



**Ronoh ((Suing as the legal representative of the Estate of Monica Jepwambok Ronoh - Deceased)) v Kipkosgei & 5 others (Environment & Land Case 60 of 2021) [2025] KEELC 168 (KLR) (27 January 2025) (Judgment)**

Neutral citation: [2025] KEELC 168 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET  
ENVIRONMENT & LAND CASE 60 OF 2021  
GMA ONGONDO, J  
JANUARY 27, 2025**

**BETWEEN**

**PAULA JEPTOO RONOHO ..... PLAINTIFF  
(SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF MONICA JEPWAMBOK RONOHO - DECEASED)**

**AND**

**MARTIN DOUGLAS KIPKOSGEI ..... 1<sup>ST</sup> DEFENDANT  
JOHN KIPRUTO TOO ..... 2<sup>ND</sup> DEFENDANT  
LAND SETTLEMENT FUND TURSTEES ..... 3<sup>RD</sup> DEFENDANT  
COUNTY LAND REGISTRAR, KAPSABET ..... 4<sup>TH</sup> DEFENDANT  
COUNTY LAND SURVEYOR, KAPSABET ..... 5<sup>TH</sup> DEFENDANT  
ATTORNEY GENERAL ..... 6<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. At the heart of the instant suit is the property title number Nandi/Chemelil Settlement Scheme/607 (The suit land herein).
2. The plaintiff is represented by E A Ochieng and Company Advocates.
3. The 1<sup>st</sup> defendant is represented by Kipkosgei Choge and Company Advocates.
4. The 2<sup>nd</sup> defendant is represented by Mwinamo Lugonzo and Company Advocates.
5. The Honourable Attorney General is on record for the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> defendants.



6. The present plaintiff, Paula Jeptoo Rono substituted the original plaintiff, Monica Jepkwambok Rono (Deceased) on 19<sup>th</sup> February 2024 further to an application dated 14<sup>th</sup> February 2024.
7. By the plaint dated 31<sup>st</sup> January 2017 and amended on 28<sup>th</sup> February 2024, the plaintiff is seeking the following orders;
  - a. A declaration that the purported allocation and issuance of the title in favour of the of the 1st Defendant was fraudulent illegal wrongful null and void.
  - b. An order directing the 4<sup>th</sup> of the suit land issued in favour of the 1<sup>st</sup> Defendant and issue a new title in favour of the Plaintiff.
  - c. An order of permanent injunction restraining the Defendants, their servants and/or agents or any other person whosoever acting on instructions and authority of the Defendants whether express or implied taking possession, selling, disposing, alienating, charging, advertising for sale, taking possession or in any manner dealing with the suit land.
8. In his statement of defence dated 4<sup>th</sup> April 2017 and amended on 9<sup>th</sup> April 2024, the 1<sup>st</sup> defendant denied the plaintiff's claim and termed the suit vexatious, unmerited and that the same be dismissed with costs. He stated that the plaintiff does not reside on the suit land, but elsewhere. That he obtained the title in respect of the suit land based on allocation procedurally and regularly.
9. By the statement of defence dated 21<sup>st</sup> April 2017 and amended on 17<sup>th</sup> April 2024, the 2<sup>nd</sup> defendant denied wholly the suit and stated that he is a stranger to it. He therefore, prayed that the plaint be struck out as it does not disclose any reasonable cause of action.
10. The 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> deny the plaintiff's claim in their statement of defence dated 4<sup>th</sup> April 2022 and pray that this suit be dismissed with costs. They aver in part that the allotment letter purporting to issue an accumulative 24 acres of land in LR No. 1467/68 to four persons including the plaintiff, cannot confer an absolute and indefeasible right over the suit land and the plaintiff's alleged stay thereon, is a misinterpretation of the law. That due settlement authorised by the Ministry of Lands as required took effect in the year 2012 following requisite stages including identification, possession and public participation and transfer of the land to Settlement Fund Trustees which managed and distributed the same per statutory procedures.
11. The plaintiff's reply to the 1<sup>st</sup> defendant's statement of defence dated 11<sup>th</sup> November 2017, reiterates the contents of the plaint. The plaintiff stated that the title to the suit land was not procedurally issued.
12. The plaintiff (PW1) testified in part that she was a retired civil servant born in the year 1955. She relied on her statement dated 31<sup>st</sup> January 2017 and a list of documents dated 31<sup>st</sup> January 2017 (PExhibits 1 to 6). It was her testimony that she has been in possession of her property measuring approximately 6 acres since the year 1991. That in 2015, part of her property was given to the 1<sup>st</sup> defendant.
13. PW2, William Amisi Ondieki, relied on his statement dated 31<sup>st</sup> January 2017, which was adopted as part of his evidence-in-chief and stated that he is a neighbour to the plaintiff. That the 1<sup>st</sup> defendant does not reside on the suit land. Upon cross-examination, he stated that the plaintiff has put up a building on the suit land and her workers stay thereon.
14. DW1, Martin Douglas Kipkosigei told the court that he was born in the year 1979, a farmer, an elected leader of Chemilil/Chemase Ward and owns the suit land measuring approximately 1.21 hectares and title issued on 23<sup>rd</sup> September 2016. That the original plaintiff sued him over the suit land which was allocated to him by the Land settlement Committee before he became a member of County Assembly. That he neither knew both the County Surveyor and County Land Registrar nor influenced the



- allocation of the suit land. He relied on title deed (DExhibit1) and search certificate (DExhibit 2) to reinforce his evidence.
15. The 2<sup>nd</sup> defendant, John Kipruto (DW2) relied on his statement dated 29<sup>th</sup> May 2018 and list of documents of even date (PExhibits 3 to 5 (a) and b) as part of his evidence in chief. He stated that he was elected as the secretary then chairman of Chemilil Sisal Estate and owns property thereat, to wit, Chemelil Settlement Scheme No. 4 measuring 4.9 acres which was allocated to him as per the minutes (DExhibit 3).
  16. Under cross examination, DW2 stated in part that the size of land parcel allocated was reduced due to influx of people. That the original title number of the parcel was 1468. That neither the original plaintiff nor the 1<sup>st</sup> defendant live thereon. That land parcel numbers 558 and the suit land share a boundary. That the original plaintiff Monica (deceased) was not a squatter. That DW1 was a Member of County Assembly (MCA) of a different Ward. That allocation was done in phases and not on equal acreages.
  17. The 3<sup>rd</sup> defendant, Judith Cherutich, Land Registrar Nandi County (DW3) testified and produced original and certified copies of green cards (DExhibits 6 and 7), area list of Chemelil Settlement Scheme (DExhibit 8) and bundle of documents dated 4<sup>th</sup> April 2022 (DExhibits 9 to 16). That they opened the Green Card using the list of squatters prepared by Adjudication Department. That the acreage is in line with the computations by surveyor (DExhibit 15).
  18. In cross-examination, DW3 stated that land parcel number Nandi/ Chemilil Settlement Scheme/558 and the suit land herein, are registered in the names of the deceased original plaintiff and DW1 respectively, as first registered proprietors. That the two land parcels share a boundary. That any complaint or dispute arising ought to have been concluded at the adjudication and settlement departments and should be raised within 60 days. That there was no complaint or appeal to the Minister, as the same is not noted in the register.
  19. The plaintiff's counsel filed submissions dated 31<sup>st</sup> October 2024 and stated that the defendants have failed to demonstrate how the certificate of title was issued to DW1 thus, the same ought to be cancelled. That the suit land is not community land and the issues raised do not relate to customary rights hence, the same is not guided by the *Land Adjudication Act*. That DW1 was not entitled to benefit from allocation of land at Chemelil Settlement Scheme since he has never occupied the suit land and he does not fall under any of the categories envisioned in Section 134 (2) of the *Land Act*, 2012.
  20. Also, it was submitted that having been in occupation of the suit land, the plaintiff had a legitimate expectation that the resultant title would be issued in her name and not that of DW1. That sufficient evidence has been adduced to prove that there was fraud in the transfer of the suit land to DW1 and the instant suit is meritorious. Reliance was placed on the case of *Munyu Maina vs Hiram Gathiha Maina Civil Appeal No. 239 of 2009 (2013) eKLR* and *Solly Mbogo vs John Mugeni Gitau (2022) eKLR*, to buttress the submissions.
  21. The 1<sup>st</sup> defendant's counsel filed submissions dated 11<sup>th</sup> November 2024 and submitted in part that the plaintiff was not a squatter and has never lived on the suit land. That the plaintiff did not prove her allegation that the 1<sup>st</sup> defendant sat in a meeting that approved allocation of land to himself since the 2<sup>nd</sup> defendant averred under oath that DW1 was not a member of the Committee he chaired to allocate land to squatters. That therefore, the title to the suit land as held by DW1 was not obtained by fraud or misrepresentation, to which DW1 was a party. That the plaintiff did not particularize and prove mesne profit.



22. Further, Learned Counsel submitted that the plaintiff failed to exhaust the dispute settlement mechanism as stipulated under the Law and no appeal was filed to the Minister for determination. That an order of injunction cannot act to prevent an action that has already taken place as is in the present case where title to the suit land has already been issued to DW1. That the plaintiff is bound by her pleadings and has failed to prove her case on a balance of probabilities hence, the same ought to be dismissed with costs. Counsel cited various authorities to reinforce the submissions including Peter Mwangi Mbutia & Another vs Samow Edin Osman (2014) eKLR, Karanja Mbugua & Another vs Marybin Holding Company Ltd. (2014) eKLR, among others.
23. The 2<sup>nd</sup> defendant's counsel filed submissions dated 12<sup>th</sup> November 2024 and submitted that the plaintiff's allegation that the 1<sup>st</sup> and 2<sup>nd</sup> defendants colluded to dispossess her of part of her land is not backed up by evidence. That the 1<sup>st</sup> defendant was allocated the suit land on the basis of the Area list and the Survey Computations. That his title thereto is protected under Sections 24(a) and 26(1) of the [Land Registration Act](#), 2016 (2012). Thus, he urged the court to dismiss the plaintiff's suit with costs. Counsel relied on the case of Ali Wanje Ziro vs Abdulbasit Abeid Said & Another (2022) eKLR, to buttress the submissions.
24. By the submissions dated 6<sup>th</sup> December 2024, the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> defendants' Counsel identified two issues for determination thus; was there fraud and if so, was it proved? and whether the plaintiffs are entitled to the orders sought herein. Learned Counsel submitted that according to the testimony of DW3, the resultant titles for Chemelil Scheme, more particularly the 1<sup>st</sup> defendant's title for the suit land, were issued according to the Area List and the Survey computations. That both the names of PW1 and DW1 are listed in the area list with their respective parcel numbers. That the acreage as indicated in the title deeds of PW1 and DW1 are per the Survey computations. That thus, the plaintiff failed to show that the inclusion of the 1<sup>st</sup> defendant thereon was done illegally.
25. Counsel submitted that the plaintiff has no right to the suit land and if the title issued thereto were to be cancelled, the same would revert to the 3<sup>rd</sup> defendant for fresh allocation and cannot be registered in the name of the plaintiff or her estate. That having failed to prove her case to the requisite standard, the plaintiff is not entitled to the orders sought therein. To reinforce the submissions, Counsel relied on various authoritative pronouncements including Ndolo vs Ndolo (2008) 1 KLR (G&F) 742, Rosemary Wanjiku Murithi vs George Maina Ndinwa NYR Civil Appeal No. 9 of 2014 (2014) eKLR and Lucy Mirigo & 550 others -vs- Minister for Lands & 4 others (2014) eKLR, among others.
26. It is well settled that the issues for determination in a suit arise either out of the pleadings or are as framed by the parties for the court's determination; see Galaxy Paints Company Limited-vs-Falcon Guards Limited (2000) eKLR, Great Lakes Transport Company (U) Limited-vs-Kenya Revenue Authority (2009) KLR 720.
27. The plaintiff's counsel filed a statement of issues dated 11<sup>th</sup> January 2018 where issues framed include; whether or not the sub division, issue and registration of the suit land in the name of the 1<sup>st</sup> defendant was wrongful, illegal and fraudulent as alleged in paragraph 17 of the plaint and is the plaintiff entitled to prayers sought in the plaint?
28. In the foregone, the issues for determination boil down to whether or not the 1<sup>st</sup> defendant's acquisition of title to the suit land was fraudulent and the orders to issue to meet the ends of justice herein.



29. In Black's Law Dictionary 10<sup>th</sup> Edition at page 775, the term "Fraud" means;
- "A knowing misrepresentation or knowing concealment of material fact made to induce another to act to his or her detriment"
30. It is trite law that the existence of fraud cannot be inferred from the facts; see Vijay Morjaria-vs-Nansingh Madhusingh Darbar and another (2000) eKLR.
31. In the case of Kinyanjui Kamau-vs-George Kamau (2015) eKLR, the Court of Appeal noted that;
- "...It is trite law that the allegations of fraud must be pleaded and strictly proved..."
32. In the instant case, the particulars of fraud and malice on the part of the 1<sup>st</sup> to 5<sup>th</sup> defendants are set out in paragraph 17(a) to (f) of the amended plaint.
33. This court is cognizant that rights and registrations in respect of land can be challenged on grounds of fraud, misrepresentation and adverse possession; see Salim-vs-Boyd (1971) EA 550 and Kimani Ruchine and another-vs-Swift Rutherford Company Ltd and another (1976-80) 1 KLR 1500.
34. The defendants' position is that the 1<sup>st</sup> defendant was allocated the suit land on the basis of the Area list and the Survey Computations. That his title thereto is protected under Sections 24(a) and 26(1) of the *Land Registration Act*, 2016 (2012).
35. Further, in the case of Gladys Wanjiru Ngacha-vs-Teresa Chepsaat and 4 others (2013) eKLR, the Court of Appeal cited R.G Patel-vs-Lalji Makani (1957) EA 314 at 317 and remarked;
- "...Allegations of fraud must be strictly proved. Although the standard of proof may not be so heavy as to require proof beyond reasonable doubt, something more than a mere balance of probabilities is required..."
36. Indeed, the plaintiff has failed to distinctly prove fraud as held in, inter alia, Kamau and Ngacha cases (supra); see also Ndolo-vs-Ndolo (supra). Thus, the same is mere allegation and not proved to the requisite standard.
37. Interestingly, during cross examination, PW1 clarified that initially, she was to be allocated land in Settlement Scheme Number 1467/8 but was moved to 1468. She admitted that she does not live on the Settlement Scheme and her name though not on the initial list of allottees, was added thereon, despite her not making an application for allocation.
38. Clearly, PW1 stated;
- "...I live in Kapsimatwa in Nandi Hills. My location is Nandi Hills not Chemilili or Chemaswe. I was given the property as a civil servant and a Secretary to Nandi Hills Town Council. I typed the list of beneficiaries and my name was not on the original list of allottees. I did not do any application for allocation..."
39. Further, she stated that:
- "... I was not a squatter but I was co-opted because I typed the list...There is no sketch map for the allocation... I was told I had been allocated 6 acres but I have no allotment from the government."



40. In the case of Munyu Maina -vs- Hiram Gathiha Maina (supra) eKLR, the Court of Appeal was emphatic thus;

“...When a registered proprietor’s root of title is under challenge.....the registered proprietor must.....prove the legality of how he acquired the title and show that the acquisition was lawful, formal and free from any encumbrances.....’

41. From the evidence on record, it is my considered view that the 1<sup>st</sup> defendant proved the root of his title as envisioned in the Munyu Maina case (supra).

42. It is trite law that the legal burden of proof in a case is always static and rests on the claimant throughout the trial; see Kirugi and another –vs- Kabiya and 3 others (1987) KLR 347. Also, this is provided for in Section 107 to 109 of the Evidence Act, Chapter 80 of the Laws of Kenya.

43. The onus was therefore, on the plaintiff to adduce sufficient evidence in support of her claim. Having failed to do so, the instant suit must fail.

44. Afortiori, this suit lacks merit and it is hereby dismissed with costs to the defendants.

45. Orders accordingly.

**DATED, DELIVERED AND SIGNED AT KAPSABET THIS 27<sup>TH</sup> DAY OF JANUARY, 2025.**

**G. M. A ONG’ONDO**

**JUDGE**

**Present;**

1. Ms. C. Ochieng’, Learned Counsel for the plaintiff
2. Mr. Matekwa holding brief for Mr. Mwinamo, Learned Counsel for the 2<sup>nd</sup> defendant
3. 1<sup>st</sup> defendant
4. Mr. Kutei holding brief for Ms. Cheruiyot, Learned Counsel for the 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> defendants
5. Walter, Court Assistant

