



**Kiprotich v Biwott (Environment and Land Case 71 of 2012)
[2026] KEELC 353 (KLR) (29 January 2026) (Judgment)**

Neutral citation: [2026] KEELC 353 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ENVIRONMENT AND LAND CASE 71 OF 2012
LA OMOLLO, J
JANUARY 29, 2026**

BETWEEN

TALAM SAMSON KIPROTICH PLAINTIFF

AND

ALBERT KIPTINGOS BIWOTT DEFENDANT

JUDGMENT

Introduction.

1. The Plaintiff in the main suit commenced the present proceedings vide the Complaint dated 29th August, 2018. It was amended on 6th November, 2018 and further amended on 13th November, 2019.
2. He sought the following prayers;
 - a) A declaration that the parcel of land registered under LR No. Kericho/Kapsoit/2463 belongs to the Plaintiff.
 - Bbb) An order for eviction against the Defendant and a permanent order of injunction barring the Defendant either by himself, his agents and or servants from further acts of trespass, occupation, use or any other acts on the Plaintiff's land.
 - cc) An order of a permanent injunction against the Defendant by himself, his servant and/or agents or otherwise restraining him from entering, trespassing onto and/or interfering in any other manner with the portion of land LR No. Kericho/Kapsoit/2463. (sic)
 - d) General damages for trespass and mesne profits from the Defendant.
 - e) Costs for the suit.
3. The Defendant in the main suit filed a Statement of Defence and Counterclaim dated 4th October, 2012 which was amended on 9th July, 2014.



4. The Plaintiff filed an application dated 18th March, 2022 which sought the following prayers;
 - a. That this Honourable Court do grant the Plaintiff leave to discontinue this suit in its entirety in accordance with the Civil Procedure Act and Civil Procedure Rules.
 - b. That this Honourable Court do hereby grant orders to the Plaintiff to withdraw and/or discontinue the claim against the Defendant Albert Kiptingos Biwott.
5. The said application was allowed on 10th November, 2022 and the Plaintiff's suit withdrawn with costs.
6. The Court issued directions that the Counterclaim proceeds for hearing.
7. The Plaintiff in the Counterclaim avers that on 9th July, 2001 he and the 2nd Defendant in the Counterclaim, jointly purchased a 0.6-acre portion of Kericho/Kapsoit Sheet 13/Plot No. 13 from Kitur Arap Mutai.
8. He also avers that land parcel No. Kericho/Kapsoit Sheet 13/Plot No. 13 measured 2.4 Ha.
9. He further avers that the portion of land they purchased was registered as Kericho/Kapsoit/2463.
10. It is his averment that the 2nd Defendant in the Counterclaim registered the said parcel of land in her name without his knowledge.
11. It is also his averment that he commenced substantial improvements on the suit parcel of land where he has been residing to date.
12. It is further his averment that when he became aware that the 2nd Defendant had registered the suit parcel of land in her name, he lodged a caution.
13. He avers that after he lodged the caution, the 4th Defendant in the Counterclaim wrote a letter to the 2nd Defendant in the Counterclaim informing her that a caution had been registered.
14. He also avers that the 2nd Defendant in the Counterclaim was aggrieved by the registration of the said caution and she filed Kericho HC Case No. 37 of 2010 seeking its removal.
15. He further avers that while the said suit was pending in Court, the 2nd Defendant in the Counterclaim allegedly conspired with the 1st and 4th Defendants in the Counterclaim to have the suit parcel of land registered in the name of the 1st Defendant in the Counterclaim.
16. It is his averment that he only became aware of the said transfer when he received a demand letter from Keter, Nyolei & Co. Advocates that was written at the behest of the 1st Defendant in the Counterclaim.
17. It is also his averment that after he received the said demand letter, he filed an application in Kericho HC Case No. 37 of 2010 seeking that the 1st, 3rd and 4th Defendants in the Counterclaim be joined to the suit.
18. It is further his averment that before his application could be heard, the 1st Defendant in the Counterclaim filed the present suit and Kericho HC Case No. 37 of 2010 was withdrawn.
19. He avers that the transfer of the suit parcel of land to the 1st Defendant in the Counterclaim was done fraudulently.
20. The Plaintiff in the Counterclaim then sets out particulars of fraud against the Defendants and avers that the 1st Defendant in the Counterclaim ought to have known his (Plaintiff in the Counterclaim) interest in the suit parcel of land.



21. He also avers that the 1st Defendant in the Counterclaim was aware of the caution he had lodged and he failed to conduct due diligence before purchasing the land.
22. The Plaintiff in the Counterclaim prays for judgement against the Defendants in the Counterclaim for;
 - a. A declaration that the purported transfer of title number Kericho/Kapsoit/2463 by the 2nd Defendant to the 1st Defendant is null and void, and this Honourable Court be pleased to cancel the same.
 - b. A declaration that the registration of title number Kericho/Kapsoit/2463 in the name of the 2nd Defendant was fraudulent and in fraud of the Plaintiff, and consequently title number Kericho/Kapsoit/2463 be registered in the joint names of the Plaintiff, Albert Kiptingos Biwott and Zipporah Jelangat Kiptingos.
 - c. Interest.
 - d. Costs.
 - e. Any other or further relief as may seem fit to this Honourable Court to grant.
23. The 1st Defendant in the Counterclaim filed a reply to the Amended Defence and Defence to Counterclaim dated 8th September, 2014.
24. He denies the averments in the Amended Defence and Counterclaim and states that he is the registered owner of land parcel No. Kericho/Kapsoit/2463.
25. He also denies having knowledge of any caution registered on the suit parcel of land.
26. He states that he is an innocent purchaser for value as he has acquired absolute proprietary interest over the suit parcel of land.
27. He then prays that the Amended Defence and Counterclaim be dismissed with costs.
28. The 2nd Defendant in the Counterclaim filed her Statement of Defence dated 27th June, 2016 which was amended on 12th February, 2019. She denies the averments in the Counterclaim and states that she purchased the suit parcel of land in the year 2000.
29. She also states that the suit parcel of land measures 0.24 Ha and she was registered as its owner on 4th June, 2004.
30. She further states that the Plaintiff in the Counterclaim is a stranger to the suit parcel of land and prays that the Counterclaim be dismissed with costs.
31. The 3rd and 4th Defendants in the Counterclaim filed their Defence to the Counterclaim dated 26th May, 2016. They deny the averments in the Counterclaim and pray that it be dismissed with costs.

The Plaintiff In The Counterclaim's Evidence.

32. Albert Kiptingos Biwott testified as PW1. It was his evidence that the 2nd Defendant in the Counterclaim was his former wife.
33. It was also his evidence that he came to know the 1st Defendant in the Counterclaim in the year 2020. He stated that he filed a witness statement and prayed that the Court adopts it as part of his evidence in Chief, which prayer the Court acceded to.



34. It was further his evidence that he had in Court a copy of the 2nd Defendant in the Counterclaim's National Identity Card. It was Identity Card No. 13109492 and he produced it as Exhibit P1.
35. He testified that they customarily got married in August, 1995 in Kapkechui Location, Mogotio Sub-County in Baringo County.
36. He also testified that he had in Court a copy of a declaration of customary marriage and residence.
37. He further testified that after they got married, the 2nd Defendant in the Counterclaim changed her residence and got a new Identity Card. He produced a copy of the change of residence as Exhibit P2.
38. It was his evidence that he had in Court a copy of his Identity Card No. 0XXXXXXX which he produced as Exhibit P3.
39. It was also his evidence that the 2nd Defendant in the Counterclaim changed her name from Ziporah Chelangat to Ziporah Jelagat Kiptingos.
40. It was further his evidence that during the subsistence of their marriage, they purchased a portion of land at Chepseon from one Joshua Kipkemoi for Kshs. 260,000/=.
41. He testified that they entered into an agreement for sale of land dated 11th May, 2001. He produced a copy of the said sale agreement as Exhibit P4.
42. He also testified that they later sold the said parcel of land and used the money to purchase another parcel of land at Kapsoit.
43. He further testified that they purchased a portion of land registered as Kapsoit Sheet 13 Plot 13 vide the land sale agreement dated 9th July, 2001 from Kitur Arap Mitei.
44. It was his evidence that the said parcel of land was sold at Kshs. 195,000/=. They paid Kshs. 145,000/= to the vendor and used Kshs. 50,000/= to pay for demarcation and survey. The land was later registered as Kericho/Kapsoit/2463. He produced a copy of the land sale agreement dated 9th July, 2001 as Exhibit P5.
45. It was also his evidence that thereafter he built two houses on the land. The first house was made of timber while the second house was built with stones.
46. It was further his evidence that he built the permanent house between the years 2006 and 2007 while he was living with the 2nd Defendant in the Counterclaim and their three children at Moi Estate within Kericho Town.
47. He testified that their first born is Kevin Kipngeno Biwott, the second born Emmanuel Kiptoo Kiptingos while the third born is Jael Jepkemoi.
48. He also testified that all the children are now university graduates.
49. He further testified that the same year he built the houses, he relocated from Moi Estate to Kapsoit Village. The photographs of the houses were marked as MFI P6.
50. It was his evidence that sometime in the year 2008, they had differences with the 2nd Defendant in the Counterclaim and added that when he conducted a search at the Lands registry, he discovered that she had transferred the suit parcel to her name.
51. It was also his evidence that the suit parcel of land as at the time of his testimony is registered in the name of the 1st Defendant in the Counterclaim.



52. It was further his evidence that when he purchased the suit parcel of land from Kitur, it was registered as Kericho/Kapsoit Sheet 13/Block 13.
53. He testified that when the land was transferred to the 2nd Defendant in the Counterclaim, it was registered as land parcel No. Kericho/Kapsoit/2463. After it was transferred to the 1st Defendant in the Counterclaim it remained to be land parcel No. Kericho/Kapsoit/2463.
54. He produced a copy of the green card of the suit parcel of land as Exhibit P7 and a copy of a Certificate of official search of the suit parcel of land dated 16th February, 2008 as Exhibit P8.
55. It was his evidence that after he realized that the suit parcel was registered in the name of the 2nd Defendant in the Counterclaim, they quarreled and in the year 2009, she deserted him.
56. It was also his evidence that later, some people went to the suit parcel of land to inspect it with the intention of purchasing the land.
57. It was further his evidence that he then registered a caution on the suit parcel of land.
58. He testified that he had in Court a letter dated 30th March, 2010 which stated that a caution had been registered on the land. He produced the said letter as Exhibit P9.
59. He also testified that after he registered the caution, the 2nd Defendant in the Counterclaim filed Kericho HC Civil Case No. 37 of 2010 against him seeking orders for removal of the caution. He produced the Amended Plaintiff filed in Kericho HC Civil Case No. 37 of 2010 as Exhibit P10.
60. He further testified that the land was later transferred to the 1st Defendant in the Counterclaim and he was given a title deed. He produced a copy of the title deed issued to the 1st Defendant as Exhibit P11.
61. It was his evidence that before he sued the Attorney General, he wrote a letter of intention to sue dated 15th April, 2013. He produced a copy of the said letter as Exhibit P12.
62. It was also his evidence that the Attorney General responded to his letter vide the letter dated 29th May, 2013. He produced a copy of the said letter as Exhibit P13.
63. It was further his evidence that in his Counterclaim, he is seeking that the title deed issued to the 1st Defendant be cancelled and another title deed be issued in his name and the 2nd Defendant's name as it is matrimonial property.
64. In his witness statement dated 9th July, 2014, PW1 reiterates his averments in the Counterclaim.
65. Upon cross-examination by Counsel for the 1st Defendant in the Counterclaim, he reiterated that his name is Albert Kiptingos Biwott.
66. He also reiterated that he purchased the suit parcel of land on 9th July, 2001 and stated that he filed the Counterclaim on 9th July, 2014 which was 13 years after he purchased the land.
67. He also reiterated that he purchased the suit parcel of land from Kitur Arap Mutai.
68. He confirmed that he had a witness, present in court, who had witnessed and signed the agreement.
69. He also confirmed that the land was transferred to the 2nd Defendant in the Counterclaim's name in the year 2004.
70. He further confirmed that he raised an issue with the said registration in the year 2010 which was six years after the land was registered in the 2nd Defendant in the Counterclaim's name.



71. He then reiterated that he realized that the land had been registered in the 2nd Defendant in the Counterclaim's name in the year 2008 after conducting a search.
72. He was referred to the Certificate of official search of the suit parcel of land dated 16th February, 2008 that was produced as Exhibit P8 and he confirmed that he registered a caution in the year 2010.
73. He also admitted that the Land Registrar stated that he had registered a caution on the suit parcel of land.
74. He further admitted that he was surprised to learn that no caution was registered on the green card.
75. He confirmed that he lives on the suit parcel of land and that the 1st Defendant in the Counterclaim was no longer in occupation.
76. He stated that he purchased materials and developed the suit parcel of land but he did not keep any receipts.
77. Upon cross examination by Counsel for the 2nd Defendant in the Counterclaim, he reiterated that his name is Albert Kiptingos and that the 2nd Defendant in the Counterclaim was still his wife as they were not divorced.
78. He stated that he was a pharmaceutical technologist and that before he relocated to Kericho, he ran a chemist in Nakuru.
79. He confirmed that he used to confide in the 2nd Defendant in the Counterclaim since they were husband and wife.
80. He reiterated that after they sold the land that they jointly owned at Chepseon, they purchased another parcel of land at Kapsoit.
81. He stated that he was not aware that the 2nd Defendant in the Counterclaim had taken a loan.
82. He also admitted that if the 2nd Defendant in the Counterclaim was doing her own sinister things, then she would not have told him.
83. He further admitted that they purchased the land on 9th July, 2001 and that there was no time frame within which to get a title deed.
84. He stated that as a purchaser, he expected to get a title deed and reiterated that it was in the year 2008, that he learnt that the land was now registered in the name of the 2nd Defendant in the Counterclaim.
85. He also stated that at the time of purchase he used to live in Nakuru and he did not suspect that the 2nd Defendant in the Counterclaim would do anything sinister.
86. He reiterated that he registered a caution on the suit parcel of land in the year 2010.
87. He admitted that the only thing that showed that a caution had been registered was the letter written by the Land Registrar.
88. He was then referred to the land sale agreement dated 9th July, 2001 (Exhibit P5) and he admitted that he purchased the suit parcel of land jointly with the 2nd Defendant.
89. He admitted that the said land sale agreement did not indicate the shares that each of them purchased.
90. He stated that if it was a jointly owned property, then it was not clear why the other party would go behind the other partner's back.



91. He also stated that the agreement did not preclude the other party from dealing with the property.
92. He confirmed that Sheet No. 13 Plot No. 13 was subdivided to give rise to land parcel No. 2463.
93. He also confirmed that the agreement for sale of land was with respect to Sheet No. 13 Plot 13.
94. Upon further cross examination by counsel for the 3rd and 4th Defendants in the Counterclaim, he reiterated that he purchased the suit parcel of land vide the land sale agreement dated 9th July, 2001 (Exhibit P5.)
95. He stated that the said parcel of land measured 0.6 acres which was an equivalent of 0.24 Ha.
96. He also stated that the suit parcel of land had been taken away from him.
97. He reiterated that at the time of purchase, the 2nd Defendant in the Counterclaim was his wife and in the agreement for sale of land, they were described as Mr. and Mrs.
98. He also reiterated that they purchased the suit parcel of land in the year 2001 and only learnt that it was registered in the name of the 2nd Defendant in the Counterclaim in the year 2008.
99. He stated that he sued the 3rd and 4th Defendants in the Counterclaim in the year 2014 which was seven years after the alleged discovery.
100. He reiterated that he filed the Counterclaim 13 years after they entered into the land sale agreement and confirmed that he had not given any reason for the delay.
101. He confirmed that his claim against the 3rd and 4th Defendants in the Counterclaim was based on the land sale agreement.
102. He was then referred to clause 3 of the land sale agreement dated 9th July, 2001 (Exhibit P5.) He admitted that he had no relationship with Mr. Kitur and was not aware if he (Mr. Kitur) sought the Land Control Board consent.
103. He confirmed that Mr. Kitur was of sound mind and that when he was selling the land, he was aware of their (Plaintiff and 2nd Defendant) existence.
104. He admitted that he was not aware if the Land Control Board Consent was given.
105. He stated that the 2nd Defendant in the Counterclaim would be in a better position to say if the Land Control Board consent was given.
106. He also stated that the 2nd Defendant in the Counterclaim had orchestrated a scheme to steal the land from him.
107. He reiterated that he lodged a caution on the suit parcel of land but admitted that when lodging the caution, he did not fill any forms.
108. He also admitted that he did not lodge any documents at the Land Registry apart from his Identity Card and the land sale agreement.
109. He further admitted that he paid some money to the Clerks at the Lands Registry but he could not remember how much it was.
110. He confirmed that he was issued with a receipt but he later clarified that he could not remember if he was given a receipt.



111. He was then referred to the letter dated 30th March, 2010 (Exhibit P9). He admitted that the said letter was addressed to the 2nd Defendant in the Counterclaim and it stated that the land belonged to her.
112. When he was referred to the Amended Plaint filed in Kericho HC Civil Case No. 37 of 2010 (Exhibit P10), he reiterated that the 2nd Defendant in the Counterclaim had commenced the said proceedings.
113. He admitted that the Attorney General was not a party to the said proceedings.
114. He stated that by the year 2010 he was aware that the suit parcel of land had a problem and alleged that that in the same year, the Court in Kericho was not active.
115. He also stated that it was not true that he did nothing between the year 2010 and 2014.
116. He admitted that the suit parcel of land was Kericho/Kapsoit/2463 and yet in the sale agreement, they were purchasing a portion of a parcel of land described as Kericho/Kapsoit Sheet 13/Plot 13.
117. He confirmed that he did not purchase the whole of Kericho/Kapsoit Sheet 13/Plot 13 and that he instead purchased a portion of it.
118. He admitted that he was not the one who drafted the land sale agreement and reiterated that he purchased a portion of Kericho/Kapsoit Sheet 13/Plot 13 measuring 0.6 acres.
119. He also admitted that the land sale agreement did not state the location of the suit parcel of land.
120. He further admitted that they went to the suit parcel of land with a surveyor who demarcated the land. He went on to state that the said surveyor was not going to be called as a witness by him.
121. He confirmed that one cannot tell the location of the suit parcel from the land agreement.
122. He stated that other plots were excised from Kericho/Kapsoit Sheet 13/Plot 13.
123. Upon re-examination, PW1 reiterated that he purchased the suit parcel of land on 9th July, 2001.
124. He also reiterated that he purchased a portion of Kericho Kapsoit Sheet 13/ 13 as per the land sale agreement dated 9th July, 2001 (Exhibit P5).
125. He stated that Kericho Kapsoit Sheet 13/ Plot 13 measures 0.24 Ha and added that he only purchased a 0.6-acre portion of it.
126. He also stated that he filed the Counterclaim on 9th July, 2014 which was within the time frame of twelve years.
127. He reiterated that when he discovered that the 2nd Defendant in the Counterclaim had registered the land in her name, he lodged a caution.
128. He stated that it was after he lodged the caution that the Land Registrar wrote a letter to the 2nd Defendant in the Counterclaim. The 2nd Defendant in the Counterclaim then filed a suit seeking to remove the said caution.
129. He also stated that the 2nd Defendant in the Counterclaim would not have filed a suit if there was no caution registered on the suit parcel of land.
130. He further stated that the Attorney General and the Land Registrar colluded to commit fraud as set out in the particulars of fraud in his Counterclaim.
131. He stated that no documents showed that a caution had been lodged and that this must have been an act of fraud by the Land Registrar.



132. He also stated that demarcated the land was surveyed.
133. He reiterated that he purchased the suit parcel of land jointly with the 2nd Defendant in the Counterclaim and that they intended to establish a matrimonial home on the land.
134. Upon clarification by the Court, PW1 stated that he was in occupation of the suit parcel of land and that he did not understand why the 1st Defendant in the Counterclaim withdrew his suit against him.
135. He clarified that he did not live on the suit parcel of land and stated that he stayed in Litein.
136. He also clarified that a relative of the 1st Defendant in the Counterclaim was the one in occupation of the suit parcel of land.
137. The Court observed that PW1 was not truthful as to who was in possession of the suit parcel of land.
138. Francis Koros Chumo testified as PW2. He prayed that the Court adopts his witness statement as part of his evidence in Chief which prayer the Court acceded to.
139. It was his evidence that he knew the Plaintiff in the Counterclaim and explained that he had purchased the suit parcel of land in the year 2001 from one Kitur Arap Mutai.
140. It was also his evidence that he was present when the advocate was drafting the land sale agreement.
141. He was referred to Exhibit P5 which was the agreement for sale of land dated 9th July, 2001 and explained that he could read but not very well.
142. He testified that the land sale agreement had his name and signature as he was one of the witnesses.
143. He also testified that the Plaintiff and the 2nd Defendant in the Counterclaim together with the vendor were present at the Advocates offices.
144. He further testified that at the time of purchase, the Plaintiff in the Counterclaim and the 2nd Defendant in the Counterclaim were married and added that they no longer live together.
145. It was his evidence that after they purchased the suit parcel of land, they built a house on it.
146. It was also his evidence that after they separated, the Plaintiff in the Counterclaim continued living on the land while the 2nd Defendant in the Counterclaim moved elsewhere.
147. It was further his evidence that the house made of timber that had been built on the suit parcel of land burnt down.
148. He testified that the brick house was still on the suit parcel of land and reiterated that the Plaintiff in the Counterclaim lived in it.
149. Upon clarification by the Court, he testified that he was neighbors with the Plaintiff in the Counterclaim and that there was a barbed wire fence that separated their parcels of land.
150. In his witness statement dated 22nd February, 2016, PW2 states that the purchase price was paid by both the Plaintiff and the 2nd Defendant in the Counterclaim.
151. He also states that Kshs. 145,000/= was paid on 9th July, 2001 while Kshs. 50,000/= was to be used to facilitate subdivision.
152. Upon cross examination by Counsel for the 1st Defendant in the Counterclaim, PW2 confirmed that he lived next to the suit parcel of land and that a worker of the 1st Defendant in the Counterclaim lived on the suit parcel of land.



153. He also confirmed that the Plaintiff in the Counterclaim was also in possession of the suit parcel of land.
154. He further confirmed that he was present when the Plaintiff in the Counterclaim and the 2nd Defendant in the Counterclaim purchased the suit parcel of land and when they paid the purchase price.
155. He admitted that both the Plaintiff in the Counterclaim and the 2nd Defendant in the Counterclaim paid the purchase price but could not remember where they were when the purchase price was paid and where the agreement was signed.
156. The Court observed that PW2 remained quiet when he was asked where the land sale agreement was signed.
157. Upon further cross examination by Counsel for the 2nd Defendant in the Counterclaim, he reiterated that he was present when the agreement for sale of land was signed.
158. He also reiterated that he was present together with the vendor and that he signed the land sale agreement.
159. He further reiterated that the purchasers were the Plaintiff in the Counterclaim and the 2nd Defendant in the Counterclaim who were at the time husband and wife as they lived together.
160. He confirmed that they had children and that it was the Plaintiff in the Counterclaim who counted the money which money they had received from the sale of another parcel of land.
161. PW2 gave his National Identity Card No. as 6011986.
162. He reiterated that the 1st Defendant in the Counterclaim's employee lives on the suit parcel of land and that the only remaining house on the land was the brick house and added that the house made of timber burnt down.
163. He then stated that it was the Plaintiff in the Counterclaim who paid the purchase price.
164. Upon further cross examination by Counsel for the 3rd and 4th Defendants in the Counterclaim, PW2 confirmed that he had in Court a copy of his National Identity Card.
165. He reiterated that the Plaintiff in the Counterclaim lives separately and that he was not in occupation of the suit parcel of land.
166. He stated that the 2nd Defendant in the Counterclaim lives in town and that whenever he was in town, he meets her there.
167. He admitted that he had not seen the Plaintiff in the Counterclaim and the 2nd Defendant in the Counterclaim together.
168. Upon re-examination, PW2 reiterated that his name was on Exhibit P5 together with his Identity Card number.
169. He stated that the agreement was signed at C.K Korir Advocates Office where they were all present together with the vendor.
170. He then reiterated that it was the Plaintiff in the Counter claim who paid the purchase price.
171. Paul Kipchoge Bii testified as PW3. It was his evidence that he knew the Plaintiff in the Counterclaim and the 2nd Defendant in the Counterclaim as they were husband and wife and were also his neighbours.
172. It was also his evidence that his parcel of land and the suit parcel of land share a boundary.



173. It was further his evidence that the Plaintiff in the Counterclaim and the 2nd Defendant in the Counterclaim purchased land at Kiboswa but he could not remember the year.
174. He testified that after they purchased the said parcel of land, they lived together on the land and he worked for the Plaintiff in the Counterclaim as a herdsman.
175. He also testified that he knew the Plaintiff in the Counterclaim and the 2nd Defendant in the Counterclaim's children.
176. He further testified that they separated four years ago and that they no longer lived together. He clarified that he could not remember the exact year they separated but it was about four years ago.
177. It was his evidence that the 1st and 2nd Defendants in the Counterclaim went to the suit parcel of land and found the gate locked. The 2nd Defendant in the Counterclaim told him that the 1st Defendant in the Counterclaim had purchased the land and she therefore wanted to remove the Plaintiff in the Counterclaim from the land.
178. It was also his evidence that the 1st Defendant in the Counterclaim then asked him for the keys but he refused to give them to him.
179. It was further his evidence that the 1st Defendant in the Counterclaim began to break down the gate which prompted him to call the Plaintiff in the Counterclaim.
180. He testified that the Plaintiff in the Counterclaim went to the suit parcel of land in the company of two police officers. He went on to testify that after discussions, the police officers advised them to take their issues to Court.
181. He further testified that the 1st Defendant in the Counterclaim wanted the suit parcel of land and yet it belonged to the Plaintiff in the Counterclaim.
182. He reiterated that the suit land belonged to the Plaintiff in the Counterclaim and that the 2nd Defendant in the Counterclaim only lived on it.
183. It was also his evidence that the 1st Defendant in the Counterclaim brought an employee to the suit parcel of land.
184. It was further his evidence that there were two houses on the land. He testified that when one of the Plaintiff in the Counterclaim's houses got burnt down, the 1st Defendant in the Counterclaim's employee was arrested and taken to Nyagacho Police station and was later released.
185. He also testified that the Plaintiff in the Counterclaim moved from the suit parcel of land and he now lives in his (PW3) house while he works in a pharmacy at Litein.
186. He further testified that at the time he was giving evidence there was no one living on the land.
187. PW3 then stated that he recorded a statement and he prayed that the Court adopts the said statement as part of his evidence in Chief which prayer the Court acceded to.
188. PW3 filed a witness statement dated 18th February, 2019. He states that the Plaintiff in the Counterclaim purchased the suit parcel of land from Kitur Arap Mutai alias Mukora in the year 2001.
189. He also states that the Plaintiff in the Counterclaim and the 2nd Defendant in the Counterclaim established their matrimonial home on the suit parcel of land.
190. He also states that they had domestic issues in October 2009 and the 2nd Defendant in the Counterclaim deserted her matrimonial home and went to her parents' home.



191. He further states that it was on 17th May, 2012 when the 1st and 2nd Defendants in the Counterclaim visited the suit parcel of land and demanded the keys to the main gate.
192. Upon cross examination by Counsel for the 1st Defendant in the Counterclaim, he stated that the Plaintiff in the Counterclaim and the 2nd Defendant in the Counterclaim jointly purchased the suit parcel of land.
193. He admitted that he was not present when they purchased the suit parcel of land and stated that the person who saw the payment of the purchase price had already testified.
194. He also admitted that he did not see payment of any money.
195. He further admitted that he was not present when the Plaintiff in the Counterclaim and the 2nd Defendant in the Counterclaim separated.
196. He stated that the 2nd Defendant in the Counterclaim moved from the suit parcel of land that he later heard that she had purchased a parcel of land elsewhere.
197. He confirmed that the parcel of land the 1st Defendant in the Counterclaim purchased was the one the Plaintiff in the Counterclaim and the 2nd Defendant in the Counterclaim had purchased.
198. He admitted that he did not know who sold the suit parcel of land to the 1st Defendant in the Counterclaim.
199. He reiterated that the 2nd Defendant in the Counterclaim brought the 1st Defendant in the Counterclaim to the suit parcel of land and later the 1st Defendant in the Counterclaim took his employee to the land.
200. PW3 reiterated that there was no one in occupation of the suit parcel of land.
201. He confirmed that the 1st Defendant in the Counterclaim had never been in occupation of the suit parcel of land and that he later removed his employee from the land.
202. He further reiterated that he gave the Plaintiff in the Counterclaim a house wherein he lives as he works in Litein.
203. Upon further cross examination by Counsel for the 2nd Defendant in the Counterclaim, he confirmed that he only came to know the Plaintiff in the Counterclaim when he moved to the suit parcel of land.
204. He admitted that he did not know the suit parcel number and confirmed that the only thing he knew was that the land belonged to the Plaintiff in the Counterclaim.
205. He stated that he heard that the 2nd Defendant in the Counterclaim sold the suit parcel of land to the 1st Defendant in the Counterclaim.
206. Upon further cross examination by Counsel for the 3rd and 4th Defendants in the Counterclaim, he was referred to paragraph 8 of his witness statement and he confirmed that the 1st Defendant in the Counterclaim did not tell him that he had purchased the suit parcel of land.
207. He reiterated that the 1st Defendant in the Counterclaim only asked for the key.
208. He confirmed that he came to learn that the 1st Defendant in the Counterclaim had purchased the suit parcel of land from the 2nd Defendant in the Counterclaim.
209. He also confirmed that when the 1st Defendant in the Counterclaim requested for the key, the Plaintiff in the Counterclaim was not present.



210. He admitted that he did not witness the purchase of the suit parcel of land by the Plaintiff in the Counterclaim and the 2nd Defendant in the Counterclaim.
211. He also admitted that he did not know in whose name the land was registered.
212. Upon re-examination he reiterated that the Plaintiff in the Counterclaim and the 2nd Defendant in the Counterclaim were his neighbors and that he did not know the registration number of the suit land.
213. He also reiterated that the 1st Defendant in the Counterclaim's employee no longer lives on the suit parcel of land.
214. Upon clarification by the Court he reiterated that he heard that it was the Plaintiff in the Counterclaim who had purchased the land.
215. By consent, MFI P6 was marked as Exhibit P6 and the Plaintiff in the Counterclaim's case was then closed.

The 2nd Defendant In The Counterclaim's Evidence.

216. Zipporah Jelagat testified as DW1. She stated that she was a Human Resource Officer working at the County Government of Kericho.
217. It was her evidence that she was in Court because of a parcel of land that she had purchased at Kapsoit.
218. It was also her evidence that in the year 2001, she purchased land parcel No. Kericho/Kapsoit/2463 from Kimulot Kitur who was now deceased and added that the purchase price was Kshs. 200,000/=.
219. It was further her evidence that the suit parcel of land measures 0.6 acres and that she had purchased it alone.
220. She testified that in the year 2009, the Plaintiff in the Counterclaim asked her leave the suit property.
221. She also testified that she was only able to leave with the title deed as the Plaintiff in the Counterclaim did not give her time to take the rest of her belongings.
222. She further testified that she was afraid that the Plaintiff in the Counterclaim would beat her and that is why she only took the title deed and her children's belongings when she was leaving.
223. It was her evidence that she did not therefore have the sale agreement for the purchase of the suit parcel of land.
224. It was also her evidence that she tried to get a copy of the agreement from the offices of the late Ngetich Advocate but she was not able to. She explained that the late Ngetich Advocate drafted the land sale agreement.
225. She then produced a copy of the title deed for land parcel No. Kericho/Kapsoit/2463 as Exhibit D1.
226. She testified that she had taken a loan from Keramuco Sacco to purchase the land.
227. She also testified that she had in Court a loan application form which showed that she applied for the loan in the year 1999 and was given the loan in the year 2000.
228. She further testified that she had applied for a loan of Kshs. 190,000/= but she was given a loan of Kshs. 194,000/=. She produced the Loan Agreement Form and Application dated 14th April, 1994 as Exhibit D2.



229. It was her evidence that she repaid the loan through deductions on her salary. She produced copies of her pay slips as Exhibit D 3 a, b, c, d, e, f, g and h.
230. It was also her evidence that they were about four purchasers and after the vendor took them to the Land Control Board, they were given a consent and the land transferred to them.
231. It was further her evidence that she had the transfer form and the green card. The green card for the suit parcel of land was marked as MFI D4.
232. She testified that she later sold the suit parcel of land to the 1st Defendant in the Counterclaim so that she could get money to pay school fees for her children.
233. She also testified that before the land was transferred to the 1st Defendant in the Counterclaim, they went to the Land Control Board to seek consent to transfer the land.
234. When referred to the green card of the suit parcel of land, she testified that the 1st Defendant was registered as the owner in the year 2012.
235. She also testified that there was no caution registered on the suit parcel of land.
236. She further testified that she filed Kericho HC Case No. 37 of 2010 seeking that the Plaintiff in the Counterclaim be evicted from the suit parcel of land.
237. It was her evidence that she saw no need to proceed with the said suit after the 1st Defendant in the Counterclaim purchased the land and filed the present suit and sought to evict the Plaintiff in the Counterclaim.
238. It was also her evidence that in Kericho HC Case No. 37 of 2010 she sought for the removal of a restriction that had been registered on the land but after conducting a search, she realized that there was no such restriction.
239. It was further her evidence that the Plaintiff in the Counterclaim had been taunting her and told her not to go near the land to the point that she had to be accompanied by police officers to remove her items from the suit parcel of land.
240. She testified that after she realized that there was no restriction registered on the suit parcel of land, she did not see the need to pursue the suit she had filed.
241. She also testified that she was not married to the Plaintiff in the Counterclaim and that they only had children together.
242. She further testified that the Plaintiff in the Counterclaim lived in Nakuru and was away most of time until she purchased the suit parcel of land.
243. It was her evidence that it was after she purchased the suit parcel of land that the Plaintiff in the Counterclaim moved in.
244. When she was referred to the sale agreement dated 9th July, 2001 that had been produced Exhibit P5, she testified that the parcel of land being sold in the said sale agreement was Kericho/Kapsoit/13 which had no relationship with Kericho/Kapsoit/2463.
245. It was also her evidence that the 1st Defendant in the Counterclaim was in occupation of the suit parcel of land.
246. It was further her evidence that the Plaintiff in the Counterclaim moved from the suit parcel of land in the year 2021.



247. She testified that the house the Plaintiff in the Counterclaim was living in caught fire and burnt down and he wanted to move into the 1st Defendant in the Counterclaim's house.
248. She also testified that they used to live in a timber house which she had constructed when their permanent house was under construction.
249. She further testified that when the semi-permanent house burnt down and the Plaintiff in the Counterclaim tried to move to the permanent house, they were summoned by the Chief.
250. It was her evidence that when they appeared before the Chief, she was asked to give an account of how she constructed the house and thereafter, the Plaintiff in the Counterclaim was asked to leave because the land now belonged to the 1st Defendant in the Counterclaim.
251. It was also her evidence that the Plaintiff in the Counterclaim then left the suit parcel of land.
252. It was further her evidence that she did not know Kipchoge Paul Bii and neither could she remember a neighbor by that name.
253. She testified that she wished that the present suit be finalized as they had been in Court for a long time.
254. She stated that she filed a witness statement dated 27th June, 2016 and prayed that the Court adopts it as part of her evidence-in-Chief, which prayer the Court acceded to.
255. Upon cross examination by Counsel for the Plaintiff in the Counterclaim she reiterated that her name was Zipporah Jelagat.
256. She admitted that she did not have a copy of her identity card with her in Court.
257. When referred to a Copy of her National Identity Card that had been produced as Exhibit P1, she confirmed that in the said identity card, her name is Zipporah Jelagat Kiptingos.
258. She also confirmed that the said identity card is No. 13109492.
259. She admitted that Kiptingos was the Plaintiff in the Counterclaim's name and that they first started to cohabit in the year 1995 after the birth of their first child.
260. She also admitted that they were blessed with three children. Kevin Kipngeno, Emmanuel Kiptoo and Jael Chepkemoi.
261. She denied that Kshs. 50,000/= and a cow was paid as dowry.
262. She stated that she only used the Plaintiff in the Counterclaim's name because he wanted her to change her Identity Card.
263. She confirmed that she moved out of the suit parcel of land in the year 2009.
264. She also confirmed that before she purchased the suit parcel of land, she had purchased another parcel of land in Chepseon.
265. when referred to Exhibit P4, which was an agreement for sale of land dated 11th May, 200, DW1 reiterated that she purchased the said parcel of land alone. She however confirmed that in the said sale agreement, the vendor is stated to be Zipporah Chelangat of ID No. 13109492 and Albert Kiptingos Kibiwott of ID No. 0XXXXXX.
266. She also confirmed that she sold the said parcel of land to one Joshua Kipkemboi Rono for Kshs. 260,000/= and then bought land at Kapsoit.



267. When referred to Exhibit P5, which was the agreement for sale of land dated 9th July, 2001, she admitted that it was with respect to the land at Kapsoit and added that it was drafted by Charles Korir Advocate who is the same advocate who drafted Exhibit P4.
268. DW1 stated that she could not remember the original title number from which the suit parcel of land was hived from.
269. She confirmed that the original land was shared amongst four purchasers.
270. She reiterated that she purchased the land at Kapsoit for Kshs. 195,000/= and confirmed that she did not pay the purchase price at once.
271. She admitted that after they sold the land at Chepseon, they used the money to buy land in Kapsoit.
272. When referred to Exhibit P9, DW1 confirmed that it is a letter dated 30th March, 2010 written by Stephen Kambaga Land Registrar.
273. She also confirmed that the said letter was addressed to her through the Chief and it stated that the Plaintiff in the Counterclaim had registered a caution on the land.
274. When referred to Exhibit P10 which was the Amended Plaintiff filed in Kericho HC Case No. 37 of 2010, she stated that she could remember filing the said suit.
275. She read out prayer (a) of the Amended Plaintiff and stated that the Plaintiff in the Counterclaim had restricted her entry onto the suit parcel of land.
276. She reiterated that no caution had been registered on the land when she sold it to the 1st Defendant in the Counterclaim.
277. She admitted that she had not produced a copy of her land sale agreement.
278. She stated that Mr. Sang represented the 1st Defendant's in the Counterclaim in the sale of the suit parcel of land.
279. She admitted that she did not produce the transfer documents from Kitur Mutai to herself.
280. She reiterated that the Plaintiff in the Counterclaim moved out of the suit parcel of land after the temporary structure was burnt down.
281. She stated that when she sold the suit parcel of land, the permanent house was incomplete and inhabitable.
282. She admitted that when she met the Plaintiff in the Counterclaim, he was a pharmacist and earning a living while she was working with the Municipal Council.
283. She stated that she purchased the land at Chepseon alone and that none of the family members contributed.
284. She denied that they jointly purchased the land at Chepseon and also denied that she took a loan in the year 1999 to do her own projects.
285. She stated that the land at Chepseon is on a slope and she was not able to get a good harvest.
286. She also stated that her father advised her to buy land at Kapsoit.
287. She reiterated that she got the loan before purchasing the land and insisted that she was telling the truth.
288. She also reiterated that the land at Chepseon was sold to buy land at Kapsoit.



289. She stated that she got a loan from a Sacco which loan she applied for in 1999 in order to buy land at Chepseon.
290. She admitted that she provided the approval forms together with the pay slips showing the deductions for the loan.
291. She confirmed that at that time, they did not have bank accounts and that whatever money they were given was in cash.
292. She also confirmed that the Sacco gave her the money in cash since she did not have a bank account.
293. She admitted that she did not produce any sale agreements for the parcels of land that she purchased.
294. She explained that she thought that the original agreement was not important and stated that she was not able to produce it because of the death of the advocate.
295. She confirmed that the home belonged to her but due to insecurity and cruelty, she left.
296. She admitted that when she left her marriage, the Plaintiff in the Counterclaim gave her the responsibility of the children.
297. She also admitted that she sold the home because she needed to repay the loan she had taken to build the house and the loan she had taken to pay school fees for the children.
298. DW1 emphasized that the suit parcel of land was not matrimonial property as the Plaintiff in the Counterclaim did not contribute to its purchase.
299. Upon further cross examination by Counsel for the 3rd and 4th Defendants, DW1 reiterated that she moved from the suit parcel of land in the year 2009.
300. She admitted that she could not remember the exact date the transfer to the 1st Defendant in the Counterclaim was done.
301. When referred to the green card of the suit parcel of land, she confirmed that the transfer to the 1st Defendant in the Counterclaim was done on 30th March, 2012.
302. Upon re-examination, DW1 reiterated that she adopted the Plaintiff in the Counterclaim's name, Kiptingos, after he insisted that she changes her name.
303. She reiterated that they began cohabiting in the year 1995 and the Identity Card was issued in the year 1997.
304. She also reiterated that no dowry was paid.
305. DW1 stated that the Plaintiff in the Counterclaim meted violence on her and added that when it happened, her father asked the Plaintiff in the Counterclaim if he was going to pay dowry but he said that he had no dowry to pay.
306. She further stated that no witness was brought to Court to confirm the issue of dowry.
307. She stated that apart from the suit parcel of land, the Plaintiff in the Counterclaim purchased a parcel of land adjacent to the suit land which he later sold.
308. She reiterated that she purchased the parcel of land at Chepseon after taking a loan from a Sacco. She further stated that she used the proceeds of the sale of the land at Chepseon to buy land at Kapsoit.



309. DW1 further reiterated that as at the year 2000, the Plaintiff in the Counterclaim was a pharmacist and pointed out that no pay slip had been availed in Court to show how much money he was earning.
310. When referred to Exhibit P9 which is the letter written by the Land Registrar, she confirmed that the said letter was never served upon her.
311. She stated that she was not shown any receipt for payment of registration of a caution.
312. When she was referred to MFI D4 which was the green card for the suit parcel of land, she stated that there was no indication that a caution had been registered.
313. She also stated that she did not produce the transfer forms from Kitur to her name because the said documents were at the Lands Office.
314. She reiterated that she took a loan in the year 1999 which she repaid through deductions as can be seen from her pay slip.
315. DW1 stated that she produced copies of her pay slips which show that a sum of Kshs. 4,789/= was deducted from her pay slip until the year 2011.
316. When referred to the Amended Plaintiff filed in Kericho HC Case no. 37 of 2010 which had been produced as Exhibit P10, she stated that she did not withdraw the said suit because the 1st Defendant in the Counterclaim purchased the suit parcel of land.
317. She also stated that at the time the 1st Defendant in the Counterclaim was purchasing the land, there was no caution registered.

The 1st Defendant In The Counterclaim's Evidence.

318. Chief Inspector Benson Talam testified as DW2. It was his evidence that he was No. 235128 and that he worked for the National Police Service.
319. It was also his evidence that he was currently the Officer Commanding Police Station at Central Police Station Nairobi.
320. It was further his evidence that in the year 2012 he purchased land parcel No. Kericho/Kapsoit/2463 from the 2nd Defendant in the Counterclaim.
321. He testified that at the time of purchase, the land was registered in the 2nd Defendant in the Counterclaim's name.
322. He also testified that he followed due process and the land was later transferred to his name.
323. He further testified that after he took possession of the land, the Plaintiff in the Counterclaim went to the land and told him that he was not consulted when the land was being transferred to him. He explained that this was in the year 2012 on the evening of the day the suit parcel of land was handed over to him.
324. It was also his evidence that the Plaintiff in the Counterclaim tried all means to access the suit parcel of land and this led to the filing of the present suit.
325. It was further his evidence that the Plaintiff in the Counterclaim was no longer in occupation of the land as he vacated it in the year 2018.
326. He testified that the Plaintiff in the Counterclaim vacated the suit parcel of land after the structure he was living in caught fire.



327. He also testified that after the Plaintiff in the Counterclaim vacated, he withdrew his suit.
328. He further testified that he was in occupation of the suit parcel of land.
329. It was his evidence that he had in Court a copy of the Certificate of Official Search dated 30th August, 2018 and that it shows that the suit parcel of land belongs to him. He produced a copy of the Certificate of Official Search as Exhibit D5 and a copy of the title deed of the suit parcel of land as Exhibit D6.
330. Upon cross examination by Counsel for the Plaintiff in the Counterclaim, he reiterated that he purchased the suit parcel of land from the 2nd Defendant in the Counterclaim.
331. He admitted that he did not produce any land sale agreement and confirmed that before he purchased the land, he had the opportunity to see it.
332. He also admitted that what was on the land was a building that was under construction that was being built with bricks. There was also another house made of timber.
333. He confirmed that he knew the 2nd Defendant in the Counterclaim and admitted that he did not know her husband.
334. He denied knowing that the Plaintiff in the Counterclaim was the 2nd Defendant in the Counterclaim's husband.
335. He admitted that at the time he was purchasing the suit parcel of land, the 2nd Defendant in the Counterclaim was not living on it.
336. He also confirmed that the Plaintiff in the Counterclaim was not living on the suit parcel of land.
337. He clarified that before the fire, the Plaintiff in the Counterclaim was living in the timber house.
338. He admitted that before he purchased the suit parcel of land, he did a search which confirmed that the suit parcel of land was registered in the 2nd Defendant in the Counterclaim's name.
339. He also admitted that he was not aware that a caution had been registered on the suit parcel of land.
340. When referred to Exhibit P9 which is a letter dated 30th March, 2010 addressed to the 2nd Defendant in the Counterclaim by the Land Registrar, he confirmed that the said letter stated that a caution had been registered on the suit parcel of land by the Plaintiff in the Counterclaim alleging beneficial interest.
341. He confirmed that he did a search at the Land Registry which showed that no caution was registered on the suit parcel of land.
342. He was then referred to Exhibit P10 which was the Amended Plaint filed in Kericho HC Civil Case No. 37 of 2010. He admitted that he was not aware of the said suit.
343. He read out prayer (a) of the said Amended Plaint as follows;
- “(a) Removal of the restriction placed against the suit land Kericho 2463”
344. He confirmed that he was not aware of any restriction and if at all a restriction was registered on the suit parcel, then the suit parcel of land would not have been transferred to his name.
345. He stated that he did not believe that there was fraud in the removal of the restriction and/or caution.
346. He also stated that the transfer of the suit parcel of land to his name was not irregular.



347. He admitted that he did not obtain the spousal consent from the 2nd Defendant in the Counterclaim's husband and added that the 2nd Defendant in the Counterclaim was single and reiterated that he did not know the Plaintiff in the Counterclaim.
348. He reiterated that he purchased the suit parcel of land from the 2nd Defendant in the Counterclaim and that the Plaintiff in the Counterclaim was Albert Kiptingos Biwott.
349. He confirmed that he only came to know the similarity in names from the Court documents.
350. Upon cross examination by Counsel for the 2nd Defendant in the Counterclaim, DW2 was referred to the copy of the green card of the suit parcel of land that had been marked as MFI D4 and he confirmed that no caution was registered on the suit parcel of land.
351. He also confirmed that there was no entry that a caution had been removed from the suit parcel of land.
352. He further confirmed that entry No. 2 on the green card shows that the suit parcel of land was registered in the name of Zipporah Jelangat Kiptingos the 2nd Defendant in the Counterclaim.
353. He also confirmed that the Plaintiff in the Counterclaim's name did not appear on the green card.
354. When referred to Exhibit D1 which was a copy of the title deed for land parcel No. Kericho/Kapsoit/2463, DW2 confirmed that the title deed was issued to the 2nd Defendant in the Counterclaim on 4th June, 2004.
355. He also confirmed that the date of issue of the title deed tallied with entry No. 3 on the green card (MFI D4).
356. Upon re-examination, DW2 was referred to Exhibit P9 which was the letter dated 30th March, 2010 and he reiterated that he purchased the suit parcel of land in the year 2012.
357. He stated that he was not a party in Kericho HC Case No. 37 of 2010.
358. He also stated that the suit land was registered in his name on 30th March, 2012 and before the said registration, he was not informed of any pending fraud case.
359. He reiterated that he was not aware that the 2nd Defendant in the Counterclaim was married and stated that at the time of purchase, the suit land was vacant.
360. He stated that a stranger went to the suit land after he was granted vacant possession.
361. The 1st Defendant in the Counterclaim's case was then closed.

The 3Rd And 4Th Defendants In The Counterclaim's Evidence.

362. Catherine Wacuka testified as (3)(4) DW1.
363. She introduced herself as the Land Registrar Kericho County and went on to state that she had in Court certified copies of the green cards for Kericho/Kapsoit 13 and Kericho/Kapsoit/ 2463.
364. She also testified that the green card for Kericho Kapsoit 13 was opened on 1st July, 1975. The land measured 3.6 Ha and was on Map Sheet 13.
365. She further testified that there was a 6.25-meter road on the said plot.
366. It was her evidence that as per the initial parcel registration, the registration fee was paid under registration No. 947847.



367. It was her evidence that the initial owner was Kitur Arap Mutai who was registered as the owner on 1st July, 1975 and was issued with a title deed on 18th March, 2002.
368. It was also her evidence that a restriction was registered on the said parcel of land on 16th April, 2003 which was later lifted.
369. It was further her evidence that the final entry was made on 22nd April, 2004 when the title was closed for subdivision into land parcel No's 2462, 2463, 2464, 2465, 2466 and 2467.
370. She produced a copy of the green card for Kericho/Kapsoit 13 as Exhibit D (3)(4)1.
371. She testified that she had the green card for land parcel No. Kericho/Kapsoit 2463. It was opened on 22nd April, 2004. The land measured 0.24 Ha and was on map sheet 13.
372. She also testified that the first registered owner was Kitur Arap Mutai and that he was registered as the owner on 22nd April, 2004.
373. It was her testimony that the second entry was a transfer to Zipporah Jelagat Kiptingos on 25th May, 2004 and further testified that Zipporah Jelagat Kiptingos was issued with a title deed on 4th June, 2004.
374. It was her evidence that the fourth entry was a transfer to Talam Samson Kiprotich on 30th March, 2012 and that on the same day he was issued with a title deed. (Produced as Exhibit D4).
375. It was also her evidence that she had in Court the transfer forms for land parcel No. Kericho/Kapsoit/2463. The seller was Zipporah Jelagat Kiptingos and the purchaser was Talam Samson Kiprotich.
376. It was further her evidence that the transfer forms were received for registration on 30th March, 2012 under presentation book number 187 of 2012.
377. She testified that Kshs. 500 was paid as registration fees, Kshs. 500 for the title deed and stamp duty of Kshs. 480/=. She produced the transfer form as Exhibit D (3)(4) 2.
378. She also testified that she had in Court an application for consent of the Land Control Board in Ainamoi. It was from Zipporah Jelagat Kiptingos to Talam Samson Kiprotich Land Control Number 102 of 2012.
379. She further testified that the application was approved on 29th March, 2012 upon payment of Kshs. 1,000/= for the consent and Kshs. 500 for a search. She produced the application for land control board consent as Exhibit D (3)(4) 3(a).
380. She produced a letter of consent from Zipporah Jelagat to Talam Samson Kiprotich for absolute ownership. It is dated 29th March, 2012 and is from Ainamoi Land Control Board. It was marked as Exhibit D (3)(4) 3(b).
381. She also produced a copy of the Kenya Revenue Authority Pin Certificate for Talam Samson Kiprotich as Exhibit D (3)(4) 4.
382. She produced a Kenya Revenue Authority Pin Certificate for Zipporah Jelagat Kiptingos as Exhibit D (3)(4) 5.
383. She also produced copies of National Identity Cards for Zipporah Jelagat Kiptingos and Samson Talam as Exhibits D (3)(4) 6 (a) & (b).



384. Upon cross examination by Counsel for the Plaintiff in the Counterclaim, she admitted that she did not have the transfer documents from Keter to the 2nd Defendant in the Counterclaim.
385. When she was referred to Exhibit P9, she confirmed that it was a letter dated 30th March, 2010 from the Land Registrar and addressed to the 2nd Defendant in the Counterclaim.
386. She also confirmed that the said letter notified the 2nd Defendant in the Counterclaim that Albert Kiptingos had filed a caution on land parcel No. Kericho/Kapsoit/2463 claiming beneficial interest.
387. She admitted that the said letter was a notification that a caution had been registered.
388. She stated that the registration of a caution is initiated by the filing of an application to register a caution. The application sets out the interest over the said parcel of land and is accompanied by an affidavit and other annexures to support the claim.
389. She also stated that payments are made and the application is then booked in the presentation book at the Land Registry.
390. She further stated that the application is then presented to the Land Registrar to approve or reject the claim.
391. She stated that if the caution is approved, the caution is immediately registered on the green card and notices of the registered caution are sent to the registered owner.
392. She also stated that if the application is rejected, then the caution is not registered on the green card.
393. She further stated that if the letter was sent, then it meant that a caution had been registered on the green card.
394. She stated that the procedure for removal of a caution is initiated by the registered owner of the land who applies for the removal through a pre-designed form.
395. She also stated that the registered owner of the land is required to pay for the application for removal and then notices are sent to the cautioner informing them of the application to remove a caution. If they do not object to removal of the caution within thirty days and there is proof of service upon the cautioner, then the caution would be removed.
396. She further stated that a caution could also be removed by a Court order.
397. When she was referred to Exhibit P10 which was the Amended Plaintiff filed in Kericho HC Case No. 37 of 2010, she confirmed that one of the prayers sought in the said Amended Plaintiff was the removal of a restriction that had been placed on land parcel No. Kericho/Kapsoit/2463.
398. When she was referred to Exhibit D4, which was the green card for the suit parcel of land, she admitted that no caution was registered on it.
399. When she compared Exhibit P9 which was the letter from the Land Registrar dated 30th March, 2010 and Exhibit P10 which was the Amended Plaintiff filed in Kericho HC Case No. 37 of 2010, she stated that there was no proof of another green card which showed the registration of a caution.
400. She reiterated that there was no proof of registration of a caution.
401. She stated that she did not agree that there was fraud, even though she did not have the green card.
402. Upon clarification by the Court, she stated that she had the certified copies of the green cards for land parcel No's Kericho/Kapsoit/13 and Kericho/Kapsoit/2463 which she produced in Court.



403. She also stated that the green card pursuant to which Exhibit P9 was issued did not exist.
404. Upon further cross examination by Counsel for the 1st Defendant in the Counterclaim, she confirmed that Exhibit P9, that is the letter dated 30th March, 2010, did not bear the stamp of her office.
405. She also confirmed that it was probable that Exhibit P9 did not originate from her office.
406. She admitted that if at all a caution was registered, then there would have been an application for the caution.
407. She then confirmed that she did not have any application for a caution.
408. She stated that if the application for a caution was approved, then it would have been recorded on the green card.
409. She reiterated that the green card she produced did not have any caution registered on it.
410. Upon further cross examination by Counsel for the 2nd Defendant in the Counterclaim, she stated that a parcel of land can only have one green card.
411. Upon re-examination, she stated that it was not disputed that Kitur had transferred the suit parcel of land to the 2nd Defendant in the Counterclaim.
412. She also stated that Exhibit P9, that is the letter dated 30th March, 2010, did not mention when the caution was registered and neither did it state the entry number on the green card.
413. She further stated that she had not seen any application made by the Plaintiff in the Counterclaim for registration of the caution.
414. She stated that the Land Registrar was not a party to Kericho High Court Civil Case No. 37 of 2010.
415. She also stated that she had not seen any other green card apart from the one she produced in Court.
416. The 3rd and 4th Defendants case was then closed.

Issues For Determination.

417. The Plaintiff in the Counterclaim filed his submissions on 16th July, 2025, the 1st Defendant in the Counterclaim filed his submissions on 23rd July, 2025, the 2nd Defendant in the Counterclaim filed her submissions on 16th July, 2025 while the 3rd and 4th Defendants in the Counterclaim filed their submissions on 22nd July, 2025.

Submissions of the Plaintiff in the Counterclaim.

418. The Plaintiff in the Counterclaim has set out the following issues for determination:
 - a. Whether suit land namely Kericho/Kapsoit/2463 is matrimonial property purchased jointly by Plaintiff and 2nd Defendant? And if so, is the 2nd Defendant precluded to dispose the same without express consent from the Plaintiff? (sic)
 - b. Whether there was a caution registered against the said suit property and the same was illegally removed without due process? (sic)
 - c. Did the suit land Kericho/Kapsoit/2463 fraudulently transferred to the 2nd Defendant and unprocedurally transferred to the 1st Defendant and with collusion of the 4th Defendant? (sic)
 - d. Who will bear costs of this suit?



419. On the first issue, the Plaintiff in the Counterclaim submits that he cohabited with the 2nd Defendant in the Counterclaim and they were blessed with three children.
420. The Plaintiff in the Counterclaim also submits that he produced a copy of the 2nd Defendant in the Counterclaim's Identity Card as Exhibit P1 and declaration of customary marriage and residence as Exhibit P2 as evidence of cohabitation.
421. The Plaintiff in the Counterclaim further submits that the evidence of PW2 and PW3 pointed to the existence of their marriage.
422. It is his submissions that he produced a copy of the land sale agreement dated 19th May, 2001 as Exhibit P4 which showed that they jointly purchased the suit parcel of land.
423. It is also his submissions that the 2nd Defendant in the Counterclaim did not produce any land sale agreement to show how she purchased the suit parcel of land.
424. It is further his submissions that he has demonstrated that land parcel No. Kericho/Kapsoit/2463 is matrimonial property as it was purchased during the subsistence of their marriage.
425. The Plaintiff in the Counterclaim relies on Sections 6(1), 12 (1) & 14 of the [Matrimonial Property Act](#), Section 93 of the [Land Registration Act](#) and the judicial decision of RWK vs SKM & 2 Others (Matrimonial Cause E006 of 2021) [2024] KEHC 1621 eKLR (22nd February, 2024) in support of his submissions.
426. On the second issue, the Plaintiff in the Counterclaim submits that after he realized that the 2nd Defendant in the Counterclaim had transferred the suit parcel of land to her name, he registered a caution.
427. He also submits that upon registration of the said caution, the then Land Registrar wrote the letter dated 30th March, 2010 to the 2nd Defendant in the Counterclaim notifying her of the said registration.
428. He further submits that the 2nd Defendant in the Counterclaim thereafter filed Kericho HC Case No. 37 of 2010 seeking for among other orders, an order for the removal of the caution.
429. It is his submissions that the Land Registrar who testified as DW4 set out in detail the procedure for registration and removal of a caution.
430. It is also his submissions that it is evident that the said procedure was not followed and therefore the registration of the 1st Defendant in the Counterclaim as the owner of the suit parcel of land was fraudulent.
431. It is further his submissions that the 2nd Defendant in the Counterclaim colluded with the then Land Registrar to remove the said caution by destroying the original abstract of the suit parcel of land and creating a new one which did not have the registration of the caution.
432. The Plaintiff in the Counterclaim submits that the said actions of the Land Registrar and the 1st and 2nd Defendants in the Counterclaim were fraudulent in nature.
433. On the third and fourth issues, the Plaintiff in the Counterclaim submits that the 2nd Defendant in the Counterclaim did not produce the transfer documents to show how the suit parcel of land was transferred from Arap Kitur to herself.
434. He also submits that the Land Registrar admitted that she had not seen the transfer documents from Arap Kitur to the 2nd Defendant in the Counterclaim.



435. He further submits that the Land Registrar did not produce the parcel file which is an indication that the transfer of the suit parcel of land to the 2nd Defendant in the Counterclaim was fraudulent.
436. It is his submissions that the 1st Defendant in the Counterclaim failed to produce the sale agreement to show that he purchased the suit parcel of land from her.
437. He concludes his submissions by relying on Section 3(3) of the [Law of Contract Act](#) and urges the Court to allow his Counterclaim with costs.

Submissions of the 1st Defendant in the Counterclaim.

438. The 1st Defendant in the Counterclaim submits on the following issues;
 - a. Whether the transfer of the suit property to the 1st Defendant was fraudulent.
 - b. Whether the suit property is matrimonial property.
 - c. Whether a caution was placed on Kericho/Kapsoit/2463.
 - d. Who bears the costs of the suit?
439. On the first issue, the 1st Defendant in the Counterclaim relies on the judicial decisions of Kinyanjui Kamau vs George Kamau [2015] eKLR, Vijay Morjia vs Nansingh Madhusingh Darbar & another [2000] eKLR and submits that fraud must be specifically pleaded and proved.
440. He submits that even though the Plaintiff in the Counterclaim contends that the transfer of the suit parcel to his name was fraudulent, he has failed to produce any evidence in support of the said allegations.
441. He also submits that he complied with legal and procedural requirements as set out in the [Land Control Act](#) and the [Land Act](#).
442. He further submits that he applied for and was given the Land Control Board Consent by the Ainamoi Land Control Board.
443. It is his submissions that the 2nd Defendant in the Counterclaim executed all the necessary transfer documents and they both availed their PIN certificates before the transfer was processed and recorded by the Land Registry.
444. It is also his submissions that he did due diligence before he purchased the suit parcel of land by conducting a search at the Land Registry which confirmed that the suit parcel of land was registered in the 2nd Defendant in the Counterclaim's name.
445. It is further his submissions that the search also confirmed that there was no caution, restriction or encumbrance registered on the green card.
446. The 1st Defendant in the Counterclaim relies on the judicial decisions of Katende vs Haridar & Company Limited [2008] 2 EA 173 (Uganda CA) and Esther Ndegi Njiru & another vs Leonard Gatei [2014] eKLR in support of his submissions.
447. The 1st Defendant in the Counterclaim submits that the 2nd Defendant in the Counterclaim was registered as the owner of the suit parcel on 4th June, 2004 and she transferred the land to him on 30th March, 2012.



448. He also submits that the requirement of spousal consent under the *Land Act* and *Matrimonial Property Act* does not apply retrospectively to land acquired and disposed of before the law came into effect.
449. The 1st Defendant in the Counterclaim relies on Section 12 of the *Matrimonial Property Act* in support of his submissions.
450. On the second issue, the 1st Defendant in the Counterclaim relies on Section 6(1) of the *Matrimonial Property Act*, the judicial decisions of PKM vs NNM [2017] eKLR, MWG Vs EWK [2010] eKLR and submits that the Plaintiff in the Counterclaim did not produce any evidence to show that he was married to the 2nd Defendant in the Counterclaim and neither did he produce any evidence of joint contribution to the purchase of the suit property.
451. On the third issue, the 1st Defendant in the Counterclaim submits that no evidence was adduced to demonstrate that a caution was registered on the suit parcel of land.
452. He also submits that no caution was registered on the green card and neither was a formal application for registration of a caution received by the Land Registrar.
453. He further submits that the letter produced by the Plaintiff in the Counterclaim did not constitute a valid caution.
454. The 1st Defendant in the Counterclaim relies on Section 79(3) of the *Land Act* in support of his submissions.
455. He concludes his submissions by relying on Section 27 of the *Civil Procedure Act* and urges the Court to dismiss the Counterclaim with costs.

Submissions of the 2nd Defendant in the Counterclaim.

456. The 2nd Defendant in the Counterclaim submits on the following issues;
- a. Whether the 2nd Defendant in the Counterclaim fraudulently registered the suit parcel of land in her name.
 - b. Whether the transfer of the suit parcel of land to the 1st Defendant in the Counterclaim is null and void.
 - c. Whether the Plaintiff in the Counterclaim has established a lawful interest on the suit parcel of land.
457. The 2nd Defendant in the Counterclaim submits that at the time she was selling the suit parcel of land, she was its registered owner and she therefore had the capacity to sell it.
458. The 2nd Defendant in the Counterclaim relies on Sections 24(a) and 25(1) of the *Land Registration Act* in support of her submissions.
459. The 2nd Defendant in the Counterclaim submits that even though the Plaintiff in the Counterclaim alleges fraud, he has failed to prove it to the required standard.
460. She relies on Section 26 of the *Land Registration Act*, Sections 107, 108 & 109 of the *Evidence Act*, the judicial decisions of Kinyanjui Kamau vs George Kamau Njoroge [2015] eKLR, Vijay Morjaria vs Nansingh Madhusingh Darbar & another [2000] eKLR, Willy Kipsongok Morogo vs Albert K. Morogo [2017] eKLR and while reiterating the evidence of the Plaintiff in the Counterclaim, submits that no evidence was produced to demonstrate misrepresentation, deceit or collusion.



461. It is her submissions that the Land Registrar testified that the transfer of the suit parcel of land followed due process.
462. It is also her submissions that no documentary evidence was produced to support the Plaintiff in the Counterclaim's contention that the suit parcel of land was jointly owned.
463. The 2nd Defendant in the Counterclaim submits that even though the Plaintiff in the Counterclaim contends that the suit parcel of land is matrimonial property, no proof of marriage was availed and neither was there proof of joint contribution to the purchase of the suit parcel of land.
464. The 2nd Defendant in the Counterclaim relies on the judicial decision of R.G Patel vs Lalji Makanji [1957] EA 314 and submits that the Land Registrar in her testimony confirmed that the 1st Defendant in the Counterclaim is the legal owner of the suit parcel of land.
465. She also submits that the 1st Defendant in the Counterclaim is an innocent purchaser for value and she relies on Section 26(1) of the [Land Registration Act](#) in support of her submissions.
466. She concludes her submissions by urging the Court to dismiss the Counterclaim with costs.

The 3rd and 4th Defendants in the Counterclaim's submissions.

467. The 3rd and 4th Defendants in the Counterclaim submit on the following issues;
 - a. On 30th March 2012 whether spousal consent was required. (sic)
 - b. Whether a caution was placed on Kericho/Kapsoit/2463.
 - c. Whether the transfer of the suit property was fraudulent.
 - d. Who shall bear the costs of the suit.
468. On the first issue, they submit that spousal consent was introduced by Section 79(3) of the [Land Act](#) which came into operation on 2nd May, 2012.
469. The 3rd and 4th Defendants in the Counterclaim also submit that before the [Land Act](#) was enacted, spousal consent was not required. They rely on the judicial decision of Francis Kiarie Kamau & Michael Kamau Wandegwa vs Sammy Kimemia Njuguna & Theresa Wairimu Njuguna (Environment & Land Case 650 of 2017) [2021] KEELC 1643 (KLR) in support of their submissions.
470. The 3rd and 4th Defendants in the Counterclaim further submit that the suit parcel of land was transferred to the 1st Defendant in the Counterclaim on 30th March, 2012 which was before the [Land Act](#) came into operation.
471. It is their submissions that at the time of transfer of the suit parcel of land to the 1st Defendant in the Counterclaim, there was no statutory requirement for the 2nd Defendant in the Counterclaim to get consent of the Plaintiff in the Counterclaim.
472. It is also their submissions that the Plaintiff in the Counterclaim's contention that the Defendant (sic) colluded to transfer matrimonial property without consent is misplaced.
473. It is further their submissions that the Plaintiff in the Counterclaim does not have any equitable or beneficial interest in the suit parcel of land because the land was not matrimonial property.
474. They submit that the 2nd Defendant in the Counterclaim acquired the suit parcel of land on 4th June, 2004 which was before both the [Land Act](#) and the [Matrimonial Property Act](#), 2013 were enacted.



475. They also submit that the Plaintiff in the Counterclaim has not demonstrated that he jointly acquired the suit parcel of land.
476. They further submit that it was the 2nd Defendant in the Counterclaim's evidence that she solely purchased the suit parcel after she took a loan from Keramuco Sacco Society.
477. The 3rd and 4th Defendants in the Counterclaim rely on the judicial decision of Christine Nekesa Wafula vs Janerose Sakina Nduguyu [2021] KEELC 2976 (KLR) in support of their submissions.
478. It is their submissions that the Plaintiff in the Counterclaim has given up possession of the suit parcel of land and he no longer resides on the land.
479. On the second issue, the 3rd and 4th Defendants in the Counterclaim rely on Regulation 80 of the Land Registration (General) Regulations, 2017 and submit that no caution was ever placed on the suit parcel of land.
480. It is their submissions that the letter dated 30th March, 2010 produced by the Plaintiff in the Counterclaim does not conclusively establish that a caution was registered on the suit parcel of land.
481. It is also their submissions that the Plaintiff in the Counterclaim never made any application for registration of a Caution and neither did the 4th Defendant in the Counterclaim receive any payment for registration of a caution.
482. It is further their submissions that the green card of the suit parcel of land does not have any record of an entry of a caution and if at all any caution was registered, then there would have been an entry on the green card to that effect.
483. The 3rd and 4th Defendants in the Counterclaim submit that the letter dated 30th March, 2010 does not mention where the caution was applied for, when it was registered, green card entry number and when the notice was issued to the registered owner.
484. They also submit that the said letter did not originate from the 4th Defendant in the Counterclaim's office as it did not have their stamp.
485. The 3rd and 4th Defendants in the Counterclaim rely on Section 107 of the *Evidence Act* and submit that no caution was registered on the suit parcel of land and therefore the Plaintiff in the Counterclaim's contention that they colluded to transfer the suit parcel of land in disregard to the alleged caution fails.
486. On the third issue, the 3rd and 4th Defendants in the Counterclaim rely on the judicial decision of Gichinga Kibutha vs Caroline Nduku [2018] KEELC 3981 (KLR) and submit that fraud must be proved on a standard higher than a balance of probability.
487. It is their submissions that the 4th Defendant in the Counterclaim performed its statutory duties under Section 14 of the *Land Registration Act* in registering the transfer of the suit parcel of land.
488. It is also their submissions that the 2nd Defendant in the Counterclaim presented to the 4th Defendant in the Counterclaim the relevant transfer documents, the application for consent from the Ainamoi Land Control board, letter of consent and Kenya Revenue Authority PIN Certificates together with her identity card.
489. It is further their submissions that the 2nd Defendant in the Counterclaim paid the requisite fees and the 4th Defendant in the Counterclaim registered the transfer.



490. The 3rd and 4th Defendants in the Counterclaim therefore submit that the Plaintiff in the Counterclaim failed to prove that there was fraud in the transfer of the suit parcel of land to the 1st Defendant in the Counterclaim.
491. The 3rd and 4th Defendants in the Counterclaim rely on the judicial decision of Jasbir Singh Rai & 3 Others vs Tarlochan Singh Rai & 4 Others [2014] eKLR and urge the Court to dismiss the Counterclaim with costs.

Analysis And Determination.

492. After considering the pleadings, the evidence adduced by the Plaintiff & Defendants in the Counterclaim and the submissions filed, it is my view that the following issues arise for determination;
- a. Whether land parcel No. Kericho/Kapsoit/2463 was matrimonial property.
 - b. Whether the prayers sought in the Amended Defence and Counterclaim should be granted.
 - c. Who should bear costs of the suit.

Summary of Evidence and Documents.

493. I shall start by briefly summarizing the evidence of the parties herein and the documents produced either in support of the claim or in opposition to it.
494. It is the Plaintiff in the Counterclaim's case that he married the 2nd Defendant in the Counterclaim in August, 1995.
495. It is also his case that during the subsistence of their marriage, they jointly purchased a portion of land at Chepseon which they sold to Joshua Kipkemoi in the year 2001 at a consideration of Kshs. 260,000/=.
496. It is further his case that they used the proceeds from the said sale of the land in Chepseon to purchase the suit parcel of land.
497. It is his case that they purchased the suit parcel of land from Kitur Arap Mutai vide the land sale agreement dated 9th July, 2001.
498. It is also his case that after purchase, he built two houses on the land. One was made of timber while the other one was a permanent house.
499. It is further his case that he had some disagreements with the 2nd Defendant in the Counterclaim and in the year 2008, he learnt that she had registered the suit parcel of land in her name.
500. It is his case that he lodged a caution at the Land Registry which led to the filing of Kericho HC Case No. 37 of 2010 by the 2nd Defendant in the Counterclaim seeking for orders of removal of the caution.
501. It is also his case that thereafter he came to learn that the suit parcel of land was registered in the name of the 1st Defendant in the Counterclaim despite him registering the caution.
502. The Plaintiff in the Counterclaim produced a copy of Identity Card No. 13109492 of Zipporah Jelangat Kiptingos as Exhibit P1. It shows that she was born on 24th June, 1974 in Kericho. It was issued on 16th September, 1997.
503. An application for Change of Particulars was produced as Exhibit P2. Portions of the said document including the date and the application number are missing. It states that Zipporah Jelangat was requesting for a change in her registration records to show the name Zipporah Jelangat Kiptingos by



- reason of marriage and resident (sic). It is signed by Albert Kiptingos as her husband under paragraph No. 3. It is not signed by the District Registrar of Persons and neither is it signed by the Principal Registrar of Persons.
504. A copy of the Identity Card for Albert Kiptingos Biwott was produced as Exhibit P3. The Identity Card is No. 0XXXXXXX and was issued on 29th March, 1996. It shows that he was born on 6th March, 1958 in Baringo.
505. A certified copy of a land sale agreement dated 19th May, 2001 was produced as Exhibit P4. The agreement is between Zipporah Jelangat Kiptingos & Albert Kiptingos Biwott (vendors) and Joshua Kipkemoi Rono (Purchaser). The agreement is for the sale of a 1.38-acre portion of land parcel No. Kericho/Kipkelion/Chepseon/Block 4/988 at a consideration of Kshs. 260,000/=.
506. The agreement states that the vendors were paid Kshs. 200,000/= with a balance of Kshs. 60,000/= to be paid upon completion of the transfer. The agreement is signed by the vendors, the purchaser and witnessed by Rose Chepkoskei. The agreement was drafted by Karigo Korir & Co. Advocates.
507. A copy of a land sale agreement dated 9th July, 2001 was produced as Exhibit P5. The agreement is between Kitur Arap Mutai (vendor) and Albert Kiptingos Biwott & Ziporah Jelangat Kiptingos (purchasers). The agreement is for the purchase of a 0.6-acre portion of Kericho/Kapsoit Sheet 13/Plot Number 13 at a consideration of Kshs. 195,000/= . Kshs. 145,000/= was to be paid immediately with the balance of Kshs. 50,000/= to be paid upon subdivision. The agreement is signed by the vendor, purchasers and it is witnessed by Francis Koros Chumo. The agreement is drafted by Karigo Korir & Co. Advocates.
508. Three colored photographs were produced as Exhibits P6. Two of the photographs are of two houses. One house is constructed with timber while the other one is a brick house. The other photograph is of what appears to be a vegetable garden with a brick house at the background.
509. A certificate of official search dated 16th February, 2008 was produced as Exhibit P7. It is for land parcel No. Kericho/Kapsoit/2463. It shows that on 25th May, 2004, the suit parcel of land was registered in the name of Ziporah Jelangat Kiptingos and on 4th June, 2004, she was issued with a title deed.
510. A certified copy of the green card for land parcel No. Kericho/Kapsoit/2463 was produced as Exhibit P8. Its entries were set out in great detail by the Land Registrar in her evidence.
511. A letter dated 30th March, 2010 was produced as Exhibit P9. The letter is written by Stephen R. Kambaga for the District Land Registrar, Kericho, Bureti and Kipkelion Districts. The letter is addressed to Ziporah Jelangat Kiptingos through the Chief Kapsoit Location and copied to Albert Kiptingos Biwott. The letter is reference No. Ker/LR/229/Vol.X/10.
512. The subject of the letter is;
- “ Caution parcel No. Kericho/Kapsoit/2463.”
513. The letter states that a caution has been registered by Albert Kiptingos Biwott who is claiming beneficiary interest. The letter also states that no dealings will be registered on the said parcel of land unless the caution is removed and/or withdrawn.
514. An Amended Plaintiff filed in Kericho HC Case No. 37 of 2010 was produced as Exhibit P10. It was amended on 6th August, 2010 and the parties in the said suit are Zippora Jelangat Kiptingos versus Albert Biwott. The following prayers were sought in the said Amended Plaintiff;
- a. Removal of the restriction placed against the suit land known as Kericho/Kapsoit/2463.



- b. The Plaintiff be allowed to have quiet use and access to her legitimate parcel of land.
 - c. That this Honourable Court be pleased to issue an order of permanent injunction restraining the Defendant by himself agents, (sic) servants, employees or otherwise from interfering with the Plaintiff's parcel of land known as LR No. Kericho/Kapsoit/2463.
 - d. Cost and interest of this suit.
 - e. Any other and/or further relief that this Honourable Court may deem fit and just to grant.
515. A copy of the title deed for land parcel No. Kericho/Kapsoit/2463 issued to Talam Samson Kiprotich ID/No. 13667275 of P.O Box 3378, Eldoret was produced as Exhibit P11. It was issued on 30th March, 2011 and it is signed by the Land Registrar.
516. A Notice of Intention to sue dated 15th April, 2013 was produced as Exhibit P12. It is addressed to The Attorney General and it states that Albert Kiptingos Biwot intends to institute proceedings over land parcel No. Kericho/Kapsoit/2463. The letter also states that the other intended Defendants are Zipporah Jelangat Kiptingos and Talam Samson Kiprotich. The intended suit is on alleged fraudulent transfer of land parcel No. Kericho/Kapsoit/2463.
517. A letter dated 29th May, 2013 was produced as Exhibit P13. It is written by Muthoni Kimani the Senior Deputy Solicitor General for the Attorney General and addressed to Dorothy Angote, the Permanent Secretary Ministry of Lands, Housing and Urban Development. The letter forwards the Plaintiff in the Counterclaim's Notice of Intention to sue and requests for instructions to enable the Attorney General respond.
518. The 1st Defendant in the Counterclaim's case on the other hand is that he purchased the suit parcel of land from the 2nd Defendant in the Counterclaim after conducting due diligence.
519. It is also his case that he followed the due process in purchasing the said parcel of land and when he took possession, the Plaintiff in the Counterclaim entered the suit parcel of land and lived in the house built with timber.
520. It is further his case that after the house the Plaintiff in the Counterclaim was living in caught fire, he moved out and he is no longer in possession of the land.
521. A Certificate of Official Search dated 30th August, 2018 was produced as Exhibit D5. It is for land parcel No. Kericho/Kapsoit/2463 and it shows that on 30th March, 2012, the land was registered in Talam Samson Kiprotich's name and on the same day he was issued with a title deed. The Certificate of Official Search is signed by the Land Registrar.
522. A copy of the title deed for land parcel No. Kericho/Kapsoit/2463 registered in the name of Talam Samson Kiprotich was produced as Exhibit D6. Its particulars have been set out in the preceding paragraphs.
523. The 2nd Defendant in the Counterclaim's case is that she took a loan from a Sacco which loan she used to purchase the suit parcel of land.
524. It is also her case that she used to live with the Plaintiff in the Counterclaim and that they have three children together.
525. It is further her case that they later had disagreements which caused her to vacate the suit parcel of land.



526. It is the 2nd Defendant in the Counterclaim's case that she solely purchased the suit parcel of land and that since she was asked to leave the land hurriedly, she was not able to leave with a copy of her agreement for sale of land.
527. A copy of the title deed for land parcel No. Kericho/Kapsoit/2463 registered in the name of Zipporah Jelangat Kiptingos Id No. 13109492 P.O Box 44 Kericho was produced as Exhibit D1. The title deed was issued on 4th June, 2004 and it is signed by the Land Registrar.
528. A copy of a loan application and agreement form of Kermuco Co-operative Savings & Credit Society Ltd was produced as Exhibit D2. The form is filled by Zipporah Kiptingos and it is for a development loan of Kshs. 180,000/=. The form is dated and signed on 9th September, 1999. The form is also signed by the Chairman and Secretary on 28th June, 2000.
529. A bundle of copies of pay slips was produced as Exhibit D3 (a), (b), (c), (d), (e) and (f). They pay slips are issued by the Municipal Council of Kericho to Zipporah Kiptingos.
530. Exhibit D3(a) is the pay slip for October 2011 and it shows that Kshs. 4,789 was deducted to pay the Kermuco Loan.
531. Exhibit D3(b) is the pay slip for November, 2011 and shows that Kshs. 4,789 was deducted to pay the Kermuco Loan.
532. Exhibit D3(c) is the pay slip for the month of March, 2011 and it shows that Kshs. 9,789 was deducted to pay the Kermuco loan.
533. Exhibit D3 (d) is the pay slip for the month of October, 2012 and it shows that Kshs. 13,218 was deducted to pay the Kermuco loan.
534. Exhibit D3 (e) is a pay slip for the month of March, 2010 and it shows that Kshs. 2,162 was deducted to pay the Kermuco loan.
535. Exhibit D3 (f) is a pay slip for the month of October, 2010 and it shows that Kshs. 2, 162 was deducted to pay the Kermuco Loan.
536. Exhibit D3 (g) is a pay slip for the month of May, 2010 which shows that Kshs. 2, 162 was deducted to pay the Kermuco Loan.
537. Exhibit D3 (h) is a pay slip for the month of March, 2011 which shows that Kshs. 9,789 was deducted to pay the Kermuco Loan.
538. The 3rd and 4th Defendants in the Counterclaim's case on the other hand is that all the requisite documents were availed to the 4th Defendant in the Counterclaim who duly followed the law in the registration of the said parcel of land in the 1st Defendant in the Counterclaim's name.
539. The Land Registrar who testified as (3)(4) DW4 produced the following documents;
- a. A certified copy of the Green Card for land parcel No. Kericho/Kapsoit/13 was produced as Exhibit D(3)(4) 1.
 - b. A Certified Copy of the green card for land parcel No. Kericho/Kapsoit/2463 was produced as Exhibit D (3)(4) 2.
 - c. An application for consent of the Land Control Board was produced as Exhibit D (3)(4) 3 (a).



- d. A letter of consent from the Ainamoi Land Control Board was produced as Exhibit D (3)(4) 3 (b).
 - e. Copies of Kenya Revenue Authority PIN Certificates for 1st and 2nd Defendants in the Counterclaim were produced as Exhibits D (3) (4) 4 and 5.
 - f. Copies of National Identity Cards for the 1st and 2nd Defendants were produced as Exhibits D (3)(4) 6 (a) & (b).
540. (3)(4) DW4 set out in great detail the contents of each of the documents that she produced.

A. Whether land parcel No. Kericho/Kapsoit/2463 was matrimonial property.

541. The Plaintiff in the Counterclaim contends that he was in a customary marriage with the 2nd Defendant in the Counterclaim.
542. The Plaintiff in the Counterclaim also contends that during the subsistence of their marriage, they jointly purchased a parcel of land at Chepseon.
543. The Plaintiff in the Counterclaim further contends that they later sold the land at Chepseon and used the proceeds to purchase the suit parcel of land.
544. It is the Plaintiff in the Counterclaim's contention that he later differed with the 2nd Defendant in the Counterclaim which led to the discovery that the suit parcel of land was registered in the 2nd Defendant in the Counterclaim's sole name.
545. It is also the Plaintiff in the Counterclaim's contention that he registered a caution on the suit parcel of land which caution the 2nd Defendant in the Counterclaim sought to remove when she filed Kericho HC Case No. 37 of 2010.
546. It is further the Plaintiff in the Counterclaim's contention that he later learnt that the suit parcel of land was registered in the name of the 1st Defendant in the Counterclaim even though he had registered a caution on the land.
547. The Plaintiff in the Counterclaim therefore contends that the suit parcel of land was matrimonial property and it was fraudulently registered in the name of the 2nd Defendant in the Counterclaim.
548. The Plaintiff in the Counterclaim also contends that the subsequent registration of the 1st Defendant in the Counterclaim as the owner of the suit parcel of land was also fraudulent.
549. The 1st Defendant in the Counterclaim on the other hand contends that he is an innocent purchaser for value as he did his due diligence before purchasing the suit parcel of land.
550. He also contends that he conducted a search which did not show the registration of any caution and he therefore had no notice of the Plaintiff in the Counterclaim's alleged interest in the suit parcel of land.
551. The 2nd Defendant in the Counterclaim admits that she cohabited with the Plaintiff in the Counterclaim from the year 1995 but denies that they were ever married.
552. The 2nd Defendant in the Counterclaim contends that she solely purchased the suit parcel of land and admits that she subsequently sold it to the 1st Defendant in the Counterclaim.
553. It is not disputed that the suit parcel of land was initially registered in the name of the 2nd Defendant in the Counterclaim.



554. It is also not disputed that the 2nd Defendant in the Counterclaim sold the suit parcel of land to the 1st Defendant in the Counterclaim.
555. It is further not disputed that that the suit parcel of land is currently registered in the name of the 1st Defendant in the Counterclaim.
556. The following issues are disputed;
- a. Whether the Plaintiff in the Counterclaim was married to the 2nd Defendant in the Counterclaim.
 - b. Whether land parcel No. Kericho/Kapsoit/2463 was jointly purchased during the subsistence of the alleged marriage and whether it is matrimonial property.
 - c. Whether the registration of land parcel No. Kericho/Kapsoit/2463 in the name of the 2nd Defendant in the Counterclaim was fraudulent.
 - d. Whether a caution was registered on land parcel No. Kericho/Kapsoit/2463 by the Plaintiff in the Counterclaim.
 - e. Whether the subsequent registration of the 1st Defendant in the Counterclaim as the owner of the suit parcel of land was fraudulent.
557. A determination of the disputed facts as set out in (a) and (b) above are crucial and have a bearing on whether it shall be necessary to determine the disputed fact set out in (c),(d) and (e).
558. In *HNM v EIK* [2025] KEHC 10287 (KLR) the judicial decision of *T.M.V v F.M.C* [2018] eKLR was cited with approval and the Court held as follows;
- “...for property to qualify as matrimonial property, it ought to have been acquired during the subsistence of the marriage between the parties unless otherwise agreed between them that such property would not form part of matrimonial property.”
559. The question that follows is whether the Plaintiff in the counterclaim was married to the 2nd Defendant in the Counterclaim. This determination is important as it will inform the finding of whether or not the suit parcel of land is matrimonial property. But, does this court have jurisdiction to make this determination?
560. It is important to note that none of the parties raised the question whether or not this Court has jurisdiction to make the said determination.
561. The Supreme Court in *Nasra Ibrahim Ibren v Independent Electoral and Boundaries Commission & 2 others* [2018] eKLR held as follows;
- “[40] A jurisdictional issue is fundamental and can even be raised by the Court suo motu as was persuasively and aptly stated by Odunga J in *Political Parties Dispute Tribunal & another v Musalia Mudavadi & 6 others Ex Parte Petronila Were* [2014] eKLR. The learned Judge drawing from the Court of Appeal precedent in *Owners and Masters of The Motor Vessel “Joey” vs. Owners and Masters of The Motor Tugs “Barbara” and “Steve B”* [2008] 1 EA 367 stated thus:
- “25. What I understand the Court to have been saying is that it is not mandatory that an issue of jurisdiction must be raised by the parties. The Court on its own motion can take up the issue and make a determination thereon without the same being pleaded...”



Consequently, while the parties have not given the jurisdiction issue the much premium that it deserves, upon evaluation of the matter before us, it is our considered opinion that the issue of jurisdiction of this Court to hear and determine this appeal warrants settlement upfront.” (Emphasis mine)

562. As was held by the Supreme Court in *Nasra Ibrahim Ibren v Independent Electoral and Boundaries Commission & 2 others* (supra) cited above, the Court can consider the issue of jurisdiction suo motu and I hereby do.

563. In the judicial decision of *Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd* [1989] eKLR the Court stated as follows;

“Jurisdiction is everything. Without it, a Court has no power to make one more step. Where a Court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A Court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.” (Emphasis mine)

564. The Supreme Court in *Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others* [2012] eKLR held as follows on jurisdiction;

“(68) A Court’s jurisdiction flows from either *the Constitution* or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by *the constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.” (Emphasis mine)

565. The judicial decisions cited in the foregoing paragraphs are important in emphasising that this court has power to determine the question of jurisdiction suo motu and further that the moment a court finds that it has no jurisdiction it shall and must down its tools.

566. The facts of the case in *RMW v ENN* (Environment & Land Case E48 of 2020) [2022] KEELC 3143 (KLR) (2 June 2022) (Ruling) are similar to the instant case. The Learned judge observed as follows;

“48. In the premises, even though the plaintiff has now denied the existence of a marriage between himself and the defendant/applicant and has heavily relied on the provisions of the *Marriage Act*, 2014, one critical issue that would need to be addressed and/or resolved by the concerned Court in respect of the subject matter, would be the issue of whether or not the plaintiff and the defendant were lawfully married and/or otherwise.

49. In my humble view, the issue as to whether there existed a legal marriage between the plaintiff/respondent and the defendant/applicant, is a matter that falls within the jurisdiction of the magistrate’s Court vide the provision of the *Magistrate’s Act* 2015.

50. Alternatively, the determination of the issue pertaining to the existence of a legal marriage between the plaintiff/respondent and the defendant/applicant also falls within the jurisdiction of the family division of the High Court.

51. Simply put, the issue as to whether or not the plaintiff/respondent and the defendant/applicant were lawfully married, which is critical for the determination of the subject dispute, does not fall within the statutory mandate of this Court.



52. Secondly, there is also the issue as to whether the suit properties were acquired during the subsistence of the marriage between the plaintiff/respondent and the defendant/applicant herein and if so, whether the suit properties are matrimonial properties in line with the provisions of *Matrimonial Property Act*, 2013...
57. Based on the foregoing provisions, it is apparent yet again that there are incidences that show that the suit properties may constitute matrimonial properties. In this regard, the interrogation as to whether or not same are indeed matrimonial must be dealt with under the *Matrimonial Property Act*, 2013.
58. In my considered view, the twin issues of whether or not there exists a marriage between the parties and whether the suit properties are matrimonial properties, are issues that fall outside the jurisdiction of this Court.
59. It is important to note that the jurisdiction of a Court is statutorily circumscribed and/or provided for. Consequently, a Court must adhere to and/or comply with the jurisdictional limitations imposed either by *the Constitution* or the parent statute...
61. In the premises, and being cognizant of the provisions of article 162 (2) (b) of *the Constitution* 2010, it is my considered view that this Court is not seized of the requisite jurisdiction to entertain and/or adjudicate on the subject matter.
62. In a nutshell, I am obliged to down my tools.” (Emphasis mine)
567. In the above cited judicial decision, the Learned Judge found that the Courts that have jurisdiction to determine whether or not parties are or were married are the Magistrates’ Courts or the Family Division of the High Court.
568. The court also found that the question whether or not a suit parcel of land is matrimonial property is to be determined under the provisions of the *Matrimonial Property Act*, 2013 and further that the Environment and Land Court does not have such jurisdiction.
569. This was also the finding in HNN v DNK (Environment & Land Case 19 of 2022) [2023] KEELC 16740 (KLR) (17 March 2023) (Ruling) where the Court observed and held as follows;
- “ 12. Does the Environment and Land Court have jurisdiction to deal with the dispute? It is apparent that the dispute in this suit revolves around the rights of the estranged couple over the suit property. The plaintiff has come to Court asserting that the suit property is both a matrimonial property and a matrimonial home and that the defendant can only deal with it as such.
13. Section 17 of the *Matrimonial Property Act* 2013 contains the following provisions on how a spouse or a former spouse is supposed to seek redress relating to a right over what he or she considers to be matrimonial property:
1. “17. Action for declaration of rights to property A person may apply to a Court for a declaration of rights to any property that is contested between that person and a spouse or a former spouse of the person.



2. An application under subsection (1)—
 - a. shall be made in accordance with such procedure as may be prescribed;
 - (b) may be made as part of a petition in a matrimonial cause; and
 - (c) may be made notwithstanding that a petition has not been filed under any law relating to matrimonial causes.

14. Until the year 2022, there were uncertainties about the Court that was contemplated to exercise jurisdiction under section 17 of the *Matrimonial Property Act*. To clear the uncertainties, the Matrimonial Property Rules 2022 were legislated and operationalized. Rules 6 and 7(1) of the Matrimonial Property Rules 2022 contain the following elaborate framework on the Court vested with jurisdiction and the cause in which a claim relating to matrimonial property is to be ventilated.

“6.

- (1) An application to enforce a claim relating to matrimonial property may be made in any proceedings under the Act —
 - (a) to the High Court in any case where the value of the matrimonial property which is the subject matter of the claim exceeds the pecuniary jurisdiction of a magistrate's Court; or
 - (b) to a magistrate's Court having civil jurisdiction to adjudicate matters within the court's pecuniary jurisdiction.

- (2) Where the spouses profess the Muslim faith, the Court to which an application is made may, on the request of the parties, be guided by Muslim law.⁷⁽¹⁾ Where, under section 17, a person seeks a declaration of any right to property that is contested between that person and a spouse or a former spouse in a petition made to a Court for dissolution of the marriage under the *Marriage Act*, 2014 (No. 4 of 2014), the application may be made as part of the relief sought in the matrimonial cause in accordance with the Matrimonial Proceedings Rules, 2020.”

15. .It is therefore clear from the above framework that the Court vested with jurisdiction to adjudicate the dispute in this suit is the High Court and the Magistrate Courts that may be



seized of the necessary pecuniary jurisdiction. The Environment and Land Court is not the court contemplated under section 17 of the Act.”

570. From the foregoing it is clear that the Environment and Land Court has no jurisdiction to determine whether or not the Plaintiff in the Counterclaim and the 2nd Defendant in the Counterclaim were married and whether or not the suit parcel was matrimonial property, I must down my tools and I hereby do.

B. Whether the prayers sought in the Amended Defence and Counterclaim should be granted.

571. Given my finding on issue (a) above, it will not be necessary for this Court to address this question.

C. Who should bear costs of the suit.

572. The general rule is that costs shall follow the event, this is in accordance with the Provisions of Section 27 of the Civil Procedure Act (Cap. 21). A successful party should ordinarily be awarded costs of an action unless the Court, for good reason, directs otherwise.

Disposition.

573. Taking the foregoing into consideration, I find that this court has no jurisdiction to determine whether or not the Plaintiff in the Counterclaim and the 2nd Defendant in the Counterclaim were married and whether or not the suit parcel was matrimonial property. Consequently, the Counterclaim is hereby struck out with costs.

574. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 29TH DAY OF JANUARY, 2026.

L. A. OMOLLO

JUDGE.

In the presence of: -

Mr. Koske for the Plaintiff in the counterclaim.

Mr. Kipkorir for Sang for 1st Defendant in the Counterclaim.

Mr. Okok for the 2nd Defendant in the Counterclaim.

Mr. Ojwang for 3rd and 4th Defendant in the Counterclaim.

Court Assistant; Mr. Joseph Makori.

