



Talam (Suing as the Personal Representative of the Estate of the Late Christopher Kiptalam Sang) & another v Rop (Environment & Land Case 139 of 2016) [2024] KEELC 363 (KLR) (1 February 2024) (Judgment)

Neutral citation: [2024] KEELC 363 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 139 OF 2016**

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

BETWEEN

**ELPHAS KIPKORIR TALAM (SUING AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF THE LATE CHRISTOPHER KIPTALAM SANG) 1ST PLAINTIFF
CECILIA JEROTICH KIRUI 2ND PLAINTIFF**

AND

JOSEPH KIPCHUMBA ROP DEFENDANT

JUDGMENT

Introduction

1. The Plaintiffs brought this suit against the Defendant claiming the following reliefs:-
 - a. A declaration that the Plaintiffs are the exclusive, lawful, legal and rightful owners of the whole suit parcel of land known as Moi’s Bridge/Ziwa Block 8 (Chepterit Farm)81 measuring 23.8 acres.
 - b. An order of eviction, permanent injunction restraining the Defendant, his agents, servants, relatives and/or assigns from tilling, cultivating, commencing and/or continuing any form of construction of building and/or structures and/or in any way adversely dealing and/or interfering with the 23.8 acres of parcel of land known as Moi’s Bridge/Ziwa Block 8 (Chepterit Farm)/81 measuring 23.8 acres.
 - c. Mesne profits.
 - d. Costs and interests of the suit.



- e. Any other such or further relief as this Honourable court may deem fit and just to grant.
2. The Defendant filed a defence and raised a counter-claim in which he sought the following reliefs:-
 - a. That Moi's Bridge/Ziwa Block 8 (Chepterit Farm)/81 be shared equally between the family of the Plaintiffs and the Defendant's family.
 - b. Plaintiffs' plaint be dismissed with costs.
 - c. Costs and interest of the suit.
 - d. Any other suitable relief this Honourable court may deem fit to so grant.

Background;

3. The dispute herein relates to Moi's Bridge/Ziwa Block 8 (Chepterit Farm)/81 (suit property) measuring 28.8 acres. The suit property was allotted to Kipsang Arap Songok who was a member of Chepterit Ranching Co-Operative Society Limited. After the demise of Kipsang Arap Songok, his wife Martha Jerop Songok took over his share. The family sold 5 acres out of the suit property to Daniel Kiptoo Kemboi and remained with 23.8 acres which is the subject of this suit.
4. Prior to the demise of Kipsang Arap Songok, the Defendant's father Augustine Kiproop Kipsugut had filed a suit against Kipsang Arap Songok in Eldoret Senior Principal Magistrate's court Land Case No 16 of 1988. This case was withdrawn on 8.11.1995 as having abated following the death of Kipsang Arap Songok.
5. The widow of Kipsang Arap Songok who took over his share too died on 25.3.2012. One of her sons Christopher Kiptalam Sang and daughter Cecilia Jerotich Kirui became the administrators and administratrix of her estate respectively. Later on Christopher Kiptalam Sang died and he was substituted by his son Elphas Kipkorir Talam.
6. A certificate of confirmation of grant in respect of the Estate of Martha Jerop Songok was issued on 15.7.2015. The suit property was shared with David Kiptoo Kemboi taking 5 acres and the administrators of the Estate of Martha Jerop Songok taking the remainder of 23.8 acres.
7. The Defendant filed an application seeking to annul the grant issued to the administrators of the Estate of Martha Jerop Songok but the application was dismissed with costs on 6.11.2019.
8. On 17.10.2023 when this case came up for hearing, neither the Defendant nor his lawyer who had been dully served were in court. Mr. Omusundi for plaintiff called Mr. Mitei and informed him that the case was set for hearing but Mr. Mitei informed him that he was going to send someone. As at 14.42p.m, Mr. Mitei or his representative were not present. The court directed hearing to proceed.

Plaintiffs' case;

9. The Plaintiff's case was presented by the 2nd Plaintiff who testified that she is one of the administrators of the Estate of the late Martha Jerop Songok. The suit property was taken over by her mother upon the demise of her father. Her father was allotted 28.8 acres. The family sold 5 acres to Daniel Kiptoo Kemboi and remained with 23.8 acres. Soon after the demise of her mother and precisely in 2014, the Defendant invaded the suit property and put up a temporary structure and occupied 6 acres which he started utilizing. The family of Martha Jerop Songok reported the invasion by the Defendant to the area chief who warned the Defendant. The Defendant vacated the land but soon thereafter he brought in his sister who has been in occupation of the six acres which the Defendant is utilizing todate.



10. The 2nd Plaintiff went on to testify that she has lost use of the six acres which the Defendant is occupying since 2014 to date. she stated that were she to lease out the land she would be getting Kshs 13,000/= per acre per year. This is the amount she is claiming in mesne profits. The 2nd Plaintiff further testified that during the lifetime of the Defendant's father, he had never occupied the suit property. She stated that the Defendant invaded the suit property on allegations that his father had purchased half of the suit property from her father. She stated that the Defendant had not been born when the alleged sale occurred and as such he could not know what happened. She stated that the Defendant's father had his own share in Chepterit Farm and that he tried to intimidate their family upon the demise of their father but he did not succeed.

Analysis and determination;

11. I have carefully gone through the evidence adduced by the plaintiff. This evidence is not controverted but the court has to be satisfied that Plaintiffs have proved their case on a balance of probabilities.
12. In the instant case, there is no contention that the suit property was 28.8 acres. Out of this, 5 acres were sold to Daniel Kiptoo Kemboi. During the succession process, the said Daniel Kiptoo Kemboi was one of the beneficiaries entitled to 5 acres. The rest of the 23.8 acres went to the administrators of the Estate of Martha Jerop Songok. This is as per the certificate of confirmation of grant issued on 15.7.2015. The Defendant attempted to have the grant annulled but he did not succeed.
13. There is a list from the District survey office, Eldoret dated 26.10.1989 which called upon the chairman of Chepterit Ranching Co-operative Society Limited to ask its members to pay survey fees as indicated. In that list, the name of Kipsang Songok appears as number 81. The acreage shown is 28.8 acres. He was supposed to pay survey fee of Kshs 850/=. The same list shows that Augustine Sugut had 51 acres. His name appears as number 94. He was supposed to pay survey fees of Kshs 1,140/=
14. The Defendant in his pleadings claimed that the suit property was co-owned in equal shares. There is no iota of evidence on record to this effect. What is on record and which the Defendant seems to bank on is a list whose source is unknown. In that list there is the name of Martha Jerop Songok. Below the name, the Chief of Kaisagat added the name of Augustine Sugut. The name was added by the chief on the ground that there was a dispute over the suit property. This is not evidence of co-ownership the basis of which the Defendant can claim that his father was entitled to half share of the property.
15. The Plaintiffs have proved that the Defendant entered the suit property in 2014. The chief wrote a letter dated 16.3.2014 warning him to desist from staying on the suit property or continuing to build on it. The Plaintiff's evidence is that he briefly vacated but later on brought in his sister who is in possession to date. The Defendant and his family members are clearly trespassers on the suit property. They have been reaping from where they never sowed. The Plaintiffs produced a report from an Agricultural officer who stated that if one were to lease one acre in the area, he would get Kshs 13,000/= per acre. This report was produced in evidence as exhibit 1.

Disposition;

16. From the above analysis, I proceed to dismiss the Defendant's counter-claim with costs to the Plaintiffs. I find that the plaintiffs have proved their case on a balance of probabilities. I enter judgement for the Plaintiffs against the Defendant as follows: -
 - a. A declaration is hereby issued that the Plaintiffs are the exclusive lawful and legal owners of the whole of parcel Number Moi's Bridge/Ziwa Block 8 (Chepterit Farm)/81 measuring 23.8 acres.



- b. An order of eviction against the Defendant, his relatives, agents and or assigns from parcels No Moi's Bridge/Ziwa Block 8 (Chepterit Farm)/81 measuring 23.8 acres.
- c. A permanent injunction restraining the Defendant, his agents, servants, relatives and /or assigns from tilling, cultivating, continuing any form of construction of buildings and/or structures and/or in any way adversely dealing and/or interfering with the 23.8 acres of parcel of land known as Moi's Bridge/Ziwa Block 8 (Chepterit Farm)/81 measuring 23.8 acres.
- d. *Mesne* profits of Kshs 780,000 made out as follows $Kshs\ 13,000 \times 6 \times 10 = 780,000/=$
- e. The Defendant is granted 30 days to remove the temporary structures from the suit property failing which the Plaintiff shall demolish the same under supervision of the Officer Commanding Police Station within the jurisdiction of the suit property without any further recourse to court at the Defendant's cost.
- f. The plaintiff shall have costs of this suit with interest at court rates.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 1ST DAY OF FEBRUARY, 2024.

E. O. OBAGA

JUDGE

In the virtual presence of;

M/s Akinyi for Mr. Omusundi for Plaintiff.

Court Assistant –Brian

E. O. OBAGA

JUDGE

1ST FEBRUARY, 2024

