



**Rono & another v Kemei (Environment & Land Case 127 of 2021)  
[2024] KEELC 359 (KLR) (25 January 2024) (Judgment)**

Neutral citation: [2024] KEELC 359 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET  
ENVIRONMENT & LAND CASE 127 OF 2021  
MN MWANYALE, J  
JANUARY 25, 2024**

**BETWEEN**

**DAVID RONO ..... 1<sup>ST</sup> PLAINTIFF**

**JEREMIAH TURGUT ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**ANDREW KIMELI KEMEI ..... DEFENDANT**

**JUDGMENT**

1. The Plaintiffs, David Rono and Jeremiah Turgut vide their Plaint dated 4<sup>th</sup> November 2009 sued the Defendant Andrew Kimeli Kemei and sought judgment as follows;
  - a) cancellation of the tittle and injunctive reliefs.
  - b) Costs of the suit
  - c) Any other relief that this Court may deem fit to grant
2. The suit was initially filed before the High Court in Eldoret and was assigned Civil Case No. 179/2009, and upon establishment of the ELC Court, it was reassigned case No. Eldoret ELC 563 of 2012. When this Court was established at Kapsabet and upon the transfer of the same it was assigned the current number.
3. The matter was a part-heard before its transfer and the Counsel for parties took directions to proceed from where it had reached on 13/10/2021 and the remaining witness for the Plaintiff was the Director of Survey who was to testify on the issue of the RIM been at variance with the field sheet and titles which did not match with the physical occupation on the ground.

**Plaintiffs' Case And Evidence: -**

4. It is the Plaintiffs' case that;



- i) They are together with the Defendant residents of Senetwo Farm formerly known as Songhor/Kabutei/Senetwo/10818 and members of Senetwo Farmers' Co-operative Society Ltd
  - ii) That while in the said Farm and society, the Plaintiffs own parcel number Songhor/Kabutei(Senetwo)/Block1/444 while the Defendant owns parcel number Songhor/Kabutei(Senetwo)/Block 1/368 which properties are adjacent to each other but separated by a road reserve.
  - iii) both Plaintiffs were registered on 29/10/1996 as owners of the aforesaid parcels which was designated as Songhor/Kabutie Block 1/444 but were served with eviction notices from the Defendant whom they discovered had been registered as proprietor of Songhor/Kabutie Block 1/Senetwo/393 measuring 4.209Ha on 19/11/2008.
5. That the Defendant subsequently filed an eviction suit being Kapsabet PMCC No. 120/2009, the Plaintiff's found that the Defendant's alleged titles refers to the Plaintiff's parcel of land which it must have been wrong since the Plaintiff's still held their original title which was obtained several years before the Defendant's title.
  6. The Plaintiffs pleaded 5 particulars of fraud and sought for the cancellation of the Defendant's title and an injunction against the Defendant. On the strength of the above the Plaintiff's sought for judgment against the Defendant as set out at paragraph 1 of this judgment.
  7. One of the Plaintiff's witnesses testified in Eldoret together with two expert witnesses before transfer of the suit to Kapsabet and the proceedings were duly typed and proceeded from where they had reached.
  8. PW1 the first Plaintiff testified and stated that Songhor/Kabutie/Block1/444 (Senetwa measuring 1.23 Hectares belonged to him and his Co-Plaintiff and he produced a copy title deed and a search as P Exhibit 1 and 2. It was his testimony that he was given the parcel after the District Surveyor Nandi subdivided the original Block into several parcels and he moved there in 1989. The society had bought the land in 1978. In 1989 when he moved into the property, the whole block Songhor/Kabutei/ Senetwo/10818 had not been demarcated to members but members were allowed to occupy various portions later demarcation was done and each member was given specific numbers which were converted to parcel numbers.
  9. His name appeared in the list against plot number 444 together with Jeremiah Turgut and were assigned parcel 444, the Defendants name appeared against plot 368, while plot 393 was allocated to AIC Senetwo Church.
  10. This witness was stood down but not recalled to finalise his testimony and nor was he cross – examined.
  11. The Court called an expert witness, Mr. Isaac Samboni Wanyonyi the Land Registrar Nandi County, who testified as follows; that.  
LR No. 444 is registered in the name of Daniel Kipngeny Rono and Jeremiah Kipngeny Rugut who were registered as owners on 29/10/1996; while L.R. No. Block/393 is registered in the name of the Defendant and a title was issued to him on 19/11/20008.
  12. It was his further testimony that the Defendant was occupying upper side of plot 393 and his membership was 393. While member No. 444 was David Rono and Jeremiah Rugut. From the documents each party has his own parcel but the same was not reflected on the ground.
  13. The witness produced searches as P Exhibits 3 and 4 a copy of Green Cards as P Exhibits No. 5 and 6 and the survey report as P Exhibit 7.



14. On cross – examination, the witness stated that some titles had no conformity with the area list.
15. A second expert witness from Nandi County Mr. Barnaba Kiplimo the County Surveyor testified. It was his testimony that he had visited the suit property and compiled the report that had been produced by the Land Registrar as P. Exhibit 7.  
He stated that parcel No. 444 as per the map is occupied by one Kosgei who is the brother of the owner of an adjacent parcel No. 177. He occupied No. 444 and 177, that part of the Defendants land was occupied by the Plaintiff. And that plot number 444 was approximately a kilometer away from plot 393.
16. On cross – examination, he stated that plot No. 395 appears once in the filed sheet but twice in the RIM. It was not normal for a number to appear twice in the RIM, one of plot No. 395 ought to be amended to read plot no. 393.  
Parcel No. 368 does not appear in the RIM, although it existed on the ground. He stated that the filed sheet and RIM was at variance on 4 points. Plot number 393 in the RIM was a combination of plot No. 368 and 444 in the filed sheet, while what is plot No. 177 in the filed sheet has been portioned into 444 and 177 in the RIM.
17. It was his further testimony that what is Plot 393 on the field sheet had been shown as 395 on the RIM. The RIM ordinarily ought to reflect the field sheet and a surveyor ought to visit the ground where there is variance so as correct and that the Amendment could only be done by the Director of survey.
18. The Director of survey was thus summoned and Ms. Rebeca Lugalia a Senior Cartographer at Survey of Kenya testified as the 3<sup>rd</sup> Expert Witness on behalf of the Director.
19. It was her testimony that she was a Senior Cartographer at the Survey of Kenya in charge of companies and co-operatives and her duties included preparation of new RIM, amendment of the same, furnishing counties with data and keeping inventory of the same.
20. It was her further testimony that she had records for SONGHOR/KABUTIE/SENETWO/10818 which had been submitted on 4/5/1993 together with letter from provincial surveyor submitting 12 pages member list, 4 pages of Area list and a final plan (field sheet). On the members list, it contained members name, their identity card numbers and plot numbers. Plot 368 was allocated to AIC Church Senetwo.
21. There was a second letter dated 6/9/1993 which also made reference to the first letter of 4/5/1993. After compilation, complaints arose from some shareholders and buyers, which necessitated a few field corrections and introduction of a new cattle dip. The new list was approved and sent to the survey. The second letter dated 6<sup>th</sup> September 1993 thus amended the first letter with regard to members list and correction on the field sheet. The correction was marked in green and showed amend the original list as the letter dated 6/9/1993 superseded the original list dated 4<sup>th</sup> May 1993.
22. In the original list, 368 belonged to AIC Senetwo Church, while in the amendment 368 belonged to Andrew Kemeli Kemei. Under the old list the same belonged to Paul K. Kerich.
23. Parcel Number 444 belonged to a Mr. Michael while in the new list belonged to Philip Langat.
24. David Rono appears in the old list as plot number 333 and 334; also appears in plot 364, 405, 493. In the amended list David Rono appears at 340, 364, 492, 493.
25. The witness produced the new lists as P Exhibits 8 (a) and 8 (b) being the old list and new list respectively.



26. The witness further stated that accordingly to the original field sheet plot number 393 is adjacent to 369 and 425 and 445 and 370 on the upper part.
27. Plot 444 in the original field sheet is between 178 and 177 on the upper part bordering 188 and 176 on the owner part.
28. On the original field sheet 368 allocated to AIC Senetwo bordered 349 on the left, 367 on top, 394 on top and 417 below the same.
29. It was her further testimony that in the first filed sheet parcel number 393 bordered 445 on the left, 425 on the right and it was a whole property as it had a brace. In the amended filed sheet where 393 was is now occupied by 368 on top and 444 on the bottom. So, 393 in the amended filed sheet had two numbers 368 and 444.
30. While 444 in the original filed sheet is between 178 and 177, in the new field sheet 444 is now below 368 bordering 369 and 425.
31. In the original filed sheet, 368 is below 367 and above 417 and on the left is 349 and 394 on the amendment. On the amendment 368 is below 370, bordering by 445, lower side 425 and 444.
32. She stated that the RIM is a duplicate of the amended filed sheet, and the current RIM was prepared using the original field sheet and the amendments were not affected.
33. The witness was stood down to allow the amendments on the RIM and was recalled once the amendments were done.
34. Upon being recalled the witness stated that the amendments were done in accordance with a letter CR/38/ND/Volume 41 done by the District Surveyor which sought for the amendments to be effected. The summary of the amendments was contained in the letter dated 7<sup>th</sup> November 2023 which she produced as P. Exhibit 9, and the two RIM maps before and after the amendments were produced as P Exhibit 10 (a) and 10 (b) respectively.
35. The Plaintiff thereafter closed his case.

**DEFENCE CASE AND EVIDENCE: -**

36. Vide his defence dated 9<sup>th</sup> November 2009, it was the Defendants case that;  
The Plaintiffs were the joint registered owners of Land Parcel No, SONGHOR/KABUTIE BLOCK/1/444 while he is the registered owner of SONGHOR/KABUTIE BLOCK 1/393. The Defendant denied been the registered owner of SONGOR/KABUTIE BLCOKC 1/368 which belonged to the AIC Senetwo.
37. The Defendant denied encroachment on the Plaintiff's parcel of land SONGHOR/KABUTIE/BLOCK 1/444 but averred that the Plaintiffs have abandoned their parcel SONGHOR/KABUTIE/BLOCK 1/444 and encroached his property.
38. The Defendant denied fraudulent acquisition of SONGHOR/KABUTIE/BLOCK 1/393 and in his counterclaim the Defendant sought for an injunction against the Defendants for and eviction orders against the Plaintiffs.
39. The Defendant sought an order of the District Surveyor to determine the location on the ground SONGHOR/KABUTIE/BLOCK 1/444 and their respective registered owners.



40. The Defendant called two witnesses. DW1, adopted his witness statement slated 30/5/2013 as part of his evidence in chief. It was his testimony that he is the registered owner of SONGHOR/KABUTIE/BLOCK 1/393 and he produced a copy of the title and a copy of a search dated 28/5/2023 as D exhibit 1 and 2. He had bought the property in 1976 and occupied the same in 1977 and stayed thereon till 1998. When survey was done the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiff moved into his property. After the survey he stayed thereon and he was given a map and a title. There was an area map which was taken back to the Director of Survey. Before the Amendment, his property was SONGHOR/KABUTIE/BLOCK 1/393 and where it is on the current map while the Plaintiffs property was SONGHOR/KABUTIE/BLOCK 1/444.
41. After amendment the property SONGHOR/KABUTIE/BLOCK 1/393 is now SONGHOR/KABUTIE/BLOCK 1/368 and SONGHOR/KABUTIE/BLOCK 1/444. The witness stated that his property on the ground was 393 which he exchanged with the church. While property SONGHOR/KABUTIE/BLOCK 1/444 is the amendment is now SONGHOR/KABUTIE/BLOCK 1/ 117. The original property 393 was 4.209 hectares while 444 was 1.123 hectares. The witness did not agree with the proposed amendments since his property was SONGHOR/KABUTIE/BLOCK 1/393 while the church property was SONGHOR/KABUTIE/BLOCK 1/368 and he prayed for the counterclaim to be allowed.
42. On cross – examination he stated that his property was 10 acres as per the initial survey as he was entitled to 10 acres per his contributions. His property was SONGHOR/KABUTIE/BLOCK 1/393. He had not seen the register of the members list.
43. On the list SONGHOR/KABUTIE/BLOCK 1/368 was given to Andrew Kimeli Kemei, while number SONGHOR/KABUTIE/BLOCK 1/444 belonged to David K. Rono/Jeremiah Rugut. He had asked for a resurvey and counterclaimed the same, he had asked for his plot SONGHOR/KABUTIE/BLOCK 1/393 and requested for identification of plot SONGHOR/KABUTIE/BLOCK 1/393 and SONGHOR/KABUTIE/BLOCK 1/444.
44. The witness stated that he was not aware of the contents of the report P. Exhibit 7 prepared by the expert witness 2 Mr. Barnaba Kiplimo. He said that the Plaintiffs were utilizing his property through forceful entry. In the amended map he lived in SONGHOR/KABUTIE/BLOCK 1/393 while David Rono lived in Plot 444. Before the amendments plot 444 was between Plot 177 and Plot 178, while his property was 393 and the two parcels were not neighboring each other.
45. He stated further in Cross-Examination that after survey the beneficiaries were all called for confirmation and there was no proposal for amendments.
46. On re-examination, the witness stated that on the area list he was number SONGHOR/KABUTIE/BLOCK 1/368. He had only exchanged the numbers with the church. SONGHOR/KABUTIE/BLOCK 1/444 was not where it is after amendments and the church was not complained over the swapping.
47. DW2, Joseph Kirui Bii also testified he is a former councilor of Kamililo in Tinderet. It was his testimony that he knew both the Plaintiffs and the Defendants and he adopted his witness statements as his part evidence in chief.
48. It was his evidence that he was the Secretary of Iwarkut company Limited which the 1<sup>st</sup> Plaintiff and Defendant were members while the 2<sup>nd</sup> Plaintiff.
49. It was his further evidence that the Defendant was allocated number SONGHOR/KABUTIE/BLOCK 1/368 where he was staying while the 1<sup>st</sup> Plaintiff having purchased from Philip Lagat where



the said Lagat had settled. Philip Lagat had SONGHOR/KABUTIE/BLOCK 1/444, neighboring SONGHOR/KABUTIE/BLOCK 1/117. Before amendment the Plaintiffs were living on the same portions. The amended map had a different acreage than what he had and the co-operative was independent of the allocation process.

50. The Plaintiff should be occupying a different portion.
51. He stated that in Wakut Company Limited has changed names to Senetwo Farmers Co-operative where he had become Secretary in 1980 and David Rono was a member. He surrendered the members register in 1996 for issuance of title. He confirmed that P Exhibit 1 was the list he had sent to the land's office. Plot 368 was allocated to the Defendant while 393 to AIC Senetwo Church. David Rono/Jeremiah Rugut, plot SONGHOR/KABUTIE/BLOCK 1/444 which 1.123 hectares.
52. The list of allocation was made before the survey whilst the surveyor had prepared a scheme plan. According to the scheme plan 368 neighbours 444. The amendment reflects to scheme plan on plots 368 and 444; David Rono utilizing 444 while Kimeli Kemei is on SONGHOR/KABUTIE/BLOCK 1/368. The witness was not aware about the letter for amendment.
53. On re-examination the witness stated that there were surveyors, who had allocated everyone based based on where they were staying and the Defendant took possession of where he now stays while the Plaintiffs also took their possession.
54. The scheme plan was amended, it was not the original scheme plan; the 2<sup>nd</sup> Plaintiffs property was taken by the Chairman and was allocated SONGHOR/KABUTIE/BLOCK 1/444 together with David Rono, which was on the hilly side between plots 177 and 178.
55. With the testimony of the two witnesses, the defence case closed and parties were directed to file their written submissions, which they did.

**PLAINTIFF'S SUBMISSIONS: -**

56. The Plaintiffs were required to have filed their submissions initially by 14/12/2023 which they did not and time was again extended to 21<sup>st</sup> December 2023 and judgment reserved for 25/01/ 2024.
57. The Plaintiffs submission were filed out of time on 18/01/2024 one week before the date scheduled for judgment and were not considered.

**DEFENDANT'S SUBMISSIONS: -**

58. The Defendant framed and submitted on 4 issues for determination as follows;
  - i) whether the land parcel SONGHOR/KABUTIE(SENETWO)/BLOCK 1/444 should be between SONGHOR/KABUTIE(SENETWO)/BLOCK 1/177 and SONGHOR/KABUTIE(SENETWO) BLOCK 1/178 or below land parcel number SONGHOR/KABUTIES (SENETWO) BLOCK 1/368.
  - ii) whether the amendments proposed on 7<sup>th</sup> November 2023 on the RIM ought to be effected as suggested.
  - iii) whether the Plaintiffs proved their case and deserve the orders sought in their plaint.
  - iv) whether the Defendant's counterclaim was proved and the same should be allowed.
59. On issue number 1 the defence submits placing reliance on the survey report prepared and produced by the Land Registrar (Expert witness 1) and the District Surveyor (Expert witness 2) and SONGHOR/KABUTIE (SENETWO)/BLOCK 1/444 is situated at least 4 kilometres from where parcel



number SONGHOR/KABUTIE(SENETWO)/BLOCK 1/444 ought to be positioned between SONGHOR KABUTIES BLOCK 1/177 and SONGOR KABUTIE (SENETWO) BLOCK 1/178 as opposed to it being below land parcel No. SONGHOR/KABUTIE(SENETWO)/BLOCK 1/368 which is now actually registered as SONGHOR/KABUTIE BLOCK/393 and registered in the name of the Defendant.

60. The Defendant submits that RIM is the official document recognized in Land Registrations Laws that support the land registration process, hence SONGHOR/KABUTIE SENETWO BLCOK 1/393 appears on the RIM before the amendments are made and the same applies to Land Parcel No, SONGHOR/KABUTIE/BLOCK 1/444 appears next to SONGHOR KABUTIE (SENETWO) BLOCK 1/177 and that the same ought to be maintained.
61. On issue number 2, the Defendant submits that the amendments proposed on 7<sup>th</sup> November 2023 on the RIM, were made in on office settings as opposed to the original RIM, and would render less acreage to the Defendant who would loose about 1.07 (2.65) Hectares, and that SONGHOR/KABUTIE/ BLOCK 1/444 would be forcefully entrenched in SONGHOR/KABUTIE BLOCK 1/393, which would create disharmony between the parties.
62. The amendments would also affect AIC Senetwo which exchange its land with the Defendant, and the Defendant submits that the amendments would bring more rift to the parties.
63. On issue number 3, the Defendant while placing reliance on the Court of Appeal decision in Independent Electoral and Boundaries Commission vs Stephen M. Mule. On the principles that parties are bound by their pleadings and evidence at variance with the pleadings should be disregarded.
64. The Defendant submit that the particulars of fraud pleaded at paragraph 9 of the plaint were not proved and that the Defendant having demonstrated acquisition of his title property, procedurally and legally the Plaintiffs claim ought to be dismissed.
65. On issue number 4, the Defendant submits that he had proved his case on a balance of probabilities and there being no complaint by AIC Senetwo the Defendant submits that he proved proper acquisition of the parcel number SONGHOR/KABUTIE BLOCK 1/393 and he is entitled to the reliefs sought.

**ISSUES FOR DETERMINATION: -**

66. Before framing issues for determination the Courts notes the following undisputed facts;
  - i) The Plaintiffs and the Defendants were all members of Senetwo Farmers' Co-operative Society
  - ii) The Plaintiffs are the registered proprietors of SONGHOR/KABUTIE (SENETWO)BLOCK 1/444 and SONGHOR/KABUTIE (SENETWO) BLOCK 1/393.
67. That the Plaintiffs were initially allocated plot number SONGHOR/KABUTIE/BLOCK 1/444 and afterwards registered as proprietors while the Defendant was initially allocated plot number SONGHOR/KABUTIE/BLOCK 1/368 but later exchanged the same with plot number SONGHOR/KABUTIE/BLOCK 1/393 with the AIC Church which had initially been allocated parcel SONGHOR/KABUTIE/BLOCK 1/393.
68. That both parties accuse each other of encroachment and the Defendant sought a confirmation of the respective parcels to be done on the ground by the District Surveyor who filed a report and testified together with the Land Registrar. The report (P. Exhibit 7).
69. Having analyzed the pleadings, the evidence on record and the submissions by the parties, the Court frames the following issues fore determination.



- i) what is the import of the survey report filed on 17/10/2017 (P. Exhibit 7)
- ii) whether there is an overlap between parcel SONGHOR/KABUTIES/SENETWO BLOCK 1/393 claimed by the Defendant and SONGHOR/KABUTIE(SENETWO)/BLOCK 1/444 claimed by the Plaintiffs.
- iii) If answer to (ii) above is in the affirmative how should the overlap be addressed?
- iv) What is the import of the proposal to amend RIM on SONGHOR KABUTIE (SENETWO) BLOCK 1/393 and SONGHOR/KABUTIE/BLOCK 1/444
- v) who between the Plaintiffs and the Defendants have proven their case?
- vi) What orders ought to issue?

**ANALYSIS AND DETERMINATION: -**

- 70. In the course of the testimony of the Plaintiff before Munyao Sila J on 19/06/2014, the Court observed that the title and/or occupation of AIC Senetwo Church would be affected by this litigation and directed service upon the said church AIC Senetwo 71. On 24/7/2014, Munyao Sila J, being certified that the AIC Senetwo Church had been served and appeared not to have any interest of joinder to the proceedings, directed the matter to proceed as it was.
- 72. On 22/3/2017 a consent requiring the County Land Surveyor and the County Land Registrar Nandi to visit the site and file a report of location and ownership of SONGHOR/KABUTIE SENETWO/BLOCK 1/444 was recorded before Ombwayo J, and the said report was produced as P Exhibit 7, the Land Registration testified as expert witness 1 while the District Surveyor testified as Expert witness 2, after their testimonies on 30/01/2019, M Odeny J now seized of the matter formed the field sheet and the RIM were at variance.
- 73. In the survey report (produced as Exhibit 7), the report identified the Plaintiffs as the registered owner of parcel SONGHOR/KABUTIE SENETWO/BLOCK 1/444 while the defendant as the registered owner as parcel SONGHOR/KABUTIE SENETWO/BLOCK 1/393.
- 74. The said report indicated that there was a filed sheet that had been forwarded to Nairobi for approval and registration as well as the RIM through which titles were issued. The report indicated that the RIM was the official document recognized in the land registration law that supported the land registration process.
- 75. The survey report noted the following in respect of parcel 395; that the same appeared once in the filed sheet, but appeared twice on the RIM. The bigger one on the RIM was the correct one, which the smaller one ought to be amended to read No. SONGHOR/KABUTIE/BLOCK 1/393 to reflect the ground situation.
- 76. On parcels No. SONGHOR/KABUTIE/BLOCK 1/368 and SONGHOR/KABUTIE/BLOCK 1/393; the report noted that parcel SONGHOR/KABUTIE/BLOCK 1/393 did not appear on the RIM, while after amendment SONGHOR/KABUTIE/BLOCK 1/393 would appear twice, the small 393 ought to be amended to 368, since 368 did not appear on the RIM. The amendment does not result in any further result in any further duplication in numbering.
- 77. The report noted that on the RIM parcel No. SONGHOR/KABUTIE/BLOCK 1/444 appeared next to 177 and measured about 1.07 Ha (2.65) acres while on the ground the owner of 177 occupies the whole of it. 177 on the filed sheet measures 5.47 acres, while on the register 177 measured 1.109 Ha



- (2.74) and was registered G.O.K. and the Defendant occupies the part that was 368, while the Plaintiffs occupy the part that was SONGHOR/KABUTIE/BLOCK 1/444.
78. On the RIM, No. SONGHOR/KABUTIE/BLOCK 1/393, combines both SONGHOR/KABUTIE/BLOCK 1/368 and SONGHOR/KABUTIE/BLOCK 1/444 of the field sheet.
  79. The Plaintiff submission were not considered as indicated in the proceeding paragraphs while the Defendant submissions is that the report P exhibit 7 in so far as it identified the location and ownership of the parcels of land ought to be one the Court should consider, as parcel SONGHOR/KABUTIE/BLOCK 1/444 was on the lower part near 177; and the Court should agree with the report.
  80. The RIM that was used to issue the title was produced in Court and the Court was able to see what the survey report stated about the RIM. Expert witnesses 3, did confirm that that the RIM that was used for registration process was erroneous as it had parcels 395 appearing twice, while parcel SONGHOR/KABUTIE/BLOCK 1/368 did not appear.
  81. The import of the survey report is thus that the RIM that was used to issue titles was had errors and needed amendments, while led to the observation by Lady Justice Odeny alluded to at paragraph 1 of this judgment. Reliance on the erroneous RIM would thus lead to an absurd outcome.
  82. On issue number 2, as to whether there is an overlap between parcels SONGHOR/KABUTIE SENETWO/BLOCK 1/393 and SONGHOR/KABUTIE SENETWO/BLOCK 1/444.
  83. On the RIM, notes the survey report (P Exhibit 7) that parcels SONGHOR/KABUTIE SENETWO/BLOCK 1/393 combines both 368 and 444 of the field sheet; and that the Defendant was occupying the part that was 368 while the Plaintiffs occupy the part that was SONGHOR/KABUTIE SENETWO/BLOCK 1/444. This is what led to the issuance of the titles in respect of the Defendant, which title was issued based on the erroneous RIM which combined the two parcels No. SONGHOR/KABUTIE SENETWO/BLOCK 1/368 and SONGHOR/KABUTIE SENETWO/BLOCK 1/444 yet the field sheet had separated the two parcels.
  84. In answer to issue number 2, the Court finds that based on the current RIM, there is an overlap between SONGHOR/KABUTIE SENETWO/BLOCK 1/393 and SONGHOR/KABUTIE SENETWO/BLOCK 1/444 and the Court turns to issue number 3.
  85. The overlap between the two parcels was first captured by the survey report and testimony of Expert witness 2 necessitating the Court to summon the director of survey on how to reconcile the overlap.
  86. The Director of Survey was represented by Rebecca Lugasia Expert witness 3 whose testified as on the need to amend the RIM so as to reflect the positions on the ground.
  87. It was her testimony that as captured at paragraph 21 and 22 of this judgment; that the original field sheet had been submitted on 4/5/1993 together with a 12 pages member list and an Area list but this field sheet was amended vide a second letter dated 6/9/1993, which amended the members list and made correction on the filed marked in green. Both these letters produced in evidence as P Exhibit 8 a and 8b.
  88. The import of the proposed amendments to the RIM, first as conveyed in the letter dated 6/9/1993 and as captured in the survey report and the testimony of Barnabas Kiplimo is thus to amend the RIM so as to reflect the correct positions on the ground and the same would adequately resolve the dispute before Court and note affect any other party not before Court.
  89. On issue number 4, whether the Plaintiff or whether the Defendant has proven their case.



90. The Plaintiff's case was based on the fraudulent acquisition of title by the Defendant, while the Defendant case was that the Plaintiffs have encroached on to his property.
91. The evidence before Court does not suggest fraudulent acquisition of a title by the Defendant and in that regard the Plaintiffs has not proven his case as pleaded.
92. On the other hand, the contention that the Plaintiffs have encroached the Defendant's property is only supported by the current RIM which led to the registration of the Defendant's property overlapping the Plaintiffs.
93. 3 Expert witnesses have all testified that the current RIM was erroneous and hence the Defendant's claim in so far as it based on an erroneous RIM is equally fails.
94. In the course of the proceedings, the Court did find based on the testimony of the surveyor that the overlap between the Plaintiff and the Defendant property was caused by the erroneous RIM and the solution was to amend the RIM so as to reflect the situation on the ground.
95. The Defendant submits that if the RIM is amended he would loose about 2.65 acres that he currently holds in his title.
96. The Court finds that the Defendant cannot claim to loose the 2.65 acres since his acreage was issued because on an erroneous RIM and had the correct RIM being issued, he would not have been entitled to the said acreages, and the Court having found that the dispute herein was cause by no fault of either party but an erroneous RIM, the orders that commend themselves is for the amendment of the RIM in terms proposed by RIM after amendments exhibit 10 (b) done via the report dated 7<sup>th</sup> November , 2023.
97. Upon such amendment, the Land Registrar to effect a rectification of the Register of Songhor/Kabutie Senetwo/Block 1/393 and Songhor/Kabutie Senetwo/Block 1/444 in terms of the survey report dated 7<sup>th</sup> November 2023 and the amended RIM under section 80 of the Lands Registration Act.

**Disposition: -**

98. Having found that the dispute herein relates to overlapping of parcels of Songhor/Kabutie Senetwo/Block 1/393 And Songhor/Kabutie Senetwo/Block 1/444 in the current RIM, THE Court orders;
  - a. For the adoption of the proposal to amend the RIM for Songhor Kabutie Senetwo /10818 in terms of the survey report dated 7<sup>th</sup> November 2023.
  - b The Land Registrar Nandi county pursuant to the above survey report dated 7<sup>th</sup> November 2023 to rectify the Registers in respect of Songhor/Kabutie Senetwo/Block 1/393 Adb Songhor/Kabutie Senetwo/Block 1/444 in terms of the acreage.
  - c. Each party to this dispute is awarded his current respective portions as per the amended RIM and the survey report dated 7<sup>th</sup> November 2023
  - d. There shall be no orders as to cost.
  - e. Judgement accordingly.

Judgment Delivered and Dated at Kapsabet this 25<sup>th</sup> day of January 2024.

**Hon. M. N. Mwanyale,**

**JUDGE**

**In the presence of;**



1. Mr. Kiboi for Plaintiff
2. Mr. Tallam for the Defendant.

<b>KAPSABET ELC 127 OF 2021 JUDGMENT</b>	6
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