



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Kimuigei v Kiptegucho & 5 others (Environment & Land Case  
E006 of 2023) [2025] KEELC 357 (KLR) (4 February 2025) (Judgment)**

Neutral citation: [2025] KEELC 357 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ITEN  
ENVIRONMENT & LAND CASE E006 OF 2023**

**L WAITHAKA, J**

**FEBRUARY 4, 2025**

**BETWEEN**

**KIPROTICH KIMUIGEI ..... PLAINTIFF**

**AND**

**MATHEW KIPTEGUCHO ..... 1<sup>ST</sup> DEFENDANT**

**CAROLINE MAGUT ..... 2<sup>ND</sup> DEFENDANT**

**GILBERT MAGUT TEGUCHO ..... 3<sup>RD</sup> DEFENDANT**

**MARAKWET COUNTY ..... 4<sup>TH</sup> DEFENDANT**

**THE COUNTY LAND REGISTRAR, ELGEYO MARAKWET  
COUNTY ..... 5<sup>TH</sup> DEFENDANT**

**THE HONOURABLE ATTORNEY GENERAL ..... 6<sup>TH</sup> DEFENDANT**

**JUDGMENT**

**Introduction**

1. By a plaint dated 15th May 2023, the plaintiff herein instituted this suit seeking a declaration that he is the legal and bona fide owner of the parcel of land known as Elgeyo Marakwet/Chepsigot "A"/793 (hereinafter referred to as the suit property); a declaration that the new boundaries and purported subdivisions of the suit property are fraudulent and illegal; restriction on any illegal and fraudulent alterations in the register of the suit property; rectification of the register of the suit property; restitution of the suit property to its original state, costs of the suit and interest; any other relief the court may deem fit and just to grant.
2. As can be discerned from the averments in the plaint, the plaintiff's suit is premised on the ground that the plaintiff is the registered owner of the suit property; that the 1st to the 3rd defendants had without



any colour of right interfered with his quiet enjoyment of the suit property by causing new beacons to be erected and the map for the suit property to be altered.

3. Terming the actions of the defendants complained of illegal and fraudulent, the plaintiff instituted the instant suit seeking the reliefs listed herein above.
4. The 1<sup>st</sup>, 2<sup>nd</sup> and the 3<sup>rd</sup> defendants filed a joint statement of defence dated 23<sup>rd</sup> May 2023, in which they deny the allegations levelled against them. Besides denying the allegations levelled against them, the 1<sup>st</sup> to the 3<sup>rd</sup> defendants contend that the suit property is subject of a case pending before the Minister for Lands. The 1<sup>st</sup> to the 3<sup>rd</sup> defendants contend that they are incapable of doing the actions they are accused of doing (erecting new beacons for the suit property and changing the map of the suit property).
5. The 4<sup>th</sup> to the 6<sup>th</sup> defendants also filed a joint statement of defence dated 27<sup>th</sup> July 2023, in which they deny the plaintiff's allegations and put him to strict proof.

## EVIDENCE

6. When the case came up for hearing, the plaintiff rehashed his pleaded case. In cross examination, he admitted that he had no documentary evidence capable of showing that the suit properties had indeed been interfered with.
7. Because the evidence adduced by the plaintiff suggested existence of a boundary dispute as opposed to land ownership case, the court ordered the County Surveyor Elgeyo Marakwet to visit the suit property and file a report.
8. Pursuant to the order of the court, the County Surveyor visited the suit property and filed reports to court. He also appeared in court and produced the reports he prepared, dated 12<sup>th</sup> February 2024 and 3<sup>rd</sup> June 2024 as Dexbt 1 and 2 respectively.
9. In the report dated 3<sup>rd</sup> June 2024 (Dexbt 2), the Surveyor concludes as follows:-
  1. Both parcels 792 and 793 are mapped and registered separately;
  2. Both boundaries of 792 and 793 were identified and shown to owners.
  3. Parcels 792 and 793 are original numbers issued after adjudication process hence no amendment has been done on the map by the land registrar or director of surveys;
  4. To ensure that all the neighbouring title deed owners get their land, RIM map positions of both parcels 792 and 793 have to be adopted;
  5. This survey was carried out in accordance with existing survey of Kenya regulations.
10. The surveyor informed the court that there are persons, other the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants who had encroached on the plaintiff's parcel of land and erected structures thereon. That fact is captured in the surveyor report dated 12<sup>th</sup> February, 2024 thus:-

### Observations

1. According to the RIM parcel 792 is to the North of 793 and are separated by a river bank on the ground defined as DCBA on the attached plan;
2. The area of contention is BCDEFB which both the plaintiff and the defendant claim.
3. The plaintiff has fenced and is carrying out farming on portion ABCDEKFGA



## Findings

- a. Parcel 792 is defined by BCDEFB;
- b. Parcel 793 is defined from point C towards H and D towards J. The other remaining points could not be placed since it was established that some one else had encroached the land on the southern side and constructed temporary houses x and she had not been given notice that the surveyors were visiting hence could not erect beacons.

## Conclusion

1. Parcel 792 and 793 are distinct on the map and on the ground;
  2. The current fence has encroached into parcel 791 and 774;
  3. In order to establish the remaining boundaries of 793 there is need to revisit the site and Ms Grace Sirma be summoned on the date of survey. It's alleged the houses x and y belong to her yet its apparent they fall within 793.”
11. As to whether the boundaries and map of the suit property had been altered, the surveyor informed the court that it had not. He urged the court to order that the position of the suit property remain as captured in the RIM as the RIM in respect of the suit property had not been altered.

## Analysis and determination

12. Whilst the plaintiff had pleaded that the 1<sup>st</sup> to 4<sup>th</sup> defendants had illegally and fraudulently interfered with the suit property by illegally and fraudulently causing:-
  - i. The initial map to get lost, destroyed and or tampered with;
  - ii. A new map to be made;
  - iii. Alterations and subdivisions on the new map with new parcels of land and new numbers;
  - iv. Changes on the initial map of the suit property and erecting new beacons on the suit property without any lawful justification, he never produced any evidence, documentary or otherwise, capable of proving his pleaded case. During cross examination, he appeared to resile from his pleaded case by stating that the reason why he sued the 1<sup>st</sup> and the 3<sup>rd</sup> defendant is because they chased away the people who were working on the suit property.
13. The plaintiff also failed to produce any evidence capable of proving the pleaded illegality and fraud against the 5<sup>th</sup> defendant which is that the 5<sup>th</sup> defendant considered the illegal and fraudulent subdivisions and fraudulently executed the relevant documents for processing of title deeds.
14. The plaintiff further failed to lead and produce any evidence capable of proving his pleaded case that the 5<sup>th</sup> defendant with the 1<sup>st</sup> to the 4<sup>th</sup> defendants are in the process of illegally and fraudulently issuing title deeds to the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants.
15. By dint of the provisions of Section 107 of the *Evidence Act*, Cap 80 Laws of Kenya, the onus was on the plaintiff to prove his pleaded case to the standard required by law. In that regard, see the said section of the law which provides as follows:-

“Whoever desires any court to give him judgment as to any right or liability dependent on the existent of facts which he asserts must prove that those facts exist.”



16. The plaintiff having based his case on alleged illegalities and fraudulent dealings with his property, the burden was on him not only to specifically plead the alleged illegalities and fraudulent dealings but also to prove the allegations on a standard higher than on a balance of probabilities but lower than beyond reasonable doubt. In that regard, see the case of Orieny & another v [\*national Bank of Kenya \(Civil Appeal E016 of 2023\)\*](#) (2024) KEHC 6002 (KLR) (20 May 2024) (Judgment) where in discussing the obligation imposed on a litigant who basis his case of alleged fraud stated/observed:-

“... there are certain requirements that must be met for the allegation of fraud to be admitted by a court of law.

34. The first principle is that an allegation of fraud must be specifically pleaded and proved. In *Vijay Morjaria v Nansingh Madhusingh Darbar & Another* [2000] eKLR, Tunoi, JA (as he then was) stated as follows: “It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must, of course, be set out, and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and distinctly proved, and it is not allowable to leave fraud to be inferred from facts.”
35. In *R.G Patel v Lalji Makanji* [1957] EA 314 the former Court of Appeal for East Africa stated as follows: “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. In *Belmont Finance Corporation Ltd v Williams Furniture Ltd* Buckley L.J said: “An allegation of dishonesty must be pleaded clearly and with particularity. That is laid down by the rules and it is a well-recognized rule of practice. This does not import that the word ‘fraud’ or the word ‘dishonesty’ must be necessarily used. The facts alleged may sufficiently demonstrate that dishonesty is allegedly involved, but where the facts are complicated this may not be very clear, and in such a case, it is incumbent upon the pleader to make it clear when dishonesty is alleged. If he uses language which is equivocal, rendering it doubtful whether he is in fact relying on the alleged dishonesty of the transaction, this will be fatal; the allegations of its dishonest nature will not have been pleaded with sufficient clarity.”
37. The second principle is that the burden of proof of an allegation of fraud is on the person alleging. In *Ndolo v Ndolo* [2008] 1KLR (G &F) 742 the court stated that: “We start by saying that it was the Respondent who was alleging that the will was a forgery and the burden to prove that allegation lay squarely on him...In cases where fraud is alleged, it is not enough to simply infer fraud from the facts.”
38. In *Christopher Ndaru Kagina v Esther Mbandi Kagina & Another* [2016] eKLR the court pronounced itself as follows: “It is trite law that he who alleges fraud must prove fraud. Allegations of fraud must strictly be proved. Great care must be taken in pleading allegations of fraud or dishonesty. In particular,



the pleader needs to be sure that there is sufficient evidence to justify the allegations.....”

39. In the case of *Urmila w/o Mahendra Shah v Barclays Bank International Ltd & Another* [1979] eKLR, the Court of Appeal took the view that the onus to prove fraud in a matter is on the party who alleges it.
  40. In *Moses Parantai & Peris Wanjiku Mukuru suing as the legal representatives of the estate of Sospeter Mukuru Mbeere (deceased) v Stephen Njoroge Macharia* [2020] eKLR, the Court of Appeal observed as follows: “In the instant case, the appellants needed to not only plead and particularize the fraud, but also lay a basis by way of credible evidence upon which the Court would make a finding that indeed there was fraud in the transaction leading to the transfer and registration of the suit land in the name of Janet all the way to the respondent.....”
  41. The third principle is that the burden of proof of allegation of fraud is higher than that required in civil cases, that of proof on a balance of probabilities; and lower than that required in criminal case that is beyond reasonable doubt. In *Ndolo v Ndolo* [2008] 1KLR (G &F) 742 the Court stated that: “...Since the Respondent was making serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities; but the burden of proof on the Respondent was certainly not one beyond a reasonable doubt as in criminal cases.....”
  42. In *Central Bank of Kenya Limited v Trust bank Limited & 4 Others* [1996] eKLR, the court rendered itself as follows: “The Appellant has made vague and very general allegations of fraud against the Respondent. Fraud and conspiracy to defraud are very serious allegations. The onus of prima facie proof was much heavier on the Appellant in this case than in an ordinary civil case.”
  43. In *Moses Parantai & Peris Wanjiku Mukuru supra*, the Court of Appeal observed as follows: “..... Fraud is a quasi-criminal charge which must, as already stated, not only be specifically pleaded but also proved on a standard though below beyond reasonable double doubt, but above balance of probabilities.....”
  44. In *R.G Patel supra* the former Court of Appeal for East Africa stated as follows: “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.”
  45. In the instant case, it was upon the appellants to adduce evidence of the allegations of fraud that they had made against the respondent Bank which they did not. The allegations of fraud particularized by the appellants remained unsubstantiated and as a result, I hold that the same was not proved to the required standard. It therefore follows that the failure by the trial magistrate to consider whether or not fraud was proved was inconsequential”.
17. The plaintiff having failed to adduce evidence capable of proving his case to the required standard, I proceed to dismiss his suit with costs to the defendants.



18. Orders accordingly.

**JUDGMENT DATED, SIGNED AND DELIVERED AT ITEN THIS 4<sup>TH</sup> DAY OF FEBRUARY, 2025.**

**L. N. WAITHAKA**

**JUDGE**

Judgment delivered virtually in the presence of:-

N/A for the plaintiff

N/A for the 1 – 3<sup>rd</sup> defendants

Mr. Mutai for the 4<sup>th</sup> & 5<sup>th</sup> defendants

Court Assistant: Christine

