



**Chumo v Onsase & 4 others (Environment & Land Case
74 of 2016) [2024] KEELC 4349 (KLR) (30 May 2024) (Judgment)**

Neutral citation: [2024] KEELC 4349 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ENVIRONMENT & LAND CASE 74 OF 2016**

MC OUNDO, J

MAY 30, 2024

BETWEEN

ALEXANDER KIPNGENO K. CHUMO PLAINTIFF

AND

JOSEPHINE KERUBO ONSASE 1ST DEFENDANT

THE DISTRICT LAND REGISTRAR, BOMET 2ND DEFENDANT

THE HON. ATTORNEY GENERAL 3RD DEFENDANT

AFRICA GOSPEL CHURCH (KENYA) 4TH DEFENDANT

RADIANT HARDWARE LIMITED 5TH DEFENDANT

JUDGMENT

1. Vide a *Plaint* dated 29th September, 2016 and Amended on 23rd July, 2018, the Plaintiff herein sought for the following orders; -
 - i. A declaration that the actions of the 1st and 2nd Defendant s amounts to violation of the right to property in land parcel numbers Kericho/Silibwet/1771, 1772, 1773, 1774, 1775 and 1776 and the Plaintiff is entitled to damages thereof.
 - ii. A declaration that the verdict of the 2nd Defendant dated 17th August, 2016 was illegal, un-procedural, abuse of office, lacks jurisdiction, contradicts the spirit and tenor of chapter 6 of *the Constitution* hence the 2nd Defendant is unfit to hold a public office.
 - iii. An order directing the Land Registrar, Bomet County to cancel the 4th and 5th Defendant’s registration as proprietors of Kericho/Silibwet 1470 and 1471 respectively and the same be reversed to the Plaintiff or in the alternative, the county surveyor be directed to visit the



scene and ascertain boundaries if there is any overlap with land registration numbers Kericho/Silibwet/1771, 1772, 1773, 1774, 1775 and 1776.

- iv. Permanent injunction restraining the Defendant s, their agents, servants or any other person acting on their behest from interfering, occupying, entering or otherwise interfering with the Plaintiff's use and enjoyment of the land parcel numbers Kericho/Silibwet/1771, 1772, 1773, 1774, 1775 and 1776.
 - v. An order directing the 2nd Defendant to provide the Plaintiff with the green card or other official records for his parcel of land L.R No. Kericho/Silibwet/1771.
 - vi. Costs of the suit.
 - vii. Any other or further relief as may seem fit for the court to grant.
2. The 1st and 5th Defendant s filed their Statements of Defence dated 26th March, 2018 which were consolidated and amended on 31st May, 2021 wherein they denied each and every allegation of facts contained in the Plaintiff putting the Plaintiff to strict proof especially on the allegation that the 1st Defendant had encroached into his parcels of land No. Kericho/Silibwet/1773, 1774, 1775 and 1776. The 1st Defendant also confirmed that a hearing had taken place wherein the 2nd Defendant had given its verdict. She further stated that Kericho/Silibwet/1471 had not been in her possession by July, 2016 as she had sold the same to the 5th Defendant in January, 2016. She denied having sold land parcel No. Kericho/Silibwet/1470 since she had never been in possession of the same.
 3. Their argument was that the Plaintiff's suit was defective, incompetent, frivolous or vexatious, bad in law, and or an abuse of the court process wherein the 1st Defendant reserved the right to raise a preliminary objection on a point of law to have the suit struck out with costs. The 1st and 5th Defendant s thus prayed that the Plaintiff's suit be dismissed with costs to them.
 4. In their counterclaim, the 1st and 5th Defendant stated that at all material times, the 1st Defendant's (now Plaintiff) husband was the registered owner of the land parcel numbers Kericho/Silibwet 1470 and 1471 which were subdivisions of land parcel No. Kericho/Silibwet/817. That on or about October 2017, the Plaintiff (now Defendant) had encroached into parcel of land No. Kericho/Silibwet/1470. That on or about 21st July, 2016, after the 2nd Defendant had visited the ground, it had been concluded that No. Kericho/Silibwet/818 had encroached into Kericho/Silibwet/1470 during its subdivision. The 1st Defendant (now plaintiff) stated that due to the Plaintiff's (now Defendant) fraudulent activities, she suffered financial loss and damage.
 5. She particularized fraud on the part of the Plaintiff (now Defendant) as colluding with the ministry of lands officials to encroach into land parcel No. Kericho/Silibwet/817 sub division number 1470 and annex it into his parcel of land number Kericho/Silibwet/818 thereby obtaining a new number.
 6. The 1st and 5th Defendant thus prayed for judgement against the Plaintiff (now Defendant) for orders that; -
 - i. A permanent injunction restraining the Plaintiff (now Defendant), its agents, and servants or any other person acting on their behalf from interfering, occupying or entering land parcels registration numbers Kericho/Silibwet/1470 and 1471.
 - ii. An order of cancellation of the resultant titles upon the survey and subdivision of L.R. No. Kericho/Silibwet/818 being parcels Numbers Kericho/Silibwet/1771-1776. In the alternative land parcel numbers Kericho/Silibwet/1771-1776 be resurveyed and their respective measurements be readjusted accordingly.



- iii. General damages.
- iv. Costs of the suit.
7. The 4th Defendant vide its Statement of Defence dated 7th September, 2018 denied the allegations contained in the Amended Plaintiff putting the Plaintiff to strict proof while stating that the 1st Defendant's spouse had sold a portion of the land parcel L.R No. Kericho/Silibwet/817 to one Micah Kipkorir A. Ngetich, who had thereafter sold the same to Abdirahman Abdullah Abdille who then sold it to Livingstone Kipsiele Langat from whom the 4th Defendant had bought the same and had it registered in its name as L.R No. Kericho/Silibwet/1470 for which the Plaintiff had not laid claim and therefore it was entitled to the enjoyment of its rights therein.
8. After compliance with pre-trial directions, the matter proceeded for hearing on 5th July, 2018 wherein Alexander Kipngeno Chumo testified as PW1 to the effect that he was a retired Information Technology expert at Kenya Commercial Bank Limited and although he resided in Nairobi yet he had a home in Narok.
9. He produced the title deeds to the said parcels No. Kericho/Silibwet/1771, 1772, 1773, 1774, 1775 and 1776 as Pf exh 1 (a –f) and their respective receipts as Pf exh 2 (a–f) and then proceeded to testify that he had bought the parcels of land from one Francis Mibey wherein he had taken possession, fenced and planted a live fence around them. That the farm had been idle until the year 2016 when he realized that it had been invaded and fenced off partially after he had been alerted of the said development by his late brother in law Charles. That subsequently, he had conducted a search at the Lands office where he had been issued with search certificates in respect of land parcels No. Kericho/Silibwet/1772, 1773, 1774, 1775, 1776 but not No. 1771 despite his request for the same. He produced the Certificates of Search as Plaintiff Exhibit 3(a-e).
10. He also marked the Registry Index Map (RIM) for the 6 parcels of land as PMFI 4 before testifying that when he conducted a search and realized that the search Certificate for parcel number Kericho/Silibwet/1771 was missing, he had instructed his Advocate to write to the Land Registrar who had responded and had summoned them for a meeting at the site. That the meeting had been attended to by his late brother in law Charles, the Land Registrar and the District Surveyor.
11. That he had been informed that a visit to the site had been made to mark land parcel No. Kericho/Silibwet/1471 belonging to the 1st Defendant where, the Land Registrar had then prepared a report dated 17th August, 2016 by which he had made a finding that the subdivision of Kericho/Silibwet/818 had resulted into land parcels No. 1773, 1774, 1775 and 1776 which subdivisions had overlapped on parcel of land No. Kericho/Silibwet/1470. He produced the Registrar's report as Pf exh 5.
12. He testified that land parcel No. Kericho/Silibwet/818 was registered to Francis Mibei and that it had been subdivided into the suit properties in the year 1996 as per the mutation form which he produced as Pf exh 6. He clarified that land parcel No. Kericho/Silibwet/1470 was a sub-division of land parcel No. Kericho/Silibwet/817 for which he produced its mutation as Pf exh 7 stating that the said land parcel No. Kericho/Silibwet/817 belonged to the 1st Defendant herein.
13. His testimony was that part of his land which had been fenced off was parcel No. Kericho/Silibwet/1771, whose green card had been missing. That parcel No. Kericho/Silibwet/1771 did not share a boundary with land parcel No. Kericho/Silibwet/817 hence he could not understand how the same had overlapped with land parcel No. Kericho/Silibwet/1470. He was categorical that such an allegation was as a result of collusion between the 1st Defendant and the Land Registrar to deny him



his land. But He thus prayed for an injunction to restrain the 1st and 2nd Defendant s from interfering with his land.

14. On cross-examination by the Counsel for the 1st Defendant, he confirmed that land parcel No. Kericho/Silibwet/818 had been sub-divided in the year 1996 wherein after he had received his title deeds in June 1998. That whereas he did not know when land parcel No. Kericho/Silibwet/817 had been sub-divided, yet by the time he bought his parcels of land, the boundaries between land parcel numbers Kericho/Silibwet/ 817 and 818 had been well marked.
15. He also confirmed that he did not reside on the suit properties and therefore he did not find the 1st Defendant on land parcel No. Kericho/Silibwet/1470. That whereas his land parcel No. Kericho/Silibwet/1771 had been fenced overnight, he did not know the person who had done so at the time but later came to learn that it had been the 1st Defendant who had fenced the same pursuant to the Land Registrar's letter dated 17th August, 2016. That there had been an attempt to superimpose land parcel No. Kericho/Silibwet/1470 onto land parcel No. Kericho/Silibwet/1771.
16. When he was referred to Paragraph 7 of the Complaint, he confirmed that he had not indicated that the 1st Defendant had encroached on parcel No. Kericho/Silibwet/1771 and neither was that land mentioned in his prayers. He also confirmed that whereas he did not know the status of land parcel No. Kericho/Silibwet/1470 and 1471, yet he had been visiting his parcels of land.
17. Upon being cross-examined by the Counsel for the 2nd and 3rd Defendants, but he confirmed that he was aware that his parcel of land had been subdivided 5 years after the subdivision of land parcel No. Kericho/Silibwet/817 and that beacons had been placed on his land during the subdivision. He also confirmed that the 1st Defendant was not his immediate neighbor since land parcel No. Kericho/Silibwet/817 bordered his other land No. Kericho/Silibwet/1776.
18. He also confirmed that his brother in law had represented him when the Land Registrar visited the site and that he had seen the report prepared after the site visit. He clarified that he was not claiming land parcel No. Kericho/Silibwet 1470 but to parcels No. Kericho/Silibwet/1773, 1774, 1775 and 1776 and that there be a cancellation of title to land parcel No. Kericho/Silibwet/1470 if the same had been superimposed on his land.
19. In re-examination he testified that he had filed the instant suit on the basis of the Land Registrar's letter dated 17th August, 2016. He was categorical that there had been beacons placed on the 6 parcels of land when he bought them wherein after he had fenced the said parcels of land. That there had not been dispute between the person who had sold him the parcels of land and the neighbors.
20. PW1 was later recalled for cross-examination by the counsel for the 4th Defendant wherein had reiterated that he was the registered proprietor of land persons No. Kericho/Silibwet/1771, 1772, 1773, 1774, 1775, and 1776 which came about as a result of the subdivision of land parcel No. Kericho/Silibwet/818 as per Pf exh 7. He also confirmed that Pf exh 6 was a mutation form in regard to land parcel No. Kericho/Silibwet/818 which had been subdivided into parcels of land numbers Kericho/Silibwet/1653, 1654, 1771 -1776. He proceeded to testify that whereas the receipt number had not been clear, yet it looked like D423745 with a registration date of 15th August, 1996. That the persons interested as per the mutation form had been Francis Mibei and Mathew K. Ngeno. He also confirmed that the suit land had been visited on 19th June, 1998 which was the date when the subdivisions which resulted into No. Kericho/Silibwet/1771 – 1776, was been done.
21. He also confirmed that whilst the date for the development plan was 15th August, the year was not clear. That land parcel No. Kericho/Silibwet/1653 was owned by two people while land parcel No. Kericho/Silibwet/1654 belonged to Mathew. He maintained that the subdivision of his portions of



- land had been done on 19th June, 1998 whereby confirmation had been done and titles issued. That field had been visited on 15th August, 1996 after which the Development sketch plan for land parcels numbers Kericho/Silibwet/ 1771 – 1776 had been prepared as per the mutation form. He explained that Francis Mibei and Matthew K. Ngeno were the ones who owned the original farm No. Kericho/Silibwet/818. That when he did the search, he could see that the mutation had been registered.
22. When he was referred to Pf exh 7, he testified that land parcel No. Kericho/Silibwet/818 had been registered on 6th September, 1994. That land parcel No. Kericho/Silibwet/818 had encroached land parcel No. Kericho/Silibwet/817 by 8 meters and he had no claim then over the 4th Defendant's land.
 23. Upon being referred to Pf exh 8, he confirmed that the report had concluded that "CK" was the boundary line and that during the survey, reliance had been placed on Registry Index Map only. That whereas the professional knew what document to rely on, the Registry Index map could not be conclusive. He testified that from the exhibits he had submitted it was only the court which could decide whether the 4th Defendant's piece of land was been his or not.
 24. In re-examination, he confirmed that indeed land parcel No. Kericho/Silibwet/1470 belonged to the 4th Defendant but from the surveyor's technical findings, land parcel No. Kericho/Silibwet/817 had encroached into his land by 8 meters.
 25. When he was referred to Pf exh 8, he testified that whereas the Registry Index Map showed 90 meters, on the ground it was 98 meters. Further that whilst line BC was 99 meters on the ground, on the Registry Index Map, it was shown as 97 meters making it a different of 2 meters. That the second technical finding relating to land parcel No. Kericho/Silibwet/818 indicated that line KI was 16.2 meters on the ground whereas it had shown to be 17 meters on the Registry Index Map making it short of 1.8 meters. That while AK showed 196 meters on the ground, it had been 205 on the Registry Index Map falling short by 9 meters on the ground.
 26. Charles Kipkemoi Mutai testified as PW2 to the effect that he was a Principal Land Surveyor working with the Ministry of Lands and Physical Planning at Bomet Survey Office. That Patrick K. Rotich who was his colleague was previously based at the same office in Bomet but had since been transferred to Nakuru Survey Office under the same Ministry. He confirmed that he had worked with him under the same Ministry but not under the same office.
 27. That he also knew Samuel K. Langat who was the immediate former District Surveyor at the Bomet Survey office and who had since been transferred to Survey Headquarter in Ruaraka in Nairobi. That he had worked with the said Mr. Langat for about 7 months hence he was conversant with his signature and handwriting. He confirmed that the signatures contained in the report dated 26th February, 2020 which had been addressed to the court, belonged to Patrick Rotich and Samuel Langat persons who had prepared it pursuant to the order by the court seeking that they ascertain the boundary between two parcels of land No. Kericho/Silibwet/818 and Kericho/Silibwet/817, and the resulting sub-divisions therein after.
 28. That the exercise had been done on 6th February, 2020 in the presence of the Plaintiff, the Defendants and the Counsel for the Plaintiff. That the resulting numbers as a result of the subdivision of land parcel No. Kericho/Silibwet/817 were Kericho/Silibwet/1173, 1174, 1175, 1470 and 1471 while the resulting numbers out of the subdivision of land parcel No. Kericho/Silibwet/818 had been Kericho/Silibwet/1653, 1654, 1771, 1772, 1773, 1774, 1775 and 1776. That the report had not mentioned a boundary dispute between the parent parcels of land.
 29. He referred to the attached sketch to explain that there had been two scenarios; that is, a boundary line indicated by "CK" and another boundary line shown by "JD". On the technical finding, he



- explained that the boundary line “ABDJA” had been shown as the 1st Defendant’s parcel of land No. Kericho/Silibwet/817 while the boundary line “CEIKC” was the Plaintiff’s parcel of land of No. Kericho/Silibwet/1771-1776. He confirmed that land parcel No. Kericho/Silibwet/1776 was the one that boarded land parcel No. Kericho/Silibwet/817.
30. That the boundary line “IEFGHI” had been shown by one Matthew Ngeno whose portion was land parcel No. Kericho/Silibwet/1654 while the boundary line “KCDJK” had been shown by the 5th Defendant representative as their portion that is Land parcel No. Kericho/Silibwet/1471 measuring 0.09 hectares on the title. He clarified that the disputed portion had been “CKJDC”.
 31. That the conclusion of the report had been that as per the RIM, the boundary between land parcel numbers Kericho/Silibwet/817 and Kericho/Silibwet/818 was line “CK”. That whereas the Registry Index Map was the only available document that his colleagues had relied on, the same could not be an authority on boundaries. He explained that the kind of survey as had been captured in the Registry Index Map were technically referred to as general boundary survey as opposed to what was called the fixed boundary survey.
 32. That if line “CK” was adopted as the boundary between the two parcels of land, it meant that there was a need to re-survey the resulting parcels of land parcel No. 817 viz a viz their acreage and measurements and apportion the same appropriately. That conversely, if line “JD” was adopted as the boundary between land parcel numbers Kericho/Silibwet/817 and Kericho/Silibwet/818, there was need for a resurvey of land parcel numbers Kericho/Silibwet/1771-1776 and the adjustment of their areas accordingly. That further, land parcel numbers Kericho/Silibwet/1775 and 1776 needed to be cancelled and the area of land parcel No. Kericho/Silibwet/1773 be rectified on the land register and the Registry Index Map.
 33. He explained that the line “JD” was cutting through 3 parcels of land hence the recommendation of cancellation of parcels of land numbers Kericho/Silibwet/1775 and 1776. He urged the court to give the way forward. That from the enclosed copy of the map prior to the sub-division of land parcel numbers Kericho/Silibwet/817 and 818, the 2nd map had the subdivisions of the said parcels intact. He produced the Surveyors Report as Pf exh 8.
 34. He testified that he had the current Registry Index Map (RIM) of the area dated 10th February, 2022 which contained the resultant subdivisions of land parcels numbers Kericho/Silibwet/818 which were Kericho/Silibwet/ 1653, 1654, 1771, 1712, 1773, 1774, 1775 and 1776. That the same showed that land parcel numbers Kericho/Silibwet/1470 and 1471 were a subdivision of land parcel No. Kericho/Silibwet/ 817. That from the mutation form the other subdivisions of land parcel No. Kericho/Silibwet/817 were parcel numbers Kericho/Silibwet/ 1173, 1174 and 1175 which had not been indicated on the Registry Index Map. That what had been indicated on the RIM were land parcel numbers Kericho/Silibwet/ 1473, 1474 and 1475 which must have been an error. That being that the mutation of land parcel No. Kericho/Silibwet/817 had been done at the same time, the error was most likely on the Registry Index Map (RIM).
 35. He further explained that the numbers should be sequential but in both cases two numbers had not been sequential. He produced the Registry Index Map (RIM) as Pf exh 4.
 36. His evidence on being cross-examined by the counsel for the 1st and 5th Defendant had been that land parcel numbers Kericho/Silibwet/ 818 and 817 were first registrations. That they were original numbers and had been captured in the RIM. He clarified that RIM for that period was not available since the parcels of land had been registered as adjudication section whereby a map to the said section



- had been prepared and the copies of the said maps were kept by the custodian of maps the Director of Survey.
37. That he did not know the acreage of the respective parcels of land as the records were with the land registrar. That the RIM which had been used to register the two parcels of land would show their boundaries. That if there had been a discrepancy in the boundaries, the same was due to the non-availability of the RIM which gave a rough estimate of the general boundaries.
 38. That whereas mutation was drawn upon sub-division of a parcel of land, the original parcels of land were not supported by the mutation. Further, that whereas what determined the ground boundaries was the RIM, he did not have the RIM for the first registration. That as per the mutation form, land parcel No. Kericho/Silibwet/817 had been subdivided in the year 1994 and the respective acreages of each of the subdivision had clearly been shown at page 2 of the said Mutation Form.
 39. His evidence was that the acreage of resultant land was inclusive of the entire acreage of the mother title. That upon the sub-divisions of land parcel numbers Kericho/Silibwet/818 and 817, new mutations had emerged. That copies of the map reflecting the resultant sub-divisions of land parcel number Kericho/Silibwet/817 had been attached to the Surveyor's Report. He however clarified that he did not have the map that supported the registration of the parcels of land.
 40. That the map as at 10th February, 2022 showed that land parcel No. Kericho/Silibwet/818 had been sub-divided in the year 1996. That whereas he had the mutation of the said land parcel, he did not have the map of the year 1996 since they did not keep original editions. That they only did amendments to the original map as opposed to re-drawing. That were there blue prints, one would have known about the various subdivisions. His explanation was that the records that were kept after sub-division were the first edition and current edition and that one could only rely on the mutation forms. That once the mutation was prepared, the same was forwarded to the Registrar to prepare titles since the title was generated from the documents given by the surveyor. He confirmed that his colleagues had relied on the RIM to make their report which had confirmed that there was an overlap of parcels of land No. Kericho/Silibwet/818 and 817 and by extension the resultant sub-division numbers. He explained that the acreage of the parcels of land especially the original numbers was not the primary basis for fixing or having the boundaries of the parcels of land on the ground because the RIM created the titles and not the other way around. That the map which were generated under the general survey had come to being without the titles for the first registration.
 41. That the foot note on the RIM had been written "this map is not an authority on boundaries". He explained that fixed boundaries on the other hand were in accordance with the statute and were accurate in terms of the calculations for instance the commercial plots which were contained in a survey plan with co-ordinates and bearings.
 42. On cross-examination by the counsel for the 4th Defendant, he was referred to Pf exh 4 wherein he confirmed that the same was not an authority in terms of confirming the boundaries. That the said map was a 78th edition since the first edition had been amended 77 times. That whilst all the amended maps always showed the list of amendments and the name of the persons and signature, the instant map did not show who had amended the 78th edition. That the said 78th edition had come as a change of boundary of one of the parcels of land.
 43. His evidence was that he had collected the map from their offices in Kericho as per the stamp, date and signature hence could confirm that the same had been in custody of their offices. He reiterated that they relied on mutation forms to see what had caused the subdivisions. He confirmed that land parcel No. Kericho/Silibwet/817 had been sub-divided on the 6th September, 1994. That the mutation forms



were from the survey office and the numbers were given therein although sometimes one could do a subdivision and keep the document even up to 5 years. That the date for registration of land parcel No. Kericho/Silibwet/817 was 6th September, 1994.

44. When he was referred to Pf exh 7, he confirmed that whereas the mutation form had various dates, the date on the page which should be the site visit had not been visible. That page 2 showed that the sketch had been done on 16th July, 1990 while page 3 contained the date when the surveyor had consented, being the 18th July, 1990. That page 4 on the other hand contained the date that the District Surveyor had signed the document, which was on the 18th July, 1990. He maintained that as per that mutation, land parcel No. Kericho/Silibwet/817 had been registered on 6th September, 1994 by the land Registrar. That whereas it could not necessarily be that there had not been a site visit, it would be difficult for him to know the date of the said site visit as the same was not visible. That the resultant sub-divisions of land parcel No. Kericho/Silibwet/ 817 were Kericho/Silibwet/1173, 1174, 1470 and 1471. That whilst there had been writings on the top done by the person who had done the certification which were not erroneous, land parcel No. Kericho/Silibwet/1470 was clear while part of the number for the land parcel No. Kericho/Silibwet/1471 was not visible. That further, the acreage for each parcel of land was not clear, as the same had been blurred but if one conducted a search, the acreages would be clear.
45. When referred to Pf exh 4, he stated that the parcels of land that had been captured on the map as the subdivisions of land parcel No. Kericho/Silibwet/817 were parcel numbers Kericho/Silibwet/1470 and 1471, and that the other parcels which were sitting on parcel No. Kericho/Silibwet/817 were parcel numbers Kericho/Silibwet/1473, 1474 and 1475. That from land parcel No. Kericho/Silibwet/ 817 two parcels had emerged on the map, that is Kericho/Silibwet/1470 and 1471. He then stated that he was not aware of the dispute between land parcel numbers Kericho/Silibwet/1470 and 1471.
46. His evidence was that a cartographer would be in a better position to give a proper explanation on the discrepancies on the map. When he was referred to Pf exh 6, he explained that the same was in regard to land parcel No. Kericho/Silibwet/818 which had been sub-divided into 8 parcels of land. That as per its mutation form, page 1 had not been dated, page 2 was dated 15th August, 1998, page 3 was dated 19th June, 1998 wherein the District Land Registrar had signed the same on 19th June, 1998.
47. He stated that the land Registrar had not signed the mutation form as approved for which the records from land Registry could explain more. When he was referred to Pf exh 7 again, he confirmed that the same showed that the document had been registered on 6th September, 1994 and that although the acreage had not been clear, a clearer version could be obtained from the land registry at Bomet. That the registered area of the titles was not a necessary indication of the parcels on the ground.
48. He maintained that land parcel No. Kericho/Silibwet/817 and 818 were original numbers which had come into being as an adjudication area. That there were air survey by aeroplanes that did the Preliminary Index which were the origins of the RIMs hence the discrepancies on the boundaries. That he did not generate the report which did not mention any beacons and that the other documents to be relied on while having the amendment were the mutation forms. That since he did not go to the ground, he could not tell whether the mutation forms had been used or not.
49. When he was referred to Pf exh 6, he testified that as per the copy that he had, he could not tell if land parcel No. Kericho/Silibwet/818 had been registered. He confirmed that he had obtained the mutation form, which normally was in 3 sets, from the survey office and explained that since the Bomet office came into being in the year 1992, some records might have remained in the Kericho office. He explained that out of the 3 sets of mutation forms, one set remained at the amendment office in Kericho, while 2 sets were taken to the Bomet office wherein as one set remained at the survey office, the other set



was submitted at the Land Registrar's office for registration of the resultant number. That the set that remained with land registry was the one that was usually signed by the Registrar as registered which explained why the set of mutation forms found at the surveyor or amendment office did not contain the land Register's signature.

The Plaintiff thus closed his case.

50. The 1st Defendant's case opened with the testimony of Josephine Kerubo Onsase, the 1st Defendant herein who testified as DW1 to the effect that parcel No. Kericho/Silibwet/817 had been registered to Tom Onsase who was her husband and who had who passed away in the year 2016. That her husband had subdivided parcel No. Kericho/Silibwet/817 but she did not know the resultant parcels of land after its subdivision. She testified that although land parcel Kericho/Silibwet/818 was a bit far from land parcel No. Kericho/Silibwet/817, yet she was aware that land parcel No. Kericho/Silibwet/1470 had been a resultant subdivision of land parcel No. Kericho/Silibwet/817.
51. That due to the clashes the year 1997, they had gone back to Kisii whereupon her return after 10 years, they had found that the fence on land parcel No. Kericho/Silibwet/1470 had been removed and cows were grazing therein. That she had gone back to Kisii and informed her husband, who had been sick, about the destroyed fence. That when her husband recovered, they had returned to their land in Kericho so that he could show her which portion to sell.
52. That it had been after-the demise of her husband, that she had received a letter from one James informing her that she had sold his land. That initially she had not reported of the broken fence but after it was broken a second time, she had reported to the same to Land Registrar and the police whereby she had been given an OB.
53. When she was referred to a mutation form registered on 6th September, 1994, she confirmed that parcel No. Kericho/Silibwet/817 had been subdivided resulting into Kericho/Silibwet/1173, 1174, 1175, 1470 and 1471. She marked the Mutation Form as DMFI 1
54. Her evidence was that after the fence had been destroyed, she had gone to the Land Registrar to inquire if she had trespassed on somebody's land wherein a surveyor whom she had been referred to had confirmed that the land still belonged to her late husband pursuant to which she had fenced it again. That whereas she could not remember if she had been given any letter by the Land Registrar, she was categorical that he had visited to the land.
55. When she was referred to a letter dated 27th June 2016, she confirmed that it had was the Land registrar's letter. She then marked it as DMFI 2 stating that upon the visit by the Land Registrar to the land, he had assured her that the land was hers wherein he had written to her a letter dated 17th August, 2016 which letter, she produced as Df exh 3.
56. It was her testimony that she did not know anything about land parcel Kericho/Silibwet/1471 but that she had built on land parcel No. Kericho/Silibwet/ 1470. That she only came to know about the existence of land parcel No. Kericho/Silibwet/1471 upon measurements being taken. That she had even buried two of her grandchildren on land parcel No. Kericho/Silibwet/1470. She prayed that justice prevail in her case.
57. On being examination by the court, she testified that there had been people living in her house and that it had been her nephew who had informed her the fence had been removed but the land was still intact.
58. On being cross examination by the counsel for the Plaintiff, she confirmed that before land parcel No. Kericho/Silibwet/817 was sub-divided, it measured 2 ½ acres. When she was referred to Pf exh 7, she stated that at the time she was building, there had been no road hence the building might have taken



- some part of the road. That she had not measured the land again therefore, she could not tell whether it was now 2 ½ or 1 ½ acres since she had no document showing the acreage.
59. She confirmed that she was present when land parcel No. Kericho/Silibwet/817 had been sub-divided in the year 1994, although she did not know the number of parcels of land that had emerged from the said sub-division because her husband had sold the resultant lands to other people and what had remained was land parcel No. Kericho/Silibwet/1470. That she had not measured the said remaining portion but it was neither big nor small.
 60. She maintained that she did not know about land parcel No. Kericho/Silibwet/1471 and that she did not sell any land to the church but her husband had sold land, at the end, to somebody called Cheress which portion of land now stood the church. She confirmed that the church was sitting on land parcel No. Kericho/Silibwet/1470, while she had sold land parcel No. Kericho/Silibwet/1471 measuring 50 x100 to Radient, a long time ago via gentleman's agreement. That although beacons had been placed, on the portion at the end, she had no idea whether they were still in place.
 61. On being cross-examined by the counsel for the 4th Defendant, her evidence was that parcel No. Kericho/Silibwet/1470 belonged to Mama Tapranditch who was the original owner and who had sold it to her late husband in the year 1976 after which they had been issued with a title deed in the year 2016 after her husband's death.
 62. That her late husband had sold the said parcel of land to another person call "sisi kwa sisi" who gave it to his brother called Nyige but she did not know whom Nyige had sold the land to. That whereas she had heard her husband mention Nyige Kipkorir Ngetich, she never heard him mention Abdul Ramon Abudlai and that her husband had not hidden from her the fact that he had sold a parcel of land.
 63. That it had neither been her husband nor herself who had sold the parcel No. Kericho/Silibwet/1470 to the church but that the person who had been was sold to parcel No. Kericho/Silibwet/1471 was the one who had brought the confusion. That the parcel of land in dispute was in another place.
 64. She maintained that she had sold land to the 5th Defendant although there had been no agreement between herself and the said 5th Defendant. That she could not remember the land parcel number. That the 4th and the 5th Defendant's land bordered each other. That the surveyors had also been on the land wherein they had confirmed that it was hers. That the parcel of land that both the Plaintiff and the 5th Defendant lay claim to was her land.
 65. In re-examination, and when referred to DMFI, she confirmed that it was the resultant parcels of land. She went on to state now that the sale agreement with the 5th Defendant had been executed before a lawyer where she had appended her thumb print, but that the 5th Defendant did not take possession of the land. That she used to plough the land where the church stood and further that the case had been filed after she buried her husband.
 66. She maintained that her husband had sold the land to Cheress. That Plot No. Kericho/Silibwet/817 was originally 2 ½ acres but after the road was constructed, it affected its size hence she did not know its current acreage. She confirmed that her husband had sold land to "Sisi kwa Sisi" and that the people struggling for the land herein had refused to say who had sold the land to them.
 67. Daniel Onyono Getusie testified as DW2 to the effect that the 1st Defendant was his mother and that Tom who had passed away was his father. That he knew about plot No. Kericho/Silibwet/817 as it was the land upon which he had grown up. That his father had bought the said land in the 1970's after which he had sub-divided it into 5 portions and whereas he had sold some of the portions of land, he



- had given his wife, the 1st Defendant herein land parcel No. Kericho/Silibwet/1470. He also confirmed that parcel of land No. Kericho/Silibwet/818 was a neighboring land.
68. That the sub-division of land parcel No. Kericho/Silibwet/817 resulted into land parcels No. Kericho/Silibwet/1471, 1470, 1173, 1174 and 1175. That his father had sold parcel of land No. Kericho/Silibwet/1471 to Mika. That whereas he did not know the Plaintiff, one Chebusit had told them that land parcel No Kericho/Silibwet/1471 was Plaintiff's land.
 69. That they had gone to the Land Registrar, who had conducted a search for them and promised that he would go on the ground to deal with the matter. That the said Land Registrar had given them a letter dated 27th June, 2016 (DMFI 2) wherein upon his visit to the ground, he had informed them that their land being parcel No. Kericho/Silibwet/1470 existed on the ground and they should continue to live there.
 70. His evidence was that when they went to Kisii during the clashes, his father had continued to sell land receive money, while in Kisii, and that it was when that one of the persons who had given his father money had taken possession of parcel No. Kericho/Silibwet/1470 instead of Kericho/Silibwet/1471 and since that person had built thereon, his father had allowed him to remain on that parcel of land and instead obtained a title deed to land parcel No. Kericho/Silibwet/ 1471 while still holding onto title to the land parcel No. Kericho/Silibwet/1470.
 71. His further evidence was that when the registrar visited the site, he confirmed that the land was theirs and gave them a letter dated 20th September, 2016. The said letter was marked as Df MFI 4. He maintained that his father had sold land parcel No. Kericho/Silibwet/1471 to Mike and that land parcel No. Kericho/Silibwet/1470 was the one that had been registered to his mother. That there was no dispute before land parcel No. Kericho/Silibwet/817 was sub-divided since his father had acquired it legally. That they had gone to Kisii after land parcel No. Kericho/Silibwet/817 had been sub-divided. That they were neither living on land parcel No. Kericho/Silibwet/1470 nor Kericho/Silibwet/1471 since they had since been sold.
 72. He confirmed that land parcel No. Kericho/Silibwet/1471 had been sold to the 5th Defendant and that the said 5th Defendant had not taken possession of the same since the owner of land parcel No. Kericho/Silibwet/818 had filed a matter in court.
 73. He marked the green card of land parcel No. Kericho/Silibwet/1471 as Df MFI 5 and then maintained that land parcel No. Kericho/Silibwet/1470 was his father's land. That they used to live therein before it was sold to Mika who sold the same to Abdul (Somali) who further sold it to the 4th Defendant who was currently occupying it.
 74. When he was referred to the green card with regards to land parcel No. Kericho/Silibwet/1470 which had been marked the same as Df MFI 6, he testified that land parcel No. Kericho/Silibwet/ 817 was slanting. Further that land parcel No. Kericho/Silibwet/818 bordered land parcel No. Kericho/Silibwet/1471 and they shared a boundary.
 75. He urged the court to deliver justice since land parcel No. Kericho/Silibwet/ 818 had encroached into land parcel No. Kericho/Silibwet/1471. That when the 1st Defendant sold the parcel of land to the 5th Defendant, they had entered into an agreement. That whereas the 5th Defendant had a title deed, he did not know the parcel number of the said portion of land.
 76. His testimony on cross-examination by the counsel for the Plaintiff was to the effect that land parcel No. Kericho/Silibwet/817 was sub-divided when he was 16 years old although he had not been there. That the said land measured 0.9 hectares as per the mutation form.



77. When he was referred to DMF1-1 he confirmed that the acreage therein was 0.60 hectares although he could not know if the same translated to 1 acre. That he did not know the acreage of the land parcel No. Kericho/Silibwet/1173.
78. On being further being referred to DMFI – 1, he confirmed that the acreage therein was 0.40 hectares and that the acreage for land parcel numbers Kericho/Silibwet/1174, 1175, 1470 and 1471 were 0.05 hectares each.
79. He maintained that land parcel No. Kericho/Silibwet/1471 measuring 0.05 hectares had been sold to the 5th Defendant although he had not been there when the agreement was entered into. That whilst all the subdivisions had been sold, he only knew about parcel numbers Kericho/Silibwet/1470 and 1471. He maintained that after the sale agreement between his father and Mike, Mike had taken possession of land parcel No. Kericho/Silibwet/1470 instead of Kericho/Silibwet/1471 which was near land parcel No. Kericho/Silibwet/818. That Mike had later sold the said land to a Somali who had later sold it to the 4th Defendant. That after Mike had taken land parcel No. Kericho/Silibwet/1470, they sold land parcel No. Kericho/Silibwet/1471 to the 5th Defendant and that nobody else had bought the land in-between.
80. On cross-examination by the counsel for the 4th Defendant, he confirmed that land parcel No. Kericho/Silibwet/817 had been sub-divided into 5 portions and that the portion that bordered land parcel No. Kericho/Silibwet/818 was Kericho/Silibwet/1471. He confirmed that he had been there when the Judge had visited the site.
81. That land parcel No. Kericho/Silibwet/1173, 1174, 1175, 1470 and 1471 were adjacent to each other. That whereas land parcel No. Kericho/Silibwet/1470 had been his father's, the same was currently occupied by the 4th Defendant.
82. When he was referred to DMFI -6, he confirmed that his father had sold the land to Mike Kipkorir Ngetich who sold it to Abdirahaman who later sold it to the 4th Defendant and that they had no claim over the said parcel of land. That whilst Mike was supposed to have taken land parcel No. Kericho/Silibwet/1471, he had taken land parcel No. Kericho/Silibwet/1470.
83. That the Plaintiff was claiming land parcel No. Kericho/Silibwet/1471 since land parcel No. Kericho/Silibwet/1470 had not encroached into land parcel No. Kericho/Silibwet/818. He maintained that upon registering their complaint with the Land Registrar, the said Registrar had visited the site and confirmed that indeed land parcel No. Kericho/Silibwet/1471 existed on the ground and that the other subdivisions had also existed. That whereas he did not have any survey expertise, the surveyor's report had indicated that land parcel No. Kericho/Silibwet/817 measured 0.06 hectares.
84. In re-examination, he confirmed that he had been there when land parcel No. Kericho/Silibwet/817 was sub-divided although he was very young and did not know what was happening. That whereas he had been there when land parcel No. Kericho/Silibwet/1471 was being sold, he did not sign any document. He confirmed that he had also been there when the Land Registrar visited the site and that the Plaintiff had been absent. That he knew the sizes of the parcels of land in accordance to how they had been shown on the documents. He confirmed that he knew for a fact that Mike had given his father money after they had agreed.
85. Kennedy Edward Bosire testified as DW3 to the effect that he was a civil servant working in the Ministry of Lands & Physical Planning as a County Registrar and that he was stationed at Bomet. That he was in court pursuant to the summons dated 12th January, 2023 requiring him to produce documents in respect of land parcel No. Kericho/Silibwet/1470 and 1471 for which he was aware of their history.



- He proceeded to testify that land parcel No. Kericho/Silibwet/1470 and 1471 had originated from the subdivision of land parcel No. Kericho/Silibwet 817 which subdivision had resulted into 5 parcels being parcel numbers Kericho/Silibwet/1173, 1174, 1175, 1471 and 1470. That the mutation form allowing the sub-division of land parcel No. Kericho/Silibwet/817 had been filed in their office and registered on 6th September, 1994.
86. He produced the said mutation form as Df exh 1 and then proceeded to testify that Green cards had been issued in respect of land parcel No. Kericho/Silibwet/1470. That Tom Onsase was registered as proprietor of land parcel No. Kericho/Silibwet/817 on 28th February, 1977. That parcel of Land No. Kericho/Silibwet/1470 was registered on 6th September 1994 in the name of Tom Onsase and on 21st June 1995, the said parcel of land was transferred to Micah Kipkorir Ngerech whereby he had been issued with the title deed on the same date.
87. That on 14th May, 2009, land parcel No. Kericho/Silibwet/1470 had been transferred to Abdirahaman and a title deed issued on the same date. On 27th January, 2017, wherein it had then been transferred to the 4th Defendant and a title deed issued. He confirmed that the 1st Defendant did not appear in any entry on land parcel No. Kericho/Silibwet/1470. He produced the green card in respect to the parcel of land No. Kericho/Silibwet/1470 Df exh 6.
88. That they had also issued a green card with regards to land parcel No. Kericho/Silibwet/1471 which green card indicated that on 6th September, 1994 the land was registered in the name of Tom Onsase and that the title deed was issued on 11th June, 2007 in the name of the said Tom Onsase. That on 4th November, 2015, a title deed was issued to the 1st Defendant and on 11th June, 2017 the said land was transferred to the 5th Defendant herein and a title deed issued. He produced the green card in respect to land parcel No. Kericho/Silibwet/1471 as Df exh 5.
89. That whilst he could not clearly remember the parcels of land that had a boundary dispute, there had been a boundary dispute between land parcel numbers Kericho/Silibwet/ 1773, 1774, 1775, and 1776 versus land parcel No. Kericho/Silibwet/1470. That after a complaint had been lodged, the land Registrar at that time had issued summons of his visit to the land on 21st July, 2016. He produced the said Summons as Df exh 2 and then proceeded to testify that according to the documents in the office, the land was visited on 21st July, 2016 whereby a report dated 17th August 2016 had been prepared in which the then land Registrar had given his verdict.
90. That land parcel No. Kericho/Silibwet/1471 had originated from the land parcel No. Kericho/Silibwet/817. That other parcels of land that had originated from land parcel No. Kericho/Silibwet/818 were Kericho/Silibwet/1773, 1774, 1775 and 1776. That land parcel No. Kericho/Silibwet/818 had been sub-divided 5 years after the subdivision of land parcel No. Kericho/Silibwet/817. That during the sub-division of land parcel No. Kericho/Silibwet/817, the boundaries of the resultant parcels had been marked.
91. That whereas as there had been clashes in the years 1992 and 1997, he did not know the direct effect of the clashes but indirectly, the same had led to displacement of people although in the instance case, he had not been given any report as to whether the parcels of land herein had been affected.
92. When he was referred to a document dated 17th August 2016, he testified that the verdict of the land Registrar had indicated as follows: -
- i. That land parcel No. Kericho/Silibwet/1470 existed on the ground and it belonged to the 1st Defendant.



- ii. That the sub division of land parcel No. Kericho/Silibwet/818 that had given rise to land parcel numbers Kericho/Silibwet/1774 – 1776 had overlapped into land parcel No. Kericho/Silibwet/1470.
 - iii. That the boundary of the land parcel No. Kericho/Silibwet/1470 had been confirmed and should be maintained by both parties as per the provisions of Section 21 of the [Land Registration Act](#). That any aggrieved party had been given 14 days from the date of the verdict to appeal through the Chief Land Registrar.
93. He produced the said letter dated 17th August, 2016 as Df exh 3 and proceeded to testify that they had no record of any appeal on the said parcels of land. He confirmed that the Land Registrar had powers to determine disputes relating to boundaries. That there was a Notice to the parties dated 20th September, 2016 notifying them that a verdict had been reached after the hearing of the dispute. That the said Notice had been issued pursuant to the provisions of Section 14 of the [Land Registration Act](#).
 94. That copies of the said Notice had been issued to the Directorate of Criminal Investigation Office in Bomet, Commission on Administration Justice, National Land Commission, Attorney General, the parties Alexander Chumo and Josephine Onsase and the Environment and Land Court. That they had not received any summons from the court quashing the land Registrar’s decision. He produced the letter dated 20th September, 2016 as Df exh 4.
 95. When he was referred to Pf exh 8, he confirmed that when conducting a survey, they usually relied on the Registry Index Map (RIM) and that they had the cadastral survey (fitted survey) and the general survey. That they only use the RIM and fixed beacons on the ground. That maps were not an authority but could only assist. That apart from RIM, they usually used physical features that had been existing on the ground as boundaries and the time/period that they had been existing.
 96. He explained that the parcels of land No. Kericho/Silibwet/817 and 818 fell under general survey category hence one could not use only the RIM because the physical features were more important than maps since maps could only be used in grey areas where determination could not be done using physical features. That where only the RIM was used in a general survey, the report would have errors.
 97. When he was cross-examined by the Counsel for the Plaintiff, he confirmed that he was aware that the land Registrar had also been sued. That where several parcels of land were overlapping, it was would be clear, strictly speaking, that only one parcel of land could overlap.
 98. When he was referred to Df exh 3, he confirmed that the Land Registrar’s verdict was to the effect that the sub-division of land parcel No. Kericho/Silibwet/818 had caused the overlap of land parcel No. Kericho/Silibwet/1470. He clarified that it had not been the entire land parcel No. Kericho/Silibwet/818 that had overlapped land parcel No. Kericho/Silibwet/1470 but only the sub-division and that the said overlap was what was supposed to be resolved. That during the correction of the overlapping, a title could be extinct by reducing the acreage.
 99. When he was further referred to Pf exh 8, he testified that the issue of overlapping therein needed to have been directed to the surveyor and when he was referred to Pf exh 6 in respect to the parcel of land No. Kericho/Silibwet/818 measuring 1.25 hectares, he testified that the same had been subdivided into 8 portions giving rise to land parcel numbers Kericho/Silibwet/1653 and 1654 measuring 0.06 and 0.37 hectares respectively and land parcel numbers Kericho/Silibwet/1771-1776 measuring 0.05 hectares each.
 100. He confirmed that a mutation form was the primary document that produced the RIM. That the area that had been taken by the road reserve was 0.45 hectares. That the total acreage was 1.18 hectares



hence there had been a deficit of 0.07 hectares. That subsequently, the mutation should not have been registered in the first place because of the said discrepancy. He confirmed that the mutation with regards to land parcel No. Kericho/Silibwet/818 had not been registered.

101. When he was referred to the Df exh 1, he confirmed that the total acreage of land parcel No. Kericho/Silibwet/817 was 0.60 hectares and that the same had been divided into 5 portions being land parcel numbers Kericho/Silibwet/1773 measuring 0.40 hectares, Kericho/Silibwet/1174, 1471 and 1470 measuring 0.05 hectares each and that the acreage for land parcel No. Kericho/Silibwet/1175 had not been clear. He explained that the subdivision acreage was 0.55 hectares minus the acreage of land parcel No. Kericho/Silibwet/1175 that had not been clear. That since no access road had been given, it could be assumed that the acreage of land parcel No. Kericho/Silibwet/1175 had also been 0.05 hectares.
102. When he was referred to Df exh 6 (Green Card with regards to land parcel No. Kericho/Silibwet/1471), he confirmed that the total acreage was 0.05 but after the alteration, it had become 0.09 hectares. That the mutation had not been altered. He explained that in rectifying the green card, the alteration could be done anytime by the land Registrar upon notification of the surveyor and that the initial mutation needed not to be changed. That the County surveyor would then prepare a sketch plan which would be sent to the cartographer to rectify the RIM.
103. That being that the extra 0.03 hectares could not be found in the mutation, the surveyor could be called to testify on the same. That whereas land parcel No. Kericho/Silibwet/1771 had been rectified, he could not confirm the same as he had not been given the rectification documents. That he could also not answer the question on 0.07 deficit that had not been accounted for with regards to land parcel No. Kericho/Silibwet/818. That in cases like the present one, they usually use the physical features for the boundaries such as trees, roads, rivers thus the land Registrar who had gone on the ground could tell the physical features that had been used to determine the boundaries.
104. That being that land parcel No. Kericho/Silibwet/818 had existed on the land during the demarcation, the same should exist on the map. That the sub-divisions of parcel No. Kericho/Silibwet/818 should exist however some parcels were not on the ground; the map could be changed to correspond to the situation on the ground. That the fact that the sub-division of land parcel No. Kericho/Silibwet/818 showed that it had less acreage, only the county surveyor could explain the same. That if there was an error, they had the powers to rectify the acreage, under the law.
105. That he could not confirm or deny the existence of titles to land parcel numbers Kericho/Silibwet/1771-1776 since he had only come with the documents of the parcels that he had been asked to come with. He explained that he was in court as the Defence witness and that if he had come as a Defendant, he would have asked that the state Counsel represents him.
106. On being cross-examined by the counsel for the 4th Defendant, he confirmed that he was the Land Registrar in Bomet County and that the 1st Defendant had requested him to come and shed light on some documents from his office. That the said 1st Defendant would have only found the documents he had requested in his custody.
107. When he was referred to Pf exh 8, he explained that there were two types of survey, that is, the cadastral and general survey and that the dispute herein fell under the general survey. That for accurate conclusion and recommendation, the surveyor could not only rely on the RIM as he needed to also rely on the physical features. That subsequently, the report contained in Pf exh 8 could be having errors in some places since RIM was not an authority on boundaries disputes.



108. Upon being referred to the Df exh 1, he confirmed that the same had been presented and booked in the registry on 6th September, 1994. When he was referred to the Pf exh 7, he confirmed that the same had been recorded on 6th September, 1994 and that the two documents were the same.
109. He then proceeded to explain the process as follows: that after the document had been booked, it was given a presentation book No.6 of 1994 after which it had gone through verification to see whether the document was registrable or not. That during the verification, they would look for certain issues such as whether there had been consent for sub-division or not. That the total acreage was checked, and that the green card was also checked to see if there were encumbrances.
110. That the document then went to the typing pool where the green cards were prepared after which the registration clerk made an entry on the original green card of the new titles. That the new and old registers together with the mutation forms were then presented to the land Registrar for signing. That the land Registrar first signed the original card, new registers and then the mutation form at (the back). That thereafter, the mutation would be taken to the booking clerk who would indicate at the remark section 'registered' and that marked the end of the registration and the documents would be filed. That it was a must that a mutation form would first be recorded and lastly registered. He confirmed that the mutation form with regards to parcel of land No. Kericho/Silibwet/ 817 had been registered on 6th September 1994.
111. When he was referred to Pf exh 6, he testified that the mutation form with regards to land registration No. Kericho/Siibwet/818 did not show when it was presented at the registry. That whereas at the far right there had been an indication that survey had been done on 15th August, 1996, yet it did not show the presentation book number.
112. That page 2, of the sketch map attached to the mutation showed a date of 15th August, 1996 while at page 3, the field diagram had a date of 19th June, 1998. That it meant that the ground had been visited after two years. That since the important component of a mutation form was neither registered nor had a Registrars signature, the same had not originated from their office. He maintained that mutation was the primary documents in preparing a RIM and without it one could not prepare a RIM. Further, that without a registered mutation form one could not come up with the resultant subdivision of land parcel No. Kericho/Silibwet/818 since the title deeds of the said sub-divisions could only be substantiated in the presence of a mutation form.
113. That if reliance was placed on the mutation that had been produced as Pf exh 6, then the title deeds resultant of land parcel No. Kericho/Silibwet/818 had not been properly done, unless there was another mutation. On being referred to the Df exh 6 with regards to land parcel No. Kericho/Silibwet/1470, he confirmed that the land had devolved from Tom to Mika then to Abdul and later to the 4th Defendant. He confirmed that the Green card had originated from their office and that he had the original card with him. That the right process had been followed until the 4th Defendant acquired the title hence he had no doubt about the title held by the 4th Defendant.
114. When he was referred to Df exh 2 (invitation), he confirmed that the dispute had been in respect of land parcel numbers Kericho/Silibwet 1773 – 1776 and land parcel No. Kericho/Silibwet/1470. That the letter had not mentioned that land parcel numbers Kericho/Silibwet/ 1771 and 1772 were resultants of the subdivision of land parcel No. Kericho/Silibwet/817. He confirmed that land parcel No. Kericho/Silibwet/1470 was a resultant of land parcel No. Kericho/Silibwet/817 as at the date that the land had been visited. That whereas he was not aware whether all the parties had come to the site, land parcel No. Kericho/Silibwet/1471 had not been part of the exercise.



115. His evidence on being referred to Df exh 3 was that the sub-division of land parcel No. Kericho/Silibwet/818, being land parcels numbers Kericho/Silibwet/1773 – 1776 had overlapped land parcel No. Kericho/Silibwet/1470 as per the report. That land parcel No. Kericho/Silibwet/817 had been sub-divided 5 years before the sub division of land parcel No. Kericho/Silibwet/818 had been done. That subsequently, land parcel No. Kericho/Silibwet/ 1470 was already existing on the ground when the new subdivisions of land parcel No. Kericho/Silibwet/818 overlapped it. That this had been the correct position pursuant to the provisions of Section 21 of [Land Registration Act](#).
116. When he was referred to Df exh 6 and Df exh 1, he confirmed that the acreage of land parcel No. Kericho/Silibwet/1470 had been indicated as 0.05 hectares and the title should also reflect the same. He explained that there could be an instance when the land register does not correspond with what is on the land. That in such cases, the land Registrar would rectify the register after a confirmation by the surveyor in writing so that the record conforms to the situation in the ground. That there was no need to rectify the mutation but the survey plans would be prepared and sent to the cartographer for amendment of the RIM. That the rectification would only be done by the Land Registrar in charge of the County and counter signed and not by any other Land Registrar.
117. That if the Plaintiff had wanted a visit over land parcel numbers Kericho/Silibwet/1471 – 1472 they should have included the same. That further, he should have also included land parcel numbers Kericho/Silibwet/1771 – 1772 if he so wished and the problem would have been solved. That his non-inclusion was to the effect that there were no issues touching on the said parcels of land.
118. In re-examination, he was referred to Df exh 3 wherein he confirmed that land parcel No. Kericho/Silibwet/817 had been sub-divided to give the resultant parcels of land. That the boundaries were existing on the land, the dispute herein had been a boundary issue which was sorted by the Land Registrar. That if it was not a boundary issue, the Land Registrar would have referred the parties to court. That the Land Registrar had powers to rectify the acreage pursuant to the provisions of Section 79 of [Land Registration Act](#).
119. He maintained that the said rectification could be done without rectifying the mutation. He further confirmed that he had come to court to testify in regard to land parcel numbers Kericho/Silibwet/1470 and 1471 and by extension, land parcel No. Kericho/Silibwet/817.
- The 1st Defendant's case was thus closed.
120. The 4th Defendant's case opened with the testimony of Livingstone Kipsiele Langat who testified as DW4 to the effect that he was a resident of Bomet Central in Chepngaina village and a business man in Bomet County.
121. He adopted his witness statement dated 7th September, 2018 as his evidence in chief before proceeding to testify that not only was he a Chairman of the building committee of the 4th Defendant but also its member. That one Abdulrahim had approached him with a view of selling a parcel of land since he was relocating to Mombasa. That when he visited the site in the company of the said Abdulrahim, he had found that the land was intact and that there was only a small shelter therein. That Abdulrahim then told him that Mika, who was a business person in town had sold him the parcel of land. That when he made more inquiries about the land from the said Mika, he was assured that the title was clean and he could buy it.
122. That they then entered into a Sale Agreement with Abdulrahim to whom he had paid a sum of Kshs. 2,250,000/= after which Abdulrahim had given him the title to the land and had left. He confirmed that he had bought the said land on 26th January, 2017. That at the time, the 4th Defendant's population had increased and therefore they had required a plot to build a church and it had been when he had



- informed its members that he had bought the plot, they requested him to give them the land. He obliged and they refunded him his money after which they started making arrangements of building the church.
123. He produced the Land Sale Agreement dated 26th January, 2017 between himself and Abdulrahim as Df exh 7 and the agreement dated 27th January, 2017 between himself and the 4th Defendant as Df Exhibit 8. He explained that the title was processed directly in the name of the 4th Defendant. He confirmed that the parcel of land was Kericho/Silibwet/1470.
 124. He produced a copy of title as Df exh 9 then proceeded to testify that he had conducted an official search on the land on 22nd August, 2018, which Certificate of Search he produced as Df exh 10. He confirmed that the first person who had been registered to that land was Tom. That Mika had told him that he had bought the land from Tom and that Abdul had also cleared his dues.
 125. That he was not aware of the dispute of resultant parcels of land parcel numbers Kericho/Silibwet/817 and 818 and that he only learnt of the same when he was told that the court was visiting the site. He confirmed that he was present when the court visited the site although he had not been told that there was a problem with the land. Further, that the judge had asked the complainant if he had a problem with the 4th Defendant and he had responded in the negative thus he did not know what the Plaintiff was seeking against the 4th Defendant. That in fact the said Plaintiff had congratulated him during the construction of the church on the said parcel of land which construction had cost Kshs.30,000,000/= and the Plaintiff did not stop them until its completion.
 126. That the 4th Defendant was for everybody and solved people's problems hence it should be left where it was. That further, according to what was on record, the 4th Defendant had not obtained the land fraudulently.
 127. In response to cross-examination by the Counsel for the Plaintiff, he confirmed that he had bought the land on 26th January, 2017 from one Abdul. That he was not aware of any dispute concerning the land or that the land Registrar had visited the said land. That he did not follow up on Abdul's whereabouts after their Agreement.
 128. He also confirmed that he had sold the land to the 4th Respondent on the 27th January, 2017 and the 4th Defendant got the title to the land on that very same date since was possible for the sale and issuance of title to be done on the same day. That he found metallic beacons on the ground which beacons were on the ground to date.
 129. On being cross-examined by the Counsel for the 1st and 5th Defendants, he explained that he was the chairman of building committee of the 4th Defendant and that he enjoyed a cordial relationship with the said 4th Defendant hence they could not do anything to harm the church. That he had visited the site before purchasing it wherein he had confirmed that there was a fence around the property.
 130. He reiterated that Mika had told him that he had bought the property from Tom. That he bought the property from Abdul who had never raised any issue and that he had never seen the said Abdul since the date of their agreement. He also confirmed that the 1st Defendant's name did not feature anywhere and that he had heard of the dispute herein after the court had visited the site. That Mika who had purchased the property in the year 1995 was still alive and had never raised any issues.
 131. In re-examination, he confirmed that he had not heard of any dispute before purchasing the land. He further confirmed that after Abdul had informed him that he was selling a parcel of land, they visited the land and thereafter went to see Mika. That the 4th Defendant got the title to the land the same day



that he sold the land to it. That the said title had been obtained through a special land control board which had been sitting on that very day.

132. That he wouldn't know if there had been any dispute as the Plaintiff used to greet and congratulate him during the construction of the 4th Defendant. He maintained that it was possible to be issued with a title deed on the same day through special Land Control Board. He thus prayed that the 4th Defendant should not be interfered with.

The 4th Defendant thus closed its case

133. In regard to the 5th Defendant's defence, DW5, Riteshkumar Rajibhai Patel testified to the effect that he lived in Bomet and was a business person owning a supermarket in Bomet known as Radiant Supermarket. That he was in court because of the land parcel No. Kericho/Silibwet/1471 which they had purchased from the 1st Defendant. That he was one of the 4 directors of the 5th Defendant.
134. That they had purchased the said parcel of land in January 2016 wherein they had signed an agreement. He produced the agreement dated 8th January, 2016 as Df exh 11 and then proceeded to testify that he had bought the property which measures 0.09 hectares for Kshs. 1,800,000/= through an agreement that had been drawn in Bomet by their Advocate Mr. Korir in the presence of both parties and their witnesses who had then executed it. That he had paid the entire purchase price and the 1st Defendant had not raised any issue over the payment wherein the property had then been transferred in the name of the 5th Defendant.
135. He produced the title deed issued on 6th November, 2017 as Df exh 12 and proceeded to testify that they had even gone to the Land Control Board for consent to transfer before the land had been registered in the 5th Defendant's name. That they were not currently in possession of the same since after the land had been transferred to them, someone had destroyed the fence. That they had informed the 1st Defendant and her son before proceeding to make a report to the police.
136. His evidence was that he had conducted a search on the parcel of land No. Kericho/Silibwet/1471 before they bought the same wherein they had been given a green card (Df exh 5). He confirmed that the 1st Defendant was registered as the proprietor of the land in the year 2015. That after they had confirmed the proprietorship of the land, they had visited the same in the company of the 1st Defendant, her son, 1st Defendant's brother and his brother. That they found that the land was empty wherein they proceeded to fence it using poles and barbed wire which fence had been pulled down after one month and he had never established the person who had pulled it down.
137. He urged the court to help them get their parcel of land, so that they could construct thereon. H confirmed that he knew the Plaintiff whose land shared a boundary with their land.
138. On cross examination by the Counsel for the 4th Defendant, he confirmed that the Plaintiff was their neighbor on the instant parcel of land. That he was not aware of any dispute between the said Plaintiff and the 1st Defendant otherwise he would not have bought the land. That he only came to know about the dispute after the instant case had been filed. He confirmed that he was aware of the boundaries at the time of purchasing the land.
139. His response on being cross-examined by the Counsel for the Plaintiff was that he had gone with a surveyor to measure the plot when he was purchasing the same. That whereas he was aware that from the mutation form the plot initially measured 0.05 hectares, the measurement on the ground was 0.09 hectares and that he could not remember from which parcel of land the extra 0.04 hectares had come from.



140. He confirmed that when they purchased the land, there had been no one in occupation and that he obtained the title in November, 2017. He maintained that there had not been any dispute until after they had bought the land. That there were trees about 5 feet on the boundary but the said trees were no longer there.
141. In re-examination, he testified that according to the sale agreement, the size of the land was 0.09 hectares and that before they purchased the land, the surveyor had confirmed the acreage. That the dispute herein was because of a boundary that had been destroyed wherein after occupation had taken place.
142. The 5th Defendant closed its case and parties were directed to file their written submissions wherein only the 1st and 5th Defendants complied.
143. The 1st and 5th Defendants summarized the factual background of the matter before framing their issues for determination as follows; -
- i. Whether the land parcel No. Kericho/Silibwet/1470 and 1471 exists.
 - ii. Whether the land parcel No. Kericho/Silibwet/1771 and 1772 exists.
 - iii. Whether the 2nd Defendant has the powers to hear and determine boundary disputes.
 - iv. Whether the sub-divisions of Kericho/Silibwet/818 overlaps Kericho/Silibwet/1470.
 - v. Whether an order of cancellation of the resultant titles of Kericho/Silibwet/818 being Kericho/Silibwet/1771-1776 should issue and/or in the alternative land parcels Kericho/Silibwet/1771-1776 be resurveyed and their measurements be readjusted accordingly.
 - vi. Whether the orders of permanent injunction should issue against the Plaintiff.
 - vii. Whether the 1st and 5th Defendant s are entitled to damages for trespass, costs and interest of the suit.
144. On the first issue for determination as to whether land parcel numbers Kericho/Silibwet/1470 and 1471 existed, they reiterated the DW1's evidence adduced in court to the effect that she was the wife to the late Tom Onsase who was the registered proprietor of land parcel number Kericho/Silibwet/817 which was later subdivided into Kericho/Silibwet/1470 and 1471. That a Mutation form for Kericho/Silibwet/817 had been produced and confirmed as authentic by the Land Registrar who testified ad DW3.
145. Further, that DW1 had stated that she had returned to her home in Keroka in the year 1997 during the electioneering period whereby the Plaintiff had taken advantage of her absence in collusion with officials and had encroached into her parcel of land and annexed it to Kericho/Silibwet/818. That upon lodging a complaint with the District Registrar, he had visited the ground on the 21st July, 2016 and conducted a hearing in which a determination had been made to the effect that land parcel number Kericho/Silibwet/1471 existed on the ground and that the sub-division of land parcel number Kericho/Silibwet/818 had overlapped on land parcel number Kericho/Silibwet/1470. That the land registrar upon confirming the boundary of land parcel Kericho/Silibwet/1470 had stated that the same should be maintained by both parties and that any person that had been dissatisfied with the decision had a right to appeal to the Chief Land Registrar or any court of law within 14 days of the verdict.
146. That an appeal having not been preferred within the stipulated period, the District land Registrar had via its letter dated 20th September, 2016 authorized DW1 to enjoy her rights over land parcel No. Kericho/Silibwet/1470 without any interference. That the Plaintiff having failed to either file an appeal



- or filed a judicial review application to quash the District Land Registrar's decision within 6 months, the said decision stood as legal and enforceable.
147. They reiterated that the 1st Defendant had sold land parcel number Kericho/Silibwet/1471 to the 5th Defendant before the instant suit had been instituted. That land parcel No. Kericho/Silbwet/1470 had never been in her possession but had only been occupied by her husband in the late 1990's who had later transferred the same to Micah Kipkorir. They reiterated that DW5's evidence had been to the effect that there had been no dispute when he had purchased land parcel number Kericho/Silibwet/1471 which land was vacant and well fenced.
 148. That with regards to discrepancy in terms of sizes as had been indicated in the mutation form and green card in respect of land parcel number Kericho/Silibwet/1471, DW3 had stated that rectification could always be done in liaison with the survey department to ensure that what was in the registry reflected what was on the ground and survey plans would be sent to the cartographer for amendment of Registry Index Map. That DW3 had further stated that the initial mutation did not need to be changed as due process must have been followed hence the size as had been indicated in the green card was the correct acreage on the ground. That from the foregoing, it was clear that parcels numbers Kericho/Silibwet/1470 and 1471 actually existed.
 149. Regarding whether the land parcel numbers Kericho/Silibwet/1771 and 1772 existed, the 1st and 5th Defendant s reiterated the evidenced that had been adduced in court by the Plaintiff and DW3 to submit that Plaintiff had presented a mutation form which had not been registered showing that his purported registration to Kericho/Silibwet/1771 and 1772 had been fraudulent and/or questionable. Further, that on the face of the said mutation form, there seemed to exist two sub-divisions, whereby the first sub-division had been crossed off without any explanation while the second sub-division had not been clear in terms of the number of the resultant parcels of land. That the surveyors report had indicated that land parcel number Kericho/Silibwet/818 had been sub-divided to give rise to Kericho/Silibwet/1653, 1654 and 1771-1776, however, the Plaintiff in his pleadings did not talk about the said Kericho/Silibwet/1653 and 1654 thus the root of his title was questionable.
 150. Their submission was that land parcel number Kericho/Silibwet/817 had been subdivided in September 1994 while Kericho/Silibwet/818 had been subdivided in June 1998 thus by the time parcel number Kericho/Silibwet/818 was being subdivided, the boundaries of parcel number Kericho/Silibwet/817 had been demarcated and delineated thus parcel numbers Kericho/Silibwet/1771 and 1772 did not exist since their records could not be traced from the registry. That the Land Registrar who had testified as DW3 had stated that one could not rely on the RIM alone on matters boundaries and that there were two surveys, that is, cadastral and general survey.
 151. That DW3 had proceeded to state that the instant matter had been in relation to issues touching on the general boundaries which fell within the ambit of general survey and to which one had to look at the physical features on the ground which features included but not limited to trees and rivers. That further, inquiries could be made from elders and witnesses who would be able to guide and tell the correct position of the boundaries. That in the instant case, there had been witnesses including the previous proprietor of the land who had helped in identifying the correct boundaries of the land. They thus submitted that land parcel numbers Kericho/Silibwet/1771 and 1772 did not exist.
 152. On the third issue for determination as to whether the 2nd Defendant had the powers to hear and determine boundary disputes, they placed reliance on the Provisions of Sections 18 (2) and 19 (1) of the [Land Registration Act](#) to submit that the court had no jurisdiction to hear and determine matters related to boundaries, the dispute herein having arisen in the year 2016 after the Commencement of the [Land Registration Act](#).



153. They thus submitted that the Land Registrar was clothed with powers to hear and determine matters related to boundaries hence the decision that had been rendered by the Land Registrar had been proper and the court should uphold the same.
154. On the fourth issue for determination, the 1st and 5th Defendant hinged their reliance on the provisions of Article 40 of *the Constitution* as read together with Sections 24, 25 and 27 of the *Land Registration Act* to submit that the right to acquire and own property was not absolute since it did not protect those who had acquired property unlawfully. That where a title had been challenged, one had to demonstrate how he had acquired the same to justify such enjoyment. Reliance was placed in the decided case of *Munyu Maina v Hiram Gathitha Maina Civil Appeal No. 239/2019*.
155. That from the foregoing, it was clear that the Plaintiff had fraudulently and in collusion with officials from the land registry, obtained the subdivisions of Kericho/Silibwet/818 to resultant parcels which had overlapped on land parcel number Kericho/Silibwet/1470 hence causing the 1st Defendant to suffer loss and damages. That whereas DW3 had testified that a mutation form was a primary document in the preparation of a title deed, the Plaintiff had presented a mutation form that was unregistered and lacked a presentation book number thus was not an authentic document.
156. That the root of the resultant parcels Kericho/Silibwet/1771-1776 was questionable as it was not clear how the sub-division had been done hence the problem could only be resolved if the said titles were cancelled and/or a resurvey was done and their measurements readjusted accordingly. Reliance was placed on the provisions of Section 80(1) of the *Land Registration Act* to submit that the court was clothed with the powers to order for cancellation of titles and/or the register.
157. As to whether the orders of permanent injunction should issue against the Plaintiff, reliance was placed on the decided case of *Kenya Power & Lighting Co. Limited v Sheriff Molana Habib [2018] eKLR* to submit that for the Plaintiff to be perpetually restrained from continuing trespassing, the court should be inclined to issue a permanent injunction so as to protect the rights of the 1st and 5th Defendant.
158. On the seventh issue for determination as to whether the 1st and 5th Defendant s were entitled to damages for trespass, costs and interest of the suit, they submitted that the Plaintiff had trespassed into the 1st and 5th Defendant's parcel of land and destroyed the fence that had been erected thereon. Reliance was placed in the decided case of *Park Towers Limited v John Mithamo Njika & 7 others [2014] eKLR*, to submit that trespass to land was actionable per se.
159. That the Plaintiff's actions had prevented them from undertaking any development on the property. Reliance was placed on the definition of mesne profit in Halsbury's Laws of England as well as the decisions in the case of *Philip Aluchio v Chrispinus Ngayo [2014] eKLR* among others to submit that from the extent of damage, the special circumstances of the case and the precedents that had been set by the superior courts, the court should award a sum of Kshs. 5,000,000/= as general damages.
160. Regarding costs, it was their submissions that having proved that the Plaintiff had trespassed on their property, they should be awarded the cost of the suit and interests.
161. In conclusion, they submitted that the Plaintiff had failed to prove his case on a balance of probabilities hence the same should be dismissed with costs. Further, that the 1st and 5th Defendant s (now Plaintiffs) in their counterclaim had proved their case against the Plaintiff (now Defendant) on a balance of probabilities hence prayed for judgment against the Plaintiff (now Defendant) as had been highlighted in the counterclaim.



Determination .

162. I have considered the matter before me, the evidence as well as the submissions, the authorities and the applicable law. I have also considered the that vide an amended plaint of 23rd July, 2018, the Plaintiff herein sought for orders that there be a declaration that the actions of the 1st and 2nd Defendants amounted to violation of his right to property in land parcel numbers Kericho/Silibwet/1771, 1772, 1773, 1774, 1775 and 1776 and therefore he was entitled to damages. The Plaintiff had also sought for the verdict of the 2nd Defendant dated 17th August, 2016 to be declared illegal, un-procedural, abuse of office, lacked jurisdiction, contradicts the spirit and tenor of chapter 6 of *the Constitution* hence the 2nd Defendant was unfit to hold a public office.(such declaration were not within the preserve of this court)
163. The plaintiff further sought for an order to be issued to the Land Registrar, Bomet County directing him/her to cancel the 4th and 5th Defendants' registration as proprietors of Kericho/Silibwet 1470 and 1471 respectively and the same be reversed to the Plaintiff or in the alternative, the county surveyor be directed to visit the scene and ascertain boundaries if there is any overlap with land registration numbers Kericho/Silibwet/1771, 1772, 1773, 1774, 1775 and 1776 and thereafter, there be a Permanent injunction restraining the Defendants, their agents, servants or any other person acting on their behest from interfering, occupying, entering or otherwise interfering with the Plaintiff's use and enjoyment of the land parcel numbers Kericho/Silibwet/1771, 1772, 1773, 1774, 1775 and 1776. He also sought for an order directing the 2nd Defendant to provide him with the green card or other official records for his parcel of land L.R No. Kericho/Silibwet/1771 and for Costs of the suit.
164. In opposition to the amended plaint, the 1st and 5th Defendants vide their consolidated amended defence of 31st May, 2021 denied each and every allegation of facts contained in the Plaintiff's Plaint terming the same as defective, incompetent, frivolous or vexatious, bad in law, and or an abuse of the court process and sought that the same be dismissed with costs.
165. In their counterclaim, the 1st and 5th Defendants stated that indeed it had been the Plaintiff (now Defendant) who had encroached into parcel of land No. Kericho/Silibwet/1470 during the subdivision of his land No. Kericho/Silibwet/818. That due to the Plaintiff's (now Defendant) fraudulent activities, the 1st Defendant had suffered financial loss and damage. they thus sought for judgement against the Plaintiff (now Defendant) for orders that there be a permanent injunction restraining the Plaintiff (now Defendant), its agents, servants or any other person acting on their behalf from interfering, occupying or entering land parcels registration numbers Kericho/Silibwet/1470 and 1471 and that there be an order of cancellation of the resultant titles upon the survey and subdivision of L.R. No. Kericho/Silibwet/818 being parcels Numbers Kericho/Silibwet/1771-1776 and in the alternative, land parcel numbers Kericho/Silibwet/1771-1776 be resurveyed and their respective measurements be readjusted accordingly. They also sought for general damages.
166. The 4th Defendant on the other hand vide its Statement of Defence dated 7th September, 2018 denied the allegations contained in the Amended Plaint stating that it was a bonafide buyer of land parcel No. L.R No. Kericho/Silibwet/1470 a resulted sub-division of L.R No. Kericho/Silibwet/817 and for which the Plaintiff had not laid claim and therefore it was entitled to the enjoyment of its rights therein.
167. There was no appearance for the Hon. Attorney General on behalf of the 2nd and 3rd Defendants.
168. Briefly, the Plaintiff's case was that he was the proprietor of land parcels Kericho/Silibwet/1771, 1772, 1773, 1774, 1775 and 1776 having had bought the same from one Francis Mibey wherein he had taken possession, fenced and planted a live fence around them. That the farm had been idle until the year



- 2016 when he realized that it had been invaded and partially fenced off. That his inquiry at the lands office yielded documents to all parcels of land save for parcel No. Kericho/Silibwet/1771.
169. That a complaint to the Land Registrar and a subsequent visit to the site by the Land Registrar and the District Surveyor to mark land parcel No. Kericho/Silibwet/1471 belonging to the 1st Defendant had yielded a report dated 17th August, 2016 wherein there had been a finding that the subdivision of Kericho/Silibwet/818 had resulted into land parcels No. 1773, 1774, 1775 and 1776 which subdivisions had overlapped on parcel of land No. Kericho/Silibwet/1470.
 170. His case was that the portion of land that had been fenced off was parcel No. Kericho/Silibwet/1771, whose green card had been missing and which land did not share a boundary with land parcel No. Kericho/Silibwet/817 hence he could not understand how the same had overlapped land parcel No. Kericho/Silibwet/1470. He was categorical that such an allegation was as a result of collusion between the 1st Defendant and the Land Registrar to deny him a portion of his land.
 171. The 1st Defendant's case which was supported by the evidence of DW2 was to the effect that land parcel No. Kericho/Silibwet/817 measuring 2¹/₂ acres had been registered to the deceased Tom Onsase who had been husband to DW1 and a father to DW2. That subsequently Tom Onsase subdivided No. Kericho/Silibwet/817 via a mutation form registered on 6th September, 1994 into resultant parcels of land No. Kericho/Silibwet/1173, 1174, 1175, 1470 and 1471. That after the subdivision, land parcel No. Kericho/Silibwet/1471 bordered land parcel No. Kericho/Silibwet/ 818 and shared a boundary.
 172. That due to the clashes the year 1997, he and his family had moved back to Kisii wherein Tom Onsase had proceeded to sell the resultant parcels of land. That whereas land parcel No. Kericho/Silibwet/1471 had been sold to one Micah while No. Kericho/Silibwet/1470 had been given to DW1, yet Micah had built on No. Kericho/Silibwet/1470 wherein Tom Onsase had allowed him to remain on that parcel of land.
 173. That upon their return to Kericho after 10 years, they had found that the fence on land parcel No. Kericho/Silibwet/1470 had been removed and cows were grazing therein. That subsequently DW1 had sold No. Kericho/Silibwet/1471 to the 5th Defendant. That there had been no dispute before land parcel No. Kericho/Silibwet/817 was sub-divided.
 174. Evidence by Livingstone Kipsiele who testified as DW4 was to the effect that not only was he a Chairman of the building committee of the 4th Defendant but was also its member. That he had purchased land parcel No. Kericho/Silibwet/1470 from one Abdirahaman through a Sale Agreement dated 26th January, 2017 for a sum of Kshs. 2,250,000/= and had subsequently sold the same by an agreement dated 27th January, 2017 to the 4th Defendant to build its church. That the title deed had been processed directly in the name of the 4th Defendant. The history of the land had been that it had first been registered to one Mr. Tom who sold it to Mr. Micah who then sold it to Abdulrahim, then Livingstone and finally to the 4th Defendant.
 175. While the 5th Defendant's case was that it had purchased land parcel No. Kericho/Silibwet/1471 measures 0.09 hectares for Kshs. 1,800,000/= from its registered proprietor, the 1st Defendant, via a sale agreement dated 8th January, 2016. Subsequently the property had been transferred in its name and a title deed issued in its name on 6th November, 2017. That they had proceeded to fence it using poles and barbed wire which fence had been pulled down after one month hence inhibiting them from taking possession. That they had informed the 1st Defendant and her son before proceeding to make a report to the police



176. The evidence of the case had been crowned by the evidence of DW3, the County Registrar stationed at Bomet, who confirmed through both oral and documentary evidence that Tom Onsase was registered as proprietor of land parcel No. Kericho/Silibwet/817 on 28th February, 1977. That the said parcel of land had been subdivided resulting into five portions being No. Kericho/Silibwet/1173, 1174, 1175, 1471 and 1470 wherein the mutation had been filed in their office and registered on 6th September, 1994. That during the sub-division of land parcel No. Kericho/Silibwet/817, the boundaries of the resultant parcels had been clearly marked.
177. That subsequently parcel of Land No. Kericho/Silibwet/1470 was on 21st June 1995, transferred and registered to Micah Kipkorir Ngerech who had been issued with the title deed on the same date. That on 14th May, 2009, land parcel No. Kericho/Silibwet/1470 had been transferred to Abdirahaman and a title deed issued on the same date. On 27th January, 2017, it had then been transferred to the 4th Defendant and a title deed issued. That the 1st Defendant did not appear in any entry on land parcel No. Kericho/Silibwet/1470 as per the green card herein produced as Df exh 6.
178. That as far as land parcel No. Kericho/Silibwet/1471 was concerned, the same had been registered to Tom Onsase 6th September, 1994 wherein he had been issued with a title on the 11th June, 2007. That on the 4th November, 2015, a title deed had been issued to the 1st Defendant wherein on 11th June, 2017 the said land had been transferred to the 5th Defendant and a title deed issued as per the green card herein produced as Df exh 5.
179. The Land Registrar had confirmed that land parcel No. Kericho/Silibwet/818 had also been subdivided 5 years after the subdivision of land parcel No. Kericho/Silibwet/817, giving rise to resultant parcels of land No. Kericho/Silibwet/1773, 1774, 1775 and 1776.
180. That thereafter there had arisen a boundary dispute between land parcel numbers Kericho/Silibwet/1773, 1774, 1775, and 1776 versus land parcel No. Kericho/Silibwet/1470 wherein the District Land Registrar had visited the ground on the 21st July, 2016 and conducted a hearing whereby a report dated 17th August 2016 was generated.
181. The court visited the scene on the 20th January 2020 wherein it had made its observation as follows;
- “We are at the site now. The plaintiff takes us round his parcel of land, which was originally KERICHO/SILIBWET/818 but is currently subdivided into several plot viz Kericho/Silibwet/1771, 1772, 1773, 1774, 1775 and 1776. The plaintiff also shows the court the location of these plots. The plaintiff then shows the court the portion of his land that the 1st defendant has allegedly taken. It is clear that that is the portion where his plot nos. 1773, 1774, 1775 and 1776 are, with plots nos. 1773 and 1774 being partly inside and partially outside the portion. Plots no.1775 and 1776 are fully inside the disputed portion.
- The 1st defendant also takes us round her parcel NO Kericho/Silibwet/817. It is clear also that it has been subdivided into several plots, among them Kericho/Silibwet/1470 and 1471. She has not told us about the other plots. There seems to be no dispute about them.
- After going round, it has become clear that the disputed portion is precisely where plot no. Kericho/Silibwet/1471 is. That plot is owned by 5th defendant. The 5th defendant is present and has also shown us this plot as its own. The 4th defendant owns the plot – Kericho/Silibwet/1470 – where there is a church standing. The plaintiff is not claiming that area. We have asked the surveyor to measure the disputed portion. It measures 36.6m x 30m x 25m x 47m.

DRAWING OF THE SITE VISIT TO BOMET TOWNN



N/B Not drawn to scale. The disputed portion is where plot no. 1471 is. It is also where plots nos. 1773 and 1774 are partly said to be while plots nos. 1775 and 1776 are said to be fully inside.”

182. Therein after the court had sought for another survey report which was prepared by Samwel Langat on the 26th February 2020 and produced by PW 2 Charles Kipkemoi Mutai wherein the conclusion of the surveyor had been as follows:

“As per the Registry Index Map (RIM) the boundary between Kericho/Silibwet/817 and Kericho/Silibwet/818 is line CK.

-The Registry Index Map (RIM) is the only available document we relied on.

-RIM may not be authorities on boundaries.

-If line CK is adopted as the boundary between the two parcels of land ie Kericho/Silibwet/817 and 818, then there is a need to re-survey the resulting parcels from Kericho/Silibwet/817 vis a vis the acreages and measurements and apportion the same appropriately.

-If line JD is adopted as the boundary between the two parcels of land ie Kericho/Silibwet/817 and 818, then the following should be done;

-Resurvey of parcels Kericho/Silibwet/1771-1776 and adjust their areas accordingly.

-Cancel parcels Kericho/Silibwet/1775 and 1776 and a rectified the area of parcel Kericho/Silibwet/1773 on the land register and the RIM.”

183. Having given a summary of the matter in issue, I find the issues arising for determination thereto as follows;

- i. Whether the verdict of the 2nd Defendant dated 17th August, 2016 was illegal, un-procedural, and lacked jurisdiction.
- ii. Whether actions of the 1st and 2nd Defendants amounted to violation of the Plaintiff's right to property in land parcel numbers Kericho/Silibwet/1771, 1772, 1773, 1774, 1775 and 1776.
- iii. Whether there should be cancellation of the 4th and 5th Defendant's registration as proprietors of Kericho/Silibwet 1470 and 1471.
- iv. Whether there should issue a Permanent injunction against the Defendants, their agents, servants or any person acting on their behalf restraining them from interfering, with the Plaintiff's use and enjoyment of the land parcel numbers Kericho/Silibwet/1771, 1772, 1773, 1774, 1775 and 1776.
- v. Whether there should be an order directing the county surveyor to visit the scene and ascertain boundaries if there is any overlap with land registration numbers Kericho/Silibwet/1771, 1772, 1773, 1774, 1775 and 1776.
- vi. Whether the 5th Defendant is entitled to the prayers sought in its counterclaim.
- vii. Who should bear the costs of the suit and counterclaim.

184. On the first issue for determination as to whether the verdict of 2nd Defendant dated 17th August, 2016 was illegal, un-procedural, and lacked jurisdiction, it is not contested that after the subdivision of land parcel No. Kericho/Silibwet/818 into land parcels No. Kericho/Silibwet/1653, 1654, 1771, 1772, 1773, 1774, 1775 and 1776 there had been a boundary dispute concerning land parcel numbers Kericho/Silibwet/ 1773, 1774, 1775, and 1776 versus land parcel No. Kericho/Silibwet/1470. That



after a complaint had been lodged, the land Registrar visited the land on 21st July, 2016 whereby a report dated 17th August 2016 had been prepared wherein the land Registrar had given his verdict.

185. Because general boundaries are identifiable by using the existing physical features, and by interviewing the owners of the adjacent plots, the law requires disputes relating to such boundaries to be handled by the Land Registrar, and not Surveyors or even the court. Section 18 of the [Land Registration Act](#) provides as follows:

- (1) Except where, in accordance with section 20, it is noted in the register that the boundaries of a parcel land have been fixed, the cadastral map and any filed plan shall be deemed to indicate the approximate boundaries and the approximate situation only of the parcel.
- (2) The court shall not entertain any action or other proceedings relating to a dispute as to the boundaries of registered land unless the boundaries have been determined in accordance with this section.
- (3) Except where, it is noted in the register that the boundaries of a parcel have been fixed, the Registrar may, in any proceedings concerning the parcel, receive such evidence as to its boundaries and situation as may be necessary:

Provided that where all the boundaries are defined under section 19(3), the determination of the position of any uncertain boundary shall be done as stipulated in the [Survey Act](#), (Cap. 299).

186. Indeed, under Section 19 of the [Land Registration Act](#), the Land Registrar cannot fix boundaries which are general in nature unless and until he gives notice to the owners and occupiers of the land adjoining the boundaries in question of his intention to ascertain and fix the boundaries.

187. In the case of Estate Sonrisa Ltd & another vs Samuel Kamau Macharia & 2 others [2020] eKLR, the Court of Appeal had held as follows:

“...It is the [Land Registration Act](#) that makes provisions relating to the determination of boundaries. Those provisions are found in sections 16 to 19. Specifically, for this dispute, the Registrar is empowered, after giving notice to all the affected parties, in this case, the 1st appellant and 1st respondent, indeed as well as any owner whose land adjoins the boundaries in question, and with the assistance of the surveyor, to ascertain and fix the disputed boundaries.”

The court continued thus;

“...It must be emphasized that under the [Land Registration Act](#), just like was the case with the repealed Act, the Registrar has wide powers, some quasi-judicial. ...Under that Act, the Registrar carries out his functions without any restrictions and may rely on any other relevant document and existing records in order to resolve any dispute between landowners. Because a title deed is only prima facie evidence of the matters shown therein, the Registrar’s investigations, of necessity must encompass all entries in the register, rely on any other relevant document and existing records, conduct proceedings in accordance with section 14(1) and cause a survey to be carried out and determine the dispute.....

...It is only after determining the dispute can parties move to court to challenge it.”



188. Similarly in the case of *Azzuri Limited v Pink Properties Limited* [2018] eKLR, the Court of Appeal had also held at paragraphs 22 and 23 in relation to the application of Section 18 of the [Land Registration Act](#) as follows:

“This means that under the aforesaid provisions, boundary disputes pertaining to lands falling within general boundary areas must be referred to the Land Registrar for resolution; while disputes pertaining to lands with fixed boundaries may be investigated and possibly resolved simply through a surveyor.....From this analysis of the law, it should be clear from the above that, we are in agreement with the learned Judge’s conclusion that the dispute ought to have been heard by the Land Registrar as stated in the statute. Jurisdiction is everything. It has been said many times before, that, without it a court has no powers to make one more step, irrespective of the strength and nature of evidence in the parties’ possession.”

189. From the foregoing it is clear that where there is any uncertainty as to the position of any boundary, the Registrar is enjoined to determine and indicate the position of the uncertain or disputed boundary. There is no discretion in this matter and the section does not impose other conditions apart from the ones contained therein to wit that the provision of the law clearly places the duty of ascertaining the boundary on the Registrar and no-one else. The argument over the Land Registrar’s jurisdiction over the boundary dispute herein, lies moot.

190. Given that the court has found that the land Registrar had the jurisdiction to resolve the land Boundary dispute between land parcels Kericho/Silibwet/1773, 1774, 1775, and 1776 and land parcel No. Kericho/Silibwet/1470, we will now delve into determination of the outstanding issues which will be dealt with in lump sum.

191. The land Registrar in his evidence as DW 3 confirmed that parcel of land No. Kericho/Silibwet/817 and Kericho/Silibwet/818 were both subdivided albeit 5 years apart wherein No. Kericho/Silibwet/817 had been subdivided earlier wherein the subdivision’s had clearly been marked.

192. That since the parcels of land No. Kericho/Silibwet/817 and 818 fell under general survey category, it was important that both the Registry Index Map and the physical features be used to ascertain the boundaries since maps were usually used in grey areas where determination could not be done using physical features. He further added that where only the Registry Index Map (RIM) was used in a general survey, like the case before us, the report was bound to contain errors.

193. The land Registrar had also confirmed that a mutation form was the primary document that was used to produce the Registry Index Map and that in the present case, whereas No. Kericho/Silibwet/817 had been subdivided in the year 1994 and the respective acreages of each of the subdivision clearly shown at page 2 of the said Mutation Form, on the other hand, the Mutation form in relation to land parcel No. Kericho/Silibwet/818, herein produced as Pf exh 6, had neither been registered nor executed (had no Registrar’s signature) and therefore did not originate from their office. He maintained that mutation was the primary document in preparing a RIM and without it one could not prepare a RIM and further, that without a registered mutation form one could not have come up with the resultant subdivision of land parcel No. Kericho/Silibwet/818 because the title deeds of the said subdivisions could only be substantiated in the presence of a mutation form. That therefore the title deeds of the resultant of land parcel No. Kericho/Silibwet/818 had not been properly done. There was confirmation that in regard to land parcel No. Kericho/Silibwet/1470, the right process had been followed until the 4th Defendant acquired the title hence there was no doubt about the title held by the 4th Defendant.



194. The verdict of the land Registrar contained in the impugned report of 17th August, 2016 had indicated as follows: -
- i. “That land parcel No. Kericho/Silibwet/1470 existed on the ground and it belonged to the 1st Defendant.
 - ii. That the sub division of land parcel No. Kericho/Silibwet/818 that had given rise to land parcel numbers Kericho/Silibwet/1774 – 1776 had overlapped into land parcel No. Kericho/Silibwet/1470.
 - iii. That the boundary of the land parcel No. Kericho/Silibwet/1470 had been confirmed and should be maintained by both parties as per the provisions of Section 21 of the [Land Registration Act](#).”
195. There having been a determination made by the Land Registrar to the effect that land parcel number Kericho/Silibwet/1471 existed on the ground and that the sub-division of land parcel number Kericho/Silibwet/818 had overlapped on land parcel number Kericho/Silibwet/1470, were the Plaintiff aggrieved by the said verdict, he ought to have appealed against it.
196. Section 86 (1) of the [Land Registration Act](#) stipulates that:
- “If any question arises with regard to the exercise of any power or the performance of any duty conferred or imposed on the by this Act, the Registrar or any aggrieved person shall state a case for the opinion of the Court and thereupon the Court shall give its opinion, which shall be binding upon the parties”
197. Section 86 (1) of the Act therefore reposed the jurisdiction to review the decision of the Land Registrar in Court. From the above provision, it is clear that apart from the Registrar, “any aggrieved person” can to seek the opinion of the Court. There was no appeal filed but instead the Plaintiff chose to file a fresh suit against the Defendants herein.
198. This being a suit to establish whether or not there had been violation of the Plaintiffs right to property in land parcel numbers Kericho/Silibwet/1771, 1772, 1773, 1774, 1775 and 1776 and having found that the same were improper subdivisions of land No. Kericho/Silibwet/818 which had subsequently resulted in overlapping on part of land parcel No. Kericho/Silibwet/1470 which land was registered to the 4th Defendant, I hold that the Plaintiff’s titles to land parcel No. Kericho/Silibwet/1771-1776 having not been properly or legitimately acquired, he has not proved his case on a balance of probability as against the Defendants and I proceed to dismiss his suit.
199. On the other hand, I uphold the 1st and 5th Defendant’s counterclaim and direct as follows:
- i. It is herein issued a permanent injunction restraining the Plaintiff (now Defendant), its agents, and servants or any other person acting on their behalf from interfering, occupying or entering land parcels registration numbers Kericho/Silibwet/1470 and 1471.
 - ii. There shall be a resurvey of land parcels No Kericho/Silibwet/1771-1776 and their respective measurements be readjusted accordingly. The said exercise to be carried out within 30 days from the date upon which the Applicant will comply with the necessary requirements necessary for the said exercise to be conducted.
 - iii. Costs of the suit and Counterclaim is herein awarded to the Defendants.

DATED AND DELIVERED VIA MICROSOFT TEAMS AT NAIVASHA THIS 30TH DAY OF MAY 2024.

M.C. OUNDO



ENVIRONMENT & LAND – JUDGE

