



REPUBLIC OF KENYA



**John Cheptum & 3 others v Kitum Chesang & 4 others (Environment and Land Case Civil Suit 53 of 2022) [2022] KEELC 4796 (KLR) (7 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 4796 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ITEN  
ENVIRONMENT AND LAND CASE CIVIL SUIT 53 OF 2022**

**L WAITHAKA, J**

**JULY 7, 2022**

**BETWEEN**

**JOHN C CHEPTUM ..... 1<sup>ST</sup> PLAINTIFF  
KENNETH KIPRUTTO KIPSANG ..... 2<sup>ND</sup> PLAINTIFF  
JOSEPH CHESIRE ..... 3<sup>RD</sup> PLAINTIFF  
JAMES YATOR ..... 4<sup>TH</sup> PLAINTIFF**

**AND**

**FREDRICK KITUM CHESANG ..... 1<sup>ST</sup> DEFENDANT  
JOHN CHEBET ARAP CHEMISTO ..... 2<sup>ND</sup> DEFENDANT  
CHERONO CHEBOI ..... 3<sup>RD</sup> DEFENDANT  
JOSEPH EGO ..... 4<sup>TH</sup> DEFENDANT  
JOSEPH KIPKNG'ENY ..... 5<sup>TH</sup> DEFENDANT**

***(FORMERLY ELDORET ELC CASE NO 238 OF 2015)***

**RULING**

**Introduction**

1. This suit was filed on August 24, 2015. It relates to land described as “land at the lower and upper sides of the Kabarnet-Iten road at Rokocho village”. The plaintiffs’ brought the suit seeking to be declared the owners of the land as representatives of Kakibii family. They also sought an order of permanent injunction to restrain the defendants from interfering with their ownership of the suit land.
2. Alongside the plaint, the plaintiffs’ filed a notice of motion seeking a temporary injunction to restrain the defendants from interfering with the suit land pending the hearing and determination of the suit.



3. *Vide* a ruling delivered on January 25, 2017 my brother Ombwayo J, rendered himself as following concerning the plaintiffs' application for temporary injunction:-

“I have considered the supporting affidavit, replying affidavit and rival submissions and do find that both parties are claiming to own the suit land which appears unadjudicated. Before adjudication, issues of ownership and irreparable harm are not justiciable and therefore the court can only determine the application on a balance of convenience which tilts towards maintaining the *status quo* as both parties are claiming ownership of the land. The balance of convenience tilts towards an order preserving the land described as Kakibii family land at the lower and upper sides of the Kabarnet Iten-road at Rokocho village. Both parties are restrained from selling the land and developing the same but should occupy the same as it is on the ground pending the hearing and determination of the suit.”

### **Notice of motion dated March 3, 2022**

4. On March 9, 2022, the defendants filed the notice of motion dated March 3, 2022 praying that the suit herein be struck out and costs be awarded to them at an higher scale.
5. The motion is premised on the grounds that the suit is guided by the provisions of the [Land Adjudication Act](#) (LAA) and the [Land Consolidation Act](#); that the suit land is community land which is under adjudication and that the plaintiffs did not seek the consent of the Land Adjudication Officer as by law required before instituting the claim in court.
6. It is the defendants' case that this court lacks jurisdiction to entertain the suit and that the suit is an abuse of the court process as the subject matter of the suit has not been fully redressed under the LAA. It is pointed out that injunction orders were issued on January 25, 2017.
7. The motion is supported by the affidavit of the 1<sup>st</sup> defendant, Fredrick Kiptum Sang, sworn on March 3, 2022, in which the grounds on the face of the application are reiterated. Annexed to the affidavit is a notice of establishment of an adjudication section and the ruling delivered on January 25, 2017, among other documents.
8. The application is opposed on the ground that the suit was filed before the area in which the subject matter of the suit is situated was declared an adjudication section, among other grounds.
9. Pursuant to directions given on May 17, 2022, the application was disposed of by way of written submissions.
10. In their submissions, the defendants have basically reiterated their contention that the suit is bad in law for want of the consent of Land Adjudication Officer for the area in which the land is situated. They defendants also fault the plaintiffs for having failed to exhaust all the available dispute resolution mechanisms before filing the suit.
11. On their part, the plaintiffs have asserted that the suit was filed before the area in which the suit land is situated was declared an adjudication section. Based on a letter from the Land Adjudication and Settlement Officer, Keiyo, dated March 15, 2017, the plaintiffs claim to have obtained the consent required under sections 8 and 30 of the LAA.
12. I have carefully read and considered the rival submissions by the respective parties and the authorities cited by the defendants in support of their case and find the sole issue for determination to be whether the defendants have made up a case of being granted the orders sought.



13. With regard to that question, I begin by pointing out that the evidence attached to the defendants' supporting affidavit namely the plaint dated August 20, 2015, the notice of establishment of an adjudication section-for Rokocho Adjudication Section and the ruling delivered on January 25, 2017 show that this suit was in existence way before the area in which the suit property is located was established as a land adjudication area under LAA.
14. Although before adjudication of the suit land, issues of ownership of the land were not justiciable; I do find as a fact that at the time the plaintiffs filed this suit there existed a dispute between the plaintiffs and the defendants that required resolution by the court. I also find as a fact that the court provided the parties reliefs that it deemed fair and just in the circumstances of the case. For those reasons, this court rejects the invitation by the defendants to fault the plaintiffs for having moved to court to seek reliefs. That notwithstanding, I do find that during the pendency of the suit, there was change of circumstances concerning the suit land; the suit land was declared an adjudication area, effectively bringing all issues concerning it under the legal regime contemplated in the LAA. The parties appears to have failed to appraise the court of that development before it delivered its ruling in the application for temporary injunction. In my considered view, if the court was informed of the changed circumstances, it may not have ordered for maintenance of status quo pending the hearing and determination of the suit as the suit appears to have been overtaken by events. The area having been declared an adjudication section, the plaintiffs' claim is better handled through the procedure contemplated under the LAA. In the event the plaintiffs' or even the defendants are not satisfied with the outcome of the process, they still have a chance to bring the suit a fresh but in strict compliance with the requirements of the *Land Adjudication Act*.
15. For the foregoing reasons, I am inclined to allow the motion in terms of prayer 1.
16. Concerning the prayer for costs, having determined that the plaintiffs' cannot be faulted for having brought the suit as they had a genuine dispute for resolution by the court and the case having ended without a decision on its merits, I order that parties bear their own costs of the suit.
17. Orders accordingly.

**DATED, SIGNED AND DELIVERED, AT ITEN THIS 7<sup>TH</sup> DAY OF JULY 2022.**

**L. N. WAITHAKA**

**JUDGE**

