



**Cheligo v Limo (Environment & Land Case 5 of 2022)
[2023] KEELC 15821 (KLR) (1 March 2023) (Judgment)**

Neutral citation: [2023] KEELC 15821 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ITEN
ENVIRONMENT & LAND CASE 5 OF 2022**

L WAITHAKA, J

MARCH 1, 2023

BETWEEN

CHARLES CHEBII CHELIGO PLAINTIFF

AND

JOSHUA C.K LIMO DEFENDANT

JUDGMENT

1. By a plaint dated December 14, 2017 and amended on October 19, 2019 the plaintiff herein instituted this suit seeking judgment against the defendant for:-
 - a. A permanent injunction to restrain the defendant, his agents and/or servants from entering, occupying, constructing and/or in any other way dealing with the parcel of land known as Baringo/Kapkiamo/277 (suit property) measuring 3.08 acres or thereabout;
 - b. A declaration that Jacob Kibet Cheligo held the suit property in trust for him and that the purported sale and transfer of the suit property to the defendant was unlawful and/or illegal. Further that he is entitled to the whole of the suit property;
 - c. An order of eviction against the defendant;
 - d. An order of cancellation of the title deed and rectification of the register to remove the defendant's name and replace it with the plaintiff's name;
 - e. Costs of the suit and interest;
 - f. Any other relief this court may deem as just and expedient in the circumstances of the case.
2. The plaintiff's case as can be discerned from the plaint is that at all times material to the suit, he was the beneficial and/or equitable owner of the suit property; that the suit property was originally owned by Masirben, a relative of his mother, Rosebella Kobibo Cheligo and his brother Jacob Kibet Cheligo; that



during land demarcation and registration, the suit property was registered in the name of his brother, Jacob Kibet to hold in trust for him because he was under age.

3. The plaintiff acknowledges that the suit property was sold by his brother, Jacob Kibet Cheligo, but contends that the sale was unlawful and/or illegal and that the suit property is registered in the defendant's name but contends that the registration was effected in a fraudulent manner. He further acknowledges that the dispute between him and the defendant over ownership of the suit property was subject of the process of determination of interests and rights in land provided for under the [Land Adjudication Act](#), cap 284 laws of Kenya (LAA) and that the dispute culminated in an appeal to the Minister to wit appeal to the Minister Case No 324 of 1995 over plot No 277 Kapkiamo Adjudication Section which appeal he lost.
4. In his amended statement of defence filed on November 8, 2019, the defendant denied the allegation that the suit property was subject of any trust in favour of the plaintiff and that his registration was effected in a fraudulent manner.
5. The defendant averred that he is the registered proprietor of the suit property and contended that his title is indefeasible because it was as a result of first registration. The defendant further contended that the plaintiff's suit is time barred as he has been in possession of the suit property for over 42 years.
6. The defendant further contended that the plaintiff lacks locus standi to claim the land which belonged to Jacob Cheligo who is alive and is not claiming it.
7. The defendant further contends that the plaintiff has no cause of action against him as his objection to the Land Adjudication Officer and appeal to the Minister was dismissed.

The Plaintiff's Case

8. During hearing, the plaintiff informed the court that the case between him and the defendant started in 1989 before the Land Disputes Tribunal where he (the plaintiff) was the objector. He (the plaintiff) lost the case and the suit property was given to the defendant. He appealed to the Minister vide appeal to the Minister Case No 324 of 1995 but lost the appeal.
9. Sometime in 2019, he (the plaintiff) conducted a search concerning registration of the suit property and discovered that it was registered in the name of the defendant. The plaintiff further informed the court that vide a search he conducted in June 2017, he discovered that the suit property was registered in the name of the defendant but there was a restriction registered against the register of the suit property restricting dealing with the suit property until the appeal to the Minister was concluded.
10. Pointing out that the defendant in his statement of defence has acknowledged that the suit property belonged to his brother, Jacob Cheligo, the plaintiff maintained that his brother, Jacob Cheligo was registered as proprietor of the suit property to hold it in trust for him.
11. Concerning the contention by the defendant that he bought the land from his brother, Jacob Cheligo, the plaintiff stated that he does not know about the agreement allegedly entered into between the defendant and his brother in 1975. He denied having witnessed the agreement and urged the court to make a declaration that the defendant holds the suit property in trust for him because it belonged to his parents.
12. The plaintiff denied the defendant's contention that he has stayed peacefully in the suit property for over 42 years. He informed the court that the defendant and him have had several cases from 1975.
13. In support of his case, the plaintiff produced Pexbts 1-9.



14. In cross examination, the plaintiff informed the court that in 1975 when the defendant tried to buy the suit property he was 16 years. He refused the defendant and his brother from buying/selling the land but both refused to listen to him. He further stated that their mother told them to return the purchase price, Kshs 700/=, but the defendant refused to take the money. They decided that his brother would use the money he received to buy another parcel of land for him but that did not happen.
15. The plaintiff further informed the court that he lodged his claim before the Land Adjudication Committee in 1975 and that his claim was determined in 1989 in favour of the defendant. He stated that when the defendant bought the suit property, his brother informed him (the defendant) that he was holding the land in trust for him.
16. He admitted that the defendant took possession of the suit property in 1975 and that they put a restriction on the register of the suit property in 1998. He also admitted that they did not attempt to remove the defendant from the suit property.
17. The plaintiff informed the court that his attempts to return the money to the defendant were futile. That notwithstanding, he stated that he left the money with the defendant.
18. He acknowledged that he was present when the defendant gave his brother Jacob Cheligo, Kshs 700/=.
19. In re-examination, the plaintiff stated that they were not selling the suit property to the defendant. He stated that the Kshs 700/= given to his brother was meant for looking for a different parcel of land.
20. PW2, Charles Kibet, informed the court that both the plaintiff and the defendant met in his homestead when the defendant gave Jacob Kshs 700/=. He stated that he was told that the money was to be used to identify a different portion of land. He acknowledged that there was a written agreement concerning the transaction.

The Defendant's Case

21. The defendant, who testified as DW1, stated that between 1973 and 1974, he approached the plaintiff's mother with intention of buying the suit property which was adjacent to his land. The plaintiff's mother informed him that she wanted to give the land to her son. After land adjudication, in 1975, the suit property was registered in the name of Jacob Cheligo. In the same year, Jacob approached him to buy his land. They agreed on a purchase price of Kshs 600 but Jacob later changed his mind and asked for Kshs 700/- which he paid him in the presence of the plaintiff and PW2 at PW2's home. They signed an agreement for sale and a proper sale agreement was drawn after he paid the balance of the purchase price. After that, Jacob wrote a letter to the Land Adjudication Officer Kapkiamo section to transfer the land to his name (Dexbt 4). The Land Adjudication Officer amalgamated the land (268) and his portion 277 and gave him number 277 for the two parcels.
22. DW1 informed the court that land parcel number 268 initially belonged to Laban Rotich but later Laban exchanged the parcel with him.
23. Later, he was served with summons to appear before the Land Adjudication Officer because the plaintiff had raised an objection. He produced objection proceedings before the LAO as Dexbt 1. He stated that the plaintiff lost the objection proceedings. The plaintiff appealed to the Minister but also lost the appeal. He produced a certificate of search done on February 7, 2018 showing that the suit property is registered in his name (Dexbt 5).
24. He informed the court that the money he paid to Jacob has never been returned to him and that he does not know what Jacob spent the money on.



25. In support of his case the defendant produced Dexbts 1-5.
26. In cross examination, DW1 stated that parcel number 277 is an amalgamation of about 8 parcels of land, including Jacob's land.
27. Concerning Dexbt 2(a), he stated that Dexbt 2(a) states that he was buying land in Kibalel but does not state which parcel.
28. He informed the court that he drew the agreement but Jacob and Charles Chebon inserted their names thereon. After he completed payment, they wrote a formal agreement (Dexbt 3) on October 20, 1976.
29. He further informed the court that he does not know who wrote the letter to LAO (Dexbt 4) but stated that Jacob knew how to read and write.
30. He acknowledged that according to the green card (Pexbt 3) parcel number 267 was in the name of Kimosop Kipkulei as at 1998. He also acknowledged that according to the green card, Plot No 268 was in the name of Chebet but could not tell why it was in that name as it belonged to Laban Rotich.
31. He denied the contention that Jacob was holding the suit property in trust for the plaintiff. He reiterated that Jacob had been given the land by his mother.
32. He further denied the contention that he had obtained the suit property by fraud.
33. In re-examination, he stated that Dexbt 2(a) and Dexbt 2(b) were not final agreements. He stated that Dexbt 3 was the final agreement which Jacob thumb printed.
34. He informed the court that by the time they entered into the agreement, the land had not been adjudicated. Their agreement was based on occupants on the ground.
35. He further informed the court that the suit property was transferred to him in 1975 by the Land Committee.
36. Concerning the green cards produced as Pexbt 3(b) and (c) for parcels number 267 and 268, he informed the court that they are strange to him and that he does not know who the people named in the green cards are.
37. He stated that his land is parcel number 277 and Pexbt 3 (d) is correct.
38. He further stated that on the ground he occupies the same acreage as shown in the green card, 3.08 Ha (approximately 7.61 acres).
39. DW2, Laban Kiptalam Rotich, informed the court that land parcel number 268 belonged to his mother who transferred it to him; that parcel number 267 belonged to the plaintiff's mother and that he transferred parcel number 268 to the defendant after selling it to him. He further informed the court that Jacob sold parcel number 267 to the defendant after his mother had given it to him and that parcels number 267 and 268 were amalgamated with the defendant's earlier parcels and the plot numbers changed.
40. In cross examination, he stated that plot number 268 initially belonged to his father, Masirben Rotich, a brother to plaintiff's mother.
41. He informed the court that his father gave parcel number 267 to the plaintiff's mother before land adjudication; that after land adjudication parcel number 267 was given to the plaintiff's mother and 268 to his mother and that the land was subdivided into the two parcels after a dispute arose between him and Jacob. Jacob was given 267 and he (DW2) 268.



42. Concerning the plaintiff's contention that Jacob was to hold the land in trust for him (plaintiff) because he (the plaintiff) was under age, he stated that he was not aware of that fact.
43. He maintained that he sold his parcel to the defendant and stated that he is aware that Jacob sold his parcel to the defendant although he did not witness the agreement.
44. In re-examination, he stated that other than land parcels number 267 and 268, his father had land elsewhere.
45. At close of hearing, parties to the suit filed submissions which I have read and considered.

Analysis and Determination

46. From the pleadings, evidence and the submissions, I find the issues for the court's determination to be:-
 - i. Whether the registration of the defendant as the proprietor of the suit property is subject of any trust in favour of the plaintiff;
 - ii. Whether the defendant's registration as proprietor of the suit property was effected fraudulently?
 - iii. What orders should the court make?
47. On whether the registration of the defendant as the proprietor of the suit property is subject to any trust in favour of the plaintiff, the plaintiff acknowledges that a portion of the suit property was sold to the defendant by his elder brother, Jacob, but contends that because the suit property was family land, it was subject to a trust in his favour. He further contends that sale and subsequent registration of the suit property to the defendant by his brother did not affect the impleaded trust. Based on the decisions in the cases of *Isack M'Inanga Kiebia and another v Isaaya Theuri M'Lintari and another* (2014) eKLR; *Dominic Otieno Ogunyo & 2 others v Helida Akoth Walori* (2022) eKLR; *Peter Gitonga v Francis Maingi M'ikiara*-Meru HCCC No 146 of 2000; *Mwangi Maguthu v Maguthu* CA 337 of 1968 (unreported) and *Hosea v Njiru* (1976) EALR, the plaintiff urges the court to find that he has made up a case for declaration that the registration of the defendant as the proprietor of the suit property is subject to a trust in his favour.
48. On his part, the defendant submits that the plaintiff does not have any valid claim over the suit property because firstly, he acquired a portion of the suit property measuring 1 ½ acres legally from Jacob Cheligo; secondly, he acquired 1 ½ acres from Laban Rotich; thirdly, he acquired other portions from his neighbours; fourthly, it is those portions that were amalgamated with his ancestral land number 277 to form the suit property, measuring 3.8 hectares, which the plaintiff seeks to deprive him of.
49. With regard to the issue as to whether registration of the defendant as proprietor of the suit property is subject to a trust in favour of the plaintiff, I have carefully evaluated and considered the evidence adduced in this case, the submissions by the parties and the authorities and law cited. From the uncontroverted evidence of the defendant showing that he acquired the suit property by purchasing several parcels of land from his neighbours, one of them being the plaintiff brother, Jacob Cheligo, the evidence showing that it is those parcels of land that were amalgamated with his parcel number 277 to form the suit property and there being no evidence that the plaintiff's mother had given the suit property to the plaintiff and not his brother, Jacob Cheligo, I find and hold that the plaintiff has not proved that the suit property is subject to any trust in his favour.
50. As to whether registration of the defendant was effected by fraud, the totality of the evidence shows that the defendant was registered as the owner of the suit property after he was adjudged as the owner of



the suit property by the Tribunals established under the [Land Adjudication Act](#), cap 284 laws of Kenya. The plaintiff participated in the process but lost his claim. By dint of the provisions of section 29 of the [Land Adjudication Act](#), the plaintiff is estopped from challenging the decision of the Minister on the grounds of the alleged fraud. Besides, the alleged fraud was neither specifically pleaded, with particulars thereof given as by law required nor was it proved. In that regard see the case of [Grace Wairimu Sorora & another v National Land Commission & 2 others](#) [2021] eKLR where it was held:-

“... having not supplied and/or pleaded the particulars of fraud or illegality, which have variously been alluded to by the Petitioners, the Petitioners plea of fraud and illegality therefore are stillborn. In this regard, the cause of action founded on the illegality and fraud is patently misconceived.”

51. The court’s observation was premised on order 2 rule 10 of the [Civil Procedure Rules](#) which provides as follows:-

“1. Subject to subrule (2), every pleading shall contain the necessary particulars of any claim, defence or other matter pleaded including, without prejudice to the foregoing

- a. particulars of any misrepresentation, fraud, breach of trust, willful default or undue influence on which the party relies; and
- b. where a party pleading alleges any condition of mind of any person, whether any disorder or disability of mind or any malice, fraudulent intention or other condition of mind except knowledge, particulars of facts on which the party relies.”

52. Having considered the evidence adduced in this case the plaintiff’s case is found devoid of merit and is dismissed with costs to the defendant.

53. Orders accordingly.

JUDGMENT READ, DELIVERED, DATED AND SIGNED AT ITEN THIS 1ST DAY OF MARCH, 2023.

LN WAITHAKA

JUDGE

Judgment delivered through Microsoft video conferencing plat form in the presence of:-

Mr. Kiboi for the plaintiff

N/A for the Defendant

Christine Towett: Court Assistant

