



**Rutto & another v Prime Holdings Limited & 6 others (Environmental and Land Originating Summons E001 of 2022) [2023] KEELC 17023 (KLR) (26 April 2023) (Judgment)**

Neutral citation: [2023] KEELC 17023 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT ELDORET**  
**ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E001 OF 2022**  
**JM ONYANGO, J**  
**APRIL 26, 2023**  
**IN THE MATTER OF THE LIMITATION OF ACTIONS ACT CAP 22 OF THE LAWS**  
**OF KENYA**  
**IN THE MATTER OF THE REGISTERED LAND KNOWN AS ELDORET**  
**MUNICIPALITY BLOCK 5/615**  
**IN THE MATTER OF AN APPLICATION BASED ON ADVERSE POSSESSION**

**BETWEEN**

**DAVID KIPKOECH RUTTO ..... 1<sup>ST</sup> APPLICANT**

**HOSEA KIBET RUTTO ..... 2<sup>ND</sup> APPLICANT**

**AND**

**PRIME HOLDINGS LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**CHRISTIN KIGEN SEREM ..... 2<sup>ND</sup> RESPONDENT**

**FRANCIS KIPKOSGEI CHEPKONGA ..... 3<sup>RD</sup> RESPONDENT**

**EMMANUEL KIPLAGAT CHEPKONGA ..... 4<sup>TH</sup> RESPONDENT**

**THE LAND REGISTRAR UASIN GISHU COUNTY ..... 5<sup>TH</sup> RESPONDENT**

**THE CHIEF LAND REGISTRAR ..... 6<sup>TH</sup> RESPONDENT**

**THE ATTORNEY GENERAL ..... 7<sup>TH</sup> RESPONDENT**

**JUDGMENT**

1. The Plaintiffs filed suit against the Defendants by way of Originating Summons dated 29<sup>th</sup> January 2022 seeking the following reliefs:



- (a) A declaration be issued declaring that the 1<sup>st</sup> Applicant and his agents have been in peaceful and continuous occupation of a portion measuring 2.4 acres of Land Reference no Eldoret Municipality/Block 5/615 for a period in excess of 12 years and they have therefore acquired title of the same by way of adverse possession.
  - (b) A declaration be issued declaring that upon the expiry of 12 years the 1<sup>st</sup> to 4<sup>th</sup> Respondents held a portion of land measuring 2.4 acres of Land Reference no Eldoret Municipality/Block 5/615 in trust for the Applicants.
  - (c) An order be issued directing the Chief Land Registrar and the Land Registrar Uasin Gishu County to cancel the Defendants' Certificate of lease issued on 21<sup>st</sup> October 2008 over Land Reference no Eldoret Municipality/Block 5/615 and in lieu thereof restore the 1<sup>st</sup> Plaintiff's certificate of lease issued on 11<sup>th</sup> January 2007.
  - (d) An order be issued directing the Land Registrar to register the 1<sup>st</sup> Respondent as the proprietor of the portion of land measuring 2.0.4 acres out of Land Reference no Eldoret Municipality/Block 5/615 which they occupy (*sic*).
  - (e) In the alternative and without prejudice to the foregoing, an order of declaration be issued that the 1<sup>st</sup> Plaintiff is the *bona fide* lessee of the leasehold interest comprised in Land Reference no Eldoret Municipality/Block 5/615 for a period of 99 years commencing 11<sup>th</sup> January, 2007 and the 1<sup>st</sup> to 4<sup>th</sup> Respondents leasehold interest on the property was acquired fraudulently, unprocedurally, illegally and is null and void *ab initio*.
  - (f) An order that the defendants shall bear the costs of this suit.
2. The originating Summons is supported by the Affidavits of David Kipkoech Rutto and Hosea Kibet Ruto the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs herein, both sworn on 27<sup>th</sup> January 2022. The 1<sup>st</sup> to 4<sup>th</sup> Defendants were served by way of substituted service through an advertisement in the Standard newspaper but they did not file any Replying Affidavit. The 5<sup>th</sup> and 6<sup>th</sup> Defendants entered appearance but did not file any Replying Affidavit. The case was therefore set down for hearing by way of Formal Proof.
  3. The 1<sup>st</sup> plaintiff relied on his Supporting Affidavit and produced the documents annexed to his affidavit as exhibits 1-11. He testified that he applied for a plot from the Eldoret Municipal Council and he was issued with an allotment letter dated 16<sup>th</sup> February 1997 in respect of residential plot –PDP no, ELD/1/95/2A which he produced as an exhibit. He paid for the said plot and took possession thereof. He was subsequently issued with a certificate of lease in respect of LR no Eldoret Municipality Block 5/615 measuring 2.4 hectares on 11<sup>th</sup> January, 2007. He then applied for sub-division and sub-divided the plot into 14 portions which were give the numbers Eldoret Municipality Block 5-830-843. He produced a letter dated 31.7.2008 from the Survey of Kenya to the Commissioner of Lands indicating the Registry index map had been amended to reflect the new parcel numbers. He told the court that when he wanted to transfer some of the parcels to his agents after the sub-division, he conducted an official search and he discovered that parcel no Eldoret Municipality Block 5/615 was registered in the name of Prime Holdings Limited (1<sup>st</sup> Defendant) whose directors are Christin Kigen Serem, Francis Kipkosgie Chepkonga and Emmanuel Kiplagat Chepkonga (2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants respectively). He produced the Certificate of Official search which shows that the certificate of Lease for Prime Holding Ltd was issued on 21<sup>st</sup> October, 2008. He testified that he has never met the directors of Prime Holdings as they have never come to the suit property and he and the 2<sup>nd</sup> Plaintiff are the ones who have been in occupation all along. He therefore prayed that the title issued in the name of Prime Holdings be cancelled and that he be registered as the owner of the suit property.



4. Hosea Kibet Ruto, (2<sup>nd</sup> Plaintiff) testified as PW2. He relied on his Supporting Affidavit sworn on 27<sup>th</sup> January, 2022. He stated that he entered into a Memorandum of Understanding dated 4<sup>th</sup> April, 2007 with the 1<sup>st</sup> Plaintiff whereby he agreed to facilitate the sub-division of the 1<sup>st</sup> plaintiff's land parcel no Eldoret Municipality Block 5/615 in exchange for a fee equivalent to 4 plots out of the said parcel of land. He carried out the sub-division and the 1<sup>st</sup> Plaintiff gave him the 4 plots which he has been occupying since 2007. He has constructed a house on one of the plots and he uses the other three for farming. The 1<sup>st</sup> Plaintiff has however been unable to transfer the 4 plots to him as he discovered that original parcel was registered in the name of the 1<sup>st</sup> defendant. He prayed that the suit property be registered in the 1<sup>st</sup> Plaintiff's name so that he could have his 4 plots transferred to him.
5. After the close of the Plaintiffs' case, learned counsel for the plaintiffs filed his submissions dated 28<sup>th</sup> February, 2023 which I have considered.
6. The following issues arise for determination:
  - i. Whether the 1<sup>st</sup>-4<sup>th</sup> defendants have a good title to land parcel no Eldoret Municipality Block 5/615.
  - ii. Whether the plaintiffs have acquired title to the suit property by way of adverse possession.
  - iii. Whether the plaintiffs are entitled to the reliefs sought.
7. It is not in dispute that the Plaintiff was issued with an allotment letter dated 16<sup>th</sup> February, 1999 by the Eldoret Municipal Council after which he complied with the conditions in the said letter and he was issued with a Certificate of Lease dated 11<sup>th</sup> January, 2007. It is also not in dispute that the plaintiffs have been in occupation of the suit property since 1997. The plaintiffs produced photographs showing the developments on the suit property as exhibits. It is evident that the 1<sup>st</sup> plaintiff obtained approval for sub-division of the suit property from the Municipal Council of Eldoret before he embarked on sub-division of the same into 14 plots as per the survey plan annexed to the 2<sup>nd</sup> plaintiff's supporting affidavit.
8. It is therefore not clear how the property was registered in the name of the 1<sup>st</sup> defendant on 21<sup>st</sup> October, 2008 yet it had already been registered 1<sup>st</sup> Plaintiff's name. In *Republic v City Council of Nairobi & 3 Others* 2014 eKLR the court observed as follows:

Once an allotment letter is issued and the allottee meets the conditions therein, that land in question is no longer available for allotment since a letter of allotment confers an absolute right of ownership unless it is challenged by the allotting authority or it is acquired through fraud, mistake or misrepresentation or that the allotment was outrightly illegal or it was against public interest.
9. In their pleadings, the plaintiffs have alleged that the 1<sup>st</sup>-4<sup>th</sup> Respondents' leasehold interest in the suit property was acquired fraudulently, unprocedurally and illegally and that the same is null and void. At paragraph 8 of the Originating Summons, the particulars of fraud attributed to all the defendants are:
  - a) "Illegally and fraudulently obtaining a certificate of lease for LR Eldoret Municipality Block 5/615 a certificate of lease while knowing that a certificate of lease for the same parcel was subsisting in favour of the Applicant.
  - b) Failing to ascertain the ground status of the land before issuing a certificate of lease to the 1<sup>st</sup> Respondent.



- c) Interfering with the register and documentation of LR no Eldoret Municipality Block 5/615 without following the law and regulations relating to registration of leases and titles.
10. It is trite law that fraud must not only be pleaded but it must also be proved to the required standard. The Plaintiffs did not lead any evidence to prove fraud on the part of the defendants. However, by failing to confirm the status on the ground and issuing the 1<sup>st</sup> Defendant with a title when the 1<sup>st</sup> plaintiff had already been issued with a Certificate of lease, the 5<sup>th</sup> and 6<sup>th</sup> defendants acted illegally and unprocedurally and the 1<sup>st</sup> defendant's title is impeachable under section 26 (1) (b) of the [Land Registration Act](#). The said section provides as follows:

Section 26. (1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as *prima facie* evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—

- (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or
- (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

In the case of [Daudi Kiptugen v Commissioner of Lands & 4 Others](#) [2015] eKLR court held as follows:

“In order to determine the question whether the lease held by the plaintiff is valid, it must be demonstrated that it was properly acquired. It is not enough that one waves a Lease or a Certificate of Lease and assert that he has good title by the mere possession of the Lease or Certificate of Lease. Where there is contention that a Lease or Certificate of Lease held by an individual was improperly acquired, then the holder thereof, must demonstrate, through evidence, that the Lease or Certificate of Lease that he holds, was properly acquired. The acquisition of title cannot be construed only in the end result, the process of acquisition is material. It follows that if a document of title was not acquired through the proper process, the title itself cannot be said to be a good title. If this were not the position, then all one would need to do is to manufacture a Lease or Certificate of Title, at a backyard or the corner of a dingy street, and by virtue thereof, claim to be the rightful proprietor of the land indicated therein. It is therefore necessary for this court to determine how the plaintiff ended up having a Lease and Certificate of Lease in his name, and further determine if the Government did intend to issue the plaintiff with a Lease over the suit land.”

11. On the basis of the plaintiffs' evidence which stands uncontroverted, I find and hold that the 1<sup>st</sup> defendant does not hold a good title to the suit property.
12. With regard to the second issue, the plaintiffs testified that they have occupied the suit property for a period in excess of 12 years and that the 1<sup>st</sup> Plaintiff should be declared as the owner thereof by virtue of adverse possession. However, the 1<sup>st</sup> plaintiff's occupation of the suit property is pursuant to an allotment by the Municipal Council of Eldoret after which he met all the necessary conditions and he was issued with a Certificate of lease. He is therefore lawfully occupying the suit property as an owner and not an adverse possessor. In order to succeed in a claim for adverse possession, one has to acknowledge the title of the owner. However, in this case the 1<sup>st</sup> plaintiff is challenging the manner



in which the 1<sup>st</sup>-4<sup>th</sup> defendants acquired the title to the suit property and the two claims cannot co-exist. The plaintiffs ought to have elected to pursue one cause of action because whereas an Originating Summons is the most appropriate format of bringing a suit for adverse possession, a plaint would have been more appropriate for challenging the 1<sup>st</sup> defendant's title.

13. Finally, with regard to the reliefs sought, the plaintiffs have proved that the 1<sup>st</sup> defendant does not hold a valid title and the same ought to be cancelled. Consequently, I enter judgment for the plaintiffs and make the following final orders;
- (a) A declaration is hereby issued that the 1<sup>st</sup> Plaintiff is the *bona fide* lessee of the leasehold interest comprised in LR no Eldoret Municipality Block 5/615. The Certificate of lease in the name of Prime Holdings Limited was acquired illegally and unprocedurally and is null and void ab initio and the same is hereby cancelled.
  - (b) The 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents are hereby directed to execute all such documents as shall facilitate the transfer of the parcel of land known as LR no Eldoret Municipality Block 5/615 measuring 2.4 Hectares to the 1<sup>st</sup> Plaintiff's name and in default the Deputy Registrar of this Honourable court shall execute all the relevant documents on behalf of the 1<sup>st</sup> Defendant to facilitate the said transfer.
  - (c) The costs of this suit shall be borne by the Defendants.

**Dated, signed and delivered virtually this 26<sup>th</sup> day of April 2023.**

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**J.M ONYANGO**

**JUDGE**

**In the presence of;**

**1. Mr. Murgor for the Plaintiffs**

**2. No appearance for the Defendants**

**Court Assistant: A.Oniala**

