



REPUBLIC OF KENYA



KENYA LAW
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**Chuma v Kibet & another (Environment & Land Case 28 of 2021)
[2022] KEELC 13830 (KLR) (27 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 13830 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ENVIRONMENT & LAND CASE 28 OF 2021
MC OUNDO, J
OCTOBER 27, 2022**

BETWEEN

KIBET ARAP CHUMA APPLICANT

AND

KIPROTICH KIBET 1ST RESPONDENT

ANDREW CHERUIYOT RUTO 2ND RESPONDENT

RULING

1. Before me for determination is an Application via a Notice of Motion dated October 28, 2021 filed pursuant to the provisions of the Article 40 and 159 of *the Constitution*, Section 73 of the *Land Registration Act*, Section 1A, 1B, and 3 of the *Civil Procedure Act*, Order 50 Rule 1 of the *Civil Procedure Rules*, and all enabling provisions of the law. The Application was disposed of by way of written submissions.
2. In the said Application, the Applicant seeks for orders that the 1st Respondent Kiprotich Kibet be ordered to lift the caution he registered on LR No. Kericho/Kassuer/3008, and for the 2nd Respondent Andrew Cheruiyot Ruto to hand over to the Applicant the title deed to the said parcel of land. The Applicant further seeks for an order to issue to the Officer Commanding Station (OCS) Sosiot police station to provide security to the land surveyor Kericho during the survey and demarcation process of the land parcel LR No. Kericho/Kassuer/3008.
3. The Application is supported by the grounds on the face of it as well as on the sworn affidavit of Kibet Arap Chumo, the Applicant herein, sworn on the October 28, 2021.
4. The Applicant contends that he is the registered proprietor of the suit property and that the Respondents herein are his sons. That wherein the 1st Respondent registered a caution on the said parcel of land in 1994 and had refused to lift it, the 2nd Respondent is illegally holding title to the



said parcel of land. However after the Respondents were served with the court proceedings the 1st Respondent lifted the caution.

5. That on several occasions, both the Respondents have hindered him from carrying out a survey to demarcate the suit parcel of land so as to share and transfer part of it to his children. The Applicant therefore seeks that the court uses powers donated to it under Section 14 of the *Environment and Land Court Act* to grant the orders as sought in his Application.
6. The said Application was opposed vide the 1st Respondent's Replying Affidavit, sworn on behalf of the 2nd Respondent and dated the December 17, 2021 wherein 1st Respondent confirmed that indeed the Applicant was their father and the registered proprietor of parcel of land LR No. Kericho/Kassuer/3008 measuring 4.30 hectares. That he had given the original title to the 2nd Respondent on the October 20, 2021 for safe keeping as per an agreement dated the October 28, 2021 herein annexed as "KB2".
7. That at no time have they denied the Applicant access to the said title, and that in fact the Applicant has denied having instructed Counsel to file the present suit. That the said title has since been returned to the Applicant.
8. The 1st Respondent further confirmed that he had cautioned the suit property in 1995 pursuant to the instructions by the Applicant because of a protracted land the sale between the Applicant and his deceased brother. That the caution had since been removed, as per the official search certificate herein annexed as "KB3" and the land transferred to two of his sisters. That the orders sought herein were not executable since there was no caution on the suit land, the title deed is in the custody of the Applicant. That the Applicant has not been prevented from surveying and demarcating his land which he has already done and given vacant possession portions of the same to his two daughters namely Margaret Chepnetich and Jane Chepkemoi. That the Application therefore should be dismissed with costs for being an abuse of the court process, frivolous and vexatious.

Determination.

9. I have considered the Application herein as well as the submissions and I find that it is not in dispute that the suit parcel herein LR No. Kericho/Kassuer/3008 is registered to the Applicant who is a father to both the Respondents. Being the proprietor of the suit property his right is protected under the law to that effect.
10. Section 24(a) of the *Land Registration Act* outlines the interests and rights of a registered proprietor as follows;

‘the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.....’
11. Section 25(1) of the *Land Registration Act* also stipulates that ;

‘The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever...’
12. In light of the above, it is trite that the Applicant being the duly registered proprietor of the suit property is entitled to all the rights appurtenant thereto which simply means that as an absolute proprietor, he can deal with it in whichever way he so desires. He can either subdivide it amongst his children or even dispose it of at his pleasure. The Respondents therefore have no right to either refuse



with the title, place a caution over the land or stop the Applicant from dealing with it as he deems fit since they have no entitlement to it.

13. I must note that it is sad that a matter such as this that concerns family members was dragged to court thereby usurping precious judicial time instead of parties seeking an alternative dispute resolution like mediation which would have sorted out the dispute expeditiously and effectively in furtherance of the spirit of Article 159 of *the Constitution*. Such alternative dispute resolution is also an economically viable process of solving such disputes.
14. I am however glad to note that the title deed has since been returned and the caution has also been removed. To this effect, the Application has been over taken by events. However what now remains is an order to issue to the Officer Commanding Station (OCS) Sosiot police station to provide security to the land surveyor Kericho during the survey and demarcation process of the land parcel LR No. Kericho/Kassuer/3008, which order is herein granted. The Application succeeds to this end but I make no orders to cost.

DATED AND DELIVERED VIA MICROSOFT TEAMS AT KERICHO THIS 27TH DAY OF OCTOBER 2022

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE

