



**Kiprop v Chepkong'a & 2 others (Environment & Land Case E006 of 2022)
[2023] KEELC 22461 (KLR) (14 December 2023) (Judgment)**

Neutral citation: [2023] KEELC 22461 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ITEN
ENVIRONMENT & LAND CASE E006 OF 2022
L WAITHAKA, J
DECEMBER 14, 2023**

BETWEEN

JOSHUA KIPROP PLAINTIFF

AND

STEPHEN CHEBOI CHEPKONG'A 1ST DEFENDANT

SOTE CHEPKONG'A 2ND DEFENDANT

BENJAMIN KIPTUM SERGON 3RD DEFENDANT

JUDGMENT

1. Joshua Kiprop, (hereinafter referred to as the plaintiff/applicant) took up the summons dated 26th December, 2022 for determination of among other questions, the question as to whether he has acquired title to a portion of land measuring 1.3 hectares comprised in Baringo/Kiboino 'B'/427 (hereinafter referred to as the suit property), by adverse possession.
2. The suit is premised on the grounds that the 1st and the 2nd defendants/respondents, were registered as proprietors of the suit property through transmission; that the 3rd respondent is the current registered owner of the suit property having obtained title thereto by way of transfer of the suit property to him by the 1st and the 2nd respondents; that he (the plaintiff/applicant) has been in occupation of a portion of the suit property measuring 1.3 hectares since 1983; that his occupation of the portion of the suit property he claims has been open, continuous and uninterrupted for over 40 years; that there is an existing fence delineating the portion he (the plaintiff/applicant) claims and that he has developed the portion of the suit property he claims by erecting houses therein, planting trees, connecting it with water and electricity and carrying out farming activities therein (planting crops and keeping animals therein).



3. The defendants/respondents swore affidavits (erroneously entitled supporting affidavits), denying the plaintiff/ applicant's claim that he has acquired title to the portion of the suit property he claims and putting the plaintiff/ applicant to strict proof of his claims.
4. Pursuant to directions given on 20th April 2023, the originating summons was converted into a plaint and the replying affidavits into statements of defence. The parties were also directed to file witness statements and the suit set down for hearing by viva voce evidence.

Evidence

Plaintiff's Case

5. When the case came up for hearing, the plaintiff who testified as PW1, relied on his statement recorded and signed on 16th December 2022 after the same was adopted as his evidence in chief. He informed the court that the 1st and 2nd respondents as the registered owners of the suit property acquired through transmission, who had transferred it to the 3rd respondent. He stated that his occupation of the suit property has been open, continuous and uninterrupted for over 40 years and he had made developments therein. He produced certificates of official search dated 27th April 2021, 21st December 2016 and 28th June 2022 as Pexbt1-3 respectively.
6. Upon being cross examined by the defendants counsel, the plaintiff stated that he currently lives 2 kilometers away from the suit property but his younger brother is in current occupation of the suit property and had been in occupation since 2009. He admitted that he is not a relative of Chepkonga Arap Kipkebut (deceased) and did not participate or raise objections to the succession proceedings. He stated that he is not aware of the trespass charges levelled against his younger brother by the 3rd respondent.
7. In re-examination, he stated that he never dispossessed any of the respondents of the suit property.
8. PW2 Moses Cheron, relied on his statement recorded and signed on 3rd May 2023 after it was adopted as his evidence in chief. His statement is to the effect that he has always known that the suit property belonged to the plaintiff with a large portion of it being a quarry.
9. In cross examination, he stated that he has never seen anyone using the suit property except the plaintiff.
10. In re-examination he stated that the plaintiff's brother resides on the suit property with the permission of the plaintiff.
11. PW3 Richard Kimeres Kiprop, relied on his statement signed on 3rd May 2023 after it was adopted as his evidence in chief. He informed the court that the suit property belongs to his elder brother the plaintiff, who has been in occupation of about 1½ acres since the 1980's, that he has developed and has been utilizing the land but currently the land is occupied by his younger brother.
12. In cross-examination, he admitted he is aware of the trespass case against their younger brother. He informed the court that the suit property belonged to their deceased grandfather who was never registered as the owner.
13. In re-examination, he stated that their family did not have a title deed for the suit property because the 1st respondent deceived them into believing that he would register the land in the plaintiff's name but instead took the land for himself.



14. PW4 Cherop Chepkirui, relied on his statement signed and recorded on 3rd May 2023, after it was adopted as his evidence in chief. He stated that the plaintiff has lived and utilized the suit property since 1980's and he was not aware how the 3rd respondent acquired his title.
15. In cross-examination, he admitted that he does not know the registration number to the suit property; that he was aware of the trespass case against the plaintiff's younger brother.
16. In re-examination, he stated that he is not aware of the determination in the trespass case.

Defendant's Case

17. DW1 Benjamin Kiptum Serгон, the 3rd respondent herein, relied on his statement recorded and signed on 30th December 2022 after it was adopted as his evidence in chief. He informed the court that he is the registered owner of the suit property; that he purchased the suit property from Chepkonga Kipkebut (deceased) and his son James Kamaina Konga; that he paid the full purchase price in 1997 and was issued with a title deed in 2022. He informed the court that the plaintiff does not live on the suit property but his younger brother currently resides therein and he had filed a trespass case against him. He denied that the plaintiff and his brothers had been in occupation of the suit property for over 12 years. He produced the title deed and certificate of official search as Dextb 1 and 2.
18. In cross examination, he stated that he purchased the suit property from Chepkonga Kipkebut (deceased) in 1997 but there was no written sale agreement. He informed the court that he left the country soon thereafter and when he came back, he found that someone had erected structures in the suit property and reported the matter to the area chief.
19. In re-examination, he stated that there was no dispute between him and Chepkonga Kipkebut's family about how he acquired the suit property and there were no structures on the land when he purchased it in 1997; that he learnt about the plaintiff's structures in the suit property in 2018.
20. DW2 Stephen Cheboi Chepkonga, the 1st respondent, relied on his statement recorded and signed on 30th December 2022 after it was adopted as his evidence in chief. He admitted that the suit property belonged to his deceased father; that he has no problem on how the 3rd respondent acquired the suit property. He stated that the plaintiff is a neighbour; that the plaintiff's family did not participate in the succession cause for his father's estate; that the plaintiff has never lived on the suit property; that the plaintiff's younger brother had trespassed the suit property prompting the 3rd respondent to file a trespass case against him. He wondered why he was included in this case as a party when he was not a registered owner.
21. In cross examination, he admitted that their father informed them of his sale of the suit property to the 3rd respondent in 1997; that there was no written sale agreement between them; that his brother who was a beneficiary of the suit property later sold his portion to the 3rd respondent.
22. In re-examination, he stated that he did not benefit from the suit property and that the 3rd respondent purchased the suit property from their father. He informed the court that the suit property was vacant before the succession cause begun; that the plaintiffs did not file any objection in the succession cause and that thereafter the plaintiff's younger brother erected a structure in the suit property.
23. DW3 Sote Chepkonga, relied on her statement recorded and thumb printed on 30th December 2022 after it was adopted as her evidence in chief. The witness appeared truthful although she had difficulty remembering details. She informed the court that the plaintiff is her neighbour and that he does not live in the suit property; that there is a person living there but it is not the plaintiff. She informed the court that her husband gave the 3rd respondent the suit property before he died; that her son, (the 1st



- respondent) and herself were administrators of the deceased's estate; that they had no problem with the 3rd respondent's ownership of the suit property and they were not claiming any part of it.
24. In cross examination, she stated that the suit property was sold in 1997 by her deceased husband to the 3rd respondent while vacant as it was grazing land.
 25. In re-examination, she confirmed that the suit property was sold to the 3rd respondent and that she and the 1st respondent transferred the same to him.
 26. At close of hearing, parties filed submissions which I have read and considered.
 27. From the pleadings, evidence, the submissions and the law applicable to the case, I find the issue for the court's determination to be whether the plaintiff has made up a case for being declared the owner of a portion of land measuring 1.3 hectares comprised in the suit property.

Analysis and Determination

28. The totality of the evidence adduced in this case shows that the suit property, measuring 2.6 hectares, was initially registered in the name of Chepkong'a Kipkebut (deceased). There is no indication as to when the suit property was registered in the name of Chepkong'a Kipkebut. The evidence adduced shows that the estate of Chepkong'a Kipkebut comprised in the suit property was transmitted to Sote Chepkong'a and James Kamaina Konga as owners in common (half share each) pursuant to grant of letters of administration issued vide Eldoret HCC Succession Cause No 25 of 2010; that the plaintiff did not raise any objection to the succession proceedings in respect of the estate of Chepkong'a Kipkebut (deceased) and/or was not a party to those proceedings. The suit property was registered in the name of Sote Chepkong'a and James Kamaina Konga on 3rd November, 2015.
29. On 28th June 2022, the suit property was registered in the name of Benjamin Kiptum Sergon, the 3rd defendant herein.
30. According to the testimonies of the defendants, a portion of the suit property was sold to the 3rd defendant by the deceased, Chepkong'a Kipkebut sometime in 1997. Later on, the 3rd defendant bought James Kamaina Konga's share of the suit property.
31. As at 16th December 2022, when the instant suit was filed, the suit property was registered in the name of the 3rd defendant having been transferred to him by the administrators of the estate of Chepkong'a Kipkebut, deceased.
32. There is evidence that after the 3rd defendant got registered as the proprietor of the suit property, he instituted a suit in court against Dickson Kiprop (one of the plaintiff's brothers) claiming that Dickson Kiprop had without any colour of right trespassed into the suit property.
33. Whereas in his pleadings and evidence, the plaintiff claims that he took possession of the suit property and has by himself and/or through his agents been in use and occupation of the suit property for over 40 years, there is no indication as to when the suit property was registered in the name of Chepkong'a Kipkebut, yet time for purposes of his claim for adverse possession if at all it began to run, began to run from the time the suit property was registered in the name of the initial registered owner.
34. Since the plaintiff cannot maintain his claim based on the time the suit property was registered in the name of the 2nd and the 3rd respondents as it would fall short of the statutory period required to prove his claim for adverse possession; it behooved him to inter alia prove when the time for purposes of his claim for adverse possession began to run and prove that his possession was indeed adverse to the entitlement of the registered owner for the requisite time, over 12 years.



35. Without proof of when time began to run for purposes of his claim for adverse possession, the plaintiff cannot maintain his claim for adverse possession.
36. The plaintiff was also duty bound to prove that he was indeed entitled to the 1.3 hectares of the suit property he claims. Whilst he claimed that he was entitled to 1.3 hectares comprised in the suit property, the plaintiff did not produce any evidence capable of demonstrating that the portion of the suit property he occupies is indeed 1.3 hectares. It is noted that other than his averment that the portion he occupies measures 1.3 hectares, the plaintiff neither defined the portion nor gave any evidence capable of assisting the court to determine the size. His witnesses did not help things either, for instance his own witness, Richard Kimeres Kiprop, PW3, stated that their claim is about 1 ½ acres which puts the claim way below the claim advanced by the plaintiff.
37. The upshot of the foregoing is that the plaintiff/applicant has not proved his case on a balance of probabilities. Consequently, I dismiss his suit with costs to the defendants.
38. Orders accordingly.

DATED, SIGNED AND DELIVERED THIS 14TH DAY OF DECEMBER, 2023.

L. N. WAITHAKA

JUDGE

Judgment delivered virtually in the presence of:

Mr. Kiptoo for the Applicant.

Mr. Kagunza for the Respondent.

Court Asst.: Daisy/Ian

