



**Chepturgut v Chemoit & another (Environment and Land Appeal
11 of 2023) [2024] KEELC 715 (KLR) (8 February 2024) (Judgment)**

Neutral citation: [2024] KEELC 715 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ITEN
ENVIRONMENT AND LAND APPEAL 11 OF 2023
L WAITHAKA, J
FEBRUARY 8, 2024**

BETWEEN

JOSEPH CHELAL CHEPTURGUT APPELLANT

AND

JOSEPH KIPLALANG CHEMOIT 1ST RESPONDENT

**THE LAND REGISTRAR, ELGEYO MARAKWET COUNTY 2ND
RESPONDENT**

JUDGMENT

1. By a Plaint dated 28th April 2021, the appellant herein instituted a suit in the lower court to wit Iten SPMC ELC Case Number E020 of 2020 seeking judgment against the defendants (now) respondents for:-
 - a. An order directing the defendant (now 1st respondent) to surrender the title deed for land parcel number E/Marakwet/Chesigot "A"/296 (suit property) to the 2nd defendant (now second respondent);
 - b. An order directing the 2nd defendant to correctly enter the plaintiff's name in the register and issue the plaintiff with title deed for land parcel number E/Marakwet/Chesigot "A"/296 bearing the plaintiff's name and other relevant details as per his National Identity Card;
 - c. A declaration that the plaintiff is the legal owner of all that parcel of land known as E/Marakwet/Chesigot "A"/296
 - d. Cost of the suit
 - e. Any other remedy the honourable court may deem appropriate to grant.



2. As can be discerned from the plaint, the appellant's suit was premised on the grounds that he is the rightful owner of the suit property having obtained it during land adjudication. The plaintiff/appellant complained that the 1st defendant/respondent, who is his cousin and bears names similar to his, fraudulently, illegally and maliciously collected the title deed for the suit property from the lands office purporting that he is the owner of the suit property.
3. The plaintiff explains that upon learning about the 1st defendant's/respondent unlawful action complained about, he complained to the area subchief who convened a meeting to resolve the dispute between him and the 1st defendant/respondent concerning the impugned action of the 1st defendant/respondent.
4. The plaintiff further pleaded that at the meeting convened by the area sub chief, the 1st defendant/respondent agreed that the suit property belongs to him and returned it to him through the area assistant chief.
5. The plaintiff lamented that despite having acknowledged that the suit property belongs to him and returned the title deed in respect thereof to him, the 1st defendant made a report to the Directorate of Criminal Investigation (DCI) accusing him of illegally collecting the title for the suit property thereby forcing him to return the title deed for the suit property to the 1st defendant/respondent.
6. Maintaining that the suit property belongs to him and that he had been in use and occupation of the suit property for over 40 years, the plaintiff/appellant instituted the suit hereto seeking the reliefs listed above.
7. The 1st defendant/respondent filed a statement of defence and counterclaim, dated 3rd June, 2021 denying the allegations levelled against him and contending that the suit property belongs to him; that he acquired the suit property through his father, Kiplalang Chemoit Teguchio, and that he had been in use and occupation of the suit property for over 30 years (he used the suit property for bee keeping and rearing cattle).
8. The 1st defendant/respondent contended that the plaintiff/appellant is not the person named in the title deed and that proof of identity was a requirement during demarcation.
9. The 2nd defendant/respondent filed a statement of defence dated 13th January 2022, contending that he was wrongly joined to the suit as the dispute was between the plaintiff and the 1st defendant. He urged the court to dismiss the suit against him with costs.
10. The plaintiff filed a reply to defence and defence to counterclaim, dated 21th July, 2021 denying the 1st defendant's/ respondent's contention that proof of identity was a requirement during land adjudication and that he (the plaintiff) is not the bearer of the name indicated in the title deed. The plaintiff/appellant admitted that his Identity Card (ID) does not bear the names indicated in the title deed but averred that Joseph Chemoit is his other name and that it was the name used during registration as opposed to the names appearing in his Identity Card.

Evidence

The plaintiff's case

11. When the suit came up for hearing, the plaintiff by himself and his witnesses (4) in number, rehashed his pleaded case.
12. The plaintiff maintained that he is the registered owner of the suit property.



13. Whilst in their statements which were adopted in evidence as their evidence in chief, the plaintiff (PW1) and his brother, PW2, indicated that the plaintiff was the one in use and occupation of the suit property.
14. In cross examination, they conceded/stated that it is the 1st defendant who is in use and occupation of the suit property.
15. PW3, maintained that it is the plaintiff who had been in use and occupation of the suit property but stated that he had nothing to prove that fact.
16. PW4, acknowledged that an ID is the correct document for identification and that he did not participate in the adjudication.
17. PW5, the area assistant chief, informed the court that his office arbitrated the dispute between the plaintiff and the 1st defendant and that according to the evidence adduced before the elders, the plaintiff is the owner of the suit property. He further informed the court that following that determination, the 1st respondent returned the title for the suit property to the plaintiff through him.

The 1st Defendant's case

18. Like the plaintiff, the 1st defendant/respondent who testified as DW1, rehashed his pleaded case and reiterated his contention that he had been in use and occupation of the suit property for over 30 years. He admitted that following the decision of the elders in the dispute preferred before the area assistant chief, he returned the title deed for the suit property but explained that he did so because the plaintiff wanted to attack him.
19. DW2 and DW3 corroborated the defendant's evidence to the effect that he is the owner of the suit property and that he is the one in use and occupation of the suit property.
20. Upon considering the cases urged by the respective parties, the learned trial magistrate dismissed the plaintiff's case and entered judgment in favour of the 1st defendant as sought in the Counterclaim. In so doing, the learned trial magistrate *inter alia* observed/held:-

“I have considered the evidence on record and submissions filed by both parties. The issue for determination is whether the plaintiff is the lawful registered owner of the suit land and whether he is entitled to the orders sought.

The plaintiff testified that he is the legal owner of the suit land. That the land was registered in his name during the adjudication process. He alleged that the 1st defendant illegally collected his title deed from the lands registry knowing very well that it belonged to him. It is his evidence that while applying for the title deed he used the name Chemoit though it was not in his identity card.

The 1st defendant on his part produced a title deed allegedly in his name. He stated that the suit land was registered in his name during the adjudication process. After he was served with the necessary notices he went and collected his title deed.

The 1st defendant's claim is based on proprietorship of the suit land and entitlement to the rights in respect to ownership of land. He has produced documentary evidence in form of a title deed over the suit land in his name as proof of ownership.....



The courts are therefore mandated by statute to consider a title document as *prima facie* evidence of ownership to land and a conclusive evidence of proprietorship to land that can only be challenged on grounds stipulated as above.

In the present case the title deed produced by the 1st defendant shows that the suit land is registered in his name.....

In order to challenge the defendant's title so as to have it surrendered to him and/or cancelled by amending the register as prayed by the plaintiff, evidence according to section 26 of the Act ought to have been led to prove that the defendant's respective title had been acquired fraudulently, through misrepresentation, illegally, unprocedurally or through a corrupt scheme.....

In the instant case, although the plaintiffs' evidence was based on allegations that the 1st defendant collected his title deed illegally he has not strictly speaking challenged the authenticity of the title held by the 1st defendant. The plaintiff did not avail documentary evidence to show his name is Joseph Chemoit. He did not avail an adjudication register to show indeed he is the one who was registered as the owner of the suit land during demarcation.

The land adjudication officer testified and confirmed a national identity card is a crucial document during adjudication, registration, verification and issuance of title deed. The 1st defendant was able to show he used his card to process his details through all these steps. On the other hand the plaintiff was unable to show that indeed he was Joseph Chemoit.

It was also alleged that the 1st defendant surrendered the title deed to the plaintiff on 17th August 2020. The local administration has no capacity to confer title and/or cancel a title deed or legal transaction. The law relating to cancellation of titles is to be found in section 80 of the [Land Registration Act...](#)

I do therefore find the 1st defendant is the legal owner of the suit land. The adjudication process and the collection of the title deed to the suit land by the plaintiff was legal, procedural and above board. The court has examined the evidence on record as given by the plaintiff and his witnesses. The court is satisfied that illegality, mistake and fraud on the part of the defendant was not proved. I do therefore dismiss the plaintiff's suit and allow the 1st defendant's counterclaim with costs."

The Appeal

21. Aggrieved by the decision of the learned trial magistrate, the plaintiff (now appellant), appealed to this court on eight grounds that can be summarized as follows;

The learned trial Magistrate:-

1. Erred by applying the wrong principles to the case;
2. Was biased in his consideration of the evidence;
3. Erred by failing to appreciate the totality of testimonies and evidence;
4. Erred by failing to determine that the admission by the 1st respondent and his brothers that the land belongs to the plaintiff was sufficient evidence that the suit property belongs to the appellant;
5. Erred by allowing the 1st defendant's defence and counterclaim;



6. Erred by failing to take into account the testimonies and evidence on *inter alia* adjudication, demarcation, processing of the title deed and current occupation of the suit property
 7. Erred by failing to record the actual testimonies from the plaintiff's witnesses especially during cross examination.
22. Pursuant to directions given on 14th November 2023, the appeal was disposed off by way of written submissions.

Submissions

Appellant's Submissions

23. In his submissions filed on 5th December 2023, the appellant submits that it is manifestly clear that the 1st respondent misrepresented himself when he presented himself as Joseph Chemoit yet according to his identification document, national identity card, he is Joseph Kiplalang Chemoit. The appellant wonders how the 1st respondent's name was captured as Joseph Chemoit if he indeed presented his identity card which bears three names, Joseph Kiplalang Chemoit.
24. Pointing out that according to the evidence tendered, there are three names, Joseph Chemoit, Joseph Kiplalang Chemoit and Joseph Chelai Chepturgut, the appellant wonders what made the learned trial magistrate to conclude that the name appearing in the title belongs to the 1st respondent and not him, yet no identity card number was captured in the title. For that reason, the appellant submits that there will be miscarriage of justice if the impugned judgment is not set aside.
25. Based on the proceedings before the area sub chief where the 1st respondent is said to have admitted that the suit property belongs to the plaintiff and agreed to return the title deed to the plaintiff, and indeed surrendered the title deed to the suit property to the plaintiff/appellant, it is submitted that the 1st respondent is estopped from claiming that the suit property is his.
26. On the merits or otherwise of the impugned judgment, it is pointed out that both the plaintiff and the 1st defendant's fathers who are said to have taken part in adjudication of the suit property for the parties, did not have the name Chemoit in their identity cards and submitted that to the extent that the judgment declared the 1st respondent as the owner of the suit property is unjust, unfair and an absurdity as the 1st respondent neither proved himself as the person captured in the title deed nor disproved the plaintiff as the person indicated in the title deed.
27. Maintaining that the impugned judgment is a miscarriage of justice, the appellant claims that the testimonies of the appellant and his witnesses were tampered with in many occasions especially during cross examination. In that regard, it is contended that the appellant testified that he was in the suit property for over 40 years yet it was captured that it's the 1st respondent who has been on the land, a fact said to be untrue. The photographs produced in evidence are said to be in respect of the appellant's activities in the suit property and not the 1st respondent.
28. According to the appellant, the claim presented before the court was not who was in occupation of the property and for how long, but the true identity of the person named in the title deed.
29. In view of the foregoing, the appellant urges this court to allow the appeal as prayed.



Respondent's Submissions

30. In the respondent's submissions dated 5th December, 2023, an overview of the cases presented by the parties is given and the following identified as the issues for the court's determination:-
 - a. Whether the learned trial magistrate erred by concluding that the 1st respondent is the rightful legal owner of the suit property?
 - b. Whether the learned trial magistrate erred by determining that the appellant is not entitled to the reliefs sought.
31. On whether the learned trial magistrate erred by concluding that the 1st respondent is the rightful legal owner of the suit property, it is submitted that the 1st respondent proved that he is the registered proprietor of the suit property and the one who has been in use and possession of the suit property for over 30 years.
32. Terming the plaintiff a stranger to the suit property, the 1st respondent submits that there is no evidence to substantiate the claim by the plaintiff that Joseph Chemoit is his name.
33. The appellant is said to have failed to furnish any documentation from the land adjudication office attesting to the registration of the names.
34. The Land Adjudication Officer (PW5) is said to have stated that they ask for an identity card during adjudication as it is the correct document for identification purpose.
35. It is further submitted that the appellant cannot assert unofficial names as conclusive proof of his status.
36. It is conceded that the appellant and the 1st respondent share the same first name, Joseph, but maintained that the appellant cannot use a name that does not appear in his identity card, Chemoit, to prove that he is also known by that name.
37. Pointing out that the appellant did not in his pleadings plead that he is also known as Joseph Chemoit (alias), the 1st respondent submits that the appellant did not prove his pleaded case on a balance of probabilities.
38. Concerning the appellant's contention that the 1st respondent admitted that the suit property belongs to the appellant during the meeting at the assistant chief's office, the appellant is said to have failed to produce documentary evidence to that effect to substantiate the alleged admission. The 1st respondent is further said to have explained that he returned the title deed for the suit property in duress and out of fear for his life during the meeting in the chief's office.
39. It is submitted that the 1st respondent surrendered the title deed to safeguard his safety and pointed out that he pursued legal remedies through a formal criminal complaint.
40. Citing Section 80 of the *Land Registration Act* which vests power to rectify or cancel title on the court, it is submitted that the local administration lacks authority to confer or cancel a title deed and argued that for the 1st respondent to have returned the title deed for the suit property, undue duress must have been exerted on him compelling him to surrender the title deed to the plaintiff.
41. On whether the impugned judgment has merit, it is submitted that the learned trial magistrate rightfully held that the 1st respondent is the rightful owner of the suit property.



42. The learned trial magistrate is said to have properly directed himself when he determined that the adjudication process was legal, procedural and sound. The appellant is also said to have failed to provide compelling proof of ownership or establish any fraudulent activities by the 1st respondent.
43. For foregoing reasons, the 1st respondent urges this court to affirm the judgment of the lower court.

Analysis and Determination

44. In exercise of the duty vested in this court as the first appellate court, I have re-evaluated the evidence adduced before the lower court with a view of reaching my own conclusion on it. I have reminded myself that a first appellate court, will not ordinarily interfere with findings of fact by the trial court unless they were based on no evidence at all, or were based on misapprehension of the evidence or unless it is demonstrated that the trial court acted upon wrong principles in reaching the finding. In that regard see *Selle & another vs. Associated Motor Boat Co. Ltd* (1968) EA 123 and *Mwanasokoni vs. Kenya Bus Service Ltd* (1982-88) 1 KAR and *Kiruga vs. Kiruga & Another* (1988) KLR 348.
45. The court record shows that the plaintiff and one of his witnesses upon cross examination, admitted that it is the 1st respondent who has been in use and occupation of the suit property.
46. Contrary to the plaintiff's contention that evidence of who is in occupation was immaterial, it is the considered view of this court that in the circumstances of this case, where the plaintiff alleged that the 1st respondent is not the person captured in the title, history of use and occupation of the suit property was relevant for purposes of determining the issue presented before the court to determine.
47. It is the view of this court that arising from the evidence of use and occupation of the suit property, there is a rebuttable presumption of fact that the person who had been in use and occupation was the actual owner.
48. Whilst the plaintiff claimed that his testimony and that of his witness concerning occupation of the suit property was not accurately captured, there is no evidence or firm basis for that contention. It is noted that both parties claimed to have been in use and occupation of the suit property. Their claims were supported by their witnesses.
49. The trial magistrate found the account offered by the 1st respondent believable. That finding was not based on whim but admission by the plaintiff and his witness that it was the defendant as opposed to the plaintiff who was in use of the suit property. The trial magistrate cannot be faulted for reaching that determination on the claim that the plaintiff's evidence was not correctly captured.
50. The Evidence on record is inclined more in favour of the 1st respondent as opposed to the appellant. At least two of the names captured in the title deed feature in the 1st respondent's identity card.
51. The upshot of the foregoing is that the appeal is found to be lacking in merits and is dismissed with costs to the respondents.
52. Orders accordingly.

JUDGMENT DATED, SIGNED AND DELIVERED AT ITEN THIS 8TH DAY OF FEBRUARY, 2024.

L. N. WAITHAKA

JUDGE

Judgment delivered virtually in the presence of:-



Mr. Kiboi for the Appellant

Ms. Lelei for the 1st Respondent

Mr. Mutai for the 2nd Respondent

Court Asst.: Christine Towett

