



REPUBLIC OF KENYA



KENYA LAW
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Kipyegen (Suing for and on behalf of the Estate of the Late Obadiah Kipyegon Kimasas) v Chesaina & another (Environment and Land Case 167 of 2017) [2025] KEELC 5454 (KLR) (22 July 2025) (Judgment)

Neutral citation: [2025] KEELC 5454 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND CASE 167 OF 2017**

**MAO ODENY, J
JULY 22, 2025**

BETWEEN

ESTHER KABON KIPYEGEN (SUING FOR AND ON BEHALF OF THE ESTATE OF THE LATE OBADIAH KIPYEGON KIMASAS) PLAINTIFF

AND

EVERLYN TOYOI PETER CHESAINA 1ST DEFENDANT

STELLA KIBOINO CHESAINA 2ND DEFENDANT

JUDGMENT

1. By a Plaint dated 18th April, 2017 which was subsequently amended on 20th June 2022, the Plaintiff herein sued the Defendants seeking the following orders:
 - a. An Eviction Order be issued through a Court bailiff or auctioneers be appointed by the Court or by the Plaintiff to forcibly remove the Defendants by themselves, their agents, their servants, their family members, persons claiming under them and a demolition Order to demolish and bring down all the Defendants' buildings, houses and other structures and belongings on Baringo/kewamoi "A"/371.
 - b. A permanent Order of Injunction be issued restraining the Defendants by themselves, their agents, their servants and other persons claiming under or through them from entering, remaining onto, dealing with or in other way interfering or trespassing in any way on the Plaintiff's parcel of land known as Baringo/kewamoi "A"/371.
 - c. That the costs of this suit and costs of eviction be borne by the Defendants.
2. The Defendants filed a counterclaim dated 14th December, 2017 which was subsequently amended on 19th October, 2022, and sought the following orders:



- a. A declaration that the suit parcel known as Baringo/kewamoi “A”/371 belongs to the Defendants, in the Amended Plaintiff, jointly and severally as a whole and that the Plaintiff, in the Amended Plaintiff, as a proprietor, holds the said suit parcel of land in trust on behalf of the Defendants and thus Defendants are not trespassers;
- b. An order directing the Plaintiff in the Amended Plaintiff, to transfer the parcel of land known as Baringo/kewamoi “A”/371 to the Defendants. In default, the Deputy Registrar of this Honourable Court to execute all the relevant, transfer and other relevant documents for and on behalf of the Plaintiff.
- c. Costs of and incidental to the suit.
- d. Any other or further relief this Honourable Court may deem fit to grant.

Plaintiff’s Case

3. PW1 Esther Kabon Kipyegon testified that she is the widow of the late Obadiah Kipyegon Kimasas (deceased) who died in 2021, during the pendency of this case. She stated that she obtained a Grant Ad Litem on 22nd November, 2021, which she produced as PExhb 1 (a). It was her testimony that the 1st Defendant is an elder sister to her deceased husband and that the 2nd Defendant is the 1st Defendant’s daughter.
4. PW1 testified that the suit land in Baringo Kewamoi measuring 0.6 Ha belongs to the deceased who bought it in 1976 and built a grass-thatched house first, then subsequently four or five stone houses for rental purposes. She further stated that the deceased lived in Marigat while she lived in Kapchwamuso in Baringo Central next to Kabarnet.
5. It was PW1’s evidence that her late husband was a carpenter in Baringo, and he obtained the title to the suit land on 22nd May, 1984, which she produced the original as PExhb 1 (b). She also produced a survey map as PExhb 2, which indicated that the land is captured on the map.
6. PW1 further produced a bundle of photographs showing the stone houses as PExhb 4. It was her testimony that her deceased husband allowed the 1st Defendant to stay for a short while in his wooden house on the plot but the same was later demolished.
7. According to PW1, the 1st Defendant lived at her mother’s home with her parents and later resided on her deceased husband’s land and then bought land at Kapropita and later returned to her husband’s plot with her children. She also stated that her deceased husband had given the 1st defendant permission to stay temporarily and therefore was not a tenant and had never paid rent.
8. It was PW1’s testimony that the 1st Defendant would leave and come back, hence has no right to the land and urged the court to allow the orders sought in the plaint plus costs.
9. Upon cross-examination by Ms. Mugweru, PW1 stated that she was married to Obadiah Kipyegon Kimasas in 1968 and the 1st Defendant was not working then but she was staying at Kapchomuso. She stated that the 1st defendant had two children and that her late husband bought the suit plot from Harun Kandagor. Further that her late husband built a house for the 1st Defendant.
10. PW1 stated that the suit land has rental houses and that the 1st Defendant does not stay in the rented stone houses. PW1 also stated that Harun Kandagor’s mother was given her land and she sold it for Ksh 250,000/= and she witnessed the transaction. She further stated that the deceased employed Harun as a carpenter and bought him a bicycle as a gift.



11. PW1 stated that she was not aware that the chief summoned her husband and that they had not interfered with the boundary when they fenced further that her late husband went to the Chief's office but the 1st Defendant did not attend. She also stated that it is not true that the 1st defendant was given a permit to cut down trees.
12. According to PW1, the 1st Defendant went away and came back claiming that Kapropita was cold and sought permission again to live on the suit land. Further that she promised that she would move out, but she did not. PW1 stated that her late husband approached a lawyer to file this case and that it is not true that the 1st Defendant has lived on the suit property since 1970 as the land was bought in 1976.
13. Upon re-examination, PW1 testified that the 1st Defendant cut the trees and that she was not on the land when it was bought in 1976, as she was at her parents' home. Further, that she would stay on the suit land intermittently and not continuously, as she claims. PW1 testified that this case was filed when the 1st Defendant cut down trees and that the other case is in respect of the demolition of the stone houses to pave the way for a road.
14. PW2 Kipyegon Cherogony adopted his witness statement dated 26th April 2018 and testified that he is a resident of Kabarnet and is a former Veterinary Officer who retired in 1995. It was his testimony that he knows the deceased (original plaintiff) who purchased the suit land in 1976 and built a stone house of about five rooms
15. PW2 stated that the suit land plot number 371 is near the road and a Police Station and that Kapropita Girls High School is about 2.5 kilometers away from the land. PW2 further testified that the 1st Defendant is the sister of the deceased and he has no family relation, and the 1st Defendant is older than the deceased. He testified that the deceased built a wooden house near the others and the 1st Defendant came and lived there.
16. PW2 testified that he does not know how she came there as she was married to someone at Kituro where she later went to live. PW2 stated that the 1st Defendant came back to the suit land after leaving Kituro and the children of the deceased are currently on the land. PW2 testified that he does not know who currently lives in the house, which the 1st Defendant used to live in.
17. Upon cross-examination by Ms. Mugweru, PW2 stated that he has lived at Kabarnet all his life and he does not know much about the Kapropita area. PW2 stated that they purchased the land from Harun Kandagor and there were two women in Harun's house. PW2 was shown PExhb 2, and he stated that there was Harun and Chemitei. He stated that Harun sold his mother's land which was parcel numbers 1190 and 1189 and the same was from numbers 1190 to 371. PW2 went on to inform the court that the deceased bought land from Harun for Ksh 250/= where he was a witness. PW2 stated that he saw them writing the agreement and Harun was working at the deceased's carpentry shop but never saw any bicycle.
18. PW2 stated that they lived at Kachomuso but not on plot No 3 and that the 1st Defendant lived in a wooden structure built by the deceased on plot number 371. It was his evidence that Harun sold the land to Obadiah and that he was present during the sale. PW2 stated that the 1st Defendant's husband worked for the County Council and that the distance from Kituro to Kapropita is far.
19. PW2 informed the court that he does not know when the 1st Defendant returned to plot No 371 and that she used to work at Kapropita. Further that the suit land was in Harun's mother's name and Harun's father had given the same to her.



20. Upon re-examination, PW2 testified that from plot 371 to Kapropita, one can walk and that there is no dispute regarding the land as the deceased was a younger brother to the 1st defendant. PW2 also stated that the 1st Defendant had requested the deceased for a place to stay but did not know for how long.

Defendants' Case

21. DW1 Everlyne Chesaina adopted her witness statement dated 14th December 2017 and testified that the Plaintiff Obadiah Kipyegon Kimasas is her late brother and that the 2nd Defendant is her daughter and that they got into the parcel of land in 1972. DW1 testified that Kandagor gave her permission and that there were no structures on the suit land.
22. DW1 further testified that Kandagor had two wives whom he gave parcels of land and that the son sold her his portion of the land in 1976, and she gave her brother Kshs.300/= to take to John for the parcel of land. DW1 testified that she has stayed on the suit land for over forty-five years. It was her testimony that Obadiah Kipyegon Kimasas (the deceased) did not stay on the suit land and that they had agreed with the deceased to construct some houses to help pay school fees for Ezekiel and Philip. It was her testimony that they had not demolished the houses but the government to pave way for the construction of a road, demolished them. DW1 testified that they were given a permit to cut down trees so as the road could be built.
23. DW1 testified that they had built a house, which was to be demolished as it was on the road reserve and Elijah's land. She further stated that the house is still intact, as the deceased did not want to remove it. It was DW1's testimony that they had good relations before this case was filed and that it is not true that she left for Kituro and came back. DW1 testified that she had two children when she came to the suit land and the 2nd Defendant is her third born who is about forty years of age.
24. DW1 testified that her husband Peter Kibono Chesaina is deceased and that during the survey, she did not have an identity card. She testified that the land was in Obadiah Kipyegon Kimasas's name (deceased) who later got a title.
25. It was DW1's further evidence that she has another parcel of land that she cultivates but stays on the suit land. She also stated that she bought the suit land hence is entitled to be registered as the owner and prayed for the orders in the counterclaim together with costs.
26. Upon cross-examination by Mr. Karanja Mbugua, DW1 stated she has been staying in Baringo Kewanoi-A since 1972 and was working at Kapropita Gils High School and was staying in Kapchomuso at her home before going to Kapropita Girls. DW1 stated that she was a tailor and she asked Kendagor for land as it was near Kapropita.
27. DW1 stated that after a survey Kendagor, gave Harun and John's mother and Obadiah Kipyegon Kimasas was working in Marigat. DW1 stated that she has ½ acre of land at Kituro where she cultivates in the morning and comes back in the evening. She further stated that she had filed a caution as a purchaser but they did not do a written agreement for the sale of the suit land.
28. DW1 referred to a sketch plan and stated that she does not know who drew the plan. She stated that there were summons from National Police Service issued to Isaac and her name is not in the summons. She stated that they made an application to cut down trees however, she cannot remember when it was made. DW1 stated that she did not receive a letter in respect of plot No. 371 and further that she did not have approvals from the Municipal Council to construct. It was her evidence that Obadiah Kipyegon Kimasas got the title fraudulently.



29. Upon re-examination, DW1 testified that the title is in Obadiah Kipyegon Kimasas's name and that she was given a forest permit to cut trees. She further stated that the suit land belongs to her and is being held in trust for her.
30. DW2, Chemitei Kandagor adopted his witness statement dated 14th December, 2017 and admitted to knowing Obadiah Kipyegon Kimasas (deceased) and that he stays five kilometers from Kapchomuso. He testified that he was given the suit land by his father – Kendagor and that the 1st Defendant stays on the suit land at Kewamoi but the deceased stayed in Marigat. DW2 testified that they divided the land with his brother and gave the 1st Defendant a place to stay on the suit land and that he did not sell his portion to anyone.
31. DW2 further testified that he told the deceased and the 1st Defendant are siblings and that his brother sold his portion to Nehemiah Chebon and another person whom he cannot remember the name. He testified that the 1st Defendant is still on the portion that he showed her and she was supposed to process the title as the plots at that time did not have titles.
32. Upon cross-examination by Mr. Karanja Mbugua, DW2 stated that he is the one who signed the statement when he sold the land to the 1st Defendant. He stated that the parcel did not have a number and it was one acre but they did not enter into any agreement. DW2 further stated that he does not know whether the deceased is the one who got the title.
33. DW2 stated that the 1st Defendant used to work at Kapropita Girls High School and had a house there. It was his evidence that the 1st Defendant comes from Kapchomuso, and her family stays in Kituro which is about 20km from Kabarnet. Upon re-examination, DW testified that 1st Defendant stayed on the suit land.
34. DW3 Stella Chasaina also adopted her witness statement dated 14th December 2017 and testified that Obadiah Kipyegon Kimasas (the deceased) was her uncle and that she did not trespass on the suit land as she has always stayed on the suit land. She testified that the Ministry of Roads expanded the road and it affected two plots. DW2 testified that they stayed on the plot with her mother who used to commute to Kapropita Girls High School. That the mother is a second wife and his father stayed with the first wife in Kituro until he died in 2021.
35. DW3 testified that they went to the chief to solve the matter, but they were later sued in court and further that Obadiah Kipyegon Kimasas (the deceased) had never lived on the suit land and he used to stay in Marigat. It was her evidence that her mother did not destroy anything and the chief gave them a permit to cut trees as the road was being expanded. DW3 informed the court that Nehemiah is two plots away from theirs. DW3 testified that her mother built temporary houses with the deceased. DW3 prayed that the title deed in Obadiah Kipyegon's name be cancelled and registered in her mother's name (the 1st Defendant).
36. Upon cross examination by Mr. Karanja Mbugua, DW3 stated that she has not seen the title in Obadiah Kipyegon's name but urged the court to order that the title to the suit land be given to the 1st Defendant as she had purchased it. She further stated that she never stayed with her father at Kituro. It was her testimony that she stays on the suit land with her mother and her four children.

Plaintiff's Submissions

37. Counsel for the Plaintiff filed submissions dated 16th April, 2025 and identified the issue for determination as whether the Plaintiff (Obadiah Kipyegon Kimasas-deceased) held the suit property in trust for the Defendants. Counsel submitted that it is the Plaintiff's case that the deceased is the



- registered proprietor of the suit property and he accommodated his sister (the 1st Defendant) to stay with him because of proximity to her place of work at Kapropita Girls High School.
38. Counsel further submitted that the 1st and 2nd Defendant (the mother and daughter) overstayed their welcome and they are now claiming that the land was held in trust for them by the registered owner whom they want to push out. Counsel relied on Section 24 (a) and 25 (1) (a) (b) & (2) of the [Land Registration Act](#) 2012, and Section 107 of the [Evidence Act](#).
39. Mr. Karanja Mbugua also cited the cases of *Njami vs Njami (Civil Appeal 34 of 2018)* [2025] KECA 492 (KLR), *Shah & 7 Others Vs Mombasa Bricks & Tiles Limited & 5 others* [2023] KESC 106 (KLR) where the court discussed the doctrine of trust and constructive trusts and submitted that the defendant did not prove that the Plaintiff held the suit land in trust for her.
40. Counsel also submitted that the Defendant also claimed that she had bought the land but did not prove such sale and relied on Section 3 of the Law of Contract and the cases of *Leanard Otworu Juma vs Francis Ongaki Mamboleo* [2022] eKLR, *Njenga Kimani & 2 others vs Kimani Nganga K. Wainaina* [2017] KEELC 209 (KLR), *Charles Kiplangat Bosuben vs Willy Kipkemoi Kigen & 2 others* [2016] KEELC 338 (KLR), *Peter Muriithi Wanjohi & 4 others vs John Mwangi Wachira* [2022] KEELC 863 (KLR) and *Haro Yonda Juaje vs Sadaka Dzenge Mbauro & Kenya Commercial Bank Ltd* [2014] eKLR and urged the court to allow the Plaintiff's claim and dismiss the Defendants' counterclaim with costs.

Defendants' Submissions

41. Counsel for the Defendants filed submissions dated 10th June, 2025 and identified the following issues for determination:
- a. Whether the Defendants demolished the perimeter fence including other developments and erected their own semi-permanent structure on the suit property?
 - b. Whether the Defendants' actions were unlawful?
 - c. Whether the Defendants took over possession of the suit property sometimes in 1970 before the deceased took out the Title Deed?
 - d. Whether the Plaintiff holds title to the suit properties in trust for the Defendants?
 - e. Whether the Plaintiff is entitled to the orders sought?
42. Counsel relied on Order 2 Rule 6 of the Civil Procedure Rules and submitted that parties are bound by their pleadings and that the Plaintiff's evidence was full of contradictions/inconsistencies. Counsel further submitted that the Plaintiff's allegation that the Defendants entered the suit property with the Deceased's consent is a mere fabrication and an afterthought meant to derail the course of justice. It was counsel's submission that the Plaintiff failed to adduce sufficient evidence to support her case.
43. Ms. Mugweru relied on Section 3 of the Law of Contract (Amendment) [Act No. 28 of 1968](#) and submitted that the Defendants not only paid the purchase price in performance of the contract but they were already in possession and continue being in possession. Counsel submitted that the Defendants have developed the suit property unlike the Plaintiff and relied on the cases of *Njami vs Njami (Civil Appeal No 34 of 2018)* [2025] KECA 492 KLR and *Shah & 7 others vs Mombasa Bricks & Tiles Limited & 5 others* (2023) KESC 106 KLR.
44. Counsel urged the court to uphold the oral contract between the 1st Defendant and the original owner of the suit property as valid by virtue of the exception clause. It was counsel's submission that the



Defendants never came into the land with the Plaintiff's consent and that the deceased held the title to the suit property in trust for the 1st Defendant.

45. Counsel further relied on Sections 107 and 109 of the *Evidence Act*, Sections 25 (2) and 28 (b) of the *Land Registration Act* and the cases of *Fulton vs Gunn* (2008) BCSC 1159 and *Seventh Day Adventist Church E.A Ltd vs Isoge F.C.S Nyamira ELC* Case No 42 of 2021 and urged the court to dismiss the Plaintiff's case and grant the orders sought in the Counterclaim.

Analysis And Determination

46. The issues for determination are as follows:
- a. Whether the Plaintiff holds title to the suit property in trust for the Defendants?
 - b. Whether the Plaintiff is entitled to the orders sought?
 - c. Whether the Defendant is entitled to the orders sought in the counter-claim?
47. It is the Plaintiff's case that the deceased (Obadiah Kipyegon Kimasas) is the registered proprietor of the parcel of land known as Baringo/kewamoi "A"/371 measuring 0.6 Hectares as per the land certificate issued to him on 30th May, 1984. It is further the Plaintiff's case that in the months of December 2016 and February 2017 the Defendants together with their agents demolished the Plaintiff's perimeter fence and other buildings belonging to the Plaintiff and erected their own semi-permanent building on the Plaintiff's land.
48. It is the Defendants case that sometimes in the year 1970, the 1st Defendant got into an agreement with the original owner of the suit premises for the sum of Ksh 300/=. It is further their case that in the year 1984, the deceased caused the land to be registered in his name and did not disclose the same to them. The Defendants claimed that the Plaintiff has at all material time held the land in trust for the Defendants and the parties have co-existed peacefully for more than thirty years. The Defendants also stated that the Plaintiff and his agents have persistently been harassing and intimidating them with the aim of unlawfully forcing them to vacate the land in their possession.
49. The main issue for determination is whether the Plaintiff held the suit land in trust for the Defendants. In the case of *Twalib Hatayan Twalib Hatayan & Anor v Said Saggar Ahmed Al-Heidy & Others* [2015] eKLR the court re-stated the law on trusts as follows:

“According to the Black's Law Dictionary, 9th Edition; a trust is defined as

“1. The right, enforceable solely in equity, to the beneficial enjoyment of property to which another holds legal title; a property interest held by one person (trustee) at the request of another (settlor) for the benefit of a third party (beneficiary).”

Under the *Trustee Act*, “... the expressions “trust” and “trustee” extend to implied and constructive trust, and cases where the trustee has a beneficial interest in the trust property...”

In the absence of an express trust, we have trusts created by operation of the law. These fall within two categories; constructive and resulting trusts. Given that the two are closely interlinked, it is perhaps pertinent to look at each of them in relation to the matter at hand. A constructive trust is an equitable remedy imposed by the court against one who has acquired property by wrong doing. ... It arises where the intention of the parties cannot be ascertained. If the circumstances of the case are such as would demand that equity treats the legal owner as a trustee, the law will impose a trust. A constructive trust will thus



automatically arise where a person who is already a trustee takes advantage of his position for his own benefit (see Halsbury's Laws of England supra at para 1453). As earlier stated, with constructive trusts, proof of parties' intention is immaterial; for the trust will nonetheless be imposed by the law for the benefit of the settlor. Imposition of a constructive trust is thus meant to guard against unjust enrichment. ...

A resulting trust is a remedy imposed by equity where property is transferred under circumstances which suggest that the transferor did not intend to confer a beneficial interest upon the transferee ...

This trust may arise either upon the unexpressed but presumed intention of the settlor or upon his informally expressed intention. (See Snell's Equity 29th Edn, Sweet & Maxwell p.175). Therefore, unlike constructive trusts where unknown intentions maybe left unexplored, with resulting trusts, courts will readily look at the circumstances of the case and presume or infer the transferor's intention. Most importantly, the general rule here is that a resulting trust will automatically arise in favour of the person who advances the purchase money. Whether or not the property is registered in his name or that of another, is immaterial (see Snell's Equity at p.177) (supra)."

50. Similarly, in the case of *Kazungu Fondo Shutu & another v Japhet Noti Charo & another* [2021] eKLR at paragraph 31 acknowledged that:

"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."

51. It is trite law that the quest of trust is a question of fact, which must be proved and can never be presumed and can only do so out of absolute necessity to give effect to the intentions of the parties which must be clearly be determined. In the case of *Mumo v Makau* [2002] 1EA.170, the court held that "trust is a question of fact to be proved by evidence....."
52. The question is whether the Defendants who alleged that the Plaintiff held the suit land in trust for them led any evidence to prove that there was an intention by the parties to create a trust.
53. The onus to prove existence of a trust lies on the person who alleges. Section 107 of the [Evidence Act](#) provides that:

"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."

54. Section 108 of the [Evidence Act](#) provides as follows:

"The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side."



55. Section 109 of the *Evidence Act* further provides that:
- “The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”
56. In the case of *Prisila Jesondin Chumo v Nelly Jebor* [2018] KEELC 2954 (KLR) this court held that:
- “The new *Land Registration Act* 2012 makes it very clear in Section 28 that unless the contrary is expressed in the register, all registered land shall be subject to various overriding interest without their being noted on the register and one such interest is a trust including customary trust. Even though the law is clear about overriding interests, which need not be noted on the register, the same must be proved. The person alleging customary trust must prove that he or she is entitled to the customary trust.”
57. The Defendants claim that they have been in occupation of the suit land since 1970 but it was the Plaintiff's evidence that he bought the suit land in 1976 and was issued with a title in 1984. The Defendants' occupation and possession of the suit land does not as such create a trust as one has to prove some interest in the land such as ancestral, customary or purchase rights. In the case of *James N. Kiarie v. Geoffrey Kinuthia & Another* (2012) eKLR the court held that:
- “...While occupation may be relevant and has been found to be relevant in some cases in raising the inference of a trust, it is not ... a necessary ingredient for a trust to be established”.
58. I find that the Defendants have not proved that they the parties intended to create a trust hence the plaintiff did not hold the suit land in trust for them. The evidence was not sufficient to prove a trust.
59. On the second issue as to whether the Plaintiff is entitled to the orders sought for eviction and a permanent injunction against the Defendants, it is admitted and not in doubt that the Plaintiff is the registered owner of the suit land having been registered as such in 1984. In fact the Defendants' counterclaim is hinged on the Plaintiff having a title to the suit land which they claim to have been held in trust for them.
60. The Plaintiff gave a chronology of how he acquired the suit land and was subsequently issued with a title deed. The root of the Plaintiff's title has not been challenged for having been procured fraudulently or unprocedurally. Sections 24, 25 and 26 of the *land Registration Act* provides for indefeasibility of title unless it is procured, fraudulently, unprocedurally or by misrepresentation.
61. Section 24 of the *Land Registration Act* provides that:
- a. the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and
 - b. the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or incidents of lease.
62. Section 25 of the *Land Registration Act* states as follows:



1. The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an Order of Court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject:—
 - a. to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and
 - b. to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register.
 2. Nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which the person is subject to as a trustee.”
63. Section 26 states as follows:
1. The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all Courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—
 - a. on the ground of fraud or misrepresentation to which the person is proved to be a party; or
 - b. where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.
 2. A certified copy of any registered instrument, signed by the Registrar and sealed with the Seal of the Registrar, shall be received in evidence in the same manner as the original”.
64. The Plaintiff produced an original title deed registered in his name and Maps showing the location of the suit land. The defendants and their witnesses did not give credible evidence to dislodge the Plaintiff’s claim to the land. The angle of evidence that the 1st Defendant entered into an oral agreement and paid Kshs 300/ was not substantiated.
65. This is a case pitting a brother and a sister against each other over a land dispute, which they should have amicably sorted out through alternative dispute resolution mechanisms that are available if parties embrace a win–win outcome.
66. I have considered the pleadings, the evidence on record and the submissions by counsel, find that the Plaintiff is the registered owner of the suit land, and is therefore entitled to the orders of eviction and a permanent injunction against the defendants. The Defendants have failed to prove that the Plaintiff held the suit land in trust for them hence the counterclaim is dismissed. This is a case involving a brother and sister, I shall therefore order that each party to bear their own costs.
67. I therefore make the following specific orders:
- a. The Defendants are hereby orders to vacate the suit land within 120 days failure to which an Eviction Order to issue to be effected by a Court bailiff or auctioneers appointed by the Plaintiff to remove the Defendants by themselves, their agents, their servants, their family members, persons claiming under them and a demolition Order to demolish and bring down all the Defendants’ buildings, houses and other structures and belongings on Baringo/kewamoi “A”/371 at their own costs.



- b. A permanent order of injunction is hereby issued restraining the Defendants by themselves, their agents, their servants and other persons claiming under or through them from entering, remaining onto, dealing with or in other way interfering or trespassing in any way on the Plaintiff's parcel of land known as Baringo/kewamoi "A"/371.
- c. The Defendants Counter-claim dated 19th October, 2022 is hereby dismissed.
- d. Each party shall bear their own costs in respect of the suit and the counter-claim.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 22ND DAY OF JULY 2025.

M. A. ODENY

JUDGE

