



Chebiego & 5 others v County Land Registrar, Elgeyo Marakwet County & another; Bartilol (Interested Party) (Environment and Land Constitutional Petition E010 of 2022) [2023] KEELC 20498 (KLR) (3 October 2023) (Judgment)

Neutral citation: [2023] KEELC 20498 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ITEN

ENVIRONMENT AND LAND CONSTITUTIONAL PETITION E010 OF 2022

L WAIHAKA, J

OCTOBER 3, 2023

**IN THE MATTER OF ALLEGED DEPRIVATION OF PROPPERTY
CONTRARY TO ARTICLES 75 OF THE OLD CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF ALLEGED BREACH OF FUNDAMENTAL RIGHTS AND
FREEDOMDS CONTRARY TO ARTICLE 40 OF THE NEW CONSTITUTION**

AND

**IN THE MATTER OF ALLEGED CONTRAVENTION OF THE RIGHTS TO OWN
PROPERTY CONTRARY TO ARTICLE 40 OF THE CONSTITUTION OF KENYA 2010**

AND

IN THE MATTER OF LEGENUI CLAN

AND

IN THE MATTER OF REGISTRATION OF TITLES ACT CAP 281 LAWS OF KENYA

AND

IN THE MATTER OF REGISTERED LAND ACT CAP 300 LAWS OF KENYA

AND

IN THE MATTER OF ALLEGED FRAUDULENT ACTS

BETWEEN

GEORGE KANGOGO CHEBIEGO 1ST PETITIONER

SAMSON KIPLAGAT KANDIE 2ND PETITIONER

JAMES CHEROP KIMAIYO 3RD PETITIONER

RUTO CHUMO 4TH PETITIONER



JOHN KIBET KEMBOI 5TH PETITIONER

LEGENUI CLAN 6TH PETITIONER

AND

THE COUNTY LAND REGISTRAR, ELGEYO MARAKWET

COUNTY 1ST RESPONDENT

THE HON ATTORNEY GENERAL 2ND RESPONDENT

AND

WILLIAM BARTILOL INTERESTED PARTY

JUDGMENT

Introduction

1. The petitioners herein who have described themselves as members of Legenui clan residing in Koikowo village Kapsokom sub location within Elegeyo Marakwet County, filed this suit/petition seeking judgment against the respondents and the interested party (IP) for :-
 - a. A declaration that the registration of the IP as the registered proprietor of the parcel of land known as Elgeyo Marakwet/Lower Segu/294 (Suit Property) measuring approximately 20 acres was fraudulent, illegal and null and void;
 - b. A declaration that they (the petitioners) are the owners of the suit property in terms of one stone and two stones according to the clan sharing formula and the same be transferred to each family representative/petitioners;
 - c. An order directing the 1st respondent to rectify the register of the suit property by cancelling entry No.1 dated May 24, 2017 vesting title to the petitioners according to shares by stones in paragraph 17 of the petition.
 - d. A declaration that restoration of boundary be confirmed by the County Surveyor Elgeyo Marakwet maintaining sharing of each family of one (1) stone and (2) stones as done by ancestors of Legenui clan accordingly;
 - e. A permanent injunction restraining the respondents and IP, their agents, servants and/or employees from alienating, selling, trespassing, charging and dealing with the suit property measuring approximately 20 acres in any way and in any manner whatsoever;
 - f. A declaration that the IP's registration and his respective occupation of some shares of the suit property measuring approximately 20 acres, subsequent occupying petitioners shares respectively is illegal, null and void and of no effect in law and the same be cancelled accordingly;
 - g. An order directing that the suit property be registered in favour of the petitioners' family representative according to shares of one stone and two stones respectively;
 - h. That the respondents and the IP be ordered to pay damages to the petitioners with sum equivalent to the current value of the land, plus interest at commercial rates from May 24, 2017 to date for illegal/fraudulent registration and loss of user of the petitioners' shares of the



suit property and the same be assessed by Government Valuer for adoption by this honourable court.

- i. Such other and/or further relief as this honourable court may deem fit and just in the unique circumstances of this matter;
 - j. Costs and interest of the suit from the time of registration to time of judgement;
 - k. Any other order the honourable court may deem fit to grant.
2. It is pleaded that on May 24, 2017, the 1st respondent without consent or authority of the 1st to 5th petitioners, unlawfully and extra judiciously appropriated and registered the IP as the sole proprietor of the suit property.
3. The IP is said to have, without any justification and permission of the 1st to 5th petitioners, presented himself to the 1st respondent's offices and fraudulently registered himself as the proprietor of the suit property. The particulars of the pleaded breach of law and fraud by the respondents and the IP are provided in paragraph 24 of the petition thus:-
- a. Registering himself as a trustee without consent of other families;
 - b. Concealment of registration;
 - c. Fraudulently disposing a portion of the suit land;
 - d. Fraudulently and unprocedurally transferring the suit property thereby giving advantage to the Interested Party;
 - e. Rejecting the petitioners' plea of interference with his proprietary interest in a paragliding path without due regard to due process as guaranteed by article 47 of the constitution;
 - f. Conferment of a benefit on another's interest in land without due process of the law;
 - g. Benefit conferred in consequence of a fraudulent act;
 - h. Illegitimate use of administrative process to appropriate property and confer to the IP;
 - i. Appropriating the land fraudulently and allocation to the IP;
 - j. Abuse of trust bestowed on the respondents to benefit themselves and/or other;
 - k. Res ipsa loquitur.
4. The 1st and the 2nd respondents are accused of abuse of the trust vested in them by violating the requirements of Articles 73 and 74 of the Constitution of Kenya, 2010.
5. It is contended that by getting himself registered as the proprietor of the suit property, the IP acted illegally and against community interest in the suit property thereby violating the petitioners' rights under Article 40(3) of the Constitution.
6. It is the petitioners' case that boundary marks for each family's share are demarcated and intact on the ground.
7. Explaining that they were not aware of the registration of the IP as the absolute proprietor of the suit property, the petitioners have pleaded that the IP took advantage of closure of Elgeyo Marakwet Land Adjudication Process in 2001 when all people in the area were waiting for titles to be issued in joint names to fastrack subdivision.



8. The petitioners lament that their attempts to get the IP to surrender the title for the suit property for cancellation and fresh registration reflecting the interests of the families entitled to the suit property have been futile.
9. It is the petitioner's case that owing to the IP's breach of their right to own property, they have suffered loss and damage hence the need for court's protection.
10. The 1st and the 2nd respondents filed a response to the petition dated February 27, 2023 denying the allegations contained in the petition and contending that no evidence of violation of the petitioners' constitutional rights and freedoms has been tendered.
11. Terming the petition frivolous, mischievous, scandalous, untenable and one that discloses no cause of action or raises any constitutional issue(s), the 1st and 2nd respondents label the petitioners as busybodies looking for unjust compensation by hoodwinking this honourable court.
12. The IP filed the affidavit (replying) he swore on 14th March 2023. In the affidavit, the IP has inter alia deponed that he was registered as the proprietor of the suit property pursuant to the procedure of land adjudication provided for under the [Land Adjudication Act](#) (LAA), Cap 284 Laws of Kenya; that he holds the suit property in trust for his family Kapsulei and three other families; that prior to issuance of the title for the suit property, he invited the petitioners family and his cousins for a way forward concerning the shares he was holding in trust for other families and that they met and agreed on how the suit property was to be shared among the four families that were entitled to it.
13. Terming the petitioners dishonest and as persons in a fishing expedition, the IP contends that the petitioners should have used the procedure provided in the LAA to challenge is registration as the proprietor of the suit property.
14. The IP contends that the issues raised in the suit ought to be raised by way of an ordinary civil suit and oral evidence given to prove the issues raised.
15. Pursuant to directions given on March 22, 2023, to the effect that the petition be disposed off by way of written submissions, parties filed submissions which I have read and considered.

SUBMISSIONS

Petitioners Submissions

16. The petitioners have submitted that the IP has through his replying affidavit paragraphs 4, 5 and 7 admitted that he is a member of Legenui clan and vide paragraphs 10, 22, 26 and 32 thereof, admitted that his registration as the proprietor of the suit property is subject of a trust in favour of the various families comprising the clan (Kipkunurmet/Kipmugung, Che-mugo/Chemaiyo, Kipsulei and Kimaity. The acknowledgement of those facts by the I.P is said to be in line with the petitioners' pleaded claim and proof that the suit property is subject of a customary trust in favour of the petitioners.
17. The petitioners are also said to have proved that the IP secretly, fraudulently and unlawfully had the entire suit property registered in his name yet it was communal land.
18. Maintaining that the suit property is subject to a trust in their favour, the petitioners urge the court to grant the prayers sought and to subdivide the suit property in the manner proposed in the petition.



1st and 2nd Respondents Submissions

19. In their submissions filed on June 13, 2023, the 1st and the 2nd respondents have submitted that the petitioners have not proved the pleaded fraud against the 1st respondent to the required standard of proof and at all.
20. It is further submitted that adjudication of the suit property was done procedurally and lawfully, pursuant to the LAA, Cap 284 Laws of Kenya.
21. Maintaining that the applicable law and procedures were complied with in registration of the IP as the registered proprietor of the suit property, the 1st and the 2nd respondents contend that if the petitioners were aggrieved by the adjudication process, they ought to have challenged it through the procedure provided for under the LAA.

Analysis and determination

22. From the pleadings, I find affidavit evidence and the submissions filed, the sole issue for the court's determination to be whether the petitioners have made up a case for being granted the orders sought or any of them.
23. Concerning this issue, the affidavit evidence tendered by both parties shows that the IP was registered as the proprietor of the suit property pursuant to the process of land adjudication provided for under the *Land Adjudication Act*, Cap 284 Laws of Kenya. There is no proof of any wrongdoing by the respondents and the IP in registration of the suit property in the name of the IP.
24. While it is true that the IP acknowledges that his registration as the property of the suit property is not absolute but subject to a trust in favour of other family members, that acknowledgement is not proof of the pleaded fraud and illegality in the registration of the IP as the proprietor of the suit property.
25. It is trite law that parties are bound by their pleadings. The petitioners' having urged their case based on the pleaded fraud and illegality in the registration of the suit property in the name of the IP. The burden was on them to prove that the registration of the IP was indeed done fraudulently and illegally. No evidence whatsoever was adduced capable of proving the pleaded fraud and illegality in the registration of the suit property in the name of the IP. The mere fact that the registration of the IP as proprietor of the suit property is subject of trust in favour of others is not proof of fraud or illegality in the registration of the IP as the proprietor.
26. The Petitioners having failed to prove their pleaded case to the standard required by law at all, I find the Petition to be lacking in merits and I dismiss it with costs to the respondents and IP.
27. Orders accordingly.

DATED, SIGNED AND DELIVERED AT ITEN THIS 3RD DAY OF OCTOBER, 2023

L. N. WAITHAKA

JUDGE

Judgement delivered virtually in the presence of:-

Ms Cherop holding brief for Mr. Kigen for the petitioners

Ms Chelagat holding brief for Ms Rutto for the respondents

No appearance for the interested parties



