



**Ruto v Kipngetch & 4 others (Environment & Land Case 321 of 2015)
[2024] KEELC 912 (KLR) (22 February 2024) (Judgment)**

Neutral citation: [2024] KEELC 912 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 321 OF 2015
LA OMOLLO, J
FEBRUARY 22, 2024**

BETWEEN

CHEROTICH KIPRONO RUTO PLAINTIFF

AND

REUBEN KIPNGETICH 1ST DEFENDANT

CHARLES KIPNGETICH 2ND DEFENDANT

JENIFFER KIPNGETICH 3RD DEFENDANT

KEN KIPNGETICH 4TH DEFENDANT

**CHEMUTAI ROTICH & BRYAN KIPROP KOECH (SUED AS THE LEGAL
REPRESENTATIVES OF WESLEY KIPNGETICH) 5TH DEFENDANT**

JUDGMENT

Introduction

1. The Plaintiff commenced this suit *vide* a Complaint dated 4th November, 2015.
2. The Plaintiff avers that she is the beneficial owner and registered proprietor of land parcel No. Molo South/Keringet Block 2/114 (Kirobon) measuring approximately 42.210 Hectares.
3. The Plaintiff also avers that she acquired the suit property by way of transmission after succession proceedings in the matter of the Estate of Raphael Kiprono Arap Ruto (deceased).
4. The Plaintiff further avers that sometime in the year 2012 the Defendants trespassed onto the suit property and begun to cultivate a portion of it with the intention of claiming ownership.
5. It is the averment of the Plaintiff that since the Defendants trespassed onto the suit property, there has been constant confrontations between them.



6. It is also her averment that despite her pleas, the Defendants have refused to stop trespassing and unless restrained by this court, they intend to remain in wrongful occupation of the suit property.
7. The Plaintiff sets out the particulars of illegality, loss and damage and is seeking that the Defendants be restrained by an order of injunction from interfering with her quiet possession of the suit property.
8. The Plaintiff prays for judgement against the Defendants for;
 - a. An order of temporary injunction restraining the Defendants herein whether by themselves, their agents and/or servants from invading, trespassing, cultivating or in any way whatsoever interfering with the Plaintiff's quiet possession and use of LR Number Molo South/Keringet Block 2/114 (Kirobon) comprising approximately 42.210 Hectares within Keringet and currently occupied by the Plaintiff.
 - b. Vacant possession of the suit property.
 - c. An order of permanent injunction restraining the Defendant herein whether by themselves, their agents and/or servants from invading, trespassing, cultivating or in any way whatsoever interfering with the Plaintiff's quiet possession and use of LR Number Molo South/ Keringet Block 2/114 (Kirobon) comprising approximately 42.210 Hectares within Keringet and currently occupied by the Plaintiff.
 - d. Costs of this suit.
 - e. Interests on (d) above at court rates.
 - f. Any other or further relief that this Honorable court may deem fit and just to grant.
9. The Defendants filed their Statement of Defence on 12th May, 2017. The Defendants deny that the Plaintiff is the registered owner of land parcel No. Molo South/Keringet Block 2/114 (Keringet).
10. The Defendants state that they have been in possession of the suit property since their late father purchased it from Kirobon Farmers on 2nd March, 1987. He was issued with a share certificate and that they have been enjoying peaceful and uninterrupted occupation until 2012 when the Plaintiff trespassed onto the property.
11. The Defendants deny trespassing onto the suit property and state that they have recently been issued with a title deed for land parcel No. Molo South/Keringet Block 2/4 (Kirobon) with the assistance of Kirobon Land Committee.
12. The Defendants also state that the title held by the Plaintiff is fake and should be recalled by the Chief Land Registrar, Nakuru.
13. The Defendants deny all other allegations in the Plaint and seeks orders that the Plaintiff's suit be dismissed with costs.

Plaintiff's Evidence.

14. Cherotich Kiprono Ruto testified as PW1. She prayed that her witness statement filed in court on 20th May, 2019 be adopted as part of her evidence. She also prayed that the documents in the list of documents be produced as exhibits.
15. The court acceded to these prayers save that the letter dated 10th August, 2015 was later produced by PW2 as Exhibit xx



16. The documents produced by PW1 were marked as follows:
- a. A copy of Letters of Administration for the estate of the late Raphael Kiprono Arap Ruto issued by the High Court of Kenya at Nairobi in Probate and Administration Cause No. 27 of 1982 to the Public Trustee of Kenya as Exhibit P1(a).
 - b. A copy of the letter dated 10th August, 2015 written by W. M Malombo for the Public Trustee to Mr B. Chesulut, the Chairman Kirobon Farm as Exhibit P1(b).
 - c. A copy of the Certificate of Confirmation of Grant to Original Grantee for the estate of the late Raphael Kiprono Arap Ruto issued to the Public Trustee of Kenya as Exhibit P1(c).
 - d. A copy of a receipt issued by Kirobon Farmers Limited dated 21st January, 1978 to Stephen Kipngetich for a sum of Kshs. 30,000/= as Exhibit P2(a).
 - e. A copy of the letter dated 23rd January, 1978 written by Stephen Kipngetich to Kiprono Arap Ruto as Exhibit P2(b).
 - f. A copy of the death certificate for Kiprono Arap Ruto as Exhibit P3.
 - g. A copy of the proceedings before the Land Dispute Appeals Tribunal. The said proceedings were dated 17th June, 2008 and were with respect to LDAC Appeal No. 7 of 2007 as Exhibit P4(a).
 - h. A copy of a decree issued by the Magistrate's Court at Molo as Exhibit P4(b).
 - i. A copy of the letter written by W. M Malombo for the Public Trustee dated 22nd June, 2006 as Exhibit P5(a).
 - j. A copy of the letter dated 16th March, 2007 written by R. A Ajwang the District Officer, Keringet Division and addressed to the Chairman, Provincial Appeal Committee, Land Dispute Tribunal as Exhibit P5(b).
 - k. A copy of an undated letter addressed to R.M.C Mahiri in the office of the Public Trustee by Mrs. Rose Ruto with the subject of the letter being Raphael A. Ruto as Exhibit P5(c).
 - l. A copy of the letter dated 7th May, 1979 that was written by R. M. C Mahiri Trust Officer for the Public Trustee addressed to Kirobon Farmers Ltd (Keringet Farm) as Exhibit P5(D).
 - m. A copy of receipt No. 017 dated 21st November 2008 issued by Kirobon Farmers Company Limited to Cherotich Kiprono Ruto for kshs. 4589/= as Exhibit P6(a).
 - n. A copy of receipt No. 9787 dated 18th February, 1992 that was issued by Olweny & Associates Ltd to Linda Ruto of Kshs. 7,000/= for survey fees for Plot No. 4 Kirobon Farmers as Exhibit P6(b).
 - o. A copy of title deed for land parcel No. Molo South/Keringet Block 2/114 (Kirobon) measuring 42.210 Hectares as Exhibit P8.
 - p. A copy of the survey map for Molo South Keringet Block 2 (Kirobon) LR No. 11323 as Exhibit P9.
 - q. A copy of Certificate of Incorporation for Kirobon Farmers Limited as Exhibit P10.
17. It was PW1's testimony that Raphael Kiprono Ruto was her father and that he had purchased 5 shares from Kirobon Farmers on 21st January, 1978.



18. She also testified that her father was not a member of Kirobon but had purchased the said shares through Stephen Kipngetich and paid Kshs. 30,000/= through cheque No. 50xxx2.
19. She further testified that a receipt was issued which receipt shows that 5 shares were equivalent to 100 acres. PW1 referred to a bank statement relating to her father's account. It shows that an amount of kshs. 30,000/= was debited from his account .
20. It was her evidence that she has a letter dated 23rd January 1978 from Stephen Kipngetich to her father informing him that he had no claim to the suit property and that her father's name could be forwarded to the company for purposes of registration.
21. It was also her evidence that the said letter was written two days after Stephen Kipngetich was issued with the receipt at page 15 of the bundle.
22. It was further her evidence that her father passed away on 8th August, 1978 and that she has his death certificate which is at was at page 18 or the trial bundle. She also explained that her mother also passed away and added that the public trustee was the administrator of her father's estate.
23. PW1 testified that they had been living on the suit property and that she later came across the receipt at page 15 of the bundle.
24. She also testified that she obtained a grant to her father's estate and that when a dispute arose, they went to the Land Dispute Tribunal whose finding was that the land was to be shared equally.
25. She further testified that she appealed to the appeals committee which overturned the decision of the Land Dispute Tribunal. The decision of the appeals committee is at page 19 of her bundle.
26. It was her testimony that she then proceeded to Molo Law Courts where she was issued with a decree on 23rd December, 2008.
27. PW1 made reference to a letter dated 7th May, 1979 from the Public Trustee to Kirobon Farmers. This letter makes reference to the letter written by Stephen Kipngetich.
28. It was her evidence that after she was issued with the decree at Molo Law Courts she approached the chairman of Kirobon Farmers whose name she gave as Benjamin Chesulut.
29. It was also her evidence that she paid kshs. 7,000/= for survey and was issued with a receipt. The receipt is at page 30 of the bundle.
30. It was further her evidence that on 21st November, 2008 she paid Kshs. 4,589/= and was issued with a receipt which receipt is at page 29 of her bundle of documents.
31. She testified that she was issued with a clearance certificate and later a title deed for land parcel No. Molo South/ Keringet Block 2/114 (Kirobon) on 8th December, 2014.
32. She also testified that according to the title deed whose original she was in possession of, the suit property measures 42.210 hectares.
33. She further testified that the Defendants begun to trespass on the suit property soon after her father died. PW1 testified that she conducted searches on 24th April, 2018, 1st August, 2016 and 6th July, 2015 which confirmed that she was the registered owner of the suit property.
34. It was her evidence that she obtained a map which was at page 38 of her bundle of documents which map shows that the suit property. She also made reference to a certificate of incorporation of Kirobon Farmers which shows that at the time her father bought the shares, the company was in existence.



35. PW1 ended by praying for judgement as set out in her plaint.
36. In her witness statement filed in court on 20th May, 2019 she states that upon the purchase of shares, her father was allocated Plot No. 11323/4 by Kirobon Farmers.
37. She also states that after she was issued with the title deed of the suit property, she purchased a survey map which shows that land parcel No. Molo South/Keringet Block 2/114 measures 42.210 Ha and has never been subdivided as alluded to by the Defendants.
38. She further states that since the Defendants trespassed onto the suit property in 2012, they have urged them to give vacant possession but they have refused to do so and that despite reporting the matter at Keringet Police Station, she has not received any assistance.
39. Upon cross examination she confirmed that her father and Stephen Kipngetchich were close friends but she was not sure if they came from the same village.
40. She stated that they were not relatives and admitted that her father was not a member of Kirobon.
41. She reiterated that when her father purchased the shares he gave a cheque to Stephen Kipngetchich and that the bank statement at page 17 showed a debit of Kshs. 30,000/=.
42. She admitted that the bank statement does not have the name of Kirobon and also stated that she found the letter at page 16 of her bundle of documents at the Public Trustee who has the original.
43. She stated that she was eight years old when they went to live on the suit land in the year 1978 and added that the Defendants began to trespass on the land in the year 2002.
44. She further stated that she was not aware that there was balloting in the year 1982 and also stated that she was also not aware that there were two title deeds in respect to the same property.
45. She confirmed that she had filed another suit which was withdrawn because she did not have letters of administration and admitted that the Defendants had obtained judicial review orders which quashed the decision of the appeals tribunal.
46. Upon re-examination she stated that the Kshs. 30,000/= her father paid through Stephen Kipngetchich was for the purchase of shares for her father.
47. She also stated that after she appealed to the appeals tribunal, she made further payments to Kirobon which were accepted.
48. She clarified that her identity card number was captured on the Certificate of Clearance as 99986621 which was the same as the one on the title.
49. She reiterated that she made the relevant payments to Kirobon pursuant to which she was issued with a title.
50. On 20th January, 2022, PW1 was recalled and she gave the following evidence in examination in chief.
51. She testified that she remembered giving evidence on 1st December, 2020. She also testified that there were documents that were subsequently filed by the defendant and that she wanted to give evidence on them.
52. When referred to the letter dated 14th May, 1979 which was No. 1 on the Defendants Supplementary List of Documents, PW1 confirmed that the letter was not complete, it had no author and she therefore had nothing else to say on it.



53. When referred to item No. 2 on the Defendants Supplementary list of documents, PW1 stated that it was a letter dated 15th March and that the year was illegible. She explained that letter was addressed to Mr. Stephen Bett and made reference to allocation of 100 acres. She went on to explain that it was written by one S. K Mergo the Company Secretary and further stated that her father paid Kshs. 30,000/= for five shares.
54. On the issue of 100 acres being given to Stephen K Bett, PW1 stated that her father paid Kshs. 30,000/= for the purchase of the 100 acres which money Stephen Bett was to pay Kirobon Farmers.
55. PW1 also testified that item No. 3 on the Defendants Supplementary List of Documents is a letter written by Rose C. Ruto who was her mother. The letter is dated 8th August, 1984 and addressed to Stephen Bett. PW1's mother was informing him that there was a client who wanted to lease the farm and proposed that they go to Molo and lease the farm to someone else. She further testified that the letter did not mention the sharing of the proceeds from the lease.
56. It was her evidence that Item No. 4 on the Defendants Supplementary List of Documents was a letter dated 7th July, 1989 which is addressed to the Office of the Public Trustee. She explained that it was written by Stephen Bett, was incomplete and she had nothing to say about it.
57. It was also her evidence that item No. 5 is a letter dated 29th May, 1990 written by the Public Trustee addressed to the Chairman Kirobon Farmers. The Public Trustee was the administrator of the estate of her late father and in the said letter the public trustee was requesting Kshs. 15,000/= which is the balance of the purchase price. PW1 further explained that the letter is not addressed to Stephen. It was also her evidence that the Public Trustee never remitted the Kshs. 15,000/= to the estate of her late father.
58. It was further her evidence that Item No. 6 on the Defendants Supplementary List of Documents is a letter dated 6th July, 1990. The said letter is addressed to the Public Trustee and it attached a banker's cheque of kshs. 15,000/= being the balance of the purchase price.
59. She testified that Item No. 7 (a) and (b) is a cheque dated 6th July, 1990 for Kshs. 15,000/=. It was to be paid to her father Raphael Ruto and yet her father had died on 8th August, 1978. She explained that it was written several years after her father had died and was not addressed to the Public Trustee and the said amount was not given to them by the Public Trustee.
60. She also testified that item No. 8 is a letter from Stephen Bett and it is dated 10th August, 1995. She explained that it is addressed to the Public Trustee and added that the letter was incomplete, had no signature. PW1 stated that she had no comment on it.
61. She further testified that item No. 9 is a letter dated 24th September, 1998 which was written by Stephen Bett and addressed to the District Officer Keringet. PW1's comment on the said letter is that it is incomplete and did not have a signature.
62. PW1's evidence on item No. 10 is that it is a letter written by Stephen Bett and is dated 25th October, 1999. She explained that it is addressed to the District Officer, Keringet Division. Her comment on it is that the said letter is incomplete and did not have a signature. She had no further comments on it.
63. It was also her evidence that item No. 11 is a letter dated 13th February, 2009. She explained that the subject of the letter is the suit land. She stated that she was able to enter the land as it belonged to them and she leased it.
64. It was further her evidence that Item No. 12 is Judicial Review Miscellaneous Application No. 39 of 2008 which application was filed by Stephen Bett. She explained that he was appealing from the form



- the decision of the Land Appeals Tribunal. She testified that she participated in the said proceedings and that the decision of the tribunal was that the suit property belonged to her father Raphael Kiprono Ruto and that it measures 100 acres.
65. She also testified that Stephen wanted the tribunal's decision to be reversed. She explained that the court in its findings set aside the decision of the tribunal and further explained that she is still in possession. She stated that her case before the court is that she is entitled to 100 acres of the land because she was issued with a title deed in the year 2015.
 66. Upon cross examination, she was referred to item No. 1 in the Defendants Supplementary List of Documents and asked to read paragraph 2. She read the said paragraph and reiterated that her father and Stephen were friends and that she was not aware of any arrangements between the two of them.
 67. She admitted that she did not know whether her father was a shareholder of Kirobon Farmers Limited. On Item No. 2 on the said list, she confirmed that Kirobon Farmers Co. Limited was a company but she did not know that it was a land buying company. The said letter stated that Stephen Bett had been allocated 100 acres.
 68. She also admitted that Item No. 3 was a letter written by her mother on a friendly tone which indicated that her mother and Stephen were friends as the said letter stated that they were to meet a client together. She further admitted that she was not aware that her mother and Stephen were jointly leasing the land to a third party.
 69. On item No. 4 she stated that it was a letter dated 7th July but the year was not legible.
 70. When she was referred to Exhibit P2(b) which was a letter dated 23rd January, 1978 she explained that her father had been allocated 50 acres on account of the letter on item No. 4 in the Defendants Supplementary List of Documents.
 71. She stated that she did not know why the Public Trustee was demanding for Kshs. 15,000/= from Kirobon Farmers in the letter on item No. 5.
 72. She further stated that she was not aware of the payment of kshs. 15,000/= by the Public Trustee to the estate of her deceased father.
 73. Upon re-examination she reiterated that on item No. 1 she was not aware if her father was a member of Kirobon Farmers and from item No. 2 Stephen Bett was allocated 100 acres.
 74. When referred to PW1 stated that it was a receipt issued by Kirobon dated 21st January, 1978 for kshs. 30,000/= in respect of five shares.
 75. She stated that according to the bank statement of her late father Raphael Ruto that was produced Exhibit P2(c) appearing at page 17 of the bundle, there is a Kshs. 30,000/= on the debit column that was reflected on Exhibit P2(a).
 76. PW1 explained that Exhibit P2(b) was a letter written by Stephen Bett addressed to Kiprono Bett where he stated that even though the receipt was in his name, he had no claim to the said shares and that when the farm is subdivided, Ruto's name would be forwarded to the company for the purposes of having his portion of land registered.
 77. She stated that with respect to item No. 4, her father was supposed to be allocated 100 acres but the said letter made reference to 50 acres. She also stated that she was in occupation of 100 acres and the title in her possession stated that the property was 100 acres.



78. William Magogo Matumbo testified as PW2. He introduced himself as the Chief State Counsel in the office of the Public Trustee and had been working with the Office of the Attorney General since 1993.
79. He also testified that the Public Trustee administered the estate of who was the father of Cherotich Kiprono Ruto, Raphael Kiprono Ruto the Plaintiff in the present matter.
80. He further testified that the estate file was opened in 1978 and in the administering of the said estate it emerged that there had been a gentleman's understanding between Raphael Kiprono and one Stephen Kipngetch Bett.
81. It was his evidence that the gentleman's agreement was to the effect that Stephen Kipngetch Bett was to buy shares in Kirobon Farm on behalf of Raphael Kiprono Ruto.
82. It was also his evidence that it is now claimed the parcel of land was to be shared on a 50: 50 basis between Raphael and Stephen and that there was a lot of correspondence to that effect. It was further his evidence that it appeared that the said arrangement was made ten years after the death of Raphael Ruto and that it was made by the Defendants.
83. He testified that he would not agree to the sharing of the suit parcel in the ratio 50:50 for the reason that the arrangement was made after the death of Raphael. He also testified that he never dealt with Kirobon Farmers and that all he was aware of was that Raphael Ruto was entitled to 100 acres from Kirobon Farm.
84. He further testified that the letter dated 10th August, 2015 was requesting the Chairman of Kirobon Company Limited to assist the beneficiaries access the suit property. It was his evidence that he was the one who had written the said letter and he produced it as Exhibit P1B.
85. When referred to the letter dated 6th July, 1990 in the Defendants Supplementary List of Documents, PW2 stated that it was written by Stephen Bett.
86. It was his evidence that the said letter made reference to a banker's cheque of kshs. 15,000/= being the balance of the purchase price that was addressed to the office of the Attorney General – Public Trustee.
87. It was also his evidence that he never received the letter as it was not in his file. The banker's cheque was addressed to Raphael K. Ruto and that it was the cheque that the letter was referring to.
88. It was further his evidence that the letter was sent by registered post and that the address of the Public Trustee was 49672 Nairobi.
89. He testified that the letter was forwarded twelve years after the death of Raphael Ruto. He made reference to Exhibit P1(b) and testified that they finished administering the estate of Raphael in November 1998 and reiterated that they never received the letter or the cheque.
90. He also testified that if a cheque is issued to the Public Trustee as the Administrator of an Estate then it cannot be in the name of the deceased.
91. He reiterated that there was no evidence of an arrangement between Raphael and Stephen on the property in dispute and in the absence of such arrangement, the Public Trustee cannot proceed to apportion the property into 50:50.
92. Upon cross examination, PW2 confirmed that he was not privy to the terms of the gentleman's agreement but stated that Stephen Kipngetch Bett was to purchase the suit property on behalf of Raphael.



93. He also confirmed that there was correspondence to that effect. He confirmed that they did not receive the letter dated 6th July, 1990 but also admitted that since they administered the estate since 1978, it was a huge file and he could not remember if the letter was in the file.
94. He also stated that the file disappeared five years ago and that the court would have to rely on his memory.
95. Upon re-examination, PW2 stated that he was aware of a gentleman's agreement between Stephen and Raphael.
96. He also stated that he wrote the letter dated 22nd June, 2006 which had been produced as Exhibit P5(a) where he notified the council of elders that the 100 acres belonged to Raphael and it was not to be shared on a 50:50 basis.
97. This marked the close of the Plaintiff's case.
98. Initially, Hosea Barmao Chemweno took the stand to testify as DW1. He introduced himself as a farmer and a director of Kirobon Farmers Company Limited. He produced the CR 12 of Kirobon Company as Exhibit D1. In the course of giving his evidence, he was stood down, his statement expunged from the record and his evidence and exhibit produced disregarded.
99. Subsequently, the Defendants called Rev. David Kimutai Arap Metei as DW1. He stated that he lives in Keringet and is a pastor.
100. It was his evidence that he knew Kirobon Farmers Limited and added that he was a member of the board. He and he produced the CR12 of the Company as Exhibit D1.
101. He went on to testify that has lived in Keringet since 1979 and that together with other members, he was allocated land in 1982.
102. It was further his evidence that on 28th and 29th December 1982 balloting was done by those who had bought the land.
103. He testified that he knew Stephen Bett as he was one of the members who balloted and after balloting, the surveyor showed them their respective parcels of land. he testified that according to the letter dated 15th March 1982, Mr. Bett was allocated 100 acres. He produced the said letter as Exhibit D2.
104. He also testified that after balloting was done, members took occupation of the parcels of their parcels of land and in 1996 they petitioned the District Officer to help them in the acquisition of title deeds.
105. He further testified that after the petition was made, the District Officer called the Directors, District Surveyor and a private surveyor by the name Washington Olweny who never turned up.
106. It was his evidence that Elisha Langat the District Surveyor showed up together with one director because for over twenty years the company was run by only one person who also acted as the Chairman, Secretary and Treasurer.
107. It was also his evidence that members of Kirobon Farmers Company Limited attended the meeting whose agenda was issuance of title deeds that had been pending for twenty years.
108. He testified that there were four parcels of land that is;
 - I. LR No. 11323 – 3932 acres.
 - II. LR No. 545 – 995 acres.



- III. LR No. 7177 – 4380 acres.
- IV. LR No. 548 – 4557 acres.
109. He also testified that these farms were owned by members of Kirobon Farmers Company Limited and it was resolved that members were to form Farm Committees that were to be chaired by District Officers in order to deal with the question of one chairman/director.
110. He further testified after formation of the Farm Committees, the District Surveyor was mandated to do the survey for the reason that some farms were large and others small and there was need to confirm the sizes.
111. It was his evidence that each member was to pay kshs. 1000 confirmation fee for the purposes of confirming the sizes and they all paid the fee including Stephen Bett.
112. It was also his evidence that when the exercise was completed, he was given the responsibility of registering the members in occupation of LR No. 11323 which register he had in court and it was marked for identification.
113. It was further his evidence that the Chairman Benjamin Chesulut was supposed to attend the meetings and it was during one of the said meetings in relation to LR 11323 when he brought up the name of Raphael Ruto who he said was a friend of Stephen Bett.
114. He testified that there was a rule that only shareholders would buy land but there were exceptions made for friends and relatives who would buy land through shareholders however their names would not be on the list. It was only the shareholder's name that would remain on the list.
115. He also testified that the Chairman brought the said issue to the meeting and said that Ruto had paid kshs. 30,000/= through Stephen Bett.
116. He further testified that Stephen Bett was called to the meeting because Raphael Ruto was deceased and his children were underage. The meeting needed him to give more information.
117. It was his evidence that Mr. Bett admitted that he had talked to Raphael Ruto concerning payments since he did not have any money and that Raphael Ruto gave him a cheque of kshs. 30,000/= to buy land in Kirobon.
118. It was also his evidence that he was supposed to refund kshs. 15,000/= to Raphael Ruto. He confirmed that page 4 of the register that was marked as MFI D3, bears two names Stephen Bett and Linda Ruto.
119. It was further his evidence that there was a letter dated 6th July, 1990 forwarding a cheque of Kshs. 15,000/= to the Public Trustee that was produced as Exhibit D4.
120. He testified that out of the Kshs. 30,000/= payment made by Ruto, he was supposed to pay back Kshs. 15,000/= and they were to share the 100 acres between the two of them.
121. He also testified that the resolution from the members was that because Ruto and Bett were friends and came from the same village and since Ruto's children were underage, they would write two names in the register which were Stephen Bett and Linda Ruto on behalf of Raphael Ruto.
122. He further testified that after writing the two names, Benjamin Chesulut, who was the Chairman, stated that there was another register that he had made when he was not yet in office. It was for LR No. 1132 and it had 326 parcels.



123. It was his evidence that he managed to see the register in 2016 and found out that 49 members had been issued with titles. He went on to state that they had gone to court to have this register and map disregarded in the suit Nakuru HCC No. 353 of 2008. He explained that the suit was heard by Justice Maraga and a ruling delivered in their favour. He produced the ruling as Exhibit D5.
124. It was also his evidence that thereafter a title deed in the names of Stephen Bett and Linda Ruto was issued. The title deed was produced as Exhibit D6.
125. Upon cross examination, he stated that he was 73 years old and added that in 1978 he was 45 years old. He went on to explain that he retired as a pastor in 1978 and was not holding any other office.
126. He also admitted that in 1978 he did not know Stephen Bett or Raphael Ruto or the transaction between them adding that he was elected as an official in 2014.
127. He confirmed that he came to know about the two gentlemen between 1996 to 1999. When referred to Exhibit P2(a) DW1 stated that he had a problem with his eyesight and he could not read it.
128. He admitted to seeing a cheque of Kshs. 30,000/= that Raphael paid to Kirobon through Bett but he did not see a receipt of payment.
129. He also admitted that non-shareholders would purchase land at Kirobon through members and that it was true that Raphael Ruto used Stephen Bett to purchase the land.
130. He further admitted that the members resolved that the property was to be shared between Ruto and Bett but he did not have the resolution with him in court.
131. He confirmed that the meeting took place at the District Officer's office between 13th to 15th November 1999. He also confirmed that at the time the resolution was made Raphael was deceased.
132. He further confirmed that Raphael's children were underage and in Nairobi and that is how the property came to be registered in the name of the two and added that he had never met the children.
133. He stated that in the said meeting he saw a cheque of Kshs. 15,000/= to the Public Trustee and stated that he could only remember that the year was.
134. He also stated that he did not know when Raphael passed away and were only given the information by the Chairman and their friends while attending the meeting. He confirmed that he did not have any documents pertaining to the said meeting.
135. Dw1 confirmed that the survey map for 11323 was combined with 545 and that the suit parcel which measures 100 acres was in the map. He stated that he had knowledge of the map but did not have it with him in court and added that it was at the Lands Registry.
136. When referred to Exhibit D6, DW1 confirmed that the title was processed by Kirobon when he was not in office. He also confirmed that the 100 acres was subdivided on the ground and not on the title.
137. He admitted that he was on the ground when the subdivision was done and that he knew that there was one title that bore two names. He stated that he was going for an eye operation and could therefore not read the map or any document.
138. He further admitted that the petition to the Registrar in respect of the two maps was with counsel and that the titles were being processed by Kirobon Farmers Limited before 2020.
139. He stated that in 2020 they passed a resolution that subsequently, Kirobon Farmers Ltd would only issue a clearance certificate and members could process titles on their own.



140. DW1 also stated that that he was not aware of any dispute between Bett and Ruto at the Tribunal.
141. Upon re-examination, he stated that when Bett presented the Cheque to Kirobon, it was Ruto's cheque and added that nonmembers were allowed to purchase land.
142. Emmanuel Karisa Kenga took the stand on 16th March, 2023. He intended to give evidence as DW2. As he was giving his evidence, counsel for the Plaintiff made an objection on the ground that his evidence was an ambush. He was not listed as a witness and had also not filed and served his witness statement. Counsel for the Plaintiff submitted that his evidence would prejudice the Plaintiff since she, the Plaintiff, had already testified and closed her case.
143. The court after hearing submissions by both counsels, delivered a ruling delivered on 16th March, 2023 which ruling had the effect of excluding DW2 from giving evidence and producing documents.
144. Reuben Kipngetch testified as DW3. He adopted his statement dated 17th October, 2022 as part of his evidence.
145. In his witness statement he states that in the year 2002, the Plaintiff's family had lodged land dispute No. 4 of 2002 against their late father claiming ownership of 100 acres over title No. LR No. 11323/4 Kirobon.
146. He also states that the claim was heard by the Lands Disputes Tribunal on 23rd August, 2002 and a decision reached on 28th January, 2003. The tribunal held that the suit property was to be subdivided into two equal portions of 50 acres each and that the respective titles were to be processed with the assistance of the Kirobon Farmers Limited officials.
147. He further states that regardless of the determination by the tribunal, the Plaintiff went ahead and applied for a title deed for the entire 100 acres.
148. He states that they are both in possession of the suit property with a clear boundary of trees. He alleges that the Plaintiff had on several occasions trespassed onto their land, cut down trees and caused destruction to their crops which incidents had been reported at Kirobon Police Station.
149. He also states that the representatives of Kirobon Farmers presented the mother title and the register of the members to the Land Registry Nakuru for the purpose of issuance of titles to the purchasers. As a result, they were issued with a title deed dated 3rd October, 2016 after all the relevant payments had been made.
150. He urged the court to cancel the title deed issued to the Plaintiff and make a declaration that they were in possession of the proper title deed to the suit property which had been issued on 3rd October, 2016.
151. He also prayed that each party bears their own costs for subdividing the land into two equal portions and the Plaintiff be directed not to interfere with the Defendants peaceful occupation of the land.
152. Upon cross examination, DW3 confirmed that his late father Stephen Kipngetch Bett and the father of the Plaintiff Kiprono Ruto were close friends.
153. He also confirmed that his father was a member of Kirobon Farmers while Kiprono Arap Ruto was not a member. He stated that in 1978 he was six years old and added that later he came to learn that the Plaintiff's father had given his father Kshs. 30,000/= to purchase land. His father purchased 100 acres arising from the said transaction.
154. He also confirmed that as he became of age, he did not find any agreement between his father and the father of the Plaintiff to divide the land equally.



155. He admitted that he had the Land Dispute Tribunal proceedings for case No. 7/2007 which were produced as Exhibit P4(a) and he confirmed that paragraph 5 of the said proceedings made reference to tribunal proceedings of 2007.
156. He also confirmed that there were earlier proceedings of 2002 that had divided the property into two and an appeal was preferred in 2007 which overturned the decision of 2002 and the suit property was given to the Plaintiff.
157. He admitted that he did not have a map of the property and that he only saw it during demarcation. When he was referred to Exhibit P9 he admitted that he was not an expert and that he could not tell whether the property was the map.
158. When referred to Exhibit P8 he confirmed that it was a title deed that indicated the size of the property as 42.210 Ha which is approximately 100 acres that was in the name of Cherotich Kiprono Ruto.
159. He also confirmed that there was also another search that was done in 2018 that showed that the parcel of land belonged to Cherotich Kiprono Ruto.
160. He admitted that he was not from the Lands Office and so he could not comment on the receipt for transfer. When he was referred to Exhibit D6 which was a copy of a title deed he admitted that it was registered in the names of Stephen Bett and Linda Ruto.
161. He confirmed that the size of the land was 40.47 Ha which was approximately 100 acres and was issued on 3rd October, 2016. He also confirmed that he did not participate in the processing of the title and added that the Plaintiff was claiming that the whole parcel belonged to them.
162. He stated that they had filed a Statement of Defence on 10th May, 2017 where they prayed that the suit be dismissed with costs and admitted that in his pleadings, there was no prayer for 50:50 division of the suit property.
163. He admitted that even though he stated that Linda got the title illegally, he had not included the said allegation in the written Statement of Defence.
164. He also admitted that it was true that they both had a title and that in his Statement of Defence, they had not prayed for revocation of the Plaintiff's title.
165. He further admitted that neither the Land Registrar nor Kirobon Farmers were parties to the suit. He stated that it was not true that he wanted to dispossess the Plaintiff the suit property and neither was it true that his family had an upper hand in comparison to the Plaintiff.
166. He denied that it was the Plaintiff's father who had paid the purchase price for the suit property.
167. Upon re-examination, DW3 stated that both his parents and the Plaintiff's parents were living in Nairobi.
168. He reiterated that they were in possession of 50 acres and sought that the suit be dismissed.
169. He further stated that in his statement he had asked that the property be subdivided and the title be revoked. He then added that his family was not in any position of influence and had not used their possession to have any advantage in the matter.
170. The Defence case was closed.



Issues For Determination.

171. The Plaintiff filed her submissions on 14th August, 2023 on while the Defendants filed their submissions dated 29th September, 2023 on 3rd October, 2023.
172. The Plaintiff in her submissions identifies the following issues for determination;
 - a. Whether the Plaintiff is the beneficial owner and the current registered proprietor of Land Reference No. Molo South/Keringet Block 2/114 (Kirobon) (the suit property)
 - b. Whether Land Reference No Molo South/Keringet Block 2/114 (Kirobon) and Land Reference No. Molo South/Keringet Block 2/4 (Kirobon) refer to the same parcel on the ground.
 - c. Whether the Defendants have illegally entered and trespassed into the suit property.
 - d. Whether the Plaintiff is entitled to the reliefs sought in the Plaint dated 4th November, 2015; and
 - e. Who bears the cost of this suit?
173. On the first issue, the Plaintiff relies on Section 26 of the [Land Registration Act](#) and submits that she is the registered owner of the suit property.
174. The Plaintiff also submits that her title was acquired under the Registered [Land Act](#) Cap 300 Laws of Kenya (repealed) which rights are guaranteed by Section 107(1) of the [Land Registration Act](#).
175. The Plaintiff further submits that the Defendants allege that her title to the suit property does not exist and yet they have not adduced any evidence to impeach the process of acquisition of the title deed.
176. It is the Plaintiff's submissions that the Defendants did not file any counterclaim or otherwise gave particulars of fraud to sustain their claim.
177. She then relies on the judicial decisions of Paul Muira vs Jane Kendi Ikinuya [2003] eKLR and Vijay Morjaria vs Nansingh Madhusingh Darbar & another [2000] eKLR in support of her arguments.
178. On the second issue the Plaintiff relies on Sections 107 and 112 of the [Evidence Act](#), the judicial decision of Pankajkumar Hemraj Shah & another Vs Abbas Lali Ahmed & 5 Others [2019] eKLR and reiterates that the Defendants have not produced any evidence to challenge her title to the suit property and that they obtained their title on 3rd October, 2016 long after she had obtained hers.
179. On the third issue, the Plaintiff submits that the Defendants have not adduced any evidence to show that they are in lawful occupation of the suit property which land they claim is non-existent.
180. On the fourth issue, the Plaintiff reiterates that since she has demonstrated that she is the owner of the suit property, she is entitled to the orders sought in the Plaint.
181. On the fifth issue, the Plaintiff relies on Stanley Kaunga Nkarichia Vs Meru Teachers College & another [2016] eKLR and submits that she is entitled to costs of the suit.
182. The Defendants in their submissions identify the following issues for determination;
 - a. Whether or not there was an agreement between the late Stephen Kipngeno Bett, the Defendants' father, and the late Raphael Kiprono Arap Rutto, the Plaintiff's father.



- b. Whether or not the Defendants' are in lawful occupation and possession of 50 acres of LR No. Molo South/Keringet Block 2/4 (Kirobon)?
 - c. Whether or not the Plaintiff's title deed for LR No. Molo South/Keringet Block 2/114 is valid?
 - d. Whether or not the Plaintiff is entitled to the reliefs sought in the Plaintiff?
 - e. Who should have costs of this suit?
183. On the first issue, the Defendants reiterate the evidence of DW1 David Kimutai and submit that the Plaintiff has relied on a letter dated 23rd January, 1978 where Stephen Kipngetch allegedly stated that he had no claim to the shares that had been purchased on behalf of the Plaintiff's father.
 184. It is the Defendants submissions that their father Stephen Kipngeno Bett had denied that he had written the said letter and that the Plaintiff did not adduce any other evidence in corroboration of the said letter.
 185. The Defendants rely on Section 107(1) of the *Evidence Act* and submit that the burden of proof was on the Plaintiff to verify the said letter by calling witnesses or handwriting experts.
 186. The Defendants in their submissions admit that there was a gentleman's agreement between Stephen Kipngetch Bett and Raphael Ruto on a quid pro quo basis in purchasing the suit property.
 187. On the second issue, the Defendants submit that they are in lawful occupation of LR No. Molo South/Keringet Block 2/4. They also submit that they are the beneficiaries of the estate of Stephen Kipng'eno Bett and that they produced a copy of grant of Letters of Administration dated 20th September, 2012.
 188. It is the Defendants submissions that they produced a copy of the title deed for land parcel No. Molo South/Keringet Block 2/4 in the names of Stephen A. Bett and Linda Ruto. It was also their submissions that the agreement between Stephen Kipng'eno Bett and the Plaintiff's father was that the suit property would be shared equally between them with the Defendants father refunding Kshs. 15,000/=.
 189. The Defendants rely on *Benja Properties Limited vs Syedna Mohammed Burhannudin Sahed & 4 Others* [2015]eKLR and submit that land parcel No. Molo South/Keringet 2/114 which the Plaintiff alleges belongs to her does not exist. The Defendants submit that it is not clear how the Plaintiff acquired the said title deed given that her father was not a member of Kirobon Farmers Company Limited.
 190. On the third issue, the Defendants rely on *Hubert L. Martin & 2 Others v Margaret J. Kamar & 5 Others* [2016] eKLR and acknowledge that each of the parties have produced their own title deeds to the suit property. They submit that two titles deeds cannot exist with respect to the same property and while relying on *Munyu Maina v Hiram Gathiha Maina* [2013] eKLR argue that the Plaintiff has not proved the root of her title.
 191. The Defendants go on to submit that according to the register of Kirobon Farmers Co. Ltd, the Plaintiff and the Defendants father were both allocated Plot No. 11323/4 being 100 acres for each to get 50 acres.
 192. The Defendants argue that since they were both allocated 100 acres it is not clear how the Plaintiff acquired the title for the entire 100 acres. They also argue that from the maps dated 1st September, 2009 and 14th September, 2017 the suit property is indicated as Plot No. 4 but the Plaintiff produced an unofficial map that showed the suit property as Plot 114.



193. On the fourth issue, the Defendants submit that the Plaintiff has not proved her case on a balance of probabilities and while relying on Republic vs Rosemary Wairimu Munene Ex Parte Applicants vs Ihururu Dairy Farmers Co-operative Society Ltd (citation not given) seeks that the Plaintiff's suit be dismissed with costs.

Analysis And Determination.

194. After considering the pleadings, evidence and the submissions, the following issues arise for determination;
- a. Whether the Defendants have trespassed onto land parcel No. Molo South/Keringet Block 2/114 (Kirobon).
 - b. Whether the Plaintiff is entitled to the orders sought in the Plaintiff.
 - c. Who should bear costs of the suit.

A. Whether the Defendants have trespassed onto land parcel No. Molo South/Keringet Block 2/114 (Kirobon).

195. It is the Plaintiff's case that she is the registered owner of land parcel No. Molo South/Keringet Block 2/114 (Kirobon) which she acquired by way of transmission after succession proceedings in the matter of the Estate of Raphael Kiprono Arap Ruto (deceased).
196. It is also the Plaintiff's case that her father had purchased the suit property from Kirobon Farmers on 21st January, 1978 through Stephen Kipngetch.
197. It is further the Plaintiff's case that her father had paid kshs. 30,000/= through cheque No. 504302 and that Stephen Kipngetch allegedly wrote the letter dated 23rd January, 1978 addressed to her father informing him that he had no claim to the suit property.
198. It is the Plaintiff's case that her father died on 8th August, 1978 and later a dispute arose between them and the Defendants, that they went to the Land Disputes Tribunal which held that the suit property was to be divided equally between the two families, that they appealed against the said decision to the Appeals Tribunal and that their appeal was allowed.
199. It is also the Plaintiff's case that after the Appeals Tribunal decision, she went to Molo Law Courts where she was issued with a decree dated 23rd December, 2008 after which she took it to Kirobon Farmers. It is her case that she was required to pay certain sums of money which she paid and was issued with a clearance certificate.
200. It is further the Plaintiff's case that after she was issued with a clearance certificate she was given a title deed for land parcel No. Molo South/Keringet/ Block 2/114 (Kirobon) on 8th December, 2014.
201. It is the Plaintiff's case that the Defendants have trespassed onto the suit property and she is therefore seeking orders of eviction against them.
202. The Plaintiff produced the following documents in support of her case; a copy of Letters of Administration for the estate of the late Raphael Kiprono Arap Ruto issued by the High Court at Nairobi in Probate and Administration Cause No. 27 of 1982 to the Public Trustee of Kenya (Exhibit P1(a)).
203. A copy of the Certificate of Confirmation of Grant to Original Grantee (Exhibit P1(c) for the estate of the late Raphael Kiprono Arap Ruto issued to the Public Trustee of Kenya was also produced.



204. A copy of the letter dated 10th August, 2015 written by W. M Malombo for the Public Trustee to Mr. B. Chesulut, the Chairman Kirobon Farm (Exhibit P1(b)) was produced. The subject of the letter was Raphael Kiprono Arap Ruto Deceased. In the said letter the Chairman Kirobon Farm was informed that the Public Trustee who had been the administrator of the estate of Raphael Kiprono Arap Ruto had finalized administration of the said estate even though the heirs had omitted Plot No. 4 Keringet which had a dispute. In the said latter, Mr. Malombo states that he had been informed by Miss Cherotich Kiprono, the daughter of the late Raphael Kiprono Ruto that the dispute had been resolved and a title deed issued for Molo South/Keringet Block 2/114 and he requests that she may be accorded any assistance needed.
205. A copy of a receipt issued by Kirobon Farmers Limited dated 21st January, 1978 (Exhibit P2(a)) was produced that was issued to Stephen Kipngetch for a sum of Kshs. 30,000/= that was equivalent to 5 shares.
206. A copy of the letter dated 23rd January, 1978 (Exhibit P2(b)) written by Stephen Kipngetch to Kiprono Arap Ruto was produced. The subject of the letter was Kirobon Farmers Ltd and states as follows;
- “This is with reference to Share Holders Certificate/receipt No. 1528 dated 21st January 1978.
- Although this receipt in respect of five shares for Kshs. 30,000/= is in my name, I confirm that I have no claim to the said shares, the entire purchase price having been paid by you.
- I would further confirm that when the farm is sub-divided, your name will be forwarded to the company for the purposes of having your portion of land registered”
207. A copy of the death certificate for Kiprono Arap Ruto was produced (Exhibit P3). It was issued on 6th September, 1978 and shows that he had died on 8th August, 1978.
208. A copy of the proceedings before the Land Dispute Appeals Tribunal were produced (Exhibit P4). The said proceedings are dated 17th June, 2008 and are in respect to LDAC Appeal No. 7 of 2007. The parties to the proceedings were Ms. Cherutich Kiprono Ruto the Appellant and Mr. Stephen Kipngeno Bett the Respondent and the suit land was No. 11323/4 Kirobon Farmers Limited. The decision of the Tribunal is as follows;
- “Parcel No. Kirobon Farmers No. 11323/4 measuring 100 acres is a property of the late Raphael Kiprono Ruto and his Dependents...”(sic)
209. A copy of a decree issued by the Magistrate’s Court at Molo (Exhibit P4(b)) was produced. It was issued after the award of the Tribunal was adopted as an order of the court.
210. A copy of the letter dated 22nd June, 2006 written by W. M Malombo for the Public Trustee was also produced (Exhibit P5). It is addressed to the panel of elders, Keringet. The subject of the letter was Raphael Kiprono Arap Ruto – Deceased Pt Admin. Cause No. 395 of 1978 Dispute over 100 acres of land at Keringet Land Dispute No. 4 of 2002.
211. In the said letter, Mr. Malombo requested the panel of elders to review their decision that the suit property was to be sub divided between the late Raphael Kiprono Arap Ruto and Stephen Kipngetch Bett on the ground that there was new evidence.
212. The new evidence was the letter dated 23rd January, 1978 where Mr. Stephen Kipngetch confirmed to the late Raphael Kiprono Arap Ruto that even though the receipt in respect of the 5 shares was in his name, he had no claim as the entire purchase price had been paid by the deceased.



213. A copy of the letter dated 16th March, 2007 was also produced (Exhibit P5(b) that was written by R. A Ajwang the District Officer, Keringet Division and addressed to the Chairman, Provincial Appeal Committee, Land Dispute Tribunal. The subject of the letter was Land Dispute No. 4 of 2002 between Cherotich Kiprono Ruto and Stephen Kipngetich Bett. The letter made reference to the proceedings that had taken place in 2002 but which had not been adopted by the Molo Law Courts because of an appeal that had been filed. The letter also stated that there was new evidence which required the attention of the appeal tribunal before it could reach a satisfactory determination.
214. A copy of an undated letter was produced (Exhibit P5(c). It is addressed to R.M.C Mahiri in the office of the Public Trustee and written by Mrs. Rose Ruto with the subject of the letter being Raphael A. Ruto. The said letter informed the public trustee that Raphael Kiprono A. Ruto had purchased shares in the name of Stephen Kimungetich and sought that the said Stephen Kimungetich should transfer the shares to the family of the deceased.
215. A copy of the letter dated 7th May, 1979 was produced (Exhibit P5(D) that was written by R. M. C Mahiri Trust Officer for the Public Trustee addressed to Kirobon Farmers Ltd (Keringet Farm). The subject of the letter was Raphael Kiprono Arap Ruto and it informed Kirobon Farmers Limited that Stephen Kipngetich had bought five shares on behalf of Raphael Kiprono Ruto.
216. Kirobon Farmers Limited was informed of the letter dated 23rd January, 1978 where Stephen Kipngetich had stated that he had no interest in the suit property as it wholly belonged to Raphael Kiprono Arap Ruto. The Trust Officer informed Kirobon Farmers that Raphael Kiprono Arap Ruto was deceased and that he would be glad if the land could be subdivided that the deceased's name registered.
217. A copy of a receipt No. 017 dated 21st November 2008 was produced (Exhibit P6(a) that was issued by Kirobon Farmers Company Limited to Cherotich Kiprono Ruto for LR No. 11323 Plot No. 114 for kshs. 4589/=.
218. A copy of a receipt No. 9787 dated 18th February, 1992 was produced (Exhibit P6(b) that was issued by Olweny & Associates Ltd to Linda Ruto of Kshs. 7,000/= as survey fees for Plot No. 4 Kirobon Farmers.
219. A copy of title deed for land parcel No. Molo South/Keringet Block 2/114 (Kirobon) measuring 42.210 Hectares was produced (Exhibit P8). It was issued on 8th December, 2014 to Cherotich Kiprono Ruto.
220. A copy of the survey map was produced (Exhibit P9) for Molo South Keringet Block 2 (Kirobon) LR No. 11323. The owners were listed as Kirobon Farmers Company Limited. The Chairman was Benjamin Kibiwot Chesulut, the Secretary Samwel Kimutai Ketenya and the treasurer David Cheruiyot Kiplagat. The total area is 3972 acres with 252 sub plots. It is signed by the Provincial Physical Planning Officer on 14th July, 2005 and approved by the Clerk of the Council Nakuru County Council on 25th August, 2005.
221. A copy of Certificate of Incorporation for Kirobon Farmers Limited was also produced as Exhibit P10.
222. The Defendants case on the other hand is that their father Stephen Kipngetich Bett was a member of Kirobon Farmers Company Limited.
223. It is also their case that he did not have money to buy shares and so he spoke to his close friend one Raphael Arap Ruto who was interested in acquiring land from Kirobon Farmers Company Limited but was not a member.



224. It is further their case that Raphael Arap Ruto gave their father Kshs. 30,000/= to enable him purchase 5 shares which was equivalent to 100 acres which they say was to be shared between the two of them.
225. The Defendants allege that their father Stephen Kipngetch Bett was to later refund the Kshs. 15,000/= which he did in 1990 twelve years after the death of Raphael Arap Ruto.
226. The Defendants also allege that the arrangement between Stephen Kipngetch and Raphael Arap Ruto was brought up before a meeting held by members of Kirobon Company Limited and where it was agreed that the suit property would be registered in the joint names of Linda Ruto and Stephen Kipngetch.
227. It is the Defendants case that in the year 2000 a dispute arose and they went to the Land Disputes Tribunal which held that they were to subdivide the land equally between them and the Plaintiff.
228. It is also their case that soon after the Land Disputes Tribunal made a determination, the property was subdivided into two and trees planted along the boundary.
229. The Plaintiff appealed to the Appeals Tribunal which allowed their appeal and held that the family of Raphael Arap Ruto was entitled to the entire 100 acres. Their case is that they filed Judicial Review Proceedings which set aside the determination of the Appeals Tribunal.
230. It is further the Defendants case that they have been in occupation of the land and have recently acquired a title deed to the suit property. The said title deed is for land parcel No. Molo South/Keringet Block 2/4 (Kirobon).
231. In support of their case the Defendants produced a copy of the CR 12 for Kirobon Farmers Company Limited (Exhibit D1).
232. A copy of the letter dated 15th March, 1982 was produced (Exhibit D2). It was written by S.K Menjo the Company Secretary Kirobon Farmers Company Limited and addressed to Stephen K. Bett. The letter informs Stephen K. Bett that during the allocation of plots on 29th December, 1981 he was allocated Plot No's 12, 13, 16, 17 and 20 within LR No. 11323 with a total of 100 acres.
233. A copy of a letter dated 6th July, 1990 was also produced (Exhibit D4). It is written by Stephen K. A. Bett and addressed to the Office of the Attorney General, Department of the Registrar General, Public Trustee. The subject of the letter was Raphael K. Ruto (Deceased) and it made reference to their letter reference No. IT/395/78/EJ dated 29th May, 1990. In the said letter he indicated that he had attached a banker's cheque of Kshs. 15,000/= as a balance of the purchase price. In the said letter, Stephen K.A Bett states that he will show the heirs of the deceased the 50-acre plots as soon as the title documents were ready.
234. A copy of the ruling issued in Nakuru HCC No. 353 of 2008 (Exhibit D5) was also produced. The parties to the said suit were Kirobon Farmers Co. Ltd vs Benjamin Chesulut & 3 others. The ruling was on an application by the 1st Defendant who sought the dismissal of the suit for want of prosecution which application was not allowed.
235. A copy the title deed for land parcel No. Molo South/ Keringet Block 2/4 (Kirobon) in the names of Stephen Bett and Linda Ruto (Exhibit D6) was also produced. It was issued on 3rd October, 2016.
236. It is not disputed that the Plaintiff's father Raphael Arap Ruto entered into an arrangement with Stephen Bett to purchase shares from Kirobon Farmers Company Limited.
237. It is also not disputed that the Defendants are in possession of a portion of the parcel of land that was allegedly purchased by Stephen Bett for Raphael Arap Ruto.



238. What is disputed is whether the parcel of land that was purchased by Raphael Arap Ruto through Stephen Kipngetch Bett from Kirobon Farmers Company Limited was to be divided equally between them.
239. It should be noted that the Plaintiff's claim in the Plaint is one of trespass. She alleges that the Defendants trespassed onto land parcel No. Molo South/Keringet Block 2/114 (Kirobon) in the year 2012 and that they have refused to vacate the land despite being asked to do so.
240. It is my view that from the evidence adduced by the parties, the issue that arises for determination is ownership while the pleadings raise the issue of trespass.
241. In the judicial decision of Daniel Otieno Migore v South Nyanza Sugar Co. Ltd [2018] eKLR the court held as follows;

“11. It is by now well settled by precedent that parties are bound by their pleadings and that evidence which tends to be at variance with the pleadings is for rejection. Pleadings are the bedrock upon which all the proceedings derive from. It hence follows that any evidence adduced in a matter must be in consonance with the pleadings. Any evidence, however strong, that tends to be at variance with the pleadings must be disregarded. (Emphasis is mine). That settled position was re-affirmed by the Court of Appeal in the case of Independent Electoral and Boundaries Commission & Ano. vs. Stephen Mutinda Mule & 3 others (2014) eKLR which cited with approval the decision of the Supreme Court of Nigeria in Adetoun Oladeji (NIG) vs. Nigeria Breweries PLC SC 91/2002 where Adereji, JSC expressed himself thus on the importance and place of pleadings: -

“...it is now trite principle in law that parties are bound by their pleadings and that any evidence led by any of the parties which does not support the averments in the pleadings, or put in another way, which is at variance with the averments of the pleadings goes to no issue and must be disregarded.....In fact, that parties are not allowed to depart from their pleadings is on the authorities basic as this enables parties to prepare their evidence on the issues as joined and avoid any surprises by which no opportunity is given to the other party to meet the new situation.” (Emphasis mine)

242. As aforementioned, it is my view that the evidence that was adduced during the hearing indicates that the dispute as between the Plaintiff and the Defendants is one of ownership of land.
243. This is supported by the various proceedings that were referred to by both the Plaintiff and the Defendants that took place before the Land Disputes Tribunal and the Appeals Committee which revolved around the issue of whether or not the 100-acre property was to be divided equally between the Plaintiff and the Defendants.
244. Taking into consideration that each of the parties has in their possession a title deed which they both claim to be legal and conferring interest in the suit parcel to them, it is evident that the dispute is one of ownership and not trespass.
245. As was held in Daniel Otieno Migore v South Nyanza Sugar Co. Ltd (supra), parties are bound by their pleadings and in the event that evidence adduced is at variance with the pleadings, it must be disregarded.

B. Whether the Plaintiff is entitled to the orders sought in the Plaint.

246. Given my finding on issue No. (a) above, the Plaintiff is not entitled to the orders sought in the Plaint.



C. Who should bear costs of the suit.

247. It is now settled that costs shall follow the event. This is in accordance with the provisions of Section 27 of the *Civil Procedure Act* (Cap. 21). A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise.

248. The Plaintiff and defendants have a long history. Their parents were friends and continued to be until their demise. An award of costs will not be in the interest of fostering good relations for the future.

Disposition.

249. In the result, I find that the plaintiff has failed to prove her claim of trespass against the defendants. Consequently, the Plaintiff's suit fails and is hereby dismissed with no order as to costs.

250. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 22ND DAY OF FEBRUARY, 2024.

L. A. OMOLLO

JUDGE.

In the presence of: -

Mr. Ruto for the Defendants.

No appearance for the Plaintiff

Court Assistant; Ms. Monica Wanjohi.

