

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERICHO

ELC CASE NO. E004 OF 2020 (OS)

JONATHAN K. MARITIM (Suing as the Administrator of the Estate of CHEBOS ARAP CHERIRO).....

....PLAINTIFF

VERSUS

ALICE CHERONO RONO(Sued as the Administrator of the Estate of ELIJAH ARAP MISOI).

.....DEFENDANT

JUDGEMENT.

INTRODUCTION.

- 1.** The Plaintiff commenced the present proceedings vide the Originating Summons dated 8th December, 2020.
- 2.** The Originating Summons is expressed to be brought under **Section 38** of the **Limitation of Actions Act** and **Order 37 Rule 7** of the **Civil Procedure Rules.**
- 3.** The Plaintiff seeks the determination of the following questions;

- 1. Whether or not the late Elijah Arap Misoi permitted the Applicant to construct a commercial premise (sic) on his Plot No. 8839/37 then allotted to him on an understanding that the two would eventually share the suit premises.**
- 2. Whether or not on completion of the construction, the deceased and the Applicant sub-divided the suit property into two on a 50:50 basis, each conducting own business on own half portion. (sic)**
- 3. Whether or not the Applicant has acquired title to the suit land by adverse possession he having been in quite (sic) and exclusive possession of it for a period of 12 years since 1968 when Elijah Arap Misoi (deceased) refused to sign documents conveying half interest of the property to Chebos Arap Cheriro (deceased) as the two would became joint owners of the suit land. (sic)**
- 4. Whether or not the aforesaid property is now held in trust for the Applicant**

he having constructed the same in consideration that they would share the same equally with the deceased.

5. Whether or not the Respondent had started threatening the Applicant and his tenants with eviction in the year 2008.

5. (A) In the alternative and absolutely without prejudice to the foregoing (sic) whether or not the Applicant is entitled to be compensated to the extent of developments put up solely by Chebos Arap Cheriro (deceased) on the suit land.

4. The Plaintiff also seeks the following orders;

a. A declaration that the Elijah Arap Misoi (Deceased) at his demise entitled to ownership of half portion of the suit premises whereas the Applicant is entitled to the other half. (sic)

b. A declaration that although the deceased was the registered Proprietor of the suit land, he was

holding half portion thereof in trust for the Applicant herein.

c. There be an order terminating the said trust.

d. There be an order directing the Respondent to sign documents of subdivision and transfer of half portion of the suit plot to the estate of the late Elijah Arap Misoi alias Elijah Kiprono Misoi in favour of the Applicant herein.

d. (A) Alternatively, there be an order directing the Respondent to compensate the Applicant to the extent of developments put up on the suit property and as may reasonably be valued.

e. Costs of this application be provided for.

- 5.** The application is supported by the Supporting Affidavit sworn on 8th December, 2020 by the Plaintiff.

FACTUAL BACKGROUND.

6. On 22nd September, 2021, the Court gave directions that the Originating Summons be deemed as a Plaint and the Replying Affidavit sworn on 15th February, 2021 be deemed as a Defence.

THE PLAINTIFF'S CONTENTION.

7. The Plaintiff contends that he has a Limited Grant of Letters of Administration issued in Ad Litem Case No. 1 of 2016 with respect to the estate of **Chebos Arap Cheriro** (Deceased).
8. The Plaintiff also contends that sometime in the year 2011, his father who is now deceased, informed him that in the year 1952, one **Elijah Arap Misoi** (Deceased) was allotted Plot No. 37 in Litein Township.
9. The Plaintiff further contends that his deceased father also informed him that **Elijah Arap Misoi** (Deceased) approached him (**Chebos Arap Cheriro**(Deceased) and asked him to put up permanent commercial premises on the

said plot and upon registration, they would share it on a 50:50 basis.

- 10.** It is his contention that his deceased father agreed and started putting up commercial premises on the said plot which premises were completed in the year 1958.
- 11.** It is also his contention that upon completion of the construction, they sat and subdivided the premises between them.
- 12.** It is further his contention that they prepared a Proposal Sub-Division plan and his deceased father was to take the portion that is shaded pink while **Elijah Arap Misoi** (Deceased) was to take the portion shaded yellow and marked "A".
- 13.** He contends that his deceased father run a bar and restaurant business on his section of the premises until the year 2007 when he rented it out to **David Kipkemoi Chepkwony** alias **Sigilai**.

- 14.** He also contends that sometime in the year 2001, the premises was burnt down and he goes on to state that after the incident, the family of **Elijah Arap Misoi** (deceased) re-constructed on their half portion while his deceased father re-constructed his portion and there was no dispute.
- 15.** He further contends that his deceased father has been in peaceful occupation of the said portion since the year 1958 until the year 2008 when the Respondent and her family members began to threaten him and their tenants with eviction.
- 16.** He ends his deposition by stating that he has been advised by his advocates on record that he has been in quiet, peaceful and open possession of half a portion of LR No. 8839/37 for a period of over twelve years and he has therefore acquired it by way of adverse possession.

THE DEFENDANT'S RESPONSE.

- 17.** The Defendant filed a Replying Affidavit. The same is sworn on 15th February, 2021.
- 18.** She deposes that her deceased father one **Elijah Arap Misoi** is the registered proprietor of Plot No. 37 - Litein Township.
- 19.** She also deposes that the Plaintiff is a stranger as there is no agreement in support of the contention that the said plot was to be owned jointly.
- 20.** She further deposes that if her deceased father and the Plaintiff's deceased father were to be joint owners of the plot, then they ought to have been registered as co-owners. She goes on to state that this is in response to Paragraph 2 of the affidavit in support of the Originating Summons.
- 21.** It is her deposition that the Plaintiff has threatened to disinherit them and goes on to state that the proposed subdivision plan attached to the affidavit in support of the

application is null and void as it was not registered with the County government.

- 22.** In response to Paragraph 4 of the affidavit in support of the Originating Summons, it is her deposition that the Plaintiff is not one of the beneficiaries of the suit parcel of land and adds that her deceased father did not sign the Proposed Subdivision plan.
- 23.** She deposes that her deceased father constructed the premises on the suit parcel of land after it was destroyed by a fire.
- 24.** In response to paragraph 6 of the affidavit in support of the Originating Summons, she also deposes that they were paying rates to the Council.
- 25.** In response to paragraph 5 of the affidavit in support of the Originating Summons, she further deposes that the Plaintiff's application has been made in bad faith and reiterates that

he does not have any claim against the estate of their deceased father.

- 26.** It is her deposition that the Plaintiff's deceased father was a tenant in their deceased father's premises where he had a hotel business. She goes on to state that the Plaintiff's deceased father paid rent to their father before his death and later to their mother before she also died.
- 27.** In response to paragraph 6 of the affidavit in support of the application, she reiterates that after the premises was consumed by a fire, their deceased father reconstructed the premises alone.
- 28.** It is also her deposition that OB No. 48/20/5/2009 which is attached to the affidavit in support of the Originating Summons and marked "**JKM-4**" has the list of tenants on Plot No. 37 and does not prove that the said plot was owned by **Chebos Cheriro** (Deceased) the Plaintiff's deceased father.

- 29.** It is further her deposition that **Chebos Cheriro's** (Deceased) name does not appear in the County Government register and reiterates that he (**Chebos Cheriro**(Deceased) was a tenant on the suit parcel of land.
- 30.** She deposes that the Plaintiff has attached documents filed in Kericho HC Succession Cause No. 2 of 2010 and marked them as "**JKM 6(a) & (b)**" and states that the Plaintiff has no beneficial interest in the said succession proceedings.
- 31.** She ends her deposition by stating that she is advised by her advocates on record that the Originating Summons is baseless, scandalous, frivolous and an abuse of the Court process and it should therefore be dismissed with costs.

THE PLAINTIFF'S EVIDENCE.

- 32. Jonathan Kiplangat Maritim** testified as **PW1**. He stated that he filed a witness statement dated 8th December, 2020 and prayed that the Court adopts the said statement as part of his evidence-in-chief, which prayer the Court acceded to.
- 33.** He testified that the suit parcel of land is located in Litein and that in the year 2001, there was a fire and the houses on the parcel of land were burnt down.
- 34.** He also testified that the suit parcel of land is owned by his deceased father one **Chebos Cheriro** and the Defendant's deceased father one **Elijah Misoi**.
- 35.** He further testified that after the fire, his deceased father rebuilt the premises on his section of the suit parcel of land.
- 36.** It was his evidence that his father had tenants on the suit parcel of land who were paying rent to him and after his death, he now receives rent.

- 37.** It was also his evidence that the registered owner of the suit parcel of land is **Elijah Misoi** (deceased).
- 38.** It was further his evidence that **Elijah Misoi** (deceased) invited his deceased father to construct buildings on the suit parcel of land which they were to share between them.
- 39.** He testified that his deceased father told him that they agreed that he was to build the premises with his own money and then they would share the buildings.
- 40.** He also testified that he was in Court as the administrator of the estate of his deceased father and added that he was praying to court to declare that the suit parcel of land belonged to his deceased father and **Elijah Misoi** (deceased) and also prayed that a title deed be issued in his name.
- 41.** He stated that he filed a list of documents dated 19th November, 2021, on 6th December, 2021. The documents

annexed to the said list were marked and produced as follows;

- a. A copy of a Limited Grant of Letters Ad Litem as Exhibit P1.**
- b. A copy of a Certificate of Title for Plot No. 8839/37 as Exhibit P2.**
- c. A copy of a Single business permit dated 5th June, 2007 issued to Chebos Cheriro as Exhibit P3.**
- d. A copy of a proposed sub-division for LR No. 8839/37 as Exhibit P4.**
- e. A copy of a Caveat dated 9th December, 2011 and an Affidavit of Protest sworn on 15th November, 2012 as Exhibit P5(a) and (b).**
- f. A copy of a tenancy agreement dated 25th May, 2009 as Exhibit P6.**
- g. A copy of a tenancy agreement dated 27th September, 2009 as Exhibit P7.**
- h. A copy of the OB report prepared by the Chief was marked for identification.**

- 42.** It was his evidence that the current tenant on the premises is one **Caroline Chepkemoi** who is paying rent to him.
- 43.** It was also his evidence that the beneficiaries of the Estate of **Elijah Misoi** (Deceased) have trespassed onto their portion of the suit parcel of land which is marked “B” on the subdivision plan.
- 44.** In his witness statement, **PW1** reiterates his averments in the affidavit in support of the Originating Summons.
- 45.** Upon cross examination, **PW1** confirmed that he is the son of **Chebos Arap Cheriro** (Deceased).
- 46.** He confirmed that his father died in the year 2014 and admitted that he did not bring his death certificate to Court.
- 47.** He also confirmed that the suit parcel of land is registered in the name of **Elijah Misoi** (Deceased).

- 48.** He further confirmed that his deceased father constructed the commercial premises on the suit parcel of land in the year 1958.
- 49.** He admitted that he did not have any plans for the construction and stated that all he knew was that their building is pink in colour.
- 50.** He also admitted that there was a fire.
- 51.** He stated that his evidence is premised on the fact that there are tenants on the premises constructed on the suit parcel of land who are paying them rent.
- 52.** When he was referred to the Single Business Premises Permit dated 5th June, 2007 produced as **Exhibit P3**, he confirmed that it was issued in his deceased father's name upon payment.

- 53.** He admitted that he did not produce any receipts for payment of any rates and rents.
- 54.** When referred to the Certificate of title of LR No. 8839/37 produced as **Exhibit P2**, he reiterated that the land is registered in the name of **Elijah Misoi** (Deceased).
- 55.** When referred to the Proposed Sub Division Plan produced as **Exhibit P4**, he stated that it was prepared in Kericho and confirmed that it only had his deceased father's name.
- 56.** He confirmed that the name of **Elijah Misoi** (Deceased) does not appear on **Exhibit P4**.
- 57.** He also confirmed that in the year 2011 his father was still alive.
- 58.** When referred to the caveat produced as **Exhibit P5(a)**, he stated that when his father was alive, he executed a power of attorney in his favour.

- 59.** When he was referred to the Affidavit in Protest produced as **Exhibit P5(b)**, he confirmed that it was filed in Succession Cause No. 2 of 2010 which succession cause was still pending in Court.
- 60.** When he was referred to **Exhibit P6** which is an agreement entered into by **Chebos Cheriro** (Deceased) and **Caroline** which agreement is dated 25th May, 2009, he denied that the said agreement was made after there was a disagreement between the two of them.
- 61.** When referred to the tenancy agreement dated 27th September, 2009 (**Exhibit P7**) he confirmed that it was an agreement entered into by his deceased father and one **Sigilai**.
- 62.** He also confirmed that after the premises burnt down, **Sigilai** vacated the premises and the Defendant took possession.

- 63.** He admitted that the portion of the premises on the suit parcel of land that is occupied by **Caroline** measures about 12 feet by 30 feet.
- 64.** He also admitted that portion “B” of the suit parcel of land is occupied by two tenants who pay them rent while the other tenants were given possession by the Defendant by force.
- 65.** He confirmed that Caroline pays Kshs.10,000/= as rent even though the tenancy agreement states that the rent to be paid is Kshs. 20,000/=.
- 66.** He also confirmed that the tenants were in occupation before their father died and they continued to be in occupation after his death.
- 67.** He stated that both of them were paying rates and admitted that he did not have any receipts to show the said payments.

- 68.** Upon re-examination, **PW1** stated that the beneficiaries of **Misoi's** estate repossessed the premises on the suit parcel of land together with the tenants.
- 69.** He also stated that the succession proceedings with respect to **Misoi's** estate were pending after they were stayed for reasons not known to him.
- 70.** **Edwin Kiprotich Kimeto** testified as **PW2**. He stated that he filed a witness statement on 8th December, 202 and prayed that the Court adopts it as part of his evidence-in-chief ,which prayer the Court acceded to.
- 71.** He introduced himself as a retired High School teacher and was engaged in farming.
- 72.** It was also his evidence that he is a resident of Litein Town and added that he was born in a village that is next to Litein.

- 73.** It was further his evidence that he knew **Elijah Misoi** (Deceased) and **Chebos Cheriro** (Deceased).
- 74.** He testified that **Elijah Misoi** (Deceased) was one of the first black missionaries and he served with his deceased father.
- 75.** He also testified that **Elijah Misoi** (Deceased) was their family friend and that he used to visit his deceased father together with **Chebos Cheriro** (Deceased) and have discussions over the suit parcel of land.
- 76.** He further testified that he heard them talk about plot No. 37 which is within town and faces East.
- 77.** It was his evidence that the said plot belongs to both **Elijah Misoi** (Deceased) and **Chebos Cheriro** (Deceased) and the tenants on the plot used to pay rent to the beneficiaries of their respective estates.

- 78.** It was also his evidence that in the year 1959, the shop that **Chebos Cheriro** (Deceased) used to run a bar in was burnt down.
- 79.** It was further his evidence that **Elijah Misoi** (Deceased) was a member of the Legislative Council and was allocated a plot.
- 80.** He testified that **Elijah Misoi** (Deceased) asked **Chebos Cheriro** (Deceased) to assist him in developing the plot.
- 81.** He also testified that they agreed that upon completion of the construction of the building, they were to share the plot.
- 82.** He further testified that he was present when the said discussion took place.
- 83.** He reiterated that in the year 1959, a fire razed down the premises on **Cheriro's** (deceased) side where he was running a bar.

- 84.** He also reiterated **Cheriro** (Deceased) reconstructed the said premises and continued running the bar business.
- 85.** It was his evidence that in the year 2001, there was another fire and the entire premises was burnt down and each party repaired their section of the premises.
- 86.** It was further his evidence that he got to know the tenants on the premises on the suit parcel of land.
- 87.** He testified that there was a hotel that was run by one **Siele** who was **Elijah Misoi's** (Deceased) tenant.
- 88.** He also testified that another one of **Elijah Misoi's** (Deceased) tenants had a butchery where he employed one **Korir** to run the business.
- 89.** He further testified that one of the tenants of **Chebos Cheriro** (Deceased) was known as **Sigilai** and he used to repair machines.

- 90.** It was his evidence that **Cheruiyot** and **Joel Chumo** rented shops from **Chebos Cheriro** (Deceased) and currently, there is a hotel in the premises which was previously rented by **Siele**.
- 91.** It was also his evidence that the Hotel's name is **Acquinas Hotel** and it is run by a tenant of the beneficiaries of the estate of **Elijah Misoi** (Deceased).
- 92.** It was further his evidence that the other tenant in the premises is one **Abdi** who pays rent to the beneficiaries of the estate of **Elijah Misoi** (Deceased).
- 93.** He testified that the tenant before **Abdi** was a tenant of **Chebos Cheriro** (Deceased) and after **Abdi** paid goodwill, he was told to pay the rent to **Elijah Misoi** (Deceased).

- 94.** He also testified that there is a bar in the premises and that the said bar is run by **Caroline Chepkwony** who was a tenant of **Chebos Cheriro** (Deceased).
- 95.** He further testified that all the shops have now been taken over by force by the beneficiaries of the estate of **Elijah Misoi** (Deceased) for a period of four years now.
- 96.** It was his evidence that **Chebos Cheriro** (Deceased) used the topmost floor of his premises as his residence.
- 97.** In his witness statement, **PW2** states that he was present when **Caroline Chepkemoi** rented one of the shops on the premises on the suit parcel of land.
- 98.** He also states that this was in the year 2001. He further states that the premises on the suit parcel of land were burnt down in the year 1959 and also in the year 2001.

99. He states that after the premises were reconstructed, the family of **Elijah Misoi** (Deceased) started claiming rent from the tenants of **Chebos Arap Cheriro** (Deceased). He added that this was in the year 2009.

100. Upon cross examination, **PW2** confirmed that he signed the witness statement dated 8th December, 2020.

101. He admitted that the signature on the said statement belonged to him and explained that his name was mistakenly stated to be **Kiprono**.

102. He confirmed that he is the secretary of the Kipsigis Council of Elders and is one of the Kipsigis Elders but explained that he was in Court in his personal capacity.

103. He admitted that in the year 1959 he was ten years old and stated that though he was a young boy, he used to mingle with old men who taught him to be kind and honest.

104. He confirmed that he listened to the conversations held by the elders when he was ten years old.

105. He denied that **Cheriro** (Deceased) was one of the tenants of **Elijah Misoi** (Deceased) and confirmed that he (**Cheriro** (Deceased)) used the premises as his residence.

106. He admitted that he did not produce anything in Court to show that **Cheriro** (Deceased) was the one who constructed the building that was burnt down.

107. He confirmed that **Cheriro** (Deceased) supervised the construction on the suit parcel of land.

108. He also admitted that he had no plans and/or approvals to show that **Cheriro** (Deceased) constructed the said premises.

109. He confirmed that **Siele** (Deceased) paid rent to **Elijah Misoi** (Deceased) and stated that the tenants he mentioned were deceased apart from **Joel Chumo** and **Sigilai**.

110. He also confirmed that tenants currently on the premises on the suit parcel of land pay rent to **Elijah Misoi** (Deceased) after the premises were taken over by force and admitted that he did not have any evidence of the said alleged forceful take over.

111. He confirmed that **Abdi** took over from **Cheriro's** (Deceased) tenant and added that **Abdi** paid the goodwill to the said tenant and now pays the rent to the beneficiaries of **Elijah Misoi's** (Deceased) estate.

112. He further confirmed that **Caroline** was one of the tenants of **Cheriro** (Deceased) and she was the only one who was paying the rent to his estate.

113. He stated that the shop on the premises is divided into two.

He also stated that on one end there is a butchery and on the other hand there is a Pharmacy and the tenants renting out the said premises pay rent to the beneficiaries of the estate of **Cheriro** (Deceased).

114. He confirmed that currently, the only tenant paying rent to the beneficiaries of the estate of **Cheriro** (Deceased) is **Caroline** while the other tenants were forced to pay rent to the beneficiaries of the estate of **Elijah Misoi** (Deceased).

115. He further confirmed that **Cheriro's** (Deceased) tenants were forced to pay rent to the beneficiaries of the estate of **Elijah Misoi** (Deceased) four years ago.

116. He admitted that he did not know who was paying the rates and confirmed that it is usually the land owner who pays the rates.

117. Caroline Chepkemai Chepkwony testified as **PW3**. She stated that she filed a witness statement dated 8th December, 2020. She prayed that the Court adopts it as part of her evidence- in- chief which prayer the Court acceded to.

118. It was her evidence that she knew **Chebos Arap Cheriro** (deceased).

119. It was also her evidence that she got to know him in the year 2001 when he gave her a shop to run her business.

120. It was further her evidence that she had in her possession, a tenancy agreement which had been produced as **Exhibit P6**.

121. She testified that she was running a food business in the said premises between February to October, 2001.

122. She also testified that in October, 2001, the entire block was burnt down and added that she was only able to run her business for a period of eight months.

123. It was her evidence that she and **Cheriro** (Deceased) contributed money to rebuild the premises which premises were rebuilt within six months.

124. It was also her evidence that after the premises was rebuilt, she moved back in in the year 2001 and continued running her business to date.

125. It was further her evidence that in the year 2009, **Alice Cherono**, the Defendant approached her and asked her to pay rent to them.

126. She testified that she did not move from the said premises and soon after, the present suit was instituted.

127. In her witness statement, she states that the Defendant and other members of her family were aware that she was renting the premises from the Plaintiff's deceased father.

128. Upon cross examination, she confirmed that she had an agreement that she entered into with **Chebos Cheriro** (Deceased) in the year 2009.

129. She admitted that the agreement they entered into in the year 2001 was oral and was not in writing.

130. She stated that the agreement dated 25th May, 2009 was not an afterthought and confirmed that she took possession of the premises in the year 2001.

131. She admitted that she did not have any documents in Court to show that she was running a business on the suit premises.

132. She confirmed that the building was burnt down in December, 2001 and they agreed to rebuild it.

133. She admitted that the money she contributed for the rebuilding of the premises was to be recovered from the rent.

134. She also admitted that she did not have any document to show the said arrangements and stated that **Chebos Cheriro** (Deceased) had the receipts.

135. She stated that she had receipts that were issued upon payment of rent and admitted that she did not bring them to Court.

136. She confirmed that she was still in occupation of the premises on the suit parcel of land and added that she had County Council receipts which she did not bring to Court.

137. She admitted that she knew that **Chebos Cheriro** was deceased and stated that she renewed her lease with

Jonathan Maritim, the Plaintiff and confirmed that she did not bring the renewed lease to Court.

138. She stated that in the year 2009, she was threatened and asked to move out of the premises on the suit parcel of land. She also stated that she was arrested but not prosecuted as the police told them to go to Court.

139. She reiterated that she is a tenant of **Chebos Cheriro** (Deceased) and that she had a tenancy agreement as evidence.

140. She confirmed that there was a suit filed in the High Court and which was case No. 60 of 2011. She confirmed that the Court found that she was a tenant and not the Landlord and admitted that **Chebos Cheriro** (deceased) was to be joined to the said suit.

141. She confirmed that she was not aware that the said suit was stayed pending the hearing and determination of the succession cause.

142. When referred to the lease agreement that was produced as **Exhibit P6, PW3** confirmed that she was to pay monthly rent of Kshs. 10,000/=.

143. She stated that she had two shops and confirmed that one of the shops was forcefully taken by the Defendant.

144. She admitted that the agreement stated that the rent payable monthly was kshs. 20,000/=.

145. She also admitted that in her witness statement she did not mention the two shops and neither did she mention that one of the shops was taken by the Defendant.

146. Upon re-examination, she stated that the Defendant took the section of the premises where she was paying Kshs.

20,000/= for and left her with the premises where she is paying rent of Kshs. 10,000/=.

147. David Kipkemoi Chepkwony alias **Sigilai** testified as **PW4**. He stated that he filed a witness statement dated 8th December, 2020 and prayed that the Court adopts it as part of his evidence- in-chief which prayer the Court acceded to.

148. He testified that he knew **Chebos Cheriro** (Deceased) and explained that **Chebos Cheriro** (Deceased) was his landlord between the year 1992 to the year 2009.

149. He also testified that in the year 2001, the premises were burnt down and they waited for it to be rebuilt.

150. He further testified that the premises was divided into two with **Chebos Cheriro** (Deceased) owning one part and **Elijah Misoi** (Deceased) owning the other part.

151. It was his evidence that he was **Chebos Cheriro's** (Deceased) tenant until the year 2007 during which period he paid Kshs. 4,000/= as monthly rent.

152. It was also his evidence that after the premises was rebuilt, he rented two shops and paid kshs. 15,000/= as rent.

153. It was further his evidence that he had a tenancy agreement dated 27th September, 2007 which agreement he entered into with **Chebos Cheriro** (Deceased).

154. He testified that initially, he used to repair TV's and Radios and later he ran a hotel business.

155. He also testified that he left the premises in the year 2009, after **Miso'i's** (Deceased) sons forcefully took over his shop and removed his things.

156. He further testified that he was paying rent to **Chebos Cheriro** (Deceased).

157. In his witness statement, he states that he entered into a lease agreement with **Chebos Cheriro** (Deceased) in the year 1993.

158. Upon cross-examination, **PW4** confirmed that he was a tenant between the year 1992 to the year 2007 and added that he did not have the initial agreement because it was burnt down during the fire in the year 2001.

159. He admitted that in his witness statement, he stated that he entered into the lease agreement in the year 1993 and also admitted that he was operating a radio and tv repair business.

160. He also admitted that he did not have anything in Court to show that he was running the said business and that what he gave to the advocate was not brought to Court.

161. He further admitted that he did not have any receipt to show payment of Kshs. 4,000/= as rent and stated that they used to sign in a notebook that was kept by **Cheriro** (Deceased).

162. He admitted that he did not know the registered owner of LR No. 8839/37 and stated that the only thing he knew was that **Cheriro** (deceased) was receiving money.

163. He confirmed that **Chebos Cheriro** (Deceased) reconstructed the premises after the fire and he took possession of the portion marked "**A**".

164. He also confirmed that he knew that portion **A** and **B** belonged to different people and later clarified that he was only shown his shop and could not tell where portion "**A**" and "**B**" were.

165. He further confirmed that his hotel was known as **Kaptich Hotel** and admitted that it was later taken over by someone else.

166. He admitted that he did not have anything in Court to show that he was running **Kaptich Hotel** and stated that he only had tables and chairs.

167. He confirmed that in January, 2009 he was forcefully evicted from the suit premises and admitted that he did not report to the police as he lives in Kapkatet.

168. He also confirmed that **Caroline Chepkemoi** reported to the police because she lives near the suit premises.

169. He denied that the reason why he did not report to the police was because he knew that the premises did not belong to **Chebos Cheriro** (Deceased).

170. When referred to the agreement dated 27th September, 2009 which was produced as **Exhibit P7, PW4** confirmed that the said agreement was for twelve months.

171. He admitted that he did not renew the said agreement and he just continued running the business.

172. He confirmed that he was **Cheriro's** (Deceased) tenant and that he paid him rent from the year 1992 and if he was not the owner, he would not have paid him the rent.

173. Upon re-examination, he stated that the tenancy was for twelve months and upon the lapse of the said period, they agreed to continue with the tenancy.

174. He also stated that between the year 2007 to 2009, he was doing hotel business and reiterated that in the year 2009, he was evicted.

175. He further stated that at the time of the eviction **Cheriro** (Deceased) was alive. He stated that when he approached **Cheriro** (Deceased), he told him that he was the owner of the premises and that he will deal with the said issue.

176. Moses Kiplangat Mutai testified as **PW5**. It was his evidence that he was a retired Senior Chief of Litein Location.

177. It was also his evidence that he retired on 31st October, 2024.

178. It was further his evidence that he wrote the letter dated 6th December, 2001.

179. He testified that the said letter was written to assist victims who had been involved in a fire tragedy and added that the purpose of the letter was to assist in the collection of funds.

180. He further testified that the letter was addressed to the area District Commissioner, the area Councilor and Red Cross and added that on 6th December, 2001, the persons listed in the said letter visited his office and requested for an introductory letter so that they could use it to seek assistance.

181. It was his evidence that on the same day, at 1:30 am a fire had gutted down the premises on plot No. 37 which was owned by **Elijah Kiprono Misoi** (Deceased) and **Chebos Cheriro** (Deceased).

182. It was further his evidence that at that time **Cheriro Chebos** (deceased) was alive while **Elijah Kiprono Misoi** was Deceased.

183. He testified that the tenants who were in occupation of the suit premises went to his office and requested that the said letter be written.

184. He also testified that he only knew **Cheriro** (Deceased) because at the time he was growing up, **Elijah Misoi** (Deceased) was already dead.

185. He further testified that he knew the building and stated that some sections of the building belonged to **Cheriro**

(Deceased) while the other sections belonged to **Elijah Misoi** (Deceased).

186. It was his evidence that in the 1970's when he was in standard three, **Cheriro** (Deceased) was running a hotel and bar business on the premises on the suit parcel of land while **Elijah Misoi** (Deceased) also had shop in the same premises.

187. It was also his evidence that the letter had a list of the tenants of both **Cheriro** (deceased) and **Elijah Misoi** (Deceased).

188. It was further his evidence that **Caroline Chepkemoi** was one of the victims of the fire as she lost goods worth Kshs. 1,000,000/=.

189. He testified that **Caroline Chepkemoi** was one of **Cheriro's** (deceased) tenants.

190. He also testified that the other tenants of **Cheriro** (Deceased) were **David Kipkemoi Chepkwony, Samuel Cheruiyot** and he did not know whose tenant **Bornes Yator** was.

191. He produced a copy of the letter dated 6th December, 2001 as **Exhibit P8**.

192. Upon cross examination, he confirmed that he wrote the letter he produced as **Exhibit P8**.

193. He admitted that he did not add any OB number to the letter and stated that the purpose of the letter was to assist the victims of the fire.

194. He stated that the proprietors of the plot were **Elijah Kiprono** (Deceased) and **Chebos Cheriro** (Deceased).

195. When he was referred to the letter dated 11th December, 2015 that is attached to the Defendant's List of Documents

dated 10th January, 2022, he confirmed that he wrote the said letter.

196. He admitted that in the said letter he stated that the proprietor of the said plot was **Elijah Kiprono** (Deceased) and explained that in the said letter, he was confirming that he wrote the letter he produced as **Exhibit P8** and he did not address the issue of ownership.

197. He also admitted that in the letter produced as **Exhibit P8**, he did not differentiate the tenants as he saw no need to do so as they were all seeking assistance.

198. He further admitted that the valuation of the loss was by the victims and that it was common knowledge that the building on the said plot was jointly owned by **Elijah** (Deceased) and **Cheriro** (Deceased).

199. He confirmed that he did not know that **Cheriro** (Deceased) was a tenant of **Elijah Misoi** (Deceased).

200. He also confirmed that the building was not marked and further confirmed that when the hotel and bar business was run in the building, it was known to belong to **Cheriro** (Deceased).

201. He further confirmed that **Elijah Kiprono Misoi** (Deceased) owned the building that had two shops. He stated that one shop sold goods on wholesale while the other shop sold bread.

202. He also stated that the Defendant was **Elijah Misoi's** (deceased) daughter-in-law.

203. He further stated that **Elijah Misoi** had two wives and confirmed that the Defendant was one of the family members of **Elijah Misoi's** (Deceased) family.

204. When he was referred to the letter produced as **Exhibit P8**, he confirmed that **Alice Chumo** was included in the list of

tenants as she was one of **Elijah Misoi's** (Deceased) tenants.

205. He stated that he could not remember whose tenant **Elijah Langat** was but confirmed that **Anthony Langat** was **Elijah Misoi's** (Deceased) tenant.

206. He confirmed that the building was gutted down by a fire and confirmed that funds were raised though he did not know who reconstructed the building.

207. Upon re-examination, he stated that the registered owner of the plot was **Elijah Misoi** (Deceased) though he allowed other people to occupy it.

208. He explained that the reason why he stated that **Chebos Cheriro** (Deceased) co-owned the property with **Elijah Misoi** (Deceased) was because he was the one who constructed the building which was razed down by the fire.

209. The Plaintiff's case was then closed.

THE DEFENDANT'S EVIDENCE.

210. David Cheruiyot testified as **DW1**. He stated that he filed a witness statement dated 15th February, 2021 and prayed that the Court adopts it as part of his evidence-in-chief, which prayer the Court acceded to.

211. He testified that he knew **Elijah Misoi** (Deceased) and also testified that he did not know **Chebos Cheriro** (Deceased).

212. In his witness statement, he states that he is a resident of Cheptendeniet Village in Rungut Sub-Location.

213. He also states that in the 1950's **Elijah Kiprono Misoi** (Deceased) contracted him to construct buildings on Plot No. 37.

214. He further states that during the construction he did not see anyone partnering with **Elijah Kiprono Misoi** (Deceased) and therefore the Plaintiff herein is a stranger.

215. He states that the Defendant who is the Administrator of the estate of **Elijah Kiprono Misoi** (Deceased) is the rightful owner of the suit parcel of land.

216. Upon cross examination, he stated that he lost his Identity Card and could not remember the year he was born.

217. He also stated that he lives in Rungut which is not far from Litein.

218. He further stated that he is always in Litein Town and confirmed that he knew that **Elijah Misoi** (Deceased) had premises in Litein.

219. He also confirmed that the upper floor of the building had tenants one of whom was known as **Arap Rono**.

220. He further confirmed that **Chebos Cheriro** (Deceased) occupied one part of the building while one **Arap Maina** occupied the other part.

221. He stated that he knew **Arap Maina** and that he was one of the children of the family.

222. He confirmed that he did not know **Chebos Cheriro** (Deceased) and stated that **Elijah** (deceased) was living on land that belonged to **Arap Maina**.

223. He admitted that the said building is in Litein and it has a bar which belonged to **Arap Cheriro** (Deceased).

224. The Court pointed out to Counsel that the evidence of **DW1** was at variance with his witness statement and **DW1** changed and stated that he did not know the person operating the hotel and bar business that used to be in the said premises.

225. He reiterated that he did not know **Arap Cheriro** (Deceased) and stated that **Elijah** had his own building.

226. He stated that he spent most of his time with **Elijah Arap Misoi** (deceased).

227. He also confirmed that **Cheriro** (deceased) and **Arap Misoi** (Deceased) co-owned the property and further confirmed that **Cheriro** (deceased) was running a hotel and bar business in the premises.

228. He then stated that the suit premises belong to **Elijah Arap Misoi** (Deceased).

229. Upon re-examination, he reiterated that he did not know when he was born and also reiterated that he lost his identity card.

230. He stated that Rungut was not far from Litein and also stated that he was aware that the plot belongs to **Elijah Misoi** (deceased).

231. He further stated that he did not know either **Chebos Cheriro** (Deceased) nor **Arap Maina**. He denied knowing

the owner of the bar and hotel and reiterated that the premises belonged to **Elijah Arap Maina** (Deceased).

232. He stated that **Elijah Arap Maina** (Deceased) was also known as **Elijah Misoi** (Deceased).

233. He stated that he did not know **Misoi's** (deceased) father and reiterated that he did not know **Chebos Cheriro** (deceased).

234. Alice Cherono Kano testified as **DW2**. She stated that she filed a witness statement dated 10th January, 2022. She prayed that the Court adopts the said statement as part of her evidence- in-chief which prayer the Court acceded to.

235. It was her evidence that she was sued in her capacity as the administrator of the estate of **Elijah Arap Misoi** (Deceased) who was her father.

236. It was also her evidence that she has the Letters of Administration with respect to the said estate which she produced as **Exhibit D1**.

237. It was further her evidence that before she was issued with the Letters of Administration, their area Chief wrote a letter dated 28th October, 2008 which she produced as **Exhibit D2**.

238. She produced a copy of the death certificate of **Elijah Arap Misoi** (Deceased) as **Exhibit D3**.

239. She testified that **Elijah Arap Misoi** (Deceased) died in the year 1978 and when he died, her mother one **Raeli Misoi** was alive but later passed on. She produced a copy of the death certificate of **Raeli Misoi** as **Exhibit D4**.

240. She also testified that Plot No. 37 is still registered in her father's name.

241. She further testified that she had in her possession the Certificate of Registration of Title dated 21st March, 1957 which she produced as **Exhibit D5(a)**.

242. It was her evidence that she had in her possession a copy of the Memorandum of Registration of Transfer dated 31st July, 1952 which she produced as **Exhibit D5(b)**.

243. She also produced a copy of a sketch map as **Exhibit D5 (c)** and testified that at the time her deceased father was using the suit parcel of land, there was a fire and it razed down the premises located on the land.

244. It was also her evidence that she had a Statutory declaration sworn on 18th December, 1968 by **Elijah Arap Misoi** (Deceased).

245. It was further her evidence that her deceased father stated in the said statutory declaration, that he owned Plot No. 37 and that the documents of title were burnt down in the fire.

She produced a copy of the statutory declaration as **Exhibit D6**.

246. She testified that she is the one paying rates for the suit parcel of land and added that she has receipts dated 28th November, 2005, 3rd June, 2005 and 17th February, 2021 which she produced as **Exhibit D7 (a), (b) and (c)**.

247. She further testified that the receipts show that **Elijah Misoi** (Deceased) was the one paying the rates.

248. It was her evidence that she had a demand note from the County Government of Kericho which is dated 21st April, 2014 and are in the name of **Elijah Misoi** (Deceased). The same was marked and produced as **Exhibit D8**.

249. She produced a letter dated 16th November, 2011 written by Sila Munyao & Co. Advocates. The said letter is addressed to **Elijah Misoi** (Deceased) and it is demanding the rate

arrears for Plot No. 37 that was owed to the County Government. It was marked and produced as **Exhibit D9**.

250. A copy of a Clearance Certificate dated 15th May, 2009 issued by the Town Council of Litein to **Elijah Misoi** (Deceased) was marked and produced as **Exhibit D10**.

251. She testified that it was not true that the plot was co-owned by **Chebos Cheriro** (deceased) and added that his name is not on the title and neither did it appear in the records held by the County Government.

252. She also testified that the premises on Plot No. 37 burnt down twice. She explained that the first time the premises burnt down was in the year 1961 and the second time was in the year 2000.

253. It was her evidence that it was not true that **Cheriro** (deceased) built part of the premises that burnt down after the second fire incident.

254. It was also her evidence that when the building burnt down, the persons in occupation rebuilt the premises and the cost of rebuilding was to be deducted from the rent.

255. When referred to the tenancy agreement that was produced as **Exhibit P6**, she testified that after her mother died, **Cheriro** (deceased) refused to pay rent and started to claim that the building belonged to him.

256. She also testified that the tenancy agreement was between **Cheriro** (Deceased) and **Chepkemoi Chepkwony** and further testified that **Cheriro** (Deceased) painted the building and alleged that he was the owner and rented it out to other people.

257. When referred to the tenancy agreement produced as **Exhibit P7**, she testified that it was an agreement between **Cheriro** (deceased) and **Sigilai**. She also testified that she did not know how they reached the said agreement and

further testified that **Cheriro** (Deceased) was receiving the rent money.

258. She further testified that **Sigilai** was no longer a tenant in the premises as they later removed him.

259. It was her evidence that it was only **Caroline Chepkemai Chepkwony** who was remaining in the premises who claimed to be **Cheriro's** (Deceased) tenant.

260. It was also her evidence that they removed all the other tenants who alleged that they were **Cheriro's** (Deceased) tenants.

261. It was further her evidence that **PW5's** evidence was false as he was the one who wrote the letter that they used to make an application in the succession cause.

262. She testified that **PW5** did not include **Cheriro's** name in the said letter and prayed that the suit be dismissed as the land belonged to **Elijah Misoi** (Deceased).

263. In her witness statement, **DW2** states that she was the daughter-in-law of **Elijah Kiprono Misoi** (Deceased).

264. She also states that the Plaintiff is a stranger to the estate of **Elijah Kiprono Misoi** (Deceased) and further states that the Plaintiff has filed numerous applications with the intention of disinheriting them.

265. Upon cross-examination, **DW2** stated that she married into the family and is a wife to **Elijah Misoi's** (Deceased) son.

266. She also stated that she was therefore **Elijah Misoi's** (Deceased) daughter-in-law and added that she got married in the year 1975.

267. She further stated that she used to visit the premises on the suit property but she never saw **Cheriro** (Deceased).

268. She admitted that she knew **Caroline** but denied that she had been in occupation of the premises for a period of over thirty years.

269. She also admitted that **Caroline** was still in possession of the premises and confirmed that Caroline did not pay rent to her.

270. She stated that **Cheriro** (Deceased) used to receive rent from **Sigilai** and take it to her mother who is now deceased.

271. She also stated that **Cheriro** (Deceased) was a tenant and added that whatever rent was collected by him was always remitted to them.

272. She further stated that **Sigilai** was using the shops which **Cheriro** (Deceased) had rented from them.

273. She confirmed that she did not know who the tenants were and reiterated that rent was always brought home.

274. She admitted that they chased away **Cheriro's** (Deceased) tenants who were five in number and added that she only knew two of them whose names she gave as: **Sigilai** and **Chepkemoi. DW2** admitted that she did not know how many rooms they were occupying.

275. She reiterated that it was **Caroline** who was left in the premises because she refused to move out.

276. She denied that she filed HC Case No. 60 of 2011 against **Caroline** and also denied that the said suit was stayed pending the hearing and determination of the present suit.

277. She admitted that when the building burnt down, **Caroline** constructed the portion she was in occupation of and the money spent was to be offset against rent payable by her.

278. She confirmed that **Caroline** was **Cheriro's** (Deceased) tenant and admitted that she did not pay them any rent.

279. She also confirmed that she heard the witnesses who testified in support of the Plaintiff's case.

280. She admitted that they testified that the plot belonged to both **Cheriro** (Deceased) and **Elijah Misoi** (Deceased) and added that this is not true because the land belonged exclusively to **Misoi** (Deceased).

281. Upon re-examination, she stated that she did not see any document produced by either the Plaintiff or his witnesses in support of the contention that the suit parcel of land was jointly owned.

282. She also stated **Sigilai** was one of the tenants they evicted and further stated that none of the tenants they evicted went to Court to complain.

283. She reiterated that **Caroline** was the only one left in the said premises and stated that she could now remember that she filed a suit in the High Court where she sought that **Caroline** be evicted.

284. She also stated that she did not know how the said case was concluded and reiterated that **Caroline** has not been a tenant for a period of over thirty years.

285. She further stated that the suit was between the estates of **Cheriro** (Deceased) and **Misoi** (Deceased).

286. She reiterated that she was married in the year 1975 and that she used to go to the premises to buy sugar.

287. She stated that she did not know what **Cheriro** (Deceased) was doing and all that she knew was that their deceased father was collecting rent from his tenants who included **Cheriro** (Deceased).

ISSUES FOR DETERMINATION.

288. The Defendant filed submissions on 15th July, 2025 while the Plaintiff filed submissions on 8th October, 2025.

289. The Plaintiff submits on the following issues;

a. Whether or not the Plaintiff has acquired half of the suit land by way of adverse possession.

b. Whether the Plaintiff is entitled to half portion to be excised out of land parcel No. 8839/37. (sic)

c. Who should pay costs of the suit.

290. On the first issue, the Plaintiff submits that **PW1** testified that **Cebos Cheriro** (Deceased) was requested by **Elijah Arap Miso** (Deceased) to construct business premises on the suit parcel of land after which they will each take possession of half of the premises.

291. The Plaintiff also submits that this was confirmed by **DW2** who testified that in the premises, there were tenants who were **Cheriro's** (Deceased) and there were tenants who were **Elijah Misoi's** (Deceased).

292. The Plaintiff further submits that as per the evidence of **PW3** and **PW4, Chebos Arap Cheriro's** (Deceased) tenants have been in occupation of the premises for a period of over twelve years.

293. It is the Plaintiff's submissions that **Elijah Misoi** (Deceased) refused to sign a transfer to convey half interest of the suit property to **Chebos Arap Cheriro** (Deceased).

294. It is also the Plaintiff's submissions that he produced as **Exhibit P4** a copy of the proposed subdivision plan of LR No. 8839/37 which shows the portion belonging to **Chebos Arap Cheriro** (Deceased) and the portion belonging to **Elijah Misoi** (Deceased).

295. It is further the Plaintiff's submissions that **Chebos Arap Cheriro's** (Deceased) possession of a section of the premises where he ran a hotel and bar business was quiet and uninterrupted since the year 1968.

296. The Plaintiff submits that **Chebos Arap Cheriro** (Deceased) rented out part of his premises to **David Kipkemoi Chepkwony** and **Caroline Chepkemoi** who have been in occupation and have been paying rent.

297. The Plaintiff also submits that even though the Defendant contends that **Chebos Arap Cheriro** (Deceased) was a tenant of **Elijah Misoi** (Deceased), no evidence in support of the said contention was produced.

298. The Plaintiff further submits that the Defendant instead admits that **Chebos Arap Cheriro** (Deceased) was in possession of the suit premises and he had his own tenants who are in possession to date.

299. The Plaintiff relies on **Section 7** of the Limitation of Actions Act, the judicial decisions of **Mtana Lewa vs Kahindi Ngala Mwangandi [2015]eKLR, Samwel Kihamba vs Mary Mbaisi [2015] eKLR** as was cited in **Stephen Mwangi Gatunge vs Edwin Onesmus Wanjau (Suing in her capacity as the administrator of the estate of Kimingi Wariera) [2022]eKLR** and submits that he has proved that he has acquired a portion of the suit parcel of land by way of adverse possession.

300. On the second issue, the Plaintiff submits that it is not disputed that LR No. 8839/37, the suit parcel of land measures 0.1275 acres and it is registered in the name of **Elijah Misoi** (Deceased).

301. The Plaintiff also submits that he produced a copy of the title as **Exhibit P1** and a copy of the proposed subdivision plan as **Exhibit P4** which shows the portion of land that they are in occupation of.

302. The Plaintiff further submits that from the said evidence, it is clear that he has proved that he is entitled to half a portion of the suit parcel of land through adverse possession.

303. The Plaintiff relies on the judicial decision of **Kazungu Katana & 101 Others vs Salim Abdalla Bakshwein & Another [2015] eKLR** as was cited in **Stephen Mwangi Gatunge vs Edwin Onesmus Wanjau (Suing in her capacity as the administrator of the estate of Kimingi Wariera) [2022]eKLR** and concludes his submissions by urging the Court to allow the prayers sought in the Originating Summons.

304. It is the Defendant's submission that the Plaintiff is a stranger to the estate of **Elijah Misoi** (Deceased) as he has not produced any agreement to show that the suit parcel of land was to be registered jointly in the names of **Elijah Misoi** (Deceased) and **Chebos Arap Cheriro** (Deceased).

305.The Defendant reiterates the averments in the Replying Affidavit, a summary of the evidence she adduced in her defence and while relying on **Sections 24 & 25 (1)** of the Land Registration Act, submits that the registration of a person as a proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges thereto.

306.It is the Defendant's submissions that the Plaintiff is trying to grab the suit property from the rightful beneficiaries.

307.It is also the Defendant's submissions that she has been paying the rates of the suit parcel of land and the Plaintiff is therefore not entitled to it.

308.It is further the Defendant's submissions that of the five witnesses the Plaintiff called, none of them produced the documentary evidence in support of his case.

309.The Defendant submits that the Plaintiff's witnesses confirmed on cross-examination that all of **Chebos Arap Cheriro's** (Deceased) tenants have since vacated the suit parcel of land save for **Caroline Chepkemoi Chepkwony**.

310.The Defendant also submits that even though they testified that **Chebos Arap Cheriro** (Deceased) constructed the premises after it was burnt down, neither of them produced evidence in the form of building plans and/or receipts in support of the said contention.

311.The Defendant further submits that the issue of trust does not arise as the Plaintiff has not proved that **Chebos Arap Cheriro** (Deceased) paid rates for the suit parcel of land.

312.It is the Defendant's submissions that the sketch map produced by the Plaintiff was not approved by the relevant authorities and neither did it have **Elijah Misoi's** (Deceased) signature.

313. It is also the Defendant's submissions that the Plaintiff is a trespasser on **Elijah Misoi's** (Deceased) land.

314. The Defendant then submits on the following issues;

a. Whether the Plaintiff deserves half a share of land comprised in the suit property.

b. Who should bear costs of the suit.

315. On the first issue, the Defendant reiterates that **Elijah Misoi** (deceased) is the registered proprietor of the suit parcel of land and **Chebos Arap Cheriro** (Deceased) was one of his tenants.

316. The Defendant submits that no evidence was adduced for the Court to imply trust and she relies on the judicial decision of **Juletaboi African Adventure Limited & Another vs Christopher Michael Lockey [2017] eKLR** as was cited in **Kazungu Fondo Shutu & another versus Japhet Noti Charo & another [2021] eKLR** in support of her submissions.

317.The Defendant concludes her submissions by urging the Court to dismiss the Originating Summons with costs.

ANALYSIS AND DETERMINATION.

318.After considering the pleadings, the evidence adduced by both the Plaintiff and the Defendant together with their respective submissions, it is my view that the following issues arise for determination;

a. Whether the Plaintiff has acquired a portion of LR No. 8839/37 by way of adverse possession.

b. Whether Elijah Arap Misoi (Deceased) was holding half a portion of LR No. 8839/37 in trust for the Plaintiff.

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

d. Who should bear costs of the suit.

SUMMARY OF EVIDENCE AND DOCUMENTS.

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

320.It is the Plaintiff's case that he has Letters of Administration *Ad Litem* with respect to the estate of **Chebos Arap Cheriro** his deceased father.

321.It is also the Plaintiff's case that **Elijah Arap Misoi** (Deceased)

whose estate the Defendant represents, was allotted LR No. 8839/37.

322.It is further the Plaintiff's case that sometime in the year 1952, **Elijah Arap Misoi** (Deceased) approached **Chebos Arap Cheriro** (Deceased) and asked him to construct commercial premises on the suit parcel of land which then would be shared on a 50:50 basis.

323. It is the Plaintiff's case that **Chebos Arap Cheriro** (Deceased) agreed and he commenced construction which construction was completed in the year 1958.

324. It is also the Plaintiff's case that upon completion, **Chebos Arap Cheriro** (Deceased) and **Elijah Arap Misoi** (Deceased) sat and subdivided the premises.

325. It is further the Plaintiff's case that **Chebos Arap Cheriro** (Deceased) took possession of his half portion where he ran a bar and Restaurant business which premises he later rented out.

326. It is the Plaintiff's case that when a fire razed down the said premises, **Chebos Arap Cheriro** (Deceased) and **Elijah Arap Misoi** (Deceased) reconstructed their respective portions of the premises.

327. It is also the Plaintiff's case that in the year 2009, the beneficiaries of the estate of **Elijah Arap Misoi** (Deceased)

repossessed the premises that **Chebos Arap Cheriro** (Deceased) used to occupy and evicted his tenants.

328. In support of his case, the Plaintiff produced a copy of a Limited Grant of Letters of Administration Ad Litem as **Exhibit P1**. It was issued in Kericho HC Ad Litem No. 1 of 2016 In the Matter of the Estate of **Chebos Arap Cheriro** (Deceased) to **Jonathan K. Maritim** on 11th April, 2016.

329. A copy of a Certificate of Registration of Title of LR No. 8839/37 dated 13th May, 1957 was produced as **Exhibit P2**. It states that **Elijah Arap Misoi** (Deceased) was granted LR No. 8839/37 which measures 0.1275 acres by the Governor and Commander in Chief of the Colony of the Protectorate of Kenya to hold for a term of fifty-five years from 1st January, 1957. It also states that **Elijah Arap Misoi** (Deceased) is to pay annual rent of Kshs. 240/=.

330. A copy of a Single Business Permit issued on 5th June, 2007 by the Town Council of Litein to **Chebos Cheriro** (Deceased)

was produced as **Exhibit P3**. It states that **Chebos Cheriro** (Deceased) was to engage in a hotel business and he paid Kshs. 2,500/= and was permitted to run the hotel business from 1st June, 2007 to 31st December, 2007.

331. A copy of a Proposed subdivision of LR No. 8839/37 was produced as **Exhibit P4**. The proposed subdivision plan shows that LR No. 8839/37 was to be subdivided into two and it is signed by **Chebos Arap Cheriro** (Deceased) and witnessed by **Arap Mangeso** of Litein.

332. A copy of a Caveat filed in Kericho HC Succession Cause No. 2 of 2010 In the Matter of the Estate of **Elijah Arap Misoi** also known as **Elijah Kiprono Misoi** (Deceased) was produced as **Exhibit P5(a)**. The caveat is dated 9th December, 2011 and is addressed to the Deputy Registrar, Kericho High Court. It is drawn and filed by **N.O Migiro** and states that nothing should be done in the estate of **Elijah Arap Misoi** (Deceased) without notice being issued to **Jonathan Kiplangat Maritim**.

333. A copy of an Affidavit of Protest against Confirmation of Grant was produced as **Exhibit P5(b)**. It is filed in Kericho HC Succession Cause No. 2 of 2010 In the Matter of the Estate of **Elijah Arap Misoi** also known as **Elijah Kiprono Misoi** (Deceased) and sworn by **Jonathan Kiplangat Maritim** on 15th November, 2012. He deposes that he represents the interests of **Chebos Arap Cheriro** who upon agreement with **Elijah Arap Misoi** (Deceased) constructed buildings on Plot No. 37 Litein Township. He also deposes that **Chebos Arap Cheriro** has been in possession of the said plot and further deposes that his interest was concealed from the Court. It is his deposition that the grant was therefore issued upon concealment of material facts. During the hearing, **PW1** confirmed that at the time of swearing of this affidavit, **Chebos Arap Cheriro** (Deceased) was alive.

334. A copy of a tenancy agreement dated 25th May, 2009 between **Chebos Arap Cheriro** (Deceased) (Landlord) and **Chepkemoi Chepkwony** (Tenant) was produced as **Exhibit**

P6. The tenancy agreement states that the Tenant is renting a portion of the business premises measuring 5 meters by 5 ½ meters that is erected on LR No. 8839/37 situated in Litein Township. The agreement also states that LR No. 8839/37 is jointly owned by the Landlord and one **Elijah Misoi** (Deceased).

335. The tenancy agreement further states that the tenancy was to commence on 25th May, 2009 for a term of five years and one month with monthly rent of Kshs. 20,000/= . The tenancy agreement is signed by the Land Lord and Tenant. It is drawn by Migiro & Co. Advocates.

336. A copy of a Lease Agreement was produced as **Exhibit P7**. The copy of the Lease Agreement that was produced in Court is for the most part illegible. The only legible part is the second page where it is signed by **Cheboss A. Cheriro, David Chepkwony (Sigilai)** and **Samuel Maritim**. The lease agreement is drawn and filed by Gachathi & Co. Advocates.

337. A copy of a Report prepared by **Moses Kiplangat** was produced as **Exhibit P8. Moses Kiplangat Mutai** who testified as **PW5** set out in great detail the contents of the said report when he gave evidence.

338. The Defendant's case on the other hand is that she is the legal representative of the estate of **Elijah Arap Misoi** (Deceased).

339. It is also the Defendant's case that **Elijah Arap Misoi** (Deceased) is the registered proprietor of LR No. 8839/37.

340. It is further the Defendant's case that he constructed premises on the said parcel of land which he rented out to among other people, one **Chebos Arap Cheriro** (Deceased).

341. It is the Defendant's case that when the premises was razed down by a fire, the tenants reconstructed the said premises

and the money they used was to be set off against rent payable by them.

342. It is also the Defendant's case that after the death of **Elijah Arap Misoi** (Deceased), **Chebos Arap Cheriro** (Deceased) alleged that the suit parcel of land belonged to him.

343. It is further the Defendant's case that **Chebos Arap Cheriro** (Deceased) repainted the building and rented it out to other people.

344. It is the Defendant's case that even though **Chebos Arap Cheriro** (Deceased) rented out the premises, he used to collect rent and remit it to their family.

345. It is also the Defendant's case that they later evicted **Chebos Arap Cheriro's** (Deceased) tenants with the exception of **Caroline Chepkemoi** who remained in the premises.

346. It is further the Defendant's case that **Chebos Arap Cheriro** (Deceased) was one of the tenants of **Elijah Arap Misoi** (Deceased) and there was no agreement that they would be joint owners of the suit parcel of land.

347. In support of her case, she produced a copy of Grant of Letters of Administration Intestate issued in Kericho HC Succession Cause No. 2 of 2010 In the Matter of the Estate of **Elijah Arap Misoi** (Deceased) to **Alice Cherono Rono** on 29th March, 2011 as **Exhibit D1**.

348. A copy of a Chief's Letter dated 28th October, 2008 was produced as **Exhibit D2**. The letter is written by **Moses Mutai** the Chief Litein Location and the reference of the letter is "*Alice Cherono Rono, Jane Rono and Elizabeth Rono*" The letter states that **Alice Cherono Rono, Jane Rono** and **Elizabeth Rono** are part of the beneficiaries of the estate of the late **Elijah Kiprono** (Deceased). The letter further states that are also beneficiaries of Plot No. 37 Litein Town.

349. A copy of a Certificate of Death of **Elijah Arap Misoi** was produced as **Exhibit D3**. The Certificate of death is No. 735224 and it shows that **Elijah Arap Misoi** died on 26th March, 1978 and the death was registered on 7th April, 1978. The Certificate of Death was issued on 17th February, 2004.

350. A copy of a Certificate of Death of **Rael Chebii Misoi** was produced as **Exhibit D4**. The Certificate of Death is No. 39707 and it shows that **Rael Chebii Misoi** died on 7th September, 1996. The death was registered on 9th October and the year of registration is not legible. The Certificate of Death was issued on 22nd December and the year of issuance is also not legible.

351. A copy of a Certificate of Registration of Title dated 21st March, 1957 was produced as **Exhibit D5(a)**. The Plaintiff produced a copy of the Certificate of Registration of Title as **Exhibit P2** and its contents have been set out in the preceding paragraphs.

352. A copy of a Memorandum of Transfer of land dated 31st July, 1957 was produced as **Exhibit D5(b)**. It is for the transfer of LR No. 8339/87 from the **Crown** to **Elijah Arap Misoi** (Deceased). It indicates that LR No. 8339/87 measures 0.1275 acres, that it is located in Litein Trading Center and the land was transferred to **Elijah Arap Misoi** (Deceased) upon payment of the stand premium of Kshs. 1,200/= . The rent is stated to be Kshs. 540/= per annum and it is for a term of fifty-five years starting from 1st January, 1957. There is a schedule on the face of the said Memorandum of Transfer which is not legible.

353. A copy of sketch map dated 11th March, 1957 was produced as **Exhibit D5(c)**. The sketch map is for LR No. 8839/37 situated in Litein Trading Center which measures 0.1275 acres.

354. A copy of a Statutory Declaration sworn by **Elijah Arap Misoi** on 18th December, 1968 was produced as **Exhibit D6**. He deposes that he is the owner of Plot No. 37 Litein Trading

center. He also deposes that on 2nd February, 1961, the building constructed on the said parcel of land was destroyed by a fire.

355. He further deposes that he kept the Certificate of Title of the said plot in that building and it was therefore destroyed in the fire. He ends his deposition by stating that he reported the said incident to the Police.

356. A copy of bundle of receipts issued by **Litein Urban Council** to **Elijah Misoi** (Deceased) for Plot No. 37 were produced as **Exhibit D7(a)** and **(b)**. **Exhibit D7(a)** is a copy of a receipt issued on 28th November, 2005 upon payment of Kshs. 2,000/= while **Exhibit D7(b)** is a copy of a receipt issued on 13th June, 2005 upon payment of Kshs. 10,160/=.

357. A copy of a receipt issued by the County Government of Kericho to **Elijah Misoi** (Deceased) upon payment of Kshs. 16,680/= was produced as **Exhibit D7(c)**.

358. A copy of a Demand Notice for Rates issued by the County Government of Kericho on 21st April, 2014 was produced as **Exhibit D8**. It is issued to **Elijah Misoi** (Deceased) and requests for payment of Kshs. 15,240/=.

359. A copy of a Demand Notice dated 16th November, 2011 and issued by Sila Munyao & Company Advocates was produced as **Exhibit D9**. The demand notice is addressed to **Elijah Misoi** (Deceased) and requests for the arrears owed to the Town Council of Litein for Plot No. 37 of Kshs. 10,160/= together with legal charges of Kshs. 3,000/=. It requests payment of the said sum of money within seven days.

360. A copy of a Clearance Certificate issued by the **Town Council of Litein** to **Elijah Misoi** on 15th May, 2009 was produced as **Exhibit D10**. It states that all the sums due to the Litein Town Council in respect of LR No. 8839/37 Litein have been paid.

A. Whether the Plaintiff has acquired a portion of LR No. 8839/37 by way of adverse possession.

361. 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.”

362.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)

363.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.”

364. I have stated in the foregoing paragraphs and I feel compelled to state again that the Plaintiff's contention is that his deceased father one **Chebos Arap Cheriro** (Deceased) entered into an agreement with **Elijah Arap Misoi** (Deceased) where they agreed that he (**Chebos Arap Cheriro** (Deceased) would construct a building on Plot No. 37 that was registered in the name of **Elijah Arap Misoi** (Deceased).

365. The Plaintiff also contends they agreed that upon completion of the construction, they will share the property on a 50:50 basis.

366. The Plaintiff further contends that upon completion of the construction in the year 1958, **Chebos Arap Cheriro** (Deceased) took possession of a portion of the premises while **Elijah Arap Misoi** (Deceased) took possession of the other portion.

367. It is the Plaintiff's contention that **Elijah Arap Misoi** (Deceased) did not transfer the said portion to **Chebos Arap Cheriro** (Deceased).

368. The Defendant on the other hand denies that there was any such arrangement and contends that **Chebos Arap Cheriro** (Deceased) was a tenant of her deceased father, one **Elijah Arap Misoi** (Deceased).

369. It is not disputed that **Chebos Arap Cheriro** (Deceased) was in possession of a section of the premises on the suit parcel of land.

370. Irrespective of whether **Chebos Arap Cheriro** (Deceased) entered into possession as a tenant of **Elijah Arap Misoi**

(Deceased) or as a result of any alleged arrangement, it is evident that his possession of a section of the premises was with the consent of the registered proprietor.

371. In the judicial decision of **Mbui v Maranya [1993] KEHC 161 (KLR)** the Court held as follows;

“The occupation of the land by the intruder who pleads adverse possession must be nonpermissive use, ie without permission from the true owner of the land occupied. It has been held many times that acts done under licence or permitted by, or with love of, the owner do not amount to adverse possession and do not give the licensee or permitted entrant any title under the limitation statute. If one is in possession as a result of permission given to him by the owner, or if he is in possession of the land as a licensee from the owner, he is not in adverse

possession. Permissive occupation is inconsistent with adverse possession. The stranger must show how and when his possession ceased to be permissive and became adverse (sic)." (Emphasis mine)

372. In the above cited judicial decision, the Court held that acts done under licence or through permission of the owner of registered land do not amount to adverse possession.

373. Taking into consideration the fact that **Chebos Arap Cheriro** (Deceased) took possession of a section of the premises on the suit parcel of land with the consent of **Elijah Arap Misoi** (Deceased), he cannot claim adverse possession.

374. Therefore, the Plaintiff's claim of adverse possession fails.

B. Whether Elijah Arap Misoi (Deceased) was holding half a portion of LR No. 8839/37 in trust for the Plaintiff.

375. Under prayer **(b)** of the Originating Summons, the Plaintiff seeks that the Court issues a declaration that **Elijah Arap Misoi** (Deceased) was holding half of the suit parcel of land in trust for the Plaintiff herein and under prayer **(c)**, the Plaintiff seeks that the said trust be terminated.

376. Taking into consideration the evidence adduced before this Court, it is evident that the Plaintiff did not lead evidence on the question of trust. Also, the Plaintiff did not submit on the question of trust.

377. It is the Defendant's submission that the Plaintiff did not adduce sufficient evidence for the Court to imply trust.

378. In the judicial decision of **Kinoti v Nkanata [2026] KEELC 181 (KLR)** the Court held as follows;

“37. Moreover, it is worthy to underscore that trust can only be established and proven on the basis of the evidence. Absent plausible; cogent; and compelling evidence to demonstrate trust, a Court of law cannot return a favourable finding in favour of the claimant.” (Emphasis mine)

379. The Court of Appeal in **Kazungu Fondo Shutu & another v Japhet Noti Charo & another [2021] KECA 592 (KLR)** held as follows;

“31. As earlier stated, the existence of a trust is a question of evidence. In the Juletabi case (supra), the Court held that the onus lies on the party relying on the existence of a trust to prove it through evidence. That is because:

“The law never implies, the Court never presumes a trust, but [only] in case of absolute necessity. The

Courts will not imply a trust save in order to give effect to the intentions of the parties. The intention of the parties to create a trust must be clearly determined before a trust will be implied. (Emphasis mine)

380. The Court of Appeal in **Kazungu Fondo Shutu & another v Japhet Noti Charo & another (supra)** held that a party relying on the existence of a trust must prove it through evidence.

381. The Plaintiff in the present suit did not lead specific evidence on the question of trust and as was held in **Kinoti v Nkanata (supra)**, a trust can only be established and/or proven on the basis of evidence.

382. Therefore, the Plaintiff's claim on the existence of a trust fails.

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

383. The questions that the Plaintiff seeks determination of and the prayers sought have been set out in the preceding paragraphs but I shall list them again for ease of reference.

384. In the Originating Summons, the Plaintiff seeks the determination of the following questions;

1. Whether or not the late Elijah Arap Misoi permitted the Applicant to construct a commercial premise (sic) on his Plot No. 8839/37 then allotted to him on an understanding that the two would eventually share the suit premises.

2. Whether or not on completion of the construction, the deceased and the Applicant sub-divided the suit property into two on a 50:50 basis, each conducting

own business on own half portion. (sic)

3. Whether or not the Applicant has acquired title to the suit land by adverse possession he having been in quite (sic) and exclusive possession of it for a period of 12 years since 1968 when Elijah Arap Misoi (deceased) refused to sign documents conveying half interest of the property to Chebos Arap Cheriro (deceased) as the two would become joint owners of the suit land. (sic)

4. Whether or not the aforesaid property is now held in trust for the Applicant he having constructed the same in consideration that they would share the same equally with the deceased.

5. Whether or not the Respondent had started threatening the Applicant and his tenants with eviction in the year 2008.

5 (A) In the alternative and absolutely without prejudice to the foregoing (sic) whether or not the Applicant is entitled to be compensated to the extent of developments put up solely by Chebos Arap Cheriro (deceased) on the suit land.

385. I have addressed questions **3** and **4** in the Originating Summons under issues **(A)** and **(B)** above and find that the other questions are not relevant for determination of this dispute. In any event, it is trite law that Originating Summons are intended for simple matters and should not be used for purposes of determining disputed questions of fact. See **Kenya Commercial Bank Ltd vs Osebe (1982) K.L.R. P. 296.**

386. That being the case, questions **1, 2, 5** and **5A** are not in the realm of matters that can be resolved in a suit commenced by way of an Originating Summons.

387. The Plaintiff also seeks for the following prayers;

a. A declaration that the Elijah Arap Misoi (Deceased) at his demise entitled to ownership of half portion of the suit premises whereas the Applicant is entitled to the other half. (sic)

b. A declaration that although the deceased was the registered Proprietor of the suit land, he was holding half portion thereof in trust for the Applicant herein.

c. There be an order terminating the said trust.

d. There be an order directing the Respondent to sign documents of subdivision and transfer of half portion of the suit plot to the estate of the late Elijah Arap Misoi alias Elijah Kiprono Misoi in favour of the Applicant herein.

d (A) Alternatively, there be an order directing the Respondent to compensate the Applicant to the extent of developments put up on

the suit property and as may reasonably be valued.

e. Costs of this application be provided for.

388. Given my finding on issues (A) and (B) above, the prayers sought in the Originating Summons cannot be granted.

D. Who should bear costs of the suit.

389. 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.

390. In the result, I find that the Plaintiff has failed to prove his claim. Consequently, this suit is hereby dismissed with costs.

391. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO
THIS 30TH DAY OF APRIL, 2026.**

**L. A. OMOLLO
JUDGE.**

In the presence of: -

Mr. Kirui Evanson for the Plaintiff.

Mr. Bii for the Defendant.

Court Assistant; Mr. Joseph Makori.