



**Kedipa v Chepkokwo (Environment & Land Case 59 of 2017)
[2023] KEELC 16905 (KLR) (24 April 2023) (Judgment)**

Neutral citation: [2023] KEELC 16905 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT & LAND CASE 59 OF 2017**

FO NYAGAKA, J

APRIL 24, 2023

BETWEEN

FRANCIS DOCTOR KEDIPA PLAINTIFF

AND

BEATRICE CHEPKOKWO DEFENDANT

JUDGMENT

1. This case is a classic example of greed and its siblings, namely, avarice and cupidity, and their distant cousins, namely, male ego and chauvinism, that have conspired subtly and made themselves to, and have taken a ride in and are now flying and gliding in the sphere of cultural beliefs, practices and tendencies that have for long been a source of discrimination against women and girls in many an African society. They have now inflicted extreme pain to a divorced sister of the Plaintiff who cries for justice in the instant case, and they intend to hit the last nail on her 'coffin' of the life of a single mother who has no other means of survival. While this Court is not one whose decisions cannot and are not made based on 'evidence' of parties' emotions, I cannot overlook the fact of the Defendant having on not less than two occasions shed tears before this Court while pleading with the Plaintiff brother to give her a share of what she knew as their own family property from childhood, and on which she has lived all along and grown on save for the stint of the failed marriage. Despite that, the Plaintiff could hear none of it.
2. The Plaintiff herein who described himself, in oral evidence, as a brother to the Defendant, was the only biological son of the late Losekwang Kedipa, through his and the Defendant's late mother. Both parents are said to be deceased, with the father having died on 07/12/2003. The deceased had daughters from the marriage. Their names are Chamakwany Siwanyang, Monicah Chemakwany, Agnes Chemakwany, Beatrice Chepkokwo (the Defendant herein). The late had two sons, Francis Doctor Kedipa (the Plaintiff herein) and Ezekial Pkiech. Of these was the Defendant whom the Plaintiff sued.



3. Despite concerted efforts by persons of goodwill, including both learned counsel, in encouraging the Plaintiff to settle this matter out of Court by agreeing to give his sister a part of the inheritance from their parents he vehemently refused. This led to the suit proceeding to full hearing hence this judgment. To him, the sister was not supposed to inherit anything, having been married off first.
4. The brief facts of the case, which came out clearly from the Plaintiff's evidence, were that once upon a time the said Losekwang Kedipa owned a parcel of land which came to be registered as West Pokot/Chepareria/328. It is the suit land herein. Before his demise, he had a land dispute with one Soi Lotus Kamket, also now deceased. The dispute was handled by the Chepareria Land Adjudication Committee.
5. At the first hearing, the Committee decided in favour of Soi Kamket. Then the deceased father of the parties herein appealed the decision to the Minister. In the course of the pendency of the said appeal, he died. Then, without taking out Letters of Administration, his son, now the Plaintiff, proceeded with the Appeal on behalf of his late father. At the end the Minister gave a decision in favour of the appellant, who by then was, as I have stated, the Plaintiff. Then the Minister, through a letter dated 31/08/2015 issued instructions that the title be registered in his name, being Francis Doctor Kedipa. It was duly registered.
6. The sister who is now the Defendant, was once upon a time married but the marriage went to the rocks. She, with her children returned to her father's home, meaning her ancestral home. It was situate on the suit land herein. She has been living there until the instant suit which seeks her eviction for the reason that the land is not registered in her name but in that of the Plaintiff. She believes that she has a right thereto and has therefore defended the suit and filed a counter-claim. In the Counterclaim she prays for, among others, cancellation of the registration of the title in the name of the Plaintiff.

The Claim

7. The Plaintiff brought this suit on 31/03/2017 by way of Plaint dated 30/03/2017. In it he prayed for an order of eviction of the Defendant, her servants and or agents from the parcel of land known as West Pokot/Chepareria/328, and a permanent injunction against the Defendant and her servants and or agents as stated herein, and the costs of the suit.
8. The Plaintiff claimed, in his pleadings, that the Defendant trespassed onto his land in or about the year 2013 and prevented him from developing the land and had been destroying crops that the Plaintiff planted and damaged his property. Again, he claimed that in 2017 when he intended to sell part of the land for fees for his children the defendant prevented him from doing so and used the area chief to intimidate him. He averred that he had not authorized the Defendant to reside on and use the land.

The Defence and Counterclaim

9. The Defendant entered appearance and filed defence thereto on 24/04/2017. She denied being a trespasser onto the parcel of land and that the land belonged to the Plaintiff. She pleaded instead that it belonged to her father the late Losekwang Kedipa and that she was a beneficiary of the estate of the late father and thus entitled to a share thereof. She averred further that the Plaintiff fraudulently and illegally registered himself as the owner. She pleaded the particulars of illegality and fraud. She prayed for the dismissal of the suit with costs.
10. Additional to the Defence, she filed a counter-claim to the suit. In it she pleaded that the registration of the parcel of land in the name of the Plaintiff was unlawful and be declared null and void. She prayed



for a declaration that the transfer and registration of the title to the land in the name of the Plaintiff was null and void. She asked for the costs of the Counter-claim.

11. When the matter came up for hearing, the Plaintiff gave evidence and called two witnesses to support his case. His evidence was that the Defendant was his sister. He testified that he owned the parcel of land known as West Pokot/Chepareria/328 and produced a copy of the title thereof as P.Exhibit 1. His evidence was that prior to being registered as the owner, the land had a dispute between his father, Losekwang, and one Kosikor Soi Rutowu Kamketo who was his neighbor, whose wife was Chepokawat Pusikol. When he was cross-examined upon being recalled to give further evidence he stated that the dispute was only in relation to a portion of the land. His further evidence in-chief was that the dispute was handled in Chepareria by the Adjudication Committee. It was appealed from in Appeal case No. 380 of 1997 and he, the Plaintiff, was successful. Then the land was, by order of the Minister, registered in his name and that the title to the whole land was issued in his name. Afterwards a restriction was placed on the land and the Director of Land Adjudication ordered the removal of the same.
12. His evidence was that he was given the land by his late father and that it was not family land. He stated that he had a step brother by name Ezekiel but the brother's mother was not married to his father and that he was taking care of him. By the time of the Plaintiff's testimony, he stated, the said Ezekiel was still in school and he, PW1, wanted to sell the land so that he would pay school fees for him. That was when the Defendant, one Beatrice, objected through the area chief.
13. His further evidence was he had sisters who, including the Defendant, were his father's children but were living in their matrimonial homes until three years prior to the case when the Defendant started disturbing him and coming to work on the land by force. He stated further that she would work on the land and leave to her home.
14. Upon cross-examination PW1 repeated the fact of the existence of a dispute between the father and the neighbor. He admitted that in that dispute it was only a portion of the land which was in issue. He took over the dispute when his father died but he did not involve the family. He stated further in cross-examination, upon being recalled for further evidence, that when he continued with the case at the Minister (on the appeal) he informed him (office) that he was the only one at home since all his sisters were already married. He admitted that he did not inform the Minister that the dispute involved only a portion of the land and not the whole. He stated that the family had conducted succession proceedings and Letters of Administration were granted but he never produced evidence to that effect. His evidence was that the father died before he could transfer the land to him.
15. His testimony was that there was a written will made by his late father bequeathing him the land. He stated that he had given the evidence thereof (in actual sense he had not given any by the time of testimony). He admitted that the sisters had a right to inherit the land if they came back in peace and not in anger to claim it. He denied that his father gave him only the portion of the land disputed at the Adjudication office and that instead it was the whole.
16. In re-examination PW1 stated that the Minister did not order that he be registered as the owner of a portion thereof but the whole. He stated that no one objected to the decision on the adjudication and that the decision of the Minister had not been set aside hence the whole parcel of land was his.
17. PW2, one Chemakwany Siwanyang, who testified in Pokot tongue identified herself as the elder sister of the Plaintiff whom she said was the family's last born. She stated that the Defendant was her younger sister. She adopted the witness statement she wrote and signed on 1/12/2021.



18. The adopted statement which PW2 filed on the same date was to the effect that she was a daughter of the late Losekwang Kedipa who had five children. She gave the names, which were actually six in the list, as Monicah Chemakwany (who testified later as DW2), herself, Agnes Chemakwany, Beatrice Chepkokwo (the Defendant herein), Francis Doctor Kedipa (the Plaintiff herein) and Ezekial Pkiech. She stated therein that the land belonged to the Plaintiff who was given the same by his late father before he died. She testified that there were eighteen (18) people who had settled on it. She then stated that Beatrice and herself had land of their own. She stated that the dispute over the suit land ended in favour of the Plaintiff. She stated that the family did not file succession proceedings.
19. On cross-examination she admitted that their father was the late Losekwang Kedipa. She then gave the other siblings' names as Monicah, Patrick, Kama, Chelimo and Francis Kedipa (the Plaintiff) who was the only son of her mother although there was a step brother whose name she gave as Kanyalaka. She stated that she wrote in her statement that her father gave the suit land to the Plaintiff. She stated that as children of their parents they were born and brought up on the land. She admitted that the father died before he would transfer the parcel of land to the Plaintiff.
20. PW3, one Martin Odhiambo who was the County Land and Adjudication and Settlement Officer of West Pokot County testified that he had records pertaining to the land in issue. He stated that the land was initially under adjudication. It had a dispute, namely No. 63 of 1983, which was decided and an appeal therefrom preferred to the Minister, as No. 380 of 1997. The appeal was dismissed. He gave the names of the parties in the initial complaint as Lopetamuk Momaku, the complainant, who sued Losekwang Kedipa. He lost the case and appealed from the decision. He produced both the Adjudication Committee's and the Minister's decisions as P.Exhibit 2 and 3 respectively.
21. His evidence was that after the dismissal of the appeal the Director of Land Adjudication wrote to the Chief Land Registrar, on 31/08/2015, a copy of which letter he produced as P.Exhibit 4, advising him that the appeal had been dismissed and that the caution placed on the land parcel No. West Pokot/ Chepareria/328 be removed. After that the Land Registrar implemented the decision and a title was issued in favour of the Plaintiff.
22. His evidence was that a caution had been placed on the parcel of land by one Beatrice Cheptarus. He produced copies of the Green Card, Adjudication Records and Certificate of Official Search as P.Exhibit 5(a), (b) and (c) respectively. His evidence was that upon the dismissal of the appeal by the Minister he advised that the land be registered in the name of Francis Kedipa, the Plaintiff.
23. On cross-examination he stated that in the proceedings before the Committee the Objector was Soi Rutowu Kamketo and the Respondent Losekwang Kedipa, and not the Plaintiff herein. He stated that he did not know how the Plaintiff herein got into the proceedings thereafter. He also admitted that the proceedings before the Committee was in respect of a portion of the land in issue but changed his testimony again to state that it was in respect of the whole parcel, and that the Committee decided that the disputed portion remained the property of Losekwang Kedipa (NB: the proceedings - P.Exhibit 2 reads, "the disputed portion to remain the property of the Defendant Losekwang Kedipa as the verdict passed by the Arbitration Board"). PW3 admitted to this fact upon further cross-examination. He stated that when the appeal from the verdict was dismissed, the directions were that the land be registered in the name of Francis Kedipa but he was not a party to the proceedings and he had no Grant of Letters of Administration to the estate of the deceased father. He, however, admitted that in the appeal, the Objector (then Appellant) was represented by his widow, one Chepokawat Psekwang, and the Respondent by Francis Doctor Kedipa, his son. By then the parties in the initial objection were deceased.



24. When PW3 was re-examined, he restated that at the conclusion of the appeal it was Francis Kedipa who was to be registered as the owner of the parcel of land. Finally, he stated that it was the conclusion of the appeal that gave rise to the issuance of the title in the name of the Plaintiff herein. At that stage the Plaintiff closed his case and the Defendant then gave her version of the evidence. She testified as DW1 and called one other witness, DW2, her elder sister and DW3, the area Chief of the place where the land was situate.
25. DW1 testified that the Plaintiff was her biological brother who was her follower. She adopted her witness statement which was dated 24/04/2017 as her evidence in-chief. In the statement she stated that the Plaintiff was her “real” (understood herein as the biological) brother and that land parcel No. West Pokot/Chepareria/328 belonged to their late father, one Losekwang Kedipa, who died on 07/12/2003. She too gave the names of the siblings as did DW2. She stated that since the death of their father the family had not petitioned for Letters of Administration of his estate. She then stated that the Plaintiff had since unlawfully acquired title to the parcel of land in question to her exclusion and that of the other beneficiaries and wanted them out of it. She stated that the family tried to resolve the matter through the administration and police but the Plaintiff was adamant that the land was his and became chaotic. She stated therein that the land belonged to all of the beneficiaries of the late Losekwang Kedipa. She asked the Court to declare the transfer in favour of the Plaintiff and the registration thereof null and void.
26. She stated that the parcel of land in question was her late father’s. Further, that he once had a dispute with one Soi Kamketo over a section of the land. She produced as D.Exhibit 1 a Green Card for the whole parcel of land known as West Pokot/Chepareria/328 to show that initially the land was registered in her late father’s name. She testified that her father died on 07/12/2003. She produced as D. Exhibit 2 a copy of the Certificate of Death of her father. She testified further that on 05/05/2015 there was a family meeting that reached an agreement that the land of the late Mzee Losekwang Kedipa be shared among his children. She produced the agreement as D.Exhibit 3. She too produced the proceedings of the dispute before the Land Adjudication Committee as D.Exhibit 4. She then prayed for the dismissal of the case by the Plaintiff and the grant of the reliefs she sought in the Counter-Claim.
27. When DW1 was cross-examined she admitted that the dispute between her late father and the late Soi Kamketo went on appeal to the Minister but she was neither aware of nor was she asked to participate in it. She did not know if the Plaintiff was the one who continued with the Appeal as per the evidence tendered as P.Exhibit 3, which she was shown in cross-examination. She did not know that the Minister ordered that the land be transferred in the name of the Plaintiff. She could not tell whether or not after the Minister’s decision a letter produced as P.Exhibit 4, which she was shown, was issued to the effect that the land be registered in the name of the Plaintiff. She also could not tell whether the title to the land in question was issued after the decision, as evidenced by P.Exhibit 1, but she acknowledged it was issued on 24/12/2015. She admitted that she did not have any other decision overturning that of the Minister or to the effect that the title in favour of the Plaintiff should be cancelled. Her testimony was that the Plaintiff did not involve her when he continued with defence of the Appeal before the Minister.
28. DW2, one Monicah Patrick, testified in Pokot tongue. She stated that she was an elder sister of the Plaintiff and the Defendant. She adopted the statement she wrote on 21/12/2018 and filed on 22/02/2018. She too stated that she knew that there existed a dispute between her father and one Kamket over a small part of the parcel of land in question. Her evidence was that her father was awarded the land in the dispute because it was his. She did not, however, know how the dispute finally ended.



29. In the witness statement she dated 21/02/2018 and filed on 22/02/2018, she stated that she was the elder sister to the Defendant and that the Plaintiff was her real (reference taken herein to mean biological) brother. She stated that the suit land belonged to her late father, Losekwang Kedipa, who died on 07/12/2003, leaving six children all whose names, including hers, which she gave. Her further statement was that the family had not taken out letters of administration in respect of her late father's estate. She stated that the Plaintiff had unprocedurally acquired title to the land parcel in issue and wanted to evict them all from there. She repeated the fact of her father having had a dispute over a portion of the suit land and not the whole. Her statement was that the dispute was resolved in favour of her father.
30. Her further statement was that when the issue of the registration of the land in favour of the Plaintiff arose, as family, they tried to resolve it through the local administration but the Plaintiff refused to cooperate and instead stated that the entire land belonged to him. She repeated that the suit land belonged to them all as beneficiaries of the estate of the late Losekwang Kedipa and asked that the court finds null and void the registration of the title in favour of the Plaintiff.
31. DW3, one John Chomil, testified on 10/11/2022. He adopted his witness statement which he wrote on 05/11/2022. He added that he was the Chief of Kipkomo Location, and he knew both the Plaintiff and Defendant. He knew them as brother and sister. He also knew well the suit land which he stated that it was separated from that of Kamketo by a road. He said there was a dispute which the late Kamketo had with the late Kedipa wherein he claimed that the road passed through a section of his land, cutting it off. The dispute was over a small portion of the land and not all. He testified further that the late Losekwang Kedipa had two wives of whom were born five children and one respectively. He then asked the Court to award each of the five children of the late Kedipa a portion of the land.
32. On cross-examination, he stated that he did not know how the dispute between Losekwang Kedipa and the late Kamketo ended. He also did not know whether or not the Minister ordered that the land be registered in the name of Francis Kedipa.
33. Upon the parties concluding their examination and cross-examination of the witness, the Court posed a number of questions to the witness, for clarification. He answered them stating that he testified that all the children of the late Losekwang Kedipa be given a portion of the land each because that was what their late father wished to do before he died. He stated further that as at the time the suit was in Court, the Plaintiff occupied the northern part of the land which his father had shown to him, in the middle, he allocated his four daughters and to the southern part was a portion on which he had built a house both of which he had given to the son of the second wife. He stated that the late Kedipa died in 2003 intestate and by then he knew there was a dispute between the late Kedipa and one Kamketo over a boundary dispute over a small portion of the land. By then he was an Assistant Chief of the area. The disputed land was within his jurisdiction. He stated that as at the time of testifying he knew there was a dispute between the two children of the deceased and he had tried to resolve it in vain.
34. Lastly, he stated that both the Plaintiff and the Defendant were of Pokot origin. To him, according to the Pokot culture, even women are given land to inherit. That marked the close of the Defence case.

Submissions

35. At the close of the case parties were given opportunity to submit on it. The Plaintiff commenced his submissions by summarizing his case and the prayers he sought. He repeated that he and the defendant were siblings and children of the deceased Losekwang Kedipa. Further that the deceased had a dispute with one Soi Rutowu Kamketo over the same land. Finally, when the dispute, appealed as No. 380 of 1997, was heard by the Minister, it was resolved that the case be dismissed and the land be registered



in his name, Identity Number given. It was upon that order of the Minister that the land was finally registered in the name of the Plaintiff on 24/12/2015.

36. He submitted that the dispute between his deceased father and Soi Kamketo was not over a portion of the land but the whole, otherwise the Minister could have stated so in his decision. He then submitted that according to Section 29 of the *Land Adjudication Act*, the decision of the Minister is final. He relied on the case of Robert Kulinga Nyamu v. Musembi Mutunga & another [2022] eKLR. He urged that he be found to have been rightfully registered as owner and therefore entitled to the orders sought.
37. The Defendant also began by summarizing the pleadings before Court. She stated that according to the Plaintiff the suit land measured 5.54 Hectares onto which the Defendant had trespassed. She submitted that contrary to that view the land belonged to their late father and that the Plaintiff had fraudulently and illegally registered himself as owner of the same. She repeated the prayers sought in her Counterclaim.
38. The Defendant posed three issues for determination, being, whether the transfer of the suit land was illegal, whether the Plaintiff was entitled to the reliefs sought, and who to pay costs. She then summed up the evidence of the parties into half a page, repeating that the dispute between the parties' late father and the late Soi Kamketo was over a small portion of the land and not the entire land but the Plaintiff took advantage of the same to have the whole land transferred to himself. She stated the he admitted that he did not involve the entire family when registered the land in his name, and that he did not take out Letters of Administration. Finally, she stated that the land belonged to their late father and her counterclaim be allowed as prayed.

Issues, Analysis and Determination

39. I have considered the entire case before me, starting with the pleadings, the evidence adduced, the submissions by the parties and both the law and case law on the relevant issues. I find the following issues falling for determination:
 - a. Whether the Plaintiff was lawfully registered as owner of all that parcel of land known as West Pokot/Chepareria/328.
 - b. Whether the registration of the Plaintiff in respect of land parcel number West Pokot/Chepareria/328 is null and should be cancelled.
 - c. Whether the Defendant, her servants and or agents should be evicted from land parcel number West Pokot/Chepareria/328.
 - d. Who to bear the costs of this suit and of the Counter-claim.
40. I begin with determination on the first issue which is whether the Plaintiff was lawfully registered as owner of all that parcel of land known as West Pokot/Chepareria/328. To clearly answer the question, one must understand who the Plaintiff and the Defendant are in the context of this suit, and who initially owned the land that was finally registered in the Plaintiff's name.
41. First, the Court notes that this suit arises from a family divided along certain interests. For those who believe in the Bible, this case reminded the Court of the prophecy by Jesus, in Mathew 10 versus 21-23 that in the last days, among others, "Brothers and sisters will betray one another and have each other put to death...." The instant one is a case where a brother resolutely and decidedly trained his arsenals on his own (biological) sister and the sister against her own biological brother and sisters against their own sisters. The Court gave them many chances for reconciliation but it turned out that each of the sides had taken clear firm stands. That is why the brother testified against the sister and vice versa and



the sisters, PW2 and DW2, testified as much. Whether or not it began as sibling rivalry that turned into hatred only God knows but it is clear that the parties herein do not see eye to eye and their sisters have taken sides.

a. Whether the Plaintiff was lawfully registered as owner of all that parcel of land known as West Pokot/Chepareria/328

42. It is clear from the evidence of PW1, PW2, DW1, DW2 and DW3 that the Plaintiff and the Defendant were biological children of the late Losekwang Kedipa who is said to have passed away on 07/12/2003. He was survived by six children of who five who were adults by the time of the hearing of this suit, were biological siblings and one, Ezekiel Pkiach, the sixth, who was a step son, through an unnamed mother.
43. The evidence of the Plaintiff and the Defendant, through their own testimony and the witnesses both called is clear that the late Losekwang Kedipa once owned the parcel of land which was finally registered as West Pokot/Chepareria/328 which is the suit land herein. D.Exhibit 1 which was produced in evidence by DW1 which is the Green Card in respect of the land details the history of the registration thereof. It is important to capture the history herein at this stage. Entry No. 1 made on 1/07/1998 showed that Losekwang Kedipa was registered as the owner. Entry No. 2 made on the same date shows that the Registrar placed a restriction on the title “until the Appeal to the Minister is finalized.” Entry No. 3 made on 24/12/2015 shows that Restriction was removed vide a letter, Ref. No. App/4/2/VOL 64/117 of 31/08/2015. It would turn out that this was the letter, a copy of which was produced by the Plaintiff in evidence as P.Exhibit 4. Entry No. 4 of the 24/12/2015 shows that Francis Doctor Kedipa of ID. No. 9407173 and P. O. Box 228 Kapenguria, was registered as owner. Entry No. 5 of the same date shows that the title deed was issued. It would come out in evidence that this was the title produced by the Plaintiff in evidence as P. Exh 1.
44. The evidence of both parties and all their witnesses was that the parcel of land was a subject of a dispute before the Land Adjudication Section Chepareria, of West Pokot. It is therefore clear, so far, from the witnesses’ evidence analyzed above that as at the time the dispute, and evidenced by P. Exhibit 2 and 3 and D.Exhibit 4, the parties’ late father was the Respondent and the Objector, one Soi Rutowu Kamket whose widow represented him in the appellate stage of the dispute before the Minister, while the Plaintiff represented the Respondent. Except the oral but unsubstantiated testimony of the Plaintiff that he had obtained the Letters of Administration to the estate of the late father, Losekwang Kedipa, PW2, PW3, DW1 and DW2 were all in agreement that the Grant of Letters of Administration to the estate of the deceased had as at the time of testimony not been obtained. I am prepared to agree with that evidence and I find that indeed the Plaintiff did not take out Letters of Administration of the estate of his late father, or even a Limited Grant - Ad Litem - in order to take over and continue with the appeal before the Minister. And if he did take out such Letters of Administration it must have been to the exclusion of the entire family, hence fraudulent. With that one may wonder where the Plaintiff obtained the authority to continue with and Defend the Appeal No. 380 of 1997 before the Minister or that his participation in the proceedings was therefore lawful or not.
45. I address the above immediate issue before I proceed with the analysis of the evidence herein and the law. From the evidence before me, the Plaintiff died intestate. I have stated that from the evidence herein, it is clear that the Plaintiff did not have Letters of Administration before me. The law in regard to succession where the deceased dies intestate is clear, and, except for the property of the persons who profess Islamic religion, is governed by the [Law of Succession Act](#), Chapter 160 of the Laws of Kenya.
46. Section 32 of the Act stipulates that the provisions of intestacy as given in the Act do not apply to some areas of Kenya, among others, West Pokot. West Pokot is the County where the parcel of land in question lies, and it is agricultural land. That being the case, the law applicable in such instances is



- that which is stipulated in Section 33 thereof. The latter Section provides that “The law applicable to the distribution on intestacy of the categories of property specified in Section 32 shall be the law or custom applicable to the deceased’s community or tribe, as the case may be.”
47. Since my brother Judge Chemitei J. would not, in *Norah Auma Asola & another v Attorney General* [2014] eKLR, find anything unconstitutional in regard to the Section (32), I find it still good law. Thus, it is worth examining whether the custom or belief that the Plaintiff held onto as a basis for regarding his sisters who were already married as not capable of inheriting his father’s estate was sound or not.
48. I have noted that Section 32 of the Law of Succession came into force in 1981. It tends to exempt some areas of the country in relation to the Application of intestacy provisions under the Act. Whereas my sisters judges have not found the provision unconstitutional, at that time Parliament considered whether the purpose for which the Section, together with related one of Section 33, has been rendered otiose with the passage of time. The history and purpose of the provisions may as well have been served in many of the exempt. Granted that the sections still apply, this Court wonders why the provisions should not apply to the property exempt in them in relation to an owner in whose name it has been registered and subsequently dies intestate since the estate of the said deceased person is now clearly known: it may not be argued to be communal land any more. Parliament should act.
49. As I come to that conclusion, it is important to settle one other issue that arose from the evidence of the parties. This was whether the dispute between Losekwang Kedipa and Soi Rutowu Kamketo was over a portion of the land that became known as West Pokot/Chepareria/328 or a portion thereof. The Plaintiff contended that it was over the whole parcel. The Defendant argued that it was over a small portion. PW3 admitted in cross-examination that it was over small portion. DW3 likewise testified that it was over a small portion. From the record of the dispute before the Adjudication Committee and the Minister, both produced as P.Exhibit 2 (which is the same as D.Exhibit 4) it is clear at pages 2 (indicated at the top as Page 146) and 3 (indicated as Page 167) and 7 (indicated as page 151 at top right), that the dispute was over a portion of the land and not the whole. It is therefore not true as the Plaintiff wished the Court to find that it was over the entire parcel. It is puzzling therefore, much as the Minister’s finding on the Appeal No. 380 of 1997 is final as the law provides in proper and ordinary circumstances, that the Minister would make a finding over the registration of the whole parcel of land. The evidence of the Plaintiff before the Minister, as evidence in P.Exhibit 3 referred to the entire land yet from P.Exhibit 2 or D.Exhibit 4 the issue was over a small portion of the land. His decision on the registration of the whole was wrong.
50. In any event, the land had been registered in the name of the Plaintiff’s late father as at 01/07/1998. This Court doubts whether the Minister had jurisdiction or authority, under the *Land Adjudication Act*, Chapter 284 Laws of Kenya, to deal with an issue over a parcel of land whose register had been since been closed and title thereto issued by that date. As to whether the determination over the appeal that had been filed was or was not yet made by the time the title was issued, that is answered under Section 29 of the Act. By the time the issuance of the title to the late Losekwang Kedipa, it means the Minister was satisfied that either there was no appeal or none had been filed within six (60) days hence the ownership decision was in favour of the late Losekwang Kedipa. The Minister had no authority to reverse his decision suo moto or without an order of the Court for such an extension and purport to direct the Chief Land Registrar once again to issue title to another person other than the one to whom it had been issued earlier.
51. Be that as it may, the question that remains to be answered by the Plaintiff is, when he took over the proceedings before the Minister over the portion of the land which was in dispute, in which capacity did he do it? Put differently on whose behalf did he do it? At what point did he become the owner of the parcel of land which his father owned and had a dispute over with the late Soi Rutowu Kamketo?



52. On the above set of questions, the Plaintiff's evidence herein regarding involvement of his sisters in the affairs of the estate of the late father was intriguing. He stated that he took over the proceedings of the appeal to the Minister over the decision of the Adjudication Committee of Chepareria Adjudication Section, evidenced by P.Exhibit 2 and 3 and D.Exhibit 4 (at page 6 - bottom, conclusion) after his father's death. To him, he believed that since his sisters were married and each settled in their matrimonial home, he was "the only one at home" hence did not see the need to involve them in the matters relating to his father's property. In essence he knew the sisters no longer were entitled to inheritance. He later would state that if the sisters wanted any part of the inheritance they would have to come "in peace" and not "in anger", according to PW1's evidence.
53. My consideration of the Plaintiff's evidence or position on the issue of inheritance is that the sisters were subordinate persons in the inheritance process hence they have to beg for their entitlement. This is a wrong and false belief based on outdated customs which for long regarded mothers, sisters, daughters and any other woman as second-class citizens in many African cultural societies, and indeed world over, until the universality of human rights and equality began taking root. Society has since departed from customs that discriminate against persons based on gender or sex, and any that has not moved away from this degrading notion should come out of it at once. All human beings were created equal before God who then gave them differentiated responsibilities and duties. That does not make any being to be of a lesser 'quality' or position in society.
54. It is foolishness to for one to treat his or her siblings as beings of a lesser quality of life, even if they have a disability, and to consider himself/herself as more entitled to the 'things' of his/her parents than any one of the siblings. It is even more appalling for one to do so in relation to a home and property that he or she himself only found himself in by virtue of birth. The process that brought you into this world as a being is the same that brought the other sibling into the same world.
55. Let it be known to that foolish soul that he/she had an equal chance of becoming a brother or sister just as that sister or brother had an equal chance of becoming a brother or sister. The fact that the Creator gave chance to become either a boy or girl or vice versa does not in any way make you more special than the others that were not given chance then. Neither does it make you feel more important than those that were given chance to give rise to your siblings of opposite sex that came forth at other different times. You all bear the same genes though differentiated according to the eternal plan of He to whom, for those who believe in the Bible, we all shall give account (Rom 14:12) on the Day of Judgment for we ALL shall appear before him (2 Cor. 5:10). Therefore, the chest-thumping of one or other of the human race over the creatures of a Higher Being just because he/she has been privileged on a temporary basis or for a short period here on earth, and for which he/she shall account how they used it should stop.
56. Even where any human being has been born of different parents, one thing is clear, we ALL as the human race share one thing in common: we have one common ancestor - one man and one woman - only that we have been multiplying and looking for resources at different times and places, and for reasons of climatic and other natural occurrences certain genes became more dominant over others hence bringing out beautiful differences in complexion, height or other features. These should be used for the common good of man rather than for discrimination and torment of others.
57. As a matter of fact and law, and starting from the constitutional perspective to explain this point of departure, Article 2(4) of *the Constitution* of Kenya 2010 provides that "any law, including customary law, that is inconsistent with this Constitution is void to the extent of the inconsistency, and any act or omission in contravention of this Constitution is invalid." Therefore, if the custom or practice, in



this case the Pokot customs and practices, relied on by the Plaintiff in his actions would be inconsistent with *the Constitution*, they would be void to the extent of their inconsistency.

58. Additionally, if the Plaintiff would be found to be, in any way, discriminating against any of his (sister) siblings that would be unconstitutional and impermissible since Articles 27(4) and (5) of the same law provide that:

“The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth. (5) A person shall not discriminate directly or indirectly against another person on any of the grounds specified or contemplated in clause (4).”

59. An analysis of the believe held by the Plaintiff herein is that his sisters were married and therefore the Defendant had come back (home) onto land parcel number West Pokot/Chepareria/328 and “trespassed upon” it, as pleaded at paragraph 4 of the Plaint hence she was an unwelcome person. PW2 testified that the land was given to the Plaintiff and that the Defendant had land elsewhere. Apart from her oral evidence and the only one of that kind, which was unsupported by even the Plaintiff himself, there was no other independent or verifiable evidence at all that the family of the late Losekwang owned land elsewhere. Also, there was no evidence that indeed the said Losekwang ever gave the suit land, whether by will or gift, to the Plaintiff to be his. I find the evidence of PW2 wholly unbelievable and reject it. Sadly, the Plaintiff had by the time the suit was proceeding, instigated all his children to rise against their aunt and accuse her on taking their land.

60. The totality of the analysis above is that the land was initially registered in the name of the deceased father, as evidenced, by Entry No. 1 on D.Exhibit 1. When the said Losekwang Kedipa passed away, the parcel of land constituted part of the estate of the deceased. Whereas, the Plaintiff may have camouflaged his intentions of proceeding with the prosecution of the Appeal No. 380 of 1997 before the Minister as good, it turns out that they were extremely subtle and trained towards illegally depriving the estate of his late father the entire parcel of land to the exclusion of the beneficiaries thereto. It is inconceivable that a small portion of land which was in dispute would entitle the Plaintiff to claim the whole parcel of land just because he misled the Minister to find that the entire land was his, especially through, his misleading evidence before the Minister that “he was the only one at home”, meaning he was the only beneficiary of the deceased father. The Minister made a wrong finding that the issue of the small portion of land which was in issue between the deceased persons would translate to covering the entire parcel of land. Even if the Minister found that the small portion which was in dispute between the two was to be registered in the name of the Plaintiff, that could have only been the case for reason of him being the representative of the estate of the late Losekwang Kedipa hence he could only be registered in trust for the entire family or beneficiaries of the deceased. Thus, I find that the registration of the land in the Plaintiff’s name, from the late father’s was unlawful.

b. Whether the registration of the Plaintiff in respect of land parcel number West Pokot/Chepareria/328 is null and should be cancelled

61. The Defendant pleaded a Counterclaim for a declaration that the transfer and registration of the land title in question in favour of the Plaintiff was unlawful and null and void. She stated that his was as a result of fraud and illegality. She pleaded three particulars of fraud and illegality which were that the Plaintiff secretly and fraudulently caused the title in issue initially registered in the name of Losekwang Kedipa to be transferred to his name without petitioning for Letters of Administration.



She also pleaded the other particular of secretly wanting to disinherit the beneficiaries of the estate of Losekwang Kedipa and taking advantage of their ignorance.

62. First, the Plaintiff lied on oath that he had taken out Letters of Administration to the estate of the late Losekwang. This was wrong. But this Court found above that in West Pokot the Law of Succession exempted taking out Letters of Administration in relation to properties such as the subject one. But the Court finds that indeed the Plaintiff, even as he admitted in cross-examination, and as DW1 and DW2 testified, secretly got himself registered as owner of the suit land without involving the family. That was fraudulent in itself. Additionally, the Court finds that to the extent that the Plaintiff claimed and maintained that the registration of the land in his name was to vest it in him as the sole owner and not in trust for the entire family or beneficiaries of the estate of their late father he secretly registered himself as such to disinherit the beneficiaries of the estate of the late Losekwang Kedipa and that was fraudulent. As for the illiteracy of the Defendant, that particular was not proved.
63. As a result, I have found out that the Plaintiff was unlawfully registered as the sole proprietor of the land parcel No. West Pokot/ Chepareria/328. In the circumstances the registration cannot stand. It must be cancelled and the land reverts back to the registration as it was under Entry No.1 in D. Exhibit 1, that is to say the manner in which it was registered as at 01/07/1998.

c. Whether the Defendant, her servants and or agents should be evicted from land parcel number West Pokot/Chepareria/328

64. The Plaintiff testified that from the year 2013 the Defendant trespassed onto his land and prevented him from not only developing it but making quiet use of it. The Defendant, on her part, testified that after her marriage broke down she returned to her parents' home with her children, and got into occupation of part of the suit land. Since then the Plaintiff has constantly harassed her and prevented her from using part of the land. The Plaintiff prayed for her eviction. The Defendant denied being a trespasser on the land and instead raised the counterclaim against the continued existence of the registration on favour of the Plaintiff. PW2 gave evidence that the Plaintiff was given the parcel of land by their father to be his. I have found her evidence unbelievable, without any other independent evidence. In any event DW1, DW2 and DW3 testified clearly that the suit land was family land. Moreover, DW3 testified that the late Losekwang had intended to subdivide the land to all his children.
65. Again, and to demonstrate from evidence that the Plaintiff was a man acting out of greed and avarice, he testified that he was given the entire parcel of land by his father. PW2 testified as much. However, their evidence was controverted by that of the defence witnesses. Again, PW1 admitted in re-examination that the sisters would be entitled to an inheritance if they came back in peace. That shows that the Plaintiff was out to humiliate his sisters. Worse, the Plaintiff testified that besides his sisters, he had a step brother by name Ezekiel Pkiech whom he was educating. If indeed he was given the land to the exclusion of his sisters, it would be inconceivable that the same parent who saw it fit to give him the land would disinherit his other son completely. I find the Plaintiff's and PW2's evidence unworthy while I find that of the Defendant and her two witnesses cogent. Thus, I hold that the Defendant, and indeed any other sibling of his on the suit land is rightfully on it and cannot be evicted.

d. Who to bear costs of the suit and Counter-claim

66. This Court did its best to request the parties herein, being family members to resolve the matter out of Court. It even sent the parties to a mediator. It even implored them to try to negotiate the same through advocates. But all the while the Plaintiff remained adamant and vowed to press on. That caused a lot of expense to be incurred on the part of an innocent sister whom the Plaintiff dragged to Court. Ordinarily the Court does not grant costs to parties where they are family but since this has proved a



peculiar case, the costs must follow the event, in terms of Section 27 of the *Civil Procedure Act*. The upshot is that, on the one hand, I am not satisfied that the suit has merits. It is hereby dismissed with costs. On the other hand, I find the counterclaim merited. The Defendant has proved it on a balance of probabilities and I allow it in terms of Prayer (a) and (b).

67. Consequently, I make the following orders:

- a. The Plaintiff's entire Claim is hereby dismissed with costs to the Defendant.
- b. Judgment is hereby entered for the Defendant against the Plaintiff in terms of the Counterclaim to the effect that a declaration be and is hereby issued that the transfer and registration of land title No. West Pokot/ Chepareria/328 to Francis Doctor Kedipa was unlawful, null and void.
- c. In terms of Section 3A of the *Civil Procedure Act*, the Land Registrar, West Pokot County is hereby ordered to cancel the registration and title issued to Francis Doctor Kedipa and forthwith register the land parcel No. West Pokot/Chepareria/328 in the Estate of the late Losekwang Kedipa.
- d. The Defendant shall be paid the costs of the Counterclaim.

68. Orders accordingly.

**JUDGMENT DATED, SIGNED AND DELIVERED AT KITALE VIA ELECTRONIC MAIL THIS
24TH DAY OF APRIL 2023**

HON. DR. IUR FRED NYAGAKA

JUDGE, ELC KITALE

