



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 599 OF 2012

SAMUEL K. RONO.....1ST PLAINTIFF
KIPRONO KIMENGISH.....2ND PLAINTIFF
KIPROTICH ROP.....3RD PLAINTIFF
CHRISTINE JEPKOSGEI KIPRONO.....4TH PLAINTIFF
DANIEL KIPTOO KANGOGO.....5TH PLAINTIFF
KIPLAGAT CHESUMER.....6TH PLAINTIFF
JANE TERIKI KAPKONG.....7TH PLAINTIFF
WILLIAM KIPTUM LAGAT.....8TH PLAINTIFF
SIOKWEI TAMINING KIPROTICH.....9TH PLAINTIFF
TECLA JESANG CHIRCHIR.....10TH PLAINTIFF
ERICK K. KIPRONO.....11TH PLAINTIFF
DANIEL KIMUTAI CHIRCHIR.....12TH PLAINTIFF
KIPTANUI C. TAMBEL.....13TH PLAINTIFF
EMILY CHEPTOO.....14TH PLAINTIFF
MIRIAM JEMUTAI KOTUT.....15TH PLAINTIFF
CHEBET KOMEN.....16TH PLAINTIFF
JACKSON KIPTUM MOSS.....17TH PLAINTIFF
KOBILO TABARNO KIPSEREM.....18TH PLAINTIFF
SAMUEL KIPROP KIBOWEN.....19TH PLAINTIFF
BETHWEL KIPMWETICH CHEROP.....20TH PLAINTIFF
KIPROTICH MALAKWEN.....21ST PLAINTIFF
WILLIAM KIPSEWERE BIEGO.....22ND PLAINTIFF

KABON BARSOSIO.....	23 RD PLAINTIFF
EVERLYNE JEPKOECH KIMAIYO.....	24 TH PLAINTIFF
TABUTANY CHESEREM.....	25 TH PLAINTIFF
TAPLELEI TERIKI CHEBIY.....	26 TH PLAINTIFF
JUSTUS K. KUTTO.....	7 TH PLAINTIFF
WILLIAM B. NGELEL.....	28 TH PLAINTIFF
SILAH KIPKEMOI KOSGEL.....	29 TH PLAINTIFF
KIPKOSGEI ARAP KOECH.....	30 TH PLAINTIFF
LAWRENCE B. TANUI.....	31 ST PLAINTIFF
SANIAGO C. KIMAIYO.....	32 ND PLAINTIFF
LABAN KIPROTICH KANGOGO.....	33 RD PLAINTIFF

VERSUS

JOEL KOMEN.....	1 ST DEFENDANT
SIRMA KIGEN.....	2 ND DEFENDANT
PAUL KIPTOO.....	3 RD DEFENDANT
JOSEPH C. KOSGEL.....	4 TH DEFENDANT
EMMY CHELIMO.....	5 TH DEFENDANT
CLEMENT MAIYO.....	6 TH DEFENDANT
JOSEPH CHEBIL.....	7 TH DEFENDANT
DANIEL KIMUTAI.....	8 TH DEFENDANT
JOHN K. KIGEN.....	9 TH DEFENDANT
THOMAS KIMELI ROTICH.....	10 TH DEFENDANT
JAMES CHEBOI KIPROTICH.....	11 TH DEFENDANT
SAMUEL KIPLAGAT.....	12 TH DEFENDANT
KIPTANUI MUSA KATAMEL.....	13 TH DEFENDANT
SAMUEL TUMO.....	14 TH DEFENDANT
JOHN SAMOEL.....	15 TH DEFENDANT
STEPHEN CHEBOI.....	16 TH DEFENDANT
WILLIAM KIPLAGAT.....	17 TH DEFENDANT
NICHOLAS CHEBAIGEL.....	18 TH DEFENDANT

REUBEN KEMBOI KIPLAGAT.....19TH DEFENDANT

KIRWA SAMOEL.....20TH DEFENDANT

JOHN K. KIPROTICH.....21ST DEFENDANT

LEAH KIPRONO.....22ND DEFENDANT

JOHN KIPKOECH MASWAI.....23RD DEFENDANT

ALEX KIPLAGAT KORIR.....24TH DEFENDANT

SAMWEL TOROITICH.....25TH DEFENDANT

JANE KEMBOI.....26TH DEFENDANT

MICAH CHEBOI.....27TH DEFENDANT

WILSON KIPTOO.....28TH DEFENDANT

LEAH BUSIENEI.....29TH DEFENDANT

JOHN K. KIGEN.....30TH DEFENDANT

REUBEN KEMBOI KIPLAGAT.....31ST DEFENDANT

JOSEPH KITUR.....32ND DEFENDANT

JAMES KIPROTICH CHEBOI.....33RD DEFENDANT

JUDGMENT

By plaint further amended on 30.10.2014, the plaintiffs, 33 in number describe themselves as adults of sound mind residing in Kipkabus. They aver that they applied to the Government of Kenya and explained their plight to be allocated land in respectively quoted title numbers thus the 1st plaintiff in parcel of land No. 1195, 2nd plaintiff in parcel No. 1131, 3rd plaintiff in parcel No. 1132, 4th plaintiff in parcel No. 1144, 5th plaintiff in parcel No. 1166, 6th plaintiff in parcel No. 1198, 7th plaintiff in parcel No. 1230, 8th plaintiff in parcel No. 1125, 9th plaintiff in parcel No. 1162, 10th plaintiff in parcel No. 1149, 11th plaintiff in parcel No. 1137, 12th plaintiff in parcel No. 1238, 13th plaintiff in parcel No. 1181, 14th plaintiff in parcel No. 1145, 15th plaintiff in parcel No. 1165, 16th plaintiff in parcel No. 1227, 17th plaintiff in parcel No. 1228, 18th plaintiff in parcel No. 1163, 19th plaintiff in parcel No. 1243, 20th plaintiff in parcel No. 1229, 21st plaintiff in parcel No. 1189, 22nd plaintiff in parcel No. 1203, 23rd plaintiff in parcel No. 1208, 24th plaintiff in parcel No. 1194, 25th plaintiff in parcel No. 1199, 26th plaintiff in parcel No. 1222, 27th plaintiff in parcel No. 1226, 28th plaintiff in parcel No. 1232, 29th plaintiff in parcel No. 1231, 30th plaintiff in parcel No. 1186, 31st plaintiff in parcel No. 1224, 32nd plaintiff in parcel No. 1201, 33rd plaintiff in parcel No. 1135 within Keiyo County Council and indeed were allocated the respective portions and each obtained title from between June, 2001 – October, 2003 and thereafter embarked on process of taking possession and settlement. The plaintiffs' respective parcels of land as set out below:

- (a) 1st plaintiff land reference Uasin Gishu/Kipkabus Settlement/1195.
- (b) 2nd plaintiff's land reference Uasin Gishu/Kipkabus Settlement/1131.
- (c) 3rd plaintiff's land reference Uasin Gishu/Kipkabus Settlement/1132
- (d) 4th plaintiff's land reference Uasin Gishu/Kipkabus Settlement/1144
- (e) 5th plaintiff's land reference Uasin Gishu/Kipkabus Settlement/1166
- (f) 6th plaintiff's land reference Uasin Gishu/Kipkabus Settlement/1198
- (g) 7th plaintiff's land reference Uasin Gishu/Kipkabus Settlement/1230
- (h) 8th plaintiff's land reference Uasin Gishu/Kipkabus Settlement/1125

- (i) 9th plaintiff's land reference Uasin Gishu/Kipkabus Settlement/1162*
- (j) 10th plaintiff's land reference Uasin Gishu/Kipkabus Settlement/1149*
- (k) 11th plaintiff's land reference Uasin Gishu/Kipkabus Settlement/1137*
- (l) 12th plaintiff's land reference Uasin Gishu/Kipkabus Settlement/1238*
- (m) 13th plaintiff's land reference Uasin Gishu/Kipkabus Settlement/1181*
- (n) 14th plaintiff's land reference Uasin Gishu/Kipkabus Settlement/1145*
- (o) 15th plaintiff's land reference Uasin Gishu/Kipkabus Settlement/1168*
- (p) 16th plaintiff's land reference Uasin Gishu/Kipkabus Settlement/1227*
- (q) 17th plaintiff's land reference Uasin Gishu/Kipkabus Settlement/1228*
- (r) 18th plaintiff's land reference Uasin Gishu/Kipkabus Settlement/1163*
- (s) 19th plaintiff's land reference Uasin Gishu/Kipkabus Settlement/1243*
- (t) 20th plaintiff's land reference Uasin Gishu/Kipkabus Settlement/1229*
- (u) 21st plaintiff's land reference Uasin Gishu/Kipkabus Settlement/1189*
- (v) 22nd plaintiff's land reference Uasin Gishu/Kipkabus Settlement/1225*
- (w) 23rd plaintiff's land reference Uasin Gishu/Kipkabus Settlement/1203*
- (x) 24th plaintiff's land reference Uasin Gishu/Kipkabus Settlement/1208*
- (y) 25th plaintiff's land reference Uasin Gishu/Kipkabus Settlement/1194*
- (z) 26th plaintiff's land reference Uasin Gishu/Kipkabus Settlement/1199*
- (aa) 27th plaintiff's land reference Uasin Gishu/Kipkabus Settlement/1226*
- (bb) 28th plaintiff's land reference Uasin Gishu/Kipkabus Settlement/1232*
- (cc) 29th plaintiff's land reference Uasin Gishu/Kipkabus Settlement/1231*
- (dd) 30th plaintiff's land reference Uasin Gishu/Kipkabus Settlement/1186*
- (ee) 31st plaintiff's land reference Uasin Gishu/Kipkabus Settlement/1224*
- (ff) 32nd plaintiff's land reference Uasin Gishu/Kipkabus Settlement/1201*
- (gg) 33rd plaintiff's land reference Uasin Gishu/Kipkabus Settlement/1135*

The plaintiffs state that the defendants illegally and forcefully/unwillingly moved into the subject parcels of land comprised in title numbers UASIN GISHU/KIPKABUS SETTLEMENT SCHEME. 1st defendant has occupied the 1st plaintiff's parcel of land No. 1195, 2nd defendant on 2nd plaintiff's parcel No. 1132, 1131, 3rd defendant is on 3rd plaintiff's parcel No. 1132, 4th defendant is on 4th plaintiff's parcel No. 1144, 5th defendant is on 5th plaintiff's parcel No. 1166, 6th defendant is on 6th plaintiff's parcel No. 1198, 7th defendant is on 7th plaintiff's parcel No. 1230, 8th defendant is on plaintiff's parcel no 1125, 9th defendant is on 9th plaintiff's parcel no 1162, 10th defendant is on 10th plaintiff's parcel No. 1149, 11th defendant is on 11 plaintiff's parcel No. 1137, 12th defendant is on 12th plaintiff's parcel No. 1238, 13th defendant is on 13th plaintiff's parcel No. 1181, 14th defendant is on 14th plaintiff's parcel No. 1145, 15th defendant is on 15th plaintiff's parcel No. 1168, 17th defendant is on 17th plaintiff's parcel No. 1228, 18th defendant is on 18th plaintiffs parcel No. 1163, 19th defendant is on 19th plaintiff's parcel No. 1243, 20th defendant is on 20th plaintiff's parcel No.1229, 21st defendant is on 21st plaintiff's 1189, 22nd defendant is on 22nd plaintiff's parcel No. 1225, 23rd defendant is on 23rd Plaintiff's parcel No. 1203, 24th defendant is on 24th plaintiff's parcel No. 1208, 25th

defendant is on 25th plaintiff's parcel No.1194, 26th defendant is on 26th plaintiff's parcel no. 1199, 27th defendant is on 27th plaintiff's parcel no. 1226, 28th defendant is on plaintiff's parcel No. 1232, 29th defendant is on 29th plaintiff's parcel No. 1231, 30th defendant is on 30th plaintiff's parcel No. 1186, 31st defendant is on 31st plaintiff's parcel No. 1224, 32nd defendant is on 32nd plaintiff's parcel No. 1201, 33rd defendant is on 33rd plaintiff's parcel No. 1135 and others not in this suit.

The plaintiffs aver that the provincial administration of whom they sought assistance to occupy their respective parcels of land have come a cropper as they advise them to seek for an eviction order and orders of permanent injunction to restrain the defendants from trespassing, ploughing, laying claim or otherwise dealing in whatever manner with the plaintiffs' respective parcels of land.

The plaintiffs claim therefore as against the defendants is for orders of eviction from the plaintiffs' respective parcels of land and this honourable court do permanently injunct them from ever trespassing, ploughing forcefully, occupying and or dealing in whatever manner with the respective plaintiffs' parcels of land

There existed a suit between some of the defendants herein with Keiyo county council over Title No. Uasin Gishu/Kipkabus Settlement Scheme/848 a block title that has since been extinct but not touching on the plaintiffs herein as the plaintiffs' initial block title was Uasin Gishu/Kipkabus Settlement Scheme/983 which has also become extinct by virtue of the commissioner of lands issuing respective titles to the plaintiffs and others.

The plaintiffs pray that this honourable court do make a declaration that the defendants actions are but demeaning, illegal, a nullity and an abuse and disrespect to the sanctity of title as constitutionally provided and but a recipe for chaos and the rule of the jungle. That there is no other suit pending in any court of law touching on the same parties and subject matter before this honourable court. The defendants despite several meetings convened by the plaintiffs and the provincial administration have held put alleging that a court order will only evict them and restraint them permanently and thus disobeyed all notices of intent to sue necessitating the plaintiffs filing this suit.

The plaintiffs precisely prays for orders of eviction removing the defendants from occupying the plaintiffs' parcels of land as comprised from the 1st plaintiff's title No. Uasin Gishu/Kipkabus Settlement Scheme/1195, 2nd plaintiff's title No. 1131, 3rd plaintiffs title No. 1132, 4th plaintiffs title No. 1144, 5th plaintiff's title No. 1166, 6th plaintiff's title No. 1198, on 7th plaintiff's title No. 1230, on 8th plaintiffs title No. 1125, on 9th plaintiff title No. 1162, 10th plaintiff's title No. 1149, 11th plaintiff's title No. 1137, plaintiff title No. 1238, plaintiff's title No. 1181, 14th plaintiffs title No. 1145, 15th plaintiff's title No. 1168, 16th plaintiff's title No. 1227, 17th plaintiff's title No. 1228, 18th plaintiff's title No. 1163, 19th plaintiff's title No. 1243, 20th plaintiff's title No. 1229, 21st plaintiff's title No. 1189, 22nd plaintiff's title No. 1225, 23rd plaintiff's title No. 1203, 24th plaintiff's title No. 1208, 25th plaintiff's title No. 1194, 26th plaintiff's title No. 1199, 27th plaintiff's title No. 1226, 28th plaintiff's title No. 1232, 29th plaintiff's title No. 1231, 30th plaintiff's title No. 1186, 31st plaintiff's title No. 1224, 32nd plaintiff's title No. 1201, 33rd plaintiff's title No. 1135.

They further pray for orders of permanent injunction to restrain the defendants, by themselves, agents, employees, servants, relatives or any other person dealing in whatever manner with the plaintiffs parcels of land comprised in title numbers 1st plaintiff's title No. Uasin Gishu/Kipkabus Settlement/1195, 2nd plaintiff's title No. 1131, 3rd plaintiff's title No. 1132, 4th plaintiff's title No. 1144, 5th plaintiff's title No. 1166, 6th plaintiff's title No. 1198, on 7th plaintiff's title No. 1230, on 8th plaintiff's title No. 1125, on 9th plaintiff's title No. 1163, 1162, 10th plaintiff's title No. 1149, 11th plaintiff's title No. 1137, 12th plaintiff's title No. 1238, 13th plaintiff's title No. 1181, 14th plaintiff's title No. 1145, 15th plaintiff's title No. 1168, 16th plaintiff's title No. 1227, 17th plaintiff's title No. 1228, 18th plaintiff's title No. 1163, 19th plaintiff's title No. 1243, 20th plaintiff's title No. 1229, 21st plaintiff's title No. 1189, 22nd plaintiff's title No. 1225, 23rd plaintiff's title No.1203, 24th plaintiff's title No. 1208, 25th plaintiff's title No. 1194, 26th plaintiff's title No.1199, 27th plaintiff's title No. 1226, 28th plaintiff's title No. 1232, 29th plaintiff's title No. 1231, 30th plaintiff's title No. 1186, 31st plaintiff's title No. 1224, 32nd plaintiff's title No. 1201, 33rd plaintiff's title No. 1135. A declaration in terms of paragraph 8 above. Costs of this suit.

The defendants filed defence and counterclaim stating that that the matter herein is pending before this court vide Eldoret HCC No. 35 of 2004 and the Defendants shall at the earliest opportunity raise a preliminary objection as the matter is re-judicata. The Defendants aver that the notice of intention to sue was not issued however, the jurisdiction of this Court is admitted. The Defendants aver that the Defendants have lived in the suit parcel of land UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/848 since the year 1996. The Defendants claim ownership of the suit parcel of land by virtue of the reason that they have been in quiet, peaceful and uninterrupted possession of the same for over a period of over 12 years. The Defendants claim that the Plaintiffs fraudulently presented conveyance and obtained registration of the unlawfully sub-divided parcels of land from the parent parcel UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/848. The particulars of the plaintiff's fraud are as hereunder: -

i. Fraudulently causing sub-division of the parcel of land L.R NO. UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/848 to form land parcel No. UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/983 and further sub-dividing the same to form land parcels UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/1195, 1131, 1132, 1144, 1166, 1198, 1230, 1125, 1163, 1149, 1137, 1238, 1181, 1145, 1165, 1227, 1228, 1163, 1243, 1229, 1189, 1203, 1208, 1194, 1199, 1222, 1226, 1232, 1231, 1186, 1224, 1201 & 1135.

ii. Fraudulently obtaining registration of mutation of land parcel L.R No. UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/983.

iii. Fraudulently presenting conveyance and obtaining registration of land parcel L. R. No. UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/983 and its resultant subdivisions which formed part and parcel of the original land parcel No. UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/848.

iv. Fraudulently claiming to be the owners of land parcel KIPKABUS SETTLEMENT SCHEME/848 and/or 983 while NOT

in possession of the same for a period of more than 12 years prior to the filing of this suit.

On counterclaim, the defendants pray for an order of this Honorable Court declaring that the defendants are the lawful owners of land parcel L.R. no. Kipkabus settlement scheme/848 measuring about 162 acres and all its resultant sub-divisions of L.R no. Kipkabus settlement scheme/983 and the aforesaid ensuing further sub-divisions. The Defendants claim against the Plaintiff is for an Order of this Honourable Court for a declaration that land parcel L.R. NO. UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/983 MEASURING 162 Acres or thereabouts was fraudulently demarcated, subdivided and registered in the names of the Plaintiffs and that title documents issued respectively in favour of the Plaintiffs are null and void and be cancelled forthwith. The defendants precisely pray for judgment in terms of:

(a) A declaration that the suit sub-divided parcels of land L.R Nos. UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/ 1195, 1131, 1132, 11444, 1166, 1198, 1230, 1125, 1163, 1149, 1137, 1238, 1181, 1145, 1165, 1227, 1228, 1163, 1243, 1229, 1189, 1203, 1208, 1194, 1199, 1222, 1226, 1232, 1231, 1186, 1224, 1201,1135 are part and parcel of the larger parcel of land L.R. NO. UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/848 measuring 162 Acres or thereabouts in which the Defendants are the legal allottees and lawful owners by virtue of long an-uninterrupted possession.

(b) A declaration that the Plaintiffs fraudulently registered themselves as the owners of the aforesaid suit parcel of land and that the Defendants are the legal owners of the suit parcel of land L.R. NO. UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/848 measuring 162 Acres.

(c) An Order of this Honourable Court directing the District Land Registrar to cancel title deed issued in favour of the Plaintiffs in respect of the suit parcels of land L.R. Nos. UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/1195, 1131, 1132, 11444, 1166, 1198, 1230, 1125, 1163, 1149, 1137, 1238, 1181, 1145, 1165, 1227, 1228, 1163, 1243, 1229, 1189, 1203, 1208, 1194, 1199, 1222, 1226, 1232, 1231, 1186, 1224, 1201 & 1135.

(d) An order re-vesting the parcel of land in prayer No. (a) above in favour of the Defendants as duly allocated to the defendants in the year 2001 and that the Defendants be issued with appropriate Title Deeds for the same.

In his Opening statement, Mr. Momanyi counsel for the plaintiffs states that the plaintiffs in this matter were squatters who were allocated a parcel of land within Kipkabus Settlement Scheme in 2003. The parcel of land was subdivided upto various titles as on paragraph 3(a) of the amended plaint. The defendants are the unsuccessful applicants of the parcel of land. When they realized that plaintiffs were given the land, they moved in and have refused to surrender. As a result of their failure, the defendants filed a Miscellaneous Application No. 35 of 2004 at Eldoret challenging the allocation of the land to the plaintiffs. The land was then delineated as Kipkabus Settlement Scheme/848. The plaintiffs are therefore entitled to this parcel of land and the defendants should vacate.

PW1, William Kiptum Lagat claims that the plaintiffs were given land in 2003 by the Government of Kenya and were issued with title deeds and have done searches and have been issued with certificates of official search. He produced the bundle of certificates of official search as PEx.1. The defendants are in occupation illegally as trespassers. Before allocation, the land was Kipkabus Scheme No. 848. This parcel of land was excised from land reference Uasin Gishu/Kipkabus settlement/985. The defendants' earlier claim in court was dismissed with costs. He prays for judgment. On cross examination by Mr. Komen, he reiterates that they were given the land by Government of Kenya and they are the registered owners.

PW2 was Lawrence Partilol Tanui who states that he is one of the plaintiffs and has title to Uasin Gishu Kipkabus Settlement Scheme No. 1224. He states that the defendants have trespassed into their land and have refused to leave. He prays for an order of eviction. He claims that he does pay rent and rates. He prays for judgment and costs. On cross examination by Mr. Komen, he states that he stays on the parcel number that does not have a plot Number. He was given Plot No. 1224 by the government. The District Commissioner came and told them that the land belonged to squatters. They were in a meeting and the District Commissioner said they should be given land and that he was given Land No. 1224 which is one acre. He has a title deed but did not avail it on the hearing date. He does not know who lives on his land. They were chased by the defendants. They have never lived on the land. He does not know the boundaries. He has no valuation report of the land.

PW3, Nathan Kipkurui Langat testified that he stays in Iten and works at Elgeyo Marakwet County as a surveyor. He produced the Registry Index Map for plot no 983 Kipkabus settlement scheme that gave rise to the plots in dispute. He states that whatever appears in the map has been implemented. On Cross examination by Mr. Komen, he states that he has not produced any document that he is the County Surveyor but claims to have worked for twelve years. He produced the R.I.M. of Kipkabus Settlement Scheme Sheet No. 2 which is certified by the County Land Surveyor, Uasin Gishu. He came to court at the request of the Advocate for the plaintiff through court summons. he was requested by the plaintiffs to attend court. There is no receipt for certification. The subdivision was done by surveyors from Uasin Gishu. He made a visit to the ground but cannot remember the dates.

In his opening statement, Mr Komen learned counsel for the defendant states that this is a case where the defendants who are 33 in number have been sued over land parcel Uasin Gishu/Kipkabus Settlement Scheme/848 measuring about 160 acres. This land was initially and equally allocated to defendants numbering 85 households. They have been living on the land year on. The defendants were equally allocated and issued with allotment letters until when the subdivision process began. The plaintiffs brought this suit before the court claiming that they were equally allocated. They are 33 claimants against 33 defendants. The defendants have a counterclaim.

DW1, Robert Kimutai Koskei of Identity Card No. is 12826402 a resident of Elgeyo Marakwet County in Keiyo South, Chepkorio Division in Kapyemit Location, Kipkoroiis village is a farmer by profession. In 1998, they went to their leaders in the location and Division. Their group was known as Tarita Football Youth Group. He produced a letter dated 24.3.1998 requesting for land. It was copied to the Provincial Land Adjudicator, Rift Valley Province through Provincial Commissioner, District Commissioner, District Officer and chief. Their list was attached to the letter. They received a response from the Provincial Commissioner that they should be allocated land. This was through a letter dated 22.8.2001. They were to go to the Land Registrar, Eldoret to be given the title deed. They received a letter from the County Council to pay for beacons. The letter is dated 26.3.2001. On the 7.9.2001, the County Clerk, Keiyo wrote to the 64 allottees and requested

for fees of Kshs.1500 per allottee for beacons.

They have developed the properties and have a church, Full Gospel Church of Kenya and have planted trees. They have water connected in the whole parcel of land and have had started a Nursery School. There are some people with titles but they do not stay on the parcel of land. They commissioned Highlands Valuers Ltd to value the property who did a valuation report dated 22.2.2013 The valuation refers to 33 parcels of land from Land No. 848. They have occupied the parcels of land as defendants.

On **Cross examination by Momanyi**, he states that the only person he knows having title deed for the plots is the plaintiff. They had gone to court to complain that the land had been given to some other people. This was in Eldoret H.C.M.A. No. 35 of 2004 and wanted the High Court to quash the decision of the County Council but did not succeed. They went to court because the plaintiffs had been issued with title deeds. He does not know when the title deeds were issued. But he knows that it was after 2000. They entered the land in 1998 and filed the Judicial Review application in the high court in 2004 6 years thereafter.

DW2 Wilson Kiplagat Kiptoo a farmer by profession States that he lives at Kiproroni village, Kabiyet Sub-Location, Keiyo South District, Elgeyo Marakwet County. The land is Kipkoresha farm. It is a big parcel of land that is possessed by 85 people. They were told to pay Kshs. 1,500 as surveyors' fees for the land which was surveyed in 2001. After survey, they were told to collect allotment letter which they did. He produced the allotment letters. They have buried many members on the land. The place of burial was Kipkemeli farm, Kabiyet location. They have lived on the land and developed the place. They put up a church in 1998.

DW3, Samuel Kiptala Chemelil, a Valuer by profession states that he prepared the valuation report for the property dated 22.2.2013. It was prepared in respect of 33 plots at Kipkabus Settlement Scheme. This was subdivision of plot No. 848. Parcel No. 848. The inspection was done on 18.2.2013 and it was established that the 33 plots were 1.5 acres each. The first, Kipkabus Settlement Scheme 1125 – Kipkabus Settlement Scheme 1243. The parcels are occupied by various people but he did not take details. There is a Nursery School and a church and a number of grave sites. The residential houses are semi-permanent and temporary structures. They were not recent houses. Their mandate was to give valuation of the land.

The **gravamen** of the submissions of Mr Momanyi, learned counsel for the plaintiff is that the plaintiffs being the registered owners of the suit parcels of land are entitled to the same by law and that the suit herein is res-judicata.

The **gravamen** of the submissions by Mr Komen learned counsel for the defendants is that the plaintiffs have failed to demonstrate how they acquired the suit parcels of land as there are no applications for allotment and that the surveyor did not produce a grounds report to show that at the time of issuance of title deeds the land was available for allocation and that it was vacant.

I have carefully considered the pleadings, evidence and rival submissions on record and do find that the plaintiffs are the duly registered proprietors of the suit lands as per the certificates of official search whilst the defendants are in occupation. No evidence of fraud or has been tendered to court by the defendants. The County Land Registrar has not been enjoined to answer the fraud claims. The burden of proof on the fraud claims lay with the defendants which burden has not been discharged and therefore the counterclaim is found without basis.

Section 24 (a) of Land Registration (Act No.3 of 2012) provides that: -

“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.”

The registration of the plaintiff as proprietor of the suit land, gives the plaintiffs absolute proprietorship for those parcels. Such absolute proprietorship can only be subject to certain rights and privileges as are known to law.

That is why Section 25 of the Act provides as follows;

S.25 (i) “The right of a Proprietor, whether acquired on first registration or subsequently for valuable consideration or by order of court, shall not be liable to be defeated except as provided by 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, subject:

(a) to 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.

“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 and endorsed in the certificate, and the title of that proprietor shall not be subject to challenge except –

a. On the ground of fraud or miss-representation to which the person is proved to be a party to;

b. Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”

The plaintiffs are the registered owners of the suit land and therefore have an indefeasible right over the property. The plaintiffs' rights as

proprietors of the land is clearly protected in law and the defendant has no reason to trespass thereon and the law allows the Defendants to challenge the plaintiffs' ownership on grounds of illegality, unprocedural acquisition or corrupt scheme. The defendants have not demonstrated on a balance of probability that the plaintiffs obtained the titles illegally, unprocedurally or through a corrupt scheme.

Ultimately, I do grant orders of eviction removing the defendants from occupying the plaintiffs' parcels of land as comprised from the 1st plaintiff's title No. Uasin Gishu/Kipkabus Settlement Scheme/1195, 2nd plaintiff's title No. 1131, 3rd plaintiffs title No. 1132, 4th plaintiffs title No. 1144, 5th plaintiff's title No. 1166, 6th plaintiff's title No. 1198, on 7th plaintiff's title No. 1230, on 8th plaintiffs title No. 1125, on 9th plaintiff title No. 1162, 10th plaintiff's title No. 1149, 11th plaintiff's title No. 1137, plaintiff title No. 1238, plaintiff's title No 1181, 14th plaintiffs title No. 1145, 15th plaintiff's title No. 1168, 16th plaintiff's title No. 1227, 17th plaintiff's title No. 1228, 18th plaintiff's title No. 1163, 19th plaintiff's title No. 1243, 20th plaintiff's title No. 1229, 21st plaintiff's title No. 1189, 22nd plaintiff's title No. 1225, 23rd plaintiff's title No. 1203, 24th plaintiff's title No. 1208, 25th plaintiff's title No. 1194, 26th plaintiff's title No. 1199, 27th plaintiff's title No. 1226, 28th plaintiff's title No. 1232, 29th plaintiff's title No. 1231, 30th plaintiff's title No. 1186, 31st plaintiff's title No 1224, 32nd plaintiff's title No 1201, 33rd plaintiff's title No. 1135. ***However, the plaintiffs shall give the defendants a 90 days' notice before undertaking any eviction.***

Further, I do find that an order of permanent injunction will be superfluous after the grant of an order of eviction as any attempt to return to the suit properties after eviction will be a new cause of action.

Dated, signed and delivered this 2nd day of March, 2018.

ANTONY OMBWAYO

JUDGE