



**Mose v Kirwa (Being sued in her own capacity & as the personal representative of the Estate of Salem Kiprono Kirwa) (Environment and Land Case 91 of 2016) [2025] KEELC 5436 (KLR) (21 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5436 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT AND LAND CASE 91 OF 2016**

**EM WASHE, J  
JULY 21, 2025**

**BETWEEN**

**MARY KWAMBOKA MOSE ..... PLAINTIFF**

**AND**

**ASHA CHEBET KIRWA (BEING SUED IN HER OWN CAPACITY & AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF SALEM KIPRONO KIRWA) ..... DEFENDANT**

**JUDGMENT**

1. The Plaintiff herein filed Amended Plaint dated 28.02.2019 (hereinafter referred to as “the present suit”) against the Defendant seeking for the following Orders; -
  - A. An Order of Specific performance to have 4 acres allocated to the Plaintiff out of land parcel No. UASIN GISHU TAPSAGOI/2X7 more specifically Land Parcel No. UASIN GISHU/TAPSAGOI/1XX3.
  - B. An Order against the Defendant to sign the Land Transfer Forms transferring 4 acres out of UASIN GISHU/TAPSAGOI/2X7 measuring 9.4 Hectares to the Plaintiff more specifically Land Parcel No. UASIN GISHU/TAPSAGOI/1XX3.
  - C. Subject to the Defendant refusing and/or obstructing compliance with Order (b) above, the registrar High Court of Kenya Eldoret be ordered to sign the Land Transfer Forms.
  - D. An Order directing the Land Registrar Uasin Gishu County to sign the relevant Consent for the Transfer of the Land Parcel No. UASIN GISHU/TAPSAGOI/1XX3 measuring approximately 4 acres out of the Land Parcel No. UASIN GISHU/TAPSAGOI/2X7 measuring approximately 9.4 Hectares.



- E. Mesne Profits.
- F. Costs of this suit.
- G. Any other and/or further relief that this Honourable Court may deem just and fit to grant.

2. The facts in support of the prayers above can be summarised as follows:-

- i. Based on an Agreement For Sale dated 27.06.2006, the Plaintiff purchased a portion of 4 Acres within the Land Parcel No. UASIN GISHU/TAPSAGOI/2X7 from the Late SALEM KIPRONO KIRWA and the Defendant herein.
- ii. The Agreement For Sale dated 27.06.2006 was sanctioned and/or executed with the Consent of the Defendant herein who appended her signature of the same.
- iii. Subsequently thereof, the Plaintiff took possession of the 4 Acres within the property known as LR.NO.UASIN GISHU/TAPSAGOI/2X7 and occupied the same.
- iv. Unfortunately, the Defendant's husband SALEM KIPRONO KIRWA passed away before the Completion documents would be handed over to the Plaintiff.
- v. Upon demise of the Defendant's husband SALEM KIPRONO KIRWA, the Defendant was appointed the Legal Representative of the Estate and thereafter, the property known as LR.NO.UASIN GISHU/TAPSAGOI/2X7 was transmitted to her as the lawful owner.
- vi. The Plaintiff pleaded that the Defendant directed her to stop any use of the 4 acres purchased on the 27.06.2006 within the property known as LR.NO.UASIN GISHU/TAPSAGOI/2X7 thereby denying the Plaintiff her rightful portion of land which had been purchased legally.
- vii. The Plaintiff proceeded to provide the Particulars of the Unlawful and/or Illegality of the Defendant's actions in stopping her to use the 4 acres within the property known as LR.NO.UASIN GISHU/TAPSAGOI/2X7.
- viii. In addition to the foregoing, the Plaintiff stated that the Defendant has failed to complete the Agreement For Sale dated 27.06.2006 by specifically failing to procure the relevant Land Control Board Consent for the Transfer to the 4 Acres purchased by her within the property known as LR.NO.UASIN GISHU/TAPSAGOI/2X7.
- ix. The Plaintiff stated that he had made various demands for the Completion of the Agreement For Sale and Transfer from the Defendant but there are has been no compliance.
- x. The Plaintiff's claim therefore is for an Order of Specific Performance to be issued directing the Defendant to undertake the sub-division of the 4 Acres purchased from the property known as LR.NO.UASIN GISHU/TAPSAGOI/2X7 and thereafter transfer the same to her name.
- xi. Similarly, if the Defendant fails to do so, then the Deputy Registrar Eldoret Environment & Land Court be directed to prepare and execute the relevant documents for the sub-division and transfer of the 4 acres portion within the property known as LR.NO.UASIN GISHU/TAPSAGOI/2X7.
- xii. The Plaintiff also sought for Mesne Profit for the period she has been barred from using her portion of 4 acres within the property known as LR.NO.UASIN GISHU/TAPSAGOI/2X7 as well as Costs of the suit.



3. The present suit was indeed served on the Defendant who opposed the same by filing a Statement of Defence and Counter-Claim dated 17.07.2019.
4. In the Statement Of Defence dated 17.07.2019 opposed the present suit on the following grounds; -
  - i. First and foremost, the Defendant denied the existence of any Agreement For Sale between the late SALEM KIPRONO KIRWA and the Plaintiff and put her to strict proof thereof.
  - ii. Secondly, the Defendant denied that the Plaintiff took possession of any portion of land within the property known as LR.NO.UASIN GISHU/TAPSAGOI/2X7 based on the Agreement For Sale and put the Plaintiff to strict proof thereof.
  - iii. The Defendant pleaded that if any Agreement For Sale was ever executed between the Plaintiff and the late SALEM KIPRONO KIRWA, then there was no Consent from the Land Control Board that had been obtained either for the Sale, Sub-division and Transfer of the alleged 4 acres within the property known as LR.NO.UASIN GISHU/TAPSAGOI/2X7.
  - iv. In essence, the Defendant denied any acts of interfering with the portion of 4 acres which is allegedly purchased by the Plaintiff within the property known as LR.NO.UASIN GISHU/TAPSAGOI/2X7 as alleged in the Particulars of Illegality pleaded in the present suit.
  - v. The Defendant pleaded before the Court that the Estate of the late SALEM KIPRONO KIRWA had offered to refund a sum of KShs 640,000/- which was the alleged consideration for the purchase of the 4 acre portion within the property known as LR.NO.UASIN GISHU/TAPSAGOI/2X7 but the Plaintiff has since declined the same.
  - vi. The Defendant further disclosed in the Statement of Defence that the Plaintiff has sought to be recognised as a beneficiary of the Estate of SALEM KIPRONO KIRWA through the proceeding known as ELDORET HIGH COURT SUCCESSION NO. 192 OF 2009 which she was not successful and there is an Appeal before the Court of Appeal in the proceedings known as ELDORET COURT OF APPEAL NO. 40 OF 2018.
  - vii. In conclusion, the Defendant sought the present suit to be dismissed with costs.
5. In addition to the Statement of Defence, the Defendant filed a Counter-claim seeking the following orders: -
  - a. A declaration that L.R. No.UASIN GISHU/TAPSAGOI/2X7 is ancestral land and therefore the sons of the late Salem Kiprono Kirwa have an ownership interest in the same.
  - b. A declaration that the Agreement for Sale dated 27.06.2006 between Salem Kiprono Kirwa (deceased) and the Plaintiff is null and void and therefore non-enforceable.
  - c. That the Defendant be allowed to reconstitute the Plaintiff the consideration for the Sale of the property pursuant to the Agreement for Sale dated 27.06.2006.
  - d. That the Plaintiff be ordered to give vacant possession of the suit property to the Defendant upon payment of the consideration to the Plaintiff.
  - e. Costs of the suit.
6. The Counter-claim is premised on the following grounds; -



- i. That the Agreement for Sale entered on 27.06.2006 between the late Salem Kiprono Kirwa and the Plaintiff for the purchase of 4 Acres within L.R. No. UASIN GISHU/TAPSAGOI/2X7 is null and void.
  - ii. On the 17.11.2010 and 10.12.2010, the Defendant and the late SALEM KIRONO KIRWA attended the Land Control Board meetings with a view of obtaining the relevant consent to subdivide and transfer in favour of the Plaintiff.
  - iii. However, the Land Control Board Consents were never issued in favour of the Plaintiff based on an objection.
  - iv. Upon the inability of obtaining the relevant Land Control Board Consent to subdivide and transfer, the Defendant offered to refund the consideration but the Plaintiff insisted that it should be based on the present market rates which in her view was Kshs. 1,000,000/= per acre.
  - v. The Defendant stated that since then, there has been a deadlock on the way forward and the Defendant has continued being in occupation within the property known as L.R. No. UASIN GISHU/TAPSAGOI/2X7.
  - vi. The Defendant further stated that the Plaintiff attempted to be recognized as a beneficiary of the estate of SALEM KIPRONO KIRWA in the Succession proceedings known as ELDORET HIGH COURT CAUSE NO. 192 OF 2009 but the application was dismissed.
  - vii. The Plaintiff being aggrieved by the decision of the ELDORET HIGH COURT SUCCESSION CAUSE NO. 192 OF 2009 filed an appeal before the Court of Appeal in the proceedings known as ELDORET COURT OF APPEAL CIVIL APPEAL NO. 40 OF 2018 which is still pending before the Court of Appeal.
  - viii. The Defendant therefore stated that the present suit is sub judice to the proceedings before this court.
7. The Statement of Defence and Counter-Claim dated 17.07.2019 was served on the Plaintiff who filed a Reply to Defence and Defence to Counter-claim dated 11.09.2019.
  8. In the Reply to Defence dated 11.09.2019, the Plaintiff reiterated the facts contained in the present suit and specifically denied the allegations contained in the Statement of Defence.
  9. The Plaintiff further denied the allegations that she accepted a refund of the Purchase Price amounting to Kshs. 640,000/=.
  10. The Plaintiff clarified that she had sought for a refund of Kshs. 600,000/= per acre but the Defendant made a counter-offer of Kshs. 530,000/= per acre which was rejected.
  11. The Plaintiff further clarified that the present suit was filed before the objection in ELDORET HIGH COURT SUCCESSION CAUSE NO.192 OF 2009 was filed.
  12. In addition to the Reply to Defence, the Plaintiff filed a Defence to the Counter-Claim dated 11.09.2019 in which she denied all the allegations pleaded by the Defendant.
  13. The Plaintiff stated that the Defendant upon the demise SALEM KIPRONO KIRWA promised before the Area Chief to undertake succession proceedings and ensure that the Title Deed for the portion of the 4 Acres within the asset of the late SALEM KIPRONO KIRWA would be transferred to her.
  14. The Plaintiff therefore sought to have the Counter-claim filed by the Defendant dismissed with costs.



15. After the service of the Reply to Defence and the Defence to the Counter-claim dated 11.09.2019 pleadings closed.

**Plaintiff's Case.**

16. The first witness was MARY KWAMBOKA MOSE, who is the Plaintiff and was marked as PW1.
17. PW1 introduced herself as a resident of Mombasa County and was an employee of Kenya Ports Authority.
18. PW1 informed the Court that she had prepared a comprehensive witness statement dated 21.04.2016 which she adopted as her evidence in chief.
19. In support of her evidence in chief, PW1 produced the following documents in support of her testimony.

PW1 Exhibit 1 – a copy of the Plaintiff's Kenyan National Identification Card No. 13327310

PW1 Exhibit 2 (a-d) – copies of agreements for sale dated 27.06.2006, 18.01.2007, 2.05.2007 and 02.06.2007 between Salem Kiprono Kirwa and the defendant with the plaintiff over portion of L.R. No. Uasin Gishu/Tapsagoi/2X7

PW1 Exhibit 3 – copy of the title deed of L.R. No. Uasin Gishu/Tapsagoi/2X7 issued on 25.10.2005

PW1 Exhibit 4 – a copy of the Mutation Form No. 305545 relating to L.R. No. Uasin Gishu/Tapsagoi/2X7

PW1 Exhibit 5 (a & b) – minutes of the meetings dated 11.03.2015 and 17.12.2015 held at the Chief's Office between the plaintiff and the defendant.

PW1 Exhibit 6 – a copy of the Demand Letter dated 18.12.2015 from the defendant's counsel to the plaintiff

PW1 Exhibit 7 - a copy of a letter dated 12.04.2016 from the plaintiff's advocates to the defendant's advocate and a certificate of postage.

PW1 Exhibit 8 – copy of the grant of Letters of Administration dated 26.01.2016 from the estate of Salem Kiprono Kirwa.

PW1 Exhibit 9 – a copy of a letter from the Area Chief to the LCB dated 16.11.2010

20. PW1 informed the Court that she purchased a portion of 4 acres within L.R. No. Uasin Gishu/Tapsagoi/2X7 from the late Salem Kiprono Kirwa and the defendant, who both signed the Agreement.
21. Upon execution for the Agreement for Sale, the Plaintiff took possession by fencing the portion of 4 acres and cultivating it.
22. Thereafter, the Plaintiff sought to have the land subdivided and the portion of 4 Acres transferred to her but the same has never been done to date.
23. According to PW1, there was laxity by the late Salem Kiprono Kirwa and the Defendant to obtain the relevant Land Control Board consent to subdivide and transfer the portion of 4 Acres from the property known as L.R. No. UASIN GISHU/ TAPSAGOI/2X7.
24. Be as it may, the late Salem Kiprono Kirwa and the defendant finally attended two meetings of the Land Control Board but the male children to the consent being issued.



25. As a result of the objection by the male children of the late Salem Kiprono Kirwa, the Land Control Board declined to approve the subdivision and transfer of the 4 acres which the Plaintiff had purchased.
26. The Land Control Board advised vendors and the plaintiff to go and discuss the matter and once an agreement was reached they could reapply for the consent.
27. Since that time, there has been no resolution and that is why the present suit was filed.
28. PW1 concluded her evidence in chief by requesting the Court to order the Defendant to provide the completion document so that the portion of 4 acres within L.R. No. UASIN GISHU/ TAPSAGOI/2X7 can be issued with a title deed and she can develop her land.
29. On cross-examination, PW1 denied any knowledge on whether the property L.R. No. UASIN GISHU/ TAPSAGOI/2X7 was subdivided or not.
30. On being referred to PW1 Exhibit 2 (a – d), PW1 informed the Court that when the application to the Land Control Board was rejected the Defendant made an offer to refund the purchase price.
31. However, PW1 reiterated that the offer was denied based on the amount of refund per acre.
32. PW1 informed the Court that this was the main reason why this suit was filed and in the event parties had agreed on the amount of refund per acre then they would not be in Court today.
33. On being referred again to PW1 Exhibit 2 (a – d), PW1 stated that she started cultivating the suit land from the year 2007 until 2015
34. PW1 disclosed to the Court that since 2015 she had not been in occupation of the 4 Acres within the property known as L.R. No. UASIN GISHU/ TAPSAGOI/2X7.
35. PW1 was then referred to the document marked as PW1 Exhibit 6, which she stated was a letter discussing about a refund.
36. PW1 denied any knowledge that the property known as L.R. No. UASIN GISHU/ TAPSAGOI/2X7 was ancestral land.
37. PW1 further denied that the Land Control Board consent was declined due to the issue regarding the suit property known as L.R. No. UASIN GISHU/ TAPSAGOI/2X7 being ancestral land.
38. PW1 admitted that she had filed an objection in the Succession proceedings known as HIGH COURT SUCCESSION CAUSE NO. 192 OF 2009 relating to the estate of Salem Kiprono Kirwa but the same was denied.
39. As regards the Appeal before the Court of Appeal known as COURT OF APPEAL CIVIL APPEAL NO. 40 OF 2018, PW1 informed the court that the same was dismissed.
40. PW1 concluded the cross-examination by stating that this Court should grant the reliefs sought in the present suit and stated that this case is not time barred.
41. On re-examination, PW1 reiterated that she had purchased the portion of 4 Acres on L.R. No. UASIN GISHU/ TAPSAGOI/2X7 in the year 2006
42. PW1 denied any knowledge that the property known as L.R. No. UASIN GISHU/ TAPSAGOI/2X7 was an ancestral as the Defendant did not disclose such a fact.
43. PW1 insisted that at the time of entering the Agreement for Sale with the Defendant, there was no intention for a refund in the future.



44. PW1 went further stated that she took possession of the 4 acres within the property known as L.R. No. UASIN GISHU/ TAPSAGOI/2X7 and utilized the same from the year 2007 until 2015.
45. PW1 stated that the main reason she has not been to the land since 2015 was because of the letter from the Defendant's Advocate produced as PW1 Exhibit 6 which prohibited her from accessing the said land.
46. PW1 informed the Court in the proceedings before the succession Court, her objection was to be included or declared as a beneficiary of the estate of the late SALEM KIPRONO KIRWA, which she was not successful.
47. At the end of this re-examination, PW1 was discharged from the witness box.
48. The second Plaintiff's witness was one SIMON LIMO, who was marked as PW2.
49. PW2 introduced himself as the retired Senior Chief of Tapsagoi location.
50. PW2 informed the Court that he had come to testify on behalf of the Plaintiff.
51. According to PW2, the late SALEM KIPRONO KIRWA and the Defendant herein visited his office in the year 2006 and expressed their intention of selling 4 acres within L.R. No. UASIN GISHU/ TAPSAGOI/2X7 to the Plaintiff.
52. Their request to PW2 was to prepare an Agreement for Sale on the terms and conditions for the said transaction.
53. PW2 informed the Court that he indeed prepared the Agreement for Sale dated 27.06.2006 hereinafter produced as PW1 Exhibit 2a and the same was executed by all the relevant parties.
54. According to PW2, the agreed purchase price per acre was Kshs. 155,000/= per acre making a total of Kshs. 620,000/= for the 4 acres purchased by the Plaintiff.
55. On execution of the Agreement for Sale dated 27.06.2006, the Plaintiff paid a sum of Kshs. 400,000/= to the late SALEM KIPRONO KIRWA and the Defendant.
56. It was also a term of the Agreement for Sale that upon the Plaintiff executing the Agreement for Sale and paying a deposit of Kshs. 400,000/=: the possession and use of the 4 acres within L.R. No. UASIN GISHU/ TAPSAGOI/2X7 would be handed over to the Plaintiff.
57. PW2 therefore confirmed to the Court that the Agreement of Sale dated 27.06.2006 was lawful and legal.
58. In addition to the above, PW2 stated that he was familiar to the witnesses to the Agreement of Sale dated 27.06.2006 and one of the witnesses was FARAK KIROP who is one of the sons of the late SALEM KIPRONO KIRWA and the Defendant herein.
59. PW2 informed the Court that the balance of Kshs. 220,000/= was to be paid on or before 31.12.2006 but was not paid on the said date.
60. PW2 informed the Court that a sum of Kshs. 140,000/= out of the balance of Kshs. 220,000/= was paid through his office on 18.01.2007 and both the late SALEM KIPRONO KIRWA and the Defendant acknowledged receipt.
61. The remaining balance of Kshs. 80,000/= to complete the balance of Kshs. 220,000/= was paid through his office on 02.05.2007.



62. Due to the late payments of the balance of Kshs. 220,000/=, the late SALEM KIPRONO KIRWA demanded a penalty of Kshs. 20,000/=, which amount was paid through the offices of PW2 on 27.06.2007 and was received by the late SALEM KIPRONO KIRWA and the defendant.
63. It is upon full payment of the purchase price that PW2 prepared and signed a letter dated 16.11.2010 produced as PW1 Exhibit 9 recommending the approval and issuance of the Land Control Board Consent to subdivide and transfer the 4 acres within L.R. No. UASIN GISHU/ TAPSAGOI/2X7 to the Plaintiff.
64. In concluding his examination in chief, PW2 stated that he was not aware of the reasons why the local Land Control Board declined to issue the consent to subdivide and transfer.
65. On cross-examination, PW2 was referred to the document marked as PW1 Exhibit 9 in which he confirmed that he did not specify the portion to be subdivided and transferred.
66. PW2 admitted that the Plaintiff delayed in completing the purchase price but was penalized a sum of Kshs. 20,000/= which she paid in full.
67. PW2 confirmed that he did not see the actual title deed before preparing the Agreement for Sale dated 27.06.2006 and could not tell who was the registered owner therein.
68. Lastly, PW2 reiterated that he could not explain why the Land Control Board had declined to issue the consent to subdivide and transfer.
69. On re-examination, PW2 was referred to the exhibit marked as PW1 Exhibit 9 and according to him, he did not write the portion to be subdivided and transferred because the letter was to be read in line with the Agreement for Sale dated 27.06.2006.
70. At the end of this re-examination, PW2 was discharged from the witness stand and the Plaintiff proceeded to close their case.

**Defence Case.**

71. The Defence case began with the testimony of Asha Chebet Kirwa, who is the Defendant herein and was marked as DW1.
72. DW1 informed the Court that she was a resident of Turbo within Tarsagoi location within Uasin Gishu County.
73. DW1 confirmed to the Court that the late SALEM KIPRONO KIRWA is her deceased husband.
74. DW1 also admitted that she knew the Plaintiff in this matter.
75. DW1 confirmed to the Court that she had prepared a witness statement dated 28.11.2024 which she adopted as her evidence in chief.
76. In support of the facts pleaded in the witness statement, DW1 produced the following documents as her exhibits; -

DW1 Exhibit 1 – a copy of the Agreement for Sale dated 27.06.2006

DW1 Exhibit 1 – minutes of the meeting dated 11.03.2015

DW1 Exhibit 3 – minutes of the meeting dated 17.12.2015

DW1 Exhibit 4 – a copy of the judgment emanating from Court of Appeal Civil Appeal No. 125 of 2018 dated 27.05.2022.



77. DW1 sought this court to dismiss the Plaintiff's suit and enter Judgment in accordance to the Counter-Claim herein.
78. On cross-examination, DW1 acknowledged knowing the Plaintiff in this matter.
79. DW1 was then referred to the document marked as DW1 Exhibit 1 which she confirmed was an Agreement for Sale of 4 Acres on the suit property known as L.R. No. UASIN GISHU/ TAPSAGOI/2X7.
80. DW1 admitted that the purchase price was Kshs. 155,000/= per acre.
81. DW1 confirmed that it was the late SALEM KIPRONO KIRWA and herself who approached the Chief and requested him to prepare the Agreement for Sale.
82. DW1 admitted that she executed the Agreement for Sale dated 27.06.2006 on her own volition.
83. DW1 also stated that during the execution of the Agreement for Sale dated 27.06.2006, one of her sons was present although he was a minor.
84. DW1 confirmed that the full purchase price provided in the Agreement of Sale dated 27.06.2006 was fully paid although there was late payment which a penalty was charged and settled.
85. After the execution of the Agreement for Sale dated 27.06.2006, the Plaintiff took possession of the suit property and ploughed it between the year 2007 and 2010.
86. In the year 2010, DW1 confirmed to the Court that an Application was made by the late SALEM KIPRONO KIRWA and herself to the Land Control Board for the subdivision and transfer of the 4 acres within the property known as L.R. No. UASIN GISHU/ TAPSAGOI/2X7 and presented for approval.
87. However, during the hearing before the Land Control Board, 2 sons out of the 5 children of the late SALEM KIPRONO KIRWA and the Defendant objected to the transaction.
88. The Land Control Board therefore declined to issue the consents and advised the parties to first discuss the matter.
89. DW1 informed the Court that there were discussions on the possibility of a refund with the Plaintiff but the Plaintiff's position was that the refund should be based on the current market rates.
90. Unfortunately, on 23.11.2010, the late SALEM KIPRONO KIRWA had an accident and passed away.
91. Despite this difficulty on the way forward, the Plaintiff was allowed to continue ploughing the 4 acres between the year 2011 up to 2015.
92. In 2015, DW1 stated that she went to cut down some trees which were on the boundary between the portion purchased by the Plaintiff and her portion and it is on this incidence that the Plaintiff went to the Area Chief to report the incident.
93. Indeed, the Chief summoned DW1 and the Plaintiff and in that meeting, there was a discussion again about the refund of the purchase price.
94. In the meeting before the Chief, there was a consensus that a refund would be acceptable to the Plaintiff, save that the Plaintiff wanted to be paid Kshs. 1,000,000/= per acre while the Defendant counter-offered a sum of Kshs. 400,000/= per acre.



95. After the disagreement on the amount of refund per acre, there was no communication between the Plaintiff and the Defendant up to the time of the hearing of this case.
96. DW1 stated that due to the agreement to refund the consideration, she refused the Plaintiff to continue occupying the portion of 4 acres which is available up to now.
97. DW1 admitted that during the Land Control Board meetings, both the late SALEM KIPRONO KIRWA and herself had accepted to subdivide and transfer the 4 acres which the Plaintiff had purchased.
98. DW1 then referred to the document marked as PW1 Exhibit 6, and confirmed that it was a demand letter done on the year 2015 to the Plaintiff that resulted to the present suit being filed.
99. DW1 stated that this letter informed the Plaintiff of their inability to obtain the consent from the Land Control Board.
100. DW1 averred that the other claims by the Plaintiff should be dismissed.
101. DW1 stated that the property known as L.R. No. UASIN GISHU/ TAPSAGOI/2X7 was 9.4 Ha.
102. DW1 further stated that there are other portions within the property known as L.R. No. UASIN GISHU/ TAPSAGOI/2X7 which had been sold to other people.
103. In concluding the cross-examination, DW1 did not remember the claim which the Plaintiff lodged in the succession proceedings.
104. On re-examination, DW1 reiterated that the consents before the Land Control Board were not granted based on objection by some of her children.
105. It is after the failure to obtain the Land Control Board consents that the Plaintiff demanded for a refund at the market rates.
106. DW1 stated that it is upon accepting the Plaintiff's request for a refund that again the amount per acre to be refunded could not be agreed on.
107. DW1 concluded her re-examination by stating that the dispute before Court started around the year 2010.
108. At the end of this re-examination, DW1 was subsequently discharged from the witness box.
109. The second defence witness was one JOHN KIBUNGEI MAGOI, who was marked as DW2.
110. DW2 introduced himself as a resident of Turbo.
111. DW2 informed the Court that he was familiar with both the Plaintiff and the Defendant herein.
112. DW2 stated that he was one of the witnesses in one of the meetings before the Chief's office in Turbo.
113. DW2 informed the Court that he had prepared and signed a witness statement dated 08.11.2024 which he adopted as his evidence in chief.
114. On cross-examination, DW2 averred that the meeting he attended was the one dated 11.03.2015 before the Area Chief and the minutes produced as DW1 Exhibit 2.
115. DW2 informed the Court that in the meeting of 11.03.2015, the Plaintiff and her father were present.
116. Similarly, one of the Defendant's son who had objected to the approval of the transaction by the Land Control Board was also present.



117. According to the discussions in the meeting of 11.03.2015, the agenda of refund was discussed but there was no agreement because the Plaintiff refused a refund.
118. Nevertheless, the Chief made a proposal that the Plaintiff should consider a refund of Kshs. 400,000/= per acre.
119. In re-examination, DW2 reiterated that one of the agenda in the meeting of 11.03.2015 was a refund.
120. DW2 further clarified that the proposal of a refund of amounting to Kshs. 400,000/= was from the Chief.
121. DW2 was then discharged from the witness box and the Defendant closed their case.
122. Parties were then directed to proceed and file their final submissions of which the Plaintiff complied by filing his submissions dated 20.05.2025 while the Defendant filed their submissions dated 16.06.2025.
123. The Court has indeed perused the pleadings in detail, the testimony of the parties, the documentary evidence produced and the submissions and identifies the following issues for determination: -

ISSUE NO. 1-WAS THE AGREEMENT FOR SALE DATED 27.06.2006 BETWEEN PARTIES LEGAL AND BINDING?

ISSUE NO. 2-DID THE DEFENDANT COMPLY WITH THE TERMS AND CONDITIONS IN THE AGREEMENT FOR SALE DATED 27.06.2006?

ISSUE NO. 3-DOES THE PLAINTIFF HAVE ANY LAWFUL AND LEGITIMATE RIGHTS OVER THE PORTION OF 4 ACRES PURCHASED THROUGH THE AGREEMENT FOR SALE DATED 27.06.2006?

ISSUE NO. 4-IS THE PROPERTY KNOWN AS L.R. NO. UASIN GISHU/TAPSAGOI/2X7 ANCESTRAL OR FAMILY LAND?

ISSUE NO. 5-WAS THE OBJECTION BY THE TWO CHILDREN OF THE DEFENDANT BEFORE THE LAND CONTROL BOARD LAWFUL AND JUSTIFIED?

ISSUE NO. 6-IS THE PLAINTIFF ENTITLED TO THE RELIEFS SOUGHT IN THE PRESENT SUIT?

ISSUE NO. 7-IS THE DEFENDANT'S COUNTER-CLAIM MERITED?

ISSUE NO. 8-WHO BEARS THE COSTS OF THE PRESENT SUIT AND THE COUNTER-CLAIM.?

124. The Court having identified the issues above for determination, the same are hereby discussed below:-

**ISSUE NO. 1 – WAS THE AGREEMENT FOR SALE DATED 27.06.2006 PARTIES LEGAL AND BINDING?**

125. The first and critical issue in this dispute is the validity of the Agreement of Sale dated 27.06.2006 which was executed by the Plaintiff and the late SALEM KIPRONO KIRWA and the Defendant.
126. According to the Plaintiff, the Agreement for Sale dated 27.06.2006 was to purchase a portion of 4 Acres within the property known as L.R. No. UASIN GISHU/TAPSAGOI/2X7.
127. The purchase price per acre provided in the Agreement For Sale was Kshs. 155,000/= making a total of Kshs. 620,000/= for the 4 acres purchased from the late SALEM KIPRONO KIRWA.



128. The Plaintiff confirmed that the full purchase price of Kshs. 620,000/= for the 4 acres was fully paid and an additional penalty of Kshs, 20,000/= due to late payment paid and accepted by the late SALEM KIPRONO KIRWA and the Defendant.
129. This evidence by the Plaintiff was corroborated by the evidence of PW2, who was the Chief that did the Agreement for Sale and witnessed the payment to the late SALEM KIPRONO KIRWA and the Defendant herself.
130. In essence, this Court is satisfied that all the ingredients of a binding contract under the provisions of the Law of Contract were complied with and the Agreement for Sale dated 27.06.2006 is therefore legal, lawful and legitimate hence binding on both the parties.

**ISSUE NO. 2 – DID THE DEFENDANT COMPLY WITH THE TERMS AND CONDITIONS IN THE AGREEMENT FOR SALE DATED 27.06.2006?**

131. The second issue for determination is whether the Defendant complied with the terms and conditions provided in the Agreement for Sale dated 27.06.2006.
132. The Defendant in the Agreement for Sale acknowledged the acquisition of 4 acres within the suit property known as L.R. No. UASIN GISHU/TAPSAGOI/2X7 pursuant to the Agreement for Sale dated 27.06.2006.
133. Upon completion of the purchase price, it was the intention of both the Plaintiff and the Defendant to excise the portion of 4 acres from the property known as LR.NO.UASIN GISHU/TAPSAGOI/2X7 and transfer the same to the Plaintiff.
134. This intention was clearly expressed by Defendant in her cross-examination wherein she confirmed that both the late SALEM KIPRONO KIRWA and herself prepared and presented an Application for Subdivision for transfer of 4 acres before the local Land Control Board.
135. The intention of the Defendant to excise the portion of 4 acres and transfer the same to the Plaintiff was corroborated by the evidence of PW2 who was the Chief that prepared the letter dated 16.11.2010 on the request of the late SALEM KIPRONO KIRWA and the Defendant to be presented before the Land Control Board.
136. The Defendant in cross-examination expressly testified that both the late SALEM KIPRONO KIRWA and herself had no objection with the issuance of the Land Control Board Consent to subdivide the property known as L.R. No. UASIN GISHU/TAPSAGOI/2X7 and transfer the portion of 4 acres purchased by the Plaintiff to her name.
137. According to Defendant, the Land Control Board consent to subdivide the property known as L.R. No. UASIN GISHU/TAPSAGOI/2X7 and transferring of the portion measuring 4 acres purchased by the Plaintiff was hindered by the objection of her son.
138. It is therefore clear that it is the Defendant who has failed to provide the relevant completion documents to facilitate the subdivision and transfer of the 4 acres portion to the Plaintiff.

**ISSUE NO. 3 – DOES THE PLAINTIFF HAVE ANY LAWFUL AND LEGITIMATE RIGHTS OVER THE PORTION OF 4 ACRES PURCHASED THROUGH THE AGREEMENT FOR SALE DATED 27.06.2006?**

139. The third issue is whether the Plaintiff herein has any lawful and legitimate rights over the portion measuring 4 acres on the property known as L.R. No. UASIN GISHU/TAPSAGOI/2X7.



140. Based on the determination in issue No. 1, it is clear that there is a binding Agreement For Sale dated 27.06.2006 between the parties as regard the portion of land measuring 4 acres within L.R. No. AUSIN GISHU/TAPSAGOI/2X7.
141. There is no dispute based on the evidence of the parties and PW2 that the full purchase price for the 4 acres purchased by the Plaintiff from the Defendant was fully settled.
142. The only issue pending in this transaction is the procuring of the Land Control Board consent to subdivide the property known as LR.NO.UASIN GISHU/TAPSAGOI/2X7 and curve out the 4 acres purchased by the Plaintiff which should then be transferred thereafter.
143. In the case of MACHARIA MWAGI MAINA VERSUS DAVIDSON MWANGI KAGIRI [2014] eKLR the Court stated as follows: -

“the transaction between the parties is to the effect that the respondent created a Constructive Trust in favour of all persons who had paid the purchase price.

We are of the considered view that a constructive trust relating to land subject to Land Control Act is enforceable.”

144. In the same case, the Court further made the following observations:-

“in the instant case, there is a common intention between the appellants and the respondents in relation to the suit property. Nothing in the Land Control Act prevents the claimants from relying on the doctrine of constructive trust created by the facts of the case.”

145. This authority cited above is one of the authorities presented by the Plaintiff.

146. In another case of KIPLAGAT KOTUT-VERSUS- ROSE JEBOR KIPNGOK (2019) eKLR, the Court stated as follows as regards the Land Control Act, Ca0 302:-

“We hasten to state that the Land Control Act, Cap 302 of the Laws of Kenya was never intended to be an instrument or statute for unjust enrichment. It was never mean to exempt a mala fide vendor from his contractual obligations.

The statute comes to the aid of persons who act in good faith without taking undue advantage of the other party. It is not a statute aimed at aiding unconscionable conduct between the parties.

It is in this context that the doctrine of constructive trust comes into play to restore property to the rightful owner and to prevent unjust enrichment. It prevents unconscionable conduct and ensures one party does not benefit at the expense of another.”

147. Looking at the facts of the present case, this Court hereby makes a finding that indeed the plaintiff has legitimate and lawful ownership rights over the portion of 4 acres within the property known as UASIN GISHU/TAPSAGOI/2X7 despite the Land Control Board Consent having not been obtained so far.

#### **ISSUE NO. 4 – IS THE PROPERTY KNOWN AS L.R. NO. UASIN GISHU/TAPSAGOI/2X7 ANCESTRAL OR FAMILY LAND?**

148. The forth issue is one raise by the Defendant and the children who have objected to the approval of the Land Control Board Consent in favour of the Plaintiff.



149. The Defendant in her Statement of Defence and Counter-Claim has pleaded that the property known as L.R. No. UASIN GISHU/TAPSAGOI/2X7 is ancestral or family land.
150. From the testimony of both the Plaintiff and the Defendant, the failure of the Land Control Board to issue the Consent to subdivide and transfer was again based on objections by two children out of five of the Vendor.
151. It therefore requires this Court to evaluate and know whether the property known as L.R. No. UASIN GISHU/TAPSAGOI/2X7 registered in the name of the late SALEM KIPRONO KIRWA either ancestral land or family land.
152. The issue of whether the property known as L.R. No. UASIN GISHU/TAPSAGOI/2X7 is ancestral and/or family land is one that should be determined based on facts.
153. The provisions of Section 107 of the *Evidence Act* place the obligation on however alleges a fact should prove the same.
154. The Defendant was under a duty to provide documentary or viva voce evidence demonstrating the fact that the property known as LR.NO.UASIN GISHU/TAPSAGOI/2X7 was either ancestral or family land.
155. In the Court's view there is a distinction between ancestral land and family land.
156. A plain understanding of ancestral land is land that has been passed from one generation to another and whoever is registered as the owner holds it in trust for all family members, for his generation and future generations.
157. On the other hand, family land on the face of it is interpreted as land that is used by a particular family and which could have been acquired either by outright purchase, adjudication, allocation or any other lawful way save that it does not emanate from the ancestors of the family.
158. Looking at the title deed of L.R. No. UASIN GISHU/TAPSAGOI/2X7 in name of the late SALEM KIPRONON KIRWA issued in the year 2005, there is no indication that the said property was ancestral land.
159. Similarly, the Defendant did not give any testimony that the property known as L.R. No. UASIN GISHU/TAPSAGOI/2X7 was ever occupied and/or owned by other family members from the lineage of the late SALEM KIPRONO KIRWA.
160. PW2 who was the Area Chief only identified the suit property L.R. No. UASIN GISHU/TAPSAGOI/2X7 to be the personal asset of the late SALEM KIPRONO KIRWA.
161. The document produced as DW1 Exhibit 4 which is the judgment by the Court of Appeal Civil Appeal No. 125 of 2018, there was no discussion that the property known as L.R. No.UASIN GISHU/TAPSAGOI/2X7 was ancestral land.
162. In essence, this Court does not have any evidence to declare the property known as L.R. No. UASIN GISHU/TAPSAGOI/2X7 to have been ancestral land.
163. As to whether the property known as L.R. No.UASIN GISHU/TAPSAGOI/2X7 is family land, this Court is of the view that the late SALEM KIPRONO KIRWA owned this property in his personal capacity as indicated in the Agreement for Sale dated 27.06.2006 as well as PW1 Exhibit 3.



**ISSUE NO. 5 – WAS THE OBJECTION BY THE TWO CHILDREN OF THE DEFENDANT BEFORE THE LAND CONTROL BOARD LAWFUL AND JUSTIFIED?**

164. The question then is whether the two sons of the late SALEM KIPRONO KIRWA and the Defendant had a right to object and oppose the issuance of the Land Control Board Consents while their parents had applied for the same.
165. The Court is of the considered view that the rights of the late SALEM KIPRONO KIRWA were based on section 26 of the *Land Registration Act*, Cap 3 of 2012.
166. This being so, the person with the last decision on whether the suit property known as L.R. No. UASIN GISHU/TAPSAGOI/2X7 was to be alienated was the late SALEM KIPRONO KIRWA.
167. In the case of NYANCHONGI & 4 OTHERS -VERSUS- NYANCHONGI & OTHERS [KEELC 3983] KLR, the Learned Judge at paragraph 29 and 30 stated as follows: -

“

“29. if a person purchases land with his own sweat, and he is the absolute proprietor thereof, he does not hold such land in trust for his children, and therefore there is no duty imposed upon him by law to consult his children when he wishes to dispose off his free land ad neither is there an obligation imposed upon him to share that land or the proceeds of that land to his children.

There is certainly no legal burden, that is he opts to give such land inter-vivos, then he must gift all his children such land, or that he must gift the children in equal shares. A gift inter-vivos is within the discretion of the property holder so long as the land is not held in trust.

He can decide to gift no children, gift some children or gift all the children in whichever manner and in whatever proportions he deems fit.

30. And neither is there a right bestowed upon the children to force their parents to subdivide land to them when their parents are still alive. In fact, this is more or less now a beaten path.”

168. The Court of Appeal in the case of NAHASHON KARENGE & ANOTHER -VERSUS- LAWRENCE KARENGE, NYERI CIVIL APPEAL NO. 222 OF 2010[2014] eKLR, the Court stated as follows: -

“there is no vested rights to inheritance during the lifetime of parents.

Let it be known that during the lifetime of their parents, and subject to beneficial and occupational rights, a child cannot force parents to subdivide and distribute their land or assets unless the said land or assets were acquired and held in trust prior to the parents’ acquisition of title to the same.”

169. Based on the authorities cited hereinabove and the finding that the property known as L.R. No. UASIN GISHU/TAPSAGOI/2X7 belonged to the late SALEM KIPRONO KIRWA and not ancestral land, the two children who objected to the issuance of the consent to subdivide and transfer before the Land Control Board had no locus to do so.
170. The decision by the Land Control Board to decline issuing the Consents to sub-divide the property known as LR.NO.AUSIN GISHU/TAPSAGOI/2X7 and Transfer the portion of 4 Acres to the Plaintiff when the late SALEM KIPRONO KIRWA and the Defendant had consented to the same on



the grounds that two of the sons had objected to the said transaction was misguided and not founded in law.

**ISSUE NO. 6 – IS THE PLAINTIFF ENTITLED TO THE RELIEFS SOUGHT IN THE PRESENT SUIT?**

171. The next issue is whether or not the present suit is merited.
172. Based on the findings in Issues No. 1, 2, 3 and 4, this Court is of the considered finding that the present suit is merited and the reliefs therein should be granted except the claim for Mesne profit.
173. The reason the relief for Mesne profit has not been granted is because the Plaintiff and/or the witnesses did not produce any documentary evidence of the loss that they incurred after the year 2015.
174. The Plaintiff in her testimony stated that she was the one that voluntarily stopped going to the portion of land based on the Demand Letter done by the Plaintiff.
175. The Defendant on the other hand testified that the portion of 4 acres belonging to the Plaintiff is still vacant and is not in use by any person up to date.
176. In such a situation, the Court cannot grant a prayer for Mesne profit where a Plaintiff voluntarily elected not to use the portion of land and where the Defendant has also not profited from the said portion.

**ISSUE NO. 7 – IS THE DEFENDANT’S COUNTER-CLAIM MERITED?**

177. As to whether the Defendant’s Counter-Claim was merited or not, this Court is of the finding that the same cannot be granted.
178. This is because the main reason the Defendant is seeking to nullify the Agreement For Sale dated 27.06.2006 is that two out of the five children have objected to the transaction.
179. As earlier stated, the property known as LR.NO.UASIN GISHU/TAPSAGOI/2X7 is not ancestral land but the property on the late SALEM KIPRONO KIRWA.
180. As such, the only person who is recognised on law to give Consent before any dealing on the land is the Defendant herein who is the lawful spouse of SALEM KIPRONO KIRWA and the Legal Administrator of the Estate of SALEM KIPRONO KIRWA.
181. According to the evidence of the Defendant, both the Late SALEM KIPRONO KIRWA and herself expressed their desirous and consent to sub-divide the property known as LR.NO.UASIN GISHU/TAPSAGOI/2X7 and transfer the portion of 4 Acres to the Plaintiff.
182. As such, there is no valid reason why the Agreement For Sale dated 26.07.2006 should be cancelled and/or rescinded as the legitimate and legal owner of the property known as LR.NO.UASIN GISHU/TAPSAGOI/2X7 executed the said Agreement and received the consideration as agreed.
183. The two children that now have placed roadblocks to the completion of the said Agreement For Sale dated 26.07.2006 are not parties to the said Agreement and have not legal standing hinder the completion of the terms and conditions therein.
184. As to the proposal for a refund of the Purchaser Price amounting to KShs 640,000/-, the Plaintiff testified that it was not a term of the Agreement and there was no intention to collect ant refund thereof.



185. Indeed, the Court has perused the Agreement For Sale dated 27.06.2006 and confirms that there was no provision for a refund in the event any of the parties therein breached the terms and conditions of Sale.
186. Consequently, therefore, the Court cannot impose a term of condition which was not agreed by the parties at the time of executing the Agreement For Sale.
187. If the Defendant wishes to refund the Plaintiff for whatever reason, then the only option is to negotiate with the Plaintiff on such an option and if successful, then an Addendum to the Agreement dated 27.06.2006 can be executed by both parties to facilitate the said refund.
188. As of now, the Court can only enforce the terms and conditions provided in the Agreement For Sale dated 27.06.2006 of which unfortunately has no provision of a Refund of the Purchase Price.
189. In essence, the prayers sought in the Counter-Claim are denied.

**ISSUE NO. 8 - WHO BEARS THE COSTS OF THE PRESENT SUIT AND THE COUNTER-CLAIM?**

190. On the issue of costs, the Plaintiff herein has succeeded to prosecute the present suit and the Defendant has not succeeded in prosecuting the Counter-Claim.
191. The Plaintiff is therefore awarded Costs of the present suit as well as the Counter-Claim payable by the Defendant.

**CONCLUSION**

192. In conclusion, the Court hereby makes the following Orders in determination of the Amended Plaintiff dated 28.02.2019; -
  - A. THE AMENDED PLAINT DATED 28.02.2019 IS MERITED.
  - B. AN ORDER OF SPECIFIC PERFORMANCE BE AND IS HEREBY GRANTED FOR THE DEFENDANT TO COMPLETE THE AGREEMENT FOR SALE DATED 27.06.2006 TO BE COMPLETED.
  - C. AN ORDER BE AND IS HEREBY MADE DIRECTING THE DEFENDANT TO PREPARE, EXECUTE AND PRESENT FOR APPROVAL THE APPLICATION FOR SUB-DIVISION OF THE PROPERTY KNOWN AS LR.NO.UASIN GISHU/TAPSAGOI/2X7 TO THE LAND CONTROL BOARD WITHIN THE NEXT 30 DAYS FROM THE DATE OF THIS JUDGEMENT.
  - D. AN ORDER BE AND IS HEREBY MADE DIRECTING THE DEFENDANT HEREIN TO PREPARE, EXECUTE AND PRESENT FOR APPROVAL THE APPLICATION TO SALE AND TRANSFER THE PORTION OF 4 ACRES OWNED BY THE PLAINTIFF WITHIN THE PROPERTY KNOWN AS LR.NO.UASIN GISHU/TAPSAGOI/2X7 TO THE LAND CONTROL BOARD WITHIN 60 DAYS FROM THE DATE OF THIS JUDGEMENT.
  - E. AN ORDER BE AND IS HEREBY ISSUED DIRECTING THE DEFENDANT HEREIN TO PREPARE AND EXECUTE THE TRANSFER FORMS OF THE 4 ACRES PORTION TO THE PLAINTIFF BASED ON THE NEW REGISTRABLE NUMBER THAT WILL BE PROVIDED IN THE REGISTERED MUTATION OF THE



PROPERTY KNOWN AS LR.NO.UASIN GISHU/TAPSAGOI/2X7 WITHIN 90 DAYS FROM THE DATE OF THIS JUDGEMENT.

- F. THE RELEVANT LAND CONTROL BOARD BE AND IS HEREBY DIRECTED TO APPROVE BOTH THE APPLICATION FOR SUB-DIVISION OF THE PROPERTY KNOWN AS LR.NO.UASIN GISHU/TAPSAGOI/2X7 AND THE APPLICATION FOR THE SALE & TRANSFER OF THE 4 ACRES BELONGING TO THE PLAINTIFF WITHIN 90 DAYS FROM THE DATE OF THIS JUDGEMENT.
- G. IN THE EVENT THE DEFENDANT SHALL FAIL TO COMPLY WITH ORDER NO. C & D HEREINABOVE, THE DEPUTY REGISTRAR OF THE ENVIRONMENT & LAND COURT ELDORET AFTER THE EXPIRY OF THE INITIAL 60 DAYS FROM THE DATE OF THIS JUDGEMENT IS HEREBY DIRECTED TO EXECUTE THE RELEVANT APPLICATIONS TO BE PRESENTED TO THE LAND CONTROL BOARD FOR THE SUB-DIVISION OF THE PROPERTY KNOWN AS LR.NO.UASIN GISHU/TAPSAGOI/2X7 & TRANSFER OF THE 4 ACRES BELONGING TO THE PLAINTIFF HEREIN AS SOON AS THE SAME ARE PRESENTED BY THE PLAINTIFF FOR EXECUTION BY THE DEPUTY REGISTRAR, ENVIRONMENT & LAND COURT, ELDORET.
- H. SIMILARLY, IN THE EVENT OF NONE COMPLIANCE OF ORDER C & D WITHIN THE 60 DAYS PROVIDED THEREIN BY THE DEFENDANT, THE DEPUTY LAND REGISTRAR, ENVIRONMENT & LAND COURT, ELDORET BE AND IS HEREBY ORDERED TO EXECUTE THE TRANSFER FORMS FOR THE PORTION OF LAND MEASURING 4 ACRES BASED ON THE NEW REGISTRABLE NUMBER IN FAVOUR OF THE PLAINTIFF HEREIN AS SOON AS THE SAME IS PRESENTED TO THE OFFICE OF THE DEPUTY REGISTRAR, ENVIRONMENT & LAND COURT ELDORET.
- I. THE COUNTER-CLAIM DATED 17.07.2019 BE AND IS HEREBY DISMISSED.
- J. THE PLAINTIFF IS AWARDED COSTS OF THE SUIT AND THE COUNTER-CLAIM PAYABLE BY THE DEFENDANT HEREIN.

**DATED, SIGNED & DELIVERED Virtually at ELDORET ELC this 21<sup>ST</sup> DAY OF JULY 2025.**

**EMMANUEL.M. WASHE**

**JUDGE**

IN THE PRESENCE OF:

COURT ASSISTANT: BRIAN

PLAINTIFF: MR. MOGIRE (N/A)

DEFENDANT: MS.NAFULA HOLDING BRIEF FOR MRS LANGAT

