



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 1B OF 2012

GRACE JELEL BOIT (Suing as the Administratrix of the Estate of the

late ABRAHAM KIMITEI ARAP BOIT).....PLAINTIFF

VERSUS

ZAKARIA ARAP KENY.....1ST DEFENDANT

JOSEPH KIPLIMO AND SAFANIA KIBET MUTAI

(Sued as the Administrators of the Estate of the Estate of

PHILIMON ARAP SITIENEI – DECEASED.....2ND DEFENDANT

PHILIP ARAP SINGOEL.....3RD DEFENDANT

JUDGMENT

PLAINTIFFS CASE

This dispute started in the year 1974 before the elders of Uasin Gishu District as it then was but was filed in this court in the year 1989 by **the late Abraham Kimtei Arap Boit** who after death was substituted by **Grace Jelel Boit**, as the administratrix of the Estate of the **late Abraham Kimtei Arap Boit** (hereinafter referred to as the plaintiff).

The late Abraham Kimtei Arap Boit filed this suit in 1989 against **Zakaria Arap Keny**, **Joseph Kiplimo** and **Safania Kibet Mutai** on behalf of the Estate of **Philimon Arap Sitienei** and **Philip Arap Singoei**.

The plaintiff obtained letters of administration intestate in Eldoret High Court Probate and Administration Cause Number 233 of 2004. The 1st defendant is a farmer within Uasin Gishu County whilst the 2nd defendants are administrators of the Estate of Philemon Arap Sitienei.

It is claimed that the late Abraham Kimitei Arap Boit was prior to his death, the registered proprietor of that leasehold interest then known and described as L. R No. 10784/2 (certificate of title No. I. R. 19664) within Uasin Gishu District measuring about 873 acres or thereabouts.

That the suit land herein L. R. No. 10784/2 was subsequently subdivided and converted to absolute titles and title deeds issued under the Registered Land Act as follows:

Soy/Kapsang Block 12(**Kapkatet**)/2, Soy/Kapsang Block 12(**Kapkatet**)/3, Soy/Kapsang Block 12(Kapkatet)/4, Soy/Kapsang Block 12(Kapkatet)/5, Soy/Kapsang Block 12(Kapkatet)/6, Soy/Kapsang Block 12(Kapkatet)/7, Soy/Kapsang Block 12(Kapkatet)/8, Soy/Kapsang Block 12(Kapkatet)/9, Soy/Kapsang Block 12(Kapkatet)/10, Soy/Kapsang Block 12(Kapkatet)/11, Soy/Kapsang Block 12(Kapkatet)/12, Soy/Kapsang Block 12(Kapkatet)/13, Soy/Kapsang Block 12(Kapkatet)/14, Soy/Kapsang Block 12(Kapkatet)/15, Soy/Kapsang Block 12(Kapkatet)/16, Soy/Kapsang Block 12(Kapkatet)/17, Soy/Kapsang Block 12(Kapkatet)/18.

The late Abraham Kimitei Arap Boit had in the course of time since purchase invited the Zakaria Arap Keny (formerly the 1st defendant herein), the late Philemon Arap Sitienei and one Mandago Rugut (now deceased and succeeded by Philip Arap Singoei, the third defendant) as partners according to everyone's payments.

That the late Abraham Kimitei Arap Boit had paid over Shs.150,000 towards purchase price. The defendants paid to the late Abraham Kimitei Arap Boit the sum of Shs.38,636 made out as follows: (a) *Zacharia Arap Keny* - Shs.15,800.00 (b) *Philemon Arap Sitienei*

(deceased) - Shs.10,836.00 (c) Philip Arap Singoei (from his brother Mandago Arap Rugut) - Shs.12,000.00

After the subdivision, the former first defendant continued to occupy the parcel known as Soy/Kapsang Block 12(Kapkatet)/4 while the late Philemon Sitienei continued to occupy the portions known as Title Number Soy/Kapsang Block 12(Kapkatet)/2 and Soy/Kapsang Block 12(Kapkatet)/7 as the third defendant continued to occupy the parcel known as Soy/Kapsang Block 12(Kapkatet)/3.

That subsequent to the above transactions, there was a verbal agreement that the plaintiff the late Abraham Kimitei Arap Boit do buy for Mandago Arap Rugut's wife another piece of land in exchange for the share otherwise in the name of Philip Arap Singoei and 40 acres of land were purchased at a price of Shs. 8,000 and the same handed over to Arap Rugut's wife.

The 3rd defendant has however, refused to move out of the and parcel Title Number Soy/Kapsang Block 12(Kapkatet)/3 and continues to occupy the land illegally and also claims some other extra parcel of land that he is not entitled to.

That the plaintiff also avers that the late Philemon Sitienei continued to occupy the portion of the land now known as Title Number Soy/Kapsang Block 12(Kapkatet)/7 illegally since his contribution aforesaid was only enough to cater for the purchase of Title Number Soy/Kapsang Block 12(Kapkatet)/2 and no more.

The plaintiff prays for judgment against the 3rd defendants for an order that he is not entitled to a share or any of land other than the land now known as Title Number Soy/Kapsang Block 12(Kapkatet)/3. A declaration that his occupation of any portions other than the land now known as Title Number Soy/Kapsang Block 12(Kapkatet)/3 is illegal. An eviction order against the 3rd defendant's continued illegal occupation of the said extra portion land.

The plaintiff prays against the 2nd defendant jointly and severally for the court to determine the late Philimon Arap Sitienei's payments and his estates entitlement.

A declaration that the estate of the late Philemon Arap Sitienei is only entitled to own and occupy Philemon Arap Sitienei is only entitled to own and occupy Soy/Kapsang Block 12(Kapkatet)/2 and that they are trespassers on the Soy/Kapsang Block 12(Kapkatet)/7 and should vacate or be evicted there from immediately in default. Costs against all the defendants jointly and severally.

1ST DEFENDANTS CASE

The 1st defendant states that he occupies that parcel of land known as Soy/Kapsang Block 12(Kapkatet)/4 measuring approximately 133.38 acres. The 1st defendant avers that he is entitled to 133.38 acres of land out of that parcel of land known as L. R. 10784/2 from his share of Kshs.18,360.60. He states that the plaintiff has raised no cause of action against him.

2ND DEFENDANTS CASE

The 2nd defendant admits that Grace Jeel Boit, the plaintiff herein is the legal administratrix of the Estate of the late Abraham Kimitei Arap Boit by virtue of being his widow and the other defendants are sleeping partners in the said suit parcel originally known as L. R. No. 10784/2 measuring 873 acres and now subdivided in L. R. No. Soy/Kapsang Block 12(Kapkatet)2-18 as they purchased the same jointly with the plaintiff Abraham Kimitei Arap Boit in the year 1962.

That the 2nd defendant avers that the defendants were partners in the purchase of the farm right from the beginning. The 2nd defendant avers that the suit land farm was purchased for Shs. 60,000, which sum was contributed by the original members namely ABRAHAM KIMITEI ARAP BOIT, ZAKARIA KENY, PHILLIP SITIENEI, ANDREA RUTTO and that the 2nd Defendant jointly contributed the initial down payment/deposit of 10% being Kshs. 6,000 (read six thousand shillings only as follows-

(a) Abraham Kimitei Arap Boit	-	Kshs.2,000.00
(b) Philemon Arap Sitienei	-	Kshs.1,500.00
(c) Andrea Ruto	-	Kshs. 900.00
(d) Philip Arap Singoei	-	Kshs. 600.00
(e) Zakaria Keny	-	Kshs. 1,000.00

The 2nd defendant avers that after the farm L. R. No. 10784/2 (the suit land) now sub-divided into L. R. Nos. SOY/KAPSANG BLOCK 12(KAPKATET)/2-18 had been purchased, a development loan was applied for and obtained by the said partners (the 2nd defendant included) and 12 cows were purchased and the milk proceeds from the said cows was utilized to repay the balance of the loan and when it was found that the milk proceeds were not enough to pay off the loan installments, all the members (the 2nd defendant included) brought in additional milk from their own cows and the proceeds thereof were used to repay the monthly installments of the loan.

The second defendant further avers that in the year 1964 Andrea Ruto opted to retire from the partnership and was paid off by the remaining partners who were ABRAHAM KIMITEI ARAP BOIT, ZAKARIA KENY, PHILIMON ARAP SITIENEI, PHILIP ARAP SINGOEI and his entitlement in the said farm was then shared out in equal portions by the said remaining partners.

The second defendant avers that his entitlement in the said farm the suit parcel of land (the suit land) which measures 843 acres is 248 acres and the third defendant's entitlement is 105 acres.

The second defendant denies that he is illegally occupying the part of the said parcel of land which portion he has occupied since 1962 to date though he wishes to have the same demarcated and the acreage ascertained. The third defendant has been in possession of the said 105 acres of land contained in the suit land. The said 105 acres of land is clearly demarcated and/or marked 011 the ground.

It is the 2nd defendant's case that the former plaintiff knew each member's entitlements in the farm and the prayers for determination of the said shares by the honorable court is superfluous.

The 2nd defendant in their counterclaim states that he is the biological son to the late Philemon Arap Sitienei herein sued as the 2nd Defendant and that his late father, Philemon Arap Sitienei and the late ABRAHAM KIMITEI ARAP BOIT were related. That in the year 1962, the late Abraham Kimitei Arap Boit (the former plaintiff) approached his father, the 2nd defendant who is also deceased with the sole aim of pooling resources for funds towards the purchase of L. R. No. 10784/2 measuring 843 acres now subdivided into L. R. Nos. SOY/KAPSANG BLOCK 12(KAPKATET)/2-18.

It is the 2nd defendant's case that the partners herein including his father sold their respective parcels of land in Nandi District in order to raise funds towards the acquisition of L. R. No. 10784/2 now sub-divided into L. R. Nos. SOY/KAPSANG BLOCK 12 (KAPKATET)/2-18.

The 2nd defendant further states that the agreed purchase price for the suit parcel of land which was purchased from a white man was Kshs. 60,000 out of which 10% thereof being Kshs. 6,000 was required as the initial deposit. The aforesaid deposit was contributed by the partners as follows:

(a) Abraham Kimitei Arap Boit	-	Kshs.2,000.00
(b) Philemon Arap Sitienei	-	Kshs.1,500.00
(c) Andrea Ruto	-	Kshs. 900.00
(d) Philip Arap Singoei	-	Kshs. 600.00
(e) Zakaria Keny	-	Kshs. 1,000.00

It is the 2nd defendant's case that upon payment of the aforesaid 10% deposit, the partners took possession of the suit land in the same year 1962 and temporarily demarcated boundaries pending the final survey work on which portions they have in use and occupation to-date.

It is the 2nd defendant's contention that after settling on their respective portions, the partners did offset the balance of the purchase price - jointly through the sale of milk and other farm proceeds obtained from the suit parcel of land.

The 2nd Defendant avers further that in 1964, Mr. Andrea Ruto, on his own volition decided to vacate the suit land whereby he was given Kshs. 5,000, being the equivalent of his then shares. It was agreed that the remaining members do share out Andrea Ruto's share in accordance with the ratio of their respective contributions.

The 2nd defendant avers that the partners resided together peacefully on the suit parcel of land until 1974 when the loan due to the settlement fund trustees was paid in full.

The 2nd Defendant avers further that trouble began when Abraham Kimitei Arap Boit started complaining and wanted to increase his acreage of the suit parcel of land in total disregard of the other members' shares who he deemed as "sleeping partners".

That all the parties herein have been in possession and use of their agreed temporary portions comprised in L. R. No. 10784/2 now subdivided into L. R. Nos. SOY/KAPSANG BLOCK 12 (KAPKATET)/2-18 since 1962 or thereabout to date.

The 2nd defendant avers that at all material times relevant to this suit, he and all the other legal beneficiaries of the estate of the late PHILEMON ARAP SITIENEI have been and continue to be the owner and beneficial owner and/or shareholder of 248 acres comprised in the suit land known as L. R. NO. 10784/2 now sub-divided into L.R. Nos. SOY/KAPSANG BLOCK 12(KAPKATET)/2-18.

The 2nd defendant prays for a declaration that the plaintiff is holding 248 Acres comprised in the suit parcel of land known as L.R NO. 10784/2 now sub-divided into L. R. Nos. SOY/KAPSANG BLOCK 12(KAPKATET)/2-18 in trust for the 2nd defendant and all the other legal beneficiaries of the estate of the late PHILEMON ARAP SITIENEI.

Further, that the trust held by the late Abraham Kimitei Boit on behalf of the 2nd Defendant and all the other legal beneficiaries of the estate of the late PHILEMON ARAP SITIENEI with regard to the 248 Acres comprised in the suit parcel of land known as L.R. NO. 10784/2 now subdivided into L. R. NOS. SOY/KAPSANG BLOCK 12(KAPKATET)/2-18 be terminated.

Moreover, an order do issue to the County surveyor to demarcate and establish the boundary and extent of the 248 acres comprised in the suit parcel of land known as L. R. NO. 10784/2 now subdivided into L. R. NOS. SOY/KAPSANG BLOCK 12(KAPKATET)/2-18, which

portion the 2nd defendant holds in trust for himself and on behalf of all the other legal beneficiaries of the estate of the late Philemon Arap Sitienei **and an** order directing that the plaintiff do execute all the requisite transfer documents for the 248 acres comprised in the suit parcel of land known as L. R. No. 10784/2 now subdivided into L. R. NOS. SOY/KAPSANG BLOCK 12(KAPKATET)/2-18 in favour of the 2nd defendant in trust on his own behalf and on behalf of all the other legal beneficiaries of the estate of the late Philemon Arap Sitienei and that in default, the Deputy Registrar of the Environment and Land Court at Eldoret do execute the said conveyance documents on her behalf.

To implement the above, he prays for enlargement and/or extension of time within which to apply for consent of the Land Control Board with respect 248 acres comprised in the suit parcel of land known as L. R. NO. 10784/2 now subdivided into L.R. NOS. SOY/KAPSANG BLOCK 12(KAPKATET)/2-18 which portion the 2nd defendant holds in trust for himself and on behalf of all the other legal beneficiaries of the estate of the late Philemon Arap Sitienei.

Lastly, a permanent injunction do issue against the plaintiff, her agents, servants and/or assigns restraining them from any acts that are detrimental to the peaceful legal ownership and occupation of 248 acres comprised in the suit parcel of land known as L.R. NO. 10784/2 now subdivided into SOY/KAPSANG BLOCK 12(KAPKATET)/2-18 which the 2nd defendant holds in trust for himself and on behalf of all the other legal beneficiaries of the estate of the late Philemon Arap Sitienei plus costs and interest.

3RD DEFENDANTS CLAIM

The 3rd defendant states that the defendants herein are sleeping partners and that they were not invited but were partners from the beginning. According to the 3rd defendant, the firm was purchased for Kshs. 60,000 contributed by Abraham Kimitei Arap Boit, Zakaria Keny, Philip Sitienei, Andrea Ruto and the 3rd defendant jointly contributed to initial down payment of 10%. According to the 3rd defendant, the contribution towards the deposit is as follows: -

(a) Abraham Kimitei Arap Boit	-	Shs.2,000
(b) Philemon Arap Sitienei	-	Shs.1,500
(c) Andrea Ruto	-	Shs. 900
(d) Philip Arap Singoei	-	Shs. 600
(e) Zakaria Keny	-	Shs.1,000

A development loan was obtained by all the parties and 12 cows were purchased and the milk proceeds from the said cows was utilized to pay the balance of loan. Members brought in additional milk from their own cows and paid the loan. He states the 2nd defendant is entitled to 248 acres whereas the 3rd defendant is entitled to 105 acres.

According to the 3rd defendant, the final contribution of the parties is as follows:

(a) Abraham Kimitei Arap Boit	-	Shs.18,000
(b) Philemon Sitienei	-	Shs. 9,400
(c) Philip Arap Singoei	-	Shs.12,000
(d) Zakaria Arap Keny	-	Shs. 8,000

The 3rd defendant states that he is entitled to 105 acres. The 3rd defendant filed a counterclaim claiming that the suit property was obtained jointly by the parties. The defendants sold their respective parcels of land to acquire L. R. 10784/2. 10% deposit of the suit land was raised by the parties and paid to the land owner and parties were allowed to take possession.

In 1964, Mr. Andrea Ruto, on his own volition decided to vacate the suit land whereby he was given Kshs. 5,000 being the equivalent of his then share and the remaining members agreed to share out Andrea Ruto's share in accordance to the ratio of their respective contributions.

The 3rd defendant avers that as from 1962 to 1973, the said parties/partners stayed together peacefully until 1974 when the loan due to Settlement Fund Trustees was cleared and it was at this time that Abraham Kimitei Arap Boit started complaining, wanting to increase his acreage of the suit land in total disregard of the other sleeping partners shares.

The 3rd defendant avers that his total contribution towards the purchase of the suit is Kshs. 13,500/= which is equivalent to 105 acres, the 1st defendant's share of the said land is 165 acres, Philemon Arap Sitienei's share of the suit land is 248 acres while that of Abraham Kimitei Arap Boit share of the suit land is 343 acres. The said members gave to their local school 10 acres.

That all the parties have been in possession and living in and working on their agreed acreages comprised in L. R. NO. 10784/2 since 1962 or thereabout to date and the said parties and or their representatives have been paying land rates to their respective acreages of land.

The 3rd defendant avers that at all material times relevant to this suit he has been and continue to be the owner and beneficial owner and/or shareholder of 105 acres of land comprised in the suit land.

The 3rd defendant prays that this Honourable do determine the plaintiff's and the defendants' payment, their respective entitlements/shares in the said land.

The 3rd defendant further prays that this Honourable do declare the 3rd defendant as the owner and or equitable owner of 105 acres of land comprised in the suit land.

The 3rd defendant further prays that this Honourable Court do issue an order enlarging and/or extending time within which to apply for consent of the Land Control Board with respect of 105 acres comprised in the suit parcel of land known as L. R. NO. 10784/2 in favour of the, 3rd defendant.

That the plaintiff be ordered to execute the application for consent of Land Control Board for purposes of excising the said 105 acres of land L. R. NO. 10784/2 and to appear at the relevant Land Control Board to obtain consent of sub-division of L. R. NO. 10784/2 and to execute the mutation form and the application for consent of Land Control Board and to appear before the relevant Land Control Board to seek consent to transfer to the 3rd defendant the said 105 acres of land contained in the suit land and in default, the Deputy Registrar of the Environment & Land Court, at Eldoret do execute all the requisite conveyancing documents and obtain the requisite consents and that the Land Registrar, Uasin Gishu County do issue the 3rd defendant with a title deed and or a certificate of lease for the said 105 acres or thereabout.

In the alternative and without prejudice to the foregoing, this Honourable Court to declare that the plaintiff is holding the suit land in trust for the estate of her late husband and in trust for the defendants and that the said trust be brought to an end and the parties herein be given/granted/allocated their respective shares, to wit, the 3rd defendant's share is 105 acres, the 1st defendant's share is 165 acres, the 2nd defendant's share is 248 acres and the plaintiff's share is 343 acres.

In her evidence in chief, **PW1 Grace Jelet Boit**, the widow to Abraham Kimitei Boit states that her husband was the registered owner of the land in dispute. He started looking for land in 1961. He went to the Settlement Office with the owner known as J. J Englebad and entered into agreement for 873 acres. The other parties joined later. Each party contributed for the land as follows; Abraham – Shs.3800, Zacharia Keny – Shs. 1,000, Philemon Sitienei – Shs.1500, Andrea Ruto – Shs.900, Martin Rugut – Shs.7800. This was 10% deposit for the purchase price. He cleared a substantial part of the debt because the other parties refused to pay. Finally, the parties paid as follows: **Abraham – Shs. 73,518.80 Sitienei - Shs. 14,526.90 , Zacharia - Shs. 18,360.60, Martin Rugut – Shs. 8,253.70, Total – Shs. 107,774.00. According to plaintiff, the ratio of sharing is as follows: Abraham – 534.1 acres, Philemon Siteinei – 105.5 acres, Zacharia Kenya – 133.38 acres, Martin Rugut/Philip Singoei – 99.9 acres.** Later, her deceased husband bought 40 acres of the suit land and his total acreage became 574.1 acres. Philip Singoei who came in for his deceased brother got 59.9 acres.

PW2, Christopher Arap Rotich stated in his evidence in chief that he knew the parties in the dispute. He was one of the elders who lived to resolve the dispute. It was resolved that the parties had not paid the ratio as agreed. According to PW2, Abraham Boit had paid Shs. 73,508, equivalent the 534.1 acres. Philemon Sitienei had paid Kshs. 14,526.90 equivalents to 105.5 acres. Zachary Keny paid Kshs.18,360.60 equivalents to 133.38. Mandago Rugut, the deceased brother of Philip Singoei had paid Kshs.13,759.90 equivalents to 99.9 acres. Abraham Boit exchanged some shares from Mandago Rugut equivalent to 40 acres. He took 40 acres from Mandago Rugut and gave beneficiaries 40 acres of his land in Ziwa.

PW3, Patrick Chepkwony was one of the members on the panel of elders. He reiterates the evidence of Christopher Rotich. He states that Mandago Rugut gave his shares to Boit. When Mandago Rugut was sick, the plaintiff gave him 40 acres of his land in Ziwa.

DW1, Zachary Arap Keny states that Abraham Kimitei Boit entered into agreement with J.J Englebad for the 873 acres and called them to pay. They used to pay Ksh.1,198 per year and were to pay for 30 years. They contributed 10% which was the initial deposit for the purchase price as follows **Abraham Boit--- 3,800, Zacharia Keny ---1000, Philemon Sitienei--- 1500, Andrea Ruto--- 900, and Mandago Rugut--- 600/=**. According to DW1, the final figure after the payment of the debt was **Abraham Boit 73,518/=, Zacharia Keny 18,360, Philemon Sitienei, 14,526, and Mandago Rugut-13,759.** The acreage as per this payment in the ratio of contribution is **534.1 acres, 105.5 acres, 133.38 acres and 99.9** acres respectively. Later Abraham Boit bought 40 acres at a consideration of kshs.5,505.80 from Mandago Rugut making his total acreage 574.1 and reducing Mandagos acreage to 59.5 acres.

DW2, Joseph Kiplimo Mutai testified that he is the biological son of the late Philemon Arap Sitienei. He testified that his father bought a portion of the suit property in 1962 measuring 248 acres. The initial purchase price was 60,000/= and that the deposit paid was kshs.6,000/= . He states that the deposit was contributed to as follows **Abraham Boit ---2000/=, Zacharia Keny 1000, Philemon Sitienei---1500, Andrea Ruto - 900 and Philip Arap Singoei - 600 translating to 343 acres, 165 acres, 248 acres and 108 acres** respectively.

DW3, Philip Arap Singoei testified that in 1962 the plaintiff approached him together with the co -defendants with an aim of contributing and or sourcing for funds towards the purchase of the suit land. He sold his parcel of land situated in Nandi County and the proceeds were used on the purchase of the suit land. The purchase price was 60,000/= and the parties raised 10 % as follows; Abraham Boit ---2,000/=, Zacharia Keny - 1000, Philemon Sitienei - 1500, Andrea Ruto - 900 and Philip Arap Singoei - 600. That upon payment of the deposit they all settled on the land and used the proceeds of milk to pay the balance. In the year 1964, Andrea Ruto vacated his parcel and was paid kshs. 5000/= . On cross examination, the DW3 was at pains to explain why his name was not mentioned in the proceedings before the elders and instead it was the name of his brother Mandago Rugut.

The **gravamen** of the plaintiff's and the 1st defendant's submissions is that the plaintiff contributed the biggest chunk of the purchase price and therefore is entitled to a bigger share of land. He paid a deposit of Kshs.3,800/= and other consistent payments of kshs.73,518.80

according to the minutes of the District Commissioner dated 2.3.1990.

The 2nd defendant heavily relied on the report to the District Commissioner Uasin Gishu district dated 13th September 1979 which was principally a dispute between Kipkilach Arap Sitienei and A. K. Boit wherein it was decided that Abraham K. A. Boit be awarded 343 acres and Kipkilach A. Sitienei be awarded 248 acres, Zachary A. Kenny was to be awarded 165 acres Mrs. Rospella Maritim and Philip Malakwen Singoei both to be awarded 105 acres on condition that they gave the 40 acres of the farm in Ziwa to Boit however if they decided to retain the 40 acres then they would be awarded 65 acres of the farm.

Mr. Wafula learned counsel for the 3rd defendant on his part submits that the 3rd defendant was a partner in the purchase of the suitland having sold his land in Nandi for the purchase of the suitland. He met the condition of the purchase of the suitland and therefore the plaintiffs husband was holding the suitland for the benefit of the partners. According to Mr. Wafula the property is to be distrusted as follows; Abraham K. A. Boit be awarded 343 acres and Kipkilach A. Sitienei be awarded 248 acres Zachary A rap Kenny was to be awarded 165 acres Mrs. Rospella Maritim and Philip Malakwen Singoei both to be awarded 105 acres.

I have considered the pleadings, evidence on record and the submissions of all counsel and do find that the two issues to be considered are whether the deceased Abraham Boit was holding the property in trust for the defendants and if so how should the property be shared.

The proceedings of the Kapkatet farm L. R. NO. 10874/2 in the land arbitration meeting held on 1ST March 1990 and 2nd March 1990 are helpful to this court. In the said proceedings, **Abraham Boit states** that he purchased the farm in 1962 and that the total acreage of the farm was 873 acres and that the amount of money required for the purchase was kshs. 31,440 and half year installment of Kshs. 1,198. He states that together with his fellow partners they paid a deposit of kshs. 7,800 as follows:

Abraham Boit - 3800, Philemon K Sitienei - 1500, Zacharia Keny - 1000, Andrea Ruto - 900 and Mandago Ruto - 600. The payment of half yearly instalments of kshs.1,198 began in 1965. In 1964, they sold sisal leaves from their farm to some Asians for kshs.14,000 and paid Andrea Ruto Kshs. 5,000 after he withdrew from their farm and joined another and divided Andrea Ruto's shares amongst the remaining 4 members. Between 1965 and 1978, Kshs. 121, 274.55 was paid to the settlement fund trustees less 13,500 cattle loans. The total payment made by Abraham K. Boit was kshs.73,518.818.

Mr. Philemon Kipkilach Sitienei in the proceedings before the elders stated that he entered the farm in 1962 and paid a deposit of kshs.1,500. They were given a settlement fund trustees loan to buy 10 heads of cattle. Milk was supplied individually through the names of Mr. Boit. He states that Boit used to pay the loans to settlement fund trustees but refused to show them the repayments. The loan cattle were never divided amongst the members. He refused to repay the loan from his personal resources and to Mr. Boit to use the milk proceeds. The total money paid by Philemon Sitienei Kipkilach was kshs.14, 526. 9077. Zacharia Keny paid a total of Kshs.18,360.6018 and Mandago Rugut paid kshs. 13,759.519. The total payments made by the members of the farm was kshs.122,175.8465 for the 873 acres. This court finds that the net total amount paid by the partners for the land measuring 873 acres is kshs 120,175.8465 and therefore, partners are entitled to the land as follows-

Abraham K. Boit... 73,518.818 x 873 divided by 120,175.8465 = **534.067** acres.

Philemon Kipkilach Sitienei...14,526.9077 x 873 divided by 120,175.8465 = **105. 529** acres.

Zacharia Keny 18,360.6018 x 873divided by 120,175.8465 = **133. 378 acres.**

Mandago Rugut.....13,769.519 x 873 divided by 120,175.8465 =100.027

This court further finds that Philip Arap Singoei inherited the shares of his brother Mandago Arap Rugut and that Mr Boit gave the family of Mandago Rugut 40 acres of land in Ziwa. The said land is hereby deducted from the entitlement of Philip Arap Singoei and added to Mr. Boit thus increasing his share to 574.067 and reducing Philip Arap Singoeis share to 60.027.

The upshot of the above is that it is declared that Abraham K. Boit held the suit land in trust for the defendants and the said trust is hereby dissolved and that the partners of the said **Abraham K. Boit** who are beneficiaries to the trust to share the property as follows: -

Abraham K Boit..... 73,518.818 x 873 divided by 120,175.8465 + 40 acres = **574.067** acres.

Philemon Kipkilach sitienei...14,526.9077 x 873 divided by 120,175.8465 = **105. 529** acres.

Zacharia Keny 18,360.6018 x 873divided by 120,175.8465 = **133. 378 acres.**

Mandago Rugut.....13,769.519 x 873 divided by 120,175.8465 – 40 acres = **60.027 acres.**

All subdivisions and resultant registration in respect of the suit property is hereby nullified and the property be subdivided according to the shareholdings herein. There be no orders as to costs this being a family dispute. Orders accordingly.

Dated and delivered at Eldoret this 9th day of August, 2019.

A. OMBWAYO

JUDGE