



**Kipkorir & another v Kiptoo (Environment & Land Case
E001 of 2023) [2024] KEELC 491 (KLR) (5 February 2024) (Judgment)**

Neutral citation: [2024] KEELC 491 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ITEN
ENVIRONMENT & LAND CASE E001 OF 2023
L WAITHAKA, J
FEBRUARY 5, 2024**

BETWEEN

HELLEN JEPKOSGEI KIPKORIR 1ST APPLICANT

FLORAH JEPKEMOI KIPLAGAT 2ND APPLICANT

AND

CHRISTOPHER KIBET KIPTOO RESPONDENT

JUDGMENT

1. By Originating Summons (OS) dated 6th February 2023, the applicants instituted this suit for determination of the following questions:-
 1. Whether the respondent should be ordered to offer an explanation of how he changed title to the parcel of land known as Irong/Iten/3713 Iten Farm (suit property) to his name and to provide its current status, income and liabilities to date;
 2. Whether the respondent should be ordered to release to the applicants their respective shares of the suit property;
 3. Whether the respondent should be ordered to deposit in court the title deed for the suit property pending ascertainment of the applicants' respective shares of the Suit property;
 4. Whether the respondent should be restrained or curtailed from continuing to deal with the suit property to the detriment of the applicants and the estate of Regina Sote Cheboi-deceased;
 5. Whether the applicants are entitled to the costs of the suit?
2. The suit is premised on the grounds that the proceedings relate to the estate of the applicants' grandmother, Regina Sote Cheboi, who died on 2nd March 2017; that prior to the death of their



- grandmother, the respondent who was living with their grandmother started laying claim to the suit property and secretly and illegally acquired it.
3. The respondent filed a response to the OS *vide* a replying affidavit dated 27th April 2023, denying the allegations levelled against him and contending that he was gifted the suit property by his great grandmother.
 4. Explaining that the suit property was transferred to him by his deceased great grandmother during her life time hence a gift *inter vivos*, the respondent terms the applicants' suit lacking in merit as the suit property did not form part of the free estate of the deceased.
 5. The respondent points out that the applicants' suit raises serious issues touching on alleged fraud and illegality in the transfer of the suit property to himself and contends that such issues cannot be determined by way of OS but through an ordinary suit.
 6. Pursuant to directions given on 27th June 2023, the OS was converted into a plaint and the replying affidavit into a defence and the suit set down for hearing by *viva voce* evidence.

Evidence

The Plaintiff's Case

7. Hellen Jepkosgei Kipkorir, informed the court that Regina Soti is her grandmother; that her grandmother inherited the suit property from her late husband, Cheboi Chepkeitany and that her mother had 7 children whose names are listed in the chief's letter, Pexbt 1.
8. Further informed the court that the respondent /defendant is a son of one of her sisters, Rosa Jemaiyo Serem, and one of the great grandchildren of her grandmother and that her grandmother died on 2nd March, 2017. She produced the certificate of death issued in respect of her grandmother as Pexbt 3.
9. Further informed the court that Flora Jepkemoi Kiplagat (2nd applicant/plaintiff) and she were appointed administrators of their grandmother's estate through a grant of letter of administration *ad litem* issued on 8th July 2022. She produced the grant as Pexbt 4.
10. It is the testimony of P.W.1 that her grandmother did not subdivide the parcel of land known as Irong/Iten/159 from which the suit property was derived.
11. Informed the court that they carried out a search and established that the parcel of land known as Irong/Iten/159 had been subdivided and a title deed issued to the respondent/defendant in respect of one of the subdivisions; to wit Irong/Iten/3457. The title was issued on 28th August, 2015. She produced a green card in respect of the property as Pexbt 5.
12. Informed the court that later on, the respondent /defendant subdivided parcel number Irong/Iten/3457 into 5 portions some of which he sold. She identified one of the subdivisions as Irong/Iten/3713. She produced green card and certificate of official search in respect of that parcel as Pexbt 6 and 7 respectively.
13. Stated that the parcel of land known as Irong/Iten/3713 is registered in the respondent's /defendant's name and that the respondent/defendant lives in that parcel of land.
14. Testified that as a family, they never participated in Land Control Board meetings or sat to agree how their grandmother's land should be shared; that they do not know how the respondent/defendant obtained title deed for parcel No. 3457 and the resultant parcels and that none of the other family members have been given any portion of land in parcel number Irong/Iten/159.



15. In cross examination, P.W.1 stated that land parcel number Irong/Iten/159 had been given to their grandmother vide succession cause. She admitted that the respondent /defendant had been living with their grandmother since he was a small boy.
16. She also admitted/acknowledged that the parcel of land known as Irong/Iten/159 was first subdivided in 2013 when their grandmother was alive.
17. She stated that the second subdivision took place in 2015 when the respondent/defendant was issued with a title deed for parcel 3713.
18. Admitted/acknowledged that in 2013, she attended a Land Control Board meeting where her grandmother wanted to transfer the parcel of land Irong/Iten/159 to the respondent/defendant.
19. She stated that they were advised to go home and resolve the issue of transfer of the land to the respondent /defendant, which issue they never resolved.
20. informed the court that after their grandmother passed on in 2017, they discovered that the respondent/defendant had registered the land in his name. She could not tell when the respondent/defendant did so.
21. In re-examination, she stated that on the date she found their grandmother with the defendant at the Land Control Board, no consent was issued by the Board. She maintained that they were sent home to resolve the issue of transfer.
22. She asserted that they never sat as a family to resolve the issue and could not tell when and how the respondent /defendant went to the Land Control Board and obtained consent.

The Defendant's Case

23. The defendant, Christopher Kibet Kiptoo, who testified as D.W.1 relied on his witness statement recorded and signed on 25th September 2023, after it was adopted as his evidence in chief.
24. He informed the court that he was brought up by his great grandmother since he was 4 years old; that the parcel of land known as Irong/Iten/159 was subdivided into 2 portions namely, 3457 and 3458 by his great grandmother; that parcel No. 3457 was given to his great grandmother and 3458 to the other family of his great grandfather-the family of Helena.
25. The defendant further informed the court that in October 2013, his great grandmother took him to the Land Control Board in the presence of the 1st plaintiff, the 1st plaintiff's husband Raymond, and a relative, Thomas; that they were going to subdivide the land between Helena and himself; that the 1st plaintiff and her husband objected saying other grandchildren were excluded and that the board carried out investigations into the objection and established that the 1st plaintiff was not a child of his grandmother.
26. D.W.1 informed the court that after two (2) months, in October 2013, they returned to the Land Control Board and were issued with a consent for parcel number 2457.
27. It is the testimony of D.W.1 that in 2014, his great grandmother instructed him to subdivide the parcel No. 3457 into 5 portions and sell four (4) portions to settle some debts for her, which he did.
28. D.W.1 informed the court that he was issued with a title deed for parcel No. 3713 in 2015 and he lives there to date. His great grandmother died in March 2017.



29. D.W.1 informed the court that when his great grandmother transferred parcel No. 2457 to him and later parcel No. 3713, she was in her normal state of mind.
30. He denied the plaintiffs' allegation that he transferred the suit property fraudulently.
31. In cross examination, D.W.1 stated that he was the only great grandchild of Regina who was living with her.
32. He maintained that they went back to the Land Control Board for the second time on 2nd October 2013, and got issued with the board's consent.
33. D.W.1 acknowledged that his grandmother, Josephine (His mother's mother and Regina's daughter) had 7 children, but stated that his great grandmother only chose him out of the entire family and gave him the suit property as a gift.
34. The court heard that Regina invited Thomas as a witness at the Land Control Board and told Thomas that she was giving the defendant her land.
35. The defendant maintained that his great grandmother asked him to subdivide the suit property into 5 portions. He explained that her great grandmother had sold the four (4) portions to persons who are currently residing in their respective portions. He admitted that he had nothing in court to show that he received those instructions.
36. In re-examination, D.W.1 asserted that parcel No. 2457 was subdivided into 5 parcels because Regina had already sold four (4) parcels and had been paid money by the purchasers.
37. His great grandmother gave him the suit property willingly, knowing full well that she had other children and grandchildren.
38. At close of hearing, parties filed submissions.

Plaintiff's Submissions

39. In the plaintiffs' submissions filed on 6th December 2023, an overview of the cases urged by the parties is given and the following identified as the issues for the court's determination: -
 - i. Whether the defendant obtained land control board's consent to have the property known as Irong/Iten/3457 transferred to him; and
 - ii. Whether the defendant's title of the suit land should be cancelled and the property reverted to the original owner, the estate of Regina Soti Cheboi.
40. On whether the defendant obtained land control board's consent to have the property known as Irong/Iten/3457 transferred to him; reference is made to the evidence adduced by the plaintiff to the effect that when they went to the Land Control Board for transfer of the suit property, the Land Control Board declined to issue consent and advised them to go and resolve the issues concerning the transfer and submitted that there is no evidence that the defendant obtained consent to transfer the property to himself.
41. On whether the defendant's title of the suit property should be cancelled and the property reverted to the original owner, the estate of Regina Soti Cheboi, the plaintiffs maintain that the registration of the suit property in favour of the defendant was procured by fraud as no consent of the land control board was obtained yet the consent is a mandatory requirement under section 6 of the [Land Control Act](#), cap 302 Laws of Kenya



42. Arising from the foregoing, it is submitted that the plaintiffs have made up a case for cancellation of the title deed held by the defendant and for reverting the title for the suit property to the estate of Regina Sote Cheboi.

Defendant's Submissions.

43. In the defendant's submissions filed on December 6, 2023, an overview of the cases urged by the parties is similarly given and submitted that this court lacks jurisdiction to distribute the estate of a deceased person. In that regard, reference is made to the case of *Monica Nyawira Wahome v Veronica Wambui* 2019 e KLR.
44. It is submitted that the defendant is the absolute proprietor of the suit property having acquired it from his great grandmother by way of gift inter vivos.
45. It is further submitted that the issue of illegality/fraud raised in the OS cannot be canvassed by way of OS as illegality/fraud requires higher standard of evidence to be tabled before the court. Reference is made to the case of *Mukokinya M'arithi v. Patrick Munkiri Kabundu* 2021 e klr.
46. The defendant submits that there are no particulars and/or evidence of illegality pleaded and/or proven before the court to which the defendant could respond; for example challenging and defending the allegation of illegality would require more evidence and witnesses to be brought before court which cannot be done through OS.
47. It is submitted that there was need to join the Government to the suit as the plaintiffs are alleging illegality on the part of the chief and land officials. Failure to join the Government and moving the court through the wrong method, that is by OS as opposed to a plaint, makes the suit bad in law hence the suit ought to be dismissed.
48. The question of how the title for parcel 3713 changed to the defendant is said to be well answered in the defendant's pleadings and clarified through his viva voce evidence during hearing of the case.
49. The defendant submits that the account given by him on how he acquired the suit property is said to have been confirmed by the 1st plaintiff by confirming that she was aware of Regina's intention to transfer the suit property to the defendant way back in 2013.
50. It is reiterated that the suit property was given to the defendant as a gift and the gift perfected during the life time of the donor.

Analysis and determination

51. From the pleadings, evidence and the submissions, I find the sole issue for the court's determination to be whether the plaintiffs' have made up a case for being granted the orders sought or any of them.
52. Regarding that issue, from the totality of the evidence adduced in this case, the suit property was transferred to the defendant during the lifetime of the owner, Regina. The plaintiffs' were aware of that fact because they objected to the intention of the owner to transfer the suit property to the defendant.
53. Whilst the plaintiffs' claimed that the defendant fraudulently, illegally and unlawfully acquired the suit property, they never adduced evidence capable of proving the pleaded fraud, illegality or unlawfulness in the transfer of the suit property to the defendant.
54. The defendant offered a plausible and believable explanation of how he acquired the suit property. In the circumstances, I find the plaintiffs' suit to be lacking in merit and dismiss it with costs to the defendant.



55. Orders accordingly.

DATED, SIGNED AND DELIVERED THIS 5TH DAY OF FEBRUARY, 2024.

L. N. WAITHAKA

JUDGE

Judgment delivered virtually in the absence of:-

N/A for the Plaintiffs

N/A for the Defendant

Court Asst.: Christine

