLR) (30 July 2025) (Judgment)

Neutral citation: [2025] KEELC 5804 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ITEN
ENVIRONMENT AND LAND CASE E005 OF 2024**

**L WAITHAKA, J
JULY 30, 2025**

BETWEEN

**SHARON JEMUTAI KISANG PLAINTIFF
SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF KIROITICH
CHELANGA**

AND

**JONATHAN KIBIWOT CHELIMO 1ST DEFENDANT
THE LAND REGISTRAR ELGEYO MARAKWET COUNTY .. 2ND DEFENDANT**

JUDGMENT

Introduction

1. By a plaint dated 30th August 2024 and filed on 6th September 2024, the plaintiff seeks judgment against the defendants for: -
 1. Delivery of title to this court and cancellation thereof, together with entries in the land register with regard to the parcels of land known as Lelan/Kibiego/259, 260, 261, 262 and 263 [suit properties].
 2. Registration to revert back to Kiroitich Chelanga [deceased] as the registered owner of the suit properties;
 3. Eviction of the 1st defendant from the property known as Lelan/Kabiego/259;
 4. Mesne profits;
 5. Costs and interest.



2. As can be discerned from the averments and contentions in the plaint, the suit is premised on the grounds that the suit properties are subdivisions of the parcel of land known as Lelan/Kibiego/19 measuring 15 hectares which belonged to Kirolich Chelanga [deceased]; that Kirolich Chelanga died on 25th October 1975 and was survived by Christine Chepor Cherotich who died on 4th July 2020; that Christine Chepor Cherotich was survived by the plaintiff and other children who are minors.
3. It is the plaintiff's case [pleaded] that the original parcel of land, Lelan/Kibiego/19 belonging to Kirolich Chelanga was fraudulently subdivided into the parcels of land listed above [the suit properties] and parcel number Lelan/Kibiego/259, which is one of the resultant parcels, transferred to the 1st defendant.
4. It is the plaintiff's further case [pleaded], that upon realizing the fraudulent dealings with the suit properties, on 27th October 2014 Christine Chepor Kirolich [deceased] registered a restriction with the 2nd defendant over the suit properties and the resulting sub-divisions.
5. The plaintiff laments that the restriction registered in respect of the parcel of land known as Lelan/Kibiego/259 was fraudulently removed on 11th March 2024 resulting in forceful entry by the 1st defendant into the above parcel of land with a view of fencing it.
6. The plaintiff accuses the defendants of having taken advantage of the death of Kirolich Chelanga before collecting the title deed for the original parcel of land to carry out unlawful/illegal dealings with the suit properties and the death of Christine to remove the restriction filed to restrict dealings with the suit properties, in particular land parcel number Lelan/Kibiego/259.
7. Terming the actions of the defendants complained of illegal and the possession of land parcel Lelan/Kibiego/259 by the 1st defendant trespass to land, the plaintiff filed the instant suit seeking the reliefs listed herein above.
8. The 1st defendant filed a statement of defence and counterclaim dated 4th December 2024, in which he denies the allegations leveled against him and contends that he bought a portion of the original parcel from Kirolich Chelanga in 2003 [6.6 ha]; that the owner, Kirolich Chelanga, subdivided the original parcel into 4 parcels, among them his parcel, 259; that arising from the subdivision, Kirolich Chelanga transferred the subdivisions to the transferees who included himself in respect of parcel number 259.
9. It is the 1st defendant's pleaded case that Kirolich Chelanga personally attended Land Control Board [LCB] meeting on 25th June 2014 where the Board granted consent for transfer; that he paid the requisite payments to facilitate the entire process of survey, subdivision and transfer of all parcels to the respective owners. Further, that he took exclusive possession of his parcel and has enjoyed quiet possession since 2003.
10. It is the 1st defendant's further pleaded case that Kirolich Chelanga died in 2020, long after due process of subdivision and transfer of his parcel had been undertaken.
11. Claiming that he has been in actual and exclusive possession of the suit property, land parcel number 19 since 2003; the 1st defendant contends that the plaintiff's or Kirolich Chelanga's title/ownership, if at all it existed, had been extinguished by lapse of time. He further contends that the title ownership of the plaintiff/or Kirolich Chelanga is time barred having brought the instant suit late in the day.
12. By way of counterclaim, the 1st defendant seeks judgment against the plaintiff for: -
 - a. A declaration that he [the 1st defendant] is the lawful owner of land parcel number Lelan/Kibiego/259;



- b. In the alternative, an order or declaration that he [the 1st defendant] is entitled by way of adverse possession to all that parcel of land known as Lelan/Kibiego/259 measuring 6.5 hectares which he occupied adverse to the claim of the plaintiff peaceably and without interruption and/or protest from the plaintiff;
 - c. An order of permanent injunction to restrain the plaintiff either by herself, her agents, servants and/or personal representatives from interfering with the operations on the suit property by denying the 1st defendant and its agents/servants access to the said parcel or doing anything that will prejudice, limit or restrict the operations and use of the property known as Lelan/Kibiego/259;
 - d. Costs of the counterclaim and interest there upon at such rate for such period of time as the honourable court may deem fit to grant;
 - e. Any other or further relief that the court may deem fit and expedient for the ends of justice to be met.
13. The plaintiff filed a reply to defence and defence to counterclaim, dated 5th December 2024, denying the allegations contained in the 1st defendant's defence and counterclaim and reiterating the averments/contentions in the plaint.
14. On 14th January 2025, the 2nd defendant through the Office of the Attorney General, filed a statement of defence, [undated], in which he avers that he is a stranger to the averments contained in the plaint; that any actions and/or registrations he undertook, he undertook them in utmost good faith in execution of his statutory duties and that he acted in accordance with the law and in pursuance to his statutory mandate. The 2nd defendant contends that the suit is fundamentally defective, a nonstarter and discloses no cause of action against him.

EVIDENCE

Plaintiff's case

15. Sharon Jemutai Sang [PW1], relied on her witness statement recorded and signed on 30th August 2024 after it was adopted as her evidence in chief and produced the documents contained in her list of documents filed on 6th September 2024 as Pexbt 1 to 4. She produced the certificate of death for Kiprotich Chelanga as Pexbt 2[a] and the certificate of death for Christine Chepor Kiprotich as Pexbt 2[b]. She informed the court that she had obtained a letter from the chief, dated 5th September 2024 showing that Kiprotich Chelanga was a resident of his area which she produced as Pexbt 3[b] and a letter dated 22nd August 2024 showing the family members as Pexbt 3[a]. She produced green cards for land parcels Lelan/Kibiego/ 259 to 263 as Pexbt 4[a] to [d].
16. PW.1 informed the court that Christine Chepor was her mother and that she died in 2020 as per Pexbt 2[b]; that Kiprotich Chelanga was her grandfather. He died in 1975; that the original owner of land parcel Lelan/ Kibiego/19 was Kiprotich Chelanga; that before her mother died, she had placed a restriction on Pexbt 4[a] to 4[d] for the reason that there was purported impersonation by the registered proprietors.
17. PW1 further informed the court that her mother was the only child of Kiprotich Chelanga and that she [PW1] has siblings who are minors [below 18 years old].



18. PW1 stated that in the 1st defendant's list of documents, there is a letter of consent of the Land Control Board, transfer forms, mutation forms dated 2003, 2012, 2010 and 2014 which are purported to be signed by Kiprotich Chelanga.
19. Maintaining that Kirotych Chelanga died in 1975, she stated that he could not have signed the above documents.
20. Concerning the caution that had been placed by her mother to restrict dealings with the suit properties, she stated that it was removed in 2024; that Jonathan Kibiwot Chelimo [the 1st defendant] was the applicant who applied to remove the caution from land parcel number Lelan/Kibiego/259. He made the application on 7th February 2024.
21. She informed the court that a letter dated 20th February 2020 was written by the Land Registrar to her mother giving her notice of intention to remove the caution.
22. As to whether that letter could form the basis of the application by the 1st defendant for removal of the caution, she stated that it could not.
23. In cross examination, PW1 stated that she is a grand-daughter of Kirotych Chelanga; that she was born on 2nd September 2000; that she applied for death certificate of her grandfather and that she is the one who provided the details contained in the certificate of death.
24. PW1 also admitted/acknowledged that she is the one who visited the chief Kapsowar and supplied the details contained in the letters produced in evidence as Pexbt 3[a] and [b].
25. PW1 told the court that when the Land Registrar wrote the notice of intention to remove caution, dated 20th February 2020 her mother was alive but very sick.
26. Concerning the statutory declaration by Jonathan Kibiwot stating that her mother was given notice in 2020 but because she filed no objection, the caution was removed, she stated that she had seen it.
27. She informed the court that the 1st defendant occupies parcel 259 and that she is praying for his eviction.
28. On whether she attended any meeting at the Assistant Chief's office, she stated that she did not. She further stated that she is not aware of the contents of the Assistant Chief's letter dated 2nd November 2024 contained in the defendant's list of documents.
29. On further cross examination by Ms. Cheruiyot counsel for the 2nd defendant, PW1 stated that her grandfather Kirotych Chelanga died in 1975. She admitted that the Land Registrar may not have known of the demise of her grandfather and of her mother who died in 2020.
30. Upon been shown the letters of consent, transfer and mutation forms relied on to carry out the impugned registration, she admitted that if a person presented himself as Kirotych Chelanga, the Land Registrar may not have known.
31. Upon being shown the title deed for Lelan/Kibiego/19, she stated that the title deed was issued to Kirotych Chelanga on 11th September 1970 but stated that they do not have the original title. She stated that she was not aware that the title deed was returned to the Land Registrar for cancellation.
32. Regarding the notice to her mother by the Land Registrar of intention to remove the caution, she stated that in the green cards for the respective parcels, there is a telephone number indicated. She admitted that the telephone numbers indicated in the green cards belonged to her mother; that the postal address in the letter sent to her mother is the one for Kiprotich Chelanga and that the Land Registrar was justified in using the details in the green cards.



33. In re-examination, she stated that by the time her grandfather died in 1975, he had not collected his title deed which was issued in 1970. She further stated that in 2014, when her mother placed the caution, the reason she gave was that there was a person impersonating her grandfather and the Land Registrar made an entry that her mother was a daughter of the real owner. Therefore, the Land Registrar should not have removed the caution because the reasons were clear. She further stated that there is no way her grandfather could have obtained the consents from the Land Control Board as he was deceased.
34. PW2, Peter Titi, the Court Administrator Iten Law Courts, informed the court that he is the custodian of court records and he was in court pursuant to court summons to produce Miscellaneous Succession Cause No. E030 of 2024 filed on 27th August 2024. He informed the court that orders for Limited Grant of Letters of Administration were issued on 28th August 2024 to Sharon Chemutai Kisang and that the orders sought were for purposes of filing a suit in relation to the Estate of Kirotych Chelanga. He produced the file as Pexbt 1.
35. In cross examination, he stated that Letters of Administration ad litem were issued to Sharon Chemutai. He could not tell whether the letters were published in the court filing system. He stated that the contents of the physical order and what is published on the court filing system should be similar.

Defendant's case

36. Jonathan Chelimo DW1, relied on his witness statement recorded and signed on 27th January 2023 after it was adopted as his evidence in chief. He informed the court that he is the owner of parcel Lelan/Kabiego/259; that Kirotych Chelanga and his wife approached him in 1998 to purchase the suit property; that he carried out due diligence by confirming the names in the title deed, Dexbt 1, and by attending the Land Control Board.
37. He told the court that Dexbt 1 is for Lelan/Kabiego/19. He produced the green card showing that the land belonged to Kirotych Chelanga. He also produced a title deed as Dexbt 2 issued to him on 27th January 2003. He told the court that Lelan/Kabiego/19 was subdivided and that the correct procedure was followed in the subdivision. In that regard, he told the court that the chief wrote a letter on 20th January 2003 to the Land Registrar telling him that Chelanga Kiprotych is the owner of the land [Dexbt 3]; that they attended the Land Control Board on 28th May, 2003 and were given a letter of consent which he produced as Dexbt 4.
38. DW1 informed the court that they had attended an earlier another meeting at the Land Control Board on 24th February 2010 for subdivision of the same parcel as the process was not completed after the 1st approval by the Land Control Board. He produced the letter of consent from Land Control Board dated 24th February 2010 as Dexbt 5.
39. He informed the court that the land was subdivided into 5 portions, that is to say into parcels numbers 259 to 263. He produced the mutation form signed by Kirotych Chelanga on page 4 as Dexbt 6.
40. DW1 informed the court that he bought a portion of parcel number 19 and was given parcel number 259 measuring 6.5 acres; He informed the court that they attended the Land Control Board on 25th June 2014 and obtained the letter of consent which he produced as Dexbt 7; that the land parcel was transferred to him and he was issued with a title deed for parcel number 259 on 4th July 2014. He produced the transfer form between himself and Kirotych Chelanga, dated 4th July 2014 as Dexbt 8 and a green card for Lelan/Kabiego/259 as Dexbt 9. He acknowledged that there is no signature of the seller, no photograph and no Pin. However, his photograph, signature and Pin are captured in the transfer form. He also admitted that he has not produced any sale agreement between him and Kirotych



- Chelanga and the other land parcels 260-263 are still in the names of Kiprotich Chelanga. Only parcel 259 is in a different name.
41. DW1 further informed the court that on 27th October 2014, the daughter to the seller placed a caution on the land; that the Land Registrar issued her with a notice to attend a meeting [Dexbt 11] which she failed to attend. On 11th March 2024, he applied for removal of the caution and it was removed [Dexbt 10]. He admitted that one of the reasons he gave in his application to remove the caution was that the cautioner was deceased.
 42. He also produced a letter from the Assistant Chief, dated 2nd November 2024 where members of the family owning the parcels known as Lelan/Kibiego/260-263 confirmed that he purchased parcel number 259 which he produced as Dexbt 12.
 43. Concerning when Kiprotich Chelanga died, he stated that Kirotych Chelanga died in 2022 and not 1975 as claimed by the plaintiff. On cross examination, he asserted that Kiprotich Chelanga died in 2022.
 44. On further cross examination by Mr. Kwame, he stated that he bought parcel number 259 from the registered owner of land parcel number 19; that parcel number 19 had been registered in his name but the land was subdivided among Chelanga and his brothers; that he bought parcel number 259 in 2003 having paid three [3] people Kshs. 300,000 each and spent Kshs. 300,000 for the process. He paid and recorded acknowledgement of the money by Kirotych Chelanga, William Lenamoi and Christine Kirotych but he did not produce the acknowledgment before court.
 45. Regarding Dexbt 1 [title deed for parcel number 19], he stated that it was issued on 27th January 2003 but he had seen the title deed earlier at the lands office when he was doing his due diligence. He stated that he is aware that before a letter of consent is issued by the Land Control Board, there must be an application. He admitted that he had not produced any application to the Land Control Board for the 2 consent forms he produced as Dexbt 4 and 5 respectively. Concerning Dexbt 4, he stated that the consent is between 4 family members. The 2nd consent, Dexbt 5, is among 5 people, four family members and himself as the 5th person. Although he bought land from Kirotych, the subdivision was not from his portion but from parcel 19 and there were no minutes from land Control Board showing that the meetings took place and Kirotych Chelanga was present.
 46. Regarding Dexbt 8 [transfer form], he admitted that there is no photograph, signature of the seller [Kiprotich] yet all his documents are attached. He stated that he could not tell how much he paid for the transfer or stamp duty but stated that he could recall paying. He admitted that he did not have the Government valuer's report. He admitted/ acknowledged that in Dexbt 7, there is no entry showing how much consideration he paid.
 47. Concerning entry No. 4 in Dexbt 9, he stated that the reason given for placing the restriction was that there was purported impersonation by the purported transferor.
 48. Concerning his application for removal of caution, he stated that he applied before Christine died on 7th March 2024 but he had made an earlier application.
 49. Upon being shown Dexbt 2[a], death certificate of Kirotych Chelanga, he stated that it shows he died on 25th October 1971. He admitted that it is not possible for a deceased person to attend meetings at the Land Control Board and sign any forms or agreements but he insisted that the Kirotych he dealt with was alive.
 50. He asserted that there has never been a dispute between him and Christine apart from when she lodged a restriction after he obtained a title deed in 2014.



51. In re-examination, he stated that he first saw the title deed for parcel number 19 at the Lands office before 2003; that the money he gave Kirolich Chelanga was shared between 3 people but there was a fourth member of the family who did not turn up.
52. He stated that there are two certificates of death before court for Chelanga Kirolich with different serial numbers. One shows he died in 1971 while the other shows he died in 1975.
53. John Kabellow DW2, relied on his witness statement recorded and signed on 27th January 2023 after it was adopted as his evidence in chief. He informed the court that he was a member of Kapcherop Land Control Board until 2010 and a retired teacher. He stated that the chairman of the board when he was a member was a retired teacher; that his name was Chepterem and they worked together for 10 years. He stated that he was present when the 1st defendant and Kirolich Chelanga attended the board meeting.
54. In cross examination, he stated that he does not have anything to show that he was a member of the Land Control Board or that the meeting he has referred to took place. He stated that Kirolich Chelanga came to the board twice, at subdivision and transfer; that he attended the Land Control Board in person but he did not produce any photograph. He stated that he had not met Kirolich Chelanga before but he confirmed he was the one because he availed an Identity card. He stated that had the board been aware that the owner was deceased, they would not have given the consent letter.
55. Regarding Dexbt 4 and 5 [letters of consent], he stated that they appear strange because it is not normal to have 2 consents to subdivide the same parcel of land. The normal procedure is that there has to be application for consent, there must be minutes showing people who are or were present before the board and their documents including photographs and IDs. If the above documents are missing, then the letter of consent is not authentic.
56. He stated that he had known the 1st defendant for a long period of time as they were both teachers. He came to court as his witness because he was present during the Land control board meeting and he was personally known to him.
57. In re-examination, he stated that at that time when a person attended the Land Control Board, he was only required to have a sale agreement between the seller and the buyer and IDs. He stated that he did not know Kirolich Chelanga before and that he met him when he was presented to the Board with his documents. He stated that he was in court as a witness for the 1st defendant because he was present as a member of the Land Control Board when the letters of consent were issued.
58. Susan Kabisa DW3, the Land Registrar, Elgeyo Marakwet County informed the court that she has worked in the County since 2020. She produced the green card for Lelan/Kabiego/19 as the 2nd defendant's exhibit 1. She stated that the parcel of land was first registered in the name of Kirolich Chelanga and he was issued with a title deed on 27th January 2003 [entry 2]. On 6th July 2014, the title was cancelled upon subdivision and new registers were opened for land parcel numbers 259-263. She stated that application for subdivision was made to the Land Control Board by Kirolich Chelanga. In that regard, she produced the application as 2nd defendant's Dexbt 2. A letter of consent for subdivision was issued on 24th February 2010 which she produced as 2nd defendant's Dexbt 3. Mutation forms were received on 4th July 2014 in their office and entered in their records on 4th July 2014. She produced the forms as 2nd defendant's Dexbt 4. After the new registers were opened on 4th February 2014, the register for parcel number 19 was closed.
59. At close of hearing, the parties filed submissions which I have read and considered.



SUBMISSIONS

Plaintiff's submissions

60. In his submissions filed on 28th April 2025 the plaintiff has identified the following issues for the court's determination. These are: -
- i. Whether subdivision of the property known as Lelan/Kabiego/19 was done fraudulently?
 - ii. Whether the resulting titles should be cancelled?
 - iii. Whether the 1st defendant should be evicted from the property known as Lelan/Kabiego/259?
 - iv. Who should bear the costs of the suit?
61. On whether subdivision of the property known as Lelan/Kabiego/19 was done fraudulently, the plaintiff submits that the same was done fraudulently as the deceased Kirotych Chelanga who was the proprietor of the said property died in the year 1971. The plaintiff lists the fraudulent activities done by the defendants as follows: -
- i. Transfer documents were never executed by the transferor [deceased];
 - ii. The transferor's PIN number was not inserted on the transfer forms;
 - iii. There are no passport size photographs of the transferor;
 - iv. The transferor died in 1971 hence could not have attended Land Control Board and he issued with a consent in 2003 or any other date after his demise;
 - v. The 1st defendant made an application dated 7th March 2024 to remove the caution and one of the grounds was that the cautioner was deceased but the 2nd defendant went ahead to lift the caution without involving family members;
 - vi. There is no written sale agreement for the purchase of the suit property.
 - vii. There is no sale agreement that was produced in court between Kirotych Chelanga [deceased] and the 1st defendant in relation to the suit property. Section 3 of the *Law of Contract Act* on disposition of interest in land provides that the same must be in writing and signed by all parties to it. Though through the counterclaim the 1st defendant in the alternative avers that he obtained the title over the suit land, parcel number Lelan/Kabiego/259 by way of adverse possession, it cannot hold water and the same must fail.
62. Based on the decision in the case of *John Mungai Karua v Muguga Farmers' Cooperative Society & 4 others* [2015] e KLR, where the Court inter alia stated: -
- “...the 1st defendant is already holding the title that was obtained through fraud hence cannot turn around and claim adverse possession”; and the case of *Halo Yonda Jaaje v Sadaka Dzenko Mbaaro & another* [2014] e KLR where it was held: -
- “One cannot succeed in a claim for adverse possession before conceding that indeed the registered proprietor of land is the true owner of the said land.”, the plaintiff submits that there is evidence that the title of the 1st defendant in respect of the suit property was obtained illegally, unprocedurally and through a corrupt scheme hence impeachable under section 26[1][b] of the *Land Registration Act*, 2012.



63. Having proven that the plaintiff obtained the suit land fraudulently, the plaintiff submits that all the resulting titles from the illegal and fraudulent transaction should be cancelled and the 1st defendant evicted from the suit property.
64. On whether the plaintiff is entitled to mesne profits, the plaintiff has made reference to the definition of mesne profits espoused in Section 2 of the *Civil Procedure Act* and Order 21 rule 13 of the Civil Procedure Rules and the case of Attorney General v Halal Meat Products Limited 2016 e klr and submitted that, in the circumstances of this case, she is entitled to mesne profits.
65. On costs, the plaintiff submits that they should be borne by the defendants as provided by Section 27 of the *Civil Procedure Act*.
66. In the 1st defendant's submissions filed on 4th June 2025, it is submitted that 1st defendant fully complied with all legal procedures thus he is guaranteed title of the suit land.
67. On whether the applicant has met the threshold for grant of orders for adverse possession, reference is made to the case of Maweu v Liu Ranching & Farming Cooperative Society 1985 e klr as quoted in Civil Appeal No. 164 of 2011 Gachuma Gacheru v Maina Kabuchwa 2016 e klr and the evidence of DW1 that he had been in continuous, uninterrupted occupation and possession of the suit property since 2003, for a period in excess of 12 years and submitted that the plaintiff demonstrated to the court that his nature of occupation was open, continuous and exclusive since 2003, a fact said to have been admitted by the plaintiff during cross examination.
68. On whether the plaintiff is entitled to mesne profits, the defendant submits that the plaintiff did not provide any evidence to prove such a claim. Based on the decision in the case of Karanja Mbugua & Another v Martin Holdings Co. Ltd 2014 e KLR and Attorney General v Halal Meat Products Limited [2016] e KLR, the defendant submits that mesne profits are special damages, which must be pleaded and specifically proved, something the plaintiff failed to do.
69. On costs, based on the principle espoused in Section 27 of the *Civil Procedure Act*, that unless otherwise ordered by court in exercise of its discretionary power to award costs, costs follow the event, the 1st defendant urges this court to find the plaintiff's case lacking in merit and dismiss it with costs to him.

Analysis and determination

70. From the pleadings, the evidence and the submissions, I find the issues for the court's determination to be as follows:-
 - i. Proof of death of Kirotych Chelanga;
 - ii. Proof of participation of Kirotych Chelanga in the process that culminated in subdivision and transfer of the original parcel, Lelan/kibiego/19 to the transferees;
 - iii. Evidence at variance with pleadings;
 - iv. Whether there were procedural irregularities in the process that led to subdivision and transfer of Lelan/Kibiego/19?
 - v. Whether the 1st defendant's claim for adverse possession is maintainable?
 - vi. What orders should the court make?
71. As pointed out herein above, in paragraph 5 of her plaint, the plaintiff, pleaded that Kirotych Chelanga died on 25th October, 1975. In a bid to prove that fact, she produced a certificate of death number



0902886 as [Pexbt 2 a]. Whilst that evidence accords with the plaintiff's pleadings, during hearing, it emerged that there are two death certificates issued in respect of Kirolich Chelanga's death. The one referred to above and the one which the plaintiff relied on in support of her application for Grant of Letters of Administration ad litem. In the affidavit sworn in support of the application for Special Limited Grant ad litem, sworn on 26th August 2024, the plaintiff deponed that Kirolich Chelanga died on 25th October, 1971. She annexed to the affidavit a certificate of death, No.0902834, attesting to that fact.

72. In view of the foregoing, I find and hold that the evidence provided by the plaintiff concerning when Kirolich Chelanga died is contradictory and incapable of being relied on in determining the exact date when he, Kirolich Chelanga died.
73. The 1st defendant, on his part, pleaded that Kirolich Chelanga died in 2020, paragraph 8[g] of his statement of defence and counterclaim. During hearing, he departed from his pleading concerning that fact and without providing any basis for the departure from his pleaded case concerning that fact, stated that Kirolich Chelanga died in 2022.
74. In view of the foregoing, I find and hold that neither the plaintiff nor the 1st defendant adduced evidence capable of helping the court to determine with precision when Kirolich Chelanga died. The foregoing determination notwithstanding, from the totality of the evidence adduced before the court concerning the death of Kirolich Chelanga and/or the issue as to whether or not Kirolich Chelanga is the person the 1st defendant dealt with in the impugned sale, subdivision and transfer of the original parcel of land to the 1st defendant, among other beneficiaries of the subdivisions, there exists material, albeit circumstantial, that leads this court to conclude that it is highly improbable that Kirolich Chelanga was alive when his parcel of land was subdivided and transferred to the transferees, among them the 1st defendant. The material/circumstances from which I make that inference are: -
 - i. Whilst the first defendant claims that Kirolich personally appeared before the Land Control Board for processing of the requisite consents, the 1st defendant by himself and/or his witness could not confirm that the person who appeared before the Land Control Board was actually Kirolich Chelanga;
 - ii. Certain documents/records that ought to have been made and kept by the Land Control Board concerning the purported application for transfer or the minutes of the Board, were not produced in evidence by the defendants;
 - iii. Whereas the transfer purportedly signed by the deceased [Kiprotich Chelanga] in favour of the 1st defendant indicates that the deceased appeared before the person certifying the appearance, the transfer form produced in court indicates that he neither signed against his provided details in the form nor provided his passport photo. No explanation for that omission was provided by the transferee/the 1st defendant and the 2nd defendant;
 - iv. As early as 2014, immediately after the suit property was subdivided and the impugned transfers effected, Kirolich Chelanga's daughter, Christine Chepor, filed a restriction to restrict dealings with the suit properties on the ground that the transfers were vitiated by purported impersonation of the transferor.
75. Arising from the foregoing, I find that there are unexplained procedural gaps and/or irregularities in the process that led to the subdivision and transfer of a portion of the suit property namely Lelan/Kabiengo/259 to the 1st defendant. Being the beneficiary of the gaps/irregularities in the impugned transfer of a portion of the suit property to him, the burden shifted to the 1st defendant to prove to the court firstly, that the person he dealt with in the impugned transaction was indeed Kirolich Chelanga



and secondly, the applicable law and procedures were complied with in subdivision and transfer of a portion of the suit land to him. In this regard, the evidence adduced by the 1st defendant and his witness, fell short of the evidence required to prove that he legally obtained his interest in the parcel of land known as Lelan/Kabiengo/259. That being the case, his title to that parcel of land is impeachable under Section 26 of the [Land Registration Act](#), 2012.

76. On whether the 1st defendant has acquired rights to the parcel of land known as Lelan/Kabiengo/259, it is the considered view of this court, that the 1st defendant cannot maintain the claim for adverse possession because firstly he pleaded that his entry was on account of purchase of a portion of the suit property, which claim/allegation cannot form a basis of an action for adverse possession as it presupposes that the entry was with the consent and/or permission of the owner.
77. The upshot of the foregoing is that the plaintiff has proved her case against the 1st defendant. Consequently, I enter judgment in her favour against the 1st defendant as sought in her plaint, dated 30th August 2024, in terms of prayer 1, 2, 3 and 4. I also award the plaintiff the costs of defending the counterclaim, which I find to be lacking in merit and dismiss it.
78. The plaintiff's case against the 2nd defendant was not proved on a balance of probabilities. Consequently, I dismiss but with no orders as to cost as the plaintiff had reason to believe that the 2nd defendant might have facilitated the irregular/illegal/unlawful transfer/ dealings with the suit land.
79. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT ITEN THIS 30TH DAY OF JULY, 2025

L. N. WAITHAKA

JUDGE

Judgment delivered virtually in the presence of:-

Mr. Mukhabane for the Plaintiff

Mr. Bett for the 1st Defendant

N/A for the 2nd Defendant

Court Assistant: Christine

