



Lokedingole (As the Legal Representative of the Estate of Lokedingole Lipopus) v Ariongonyang & 2 others (Environment and Land Case 98 of 2016) [2025] KEELC 4473 (KLR) (11 June 2025) (Judgment)

Neutral citation: [2025] KEELC 4473 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND CASE 98 OF 2016**

**CK NZILI, J
JUNE 11, 2025**

BETWEEN

EMMANUEL LOKEDINGOLE (AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF LOKEDINGOLE LIPOPUS) PLAINTIFF

AND

LOYEKE ARIONGONYANG 1ST DEFENDANT

EMMANUEL LOLINGANYANG 2ND DEFENDANT

THOMAS JELIM 3RD DEFENDANT

JUDGMENT

1. The plaintiff came to court through an amended amended plaintiff dated 10/12/2024. He seeks:
 - (a) Declaration that the original plaintiff is the sole owner of a piece of land situated in Senetwo, being part of Ranch land, to which the defendants have no interest whatsoever in the land.
 - (b) Permanent injunction restraining the defendants from trespassing into the plaintiff's land which is part of No. 1X1 Chepkobegh Group Ranch Land.
 - (c) An order that the 1st defendant vacates the plaintiff's land which is part of Plot No. 1X1 Chepkobegh Group, failure to which he be evicted.
2. Briefly, the plaintiff averred that the initial plaintiff was a member number 1X1 in Chepkobegh Group Ranch which owns the land comprised in Title No. West Pokot/Chepkobegh/1, falling under Pserum and Senetwo location, which parcel of land is yet to be subdivided among group members though they have settled on their respective portions, as demarcated to them by the Group Ranch elders. The plaintiff averred that the original plaintiff had two pieces of land, one of which is located in Pserum location, and occupied by his family, while the second portion is situated in Senetwo location, occupied



- by his younger brother together with his family. It is averred that in or about 2015, the defendants with no reasonable or lawful course, forcefully started cultivating and grazing animals in the plaintiff's portion situated in Senetwo location on top of which they even built houses covering close to 9 acres by the portion. The plaintiff averred that the defendants were trespassers or strangers to his land and should therefore be ordered to vacate.
3. The defendants opposed the suit through a statement of defence dated 15/7/2016; denying in toto the alleged forceful entry and occupation of 6 acres of Plot No. 1X1 or ever interfering in any manner with the said land as alleged by the plaintiff. The defendant averred, in the alternative, that they are occupants on land whose membership number is 2X3, having bought the same from Dedinyang Pogsho Lotulia alias Matayo, which is far away from the alleged Plot No. 1X1, occupied by the plaintiff. The defendants denied receiving any demand letter concerning plot No. 1X1 from the plaintiff, otherwise the order sought cannot legally be obtained against them as the plaintiff is a stranger.
 4. In a document titled reply to amended plaint, dated 12/11/2018, the defendants averred that following a court order, a report filed in court by the Land Adjudication Officer had clearly confirmed that Plot No. 1X1 is only found in Pserum location and not any other location, where the plaintiff's family resides and not in Senetwo location as alleged, hence Plot Nos. 1X1 and 2X3 were distinct and separate. The defendants averred that they have never occupied land under membership number 1X1 or any other land associated with the plaintiff hence the suit discloses no cause of action against them, regarding land within Senetwo location, who membership number is not disclosed.
 5. At the trial Bernard Nyakundi, a Deputy Land Adjudication Officer, Kapenguria, testified as PW1. He told the court that he was the maker of a report dated 15/3/2018 following a court order, visited the land on 13/2/2018 to ascertain the status of the suitland. PW1 told the court that Chepkopegh Group Ranch is comprised of more than two Sub-locations but was yet to register the map for the same, for the process of subdivisions was yet to commence even though he had applied for a consent to do so. PW1 told the court that the Land Consolidation Act was inapplicable in West Pokot. He told the court that the land was distributed among members through shares with each member supposed to have one undivided share, with an option also to buy a portion, otherwise all the land had been shared out. PW1 told the court that if a person buys a portion, then he has to await the subdivision. Though there is a map for the entire Group Ranch, PW1 stated that there has been no individual mapping for the respective shares.
 6. Regarding Plot No. 1X1, PW1 told the court that it is one piece of land in which the owner has sold to several people. PW1 added that he visited the land alongside the land committee and the area chief. Though the chairman of the land committee is deceased, PW1 told the court that he has an acting chair. PW1 told the court that Plot No. 1X1 is situated in Pserum location while Plot No. 2X3 is in Senetwo location as per photographs marked PMFI-1(a) and (b) and (2), showing structures on Plot No. 2X3 and 1X1, respectively. PW1 told the court that the plots are defined by natural features.
 7. Regarding PMFI-1(a) and (b), PW1 testified that the structures belong to Daniel Muto's father while Samuel Kapel Lokedigole Lopepu is his uncle. PW1 told the court that the defendants have settled on Plot No. 2X3, whose occupants are Rhoda Ruto. PW1 told the court that one Mathew bought 22 acres and sold the same to the defendants who own 3 acres each and was left with 13 acres of land. PW1 clarified that neither Mathew nor the defendants were members of the Group Ranch. PW1 stated that Mathew bought the land from Kapel in 1999. PW1 further said that Lokedigole was a member of the Group Ranch. He could not tell the size of Plot No. 2X3 owned by Kori Altoria.
 8. In cross-examination, PW1 told the court that the two plots are between 6-8 kilometres apart, though they fall in two different locations. PW1 clarified that the plaintiff has no houses on Plot No 2X3. PW1



said that he found about 40 people on the ground and has captured what is on the ground in his report. PW1 told the court from the information that he had gathered, Mathew bought the land from Samuel Kapel Altoria and sold the same to the defendants who have now settled therein. Equally, PW1 told the court that the plaintiff resides on Plot No. 1X1, situated in Pserum location and has also sold part of his land to third parties.

9. Following directions under Order 18 of the Civil Procedure Rules, taken on 10/3/2022, the matter proceeded before the court that had took over the case from the previous court.
10. Lokedingole Lipopus testified as PW2. He relied on witness statements dated 9/6/2016 and 10/7/2016, as his evidence in chief. He told the court that he is aged 74 years and resides in Pserum location and was a member number 1X1 of Chepkopegh Group Ranch, the owner of large farm spread in two locations. He told the court that he resides in Pserum location with his two wives and children while he has another land in Korelaitas which he gave to his grandson Longole to live and use it. PW2 told the court that Kapelingor Kipopu is his younger brother who had written a witness statement before he passed on, confirming that he used to live for many years in the other portion of land, where he was also buried, leaving behind 4 grown up grandchildren, who have three houses on the land. PW2 confirmed that the Group Ranch land is yet to be subdivided among the members. PW2 told the court that he has sued the defendants for trespassing into his land and erecting houses therein without his consent.
11. PW2 relies on a group membership card as P. Exhibit No. (1), copy of certificate for the Group Ranch as P. Exhibit No. (2), list of membership as P. Exhibit No. (3), letter dated 6/4/2016 from the Land Adjudication Officer confirming membership of the land by the Ranch as P. Exhibit No. (4), demand letter dated 2/6/2016 as P. Exhibit No. (5), copy of land ownership certificate dated 8/10/1980 as P. Exhibit No. (6).
12. In cross-examination, PW2 told the court that he owns two plot as per P. Exhibit No. (3) all bearing the same number. (The court noted that the register has no parcel numbers against each member). PW2 confirmed that PW1 visited the suitland, but did not accompany him to Plot No. 2X3. PW2 told the court that it was his brother who was residing in the other portion of land but could not tell if it was in Plot No. 2X3. As per DMFI-(1). PW2 told the court that Kori Altori was a brother to his late father Lipopus, otherwise Plot No. 2X3 was his land which he acquired a long time ago, and never sold it to the defendants, though he did not object to it. PW2 confirmed that Plot No. 2X3 was 10 kilometres away from his Plot No. 1X1. PW2 denied that one member, as testified by PW1 could not own two plots, otherwise, Lwaledeny Chapkroko was the one, who gave him the plot in Senetwo location. In re-examination, PW2 told the court that the land in Chepkopegh Group Ranch was yet to be subdivided.
13. Kemerkou Apariono testified as PW3. He confirmed writing a witness statement dated 10/7/2019 which he relied on as his evidence in chief. He told the court that his membership number in the Ranch is 253, but owns four different portions of land within the ranch, just like plaintiff has two portions one in Pserum and another one in Senetwo location, occupied by his young brother. He termed the defendants as trespassers to the plaintiff's land.
14. Ywalareng Chakaow alias Ywalareng Nyangat, testified as PW4. He relied on a witness statement dated 14/1/2022 as his evidence in chief. PW4 told the court that he has two portion of land in different places within Chepkopegh Group Ranch under membership number 256 just like the plaintiff herein. PW4 told the court that he was also a committee member of the Group Ranch and was present on 8/10/1980 when the plaintiff's land was allocated to him in Semetwo location. PW4 told the court that the Group Ranch land covers three locations. PW4 told the court that the allocation of parcels of



land to group members depended on one's ability and as to how they were residing on the land during the issuance of membership numbers.

15. PW4 told the court that in P. Exhibit Nos. (2) and (6), his name and membership number are indicated as number 10. He confirmed that the plaintiff had two portions of land in different places. PW4 said that after allocation, a member would erect wooden beacons to show a boundary to his land. PW4 said that after the plaintiff was allocated his land, he put his younger brother into possession of the Senetwo land and continued living on the other parcel in Pserum location. The court noted that the witness was truthful. PW4 confirmed that Altoria had his own parcel of land issued by the land committee.
16. The record shows that after the plaintiff closed his case, parties recorded a consent on 27/6/2022 to have the Deputy Registrar visit the locus in quo. A report was thereafter filed dated 15/4/2024. Following directions also made on 20/2/2025, the matter proceeded from where the previous court had reached.
17. Emmanuel Lolinganyang, the 2nd defendant testified a DW1. He relied on a witness statement dated 17/7/2016 as his evidence in chief. DW1 told the court that on 7/12/2012 he bought 3 acres of land from Kedeng Poghismo Lutulia alias Mathayo, paid for it in full and took vacant possession to date. DW1 said that the land that he bought was part of membership number 2X3 of the Group Ranch, which the seller had also bought from Samuel Kapel Altoria in 1999. He termed the plaintiff as a stranger and the case as misplaced. DW1 relied on sale agreements dated 8/1/1991, 7/8/2001 and 7/1/2012 as D. Exhibit No. 1(a), (b) and (c). DW1 said that Plot No. 1X1 was unknown to him and has never invaded it or an intention of encroaching six acres of the plaintiff's land.
18. DW1 said that he lived on plot No. 2X3, otherwise the plaintiff's family lives elsewhere. DW1 said that Matayo who sold him the land had recorded a witness statement dated 5/9/2017 before he passed on as per the burial permit, death certificate and surrender later for the ID which he produced as D. Exhibit No 2(a), (b) and (c). DW1 said that Plot No. 2X3 and 1X1 were distinct, separate and different localities approximately five kilometres apart. DW1 said that the scene visit report had confirmed the locality of the two parcels of land. He denied the alleged invasion into Plot No. 1X1.
19. DW1 told the court that he bought the land in 2012 from Matayo who was not a members of the Group Ranch but the seller Altoria who had sold the land had membership No. 2X3. DW1 said that he did not call the elders or land committee officials to the Group Ranch during the sale. DW1 admitted that he found a brother of Lopopur now deceased living on the land, but could not tell when he had settled on the land. DW1 said that there were visible burial sites on the land. Equally, DW1 admitted that he was not privy to when and how Matayo settled on the land or how the boundaries to it were fixed before he acquired the land in 2013. DW1 said that he did not involve any of the neighbours that he found there in the sale. DW1 said that the location initially was one and known as Chepkopegh. DW1 said that he was not certain if a membership number could be used to allocate more than one portion of land in different localities.
20. Thomas Julius Amoler, the 3rd defendant testified as DW2. He relied on a witness statement dated 16/7/2016 as his evidence in chief. DW2 told the court that on 16/1/2016, he bought two acres of land from one Mathayo and has since been in possession of the land which was part of membership No. 2X3 of the Ranch whose seller had bought the same from Samuel Altoria in 1999. He denied trespassing into the plaintiff's parcel of land. DW2 said that his sale agreement is among the ones produced by DW1. DW2 confirmed that the plaintiff's late brother was one of their neighbours in the locality. DW2 said that he did not involve the Group Ranch officials during the sale or any other independent witness. DW2 also confirmed that the plaintiff's late brother's homestead was visible during the court scene visit.



21. Loyeke Ariongonyang the 1st defendant testified as DW3. He relied on a witness statement dated 15/7/2016 as his evidence in chief. His testimony was that he bought three acres of land from one Matayo in 2009, paid the total purchase price and took vacant possession without any complaint from the neighbours. DW3 said that his land was part of membership No. 2X3 and not 1X1, whose initial owner was one Altoria. DW3 confirmed that the suitland neighbours that of a late brother to the plaintiff, who never lodged a complaint against him. He denied invading the plaintiff's land. DW3 told the court that he bought the land without involving the Group Ranch officials or elders to verify both the owner of the land, its size and the boundaries. DW3 also confirmed that during the sale he did not involve the plaintiff or his late brother as a neighbour.
22. The defendants rely on written submissions dated 14/3/2025, isolating five issues for the court's determination. It is submitted that the theory by the plaintiff that his membership number 1X1 could and did cover two different portions on and in different localities was discounted by PW1 who made a visit to the locus in quo and also in captured in the scene visit report by the Deputy Registrar that plot No. 1X1 only exists in Pserum but not Senetwo location. The defendants therefore submit that the plaintiff has failed to substantiate his claim that membership No. 1X1 could stretch two localities and that the other locality belongs to him and is not Plot No. 2X3 where the defendants occupy, hence trespass has not been proved on a balance of probability to be entitled to the relief sought.
23. The court has carefully gone through the pleadings, evidence tendered and the written submissions. The issues calling for my determination are:
 1. If the plaintiff has proved that he is the beneficial owner of Plot No. 1X1 in Chepkobegh Group Ranch, comprised of Title No. West Pokot/Chepkobegh/1.
 2. If the plaintiff has proved that membership number 1X1 entitled him to two portions of land one situated in Pserum and another in Senetwo Locations.
 3. If the plaintiff has proved trespass into his land at Senetwo location comprised of membership number 1X1 by the defendants.
 4. If Plot Nos. 1X1 and 2X3 are one and the same land on the ground.
 5. If the defendants were justified in entering, living and staying on Plot Nos. 2X3 or 1X1.
 6. Whether the plaintiff is entitled to the reliefs sought.
 7. What is the order as to cost?
24. The cause of action as pleaded and presented by the plaintiff is that the late Lokendingole Lipopus was member number 1X1, in Chepkopegh Group Ranch, which Ranch is registered as per Certificate No. 0096 issued on 8/10/1980 under the Land Group Representative Act, Cap 287 Laws of Kenya (repealed). He produced as P. Exhibit No. (1), a confirmation of membership by the Lands Department Kapenguria through PW1. PW1 told the court in his report that he visited the locus in quo in the presence of the chairman of the Group Ranch.
25. It is trite law that under the repealed Cap 287, a District Land Settlement and Adjudication Officer was in charge of ascertaining interests or rights under the adjudication of Group Ranches. A third party who is not a registered member of a Group Ranch cannot own land belonging to the Group Ranch, and cannot also obtain a title. Section 5 of the repealed Act provided that once a meeting of the group is convened, representatives are elected, who apply for the incorporation of the group. Under Section 8 thereof, the representatives have powers to sue and be sued under their corporate name. They are also the ones to acquire, hold, charge or dispose of property of any kind for the group.



26. The plaintiff relies further on a letter dated 6/4/2016, from the County Land and Settlement Officer confirming ownership of L.R No. West Pokot/Chepkobegh/1 by the Group Ranch. P. Exhibit No. (4) is a letter or report showing that the plaintiff was demarcated the land in Senetwo location on 8/10/1980 at Korelach area. The sketch map is also attached showing where the land is. The report was made in the presence of group officials, area elders and village witnesses. Whereas R. Nyakundi, the District Land Adjudication and Settlement Officer (DLASO), Kapenguria testified as PW1 and produced a report dated 15/2/2018, he did not attach any sketch maps to his report and a certified copy of a list of the members of the Group Ranch especially to confirm the name of the member number 2X3. The report does not specify if he ascertained and or verified from both his office and from the officials of the group, the member numbers 1X1 and 2X3, and the respective portions of land they were allocated.
27. It is not clear on what source of information that PW1 used to conclude that membership number 1X1 is only with respect to land in Pserum location and not anywhere else. Equally, with respect to membership of both 1X1 and 2X3, and the respective land portions as demarcated, the report and the maker did not attach any historical information both from his record and the interview with the registered officials of the Group Ranch. The list of attendees for the meeting held on 13/3/2018 lacks the presence of the known Group Ranch officials. Without the presence of the officials to assist PW1 to identify the location of both membership numbers against the land demarcated, confirmed occupation and ascertainment of the acreage, my finding is that the evidence of PW1 in the light of the Land Committee Report dated 8/10/1999 lacks authenticity, credibility and reliability. The key issue raised by the plaintiff is that the Group Ranch had an option of a member owning more than one portion of land in different localities, but with respect or reference being made against his membership number. That part evidence is confirmed by the plaintiff's witness one Ywalareng Chakaow. It was therefore a common occurrence within the Group Ranch. The witness in his witness statement says that it was true that the plaintiff like himself had two distinct portions, one in Korelach sub-location within Senetwo location. Ywalareng Chakaow confirmed that he was a land committee member. His name also appears in the certificate of incorporation. He, as a matter of fact, confirmed that the plaintiff was demarcated land in Senetwo location.
28. PW2 in his witness statement and evidence confirmed that his other portion was under use and occupation by his late brother, who had signed a witness statement dated 10/7/2019 before he passed on. The witness statement was produced as an exhibit. He confirms that the portion he had occupied for long belonged to his late brother and the initial plaintiff in this suit.
29. Kemerkou Amomor Apariono, who was PW3, also confirmed that he had five portions in the Group Ranch as member No 253. He also said that he was one of the original group representatives as per the certificate of incorporation. The witness confirmed that the initial plaintiff was a member of the Group Ranch and owner of two portions, one in Pserum and another in Senetwo locations, acquired by the late Lokedingole Lipopus.
30. DW1, 2 and 3, are all in agreement that the late Lokedingole Lipopus and his immediate family members are immediate neighbours of the defendants. The 1st, 2nd and 3rd defendants admit that they bought their portions of land from Matayo, alias Kedeng Poghisiso alias Mathayo, who had acquired the land from a vendor who was member number 2X3. According to the defendants, the land that they are occupying is part of a portion allocated to member number 2X3, alleged to be in a different locality and which is distinct from one the plaintiff is claiming as Plot No. 1X1, since it was not possible for a member of the Group Ranch to have two portions of land. First and foremost, the defendants do admit that they are not members of the Group Ranch and did not undertake any due diligence while purchasing the portions from third party who was not the initial members of the Group Ranch.



- The defendants admit that they never involved the Group Ranch bona fide officials in ascertaining the registration status, locality, size, boundaries and the neighbours of the portions they were purchasing.
31. In his reply to defence dated 22/7/2016, the plaintiff was categorical that Kedeng Poghismo Lutulia alias Matayo had never had any legal interest whatsoever in Plot No. 1X1 and hence had no capacity to sell any part of the said plot to the defendants. Other than listing the defendants as witnesses, the defendants failed to call the vendor who sold them the land. D. Exhibit No. 1(a), (b) and (c) are not signed or witnessed by the Group Ranch officials. The details of the extract locality, boundaries and the neighbourhood of the land being sold are missing. The area chief who witnessed all these agreements was not called as a witness of the defendants. The defendants failed to call the District Land Settlement and Adjudication Officer to tender any evidence that the initial seller of the land was a member of the Group Ranch as No. 2X3, or had beneficial interest at Senetwo village.
 32. Further, and more importantly, the defendants failed to call Samuel Kapel Altori, who was a key witness to confirm that he was a member of the Group Ranch and an owner of the land before he sold it to Kedeng Phogismo Lotulia alias Matayo. Above all, the defendants failed to call any official of the Group Ranch to verify, authenticate and certify that the documents attached to their list and the land ownership certificate was genuinely issued by Jacob Cheprupus and Paul Aputote as chairman and secretary on 8/1/1999, to Matayo Lotulia as member number 2X3. From the document, the certificate number is missing. The locality of the land is not clear especially with relation to Senetwo location. The defendants availed no certified register of members and a letter from the District Land Adjudication and Settlement Officer to show that the initial owner of plot No. 2X3 was a member of the Group Ranch and therefore had land situate in Senetwo location.
 33. Equally, there is no single correspondence between the seller of the land, its initial owner or the defendants with the Group Ranch officials confirming that Samuel Kapel Altorioria in 1999 sold some land comprised of his Plot No. 2X3 to Kedeng Poghismo Litulia alias Matayo, who also sold the same to the defendants. He who avers must prove. The burden of proof was on the defendants to prove that Plot Nos. 1X1 and 2X3, both in the register of demarcation and on the ground belong to two different members of the Group Ranch and are distinct. It is the defendants who moved in while the land for member number 1X1, had long been occupied by the plaintiff, through his late brother, and purported to purchase 6 acres from an unauthorized member of the Group Ranch one Matayo. The burden was on the defendants to show from the officials of the Group Ranch and the Land Settlement and Demarcation Officer that they dwelt with a bona fide beneficial owner of Plot No. 2X3. There is no evidence that the defendants before the purchase sought to verify the ground status of the land from the registered Group Ranch officials or the neighbours. Even after the defendants were sued before this court, they still take the view that the plaintiff is mistaken on the identity of his land and its locality. The plaintiff has brought before court ownership documents and called PW3 and PW4 who are the bona fide officials, members and persons who were involved in the demarcation process of the suit land from the onset, that is in 1980.
 34. Schedule 2 of Cap 287 provides that every member shall be deemed to own a share in the ownership of the group land in undivided shares. Trespass refers to entry into private land of a person and commission of acts therein without permission, authority, consent or justification. See Section 3 of the *Trespass Act*. Trespass once proved is actionable per se. The ingredients of trespass are proof of ownership or possession and entry into the land by an intruder. The plaintiff in this suit has adduced evidence of membership to the Group Ranch that in law entitles him a share in the ownership of the Group Ranch in undivided shares. The defendants have no superior ownership documents or membership to the Group Ranch. They have not called any evidence from any Group Ranch officials



to confirm the basis upon which they entered into and started occupying the land which they are not entitled to any undivided ownership shares, in the Group Ranch land.

35. Denying the plaintiff, the right to enjoy his ownership to the land is contrary to Article 40 (1a) and (b) of *the Constitution*. The court is therefore satisfied that the plaintiff has proved his claim to the required standard to be entitled to the reliefs sought. The defence lacks merits. Costs to the plaintiff.
36. Orders accordingly.

JUDGMENT DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 11TH DAY OF JUNE 2025.

In the presence of:

Court Assistant - Dennis

Kiarie for the Plaintiff present

Kaosa for the Defendant present

HON. C.K. NZILI

JUDGE, ELC KITALE.

