



**Marigat Group Ranch & 4 others v Kisenger & another (Environment & Land Case 49 of 2022 & 49B of 2023 (Consolidated)) [2023] KEELC 20060 (KLR) (19 September 2023) (Judgment)**

Neutral citation: [2023] KEELC 20060 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ITEN  
ENVIRONMENT & LAND CASE 49 OF 2022 & 49B OF 2023 (CONSOLIDATED)  
L WAITHAKA, J  
SEPTEMBER 19, 2023**

**BETWEEN**

**MARIGAT GROUP RANCH ..... 1<sup>ST</sup> PLAINTIFF  
FREDRICK KILLEN ..... 2<sup>ND</sup> PLAINTIFF  
JOHN CHEBII ..... 3<sup>RD</sup> PLAINTIFF  
MICHAEL CHEROP ..... 4<sup>TH</sup> PLAINTIFF  
JOSHUA KISENGER ..... 5<sup>TH</sup> PLAINTIFF**

**AND**

**JOSHUA KISENGER ..... 1<sup>ST</sup> DEFENDANT  
DANIEL KIPTULWO ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. By a Plaint dated 14<sup>th</sup> February 2014, the plaintiffs instituted this suit seeking judgment against the defendant for a declaration that the defendant is a trespasser on the suit land to wit Baringo Marigat/1; an order of eviction against the defendant and an order of permanent injunction to restrain the defendant by himself, his agents and/or servants from further trespassing into, putting up any structures, alienating any interest on, occupying, transferring and or dealing with the suit land in any manner prejudicial to their interest therein; costs of the suit.
2. The suit is premised on the grounds that the suit land belongs to the 1<sup>st</sup> plaintiffs and is managed by the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> plaintiff on behalf of the members of the 1<sup>st</sup> plaintiff; that on diverse dates between June 2013 and January 2014, the defendant trespassed into the suit land and constructed structures therein thereby denying the 1<sup>st</sup> plaintiff quiet use and enjoyment of the portion of the suit land occupied by him.



3. Lamenting that attempts to get the defendant to vacate the suit land had been futile, the plaintiffs instituted the instant suit seeking the reliefs listed herein above.
4. The defendant filed a statement of defence and counterclaim, dated 4<sup>th</sup> March 2014 and amended on 10<sup>th</sup> April 2014 contending that the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> plaintiffs are not the registered representatives of the 1<sup>st</sup> plaintiff and that the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants had abdicated their responsibilities as custodians of the 1<sup>st</sup> plaintiff by engaging in wanton acts of abuse of office to the detriment of unsuspecting members of the 1<sup>st</sup> plaintiff.
5. Explaining that he has been living in the suit land with permission of Samuel Kipkulei Mibei, member of the 1<sup>st</sup> plaintiff, member number 256 (now deceased), the defendant averred that he is one of the heirs of Samuel Kipkulei's estate comprised in the portion of the suit land he occupies.
6. In the counterclaim, the defendant reiterates the averments contained in his statement of defence and prays for judgment against the plaintiffs for:-
  - a. An order revoking the registration of the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> plaintiffs as the registered group representatives of the 1<sup>st</sup> plaintiff and a further order for their replacement;
  - b. An order that the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> plaintiffs are unfit to hold public office;
  - (c) An order restraining the plaintiffs by themselves, their servants, agents and/or employees from grabbing, selling, alienating, re-planning and/or converting his portion to be a public utility with intent of defeating his claim or interest.
  - d. costs of the counterclaim;
  - e. Any other relief that this honourable court may deem fit to grant.

## **Evidence**

### **The Plaintiff's Case**

7. When the case came up for hearing, Fredrick Kirui Killen (P.W.1) relied on his statement filed on 14<sup>th</sup> February, 2014 after it was adopted as his evidence in chief. He informed the court that he is the chairman of Marigat Group Ranch (1<sup>st</sup> plaintiff); that the group ranch owns the parcel of land known as Baringo/Marigat 1; that the group ranch was registered as the proprietor of the suit land on 7<sup>th</sup> October 1994. He produced the green card for suit land as Pexbt 2.
8. He informed the court that the group ranch has 333 members all of whom are entitled to a share of the suit land and that the defendant is not a member of the group ranch.
9. He acknowledged that Kipkulei Kimibei is a member of the group ranch; member number 256; but stated that they have never been made aware that the defendant is the administrator of the estate of the deceased.
10. further informed the court that in December 1994, they were given authority by the Director of Land Adjudication and Settlement to dissolve the group ranch.
11. In 1995, the Land Adjudication Officer gave them authority to subdivide the suit land among the members of the group ranch.
12. Upon obtaining authority to subdivide the suit land, they went before the Land Control Board and obtained consent to subdivide the land.



13. further informed the court that the defendant trespassed and occupied the portion of the suit land allocated to member number 256 despite the group ranch having written to him asking him to vacate the land. He produced the following documents in evidence:- Certificate of Incorporation; green card for the suit land; map for the suit land; Marigat Group Ranch Members Register; letter dated 1<sup>st</sup> December, 1994; letter dated 15<sup>th</sup> June, 1995; letter of consent from land control board, dated 14<sup>th</sup> December, 2011; letter dated 26<sup>th</sup> August, 2013; letter dated 17<sup>th</sup> January, 2013 and minutes of a meeting held on 14<sup>th</sup> May, 2012 as Pexbt 1 to 11 respectively.
14. In cross examination, he stated that the portion of land occupied by the defendant is not the portion meant for Kipkulei Kimibei for the reason that they were yet to confirm which member is to occupy which parcel of land.
15. He acknowledged that Kipkulei Kimibei has a family and admitted that his share of the suit property should go his family.
16. On whether the officials of the group ranch have authority to bring a case against the defendant, he stated that the officials have authority to bring a case against the defendant because they have not subdivided the land and allocated it to members.
17. He further acknowledged that the portions the members currently occupy/live on is what they will be allocated.
18. In re-examination, he stated that they have sued the defendant as a trespasser because he is not a member of the group ranch.
19. He stated that they filed the case as representatives of the group ranch.
20. Despite having obtained authority to dissolve the group ranch, he informed the court that they were yet to dissolve it because they had not completed the exercise of subdivision of the land.
21. He maintained that the portion allocated to Kimibei Kipkulei is not the one occupied by the defendant.

### **The Defendant's Case**

22. The defendant who testified as D.W.1, relied on his statement recorded on 16.6.2014 after it was adopted as his evidence in chief.
23. He produced the documents contained in his list of documents filed on 6<sup>th</sup> March, 2014 as Dexbt 1 to 4 respectively. These are:- Grant of letters of administration (not attached); extract of register of members of the 1<sup>st</sup> plaintiff; chief's letter dated 21<sup>st</sup> February, 2014 confirming beneficiaries of the estate of Kipkulei Kimibei (defendant is listed as a brother of the deceased); letter allegedly written by the group representatives to Mrs. Carren Chemusian dated 10<sup>th</sup> September, 2013, (the defendant is listed as a beneficiary of the estate of Samwel Kipkulei Kimibei) but the letter is not signed.
24. The defendant reiterated that his entry into the suit land was with permission of Kipkulei Kimibei, who was his cousin in 2001 (evidence contradicts the evidence in the documents he produced showing that he is a brother to the deceased).
25. During subdivision and survey of the land the group ranch officials said they did not recognize him and told him to vacate.
26. In cross examination, he stated that the portion of the suit property he occupies belongs to him by virtue of having been given it by his late cousin.



27. He admitted that he is not a member of the group ranch but stated that his cousin who was a member told him to continue living in the land.
28. He acknowledged that by the time Kipkulei died on, 20<sup>th</sup> December, 2008, he had no title to his portion of the suit land.
29. He admitted that in 2014 he was charged in court for selling a portion of the suit land but was acquitted.
30. He obtained a title in respect of the portion of the suit land through a succession cause for the estate of Kipkulei. He did so despite there having been a court decision restraining dealing with the suit land. (Proceedings in the succession cause not produced in evidence).
31. He produced grant of letters ad litem allowing him to defend himself in this suit as Dexbt 2.
32. He stated that he had not obtained consent of the group ranch to acquire title deed for the suit property despite subdivision and survey of the entire suit land having been ongoing.
33. Concerning the alleged abuse of office by the official of the group ranch, he stated that he did not report them to the Group Representatives Registrar.
34. He admitted that the developments shown in the photographs which were produced as P.exbt 9 by the plaintiffs, were erected by him.
35. He stated that he did not present the letters of administration issued to him in respect of Kipkulei's estate to the officials of the Group Ranch Representatives because there was bad blood between him and them.
36. On how he obtained a title for the suit land, he stated that he took the order to the lands office and was given a title deed.
37. Concerning Dexbt 3, he stated that the group ranch secretary refused to sign it.
38. In re-examination, he stated that he is the administrator of the estate of Kipkulei through succession process and that he obtained title for his portion of the suit land in 2019.
39. He acknowledged that the officials of the group ranch neither signed the transfer nor gave consent for him to transfer the suit land to himself because there was bad blood between them and the family of Kipkulei.

### **Consolidation**

40. On 5<sup>th</sup> March 2019 file No.49 of 2022 was consolidated with ELC Case No. 49B of 2022 (Formerly Eldoret ELC Case No.416 of 2015) - Joshua Kisenger v Daniel Kiptulwo.

### **Introduction:**

41. Iten ELC Case No. 49B of 2022 was instituted by Joshua Kisenger (suing on behalf of the estate of Kipkulei Kimibei) (deceased). It was filed on 18<sup>th</sup> November 2015.
42. The plaintiff in that suit, Joshua Kisenger, described himself as one of the administrators of the estate of Kipkulei Kimibei (deceased) and as a resident on the deceased's land comprised in Baringo/Marigat/1 registered in the name of Marigat Group Ranch.
43. The plaintiff complained that the defendant in that suit, in collusion with persons unknown to him, had excised a small portion of land measuring 50 feet by 100 feet from the deceased land and that upon arbitration by family members, the defendant agreed to relocate.



44. The plaintiff lamented that despite admission of encroachment on the suit land and committing to vacate, the defendant refused and/or neglected to heed his commitment rendering the suit inevitable.
45. The plaintiff sought judgment against the defendant for:-
  - a. An order to vacate;
  - b. An order for eviction and demolition of the temporary structure thereon;
  - c. An order of permanent injunction restraining the defendant by himself, his agents, his servants, agents and/or employees from entering, trespassing, building thereon, selling or in any other way interfering with his enjoyment of his parcel of land;
  - d. Costs of the suit;
  - e. Any other relief that this honourable court may deem fit to grant.
46. The defendant filed a statement of defence dated 8<sup>th</sup> December 2015 denying the allegations levelled against him and contending that being the son of Joseph Kiptulwo Ndaramot (deceased), member No. 193 in marigat group ranch, he was entitled to the suit property.
47. The defendant further contended that the plaintiff lacked locus standi to file the suit against him as the right to recover it vests with the group representatives.
48. The defendant further contended that because the plaintiff admits the demarcation process is in progress, his suit is premature.
49. The defendant further pleaded that he is aware of Eldoret Suit No. 42 of 2014 between the plaintiff and the group ranch in which the plaintiff was ordered not to interfere in any manner with the demarcation process lest he faces contempt of court proceedings.
50. Arising from the foregoing, the defendant urged the court to dismiss the suit with costs to him.

## **Evidence**

### **The Plaintiff's Case**

51. When the suit came up for hearing, the plaintiff, Joshua Kisenger, relied on his evidence adduced in Iten ELC No.49/2022 after it was adopted as his evidence in the suit. He also relied on his statement recorded and signed on 21<sup>st</sup> October 2015 after it was adopted as his evidence in chief. He produced the documents filed on 18<sup>th</sup> November 2015 as Pexbt 1-3; and those in his further list of documents as Pexbt 4 to 8. These are:- limited grant of letter of administration; register of members, demand notice, letter dated 17<sup>th</sup> October, 2018; letter dated 5<sup>th</sup> April, 2017, letter dated 11<sup>th</sup> February, 2014, letter of administration as Pexbt 1-8.
52. He informed the court that the portion excised by the defendant measuring 50 by 100 feet belongs to him but was at the time being occupied by the defendant; that the defendant is not a member of the group ranch; that the defendant's father is a member of the group ranch, member number 193; that his land and the defendant's land is separated by the main Nakuru-Marigat road and that the defendant's family encroached on their land in 2010 before survey was done; Further, that he called the defendant's father and some elders and the defendant and his brothers vacated the land but the defendant refused to demolish the structures he had constructed on the suit land, that the suit land is not a commercial plot because there has never been a meeting by the County Government to set it aside as such.



53. In cross examination, he stated that the plot in dispute was given to member number 256 by the group ranch. He maintained that the defendant's father, elders and himself held a meeting where the defendant and his brothers were asked to leave; that he is not aware of any suit where the group ranch has sued the defendant; that the group ranch is on the side of the defendant; That the 15 acres have not been surveyed by the group ranch; that he is aware of a meeting held in 2015 where the chief of the area asked everyone to continue occupying the portions they had settled on; that as per Pexbt 6, the parcel in dispute is within the area that had been set aside as a centre by the group ranch; that there are other people who have shares in the centre and that Pexbt 7 does not mention the defendant.
54. In re-examination, he stated that he filed the case when the defendant had already been removed from the suit land by elders; that the defendant left structures on the suit land which he wants him to be ordered to remove from the suit land; that the area that had been set aside by the group ranch is inside the plot in dispute; that they were not consulted by the group ranch when they set aside the land as a centre.
55. Samson Kandagor, relied on his witness statement recorded and signed on 26<sup>th</sup> April, 2019 after it was adopted as his evidence in chief.
56. He informed the court that he is a member of Marigat Group Ranch, No.92. He has 27 acres from the group but does not have title; that some members have titles while others do not have titles; that the defendant and his brothers, after a meeting held in 2008 left the land of the late Kipkulei Kimibei but Daniel Kiptulwo left some structures thereat. He urged the court to order the defendant to remove the structures.
57. In cross-examination, he stated that he had not brought any evidence showing the meetings held on 15<sup>th</sup> June 2008 and 6<sup>th</sup> August 2015 took place; that during the 1<sup>st</sup> meeting of 2008 the late Kipkulei was alive; that he had gone to the meeting with the plaintiff to complain about the defendant and his brothers. He stated that during the 2<sup>nd</sup> meeting Kipkulei had passed on. In that meeting, no document was presented by the plaintiff showing that the late Kipkulei had given him the suit land.
58. He acknowledged that the plaintiff is not a member of the group ranch but stated that the land in dispute is the one given by the group ranch to the late Kipkulei.
59. He further stated that in the two meetings, they did not invite the group ranch officials to participate in the meeting which was about ownership of the suit parcel.
60. He admitted that he is not an official of the group ranch and neither was any member of the group ranch present in the meeting.
61. In re examination, he stated that the late Kipkulei's next of kin was the plaintiff and that the plaintiff is the only family member he knows.
62. He stated that in the meeting held in 2008 and 2015, they discussed who was the rightful person to occupy the land belonging to Kipkulei.

### **The Defendant's Case**

63. D.W.1, Toroitich Kiptulwo, relied on his his witness statement recorded and signed on 8<sup>th</sup> December 2015 after it was adopted as his evidence in chief.
64. He stated that he does not live on the land in dispute and that he does not have any structures thereat. He lives in his father's land plot No.193.



65. In cross examination, he stated that he knows the plaintiff; that they are not neighbours with the plaintiff; that they live about 2 km apart and that his family was given agricultural and commercial plots measuring 50 by 100 feet at Tabarbangetuny Centre.
66. He stated that the commercial plot and the agricultural plot are together in one place that all the land in the area belongs to the group ranch and the plaintiff cannot sue him over land that does not belong to him.
67. He informed the court that he entered the plot in 2007 and built one room which he rented out; that he no longer lives on the disputed parcel; that the house he erected there was demolished by the plaintiff's children. He stated that the plots at the Centre are occupied by members of the group ranch; that his father has a plot at the Centre as does the treasurer of the group ranch; that they have not filed a succession cause for the estate of his late father and that he is not an administrator of the estate of his father.
68. In re examination, he stated that his father was member number 193 in the group ranch; that his father was given agricultural land and a commercial plot; that the group ranch has never asked them to vacate the land they have settled on in Tabarbangetuny. The agricultural land is located in a different place from the commercial plot.
69. He stated that his house that was demolished had been built on plot No. 193; that no group ranch official had ever told him to vacate the land where he had built his house and that he did not demolish his house.
70. At end of hearing, parties filed submissions which I have read and considered.

### **Submissions**

71. In their submissions filed on 5<sup>th</sup> May 2023, the plaintiffs have identified the following as the issues for the court's determination in Iten ELC No.49 OF 2022:-
  - a. Whether the plaintiffs have demonstrated that the defendant is a trespasser on the suit property
  - b. Whether the defendant's counterclaim has merit
  - c. What orders can issue
72. On the first issue, it is submitted that the evidence adduced shows that the suit land belongs to the 1<sup>st</sup> plaintiff and that the defendant is not a member of the 1<sup>st</sup> plaintiff, entitled to a share of the 1<sup>st</sup> plaintiff's property. The defendant is said to have failed to comply with the applicable law and procedures in his purported acquisition of interest in the suit property. In view of the foregoing the court is urged to find that the plaintiffs' have proved their case against the defendant and to declare the defendant a trespasser into the suit land.
73. On whether there is merit in the defendant's defence and counterclaim, it is submitted that the defendant lacks locus standi to bring and prosecute the counterclaim as he is neither a member of the 1<sup>st</sup> plaintiff nor a legal representative of a member of the 1<sup>st</sup> plaintiff. Reliance placed on the cases of Priscilla Jesang Koech v Rebecca Koech & 3 others [2018] eKLR; Julian Adoyo Ongunga & another v Francis Kiberenge Bondeva suing as the administrator of the estate of Fanuel Evans Amudayi, deceased, [2016] eKLR.

### **Analysis and determination**

74. The following facts of this case are either common ground or uncontroverted:-



- i. That the suit property belongs to Marigat Group Ranch (1<sup>st</sup> Plaintiff)
  - ii. That the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Plaintiffs were at all times material to this suit the officials of the 1<sup>st</sup> Plaintiff;
  - iii. That the 1<sup>st</sup> plaintiff has 333 members
  - iv. That the defendant is not a member of the group ranch;
  - v. That the defendant's claim to entitlement of a portion of the suit land is tied to member Kipkulei Mibei, (now deceased), who was a member of the group ranch.
  - vi. That the 1<sup>st</sup> plaintiff obtained authority from director of Lands and Settlement to sub-divide the suit land and share it among its members;
  - vii. That the exercise of sub-division and distribution of the suit land to the members had not been concluded when this suit was filed;
  - viii. That the circumstances leading to filing of this suit were that the officials of the Group Ranch had issued the defendant with a notice to vacate the portion of the suit land he occupied but the defendant had refused to heed the notice claiming that he was entitled to the portion having been given it by Kipkulei Mibei (deceased);
  - ix. That at the time of filing of the suit, the defendant was not the legal representative of the estate of Kipkulei Mibei;
  - x. That vide a ruling delivered on 23<sup>rd</sup> October 2014 in Eldoret ELC No. 42 of 2014, the court stopped the defendant from interfering with the process of subdividing the suit land and allocating it to its members.
  - xi. There is evidence that during the pendency of this suit, the defendant caused himself to be appointed the administrator of the estate of Kipkulei Mibei and on the strength of the grant of letters of administration issued to him, transferred a portion of the suit land measuring 15 acres to himself without consent and/or involvement of the officials of the group ranch. The defendant did so in 2019 (at least going by his oral evidence, which this court has no reason to doubt).
75. There being evidence that the land in question belongs to the 1<sup>st</sup> plaintiff, it is only the 1<sup>st</sup> plaintiff through its officials who could authorize dealings with the suit land.
  76. The dealings with the suit land by the defendant without the consent or permission of the officials of the 1<sup>st</sup> plaintiff and in disregard of the decision of the court which had barred him from interfering with the process the plaintiffs were undertaking was illegal and unlawful.
  77. Instead of taking the law into his own hands and dealing with the suit land without involvement and/or sanction of the 1<sup>st</sup> plaintiff's officials, the defendant ought to have invoked the dispute resolution mechanism provided for under the Land (Group Representatives) Act, CAP.287 to resolve the dispute that existed between him and the officials of the group ranch.
  78. The court does not take it lightly that the defendant transferred the suit land to himself in what appears to be blatant disobedience of the decision of the court made in 2014 stopping him from interfering with the process of subdivision and sharing of the suit land amongst the members of the group ranch.
  79. In its ruling, the court acknowledged the defendant's right to be on the portion belonging to his benefactor, Kipkulei Kimibei as long as the family of Kipkulei were not opposed to his occupation of



Kipkulei portion of the suit land but acknowledged that the process of land sub-division and survey need not conform directly to what each member was occupying. In that regard the court stated:-

“The Group Ranch representatives have a mandate to carve out titles to each member. What each member will end up getting title to, does not necessarily have to conform directly to what such person is currently in occupation of. There will inevitably be some changes in occupation of the ground based on physical planning considerations and the need to accommodate the interests of all members.”

80. The court noted that the family of Kimibei Kipkulei had no problem with the ongoing demarcation process.
81. The action by the defendant of causing himself to be registered the owner of the portion he claimed to have interest in was clearly in violation of the group representatives mandate to carve out titles to each of its members taking into account the issues enumerated by the judge in his decision cited above.
82. The conduct of the defendant, in the circumstances, amounted to contempt of court, which this court frowns upon.
83. It is the considered view of this court that the defendant could only engage the officials of the 1<sup>st</sup> plaintiff on the entitlement of Kipkulei if and if only he was the personal representative of the estate of the deceased.
84. Having been neither a member of the group ranch nor a personal representative of the estate of Kipkulei, the defendant lacked capacity to engage the officials of the group ranch on matters touching on the estate of the deceased.
85. It is possible that the defendant will ultimately have some interest in the suit land, arising out of his relationship with the deceased. However, that has to await ascertaining of the interest of the deceased in accordance with applicable law and procedures. After the interest of the deceased in the suit land is ascertained, the defendant can at that time, lawfully stake his claim on the estate of the deceased comprised in the suit land. Until that is done, the defendant has no business interfering with the lawful discharge of the mandate of the 1<sup>st</sup> plaintiff's officials.
86. I think I have said enough to demonstrate that the plaintiffs have made a case for being granted the prayers sought in their plaint dated 14<sup>th</sup> February, 2014.
87. To give effect to this judgment, the title unprocedurally obtained by the defendant arising from the suit land is declared to be null and void. The land registrar is directed to cancel it forthwith in order to restore the suit land to the status it was when this suit was filed.
88. Regarding ITEN ELC 49B of 2022, although by the time the above suit was filed the defendant (Plaintiff in ELC 49B of 2022) had capacity to sue on behalf of the deceased, he cannot sustain the suit as long as it is premised on ownership of the suit land because the deceased's ownership of the portion of the suit land had not been ascertained. The suit land at the time belonged to the group ranch.
89. It is only the group ranch, through its officials which could sustain a suit premised on ownership of the suit land or a portion thereof. For that reason, I dismiss the defendant's suit (Plaintiff in ELC 49B of 2022) with costs.
90. Orders accordingly.

**JUDGMENT READ, DELIVERED, DATED AND SIGNED AT ITEN THIS 19TH DAY OF SEPTEMBER, 2023**



**L. N. WAITHAKA**

**JUDGE**

**Delivered virtually in the presence of:**

Ms. Moraa for the plaintiff.

Mr. Matoke for the defendant.

