



REPUBLIC OF KENYA



KENYA LAW
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**Yatich & 5 others v Chepkurui & another (Environment & Land Case
E006 of 2024) [2025] KEELC 1203 (KLR) (3 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1203 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ITEN
ENVIRONMENT & LAND CASE E006 OF 2024**

**L WAITHAKA, J
MARCH 3, 2025**

BETWEEN

JOSEPH KIPKOSGEI YATICH & 5 OTHERS & 5 OTHERS APPLICANT

AND

SABINA CHEPKURUI 1ST RESPONDENT

ALEXANDER NG'ETICH 2ND RESPONDENT

RULING

Introduction

1. The plaintiffs/applicants, herein instituted the instant suit seeking a declaration that they have acquired portions of the parcels of land known as Irong/Iten/34 and 138 (hereinafter referred to as the suit properties) by adverse possession; a declaration that the respondents hold the suit properties in trust for them; an order directing the Land Registrar Elgeyo Marakwet County to cancel the title deeds issued to the late Chepkurui Matwek and the respondents over the suit properties and in lieu thereof, register the applicants as the proprietors in the shares indicated; costs of the suit/application.
2. As can be discerned from the affidavit sworn in support of the suit/application, the plaintiffs' suit is premised on the ground that they have become entitled to the suit properties or portions thereof on account of having been in adverse possession thereof.
3. In reply and opposition to the application, the respondents through the replying affidavit of Sabina Chepkurui (1st respondent), sworn on 28th October 2023, inter alia depone that they lack capacity to sue or be sued as administrators of the estate of the deceased as the proceedings in which they were appointed as administrators of the estate of the deceased and their appointment were declared null and void by court; that because the plaintiffs are relatives of the deceased, their claim to the estate of the deceased ought to be heard and determined by the succession court and that the plaintiffs' claim for



adverse possession is unsustainable because their entry into the suit properties was with the permission of the owner of the suit properties.

4. The respondents also filed the notice of preliminary objection dated 28th October 2024 seeking to strike out the plaintiffs' suit/application on the grounds that this court lacks jurisdiction to hear the dispute preferred before it as it ought to be heard and determined by the succession court and that they lack capacity to be sued as the administrators of the estate of the deceased.
5. The respondents filed a further affidavit (erroneously entitled replying affidavit), sworn on 13th January, 2025 through which they reiterate their contention that they have acquired portions of the suit properties on account of having been in adverse possession thereof and/or the suit properties are subject of a trust in their favour.
6. Concerning the respondents' contention that the grant issued to them was declared null and void by the High Court, the plaintiffs/applicants have deponed that the grant was not revoked.
7. Pursuant to directions given on 4th December 2024, the notice of preliminary objection was disposed off by way of written submissions.

Submissions

8. In their submissions filed on 16th January, 2025 the respondents have reiterated their contention that this court lacks jurisdiction to hear the dispute preferred before it as it relates to the succession of the estate of the deceased. The respondents have also asserted their contention that they are not the administrators of the estate of the deceased as the proceedings in which they were appointed administrators of the estate of the deceased were declared null and void by the High Court in Eldoret High P/A Appeal No. 1 of 2024.

Analysis and determination

9. The respondents' claim or contention that their appointment as administrators of the estate of the deceased was nullified by the High Court is not supported by the decision of the court relied on. The court merely declared the proceedings voidable as opposed to void and transferred the case to the High Court for hearing and determination. No order was made in that decision annulling and/or declaring null and void the appointment of administrators by the lower court. In that regard, see the judgment of the court, which at the relevant part is as follows: -

“The legion of issues which may have been canvassed before the lower court are voidable for want of jurisdiction. For if an act is void then it's in law a nullity. I find that the appeal is merited and the way forward is that Iten Succession Cause No.43 of 2005 be transferred to this court for hearing and determination.”

10. It is noted that one of the prayers specifically sought by the respondents in the appeal preferred before the High Court was an order setting aside the ruling delivered on 21st December 2022 for want of jurisdiction. Despite the court having determined that the suit was filed in a court that lacked jurisdiction to hear and determine the petition, it did not set aside the otherwise void/voidable proceedings.
11. The issue raised in the suit namely whether the applicants have been in adverse possession of the suit properties; whether the applicants have become entitled to the suit properties on account of having been in adverse possession thereof and whether the respondents hold the suit properties in trust for the applicants, are matters of law and fact which can only be determined by this court and not the



succession court. In that regard, see the case of re Estate of Samuel Kathieri (Deceased) (2019) e KLR where it was stated: -

“...Consequently and for the reasons above stated, I must find and hold that this court has no jurisdiction to resolve the proprietary interest on land based on the alleged trust”.

12. In re Estate of Julius Wachira (Deceased) (2022) e KLR, Maureen Odera J in quoting a decision by William Musyoka J stated: -

“The applicants (the Respondents herein) claim existence of a trust in their favour. It could be very well be that such trust does not exist. However, it is not for this court to declare it. None has been demonstrated by a court of competent jurisdiction. Ideally, the applicants ought to have moved a civil or land court to make a declaration of trust in their favour which they would then seek to enforce against the estate...”

13. For the foregoing reasons, I find the preliminary objection to be lacking in merit and dismiss it with costs to the plaintiffs/applicants.

DATED, SIGNED AND DELIVERED AT ITEN THIS 3TH DAY OF MARCH, 2025

L. N. WAITHAKA

JUDGE

Ruling delivered virtually in the presence of:-

Dr. Chebii for the applicants

Ms. Chepkwong holding brief for Ms. Isiaho for the respondents

Court Assistant: Christine

