



**Cheptoo v Chemngok & 2 others (Environment & Land Case  
315 of 2016) [2022] KEELC 15256 (KLR) (7 December 2022) (Judgment)**

Neutral citation: [2022] KEELC 15256 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND CASE 315 OF 2016  
SM KIBUNJA, J  
DECEMBER 7, 2022**

**BETWEEN**

**LUKA KIMUTAI CHEPTOO ..... PLAINTIFF**

**AND**

**PHILIP KIPLAGAT CHEMNGOK ..... 1<sup>ST</sup> DEFENDANT**

**COUNTY LAND REGISTRAR UASIN GISHU ..... 2<sup>ND</sup> DEFENDANT**

**ATTORNEY GENERAL ..... 3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

1. This suit was commenced through the undated plaint filed on the 1<sup>st</sup> November 2016, through which the plaintiff sought for the following prayers against the defendants;
  - a. An order holding and declaring the allotment to the plaintiff as the only genuine allotment of the suit property and directing the annulment/cancellation of the lease and certificate of lease issued to the 1<sup>st</sup> Defendant over L.R. No. Eldoret Municipality Block 5/567.
  - b. A permanent order of injunction restraining/barring the 1<sup>st</sup> Defendant through his advocate his agents, servants, employees and/or other person acting on his authority from leasing, selling, creating structures/buildings, tilling, entering, remaining, dealing and/or in any other way transacting on all that parcel of land known as L.R. Eldoret Municipality Block 5/567
  - c. An order directing the County Government of Uasin Gishu/Lessor to draw a lease over the suit property in favor of the plaintiff and further directing the 2<sup>nd</sup> Defendant to register such lease as shall be drawn by the 2<sup>nd</sup> Defendant in favor of the plaintiff and issue the plaintiff with a certificate of lease.
  - d. An order of eviction against the 1<sup>st</sup> Defendant, his agents, servants, employees or any person acting on his authority from the suit property.



- e. Damages for trespass from the 1<sup>st</sup> Defendant.
- f. Cost of the suit.
- g. Interest on (d) and (c) above.
- h. Any other or further relief that may be granted by the court as it deems fit.

The plaintiff averred that he was the original allottee of L R No. Eldoret Municipality Block5/567, the suit land, formerly Residential Plot No. 36 Eldoret West, vide a letter of allotment dated 23<sup>rd</sup> April 1992. That he accepted the offer, paid the amount required under the letter of allotment, took possession of the plot and continued paying the rates, but in May 2015 some third parties came onto the plot and took possession. On making enquiries, he learnt the 1<sup>st</sup> defendant had been issued with a lease to the now registered plot. That the 1<sup>st</sup> and 2<sup>nd</sup> defendants were aware about his proprietary interests over the property when they colluded and registered it with 1<sup>st</sup> defendant, and hence this suit.

2. The 1<sup>st</sup> defendant opposed the claim through the statement of defence dated the 20<sup>th</sup> November 2017. He avers that he was issued with the certificate of lease over the suit land on the 25<sup>th</sup> May 2011. That the land had been allocated to him vide the letter of allotment dated the 2<sup>nd</sup> December 1992, and he accepted the offer by paying the requisite fees on the 9<sup>th</sup> March 1995. He denied any involvement in fraud, or being a trespasser on the plot, and prayed for the plaintiff's suit to be dismissed with costs. He also prayed that he be declared the owner of the suit land and be awarded costs.
3. The 2<sup>nd</sup> and 3<sup>rd</sup> defendants did not file any statement of defence.
4. The plaintiff testified as PW1 and called Jackson Kiprop, the then director of Lands Administration at the County Government of Uasin Gishu, who testified as PW2. The plaintiff told this court how he applied for the suit land, paid the application fee and produced a payment receipt as exhibit. He was then issued with the letter of allotment and upon accepting the offer, he paid the required premiums and produced a receipt thereof as exhibit 3. It was his testimony that he has ever since, been diligently paying premiums as shown by exhibits 8(a) to (d). That upon finding out that the 1<sup>st</sup> Defendant had trespassed on the said land, he placed a caution over the suit land's register, which he produced as exhibit 4. He also wrote a letter to the Lessor seeking more clarification on his interests in the suit property, which he produced as exhibits 5 (a) and (b). He got a reply from the Lessor as exhibit 6 which indeed revealed that the suit property was initially plot number 36 which belonged to him. Other exhibits produced by the plaintiff were in form of letters served upon the 1<sup>st</sup> defendant which were produced as exhibits 9 (a), (b) and (c). The testimony by PW2 was that the lessor was only aware about the allotment that was made to the plaintiff, and distanced himself from any dealing involving the 1<sup>st</sup> Defendant.
5. The 1<sup>st</sup> defendant testified as DW1, and told the court that he was allocated the suit land vide a letter dated 2<sup>nd</sup> December 1992. That he followed the due process which included getting a lease agreement from the lessor, and later on, he was given a lease certificate for the suit property. He produced the lease agreement and certificate of a lease as exhibits 4 and 5 respectively. The 2<sup>nd</sup> and 3<sup>rd</sup> defendants called Emmah Sitienei, from Uasin Gishu land registry, who testified as DW2. She produced a certified copy of the white card for the suit land, and told the court that the parcel file of the suit property showed that the suit land was registered in the name of the 1<sup>st</sup> Defendant. She went on by stating that the suit land was the property of the Municipal Council of Eldoret, and any queries concerning its allocation ought to lie against the allocating entity, and not the 2<sup>nd</sup> and 3<sup>rd</sup> defendants.
6. The learned counsel for the plaintiff, 1<sup>st</sup> defendant, 2<sup>nd</sup> & 3<sup>rd</sup> defendants filed their submissions dated the 14<sup>th</sup> March 2022, 7<sup>th</sup> June 2022 and 6<sup>th</sup> June 2022 respectively.



7. The learned counsel for the plaintiff raised two issues for determination in his submissions. The two issues are:
- i. Whether the registration of the 1<sup>st</sup> defendant as proprietor was fraudulent, irregular and illegal.
  - ii. Whether the plaintiff is entitled to the relief sought.

It is the plaintiff's submissions that the 1<sup>st</sup> defendant's title was procured illegally and fraudulently, and therefore cannot be protected by law. He cited the case of Republic vs Minister for Transport and Communication & 5 others wherein Maraga J (as he then was) stated:

“Court should nullify titles by land grabbers who stare at your face and wave to you a title of the land grabbed and loudly plead the principle of the indefeasibility of title deed.”

The plaintiff also invoked Section 112 of the *Evidence Act* which creates a burden on the 1<sup>st</sup> Defendant to prove that he acquired a good title of the suit land through a legally recognized channel. Furthermore, he questioned the validity of the lease itself, and submitted that the 1<sup>st</sup> defendant failed to tell the court the circumstances that led to the firm of Rioba Omboto Advocates drafting the lease. He went on by submitting that the drafter of the lease instrument was never called as a witness to verify the content of the lease. He invited this court to look at the sentiments of Munyao J, in *David Kipketer Birgen VS Omare Peter Maaga*, where the court found that documents that had been drawn by Rioba Omboto were fraudulent, irregular, and illegal for the reason that Mr. Rioba Omboto, had denied drawing the lease. The plaintiff also submitted on the question of double allotment by stating that even if the 1<sup>st</sup> Defendant's allotment is found to be genuine, it cannot rank first in priority as his allotment came first in time and has not been revoked. He has anchored his reasoning on the case of *Rukaya Ali Mohammed vs David Gikonyo Nambacha & Another* where Warsame J, as he then was, held:-

“Once (an) allotment letter 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 (an) absolute right of ownership or proprietorship unless it is challenged by the allotting authority or is acquired through fraud, mistake or misrepresentation, or that the allotment was outrightly illegal or it was against the public interest.”

On whether the plaintiff is entitled to the relief sought, he submitted that the court ought to grant him the relief due to the fact that the 1<sup>st</sup> defendant failed to rebut his evidence. He stated that this court should be guided by Section 26 and Section 80 (1) of the *Land Registration Act* and impeach the 1<sup>st</sup> defendant's certificate of lease. He relied on the case of *Alice Chemutai Too -vs- Nickson Kipkurui Korir & 2 Others*. Moreover, the plaintiff submitted that he is entitled to damages emanating from the 1<sup>st</sup> Defendant's actions of unlawful trespass and/or entry into his land, and relied on the case of *Oludhe -v- Jubilee Jumbo Hardware* where Mutungi J. held:

“I agree with the learned judge that where trespass is approved a party need not prove that he suffered any specific damage or loss to be awarded damages. The court in such circumstances is under a duty to assess the damages awarded depending on the unique facts and circumstances of each case.”

8. The learned counsel for the 1<sup>st</sup> defendant raised three issues for determination. These issues are:
- i. Whether the letter of allotment vests in the allottee proprietary interest in land.
  - ii. Whether the registration of the 1<sup>st</sup> Defendant as proprietor was fraudulent, irregular and illegal.



iii. Whether the plaintiff is entitled to the relief sought.

The counsel highlighted the process that an allottee goes through up to the registration of the certificate of lease. He cited various authorities that evaluate in details the steps that the allottee must partake to have a leasehold title registered in his name. The 1<sup>st</sup> defendant submitted that the plaintiff failed to prove to this court that he followed all the steps before being granted the leasehold interest to the suit land. On the legality and/or validity of his proprietorship of the suit land, he submitted that he followed all the due process in acquiring the title and relied on Sections 25 (1) and 26 of the Registered *Land Act*. He also invokes Section 27 of the *Land Registration Act* to protect him. On whether the plaintiff is entitled to the relief sought, he submitted that the plaintiff is guilty of laches, having taken a long time to be issued with the title deed. He stated that his title is valid because the plot allocation committee that authenticated the plaintiff's land is the same that authenticated his land. He concluded by praying that the plaintiff's suit be dismissed.

9. The learned counsel for the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants submitted that guided by the pleadings, the court ought to find that the 2<sup>nd</sup> and 3<sup>rd</sup> defendants never committed any illegality in respect of the suit land because they never played any role in its allocation. They relied on Section 40(6) of *the Constitution* and argued that it permits the cancellation of any title which is found to have been acquired illegally. They submitted that the 1<sup>st</sup> defendant's evidence was marred with numerous lacunas as he failed to prove to the court how he acquired the title. They went on by submitting that the 1<sup>st</sup> defendant never complied with the 30-day offer time frame as required in the allotment letter, rendering the offer granted to the 1<sup>st</sup> defendant to have lapsed. Furthermore, it was their submission that what stopped processing a lease in the plaintiff's favor was the then-existing lease registered in the name of the 1<sup>st</sup> defendant. They concluded by praying that the plaintiff's suit should be dismissed.
10. The following are the issues for the court's determinations;
  - a. Who between the plaintiff and the 1<sup>st</sup> defendant has good title to the suit land?
  - b. Whether the plaintiff has made out a reasonable case for permanent injunction order to issue against the 1<sup>st</sup> Defendant in respect of the suit land.
  - c. Whether the plaintiff has made out a reasonable case for an order of rectification of the suit land's register to issue to reflect the Plaintiff as the registered proprietor.
  - d. Whether the plaintiff has established the claim for an award of general damages, and if so, how much.
  - e. Who shall bear the costs of the suit and interest?
11. The court has carefully considered the pleadings, evidence tendered, written submissions, superior courts decisions cited and come to the following determinations;
  - a. All the pleadings filed by the plaintiff and the 1<sup>st</sup> defendant call for a determination in their favor. The plaintiff claims that he acquired a good title of the suit land having followed all the required channels. On the other hand, the 1<sup>st</sup> defendant has pleaded that he followed the law in acquiring the suit land. During the hearing of the plaintiff's case, he produced documentary evidence on the steps he went through in acquiring the suit land. The whole process began with an application to the lessor, his application was allowed, and vide a meeting held on the 23<sup>rd</sup> of April 1992 he was allotted the suit property by a notification letter dated 17<sup>th</sup> July 1992. What followed was the acceptance and payment of the required premium which the lessor accepted, and thereafter the plaintiff took possession of the suit land. It is his testimony that he has been



paying the rates diligently ever since. It was the Plaintiff's evidence that having fully complied with all the requirements of the 2<sup>nd</sup> Defendant, he was only waiting for the issuance of the title deed in his name. It was during this pendency that the 1<sup>st</sup> Defendant encroached into the suit property and managed to register a certificate of lease in his name. It was his testimony that, upon learning of the trespass by the 1<sup>st</sup> Defendant, he placed a caution over the suit land and went further and wrote a letter to the Lessor seeking clarification on the lease. The Lessor wrote a reply and indeed confirmed to him that he was the owner of the suit land. To reach a final determination over the suit land, he then brought this suit before this court seeking to be granted prayers as enumerated in his plaint. On the other hand, the 1<sup>st</sup> Defendant also claimed ownership of the suit property. It was his evidence that he was also allotted the suit land by the 2<sup>nd</sup> Defendant after making an application to the Lessor on the 17<sup>th</sup> of July 1992. He added that upon being allocated the suit land, he followed all the required processes and was he was later on issued with a certificate of lease which he produced as exhibit D5. He told this court that the lease agreement was drafted by the firm of Rioba Omboto & Co. Advocates.

- b. The position of the holder of a title deed over a parcel of land is well stated in Section 26(1) of the [Land Registration Act](#) which provides as follows:

“The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer ... shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner ... and the title of that proprietor shall not be subject to challenge, except-

- (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or
- (b) where the certificate of title has been acquired illegally, procedurally or through a corrupt scheme.”

The Plaintiff claims that the 1<sup>st</sup> Defendant's Certificate of Lease was acquired illegally and procedurally. Looking at the evidence tendered before me, I must say that the 1<sup>st</sup> defendant has failed to convince this court on the question of the validity of the ownership of the suit property. He failed to produce vital documents in support of his ownership of the suit land. It is important to note that most of the 1<sup>st</sup> defendant's documents were only marked for identification and he never availed the original documents to authenticate the same. What came out during the hearing was that the 1<sup>st</sup> Defendant never complied with the condition of allocation of the plot, that required him to accept the offer and make payment within 30 days. It was the 1<sup>st</sup> defendant's testimony that he paid the requisite charges after 3 years from the date he was allocated the suit land. It is true to state that by the time he was paying this premium, the application had already lapsed. Having failed to comply with the mandatorily required timelines, I must say that the certificate of lease that the 1<sup>st</sup> defendant is relying upon is now under challenge. In the case of H.H. Dr. Syedna Mohammed Burhannuddin Saheb & 2 others V Benja Properties Ltd & 2 others [2007] eKLR, the court held that;

“In any event, the letter of allotment relied upon by Defendant had itself expired and was therefore invalid. I do not accept Mr. Kirundi, Counsel for Defendant's argument, that the expired letter, when acted upon, had been "revived" through conduct. The letter had expired. It was dead. There was nothing to "revive".



- c. The 1<sup>st</sup> defendant's main foundation of his defence is the certificate of lease registered in his name. The superior courts have time and again held that where ownership of land is in dispute, possession of a certificate of title to that land alone is not conclusive proof of ownership, without showing that it was acquired regularly and procedurally. In the case of *Daudi Kiptugen versus Commissioner of Lands & 4 Others*, the court held:

“In order to determine the question of whether the lease held by the plaintiff is valid, it must be demonstrated that it was properly acquired. It is not enough that one waves a Lease or a Certificate of Lease and assert that he has good title by the mere possession of the Lease or Certificate of Lease. Where there is contention that a Lease or Certificate of Lease held by an individual was improperly acquired, then the holder thereof must demonstrate through evidence that the Lease or Certificate of Lease that he holds was properly acquired. The acquisition of title cannot be construed only in the end result, the process of acquisition is material. It follows that if a document of title was not acquired through the proper process, the title itself cannot be said to be a good title. If this were not the position, then all one would need to do is to manufacture a Lease or Certificate of Title at a backyard or the corner of a dingy street and by virtue thereof claim to the rightful proprietor of the land indicated therein. It is, therefore, necessary for this court to determine how the plaintiff ended up having a Lease and Certificate of Lease in his name and further determine if the Government did intend to issue the plaintiff with a Lease over the suit land.”

On his part, the plaintiff took the court through the steps he went through in the acquisition of the suit land, from the application stage, and produced as exhibits documentary evidence in support thereof. The 2<sup>nd</sup> Defendant is without a doubt the one who has custody over the land records, including for the suit property. The letter dated 10<sup>th</sup> October 2016 from the 2<sup>nd</sup> Defendant which was produced by the Plaintiff, indeed confirmed that the suit land was originally allocated to the plaintiff. In his submissions before this court, the 2<sup>nd</sup> Defendant raised questions on the validity of the 1<sup>st</sup> defendant's ownership of the suit land by maintaining that he never complied with the required procedure in acquiring the ownership of the suit land.

- d. On the question of whose allocation takes priority in terms of dates of allocation, courts of law have held that an allotment cannot be issued twice after the first allottee has complied with the letter of allotment. In the case of *Republic versus City Council of Nairobi & 3 Others (2014) eKLR*, the court had this to say about the land that has already been allotted:

“once allotment letter 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 an absolute right of ownership unless it is challenged by the allotting authority or is acquired through fraud, mistake or misrepresentation or that the allotment was out rightly illegal or it was against public interest. In other words, where land has been allocated, the same land cannot be reallocated unless the first allocation is validly and lawfully cancelled.”



Similarly, in the case of Rukaya Ali Mohamed Vs David Gikonyo Nambacha & Another (Kisumu HCCA No. 9 of 2009, the court held that;

“Once (an) allotment letter 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 (an) absolute right of ownership or proprietorship unless it is challenged by the allotting authority or is acquired through fraud, mistake or misrepresentation, or that the allotment was out rightly illegal or it was against the public interest.”

In this suit, it is crystal that the plaintiff was allocated the suit land on the 17<sup>th</sup> July 1992 while 1<sup>st</sup> defendant allocation was on 2<sup>nd</sup> December 1992. This shows that the plaintiff's allocation was a few months before that of the 1<sup>st</sup> defendant. The 1<sup>st</sup> defendant has failed to provide evidence to show that the Letter of Allotment issued by the 2nd Defendant to the Plaintiff in respect of the suit property was ever canceled, recalled or was invalid in any way.

- e. In view of the foregoing, the court finds that the Plaintiff is the rightful owner of the suit property, and the subsequent allocation of the said land to the 1<sup>st</sup> Defendant, was irregular, invalid and of no legal effect for the reason that it was obtained illegally and procedurally. Sections 24 (a) and 25 (1) of the [Land Registration Act](#) No. 3 of 2012 provides as follows:

“24 (a) 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:”

25. (1) 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, but subject-

- a) to the leases, charges and other encumbrances and to the conditions and restrictions if any, shown in the register; and b) to such liabilities, rights and interests as affect the same and are declared by Section 28 and to require noting on the register, unless the contrary is expressed in the register.”

That as the court finds that the Plaintiff acquired the allocation of the suit land regularly and lawfully, then he is entitled to the protection of the property as provided by Article 40 of [the Constitution](#). He is therefore entitled to the injunction orders sought, so as to keep off the 1<sup>st</sup> defendant and or his agents.

- f. Having established that the suit property belongs to the Plaintiff and not the 1<sup>st</sup> Defendant, it follows that the plaintiff is entitled to an order for the rectification of the land register to reflect him as the registered proprietor of the suit property in place of the 1<sup>st</sup> defendant.
- g. Though the 1<sup>st</sup> defendant had trespassed on to the suit land when he displaced the plaintiff, his actions were based on a voidable certificate of lease issued to him by the 2<sup>nd</sup> Defendant, and as the County Government of Uasin Gishu who had reportedly issued the lease has not been joined as a party, the court will not award any damages.



- h. Further, as the plaintiff has not presented evidence to the court on any economic activities that he was carrying out, or intended to carry out on the suit land, that can help in determining the nature and extent of the loss if any that he sustained, then the court find the plaintiff has failed to establish any basis for the award of damages in the circumstances.
  - i. On the issue of costs of the suit, the applicable law is found in section 27 (1) of the *Civil Procedure Act* chapter 21 of the Laws of Kenya, which provides that costs largely follow the event, unless where for good cause the court directs differently. The circumstances of this case can best be served by an order that each party bears its own costs.
12. Flowing from the determinations above, the court finds that the plaintiff has proved his claim against the 1<sup>st</sup> defendant to the standard required and orders as follows;
- a. That a declaration be and is hereby issued that Luka Kimutai Cheptoo, the Plaintiff, is the rightful allottee and owner of all parcel of land described as Residential Plot No. 36 Eldoret West, and now registered as L.R. No. Eldoret Municipality Block 5/567.
  - b. An order be and is hereby issued directing the Chief Land's Registrar to rectify the register in respect to title L.R. No. Eldoret Municipality Block 5/567 by cancelling the name of Philip Kiplangat Chemngok, 1<sup>st</sup> defendant, and registering the same in the name of Luka Kimutai Cheptoo, the Plaintiff, as the registered proprietor.
  - c. A permanent injunction be and is hereby issued restraining Philip Kiplangat Chemngok, the 1<sup>st</sup> Defendant and his agents from trespassing on the said suit land L.R. No. Eldoret Municipality Block 5/567.
  - d. Each party to bear his/its own costs.

It is so ordered.

**DATED AND VIRTUALLY DELIVERED THIS 7<sup>TH</sup> DAY OF DECEMBER 2022.**

**S. M. KIBUNJA, J.**

**IN THE PRESENCE OF;**

PLAINTIFF: Absent

DEFENDANTS: Absent

COUNSEL : Mr Murgor for 1<sup>st</sup> Defendant

Mr Kibet for Langat for Plaintiff.

WILSON .. COURT ASSISTANT.

**S. M. KIBUNJA, J.**

**ELC MOMBASA.**

