



**Murei v Kapkiyai (Environment & Land Case E001 of 2021)
[2023] KEELC 20768 (KLR) (19 October 2023) (Judgment)**

Neutral citation: [2023] KEELC 20768 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE E001 OF 2021
EO OBAGA, J
OCTOBER 19, 2023**

BETWEEN

JOSEPH KIPKURGAT MUREI PLAINTIFF

AND

JOSEPH KAPKIYAI DEFENDANT

JUDGMENT

1. The Plaintiff filed this suit against the Defendants in which he sought the following reliefs: -
 - a. A declaration that the Plaintiff is the sole registered owner of all that parcel of land measuring approximately 9.760 Hectares known as Plateau/Chepkongony Block 1 (Songich) 19.
 - b. An order for eviction against the Defendant to vacate the Plaintiff's parcel of land known as Plateau/ Chepkongony Block 1 (Songich) 19.
 - c. An order of permanent injunction restraining the Defendant, his servants or agents from encroaching, disposing, alienation, cultivating, constructing on and/or trespassing onto the Plaintiffs parcel of land known as Plateau/Chepkongony Block 1 (Songich) 19.
 - d. Costs of this suit.
 - e. Interest on (d) above at court rates.
 - f. Any other this honorable court may deem fit and just to grant.
2. The Defendant entered appearance through the firm of Ms. Chepkwony & Co. Advocates. There was no defence filed. The said firm applied to cease acting and were allowed to do so on 22/2/2022. Interlocutory judgement was applied for by the Plaintiff. This case therefore proceeded by way of formal proof.



3. The Plaintiff testified that he is the registered owner of LR. No. Plateau/Chepkongony Block 1 (Songich)/19. He stated that in December 2020 he was walking on his farm which measures 9.760 hectares. He found a semi-permanent structure erected on a portion of one acre. When he inquired on who had put up the structure, he found out that it is the Defendant who claimed that he purchased the one acre from a third party.
4. The Plaintiff stated that he has never sold any portion of his land to anyone. I have considered the Plaintiff's evidence which is not controverted. The Defendant was given an opportunity to defend the suit but he did not. The only issue for determination is whether the Plaintiff has proved his case on a balance of probability. This is not a case of boundary dispute. The Plaintiff produced a copy of title deed which was issued on 20/9/1989.
5. I have considered the Plaintiff's submissions, the evidence and the applicable law. Section 26(1) of the *Land Registration Act* provides as follows: -

“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.”
6. There is no evidence that the title to the suit property was obtained through fraud or misrepresentation. Equally there is no evidence that the title was obtained illegally, unprocedurally or through a corrupt scheme. This being the case, I find that the Plaintiff has proved his case on a balance of probabilities. I enter judgement for him against the Defendant in terms of prayers (a), (b), and (c) of the plaint dated 29/1/2021.

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

E. O. OBAGA

JUDGE

In the virtual presence of;

Ms. Chelimo for Mr. Yego for Plaintiff.

Court Assistant –Brian

E. O. OBAGA

JUDGE

