



**Chelanga v Land Adjudication Officer Elgeyo Marakwet & 2 others (Environment and Land Constitutional Petition 3 of 2022) [2022] KEELC 12833 (KLR) (30 September 2022) (Ruling)**

Neutral citation: [2022] KEELC 12833 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ITEN  
ENVIRONMENT AND LAND CONSTITUTIONAL PETITION 3 OF 2022**

**L WAITHAKA, J**

**SEPTEMBER 30, 2022**

**IN THE MATTER OF LAND ADJUDICATION ELGEYO MARAKWET ADJUDICATION  
AREA CHESOI ADJUDICATION SECTION AFFECTING PROPERTY NO.2522**

**AND**

**IN THE MATTER OF CONSTITUTION OF KENYA  
2010 ARTICLES 20, 21, 22, 23, 40(2)(A), 50(1), 163(3)(A)**

**BETWEEN**

**EDWIN CHELANGA ..... APPLICANT**

**AND**

**LAND ADJUDICATION OFFICER ELGEYO MARAKWET ... 1<sup>ST</sup> RESPONDENT**

**THE HON ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**PHILEMON YEGO KITUM ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. Edwin Chelanga, hereinafter referred to as the applicant filed the Suit/Petition herein inter alia seeking to be declared the lawful owner of the parcel of land known as plot No.XXX2 Chesoi Adjudication Section.
2. The parcel of land known as plot No.2522 (hereinafter known as the suit property) was subject of land adjudication processes provided for under the *Land Adjudication Act*, Cap 284 Laws of Kenya. During land demarcation and adjudication, the suit property was adjudicated in favour of the 3<sup>rd</sup> respondent herein, Philemon Yego Kitum.
3. Dissatisfied with the decision of the Land Adjudication Committee, the applicant complained to the Land Adjudication Board which heard his complaint but dismissed it. After the adjudication register was published, the applicant was dissatisfied with the decision of the Board and lodged an objection



with the Land Adjudication Officer but still lost it as the Land Adjudication Officer found in favour of the 3<sup>rd</sup> Respondent. Undeterred, the applicant filed an appeal to the Minister, which appeal he lost.

4. Claiming that he was not given an expeditious, efficient, lawful, reasonable and procedurally fair hearing, in addition to the reliefs listed herein above, the applicant urges the court to declare the decisions of the Land Adjudication Board, that of the Land Adjudication Officer and that of the Minister to be null and void. The applicant also seeks a permanent injunction to restrain the 3<sup>rd</sup> respondent, his agents, servants and employees from invading the suit property.
5. After filing the Suit/Petition, the applicant filed the notice of motion dated November 10, 2021 seeking a temporary injunction to restrain the respondents, their agents, servants, employees and/or assignees from trespassing, wasting, damaging, alienating, cultivating or in any other manner whatsoever dealing with the suit property pending the hearing and determination of the application (prayer 2) and the Petition (prayer 3).
6. The application is premised on the grounds that the applicant is the bona fide owner of the suit property; that the applicant has been in use and occupation of the suit property since 2002; that the applicant took possession of the suit property from his father, Suter Kiptoo (deceased); that after the area in which the suit property is situated was declared an adjudication area, the suit property was adjudicated in favour of the 3<sup>rd</sup> respondent and that the applicant unsuccessfully challenged the decisions of the various land demarcation institution and offices. Further that the applicant is apprehensive that the 3<sup>rd</sup> respondent may evict him from the suit property rendering him and his family destitute.
7. The application is supported by the affidavit of the petitioner/applicant sworn on November 10, 2021 in which the averments on the face of the application are reiterated. The following documents are annexed to the affidavit sworn in support of the application: -
  - (i) Photographs marked EC1 (a), (b) and (c) showing that the applicant is in use and occupation of the suit property;
  - (ii) Proceedings of a meeting held in the office of District Officer (D.O) Chesoi over the suit property; marked EC 2;
  - (iii) Proceedings of Chesoi Land Adjudication Committee dated 5<sup>th</sup> October, 2011 marked EC 3;
  - (iv) Proceeding of the Land Arbitration Board 19<sup>th</sup> June 2013 marked EC4;
  - (v) Objection proceedings dated July 3, 2020, marked EC 5
  - (vi) Appeal to the Minister proceedings marked EC6.

The application is unopposed.

8. For the Petitioner/Applicant to be granted the orders sought, he must demonstrate that he has a *prima facie* case with likelihood of success and that unless the court grants the conservatory orders sought there is real danger that he will suffer prejudice as a result of the violation or threatened violation of the Constitution. In this regard see the case of *Centre for Rights Education Awareness (CREW) & 7 Others v Attorney General* [2011] eKLR and the case of *Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 Others* [2014] eKLR where the Supreme Court stated:-

“Conservatory orders” bear a more decided public-law connotation: for these are orders to facilitate ordered functioning within public agencies, as well as to uphold the adjudicatory authority of the court, in the public interest. Conservatory orders therefore, are not, unlike



interlocutory injunctions, linked to such private-party issues as “the prospects of irreparable harm” occurring during the pendency of a case; or “high probability of success” in the supplicant’s case for orders of stay. Conservatory orders, consequently, should be granted on the inherent merit of a case, bearing in mind the public interest, the constitutional values, and the proportionate magnitudes, and priority levels attributable to the relevant causes.”

9. In applying the above principles to the circumstances of this case, it is noteworthy that the petitioner/applicant is essentially challenging the outcome of an elaborate legal process provided for under the [Land Adjudication Act](#) (LAA), cap 284.
10. Whilst the petitioner/applicant claims he was not given an expeditious, efficient, lawful, reasonable and procedurally fair hearing, other than leading evidence showing that there have been previous legal proceedings arising from the processes and procedures contemplated under the [LAA](#), Cap 284 laws of Kenya, he has not demonstrated how his constitutional rights were violated by the respondents and/or the interested party to warrant issuance of the orders sought pending the hearing of the Petition.
11. Cognizant of the fact that the law, in particular the [Land Laws \(Amendment Act\)](#) 2016, Section 152B thereof, provides safeguards for persons in the position of the petitioner/applicant (in unlawful occupation of land belonging to another person) and there being nothing to show that the 3<sup>rd</sup> respondent has threatened to evict the petitioner/applicant without complying with the safeguards provided in that section of the law, I find and hold that the petitioner/applicant has not made up a case for being granted the orders sought. Consequently, I dismiss the application with no order as to costs as it is undefended.
12. Orders accordingly.

**DATED, SIGNED AND DELIVERED, AT ITEN THIS 30TH DAY OF SEPTEMBER, 2022.**

**L. N. WAITHAKA**

**JUDGE**

**Ruling read virtually in the presence of:**

**N/A for the applicant.**

**N/A for the respondent**

**Christine Towett: Court Assistant**

