



**Langat v Cheiyot (Environment and Land Case E031 of 2021)
[2026] KEELC 2353 (KLR) (23 April 2026) (Judgment)**

Neutral citation: [2026] KEELC 2353 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ENVIRONMENT AND LAND CASE E031 OF 2021**

LA OMOLLO, J

APRIL 23, 2026

BETWEEN

JOSEPH LANGAT PLAINTIFF

AND

MARTIN CHEIYOT DEFENDANT

JUDGMENT

Introduction

1. The Plaintiff commenced the present proceedings vide the Originating Summons dated 5th December, 2021.
2. The Originating Summons is expressed to be brought under Order 37 Rule 1 of the Civil Procedure Rules and Sections 1A & 3A of the *Civil Procedure Act*.
3. The Plaintiff seeks the following orders;
 - a. That the Respondent father's rights over the land measuring 17.0 ha out of land parcel Kericho/Kimulot/346 got extinguished by adverse possession upon expiry of 12 statutory years when the Applicant and his family had been in possession (sic).
 - b. A declaration that the Applicant be registered as the proprietor of 8.5 Ha of the said portion of land and the Respondent be registered for the remaining 8.5 ha out of the said land parcel Kericho/Kimulot/346.
 - c. A declaration be made that the Respondent be permanently barred from disturbing peaceful enjoyment of 8.5 Ha of the suit land parcel no. Kericho/Kimulot/346.



- d. A declaration that the Respondent has no right to file succession on behalf of the estate of the deceased Kipcheiyot Soi, without including the beneficiaries from the estate of Andrew Kimalel Tonui, who are represented by the Applicant of the estate of the deceased. (sic)
 - e. An order that the respondent be condemned to pay costs of this case.
 - f. Such orders or other relief as this Honourable Court may deem fit and just to grant.
4. The application is supported by the affidavit of Joseph Langat that is sworn on 5th December, 2021.

Factual Background.

5. On 14th November, 2022 the Court issued directions that the Originating Summons be heard by way of viva voce evidence.

The Plaintiff's Contention.

6. The Plaintiff contends that he has a Grant of Letters of Administration Ad Litem for the estate of Kimalel Andrew Tonui (Deceased) his father.
7. The Plaintiff also contends that the Defendant is the administrator of the estate of Kipcheiyoy Soi (Deceased) the registered owner of land parcel No. Kericho/Kimulot/346.
8. The Plaintiff further contends that his deceased father lived on the suit parcel of land before it was registered in the name of the Defendant's deceased father.
9. It is the Plaintiff's contention that he and his siblings have always lived on the suit parcel of land.
10. It is also the Plaintiff's contention that there are distinct boundaries and demarcations on the suit parcel of land that show each family's share of the land.
11. It is further the Plaintiff's contention that his deceased father occupied the suit parcel of land since the 1970's and goes on to state that his deceased father planted tea and built massive structures on the land.
12. He contends that his deceased father and the Defendant's deceased father lived peacefully and the only dispute between them was with regard to a boundary.
13. He also contends that no succession proceedings have been undertaken in respect of the estate of the deceased. (sic)
14. He further contends that no caution and/or prohibition has been registered on the title of the suit parcel of land.
15. It is his contention that the Defendant's family has been fighting to have the suit property shared equally with his family.
16. It is also his contention that the Defendant's family has never tried to evict them since the year 1973 when the title of the suit parcel of land was issued.
17. It is further his contention that he has seven siblings and goes on to state that his brother Joseph Kipngetch Langat was born in the year 1950 and his sister Alice Chepngeno Sang was born in the year 1952.
18. He contends that Joseph and Alice were the only siblings who were not born on the suit parcel of land.
19. He also contends that the following siblings were born on the suit parcel of land;



- a. Samuel Langat who was born in the year 1956.
 - b. Esther Tanui who was born in the year 1961.
 - c. Joel Yegon who was born in the year 1966.
 - d. Rebecca who was born in the year 1972.
 - e. Richard Langat who was born in the year 1974
20. He ends his deposition by setting out the prayers sought in the Originating Summons.

The Defendant's Contention.

21. The Defendant filed a Replying Affidavit sworn on 20th December, 2021.
22. He deposes that the Plaintiff has filed the present proceedings because he (Defendant) intends to commence succession proceedings with regard to the estate of his deceased father.
23. He also deposes that the Plaintiff's deceased father died on 17th May, 2011 and he was not buried on the suit parcel of land and adds that he was buried at his home in Chepseon.
24. He further deposes that upon the death of the Plaintiff's father, death certificate No. 244122 was issued which shows that he died on two separate dates. He goes on to state that the death certificate shows two contradictory dates as related to date of his death; 25th May, 2011 and 17th May, 2011.
25. It is his deposition that the Plaintiff's brother filed an affidavit sworn on 27th August, 2014 in Nakuru HC Succession Cause No. 635 of 2014 where he deponed that his place of abode was in Rongai, Nakuru County.
26. It is also his deposition that their area Chief wrote a letter dated 15th April, 2014 with regard to the estate of the Plaintiff's deceased father.
27. It is further his deposition that the suit parcel of land is registered in the name of his deceased father one Cherinyit Kipchiyot Soi and adds that he was registered as the owner of the suit parcel of land on 2nd May, 1973. It is his further deposition that the land is situated at Kimulot.
28. He deposes that Cherinyit Kipchiyot Soi (deceased) died on 13th December, 1983 at the age of fifty-six years and adds that he was issued with a Grant of Letters of Administration in respect of his deceased father's estate.
29. He further deposes that the Plaintiff's deceased father was allocated land in Chepseon and Rongai and goes on to state that the Plaintiff's deceased father was not allocated land in Kimulot Settlement Scheme.
30. It is his deposition that the beneficiaries of the estate of the Plaintiff's deceased father should not unjustly enrich themselves by depriving the beneficiaries of the estate of his (Defendant) father's estate.
31. It is his deposition that there was no land adjudication and consolidation before the start of the registration exercise as a settlement scheme. (sic)
32. It is also his deposition that his deceased father belonged to the Kipkelesek Clan while the Plaintiff's deceased father belonged to the Chebunyek Clan.
33. It is further his deposition that the government gazetted the suit parcel of land as a registration area to settle landless Africans in the year 1973.



34. He deposes that the Plaintiff's deceased father's entry onto the suit parcel of land was with the permission of the registered owner and it cannot therefore be said to be adverse.
35. He also deposes that the Plaintiff's deceased father did not forcefully take possession as he was allocated other parcels of land.
36. He further deposes that the Plaintiff and his siblings are in occupation of the suit parcel of land as licensees.
37. It is his deposition that there is no evidence that the suit parcel of land was ever allocated to the Plaintiff's deceased father.
38. It is also his deposition that it is the Land Registrar who deals with the issues of boundaries and adds that the Plaintiff has not availed any Certificate of beacons for the alleged boundaries.
39. He deposes that there is no legal provision for ad hoc committees to deal with land disputes outside of the [Land Registration Act](#). (sic)
40. He also deposes that the Plaintiff has not availed any evidence to show that the suit parcel of land was subdivided.
41. He further deposes that if the land was subdivided then it must have been done illegally as no grant has been issued with respect to the estate of his deceased father.
42. It is his deposition that the Plaintiff's case cannot be resolved in a claim for adverse possession.
43. It is also his deposition that adverse possession can only be claimed against a registered proprietor of land. He goes on to state the registered owner of the suit parcel of land is not a party to the suit.
44. It is further his deposition that the [law of Succession Act](#) does not recognize the rights of wives and children over their deceased father and/or husband's estate.
45. He deposes that the Plaintiff's rights are over his deceased father's parcels of land that are in Rongai and Chepseon settlement scheme.
46. He also deposes that he has been lenient with the Plaintiff and his siblings as they are yet to move to their land.
47. He further deposes that the minutes of a committee which minutes are attached to the affidavit in support of the Originating Summons are null and void as the said committee is not provided for in the [Land Registration Act](#).
48. It is his deposition that the Plaintiff has masqueraded as the owner of the suit parcel of land and has even sold it to third parties.
49. It is also his deposition that a license does not confer an exclusive interest in a parcel of land.
50. It is further his deposition that customary law rights are subject to the rights under the Registered [Land Act](#) and they do not include any rights alleged by the Plaintiff.
51. He deposes that the Plaintiff's Kipsigis customary law rights in the land are not noted in the land register and goes on to state that customary land rights are not overriding interests under the Registered [Land Act](#).



52. He also deposes that the interests of the Plaintiff's deceased father over the suit parcel of land were to be undertaken in succession proceedings. He goes on to state that in the succession cause, the Court excluded the Plaintiff's claim for reason that he was a buyer.
53. He further deposes that the Plaintiff's claim of adverse possession is an abuse of the Court process and goes on to state that the Plaintiff has never been a creditor of the estate of the deceased.
54. It is his deposition that the Court should not to grant the prayer sought and should instead dismiss the Plaintiff's suit.
55. It is also his deposition that the Plaintiff's possession of the suit parcel of land has not been peaceful and adds that the Plaintiff has been evicted from the suit parcel of land which he admits to in the affidavit in support of the application.
56. It is further his deposition that the Plaintiff has not attached a copy of the extract of title which shows that the suit parcel of land is registered in the name of his (Defendant) father.
57. He deposes that the Plaintiff's claim is with regard to the estate of his deceased father and that the Plaintiff should not bar them from plucking the tea planted on the suit parcel of land.

The Plaintiff's Evidence.

58. Joseph Arap Langat testified as PW1. It was his evidence that he was in Court because of land parcel No. Kericho/Kimulot/346 which they occupy but they do not have a title to.
59. It was also his evidence that his parents took possession of the said parcel of land in the 1950's which was way before he was born.
60. It was further his evidence that he was born on the suit parcel of land in the year 1970.
61. He testified that the suit parcel of land measures 17 Ha which is approximately 42 acres and added that their family occupies about 21 acres, which is half the suit parcel of land.
62. He further testified that the suit parcel of land is registered in the name of Kipcheiyot Soi (deceased) who was their neighbour.
63. He produced a copy of a Certificate of Official Search of the suit parcel of land dated 24th November, 2021 as Exhibit P1.
64. It was his evidence that he filed the present suit after he got a grant of the estate of his deceased father and after the Defendant tried to chase them away from the land. He produced a copy of a Grant of Letters of Administration Ad Litem dated 30th November, 2021 as Exhibit P2.
65. It was also his evidence that his deceased father acquired the suit parcel of land together with the Defendant's deceased father in the year 1950.
66. It was further his evidence that the suit parcel of land was instead registered in Kipcheiyot Arap Soi's (deceased) name as his deceased father had no money and explained that Kipcheiyot Arap Soi (deceased) was the Defendant's father.
67. He also testified that the title to the suit parcel of land was issued in the year 1970.
68. He further testified that the white settlers gave each person who purchased land twenty-one acres.
69. It was his evidence that since the suit parcel of land measures 42 acres then this means that the land was meant for two people.



70. It was also his evidence that his deceased father was aware that the title was not in his name and instead of filing a suit, he planned to have the land subdivided.
71. It was further his evidence that they have extensively developed the portion of land they occupy as they have planted tea on one and a half acres of land and on the rest of the land they have planted trees and keep cows.
72. He testified that there was a boundary made of stones between the portion of land they occupy and the one occupied by the Defendant and his family but the said boundary was removed by the family that is in occupation of the land.
73. He further testified that trees were planted along the boundary which trees have since been cut down. It was his evidence that even though the trees were cut down, no one trespassed onto their portion of land.
74. It was also his evidence that he had a photograph which showed the trees before they were cut down. The photograph was marked for identification.
75. It was further his evidence that initially they thought that the title deed of the suit parcel of land had the names of their deceased father and the Defendant's deceased father.
76. He testified that it was in the year 2021 when they discovered that their deceased father's name was not on the title and that this prompted them to hold a meeting on 26th August, 2021 in order to resolve the said issue.
77. He further testified that the said meeting was held with the Defendant's family members and added that it was the first ever meeting held over the said issue.
78. It was also his evidence that they did not reach any agreement and another meeting was held on 2nd September, 2021. It was further his evidence that in the subsequent meeting, it was agreed that the boundary would remain where it was while the Defendant's family sought that the land be surveyed.
79. He testified that the Defendant's family thought that after the survey they would take over their land.
80. He also testified that they agreed that the cost of the survey would be Kshs. 20,000/= which sum of money was paid to a surveyor who surveyed the land.
81. He further testified that they have never fought over the boundary as it has always been there.
82. It was his evidence that his father had five sons and three daughters and added that his siblings and him have homesteads on the suit parcel of land.
83. It was further his evidence that he had in his possession a letter dated 22nd November, 2021 that was written by the Chief in which the Chief set out the names of the sons of his deceased father.
84. He also testified that their first born was born in the year 1950 on the suit parcel of land.
85. He further testified that their mother was known as Sarah Cheruto Tunoi (deceased) and she died and was buried on the suit parcel of land in the year 2004.
86. It was also his evidence that his father died in the year 2011 and he was buried in Chepseon.
87. It was further his evidence that his deceased father had three wives and explained that his deceased mother was the first wife, the second wife lives in Rongai while the third wife lives in Chepseon.



88. He also testified that he grows tea leaves on the suit parcel of land and added that his tea farm No. 73 and explained that each member has a number that reflects at the tea factory and that the said number is used when supplying tea leaves.
89. It was his evidence that apart from the said meetings, they did not have any other meeting to have the dispute resolved adding that they have been living peacefully on the land.
90. It was further his evidence that he was seeking that the Court assists them to get the title to the twenty-one acre portion of the suit parcel of land that they have been in occupation of and that the other twenty-one acres can be given to the Defendant.
91. He also testified that he had a green card of the suit parcel of land which showed that the land was registered in the name of Kipcheiyot Soi (deceased) in the year 1973.
92. He ended his evidence by praying for costs of the suit.
93. Upon cross examination he reiterated that his name is Joseph Langat.
94. He confirmed that he was one of the sons of Andrew Kimalel Tonui (deceased).
95. He admitted that he was not a son to Kipcheiyot Soy (deceased).
96. He confirmed that his deceased father was a neighbour to Kipcheiyot Soy (deceased) and that the Defendant was one of Kipcheiyot Soy's sons.
97. He reiterated that his father was deceased and that he had three wives.
98. He confirmed that he did not inform the Court of his deceased father's sons.
99. He also stated that the other parcels of land belonged to his deceased father and confirmed that he had no land registered in his name.
100. He further stated that he was seeking that a portion of the suit parcel of land be registered in his name.
101. He admitted that in the year 2014, a suit was filed in Nakuru with regard to the estate of his deceased father the suit being Nakuru HC Case No. 635 of 2014.
102. He admitted that he was aware of the suit that was filed in Nakuru and confirmed that he did not know the issues that were raised therein.
103. When he was referred to the proceedings in Nakuru HC Case No. 635 of 2014, PW1 confirmed that one of the parties was Joseph Langat.
104. He also confirmed that Joseph Langat was one of his brothers from the second house and explained that he belonged to the first house.
105. When he was referred to the Grant of Letters of Administration Ad Litem that he produced as Exhibit P2, he confirmed that they were issued with respect to the estate of Kimalel Arap Tonui.
106. He confirmed that he was a party to the suit that was filed in Nakuru and later clarified that he did not participate in the said proceedings.
107. He also confirmed that he did not have letters of administration Ad Litem with regard to the estate of Kipcheiyot Soi (deceased).
108. He reiterated that they are eight siblings who include five boys and three girls and gave the names of his sisters as Esther, Alice and Rebecca.



109. He confirmed that he has older siblings and that they agreed that he files the present suit but had no evidence of this agreement.
110. He stated that his second mother's name is Elizabeth Tonui and Stephen, Robert and Charles are her sons.
111. He also stated that they wanted the suit to be concluded before meeting with them.
112. He further stated that there are three sons in the third house and gave their names as John, Philip and Richard.
113. He confirmed that they are all his step brothers and admitted that they are not involved in the present suit.
114. PW1 stated that he was born in the year 1970 and he showed Counsel his Identity Card which was issued in the year 2010.
115. He reiterated that his deceased father moved to the suit parcel of land in the year 1950 and confirmed that in the year 1950, the suit parcel of land belonged to the government.
116. He admitted that the land was registered in the year 1973 in the name of Kipcheiyot Soi (deceased).
117. He also admitted that his deceased father was not allocated land in Kimulot.
118. He confirmed that his deceased father purchased land in Chepseon and Rongai.
119. He also confirmed that his deceased father acquired a portion of the suit land which is located in Chebangang and explained that his deceased father and Kipcheiyot Soi (deceased), the Defendant's father were given the suit parcel of land.
120. He admitted that his deceased father moved from the suit parcel of land to Chepseon after he married the other wives but his children remained on the land.
121. He stated that Kipcheiyot Soi's (deceased) sons asked them to vacate the suit parcel of land and they reported the said issue to the police.
122. He also stated that his deceased father did not move them from the suit parcel of land and when he died, they attended his burial at Chepseon.
123. He confirmed that his deceased father's third wife lives in Chepseon and reiterated that his deceased father also had a parcel of land in Rongai.
124. He stated that his deceased father and the Defendant's deceased father fixed the boundaries between the two portions of the suit parcel of land.
125. He also stated that an official from the Agricultural Department also subdivided the suit parcel of land and trees were planted along the boundary.
126. He admitted that he did not know when the land was subdivided and confirmed that the suit parcel of land is located in a settlement scheme.
127. He reiterated that his deceased father was given land together with the Defendant's deceased father and they therefore acquired it together.
128. He clarified that the Defendant's deceased father allowed his father to take possession of a portion of the suit parcel of land.



129. He reiterated that his deceased father and the Defendant's deceased father lived together when the land was registered in the name of the Defendant's deceased father.
130. He also reiterated that they have lived peacefully on the suit parcel of land and stated that he did not file the present suit because there were any disagreements.
131. He confirmed that disputes begun after his father and the Defendant's father died but he could not remember when the Defendant's father died.
132. He admitted that his siblings are in possession of a portion of the suit parcel of land and invited the Court to compare his witness statement and the evidence that he was giving in Court.
133. He confirmed that his elder brother one Joseph Langat who was born in the year 1950 is deceased.
134. He also confirmed that meetings were held to discuss issues over the suit parcel of land.
135. He reiterated that the land was registered in the Defendant's deceased father's name and his (PW1) father took possession of the land in the year 1950.
136. He stated that if his deceased father and the Defendant's deceased father were alive, they would have subdivided the land between them.
137. He confirmed that as at the year 1973, his deceased father knew that the title of the suit parcel of land was registered in the name of the Defendant's deceased father.
138. He also confirmed that his deceased father was present when the officers who were issuing title deeds went to the suit parcel of land.
139. He admitted that the trees were uprooted in the year 2012 and they had been planted by Richard, Joseph, Samuel and Joel and confirmed that the said persons were not witnesses in this suit.
140. He reiterated that his father died in the year 2011 and that blue gum trees were planted after his death and added that his deceased father planted Cyprus trees and some of them were sold.
141. He also stated that he was claiming adverse possession on behalf of the estate of his deceased father because they continued living on the land.
142. He confirmed that the entire parcel of land measures 17 Ha. He also confirmed that his deceased father's property was adjacent to their land and reiterated that they are all living on the suit parcel of land which initially belonged to white settlers.
143. He admitted that his deceased father and mother planted tea on a one-and-a-half-acre portion of the suit parcel of land in the year 1957.
144. He confirmed that the boundary still exists on the ground and stated that his deceased father did not have money and that is why the land was not registered in his name.
145. He reiterated that the land was registered in the name of the Defendant's deceased father in the year 1973 and to date the land is still registered in his name.
146. He admitted that there was a dispute because the land was not registered in his deceased father's name and admitted that they took possession of the land because it belonged to their deceased father.
147. He reiterated that they are claiming a portion of the suit parcel of land because it belongs to the estate of their deceased father.



148. He admitted that in the Nakuru case, the suit parcel of land was not included as part of his deceased father's estate.
149. He stated that his deceased father stayed on the suit parcel of land continuously and reiterated that he only moved away after he married the other wives.
150. He reiterated that he had no authorization to sue on behalf of the estate of the Defendant's deceased father.
151. Upon re-examination, he stated that he was a representative of the estate of his deceased father one Andrew Tonui.
152. He reiterated that he was not a representative of the estate of the Defendant's deceased father.
153. He also reiterated that he has lived on the suit parcel of land since he was born in the year 1970.
154. He further reiterated that his siblings have never left the suit parcel of land.
155. He stated that his deceased father had other properties but the suit parcel of land belonged to the first house.
156. He also stated that Nakuru HC Case No. 635 of 2014 were citation proceedings which did not involve the suit parcel of land.
157. He reiterated that his claim was for adverse possession.
158. Richard Towett testified as PW2. He stated that he filed a witness statement dated 15th June, 2022 and prayed that the Court adopts the said statement as part of his evidence-in-chief which prayer the Court acceded to.
159. It was his evidence that he lives in Chebangang village in Kimulot Division, Konoin District.
160. He stated that he is seventy-five years old and that he was in Court to give evidence with regard to the suit parcel of land.
161. In his witness statement, he states that he settled in Kipsomor Village in the year 1954.
162. He also states that when he moved to the said village he found the families of both the Plaintiff and the Defendant in possession of the suit parcel of land.
163. He further states that in 1956 he went to plant maize on the land and he found the Defendant's deceased father.
164. He states that in the year 1970, the process of issuance of titles begun and in the year 1971 the titles were issued.
165. He also states that sometime later, one Arap Tamase joined them.
166. He further states that he was an Agricultural Officer and that both the Plaintiff's deceased father and the Defendant's deceased father had tea accounts.
167. He states that the Defendant's deceased father's tea account was Kon/853 while the Plaintiff's deceased father's tea account was No. 40.
168. He also states that both families lived peacefully on the suit parcel of land until recently.
169. Upon cross examination, he confirmed that he did not have his National Identity Card in Court.



170. He stated that he was born on 27th February, 1948.
171. He confirmed that the settlement scheme at Kimulot was initially known as Chebangang Settlement Scheme and stated that he did not know if the said settlement scheme was managed by the Settlement Fund Trustees.
172. He admitted that he was not aware if the suit land was occupied before the year 1948.
173. He stated that he originally came from Saptet Village while Plaintiff came from Kipsamoik Village.
174. He also stated that his village is across the river and the Plaintiff's neighbours included Kimibei Kosgei and Kipsielei Arap Langat who were all deceased and added that the said neighbours were related to the Plaintiff.
175. He also confirmed that he knew the Plaintiff's father and further confirmed that he had three wives.
176. He stated that the Plaintiff's deceased father was given the suit parcel of land by a mzungu (White man) around the year 1948.
177. He admitted that he did not know the exact year that the Plaintiff's deceased father was given the suit parcel of land and also admitted that as at the year 1948, the land had no title documents.
178. He confirmed that he could not remember if the Plaintiff's deceased father was given any documents by the mzungu (White man).
179. He also confirmed that the Plaintiff's deceased father was buried in Chepseon at one of his wives parcels of land and further confirmed that the Plaintiff's deceased father had many properties and he lived in Chepseon with his youngest wife.
180. He admitted that he did not know how long the Plaintiff's deceased father lived in Salgaa but he could confirm that he lived in Chepseon for fifty years and in Chebangang for seventy years.
181. PW2 confirmed that he knew the Defendant's deceased father and also confirmed he was one of the sons of Arap Temase.
182. He stated that Arap Temase was given the suit parcel of land by a Mzungu (white man) but he did not plant anything on it.
183. He also stated that the Plaintiff's deceased father planted tea and cyprus trees on the suit parcel of land in the year 1957.
184. He further stated that after the Plaintiff's deceased father purchased land in Chepseon, he continued living on the suit parcel of land. He clarified that the Plaintiff's deceased father lived on the suit parcel of land and in Chepseon.
185. He stated that the Plaintiff's deceased father also bought land in Salgaa and added the land in the settlement scheme was given for free.
186. He stated that the land that they were given by the Mzungu (White man) was demarcated.
187. He further stated that a land committee was established and admitted that he did not know its mandate.
188. He stated that he was not aware if the Plaintiff's deceased father raised any issue with the said committee.
189. He admitted that he was not aware if the suit parcel of land was registered in the name of the Plaintiff's deceased father but confirmed that the suit parcel of land belongs to two people.



190. He stated that the Mzungu (white man) who gave out the suit parcel of land was known as Major Graham and added that he gave out the land in the 1940's.
191. He reiterated that the Plaintiff's deceased father took occupation of the suit parcel of land after the Mzungu (white man) gave it to him.
192. He stated that the settlement scheme belonged to the colonial government and that Major Graham had the authority to give out land.
193. He also stated that the titles to the parcels of land in the settlement scheme were processed in the year 1970 and the suit parcel of land was registered in the name of the Plaintiff's deceased father.
194. He further stated that the Plaintiff's deceased father might have been given the title deed in the year 1971.
195. He admitted he was not the Plaintiff's deceased father's neighbour but he used to plant maize on the suit parcel of land with his permission.
196. He reiterated that he found the Defendant's deceased father living in that area.
197. He confirmed that the said parcel of land is subdivided into two. One portion is occupied by the Plaintiff's family while the other portion is occupied by the Defendant's family.
198. He admitted that he did not know who gave the Defendant's deceased father the portion of land that he was in occupation of.
199. He stated that in the year 1970 he was an Agricultural Officer. He admitted that he had no evidence to prove that that was his position but asked the Court to trust him.
200. He also admitted that he had no letter to show that he was an Agricultural Officer and denied that he was a Land and/or Settlement Officer.
201. He confirmed that the suit parcel of land is in Konoin and stated that he was not aware if Konoin was existent at that time.
202. He also confirmed that in the year 1970, the Plaintiff's deceased father planted one acre of tea which comprised of 1000 seedlings.
203. He admitted that he did not have those records with him in Court.
204. He confirmed that there were no trespassers on the suit parcel of land as the Mzungu (White man) gave the suit land to the Plaintiff's deceased father.
205. Upon re-examination, he stated that he planted maize on a portion of the suit parcel of land in the year 1956 and in the year 1957 he met the Plaintiff's deceased father.
206. He also stated that he knows the siblings of the Plaintiff and confirmed that they live on the suit parcel of land.
207. He reiterated that the Plaintiff's deceased father had three wives who lived in different parcels of land.
208. He stated that the suit parcel of land was a tea farm and it was acquired around the year 1958.
209. He stated that the first African planted tea in the year 1957.
210. He reiterated that the Plaintiff's deceased father was the first to plant tea on the suit parcel of land.



211. He stated that the Plaintiff's deceased father and the Defendant's grandfather one Temase were of the same age.
212. Joseph Rotich testified as PW3. He stated that he filed a witness statement dated 15th June, 2022 and prayed that the Court adopts the said statement as part of his evidence in Chief, which prayer the Court acceded to.
213. It was his evidence that the Plaintiff and the Defendant are his neighbours who have lived peacefully since the colonial government gave them the suit parcel of land.
214. It was also his evidence that he has known them since he was born and each of them have their own respective portion of land. It was further his evidence that there was a boundary between their respective portions and each of them has a tea plantation.
215. He testified that he knew both the Plaintiff and the Defendant's parents had added that they were all deceased.
216. He reiterated that the Plaintiff and the Defendant's families are neighbours and they helped each other clear their respective portions after the land was allocated to them.
217. He also reiterated that they were living peacefully on the suit parcel of land until the year 2021 and 2022 when disputes arose.
218. In his witness statement, he states that he has lived in Kipsomor Village since the year 1959.
219. He also states that he knew the parents of the Plaintiff and the Defendant and that he underwent the Kipsigis customary initiation with one David Mitei the Defendant's brother.
220. He further states that he is a close associate of the Plaintiff's brothers and their names are;
 - a. Joseph Langat (Deceased)
 - b. Samwel Langat
 - c. Joel Kipkurui Langat
 - d. Kinyatta (Joseph Langat)
 - e. Richard Langat
221. He states that each parcel of land in the settlement scheme has the same acreage and therefore both the Plaintiff and the Defendant's deceased fathers' portions of land have the same acreage.
222. He also states that the two families lived peacefully until the year 2021 when he heard that there was a boundary dispute.
223. He further states that issues also arose as to who owned the suit parcel of land.
224. He states that both the Plaintiff's deceased father and the Defendant's deceased father were friends with his father.
225. He also states that the Plaintiff's deceased father was buried in Chepseon where his second wife lived because his first wife who lived on the suit parcel of land had died earlier.
226. He further states that both families have identical portions with a definite boundary where they have built homesteads and planted trees and tea.
227. He states that the suit parcel of land should be apportioned equally between the two families.



228. Upon cross examination, he reiterated that his name is Joseph Kibet Arap Rotich and his Identity Card number is 0868912.
229. He confirmed that his Identity Card states that he hails from Kimulot Division, Chebangang Location and Chebangang sub-location.
230. He admitted that the suit parcel of land is part of the Chebangang Settlement Scheme.
231. He confirmed that there was a Land Adjudication Committee and any disputes were to be taken to the said Committee within sixty days.
232. He admitted that the farmers that were settled on the said settlement scheme paid for their respective parcels of land.
233. He confirmed that one of the farmers was Kipchiyot Soi, the Defendant's deceased father.
234. He also confirmed that the persons who applied for the land were evaluated before the land was allocated to them.
235. He admitted that the land the Defendant's deceased father was given belonged to the Settlement Fund Trustees and confirmed that he would not be surprised if the land was registered in his name.
236. He confirmed that he lives in the said Settlement Scheme and that he has a title deed.
237. When he was referred to the green card appearing at No. 6 of the Defendant's List of Documents dated 5th February, 2023, he confirmed that it was for land parcel No. Kericho/Kimulot/346.
238. He also confirmed that the said parcel of land is registered in the name of Kipcheiyot Soi (deceased).
239. He further confirmed that he did not have a copy of the title deed to the suit parcel of land that showed that Andrew Kimalel Tonui (deceased), the Plaintiff's father was the registered owner.
240. He stated that it was not true that Andrew Kimalel Tonui (deceased) entered Kipcheiyot Soi (deceased) land.
241. He confirmed that Andrew Kimalel Tonui (deceased) applied to the Settlement Funds Trustees for land.
242. He admitted that he was not aware if the Settlement Funds Trustees allocated Andrew Kimalel Tonui (deceased) land at Rongai and/or Chepseon.
243. He also admitted that his deceased father paid for the land that the Settlement Funds Trustees gave to him.
244. He stated that he was not aware that after the Settlement Funds Trustees allocated Andrew Kimalel Tonui (deceased) land, he moved to the Rongai and Chepseon Settlement Scheme.
245. He admitted that he was not aware if Andrew Kimalel Tonui (deceased) was buried in Chepseon but confirmed that he was living in Chepseon.
246. He also confirmed that he did not know when Andrew Kimalel Tonui (deceased) moved out of the suit parcel of land.
247. He admitted that he did not know how Andrew Kimalel Tonui (deceased) and Kipcheiyot Soi (deceased) ended up on the suit parcel of land.



248. He also admitted that he did not know who authorized Andrew Kimalel Tonui (deceased) to enter Kipcheiyot Soi (deceased) land.
249. He stated that the Plaintiff would be lying if he told the Court that his deceased father had the consent of Kipcheiyot Soi (deceased) when he entered the suit parcel of land.
250. He admitted that he did not know when Kipcheiyot Soi (deceased) died and neither could he remember when Andrew Kimalel Tonui (deceased) died.
251. He also admitted that he could not remember who between Andrew Kimalel Tonui (deceased) and Kipcheiyot Soi (deceased) died first.
252. He further admitted that he did not know if the Plaintiff instituted citation proceedings in respect of the estate of Kipcheiyot Soi (deceased).
253. He stated that the colonial government gave Andrew Kimalel Tonui (deceased) a portion of the suit parcel of land in the year 1956 or thereabout.
254. He also stated that the land Andrew Kimalel Tonui (deceased) was given is the land where his family is living.
255. He admitted that he did not know the registration number of the said parcel of land.
256. He also admitted that he was not aware if the suit parcel of land is jointly owned.
257. He confirmed that there have been disputes over the suit parcel of land and the police have been called on some occasions to intervene.
258. He also confirmed that he had no evidence of a friendship between Kipcheiyot Soi (deceased) and his deceased father.
259. He admitted that he did not know the acreage of the portion of the suit parcel of land that the Plaintiff is in occupation of.
260. He also admitted that he had no evidence of the developments made on the suit parcel of land.
261. He confirmed that in his witness statement, he stated that both families have identical exclusive portions of land with a definite boundary.
262. He admitted that he had no photographs as evidence in support of the said contention.
263. He confirmed that what was stated in his witness statement was his opinion and it was based on his experience as a resident of their location.
264. He also confirmed that he did not state in his witness statement the church, school and dispensary they attend and neither did he state which river they draw water from.
265. He denied that he was in Court to tell lies.
266. Upon re-examination, he stated that there were no disputes between the two families and denied that Andrew Kimalel Tonui (deceased) took possession of a portion of the suit parcel of land with the permission of Kipcheiyot Soi (deceased).
267. He reiterated that each of the parties to the present suit is in occupation of their own portion of the suit parcel of land.



268. He also reiterated that he was not aware if the title to the suit parcel of land was issued to Kipcheiyot Soi (deceased).
269. He stated that he was aware that there were beacons placed on the suit parcel of land that were marked by Cyprus Trees which trees were later destroyed.
270. He reiterated that the suit parcel of land was allocated to Andrew Kimalel Tonui (deceased) and Kipcheiyot Soi (deceased) in the year 1956.
271. He also reiterated that the disputes arose in the year 2021 which was long after the parents of the Defendant and the Plaintiff died.
272. He stated that both Andrew Kimalel Tonui (deceased) and Kipcheiyot Soi (deceased) paid for the land at the Settlement Fund Trustees.
273. He also stated that Andrew Kimalel Tonui (deceased) was buried in Chepseon where his second wife lived.
274. He further stated that after the death of his first wife, Andrew Kimalel Tonui (deceased) moved to Chepseon while the rest of his family remained on the suit parcel of land.
275. Tumese Chepchirchir testified as PW4. She stated that she filed a witness statement dated 15th June, 2022 and prayed that the Court adopts the said statement as part of her evidence- in-chief, which prayer the Court acceded to.
276. It was her evidence that she is a farmer and that she lives in Kipsomor Village.
277. It was also her evidence that she purchased a quarter acre portion of the suit parcel of land from Andrew Kimalel Tonui (deceased) in the year 2003 which land he purchased from the Settlement Fund Trustees.
278. It was further her evidence that Andrew Kimalel Tonui (deceased) was sharing the land that he had purchased.
279. She testified that her child was in occupation of the portion of land that Andrew Kimalel Tonui (deceased) sold to her.
280. She also testified that between the year 2003 to the year 2021, there was no dispute over the suit parcel of land.
281. She further testified that in December, 2023, the family members of Kipcheiyot Soi (deceased) plucked the tea that she had planted.
282. It was her evidence that at the time the said tea was being plucked, they were at a funeral and adds that that she reported the said issue to the police.
283. In her witness statement, she states that she purchased the said portion of land for Kshs. 50,000/=.
284. She also states that before purchasing the said portion of land, she made inquiries and found out that the suit parcel of land was owned by two persons.
285. She further states that she paid the purchase price and a balance of kshs. 10,000/= was to be paid upon the title being issued.
286. She states that when she took possession of the said portion of land, one Paul who is the brother of the Defendant told her that it was good that she took possession so that the boundary could be mapped.



287. She also states that one Simon who is a relative of the Defendant's deceased father among other people witnessed the said agreement.
288. Upon cross examination, she admitted that she purchased a quarter an acre portion of the suit parcel of land from Andrew Kimalel Tonui (deceased).
289. She confirmed that they entered into a land sale agreement which she admitted that she did not produce in Court.
290. She stated that at the time of purchase, she was informed that Andrew Kimalel Tonui (deceased) and Kipcheyot Soi (deceased) were co-owners of the land.
291. She reiterated that her children live on the land and confirmed that she did not live on it.
292. She admitted that she did not know the acreage of the entire parcel of land.
293. She also admitted that she was not given a copy of the title deed for the portion of land that she was purchasing.
294. She further admitted that Andrew Kimalel Tonui (deceased) did not give her any copy of a title in his name.
295. She confirmed that the suit parcel of land is agricultural and admitted that she has never been to the Land Control Board.
296. She stated that she paid the purchase price in instalments.
297. She admitted that her witness statement was written by the Plaintiff's advocates and that she only signed it.
298. She confirmed that in her statement, she stated that she was to pay the balance of Kshs. 10,000/= upon issuance of the title deed.
299. She also confirmed that since Andrew Kimalel Tonui (deceased) was dead and that the balance was to be paid to his children.
300. She further confirmed that in her witness statement she stated that she paid a surveyor who went to the suit parcel of land and mapped it.
301. She admitted that she stated in her witness statement that there was a boundary marked on the suit parcel of land.
302. She also admitted that she did not know the registration number of the suit parcel of land.
303. She further admitted that she did not have any evidence to show that she has built a house on the land and planted tea bushes.
304. She reiterated that when the tea was plucked she was at a funeral and she did not therefore see the person who plucked the tea.
305. She confirmed that she did not have the OB number to show that she reported the said issue to the police.
306. She also confirmed that she mentioned one Simon in her witness statement.



307. She stated that the said Simon was Kipcheiyot Soi (deceased) uncle and he was present when she signed the agreement for sale and further confirmed that the land sale agreement has not been produced in evidence.
308. She further confirmed that she did not know how Andrew Kimalel Tonui (deceased) entered the suit parcel of land and also confirmed that she did not know Andrew Kimalel Tonui's (deceased) original home and neither did she know whether he purchased the suit parcel of land.
309. She stated that she was born in the year 1970 in the area where the suit parcel of land is located and knew that Andrew Kimalel Tonui (deceased) was the registered owner of the suit parcel of land.
310. She confirmed that Kipcheiyot Soi (deceased) bought the land in the year 1973.
311. She also confirmed that her original home is in Kaplong where her parents were born and further confirmed that she was not born on Kipcheiyot Soi (deceased) land.
312. She admitted that Kipcheiyot Soi (deceased) was alive when she purchased a portion of the suit parcel of land from Andrew Kimalel Tonui (deceased).
313. She stated that she only heard in Court, that day, that the land belonged to Kipcheiyot Soi (deceased).
314. Upon re-examination PW4 stated that she has never seen a title deed of the suit parcel of land registered in the name of Andrew Kimalel Tonui (deceased).
315. She also stated that when she purchased a portion of the suit parcel of land from Andrew Kimalel Tonui (deceased), he informed her the land belonged to him and Kipcheiyot Soi (deceased).
316. David Mibei testified as PW5. He stated that he filed a witness statement dated 15th June, 2022 and prayed that the Court adopts the said statement as part of his evidence in chief which prayer the Court acceded to.
317. It was his evidence that he has been a village elder for twenty-six years and that he knows the Plaintiff and the Defendant who are his neighbours.
318. It was also his evidence that they were all born in the same village and they have lived together.
319. It was further his evidence that in August 2021, they met with the two families and were informed that there was a suit filed in Court.
320. He testified that they were told that the suit parcel of land has one title even though it was occupied by two families.
321. In his witness statement, he states that the Defendant's mother came from the same clan as the Plaintiff's deceased father and therefore the two families are related.
322. He also states that the Plaintiff's deceased father purchased other parcels of land in Rongai and Chepseon.
323. He further states that both families lived peacefully until the year 2000 when a boundary dispute arose. This was after the death of both the Plaintiff and the Defendant's fathers.
324. He also states that sixty-two elders sat to hear and determine the dispute.
325. He further states that the sons of Andrew (deceased) who were present in the meeting that was convened to hear the dispute are Joshua Langat, Joel Langat and Joseph Langat while the sons of Kipcheiyot (Deceased) who were present are Paul Mitei, Philip Mitei, Stephen Mitei and Zachari Mitei.



326. He states that at the meeting, they were informed that the boundary had been marked and was later fenced and added that after the said meeting, they went to the Defendant's home to have tea and they found his mother who was sick.
327. He further states that both families lived like brothers and the Plaintiff's brothers have built houses and planted trees and tea on the suit parcel of land.
328. He states that it was in the year 2021 when they discovered that the suit parcel of land was registered in the name of the Defendant's deceased father.
329. He also states that the Defendant's brothers called a meeting through the Chief one John Maritim which meeting he attended.
330. He also states that the said meeting was held on 28th August, 2021 and the Defendant's family members insisted that they be refunded the sum of kshs. 20,000/= which were costs they incurred when they called a surveyor to the suit parcel of land in the 1990's.
331. He further states that at the end of the meeting, the parties failed to reach an agreement.
332. Upon cross examination he admitted that he had nothing in Court to show that he was a village elder. He confirmed that he had no letter of appointment and had no evidence of his years of service.
333. He stated that their area Chief was in a position to confirm that he was a village elder.
334. He also stated that Kipcheiyot Soi (deceased) and Andrew Kimalel Tonui (deceased) were relatives as Soi's wife and Kimalel Tonui came from the same clan.
335. He further stated that Andrew Kimalel Tonui (deceased) was Kipcheiyot Soi (deceased) brother-in-law and that they were from different clans.
336. He confirmed that Andrew Kimalel Tonui (deceased) came from the Chebonye clan while Kipcheiyot Soi (deceased) came from the Kelese clan.
337. He also confirmed that the wife of Andrew Kimalel Tonui (deceased) came from the Kelese clan where Kipcheiyot Soi (deceased) came from.
338. He admitted that they both got a portion of the suit parcel of land and confirmed that he did not know who got the land first.
339. He also admitted that the land belonged to the Kericho Kimulot Settlement Scheme and stated that the Chief and the District Commissioner were distributing the land for free.
340. He confirmed that the land was free because he also has land in the same locality.
341. He admitted that the land where he lives has a title deed.
342. He also admitted that there were some payments made to the government as the land initially belonged to it.
343. He reiterated that they have a title to their parcel of land and stated that they were the only ones in occupation of it.
344. He confirmed that his evidence was that the suit parcel of land belongs to the two families even though he had no evidence in support of the said contention.
345. He confirmed that he was not aware of any suit that was filed in Nakuru with respect to Andrew Kimalel Tonui (deceased) estate.



346. He admitted that a meeting was held that comprised of sixty-two elders over a boundary dispute on the suit parcel of land. He also admitted that he did not have the minutes of the said meeting.
347. He confirmed that in his witness statement, he stated that Andrew Kimalel Tonui (deceased) children have planted tea bushes on the suit parcel of land.
348. He stated that Andrew Kimalel Tonui (deceased) planted trees and tea bushes on the suit parcel of land but admitted that he did not see him do it.
349. He also admitted that he did not see Andrew Kimalel Tonui (deceased) build any house on the suit parcel of land.
350. He further admitted that Andrew Kimalel Tonui's (deceased) children went to Chebangang Primary School and worship at AIC Church Kimulot.
351. He confirmed that their parcel of land was No. 612 while Andrew Kimalel Tonui (deceased) parcel of land was no. 583.
352. He also confirmed that the two parcels of land share a common boundary but admitted that he did not have a map as evidence of the said assertion.
353. He further confirmed that he did not know the acreage that was occupied by two families but the trees planted occupied three acres.
354. He admitted that he did not know the acreage of the tea plantation.
355. He also admitted that a surveyor went to the suit parcel of land to do a survey but Kipcheiyot Soi (deceased) family declined and the surveyor did not therefore undertake the survey.
356. He stated that after this incident, they called a meeting which meeting he had no minutes of.
357. He confirmed that he did not have evidence of payment of Kshs. 20,000/= that was made by the family of Kipcheiyot Soi (deceased).
358. He read out the second land sentence of his witness statement as follows;
- “That it is in order that the land measuring 21 acres and boundary be mentioned (sic).”
359. He confirmed that this was the resolution of the meeting and admitted that in his witness statement he did not disclose the person who made the said statement.
360. He reiterated that his evidence was that Kipcheiyot Soi (deceased) and Andrew Kimalel Tonui (deceased) own the suit parcel of land jointly.
361. He also reiterated that he did not know how they acquired portions of the suit parcel of land.
362. Upon re-examination he stated that as per the green card, the suit parcel of land is registered in the name of Kipcheiyot Soi (deceased).
363. The Plaintiff's case was then closed.

The Defendant's Evidence.

364. Martin Langat Cheruiyot testified as DW1. It was his evidence that he is a labourer and he lives in Chebangang.



365. It was also his evidence that he was the son of Kipcheiyot Soi (deceased) who was also known as Cherinyet.
366. It was further his evidence that they live on land parcel No. Kericho/Kimulot/346 the suit parcel of land.
367. He testified that their parents had thirteen children and some of them are deceased.
368. He also testified that he has a Certificate of Official Search for the suit parcel of land which shows the size of the suit parcel of land.
369. He further testified his deceased father was allocated the suit parcel of land by the government.
370. It was his evidence that his deceased father was given land, seeds and cows on loan which loan he was supposed to repay.
371. It also his evidence that his deceased father repaid the loan and he was then issued with a title deed.
372. It was further his evidence that they rear cows on the suit parcel of land and have planted tea, beans and potatoes.
373. He testified that his parents built their home on the suit parcel of land and he together with his siblings have also built homes on the land.
374. It was his evidence that he knows the Plaintiff's father one Andrew Kimalel Tonui (deceased). He further testified that the Plaintiff's deceased father was born in Cheborgei and he knows his home.
375. It was his evidence that the Plaintiff claimed that the suit parcel of land belonged to them and added that it is not true because they did not have a title deed to the suit parcel of land which would show that the land belonged to them.
376. It was further his evidence that it was not true that the Plaintiff's parents took possession of a portion of the suit parcel of land in the 1950's.
377. He testified that the parcels of land in Chebangang were allocated in the 1970's after the government purchased them from white settlers.
378. He also testified that Andrew Kimalel Tonui (deceased) the Plaintiff's deceased father was allocated land in Rongai and Chepseon Settlement Scheme.
379. He further testified that Andrew Kimalel Tonui (deceased) took possession of a portion of the suit parcel of land with the permission of his deceased father.
380. He was referred to the copy of the Limited Grant of Letters of Administration Ad Litem which was produced as Exhibit P2 and he testified that they were with respect to the estate of Andrew Kimalel Tonui (deceased) and were issued to Joseph Langat.
381. He also testified that the said grant was not with respect to the estate of Kipcheiyot Soi (deceased) his deceased father.
382. He further testified that they have not been living peacefully on the suit parcel of land as every time they planted trees, the Plaintiff's family would cut them down.
383. It was his evidence that the disputes they had were with respect to the suit parcel of land.
384. It was also his evidence that the Plaintiff did not disclose that he was a beneficiary of his father's estate in Chebangang and he instead disclosed the parcels of land in Rongai and Chepseon.



385. It was further his evidence that there was nothing to show that he (Plaintiff) was a beneficiary of the suit parcel of land. He urged the Court to look at a Replying Affidavit he (Defendant) swore in Nakuru HC Citation No. 635 of 2014 on 20th December, 2021.
386. He testified that the Plaintiff did not testify as to the portion of the suit parcel of land that he is alleged to occupy and he only testified that the suit parcel of land belonged to his deceased father.
387. He also testified that the Plaintiff should be evicted and they go back to their home in Chepseon and Rongai and urged the Court to dismiss the Plaintiff's suit with costs.
388. Upon cross examination, DW1 stated that they were in use and occupation of the suit parcel of land.
389. He admitted that Andrew Kimalel Tonui (deceased), the Plaintiff's deceased father was given land to stay on for a short period of time.
390. He also admitted that the portion of the suit parcel of land that the Plaintiff and his family were in occupation of was yet to be surveyed.
391. He further admitted that he did not know the exact acreage of the suit parcel of land that the Plaintiff's family was in occupation of.
392. He confirmed that he had no evidence to show that Andrew Kimalel Tonui (deceased) was allocated land in Rongai, Nakuru and Chepseon.
393. He also confirmed that Andrew Kimalel Tonui (deceased) had three wives. The first wife lived on the suit parcel of land, the second wife lived in Rongai while the third wife lived in Chepseon.
394. He stated that his deceased father was given land by the Settlement Fund Trustees upon taking a loan which loan he repaid.
395. He admitted that he did not have any details on the loan repayment.
396. He stated that he had in his possession the title deed and green card of the suit parcel of land and confirmed that he did not have them in Court.
397. He confirmed that the Plaintiff's deceased father settled on a portion of the suit parcel of land in the year 1973 and his family has been in possession since then.
398. He stated that the dispute started in the year 1983 when his (Defendant) father died.
399. He also stated that the Plaintiff's family started uprooting their trees which issue resulted in several meetings to try and resolve the dispute and admitted that he did not have minutes of any such meeting in Court.
400. He denied that he uprooted the Plaintiff's trees and confirmed that he did not have with him in Court a copy of the ruling that was delivered by the High Court in Nakuru in the citation case.
401. Upon re-examination, he confirmed that what he has stated in court is true and reiterated that the suit parcel of land belongs to his deceased father Kipcheiyot Soi (deceased).
402. He also stated that there was nothing to show that the suit parcel of land belongs to the Plaintiff's deceased father.
403. He reiterated that Andrew Kimalel Tonui (deceased) took possession of the suit parcel of land with the consent of Kipcheiyot Soi (deceased).



404. He also reiterated that they have had several disputes over the suit parcel of land which led to the involvement of the police.
405. He stated that no one was in occupation of the suit parcel of land before it was allocated to his deceased father by the Settlement Fund Trustees.
406. He also stated that his deceased father had a title to the suit parcel of land which he was given after he repaid the Settlement Fund Trustees Loan.
407. He further stated that it was the Plaintiff's evidence that his father had land in Rongai and Chepseon and he therefore did not need to produce any evidence in support of the said contention.
408. He ended by praying that the court adopts his witness statement as part of his evidence-in-chief, which prayer the court acceded to.
409. Charles Bett testified as DW2. It was his evidence that he knows the Plaintiff and the Defendant. He stated that he filed a witness statement and prayed that the Court adopts it as part of his evidence in Chief which prayer the Court acceded to.
410. It was also his evidence that the parents of both the Plaintiff and the Defendant were deceased.
411. It was further his evidence that he went to school with the Defendant and added that they are neighbours.
412. He testified that they live in Chebangang Location and the land which he occupies was purchased from the Settlement Fund Trustees.
413. He also testified that they applied to the Agricultural Finance Cooperation for loans to purchase land from the Settlement Fund Trustees.
414. He further testified that the parcels of land in their locality belonged to the government and that all persons in occupation of them were farmers.
415. It was his evidence that the Lands Department was in charge of the Settlement Fund Trustees and added that the Defendant was allocated land in Kimulot Settlement Scheme.
416. It was further his evidence that by the year 1950, the Kimulot Settlement Scheme was yet to be established.
417. He testified that the Government purchased the land at Kimulot from a white settler known as Krem which land was then subdivided.
418. He explained that anyone who wanted land in the said settlement scheme had to make an application.
419. It was DW2's evidence that at the settlement scheme, they live as a community and celebrate together. He explained that they support each other during funerals, circumcision ceremonies and harambees (Fund raisers).
420. It was also his evidence that the suit parcel of land belongs to the Defendant's deceased father.
421. It was further his evidence that Andrew Kimalel Tonui (deceased), the Plaintiff's father was a sister to the Defendant's mother.
422. He testified that Andrew Kimalel Tonui (deceased) was not allocated land in their settlement scheme because he had land in Rongai and Chepseon.



423. He also testified that Andrew Kimalel Tonui (deceased) took possession of the suit parcel of land with the permission of the Defendant's deceased father.
424. He further testified that the Plaintiff and the Defendant together with their families live on the suit parcel of land and share a boundary.
425. It was his evidence that when the parents of the Plaintiff and the Defendant were alive, they lived peacefully.
426. It was further his evidence that it was their children who were now fighting.
427. He reiterated that the suit parcel of land belongs to the Defendant's deceased father and testified that the Plaintiff was aware of this fact.
428. In his witness statement, he states that the Plaintiff's deceased father stayed on a portion of the suit parcel of land until he was allocated land in Chepseon and Rongai.
429. He also states that as soon as he was allocated the land, the Plaintiff's deceased father moved with his family.
430. He further states that when the Plaintiff's father died, he was buried in Chepseon.
431. He states that the Plaintiff's deceased father was not allocated land in Kimulot.
432. He also states that the Plaintiff's deceased father took possession of a portion of the suit parcel of land with the consent of the Defendant's deceased father.
433. Upon cross examination, he admitted that he knew the Plaintiff and added that they live together with the Plaintiff in the same location.
434. He admitted that the Plaintiff lives on a portion of the suit parcel of land.
435. He stated that his evidence is that the Defendant's deceased father and the Plaintiff's deceased father talked amongst themselves with regard to possession of the suit parcel of land.
436. He admitted that he was not present at the alleged meeting and confirmed that he did not know whether Andrew Kimalel Tonui's (deceased) occupation of a portion of the suit parcel of land was with the permission of the Defendant's deceased father.
437. He confirmed that the Plaintiff's deceased father had three wives. He stated that the first wife lives in Rongai, the second wife lives in Chepseon while the third wife lives in Chebangang.
438. He admitted that he only knew that Andrew Kimalel Tonui (deceased) had three wives and confirmed that he did not know who between the three was the first wife and admitted that the Defendant's evidence that the first wife of Andrew Kimalel Tonui (deceased) lives in Chebangang must be correct.
439. He stated that Kipcheyot Soi (deceased) died before Andrew Kimalel Tonui (deceased) and the two families continued to live on the suit parcel of land.
440. He confirmed that it was their children who started fighting and also confirmed that there was a fence on the suit parcel of land that separated the portion each family occupied.
441. He admitted that the first suit he heard about as between the parties was the instant suit and confirmed that he had never heard the Defendant asking the Plaintiff to vacate the suit parcel of land.
442. Upon re-examination, he stated that Andrew Kimalel Tonui (deceased) was given land by the government in Rongai and Chepseon.



443. He also stated that Andrew Kimalel Tonui (deceased) was not allocated land in Kimulot settlement scheme.
444. He reiterated that there was a fence on the suit parcel of land and stated that he had not been shown any survey report of the suit parcel of land.
445. Philip Kibii Mitei testified as DW3. He stated that he filed a witness statement and prayed that the Court adopts the said statement as part of his evidence in Chief which prayer the Court acceded to.
446. It was his evidence that he was the Defendant's brother and was born in the year 1962 in Chebangang.
447. It was also his evidence that the suit parcel of land belongs to his deceased father and the title deed is in his father's name.
448. It was further his evidence that he did not have the title deed of the suit parcel of land in Court.
449. He testified that the government purchased land at Kimulot from a white settler known as Krem.
450. He also testified that their deceased father purchased the suit parcel of land upon taking a loan which loan he repaid.
451. He further testified that upon completion of payment of the loan, their deceased father was given a title deed and added that the title deed was given solely to his deceased father.
452. It was also his evidence that he did not know the size of the suit parcel of land but confirmed that they have lived on it since it was purchased from the government.
453. It was further his evidence that he knows the Plaintiff and explained that he is Andrew Kimalel Tonui's (deceased) son.
454. He testified that he has never seen a title deed of the suit parcel of land.
455. He also testified that his mother and Andrew Kimalel Tonui (deceased) share the same father but their mothers are different.
456. He further testified that Andrew Kimalel Tonui (deceased) lived on a portion of the suit parcel of land.
457. It was his evidence that Andrew Kimalel Tonui (deceased) followed one Solomon Rono who is a brother to Simatwo to Chebangang.
458. It was also his evidence that Simatwo got land but Andrew Kimalel Tonui (deceased) was not able to get land.
459. It was further his evidence that Andrew Kimalel Tonui (deceased) asked their deceased father if he would stay in his land as he looked for his own land.
460. He testified that their deceased father allowed Andrew Kimalel Tonui (deceased) to stay on the suit parcel of land and he later got land in Rongai and Chepseon.
461. He also testified that Andrew Kimalel Tonui (deceased) later moved from the suit parcel of land but left his wife there.
462. He further testified that Andrew Kimalel Tonui (deceased) sons moved with him to Rongai but they later went back to the suit parcel of land.
463. It was his evidence that the sons of Andrew Kimalel Tonui (deceased) have lived with them on the suit parcel of land but their stay was problematic as they would uproot any trees that they planted.



464. It was also his evidence that he did not know the acreage of the suit parcel of land but confirmed that there were trees, tea and maize planted on it.
465. It was further his evidence that the Plaintiff should go to their parcel of land in Rongai.
466. In his witness statement, DW3 states that the suit parcel of land measures 42.5 acres and adds that he has been living on the suit parcel of land since the year 1961 to date.
467. He further states that the Plaintiff's deceased father sought his deceased father's permission to take possession of a portion of the suit parcel of land as he awaited to be allocated land.
468. He states that it was after the Plaintiff's father died that his children begun laying claim to the suit parcel of land.
469. He also states that the Plaintiff has not established his claim for adverse possession and his suit should therefore be dismissed with costs.
470. Upon cross examination, he confirmed that Andrew Kimalel Tonui (deceased) went to the suit parcel of land after he failed to get his own parcel of land.
471. He stated that the Plaintiff's deceased father did not ask for land and he instead entered the suit parcel of land.
472. He admitted that their deceased father told them that Andrew Kimalel Tonui (deceased) would eventually move from the suit parcel of land but did not tell them how long he would stay.
473. He stated that there was no boundary on the suit parcel of land and any evidence as to a boundary is not true.
474. He confirmed that Andrew Kimalel Tonui (deceased) went to the suit parcel of land in the year 1973.
475. He admitted that he did not know when the suit parcel of land was registered in the name of his deceased father.
476. He also admitted that he had no evidence to show that Andrew Kimalel Tonui (deceased) had land in Chepseon and Rongai.
477. He denied that Andrew Kimalel Tonui (deceased) purchased a portion of the suit parcel of land and stated that the dispute begun in the year 2014.
478. He denied that the suit parcel of land was allocated to Andrew Kimalel Tonui (deceased).
479. He admitted that he had no evidence to show that they had meetings to try and resolve the dispute between the two families.
480. He urged the Court not to allow the Plaintiff's claim.
481. Upon re-examination, DW3 stated that there is no evidence that the suit parcel of land was registered in the name of their deceased father and Andrew Kimalel Tonui (deceased).
482. He reiterated that his deceased father allowed the Plaintiff's deceased father to occupy a portion of the suit parcel of land as he waited to be allocated his own parcel of land.
483. Upon clarification by the Court, he confirmed that he could not remember when his father died. He admitted that the disputes between the parties begun in the year 2022 and he later clarified that the dispute begun in 2014.



484. The Defendant's case was then closed.

Issues for Determination.

485. The Plaintiff filed his submissions on 9th December, 2025 while the Defendant filed his submissions on 2nd December, 2025.
486. The Plaintiff submits on the following issues;
- a. Whether the Plaintiff has established a case for adverse possession.
 - b. Whether the prayers in the Originating Summons should be granted.
487. The Plaintiff relies on Sections 7, 13 and 38 of the *Limitation of Actions Act*, the judicial decisions of *Mtana Lewa vs Kahindi Ngala Mwagangi* [2015] eKLR, *Gabriel Mbui vs Mukindia Maranya* [1993] eKLR, *Wambugu vs Njuguna* [1983] KLR 173, *Jandu vs Kirplal & another* [1975] EA 225 and submits that he has proved his claim for adverse possession.
488. It is the Plaintiff's submissions that the suit parcel of land was registered in the name of Kipcheiyot Soi (deceased) on 2nd May, 1973.
489. It is also the Plaintiff's submissions that his deceased father was allocated land measuring 8.5 ha by the Settlement Fund Trustees in the year 1954.
490. It is further the Plaintiff's submissions that his deceased father took possession of a portion of the suit parcel of land upon allocation and it was therefore without the permission of Kipcheiyot Soi (deceased).
491. The Plaintiff submits that his father died in the year 2011 while the Defendant's father died in the year 1983.
492. The Plaintiff also submits that they lived peacefully on the suit parcel of land until the year 2021 when the Defendant destroyed the boundary while attempting to evict him and his family.
493. The Plaintiff further submits that the beneficiaries of the estate of his deceased father took possession of the suit parcel of land in the year 1950 and they have therefore lived on the land for seventy years.
494. It is the Plaintiff's submissions that their possession of the suit parcel of land has been open, continuous and exclusive. It is also the Plaintiff's submissions that their possession has been without force, without secrecy and without the permission of the registered owner.
495. It is further the Plaintiff's submissions that they have put up structures on the portion of the suit parcel of land that they occupy and they have also planted trees.
496. The Plaintiff submits that the period they have been in possession of the suit parcel of land has been uninterrupted and that it was only in the year 2021 that the Defendant tried to evict them.
497. On the second issue, the Plaintiff submits that the registered owner of the suit parcel of land was holding the title in trust for his deceased father and therefore the Defendant should be compelled to file succession proceedings with respect to the estate of his (Defendant) father and include the Plaintiff and his siblings.
498. The Plaintiff relies on the judicial decisions of *Titus Kigoro Munyi vs Peter Mburu Kimani* [2015] eKLR, *Peter Thuo Kairu vs Kuria Gacheru* [1988] 2 KLR 111, *Karuntimi Raiji vs M'Makinya*



M'itunga [2013] eKLR, Gabriel Mbui vs Mukindia Maranya [1993] eKLR and urges the Court to allow the prayers sought in the Originating Summons.

499. The Defendant submits that land parcel No. Kericho/Kimulot/346 is registered in the name of Kipcheiyot Soi (deceased).
500. The Defendant also submits that the said Kipcheiyot Soi (deceased) was allotted and financed by the Settlement Fund Trustees in the purchase of the suit parcel of land.
501. The Defendant further submits that it is the Plaintiff's evidence that his deceased father occupied land that is now comprised in land parcel No. Kericho/Kimulot/346.
502. It is the Defendant's submissions that the Plaintiff did not lead evidence as to when they learnt that the suit parcel of land was adjudicated in favour of the Defendant's deceased father.
503. It is also the Defendant's submissions that if at all the Plaintiff's deceased father was in occupation of a portion of the suit parcel of land, he failed to register a restriction at the time of registration of the suit parcel of land.
504. It is further the Defendant's submissions that at the time the suit parcel of land was being registered in his deceased father's name, there was no one in occupation.
505. The Defendant submits that the Plaintiff's deceased father was allocated land in Rongai and Chepseon Settlement Scheme.
506. The Defendant also submits that after his deceased father took possession of the suit parcel of land, he developed it and fenced it along the boundaries as set out by the Settlement Fund Trustees.
507. The Defendant further submits that the suit parcel of land has never been subdivided.
508. It is the Defendant's submissions that the Plaintiff's deceased father took possession of a portion of the suit parcel of land with the permission of his (Defendant) father.
509. It is also the Defendant's submissions that at no time did the Plaintiff's deceased father claim a portion of the suit parcel of land by way of adverse possession.
510. It is further the Defendant's submissions that the Plaintiff admits that their possession of a portion of the suit parcel of land was with the permission of the registered owner.
511. The Defendant submits that therefore; the Plaintiff's possession cannot be said to be adverse.
512. The Defendant also submits that the Plaintiff did not adduce any evidence to show the developments that their deceased father made on the suit parcel of land.
513. The Defendant further submits that the Plaintiff has therefore not demonstrated the animus possidendi.
514. It is the Defendant's submissions that the Plaintiff's possession of the suit parcel of land has been hostile as any attempts to evict them have been resisted and that peace has only been sustained through the involvement of the police.
515. The Defendant relies on Sections 21, 22, 26 & 29 of the [Land Adjudication Act](#) and submits that if at all the Plaintiff's deceased father was aggrieved with the decision of the Kimulot Land Adjudication Committee, then he ought to have sought redress as provided for under the [Land Adjudication Act](#).
516. It is also the Defendant's submissions, that the Plaintiff's deceased father had no intention to dispossess the Defendant's deceased father as he only took possession as he awaited allocation of his own land.



517. It is further the Defendant's submissions that once the Plaintiff's deceased father was allocated land in Rongai and Chepseon, he moved out.
518. The Defendant concludes his submissions by stating that he is relying on the various affidavits filed, the annexures attached and the witness statements.

Analysis and Determination.

519. After considering the pleadings, the evidence adduced by the Plaintiff, the Defendant and their witnesses together with their respective submissions, it is my view that the following questions arise for determination;
- a. Whether the Plaintiff has acquired an 8.5 Ha portion of land comprised in parcel No. Kericho/Kimulot/346 by way of adverse possession.
 - b. Whether the prayers sought in the Originating Summons should be granted.
 - c. Who should bear costs of the suit.

Summary of Evidence and Documents.

520. I shall start by briefly summarizing the evidence of the parties herein and the documents produced in support of the claim.
521. Five witnesses testified in support of the Plaintiffs' case and three in opposition to the Plaintiff's case and in support of the Defendants case.
522. The oral evidence adduced ran into numerous pages and has taken up quite a large part of this judgment. It was important to capture all of it before the Court can determine which parts of it are relevant in answering the claim of adverse possession.
523. Further, the witness statements filed by the Defendant were handwritten which turned an otherwise simple task of summarising proceedings into a herculean task.
524. These circumstances notwithstanding, the summary is as hereunder.
525. It is the Plaintiff's case that he is the son of Kimalael Andrew Tonui (Deceased). It is also the Plaintiff's case that his deceased father took possession of a twenty-one-acre portion of land comprised in Kericho/Kimulot/346 in the 1950's.
526. It is further the Plaintiff's case that he was born on the suit parcel of land in the year 1970 and his family members have been on the said parcel of land to date.
527. It is the Plaintiff's case that even though his deceased father was in possession of a portion of the suit parcel of land, the land was registered in the name of Kipcheiyot Arap Soi (Deceased) the Defendant's father.
528. It is also the Plaintiff's case that they have established their homesteads on the suit parcel of land where they have also planted trees and tea.
529. It is further the Plaintiff's case that in the year 2021, the Defendant's family tried to evict them and they now seek to be declared to have acquired a portion the suit parcel of land by way of adverse possession.



530. In support of his case, the Plaintiff produced a Certificate of Official Search of land parcel No. Kericho/Kimulot/346 dated 24th November, 2021 as Exhibit P1. It shows that the suit land measures 17.0 Ha and was registered in the name of Kipcheiyot Soi on 2nd May, 1973.
531. The Plaintiff produced a copy of a Limited Grant of Letters of Administration Ad Litem issued in Kericho CM Ad Litem No. E34 of 2021 in the matter of the Estate of the Late Andrew Kimalel Tonui (Deceased) to Joseph Langat on 30th November, 2021 as Exhibit P2.
532. The Defendant's case on the other hand is that their deceased father one Kipcheiyot Soi is the registered owner of land parcel No. Kericho/Kimulot/346.
533. It is also the Defendant's case that their deceased father applied to the Settlement Fund Trustees and was allocated the suit parcel of land.
534. It is further the Defendant's case that their deceased father repaid the loan issued by the Settlement Fund Trustees before he was issued with a title deed for the suit parcel of land.
535. It is the Defendant's case the Plaintiff's deceased father sought and was given permission to take possession of a portion of the suit parcel of land as he awaited to be allocated his own land.
536. It is also the Defendant's case that after the Plaintiff's deceased father was allocated land in Chepseon and Rongai, he moved from the suit parcel of land.
537. It is further the Defendant's case that the Plaintiff's deceased father took possession of a portion of the suit parcel of land with the consent of their deceased father.
538. The Defendant did not produce any documents in support of his case.

A. Whether the Plaintiff has acquired an 8.5 Ha portion of land parcel No. Kericho/Kimulot/346 by way of adverse possession.

539. This question addresses prayer (a) of the originating summons.
540. It is not in dispute that land parcel No. Kericho/Kimulot/346 is registered in the name of Kipcheiyot Soi (deceased).
541. It is also not in dispute that the Plaintiff's deceased father one Andrew Kimalel Tonui (deceased) took possession of a portion of the suit parcel of land.
542. It is further not in dispute that the Plaintiff and his family members are in possession of a portion of the suit parcel of land.
543. The following issues are in dispute;
- a. When Andrew Kimalel Tonui (deceased) took possession of a portion of the suit parcel of land.
 - b. Whether Andrew Kimalel Tonui (deceased) took possession of a portion of the suit parcel of land with the consent of Kipcheiyot Soi (deceased).
 - c. Whether the possession by the Plaintiff of a portion of the suit parcel of land has been peaceful.
544. 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.”[Emphasis mine]

545. 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)

546. 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.” (Emphasis mine)

547. PW1, PW2 and PW3 in their evidence, testify that Andrew Kimalel Tonui (deceased), the Plaintiff’s father took possession of a portion of the suit parcel of land in the 1950’s.

548. It is also their evidence that he took possession of the said portion of land after it was allocated to him by a white settler. PW2 identified the white settler as one Major Graham.

549. The defence was hinged on the question of permission. The Defendants on the other hand, dispute that Andrew Kimalel Tonui (deceased) took possession of a portion of the suit parcel of land in the 1950’s.

550. It is DW1 and DW3’s evidence that Andrew Kimalel Tonui (deceased) took possession in the year 1973 after Kipcheiyot Soi (deceased), the registered owner of the suit parcel of land who is also their deceased father gave him permission.

551. It is also their evidence that their deceased father applied for and was allocated the suit parcel of land by the Settlement Fund Trustees.

552. It is DW3’s evidence that Andrew Kimalel Tonui (deceased) followed Solomon Rono and his brother Simatwo, to Chebangang to look for land.

553. It is also DW3’s evidence that Simatwo was allocated land but Andrew Kimalel Tonui (deceased) was not able to get land.

554. It is further his evidence that Andrew Kimalel Tonui (deceased) asked Kipcheiyot Soi (deceased), their father for permission to occupy his parcel of land as he looked for his own land.



555. It is DW3's evidence that when Andrew Kimalel Tonui (deceased) was allocated land in Chepseon, he moved with his entire family but his sons later came back to the suit parcel.
556. However, upon cross examination, DW3 admits that Andrew Kimalel Tonui (deceased) did not ask for permission to occupy a portion of the suit parcel of land. He confirms that Andrew Kimalel Tonui (deceased) just entered the suit parcel of land and occupied it.
557. Even though DW2 testifies that Andrew Kimalel Tonui (deceased) took possession of a portion of the suit parcel of land with the permission of Kipcheiyot Soi (deceased), he admits upon cross examination, that he was not present when the alleged permission was given.
558. DW2 then categorically states that he does not know if Andrew Kimalel Tonui's (deceased) possession of the suit parcel of land was with the permission of Kipcheiyot Soi (Deceased).
559. From the totality of the evidence adduced, it is my view that it is more probable than not that Andrew Kimalel Tonui (deceased) took possession of a portion of the suit parcel of land in the 1950's as set out in the evidence of the Plaintiff and his witnesses and also that the said occupation was not on account of consent or permission of Kipcheiyot Soi (Deceased).
560. It is PW1's evidence that the portion of land they are in occupation of measures twenty-one acres. In their evidence, the Defendant and his witnesses confirm that they do not know the size of the portion of the suit parcel of land that Plaintiff and his family are in occupation of. The Plaintiff's evidence that they are in possession of a twenty-one-acre portion of the suit parcel of land though not controverted has not been proved.
561. However, the evidence adduced points to the fact that the portion occupied by the Plaintiff and the Defendant and their respective families is demarcated.
562. The Plaintiff produced a Certificate of Official Search of the suit parcel of land as Exhibit P1. It shows that the suit parcel of land was registered in the name of Kipcheiyot Soi (Deceased) on 2nd May, 1973.
563. That being the case, the period between the 1950's when Andrew Kimalel Tonui (deceased) took possession of the land to 1973 when the title deed was issued, the land was not registered.
564. In the judicial decision of Daniel Gikundi M'Impwi & 7 others v Charles Mutura Njau [2019] eKLR the Court held as follows;
- “29. According to Section 37 and 38 of the Limitations of Actions Act, land must be registered in the name of another for whom the claimant is claiming adverse position. (sic) The rational (sic) for registration is to be found under section 41 which provides for exemptions of the Limitations of Actions Act in certain case such as land owned by the Government of Kenya, Settlement Fund Trustee, trust land. In the case of Erick Chepkwony Aengwo vs Jonathan Rutto Kibiesang ELC 743 of 2012, the Court held that Adverse Possession does not begin to run for land that is unregistered.” (Emphasis mine)
565. In the above cited judicial decision, the Court held that a claim of adverse possession cannot accrue against land that is unregistered. Therefore, the period between the 1950's to 1973 is excluded in computing time. This means that the Plaintiff cannot claim adverse possession between the years 1950 to 1973.
566. It is DW3's evidence that Kipcheiyot Soi (Deceased) was aware that Andrew Kimalel Tonui (deceased) was in possession of a portion of the suit parcel of land.



567. It is not disputed that Andrew Kimalel Tonui (deceased) died in the year 2011. Between the year 1973 and 2011 when the Plaintiff's father died, a period of thirty-eight years had lapsed.
568. It is also not disputed that after Andrew Kimalel Tonui's death, his family continued to be in possession of a portion of the suit parcel of land.
569. On whether Andrew Kimalel Tonui's (deceased) possession was peaceful, PW1 and PW2 testified that they lived peacefully on the suit parcel of land until the year 2021 when they had a boundary dispute. This was also confirmed by the evidence of PW5.
570. DW1 on the other hand contends that the dispute arose in the year 1983 while his brother, DW3 testified that the dispute arose in the year 2014. Upon clarification sought by the Court, DW3 stated that the conflict started in the year 2022 and he later changed that is started in the year 2014.
571. The Defendant's evidence on when the disputes over the suit parcel of land arose is conflicting and therefore not plausible.
572. On the other hand, The Plaintiff called one David Mibei (a village elder) who testified as PW5.
573. It is PW5's evidence that he is a village elder and that in August, 2021, they were informed that there was a boundary dispute between the two families. PW5's evidence was not controverted.
574. Therefore, between the year 1973 when Kipcheiyot Soi (deceased) was registered as the owner of the suit parcel of land and the year 2021 when a boundary dispute arose (Evidence of (PW5), a period of forty-eight years had lapsed. During this period, the Plaintiff's possession of a portion of the suit parcel of land was peaceful.
575. It is therefore my finding that the Plaintiff has demonstrated that his deceased father was in exclusive possession of a portion of land comprised in Kericho/Kimulot/346. It is evident that his possession was open and without interruption for a period of over twelve years.

B. Whether the prayers sought in the Originating Summons should be granted.

576. The prayers sought by the Plaintiff in the Originating Summons are as follows;
- a. That the Respondent father's rights over the land measuring 17.0 ha out of land parcel Kericho/Kimulot/346 got extinguished by adverse possession upon expiry of 12 statutory years when the Applicant and his family had been in possession (sic).
 - b. A declaration that the Applicant be registered as the proprietor of 8.5 Ha of the said portion of land and the Respondent be registered for the remaining 8.5 ha out of the said land parcel Kericho/Kimulot/346.
 - c. A declaration be made that the Respondent be permanently barred from disturbing peaceful enjoyment of 8.5 Ha of the suit land parcel no. Kericho/Kimulot/346.
 - d. A declaration that the Respondent has no right to file succession on behalf of the estate of the deceased Kipcheiyot Soi, without including the beneficiaries from the estate of Andrew Kimalel Tonui, who are represented by the Applicant of the estate of the deceased. (sic)
 - e. An order that the respondent be condemned to pay costs of this case.
 - f. Such orders or other relief as this Honourable Court may deem fit and just to grant.



577. Under prayer (b) of the Originating Summons, the Plaintiff seeks that he be registered as the owner of an 8.5 Ha portion of land comprised in Kericho/Kimulot/346 and that the Defendant be registered as the owner of the remaining 8.5 Ha portion.
578. From the evidence adduced, it is apparent that the Plaintiff and his family members are in possession of a portion of the suit parcel of land by virtue of being a legal representative of the estate of Andrew Kimalel Tonui (deceased) but no evidence was adduced as to the exact measurement of the said portion.
579. It is therefore in the interest of justice that the portion of land comprised in Kericho/Kimulot/346 and occupied by the Plaintiff be surveyed, excised from Kericho/Kimulot/346 and be registered in the name of Andrew Kimalel Tonui (deceased).
580. Under prayer (c) the Plaintiff seeks orders of permanent injunction barring the Defendant from disturbing his peaceful enjoyment of the portion of land that he is in occupation of. Given finding on issue (A) nothing is easier than to grant this prayer
581. Under prayer (d) in the Originating Summons, the Plaintiff seeks an order to compel the Defendant to include him when filing for succession proceedings with respect to the estate of Kipcheiyot Soi (Deceased).
582. Given my finding on prayer (b) above, it will not be necessary for such an order to issue.
583. Prayer (g) is for costs and (h) is for any other reliefs that this court may deem fit and just to grant.
584. Before penning off, I note that the Plaintiff has extensively submitted on the issue of Kipcheiyot Soi (deceased) holding the suit parcel of land in trust for his deceased father.
585. It is important to note that neither of the parties pleaded the issue of trust and it is trite law that parties are bound by their pleadings.
586. It is also trite law that new issues cannot be raised in submissions. In the judicial decision of *ASSL v ASMB* [2020] eKLR the Court held as follows;

“ 17. It is trite law that new issues cannot be raised in submissions. In the case of *Republic vs. Chairman Public Procurement Administrative Review Board & another Ex parte Zapkass Consulting and Training Limited & another* [2014] Korir, J. stated:

“The Applicant, the respondents and the interested party all introduced new issues in their submissions. Submissions are not pleadings. There is no evidence by way of affidavits to support the submissions. New issues raised by way of submissions are best ignored.” (Emphasis mine)

587. Considering that submissions are not pleadings; this Court will not address the issue of trust.

C. Who should bear costs of the suit.

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



Disposition.

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

- a. The estate of Andrew Kimalel Tonui (deceased) is hereby declared to have acquired a portion of land comprised in Kericho/Kimulot/346 by way of adverse possession.
- b. The District surveyor and Land Registrar - Bomet shall within 90 days of the date hereof, visit the suit parcel for purposes of establishing the acreage of the portion of land occupied by the Plaintiff; for purposes of sub-division and Registration.
- c. Upon establishing (b) above, the Defendant shall execute all the necessary documents for purposes of the subdivision, transfer and registration in the name of Andrew Kimalel Tonui (deceased).
- d. In default of (c) above, the Deputy Registrar of this Court shall execute the said documents.
- e. A permanent injunction is hereby issued restraining the Defendant from interfering with the peaceful enjoyment and possession of the portion of land comprised in Kericho/Kimulot/346 that is occupied by the Plaintiff.
- f. The Plaintiff shall have costs of the suit.

590. 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.Nyangiri for the Defendant

Miss Chirchir for the Plaintiff - Absent

Court Assistant; Mr. Joseph Makori.

