



Barkeben (Suing as the Personal Representatives of the Estate of the Late Barkeben Kiprotich) v Kemboi & 4 others (Environment and Land Case 397 of 2013) [2026] KEELC 130 (KLR) (22 January 2026) (Judgment)

Neutral citation: [2026] KEELC 130 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT AND LAND CASE 397 OF 2013
EM WASHE, J
JANUARY 22, 2026**

BETWEEN

SAMUEL KIPKOECH BARKEBEN (SUING AS THE PERSONAL REPRESENTATIVES OF THE ESTATE OF THE LATE BARKEBEN KIPROTICH) PLAINTIFF

AND

**ISAAC KEMBOI 1ST DEFENDANT
WILLIAM KIPLAGAT 2ND DEFENDANT
ZAKAYO KIPKERING 3RD DEFENDANT
THOMAS KIMELI ROTICH 4TH DEFENDANT
REUBEN KEMBOI 5TH DEFENDANT**

JUDGMENT

1. The Plaintiff herein did file a Further Amended Plaintiff dated 10.04.2018 (hereinafter referred to as “the present suit”) against the 1st to 5th Defendants seeking the following Orders; -
 - a. An Order of Injunction in terms of Paragraph 7 and 8.
 - b. An Order of Eviction in terms of Paragraph 8.
 - c. Mesne Profits in terms of Paragraph 5 above.
 - d. Costs and interest.
 - e. Any other relief that the Honourable Court may deem fit to grant.
2. The grounds upon which the prayers sought are premised can be summarised as follows; -



- i. The Plaintiff did plead that he is the lawful and legitimate beneficiary of two parcels of land namely Kipkabus Settlement Scheme Plot.No.981 and 982 (hereinafter referred to as “the suit properties”) measuring 20 acres.
 - ii. However, on or about 10.03.2002, the Defendants herein jointly and severally trespassed into the suit properties and erecting various temporary structures in violation of the Plaintiff’s ownership rights therein.
 - iii. As a consequence of the Defendants actions on the suit properties, the Plaintiff was denied and/or hindered to undertake various income earning activities as well as did suffer substantial cause by the tempering of his fence on the suit properties.
 - iv. The Plaintiff therefore sought for an Order of eviction against the Defendants herein from the suit properties.
 - v. Further to that, the Plaintiff did seek for A Permanent Injunction to be issued against the Defendants herein jointly and severally against entering, using, occupying and/or in whatsoever manner interfering with the Plaintiff’s occupation of the suit properties herein.
 - vi. Lastly, the Plaintiff did seek for an Order of Mesne Profit against the Defendants jointly and severally for the unlawful use and occupation of the suit properties between the time of entry and yielding vacate possession of the suit properties.
 - vii. In conclusion, the Plaintiff urged the Court to enter judgment against the Defendants jointly and severally as sought.
3. The present suit was duly served on the Defendants herein.
 4. The Defendants in opposing the present suit did file a Statement of Defence dated 07.09.2004.
 5. In the Statement of Defence dated 07.09.2004, the Defendants did oppose the present suit on the following grounds; -
 - i. The Defendants did first and foremost deny the allegation that the Plaintiff herein was the legitimate and registered owner of the suit properties herein.
 - ii. The Defendants further did plead that the present suit was Res Judicata the proceedings known as Eldoret High Court Civil Miscellaneous No. 35 of 2004 which the Defendants had obtained Stay Orders thereof.
 - iii. In essence, the Defendant did state that the present suit was fatally defective and ought to be struck out with costs.
 6. After the Statement of Defence was filed and served on the Plaintiff, there was no Reply to Defence filed by the Plaintiff and the pleadings did close thereafter.
 7. The matter was therefore set down for hearing of the witnesses and production of documents.

Plaintiff’s Testimony & Documentary Evidence

8. The first witness to the stand was the Plaintiff herein who was marked as PW 1.
9. The Plaintiff did introduce himself as a resident of Kaungura within Uasin Gishu County.
10. The Plaintiff began his testimony by informing the Court that he was not familiar with any of the Defendants herein.



11. The Plaintiff did state that he was the registered owner of the suit properties herein and produced the relevant Title Deeds as Plaintiff's Exhibit 1 & 2.
12. However, the Plaintiff did disclose to the Court that one of his sons who lives in Kisumu came across the Defendants who were intending to sell the suit properties herein as the lawful owners.
13. The Plaintiff did testify that although he was the registered owner of the suit properties, he did not reside on the suit properties.
14. The Plaintiff did state that he was not aware of anyone who was in occupation of the suit properties but did further clarify that he had not authorised anyone to use and/or occupy the suit properties herein.
15. The Plaintiff did confirm that he sent his sons to verify the state of occupation on the suit properties and later on, he was informed that the Defendants had trespassed into the same and were in occupation without his consent and/or authority.
16. The Plaintiff informed the Court that he had been allocated the suit properties through two Letters of Allotments which he did produce as Plaintiff Exhibit 3 (A) & (B).
17. The Plaintiff did deny the allegation that the suit properties herein emanated from Plot.No.848.
18. The Plaintiff further did deny that the Defendants herein were in occupation and use of the suit properties when he was allocated the same.
19. The Plaintiff did aver that the suit properties herein were properly beaconed by a Licensed Surveyor although it seems that the beacons had been removed by unknown persons.
20. In essence, the Plaintiff did deny the allegations that he had acquired the suit properties by way of fraud and therefore he was the legitimate owner of the suit properties herein.
21. On cross-examination, the Plaintiff did inform the Court that he had purchased the suit properties from one Wilson Chepkwony although he could not remember the actual year.
22. Nevertheless, the Plaintiff did confirm that he was the registered owner of the suit properties herein.
23. According to the Plaintiff, the suit properties were within a Settlement Scheme.
24. The Plaintiff did disclose that the Purchase Price for the suit properties was Kenya Shillings Five Hundred Thousand (KShs 500,000/- although he did not have the Agreement for Sale or the prove of paying the said Purchase Price.
25. The Plaintiff did testify that the Defendants herein were in occupation and/or use of the suit properties without his consent and/or permission and therefore should be evicted.
26. On Re-examination, the Plaintiff did reiterate he was the lawful purchaser of the suit properties herein.
27. The Plaintiff therefore did state that the Defendants occupation and use of the suit properties was unlawful and illegal and hence they should be evicted.
28. At the end of the re-examination, PW1 was discharged.
29. The second's Plaintiff witness was SAMUEL KIPKOECH BARKEBEN who was marked as PW2.
30. PW 2 did inform the Court that he had prepared a witness statement dated 26.10.2011 of which he did proceed to adopt the same as his evidence in chief.
31. PW 2 began his testimony by informing the Court that the Plaintiff was his father.



32. PW2 did state that the Plaintiff herein was introduced to one Wilson Chepkwony who was a Statehouse Controller at the time.
33. According to PW 2, Wilson Chepkwony did offer to sell the suit properties for a consideration of Kenya Shillings Five Hundred Thousand (Kshs.500,000/-)
34. The offer was duly accepted by the Plaintiff who made payment of Kenya Shillings Three Hundred Thousand (Kshs.300,000/-) first and later cleared the rest.
35. The Receipt for the initial Kenya Shillings Three Hundred Thousand (KShs.300,000/-) dated 26.07.1993 was produced as Plaintiff Exhibit 4.
36. Thereafter, the Plaintiff was directed to collect two letters of Allotment from the Land Adjudication Officer in Nakuru which are produced as Plaintiff Exhibit 3 (a) & (b).
37. Later on, the Plaintiff was directed to collect the Title Deeds to the suit properties at the Eldoret Land Registry.
38. To confirm the legality of the Title Deeds and the ownership of the suit properties, PW 2 did produce copies of Official Searches of the suit properties as Plaintiff's Exhibit 5 (a) & (b).
39. PW 2 did inform the Court that at the time of acquiring the suit properties, the Defendants herein were not in occupation and/or use of the same.
40. PW 2 therefore did confirm that the present suit was filed upon discovering that the Defendants had trespassed into the suit properties and destroyed even trees that were on it.
41. PW 2 did state that the suit properties herein did not emanate from Plot.No.848 as alleged by the Defendants.
42. PW 2 did refer to the Survey Map and/or Registered Index Map of Kipkabus which was produced as Plaintiff Exhibit 6.
43. PW 2 did confirm to the Court that both suit properties were properly drawn within the Survey Map and/or Registered Index Map provided herein.
44. On cross-examination, PW 2 denied the allegation that the allocation of the suit properties was unlawful.
45. PW 2 did reiterate that the Plaintiff had purchased the suit properties from Wilson Chepkwony for a value of Kenya Shillings Five Hundred Thousand (KShs.500,000/-)
46. According to PW 2, the suit properties were acquired by the Plaintiff in the year 1993 and the Defendants herein trespassed into the same in the year 2002.
47. The Plaintiff upon reporting the incidence to the Area Chief and the District Officer was advised to file a case in Court.
48. PW 2 did testify that the Title Deeds to the suit properties were issued on the 25.08.1998.
49. On re-examination, PW 2 did reiterate that the suit properties had been purchased from Wilson Chepkwony.
50. At the end of this re-examination, PW 2 was duly discharged from the witness box.
51. The third Plaintiff's witness was Dorcas Jerotich Kore who was marked as PW3.



52. PW 3 did introduce herself as a Government Surveyor in the Department of Land, Uasin Gishu.
53. PW 3 did state that she had been summoned to present the Certified Copy of the Survey Map and/or Registered Index Map in relation of Kipkabus Settlement Scheme and in particular Plot.No. 982.
54. PW 3 therefore did produce the Survey Map and/or Registered Index Map of the property known as LR.No.Kipkabus Settlement Scheme/982 and Plaintiff's Exhibit 6.
55. PW 3 did state that the property known as LR.No.Kipkabus Settlement Scheme/982 shares a boundary with LR.No.Kipkabus Settlement Scheme/981.
56. At the end of this examination in chief by PW 3, there was no cross-examination by the Defendants herein and the witness was duly discharged from the witness box.
57. The fourth Plaintiff's witness was Diana Agunda who was marked as PW4.
58. PW 4 did introduce herself as a Land Registrar, working at the Department of Land in Uasin Gishu County.
59. PW 4 did inform the Court that she was in Court pursuant to Witness Summons issued on the 05.06.2025.
60. The main reason PW 4 had been summoned by the Court was to produce the Certified Copies of the Register relating to the suit properties herein.
61. According to PW 4, the property known as LR.No.kipkabus Settlement Schemme/981 was created on the 25.08.1998 and measuring about 4.04 Hectares based Sheet No. 2.
62. PW 4 did state that the property known as LR.No.Kipkabus Settlement Scheme/981 was a Sub-Division of the property known as LR.No.Kipkabus Settlement Scheme/950.
63. As regards the second property known as LR.No.Kipkabus Settlement Scheme/982, the same was created on the 25.08.1998 and measures approximately 4.04 Hectares based on Sheet No.2.
64. The property known as LR.No.Kipkabus Settlement Scheme/982 was once again a sub-division from the property known as LR.No.Kipkabus Settlement Scheme/950.
65. PW 4 thereafter did produce the Certified Registers and/or Green Cards of the properties known as LR.No.Kipkabus Settlement Scheme/981 and LR.No.Kipkabus Settlement Scheme/982 as PW 4 EXHIBIT 1 & 2 respectively.
66. PW 4 further did inform the Court that the property known as LR.No.Kipkabus Settlement Scheme/950 was still in existence and measures approximately 57.4 Hectares.
67. PW 4 was not cross-examined as the Defendants were not present on the material date.
68. Consequently, PW 4 was discharged from the witness box and the Plaintiff did proceed to close his case.

Defendant's Testimonies & Documentary Evidence

69. Despite being duly served with the various Mention and Hearing Notices and an Affidavit of Service filed to that effect, there was no attendance and/or representation by the Defendants to prosecute their case and no explanation was given for their absence
70. In the absence of the Defendants to prosecute their case, this Court did proceed to close of the Defence case.



71. The parties were thereafter directed to prepare, file and exchange their final submissions.
72. The Plaintiff did file his final submissions on the 15.07.2025 while the Respondents did not file any submissions.
73. The Court has duly perused the pleadings herein, the testimonies of the parties and the documents presented and identifies the following issues for determination; -
 - Issue No. 1 – Who is the lawful registered owner of the suit properties?
 - Issue No. 2 – Have the defendants trespassed into the plaintiff's suit properties?
 - Issue No. 3 - Whether the plaintiff is entitled to the reliefs sought in the further amended plaint.

Issue No. 4 – Who shall bear the costs of the suit.

74. The Court having identified the above issues for determination, the same will now be analysed and resolved as follows; -
 - Issue No. 1 - Who is the lawful registered owner of the suit properties?
75. The first issue for determination is to establish the true and legitimate owner of the suit property.
76. According to the testimony of the Plaintiff, the suit properties were purchased from one Wilson Chepkwony and thereafter the titles legally processed and issued on the 25.09.1998 as confirmed by Plaintiff Exhibit 1 & 2.
77. To verify the Plaintiff's registration as the owner of the suit properties, two Official Searches dated 31.01.2014 were produced in Court as Plaintiff's Exhibit 5 (a) and (b).
78. Lastly, the County Land Registrar, Uasin Gishu who was called as the Plaintiff's fourth witness did also produce the Registers of the suit properties as PW 4 Exhibit 1 & 2.
79. In all these documents, the person who is recorded and recognised as the lawful owner of the suit properties is the Plaintiff herein.
80. The Defendants in their Defence dated 07.09.2004 denied that the suit properties were registered in the name of the Plaintiff herein.
81. However, the Defendants did not disclose the person and/or entity that was claiming ownership of the suit properties against the Plaintiff herein.
82. According to the Defendants, their view was that the present suit was Res Judicata the proceedings known as Eldoret High Court Civil Miscellaneous No. 35 of 2004.
83. Unfortunately, the Defendants did not provide any information as regards the proceedings known as Eldoret High Court Civil Miscellaneous No.35 of 2004 or its outcome thereof.
84. Be as it may, Section 26 of the [Land Registration Act](#), No. 3 of 2012 provides that a Certificate of Title shall be held as conclusive proof of ownership.
85. The grounds upon which a Certificate of Title can be cancelled and/or impeached are further provided in the same proviso as Fraud, Misrepresentation and unprocedural, illegal or corrupt acquisition of a title.
86. The Defendants did not plead any of the three grounds of impeaching and/or cancelling a Certificate of Title in their Defence dated 07.09.2004.



87. To make matters worse, the Defendants did not attend Court on the various hearing dates to give their testimonies or side of the story.
88. As a consequence, the testimony and documents adduced by the Plaintiff stand unchallenged.
89. In conclusion, this Court hereby makes a finding that the suit properties are lawful and legally registered in the name of the Plaintiff herein.

Issue No. 2 – Have the defendants herein trespassed into the plaintiff’s suit properties?

90. The Plaintiff in the present suit pleads that the Defendants herein have trespassed into the suit properties.
91. According to the testimonies of the Plaintiff and PW 2, the Defendants occupation on the suit properties were without consent and interfere with the ownership rights of the registered owner.
92. The Defendants in their Defence dated 07.09.2004 did not deny the Plaintiff’s allegations that they were in occupation of the suit properties.
93. The only response that the Defendants gave in their Defence dated 07.09.2004 was that there was a proceeding known as Eldoret High Court Civil Miscellaneous Application No. 35 of 2004 which had Stay Orders in their favour.
94. Nevertheless, the Stay Orders being referred by the Defendants having emanated from Eldoret High Court Civil Miscellaneous Application No. 35 of 2004 were never presented before this Court to appreciate their impact in terms of the Defendant’s occupation of the suit properties.
95. The provisions of Section 3 (1) of the *Trespass Act*, Cap 294 provides that; -

“ Any person who without reasonable excuse enters, is or remains upon or erects any structure on, or cultivates or tills or grazes stock or permits stock to be on, private land without the consent of the occupier thereof shall be guilty of an offence.”
96. Based on the testimonies of the Plaintiff and PW 2, it is clear that the Defendants occupation and use of the suit properties without the consent of the Plaintiff amounts to trespass and interference of his rights provided under Section 24 and 25 of the *Land Registration Act*, Cap 3 of 2012.
97. As such, this Court hereby makes a finding that the Defendants herein are trespassers in the Plaintiff’s suit properties.

Issue No. 3 - Whether the plaintiff is entitled to the reliefs sought in the further amended plaint?

98. The first relief sought by the Plaintiff is an Order of Injunction prohibiting the Defendants from further use of the suit properties herein.
99. As found in Issue No. 1, the suit properties herein are registered in the name of the Plaintiff herein and the Defendants have no ownership rights over the same.
100. As such, the Defendants occupation and use of the suit properties without the consent and/or authority of the Plaintiff is contrary to the provisions of Section 24 and 25 of the *Land Registration Act*, No.3 of 2012.
101. For the Plaintiff to enjoy the rights provided under Section 24 and 25 of the *Land Registration Act*, No. 3 of 2012, the Court has no alternative but to issue a Permanent Injunction prohibiting the Defendants from further use and/or occupation of the suit properties henceforth.



102. The second relief sought by the Plaintiff herein was an order of Eviction against the Defendants.
103. In Issue No.2, the Defendants herein were found to have been in occupation and use of the Plaintiff's suit properties without his consent and therefore in trespass thereof.
104. Consequently, the available remedy in favour of the Plaintiff is to order the Defendants herein to vacate, yield vacant possession and restore the suit properties to the hands of the Plaintiff.
105. This exercise can only be achieved through an Order of Eviction against the Defendants if they fail to comply with the Orders of handing vacate possession to the Plaintiff within the time provided by the Court.
106. Be as it may, the Plaintiff is entitled to a prayer of Eviction as sought in the Plaint herein.
107. Lastly, the Plaintiff sought for mesne profits from the Defendants for the unlawful use of the suit properties from the date they entered into the suit properties to the date they hand over possession to the Plaintiff or are evicted.
108. However, it is settled law that mesne profit is considered as a special damage which a claimant is required to specific plead it and prove the same.
109. Unfortunately, the Plaintiff herein did not specifically plead the particulars of the Mesne profit being sought or prove the same at the hearing.
110. As such, this Court is of the considered view and finding that the Plaintiff's claim for mesne profit is not merited and cannot be granted.
111. In conclusion, the Court hereby makes a finding that the Plaintiff is entitled to the reliefs sought in the Plaint save for mesne profits.

Issue No. 4 – Who shall bear the costs of the suit

112. Costs usually follow the event.
113. In the present case, the Plaintiff has succeeded in prosecuting his claim and the Defendants are condemned to pay costs either jointly or severally.

Conclusion

114. In conclusion, this Court hereby makes the following Orders in determination of the present suit;-
 - i. The further amended plaint dated 10.04.2018 be and is hereby allowed.
 - ii. An order of permanent injunction be and is hereby issued against the defendants, restraining them from continued trespass, occupation and use of the suit properties known as Kipkabus Settlement Scheme/981 and Kipkabus Settlement Scheme/982.
 - iii. The Defendants be and are hereby ordered to vacate the suit properties within 45 days from the date hereof.
 - iv. In default of order (iii) above, an order of eviction be and is hereby issued automatically to be executed by the deputy registrar, environment & land court, Eldoret upon application by the plaintiff.
 - v. Costs of the suit to be borne by the defendants jointly and severally.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 22ND DAY OF JANUARY, 2026.



EMMANUEL M.WASHE

JUDGE

In the presence of:

Court Assistant: Brian

Plaintiff: Mr. Wainaina for the Plaintiff

Defendant: N/A for the Defendant

