



REPUBLIC OF KENYA



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**Sinyei v Kiprotich & 6 others (Environment & Land Case
8 of 2022) [2023] KEELC 22640 (KLR) (19 June 2023) (Judgment)**

Neutral citation: [2023] KEELC 22640 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ITEN
ENVIRONMENT & LAND CASE 8 OF 2022**

**L WAITHAKA, J
JUNE 19, 2023**

BETWEEN

CHEPTANUI SINYEI PLAINTIFF

AND

CHESEREK CHELANGA KIPROTICH 1ST DEFENDANT

WILLIAM CHESAN ROTICH 2ND DEFENDANT

JOEL KIPELEL 3RD DEFENDANT

EMILY RUTO 4TH DEFENDANT

JOSHUA KIPKEMEI BARTENGE 5TH DEFENDANT

**THE COUNTY LAND REGISTRAR, ELGEYO MARAKWET
COUNTY 6TH DEFENDANT**

THE COUNTY LAND SURVEYOR 7TH DEFENDANT

JUDGMENT

1. By a plaint dated 23rd June 2020, the plaintiff instituted this suit seeking judgment against the defendants jointly and severally for:-
 - i. The survey plan, subdivision, creation of plot Nos.2469, 2470, 2471, 2472 and 2473 out of land parcel known as L.R Cherangany/Kapcherop/44 (suit property) is illegal, unlawful, null and void;
 - ii. A declaration that she (the plaintiff) is the owner of all that parcel of land known as L.R Cherangany /Kapcherop/44;



- iii. An order directing the 6th defendant to rectify the land register to reflect her (the plaintiff) as the legal owner of the suit property and/or register the plaintiff as the owner of land parcel L.R. Cherangany/ Kapcherop/44;
 - iv. An order directing the 6th defendant to amend the register to reflect her (the plaintiff) as the owner of all that parcel of land known as L.R Cherangany /Kapcherop/44 and to cancel the newly created parcel numbers-Cherangany/Kapcherop/2469; 2470; 2471; 2472 and 2473.
 - v. An order directing the 7th defendant to rectify and/or amend the area map and/or survey plan to reflect her (the plaintiff's) parcel of land as a whole and delete the purported newly created numbers -Cherangany/ Kapcherop/2469; 2470; 2471; 2472 and 2473;
 - vi. A permanent injunction restraining the defendants, their agents and/or servants from entering into, constructing on, ploughing, fencing, wasting, selling, alienating, subdividing, leasing, demarcating, surveying, charging, offering as a security and/or in any other manner whatsoever dealing with and/or interfering with her (the plaintiff's) land parcel known as L.R Cherangany/Kapcherop/44.
 - vii. Costs and interest.
2. The suit is premised on the grounds that the plaintiff is the owner of the suit property; that the plaintiff's rights to the suit property stems from a judgment and decree issued in her favour in Eldoret High Court Civil Case No.203 of 1992 in which her mother, Kobilo Chesondin and herself had sued Cheserek Chelang'a Kiprotich seeking a declaration that Cheserek Chelang'a Kiprotich's registration as the proprietor of the suit property was subject to a trust in their favour; that by a judgment delivered on 26th September, 2012 the court allowed their claim.
 3. The plaintiff avers that on or about 7th November 2019, she learnt that the 1st defendant, whom they had sued in Eldoret HCC No.203 of 1992 and won the case against him, had purported to subdivide and offer for sale the suit property to the 2nd to 5th defendants when he had no colour of right to do so and in total contravention of the judgment delivered in Eldoret HCC No.203 of 1992 in their favour on 26th September, 2022.
 4. Terming the actions of the 1st defendant complained of a breach of the judgment issued in their favour and trespass to land, the plaintiff states that she conducted searches at the lands office Iten and established that the 1st defendant had presented himself to the 6th defendant and caused the suit property to be subdivided into plot Nos. 2470, 2471, 2472 and 2473 which he transferred to the 2nd to 5th defendants.
 5. Lamenting that arising from the 1st defendant's illegal actions, her ownership and possession of the suit property is under threat, the plaintiff seeks the reliefs listed herein above.
 6. The 2nd and 4th defendants filed a statement of defence in which they acknowledge that the 1st defendant is their father. Explaining that their father died on 13th October 2013, the 2nd and 4th defendants wonder why proceedings were instituted against their father seven years after he passed on.
 7. The 2nd and 4th defendants acknowledge that there was a suit in Eldoret High Court to wit 203 of 1992 between their father and the plaintiff's mother and contend that they are strangers to the subdivision of the suit property and transfers that were done in respect thereof upon determination of the suit.



8. Claiming that they were surprised to learn that some of the titles emanating from the suit property were registered in their names by the deceased in 2014 yet he had passed away on 13th October, 2013, the 2nd and 4th Defendants deny the particulars of fraud in paragraph 22 of the plaint.
9. Terming the suit incompetent, untenable and bad in law, the 2nd and 4th defendants contend that the reliefs sought are unavailable.

Reply to Defence

10. In reply, the plaintiff submits that feigning ignorance and denying knowledge of the circumstances upon which the suit properties were registered in favour of the 2nd and 4th defendants is reason enough to grant the reliefs being sought.

The 3rd Defendant's Statement of Defence

11. In his statement of defence, the 3rd defendant contends that he has a good title, acquired through proper procedure; that he is a *bona fide* purchaser for value of his parcel of land without notice; and that the case against him is an abuse of the court process as it amounts to multiplicity of suits.

The 5th Defendant's Statement of Defence

12. In his statement of defence, the 5th defendant inter alia contends that he was not a party to the High Court Case; that the suit property no longer exists and that the suit is inept, incompetent, ambiguous, fatally defective as it does not disclose material particulars of any cause of action against him; that he acquired interest of his portions of the suit property by way of purchase from the 1st defendant and that the plaintiff was aware of the sale and his presence in the suit property since 2013.
13. Claiming that he is a *bona fide* purchaser for value of parcel number 2473, the 5th defendant contends that the judgment issued in favour of the plaintiff was not perfected until 22nd November 2019, when a decree in respect thereof was issued. According to the 5th defendant, the suit property had ceased to exist when the decree issued in respect thereof was issued.
14. Maintaining that he is an innocent purchaser for value without notice of his portion of the suit property, the 5th defendant contends that his rights to the share of the suit property he owns are indefeasible. He denies having committed any acts of fraud in getting his title to land parcel 2473.
15. He further contends that he is not an agent of the 1st defendant hence should not be made to suffer for the actions of the 1st defendant.
16. The plaintiff filed a reply to defence reiterating her contention that the 5th defendant's title was fraudulently acquired; that the 5th defendant was not a *bona fide* purchaser for value and that she was not aware of the illegal sale.

Hearing

The Plaintiff's Case

17. Jeptanui Sinyei Rotich, relied on her statement recorded on 23rd June 2020 after it was adopted as her evidence in chief. She informed the court that she is the owner of parcel number 44 and that she is the one in occupation of the parcel.
18. She further informed the court that a few years before she filed the suit, the 2nd to the 5th defendants attempted to occupy the land but she warded them off.



19. The plaintiff further informed the court that she had a case with the 1st defendant in Eldoret which case was determined in her favour. The court in the Eldoret High Court case held that the land belonged to her father and that the 1st defendant held it in trust for her and her mother.
20. Concerning the defendants' contention that they were not aware of her interest in the suit property, she termed the contention false and stated that the defendants knew of her interest in the suit property as she was the one in occupation.
21. In cross examination, the plaintiff inter alia stated that she is not aware that the suit property ceased to exist upon subdivision and that some of the defendants bought portions of the suit property from the 1st defendant.
22. In re-examination, the plaintiff stated that land parcel number 44 was given to her and her mother by the court in 2012.
23. Concerning the alleged sale of the land to some of the defendants by the 1st defendant, the plaintiff stated that the 1st defendant lacked capacity to sell the land to the defendants or any other person because the land was not his.

The Defendants Case

24. The 2nd and 4th defendants case was closed by court for none attendance.
25. The 3rd defendant, Joel Kiplel Rotich, informed the court that he was given parcels number 2470 and 2472 by the 1st defendant as a gift; That he was not aware of the dispute that existed between the plaintiff and the 1st defendant and that he obtained his titles to the parcels he was given in 2014, way after the 1st defendant had passed on.
26. The 5th defendant, Joshua Kipkemei Bartenge, informed the court that he is the registered owner of parcel number 2473 hived off from the original parcel of land, 44; that he got registered as proprietor of land parcel number 2473 in 2014 way after the 1st defendant had passed on; that he bought the parcel from the 1st defendant and that he had no sale agreement in respect of the transaction. He explained that the sale agreement was burnt during land clashes in Elgeyo Marakwet.
27. Concerning the issue of transfer of his parcels of land to him way after the 1st defendant had passed on, he explained that the 1st defendant had signed for him all the transfer documents before he passed on. He further explained that he did not transfer the parcel during the lifetime of the 1st defendant because he had no money to facilitate the transfer.
28. He further stated that he was not aware of the case between the 1st defendant and the plaintiff over the original parcel of land, 44.
29. In cross examination, he acknowledged that the green card in respect of parcel number 44 shows that subdivision was done in 2014.
30. Terming the record an error, he stated that he does not know who processed the subdivision at the lands office. He acknowledged that he neither produced the transfer forms used to transfer the property to him nor did he produce the consent of the land control board in respect of the transaction. He did not produce the mutation form, either.
31. The 6th and 7th defendant's case was closed without hearing.



32. At close of hearing, the plaintiff, the 3rd and the 5th defendants filed submissions which I have read and considered.

Analysis and Determination

33. The issues arising from the pleadings, evidence and the submissions are:-

- i. Whether land parcel number LR. No. Cherangany/Kapcherop/44 was illegally and/or fraudulently transferred to the 2nd to the 5th defendants;
- ii. Whether the plaintiff has made up a case for being granted the orders sought?
- iii. What orders should the court make?

34. On whether land parcel number LR. No. Cherangany/ Kapcherop/44 was illegally and/or fraudulently subdivided and the subdivisions therefrom transferred to the 2nd to 5th defendants; on behalf of the plaintiff it is submitted that the plaintiff's contention that the parcel of land known as L.R No. Cherangany/ Kapcherop/ 44 was illegally Subdivided to create the parcels of land known as Cherangany/Kapcherop/2469, 2470, 2471, 2472 and 2473 was confirmed by the letter from the County Land Registrar dated 4th December 2019 (Pexbt 6); that the subdivision and subsequent transfer of the suit properties was done after the court had already delivered a judgment transferring the property in issue to the plaintiff; that the plaintiff did not sanction the subdivision and transfer of the suit property to the 2nd to 5th defendants and that the 1st defendant, who allegedly subdivided the suit property and transferred the portions emanating therefrom to the 2nd to 5th defendants had no good title to pass to the 2nd to 5th defendants.

35. Terming the evidence of fraud and illegality in the subdivision and transfer of the suit property to the 2nd to 5th defendants overwhelming, the plaintiff submits that the burden shifts to the 2nd to 5th defendants to demonstrate that they lawfully acquired the titles they hold in respect of the subdivisions that emanated from the suit property. In that regard, reliance is placed on the case of *Munyu Maina v Hiram Gathiba Maina* [2013]eKLR where it was held:-

“When a registered proprietor’s root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show the acquisition was legal, formal and free from any encumbrances including any interests which need not be noted on the register.”

36. On whether the 2nd to 5th defendants proved that they legally and validly obtained title to the subdivisions emanating from the suit property, it is submitted that they did not. In that regard, it is pointed out that none of them produced the documents relied on to transfer the parcels to them like sale agreement, land board consent and/or transfer documents relied on to transfer the subdivisions of the suit property to them.

37. It is pointed out that the subdivisions and transfers were done way after the 1st defendant had passed on.

38. The totality of the evidence adduced by the plaintiff is said to be enough to prove that the suit property was unprocedurally, illegally and fraudulently transferred to the 2nd to 5th defendants.

39. In reply, the 3rd defendant submits that the plaintiff has not proved that he was aware of Eldoret HCCC No.203 of 1992 between the plaintiff and the 1st defendant; that he was not was not a party to that case and that fraud cannot be imputed on him by purporting to buy portions of the suit property. The



- 3rd defendant has further submitted that there is no proof of fraud or illegality in acquisition of land parcels Nos. 2470 and 2472.
40. Despite having stated in his evidence that land parcels number 2470 and 2472 were gifted to him by the 1st defendant, he submits that he is an innocent purchaser for value of the parcels of land registered in his name, that is; land parcels numbers 2470 and 2472.
41. On his part, the 5th defendant has submitted that the orders sought by the plaintiff relate to a none existent parcel of land hence incapable of being granted; that the orders sought cannot issue because the 1st defendant did not participate in the suit and that the plaintiff is estopped from challenging the title he holds because her claim is overtaken by events.
42. The 5th defendant further submits that the plaintiff has not proved that the title he holds was not validly and legally created.
43. Maintaining that he is an innocent purchaser for value without notice, the 5th defendant submits that the orders sought, if granted, would infringe on his rights to property.
44. I have carefully read and considered the pleadings filed in this case, the evidence and submissions. The issues arising therefrom can be reduced to one broad issue namely, whether the plaintiff has made up a case for being granted the orders sought.
45. Concerning that issue, having reviewed the totality of evidence adduced in this case, I find and hold that the 1st defendant had no capacity to deal with the suit property because he was not the rightful owner of the suit property. Any dealings with the suit property by the 1st defendant after the judgment in Eldoret HCCC No. 203 was delivered declaring the plaintiff and her mother the owners of the suit property, calculated at defeating the judgment issued in that case would be incapable of conferring any legally protectable interest in the suit property as against the plaintiff. In that regard, see the case of *Elijah Makeri Nyangw'ra v Stephen Mungai Njuguna & another* [2013]e KLR where it was inter alia held:-
- “The heavy import of section 26(1)(b) (of the *Land registration Act*, 2012) is to remove protection from an innocent purchaser or innocent title holder. It means the title of an innocent person is impeachable so long as that title was obtained illegally, unprocedurally or through a corrupt scheme. The title holder need not have contributed to these vitiating factors....”
46. In the circumstances of this case, I hasten to point out that the defendants did not prove that they are either innocent purchasers of the suit property without notice or that the titles they hold in respect of the sub-divisions from the suit property were validly and legally issued to them. In this regard, it is noted that the 2nd and 4th defendants feigned ignorance of the circumstances upon which they were registered as the proprietors of parcel numbers 2469 and 2471. The 3rd defendant in his pleading, claimed that he purchased the parcels registered in his favour, 2470 and 2472 from the 1st defendant only for him to change that narrative during hearing and claim that he was gifted the properties by the deceased. This court rejects his evidence for being at variance with his pleadings; thus violating the provisions of Order 2 Rule 6 of the Civil Procedure Rules.
47. The claim by the 5th defendant that he is an innocent purchaser for value without notice must similarly fail on the ground that he did lead any evidence capable of proving that he legally and procedurally obtained title to the parcel transferred to him. For instance, he did not produce any sale agreement executed between him and the 1st defendant and/or any document used in transfer of the parcel



registered in his name to him. He equally, failed to convince this court that the 1st defendant had executed for him transfer documents in respect of the portion he claims to have bought from him.

48. On whether parcel number Cherangany/Kapcherop/44 claimed by the plaintiff exists, it is the view of this court that despite the title in respect thereof having been closed upon subdivision, the same exists on the ground and is traceable to the plaintiff.
49. The upshot of the foregoing is that the plaintiff has made up a case for being granted the orders sought in the plaint dated 23rd June 2020, which prayers I grant to her as prayed.
50. Orders accordingly.

JUDGMENT DATED, SIGNED AND DELIVERED AT ITEN THIS 19TH DAY OF JUNE, 2023.

L. N. WAITHAKA

JUDGE

Judgment delivered virtually in the presence of:-

Ms. Wahome holding brief for Ms. Odwa for the Plaintiff

N/A for the 1st & 2nd Defendants

Ms. Bett for the 3rd Defendant

N/A for the 4th to 7th Defendants

Court Asst.: Christine Towett

