

REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT
AT ELDORET
ELC CASE NO. E011 OF 2024

KIBWARI PLC.....1ST

PLAINTIFF

TOIYOI INVESTMENT LIMITE.....2ND

PLAINTIFF

-VERSUS-

DAVID BETT.....1ST

DEFENDANT

RISPAH BETT.....2ND

DEFENDANT

J U D G E M E N T

1. The 1st and 2nd Defendants herein did file a Counter-Claim against the 1st and 2nd Plaintiffs herein dated 12.04.2024 seeking the following Orders; -

a) The Plaintiffs suit be dismissed with costs.

b) A declaration that the 1st and 2nd Defendants herein are entitled to 2 Acres to be excised from LR.NO.8451/39 currently in occupation by them.

c) Costs of the suit.

2. The facts pleaded in the Counter-Claim dated 12.04.2024 in support of the above Orders can be summarised as follows; -

- a) There is an Agreement for Sale dated 10.02.2002 between the 1st and 2nd Plaintiffs and the 1st and 2nd Defendants herein.
 - b) However, the 1st and 2nd Plaintiff did breach the Agreement for Sale dated 10.02.2002 due to non-payment.
 - c) In addition, the 1st and 2nd Plaintiff did fail to deliver the property in KAPKANGANI as the same was non-existent.
 - d) The 1st and 2nd Defendants claim against the 1st and 2nd Plaintiffs was for a sum of Kenya Shillings Two Million Three Sixty-Eight Thousand Six Hundred and Eighty Thousand (KShs.3,367,680/-) which was equivalent to 2 Acres.
 - e) In essence, the 1st and 2nd Defendants did plead that they are entitled to the Orders sought hereinabove.
3. The Counter-Claim dated 12.04.2024 was duly served on the 1st and 2nd Plaintiffs herein.
 4. The 1st and 2nd Plaintiff did oppose the Counter-Claim dated 12.04.2024 through a Defence to the Counter-Claim dated 10.03.2025.
 5. In the Defence to the Counter-Claim dated 10.03.2025, the 1st and 2nd Plaintiffs did state as follows; -
 - a) Indeed vide an Agreement for Sale dated 08.03.2025, the 1st and 2nd Plaintiff agreed to purchase the property known as LR.NO.8451/26 measuring 40.47 Hectares from the 1st and 2nd Defendants.
 - b) The purchase price was a sum of Kenya Shillings Ten Million Four hundred and Sixty Eight Thousand Five Hundred (KShs.10,468,500/-).

- c) A sum of Kenya Shillings Four Million (KShs.4,000,000/-) was paid directly to the 1st and 2nd Defendant's finance which sum is duly acknowledged.
- d) In addition to the above, the 1st and 2nd Plaintiffs were to surrender a portion of 30 acres in a place called KAPKANGANI which was mutually agreed to be worth Kenya Shillings Three Million (KShs.3,000,000/-) to the 1st and 2nd Defendants.
- e) However, later on it was discovered that the portion of 30 acres in a place called KAPKANGANI was not available for acquisition by the 1st and 2nd Defendants as promised by the 1st and 2nd Plaintiffs.
- f) Due to this inability of the 1st and 2nd Plaintiffs to transfer the portion of 30 Acres in a place called KAPKANGANI, there was a second Agreement for Sale dated 03.02.2009 wherein the property known as LR.NO.8451/26 was to be divided into two portions.
- g) The first portion of 52 Acres was marked as Portion A and was to be registered in the name of the 1st and 2nd Plaintiffs herein.
- h) The second portion of 48 Acres was marked as Portion B and was to be registered in the name of the 1st and 2nd Defendants herein.
- i) In addition to the above, the 1st and 2nd Defendants did hereby make a request that the 1st and 2nd Plaintiff undertake a number of developments including construction of a residential house and other facilities for their employees.

- j) The construction of the developments mentioned hereinabove was duly undertaken by the 1st and 2nd Plaintiffs and was completed in the year 2020 and is valued at about Kenya Shillings Three Million (KShs.3,000,000/-).
- k) Consequently, the 1st and 2nd Plaintiff did plead to the fact that the 1st and 2nd Defendants acceptance to attend the Land Control Board and consent to the sub-division and transfer of the two portions to the respective owners did confirm the terms and conditions including any payments had been fully settled.
- l) In essence, the 1st and 2nd Defendants claim for a portion of two (2) acres on the 1st and 2nd Plaintiffs property was mischievous and an afterthought.
- m) The 1st and 2nd Plaintiffs did plead that the present suit be dismissed with costs.
6. The Defence to the Counter-Claim dated 10.03.2025 was duly served on the 1st and 2nd Defendants herein.
7. In reply thereof, the 1st and 2nd Defendants did file a Reply to Defence on the Counter-Claim dated 24.03.2025.
8. In the Reply to Defence on the Counter-Claim dated 24.03.2025, the 1st and 2nd Defendants did plead as follows; -
- a) The 1st and 2nd Defendants did reiterate the facts pleaded in the Counter-Claim in totality.
- b) The 1st and 2nd Defendants nevertheless did deny the allegation that they did attend a Land Control Board to

procure a consent to transfer the property known as LR.NO.8451/39 to the 1st and 2nd Plaintiffs.

9. After service of the Reply to Defence on the Counter-Claim, pleadings did close and the matter set down for hearing.

1ST & 2ND DEFENDANTS TESTIMONY & DOCUMENTARY EVIDENCE

10. The 1st Defendant was the first witness to testify and was marked as PW 1.
11. The 1st Defendant did introduce himself as a farmer by occupation.
12. The 1st Defendant did inform the Court that he had prepared and filed a witness statement dated 12.04.2024 and a further witness statement dated 24.03.2025 of which he did adopt both as his evidence in chief.
13. In addition to the above, the 1st Defendant did produce the following documents in support of his evidence in chief;-

PW 1 EXHIBIT 1- A copy of the Certificate of Title for the property known as LR.NO. 8451/26 issued on the 04.08.1993.

PW 1 EXHIBIT 2- A Copy of the Certificate of Title for the property known as LR.NO.8451/39 issued on 17.10.2012 in the name of the 1st Defendant.

PW 1 EXHIBIT 3- A Copy of Agreement For Sale dated 10.02.2002 over the property LR.NO.8451/26 between the 1st Plaintiff and the 1st Defendant.

PW 1 EXHIBIT 4- A Copy of the Agreement For Sale dated 08.03.2002 over the property known as LR.NO.8451/26 between the 1st Defendant and the 1st Plaintiff.

PW 1 EXHIBIT 5- A Copy of the Agreement For Sale dated 03.02.2009 over a portion of 40 Acres on LR.NO.8451/29

14. Upon production of the above-mentioned documents, the 1st Defendant did state that his relationship with the 1st Plaintiff had began in the year 2002.
15. According to the 1st Defendant, the 1st Plaintiff did purchase the entire property known as LR.NO.8451/26 for a consideration of Kenya Shillings Ten Million Four Hundred Sixty-Eight Thousand Five Hundred (KShs.10,468,500/-)
16. After execution of the Agreement for Sale dated 10.02.2002, the 1st and 2nd Plaintiffs did make a payment of Kenya Shillings Five Hundred (KShs.500,000/-) and a further Kenya Shillings Five Hundred and Forty Six Thousand Eight Fifty (Kshs.546,800/-) to the 1st and 2nd Defendants.

17. Thereafter, a further sum of Kenya Shillings Four Million Fifty-Three Thousand Nine hundred and Sixty-Nine (KShs.4,053,969/-) was paid directly to Agricultural Finance Corporation by the 1st and 2nd Plaintiffs on behalf of the 1st and 2nd Defendant deductible from the consideration agreed.
18. Unfortunately, the 1st and 2nd Plaintiffs did not clear the balance of the purchase price within the period mutually agreed.
19. Be as it may, the 1st and 2nd Plaintiffs did offer to settle a portion of the balance from the purchase price through a portion of 30 acres located within an area known as KAPKANGANI and the agreed value for it was Kenya Shillings Three Million (KShs.3,000,000/-)
20. The balance of Kenya Shillings Two Million Three Sixty Seven Thousand Six Hundred and Eighty (KShs.2,367,680/-) was to be settled within 180 days from 30.05.2002 in cash.
21. However, this amount of Kenya Shillings Two Million Three Sixty-Seven Thousand Six Hundred and Eighty (KShs.2,367,680/-) was not settled within the prescribed time.
22. Similarly, the portion of 30 acres which was located in an area known as KAPKANGANI was not available for the 1st and 2nd Defendants acquisition as promised by the 1st and 2nd Plaintiffs.
23. Due to this challenge of non-payment, the 1st and 2nd Plaintiffs and the 1st and 2nd Defendants did agree to sub-divide the property known as LR.NO.8451/26 into two portions.
24. The 1st and 2nd Plaintiffs was to get a portion of 52 Acres and the 1st and 2nd Defendants were to get a portion of 48 Acres.

25. The portion of 48 Acres surrendered part from the property known as LR.NO.8451/26 were contained in the Titles known as LR.NO.8451/40 TO 43.
26. The 1st Defendant did state that even after the acquisition of the 48 Acres, there was still a portion of 2 Acres within the 1st and 2nd Plaintiffs portion known as LR.NO.8451/39 which has not been paid for.
27. The 1st Defendant did inform the Court that it was the 1st and 2nd Plaintiff's director that did undertake the sub-division of the original property known as LR.NO.8451/26 without his consent and/or participation.
28. The 1st Defendant did further admit that the 1st and 2nd Plaintiffs had developed some structures including a house as a token of appreciation for the long period of suffering due to non-payment.
29. In essence, the 1st Defendant did state that the cost of the developments were not part of the consideration of the property known as LR.NO.8451/26.
30. In essence, the 1st Defendant sought this Court to grant the prayers of 2 Acres within the property known as LR.NO.8451/39 currently registered in the name of the 1st and 2nd Plaintiffs.
31. On cross-examination by the Plaintiff, the 1st Defendant reconfirmed his commitment to say the truth based on the Oath administered in Court.

32. The 1st Defendant did confirm that the property known as LR.NO.8451/26 was approximately 100 acres and had been registered in the names of the 1st and 2nd Defendants herein.
33. In essence, the 1st Defendant did aver that he was testifying on behalf of the 2nd Defendant who was his wife as well as his own behalf.
34. On being referred to PW 1 EXHIBIT 3, the 1st Defendant did state that the consideration for the entire 100 acres was Kenya Shillings Ten Million Four Sixty-Eight Thousand Five Hundred (KShs.10.468,500/-)
35. According to the 1st Defendant, upon execution of the 1st Agreement, he did not receive any payment directly from the 1st and 2nd Plaintiffs.
36. On execution of the 2nd Agreement, the 1st Defendant was paid a sum of Kenya Shillings Five Hundred Thousand (KShs.500,000/) and a further Kenya Shillings Five Hundred and Forty-Six Thousand (KShs.546,000/-).
37. The two payments were made between 10.02.2002 and 08.03.2002 which is about one month.
38. In addition to the above, the 1st and 2nd Plaintiffs did make a payment of Kenya Shillings Four Million Fifty-Three Thousand Nine Sixty-Nine (KShs.4,053,969/-) to the Agricultural Finance Corporation on behalf of the 1st and 2nd Defendants debited from the consideration of Kenya Shillings Ten Million Four Sixty-Eight Thousand Five Hundred (KShs.10.468,500/-)
39. According to the 1st Defendant, the total amount received from the 1st and 2nd Plaintiffs was a sum of Kenya Shillings

Five Million Ninety-Nine Thousand Nine Sixty-Nine (KShs.5,099,696/-).

40. However, in the 2nd Agreement, the amount acknowledged as received was Kenya Shillings Five Million Three Hundred and Sixty-Eight Thousand Five Fifty-One (KShs.5,368,591/-).
41. The 1st Defendant did inform the Court that based on the sub-divisions transferred to him, the total acreage was only 40 Acres.
42. The 1st Defendant did state that the value of the 40 acres in his name were valued at Kenya Shillings Thirty Million (KShs.30,000,000/-) leaving a balance of Kenya Shillings Two Million, Three Sixty-Eight Thousand Five Hundred and Thirty-One (KShs.2,368,531/-).
43. The 1st Defendant did deny any payment of this balance by the 1st and 2nd Plaintiffs within the period of 180 days that had been provided therein.
44. The 1st Defendant did confirm that he was familiar with an Advocate known as MACHARIA ODONGO.
45. On being referred to the Defence List of Documents dated 10.03.2025 (Item No. 7), the 1st Defendant did identify the document as a letter dated 23.08.2013.
46. The 1st Defendant did testify that the cheque enclosed therein was in regards to the costs of sub-division of the mother title.
47. The 1st Defendant did acknowledge that he had never done a Demand Letter to the 1st and 2nd Plaintiffs for payment of the outstanding balance.

48. The 1st Defendant did inform the Court that he was still residing on a portion of 2 Acres which is yet to be paid for.
49. The 1st Defendant did aver that the house developed by the 1st and 2nd Plaintiffs was without his knowledge.
50. The 1st Defendant did reiterate that the cheque received by the Advocate MACHARIA ODONGO was for the sub-division of the 48 acres from the mother title and did not have any relationship with the balance of the purchase price.
51. The 1st Defendant did inform the Court that his intention as regards the KAPKANGAI property measuring 30 acres was to plant a Tea Estate on it.
52. Unfortunately, due to the fact that the land was not available, the 1st and 2nd Defendants did suffer loss and damages thereof.
53. Upon this cross-examination, the 1st Defendant was discharged from the witness box and 1st and 2nd Defendants case was closed.

1ST AND 2ND PLAINTIFFS TESTIMONIES AND DOCUMENTARY EVIDENCE

54. The 1st witness on behalf of the 1st and 2nd Plaintiffs was one JONAH KIRWA KEMBOI who was marked as DW 1.
55. DW 1 did introduce himself as the manager of the 1st Plaintiff who is the registered owner of the sub-division known as LR.NO.8451/39.

56. DW 1 did inform the Court that he was in Court based on a Letter of Authority dated 06.03.2024 issued by the 2nd Plaintiff herein.
57. Based on the said Letter of Authority dated 06.03.2024, DW 1 did prepare, execute and file a witness statement dated 11.03.2025 of which he did adopt as his evidence in chief.
58. In support of this evidence in chief, DW 1 did produce the following documents thereof; -

DW 1 EXHIBIT 1- A Copy of a Title Deed of LR.NO.8451/26 in the name of the 1st Plaintiff.

DW 1 EXHIBIT 2- A Copy of the Title Deed of LR.NO.8451/39 in the names of the 1st and 2nd Defendants issued on the 17.10.2012.

DW 1 EXHIBIT 3- A Copy of the Mutation of LR.NO.8451/39.

DW 1 EXHIBIT 4- A Copy of the Agreement For Sale dated 10.02.2002 in relation to LR.NO.8451/26.

DW 1 EXHIBIT 5- A Copy of the Agreement For Sale dated 08.03.2002 in relation to LR.NO.8451/26.

DW 1 EXHIBIT 6- A Copy of the Agreement For Sale dated 03.02.2009 in relation to LR.NO.8451/26.

DW 1 EXHIBIT 7- A Copy of the Letter dated 31.08.2012 from the firm of MACHARIA ODONGO ADVOCATES to the Advocate of the 2nd Defendant.

DW 1 EXHIBIT 8- A copy of the letter dated 23.08.2013 from the 2nd Defendant's Advocate to the Plaintiffs advocate.

DW 1 EXHIBIT 9- A Copy of a Letter dated 27.04.2022 from the Plaintiffs to the 2nd Defendant.

DW 1 EXHIBIT 10- A Copy of a Letter dated 04.01.2018 from the 1st Defendant to the Plaintiffs requesting the location of the house to be developed.

DW 1 EXHIBIT 11- A copy of a Letter dated 15.12.2021 from the 1st Defendant to the Plaintiff seeking for vacant possession.

DW 1 EXHIBIT 12- A Copy of a letter dated 16.01.2021 which has the proposed Plan for the developments to be made within the 48 Acres belonging to the 1st and 2nd Defendants.

DW 1 EXHIBIT 13- A copy of a Letter dated 16.01.2021 from the 2nd Defendant about the proposed house to be developed by the 1st Plaintiff.

DW 1 EXHIBIT 14- A Copy of the Service Agreement dated 29.07.2021 between the 1st Plaintiff and the constructor thereof.

DW 1 EXHIBIT 15- A Copy of the Contract payment Certificate from the 1st Plaintiff to the Contractor.

DW 1 EXHIBIT 16- A copy of the history of the Lease document for the property known as LR.NO.8451/26 by the Registrar of Titles dated 14.02.2024.

59. DW 1 did confirm that there was an Agreement For Sale done in February 2002.
60. In the Agreement For Sale done in February 2002, the consideration was Kenya Shillings Ten Million Four Sixty-Eight Thousand Five Hundred (KShs.10.468,500/-)
61. However, the consideration for this Agreement For Sale was not paid because the 1st and 2nd Defendants had not obtained the Consent to Sale from the Land Control Board.
62. However, later on, the Consent to Sale by the Land Control Board was obtained and that is why a second Agreement For Sale dated 10.03.2002 was executed.
63. DW 1 did confirm that the purchase price in the second Agreement For Sale dated 10.03.2002 did remain the same and was liquidated as follows; -

- a) On execution, a sum of Kenya Shillings Five Hundred Thousand (KShs.500,000/-) was paid to the 1st and 2nd Defendants.
 - b) Thereafter, a further sum of Kenya Shillings Five Hundred and Forty Six Thousand Eight Hundred and Fifty (KShs.546,850/-) was paid to the 1st and 2nd Defendants.
 - c) In addition to the above, a sum of Kenya Shillings Four Million Fifty-Three Thousand Nine Sixty Nine (KShs.4,053,969/-) was paid to Agricultural Finance Corporation on behalf of the 1st and 2nd Defendants.
 - d) The portion of 30 acres located in KAPKANGAI was valued at Kenya Shillings Three Million (KShs.3,000,000/-).
 - e) The balance of Kenya Shillings Two Million Three Hundred and Sixty-Seven Thousand Six Hundred and Eighty (KShs.2,367,680/-) was paid in cash to the 1st and 2nd Defendants.
64. However, on or about the year 2009, the transfer of the portion measuring 30 acres located in KAPKANGAI did not materialise.
65. It is on this basis that the 3rd Agreement for Sale was prepared with a view of returning 48 Acres from the original 100 acres.
66. DW 1 did confirm that a portion of 48 acres was returned to the 1st and 2nd Defendants and there is a road that demarcates the portion of 52 acres registered in the name of the 1st Plaintiff and the 48 acres registered in the name of the 1st and 2nd Defendants.

67. DW 1 did confirm that the 1st and 2nd Defendants had made a request to the 1st Plaintiff for the construction of various developments including a house on their portion.
68. This request according to DW 1 was accepted by the 1st Plaintiff and the developments including the house were constructed.
69. However, DW 1 did admit that the various developments constructed by the 1st Plaintiff were purely on the request of the 1st and 2nd Defendants and the costs thereof was not to be factored in the consideration.
70. However, the 1st and 2nd Defendant have so far refused to vacate the two acres which they occupy on the 1st Plaintiff's property known as LR.NO.8451/26 for no lawful reason.
71. On cross-examination, DW 1 did admit that he was not there when the Agreements For Sale were being negotiated and executed.
72. DW 1 was not aware of when the payments were made by the 1st Plaintiff to the 1st and 2nd Defendants herein.
73. On being referred to DW 1 EXHIBIT 5, DW 1 did not explain how and when the cash payment of Kenya Shillings Two Million Three Hundred and Sixty-Four Thousand (KShs.2,364,000/-) was made to the 1st and 2nd Defendants by the 1st Plaintiff.
74. DW 1 also did not have the Application for the Sub-Division of LR.NO.8451/26 made to the Land Control Board by the 1st Plaintiff and/or the Consent to Transfer the portion of 48 Acres known as LR.NO.8451/39 to the 1st and 2nd Defendants herein.

75. DW 1 could also not confirm if the 1st and 2nd Defendants had ever acknowledged the payments made by the 1st Plaintiff against the consideration mutually agreed.
76. DW1 however did confirm that the developments undertaken by the 1st Plaintiff on the 1st and 2nd Defendants portion of 48 Acres were not part of the consideration and had been done in good faith.
77. DW 1 did state that the second Agreement dated 10.03.2002 did away with the first Agreement For Sale dated 10.02.2002.
78. On re-examination, DW 1 did testify that no property would be sub-divided and/or transferred without a Consent for the Land Control Board.
79. At the end of this re-examination, DW 1 was duly discharged from the witness box and the 1st and 2nd Plaintiffs did close their case thereof.
80. The Court then did direct parties to file their final submissions thereof.
81. The 1st and 2nd Defendants in compliance of the above directions did file their submissions dated 27.08.2025 while the 1st and 2nd Plaintiffs did file their submissions dated 09.09.2025.
82. The Court has duly gone through the pleadings filed herein, the testimonies of the parties, the documentary evidence tabled before the Court and the submissions thereof and identifies the issues for determination as follows; -

**ISSUE NO. 1- BASED ON THE AGREEMENTS FOR SALE
BETWEEN THE 1ST AND 2ND DEFENDANTS AND
THE 1ST AND 2ND PLAINTIFFS, IS THERE ANY**

OUTSTANDING BALANCE OF THE PURCHASE PRICE?

ISSUE NO.2- ARE THE 1ST AND 2ND DEFENDANTS ENTITLED TO POSSESSION AND/OR OCCUPATION OF A PORTION MEASURING 2 ACRES WITHIN THE 1ST AND 2ND PLAINTIFF'S PORTION OF LAND?

ISSUE NO.3- ARE THE 1ST AND 2ND DEFENDANTS ENTITLED TO THE RELIEFS SOUGHT IN THE PLAINT BEFORE COURT?

ISSUE NO.4- WHO BEARS THE COSTS OF THIS SUIT?

83. The Court having identified the above issues for determination, the same will now be discussed as provided below.

ISSUE NO. 1- BASED ON THE AGREEMENTS FOR SALE BETWEEN THE 1ST AND 2ND DEFENDANTS AND THE 1ST AND 2ND PLAINTIFFS, IS THERE ANY OUTSTANDING BALANCE OF THE PURCHASE PRICE?

84. The first issue for determination is whether or not there is any outstanding balance emanating from the various Agreements For Sale between the 1st and 2nd Defendants and the 1st and 2nd Plaintiffs.

85. To begin with, the 1st and 2nd Defendants did produce an Agreement For Sale dated 10.02.2002 with the 1st and 2nd Plaintiffs over the property known as LR.NO.8451/26.
86. In this Agreement For Sale dated 10.02.2002, the consideration was a sum of Kenya Shillings Ten Million Four Sixty-Eight Thousand Five Hundred (KShs.10.468,500/-)
87. However, the 1st and 2nd Plaintiff did testify and admit that the Agreement For Sale dated 10.02.2002 was never implemented due to lack of the Consent to Sale from the Land Control Board which was a prerequisite requirement for payment of the deposit.
88. Due to this difficulty, a second Agreement for Sale dated 08.03.2002 was prepared and executed by the 1st and 2nd Defendants and the 1st and 2nd Plaintiffs herein.
89. Once again, the property on sale was LR.NO.8451/26 and the consideration was the same amount of Kenya Shillings Ten Million Four Sixty-Eight Thousand Five Hundred (KShs.10.468,500/-)
90. In this second Agreement For Sale dated 08.03.2002, the purchase price of Kenya Shillings Ten Million Four Sixty-Eight Thousand Five Hundred (KShs.10,468,500/-) was to be cleared as follows;-
- a) A deposit of Kenya Shillings Five Hundred Thousand (KShs.500,000/-) was duly paid by the 2nd Plaintiff and duly acknowledged by the 1st and 2nd Defendants on execution of the Agreement for Sale.

- b) A further sum of Kenya Shillings Five Hundred and Forty Six Thousand Eight Hundred & Fifty (KShs.546,850/-) was to be paid on or before the 30.05.2002.
- c) A sum of Kenya Shillings Four Million Fifty-Three Thousand Nine Sixty-Nine (KShs.4,053,969/-) was to be paid by the 2nd Plaintiff directly to Agricultural Finance Corporation on behalf of the 1st and 2nd Defendant deductible from the consideration therein.
- d) A further Kenya Shillings Three Million (KShs.3,000,000/-) was to be paid through the transfer of the 30 Acres located at KAPKANGAI from the 2nd Plaintiff to the 1st and 2nd Defendants herein.
- e) The balance of Kenya Shillings Two Million Three Hundred Sixty-Seven Thousand Six Eighty (KShs.2,367, 680/-) was to be paid directly to the 1st and 2nd Defendants within One Eighty (180) Days from the date of execution of the Agreement For Sale which was 30.05.2002.
91. As fate would have it, the portion of 30 Acres which the 2nd Plaintiff had offered to transfer to the 1st and 2nd Defendant had ownership disputes and the same was never registered in the name of the 1st and 2nd Defendants as promised by the 2nd Plaintiff.
92. In other words, the sum of Kenya Shillings Three Million (KShs.3,000,000/-) which was the mutually agreed valuation of the 30 acres located in KAPKANGAI was not paid in accordance to the Agreement for Sale dated 08.03.2002.
93. Similarly, according to the 1st and 2nd Defendant, the sum of Kenya Shillings Two Million Three Hundred Sixty-Seven Thousand Six Eighty (KShs.2,367,680/-) payable directly to them by the 2nd Plaintiff on or before the 30.05.2002 was also not settled.

94. DW 1 who was the witness for the 1st and 2nd Plaintiffs did testify that the sum of Kenya Shillings Two Million Three Hundred Sixty-Seven Thousand Six Eighty (KShs.2,367,680/-) was duly paid on or before the agreed date of 30.05.2002 in cash.
95. However, during cross-examination, DW 1 could not give the actual date when the sum of Kenya Shillings Two Million Three Hundred Sixty-Seven Thousand Six Eighty (KShs.2,367, 680/-) was paid and to whom the cash was paid to.
96. Further, DW 1 did not produce any document showing that the 1st and 2nd Defendants had acknowledged receipt of this amount of Kenya Shillings Two Million Three Hundred Sixty-Seven Thousand Six Eighty (KShs.2,367, 680/-).
97. In essence, this Court is of the view and finding that the 2nd Plaintiff herein did not also pay the sum of Kenya Shillings Two Million Three Hundred Sixty-Seven Thousand Six Eighty (KShs.2,367, 680/-) as provided in the Agreement For Sale dated 08.03.2002 which was 30.05.2002.
98. In acknowledgement of the 2nd Plaintiffs indebtedness to the 1st and 2nd Defendants, a third Agreement For Sale dated 03.02.2009 was prepared and executed between the 2nd Plaintiff and the 1st and 2nd Defendants.
99. In the Agreement dated 03.02.2009, the terms and conditions mutually agreed between the 2nd Plaintiff and the 1st and 2nd Defendants were as follows; -
- a) The property known as LR.NO.8451/26 would be subdivided two portions.

- b) The portion marked as B would be 48 Acres and recorded in the name of the 1st and 2nd Defendants herein.
 - c) The portion marked as A would be 52 Acres and recorded in the name of the 1st and 2nd Plaintiff.
 - d) The 1st and 2nd Defendants further did give an undertaking to the 1st and 2nd Plaintiffs to vacate and remove all their structures located within Portion A recorded in the name of the 1st and 2nd Plaintiffs within 180 days from the date of the execution of this Agreement For Sale.
100. Based on the above terms and conditions, this Court is of the considered view that the Agreement For Sale dated 30.02.2009 was to address the manner in which the two parties therein would occupy the property originally known as LR.NO.8451/26.
101. The property known as LR.NO.8451/26 which after excision of 48 Acres would remain 52 Acres was to be occupied by the 1st and 2nd Plaintiffs.
102. The portion of 48 acres which was excised from the original LR.NO.8451/26 and now titled as LR.NO.8451/39 was to be occupied by the 1st and 2nd Defendants.
103. The question that now remains to be answered is whether the 1st and 2nd Plaintiffs did pay the correct value for the 52 acres that is contained in LR.NO.8451/26?
104. To answer this question, the Court will first look at the amount duly acknowledged by the parties in these pleadings.
105. The payments acknowledged by the parties through the pleadings is the amount of Kenya Shillings Five Hundred

Thousand (KShs.500,000/-) made on the date of execution of the Agreement dated 08.03.2002, a Further payment of Kenya Shillings Five Hundred and Forty Six Thousand Eight Hundred and Fifty (KShs.546,850/-) and the sum of Four Million Fifty Three Thousand Nine Sixty Nine (KShs.4,053,969/-) paid to the Agricultural Finance Corporation by the 2nd Plaintiff on behalf of the 1st and 2nd Defendants.

106. In essence, the total amount paid by the 1st and 2nd Plaintiffs to the 1st and 2nd Defendants in regards to the property known as LR.NO.8451/26 is Kenya Shilling Five Million One Hundred Thousand Eight Hundred and Ninety (KShs.5,100,819/-).
107. The Court having ascertained the actual amount of consideration paid by the 1st and 2nd Plaintiffs to the 1st and 2nd Defendants, what is the actual acreage that should have been allocated to the 1st and 2nd Plaintiffs against the 1st and 2nd Defendants.
108. According to the original Agreement For Sale dated 08.03.2002, the entire LR.NO.8451/26 measuring 100 acres was to be purchased as a cost of Kenya Shillings Ten Million Four Sixty-Eight Thousand Five Hundred (KShs.10,468,500/-) which translates to Kenya Shillings One Hundred and Four Thousand Six Hundred and Eighty Five (KShs.104,685/-) per acre.
109. Consequently, the acreage which the 1st and 2nd Plaintiffs should be allocated based on the sum of Kenya Shilling Five Million One Hundred Thousand Eight Hundred and Ninety (KShs.5,100,819/-) paid to the 1st and 2nd Defendants is actually 48.725 Acres.
110. However, it is clear that the 1st and 2nd Plaintiffs title known as LR.NO.8451/26 has an acreage of 52 Acres in line with the Agreement For Sale dated 03.02.2009.

111. Clearly therefore, this Court is of the considered finding the 1st and 2nd Plaintiffs herein still owe the 1st and 2nd Defendants a sum of Kenya Shillings Four Hundred and Eighty Thousand Seven Hundred and Forty (KShs.418,740/-) which is for the four acres contained in the Title known as LR.NO.8451/26 registered in the name of the 1st and 2nd Plaintiffs herein.

ISSUE NO.2- ARE THE 1ST AND 2ND DEFENDANTS ENTITLED TO POSSESSION AND/OR OCCUPATION OF A PORTION MEASURING 2 ACRES WITHIN THE 1ST AND 2ND PLAINTIFF'S PORTION OF LAND?

112.The second issue is whether the 1st and 2nd Defendants are entitled to the portion of 2 acres in which they are in occupation.

113.As already stated in Issue No. 1, the payments made by the 1st and 2nd Plaintiffs herein can only purchase approximately 48.725 Acres from the property known as LR.NO.8451/26.

114.In other words, the 1st and 2nd Defendants are entitled to the balance remaining from the property known as LR.NO.8451/26.

115.However, in view of the Agreement dated 03.02.2009, it was the intention of the parties that 1st and 2nd Defendants would give vacant possession of the entire 52 Acres registered on LR.NO.8451/26 to the 1st and 2nd Plaintiffs.

116.In other words, if the 1st and 2nd Defendants would still wish to occupy any portion of the property known as LR.NO.8451/26

registered in the names of the 1st and 2nd Plaintiffs, then it would mean that the Agreement For Sale dated 03.02.2009 is amended to reflect this intention by the parties or the sale is rescinded through a Court process.

117. Where these two events have not occurred, then this Court cannot impose and/or rewrite the intentions of the parties to the Agreement for Sale dated 03.02.2009.

118. In essence, this Court is of the considered view and finding that although the 1st and 2nd Defendants are entitled to a payment of Kenya Shillings Four Hundred and Eighty Thousand Seven Hundred and Forty (KShs.418,740/-) from the 1st and 2nd Plaintiffs herein, they have no right of occupation and/or possession of any portion of land within LR.NO.8451/26 as mutually consented in the Agreement For Sale dated 03.02.2009.

ISSUE NO.3- IS THE 1ST AND 2ND DEFENDANTS ENTITLED TO THE RELIEFS SOUGHT IN THE PLAINT BEFORE COURT?

119. The third issue is whether the reliefs sought in the 1st and 2nd Defendants Counter-Claim dated 12.04.2024 can be granted or not.

120. In the Counter-Claim dated 12.04.2024, the 1st and 2nd Defendants did seek for the following reliefs; -

a) The Plaintiffs case be dismissed with costs.

b) A declaration that the Defendants are entitled to 2 acres to be excised from LR.NO.8451/39 currently in occupation by them.

c) Costs of the suit.

121.To begin with the first relief, this has already been overtaken by events based on the Consent Ruling pronounced by this Court on the 26.02.2025.

122.As regards the second relief, the Court first and foremost notes that the same was not properly pleaded.

123.On the face of the second relief sought by the 1st and 2nd Defendants, they are seeking for a declaration that a portion of 2 Acres within the property known as LR.NO.8451/39 in which they are in occupation of be excised to them.

124.However, from the pleadings and documents presented to the Court, the property known as LR.NO.8451/39 is actually the 1st and 2nd Defendants property which they are already in occupation.

125.The portion of 2 Acres which the 1st and 2nd Defendants herein are in occupation is located in the property known as LR.NO.8451/26 which is registered in the name of the 1st Plaintiff.

126.Be as it may, the Court has already pronounced itself in Issue No. 2 to the effect that the intention of the parties in terms of occupation of the two portions is contained the Agreement For Sale dated 03.02.2009 and it will not interfere with this intention unless the Agreement is either Amended or rescinded lawfully.

127.As such, this relief cannot be granted as prayed for.

128.The last relief was costs of the Counter-Claim.

129.Costs are usually awarded to a winning party unless otherwise stated.

130.In the instant case, although the 1st and 2nd Defendants had a reasonable cause of action against the 1st and 2nd Plaintiffs, the reliefs sought in this Counter-Claim were not in line with the available reliefs flowing from the various Agreements For Sale between the parties.

131.As such, this Court of the view and finding that each party should bear its own costs.

CONCLUSION

132.In conclusion, this Court hereby makes the following Orders as regards the Counter-Claim dated 12.04.2024; -

A.THE COUNTER-CLAIM DATED 12.04.2024 IS NOT MERITED AND THEREFORE DISALLOWED.

B.EACH PARTY WILL BEAR ITS OWN COSTS AS REGARDS THE COUNTER-CLAIM DATED 12.04.2024.

DATED, SIGNED and DELIVERED in ELDORET this 23RD DAY OF APRIL,2026.

**EMMANUEL.M. WASHE
JUDGE**

IN THE PRESENCE OF:

COURT ASSISTANT: Brian

Counsel for the 1st and 2nd Defendants: Mr. Rotich

Counsel for the 1st and 2nd Plaintiffs: Mr. Kimaru