



**Chelagat v National Land Commission & 2 others (Environment & Land
Case 12 of 2023) [2025] KEELC 3705 (KLR) (9 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3705 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 12 OF 2023**

**A OMBWAYO, J
MAY 9, 2025**

BETWEEN

ROBERT KIPROP CHELAGAT PLAINTIFF

AND

NATIONAL LAND COMMISSION 1ST DEFENDANT

BARINGO COUNTY & ANOTHER 2ND DEFENDANT

RULING

Brief Facts

1. Spent.
2. Spent.
3. That the court be pleased to extend orders issued on 17th October, 2023 of status quo by restraining the 4th Defendant and the Deputy County Commissioner Baringo County from trespassing, entering into, interfering with the 2nd Plaintiff's possession of land parcel No.Sacho/Kabasis/86 pending the hearing of the suit.
4. That the OCS Sacho Police Station to ensure compliance of the orders.
5. That the consent order between the 1st Plaintiff and the Defendants entered on 22nd May, 2018 and the resultant ruling delivered on 5Th May, 2021 and consequential orders be set aside. The Application was based on grounds set out and supported by the Affidavit of IBRAHIM KIPRONO the 1st Plaintiff herein sworn on 20th March, 2025. He stated that on 26th September, 2025(sic) he was enjoined as the 2nd Plaintiff and directed to file the necessary pleadings. He further stated that he has been in possession of the suit land as children of Isaac Kipyego Chelagat (deceased). He stated that the court on 17th October, 2023 had ordered that the status quo of the land be maintained. He added that on 21st March, 2025, the 4th Defendant in conjunction with the Assistant County Commissioner



incited a group of goons who invaded the suit property and fell trees and ploughed the suit land. He also stated that the consent orders entered between the 1st Plaintiff and Defendants ought to be set aside to allow the matter be heard on merit.

Response

6. The 4th Respondent through its chairman of the Board of Management by Kipruto Laktano filed a Replying Affidavit sworn on 3rd April, 2025. He averred that the application was devoid of merit and should be dismissed. He averred that the application sought to extend a non-existent status quo orders issued on 17th October, 2023. He averred that the status quo orders were issued at the time of filing the application after which the file was then transferred to the present court. He further averred that the application was heard and dismissed and thus the status quo orders stood vacated. He averred that after dismissal of the application, the 4th Defendant took immediate possession of the suit land. He averred that granting of the said orders would amount to constructive eviction against the 4th Defendant. He also averred that public interest militates against the orders sought since the learners are utilizing the classrooms on the suit land and would be adversely affected. He averred that the 4th Defendant owned the suit property having been issued a title deed by dint of the consent order. He urged the court to dismiss the application with costs.

Submissions

7. Counsel for the 2nd Plaintiff filed his submission dated 2nd May, 2025 where he identified two issues for determination. The first issue was whether the consent entered on 22nd May, 2018 and all consequential orders ought to be set aside. He relied on the case in *Hirani V Kassam* [1952] 19 EACA 131 and the case of *Sebel District Administration V Gasyali* [1968] EA 300, 301-302. He submits that a contract could be set aside where it is demonstrated that it was entered into as a result of fraud, mistake, material non-disclosure or concealment of material facts and/or duress. He submits that the Applicant has demonstrated that the suit land had devolved to 3 other persons including the estate of Isaac Chelagat showed that there was non-disclosure of their failure to be joined in the proceedings thus the court was misled in entertaining the consent. He argues that the portion alienated to the Defendants was a portion occupied by the Applicant and they would be prejudiced unless the consent and consequential orders are set aside and the Applicant be allowed to ventilate his case. It was counsel's submission that at the time the consent was entered the land was registered in the names of Cherono Kipnyonyei (deceased) whom the Plaintiff was the administrator. He submits that the Defendant's counterclaim was in relation to land that belonged to Laban Rono which land he had given the 4th Defendant. It was his submission that the said Laban was never joined in the proceedings so that the court could determine that he could not alienate land that belonged to a deceased person before succession was concluded. He argues that the Plaintiff could only settle liabilities incurred by Cherono.
8. He submits that it was therefore a fallacy for the Defendants to argue that liabilities of Laban were liabilities of Cherono. He submits that alienation of the land directly from the estate of Cherono to the Defendants was unprocedural. He adds that alienation of the suit land to the Defendants could only be done upon completion of transmission which was upon one acre being registered in favour of
9. Laban. He relied on Section 82 and 83 of the *Law of Succession Act* and the case in *Re Estate of Makhoha Idris* (2019) eKLR. He submits that the powers of the Plaintiff as an administrator was limited to settling debts and liabilities incurred by Cherono alone and not Laban. He submits that the 2nd Plaintiff having been enjoined to the suit, the proceedings ought to be re-opened and be allowed to ventilate his case which could not be done unless the consent was set aside.



10. The second issue was whether the injunctive orders and or orders of status quo ante ought issue pending hearing of the suit. He relied on the case of *Giella V Cassman Brown* (1973) EA 358. He further relied on a number of cases including *Mugah V Kunga* [1988] KLR 748 and *Pius Kipchirchir Kogo V Frank Kimeli Tenai* [2018] eKLR. He submits that the Applicants have been in possession of the suit property and that the Respondents only recently moved to assume possession of the suit land during pendency of the proceedings. He submits that the Defendants could not at this stage assert rights over the portion of the suit property on the strength of a title deed that was the product of the impugned consent currently being challenged.
- 11'. Counsel for the 4th Defendant on the other hand filed his submissions dated 2nd May, 2025 where he identified one issue for determination being whether the 2nd Plaintiff met the threshold for setting aside a consent order. Counsel submits in the negative and argues that no evidence had been led in the instant application to warrant setting aside of the consent. He relied on the case of *Kenya Commercial Bank Limited V Benjoh Amalgamated Limited & Another* [1998] KECA 236 (KLR) and submits that the court could not interfere with a consent judgment except in very rare circumstances. He submits that in the affidavit of Nicholas Kipchumba Yegon being the biological son of Isaac Chelagat whom Ibrahim was the personal representative confirmed that the consent order reflected the family wishes that the school be given Laban's land. He argues that the 2nd Plaintiff has no legitimate interest in the disputed portion granted by the 4th Defendant. He further submits that the consent sought to be set aside no longer existed as it had been implemented through the vesting order that permitted the Deputy Registrar to sign the transfer instrument in the event the Plaintiff defaulted. He added that the consent orders were implemented and new titles were issued. He cited the case of *Catherine C Kittony V Jonathan Muindi Dome & 2 Others* [2019] eKLR.
12. It was his submission that the 2nd Plaintiff's allegation that the consent was made outside the 1st Plaintiff's mandate amounted to approbating and reprobating at the same time. He argues that by dint of the consent order, the 4th Defendant became a creditor of the stated as she was acknowledged by the administrator through the consent and thus held a valid decree against the estate. He relied on the case *In Re Estate of Francis Andachila Luta (Deceased)* KEHC 16900 (KLR). He argues that this court lacked the jurisdiction to question the validity of the exercise of the powers of the administrator under Sections 82 and 83 of the [Law of Succession Act](#) thus outside this court's mandate. He relied on the case of *Isaac Kinyua & 3 Others V Hellen Kaigongi* [2018] eKLR.

Analysis and Determination

13. This court has carefully considered the application and the main issue for determination is whether the application is merited.
14. *Board of Trustees National Social Security Fund v Micheal Mwalo* [2015] KECA 782 (KLR) the court held as follows:

“A Court of law will not interfere with a consent judgment except in circumstances such as would provide a good ground for varying or rescinding a contract between parties. To impeach a consent order or a consent judgment, it must be shown that it was obtained by fraud, or collusion or by an agreement contrary to the policy of Court.”
15. Similarly, in the case of *Brooke Bond Liebig Ltd v Mallya* [1975] EA 266, it was held that: “A court cannot interfere with a consent judgment except in such circumstances as would afford good ground for varying or rescinding a contract between the parties.”



16. It is not in dispute that the court having established that the 2nd Plaintiff had an identifiable stake in the matter and proceeded to have him enjoined as a party to this case on 26th September, 2024. It is also not in dispute that the consent dated 22nd May, 2018 giving the 4th Defendant a portion of the suit property was entered into when the 2nd Plaintiff was yet to be made a party.
17. It is this court's view that it would only be in the interest of justice that since the 2nd Plaintiff is now a party, that he be given an opportunity to be heard on merit as he had no say at the time the consent was entered into. In the circumstances, it is my inclination that the consent dated 22nd May, 2018 be set aside.
18. On the issue of status quo orders, it is this court's view that the same is rather misplaced as there was no status quo orders in place issued by this court to warrant extension. It is noteworthy that the status quo dated 17th October, 2023 orders were given by the court in Eldoret for purposes of the transfer of the matter.
19. The upshot of the foregoing is that the instant application partially succeeds in terms of prayer (5) only. It is so ordered. The matter is hereby transferred to the Environment and Land Court Iten for determination of the main case on merit. It is so ordered.

SIGNED BY: HON. JUSTICE ANTONY O. OMBWAYO

