

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT ELDORET**  
**ELC CASE NO. 119 OF 2018**  
**CONSOLIDATED WITH ELC CASE No. 117 OF 2018**

**SIMON BETT .....1<sup>ST</sup> PLAINTIFF**  
**HARRISON MOGERE ONDIMU .....2<sup>ND</sup>**  
**PLAINTIFF**  
**ANNE MISOI .....3<sup>RD</sup> PLAINTIFF**  
**MORRIS ONYANGO .....4<sup>TH</sup>**  
**PLAINTIFF**  
**WYCLIFF CHESOLI NGOME .....5<sup>TH</sup> PLAINTIFF**  
**BONIFACE OTHIENO ADENYI .....6<sup>TH</sup> PLAINTIFF**  
**EVERLYNE KHAOMA SOLOMON .....7<sup>TH</sup>**  
**PLAINTIFF**  
**JACINTA JEPKOSGEI CHEROP .....8<sup>TH</sup>**  
**PLAINTIFF**  
**CHRISTINE AOKO OKELLO .....9<sup>TH</sup> PLAINTIFF**  
**JOHN ODHIAMBO ONYANGO .....10<sup>TH</sup>**  
**PLAINTIFF**  
**JOSEPH OTIENO SIDHO .....11<sup>TH</sup> PLAINTIFF**  
**DAVID OMOLLO GOMBE .....12<sup>TH</sup>**  
**PLAINTIFF**  
**BERNARD K. LIME .....13<sup>TH</sup> PLAINTIFF**  
**HELLEN ISICHI .....14<sup>TH</sup> PLAINTIFF**  
**MARTIN OCHIENG OKWAK .....15<sup>TH</sup> PLAINTIFF**

***VERSUS***

**PRUDENTIAL BUILDING**

**SOCIETY (In Liquidation) .....1<sup>ST</sup>**  
**DEFENDANT**  
**RICHARD NYARIKI T/A**  
**BASELINE AUCTIONEERS ..... 2<sup>ND</sup> DEFENDANT**  
**RADION NTABO .....3<sup>RD</sup> DEFENDANT**  
**HON. OSCAR SUDI .....4<sup>TH</sup> DEFENDANT**

**AND**

**O.S TRADERS LIMITED .....INTERESTED**  
**PARTY**

J U D G E M E N T

1. The Plaintiffs herein did file an Amended Plaint dated 5.12.2019 (hereinafter referred as **“the present suit”**) against the 1<sup>st</sup> to 4<sup>th</sup> Defendant seeking the following orders: -
  - (a) The Honourable Court be pleased to grant an Order of Injunction restraining the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants and Interested Party whether by itself, or its agents, auctioneers and or any of them or otherwise from further demolishing, destroying, evicting or ejecting the Plaintiffs from that parcel number EDLORET MUNICIPALITY/BLOCK 15/1739.**
  - (b) An Order that the purported public auction conducted on 30.08.2018 be declared a nullity and of no consequence.**
  - (c) Costs of the suit together with the interest thereon at court rates.**
  - (d) Such other further or consequential reliefs as this Honourable court may deem fit to grant.**
2. The facts in support of the Plaintiffs prayers were outlined as follows; -

- (i) The Plaintiffs herein claim to be the lawful owners and occupants of the property known as ELDORET MUNICIPALITY/BLOCK 15/1739.
  - (ii) The Plaintiffs state that they did acquire the same as innocent purchasers from the 3<sup>rd</sup> Defendant herein through various Agreements For Sale.
  - (iii) The Plaintiffs aver that the 3<sup>rd</sup> Defendant had lawfully purchased the suit property from the 1<sup>st</sup> Defendant who was the registered owner of the same.
  - (iv) However, unknown to the Plaintiffs, the suit property registered in the name of the 1<sup>st</sup> Defendant was sold by way of public auction to the Interested Party by the 2<sup>nd</sup> Defendant herein.
  - (v) Consequently, the Interested Party herein did evict the Plaintiffs from the suit property without following the law and respecting their ownership rights thereof.
  - (vi) In essence, the Plaintiffs herein sought an Order of Permanent Injunction against the Interested Party or any other persons, servants, employees and/or assigns from interfering with their ownership and occupation of the suit property herein.
  - (vii) Further to that, the Plaintiffs sought for an Order cancelling the auction of the suit property in the name of the 1<sup>st</sup> Defendant by the 2<sup>nd</sup> Defendant to the Interested Party herein for failure to recognize their ownership rights.
3. The present suit was duly served on 1<sup>st</sup> to 4<sup>th</sup> Defendants as well as the Interested Party thereof.
  4. The 1<sup>st</sup> Defendant did oppose the present suit by filing a Statement of Defence dated 22.02.2021 based on the following facts; -

- (i) The 1<sup>st</sup> Defendant did admit that he was the registered owner of the suit property herein prior to the auction undertaken by the 2<sup>nd</sup> Defendant.
- (ii) However, the 1<sup>st</sup> Defendant did deny the ownership rights, occupation and/or use of the suit property by the Plaintiffs during its period of registration.
- (iii) The 1<sup>st</sup> Defendant further did deny the allegation that the suit property was ever sold and/or transferred to the 3<sup>rd</sup> Defendant as alleged by the Plaintiffs herein.
- (iv) According to the 1<sup>st</sup> Defendant, the same was placed under liquidation on the 18.01.2005 due to financial challenges and the defunct Deposit Protection Fund now Kenya Deposit Protection Fund was appointed the liquidators thereof.
- (v) In an effort to meet the liabilities of the 1<sup>st</sup> Defendant, the Liquidators did undertake a valuation of the suit property through the firm of Real Appraisal Limited and thereafter instructions were issued to the 2<sup>nd</sup> Defendant to auction the same.
- (vi) Based on these instructions from the Liquidator, the 2<sup>nd</sup> Defendant did advertise the suit property on 30.08.2018 for public auction in the Daily Newspaper and various posters within Eldoret Town.
- (vii) As scheduled in the Advertisement of 30.08.2018, the 2<sup>nd</sup> Defendant did successfully auction the suit property to the Interested Party who was the highest bidder.
- (viii) The full purchase price declared at the auction was subsequently settled by payment of a deposit of 10% upon the fall of the hammer and the balance within the provided time period.
- (ix) The 1<sup>st</sup> Defendant was of the considered view that the actions of the Liquidator in auctioning the suit property in effort to settle its liabilities was well within the law and

the auction undertaken by the 2<sup>nd</sup> Defendant is legal and lawful.

- (x) The 1<sup>st</sup> Defendant did admit that the suit property was lawfully and legitimately purchased by the Interested Party herein and there were no irregularities and/or none compliance of the law during the public auction conducted by the 2<sup>nd</sup> Defendant.
  - (xi) In conclusion, the 1<sup>st</sup> Defendant sought this Court to dismiss the Plaintiffs suit with costs.
5. The 2<sup>nd</sup> Defendant besides entering Appearance did not file any Statement of Defence against the Plaintiffs case.
6. The 3<sup>rd</sup> Defendant did oppose the present suit by filing a Statement of Defence 01.07.2020 on the following facts;-
- (i) The 3<sup>rd</sup> Defendant did admit that the suit property belonged to the 1<sup>st</sup> Defendant prior to the purchase by the Interested Party through a public auction.
  - (ii) However, during the ownership of the 1<sup>st</sup> Defendant, one of the trustees of the 1<sup>st</sup> Defendant known as STEPHEN KIPKIRUI MITEI did sale a portion of 2 acres to the 3<sup>rd</sup> Defendant on the 09.02.1994.
  - (iii) Upon purchase, the 3<sup>rd</sup> Defendant did immediately move into possession and thereafter sold portions thereof to the Plaintiffs who have been on the land for more than 12 years.
  - (iv) The 3<sup>rd</sup> Defendant was therefore of the view that the Plaintiffs herein had legitimate ownership of the portions they purchased and should not be evicted and/or dispossessed of the same by any of the Defendants.
  - (v) The 3<sup>rd</sup> Defendant did plead that he was not privy to the 1<sup>st</sup> Defendant's actions or the legality thereof of the demolition undertaken against the Plaintiffs herein.

- (vi) In conclusion, that the 3<sup>rd</sup> Defendant averred that he is unaware of the alleged violations of the Plaintiffs' rights, and if there are any, then he is not to be blamed for the same.
- (vii) The 3<sup>rd</sup> Defendant asked that the Plaintiff's suit against him be dismissed.
7. The 4<sup>th</sup> Defendant and the Interested Party did file a Joint Statement of Defence dated 08.06.2020 in opposition of the present suit on the following facts; -
- (i) The suit property herein was purchased by the Interested Party though the public auction undertaken by the 2<sup>nd</sup> Defendant herein.
- (ii) The 4<sup>th</sup> Defendant was a Director of the Interested Party herein.
- (iii) In essence, the 4<sup>th</sup> Defendant did state that he did not have personal ownership rights and/or interest on the suit property as alleged by the Applicants.
- (iv) According to the Interested Party, it was the highest bidder in the public auction undertaken by the 2<sup>nd</sup> Defendant on the 30.08.2018 and was issued with the appropriate Certificate of Sale thereof.
- (v) Thereafter, the Interested Party did proceed to settle the full purchase price and legally acquire the ownership and registration of the suit property.
- (vi) The 4<sup>th</sup> Defendant did deny any allegations of instigating and/or undertaking any actions geared towards dispossession and/or eviction of the Plaintiffs herein.
- (vii) The 4<sup>th</sup> Defendant and the Interested Party did plead that the rightful owner of the suit property was the Interested Party who had all the rights of use and occupation over the same.

- (viii) In conclusion, the 4<sup>th</sup> Defendant and the Interested Party did seek this Court to dismiss the Plaintiffs suit with costs.
8. It is worthy to note that in the Statement of Defence dated 08.06.2020 by the 4<sup>th</sup> Defendant and the Interested Party, there was no Counter-Claim pleaded therein but the following Orders were sought against the Plaintiffs herein jointly and severally; -
- (a) The Plaintiffs be evicted from the said parcel of land to allow for occupation by the Interested Party.**
  - (b) A declaration that the public auction conducted on 30/08/2018 was conducted legally.**
  - (c) Costs of this suit with interest thereon at court rates.**
  - (d) Any other relief as this Honourable Court may deem fit to grant.**
9. The Plaintiffs upon being served by the Statements of Defence mentioned hereinabove did not file any Reply to Defence to any of them.
10. Consequently, the pleadings did close and the matter was listed for hearing.

## **PLAINTIFFS TESTIMONIES & DOCUMENTARY EVIDENCE**

11. The Plaintiffs first witness was WYCLIFFE CHESOLI NGOME who was marked as PW 1.
12. PW1 did introduce himself as a resident of Uasin Gishu County and one of the Plaintiffs in the present suit.

13. PW 1 did confirm to the Court that he had prepared and executed a witness statement dated 17.09.2017 of which he adopted as his evidence in chief.

14. In support of his testimony in chief, PW 1 did produce the following documents; -

PW1 Exhibit 1 - Copy of authority to plead dated 26.10.2018

PW1 Exhibit 2 - Copy of a Sale Agreement dated 9.02.1994 between the 1<sup>st</sup> Defendant with Stephen Kipkirui Mitei.

PW1 Exhibit 3 - Copy of a Sale Agreement dated 19.11.2015 between the PW 1 and the 3<sup>rd</sup> Defendant over 0.8Ha of the suit property.

PW1 Exhibit 4- Copy of Sale Agreement dated 11.01.2016 between the 2<sup>nd</sup> Plaintiff and the 3<sup>rd</sup> Defendant over  $\frac{1}{4}$  an Acre of the suit property.

PW1 Exhibit 5 - Copy of a Sale Agreement dated 5.05.2011 between the 4<sup>th</sup> Plaintiff and the 3<sup>rd</sup> Defendant 0.8Ha on the suit property.

PW1 Exhibit 6 - Copy of a Sale Agreement dated 13.02.2018 between the 8<sup>th</sup> Plaintiff and the 3<sup>rd</sup> Defendant over  $\frac{1}{8}$  of an Acre on suit property.

PW1 Exhibit 7 - Copy of a Sale Agreement dated 8.02.2018 between the 9<sup>th</sup> Plaintiff and the 3<sup>rd</sup> Defendant for  $\frac{1}{8}$  of an Acre on the suit property.

PW1 Exhibit 8 - Copy of a Sale Agreement dated 8.02.2018 between the 10<sup>th</sup> Plaintiff and the 3<sup>rd</sup> Defendant for a portion of  $\frac{1}{8}$  Acres on the suit property.

PW1 Exhibit 9 - Copy of a Sale Agreement dated 29.01.2018 between the 10<sup>th</sup> and 11<sup>th</sup> Plaintiffs and the 3<sup>rd</sup> Defendant for a portion of  $\frac{1}{8}$  Acres on suit property.

PW1 Exhibit 10 - Copy of a Sale Agreement dated 7.05.2018 between Wilson K. Korir and Joseph Otieno over a portion measuring 1/8 Acres on the suit property.

PW1 Exhibit 11 - Copy of an acknowledgement dated 24.10.2017 between the 3<sup>rd</sup> Defendant and the 1<sup>st</sup> Defendant.

PW1 Exhibit 12 - Copy of a Sale Agreement dated 18.08.2015 between the 15<sup>th</sup> Plaintiff and the 3<sup>rd</sup> Defendant over 1.001 Ha on the suit property.

PW1 Exhibit 13 - Bundle of photos dated 26.10.2018 of Notices to Vacate.

PW1 Exhibit 14 - Copy of a Notice to Vacate issued by the 4<sup>th</sup> Defendant dated 26.10.2018

15. Upon production of the above documents, PW 1 did reiterate that all the Plaintiffs herein had purchased various portions of land within the suit property from the 3<sup>rd</sup> Defendant herein.
16. According to the information in their possession, the 3<sup>rd</sup> Defendant had been sold a portion of the suit property by one of the Trustees of the 1<sup>st</sup> Defendant known as STEPHEN KIPKURUI MITEI.
17. PW 1 did state that at the time when the Plaintiffs were purchasing the various portions of the suit property from the 3<sup>rd</sup> Defendant, the same were vacant.
18. Consequently, the Plaintiffs herein did enter the portions they had purchased from the 3<sup>rd</sup> Defendant and have done numerous developments thereof.
19. However, later on, the Plaintiffs herein were served with Notices to Vacate the suit property by an agent of the 4<sup>th</sup> Defendant.

20. PW 1 did inform the Court that they were not aware when the suit property was sold by the 1<sup>st</sup> Defendant to the 4<sup>th</sup> Defendant and/or the Interested Party.
21. PW 1 did aver that the Plaintiffs had not been shown the 4<sup>th</sup> Defendant's ownership documents although he would visit the suit property from time to time inspecting the same.
22. PW 1 therefore sought this Court to declare the auction undertaken by the 2<sup>nd</sup> Defendant and the subsequent transfer to the Interested Party irregular, null and void.
23. As such, the prayers sought in the present suit be granted and the Defendants as well as the Interested Party do meet the costs thereof.
24. On cross-examination by Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, PW1 was referred to PW1 Exhibit 3.
25. PW 1 did admit that prior to the execution of the said Agreement For Sale, he did not undertake any due diligence of the suit property he was purchasing.
26. PW 1 did inform the Court that later on, the Plaintiffs did a search on the suit property which did state that the suit property was registered in the name of STEPHEN KIPKIRUI MITEI and not the 3<sup>rd</sup> Defendant who had sold to them.
27. PW1 did aver that they also saw the 1<sup>st</sup> Defendant's name on the search but he could not remember the remarks about it.
28. According to PW 1, the Plaintiffs were the legitimate owners of various portions of land within the suit property but had never been given the Transfer documents and/or any ownership documents by the County Government of Uasin Gishu.
29. PW 1 did reiterate that the ownership of the Plaintiffs herein did emanate from the 3<sup>rd</sup> Defendant who had purchased a portion of the suit property from one STEPHEN KIPKIRUI MITEI.

30. PW1 did inform the Court that the Plaintiffs were not aware that the suit property had been auctioned or that the 1<sup>st</sup> Defendant was placed in liquidation.
31. On further cross-examined by Counsel for the 4<sup>th</sup> Defendant and the Interested Party, PW 1 did admit that there was no evidence that the 4<sup>th</sup> Defendant was the one that had demolished their developments on the suit property.
32. PW1 did inform the Court that according to the Agreement For Sale with the 3<sup>rd</sup> Defendant, it stated that the registered owner of the suit property of the 3<sup>rd</sup> Defendant but his name was never recorded in the Certificate of Lease.
33. PW 1 did aver that the Official Search to the suit property did show the names of the 1<sup>st</sup> Defendant and one STEPHEN KIPKIRUI MITEI as the registered owners of the suit property although a copy was never produced before the Court.
34. PW 1 stated that there were no ownership documents handed over to them by the 3<sup>rd</sup> Defendant and as a consequence thereof, all the Plaintiffs were evicted from the suit property.
35. PW 1 did agree that one could not sell what they do not own.
36. PW1 did further admit that there was no proposed and/or registered Mutation and/or Registry Index Map creating their portions of land within the suit property that had been prepared by the 3<sup>rd</sup> Defendant.
37. As such, the portions which the Plaintiffs occupy and/or use have no registrable numbers that can be legally declared to belong to them.
38. On re-examination, PW1 was referred to the Agreement dated 9.02.1994 which he did deny the allegation that the 3<sup>rd</sup> Defendant had only bought 0.8 of a Hectare on the suit property.

39. At the end of this re-examination, the PW 1 was discharged from the witness box and the Plaintiffs did close their case.

## **DEFENDANTS TESTIMONIES & DOCUMENTARY EVIDENCE**

40. The Defence first witness was one DORCAS WANJALA who was marked as DW 1.

41. DW 1 did inform the Court that she would testify on behalf of the 1<sup>st</sup> Defendant herein.

42. DW1 then did introduce herself as the Assistant Director, Bank Resolution at Kenya Deposit Insurance Corporation.

43. DW 1 did proceed to inform the Court that she had prepared a witness statement dated 19.02.2021 of which she did adopt as her evidence in chief.

44. Thereafter, DW 1 did proceed to produce the following documents; -

DW1 Exhibit 1 - Copy of Certificate of Lease of the suit property in the name of the 1<sup>st</sup> Defendant issued on 25.11.1992.

DW1 Exhibit 2- A Copy of a Valuation Report dated 19.06.2018 by Real Appraisal Ltd over the suit property.

DW1 Exhibit 3- A copy of a newspaper dated 13.05.2018 advertising the property for auction.

DW1 Exhibit 4 - A Copy of Letter of Instruction from the 1<sup>st</sup> Defendant to the 2<sup>nd</sup> Defendant.

DW1 Exhibit 5- A Copy of a Memorandum of Sale dated 30.08.2018 issued by the 2<sup>nd</sup> Defendant on behalf of the 1<sup>st</sup> Defendant.

DW1 Exhibit 6- A Copy of a Green Card to the suit property certified on 28.05.2025.

45. Based on the above documents, DW 1 did inform the Court that the 1<sup>st</sup> Defendant was placed in liquidation on 18.01.2005 since it could not meet their obligations as a building society.
46. DW 1 did state that as of 14.06.2018, the suit property was registered in the name of the 1<sup>st</sup> Defendant and there were no encumbrances or ownership claims by any third party.
47. In an effort to clear the liabilities of the 1<sup>st</sup> Defendant, the Liquidator did decide to sell the suit property through a public auction which attracted over 300 bidders.
48. Nevertheless, the Interested Party herein did emerge the highest bidder and upon the fall of the hammer, it was issued with the Certificate of Sale by the 2<sup>nd</sup> Defendant.
49. DW1 did confirm that the full purchase price had been settled by the Interested Party but the suit property was yet to be transferred due to the pendency of the present suit.
50. In conclusion thereof, DW 1 sought this Court to dismiss the Plaintiffs suit with costs.
51. On cross-examination by Counsel for the 4<sup>th</sup> Defendant and the Interested Party, DW1 did reiterate that a search had been done before the suit property was put on auction and it confirmed that the 1<sup>st</sup> Defendant was the legitimate and lawful owner thereof.
52. According to DW1, the Valuation Report undertaken on the instruction of the liquidators mentioned that there were squatters of the suit property who did not have any legal rights therein.
53. DW1 stated that it was the obligation of the 1<sup>st</sup> Defendant to ensure that all the squatters on the suit property were

removed to facilitate the handing over of the same to the purchaser in this case the Interested Party.

54. For this reason, the 1<sup>st</sup> Defendant did engage a licensed auctioneer who undertook the exercise of ensuring the suit property was vacate.
55. As regards the public auction undertaken by the 2<sup>nd</sup> Defendant, the DW 1 did confirm that all the procedures and requirements were undertaken and there has been no challenge of the auction by any of the participants.
56. DW 1 did confirm that the process of removing any squatters on the suit property was undertaken by the 2<sup>nd</sup> Defendant and not the 4<sup>th</sup> Defendant as alleged by the Plaintiffs.
57. DW1 was then referred to the various Agreements for sale between the Plaintiff and the 3<sup>rd</sup> Defendant produced in Court.
58. DW 1 was of the view that all the Agreements For Sale held by the Plaintiffs were with the 3<sup>rd</sup> Defendant and therefore any reliefs and/or remedies being sought by the Plaintiffs should be restricted to the 3<sup>rd</sup> Defendant.
59. On further cross-examination by Counsel for the Plaintiff, DW 1 did state that the provisions of the Land Act, No. 6 of 2012 did not apply to properties which were in liquidation.
60. DW1 did clarify that the auction undertaken by the Liquidator was not based on a registered charge and therefore, the Notices provided under Section 90 of the Land Act, No. 6 of 2012 did not apply.
61. DW 1 did state that the auction conducted on the 30.08.2018 was on the instructions of the Liquidators of the 1<sup>st</sup> Defendant who had given instructions to the 2<sup>nd</sup> Defendant on the 11.06.2018.

62. DW 1 did inform the Court that the 1<sup>st</sup> Defendant was placed under liquidation pursuant to a Gazette Notice published on the 18.01.2025.
63. On being referred to DW 1 EXHIBIT 5, DW 1 did admit that there is no name entered on the part of execution by the purchaser.
64. On being referred to DW1 Exhibit 2, DW1 testified that it had the signature but she could not see the stamp.
65. On re-examination, DW1 did state that the 1<sup>st</sup> Defendant had no relationship with the 3<sup>rd</sup> Defendant.
66. On being referred to PW1 EXHIBIT-2, DW1 did point out that the Agreement For Sale was between one STEPHEN KIPKIRUI MITEI and the 3<sup>rd</sup> Defendant.
67. As such, the 1<sup>st</sup> Defendant was not a party to the same and/or did not give any consent thereof as the registered owner of the suit property.
68. At the end of this re-examination, DW 1 was discharged from the witness box and the 1<sup>st</sup> and 2<sup>nd</sup> Defendants did proceed to close their case.
69. The 3<sup>rd</sup> Defendant despite knowledge of the hearing did not attend Court on the hearing date and the Court did close its case thereof.
70. On 12.06.2025, Counsel for the 4<sup>th</sup> Defendant did inform the Court that the witness was not available and consequently, the 4<sup>th</sup> Defendant's case was closed.

## **INTERESTED PARTY'S TESTIMONY & DOCUMENTARY EVIDENCE**

71. The Interested Party's first witness was METRINE CHEPKORIR KABIATICH who was marked as DW 2.

72. DW2 did introduce herself as a resident of Uasin Gishu working as a medic at Moi Referral Hospital.
73. DW 2 did also inform the Court that she was one of the Directors of the Interested Party.
74. DW 2 did state that she had prepared a witness statement dated 12.06.2025 of which she did adopt as her evidence in chief.
75. Similarly, DW 2 did produce the following documents in support of her evidence in chief; -
- DW2 Exhibit 1 - A copy of Memo of Sale dated 30.08.2018 issued executed by the Auctioneer and Interested Party over the suit property.
- DW2 Exhibit 2-A Copy of the Certificate of Sale dated 30.08.2018 by the Auctioneer on behalf of Prudential.
- DW2 Exhibit 3- A Copy of Certificate of Incorporation of the Interested Party issued on 8.05.2018.
76. According to the documents produced, DW2 was of the considered view that the suit property was legally and lawfully purchased from the 1<sup>st</sup> Defendant through a public auction.
77. DW2 did confirm that the full purchase price upon the fall of the hammer had been settled to the liquidators of the 1<sup>st</sup> Defendant.
78. Upon completion of DW 2 testimony in chief, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants did not have any questions for cross-examination.

79. On further cross-examination by Counsel for the Plaintiffs, DW 2 did state that the suit property had been purchased through a public auction although she did not attend the said auction.
80. DW 2 did state that the Director of the Interested Party who had attended the public auction was the 4<sup>th</sup> Defendant.
81. DW 2 was referred to DW 2 Exhibit 1 which upon perusal did agree that the name of the Director who attended had not been indicated thereon.
82. DW2 did testify that the total purchase price of the suit property was KShs.27,000,000/- and the 10% deposit was paid at the fall of the hammer while the balance was cleared thereafter.
83. DW 2 did confirm that the directors of the Interested Party did inspect the suit property before the auction and indeed there were a number of occupants on the same.
84. However, the undertaking by the 2<sup>nd</sup> Defendant on behalf of the 1<sup>st</sup> Defendant was that they would be removed as these occupants did not have any legal basis to be on the suit property.
85. On re-examination, DW2 was referred to DW2 Exhibit 1 which upon perusal, she did confirm that it had been signed by the 4<sup>th</sup> Defendant as a director of the Interested Party.
86. According to DW2, if the terms and conditions of the sale through the auction had not be satisfied by the Interested Party, then the 1<sup>st</sup> Defendant would have rescinded the same.
87. At the end of this re-examination, DW 2 was discharged from the witness box and the Interested Party's case was closed thereafter.
88. At the end of this hearing, the Court directed parties to file their final submissions.

89. In compliance with the Court's directions, the 1<sup>st</sup> to 4<sup>th</sup> Plaintiffs did file their submissions dated 17.11.2025 and the 5<sup>th</sup> to 15<sup>th</sup> Plaintiff did also file their submissions dated 15.12.2025.
90. On the other hand, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants did file their submissions dated 26.11.2025 while the 4<sup>th</sup> Defendant and the Interested Party's submissions were dated 20.11.2025.
91. This Court has perused the pleadings by the Plaintiffs, the Defendants and the Interested Party herein, and considered the witness testimonies and documentary evidence placed before it, as well as the submissions filed herein and in its considered view, the following are the issues for determination: -

**ISSUE NO.1- WHO IS THE REGISTERED OWNER OF THE SUIT PROPERTY HEREIN?**

**ISSUE NO.2- IS THERE A VALID AGREEMENT FOR SALE BETWEEN THE 1<sup>ST</sup> DEFENDANT AND THE 3<sup>RD</sup> DEFENDANT HEREIN?**

**ISSUE NO.3- ARE THERE VALID AGREEMENTS FOR SALE BETWEEN THE PLAINTIFFS & THE 3<sup>RD</sup> DEFENDANT FOR A PORTION OF THE SUIT PROPERTY?**

**ISSUE NO.4-WAS THE AUCTION UNDERTAKEN BY THE 1<sup>ST</sup> AND 2<sup>ND</sup> DEFENDANTS LEGAL AND LAWFUL?**

**ISSUE NO.5- IS THE PLAINTIFFS' SUIT AGAINST THE DEFENDANTS MERITED?**

**ISSUE NO.6- WHO BEARS THE COSTS OF THE PRESENT SUIT?**

92. The issues for determination having been duly identified hereinabove, the same will now be discussed as herein-below.

**ISSUE NO.1- WHO IS THE REGISTERED OWNER OF THE SUIT PROPERTY HEREIN?**

93. The first issue for determination is who is the registered owner of the suit property herein.
94. According to the Plaintiffs evidence through PW 1, the suit property herein was registered in the name of the 1<sup>st</sup> Defendant herein.
95. The 1<sup>st</sup> Defendant through the witness marked as DW 1 did also place before this Court the Certified Copy of the Register and/or Green Card dated 28.05.2025 as DW 1 EXHIBIT 6.
96. The Certified Copy of the Register and/or Green Card dated 28.05.2025 confirms that the name of the 1<sup>st</sup> Defendant is the one recorded as the proprietor of the suit property.
97. Consequently, this Court is of the considered view and finding that the suit property belongs to the 1<sup>st</sup> Defendant herein.

**ISSUE NO.2- IS THERE A VALID AGREEMENT FOR SALE BETWEEN THE 1<sup>ST</sup> DEFENDANT AND THE 3<sup>RD</sup> DEFENDANT HEREIN?**

98. The second issue for determination is whether or not there was a valid Agreement For Sale between the 1<sup>st</sup> Defendant and the 3<sup>rd</sup> Defendant.
99. The Plaintiffs herein did plead and testify before this Court that the 1<sup>st</sup> Defendant had sold a portion of the suit property to the 3<sup>rd</sup> Defendant herein.
100. The Plaintiffs sought to rely on the Agreement dated 09.02.1994 between one STEPHEN KIPKIRUI MITEI who is alleged to have been a Trustee of the 1<sup>st</sup> Defendant and the 3<sup>rd</sup> Defendant herein.
101. The 3<sup>rd</sup> Defendant herein through the Defence dated 01.07.2020 did rely on the Agreement For Sale dated

09.02.1994 as the basis of having ownership of about 2 Acres of the suit property.

102. The 1<sup>st</sup> Defendant on the other did deny the existence of the Agreement For Sale dated 09.02.1994.
103. According to the DW 1 who was representing the Liquidator of the 1<sup>st</sup> Defendant, the suit property did not have any encumbrance on the title in terms of any claims of ownership by third parties.
104. Further to the above, the 1<sup>st</sup> Defendant was not aware of any claims for a portion of the suit property by the 3<sup>rd</sup> Defendant as contained in the Agreement For Sale dated 09.02.1994.
105. In an effort to resolve this issue, the Court has indeed taken time to review the Agreement For Sale dated 09.02.1994.
106. It is true that the Agreement For Sale dated 09.02.1994 is between one STEPHEN KIPKIRUI MITEI as the Trustee of the 1<sup>st</sup> Defendant and the 3<sup>rd</sup> Defendant.
107. The Agreement For Sale dated 09.02.1994 is for the sale of 10 Acres within the suit property herein.
108. The Agreement For Sale dated 09.02.1994 further gives various terms and conditions that require to be fulfilled to facilitate the sub-division and transfer of the 10 acres within the suit property from the person known as STEPHEN KIPKIRUI MITEI and the 3<sup>rd</sup> Defendant.
109. To begin with, it is important to state that he who alleges is required to prove as envisaged under Section 107 of the Evidence Act, Cap 80.

110. In the 3<sup>rd</sup> Defendant's Defence dated 01.07.2020, the 3<sup>rd</sup> Defendant did plead that he was the lawful purchaser of a portion of the suit property.
111. Consequently, the first expectation by this Court was that the 3<sup>rd</sup> Defendant would have presented some form of document to demonstrate that the person known as STEPHEN KIPKIRUI MITEI was a bonafide Trustee of the 1<sup>st</sup> Defendant as of 09.02.1994 when the Agreement For Sale was executed thereof.
112. Secondly, the 3<sup>rd</sup> Defendant was under an obligation to demonstrate that at the date of the Agreement For Sale dated 09.02.1994, the person known as STEPHEN KIPKIRUI MITEI had the appropriate Resolution and/or Authority to sale whatever portion of land within the suit property owned by the 1<sup>st</sup> Defendant.
113. Thirdly, the 3<sup>rd</sup> Defendant had the obligation to prove before this Court that all the terms and conditions provided in the Agreement For Sale dated 09.02.1994 had been complied with to bestow the legal ownership on him.
114. Unfortunately, the 3<sup>rd</sup> Defendant despite being aware of this proceeding elected not to participate and/or tender any evidence to support the allegation that he lawfully purchased a portion of the suit property from the 1<sup>st</sup> Defendant.
115. The failure by the 3<sup>rd</sup> Defendant to either participate and/or tender the relevant evidence to prove his claim of purchase makes the contents of his Defence dated 01.07.2020 mere denials.
116. As it stands now, there is no prove that the 3<sup>rd</sup> Defendant even complied with the terms and conditions of sale in the Agreement For Sale dated 09.02.1994 to cement a valid Agreement For Sale over the suit property capable of bestowing any ownership rights to him.

117. As such, this Court is of the considered view and finding that the Agreement For Sale dated 09.02.1994 between the person known as STEPHEN KIPKIRUI MITEI who purports to be a Trustee of the 1<sup>st</sup> Defendant and the 3<sup>rd</sup> Defendant is not valid and/or lawful for lack of capacity by the purported Vendor and failure to prove that the terms and conditions of sale therein were compiled by the 3<sup>rd</sup> Defendant if at all.

**ISSUE NO.3- ARE THERE VALID AGREEMENTS FOR SALE BETWEEN THE PLAINTIFFS & THE 3<sup>RD</sup> DEFENDANT FOR A PORTION OF THE SUIT PROPERTY?**

118. The third issue for determination is whether or not the Plaintiffs herein have lawful and valid Agreements For Sale between themselves and the 3<sup>rd</sup> Defendants capable of alienating any ownership rights on the suit property.

119. The Plaintiffs did plead and testify that all their Agreements For Sale were executed with the 3<sup>rd</sup> Defendant as the Vendor of the portions they were purchasing.

120. The Plaintiffs did admit that at the time of entering into various Agreements For Sale with the 3<sup>rd</sup> Defendant, they did not undertake any due diligence on who the rightful owner of the suit property was.

121. The 3<sup>rd</sup> Defendant on the other hand admits to have sold various portions of the suit property to the Plaintiffs herein based on the Agreement For Sale dated 09.02.1994.

122. Be as it may, this Court in Issue No.2 did make a finding that the Agreement For Sale dated 09.02.1994 was in fact not legal and binding between the person known as STEPHEN KIPKIRUI MITEI and the 3<sup>rd</sup> Defendant therein.

123. As such, the 3<sup>rd</sup> Defendant was not able to acquire any legal and/or ownership rights over any portion of the suit property herein which belongs to the 1<sup>st</sup> Defendant.
124. In the cross-examination of the Plaintiffs witness marked as PW 1, it was admitted that one could not sell what they do not have.
125. In other words, the failure by the 3<sup>rd</sup> Defendant to get legal and/or lawful ownership rights over a portion of the suit property from the 1<sup>st</sup> Defendant meant that any further Agreements For Sale with the Plaintiffs were annulity from the very beginning.
126. In essence, this Court hereby makes a finding that the Agreements For Sale between the Plaintiffs and the 3<sup>rd</sup> Defendant herein were illegal, null and void hence incapable of passing any ownership rights from the 3<sup>rd</sup> Defendant to the Plaintiffs herein.

**ISSUE NO.4-WAS THE AUCTION UNDERTAKEN BY THE  
1<sup>ST</sup> AND 2<sup>ND</sup> DEFENDANTS LEGAL AND  
LAWFUL?**

127. The fourth issue for determination is whether the auction undertaken by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants herein was lawful or illegal.
128. The Plaintiffs did cast doubt on the manner in which the auction undertaken by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants was conducted and whether the Interested Party did comply with the terms and condition of the sale.
129. The Plaintiffs began by alleging that the Notice provided under the Land Act, Cap 6 of 2012 were never issued before the suit property was auctioned.
130. Secondly, the Plaintiffs did allege that the Interested Party herein was not at the place of auction on the material date.

131. Similarly, the Plaintiffs did allege that there was no prove that the Interested Party had settled the entire purchase price pronounced at the fall of the hammer.
132. The 1<sup>st</sup> Defendant, 2<sup>nd</sup> Defendant, 4<sup>th</sup> Defendant and the Interested Party did refute these allegations.
133. To begin with, the DW 1 did testify that the 1<sup>st</sup> Defendant went into liquidation sometime in the year 2005.
134. Consequently, the auction undertaken by the 2<sup>nd</sup> Defendant was not based on a Statutory Power of Sale as provided in the Land Act, Cap 6 of 2012.
135. In addition to the above, the 1<sup>st</sup> Defendant did confirm that the 2<sup>nd</sup> Defendant who was on instructions to auction the suit property did undertake the relevant valuation and had issued public notices required by law.
136. Indeed, the valuation of the suit property by the 1<sup>st</sup> Defendant and the various notices thereof were placed before the Court at the hearing.
137. Lastly, the Interested Party did produce the Certificate of Sale issued by the 2<sup>nd</sup> Defendant confirming the sale of the suit property to it.
138. Based on the all the documents produced by the 1<sup>st</sup> Defendant and the Interested Party, this Court is of the considered view and finding that the auction undertaken by the 2<sup>nd</sup> Defendant on instructions of the 1<sup>st</sup> Defendant was lawful and in compliance with the law.
139. In fact, in the Amended Plaint dated 09.12.2019, the Plaintiffs did plead a number of particulars relating to the irregularity and/or illegality of the auction undertaken by the 2<sup>nd</sup> Defendant.

140. However, none of the particulars therein was specifically proved at the hearing of this matter.

141. In conclusion, this Court is of the considered view and finding that the auction conducted on the 30.08.2018 by the 2<sup>nd</sup> Defendant on behalf of the 1<sup>st</sup> Defendant was indeed lawful and legal before the law.

142. As such, the Interested Party being the highest bidder is entitled to the ownership of the suit property herein.

**ISSUE NO.5- IS THE PLAINTIFFS' SUIT AGAINST THE DEFENDANTS MERITED?**

143. Based on the determinations in Issue No. 1,2,3 and 4 hereinabove, this Court is of the finding that the Plaintiffs case is not merited and should be dismissed forthwith.

**ISSUE NO.6- WHO BEARS THE COSTS OF THE PRESENT SUIT?**

144. Costs are usually awarded to a winning party.

145. In this suit, the Plaintiffs suit against the 1<sup>st</sup> to 4<sup>th</sup> Defendants and the Interested Party has not been successful.

146. As such, the Plaintiffs are condemned to pay costs to the 1<sup>st</sup> to 4<sup>th</sup> Defendants and the Interested Party.

**CONCLUSION**

147. In conclusion, the Court hereby makes the following Orders in determination of the present suit; -

**A. THE AMENDED PLAINT DATED 05.12.2019 IS NOT MERITED AND IS THEREFORE DISMISSED.**

**B. THE AUCTION UNDERTAKEN ON THE 30.08.2018 BY THE 2<sup>ND</sup> DEFENDANT ON BEHALF OF THE 1<sup>ST</sup> DEFENDANT RELATING TO THE PROPERTY KNOWN AS ELDORET MUNICIPALITY BLOCK 15/1739 IS LAWFUL AND LEGAL.**

**C. THE INTERESTED PARTY OS TRADERS LIMITED WHO WAS DECLARED THE HIGHEST BIDDER AND ISSUED WITH THE CERTIFICATE OF SALE DATED 30.08.2018 IS THE LAWFUL AND LEGITIMATE OWNER OF THE PROPERTY KNOWN AS ELDORET MUNICIPALITY BLOCK15/1739.**

**D. THE PLAINTIFFS HEREIN ARE CONDEMNED TO PAY COSTS OF THIS SUIT TO THE 1<sup>ST</sup> DEFENDANT, 2<sup>ND</sup> DEFENDANT, 4<sup>TH</sup> DEFENDANT AND THE INTERESTED PARTY ONLY.**

**DATED, SIGNED and DELIVERED in ELDORET this 19<sup>TH</sup> DAY OF FEBRUARY, 2026.**

**EMMANUEL.M. WASHE  
JUDGE**

**IN THE PRESENCE OF:**

Court Assistant: Brian

Counsel for the Plaintiffs: Mr. Mathai

Counsel for the Defendants: Mr. Onyango holding brief for Mr.  
Kimiti

Counsel for the Interested Party: Ms. Aketch holding brief for  
Mr. Kigen