



Koske (Suing as the Legal Representative of the Estate of Michael Kipchirchir Bor) v Kipleitich (Environment & Land Case 76 of 2018) [2024] KEELC 766 (KLR) (21 February 2024) (Judgment)

Neutral citation: [2024] KEELC 766 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT & LAND CASE 76 OF 2018
FO NYAGAKA, J
FEBRUARY 21, 2024**

BETWEEN

JOSEPHAT KIPRUGUT KOSKE (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF MICHAEL KIPCHIRCHIR BOR) PLAINTIFF

AND

SARAH CHEPCHIRCHIR KIPLEITICH DEFENDANT

JUDGMENT

1. Through an Amended Complaint dated 23/10/2018, Josephat Kiprugut Koske, the Plaintiff claimed to be the legal representative of the estate of his late brother Michael Kipchirchir Bor who hereinafter will be referred to as 'Bor'. The Plaintiff's case was that Bor died on 13/04/2016.
2. The Plaintiff pleaded that, Sarah Chepchirchir Kipleitich, the Defendant herein, was the legal representative of her late husband, Elijah Leitich, who I refer to hereinafter as 'Leitich'.
3. It is the Plaintiff's case that the late Bor and Leitich were step brothers by virtue of being the children of Njege Kipleitich Arap Maramba, (hereinafter simply called 'Maramba'). That on 24/10/1997, the Court, in Kitale Senior Principal Magistrates Court Land Case No. 71 of 1997 (hereinafter referred to 'Land Case No. 71 of 1997') ordered and decreed that Title No. Kapomboi/Kapomboi Block 3/ Kobos/311 (hereinafter referred to as 'The Suit Land') measuring 12 acres be shared equally between the Plaintiff and the Defendant.
4. The Plaintiff pleaded that on or about 22/09/2000, the Court issued an eviction Order against Leitich and put the Plaintiff in possession of the 6 acres therein. The Order was not implemented until 2016 when the Bor died.
5. Consequent upon the death of Leitich, the Defendant, fraudulently and secretly subdivided the suit land, sold part of it and remained with LR No Kapomboi/Kapomboi Block 3/ Kobos/633. By so doing she locked the Plaintiff out of the suit land.



6. In setting out the particulars of fraud, the Plaintiff claimed that the Defendant secretly processed the registration of the suit land and obtained the registration of LR No Kapomboi/Kapomboi Block 3/ Kobos/633 in her name. Then she secretly set out to selling part of the suit land despite full knowledge of the decree of the Court in Land Case No. 71/1997 and the eviction order thereto.
7. He further stated that despite Bor being awarded the six (6) acres of land by the tribunal which order was adopted by the Court in Land Case No. 71 of 1997, the Defendant fraudulently acquired the title of the whole suit land instead of sharing it into two equal portions as directed by the Court. He averred that it was fraudulent of the Defendant to obtain the title of the suit land in her sole name knowing very well that the land belonged to Bor as per the judgment of the Court.
8. The Plaintiff pleaded that by reason of the Defendant's trespass upon his land, he had lost Kshs.720,000/- in the last twenty years calculated from lease rate of Kshs. 6,000/- per acre. On the foregoing basis, he prayed for the following reliefs;
 - aa. a declaration that the Plaintiff is the lawful owner of the 6 acres part of LR No Kapomboi/Kapomboi Block 3/ Kobos/633.
 - aaa. An order that the Plaintiff be registered as the proprietor of the aforesaid 6 acres.
 - b. an order that the defendant do move out of the Plaintiff's land comprised in LR No Kapomboi/Kapomboi Block 3/ Kobos/633 following which his agents, servant, family members or anybody claiming under her to be forcefully evicted from the suit land.
 - cc. an award of mesne profits at the rate of Kshs. 6,000/- per acre from 1997 t the date of Judgment and or eviction and or general damages.
 - d) Costs.
 - e) Interest.
 - f) Any other relief that this Honourable Court may deem fit to grant.

The Evidence

9. The Plaintiff testified as PW1. He adopted his witness statement as his evidence. It was his case that Kapomboi Land Tribunal ordered that the suit land be divided between Bor and Leitich each of them getting 6 Acres. The elder's award was adopted as the judgment and decree of the court in Kitale law Courts. Despite that the Defendant continued to farm in his portion of the land and subsequently took the whole parcel's title deed, subdivided it and remained with her portion christened Parcel No. 633.
10. He testified that the cost of leasing one acre at the time of suit was about Khs.6,000/- and therefore claimed mesne profits for the last 23 years since 1997.
11. The record shows that during the pendency of the suit the Defendant sold part of the suit land and obtained a different title thereto. She then applied to amend her pleadings to reflect the new parcel number. By the time the amendment was made the Plaintiff had closed his case. Thus, PW1's evidence was reopened as a result of the Defendant having sold part of the suit land thus changing the identity of the land in question from parcel No. 633 to parcel No. 743. He testified further that the defendant sold six acres while this suit was ongoing and as such, the remaining six are supposed to be his. He referred to his newly written statement dated 19/10/2022 and adopted it as his evidence.



12. On cross-examination it was his case that the original suit land belonged to his father. The late Bor was his immediate elder brother.
13. Upon being shown eviction Order dated 22/09/2000 it was his case that the eviction was in respect of Kios Farm, Kapomboi. He testified that Plot No. 311 was not written in the eviction notice. Also, when shown the eviction order dated 20/09/2000, it was his case that the Order had no parcel number of the land in question.
14. He stated further that he claimed over land comprised in Plot No. 633 which was from plot No. 311 upon subdivision. He testified in further cross examination that there were grown kay apples trees between the two portions belonging to Bor and Leitich.
15. Isaac Marasi testified as PW2. He was the records officer in Kitale Law Courts, in charge of all concluded cases. To that end, he referred to Kitale Senior Principal Magistrates Court Land Case No. 71 of 1997 where the parties are Bor v Leitich. His evidence was that the decree therein was for the subdivision of the land which Leitich occupied. It awarded six acres to Bor. That although the Court did not specify the land the decree was implemented on 06/03/1998. He produced the decree as PExh 2, the eviction notice dated 22/09/2000 as PExh 4 and the reissued eviction notice dated 10/02/2005 as PExh 5. He stated further that there was an eviction against Leitich from the six acres and the last eviction notice was issued on 10/02/2005. He produced the entire file in Kitale Senior Principal Magistrates Court Land Case No. 71 of 1997 file as PExh. 8.
16. PW2 also produced the file in Kitale High Court Miscellaneous No. 28/1998 where the parties were Leitich v Kapomboi Land Dispute tribunal, David Barng'etuny and Others and Bor as an interested party. He stated that the ruling of the court was given on 25/05/2000 where the Application was dismissed for want of prosecution. He produced the Ruling and the File as PExh. 3 and Pexh.4 respectively.

The Defence

17. Sarah Chepchirchir Leitich opposed the Plaintiff's case through the Defence dated 04/11/2019. She denied the entirety of the Plaintiff's case demanding full proof of the Plaintiff's averments. She averred that she was a beneficiary of the suit land, the rightful owner and has been in occupation since inception.
18. She claimed that she had neither defrauded anyone nor had she trespassed onto any other person's portion. She urged the Court to dismiss the Plaintiff's case with costs.

The Evidence

19. The Defendant testified as DW1. She adopted her statement dated 01/12/2020 as her evidence. It was her case that the late Leitich was her husband. She stated that her children used to reside there but they moved to Nandi. Further, that the suit land was registered in her husband's name but he (Leitich) had not gotten title to it by the time he died.
20. She testified that she and her husband moved from Nandi and bought the land Parcel No. Kapomboi/ Kapomboi Block3/Kobos/743. The land, which was 12 acres, was subdivided from parcel 633 and was finally registered in her late husband's name.
21. She testified that the time of the testimony she resided on three (3) acres, her husband had bought 6 acres and there was an old man who said he be given him six (6) more acres, thus making the parcel



- 12 acres in total. Her husband bought the extra 6 acres from Lewa Kapoch, the old man. The two exchanged their six acres of their land in Nandi with the old man's said six acres at Kapomboi.
22. She stated that Lewa Kaboch entered into a written agreement with her husband over the exchange and she had since been using the parcel of 12 acres.
 23. She testified that Bor had a case with her late husband but never resided on their parcel of land neither did he cultivate it. She produced as DExh. 1 the title of Kapomboi/ Kapomboi Block 3/ Kobos /743 measuring approximately 2.462 hectares.
 24. On cross-examination, she admitted that there was an ongoing case between her husband and Bor which in the end, the Court decided that the 6 acres be given to Bor but her husband refused. She admitted that the land over which her husband and Bor had a dispute in court was the same one in issue in this suit. That it was initially given registration No. 311.
 25. As regards the case before the Tribunal, she stated that according to the elders, the land did not belong to her father-in-law. She conceded that the title she took out in the year 2008 was not in line with the decree in Kitale Senior Principal Magistrates Court Land Case No. 71 of 1997.
 26. She admitted she sold part of the suit land and remained with land title no. 633 and that as the case was on-going, she sold three (3) more acres and thus ended up remaining with land parcel no. 743 which is six (6) acres. She admitted further that the land she had sold in total six acres and that if she lost the instant suit, she would move out of the 6 acres she occupied and give it to the buyers of the six (6) acres occupying the portion belonging to Leitich.
 27. Alexander Kipchumba Choge testified as DW2. He stated that Leitich was a shareholder in Kobos Farm when he paid Kshs. 9,000/- for 18 acres. He stated further that there was one Joseph Sang who also had a share of 18 acres. DW2 did not know Bor. That since 1974 when shareholders first entered Kobos, Bor was not one of them and has never heard a case between Bor and Leitich.
 28. He stated that Plot No. 311 bore the Defendant's name since her husband did a process of acquisition in the chief's compound. He referred to Area List which was marked as DMFI 2.
 29. He testified further that when the titles were being processed, the Defendant lived on the suit land, it was his evidence that it was not sub-divided and when Leitich died. That Leitich was buried thereon.
 30. On cross-examination, he stated that he did not have any proof that indeed he was the secretary of Kobos Farm and neither was evidence that he was elected as secretary. He stated he knew Leitich but neither knew that he had two wives nor that he had a brother called Bor. He stated that he did not know if Bor and Leitich were step-brothers.
 31. He stated he did not know if the elders' panel solved the dispute between Leitich and Bor. He could not tell whether the resolution was adopted as an order of Court. He held onto the belief that Plot No. 311 was of the Defendant. He could not give evidence of minutes of the Company by which the name of Leitich was removed from the Area List and that of the Defendant inserted.
 32. He asserted that it was not his decision to add the defendant's name in the Area List but that of the members. He however could not avail Minutes of the said decision.

Issues for Determination

33. Having elaborately reproduced and appreciated the respective parties' cases the only issue for determination is;



- i. Whether the Plaintiff has proved to be the proprietary owner of six acres comprised in Title No. Kapomboi/Kapomboi Block 3/Kobos/311.
 - ii. Depending on (i) above, whether the Plaintiff has made a case for the award of mesne profits.
34. I will hence interrogate the issues sequentially.

Analysis and Determination

Whether the Plaintiff has proved to be the proprietary owner of six acres comprised in Title No. Kapomboi/Kapomboi Block 3/Kobos/311.

35. The answer to the foregoing issue resides in an interrogation of the history of ownership of the original land parcel No. Kapomboi/Kapomboi Block 3/Kobos/311.
36. The dispute herein was first instituted before Land Dispute Tribunal by Michael Bor against Elijah Leitich. As can be gathered from paragraph five of the Land Tribunal's Application Claim Form, the material facts as presented by Bor are as follows;
- “Our father Mr. Arap Teritio subdivided his shamba and gave me 6 acres in Samitui Sub location Nandi District. After our father's death Mr. Elijah Leitich exchanged my six acres with Mr. Lewa who was in Kobos Farm without my knowledge.
37. The complainant elaborated the foregoing when he appeared before the Panel of Elders Kapomboi Location that comprised David Barng'etuny, Joseph Manialo, Jollyn Wekhui, Joseph Chelus and Musa Talam as the Chairman, the Vice Chairman, the Secretary, the vice secretary and member respectively.
38. His complaint was that when Elijah exchanged his bequeathed land in Nandi he refused to surrender the one in Kobos to him.
39. In his response before the Tribunal, Leitich stated as follows;
- “Mr. Michael Arap Bore has nothing to demand or complain from me. We had a case with his mother (Mrs. Paulina) and was ruled against her in 1987.”
40. Upon examining Mr. Leitich, the Panel of Elders found out that indeed Mr. Lewa had six acres of land in Kobos. Through his own admission, Leitich stated that Mr. Lewa exchanged his 6 acres of land in Kobos with his Nandi.
41. In his testimony, Mr. Leitich admitted to the Panel of Elders that the said piece of land in Nandi was the one his father one Mr. Tireito gave to his brother Michael Bor.
42. On 5th March 1997, the Panel of Elders represented by its member, Mr. Wakhui visited the land in Nandi, Samitui sub-location. Under the chairmanship of the area Assistant Chief, Mr. Silas Kiprotich Simatwa 8 other persons who were residents of the area were convened to discuss the land issue.
43. Kiptoo Arap Murie, one member of the meeting stated that Leitich sold the land belonging to their father Arap Titreito. It was his position that Arap Tireito had two wives, Leitich's mother and Bor's mother. He stated that Leitich sold his share give to Bor six acres of the land in Kobos.
44. Another member of Simatwa location, one Mr. Petero Arap Mengich stated that the late father of Leitich and Bor shared his portion of land to his two wives, one portion to the first wife and the second proton of 6 acres to Bor's mother. He stated that Leitich should give his brother six acres of land.



45. On his part, Patrice Arap Misei, the village elder in Simatoi location stated as follows;
- “Mr. Elijah Leitich and Mr. Michael Arap Bore are cousins of the same father and different mothers. I, personally asked Elijah why he was selling his cousin’s shamba. He replied that Arap Bore and his mother were living in Kitale Kobos.”
46. He stated further in those proceedings that “...all of us here (Samitui) know that Mr. Bore and his mother Paulina are at Kobos as Elijah had sold their land in Nandi.”
47. The village elder went on to state that there was no piece of land left for Arap Tireito’s family in Nandi after the land was sold.
48. The rest of the members including the area Assistant Chief shared the same position regarding the fact that the Leitich and Bor were step brothers and that Leitich sold Bor’s piece of land in Nandi. For avoidance of doubt the Assistant Chief stated as follows;
- “After inquiring from my panel of elders, I learnt that both Elijah and Arap Bore are cousins. Their late father Arap Tireito had subdivided his shamba to two sons to live in with their mothers. Afterwards Elijah exchanged Mr. Bore’s 6 acres with Mr. Lewa. Therefore, we have full confidence that Elijah should surrender 6 acres to Mr. Bore from his shares at Kobos”
49. Upon gathering the foregoing information, Kobos panel of Elders member made the Ruling that Arap Tireito had two wives and before he died he subdivided his land in two portions. One belonged to Elijah and his mother and another to Bor’s mother. They then made the following remarks;
- “We therefore have no doubt that the evidence we have gathered from Nandi and to our own investigation, Mr. Bore has the right to share the land at Kobos with his Cousin Elijah. Mr. Arap Bore’s family has suffered a deal due to Mr. Elijah’s ignorance. So we Order the Survey of Kenya to subdivide the land Mr. Elijah Leitich is occupying in Kobos and give 6 acres to Mr. Bore.
50. I now turn to the instant matter. I have carefully perused the Decree of the Court in Senior Principal Magistrates Court at Kitale Mand Case No. 71 of 1997. The findings of the Kapomboi Land Dispute Tribunal, elaborated in the preceding paragraphs, were adopted as Judgment of Court on 24th October 1997. Subsequent upon the foregoing decree the eviction Order dated 20th July 2000 was issued. It was later reissued on 22nd September 2000. Accordingly, Leitich was ordered out of the 6 acres.
51. I have also deeply perused the through the Judicial Review Application No. 28 of 1998 lodged on 5th January 1998 by Elijah Leitich against Kapomboi Land Disputes Tribunal and Bore as an interested party. Leitich sought to quash the decision of the Land Tribunal. He acknowledged in the Application that the decision of the Tribunal was adopted as an order of the Court in Land Case No. 71 of 1997. The suit never saw light of day. It was dismissed on 23rd August 2001 by Hon. Lady Justice Roslyne Nambuye for want of prosecution. That, effectively meant that the decision of the Land Tribunal stood.
52. I have carefully pitted the foregoing findings against the evidence adduced by PW1, PW2 and that of DW1 and DW2. First, it is important to note that the evidence of DW2 seems to me to be a mere re-litigation of the issues which were determined by the panel of elders in the Tribunal whose decision was adopted by the Court in Land Case 71 of 1997.



53. I find that there is an irrefutable consistency in the entire evidence adduced by the Plaintiff that the six (6) acres of suit land at Kobos Farm belongs to Bor. That is also borne by the Defendant's admissions in cross-examination that indeed the suit land, in its history of title change from the original to the current one she (DW1) resided on and was in her name although after the subdivisions she alluded to all had the root title in the land in issue.
54. The entirety of the process before the Land Dispute Tribunal, including making a visit to Samitui village to ascertain the ownership status of the land thereon was thorough. It was beyond reproach and cannot be questioned by this Court. Moreover, the judicial review application that sought to quash it was dismissed. Therefore, the decree of the Court remains as it was.
55. The Evidence adduced by the villages at Samitui village in Nandi was corroborated by the evidence of the PW1 and this Court's own records in Kitale Senior Principal Magistrates Court Land Case No. 71 of 1997 and in Judicial Review Case no. 28 of 1998 which this court takes judicial notice of. Conversely, the evidence by the Defendant was not in support of their case but rather of the Plaintiff. The Defendant's testimony that they moved from Nandi and bought land in Kobos is consistent with the narrative of the Plaintiff.
56. The Defendant went to the extent of admitting that there was had been an on-going case between her husband and Bor where the Court awarded Bor six (6) acres out of the twelve (12) they had. She stated he foregoing land is the same one that is before this Court but stated that she did not want to surrender the portion belonging to Bor since her husband implored her never to give it away.
57. It was the Defendant's own testimony that should the Court find the Plaintiff to be the owner of the six (6) acres, she would move out of her portion and relocate the persons she unlawfully sold the Plaintiff's land to her own portion so as to ensure the Plaintiff takes vacant possession of his rightful share.
58. In addition to that, the totality of DW2's evidence was a testament, including the claim that he did not know that Leitich and Bor were step-brothers and denial of knowledge of the suit in Kitale Land Case No. 71 of 1997 was an indication of collusion by the Defendants to try and make this Court believe that the suit land was solely owned by Leitich, the Defendant's deceased husband.
59. Deriving from the foregoing, I do find that on a balance of probability, the Plaintiff has proved his case that indeed he is entitled to six (6) acres in the original land parcel No. Title No. Kapomboi/Kapomboi Block 3/Kobos/311, and that is to be so irrespective of whether the Defendant has sold the land or part thereof as to remain with less than the six (6) acres which issue I will come to as I deal with the doctrine of *lis pendens*.

Whether the Plaintiff has made a case for the award of mesne profits.

60. Mesne profits is defined by Section 2 of the *Civil Procedure Act* Cap 21 of the Laws of Kenya in the following manners: -

“Mesne profits”,

In relation to property, means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but does not include profits due to improvements made by the person in wrongful possession.”



61. In the case of *Rajan Shah T/A Rajan S. Shah & Partners v Bipin P. Shah* [2016] eKLR mesne profits were defined as hereunder;

“The term ‘mesne profits’ relates to the damages or compensation recoverable from a person who has been in wrongful possession of immovable property. The Mesne profits are nothing but a compensation that a person in the unlawful possession of others property has to pay for such wrongful occupation to the owner of the property. It is settled principle of law that wrongful possession is the very essence of a claim for mesne profits and the very foundation of the unlawful possessor’s liability therefore. As a rule, therefore, liability to pay mesne profits goes with actual possession of the land. That is to say, generally, the person in wrongful possession and enjoyment of the immovable property is liable for mesne profits”.

62. Order 21 Rule 13 of the *Civil Procedure Rules* provides as follows

13.

- (1) Where a suit is for the recovery of possession of immovable property and for rent or mesne profits, the Court may pass a decree
 - (a) for the possession of the property;
 - (b) for the rent or mesne profits which have accrued on the property during a period prior to the institution of the suit or directing an inquiry as to such rent or mesne profits;
 - (c) directing an inquiry as to rent or mesne profits from the institution of such suit until—
 - (i) the delivery of possession to the decree-holder;
 - (ii) the relinquishment of possession by the judgment- debtor with notice to the decree-holder through the Court; or
 - (iii) the expiration of three years from the date of the decree, whichever event first occurs.
- (2) Where an inquiry is directed under sub rule (1) (b) or (1) (c), a final decree in respect of the rent and mesne profits shall be passed in accordance with the result of such inquiry.”

63. In the case of *Attorney General v Halal Meat Products Limited* [2016] eKLR, the Court of Appeal spoke of Mesne Profits in the following terms: -

“It follows therefore that where a person is wrongfully deprived of his property, he/she is entitled to damages known as mesne profits for loss suffered as a result of the wrongful period of occupation of his/her property by another.”



64. The award of mesne profits was further discussed by the Court of Appeal in Civil Appeal 208 of 2018, *Christine Nyanchama Oanda v Catholic Diocese of Homa Bay Registered Trustees* [2020] eKLR. The learned judges observed as follows;

“It is settled law that where a party claims for both mesne profits and damages for trespass, the court can only grant one and not both. Mesne Profits is defined as the profit of an estate received by a tenant in wrongful possession between the dates when he entered the suit property and when he leaves (See: *Black's Law Dictionary* 9th edition). Mesne Profits must be pleaded and proved. In the case *Peter Mwangi Msuitia & Another v Samow Edin Osman* [2014] eKLR, this Court held as follows:

“As regards the payment of mesne profit, we think the applicant has an arguable appeal. No specific sum was claimed in the Plaint as mesne profit and it appears to us prima facie, that there was no evidence to support the actual figure awarded...”

65. As can be discerned from the foregoing, mesne profits must be pleaded and proved.

66. The Plaintiff herein does not avail any piece of evidence to prove his claim for the specific sum of Ksh. 720,000/-. The claim therefore fails.

67. As I bring this Judgment to a close, I must address a concern that emerged during trial. There is no doubt that the Defendant sold most of the suit land both before and during pendency of the suit hence the change in the parcel's original identity from land parcel Kapomboi/Kapomboi Block3/No. 311 to Kapomboi/Kapomboi Block633 and its latest parcel No as Kapomboi/Kapomboi Block3 to No. 743 d

68. Courts have been extremely stern on any litigant dealing with land or indeed any subject matter that is the subject of adjudication before them. They must remain firm on that issue. It smirks on the face of the Court and it is disingenuous for a party to think themselves as clever and try to change the character of the subject matter before the Court so as to defeat justice. Such conduct is despicable and must be greatly discouraged by the severest of the sentences a Court can mete out, as it amounts to indirect contempt of court, to the effect that, “Court, ‘utado’”?

69. In Civil Appeal 172 of 2010, *Rose Wakanyi Karanja & 3 others v Geoffrey Chege Kirundi & another* [2016] eKLR, the Court of Appeal, while citing with approval the decision of the High Court, discussed the consequences of dealing with the subject of litigation. The learned Judges observed as follows;

It is therefore our considered finding, and we hold that the deceased and the respondents could not deal with the suit property as it was the subject of contentious litigation pending in court.

70. In the High Court decisions of *Mawji v US International University & Another* [1976] KLR Page 199 it was held:-

“Until the court is able to determine the issue both justice and the equities in the case demand that the status quo be preserved so that if the plaintiff succeeds, he will not be left with an empty victory, the just fruits of which he cannot realize, and justice would be defeated.

Further, it would be a poor and insufficient system of justice, unethical to contemplate, if a successful plaintiff is forced to litigate again and again to restore the status quo either by



further proceedings in the same suit or by a fresh suit. If the property in dispute is transferred to a third party.”

71. The doctrine of lis pendens rests upon the foundation that it would plainly be impossible that any action or suit could be brought to a successful conclusion if alienations pendente lite were permitted to prevail. In *Bellamy v Sabince* IDEG & J 566 it was held:

“The doctrine of lis pendens intends to prevent not only the defendant from transferring the suit property when litigation is pending but it is equally binding on those who derive their title through the defendant, whether they had or had no notice of the pending proceedings. Expediency demands that neither party to a suit should alienate his interest in the suit property during the pendency of the suit so as to defeat the rights of the other party ...”

72. The Defendant, acted maliciously in purporting to sell the suit land whose ‘property’ the court was seized of. It can only be viewed as a bid to defeat the course of justice.

73. That said, the purported purchasers of the portion(s) of land during the pendency of this suit have no right over their pieces of land they purport to have bought because their agreements were made on an illegality, since no valid agreement or transaction could be effected over the land during pendency of this suit.

74. Having said that, it is my finding that the Plaintiff succeeds partly and the following final orders hereby issue;

- i. The Plaintiff is the lawful proprietor of 6 acres of that land comprised in the original land parcel No. Kapomboi/Kapomboi Block 3/Kobos/311.
- ii. A declaration is hereby issued that the Plaintiff, Josephat Kipkurgut Koske, is the lawful owner of six (6) acres comprised in L. R. No. Kapomboi/Kapomboi Block 3/Kobos/743
- iii. A declaration be and is hereby issued cancelling the registration of the Defendant as the owner of all that parcel of land known as Kapomboi/Kapomboi Block 3/Kobos/743 and an order is issued to the effect that Plaintiff be registered as the owner of the said parcel of land forthwith.
- iv. The Defendant, and any other person claiming through her whether as servant, heir, successor or assign or purchaser is hereby ordered to vacate the 6 acres of land comprised in the original land parcel No. Kapomboi/Kapomboi Block 3/Kobos/311 now to be registered belonging to the Plaintiff herein.
- v. The purported sale(s) of the suit land during pendency of the suit herein are hereby quashed and the same declared unlawful and of no effect ab initio.
- vi. The Plaintiff’s claim for Mesne Profits of Kshs. 720,000/- was not proved and is hereby declined and dismissed.
- vii. Cost of the suit shall be borne by the Defendant.

75. It is so Ordered.

JUDGMENT DATED, SIGNED AND DELIVERED AT KITALE VIA ELECTRONIC MAIL ON THIS 21ST DAY OF FEBRUARY, 2024.

HON. DR. IUR FRED NYAGAKA,

JUDGE

