

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT ELDORET**  
**ELC NO. 36 OF 2018**

STANLEY KAPTINGEI.....PLAINTIFF  
VERSUS  
SAMWEL KIBIWOTT KERICH.....  
DEFENDANT

**JUDGMENT**

**Introduction**

1. By an amended plaint dated 6<sup>th</sup> July, 2018, the Plaintiff sought the following reliefs:
  - i. **An order of eviction against the Defendant.**
  - ii. **An order for demolition of structures on land parcel number Kapsaret/Kapsaret Block 1 (Mararma) 11 to pave way for eviction of the Defendant from the suit land.**
  - iii. **An order for permanent injunction against the Defendant restraining the Defendant either by himself, his servants and/or his agents from constructing structures, wasting, damaging, alienating, wrongfully selling and or in any other manner interfering with the Plaintiff's quiet and peaceful occupation of the suit parcel of land known as parcel No. Kapsaret/Kapsaret Block 1 (Mararma) 11.**
  - iv. **Mesne profits**
  - v. **Costs of the suit.**

**Plaintiff's Case**

2. At the hearing, the Plaintiff adopted his witness statement dated 13<sup>th</sup> February, 2018. He stated that at the beginning of 2017 he found the Defendant who was putting up a house on his land. The Plaintiff's land is LR

No. Kapsaret/Kapsaret Block 1 (Mararma)/11 (suit property). He asked the Defendant to stop the construction but the Defendant did not stop. He went and reported the matter to the Assistant Chief of Kapsaret.

3. A meeting was held at the suit property and minutes of the meeting were recorded. He stated that he never sold any portion of the property to the Defendant.
4. The Plaintiff called PW2 Pius Kipchirchir Kogo who adopted his witness statement dated 29<sup>th</sup> June, 2018. He testified that he purchased one acre from the Plaintiff where he stays today. The Defendant came and occupied a plot next to his. The Defendant asked him to help him build a house. The Defendant constructed a brick house, a wooden store, brick latrine and dug a borehole. He also planted maize on the land. When this suit was filed the Defendant moved away.
5. The Plaintiff also called PW3 Shadrack Kipchumba Kaptingei who adopted his witness statement dated 2<sup>nd</sup> July, 2018. He stated that he purchased land from the Plaintiff. In 2017, the Defendant approached him for timber. He sold timber worth Kshs.25,000/= to the Defendant who constructed a brick house, wooden store, latrine and dug a borehole. The Defendant built 60 metres away from his land.
6. On 6<sup>th</sup> December, 2017, the area Chief convened a meeting at the home of the Plaintiff. In attendance were purchasers who had purchased land from the Plaintiff. Among those present was the Defendant who was claiming two acres. The Defendant had planted maize on his portion.

### **Defendant's Case**

7. The Defendant testified that he purchased two acres from Abel Kigen Maritim. The two acres were part of the suit property. Abel Kigen Maritim had purchased the land from Christopher Kiplagat Melly who had purchased it from the Plaintiff.

8. The Plaintiff started complaining that he had not sold the land to him. He went and reported to the area chief who came to the suit property. The Plaintiff demanded Kshs.10,000/= so as to process titles for the purchasers. The Plaintiff alleged that the documents which the Defendant had were forgeries.
9. The Defendant called DW2 Abel Kigen Maritim who testified that he is the one who sold the land to the Defendant. He stated that he had purchased the same land from Christopher Kiplagat Melly. Abel purchased the land from Christopher in 2010 and sold it to the Defendant in 2017.
10. Abel testified that he filed a case against the Plaintiff and Christopher Kiplagat Melly in 2018. He later learnt that this case had been filed against the Defendant. He stated that he was not in the meeting which was convened by the area chief at the Plaintiff's home.
11. DW4 Francis Obaka testified that he had been doing casual jobs for the Plaintiff but he stopped. He testified that he changed to doing casual jobs for the Defendant who is the current owner of two acres. The two acres were sold in 1999 and there is a time a surveyor came to the ground. He stated that he is the one who planted trees which are on the two acres occupied by the Defendant.
12. DW5 Thomas Kimagut Ngeny testified that he was a college mate of the Plaintiff and is also his neighbour. He has been in the area for over 50 years. He stated that he is aware that the Plaintiff sold two acres. The Defendant purchased the two acres from Abel Kigen Maritim in 2010. The witness stated that he purchased one acre from the Plaintiff and there are more people who purchased land from the Plaintiff. The two acres belonging to the Defendant are fenced.
13. The Defendant called DW6 Rebecca Kogo who is the area chief. She testified that she was aware that the Plaintiff sold two acres to Christopher Kiplagat Melly in 1999. Christopher sold the two acres to Abel Kigen

Maritim who in turn sold to the Defendant who has built a brick house which is incomplete. There is a time the Plaintiff was summoned to the chief's office but he did not attend. An assistant chief handled the case.

14. The Defendant called a County Surveyor as his last witness. The surveyor testified as DW7 Samuel Langat. He stated that according to the records held by their offices, the Plaintiff subdivided his land into four portions. The mutations were duly registered. He stated that there was an error in the title held by the Plaintiff which indicates that his land is Block 1 whereas it is supposed to be in Block 3. He stated that the same error is repeated in the green card.

15. The witness testified that Block 1 is for parcels which falls under Yamumbi. Block 2 is for parcels which fall under Kaptuiya and Block 3 is for parcels which fall under Mararma.

### **Parties Submissions**

16. The parties were directed to file written submissions. The Plaintiff filed his submissions dated 24<sup>th</sup> July, 2025. The Defendant filed his submissions dated 17<sup>th</sup> September, 2025.

### **Plaintiff's Submissions**

17. In his submissions, the Plaintiff identified the following issues for determination:

- i. *Who is the legal owner of Kapsaret/Kapsaret Block 1 (Mararma) 11?*
- ii. *Whether the Plaintiff is entitled to the reliefs sought?*
  - a. *Eviction*
  - b. *An order of demolition of structures.*
  - c. *Mesne profits.*
  - d. *Permanent injunction.*

iii. *Who should bear the costs of the suit?*

### **Defendant's Submissions**

18. In his submissions the Defendant identified the following issues for determination:

- a. *Whether the Plaintiff sold 2 acres to be excised from his land?*
- b. *Whether Kapsaret/Kapsaret Block 1 (Mararma)/11 and Kapsaret/Kapsaret Block 3 (Mararma)/11 Refer One And The Same Land?*
- c. *Who is in possession of the 2 acres in the Plaintiff's land?*
- d. *Whether the Defendant has trespassed onto the suit land?*
- e. *Whether an order of permanent injunction should issue against the Defendant?*
- f. *What reliefs should be granted?*
- g. *Who should pay the costs of the suit?*

### **Analysis and Determination**

19. I have carefully considered the evidence adduced by the Plaintiff and that of the Defendant. I have also considered the submission by the parties. There is no contention that the Plaintiff is the registered owner of LR No. Kapsaret/Kapsaret Block 1 (Mararma)/11 which I shall hereinafter refer to as the suit property. The first issue for determination is whether the suit property is one and the same as Kapsaret/Kapsaret Block 3 (Mararma)/11. There is no contention that the two acres which are being claimed by the Defendant are within the suit property.

20. The evidence which was adduced is that the origin of the 2 acres arise from the agreement between Christopher Kiplagat Melly and Abel Kigen Maritim. The evidence which was adduced is that Christopher Kiplagat Melly purchased the 2 acres from the Plaintiff in 1999. It is Abel Kigen Maritim who sold the two acres to the Defendant in 2010.

21. When Christopher Kiplagat Melly was selling his two acres to Abel Kigen Maritim, the property was described as Kapsaret/Kapsaret Mararma. In this agreement, the Plaintiff signed on it confirming that the land being sold was his land. During the hearing, the Defendant's counsel asked the Plaintiff whether he had been a witness in a sale agreement between Abel Kigen and Christopher Kiplagat Melly. The Plaintiff's answer was and I quote "I have been a witness in a sale agreement between Abel Kigen and Christopher Kiplagat Melly".
22. It is Abel Kigen Maritim who sold the two acres which he had purchased from Christopher Kiplagat Melly to the Defendant. The Plaintiff is arguing that the Defendant purchased land from Kapsaret/Kapsaret/Block 3 (Mararma) 11 which does not belong to him. The Defendant called DW7 Samuel Langat, a County Surveyor. This witness testified that the title known as Kapsaret/Kapsaret Block I (Mararma)/11 is erroneous. This was a mistake which was made in the green card as well as the title. He explained that block 1 is assigned to plots at Yamumbi. Block 2 is assigned to plots at Kaptuiya and Block 3 is assigned to plots at Mararma.
23. The County Surveyor went on to show that in 2012, the Plaintiff applied for subdivision of his land under Block 3 which is under Mararma Block. The Plaintiff's land was subdivided into four portions of various sizes. He produced a Registry Index Map (RIM) which was prepared showing the four subdivisions.
24. All the Defendant's witnesses testified that the Defendant was occupying two acres within the Plaintiff's land. The Plaintiff has sold various sizes to persons including the witnesses of the Defendant who testified that the Defendant was their neighbour. The Plaintiff having endorsed the agreement between Abel Kigen Maritim and Christopher Kiplagat Melly, he cannot turn around and say that the Defendant may have purchased land from a different block. The same land which he endorsed is the same land which

Abel Kigen Maritim sold to the Defendant. I therefore find that the suit property is one and the same as Kapsaret/Kapsaret Block 3 (Mararma)/11.

25. The Plaintiff took issue with ELC suit No. 11 of 2018 which had been filed by Abel Kigen Maritim against him and Christopher Kiplagat Melly. He argued that this suit was based on LR No. Kapsaret/Kapsaret Block 3 (Mararma)/39. This suit was based on one of the subdivisions of Kapsaret/Kapsaret Block 3 (Mararma)/11 which was done by the Plaintiff. This was confirmed by the County Surveyor and the Plaintiff did not deny the fact of subdivision.

26. The second issue for determination is whether the Defendant is a trespasser on the suit property. I have already demonstrated that the ownership of the two acres claimed by the Defendant is as a result of the sale to him by Abel Kigen Maritim. Abel Kigen Maritim testified in this case and confirmed that he sold the two acres to the Defendant. Abel Kigen Maritim purchased the two acres from Christopher Kiplagat Melly. The Plaintiff witnessed the agreement between Abel and Christopher. The Plaintiff cannot therefore call the Defendant a trespasser on land which he himself had endorsed as his. The Defendant is therefore not a trespasser on the land which falls within the suit property.

27. The Plaintiff produced minutes of 6<sup>th</sup> December, 2017 in which he was present. The meeting was convened at his land and the subject was subdivision for purposes of giving titles to purchasers. It was agreed that each purchaser had to produce proof that he/she purchased land. The Plaintiff produced these minutes but what was filed in court had the members in attendance redacted during photocopying. However the Defendant testified that his name appeared as number ten (10) on the list.

### **Disposition**

28. With all this evidence, the Plaintiff cannot say that the Defendant is a trespasser on the land. The Plaintiff himself agrees that the Defendant is in occupation and has built on the land. There is no way the Defendant can have his buildings demolished or evicted from the land he lawfully purchased. I therefore find that the Plaintiff has failed to prove his case against the Defendant. The Plaintiff's case is dismissed with costs to the Defendant.

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**HON. E. O. OBAGA**

**JUDGE**

**JUDGMENT DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 11<sup>TH</sup> DAY OF DECEMBER, 2025.**

**IN THE PRESENCE OF:**

Mr. Kimurgor for Mr. Kigen for Plaintiff.

Ms. Kesei for Defendant.

Court assistant – Steve Musyoki

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