



Atodongor & another (Representing Estate of Kamei Chombir Psetilat alias Kemei Chombir Psetilat) v Kala & 3 others (Environment & Land Case 16 of 2018) [2022] KEELC 3530 (KLR) (26 May 2022) (Judgment)

Neutral citation: [2022] KEELC 3530 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT & LAND CASE 16 OF 2018**

FO NYAGAKA, J

MAY 26, 2022

BETWEEN

CHEPOCHECHEDO CHOMBIR ATODONGOR 1ST PLAINTIFF

CHEMORIOT CHEPKITE TUKOO 2ND PLAINTIFF

**REPRESENTING ESTATE OF KAMEI CHOMBIR PSETILAT ALIAS KEMEI
CHOMBIR PSETILAT**

AND

REUBEN KALA 1ST DEFENDANT

JACKSON KARIWO 2ND DEFENDANT

KOMOLINYANG NGARIA 3RD DEFENDANT

JENNIFER CHEYECH 4TH DEFENDANT

JUDGMENT

1. The Plaintiff being the Estate of the late Kamei Chombir Psetilat alias Kemei Chombir Psetilat, brought this suit on 08/02/2018. It did so through widows of the deceased as the Administrators of the estate. One Chepochechedo Chombir Atodongor signed the documents in support on her own behalf and that of her co-administrator of the estate, one Chemoriot Chepkite Tukoo, who signed a letter of authority for the institution of the suit, among other things. The Plaintiff sought the following reliefs:
 - (a) A declaration that the land comprised in Title No. West Pokot/Siyoi/71 does belong to the late Kamei Chombir Psetilat alias Kemei Chombir Psetilat and that the same, upon his death, is vested in his estate.



- (b) A declaration that the defendants have no proprietary interest whatsoever in the land comprised in title No. West Pokot/Siyoi/71 and further that they are trespassers in the said land, and who should be ordered to vacate and failing which they be forcefully evicted and their standing structures be demolished.
 - (c) Costs.
 - (d) Interest.
 - (e) Any other relief the Court shall deems fit to grant.
2. Through a Plaint dated 07/02/2018, the plaintiffs alleged that they brought the suit in their capacity as the Administrators of the estate of Kamei Chombir Psetilat alias Kemei Chombir Psetilat who died on 1/12/2008. It was pleaded that Letters of Administration of the estate were granted in Kitale High Court Succession Cause No. 205 of 2011 on October 31, 2017, and further that their late husband, Kamei Chombir Psetilat alias Kemei Chombir Psetilat, had become the registered owner of the suit land on March 24, 2010. It was alleged further that prior to his death, specifically from the year 2008, their late husband had allowed the 2nd Defendant, who was not a beneficiary of the estate, to cultivate part of the suit land to grow vegetables, and upon the demise of Kamei Chombir Psetilat alias Kemei Chombir Psetilat, the said Defendant began paying rent for the portion he used. She pleaded further that in 2016 the 2nd Defendant forcefully put up a semi-permanent structures on the portion comprising of 1½ acres and has since been residing therein.
 3. It was also pleaded that in the same year, that is 2016, the 1st Defendant who also not a beneficiary of the estate, forcefully entered in and fenced off 5 acres of part of the suit land which was a quarry used by the family as a source of income and has since been in occupation. In regard to the 3rd Defendant, it was pleaded that he had been licenced by the deceased on 2/12/2008 to cultivate approximately 3 acres, which licence was withdrawn in 2017. As for the 4th Defendant, the Plaintiffs alleged that she forcefully moved onto the subject parcel of land and started occupying about 2¼ acres from 2016 or 2017. She also put up a permanent house thereon. It was then stated that despite demand and notices being given to the Defendants to vacate the land, they did not, hence the institution of this suit.
 4. The Defendants filed a joint Statement of Defence on April 17, 2018, after entering appearance on March 13, 2018. In it, they denied trespassing onto the Plaintiff's parcel of land. They pleaded that the Claim was incompetent and misplaced. They then alleged that the Plaintiffs had sold part of the land to the 3rd Defendant and that the 2nd Defendant had bought part of the land through his wife one, Lucy Cherotich Lorena, from Chemurkong Tukoo, one of the beneficiaries of the estate. They then pleaded that their entry, fencing and or building on the land respectively was with the consent of the beneficiaries of the estate and that by virtue of their purchase of the respective portions, they too had become beneficiaries of the estate of the late Kamei Chombir Psetilat alias Kemei Chombir Psetilat. They then accused the Plaintiffs of concealment of some facts.
 5. The Plaintiffs filed a Reply to Defence on June 20, 2018. Thereafter the Court confirmed compliance with Order 11 of the *Civil Procedure Rules*. On April 28, 2022, the Plaintiffs filed a list of witnesses and documents to be relied upon at the hearing.
 6. On 4/05/2022, when the suit came for hearing, the Defendants were absent although served with a hearing notice. The Court being satisfied itself as to proper service of the hearing notice, by analyzing the Affidavit of Service sworn by one George Mumali and filed on April 30, 2022, proceeded with the hearing.



7. PW1, Chepochedo Chombir Atodongor, testified echoing the facts as pleaded in the Plaintiff. She adopted her witness statement dated April 28, 2018 which she filed the same date. The witness statement basically reproduced the facts as pleaded in the Plaintiff, save for making reference to the documents in support of the Claim. She produced as P. Exhibit 1 a copy of the title deed in respect of the suit land measuring approximately 97.0 Ha, P. Exhibit 2 a copy of the grant of letters of Administration and P. Exhibit 3-6 copies of demand notices issued on July 15, 2017 through the firm of Ms. Kiarie & Co. Advocates to each of the Defendants respectively. She then closed the Plaintiff's case and prayed for the closure of that of the Defendants. In absence of any Defendants, the Court closed their case.

Submissions

8. The Court gave the parties seven days to file written submissions which the Plaintiffs did, on 11/05/2022. In the submissions, they reiterated the case for the Plaintiffs and the evidence adduced. They prayed for the prayers in the Plaintiff.

Analysis and Determination

9. I have considered the pleadings herein, the evidence adduced, the written submissions and the law. I find two issues for determination. These are:
- (a) Whether the Plaintiffs have proved her case on a balance of probabilities
 - (b) Who to bear the costs of the suit?
10. I analyze the issues sequentially, beginning with the first one. In regard to proof and the standard thereof, the law is that whoever alleges a fact, unless the law expressly lifts the burden from him/her or shifts the burden to the other that he party must prove those facts propounded by him or her. Section 107 of the Evidence Act, Chapter 80 of the Laws of Kenya provides that
- “(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
 - (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person”.
11. In this case, it was the Plaintiffs who desired to prove that the Defendants had committed the breaches alleged to be inconsistent with their rights as beneficiaries of the estate of the deceased. This Court sets to consider this. It was the Plaintiffs' witness' (PW1) evidence, that she, Chemoriot Chepkite Tukoo and Esther Atodongor, were widows of the late Kamei Chombir. Her evidence was that their late husband died on 1/12/2008. She testified further that her late husband owned land parcel number West Pokot/Siyoi/71. She produced P. Exhibit 1 being the copy of title to the parcel of land, to prove evidence of ownership. She testified before his demise, her late husband had in 2008 permitted the 2nd Defendant to cultivate part of the suit land and grow vegetables thereon. It was her evidence that after the death of her husband, the 2nd Defendant began paying rent for the portion he used. Her further testimony was that the 2nd Defendant, just as all the others, were not beneficiaries of the estate of her late husband.
12. She testified further that in 2016, the 2nd Defendant forcefully put up semi-permanent structures on the portion comprising of 1½ acres and has since been residing therein. It was her testimony that in the same year, the 1st Defendant forcefully entered into and fenced off five (5) acres of part of the suit



land. She stated that prior to that time, the said portion was being used by the deceased family as a quarry that generated a source of income. Her evidence was that the said Defendant has since been in occupation of the portion. Her further evidence was that the 3rd Defendant had been licenced by the late husband on 02/12/2008, to cultivate approximately 3 acres, which licence the family withdrew in 2017. He however refused to vacate the land. She then testified that the 4th Defendant forcefully moved onto the suit land in or about 2016 or 2017 and started occupying about 2¼ acres on which she put up a permanent house. She adduced evidence that the family had given quit notices to the Defendants but they refused to heed to them. She prayed for the reliefs sought.

13. The Plaintiffs' evidence was not controverted. It is not in doubt that the suit land was owned by the late Kamei Chombir Psetilat alias Kemei Chombir Psetilat. Unless otherwise proved in a succession cause, it therefore belongs to and is part of his estate. The Defendants did not deny that the land belonged to the late Kamei Chombir Psetilat alias Kemei Chombir Psetilat. Instead they alleged that their entry onto and occupation of it was not trespass but consented to by Plaintiffs and some of the beneficiaries of the estate. The Defendants did not adduce any evidence to back their claims as made in the Statement of Defence. And even if they could have done so, they would have had to show how their claims would have resulted into being lawful claims to the estate of the deceased. Thus, having considered the pleadings and evidence, I find that the Plaintiffs have proved the case to the required standard - a balance of probabilities. I therefore enter judgment in their favour against the Defendants jointly and severally as prayed in the Plaintiff.
14. In regard to costs, it is clear that the Plaintiffs had succeeded in the claim. The actions of the Defendants precipitated the Claim herein. Although they did not attend Court to adduce evidence in their defence, they will nevertheless bear the costs.

Final Disposition

15. I therefore enter judgment for the Plaintiff against the Defendants as follows:-
 - a. A declaration is hereby issued that the land comprised in Title No. West Pokot/Siyoi/71 belongs to the late Kamei Chombir Psetilat alias Kemei Chombir Psetilat and that, upon his death, the land is vested in his Estate.
 - b. A declaration is hereby issued that the defendants have no proprietary interest whatsoever in the land comprised in title No. West Pokot/Siyoi/71 and further that they are trespassers on the said land, and are hereby ordered to vacate and remove at their cost, structures they erected on the land within the next thirty (30) days, except for any crops planted thereon as at the date of this judgment which shall be left to last until the immediate next harvest time, failure of which the Defendants will be forcefully evicted and their standing structures be demolished at their cost.
 - c. Costs of this suit.
 - d. Interest on costs.

Orders accordingly.

JUDGMENT, DATED, SIGNED AND DELIVERED AT KITALE VIA ELECTRONIC MAIL THIS 26TH DAY OF MAY, 2022.

DR. IUR FRED NYAGAKA

JUDGE, ELC, KITALE.

