



**Bowen v Kwonyike (Environment and Land Appeal E006 of 2022)
[2023] KEELC 17626 (KLR) (26 April 2023) (Judgment)**

Neutral citation: [2023] KEELC 17626 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ITEN
ENVIRONMENT AND LAND APPEAL E006 OF 2022**

**L WAITHAKA, J
APRIL 26, 2023**

BETWEEN

ISAIAH BOWEN APPELLANT

AND

ANDREW KWONYIKE RESPONDENT

*(Being an appeal from the judgment of SPM C. Biwott
delivered on 30th June 2022 in ELC No. 25 of 2020)*

JUDGMENT

Introduction

1. By a plaint dated 9th September 2020 and filed on 11th September 2020, the respondent herein instituted a suit in the lower court to wit Kabarnet CMC ELC Case No 34 of 2020 seeking judgment against the appellant herein for an order of permanent injunction to restrain the appellant by himself, his servants, and/or agents or otherwise howsoever from entering and/or trespassing upon, alienating, interfering with and/or in any other manner dealing with the parcel of land known as Baringo/Marigat/385 (hereinafter referred to as the suit property); an order of eviction against the appellant; general and special damages of Kshs 58,000/- and costs of the suit.
2. The respondent's case was premised on the grounds that he is the registered owner of the suit property; that on or about 2017 the appellant unlawfully, illegally and forcefully encroached and trespassed on the suit property and committed acts of waste thereon by demolishing the fence he had erected thereon and erected a structure thereon.
3. Lamenting that as a result of the appellant's unlawful entry, interference and trespass to the suit property he has suffered and continues to suffer loss and damage, the respondent sought the reliefs listed herein above.



4. Upon being served with the suit papers, the appellant filed a statement of defence and counterclaim denying the allegation levelled against him and contending that the respondent illegally and fraudulently acquired the suit property.
5. The particulars of the pleaded fraud and illegality are listed in paragraph 4 of the counterclaim thus:
 - a. Failing to follow due process in executing transfer forms;
 - b. Buying land without regard to subsisting owner utilizing and owning the land;
 - c. Acquiring a certificate of title illegally, unprocedurally and through corrupt scheme;
 - d. Acquiring the land without consent of the affected members and oblivious of the consent of the owner utilizing the suit land;
 - e. Masquerading as a member of the marigat group ranch.
6. By way of counterclaim, the appellant sought judgment for a declaration he (the appellant) is the rightful owner of the suit property; cancellation of the title held by the respondent in respect of the suit property.
7. The respondent filed a defence to the counterclaim denying the appellant's claim and contention that he obtained the suit property illegally and/or fraudulently.

Evidence

The Respondent's Case

8. When the case came up for hearing, the respondent informed the court that he bought the suit property from Grace Chelagat in 2015; that he bought the suit property at kshs. 600,000/- and that the seller transferred the suit property to him. He produced a copy of the title deed issued to him in respect of the suit property as Pexbt 1. He fenced the suit property using barbed wire and metal posts.
9. He received information that the fence was destroyed. He hired boys to clear the suit property but the boys were chased away by the appellant who claimed to be the owner of the suit property.
10. The respondent further informed the court that the appellant trespassed into the suit property and erected a structure thereon. He instructed an advocate to take action against the appellant. He obtained temporary orders restraining the defendant from entering the suit property which he served upon the appellant. The appellant disobeyed the orders. He produced the agreements entered between him and the seller, dated 3th October 2015 and 15th December 2015 as Pexbt 2a and 2b.
11. The respondent further informed the court that when he bought the suit property, it was idle and unoccupied; that he did not deal with group ranch but dealt with Grace.
12. He conceded that he did not attend the Land Control Board but he signed transfer forms presented to him by Grace.
13. PW 2, Grace Chelagat Chebungei confirmed the respondent's evidence to the effect that she sold and transferred the suit property to him. She had bought the suit property from Michael Chepsergon. She sold to the respondent a portion of the land she bought from Chepsergon. Michael Chepsergon transferred the land to them.
14. PW 2 further informed the court that Michael Chepsergon was a member of the group ranch.



The Appellant's Case

15. The appellant informed the court that his claim of ownership on the suit property is on account of being a member of the group ranch. He was entitled to 35 acres from the group ranch.
16. He was in occupation of the suit property when the respondent bought it and acquired a title in respect thereof.
17. He acknowledged that the group ranch had issued titles to some of its members and that such persons could sell their land. He also acknowledged that his 35 acres share of land from the group ranch is not mapped out or surveyed. He further acknowledged that the respondent has a title deed in respect of the suit property but stated that he does not know how he got it.
18. He further stated that they have a case at the group ranch over the suit property.
19. He stated that it is the group ranch which transferred the suit property to the respondent and contended that the group ranch could neither transfer the land without participation of its members nor transfer the land to none members.
20. DW 2, Isaiah K. David led evidence to the effect that the appellant was in use and occupation of the suit property when the respondent bought it acquired a title deed in respect thereof.
21. He acknowledged that some of the group ranch members had obtained title deeds in respect of their portions of their land and that those with title deeds could sell their portions.
22. DW 3 John Laku, outlined the procedure for acquisition of land belonging to a group ranch. Like DW 2 he acknowledged that upon obtaining title deeds for their portions of the group ranch land, owners could sell their portions. He further acknowledged that that Michael Chepsergon from who the respondent's title deed arises, was given a title deed.
23. He could not tell whether the titles issued in respect of the group ranch were proper.
24. DW 4, Mark Odhiambo Ochieng, gave an account of the procedure for registration of land belonging to a group ranch. He could not tell whether anything was the matter with the title issued to the respondent.
25. On the basis of the pleadings, evidence and submissions filed by the parties, the Learned Trial Magistrate (TM) entered judgment in favour of respondent and against the appellant. In doing so, he stated:-

“From the evidence given, this suit is related to Kabarnet CM ELC No 2 of 2020, Grace Chelagat v Isaiah Kibowen. The secretary, Marigat Group Ranch told court that the mother title was comprised of 18000 acres due for 394 members; That 200 titles had only issued and some are pending. The defendant appears to be one of those who have not taken titles to their portions of land. He should petition the Group Ranch for own title deed. In this case, the plaintiff has title for the suit land. PW 2 got ownership from original member – Michael Chepsergon. The plaintiff gave consideration for it. The defendant has lost nothing since his portion is still in the remaining part of the remaining 18,000 acres had by the Group Ranch. His allegations of fraud are unfounded because the transaction was processed through the group ranch offices. I dismiss his defence and counterclaim with costs to the plaintiff.....



Having proven that the suit parcel No Baringo/Marigat/385 is registered in his name having bought it, I find the plaintiff's suit with merit. He should be respected for his rights under section 24 of the [Registered Land Act](#). Therefore, I grant the injunction in prayer a of the plaint against the defendant and/or his agents/servants. Prayer b fails. The plaintiff shall have the costs of the suit with interest at court rates against the defendant”.

26. Aggrieved by the decision of the lower court, the appellant appealed to this court on thirteen 13 grounds that can be reduced to one broad ground namely; The TM erred in allowing the respondent's case and dismissing his defence and counterclaim.
27. Pursuant to directions given on 3rd November 2022, that the appeal be disposed of by way of written submissions, the parties filed submissions which I have read and considered.

The Appellant's Submissions

28. In his submissions, the appellant submits that the TM erred by not giving satisfactory reasons supported by evidence tendered in court that the title to the suit property was not obtained fraudulently. He contends that a title deed cannot legally issue to a person who did not appear before the land control board or who was represented thereat by a person without any valid document to appear on his behalf.
29. He imputes forgery in the process that led to acquisition of title by the respondent and claims that respondent did not sign transfer documents.
30. He contends that the agreement did not refer to the suit property because at the time of sale, the suit property was not yet registered and takes issue with the fact that the suit property was directly transferred to the respondent, who was not a member of the group ranch, without consultation of the group members.
31. The appellant further submits that there never existed a title deed in the name of PW 2 or Chepsergon which could be transferred to the respondent; that the respondent mischievously failed to include Chepsergon in the suit order to hid information concerning how he came to own the suit property and that the TM ignored his evidence.
32. The appellant further submits that the TM ignored the legitimacy and ownership of the suit property by the appellant as a member of the group ranch and that the TM ignored the evidence of his witnesses and was outrightly biased against him.
33. The appellant further contends that the TM failed to address himself to his counterclaim, delivered a judgment that was not objective and jurisprudential and failed to refer to expert witness on procedure of obtaining title in group ranches, that to say DW 3 and DW 4.
34. The appellant maintained that the respondent obtained title to the suit property directly from the group ranch, when he was not a member of the group ranch, which action is unprocedural. According to the appellant, title has to be issued to a member of the group ranch, first.

Duty of this court as the first appellate court

35. In exercise of the duty vested in this court as a first appellate court, I have reevaluated the evidence adduced before the lower court with a view of reaching my own conclusion on it. I have reminded myself that a first appellate court will not ordinarily interfere with findings of fact by the trial court unless they were based on no evidence at all, or were based on misapprehension of the evidence or unless it is demonstrated that the trial court acted upon wrong principles in reaching the finding. In



that regard see *Selle & another v Associated Motor Boat Co. Ltd* (1968)E.A 123 and *Mwanasokoni v Kenya Bus Service Ltd* (1982-88)1 KAR and *Kiruga v Kiruga & another* (1988) KLR 348.

Analysis and Determination

36. The respondent is the registered proprietor of the suit property. He was registered as the proprietor of the suit property on 18th February 2019 (see Pexbt 1-Title deed for the suit property). The respondent obtained title to the suit property by way of purchase from Grace J. Chebongei (PW 2) who had equally bought it from Michael Chepsergon, a member of the group ranch.
37. There is evidence from the appellant's own witnesses, DW 2 and DW 3, that Michael Chepsergon was a member of the group ranch and that he had obtained a title deed in respect of his share of land in the group ranch.
38. The appellant and his witnesses acknowledged that members of the group ranch who had obtained title in respect of their share of land in the group ranch could sell it.
39. No involvement of the group ranch or its members was required for such members to sell their land as upon registration as private owners of the land, the land ceased to belong to the group ranch. In any event, it is only the group ranch through its representatives that could sue on behalf of its members concerning land belonging to the group ranch. Individual members of a group ranch lack capacity to sue until and unless they have acquired private interest in the land belonging to the group ranch. In that regard see the case of *Daniel Mamagul Kandeji & 2 others v Kamanga Holdings Ltd & 44 others* (2017) eKLR where it was held:-

“Having read the provisions of Sections 5, 7 and 8 of the Act, and the cases of *Simon Tapai Santento Kimnyak Ole Sale (Suing on behalf of 78 Olepols Village Members) v Ita Ole Bulati & 8 others* [2011] eKLR and *Nkol Risha Ole Ntompo Kerery and 4 others v Chairman Larngosua Group Ranch & 9 others* Nairobi HCCC No 269 of 2001, I agree with the defendants that the plaintiffs not being the group representatives contemplated under the aforementioned sections of the law, have no capacity to sue on behalf of the group ranch, the members of the group ranch or on their own behalf.

In the case of *Simon Tapai Santento Kimnyak Ole Sale (Suing on behalf of 78 Olepols Village Members) v Ita Ole Bulati & 8 others* (supra), Wendoh J., observed:

“It does not seem to be in dispute that the land in issue generally belongs to Naroosura Group Ranch. It has not yet been subdivided. The land is therefore governed by the *Land Group (Representative) Act* Cap. 287, Laws of Kenya. The question is therefore whether the applicants are properly before the court. Under Section 5 of the Act, a meeting of the Group, convened by the Registrar after due notice, elects its representatives. Under Section 7, the said representatives who then apply for incorporation and under Section 8, the certificate of incorporation confers on the representatives power to sue and be sued in the corporate name, acquire, hold or charge and dispose of property of any kind and borrow money with or without security. Section 9 then provides for change in the Group representatives. In the event of disputes, Section 10 allows the Registrar to intervene or the same be adjudicated upon by the District Magistrate's Court. It seems that there are disputes in the Group Ranch over leadership and ownership or use of land as admitted by the applicants in the further affidavit at paragraphs 9 to 14. That being the case, the applicants should first exhaust the dispute resolution mechanism under the Act (Section 10) before they can venture to come to this court. Besides, it is clear from Section 5 and 7 that the applicants have no locus to bring this application as they are not Group representatives recognized under Section 8 of



the Act. The Group Ranch is still in existence and the applicants must comply with Chapter 287, Laws of Kenya, and Rules of the Group to which the Group is subject.....Apart from the applicants lacking the necessary locus standi to bring this suit, this application offends provisions of the Group Ranch Representatives Act. I do uphold the objection based on the preliminary objection filed by the Respondent and the application dated 28/7/2010 is hereby dismissed with the applicants bearing the costs.”

40. The totality of the evidence led in this case shows that the respondent lawfully acquired interest in the suit property, by way of purchase from a person who had purchased it from a member of the group ranch.
41. The pleaded fraud or illegality was not proved. The mere fact that the appellant was in occupation of a portion of land belonging to the group ranch did not make him owner of the land.
42. In the end, I find the appeal to be lacking in merits and dismiss it with costs to the respondent.
43. Orders accordingly.

JUDGMENT DATED, SIGNED AND DELIVERED AT ITEN THIS 26TH DAY OF APRIL, 2023.

L. N. WAITHAKA

JUDGE

Judgment delivered virtually in the presence of:-

N/A for the Appellant

Mr. Chebii for the Respondent

Court Asst.: Thomas

