



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Choge v Kenda & 2 others (Environment & Land Case E038 of 2021)
[2023] KEELC 20769 (KLR) (19 October 2023) (Judgment)**

Neutral citation: [2023] KEELC 20769 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE E038 OF 2021**

**EO OBAGA, J
OCTOBER 19, 2023**

BETWEEN

ABRAHAM KIPROP CHOGE PLAINTIFF

AND

MICAH KIBET KENDA 1ST DEFENDANT

EDWARD MWANGANI 2ND DEFENDANT

SAMUEL AMALEMBA 3RD DEFENDANT

JUDGMENT

1. The plaintiff brought this suit against the Defendants seeking the following reliefs:-
 - a. An order of declaration holding that the Plaintiff is the legal and rightful owner of all that parcel of land known as Plateau/kipkabus Block 4 (Ielmokwo)/23 and the Defendants actions are unlawful and illegal.
 - b. An order of permanent injunction restraining the Defendants jointly and severally whether by themselves, their agents, servants, employees and/or any other person acting on their behalf from encroaching, trespassing into, alienating, occupying, cultivating, claiming, leasing or interfering with the Plaintiffs peaceful possession and use and/or in any other way whatsoever dealing with the parcel of land known as Plateau/kipkabus Block 4 (Ielmokwo)/23.
 - c. An order directing the Defendants to give vacant possession of the suit land failure upon which an order of eviction be issued directing for their removal from LR Number Plateau/kipkabus Block 4 (Ielmokwo)/23.
 - d. Costs and interest of this suit.
 - e. Any other relief this court deems fit and just to grant.



2. The Defendants' counsel had been invited to attend court to fix a hearing date on 28/2/2023 but he did not attend. Consequently, a date for hearing was given on 20/9/2023. The Defendants' counsel was duly served but he received hearing notice under protest arguing that the date had been fixed ex-parte and that he had pre-fixed matters for hearing on that date. The court having been satisfied that he had been invited to fix a suitable date but chose not to attend, the matter proceeded ex-parte on 20/9/2023.
3. The Plaintiff testified that he inherited 25 acres from his father Paul Malakwen Choge who was entitled to 329.2 acres out of Lelmokwo Farm which was owned by nine partners who have all died. There were cases filed in the High Court regarding Lelmokwo Farm but all were determined.
4. The plaintiff obtained title in respect of Plateau/Kipkabus 4 (Lelmokwo) 23 as a result of succession of his father's estate in Eldoret Succession Cause No 48 of 2003. The plaintiff's father's share was in LR No Plateau/Kipkabus (Lelmokwo) /9. He processed and obtained his 25 acres and title was issued on 4/2/2005.
5. In 2016, the Defendants encroached on to his land and put up structures where they are residing. The 1st Defendant is occupying 2 acres while the 2nd and 3rd Defendant are occupying ½ acre each. He testified that the Defendants purchased land from his father's partner's portions but the sellers showed them his portion.
6. The Plaintiff took the dispute before the local chief but the same was not solved. This is why he came to court. I have considered the evidence of the Plaintiff which is not controverted. Though the Plaintiff has title to the suit property, the court has to determine whether he has proved his case to the required standards.
7. The Plaintiff is seeking eviction of the Defendants from the portions he alleges they have encroached in his land. He stated that the 1st Defendant is occupying two acres and the 2nd and 3rd Defendants are each occupying ½ acre. The Plaintiff is not a surveyor as he did not say so during the hearing. It is therefore beyond comprehension how he came to the conclusion that each of the three Defendants had encroached on to his portion.
8. From the documents filed by the Defendants in this case, it is apparent that Lelmokwo Farm whose land was LR No Plateau/Kipkabus (Lelmokwo)/5798 had disputes which ended up in court. There were also cases of forgery which ended up in criminal prosecution. Though the plaintiff stated that the cases were concluded, he did not give evidence of the outcomes of the said cases. The Plaintiff was one of those charged in criminal case No 766 of 2001 for forgery. He did not give evidence of what became of this case.
9. In Misc Civil Application No 262 of 1994, a letter of consent to subdivide LR No Plateau/Kipkabus (Lelmokwo)/5798 which gave a go ahead to subdivide the parcel was quashed by the High Court on 13/12/1994. The Plaintiff did not give evidence on how then the farm was subdivided and his father got 329.2 acres which they shared after succession.
10. Even if a case proceeds by way of formal proof or ex-parte, a plaintiff is bound to prove his case on a balance of probabilities. In the instant case, there is no survey report which was produced to confirm the alleged encroachment. I therefore find that he Plaintiff has failed to prove his case on a balance of probabilities. The Plaintiff's suit is dismissed with no order as to costs.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 19TH DAY OF OCTOBER, 2023.

E. O. OBAGA

JUDGE



In the virtual presence of;
Mr. Keter for Defendants.
Mr. Murgor for Plaintiff.
Court Assistant –Brian

E. O. OBAGA

JUDGE

