



**Chepsoi & 4 others v Maina (Environment & Land Case 29 of 2020)
[2023] KEELC 472 (KLR) (2 February 2023) (Judgment)**

Neutral citation: [2023] KEELC 472 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 29 OF 2020**

**EO OBAGA, J
FEBRUARY 2, 2023**

BETWEEN

**JONATHAN KIPRONO CHEPSOI 1ST APPLICANT
JOSEPH KIPNGETICH CHEPSOI 2ND APPLICANT
JUSTUS KIPKEMOI CHEPSOI 3RD APPLICANT
JAFRED KIPKORIR CHEPSOI 4TH APPLICANT
JEREMIAH KIPROP CHEPSOI 5TH APPLICANT**

AND

MICHAEL ROTICH MAINA RESPONDENT

JUDGMENT

1. The applicants who are brothers filed this originating summons against the respondent claiming that they had acquired LR No Mosop/Metkei/705 (suit property) by way of adverse possession. The applicants testified that sometime in the mid 60's their late father Chepsoi Tumek purchased the suit property measuring 2.0 hectares from Cheruiyot Ego who was then the registered owner of the same.
2. The applicants' father took possession in the 1960's and when the 1st applicant became of age in 1972, he put up his house on the suit property where he has lived to date. The 2nd applicant put up his house in 1976, the 3rd applicant built his in 1994, the 4th applicant built his in 1998 whereas the 5th applicant built his house in 2002.
3. The applicants stated that in 1980's the respondent claimed that he had purchased the suit property from Cheruiyot Ego and proceeded to process transfer on January 4, 1988. The applicants further testified that they were unable to process title as they did not have the sale agreement between their late father and Cheruiyot Ego.



4. The applicants went on to state that they have lived on the suit property for over 48 years and that the respondent has never taken any active steps to remove them and that as they have been on the land for over 12 years, they should be registered as proprietors of the suit property in place of the respondent who owns a neighbouring plot.
5. The applicants further testified that they engaged a valuer and a surveyor who prepared reports on what is on the ground. The applicants stated that they all agree with the survey report and valuation report prepared.
6. There were no directions given on the mode of hearing of the originating summons. Though the respondents did not testify orally, he had filed a replying affidavit to the originating summons and filed a statement from the former chief of the area. The respondent stated that there have been litigations over the property. There was Eldoret HCCC No 475 of 1993 between the applicants and Cheruiyot Ego and another suit before the lower court at Iten being Iten Principal Magistrate Land Case No 7 of 2020 in which the applicants were seeking similar orders.
7. The respondent therefore states that the applicants have not enjoyed peaceful occupation of the suit property. The applicants came to the suit property in 2014 and occupied a portion of it and put up structures thereon.
8. I have carefully considered the applicants' evidence as well as the statement of the respondent and his witness. Though the respondent did not file written submissions I must be satisfied that the applicants have proved their case to the required standard. There is a misconception that in claims of adverse possession, all what one has to prove is that he has been in possession of the subject matter of the suit for more than 12 years.
9. In the instant case, the applicants did not prove that there was a sale between their late father and Cheruiyot Ego. They simply stated that Cheruiyot Ego was the registered owner from whom their father purchased the suit property. There was absolutely no evidence adduced to show that Cheruiyot Ego was ever the registered owner.
10. The applicants further stated that the respondent transferred the suit property to himself on January 4, 1988. There was no evidence of such a transfer. The only document produced by the applicants is a copy of a search which was conducted on January 30, 2020 which shows that the respondent was issued with title deed on January 4, 1988. There was no copy of white card or green card given to show the history of ownership.
11. Contrary to the applicants' allegations that their stay has been peaceful for the last 48 years, there is evidence that there was Eldoret HCCC No 475 of 1993 between the applicants and Cheruiyot Ego. The applicants had also filed Iten Principal Magistrate Land Case No 7 of 2020 against the respondent. In the 1980's the respondent had laid claim to the suit property. There was therefore no peaceful stay on the suit property.
12. The applicants claim that they put up their respective houses on the suit property between 1972 and 2002. A look at the houses from the valuation report shows that the houses could not be such old as the applicants claim. I tend to agree with the respondent that the houses were put up in 2014. I therefore find that the applicants have failed to prove their case against the respondent. The case is dismissed with costs to the respondent.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 2ND DAY OF FEBRUARY, 2023.

EO OBAGA



JUDGE

In the virtual presence of;
Mr Kipnyekwei for Plaintiffs
Court Assistant –Laban

EO OBAGA

JUDGE

2ND FEBRUARY, 2023

