



**Choge v National Land Commission & another (Environment & Land Case
37 of 2018) [2023] KEELC 16323 (KLR) (20 March 2023) (Judgment)**

Neutral citation: [2023] KEELC 16323 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 37 OF 2018**

**EO OBAGA, J
MARCH 20, 2023**

BETWEEN

JANE CHOGE PLAINTIFF

AND

THE NATIONAL LAND COMMISSION 1ST DEFENDANT

FREDRICK KIPCHIRCHIR KURGAT 2ND DEFENDANT

JUDGMENT

1. The plaintiff was the registered owner of LR. No Kapsaret/Kapsaret Block 5 (Kapteldon)/119 which measured 3.18hectares. During the construction of ELdoret Town By Pass, the National Land Commission (NLC) compulsorily acquired part of the land on behalf of Kenya National Highways Authority (KENHA) for purposes of construction of the By Pass.
2. The NLC through Gazette Notice dated 2nd June, 2017 published that it intended to acquire 0.1797 hectares from the Plaintiff in respect of LR. No. Kapsaret/Kpsaret Block 5 (Kapteldon)/119 A and 0.3976 from LR. Kapsaret/Kapsaret Block 5 (Kapteldon)/119B. The truth of the matter was that Kapsaret/Kapsaret Block 5 (Kapteldon)/119 had not been subdivided and was intact.
3. The Plaintiff who is the mother of the 2nd Defendant protested to NLC officials who were by then based at the Chief's office Kapsaret location. The Plaintiff did not want her son to be compensated for land save for developments he had carried on the land as she had not subdivided her land.
4. When the NLC officials did not address her concerns, she instructed her lawyer who wrote a demand letter which was also not acted upon. This is what prompted the Plaintiff to file a suit against NLC and her son who is the second Defendant.
5. The Plaintiff claimed the following reliefs:-
 - a. The compensation for the whole of plot No. Kapsaret Block 5 (Kapteldon) 119 be paid to her.



- b. There be a permanent injunction against the 1st Defendant restraining them whether by themselves or agents or servants or anybody acting under their instructions from paying the 2nd Defendant the compensation in respect to plot No. Kapsaret Block 5 (Kapteldon) 119 B except for compensation for trees, pending hearing and determination of this case.
 - c. Costs of this suit.
 - d. Interest on (a) & (b) above till payment in full.
 - e. Any other or further relief this Honourable court may deem fit to grant.
6. The NLC filed a defence to the Plaintiff's claim in which it stated that it had nothing to do with the dispute between a mother and her son and that NLC relied on information regarding who was to be compensated from the acquiring authority in this case KEHNA. The NLC stated that it was ready to abide with any court orders given.
 7. On 11th June, 2019, the Advocates for the Plaintiff and the 2nd Defendant recorded a consent in which they agreed that the compensation for improvements on the land be paid to the Plaintiff, the 2nd Defendant and her other son Michael Kipruto Kurgat according to their respective improvements on their portions. The compensation in respect of the land acquired was to be deposited in a joint interest earning account in the names of the Advocates for the Plaintiff and the 2nd Defendant pending determination of this suit.
 8. The consent order was fully implemented by NLC which was discharged from this suit on 20th February, 2020.
 9. The Plaintiff who has five sons and two daughters testified that initially LR. No Kapsaret/Kapsaret Block 5 (Kapteldon)/119 was registered in the name of her late husband Hassan Choge. The land later changed to her name and she obtained title on 21st November, 2016. She testified that she had never subdivided the land and that she only showed her sons where to build their houses and plant trees.
 10. The Plaintiff testified that the 2nd Defendant had fraudulently claimed that he had a share of 2 acres of the land which was about 8 acres and that he was therefore entitled to compensation for his portion. The Plaintiff called her two other sons and two daughters who all said that their mother's land had not been subdivided and that they wanted the compensation money to be released to their mother who would then decide on how to share the money.
 11. On his part the 2nd Defendant stated that his late father became sick between 2009 and 2010 and that when he felt better, he came and informally subdivided his land into four portions of 2 acres each. His mother was given 2 acres and each of the three sons 2 acres each. He went on to state that his brothers and mother sold their portions and re-located from home. He stated that he is the only one who has land at home and that his mother and brothers have come back after compensation was given to claim compensation from his land.
 12. The 2nd Defendant called the Chief of Kapsaret location who testified that on 21st November, 2013, there was a meeting which was held between the Plaintiff and her family. Prior to this meeting, the plaintiff and her son had been to her office where the Plaintiff informed her that she had shouldered medical expenses for the wife of the 2nd Defendant to the tune of Kshs 34,000/= and that the 2nd Defendant had agreed to give his mother 0.1 of an acre in compensation thereof. She produced a letter which she had written on 10th November, 2018.
 13. The parties were directed to file written submissions in respect of this suit. The Plaintiff filed her submissions on August 15, 2022. As at the time of writing this judgement on March 16, 2023, the 2nd



Defendant had not filed submissions and if any were filed, then they are not in the file. The only issue for determination in this case is as to who is entitled to compensation for the land which was acquired. The other issue is as to which order should be made on costs.

14. There is no contention that LR. No Kapsaret/Kapsaret Block 5 (Kapteldon)/119 was registered in the name of the Plaintiff. Evidence which was adduced which I found credible is that neither the Plaintiff nor her deceased husband had subdivided the land. The Plaintiff's sons had been shown where to plant trees and put up their houses.
15. The Plaintiff did not have any objection to her sons being compensated for the improvements on the land. The second Defendant whose house and trees were affected was given Kshs 265,500/= . Michael Kipruto Kurgat whose trees were affected was given 248, 975/=
16. Ordinarily, compensation for acquired land is given to the registered owner of the land acquired or to whoever the parties will agree that the compensation should be given to. In the instant case, the Plaintiff had not subdivided her land. It therefore follows that compensation for land should go to her.
17. I found the evidence of the second defendant to be doubtful. He claimed that his father had subdivided his land and that all his brothers and mother sold their portions and relocated from home. The evidence which emerged during hearing is that it is the 2nd Defendant who chased his mother who went to live in rental premises.
18. Whereas the 2nd Defendant testified that it is his father who subdivided his land after 2010, the Chief of Kapsaret location whom he called as his witness contradicted him when she claimed that on November 21, 2013, the Plaintiff convened a family meeting whereby she gave the 2nd Defendant 1.8 acres after deducting 0.1 acres in compensation of the amount the Plaintiff had spent on the 2nd Defendant's wife's medical expenses.
19. The 2nd Defendant was charged with a criminal offence arising out of the compensation money. He was fined Kshs. 10,000/= as per his own evidence though he alleged that he was framed up.
20. As there is cogent evidence that the Plaintiff had not subdivided her land, there is no basis upon which the 2nd Defendant can claim compensation for the acquired land. It is the Plaintiff who still held the land and is entitled to the entire compensation for the land.
21. I therefore find that the Plaintiff has proved her case on a balance of probabilities. I therefore allow the Plaintiff's claim in terms of prayer (a). Prayer (b) has already been spent in that the NLC had released the compensation money for the land which is held in the joint interest earning account in the names of the Advocates for the Plaintiff and the 2nd Defendant. The entire money which was deposited should be released to the Plaintiff's Advocate for onward transmission to the Plaintiff. As the Plaintiff is mother to the 2nd Defendant I order that each party do bear their own costs.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 20TH DAY OF MARCH, 2023.

E. O. OBAGA

JUDGE

In the virtual presence of;

Ms. Mutai for Mr. Chepkwony for Plaintiff.

