

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ELC CASE NO. E008 OF 2020
(CONSOLIDATED WITH ELC CASE NO. E003 AND E004 OF
2023 (OS))

JOHNSTONE KIPNGENO KIRUI.....
.....PLAINTIFF

VERSUS

SAMWEL KORIR.....1ST
DEFENDANT

STANLEY KORIR.....2ND
DEFENDANT

AND

STEPHEN KORIR....APPLICANT IN ELC CASE NO. E004 OF
2023

JUDGEMENT.

INTRODUCTION.

- 1.** The Plaintiff commenced this suit vide the Plaint dated 29th October, 2020.

- 2.** The Plaintiff avers that he is the registered owner of land parcel No. **Kericho/Kibwastuiyo/286.**

3. The Plaintiff also avers that the Defendants have forcefully entered the suit parcel of land and taken possession while alleging that they purchased it.

4. The Plaintiff further avers that despite asking the Defendants to vacate the suit parcel of land they have declined to do so and he therefore seeks the following prayers;

a. *Permanent injunction meant to restrain the Defendants by their self (sic) there (sic) agents and/or assignees, their workers, sons from fencing off and/or alienating and further trespassing into land parcel Kericho/Kibwastuiyo/286.*

b. *Costs of this suit.*

c. *Any other receipt of this Honourable Court deem fit to grant. (sic)*

5. The 1st Defendant filed a Statement of Defence dated 10th March, 2020.

- 6.** He denies the averments in the Plaint and states that he has been in possession of a portion of the suit parcel of land since the year 1977.
- 7.** He also states that he purchased the said portion, paid the purchase price in full before taking possession.
- 8.** He further states that the community including the area Chief know that he is in possession of the suit parcel of land.
- 9.** He states that since he took possession of the land, he has not had any dispute with the registered owner.
- 10.** He also states that the only dispute over the suit property was filed in the District Officer's Office and it was Land case No. 8 of 1984.
- 11.** He further states that the Panel of Elders made a determination that he purchased a four-acre portion of the

suit parcel of land and **Elijah Ngololu** (Deceased) was compelled to transfer it to him and adds that no appeal has been filed against the said decision.

12. He also states that the succession proceedings which culminated in the issuance of the title deed to the Plaintiff were fraudulent as the Plaintiff knowingly concealed material facts.

13. He further states that the Plaintiff therefore obtained the title deed to the suit property fraudulently.

14. He states that he has been in occupation of the suit parcel of land for a period of over thirty years and he has therefore an overriding interest as provided for under **Section 28** of the **Land Registration Act**.

15. He also states that the Plaintiff's suit is incompetent, bad in law and should be dismissed with costs.

- 16.** The 2nd Defendant filed a Statement of Defence dated 5th January, 2021.
- 17.** He denies the averments in the Plaint and states that he has been in occupation of the suit parcel of land from the early 1980s.
- 18.** He also states that his entry into the suit parcel of land was not forceful.
- 19.** He further states that his deceased father purchased a three-acre portion of the suit parcel of land from the Plaintiff's deceased father.
- 20.** He states that upon conclusion of the sale in the year 1977, he took possession of the said portion with the consent of the Plaintiff's father and has been in occupation ever since.

- 21.** He also states that he has planted tea on the said parcel of land which he continues to harvest to date.
- 22.** He further states that the suit parcel of land was subject of a land dispute in Land Case No. 8 of 1984 at the District Officer's Office Litein and states that the Panel of Elders made a decision which was adopted in Kericho RM Misc Application No. 24 of 1984 **Samwel Cheruiyot A. Korir and Reuben Kipkorir A. Koech vs Elijah Ngulolu A. Tonui.**
- 23.** He also states that no appeal has been filed against the said decision and that it has also not been set aside and adds that the said decision conclusively determined the issues raised herein.
- 24.** He states that he has been in occupation of the three-acre portion of the suit parcel of land for a period of close to thirty years and has therefore an overriding interest as set out under **Section 28** of the **Land Registration Act.**

25. He also states that the Plaintiff is not entitled to the prayers sought and he seeks that the suit be dismissed with costs.

26. The 1st Defendant commenced ELC Case No. E003 of 2023 (OS) against the Plaintiff herein vide the Originating Summons dated 19th July, 2023 where he sought the following orders;

a. That this Honourable Court certify this application as urgent and service be dispensed with in the first instance.

b. That the Respondents, their agent, representatives, employees, servants and/or assigns be restrained by a permanent order of injunction from interfering, alienating sub-dividing, evicting and or threatening the peaceful occupation of the Applicant's portion and or do anything whatsoever on a portion occupied by the Applicant on Kericho/Kibwastuiyo/286 pending inter partes hearing and

determination of the instant summons. (sic)

c. That the Honourable Court do issue preservatory order directing the District Land Registrar Kericho to stop any dealing and/or transactions in the entries of the register relating to land parcel No. Kericho/Kibwastuiyo/286.

d. The Applicant be declared to have become the legal owner entitled by adverse possession of over twelve (12) years since 1977 a portion of land measuring four (4) acres comprised in Land known as Kericho/Kibwastuiyo/286 situated in Kericho county, which parcel he has cultivated and has been in actual possession of peacefully, openly and uninterrupted for a period of over 12 years.

e. The Applicant be declared as entitled to be registered as the sole proprietor of the portion of land measuring four (4) acres comprised in Land known as Kericho/Kibwastuiyo/286 in place of

the above-named Defendant in whose favour the land is currently registered.

- f. The Defendant Johnstone Kipngeno Kirui be ordered to execute all documents of transfer in respect of the portion measuring four (4) acres of land parcel Kericho/Kibwastuiyo/286 in favour of the Plaintiff failure to which the Deputy Registrar of the Court to execute the requisite documents in place of the Defendant.**
- g. Costs of this application be provided for.**

27. The application is supported by the undated Supporting Affidavit of **Samwel Cheruiyot Korir**.

28. Stephen Korir commenced ELC Case No. E004 of 2023 (OS) vide the Originating Summons dated 19th July, 2023. He seeks for the following orders;

- 1. That this Honourable Court certify this application as urgent and service be dispensed with in the first instance.**
- 2. That the Defendant, his agent, representatives, employees, servants and/or assigns be restrained by an order of an injunction from interfering, alienating, sub-dividing, evicting and or threatening the peaceful occupation of the Applicant's portion and or do anything whatsoever on a portion occupied by the Applicant on Kericho/Kibwastuiyo/286 pending inter partes hearing and determination of the instant summons.**
- 3. That the Honourable Court do issue preservative order directing the District Land Registrar Kericho to stop any dealing and/or transactions in the entries of the register relating to land parcel No. Kericho/Kibwastuiyo/286.**
- 4. The Applicant be declared to have become the legal owner entitled by adverse possession of over twelve (12) years since 1984 a portion of land**

measuring three (3) acres comprised in land known as Kericho/Kibwastuiyo/286 situated in Kericho County, which parcel he has cultivated and has been in actual possession of peacefully, openly and uninterrupted for a period of over 12 years.

5. The Applicant be declared as entitled to be registered as the sole proprietor of the portion of land measuring three (3) acres comprised in land known as Kericho/Kibwastuiyo/286 in place of the above-named Defendant in whose favour the land is currently registered.

6. The Defendant Johnstone Kipngeno Kirui be ordered to execute all documents of transfer in respect of the portion measuring three (3) acres of land parcel Kericho/Kibwastuiyo/286 in favour of the Plaintiff failure to which the Deputy Registrar of the Court to execute the requisite documents in place of the Defendant.

- 29.** The Originating Summons is supported by the Affidavit of **Stephen Korir** that is sworn on 19th July, 2023.
- 30.** On 23rd January, 2023, ELC Case No. E004 of 2023 (OS) was consolidated with the present suit and was deemed as the defence.
- 31.** On 30th October, 2024, ELC Case No. E003 of 2023 was consolidated with the present suit.
- 32.** The Court directed that the present suit shall be the lead file.

The 1st Defendant's Contention in ELC Case No. E003 of 2023

- 33.** The 1st Defendant contends that he has been in occupation of a four-acre portion of land parcel No. Kericho/Kibwastuiyo/286 since the 1980's.

- 34.** He also contends that in the year 1977, he entered into a land sale agreement with **Elijah Ngulolu** (deceased) for the purchase of the said portion of land.
- 35.** He reiterates that the said sale was subject of a case in the District Officer's Office in Litein and explains that the said dispute was Land Case No. 8 of 1984.
- 36.** It is his contention that the dispute was heard by a Panel of Elders who made a decision in his favour.
- 37.** He reiterates that the decision of the Panel of Elders was adopted as the judgement of the Court in Kericho RM Miscellaneous Application No. 24 of 1984.
- 38.** He then reiterates the averments in his Statement of Defence.
- 39.** The Plaintiff did not file any response to the said Originating Summons.

Stephen Korir's Contention in ELC Case No. E004 of 2023 (OS)

- 40.** He contends that he is the legal representative of the estate of **Reuben Kipkorir Arap Koech (deceased)**.
- 41.** He also contends that he was issued with a Grant of Letters of Administration Ad Litem in Kericho Ad Litem Cause No. E077 of 2023 for the estate of **Reuben Kipkorir Arap Koech**.
- 42.** He further contends that on 8th January, 1977 his deceased father entered into a land sale agreement with **Elijah Ngulolu Tonui** (deceased) for the purchase of a three-acre portion of land parcel No. **Kericho/Kibwastuiyo/286**.

- 43.** It is his contention that his deceased father together with their family took possession of the said parcel of land in the 1980's.
- 44.** It is also his contention that the suit parcel of land was subject of a dispute in Land Case No. 8 of 1984 at the District Officer's office, Litein.
- 45.** It is further his contention that the decision of the Panel of Elders was adopted as an order of the Court in Kericho RM Misc Application No. 24 of 1984 **Samwel Cheruiyot A. Korir and Rueben Kipkorir A. Koech vs Elijah Ngulolu.**
- 46.** He contends that the decision of the Court was neither appealed nor set aside and he goes on to state that the said decision conclusively determined the issue of ownership of the suit parcel of land.

- 47.** He also contends that after the death of **Elijah Ngulolu Tonui**, the Plaintiff herein conducted succession proceedings and registered the entire parcel of land in his name.
- 48.** He further contends that the Plaintiff's deceased father sold a portion of the suit parcel of land to his father and therefore the Plaintiff's rights over the suit parcel of land cannot be greater than the rights his deceased father had at the time of his death.
- 49.** It is his contention that they planted tea on the said portion of land which they continue to harvest.
- 50.** He ends his deposition by stating that he has been advised by his advocates on record that the Plaintiff's interest if any on the suit parcel of land is subject to their overriding interest of prescription as provided for under **Section 28** of the **Land Registration Act**.

The Plaintiff's Response.

51. In response to the Originating Summons, the Plaintiff filed a Notice of Preliminary Objection dated 23rd August, 2023 which was on the following ground;

“Take notice that the Defendant prays that the suit filed by the Plaintiff be struck out with costs reasons being that there is an existing similar matter before the same Court being Kericho ELC No. 008 of 2020 and the same is coming for hearing on 3rd October, 2023.”

52. A perusal of the Court record shows that no directions were taken and/or given on the said Preliminary Objection.

The Plaintiff’s Evidence.

53. **Johnstone Kipngeno Kirui** testified as **PW1**. He stated that he filed two witness statements; one dated 10th June, 2024 and another dated 29th October 2020. He prayed that the Court adopts the said statement dated 10th June 2024 as

part of his evidence in Chief, which prayer the Court acceded to.

- 54.** It was his evidence that he filed the present suit in the year 2020 and the Court thereafter issued orders of *status quo*.
- 55.** It was further his evidence that the Defendants subsequently filed a Preliminary Objection and the Court delivered a ruling on it on 2nd March, 2023.
- 56.** He testified that the present suit is with regard to a land dispute between him and the Defendants over land parcel No. **Kericho/Kibwastuiyo/286**.
- 57.** He also testified that he filed Kericho HC Succession Cause No. 17 of 2018 over the estate of **Elijah Ngulolu Tonui** his deceased father.

58. He further testified that the 1st Defendant filed objection proceedings which he later withdrew. He produced a copy of a Court order issued on 9th December, 2020 showing the said withdrawal as **Exhibit P1**.

59. It was his evidence that he was issued with a Certificate of Confirmation of Grant on 29th November, 2019 which certificate of confirmation of grant is dated 19th November, 2019. He produced a copy of the Certificate of Confirmation of Grant as **Exhibit P2**.

60. It was also his evidence that he was later issued with a title deed for land parcel No. **Kericho/Kibwastuiyo/286** on 5th June, 2020.

61. It was further his evidence that he had the original title deed in Court. He produced a copy of the title deed for land parcel No. **Kericho/Kibwastuiyo/286** as **Exhibit P3**. The Court

compared the original title and the copy and the original was released back to the Plaintiff.

- 62. PW1** testified that after he was issued with the title deed he tried to reconstruct his house and resettle since the 1st Defendant had demolished his parents' house.
- 63.** He also testified that the Defendants threatened him and he was therefore not able to reconstruct the house.
- 64.** He further testified that he filed a report at the Trinitab Moita Police Post and explained that the basis for the report was that he was feeling insecure and was issued with OB No. **06/07/08/2021**. He produced a copy of the said OB as **Exhibit P4**.
- 65.** He also produced a copy of his National Identity Card as **Exhibit P5**.

- 66.** He sought that the Court issues orders of permanent injunction and costs of the suit as sought in the Plaint.
- 67.** In his witness statement, **PW1** states that the Defendants should be restrained from trespassing on the suit parcel of land and that they should be evicted from the land.
- 68.** He further states that his house and the other developments that were demolished should be reinstated. (sic)
- 69.** He states that the 2nd Defendant's brother one **Wesley Korir** was served with a Court order issued in the present suit through the area Chief Kibwastuiyo.
- 70.** He also states that the said **Wesley Korir** approached him and told him that he was ready to pay Kshs. 300,000/= if he withdrew the application that was pending in Court.

- 71.** He further states that at the same time the 2nd Defendant who was grazing animals on the suit parcel of land told him that he was wasting his time with the present suit as he had no money to proceed with it.
- 72.** He states that thereafter the Defendants constructed permanent houses on the suit parcel of land and planted tea.
- 73.** He also states that the 2nd Defendant moved from the land he inherited to the suit parcel of land and occupied the newly constructed houses.
- 74.** Upon cross examination, he confirmed that he was born in the year 1956.
- 75.** He also confirmed that he has other siblings and his brother one **Edward Kirui** was present in Court.

- 76.** He further confirmed that he was living in Chemosit in Bureti and added that he moved there in the year 1997.
- 77.** He admitted that he last lived on the suit parcel of land in the year 1997.
- 78.** He also admitted that his father one **Elijah Ngulolu Tonui** died in the year 2009 and at the time of his death he lived in Londiani.
- 79.** He confirmed that his father moved to Londiani in the year 1980.
- 80.** He admitted that he was not aware that the suit parcel of land was sold in the year 1977.
- 81.** He confirmed that he was not aware that the Defendants purchased the suit parcel of land from his deceased father.

- 82.** When referred to the land sale agreement between the Defendants and the Plaintiff's deceased father (the said agreements as at the time of hearing were attached to the Defendants' list of documents) **PW1** confirmed that he was not aware of the said agreement.
- 83.** When referred to the decision of the Panel of Elders of 4th April, 1984 (attached to the Defendants' list of documents) **PW1** stated that he was not aware of the said decision.
- 84.** He confirmed that in the case before the Panel of Elders, the 1st Plaintiff was **Samwel Cheruiyot Korir** while the 2nd Plaintiff was **Reuben Koech** the father of the 2nd Defendant.
- 85.** He confirmed that his deceased father one **Elijah Ngololu** was the Defendant.
- 86.** He read out the decision of the Panel of Elders as follows;

***“The Defendant be ordered to
execute transfer of the parcel***

to the two complainants with immediate effect.”

- 87.** He reiterated that he was not aware of the said order as he had only seen it in Court that day.
- 88.** He stated that he had a good relationship with his father and also stated that his father had a good relationship with all his children.
- 89.** He confirmed that he did not hear that his father had appealed the decision of the Panel of Elders.
- 90.** He admitted that he was the administrator of the estate of his deceased father and confirmed that he did not appeal against the said decision and neither did he seek for it to be reviewed.

- 91.** He also confirmed that before the suit parcel of land was transferred to his name, it was in the name of his deceased father.
- 92.** He further confirmed that he commenced the succession proceedings in the year 2018 and that the family agreed to have the suit parcel of land registered in his name.
- 93.** He also stated that he did not ask the Defendants to pay for the succession proceedings.
- 94.** He further stated that the advocate he engaged to assist him in the Succession proceedings was **Ngeno Lessan** Advocate.
- 95.** He confirmed that he was not aware that the Defendants paid his then advocates.

96. He admitted that he knew the 1st Defendant as he was his neighbour in Kebwastuiyo and he also knew **Reuben Koech**, the 2nd Defendant's father.

97. He stated that the 2nd Defendant's father was also his neighbour in Kebwastuiyo.

98. He admitted that the 1st and 2nd Defendants were using the suit parcel of land and confirmed that he did not know when they started using the land.

99. He stated that he was outside the Country when his house was demolished and was insistent that the 1st Defendant demolished his house even though he did not see him demolishing it.

100. DW1 admitted that he did not attend the Elders' Panel.

101. He also admitted that he did not inform the Defendants that the grant was confirmed.

102. He further admitted that he was not aware that the decision of the Panel of Elders was adopted as an order of the Court in Kericho RM Misc. Application No. 24 of 1984.

103. He confirmed that he was not the one who sold the suit parcel of land to the Defendants and stated that he did not know who sold it to them.

104. He stated that the 2nd Defendant was not the administrator of the estate of **Reuben Koech**.

105. The Plaintiff's case was then closed.

THE DEFENDANTS EVIDENCE.

106. Samwel Kipkorir Cheruiyot testified as **DW1**. He stated that he filed a witness statement dated 10th March, 2021 and

prayed that the Court adopts the said statement as part of his evidence -in-chief which prayer the Court acceded to.

107. He read out his National Identity Card number as No. 6023307 and stated that he lives in Kibwastuiyo Sub-location near Mauswa Primary School.

108. It was also his evidence that he purchased a portion of land parcel No. **Kericho/Kibwastuiyo/286** from **Elijah Ngulolu Tanui** (deceased) in the year 1975.

109. It was further his evidence that the Plaintiff is the son of **Elijah** and that the said **Elijah** sold a portion of the suit parcel to him.

110. He stated that he filed a list of documents on 10th March, 2021 and produced a land sale agreement dated 31st January, 1977 between him and **Elijah Ngulolu** (deceased) that was witnessed by the Plaintiff as **Exhibit D1**.

111. He also testified that their area Chief wrote a letter dated 6th July, 2020 wherein he stated that he (1st Defendant) lives in his area and is in occupation of the suit parcel of land. **DW1** produced a copy of the said letter as **Exhibit D2**.

112. He further testified that he had a copy of the proceedings of Kericho RM Misc Application No. 24 of 1984 wherein the Panel of Elders' decision was adopted as an order of the Court in the year 1984.

113. It was his evidence that the Panel of Elders found that the suit parcel of land ought to be transferred by the Plaintiff's father to his name. He produced a copy of the said proceedings as **Exhibit D3**.

114. He urged the Court should take into consideration the said documents and dismiss the Plaintiff's suit.

115. In his witness statement, **DW1** states that in the year 1977 **Stanley Korir** and him purchased portions of the land parcel No. **Kericho/Kibwastuiyo/286** from **Elijah Ngulolu** (deceased).

116. He also states that land parcel No. **Kericho/Kibwastuiyo/286** measures seven acres.

117. He further states that he purchased a four-acre portion of it while **Stanley Korir** purchased the remaining three acres.

118. He states that after the decision of the Panel of Elders was adopted as an order of the Court, **Elijah Ngulolu** (deceased) did not transfer the suit property to their names but they lived on the land peacefully until the year 2020.

119. He also states that in the year 2020, he was informed by **Edward Kipkoech Kirui** who is one of the beneficiaries of

the estate of **Elijah Ngulolu** (deceased), that succession proceedings had been done and a confirmed grant issued.

120. He further states that the Plaintiff concealed material facts in the succession cause and he was given the suit parcel of land.

121. He states that he has been living on the suit parcel of land peacefully since the year 1977 and has made substantial developments on it with the knowledge and consent of the Plaintiff.

122. Upon cross examination by the Plaintiff, **DW1** reiterated that his name is **Samuel Cheruiyot Korir** and added that he is a retired civil servant.

123. He reiterated that he purchased the suit parcel of land in the year 1977 and confirmed that the Plaintiff signed the land

sale agreement as a witness and added that the Plaintiff's name appears on the land sale agreement.

124. He stated that he paid the purchase price in cash and that the Plaintiff signed the agreement after he saw him pay.

125. He also stated that he could not remember whether he filed any documents in the succession cause.

126. He admitted that he appointed an advocate known as **Mei** and stated that it was not true that he applied for withdrawal of documents he had filed in Court.

127. He also admitted that he went with the Plaintiff's deceased father to the Panel of Elders and confirmed that he has never been removed from the land.

128. He confirmed that he did not see the Plaintiff at the tribunal and admitted that after they left the tribunal, the suit land

was not registered in his name and that he does not have a title deed.

129. He explained that the land was not transferred to him because both the title deed of the suit parcel of land and the Plaintiff's deceased father's Identity Card were lost and further that the Plaintiff's deceased father was also sick.

130. He confirmed that he only spoke with the Plaintiff's father on issues pertaining the suit parcel of land and also confirmed that he still did not have a title deed to his portion of the suit parcel.

131. He denied that he took advantage of the Plaintiff's deceased father because he (**DW1**) was a civil servant.

132. He confirmed that he purchased the land and the houses that were constructed on the land and admitted that he demolished two houses and a store.

133. Edward Kirui testified as **DW2**. He stated that he filed a witness statement dated 4th December, 2024 and prayed that the Court adopts the said statement as part of his evidence-in-Chief which prayer the Court acceded to.

134. It was his evidence that his deceased father had two wives and that the Plaintiff is his elder brother.

135. It was also his evidence that his mother is the first wife and added that they are seven brothers and two sisters.

136. It was further his evidence that in the second house there are two sons and a daughter and that his step mother was still alive.

137. He testified that they agreed as a family to have the Plaintiff appointed as an administrator of the estate of their deceased father.

138. He also testified that the Plaintiff was supposed to transfer the suit parcel of land to **Samuel Cheruiyot Korir** the 1st Defendant and **Reuben Arap Koech** (deceased) who had purchased portions of it.

139. He further testified that **Stanley Korir** was the son of **Reuben Arap Koech** (deceased).

140. It was his evidence that the Plaintiff did not transfer the suit parcel of land to the purchasers as agreed by the family.

141. It was also his evidence that their deceased father sold the suit parcel of land to the Defendants.

142. It was further his evidence that in the year 1986, he saw a letter whose contents were that **Samuel Korir** paid the purchase price of the suit parcel of land.

143. He testified that the money paid by **Samuel Korir** was used to buy land that they occupy in Londiani.

144. He also testified that they all moved to Londiani in the year 1978.

145. He further testified that his uncles have parcels of land that are adjoining the suit parcel of land.

146. It was his evidence that **Zablon Kipkorir Tanui's** parcel of land was on the left side of the suit parcel of land while **Joshua Kipruto Tanui's** parcel of land was on the right side.

147. He reiterated that the suit parcel of land belongs to **Samuel Cheruiyot Korir** and **Reuben Arap Koech** (deceased).

148. It was also his evidence that the Defendants are in occupation of the suit parcel of land and added that that they took possession in the year 1978.

149. Upon cross-examination by the Plaintiff, **DW2** confirmed he was born in the year 1964 and added that this also appears in his National Identity Card.

150. He confirmed that he is a lecturer at the university and admitted that he did not attend the succession proceedings.

151. He also admitted that when the grant was being confirmed in the year 2019, he did not attend Court.

152. He confirmed that he was present when the land in Barsiele, Londiani was being subdivided.

153. He stated that he was surprised that the suit parcel of land was registered in the Plaintiff's name.

154. He also stated that the Plaintiff may have fraudulently registered the suit parcel of land in his name.

155. He further stated that he lives in his father's house in Londiani and added that his younger brother sold to him his portion of land and moved to Tenwek.

156. He stated that they were shocked that the Plaintiff was in Court claiming the suit parcel of land.

157. He admitted that he did not attend the meeting of the Panel of Elders who sat as a tribunal to hear the Defendants case over the suit parcel of land.

158. He also admitted that in November, 2024 he met the Plaintiff and asked him to transfer the suit parcel of land to the Defendants but denied that he asked the Plaintiff to surrender the title.

159. DW2 confirmed that the Plaintiff dared him to attend Court and see how he will succeed with the suit but denied that he was present in Court to make the Plaintiff's claim fail.

160. Upon re-examination, **DW2** reiterated that he did not attend Court during the proceedings for confirmation of grant.

161. Rogeny Chebwogen testified as **DW3**. It was his evidence that he lives in Bureti and that he is the Chief Techoget Location.

162. It was also his evidence that he knows that the suit parcel of land was initially registered in the name of **Elijah Tunoi** who is now deceased.

163. It was further his evidence that the Plaintiff was one of the sons of **Elijah Tunoi** (deceased).

164. He testified that he knows the 1st Defendant and added that he lives in his location.

165. He also testified that he knows **Stanley Korir** and added that he lives in his location.

166. He further testified that the 1st and 2nd Defendants live on the suit parcel of land.

167. It was his evidence that he was appointed as a Chief in the year 2004 and at that in the year 2004, the Defendants were already living on the suit parcel of land

168. It was also his evidence that he is a neighbour to the Defendants.

169. It was further his evidence that the 2nd Defendant's father purchased a portion of the suit parcel of land from the Plaintiff's father one **Elijah Tunoi** (deceased).

170. He testified that both the Plaintiff's father and the 2nd Defendant's father were deceased.

171. He also testified that the 1st Defendant purchased a portion of the suit parcel of land from **Elijah Tunoi** (deceased).

172. He further testified that the Plaintiff neither lives nor tills the suit parcel of land.

173. It was his evidence that the Plaintiff does not live within his location.

174. It was also his evidence that the Plaintiff, his deceased father and their family relocated from his location a long time ago.

175. Upon cross examination by the Plaintiff, **DW3** reiterated that his name is **Rogeny Chebwogen**.

176. He confirmed that the 1st Defendant and the 2nd Defendant's deceased father purchased the suit parcel of land.

177. He confirmed that the purchase was not done through his office and he also admitted, that he did not witness the said agreement.

178. He admitted that he was not aware if his predecessor witnessed the said land sale agreement.

179. He further admitted that he did not know how much was paid for the suit parcel of land.

180. He stated that he was testifying in good faith and reiterated that he did not witness the sale transaction.

181. He admitted that he saw the documents that relate to the sale which included the land sale agreement that was produced as **Exhibit D1**.

182. He stated that it was the Plaintiff's deceased father who sold the suit parcel of land and not the Plaintiff.

183. He also stated that the land sale agreement was between the Plaintiff's deceased father and other parties.

184. He further stated that at the time of the sale, the registered owner of the land was alive and he ought to have informed his siblings and children of the said sale.

185. He confirmed that the Plaintiff went to his office and he advised him to follow the due process of the law.

186. He also confirmed that the Plaintiff followed the due process of the law to resolve the dispute.

187. DW3 stated that he had no vested interest in the suit parcel of land.

188. Upon re-examination, **DW3** reiterated that he had no vested interests in the suit parcel of land.

189. Stanley Korir testified as **DW4**. He stated that he filed a witness statement dated 18th October, 2023 and prayed that the Court adopts the said statement as part of his evidence-in-Chief which prayer the Court acceded to.

190. It was his evidence that his deceased father one **Reuben Koech** purchased the suit parcel of land vide the land sale agreement produced as **Exhibit D1**.

191. It was also his evidence that he took possession of the suit parcel of land in the year 1999 after his father built him a house.

192. It was further his evidence that his brother one **Stephen Korir** sought and was issued with a Grant of Letters of

Administration Ad Litem with respect to the estate of their deceased father.

193. He testified that he had in Court a copy of the Limited Grant of Letters of Administration Ad Litem.

194. He also testified that his brother who is the administrator of the estate of their deceased father was not sued.

195. He further testified that he was sued because he was the one who was in possession of the suit parcel of land.

196. It was his evidence that his brother **Stephen Korir** filed ELC Case No. E004 of 2023 (OS) where at prayers 4, 5 and 6 of the Originating Summons sought the following prayers;

“4. The Applicant be declared to have become the legal owner entitled by adverse possession of over twelve (12) years since 1984 a portion of land measuring three

(3) acres comprised in land known as Kericho/Kibwastuiyo/286 situated in Kericho County, which parcel he has cultivated and has been in actual possession of peacefully, openly and uninterrupted for a period of over 12 years.

5. The Applicant be declared as entitled to be registered as the sole proprietor of the portion of land measuring three (3) acres comprised in land known as Kericho/Kibwastuiyo/286 in place of the above-named Defendant in whose favour the land is currently registered.

6. The Defendant Johnstone Kipngeno Kirui be ordered to execute all documents of transfer in respect of the portion measuring three (3) acres of land parcel Kericho/Kibwastuiyo/286 in favour of the Plaintiff failure to which the Deputy Registrar of the Court to

execute the requisite documents in place of the Defendant.”

197. He prayed that the Court grants the prayers sought in ELC Case No's E003 and E004 of 2023 (OS).

198. In his witness statement, **DW4** reiterates the averments in his Statement of Defence.

199. Upon cross-examination by the Plaintiff, **DW4** reiterated that his name is **Stanley Korir**.

200. He confirmed that he knew the Plaintiff's name to be **Johnstone Kirui** and admitted that he did not know his other names.

201. He reiterated that it was his father who purchased the suit parcel of land and that he inherited the land from his father.

202. He admitted that he was not present during the sale but was represented by an advocate.

203. He stated that he was not aware if they had an advocate representing them in the succession proceedings and stated that his brother would know.

204. He also stated that he was not aware if an application had been filed in the succession proceedings with respect to the estate of the Plaintiff's deceased father.

205. He stated that he was not aware if they were told to withdraw the application filed in the succession proceedings with respect to the estate of the Plaintiff's deceased father.

206. He reiterated that his brother was the administrator of the estate of their deceased father.

207. He stated that he was not the Plaintiff's brother and added that they were not related.

208. When referred to the order of this Court issued on 26th February, 2021, he admitted that he received the said order but denied that he sent someone from Kenya Power to the Plaintiff with the said order.

209. He confirmed that one **Wesley Korir** is his younger brother and stated that he was not aware that **Wesley Korir** met with the Plaintiff and further stated that he was not aware of the nature of discussion had by them.

210. He also stated that he was not aware that **Wesley Korir** asked the Plaintiff to withdraw the suit.

211. He confirmed that apart from the present suit, ELC Case No's E003 and E004 of 2023 (OS) there were no other suit pending before the Court.

212. He admitted that they have never had a dispute with the Plaintiff.

213. He confirmed that he built his house on the suit parcel of land in the year 1999 which was way before the *status quo* orders were issued by the Court.

214. He also confirmed that he is aware of the present suit and that an agreement had been produced that was entered into by his deceased father and the Plaintiff's deceased father.

215. DW4 denied knowing a person whose name was given as **Ngeter** and also denied that he knew that that was the Plaintiff's name.

216. The defence case was then closed.

ISSUES FOR DETERMINATION.

217. The Plaintiff filed his submissions on 21st May, 2025 while the Defendants filed their submissions on 25th September, 2025.

218. In his submissions, the Plaintiff sets out the prayers sought in the Plaint and submits that he inherited the suit parcel of land from his great grandfather through his father. (sic)

219. The Plaintiff also submits that he was issued with a Certificate of Confirmation of Grant with respect to the estate of his deceased father on 19th November, 2019.

220. The Plaintiff further submits that the Defendants filed an application in the succession cause which application was withdrawn on 26th October, 2020.

221. It is the Plaintiff's submissions that after the grant was confirmed he was issued with a title deed to the suit parcel of land.

222. It is also the Plaintiff's submissions that he has not been able to utilize the suit parcel of land as the 1st Defendant demolished his house.

223. It is further the Plaintiff's submissions that he sought the advice of their area chief who advised him to follow the due process of the law.

224. The Plaintiff submits that he filed the present suit and the Court issued *status quo* orders.

225. The Plaintiff sets out his evidence and invites the Court to look at his list of documents and written statement.

226. The Defendants set out a summary of the evidence adduced and submit on the following issues;

a. *Burden of proof. (sic)*

b. *Does the Plaintiff warrant the orders sought against the Defendants. (sic)*

c. *Who should bear costs of the suit.*

227. The Defendants rely on **Sections 107** and **109** of the Evidence Act, the judicial decisions of **Muriungi Kanoru Jeremiah vs Stephen Ungu M'mwarabua [2015] eKLR,**

Abu Chiaba Mohammed vs Mohammed Bwana Bakari & 2 Others [2005] eKLR and submit that the Plaintiff has failed to demonstrate that he is entitled to the suit parcel of land as his deceased father had sold it during his lifetime.

228. The Defendants also submit that the Plaintiff is on a mission to defeat justice and his suit is an abuse of the Court process.

229. The Defendants conclude their submissions by urging the Court to dismiss the Plaintiff's suit and to allow ELC Case No's E003 and E004 of 2023 (OS) with costs.

ANALYSIS AND DETERMINATION.

230. After considering the pleadings, the evidence adduced by both the Plaintiff and the Defendants together with their

respective submissions, it is my view that the following issues arise for determination;

- a. Whether Samwel Cheruiyot Korir and Stephen Korir have acquired a four-acre portion and a three-acre portion of land comprised in Kericho/Kibwastuiyo/286 respectively by way of adverse possession.**
- b. Whether the prayers sought in the *Plaint* should be granted.**
- c. Who should bear costs of the suit.**

Summary of Evidence and Documents.

231. I shall start by briefly summarizing the evidence of the parties herein and the documents produced either in support of the claim or in opposition to it.

232. It is the Plaintiff's case that he is the registered owner of land parcel No. **Kericho/Kibwastuyio/286.**

233. It is also the Plaintiff's case that the Defendants trespassed onto the said parcel of land and have refused to vacate it.

234. The Plaintiff therefore seeks that a permanent injunction be issued restraining the Defendants from fencing off, alienating and/or further trespassing onto the suit parcel of land.

235. The Plaintiff produced a copy of a Court order issued in Kericho HC Succession Cause No. 17 of 2018 In the matter of the estate of **Elijah Ngulolu Arap Tonui** (Deceased) on 9th December, 2020 as **Exhibit P1** where the following orders were issued;

1. That the application to withdraw the application dated 16th July, 2020 be and is hereby allowed.

2. That the said application is marked as withdrawn.

236. A copy of the Certificate of Confirmation of Grant issued in Kericho HC Succession Cause No. 17 of 2018 In the matter of

the estate of **Elijah Ngulolu Arap Tanui** was produced as **Exhibit P2**. It states that **Johnstone Kipngeno Kirui** was issued with a Grant of representation of the estate of **Elijah Ngulolu Arap Tanui** on 28th January, 2019. It also states that the grant was confirmed on 19th November, 2019. There is a schedule on the face of the Certificate of Confirmation of Grant which shows that **Johnstone Kipngeno Kirui** is to receive an absolute share in respect of land parcel No. **Kericho/Kibwastuiyo/286**.

237. A copy of the title deed for land parcel No. **Kericho/Kibwastuiyo/286** was produced as **Exhibit P3**. It shows that **Johnstone Kipngeno Kirui** ID No. 0736688 P.O Box 46 Kipkelion was registered as the owner on 5th June, 2020. It also shows that the land measures 2.83 Ha and it is on Registry Map Sheet No's 12 & 18. **Johnstone Kipngeno Kirui** was issued with a title deed on 5th June, 2020.

238. A copy of Police OB Number 06/07/08/2021 recorded at Tritab Moita Police Post - Bureti was produced as **Exhibit P4**.

239. A copy of the Plaintiff's Identity Card was produced as **Exhibit P5**. It is Identity Card No. 0736688 and it shows that the Plaintiff was born on 15th December, 1956 in Kericho. The identity card was issued on 21st May, 2019 at Ainamoi.

240. The Defendants case, on the other hand, is that the 1st Defendant purchased a four-acre portion of the suit parcel of land from the Plaintiff's deceased father.

241. It is also the Defendants case that the 2nd Defendant's deceased father one **Reuben Kipkorir Koech** purchased a three-acre portion of the suit parcel of land.

242. It is further the Defendants case that the said purchase was vide the land sale agreement dated 31st July, 1977.

243. It is the Defendants case that a dispute arose between them and it was heard by a Panel of Elders in Land Dispute Case No. 8 of 1984.

244. It is also the Defendants case that the determination of the Panel of Elders was adopted as an order of the Court in Kericho RM Misc. Application No. 24 of 1984.

245. It is further the Defendants case that the said determination was neither appealed nor set aside.

246. It is the Defendants case that they have acquired the suit parcel of land by way of adverse possession.

247. In support of their case, the Defendants produced a copy of a land sale agreement dated 31st January, 1977 as **Exhibit D1**. The said agreement is neither in English nor Kiswahili and a translation has not been provided. It is however

evident that it was signed by **A. Tonui, Samwel C.A Korir** and **Johnstone A. Kirui**.

248. A copy of a Chief's letter dated 6th July, 2020 was produced as **Exhibit D2**. The letter is addressed to the Registrar, Kericho High Court. The reference of the said letter is "*Samwel Cheruiyot ID No. 6023307*". The letter states that **Samwel Cheruiyot** purchased a four-acre portion of land parcel No. **Kericho/ Kibwastuiyo /286** in the year 1975 and cleared payment in the year 1977. The letter also states that **Samwel Cheruiyot** is in possession of the said portion of land and that no transfer or succession has been done to date.

249. Copies of proceedings of Kericho RM Misc Application No. 24 of 1984 **Samwel Cheruiyot A. Korir & Reuben Kipkorir A. Koech vs Elijah Ngolulu A. Tonui** were produced as **Exhibit D3**. The said proceedings include an undated Notice of Motion application, an affidavit sworn by **Samwel**

Cheruiyot A. Korir and **Reuben Kipkorir A. Koech** and a Notice of filing of a decision.

250. The undated Notice of Motion application is illegible while in the affidavit, **Samwel Cheruiyot A. Korir** and **Reuben Kipkorir A. Koech** contend that a decision by the Panel of Elders was filed in Court on 6th June, 1984.

251. They also contend that thirty days had lapsed since the said filing and the Respondent had not filed an objection.

252. The Notice of Filing decision is addressed to **Samwel Cheruiyot A. Korir**, **Reuben Kipkorir A. Koech** and **Elijah Ngolulu A. Tonui** and it states that the Chairman Litein has filed a decision of the Panel of Elders that he chaired in Court. The notice invites objections within thirty days and states that if no objection is received, the Court may proceed to enter judgement according to the decision of the Panel of Elders.

253. A copy of the proceedings and decision of the Panel of Elders in Land Case no. 8 of 1984 **Kericho Kibwastuiyo/286** have been attached to the Notice of Filing of decision. They are dated 4th April, 1984.

254. In the said proceedings, **Samwel Cheruiyot Korir** testified that he purchased a four-acre portion of the suit parcel of land on 31st January, 1977 for a consideration of kshs. 19,000/= from **Elijah Ngulolu** (deceased). He also testified that he paid the entire purchase price but **Elijah** (deceased) refused to transfer the said portion of land to his name.

255. He further testified that in March, 1984, **Elijah Ngulolu** (deceased) went to his house broke down the door and closed the gate to his home.

256. He testified that **Elijah Ngulolu** (deceased) informed him that the land he purchased in Barsiele was not suitable for

his health and he therefore wanted to refund the purchase price and repossess the land.

257. In his evidence before the Panel of Elders, **Reuben Kipkorir Koech** (deceased) testified that on 8th January, 1977 he purchased a portion of the suit parcel of land measuring three-acres at a consideration of Kshs. 13,000/= from **Elijah Ngulolu** (deceased).

258. It was also his evidence that he paid the entire purchase price but **Elijah Ngulolu** (deceased) refused to transfer the said portion of land to him and contended that he lost his identity card.

259. It was further his evidence that in March, 1984 **Elijah Ngulolu** (deceased) informed him that he would refund him the money he paid.

260. Three witnesses testified in support of **Samwel Cheruiyot Korir's** case while three witnesses testified in support of **Reuben Kipkorir Koech's** (deceased) case.

261. Elijah Ngulolu A. Tonui (deceased) admitted in his evidence that he sold portions of the suit parcel of land to **Samwel Cheruiyot Korir** and **Reuben Kipkorir Koech** (deceased) for a consideration of kshs. 19,000/= and 13,000/= respectively.

262. He testified that he used the money he got to purchase a twenty -acre parcel of land at Barsiele. He also testified that when he moved to Barsiele he fell sick and he therefore informed **Samwel Cheruiyot Korir** and **Reuben Kipkorir Koech** (deceased) that he would not be transferring the said portions of land to them as he wanted to return to his land.

263. It was his evidence that this was in the year 1980 and that he was ready to refund them the money that they paid.

264.The Panel of Elders at paragraphs 5, 6, 7 and 8 of their award stated as follows;

“...Although the panel of elders has no jurisdiction to make a decision on this case the panel is of the view that the Defendant should be compelled to transfer the parcels under dispute to the 1st and 2nd Complainant respectively.

He has been deliberately refusing to appear before the Land Control Board with a view of rendering null and void the land sale agreements he had voluntarily entered into.

The Defendant has enough land in Kipkelion and his reasons for moving from there are flimsy and “calculate” to snatch the two complainants their rightful share. (sic)

I rule that the Defendant be declared to execute the transfer of the said

parcels to the two complainants with immediate effect.”

265. The award is signed by **T. Mooha** the District Officer Bureti Division and the Chairman of the Panel of Elders.

266. A copy of a Limited Grant of Letters of Administration Ad Litem issued in Kericho CM Ad Litem No. E077 of 2023 was produced as **Exhibit D4**. It shows that **Stephen Korir** was given Letters of Administration Ad Litem for the estate of **Reuben Kipkorir Arap Koech** on 21st July, 2023.

A. Whether Samwel Cheruiyot Korir and Stephen Korir have acquired a four-acre portion and a three-acre portion of land comprised in Kericho/Kibwastuiyo/286 respectively by way of adverse possession.

267. It is not in dispute that the Plaintiff is the registered owner of land parcel No. **Kericho/Kibwastuiyo/286**.

268. It is also not in dispute that the Plaintiff is one of the sons of **Elijah Ngulolu** (deceased).

269. It is further not in dispute that the suit parcel of land was initially registered in the name of **Elijah Ngulolu** (deceased).

270. It is not in dispute that the Plaintiff was registered as the owner of the suit parcel of land after succession proceedings in respect of the estate of **Elijah Ngulolu** (deceased) were conducted.

271. It is also not in dispute that the Defendants are in possession of portions of the suit parcel of land.

272. The following issues are in dispute;

- a. *Whether the Defendants forcefully took possession of the suit parcel of land.***

b. Whether Samwel Cheruiyot Korir and Stephen Korir have acquired portions of the suit parcel of land by way of adverse possession.

273. I will first address the issue whether **Samwel Cheruiyot Korir** and **Stephen Korir** have acquired portions of the suit parcel of land by way of adverse possession.

274. Samwel Cheruiyot Korir, the 1st Defendant in the present suit and the Applicant in ELC Case No. E003 of 2023 (OS) contends that he purchased a four-acre portion of the suit parcel of land in the year 1977 from **Elijah Ngulolu** (deceased).

275. He also contends that has lived peacefully on the suit parcel of land and has therefore acquired it by way of adverse possession.

276. Stephen Korir, the Applicant in ELC E004 of 2023 contends that his deceased father one **Reuben Kipkorir Koech**

purchased a three-acre portion of the suit parcel of land from **Elijah Ngulolu** (deceased).

277. He also contends that he has lived peacefully on the said portion of land and has therefore acquired it by way of adverse possession.

278. The Plaintiff on the other hand denies that **Samwel Cheruiyot Korir** and **Reuben Kipkorir Koech** (Deceased) purchased portions of the suit parcel of land and he did not specifically address the issue of adverse possession.

279. **Section 38 (1) and (2)** of the Limitation of Actions Act provides as follows:

“(1) Where a person claims to have become entitled by adverse possession to land registered under any of the Acts cited in section 37 of this Act, or land comprised in a lease

registered under any of those Acts, he may apply to the High Court for an order that he be registered as the proprietor of the land or lease in place of the person then registered as proprietor of the land.

(2) An order made under subsection (1) of this section shall on registration take effect subject to any entry on the register which has not been extinguished under this Act.”

280.The Court of Appeal in **Kasuve Vs Mwaani Investments Limited & 4 others 1 KLR 184** held as follows;

“In order to be entitled to land by Adverse Possession, the claimant must prove that he has been in exclusive possession of the land openly and as of right without interruption for a period of 12 years either after dispossessing the owner or by discontinuation of possession by the owner on his own volition”.[Emphasis mine]

281. In the judicial decision of **Richard Wefwafwa Songoi v Ben Munyifwa Songoi [2020] eKLR** the Court of Appeal held as follows;

“40. A person who claims adverse possession must inter alia show:

- (a) on what date he came into possession.***
- (b) what was the nature of his possession?***
- (c) whether the fact of his possession was known to the other party.***
- (d) for how long his possession has continued and***
- (e) that the possession was open and undisturbed for the requisite 12 years.”***

282. As stated, **Samwel Cheruiyot Korir** contends that he and **Stephen Korir’s** father one **Reuben Kipkorir Koech** (deceased) purchased portions of the suit parcel of land. In

support of this contention, the Defendants produced a copy of a land sale agreement dated 31st January, 1977 which was not translated.

283. The Defendants also produced a copy of proceedings and the decision of Panel of Elders in Land Case No. 8 of 1984 which were part of the documents produced as **Exhibit D3**.

284. It is my view that the proceedings and the decision of the Panel of Elders in Land Case No. 8 of 1984 are crucial in determining whether the **Samwel Cheruiyot Korir** and **Stephen Korir** have acquired portions of the suit parcel of land by way of adverse possession.

285. The evidence produced before the panel of Panel of Elders in Land Case No. 8 of 1984 has been set out in great detail in the preceding paragraphs.

286. The Plaintiff denies that **Samwel Cheruiyot Korir** and **Stephen Korir's** father one **Reuben Kipkorir Koech** purchased portions of the suit parcel of land but in the proceedings in Land Case No. 8 of 1994, the Plaintiff's deceased father admitted to selling the land.

287. Further, the Plaintiff's brother one **Edward Kirui** who testified as **DW2** gave evidence that their deceased father sold portions of the suit parcel of land to the Defendants and that the proceeds of the sale were used to purchase land in Londiani where they all moved to. His further evidence was that they had, as a family, agreed that the suit parcel be transferred to the Defendants and were surprised to find out that the Plaintiff had transferred the suit parcel to himself.

288. The Plaintiff did not controvert this evidence.

289. It is therefore evident that **Elijah Ngulolu** (deceased) who was the Plaintiff's father sold a four-acre portion of the suit

parcel of land to **Samwel Cheruiyot Korir** and a three-acre portion of land to **Reuben Kipkorir Koech** (deceased).

290. In the judicial decision of **Cheromei v Muigai (Environment & Land Case E005 of 2023) [2024] KEELC 5604 (KLR) (25 July 2024) (Judgment)** the Court held as follows;

“18. Having been allowed possession under a sale, the Applicant can only claim that his occupation became adverse if he can prove that the license was determined. In such circumstances where an Applicant claims adverse possession arising out of an agreement for sale, courts have held that the purchaser’s possession becomes adverse to the vendor once the purchase price is paid in full. Time starts to run from that point, and on completion of the statutory time limit of 12 years, the purchaser would be entitled to become registered as

proprietor of the land under adverse possession.

In Peter Mbiri Michuki v Samuel Mugo Michuki [2014] eKLR, the Court of Appeal held that:

“32. Our reading of the record shows that the Plaintiff entered the suit property pursuant to a sale agreement in 1964 as a bona fide purchaser for value. The entry in 1964 was with permission of the appellant qua vendor. In the case of Public Trustee v Wanduru, [1984] KLR 314 at 319 Madan, J.A. stated that adverse possession should be calculated from the date of payment of the purchase price to the full span of twelve years if the purchaser takes possession of the property because from this date, the true owner is dispossessed of possession. A purchaser in possession of the land purchased, after having paid the purchase price, is a person in

whose favour the period of limitation can run.” (Emphasis mine)

291. The Court in **Cheromei v Muigai (Environment & Land Case E005 of 2023)** held that a purchaser’s possession of land becomes adverse to the vendor once the purchase price has been paid in full. The Court also held that time begins to run from that point and upon completion of the statutory time limit of twelve years, a proprietor is entitled to be registered as proprietor of the land under adverse possession.

292. From the proceedings of Land Case No. 8 of 1984 produced as part of **Exhibit D3**, it is evident that **Samwel Cheruiyot Korir** and **Reuben Kipkorir Koech** (deceased) paid the purchase price in full.

293. From the evidence adduced before this Court, it is evident that the Defendants lived peacefully on the suit parcel of

land after the Panel of Elders rendered their decision on 4th April, 1984.

294. A period of thirty-six years has lapsed since 4th April, 1984 when the Panel of Elders delivered their decision to 5th June, 2020 when the Plaintiff was registered as the owner of the suit parcel of land.

295. Given the said circumstances, it is my finding that **Samwel Cheruiyot Korir** has proved that he has acquired a four-acre portion of land comprised in **Kericho/Kibwastuiyo/286** by way of adverse possession.

296. In ELC Case No. E004 of 2023 (OS), **Stephen Korir** seeks, under prayer (4) of the Originating Summons, to be declared to have acquired a three-acre portion of the suit parcel of land by way of adverse possession.

297. He seeks the said prayer on the ground that his deceased father one **Reuben Kipkorir Koech** purchased the said portion of land from **Elijah Ngulolu** (deceased) in the year 1977.

298. Even though it is not disputed that **Stephen Korir** is the legal representative of the estate of **Reuben Kipkorir Koech** (deceased), it is apparent that he commenced ELC Case No. E004 of 2023 (OS) in his personal capacity and he seeks to be personally declared to have acquired a three-acre portion of the suit land by way of adverse possession.

299. However, **Stephen Korir** did not testify in this matter and it is also not clear whether he is in possession. **DW4** testified in this suit and he introduced himself as **Stephen Korir's** brother. His evidence is that their deceased father **Reuben Koech** purchased a three-acre portion of the suit parcel of land and that in the year 1999 his father build for him a house on the said portion. It would seem that **DW4** is in

possession of the three-acre portion but has not filed a counter claim. His brother **Stephen Korir** [the Applicant in ELC Case No. E004 of 2023 (OS)] did not tender evidence and this Court cannot make a finding that he is in possession. It should be noted that possession is at the heart of a claim for adverse possession.

300. In the absence of a counterclaim filed by the 2nd Defendant herein (**Stanley Korir**) and in the absence of proof of possession by **Stephen Korir**, I cannot make a finding in their favour.

301. However, from the evidence adduced, it is apparent that the estate of **Reuben Kipkorir Koech** (deceased) has an interest in a three-acre portion of the suit parcel of land and I deem it fit and just to find that the estate of **Reuben Kipkorir Koech** (deceased) has acquired the said three-acre portion of the suit parcel of land by way of adverse possession.

B. Whether the prayers sought in the Plaint should be granted.

302. The prayers in the Plaint have been set out in the preceding paragraphs but I will nonetheless replicate them as hereunder;

a. *Permanent injunction meant to restrain the Defendants by their self (sic) there (sic) agents and/or assignees, their workers, sons from fencing off and/or alienating and further trespassing into land parcel Kericho/Kibwastuiyo/286.*

b. *Costs of this suit.*

c. *Any other receipt of this Honourable Court deem fit to grant. (sic)*

303. The Plaintiff seeks for an order of permanent injunction to issue against the Defendants herein.

304. The Plaintiff in his evidence admits that he moved from the suit parcel of land in the year 1997. The Plaintiff also admits that the Defendants are in possession of the suit parcel of land. These coupled with my finding on issue **(A)** i.e. that the Defendants have acquired their respective portions of the suit parcel of land by way of adverse possession, orders of permanent injunction cannot issue against them.

c. Who should bear costs of the suit?

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

DISPOSITION.

306. In the result, I find and order as follows;

a. ELC Case No. E008 of 2020 is hereby dismissed with costs.

b. ELC Case No. E003 of 2023 and ELC Case No. E004 of 2023 (OS) are hereby allowed in the following terms;

- i. Samwel Cheruiyot Korir is hereby declared to have acquired a four-acre portion of land comprised in parcel No. Kericho/Kibwastuiyo/286 by way of adverse possession.**
- ii. The Estate of Reuben Kipkorir Arap Koech (Deceased) is hereby declared to have acquired a three-acre portion of land comprised in parcel No. Kericho/Kibwastuiyo/286 by way of adverse possession.**
- iii. Johnstone Kipngeno Korir is hereby ordered to execute within 90 days of the date hereof, all documents necessary for purposes of subdivision, transfer and registration of the four-acre and three-acre portions of land comprised in Kericho/Kibwastuiyo/286 in the name of Samwel Cheruiyot Korir and Reuben Kipkorir Arap Koech (deceased)**

- iv. In default of iii above, the Deputy Registrar of this Court shall execute the said documents.***
- v. The Defendants shall have costs of the suit.***

307. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO
THIS 23RD DAY OF APRIL, 2026.**

**L. A. OMOLLO
JUDGE.**

In the presence of: -

Mr. Ojwang for 2nd & Respondents.

Miss Chebet for Plaintiff/Applicant.

Court Assistant; Mr. Joseph Makori.