

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KITALE**

**CIVIL SUIT NO.12 OF 2020**

**KENNEDY WAKOLI WELIKHE.....PLAINTIFF**

**(Suing on his own and on behalf of 2,022 internally displaced persons (IDPs) from Cherangany, Endebess, Kiminini, Kwanza and Saboti )**

**VERSUS**

**RAPHAEL EYENAI EPRONO.....1<sup>ST</sup>**

**DEFENDANT**

**EQUITY BANK KENYA LTD.....2<sup>ND</sup>**

**DEFENDANT**

**THE ATTORNEY GENERAL.....3<sup>RD</sup>**

**DEFENDANT**

**THE PRINCIPAL SECRETARY**

**MINISTRY OF INTERIOR & COORDINATION OF**

**NATIONAL GOVERNMENT.....4<sup>TH</sup>**

**DEFENDANT**

**JUDGMENT**

1. Kennedy Wakoli Welikhe one of the plaintiffs herein describes himself as one of the internally displaced persons

(IDPs) as a result of the post-election violence that occurred following disputed Presidential Elections Results of 2007 in Kenya.

2. The plaintiff has brought this suit on his own behalf and on behalf of 2,022 internally displaced persons (IDPs) from Cherangany, Endebess, Kiminini, Kwanza and Saboti Sub-counties within Trans-Nzoia County.
3. The plaintiff has come to this court vide a plaint dated 13/8/2020 seeking the following reliefs namely;

**(i) A declaration that the list of names as presented by the plaintiff are the genuine internally displaced persons (hereinafter to be referred to as IDPs for ease of reference) from Cherangany, Endebess, Kiminini, Kwanza and Saboti Sub-counties.**

**(ii) The withdrawal of the fake list presented to the 4<sup>th</sup> defendant and subsequently to the 3<sup>rd</sup> defendant to effect payments.**

**(iii) That full compensation do issue to IDPs as per the genuine/reconciled list.**

**(iv) Orders restraining the defendants/their agents/police officers from harassing and intimidating the plaintiffs/IDPs and under the supervision of the DCIO Kitale.**

**(v) Costs of the suit.**

***(vi) Any other relief and/or order this Hon. Court may deem fit and just to grant.***

**4. The plaintiff's case.**

The plaintiff pleads that he and over two thousand IDPs from Cherangany, Endebess, Kiminini, Kwanza and Saboti Sub-counties are genuine IDPs that were injured, forced out of their houses and lost property during post-election violence following the December 2007 disputed Presidential Elections Results.

5. The plaintiff claims that the list of IDPs from Trans-Nzoia County comprised about 17,000 people and out of that only 113 people from the same area were compensated by payment of Kshs.50,000 paid through the 3<sup>rd</sup> defendant in 2017.
6. That upon compensation, the plaintiff noticed that most names of the genuine IDPs from Cherangany, Endebess, Kiminini, Kwanza and Saboti Sub-counties had been short changed and replaced with fake names at the time of payments conducted by the 3<sup>rd</sup> defendant.
7. The plaintiff claims that the 1<sup>st</sup> defendant was among the leaders mandated to forward the verified names of the IDPs to the 4<sup>th</sup> defendant and/or the National Consultative Coordination Committee on Internally Displaced Persons (NCCC) to effect compensation payments to the IDPs.

8. According to the plaintiff, the 1<sup>st</sup> defendant replaced the names of the genuine IDPs with fake names of people from South Sudan, Turkana and Uganda who were paid instead of genuine IDPs.
9. The plaintiff seeks that defendants jointly and severally to withdraw the fake list and payments of compensation that is due and replace the list with plaintiff's genuine list which he claims is in the defendants possession which list he further claims was vetted and approved by the local authorities.
10. In his oral evidence, the plaintiff stated that he lived at a place called Rafiki Area after leaving a farm known as Kinyi Kei Farm at Mowlem Area where he stated that he was born and grew up in.
11. He told this court that he left Mowlem Area due to tribal clashes. He stated that their houses were torched and had to run away to safety due to fear. He claimed that his relationship with his neighbours was not good and his farm is now inhabited by other people forcing him to live in a rented house in Rafiki.
12. He further stated that he had filed this suit on behalf of himself and other 2,022 people. He tendered the list of the 2,022 members he said he represented as PExhibit 1(a) and (b).
13. He stated the members are registered as Kiminini Alliance Community and exhibited a Certificate of

Registration as PExhibit 2 and a letter from Assistant Chief Nabiswa Sub-location as PExhibit 3.

14. According to him the 1<sup>st</sup> defendant is a leader of another IDP group but not part of his group.
15. He said that he sued the 2<sup>nd</sup> defendant since all previous payments to IDPs were done through that bank and that the payments were in respect to IDPs represented by the 1<sup>st</sup> defendant.
16. He blamed the 1<sup>st</sup> defendant for liaising with the 2<sup>nd</sup> defendant to short change other IDPs. He claimed that the IDPs led by the 1<sup>st</sup> defendant were paid Kshs.50,000/- by the 4<sup>th</sup> defendant and prayed that his group be also considered for compensation.
17. He however admitted in cross-examination that the 2<sup>nd</sup> defendant was not involved in preparing the list of IDPs to be compensated but only paid as instructed.
18. When pressed to explain the portion of land he was evicted from, he stated that he was given the portion by his father but the land belonged to a company known as Kinyi Kei Farm and that though there are other people occupying his portion, he had not taken any action to reclaim his parcel of land. He insisted that he was displaced in 2002 and had taken him 18 years to file this case.
19. He stated that he had filed a representative suit because the other members authorized him to do so. He blamed the 1<sup>st</sup> defendant for omitting other IDPs in the list

presented for compensation. He stated that he had complained about the issue in writing to the 4<sup>th</sup> defendant.

**20. 2<sup>nd</sup> defendant's case.**

The 2<sup>nd</sup> defendant in its pleadings denied in toto the plaintiff's claim stating that it was a stranger to the claim and averred that the plaintiff's suit was bad in law.

Through its witness Samwel Waimutu **(DW1)**, the 2<sup>nd</sup> defendant stated it was instructed by the 3<sup>rd</sup> defendant vide a letter dated 5/6/2017 to pay a total of 26,315 IDPs throughout Kenya Kshs.50,000/- which was deposited in individual accounts of the IDPs identified and listed by the Government.

21. He stated that from the list of 26,315 IDPs, 4,913 were from Trans-Nzoia and that as per instructions from the 3<sup>rd</sup> defendant it opened individual accounts of the named persons and credited each account with Kshs.50,000/- each.

22. It further stated that as a bank, it did not participate in identification and verification of the beneficiaries and wholly relied on the instructions from the 3<sup>rd</sup> defendant who provided the names, ID numbers and the funds to be deposited.

23. The witness tendered a letter of instructions from the 3<sup>rd</sup> defendant dated 5/6/2017 as DExhibit 1 and the list of beneficiaries from the 4<sup>th</sup> defendant as DExhibit 2.

24. The 3<sup>rd</sup> and 4<sup>th</sup> defendants on their part called no witness but filed written submissions which I will consider shortly.

**25. The plaintiff's written submissions.**

The plaintiff submits that this suit raises a human rights issue which calls for intervention of this court to ensure that the affected persons are compensated.

26. He submits that he and the group of IDPs he represents were forced out of their houses to escape violence and as other displaced persons who were compensated, they should also be compensated.

27. He further submits that he and other displaced persons are under the auspices of Kiminini Alliance Community IDPs and are duly registered under certificate number 47378. That they were displaced from their houses between 2002 and 2007 during post-election violence but were never compensated.

28. He further contends that the government through NCCC sat and came up with a report that there were so many people displaced during 2007 post-election violence and recommended compensation.

29. He submits that the 1<sup>st</sup> defendant submitted a totally difference list with fake names of non-existent IDPs to be compensated and left them out. He blames the 4<sup>th</sup> defendant for using the 1<sup>st</sup> defendant to compensate people who were not genuine IDPs but strangers.

30. He submits that their exclusion was discriminatory, oppressive and contrary to the Constitution.

**31. 2<sup>nd</sup> defendant's written submissions.**

The 2<sup>nd</sup> defendant filed written submissions dated 24/11/2025 through learned counsel Mburu Maina & Co Advocates. In the said submissions, the 2<sup>nd</sup> defendant stated the legal position of the law of evidence is that whoever alleges must prove.

32. It contends that the plaintiff alleged fraud against the defendants but in his evidence PW1 did not table any evidence in proof and that in particular he stated that the 2<sup>nd</sup> defendant had no role to play in identifying and verifying IDPs to be compensated by government and their only role was to disburse funds to IDPs as approved by the 3<sup>rd</sup> and 4<sup>th</sup> defendants.

33. The 2<sup>nd</sup> defendant contends that the plaintiff failed to call any witness to corroborate his claims and that there was even a disagreement on the number and the list of IDPs among the plaintiff and the people he represented.

**34. The 3<sup>rd</sup> and 4<sup>th</sup> defendants' written submissions.**

The 3<sup>rd</sup> and 4<sup>th</sup> defendants in their written submissions dated 29/1/2026 through M/s Chilaka Lumiti, Deputy Chief State Counsel contends that when the Government began a programme of restoration and compensation as a result of 2007/2008 post-election violence, several people including persons who were not IDPs began profiling themselves as

IDPS with a view to illegally getting compensation from Government.

35. The 3<sup>rd</sup> and 4<sup>th</sup> defendants take the position that only genuine persons affected by post-election violence and internally displaced were compensated. They submit that the list was re-affirmed by the Ethics and Anti-corruption Commission, the leaders from different IDPs across the country including the 1<sup>st</sup> defendant, the DCI and National Intelligence Service.

36. They contend that during the verification exercise, no one from Cherangany, Endebess, Kiminini, Kwanza or Saboti raised any issue regarding the authenticity of the list presented to the 2<sup>nd</sup> defendant for payment.

37. This court has laid out both the plaintiff's case and the defence put forward.

38. In this matter only the 2<sup>nd</sup> defendant presented a witness in defence. However that notwithstanding, the burden of proof does not change. It lies on whoever alleges.

**Section 107 of the Evidence Act** is clear in that respect. It states;

***(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.***

***(2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.***

39. The plaintiff was required by law to tender evidence to prove the allegations against the defendants jointly and severally before the evidential burden of proof shifts to them to require a rebuttal.
40. Lets break down the plaintiff's issues brought up in the plaint with a view to determining whether the plaintiff's case meets the threshold.
- (i) The first issue is whether the plaintiff and his group are IDPs and were internally displaced after the post-election violence experienced in this country during the 2007 and 2008 election violence that erupted after disputed Presidential Election Results.

The plaintiff's only piece of evidence tendered to prove that he and his group were IDPs was a list of 2,022 individuals.

41. It is unclear who the individuals on the list are because the list does not even mention who they are. The list is without a heading and it is a mere list of names with signatures and at the tail end of the list is a stamp and signature of an Assistant Chief of a place called Keiyo Sub-location. The name of the Assistant Chief is not given.
42. Secondly, the plaintiff alleges that the 1<sup>st</sup> defendant allegedly short changed them by fraudulently changing the names of the genuine IDPs and replacing them with fake people from South Sudan, Uganda and Turkana. However

the plaintiff in this suit has failed to specially provide the particulars of fraud as stipulated under Order 2 Rule 4(1) of the Civil Procedure Rules. Order 2 Rule 4(1) provides as follows;

***(1) A party shall in any pleading subsequent to a plaint plead specifically any matter, for example performance, release, payment, fraud, inevitable accident, act of God, any relevant Statute of limitation or any fact showing illegality—***

***(a) which he alleges makes any claim or defence of the opposite party not maintainable;***

***(b) which, if not specifically pleaded, might take the opposite party by surprise; or***

***(c) which raises issues of fact not arising out of the preceding pleading.***

43. The allegations by the plaintiff on fraud therefore are incompetent going by the above provision. He did not give particulars of fraud to prove his allegations.

44. Besides the above incompetence the plaintiff did not provide specific proof of fraud on any of the named defendants herein. The claims of fraud or being short changed or malpractice by the defendants are therefore not sustainable in law.

45. The other issue that cropped up regarding the plaintiff's claim is inconsistency. In this suit it is not clear whether the plaintiff and his group are making their claim based on post-election violence of 2007/2008 or tribal clashes of 2002. The

suit filed herein is not a Constitutional petition. It is therefore time bound. In his oral evidence in this court, the plaintiff stated that he was evicted from his land in Mowlem in 2002. If that is the case, then the action against the 2<sup>nd</sup> and 3<sup>rd</sup> defendants is time barred by operation of Section 4(1) of Limitations of Actions Act. In his written submissions done in person and dated 21/11/2025, he says that he and his group were displaced during 2007 and 2008 and gives the number of displaced persons as 35,366 as opposed to the list of 2,022 persons he presented in his plaint.

46. This inconsistency lends credence to the submissions by the 3<sup>rd</sup> and 4<sup>th</sup> defendants that as a result of the Government's programme to re-settle/compensate genuine victims of post-election violence, very many people most of who were masqueraders came up perhaps to also have a bite of the cake of compensation provided by the State.

47. This court finds that the plaintiff and the people he represents have simply failed to prove their case against the defendants to the required standard in law. In his oral evidence in court, the plaintiff admitted that the 2<sup>nd</sup> defendant in particular had no role in identifying or verifying the persons (IDPs) to be compensated. It was a misconception therefore to drag them to court. The same thing applies to the 1<sup>st</sup> defendant whom the plaintiff stated that he was a leader of another group of displaced persons different from theirs so why sue him?

In the end this court finds that the plaintiff's suit is unsustainable for want of proof. The same is dismissed with costs to the defendants.

**DELIVERED, DATED and SIGNED at KITALE this .....29<sup>th</sup> .... day of .....APRIL....., 2026.**

**HON JUSTICE R.K. LIMO**  
**KITALE HIGH COURT**

**Judgment delivered in open court**

**In the presence of**

**Kennedy Wakoli Welikhe**

**Langat for the 2<sup>nd</sup> defendant**

**Evans Wekesa**

**Duke/Chemosop- court assistants**