



**Kirop & 2 others v Chelanga & 2 others (Environment and Land Appeal  
19 of 2020) [2024] KEELC 368 (KLR) (1 February 2024) (Judgment)**

Neutral citation: [2024] KEELC 368 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT AND LAND APPEAL 19 OF 2020**

**EO OBAGA, J  
FEBRUARY 1, 2024**

**BETWEEN**

**DENNIS KIPKEMOI KIROP ..... 1<sup>ST</sup> APPELLANT  
BENJAMIN KIPTOO KITUM ..... 2<sup>ND</sup> APPELLANT  
WILLIAM KIROP ..... 3<sup>RD</sup> APPELLANT**

**AND**

**JOEL RUTO CHELANGA ..... 1<sup>ST</sup> RESPONDENT  
REV. SAMUEL CHEPKONGA ..... 2<sup>ND</sup> RESPONDENT  
WILSON KIROP ..... 3<sup>RD</sup> RESPONDENT**

*(Being an appeal from the Award/Ruling of Marakwet Land Disputes  
Tribunal delivered on 16th June, 2009 in Tribunal Case no. 19 of 2009)*

**JUDGMENT**

**Introduction;**

1. The Appellants herein filed an amended memorandum of appeal in which they raised the following grounds:-
  1. That the honourable tribunal erred in law and fact by doing a case out of their jurisdiction since it involved land belonging to deceased people.
  2. That the honourable tribunal erred in law and fact by not considering the fact that the respondents were not there when land was bought and there was no proof of sale of the appellant's land.



3. That the honourable tribunal erred in law and fact by not considering the fact that the map produced by the respondent indicate they were in the land even before they bought the land.
4. That the honourable tribunal erred in law and fact by not considering the fact that the appellants are not administrators of the estate of their late grandfather and therefore the suit was irregular and unprocedural.
5. That the honourable tribunal erred in law and fact by not considering the fact that the receipts produced by the respondents are forgeries since by 1966 there were no such receipts with the hand writings shown and the appellant's grandfather was not a land buyer to keep receipts to issue to white missionaries.
6. That the honourable tribunal erred in law and fact by not considering the fact that the respondents did not proof that they are trustees of the church and they are only fighting for their own selfish gains therefore they have no locus to sue on behalf of the church. The trustees of AIC Church are well known and the respondents are not.
7. That the honourable tribunal erred in law and fact by not considering the fact that the respondents have not explained how they acquired land and why they don't have title deed for the same.
8. That the honourable tribunal erred in law and fact by not considering the fact that the land on which the church stands is different from the one occupied by the appellants and the respondents want to expand their boundaries.
9. That the honourable tribunal erred in law and fact by not considering the fact that there was no elderly person who testified witnessing the sale of land since the appellants' grandfather could not sell land and continue staying on it and yet the missionaries came when they were already on the land.
10. That the honourable Tribunal erred in law and fact by signing an award in favour of the respondents against the weight of evidence.
11. There was no written claim filed before the tribunal as per law contemplated to enable the appellants file a written response thereto.
12. The tribunal lacked jurisdiction to deal with issues of ownership of land.
13. The elders who sat were not legally constituted to deal with the land disputes as at the time they sat.
14. The proceedings before the tribunal were not processed for hearing as per law contemplated.
15. The award of the elders was not signed as per law contemplated and it has different dates of signing the same.

### **Background;**

2. In or around the early 50's, some white missionaries came to Elgeyo Marakwet at a place called Liter. They wanted to put up a church, school and a health Centre. They approached the locals to provide land for which they were to be compensated. The missionaries managed to have land for which they paid those who had given their plots. There was one old man called Chepkonga Arap Chesang alias Chematia who had been paid for his land but he could not move out of the land.



3. The old man (Chematia) became a thorn in the flesh of the missionaries who decided to compensate him for his grass thatched house before he agreed to re-locate to another area. The 1<sup>st</sup> Appellant who is grandson of Chematia was a member of Liter A.I.C church until he was ex-communicated from the church. The 1<sup>st</sup> Appellant went and fenced part of the Liter AIC church land claiming that it belonged to his grandfather Chematia who had allegedly not been paid for it and that he wanted it back to hold it on behalf of the Kapchechil clan.
4. It is the fencing off of part of the Liter church property which prompted the church officials to file a complaint before Marakwet Land Disputes Tribunal. The Tribunal heard the Appellants and the Respondents and awarded the disputed portion to the Liter A.I.C Church. The award prompted the Appellants to file an appeal to the Rift Valley Provincial Appeals Committee vide Appeal No. 27 of 2010.
5. Before the Appeal could be heard, the Land Disputes Tribunal Act was repealed. The Provincial Appeals Committees were disbanded and directions were given that all the pending Appeals before the Provincial Appeals Committees were to be transferred to the Environment & Land Court for hearing and disposal. This is how this appeal found its way to this court.

### **The Appeal;**

6. I have carefully considered the grounds in the memorandum of appeal as well as the proceedings before the Marakwet Land Disputes Tribunal and the submissions by the parties. I must say at the outset that the record of appeal is incomplete as it does not contain all that was placed before the Tribunal. This being a first appeal before this court, my duty is to re-evaluate the evidence and reach my own conclusion but of course giving allowance for the fact that I did not see the witnesses testifying. See the case of Abok James Odera t/a. A.J Odera & Associates – Vs- John Patrick Macharia t/a Macharia & Co. Advocates (2013) eKLR.
7. The issues which emerge for determination are firstly, whether the Marakwet Land Disputes Tribunal had jurisdiction to entertain the dispute. Secondly, whether the Tribunal was properly constituted. Thirdly, whether the hearing and determination of the dispute was in accordance with the Land Disputes Tribunal Act. Fourthly, whether there was a case filed before the Marakwet Land Disputes Tribunal and fifthly, whether the Respondents had locus standi to pursue a case against the Appellants.

### **Whether the Marakwet Land Disputes Tribunal had jurisdiction to entertain the dispute;**

8. The jurisdiction of a Tribunal was given under section 3 of the land Disputes Tribunal Act Cap 303 A (now repealed) which stated as follows:-
 

“Subject to this Act, all cases of a civil nature involving a dispute as to—

  - (a) the division of, or the determination of boundaries to land, including land held in common;
  - (b) a claim to occupy or work land; or
  - (c) trespass to land, shall be heard and determined by a Tribunal established under section.”
9. A look at the proceedings before the Tribunal show that what was in dispute was the boundary of the church land. The church land had been clearly demarcated in the 1960's and the 1<sup>st</sup> Appellant only



came to fence off part of the land claiming that it was not part of the church land. The 1<sup>st</sup> Appellant's action was trespass to land which did not belong to him.

10. There was no issue of ownership. During the hearing before the Tribunal, the 2<sup>nd</sup> Appellant while being asked questions in cross-examination, he admitted that Chematia was chaotic and noisy and that Mr. Paul Barnet one of the Missionaries gave him money to re-locate somewhere else. This was after he had claimed that the money which Chematia was given was for compensation of his grass thatched house.
11. As Chematia had re-located, the issue of ownership would not have again arisen. It is the 1<sup>st</sup> Appellant's actions of fencing off the already sold land which was an issue before the Tribunal. The 1<sup>st</sup> Appellant had trespassed into land belonging to Liter A.I.C church and fenced off after he was ex-communicated from the church. Until his grandfather died, he had not raised any complaint as he knew that he had been compensated and re-located from the land which became church property.

#### **Whether the Tribunal was properly constituted;**

12. Establishment of Tribunal was the function of the District Commissioner whose powers were stipulated under section 4 of the Land Disputes Tribunal Act (now repealed). Section 4 (2) (a) and (b) provided as follows: -

“ Each Tribunal shall consist of—

- a. a chairman who shall be appointed from time to time by the District Commissioner from the panel of elders appointed under section 5; and
  - b. either two or four elders selected by the District Commissioner from a panel of elders appointed under section 5.”
13. A look at the proceedings show that there were three members of the Tribunal one of whom was chairman. This was in compliance with provisions of section 4 (2) (a) and (b) of the Act. These members are supposed to be picked from those who have been gazetted by the minister under section 5 of the Act. The Appellants are alleging that the members were not gazetted. It was upon them to prove that that was not the case. They cannot shift the burden of proof to the Respondents. If they wanted to prove their allegations, they should have availed a gazette notice of elders under Marakwet District to prove that the names of the three members of the Tribunal were not among them. Without this, the Appellant's allegations are without merit.

#### **Whether the hearing and determination of the dispute was in accordance with the Land Disputes Tribunal Act;**

14. Hearing of disputes is provided under section 6 of the Act. It is the chairman who is to preside and the decision which carries the day is that of the majority. In the instant case, there were three members who heard the dispute. Two members signed the final decision on 16.6.2009 and one signed on 23.8.2009. the chairman then sent the decision to the magistrate's court for adoption in accordance with section 7 of the Act. The parties were given opportunity to ask questions as per section 3(7) of the Act. There was therefore compliance with the Act.

#### **Whether there was a case filed before the Marakwet Land Disputes Tribunal;**

15. Section 3(2) of the Act provided that every claim shall be presented before the Tribunal and as per section 3(3) of the Act. The claims are supposed to be numbered consecutively in each year according to the order of their institution. In the instant case, the claim before the tribunal was assigned Tribunal



Case No. 19 of 2009. This claim could not have been assigned a number if there was no claim filed. The Appellants would not have responded and a hearing set if they were not served with any claim. The Appellants chose to prepare an incomplete record of appeal. There is no provision for hearing an oral complaint under the Act.

**Whether the Respondents had locus standi to bring a dispute against the Appellants and whether the Appellants had capacity to be taken before the Tribunal;**

16. The Appellants are arguing that the Respondents had no locus standi to file a claim against them as they are not the registered trustees of African Inland church who are supposed to transact the business of the church. The procedure under the Act was meant to be abit informal. This is why the nature of disputes to be handled was taken away from the formal courts and given to elders to preside over. The disputes were to be handled in accordance to the local customs. The Respondents herein were from the local marakwet community and were better placed to file a claim against the Appellants. The registered trustees of AIC could not fit in this set up. There was therefore nothing wrong in the Respondents filing the claim against the Appellants.
17. On the argument that the Appellants had no capacity to be sued as they were not administrators of the estate of Chematia, it is important to note that the dispute was on trespass and interference of boundary. It is the 1<sup>st</sup> Appellant who had trespassed and interfered with the boundaries of the church land. He was supported by the other Appellants. There was therefore no need to bring up the issue of administration of the estate of Chematia. The complaint was against a trespasser who was being supported by his Co-Appellants.
18. The Appellants took issue with the manner in which the Tribunal considered the evidence. They contended that the receipts which were produced were forgeries; that no one was present when the alleged transaction between the missionaries and Chematia took place; that no senior citizen was called to give evidence on the sale; that the church land was separate from the one occupied by the Appellants; that the award was signed against the weight of evidence; that it was not possible for Chematia to sell his land and continue staying on it; that the Respondents did not explain how they acquired the land and that the map which was produced by the Respondents showed that the Respondents were on the land before they purchased it.
19. To begin with, there is evidence on record that Chematia was chaotic and noisy and he was problematic. The 2<sup>nd</sup> Appellant during cross-examination was asked why Chematia was being compensated for his grass thatched house if he had not sold his land. His answer was that Chematia was compensated for the house and he agreed to re-locate from the land he had sold.
20. The Respondents provided evidence of payments made to Chematia and where he had signed by thumb printing when he handed over the sold land. The argument that the receipts were forgeries is devoid of any logic as the appellants did not provide any evidence to show that the receipts were forgeries.
21. The Tribunal took the liberty to bring independent persons from the various clans to assist them. All these independent persons confirmed that the disputed property belonged to the church. One would not have been expected to bring people who were around in the 1950's and 1960's as they had passed on just like the missionaries who dealt with Chematia had too passed on.
22. The Respondents relied on records which were meticulously kept from the time of the missionaries and which were witnessed by the area paramount chief and other senior citizens. There is no way one can tell from a map that he was in occupation of land before he purchased it. The Respondents fully



explained how Chematia was given money including some trouser and other things like a cow. The 2<sup>nd</sup> Appellant conceded that Chematia re-located after he was compensated for his grass thatched house.

23. The 1<sup>st</sup> Appellant admitted that he fenced off the church land after he failed to settle whatever issues he had with the church. In his own evidence, he had joined AIC in 1989 and he fenced the disputed land in 1995. This was several years after Chematia had sold it. He stated that he came to know that the land belonged to Chematia after Chematia stormed the church while naked. There is evidence that Chematia was a man of drama and he was a thorn in the flesh of the missionaries.
24. There is an argument which was raised by the Appellants that the award was not signed in accordance with the law. I notice that one of the members who signed the award was not a member who heard the dispute and the date of signing was on a different date other than the date of ruling. This may be wrong but this does not invalidate the decision of the majority that is the two who included the chairman and one member who signed the award on 16.6.2009. This omission does not go to the root of this case.
25. It is clear that the 1<sup>st</sup> Appellant decided to cause problems by fencing off the disputed portion after he was ex-communicated from the church which he had joined in 1989. Litigation has to come to an end. One wonders where the Appellants were for all the decades only to come and start claiming land when those who sold it never raised an issue during their lifetime.

**Disposition;**

26. From the above analysis, it is clear that the appellants' appeal is devoid of any merit. The same is dismissed with costs to the Respondents.

**DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 1<sup>ST</sup> DAY OF FEBRUARY, 2024.**

**E. O. OBAGA**

**JUDGE**

In the virtual presence of;

Mr. Wainaina for Mr. Momanyi for Appellants.

Court Assistant –Brian

**E. O. OBAGA**

**JUDGE**

**1<sup>ST</sup> FEBRUARY, 2024**

