



**Chebii v Inspector General of Police & 3 others (Environment & Land  
Petition 13 of 2016) [2025] KEELC 364 (KLR) (6 February 2025) (Judgment)**

Neutral citation: [2025] KEELC 364 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND PETITION 13 OF 2016**

**EO OBAGA, J  
FEBRUARY 6, 2025**

**BETWEEN**

**JOHN CHUMO CHEBII ..... PETITIONER**

**AND**

**THE INSPECTOR GENERAL OF POLICE ..... 1<sup>ST</sup> RESPONDENT**

**THE NATIONAL LAND COMMISSION ..... 2<sup>ND</sup> RESPONDENT**

**MINISTRY OF LANDS, HOUSING & URBAN DEVELOPMENT .... 3<sup>RD</sup>  
RESPONDENT**

**ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT**

**JUDGMENT**

**Introduction**

1. The Petitioner filed this petition against the Respondents in which he sought the following reliefs:
  - i. A declaratory order holding that the 1<sup>st</sup> Respondent's occupation of the Petitioner's land Parcel Iten/Irong/2933 is illegal and in violation of the Petitioner's right to property under Article 75 of the independence Constitution and Article 40 (3) of the Kenya Constitution 2010.
  - ii. The Petitioner further prays for a declaratory order holding that the 1<sup>st</sup> Respondent's occupation of his land parcel Iten/Irong/2933 without adhering to the provisions of Land Acquisition Act (repealed) and without compensation is illegal and in violation of the Petitioner's right to Fair Administrative Action under Article 47 of the Kenya Constitution 2010.
  - iii. Pursuant to prayer (i) and (ii) above, an order do issue compelling the 1<sup>st</sup> Respondent to render vacant possession of land parcel Iten/Irong/2933.



- iv. Further and in alternative, an order do issue compelling the Respondents to pay Kshs.40,000/= being the current value of the subject land as per the Valuation Report.
  - v. The Petitioner also prays for an order compelling the Respondents to pay mesne profit in the sum of Kshs.20,042,446.70/= on account of loss of user since 1984.
  - vi. The Petitioner prays for an order compelling the Respondents to pay Kshs.25,000/= being the Land Valuer's fees on valuation of the suit land.
  - vii. Any other relief as the court may deem just to grant.
  - viii. Costs.
2. The 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents filed a response to the Petition and raised a Cross Petition in which they sought the following reliefs:
- i. The Petition be dismissed with costs.
  - ii. Judgment be entered against Petitioner in terms of the cross-petition as follows:
    - a. A declaration that Petitioner's acquisition of LR. No. Irong/Iten/515 or its subdivision into Irong/Iten/2933 and 2934 and issuance of title to the Petitioner in respect of Irong/Iten/2934 and the Diocese of Eldoret Trustees Registered (Sacred Heart of Jesus Parish) in respect of Irong/Iten/2933 over public land was/is unconstitutional, illegal, unlawful null and void ab initio and ineffectual to confer any good title to holders.
    - b. An order cancelling registers for LR No. Irong/Iten/2933 and 2934 in their entirety and reverting to Irong/Iten/515 and further rectifying register of Irong/Iten/515 and annulling all entries in favour of the Petitioner or any other person and vesting the same to the Principal Secretary - National Treasury.
    - c. A declaration that 1<sup>st</sup> and 3<sup>rd</sup> Respondents and by extension the National Police Service is entitled to peaceful and quiet occupation and use of LR. No. Irong/Iten/515.
    - d. An order of permanent injunction restraining Petitioner, his servants, agents or any other person acting under him from laying claim to, interfering with or otherwise dealing with LR No. Irong/Iten/515 contrary to government's interest.
  - iii. Cost of the cross-petition and interest thereon at court rates.
3. The 2<sup>nd</sup> Respondent neither entered appearance nor filed a response to the Petition.

### **Background**

- 4. The origin of the suit property which is the subject of this Petition can be traced to LR. No. Irong/Iten/291 whose register wa first opened on 11<sup>th</sup> September, 1962 in the name of Chumo Chebii. A certificate of title for this property was issued on 5<sup>th</sup> August, 1969. On 5<sup>th</sup> March, 1980, the title for this property was closed on subdivision and it resulted in LR. Nos. Irong/Iten/515, 516 and 517. All the resultant subdivisions came out in the name of Chumo Chebii.
- 5. On 6<sup>th</sup> September, 2005 the name in the title was changed to that of the Petitioner following an application made by him. On 1<sup>st</sup> October, 2009, title in respect of Irong/Iten/515 was closed on sbudivision and it resulted in LR. Nos. Irong/Iten/2933 and 2934. The suit property which is the



subject of this Petition is Irong/Iten/2933 ( suit property) measuring 2.0 hectares and is registered in the name of the Petitioner.

6. On 5<sup>th</sup> July, 1978 a mutation in respect of LR. No. Irong/Iten/291 was registered. According to the documents held at the Lands Office at Iten, Parcel 515 measuring about 7 acres was acquired by the then County Council of Elgeyo/Marakwet. The identity certificate attached to the mutation shows that Chumo Chebii signed on behalf of the seller and the clerk to Elgeyo/Marakwet County Council signed on behalf of the County Council. The identity certificate was signed on 21<sup>st</sup> February, 1978.
7. The County Council of Elgeyo/Marakwet donated parcel 515 to the Administration Police who occupied the land in 1984 and are there to date. On 1<sup>st</sup> October, 2009, the Petitioner subdivided parcel 515 and gave LR. No. Irong/Iten/2934 to the Catholic Church who occupy the two acre parcel. The suit property which is five acres is currently occupied by the Administration Police which is a unit under the National Police Service.

### **Petitioner's Case**

8. The Petitioner contends that his name was Chumo Chebii and his name was put in the adjudication register at the request of his father who was called Kimwelel Chebii. At the time the register for parcel No. Irong/Iten/291 was opened on 11<sup>th</sup> September, 1962, he was 14 years old. When he was baptised, he was given the name John. He later applied for correction of name in the register to read John Chumo Chebii.
9. He states that he subdivided LR. No. Irong/Iten/291 and apportioned 7 acres to the Catholic Church at the request of area chief on the promise that the catholic church was going to give him 40 acres at Kapkoi are within Elgeyo Marakwet District. The resultant subdivision from parcel 291 remained in his name as he awaited the compensation as promised.
10. He further states that the government delayed in compensating him prompting him to write letters to the County Council of Elgeyo/Marakwet and the Land Registrar. In 1984 as he was awaiting compensation, the government constructed the Administration Police Headquarters Offices and residential quarters in the suit property. He was promised that he would be compensated. In 2009, it dawned on him that compensation was not forthcoming. He approached the catholic Church to whom he transferred two acres being LR. No. Irong/Iten/2934 and he remained with title to the suit property which is still occupied by the Administration Police.
11. The Petitioner then embarked on the mission of pursuing the Administration Police for compensation of the 5 acres occupied by them. He wrote to the National Land Commission demanding compensation. He also wrote to the Inspector General of Police on 6<sup>th</sup> January, 2015 and to the County Land Management Board. On 2<sup>nd</sup> March, 2016. He stated that he has been paying all the rates and rent in respect of the suit property. The Petitioner therefore contends that his rights under Article 40 of *the Constitution* have been violated. It is on this basis that he seeks for the reliefs in the Petition.

### **The 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents' case**

12. The Respondents' case is that the Petitioner is not the one who was registered owner of LR. No. Irong/Iten/291. They state that this property was registered in the name of his father Chumo Chebii. They argue that there is no way this property would have been registered in his name when he was 14 years old when the register of the property was first opened.
13. The Respondents state that parcel No. Irong/Iten/515 was acquired by the County Council of Elgeyo/Marakwet which compensated the Petitioner by giving LR. No. Irong/MUTEI/591



measuring 3.0 hectares. In or around 1980, the County Council of Elgeyo/Marakwet gave the Administration Police Irong/Iten/515 measuring 7 acres.

14. The Respondent further states that the Petitioner took advantage of his illiterate father to take a loan using his land and when the father complained, the Petitioner quickly had his father's land discharged. They continue to state that the Petitioner unlawfully changed the title of his father's land without first carrying out the process by succession.
15. The Respondent further contend that the Petitioner's claim does not amount to a Constitutional Petition. They argue that what the Petitioner is seeking was a claim for breach of contract which should have been pursued in an ordinary suit but that the Petitioner opted to file a Constitutional Petition to run away from the *Limitation of Actions Act*.

## **Submissions of parties**

### **Petitioner's Submission**

16. The Petitioner filed his submissions dated 5<sup>th</sup> July, 2024. The Petitioner submitted that the Respondents had not proved that Chumo Chebii was not John Chumo Chebii. He submitted that Chumo Chebii was his name before he adopted John on baptism. He stated that his old generation identity card number was 07784761X and that identity card number 0286427 was his new generation number.
17. On the issue of the Petitioner taking a loan using the title for Chumo Chebii, the Petitioner submitted that the Land Registrar's letter of 24<sup>th</sup> October, 1972 recognized that title which was issued in 1969 was issued based on the identity card of the Petitioner. He submitted that there was no complaint of fraud raised against the Petitioner and that the title which was issued to him was never revoked.
18. On the issue of correction of names, the Petitioner submitted that the application for correction of names was made by hi and he swore a statutory declaration which was also confirmed by Clement Kaino Kiplagat. This application was approved by the Land Registrar and has never been revoked.
19. On the issue of identification report produced by the Respondents, the Petitioner submitted that he had given his father's name as Kimwelel Chebii and that he provided his father's records from National Social Security Fund and St. Patricks High School Iten where his father used to work. He submitted that the Respondents should have availed records of his father just the same way they provided his records from the Registrar of Persons.
20. On the issue of fraud, the Petitioner submitted that the Respondents did not prove fraud to the required standards. He submits that no particulars of fraud were stated. He further submitted that misfeasance which is defined in Black's Law Dictionary as not doing a lawful act in a proper manner is not fraud. Reliance was put on the case of Kuria Kiarie & 2 others -vs- Sammy Magera (2008) eKLR where the court of Appeal cited the case of Ndolo -vs- Ndolo (2008) 1 KLR (G&F) 742 where it was held as follows:

“Since the Respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than required in ordinary civil cases namely proof on a balance of probabilities, but the burden of proof on the Respondent was certainly not one beyond reasonable doubt as in criminal cases....in a claim under fraud, it is not enough to simply infer fraud from the facts.”

The court of Appeal proceed to state as follows;



“The amended defence had no particulars of fraud or illegality..... the claim was therefore stillborn and no evidence could be tendered”.....even if it was open to tender evidence on fraud & illegality, the mere allegation that a sale agreement and consent for transfer cannot be obtained on the same day is well below the standard of proof set under the cited authorities....”

21. The Petitioner submitted that the 1<sup>st</sup> Respondent’s acquisition of the suit property was not lawful. He submitted that under the Land Acquisition Act (Repealed), it was provided that where private land is acquired for public purpose, then prompt and adequate compensation shall be made. Section 12 of the Act provided that where land is granted in lieu of award, then such agreement shall be put in writing and the agreement shall be recorded in the award.
22. The Petitioner submitted that it is not possible that Chumo Chebii was compensated by being given LR. No. Irong/Iten/591 because already as at 6<sup>th</sup> April, 1965, Chumo Chebii’s was already recorded for that parcel.
23. The Petitioner further submitted that the provisions of the Land Acquisition Act (Now Repealed) were never invoked. Reliance was placed on the case of Commissioner of Lands -vs- Coastal Aquaculture Limited (1997) eKLR where the court of Appeal held as follows:

“There is all the more reason to ensure that all procedures related to compulsory acquisition must not only be strictly pursued, but also appear to be so on the face of the inquiry”.
24. Finally the Petitioner submitted in favour of its petition that the government could not give what it did not own. Reliance was placed on the case of Daniel Kipkurgat Maiywa -vs- Rebecca Chepkurgat Maina (2019) eKLR where it was stated as follows:

“One cannot give what he does not have. The principle is intended to protect title of a true owner. The rationale behind the principle is that whoever owns the legal title to the property holds the title thereto until he decides to transfer it to someone else. Accordingly, an unauthorized transfer of the title by any other person other than the owner generally has no legal effect”.
25. In opposition to the Respondents’ cross Petition, the Petitioner submitted that if the Petitioner was not the owner of the suit property, then it follows that the cross petition cannot succeed as one cannot sue a person without grant of letters of administration. He further submits that the subdivisions carried on parcel 291 were null and void for lack of locus standi.
26. The Petitioner further submits that there is no privity of contract between the Respondents and Chumo Chebii. Chumo Chebii only dealt with County Council of Elgeyo/Marakwet. He relied on the case of Agricultural Finance Corporation -vs- Lengetia Limited (1985) eKLR where the court of Appeal cited Hulsbury’s Laws of England 3<sup>rd</sup> Edition Vol. 8 para 110 where it was stated as follows:

“As a general rule, a contract affects only the parties to it, and cannot be enforced by or against a person who was not a party, even if the contract is made for his benefit and purports to give him the right to sue or make him liable upon it. The fact that a person who is a stranger to the consideration of a contract stands in such near relationship to the party from whom the consideration proceeds that he may be considered a party to the consideration does not entitle him to sue upon the contract”.



27. The Petitioner further submits that the Respondents cannot be granted the prayers they are seeking because the grant of such prayers will be against parties who are not named in this Petition. The Petitioner relied on the case of David Njoroge Kinuthia & 651 others -vs- Gnanfivan Screws & Fasteners Limited and 50 others (2021) eKLR where it was held as follows:

“The court cannot issue orders against person that is not a party to the suit.”

28. The Petitioner further relied on the case of Kiai Mbaki & 2 others -vs- Gichuhi Macharia & Another (2005) eKLR where the court held as follows:

“The right to be heard is a valued right. It would offend all notions of justice if the right of a party were to be prejudiced or affected without the party being offered an opportunity to be heard.”

29. The Petitioner therefore submitted that the Respondents’ claim is incompetent as it seeks orders against the estate of Chumo Chebii and the Catholic Church without affording them a chance to be heard. The Petitioner submitted that County Council of Elgeyo Marakwet was established under the Local Government Act and is therefore capable of suing and being sued. If the council had interest in the suit property, the Respondents cannot claim the same without affording its successor the County Government of Elgeyo Marakwet an opportunity to be heard.

30. The Petitioner submitted that there was no evidence adduced to show that the suit property was public land which was either lawfully purchased or acquired under the Land Acquisition Act.

31. Finally the Petitioner submitted that there is no basis upon which a declaration can be given that the Petitioner acquired the suit property fraudulently as no particulars of fraud were proved. The Petitioner further submitted that there is no basis for ordering cancellation of title for the Petitioner as he lawfully subdivided land which belonged to him. He submitted that parcel number Irong/Iten/2934 has been transferred to a third party and cannot therefore be subjected to cancellation.

### **Respondents’ submissions**

32. The Respondents submitted that the evidence adduced showed that the suit property had been purchased by the County Council of Elgeyo/Marakwet. There was an identity certificate which was duly signed and a mutation which was signed and registered. The registration of the mutation vested the suit property in the name of County Council of Elgeyo/Marakwet and therefore that became public land. The land was donated to the 1<sup>st</sup> Respondent by the County Council and if any claim was to be filed, it should have been filed against the County Council for breach of contract, trespass and eviction and not for breach of property rights.

33. The Respondent therefore submits that this court does not have jurisdiction to entertain the Petition which was filed after 40 years from the date the cause of action arose. The Respondents submit that there was no explanation given for the inordinate delay in filing this Petition. The Respondents relied on the case of Daniel Kibet Mutai & 9 Others -vs- Attorney General (2019) eKLR where it was stated as follows:

“52. Delay is an anathema to fair trial which is one of the key fundamental rights provided to all litigants under Article 50 of *the Constitution*. Furthermore, it would be an abuse of the court process and contrary to the Constitutional principles espoused in Article 159 that requires justice to be administered without delay, to allow a party who alleges violation of Constitutional rights,



to bring their action after undue inordinate delay, without any justifiable reason”.

34. The Respondent further submitted that this court does not have jurisdiction to deal with this petition because it does not fit the characteristics of Constitutional Petitions. The Respondents relied on the case of CNM -vs-WMG (2018) eKLR where it was stated as follows:

“

“18. A Constitutional question (or matter) is an issue whose resolution requires the interpretation of a Constitution rather than that of a statute.:

“20. When determining whether an argument raises a Constitutional issue, the court is not strictly concerned with whether the argument will be successful. The question is whether the argument forces the court to consider Constitutional rights or values”.

35. The Respondent further relied on the case of Stephen Muthami Mbau & 10 others -vs- Kenya Railways Corporation & another (2022) eKLR where it was stated as follows:

“39 .... However, not all claims brought before the ELC relating to the use and occupation of, and title to land raise Constitutional questions. The Court of Appeal stated in Eaton Towers Kenya -vs- Kasing & 5 Others (Civil Appeal 49 of 2016) 2022 KECA 861 (KLR) that for a claim to fit a Constitutional Petition, even when other avenues are available, a party ought to demonstrate that the Respondents who caused the injury were barring him from using other avenues available for redress.....

44. As the court of Appeal reiterated in the Eaton Towers Kenya case, where a matter can be disposed of without recourse to *the Constitution*, then it should be so resolved without it being made a Constitutional petition. If every claim touching on ownership of land were to be presented as a Constitutional petition, it would create an avalanche of petitions which would hamper the expeditious and efficient disposal of cases besides rendering *Civil Procedure Act* and the Rules made under it otiose”.

36. The Respondents further submitted that matters of trespass and eviction cannot be turned into Constitutional issue and that in any case there were no particulars of any violation of *the Constitution* in the pleadings contrary to the requirements in the well known case of Anarita Karimi Njeru -vs- Republic (1976 - 1980) KLR 1272 and Mumo Matemo -vs- Trusted Society of Human Right Alliance & 5 Others (2013) eKLR.

37. The Respondents submitted that the suit property vested in the County Council of Elgeyo/Marakwet once the identity certificate was signed and a mutation registered. The transaction did not require consent of the land control board. The Respondent further submitted that the County Council of Elgeyo/Marakwet had acquired legitimate interest in the suit property which was capable of protection. They relied on the case of Council of Civil Service Unions & Others -vs- Minister for the Civil Service (1984) 3 ALL LR 935 where it was stated as follows:

“Even where a person claiming some benefit or privilege has not legal right to it, as a matter of private law, he may have a legitimate expectation of receiving the benefit or privilege, and, if so, the courts will protect his expectation by judicial review as a matter of public law”.



38. On the issue that the suit property was reserved for public use and was therefore not available, the Respondents submitted that the subdivision by the Petitioner of parcel 515 was null and void. They relied on the case of Eldoret CACA No. 288 of 2010. Kipsirgoi Investments Limited -vs- Kenya Anti Corruption Commisison where the court of Appeal sitting at Eldoret found that the suit property planned and reserved as an open space was not available for allocation to any person as it was reserved for public use. The judges held that reservation of land for public purpose renders that land alienated and neither the President nor Commissioner of Land had powers to allocate such land. The court further observed that all land reserved for public use are not available for further dealing or transfer as if they were private properties notwithstanding that the same have not been registered as public land. The Respondent further relied on the case of Chemey Investments Limited -vs- Attorney General & 2 others (2018) eKLR.
39. The Respondents submitted that the Petitioner did not have the consent of the Land Control Board to subdivide Irong/Iten/515 and as such his title cannot be protected under Article 40 (6) of *the Constitution*.

### **Analysis and Determination**

40. I have considered the Petitioner's case, the Respondents' case, the rival submissions as well as the authorities cited by the parties. The following are the issues for determination:
1. Whether the Petition herein is statute barred.
  2. Whether the County Council of Elgeyo/Marakwet acquired interest in Irong/Iten/515.
  3. Whether Irong/Iten/515 was available for alienation
  4. Whether the Petitioner was right in subdividing Irong/Iten/515 and giving part of it to a third party.
  5. Which reliefs are available in the Petition or cross-petition if any.
  6. Whether the Petition herein is statute barred
41. It was the evidence of the Petitioner that his father died in 1976. The mutation which was registered on 5<sup>th</sup> June, 1978 shows that parcel 515 was acquired by the County Council of Elgeyo/Marakwet. The identity certificate which was signed by the Petitioner on 21<sup>st</sup> February, 1978 showed that the County Council of Elgeyo/Marakwet had acquired parcel 515 by way of purchase. The seller was the Petitioner. What followed was survey of of the land which removed parcel 515 from parcel 291. The mutation which was registered on 5<sup>th</sup> June, 1978 shows that the County Council of Elgeyo/Marakwet had acquired parcel 515 parcel 516 and 517 remained with Chumo Chebii as per the additional information contained in the mutation.
42. The Petitioner's own evidence is that the 1<sup>st</sup> Respondent occupied parcel 515 in 1984. This petition was filed in 2016, a period of 32 years form the time the cause of action arose. There was no plausible reason given why the Petitioner did not bring a suit against the Administration Police or file any Constitutional Petition alleging violation of his right to property in time.
43. The 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents submitted that the Petitioner filed the Constitutional Petition to run away from the *Limitation of Actions Act*. In the case of Monica Wangu Wamwere & 5 Others -vs-



Attorney General SC Petition Nos. 26, 34 & 35 of 2019 (Consolidated) (2023) KESC 3 (KLR) the Supreme Court held as follows:

“37. In point of fact, the two superior courts affirmed the position that the *Limitation of Actions Act*, Cap 22 Laws of Kenya does not apply to causes founded on violation of rights and freedoms. We concur and hold that there is no limitation of time in matters relating to violation of rights under *the Constitution*, which are evaluated and decided on a case by case basis. Nonetheless, it is well settled that a court is entitled to consider whether there has been inordinate delay in lodging a claim of violation of rights.” (Ephasis added).

44. The case of Moninca Wangu Wamwere (Supra) was referred to in the case of Janmohammed (SC) (Suing as the Executrix of the Estate of the late H. E. Daniel Toroitich Arap Moi) & Another -vs- District Land Registrar Uasin Gishu & 4 others (Pet) in 17 (EO21) of 2023 and 24 (EO 27) of 2022 (Consolidated) (2024 [KLR] 2<sup>nd</sup> August, 2024 (judgment). Neutral citation: (2024) KESC 39 (KLR) where the Supreme Court held as follows:

In views of our decision in Monica Wangu (Supra), we do reiterate that as a general principle, petitions founded on claims of violation of fundamental rights and freedoms are not subject to limitation of actions. However, having so affirmed, it is to be noted that this principle is not absolute. It is to be applied by a court of law on a case by case basis taking into account factors such as the nature of the right, the time taken to ventilate the alleged violation, and whether the claimant may be riding on a mischief.

45. The Petitioner had given the County Council of Elgeyo/Marakwet parcel 515 in 1978. The Administration Police came into the property in 1984. Between 1978 and 2016 when this petition was filed is a period of 38 years. Between 1978 and 1984, the Petitioner seems to have had no issue over parcel No. 515 to which he had given the County Council of Elgeyo/Marakwet by way of sale. If the Petitioner was offended by the coming in of the Administration Police to parcel 515, he has not given any explanation as to why he did not take any step to ventilate his right for a period of 32 years.

46. In the case of Janmohammed ( Suing as the Executrix of the estate of the late H. E. Daniel Toroitich Arap Moi (Supra), the court found that the period of 30 years taken to file a petition was not explained and thus the Petition was statute barred. The same case applies here. The Petitioner knew that the Administration Police were on the land from 1984. He did not take any step to ventilate his rights for a period of 32 years.

47. The Petitioner knew that the County Council had acquired parcel 515 in 1978. If it is true that he was never compensated, he should have brought a claim against the County Council of Elgeyo/Marakwet for specific performance or any other relief. Waiting for 32 years before filing a petition is a long period. The delay is inordinate and unexplained. As was observed in Daniel Kibet Mutai & 9 others (Supra), it would be an abuse of the court process to allow a party who alleges violation of Constitutional rights, to bring their action after undue inordinate delay, without any justifiable reason.

48. The Petitioner submitted that he patiently waited for 25 years to be compensated but when there was no compensation, he decided to subdivide parcel 515 which he gave a portion measuring 2 acres to the Catholic church and 7 years later, he filed this petition seeking violation of his rights over a portion of 5 acres occupied by the Administration Police. This explanation is not plausible. The cause of action if any arose in 1984. The Petition is hopelessly out of time.



49. The Petitioner is riding on mischief. He is trying to ride on the fact that parcel 515 was not registered under the County Council of Elgeyo/Marakwet.

#### **Whether the County Council of Elgeyo/Marakwet acquired interest in Irong/Iten/515**

50. The evidence on record is that the County Council of Elgeyo/Marakwet acquired interest in Irong/Iten/515. This is clear from the certificate of identity signed on 21<sup>st</sup> February, 1978 and the mutation which was registered on 5<sup>th</sup> June, 1978. Further confirmation is found in a letter dated 17<sup>th</sup> November, 1979 from the County Council of Keiyo and Marakwet which states that about six acres were allocated to the Administration police housing by the County Council of Keiyo/Marakwet.
51. Even if the interest acquired by the County Council of Keiyo/Marakwet was not registered, the Council had legitimate expectation capable of being protected. This was the holding in the case of Council of Civil Service Unions & others (Supra). The expectations flowed from the purchase by the County Council. I therefore find that County Council of Elgeyo/Marakwet acquired an interest in parcel 515.

#### **Whether Irong/Iten/515 was available for alienation**

52. The Petitioner's evidence is that he is the one who subdivided Irong/Iten/515 which resulted into Irong/Iten/2933 and 2934. He then sold Irong/Iten/2934 to the Catholic Church. This act by the Petitioner was wrong. This is because Irong/Iten/515 had been acquired by County Council of Elgeyo/Marakwet which had given it to Administration Police way back in 1979 for purposes of developing its houses and offices. The land was therefore not available for alienation. In fact when the Petitioner was subdividing parcel 515 in 2009, already the Administration police was in possession having taken possession in 1984. They have their offices and houses on the land.
53. The case of Kipsirgoi Investment Limited (Supra) is clear that land reserved for public use is not available for alienation even if it is not registered. The Petitioner who was registered as owner of parcel 515 did so unlawfully. The land had already been acquired by the County Council of Elgeyo/Marakwet which allocated it to the Administration Police. Chumo Chebii in whose name parcel 515 appeared was holding the same in trust for the County Council of Elgeyo/Marakwet.

#### **Whether the Petitioner was right in subdividing Irong/Iten/515 and giving it to a third party**

54. The Petitioner was aware that the County Council of Elgeyo/Marakwet had acquired parcel 515. It was therefore wrong for him to subdivide the land and give the Catholic Church parcel 2934. Even if the land was in his name, he was a trustee of the County Council of Elgeyo/Marakwet. The land was public land which could not be sold to anyone else.
55. There was a lot which was said about whether Chumo Chebii and John Chumo Chebii are one and the same person. A lot was also said about how the Petitioner came to deal with parcel 515 which is now in contention. I do not wish to delve into these issues because what is in contention is a Petition filed in 2016 over alleged invasion by the 1<sup>st</sup> Respondent on the Petitioner's property in 1984. The petition is pegged on what happened after the Petitioner's father died in 1976.
56. The subdivision of Irong/Iten/291 occurred in 1978 after the death of the Petitioner's father. It will therefore not help in determining this petition if the court were to consider what happened before 1976. What happened before 1976 only helps in tracing the history of Irong/Iten/291. What is material in this petition is what happened in 1978 and onwards.



**Disposition**

57. From the above analysis it is clear that the Petitioner's petition is statute barred. The same is dismissed with costs to the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents. On the other hand, the cross-petition is well merited. The same is allowed in its entirety.

**JUDGMENT DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MAKUENI  
THIS 6<sup>TH</sup> DAY OF FEBRUARY, 2025.**

**HON. E. O. OBAGA**

**JUDGE**

In the presence of:

Mr. Kipnyekwei for Petitioner

Court assistant - Steve Musyoki

