



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kipruto v County Government of Elgeyo Marakwet (Environment and Land Appeal E007 of 2024) [2025] KEELC 3278 (KLR) (7 April 2025) (Judgment)**

Neutral citation: [2025] KEELC 3278 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ITEN  
ENVIRONMENT AND LAND APPEAL E007 OF 2024**

**L WAITHAKA, J**

**APRIL 7, 2025**

**BETWEEN**

**RICHARD KIPRUTO ..... APPELLANT**

**AND**

**COUNTY GOVERNMENT OF ELGEYO MARAKWET ..... RESPONDENT**

*(Being an Appeal from the Judgement of Hon E. KIGEN PM  
delivered in Iten MCELC E031 of 2023 on 5th June 2024)*

**JUDGMENT**

**Introduction**

1. By a plaint dated 11<sup>th</sup> October, 2023 the plaintiff now appellant, instituted a suit in the lower court to wit, Iten SPM ELC Case No. E031 of 2023 seeking judgment against the defendant, now respondent for:-
  - a. A declaration that the plaintiff is the rightful owner of plot No. 84 at Cheptongei Center;
  - b. An order directing the defendant to conduct physical development plan to ascertain the exact boundaries of plot No. 84 at Cheptongei Center;
  - c. A permanent injunction to restrain the defendant from interfering with the plaintiff's quiet possession of plot No. 84 at Cheptongei Centre;
  - d. Compensation for loss of use;
  - e. Any other relief the court may deem fit and just to grant.
2. The suit was premised on the grounds that the plaintiff is the registered owner of Plot No. 84 situated at Cheptongei Centre (hereinafter referred to as the suit plot); that the plaintiff was allocated the suit plot by the defunct County Council of Marakwet; that on account of an allegation by officers of the



- defendant, there is a road passing on the suit plot; that by failure of the defendant to resurvey the suit plot, he had been unable to develop the plot.
3. The plaintiff also complained that the defendant had threatened to construct a road through the suit plot.
  4. It was the plaintiff's case that owing to the actions/ inactions of the defendant complained about, he had suffered loss and damage namely: -
    - a. Deprivation of use, possession, occupation and quiet enjoyment of the suit plot;
    - b. Deprivation of his source of livelihood;
    - c. Mental anguish; and
    - d. Financial strain leading to deterioration of his health.
  5. The defendant filed a statement of defence dated 11<sup>th</sup> November 2023 in which it inter alia pleaded that the suit plot was part of a larger parcel of land known as Moiben/Kimnai/345 that belongs to it; that the plaintiff had encroached on part of the existing public road in the larger parcel of land belonging to it and that the plaintiff has no recognizable interest in the suit plot.
  6. The defendant further contended that the plaintiff's interest in the suit property, if any, is outweighed by public interest; that if the plaintiff was allocated the suit plot, he lost interest in it by failing to develop it within the requisite time and that the suit plot is subject to laws and regulations regarding the plot and the planting of the entire area within which the plot is situated.
  7. The plaintiff filed a reply to defence reiterating the averments/contentions in his plaint.
  8. When the case came up for hearing, the parties led evidence in support of their pleaded cases.
  9. After hearing closed, parties filed written submissions in respect of their respective cases.
  10. Upon considering the case urged before her, the learned trial Magistrate observed/held: -

“...The defendant through their witness, David Kibet, the town administrator, testified and stated that according to the 2010 Cheptongei register the plaintiff was not an allottee of the plot but later the council prepared a land use development plan for Cheptongei market which created additional plots where the plaintiff was designated to plot No.84; that the said plot measured 11m by 27 metres...The allottees were to pay an application and pegging fee and that the plaintiff paid for the pegging fee in the year 2012. It is also his evidence that the plaintiff illegally entered onto and took physical possession of the plot before allocation hence the council demanded Kshs. 9600/- for mesne profits.

From the evidence adduced herein above, it is not in dispute that the said plot belongs to the plaintiff as it has been confirmed by the defendant's witness that the plot forms part of the larger Moiben/Kimnai /345.

As to whether there is need to resurvey the parcel of land to ascertain boundaries, on that issue the plaintiff submitted that the defendant has not ascertained the exact measurements of the plots. whereas the defendant submitted that the plaintiff was in agreement with the maps produced by the defendant which showed that the width of the public road adjoining plot No. 84 is 10 metres and that if the plaintiff was serious about resurveying the parcel should have paid fees as the County Finance Act...



From the evidence adduced, I note that the plaintiff has not made a case for resurvey of the parcel of land....

The onus of proof lies with the plaintiff. The plaintiff is supposed to demonstrate that the defendant has trespassed into his parcel of land, he should also demonstrate that he suffered loss and is entitled to compensation...

I find that the plaintiff has failed to prove his case on a balance of probabilities. In the circumstances the plaintiff's suit is hereby dismissed with costs.

11. Dissatisfied with the judgment, the plaintiff appealed to this court on seven grounds. These are; That the learned trial magistrate erred by:-
  1. Failing to appreciate the appellant is the rightful owner of plot No.84 at Cheptongei Centre;
  2. Failing to appreciate that by virtue of demanding and receiving rent from the appellant, the respondent acknowledged the appellant's proprietary right over plot No. 84 at Cheptongei Centre;
  3. Holding that on account of being the owner of the larger parcel of land known as Moiben/Kimnai/345, the defendant enjoys all rights and privileges over the suit plot No.84 at Cheptongei Centre;
  4. Holding that individual interest cannot supersede public interest in relation to the suit property;
  5. Holding that the appellant failed to prove his case on a balance of probabilities;
  6. Failing to consider the evidence on record;
7. Dismissing the appellant's case on the ground that Cheptongei market has been earmarked for development by the world bank without any legal or logical basis.
12. The appellant prays that the judgment of the lower court be set aside and judgment be entered in his favour with costs.
13. The appeal was disposed off by way of written submissions.

## **Submissions**

### **Appellant's submissions**

14. In his submissions filed on 20<sup>th</sup> February 2025, the appellant has given an overview of the cases urged by the parties and framed two issues for the court's determination. These are:-
  - a. Whether the appellant is the owner of plot No.84 situated at Chetongei Centre; and
  - b. Whether the court can order the respondent to conduct physical development plan to ascertain the exact boundaries of plot No.84 at Cheptongei Centre.
15. On whether the appellant is the owner of plot No.84 situated at Chetongei Centre, the appellant submits that the trial court erred by holding that the fact that the respondent was the registered owner of the larger parcel of land known as Moiben/Kimnai/345, it could do whatever it wanted in respect of the said land irrespective of the appellant's interest in Plot No. 84 having been allotted to him; that it is obvious that the title deed of market centres are held by the respective County governments and individuals have been allotted plots in respect of which they pay land rent to the County governments.



16. On whether the Court can order the respondent to conduct physical development plan to ascertain the exact boundaries of plot No.84 at Cheptongei Centre, based on the evidence of D.W.1, the plaintiff submits that it is evident that the respondent has not ascertained the exact measurement of the plots at Cheptongei centre hence the need for the court to order the defendant to conduct physical development plan to ascertain the exact boundaries of plot No. 84 at Cheptongei centre.

### **Respondent's submissions**

17. In the respondent's submissions dated 28<sup>th</sup> February, 2025 the respondent has framed two issues for this court's determination. These are: -
  - a. Whether the appeal is merited; and
  - b. Who should bear the costs of the appeal.
18. On whether the appeal is merited, the respondent submits that the appeal is unnecessary, unmerited and amounts to a waste of the court's precious time because the appellant did not prove his pleaded case to the required standard.
19. Whilst the trial court determined that the evidence adduced sufficed to prove that the appellant was allocated the suit plot, the respondent submits that the appellant did not prove that he is the owner of the suit plot. In that regard, the respondent points out that the appellant did not produce any letter of allotment.
20. Based on the decisions in the cases of Dr. Joseph N.K. Arap Ng'ok v Justice OleKeiwua & 4 others Civil Appeal No. 60 of 1997 and Shadrack Kuria Kimani v. Stephen GitauNganga & another (2017)e KLR, the respondent submits that even if the appellant had produced a letter of Allotment in respect of the suit plot, on account of the fact that the respondent is the registered proprietor of the larger parcel of land where the suit plot was created, the letter of allotment could not be used to defeat the title of the respondent.
21. The respondent faults the appellant for having failed to use the dispute resolution mechanism available to him before moving to court and submits that it would not be in public interest to grant an order of permanent injunction against the respondent as doing so might halt the anticipated development projects funded by the World Bank.
22. On who should bear the costs of the appeal, the respondent submits that the appellant having filed an appeal which lacks merit should bear the costs of the appeal.

### **Analysis and determination**

23. In exercise of the duty vested in this court as a first appellate court, I have reevaluated the evidence adduced before the lower court with a view of reaching my own conclusion on it. I have reminded myself that a first appellate court will not ordinarily interfere with findings of fact by the trial court unless they were based on no evidence at all, or were based on misapprehension of the evidence or unless it is demonstrated that the trial court acted upon wrong principles in reaching the finding. In that regard, see *Selle & another vs. Associated Motor Boat Co. Ltd* (1968)E.A 123 and *Mwanasokoni vs. Kenya Bus Service Ltd* (1982-88)1 KAR and *Kiruga vs. Kiruga & Another* (1988)KLR 348.
24. I have also reviewed the pleadings filed in the lower court, the evidence adduced therein, the submissions and the judgment of the lower court.
25. I note that the learned trial magistrate aptly summarized the evidence adduced by the parties.



26. Whereas from the 1<sup>st</sup> and 2<sup>nd</sup> grounds of appeal as well as his submissions the appellant suggests that the learned trial magistrate determined that the suit plot does not belong to the plaintiff/appellant, that claim or contention is not supported by the judgment of the trial court as the trial magistrate did in fact find that the suit plot No. 84 at Cheptongei Centre belongs to the plaintiff. Although that fact is not explicitly stated in the judgment of the court, it is implicitly covered in the judgment thus:-

“The Council prepared a land use development plan for Cheptongei market which created additional plots where the plaintiff was designated to plot No.84; that the said plot measured 11m by 27 metres...The allottees were to pay an application and pegging fee and that the plaintiff paid for the pegging fee in the year 2012. It is also his evidence that the plaintiff illegally entered onto and took physical possession of the plot before allocation hence the council demanded Kshs. 9600/- for mesne profits.

From the evidence adduced herein above, it is not in dispute that the said plot belongs to the plaintiff as it has been confirmed by the defendant’s witness that the plot form’s part of the larger Moiben/Kimnai/345.”

27. From the judgment of the court, I gather that the only issues arising from the plaintiff’s suit which the court found not proven, is the issue touching on whether the plaintiff had made up a case for ordering of a resurvey of the plots; the issue of trespass on the plaintiff’s plot and whether the plaintiff was entitled to damages for loss and damage allegedly occasioned on him. It is clear from the court’s judgment that the trial court found that the plaintiff had not made up a case for being granted those orders.

28. I have carefully reviewed the evidence adduced before the lower court in respect of the aspects of the plaintiff’s case which the court found not proven.

29. On whether the court erred by determining that the plaintiff did not prove those aspects on a balance of probabilities, I agree with the trial court that the plaintiff did not prove those aspects. There is no way the plaintiff can be said to have proved the threatened encroachment on his parcel of land yet he had moved the court for an order for resurvey of the plot. It is that exercise of resurvey, that would have yielded evidence capable of proving whether or not there was encroachment on the plaintiff’s parcel of land.

30. Whereas the plaintiff proved that he had moved the defendant to cause resurvey on the market centre with a view of determining whether a road passes through his parcel of land, being of the view that the question of refusal to act would better be handled through an application for judicial review as opposed to a civil dispute, I find and hold that the learned trial magistrate cannot reasonably be faulted for having determined that the plaintiff failed to prove his case for an order of resurvey of the suit plot on a balance of probabilities.

31. As to whether the learned magistrate erred by determining that by virtue of being the registered owner of the larger parcel of land from which the suit plot was created the defendant still enjoys the rights and privileges over the entire parcel of land, it is the considered view of this court that having been lawfully allocated the suit plot by the defendant, the plaintiff/appellant acquired legally protected rights to the suit plot, which rights cannot be defeated on the basis of the argument that the defendant is the registered owner of the larger portion of land from which the suit plot was created or on account of alleged public interest. In that regard, see the case of Republic v. City Council of Nairobi & 3 others



(2014) e KLR where the court cited with approval the decision in Rukaya Ali Mohamed vs. David Gikonyo Nambacha & Another Kisumu HCCA No. 9 of 2004 thus:-

“Once a letter of allotment is issued and the allottee meets the conditions therein, the land in question is no longer available for allotment since a letter of allotment confers absolute right of ownership unless it is challenged by the allocating authority or is acquired through fraud, mistake or misrepresentation or that the allotment was out rightly illegal or it was against public interest...”.

32. Also see the case of Paul Victone Otieno v. George Asuke & 2 others (2022) e KLR where it was inter alia observed: -

“It is clear that he successfully applied and was issued with a letter of offer dated 19<sup>th</sup> November 2010 and he complied with all the conditions in the letter of offer and was paying rates to the 2<sup>nd</sup> Respondent. This court has found that the 1<sup>st</sup> Respondent lawfully acquired the suit property from the 2<sup>nd</sup> Respondent.”

33. In the instant case/appeal, it is not in dispute that the plaintiff/appellant was allocated the suit plot and has been paying the requisite rent to the defendant/respondent in respect thereof.

34. Despite being the registered proprietor of the larger parcel of land from which the suit plot was created, the respondent cannot lawfully interfere with the appellant’s rights to the portion of the larger parcel allocated to him on account of the claim that the defendant/respondent is the registered owner of the larger portion or on account of public interest. If the defendant wants to repossess any portion of the portion of land it allocated to the plaintiff/appellant, it should follow the legally provided procedure of acquiring land vested in a private individual for public use.

35. The cases cited by the respondent to the effect that a letter of allotment cannot supersede the rights of a holder of title are distinguishable in that the circumstances of the cases are different. In the instant case, there is evidence that the respondent allocated the suit plot to the appellant. No other person was allocated the plot to warrant applying the cases cited by the respondent to the peculiar circumstances of this case/appeal.

36. The upshot of the foregoing is that the learned trial magistrate erred in dismissing the plaintiff’s suit on account of the determination that the defendant is the registered owner of the larger portion of land from which the suit plot was created hence entitled to it despite finding that the plaintiff was lawfully allocated the suit plot by the defendant. The learned trial magistrate also erred by determining that the plaintiff/appellant’s interest could not override the public interest in getting the area in which the suit plot is situated.

37. In view of the foregoing, I find and hold that the plaintiff/appellant has made a case for interference with the judgment of the trial court by setting aside the order dismissing the plaintiff/appellant’s suit in its entirety and substituting that judgment with an order declaring the plaintiff/appellant the rightful owner of plot No. 84 at Cheptongei Centre. As the rightful owner of the suit plot, and there being no evidence showing that the defendant has through any legal process brought to an end the plaintiff’s entitlement to the suit plot, I do find that the plaintiff/appellant has also made a case for grant of an order of permanent injunction to restrain the defendant from interfering with his quiet possession of plot No. 84 at Cheptongei Centre.

38. On costs, because the plaintiff/appellant has partially succeeded in his appeal, I award him half the costs of the appeal and half the costs of the suit in the lower court.



39. Orders accordingly.

**DATED, SIGNED AND DELIVERED THIS 7<sup>TH</sup> DAY OF APRIL, 2025.**

**L. N. WAITHAKA**

**JUDGE**

Ruling delivered Virtually in the presence of - :

Mr. Mukhabane for the Applicant.

Mr. Wafula for the Respondent.

Christine: Court Assistant.

