



**Chebet (Suing through his personal representative, namely Joseph Kiprotich Rop)
v Director of Land Adjudication and Settlement & 2 others (Environment and
Land Case 8 of 2021) [2026] KEELC 552 (KLR) (4 February 2026) (Judgment)**

Neutral citation: [2026] KEELC 552 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KWALE
ENVIRONMENT AND LAND CASE 8 OF 2021
CK NZILI, J
FEBRUARY 4, 2026**

BETWEEN

**ESTATE OF GABRIEL KIPTOP CHEBET (SUING THROUGH HIS PERSONAL
REPRESENTATIVE, NAMELY JOSEPH KIPROTICH ROP) PLAINTIFF**

AND

**THE DIRECTOR OF LAND ADJUDICATION AND SETTLEMENT 1ST
DEFENDANT**

HON ATTORNEY GENERAL 2ND DEFENDANT

**ESTATE OF KAND KIPTOO (SUED THROUGH HIS
PERSONAL REPRESENTATIVE, NAMELY FREDRICK KIPCHUMBA
TALAM 3RD DEFENDANT**

JUDGMENT

1. The plaintiff approached this court through an amended plaint dated 1/3/2022 seeking:
 - a. Declaration that a mistake was committed in the title mapping exercise by the 1st defendant over Plot No. 172 in Suwerwa Settlement Scheme, and that the boundary shown in the map drawn pursuant to the title mapping exercise is not reflected in the boundary that has been respected by the proprietors of Plot Nos. 171 and 172, from 1964 to date.
 - b. Declaration that the boundary on the ground and what has existed since 1964 to date, is the correct boundary between Plot Nos. 171 and 172 in the Suwerwa Settlement Scheme, and further the Registry Index Map, be corrected to reflect the correct boundary on the ground.
 - c. Rectification of the Register for Title Nos. Trans Nzoia/Suwerwa/171 and 172, and the correct sizes be reflective and the said corrections be reflected in the title deeds.



- d. Preservation of the status quo on the ground pending hearing of this suit.
2. The plaintiff is suing on behalf of the estate of the late Gabriel Kiprof Chebet, who died on 12/4/2010, pursuant to a grant of letters of ad litem. It is averred that the deceased was allocated plot No. 172 in Suwerwa Settlement Scheme in 1972, measuring 57.9 acres which he was in occupation upto his death, leaving the family living on the same, whose boundaries was marked on the ground by a trench separating Plot No. 171 measuring 58.8 acres, owned by the late Kanda Kiptoo, whose estate is represented by the 3rd defendant, which parties have at all time since 1964 respected.
 3. The plaintiff avers that since 1964, to the death of the initial allottee, there has been no boundary dispute between the proprietors, and at some point, the Department of Roads used to purchase some murrum from the owner of plot No. 172, since the quarry was situated therein.
 4. The plaintiff avers that in 1989, or thereabout, the 1st defendant, without his knowledge, undertook a title mapping exercise, and through its surveyors, was supposed to pick the existing boundaries of the parcels.
 5. Further, the plaintiff avers that while computing the acreage and then processing titles for the cleared loans, the 1st defendant unfortunately did not adhere to the existing boundaries on the ground.
 6. The plaintiff avers that on 13/8/2001, the deceased, who was then sickly and aged, collected his title deed from the lands office, honestly but mistakenly believing that it was reflective of the correct acreage of the entire land he had all along been occupying as per the boundaries on the ground. The plaintiff avers that the deceased held that belief until he died in 2010.
 7. According to the plaintiff after the death, the deceased family continued to occupy and utilise all the subject land until 2019, when one of the sons of the late Kanda Kiptoo, purported to demand the extra land based on the wrongly drawn out Registry Index Map, during the titling mapping exercise of 1989, capturing the 22.1 acres of land allegedly belonging to Plot No. 171.
 8. The plaintiff avers that following the alleged claim, he perused the Registry Index Map for Plot No. 171 in 2019, which revealed that there were discrepancies as to the land record and the ground position, showing that Plot No. 172 was 76.57 acres on paper compared to what is on the ground, meaning Plot No. 172 had been reduced by 22.1 acres.
 9. Again, the plaintiff avers that apart from the murrum quarry, the County Government of Trans Nzoia and the predecessor in title had been demanding and collecting rates payment for 57.9 acres in line with land recordings obtained from the 1st defendant.
 10. The plaintiff avers that there was a mistake on the part of the 1st defendant in undertaking the title mapping exercise for Plot No. 172, requiring correction of this court; otherwise, the estate of the plaintiff stands to lose 22.1 acres of its land.
 11. The plaintiff avers that by a letter dated 19/1/2021, the 1st defendant notified him of the intention to establish the boundary, which he objected to until the court determines the suit, on the status and in existence, since 1964, on the ground obtained.
 12. The 1st and 2nd defendants opposed the suit by a statement of defence dated 21/7/2021. It was averred that in 1964, Kanda Kiptoo was issued with Plot No. 171, measuring 31.0 Ha, and Gabriel Kiptoo was issued with a plot No. 172 measuring 36.25 acres, out of the 1st defendant's acquisition of Suwerwa Settlement Scheme, which was planned, surveyed, and demarcated to generate 400 plots of varying sizes.



13. The 1st and 2nd defendants aver that plot No. 172 allocated to Gabriel Chebet was discharged in 2001, and a title deed No. Trans Nzoia/Suwerwa/172 issued on 13/8/2001, measuring 14.5 Ha, which the plaintiff's late father continued to occupy, without raising any dispute as to the acreage or boundary until he passed on in 2010.
14. Further, the 1st and 2nd defendants aver that the plaintiff also took another 9 years to raise the issue of the boundary; any complaint thereof ought to have been raised with the Director of Surveys at the earliest time possible when the RIM and the final area list were compiled.
15. The 1st and 2nd defendants aver that plot No. 171 measures 77.5 acres while plot No. 172 measures 36.25 acres, as per the allocation zone in 1964 and the area list, which is also reflected in the Registry Index Map, hence the allegation that the mapping was done in 1989 is untrue. The 1st and 2nd defendants term the suit as defective, incompetent, and bad in law.
16. The 3rd defendant opposed the suit through a statement of defence dated 4/7/2022. The 3rd defendant contends that the contents of the amended plaint are untrue, since, at the allocation in 1964, the two plots, which share a marked common boundary, were already surveyed, planned, and demarcated for about 400 members with clear acreages.
17. The 3rd defendant avers that his Plot No. 171 was and remains 77.5 acres; otherwise, there were no trenches, but terraces created in all plots to prevent soil erosion. The 3rd defendant denies that the Department of Roads purchased murrum from the plaintiff's late father; otherwise, the government, through the youth service, would enter any land, including Plot No. 171, without any payment to excavate murrum; otherwise, in 1975, the land within the Suwerwa Settlement Scheme was government land, since the allottees were still paying loans.
18. Again, the 3rd defendant avers that as the registered owner of plot No. 172, the plaintiff's father took title deed for the same, upon discharge on 13/8/2001, measuring 14.5 Ha, without raising any complaint and given that he was a teacher, he knew or ought to have known the anomaly or raised a question regarding both acreage and boundary during his lifetime.
19. The 3rd defendant terms the claim as misplaced, an afterthought, incompetent, bad in law, and lacking a basis for being brought up about 9 years after the demise of the registered owner. The 3rd defendant avers that the plaintiff had filed ELC No. 35 of 2019, claiming ownership of about 22 acres, by way of adverse possession, a clear confirmation that the suit herein is fatally defective and an afterthought, which suit was withdrawn since the land was still government land under Settlement Fund Trustees.
20. The 3rd defendant avers that the allocation of the two plots was carried out in 1964 as per the area list and Registry Index Map, confirming that there was no mapping carried out in 1989.
21. The 3rd defendant states that the correct boundary between the two plots has already been established, and as such, the issue of preserving the status quo does not arise, after it was overtaken by events.
22. The 3rd defendant avers that the plaintiff and his family, after the demise of the registered owner, illegally encroached on the suit land without their knowledge and or notice, and have since become trespassers.
23. By way of a counterclaim, which bears no titular heading or payment of the requisite fees, the 3rd defendant as the plaintiff in the counterclaim avers that the initial plaintiff has without any legal basis or excuse, unlawfully and illegally encroached onto part of Plot No. 171 by about 22 acres, together with his family members, employees, agents, servant, or anyone claiming under him, hence becoming trespassers, who should move out, failure of which they should be evicted.
24. The 3rd defendant prayed for:



- a. Declaration that the plaintiff is a trespasser on about 22 acres of plot No. 171 in Suwerwa Settlement Scheme being the 3rd defendant's late father's land, who should move out, failure to which he be evicted together with his family members, employees, agents, servants, and or proxies therefrom, with the assistance of the OCS Cherangany Police Station and the Assistant County Commissioner Cherangany Division.
 - b. Permanent injunction.
25. By a reply to the 3rd defendant's defence and counterclaim, dated 9/11/2022, the plaintiff avers that at the time of allocation, the plots had only been planned but not surveyed for titling purposes; otherwise, a marked boundary by way of a trench has been in existence between the two plots since demarcation.
 26. The plaintiff reiterates that the murrum excavation was on his plot with the National Youth Service officer, only engaged to do a bridge and culvert, but not the road. The plaintiff reiterated that up to and after the issuance of the title deed on 13/8/2011, the late Gabriel Chebet continued using or occupying the entire land as allowed to him in 1964 till death, as per the boundary that has existed since 1964 on the ground, which represents the status quo as of the time of filing the suit. The plaintiff, in view of the foregoing, denied being a trespasser to Plot No. 171.
 27. At the hearing, Joseph Kiprotich Rop testified as PW1. He relied on witness statements dated 12/2/2021 and 6/2/2023 as his evidence-in-chief. PW1 told the court that his late father, Gabriel Kiprop Chebet, was allocated Plot No. 171 in Suwerwa Settlement Scheme measuring 57.9 acres in 1964, which he took possession of, erected a house, and settled his family therein, until he passed on, on 12/4/2010.
 28. PW1 told the court that the parcel had clear boundaries marked on the ground between the 3rd defendant's Plot No. 171, measuring 58.8 acres, namely, a trench which was created by the Department of Land Adjudication and Settlement at the time the allottees were settled in their plots in 1964. PW1 said that his late father and the 3rd defendant's late father had no boundary disputes upto their passing. PW1 said that his late father had also at some point leased out part of his plot for a murrum excavation to the Ministry of Public Works.
 29. PW1 said that about 1989, the 1st defendant, without his knowledge or involvement, undertook a title mapping exercise, and instead of the surveyors picking the existing boundaries, to compare the acreage, or process title for the cleared loans, they reduced his acreage contrary to what is on the ground.
 30. PW1 said that his sickly and aged father collected the title deed on 13/8/2001 for his land, believing that it was reflective of the land acreage under his possession since 1964 to date, only for his neighbour in 2019 to claim that as per the Registry Index Map drawn in 1989, some 23.1 acres or so of land belonging to Plot No. 172 was under his occupation.
 31. Further, PW1 said that upon perusing the land Registry Index Map, he discovered that the sizes of the two plots were at variance, including in the locality where the murrum had been excavated.
 32. PW1 said that the County Government of Kitale, and its predecessors in title, have always been demanding land rates based on 57.9 acres as per the land held by the 1st defendant.
 33. PW1 confirmed having filed Kitale ELC No. 35 of 2019, which he withdrew on 29/1/2020, for lack of a grant by himself and the 3rd defendant. PW1 asked the court to order the rectification of the land records, which resulted from the mistake or errors alluded to above on the part of the officers of the 1st defendant.



34. PW1 relied on a copy of an identification card, a grant of letters ad litem dated 10/2/2020, an allotment letter dated 2/9/1994, payment acknowledgement for Kshs.1,040/=, certified copy showing the size of the plot by the Ministry of Agriculture, extract of the settlement scheme map certified by the Ministry of Agriculture on 14/1/2020, letter dated 11/9/1989 over the murrum excavation, compensation scale demand letter dated 3/10/1984, rates register, rates payment register, copy of title for plot No. 172 and a copy of a Registry Index Map as P. Exhibits No. (1), (2), (3), (4), (5), (6), (7), (8), (9), 10(a), (b), (c), (d), (e), (f), (11), and (12), respectively.
35. PW1 said that for close to 20 years, his late father did not lodge a complaint over both the acreage and the boundary, since he was under a mistaken but honest belief that all was well with his land as per the occupation on the ground. PW1 said that he was uncertain if, at the allocation stage, the land surveyor ascertained the size on the ground in 1964, vis-à-vis what was on the allotment letter.
36. PW1 confirmed that the 1st and 2nd defendants' documents were reflective of the land sizes as per the title deed. PW1 said that his late father did not object to the area list particulars or the title deed before passing on in 2010; otherwise, the mistakes were discovered long after he had passed on.
37. PW1 admitted the content of his pleadings in the former suit, which he had filed without first obtaining letters of administration for the estate. PW1 also admitted that apart from the allotment letter, he had no letter of offer or receipt for payment from the allocating authority (Settlement Fund Trustees) for the allocated 57.9 acres.
38. As to whether the late father had raised a complaint at the time he collected the original title deed, PW1 said that none was within his knowledge. PW1 admitted that he was present when the surveyor visited the land in January 2021 to fix the boundary and establish the alleged encroachment.
39. PW1 denied having agreed to voluntarily vacate the disputed portion at any given time since he had raised a claim over the said land as his entitlement with the lands office. PW1 said that he was not privy to the procedures of allotment of plots that were followed in 1964, generally and in particular, the manner that allottees were taken through in the process of taking vacant possession.
40. PW1 insisted that the ground locality or occupation was not in tandem with the land records for the two plots. PW1 said that since the allocation in 1964, the issuance of the title deed in 2001, the 3rd defendant had never complained of trespass to part of his land or demanded vacant possession until 2019.
41. PW1 said that after the boundary was fixed in January 2021, he did not vacate the disputed parcel of land in view of the existing court orders of maintenance of the status quo. PW1 said that he was uncertain if the allottees, in 1964, were notified to confirm the particulars in the final area list before it was forwarded to Nairobi for titling purposes. PW1 said that his late father retired as a teacher in 1974, and loan and land rates payments were commensurate with the plot size and its locality in the area.
42. Evans Kamau Mwanja, the owner of Plot No. 174, testified as PW2. He relied on a witness statement dated 6/2/2023 as his evidence-in-chief and produced his allotment letter as P. Exhibit No. (13). PW2 confirmed that, just like the plaintiff's plot, the confirmation of the size and the locality of his plot was done by both the Department of Agriculture and the Settlement Fund Trustees during the allocation period, since the two departments were under one Ministry.
43. PW2 confirmed that all plots on the upper side in the locality were larger compared to the ones on the lower side. PW2 said that the plaintiff's plot boundaries were distinct on the ground as compared to those of the 3rd defendant, which had remained the same since 1964.



44. Fredrick Kipchumba Talam testified as DW1. He relied on a witness statement dated 28/10/2022 as his evidence-in-chief. DW1 told the court that his late father, a neighbour of the plaintiff's father, Plot No. 172, and the owner of Plot No. 171, Suwerwa Settlement Scheme, measuring 31 Ha, although the title deed was yet to be issued until the loan was discharged. DW1 told the court that he discovered the encroachment by the plaintiff to an extent of about 22 acres recently, as the land was fallow, used for grazing purposes, covering 17 acres, while 5 acres were under maize plantation.
45. DW1 said that there was no permanent fence in existence separating the two disputed plots. DW1 said that after he went to the Lands and Settlement offices and requested the ascertainment of the boundary, since he wanted to subdivide the land among his siblings, only to discover that what was under their occupation on the ground was less acreage compared to what was in the title deed.
46. DW1 said that after the discovery of the discrepancies in the acreage and the encroachment, he reported to the local administration and the office of Land Adjudication & Settlement, who advised that the matter could be amicably settled, only for the plaintiff to lodge a suit in Kitale ELC No. 35 of 2019 (OS).
47. DW1 insisted that the original survey map held by the Land & Settlement Office confirmed the correct acreages for the two plots as 77.5 acres and 36.35 acres, rendering the plaintiff's suit an afterthought. DW1 said that there has been no objection that was raised by the plaintiff since allocation, and even when the title deed was issued to the plaintiff's late father in 2001.
48. DW1 relied, and produced as exhibits a copy of an allotment letter dated 2/9/1964, a letter dated 20/5/2021, payment receipt for Kshs. 6,000/=, death certificate issued on 27/11/1995, copy of an official search certificates dated 25/4/2019 for Plots No.172 and 171, letters dated 29/4/2019, 11/2/2019, 21/3/2019 and 18/4/2019, originating summons in ELC No. 35 of 2019, replying affidavit of the 3rd defendant, supplementary affidavit of the 3rd defendant, supplementary affidavit sworn on 1/7/2019, area map letters dated 16/12/2020, and 24/11/2020, court order issued on 9/7/2020, an area list, limited grant and letter dated 27/2/2021 as D. Exhibit No. (1) - (20).
49. Further, DW1 relied on a surveyor's report dated 11/2/2021, letters dated 17/2/2021 and 26/2/2021 as D. Exhibit No. (21) and (22). DW1 confirmed that the former suit was withdrawn for lack of capacity to sue and be sued. DW1 said that despite the existence of a court order, the surveyor nevertheless visited the locus in quo and effected the boundary as indicated in the report. He urged the court to allow his counterclaim so that the plaintiff could be evicted from the disputed land.
50. DW1 said that the boundary between his plot and the plaintiff's plot is ordinary posts that have been in existence for many years. DW1 said that the plaintiff was present when the surveyor visited the two parcels and made a report dated 11/2/2021. According to DW1, there is no discrepancy between what is on the land records and on the ground; the title deeds were generated in conformity with the area list, so that no mistake can be levelled against the land office.
51. DW1 confirmed that murrum was being excavated from Plot No. 172. DW1 admitted that up to the death of his father and thereafter, both parties were using the existing boundary until the discovery of the encroachment in 2019, when he visited the lands office, which the surveyor confirmed in their report.
52. DW1 said that he obtained the limited grant on 22/2/2021; otherwise, before then, he was not aware of the land size and the encroachment by the plaintiff's late father.
53. DW1 said that apart from the 22 acres under trespass by the plaintiff, his family has been utilising about 56 acres of land; otherwise, DW1 confirmed that the loan payment indicated in both letters of



- allotment was Kshs.5,544/= as per P. Exhibit No. (3) and D. Exhibit No. (1). Similarly, DW1 confirmed that the charge for the two parcels of land indicates Kshs. 5,600/=. Equally, DW1 admitted that the land rates payment for the two parcels of land is indicated as Kshs.1,176/= and Kshs.1,158/=:, per annum.
54. DW1 said that according to D. Exhibit No. (20), the final area list was prepared on 5/5/1990, but it could not confirm if it was published for verification after viewing by the members. DW1 said that D. Exhibit No. (21) refers to a Registry Index Map which shows the size of his land as larger, but it could not tell when it was prepared.
55. DW1 said that the Registry Index Map is the one that has confirmed the boundary as different from what has been in existence on the ground since 1965. DW1 said that the 3rd defendant has never been in occupation or use of the 22 acres since 1965. DW1 confirmed that there has never been a boundary dispute since 1965, until the discovery of the encroachment in 2021. DW1 said that he has never seen the area map that was used to allocate him the plots in 1964; otherwise, Exhibit No. (18) was showing varying land sizes.
56. Paul Wanjala testified as DW2. He relied on a witness statement dated 28/10/2022 as his evidence-in-chief. DW2 told the court that he owns Plot No. 359, which neighbours Plots No. 171 and 172. According to DW2, the boundaries of their plots were clearly shown in the area list and the map. The court noted that the witness was evasive.
57. John Kipruto Kanda testified as DW3. He relied on a witness statement dated 28/10/2022. DW3 emphasized that the plaintiff's pleadings and evidence were at variance with earlier statements made in D. Exhibit No. (12) particularly in the supporting and supplementary affidavit to the originating summons No. 35 of 2019. DW3 told the court that the boundaries on the two plots, since 1965, were temporary until the re-establishment in 2021. He denied that his family had not, before 2021, raised the issue of encroachment of the 22 acres by the plaintiff.
58. Simon Kibet testified as DW4. He relied on a witness statement dated 28/10/2022 as his evidence-in-chief. As the owner of Plot No. 171, he told the court that the plots were allocated to them after balloting in 1965, and they were already surveyed, demarcated, and boundaries fixed on the ground. DW4 told the court that there is an access road in the area separating plots on the lower side from the ones on the upper side of the hill. DW4 confirmed that there was a murram quarry in the area, but could not tell in which of the two plots it was situated.
59. Christientia Atieno Nyanga testified as DW5. She told the court that Plot No. 171 was allocated to the late Kanda Kiptoo, measuring 31 Ha in 1964, while Plot No. 172 was allocated to the late Gabriel Chebet, measuring 14.5 Ha, as per the area list prepared by the director and surveyor.
60. DW5 said that it was the accountability list that would give the plot number of the allottee, the sheet number of the map, and the acreage. DW5 said that according to the final list, Plot No. 171 was 31 Ha. DW5 said that the preparation of an area list starts with the plot being picked from the ground by the surveyor, who would then use the data to prepare an area map, otherwise known as a field sheet. DW5 said that the prepared field sheet is then forwarded to the Director of Surveys, who, upon going through it, may order a random check.
61. DW5 said that the Director of Surveys would use such documents to prepare an area list and the Registry Index Map. Once the area list and the Registry Index Map are ready, DW5 said that the two are then forwarded to the land Registrar with copies to the Director of Land Adjudication and Settlement. DW5 said that the area list, which is used during the allocation process by the Director of Land Adjudication and Settlement, is prepared by the area committee.



62. DW5 said that the first step is the ground survey by the Survey Department, which the Director of Land Adjudication & Settlement has no role to play. DW5 said that ordinarily, the allocated land could be given as a loan after a letter of offer is accepted by the allottee. DW5 said that the loan for the land is usually predetermined based on the acreage of the land offered to the allottee.
63. Regarding the development loan, DW5 said that it could be determined by the ability to repay by the allottee. DW5 said that the plots are normally freehold titles. In this instance, DW5 produced a copy of the charge for plot No. 171 as executed on 2/9/1996 as D. Exhibit No. (14).
64. Concerning plot No. 172, DW5 said that a discharge was issued to the allottee in 2001 in favour of the 1st and 2nd defendants. DW5 also produced a copy of the area list as Exhibit No. (15), allotment letter for Plot No. 172 as D. Exhibit No. (16), discharge of charge for Plot No. 172 as D. Exhibit No. (17), certificate of official search for plot No. 171 and 172 as D. Exhibit No. (18) and (19).
65. In cross-examination, DW5 said that land rates for the plots fall under the County Government of Trans Nzoia. As to the role of the Ministry of Agriculture in plot allocation, DW5 said that initially, the Ministry used to have a role in settlement schemes by virtue of the repealed Agriculture Act Cap 318; otherwise, when the role was under Settlement Fund Trustees, the documents could be in the custody of the County Land Adjudication & Settlement Officer.
66. DW5 said that once the title deeds were issued, the records would then fall under the Land Registrar's office, which could be best suited to handle any dispute over titled land. DW5 said that her office, as the County Land Adjudication & Settlement Officer, has no role to play in the preparation of the area list, which role falls under the survey department.
67. Again, DW5 said that the role of her office is to acquire land for settlement schemes, after which a physical planner would come in to make a subdivision scheme plan. DW5 said that once a subdivision scheme plan is finalised, the survey department will take over to demarcate and survey the land, prepare a base map, and finally, a Registry Index Map.
68. DW5 said that all the documents from the Survey Department would then be used by the Director of Land Adjudication & Settlement in the allocation process. DW5 said that the complaint arose when the 3rd defendant came to clear the loan arrears, hence the need to establish the boundaries, to file for a succession cause since the allottee was deceased.
69. DW5 said that the 3rd defendant is yet to be issued with a discharge of charge. DW5 said that they advised the 3rd defendant to go to the County Surveyor since the plaintiff already had obtained a title deed, meaning that their office had no role to play.
70. According to DW5, their office merely accompanied the County Land Surveyor, who has the authority on land boundaries, where they found no marked boundary. DW5 said that until the land for a settlement scheme is acquired, planned, surveyed, and demarcated, and ground plots given numbers, the allocation process may not commence.
71. DW5 said that its officers are the ones who help in showing the allocated plots to the allottees. DW5 said that the process of demarcation involves the placement of beacons on the ground, before the allottees are settled on the land, after which one is supposed to erect a fence.
72. Further, DW5 said that once the demarcation and mapping are completed, a copy of the map will be shared with the Department of Land Adjudication & Settlement. DW5 said that the Director of Surveys was the custodian of the Suwerwa Settlement Scheme map dated 1989, which could show the extent of the plots.



73. DW5 clarified that demarcation comes first, where information is picked on the ground as per the subdivision blocks and mapped (placing the information paper). DW said that the Suwerwa Settlement Scheme process commenced in 1962, whereas the settlement on the land started in 1964.
74. Further, DW5 said that random checks could be done by the surveyors at intervals. DW5 also produced the RIM dated 1989. DW5 said that the two plots could not have the same charge of Kshs.5,600/=, since the acreage was not the same. DW5 confirmed that the boundary picked in 2021 was different from the one that had been in existence since 1964.
75. DW5 said that according to the allotment letters, allottees had 28 years to repay the loan. DW5 confirmed that the allotment letters had no particulars of the acreage. DW5 said that her office had only come across the area lists dated 1989 and 1990. DW5 said that it was possible for errors, though rare, with regard to the loan payable not matching with what is on the ground vis-à-vis what is on the title deed, which errors may be rectified by the surveyor. Asked by the court, DW5 clarified that the accountability list was not before the court.
76. The 1st and 2nd defendants filed submissions dated 15/12/2025 and isolated five issues for determination. On whether the suit is defeated by statutory limitation and the doctrine of laches, they submit that under Section 7 of the *Limitation of Actions Act*, a claim for recovery of land must be lodged before the expiry of 12 years. Section 9 (1) thereof provides that where the person bringing an action to recover land or some person through whom he claims has been in possession of the land and has, while entitled to the land, been disposed of or discontinued his possession, the right of action accrues on the date of the dispossession or discontinuance. Section 26 thereof states that where a period of limitation is prescribed regarding fraud, the limitations period does not begin to run until the plaintiff has discovered the fraud or mistake or could, with reasonable diligence, have discovered it.
77. The 1st and 2nd defendants submit that the plaintiff failed to prove due diligence in discovering the variance in acreage. Reliance is placed on *Nkarichia -vs- Magiri & 6 others* [2024] KEELC 4453 (KLR).
78. Regarding whether the suit land was subjected to adjudication under the *Land Adjudication Act* (Cap 284), the 1st and 2nd defendants submit that upon completion of adjudication, boundaries were demarcated on the ground and later confirmed through the title mapping exercise completed in the 1980s, after which titles were issued. Reliance is placed on *Speaker of the National Assembly -vs- Karume* [1992] eKLR Sections 26, 28, and 29 of the *Land Adjudication Act* on the framework for objections and appeals upon adjudication.
79. The 1st and 2nd defendants submit that the plaintiff has failed to produce evidence on fraud, misrepresentation, or illegality. Reliance is placed on Section 80 of the *Land Registration Act*, *Wreck Motors Enterprises -vs- Commissioner of Lands & Others* [1997] eKLR, *Azzuri Limited -vs- Pink Properties Limited* [2018] eKLR, *Maweu -vs- Liu Ranching & Farming Co-operative Society* [1985] eKLR, and *Republic -vs- Land Registrar, Uasin Gishu & Another ex parte Kipsang* [2018] eKLR.
80. The 3rd defendant filed submissions dated 17/12/2025. He submitted that the plaintiff has failed to discharge the burden of proof under Sections 107-109 of the *Evidence Act*. The 3rd defendant submits that the plaintiff failed to establish when the alleged mistake occurred and that mere assertions of a historical boundary could not dislodge registered titles.
81. Further, the 3rd defendant submits that the plaintiff did not call as witnesses officials from the Ministry of Lands, Department of Surveys, Settlement Office, Ministry of Agriculture, or from the County Government. Reliance is placed on *Esther Ndegi -vs- Leonard Gatei* (2014) eKLR, where the court



- held that rectification of a register is not a casual remedy and must be founded on clear and convincing proof of fraud or mistake.
82. The 3rd defendant submits that the plaintiff slept on his rights and cannot decades later seek to reopen matters already settled without cogent evidence.
83. The 3rd defendant submits that trespass is actionable per se and he is entitled to eviction and injunctive reliefs. Reliance is placed on Section 80 of the *Land Registration Act* that rectification is discretionary and only issued upon sound proof. In addition, the 3rd defendant submits that the plaintiff has not proved his case on a balance of probabilities, the suit is speculative, an afterthought, and an abuse of the court process.
84. The issues calling for my determination are:
1. What is the cause of action before the court as pleaded in both the amended plaint and the statement of defence?
 2. If the suit by the plaintiff is statute-barred.
 3. If the plaintiff has proved any mistake against the 1st defendant in the planning, demarcation, surveying, erection of the boundary, placement of beacons, allocation, issuance of title, and re-establishment of the boundary between Plots No. Trans Nzoia/Suwerwa/171 and 172.
 4. If the plaintiff is entitled to the reliefs sought.
 5. Whether there is a competent counterclaim before the court.
 6. If the 3rd defendant has proved encroachment and illegal occupation by the plaintiff to the extent of 22 acres.
 7. What is the order as to costs?
85. It is trite law that parties are bound by their pleadings, and issues for the court's determination flow from their pleadings. See Stephen Mutinda Mule -vs- Independent Electoral & Boundaries Commission & Others [2014] eKLR and Raila Odinga & Others -vs- Independent Electoral & Boundaries Commission & Others [2017] eKLR.
86. A cause of action has been defined as acts on the part of the defendant which give rise to a cause of complaint on the part of the plaintiff. See D.T. Dobie & Company (Kenya) Limited -vs- Joseph Mbaria Muchina & another, [1982] KLR 1. In this suit, the plaintiff's cause of action is captured in paragraphs 10 - 18 of the amended plaint dated 1/3/2022.
87. The plaintiff contends that his late father, upon allocation of Plot No. 172, mistakenly and innocently occupied and lived on more land than was captured in the title deed issued on 13/8/2001, which he continued as such till death on 12/4/2010, and upto 2019, when the 3rd defendant complained to the lands office that close to 22 acres of their land had been encroached upon by the plaintiff's late father. After this discovery of the mistake, the plaintiff avers that the 3rd defendant, through a letter dated 19/1/2021, sought to and did visit the two parcels of land on 11/2/2021 to re-establish and fix the boundary.
88. The 1st and 2nd defendants opposed the suit through a preliminary objection dated 22/9/2021 on jurisdiction under Section 18(2) of the *Land Registration Act*, as well as the statement of defence dated 21/7/2021. Again, the 1st and 2nd defendants admitted that the suit Plot No. 172 was allocated in 1964 to the late Gabriel Kiprop Chebet after the settlement scheme was planned, surveyed, and demarcated into 400 plots of various sizes.



89. The 1st and 2nd defendants deny that there was any mistake on the size, locality, and boundary of the two plots, or any mapping exercise undertaken in 1989, as alleged, resulting in the alleged mistakes.
90. Further, the 1st and 2nd defendants aver that the plaintiff's plot was discharged in 2001 and a title deed issued on 13/8/2001 measuring 14.5 Ha, without any dispute being raised on the acreage or boundary with the Director of Surveys at the earliest opportunity, when the Registry Index Map and the area list were compiled till the filing of this suit.
91. The 1st and 2nd defendants aver that the plot sizes of parcels No. 171 and 172 have remained as per the allocation done in 1964, both in the area list and the Registry Index Map. The 1st and 2nd defendants deny the contents of paragraph 18 of the amended plaint as regards the letter dated 19/1/2021 and the subsequent event to re-establish the boundaries.
92. The 3rd defendant on the statement of defence and counterclaim dated 4/7/2022, admitted that allocation in 1964, occupation on the ground to present, and re-establishment of boundaries on 11/2/2021. In paragraph 18 thereof, the 3rd defendant admits that the plaintiff is encroaching onto Plot No. 171 to the extent of 22 acres, which is termed as unjustified, illegal, and acts of trespass by his family members, employees, agents, or servants. The 3rd defendant seeks a declaration that the plaintiff is a trespass on his Plot No. 171 to the extent of 22 acres, eviction, and permanent injunction.
93. Through a ruling dated 17/1/2022, the court made a finding on paragraph 19 that the issues before the court are beyond the jurisdiction of the Land Registrar, yet in Section 18(2) of the [Land Registration Act](#).
94. Black's Law Dictionary, 12th Edition, defines encroachment as including, invading, or unlawfully gaining upon the right or possession of another. In *Vaz -vs- Oyatsi & Others Civil Appeal No. E035 of 2022 [2025] KECA 251 [KLR] (21st February 2025) (Judgment)*, the court addressed the issue of whether the trial court was barred by statute on account of the appellant's prolonged occupation of the suit land. The court cited with approval *Isaack Ben Mulwa -vs- Jonathan Mutunga Mweke [2016] eKLR*, that:
- “Each action of trespass constitutes a fresh and distinct cause of action.....It is a well-settled principle that continuous injuries to land caused by the maintenance of tortious acts create separate causes of action barred only by the running of the Statute of Limitations against each successive act”.
95. The court further cited *Muthiora -vs- Marion Muthamia Kiara suing in the estate of Erastus Muthamia Kiara (deceased) [2022] KECA 28 [KLR]* that:
- “Trespass is described under the [Trespass Act](#) Cap 294 to mean any person who, without reasonable excuse, enters, or remains upon, or erects any structure on, or cultivates, or tills, or grazes stock or permits stock to be on private land without the consent of the occupier thereof”. The court cited *Jowitt's Dictionary of English Law, 2nd Edition*, that a continuing trespass is permanent in its nature.
96. Guided by the foregoing case law, and applying the same to the facts in this case, the 3rd defendant admits in the statement of defence and his evidence that until 2019 or 2021, the estate of his late father was not aware that part of their land measuring approximately 22 acres was under occupation of the plaintiff's family. Therefore, the predominant cause of action as pleaded by the two competing parties is of an alleged unauthorized entry, present or continuous. Continued occupation of part of Plot No. 171 by the plaintiff cannot be time-barred.



97. As to the second limb of the cause of action based on a mistake in the boundary and acreage, and whether or not the acreage set in the plaintiff's title was mistakenly registered, the plaintiff alleges that the discovery of the mistake occurred in 2021. On the other hand, the 1st, 2nd, and 3rd defendants plead that the plaintiff's deceased father obtained a title deed for 14.5 Ha without complaint in 2001, died after several years without raising any complaint, and thereafter his estate waited for another 9 years before filing the suit.
98. The onus was on the defendants who invoked the time limitation to establish when time began to run, or when the plaintiff was deemed to have reasonably or diligently discovered the mistake.
99. In *Vaz -vs- Oyatsi* (supra), the court said that in a claim of fraud, the time to run generally begins when the victim discovers the fraud, or could have discovered it with reasonable diligence, meaning that the clock starts ticking once they have enough information to suspect fraud.
100. The plaintiff's case is that he discovered the alleged mistake when the 3rd defendant raised the issue of acreage and encroachment with the Land Registrar in 2019. The defendants aver that the deceased Gilbert Kiprop Chebet was a teacher and literate enough to have raised the issue at the earliest opportunity when the area list came out, and at the very least in 2001, when he obtained the title deed.
101. After the defendants pleaded the foregoing facts, the evidential burden shifted to the plaintiff to satisfy the requirements of Section 30 for purposes of Section 27 of the *Limitation of Actions Act*. The plaintiff has testified that, even though his late father was literate, he was aged, elderly, and sickly such that the material facts relating to the cause of action were at all times outside the actual or constructive knowledge of his late father, until the date when the 3rd defendant first raised the issue in 2019.
102. Section 27(3) of the *Limitation of Actions Act* states that this Section does not exclude or otherwise afford any defence available by virtue of any written law or the operation of any law, or by virtue of any rule of law or equity. Overriding interests such as trust are not statute-barred, as according to Section 20 of Cap 22. The same applies to continuous trespass.
103. The plaintiff has pleaded that his family and late father have been on the land as of right, and no one has disturbed their occupation or laid a superior claim since 1964 until 2021, when the Land Registrar came to re-establish the boundary, which the parties have all these years assumed as the common boundary.
104. Continuous trespass, as indicated above, is defined as a trespass consisting of a series of acts done on consecutive days that are of the same nature and that are continued from day to day, so that the acts are an aggregate form of one indivisible harm. See *Eliud Njoroge Gachiri -vs- Stephen Kamau Nganga* [2018] eKLR.
105. In *Gladys Koskey -vs- Benjamin Mutai* [2017] eKLR, the court held that Cap 22 does not come into play in continuous trespass. Title No. Trans Nzoia/Suwerwa/171 as of 25/4/2011, going by the official search certificate produced as D. Exhibit No. (6) was land in the name of the Settlement Fund Trustees.
106. The record therefore confirms that Plot No. 171 is still registered in the name of the defunct Settlement Fund Trustees and not the estate of the late Kanda Kiptoo, who passed on on 3/11/1994. D. Exhibit No. (8) confirms that the discharge of charge and transfer documents are yet to be signed in favour of the 3rd defendant for the issuance of the title. There is no evidence that the current registered owner or the defunct Settlement Fund Trustees have sought the plaintiff to vacate their land.
107. As of 11/2/2021, when the surveyor visited the locus in quo to fix the boundary, the estate of the late Kanda Kiptoo had not devolved or vested to his personal representative, the 3rd defendant. D. Exhibit



- No. (20), which is the grant of letters of administration intestate, was issued on 22/2/2021. The report produced as D. Exhibit No. (21) confirms that there had been a clear boundary between the two parcels of land, and the boundary was not a straight one on the ground.
108. The law of limitation of action is intended to protect defendants against unreasonable delay in the bringing of suits against them. In *Gathoni -vs- Kenya Co-operative Creameries* [1982] KLR 104, the court held that the law expects the intending plaintiff to take reasonable steps in his own interest. In *Iga -vs- Makerere University* [1972] eKLR, the court said that the [*Limitation of Actions Act*](#) does not extinguish a suit or action itself, but operates to bar the claim or remedy sought, and when a suit is time-barred, the court cannot grant the remedy or relief.
 109. In this suit, the plaintiff is alleging a mistake. The discovery of the mistake is said to have arisen in 2019. Mere suspicion is not enough. In *Frann Investments Ltd -vs- Kenya Anti-Corruption Commission & Others*, Mombasa Civil Appeal No. E038 of 2021, the court cited *Torino Enterprises Ltd -vs- Attorney General* [2023] KESC 79 [KLR], that the legal effect of registration of land is to convert property from unalienated government land to alienated land, with the consequence that the property becomes private property and is moved out of the ambit and confines of the repealed Government [*Land Act*](#).
 110. In this suit, Plot No. 171 became registered in the name of the Settlement Fund Trustees on 13/3/1990. It still remains the property of the Settlement Fund Trustees today. In *Mbogo -vs- Settlement Fund Trustees* Civil Appeal No. 17 of 2019 [2025] KECA 561 [KLR] (28th March 2025) (Judgment), the court cited *Halsbury's Law of England Vol. 17 page 260*, that proof is that which leads to a conviction as to the truth or falsity of alleged facts which are the subject of inquiry.
 111. The burden was on the 1st and 2nd defendants to lead evidence that satisfies the court as to the truth or falsity of a fact of discovery of the mistake at allocation, issuance of title, and the fixing of the boundary, which the deceased was privy to but took no action to have it remedied.
 112. DW1 and DW5 admit that the letter of allotment had no acreage indicated. If then the allotment letters were issued without defined acreages, on what basis can the deceased be alleged to have been entitled only to what is in the title deed? The onus was on the 1st defendant to tender consistent documentation on what acreage was allocated to the deceased in the first instance, how and when the beacons for the correct acreage were fixed, if the deceased tampered with them, and what remedial action was taken to ensure that the deceased remained on the defined acreage.
 113. On the other hand, the 3rd defendant had the burden to discharge on why, for over 40 years, his late father failed to stop, demand, call for the removal, and or seek to recover the extra acreage under the possession of the plaintiff. I find that the defendants have adduced no sufficient evidence to raise a presumption that the plaintiff knew of the alleged mistake or could have discovered the same by exercise of due diligence earlier than in 2019 or 2021. The plea of limitation of time is rejected.
 114. Coming to whether the plaintiff has proved his claim, it is not in dispute that the plaintiff and the 3rd defendant were allocated Plots No.171 and 172 from the Suwerwa Settlement Scheme in 1964. The contestation before this court is on the exact acreage, boundary, and the alleged mix-up in the acreage between the two neighbouring plots.
 115. In *M'Mugwika M'Rugongo -vs- Settlement Fund Trustees & Another* [2022] eKLR, the court held that a party must demonstrate the chain of acquisition and authenticity of the documents used to acquire the land. In *Botwa Farm Co. Ltd -vs- Settlement Fund Trustees & Another* Civil Appeal No. 100 of 2015, the court cited *John Kamunge & Another -vs- John Nginyi Muchiri & Others* [2015] eKLR, that before the land under the Settlement Fund Trustees is discharged as to the indebtedness



and the title to the suitland transferred to his name as owner, the allottee had no title and could enter into a legally binding contract to dispose of the land.

116. In this suit, the 3rd defendant, as an allottee of Plot No. 171 as of 11/2/2021, had not perfected the charge to become a registered owner of the plot to acquire the capacity to enforce any proprietary rights over Plot No. 171 or to claim trespass for encroachment by the plaintiff to 22 acres of the land alleged to be part of Plot No. 171.
117. As of the closure of the 1st and 2nd defendants' testimony, DW5 was emphatic that the title to Plot No. 171 had not passed to the 3rd defendant from the defunct Settlement Fund Trustees.
118. A party that has not perfected a charge lacks capacity in law to file a counterclaim, as the 3rd defendant has done in this matter, and to claim substantive reliefs. It is the 3rd defendant who went to rattle the snake and demanded the boundary fixing, and for the plaintiff to stop the encroachment. Registration of the land in favour of the 3rd defendant has not occurred. In this suit, the plaintiff relies on P. Exhibit Nos. 3 - 11 to prove that he has been in occupation of the subject land to the exclusion of the 3rd defendant, since 1964 to the present.
119. The onus was on the plaintiff to prove that the 1st and 2nd defendants were the ones responsible for the alleged mistakes in the title deed, as opposed to what he had been occupying on the ground. Before the enactment of the Land Act, the law that mandated the government to establish settlement schemes was the repealed Agriculture Act. Other than providing for the establishment of the Settlement Fund Trustees and defining its jurisdiction, the Act did not provide how people were supposed to be identified for the purpose of being settled by the Settlement Fund Trustees. What was in place were policy decisions and practices till 2016.
120. The defunct Settlement Fund Trustees would acquire land for settlement purpose then prepare a scheme plan. Allocation of land would be done by the issuance of letters of offer. The land would then be charged to the Settlement Fund Trustees.
121. The beneficiaries were either required to make a full payment or at least 10% of the required amount. The title document would then be prepared in favour of the beneficiary upon making full payments of the requisite amount to the Settlement Fund Trustees. The burden was therefore on the plaintiff to establish how the 1st and 2nd defendants committed statutory mistakes or errors in favour of the 3rd defendant.
122. Sections 134 and 135 of the Land Act set out how the National Land Commission creates settlement Schemes, how and who is entitled to the land in these schemes, the manner of setting up the authority responsible for identifying the beneficiaries, and the manner of acquiring land for the establishment of the settlement scheme. This law has effectively replaced the Settlement Fund Trustees with the Land Settlement Fund Trustees, which is the body responsible for the process. See *Bandi -vs- Dzomo & Others* [2022] KECA 584 [KLR] (24th June 2022) (Judgment).
123. Locus standi means the capacity to sue or to maintain a suit or defend where a valid cause of action subsists. In *Julian Adoyo Ongunga & another -vs- Francis Kiberenge Bondeva* (Suing as the Administrator of the Estate of Fanuel Evans Amudavi, Deceased) [2016] eKLR, the court said that the impact of a party in a suit without locus standi is similar to a court without jurisdiction, as it amounts to null and void proceedings.
124. A plaintiff who sues the wrong party has himself to blame. In *Donoghue -vs- Stevenson* [1932] UKHL 100, the court observed that the cardinal principle of liability is that the party complaining should be



owed a duty of care and the party complaining should be able to prove that he has suffered damage in breach of that duty.

125. The responsibility of the 1st and 2nd defendants in the process of planning, survey, demarcation, allocation, and issuance of title to the 3rd defendant, and eventually threats to, and re-establishment of the boundary as per D. Exhibit No. (21) had to be proved. DW5 was emphatic on the role of the 1st defendant in the settlement scheme. The 1st and 2nd defendants in the statement of defence dated 21/7/2021 denied owing any statutory duties to the plaintiff.
126. Section 167 (2) of the Agriculture Act Cap 318, now repealed, was the applicable law in the whole process of allocation of Plots No. 171 and 172 to the plaintiff and the 3rd defendant. The 1st and 2nd defendants have not issued any title for more land to the 3rd defendant. Indeed, the 1st defendant has no statutory power to do so, with the regime of settlement schemes. Actual issuance of a title deed to the 3rd defendant is what gives him the capacity to demand the 22 acres of land allegedly occupied by the plaintiff. See *Dr. Ngok -vs- Ole Keiwua* [1997] eKLR.
127. It is not disputed that the plaintiff has been in possession of the entire 77 acres, which he takes the view that should be reflected in his title deed. No one has caused him to be evicted therefrom. The 3rd defendant at the moment lacks the capacity to purport to assume Plot No. 171, as supposed to be of more acreage than what he has been occupying on the ground, without the perfection of the charge.
128. The 3rd defendant has to move to the allocating authority and not to the plaintiff to know why he occupies less land than what he paid for. Equally, the 3rd defendant owes an explanation why he was mistaken all those years to occupy less land than he was allegedly allocated. Acquiescing to the occupation by the plaintiff works against the 3rd defendant. The court, in the circumstances, finds no basis to hold that the plaintiff is a trespasser to the 3rd defendant's land to the extent of 22.4 acres.
129. As to defects in the title deed held by the plaintiff regarding acreage, in *Benja Properties Limited -vs- Syedna Mohammed Burhannudin Sahed & 4 others* [2015] KECA 457 (KLR), the court held that it is trite law that all titles to land are ultimately based upon possession, which in law is nine-tenths ownership. The plaintiff has not sued the Land Registrar who issued the title with less acreage.
130. In *General & Another -vs- Hussein & Others* [2015] KECA 1022 [KLR] (5th June 2025) (Judgment), the court said that a title holder would go beyond the instrument itself and show that the process of acquisition from inception was both legal and procedural.
131. Prudence in this matter required both the plaintiff and the 3rd defendant to call the allocating authority as a witness to come and prove from inception the exact acreage in their allotment letters, since a title deed is an end result. The evidence of the Land Registrar was also critical. Similarly, the custodian of the Registry Index Map, who is the authority on boundaries, was a critical party or witness. D. Exhibit No. (21) has no details on which RIM was relied upon to fix the boundary, and the extent of the encroachment, if any. DW5 was not a party to or the maker of the exhibits relied upon by either the plaintiff or the 3rd defendant.
132. In *Embakasi Properties Ltd & Another -vs- Commissioner of Lands & Another* [2019] eKLR, the court held that the philosophy of land titles embodies three principles namely; the mirror principle, where the register is a perfect mirror of the state title, the curtain principle which hold that a purchaser need not investigate the history of past dealings with the land and the insurance principle, where the state guarantees the accuracy of the register. The official records on the allocation are not held by the 1st and 2nd defendants.



133. Section 80 of the *Land Registration Act* allows the court to direct the amendment, cancellation, or rectification of the register if it is satisfied that any registration was obtained, made, or omitted by fraud or mistake. Evidence to show the mistake, if any, is lacking. The exhibits produced by the plaintiffs were not certified. Their makers were not called to testify and authenticate them. As held in *Botwa Farm Co. Ltd -vs- Settlement Fund Trustees* (supra), whoever desires a court to give judgment as to any legal right or liability, dependent on the existence of those facts, has to prove them. The court cited with approval *Kenneth Nyaga Mwigie -vs- Austin Kiguta & Others* [2015] eKLR, that a document becomes proved or not proved when the court applies its judicial mind to determine the relevance and the veracity of its contents.
134. Having looked at all the pleadings and evidence, I think the plaintiff has not only sued the wrong defendants alongside the 3rd defendant, but failed to attribute any liability to the defendants. The evidence to show the mistake on the part of the 1st and 2nd defendants is missing. The 1st and 2nd defendants owe no statutory duty to the plaintiff. The Land Registrar and the Land Surveyor were necessary parties to this suit for the plaintiff to be entitled to the reliefs sought.
135. As held in *Barmasai -vs- Rono* [2025] KECA 1489 [KLR] (19th September 2023) (Judgment), a Registry Index Map serves as the primary and authoritative record of land boundaries and parcels, and any inconsistencies between a scheme plan and the Registry Index Map are generally resolved in favour of the Registry Index Map, which is the cadastral document used in the land registration system, to visually represent the location and boundaries of land parcels.
136. The Director of Surveys is the custodian of and the authority on boundaries. DW1 was clear that the mapping out of the physical existence and the precise location of Plots No. 171 and 172 was done by the Director of Surveys. Without that evidence, the court cannot make a finding that what the plaintiff and 3rd defendant were allocated and took possession of with effect from 1964 to the present was mistaken on both sides to make a finding that the plaintiff is a trespasser, and or should be evicted from the alleged 22 acres.
137. Over and above lacking the capacity to sue or to be sued, the 3rd defendant did not pay the requisite fees for the counterclaim, which also lacks a titular heading, even if the court were to find the counterclaim properly filed. Similarly, evidence of trespass, the basis why the 3rd defendant's late father acquiesced to the occupation of his alleged 22 acres for close to 57 years, and the basis why the court should intervene, and not the allocating authority, has not been substantiated.
138. More importantly, the court finds it unusual for the Land Surveyor to have determined the boundary without full compliance with Section 18 of the *Land Registration Act*. The land surveyor failed to summon all the registered owners of the adjoining parcels of land, which in this instance was the Settlement Fund Trustees and not the 3rd defendant.
139. The upshot is that I find both the plaintiff's suit and the 3rd defendant's statement of defence and the purported counterclaim lacking merit and incompetent. The same are dismissed with no order as to costs.
140. Orders accordingly.

JUDGMENT DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 4TH DAY OF FEBRUARY 2026.

HON. C.K. NZILI

JUDGE, ELC KITALE.



In the presence of:

Court Assistant - Dennis

Kiarie for the plaintiff - present

Chebii for the 3rd defendant - absent

Hon. Attorney General for the 1st and 2nd defendants absent

