



Chepngetich v National Land Commission & 6 others (Environment & Land Case E006 of 2021) [2025] KEELC 163 (KLR) (27 January 2025) (Judgment)

Neutral citation: [2025] KEELC 163 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET
ENVIRONMENT & LAND CASE E006 OF 2021
GMA ONGONDO, J
JANUARY 27, 2025**

BETWEEN

LUDIAH CHEPNGETICH PLAINTIFF

AND

THE NATIONAL LAND COMMISSION 1ST DEFENDANT

THE COUNTY GOVERNMENT OF NANDI 2ND DEFENDANT

THE NANDI COUNTY LAND MANAGEMENT BOARD 3RD DEFENDANT

THE LAND REGISTRAR NANDI COUNTY 4TH DEFENDANT

THE MINISTER INTERIOR AND COORDINATION OF THE NATIONAL GOVERNMENT 5TH DEFENDANT

THE MINISTER LANDS AND PHYSICAL PLANNING 6TH DEFENDANT

THE HON ATTORNEY GENERAL 7TH DEFENDANT

JUDGMENT

1. The central property in the instant suit is land reference number NANDI/KAMOBO/1399 measuring approximately Nought Decimal One hectares (0.1 Ha) in area, the suit land herein. It is a sub division of plot number 92, the parent land herein. The same is located within Nandi County.
2. The plaintiff was initially represented by Chebii and Company Advocates but the firm of Korir, Jepleting and Company Advocates is presently on record for her, pursuant to a Notice of Change of Advocate dated 5th May 2023 and filed herein on 8th May 2023.
3. Ms. Bellinda Akello, Advocate appears for the 1st defendant.
4. The 2nd defendant is represented by the County Attorney, Nandi.



5. The Honourable Attorney General represents the 4th, 5th, 6th and 7th defendants.
6. In the plaint (Multi Track) dated 23rd November 2021, the plaintiff is seeking the following orders;
 - a. An order that the plaintiff be compensated promptly and sufficiently within the market value in respect of the interest on the suit land as per the Valuation Report filed and dated 18th November 2021, which is Ksh. 16,000,000.
 - b. In the alternative the Plaintiff allocated an alternative parcel of land within the Kapsabet Municipality – Nandi County that is of the same and/or similar to the status of the suit land.
 - c. Compensation for damage sustained due to separation of the suit land, expenses and loss incurred due to decreased/loss of user and statutory disturbance since September 1991.
 - d. Expenses incurred as a result of the acquisition of the suit land.
 - e. General damages for trespass and loss of use.
 - f. An order that the Land Registrar Nandi County do establish a clear boundary between the remainder of the Plaintiff's land and the land already taken by the new police lines in respect of the suit land.

In the alternative;

- g. An order of eviction do issue against the Kenya Police Service (Kapsabet New Police Lines) who are the occupants in suit land.
 - h. A permanent injunction restraining the said occupants. Their agents, servant, families from entering, trespassing or in any way dealing with the suit land.
 - i. Costs of the suit.
7. By the statement of defence dated 19th September 2022, the 1st defendant denied the suit and claimed to be a stranger to the same. He stated that during the purported acquisition of the suit land, the 1st defendant had not been established by an Act of Parliament. That the Land Acquisition Act and the Land Acquisition Tribunal existed to deal with land compensation claims but the plaintiff failed to attach any pleadings from the tribunal hence, there is misjoinder of the 1st defendant herein. That the plaint does not disclose any cause of action against the 1st defendant and thus, the same be struck off from the suit which should be dismissed with costs against the plaintiff.
8. In the 2nd defendant's defence filed on 6th July 2022, there is denial of the claim and it was averred that the same is time barred. That the meeting held between the plaintiff and the 2nd defendant was not for compensation of land but a boundary dispute complaint which had been lodged by the plaintiff. Thus, the 2nd defendant urged the court to strike out the suit with costs.
9. The 4th, 5th, 6th and 7th defendants filed a Statement of defence dated 23rd February 2022 opposing the claim and urging the honourable court to dismiss the suit with costs. They contended that the suit land is a public utility and not a private property. That if the plaintiff has a title to it, the same was acquired fraudulently and does not accrue rights as enshrined in Article 40 of *the Constitution* of Kenya, 2010. That the plaintiff is guilty of laches since the instant suit has not been brought within the proper time frame.
10. Vide a Reply to defences dated 13th July 2022, the plaintiff denied the averments in the defendants' statements of defence. She averred that she is the absolute registered owner of the suit land, notwithstanding that some of it was taken by the 5th defendant. That the suit is not time barred as the



claim was previously being handled by the 2nd defendant, who last tabled the same in 2011 with a clear promise of compensation.

11. The plaintiff (PW1) relied on her statement dated 23rd November 2021 and a list of documents of even date serial numbers 1, 2, 3, 7, 11, 12, 13 and 14 (PExhibits 1, 2, 3, 4, 5, 6, 7 and 8 respectively) as part of evidence in chief and testified that she was born in 1951. That the suit land is her property measuring 0.35 acres and in 1991 she learnt that, Kapsabet Municipality had excised 0.20 acres of it and fenced the same leaving 0.15 acres thereof and upon inquiry from the Municipality, she was informed that she would be compensated. However, no compensation was forthcoming thereby causing her to lodge a complaint to the County Commissioner. That despite several follow ups, the issue was not resolved. That in the year 2022, the County Surveyor placed beacons thereon, which divided the suit land into two.
12. Under cross examination, she stated that the suit land borders the Police station. That she was issued with a letter indicating that she would be given another property. She conceded that the letter-PExhibit 6 is titled boundary dispute. That although the County Commissioner sent a Physical Planner to the suit land, she did not have a report of the said Physical Planner. That beacons were erected on the suit land without giving her reasons. She averred that the state took the suit land for use as a police station. That she was not notified of the acquisition and there was no gazettment thereof. That further, there was no advertisement of building plans. That she did not raise any objection to the part development plans. That the disputed portion is not developed but trees have been planted thereon by the Police.
13. PW2, LAUREEN CHERONO, Acting Municipal Manager of Kapsabet Municipality told the court that there exists a boundary dispute in which the plaintiff herein is the complainant. She produced several documents in evidence, including extract of minutes of 12th November 1999, a letter from Joseph Mutai – Town Clerk, a letter from the Town Clerk to the plaintiff herein indicating that part of the suit land was ceded to Kapsabet Police Station, a copy of the minutes of Works Town Planning Committee dated 20th March 2007 and a copy of the minutes of Works Town Planning Committee dated 30th August 2011 (PExhibits 9, 10, 11, 12, 13 and 14 respectively). She admitted that PExhibit 11 confirms that the plaintiff was to be compensated. On cross examination, she stated that the issue before court relates to a boundary dispute. That the 1st defendant had not been constituted at the time the dispute arose and no correspondence relating to the dispute has been done to it. That the suit land has not been gazetted for compulsory acquisition. That allocation of plots was within the mandate of the council but there are no minutes approving allocation of the suit land to the plaintiff herein.
14. PW3, EDWIN KIMURGOR TOO, a Valuer at Premium Valuers Ltd testified that he prepared the valuation report dated 12th November 2021, which he produced in evidence and was adopted by court as PExhibit 15. That the value of encroached parcel is Kshs. 16, 000, 000/-. Upon cross examination, he stated that he used comparable method, although he did not attach the comparable plots in the report. He admitted that he did not engage a surveyor during the exercise.
15. DW1, VENONICA NDUNGE MUSEE, Director Physical Planning, County Government of Nandi relied on her statement dated 7th June 2024, which was adopted as part of her evidence in chief. She produced in evidence a land use and physical plan for Kapsabet Municipality prepared in 1981-DExhibit 1, Part Development Plan of 2020-DExhibit 2, Extract Advertisement of Standard Newspaper dated 28th January 2020 (DExhibit 3), Extract Advertisement of Taifa Leo dated 30th January 2020 (DExhibit 4) and Gazzette Notice No. 1404/21/2/2020 (DExhibit 5). She stated that no objection was lodged against the Part Development Plan hence, the same was forwarded to Director of Physical Planning for vetting and approved by the Cabinet Secretary on 10th March 2021. That the plaintiff's property is freehold while the police line is leasehold.



16. CW1, JUDITH CHERUTICH, Land Registrar Nandi County, relied on the record for Nandi/Kamobo/879 (DExhibit 6), the Register for the suit land (DExhibit 7) and a mutation form showing sub division of land parcel number Nandi/Kamobo/92 into Nandi/Kamobo/1398 and the suit land herein (PExhibit 16). In examination in chief, she testified that the suit land originally belonged to one Saul Chama Nakamet before the same was transferred to the plaintiff herein on 23rd September 1980 and a land certificate issued on 1st October 1980. On cross examination, she stated that Land Parcel No. 1181 was the original number which was later converted to L. R. No. 879. That however, such conversion had no change on the ground.
17. DW2, JAMES CHAVASINDA VOSENA, a Cartographer at Nandi Survey Office, testified that the Survey Office visited the site and made a report dated 21st August 2024 (DExhibit 8). He also produced in evidence Survey Map FR 92/94 (DExhibit 9), FR CT 97 (DExhibit 10) and Kamobo Map Sheet 2 (DExhibit 11). He testified that the suit land belongs to the plaintiff, and is separate and distinct from land parcel number Nandi/Kamobo/879 which is occupied by the police station. That while the former is situated within Kamobo Section, the latter lies in Kapsabet Township.
18. Under cross examination, DW2 clarified that there is no overlap between Kapsabet Township and Kamobo Registration Area. That the two parcels are separated by a pavement on the ground. That although the plaintiff claims part C in the leasehold section, the same is rightly possessed by the police station. That according to the official search certificate, the acreage of the suit land is 0.1 Ha and the plaintiff occupies 0.096 Ha on the ground, which is within the title range. That it is impossible to have property in a freehold section and leasehold section in one title.
19. By the plaintiff's submissions dated 9th December 2024, the plaintiff's counsel gave a summary of the case and identified four issues for determination thus:
 - a. Whether the plaintiff was illegally dispossessed of her interest in the suit land without compensation.
 - b. Whether the ceded land forms part of the plaintiff's land.
 - c. Whether the plaintiff is entitled to the orders sought.
 - d. Who should bear the costs of this suit.
20. Briefly, Learned Counsel submitted that the defendants did not follow the procedure for compulsory acquisition thereby, illegally dispossessing the plaintiff of her land parcel without any compensation. That the ceded land forms part of the plaintiff's land. Counsel urged the court to find in favour of the plaintiff and grant her the orders sought. To buttress the submissions, Counsel cited, among others, Article 40(3) of *the Constitution* of Kenya, 2010, Section 111 of the *Land Act*, 2012 and relied on the case of *Muambi Properties Limited vs Kenya Urban Roads Authority & 2 others* [2024] KEELC 4307 (KLR).
21. In the 2nd defendant's submissions dated 9th December 2024, reference is made to the plaint with the prayers at its foot which are termed as founded on illegalities. Counsel identified four issues for determination inclusive of whether there was compulsory acquisition of the plaintiff's land and whether she is entitled to compensation. In the analysis of issues, counsel for the 2nd defendant cited various authoritative pronouncements including *Commissioner of Lands & Another vs Coastal Aquaculture Ltd.* CA Civil Appeal No. 253 of 1990 (1997) eKLR and *Standard Chartered Bank Limited vs Intercom Services Limited & 4 others* (Civil Appeal No. 37 of 2003), to fortify the submissions.



22. It was submitted in part that the plaintiff has not produced in evidence any document or gazette notice to the effect that the suit land was to be compulsorily acquired by the County Government of Nandi. That the evidence on record by the plaintiff are minutes by the municipal council which are referenced “boundary dispute” and not compulsory acquisition as alleged. That the Survey Report and the coordinates of the Survey Plan FR 92/94 of 1960 clearly shows the boundaries between Municipality and Kamobo Section and that the entire Kapsabet Police line is part of the Township thus, the part of the land being claimed by the plaintiff herein is not her land. That the principles governing compensation for compulsorily acquired land could not be applicable to the suit land, as the same had not been so acquired.
23. The 4th, 5th, 6th and 7th defendants’ counsel filed submissions dated 19th December 2024 on 6th December 2024 giving brief facts of the matter, inter alia, the institution of the suit by the plaintiff, the response and the evidence inclusive of the testimony of PW1 that the present dispute relates to boundary. Counsel identified three issues for determination thus; whether the suit is out of time, whether the dispute is a land or a boundary dispute and whether the plaintiff should be compensated. In analysing the issues, counsel submitted that the plaintiff is guilty of laches since she stated that her land was taken in 1991 hence slept on her rights for over 20 years. That correspondence such as PExhibits 9 and 11 show that this is a boundary dispute and that she is not entitled to compensation herein. That the plaintiff’s land is intact and she has not proved her claim as required hence, the suit be dismissed with costs.
24. Upon careful consideration of the parties’ respective pleadings, evidence and submissions, the issues for determination crystallize to;
 - a. Whether the instant suit is time barred.
 - b. Subject to issue (a) hereinabove, whether the suit is incompetent for misjoinder of the 1st defendant.
 - c. Has the plaintiff proved her claim for the orders contained at the foot of the plaintiff on a balance of probability?
 - d. The appropriate orders to issue to meet the ends of justice.
25. Notably, learned counsel for the plaintiff filed a notice of withdrawal of the suit against the 3rd defendant dated 13th July 2022 pursuant to Order 25 Rule 1 of the Civil Procedure Rules 2010. Therefore, the suit against the 3rd defendant is hereby marked as withdrawn.
26. On the first issue, I observe that in the 2nd defendant’s statement of defence filed on 6th July 2022, it denied the plaintiff’s claim. It was averred that the same is time barred.
27. Similarly, the 4th, 5th, 6th and 7th defendants affirmed, vide their Statement of defence dated 23rd February 2022, that the plaintiff is guilty of laches since the instant suit has not been brought within the proper time frame.
28. On her part, the plaintiff contended that the instant suit is not time barred as the claim was previously being handled by the 2nd defendant, who last tabled the same in 2011 with a clear promise of compensation.



29. I bear in mind the provision of the law under Section 7 of the *Limitation of Actions Act*, Chapter 22 of the Laws of Kenya that:

“An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.”

30. In the present case, the plaintiff (PW1) testified that she learnt that a portion of the suit land had been excised by Kapsabet Municipality in 1991. She stated in part:

“... In 1991 I was informed that the Kapsabet Municipality had excised half of my property...”

31. It is noteworthy that the instant suit was instituted on 1st December 2021. Clearly, that is a period in excess of 12 years.

32. No leave for extension of time to file the suit outside the twelve year period has been exhibited before this court. It follows therefore, that by the time the Plaintiff filed this suit, the claim was statute barred.

33. This court subscribes to the decision in the case of Samuel Kamau Macharia & another –vs- Kenya Commercial Bank Ltd & 2 others [2012] eKLR, wherein the Supreme Court of Kenya rendered itself in part that;

“...a court’s jurisdiction flows from either *the Constitution* or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by *the Constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law...”

34. To that end, I associate myself with the finding in the case of Bosire Ongero vs Royal Media Services [2015] eKLR that the issue of limitation goes to the jurisdiction of the court to entertain claims therefore, if a matter is statute barred the court has no jurisdiction to entertain the same.

35. It is trite that lack of jurisdiction renders a court’s decision void as opposed to it being merely voidable; see Republic-vs-Karisa Chengo & 2 others (2017) eKLR

36. Accordingly, this court cannot make a finding on issues (b) and (c) as stated in paragraph 24 hereinabove, in the circumstances.

37. Wherefore, the instant suit originated by way of a plaint (Multi Track) dated 23rd November 2021 is hereby dismissed with costs to the defendants.

38. It is so ordered.

DELIVERED, DATED AND SIGNED AT KAPSABET THIS 27TH DAY OF JANUARY 2025.

G.M.A ONG’ONDO

JUDGE

Present

1. Mr. Korir, Learned Counsel for the plaintiff

2. Mr. Kogo, Learned Counsel for the 2nd defendant

3. Mr. Kotuei holding brief for Ms. Cheruiyot for the 4th, 5th, 6th and 7th defendants

4. Walter, Court Assistant

