



REPUBLIC OF KENYA



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**Sawe v Kosgei & another (Environment & Land Case 233 of 2015)  
[2025] KEELC 118 (KLR) (23 January 2025) (Judgment)**

Neutral citation: [2025] KEELC 118 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND CASE 233 OF 2015**

**EO OBAGA, J  
JANUARY 23, 2025**

**BETWEEN**

**PHILIP KIPKEMBOI SAWE ..... PLAINTIFF**

**AND**

**ELIZABETH JEPKEMOI KOSGEI ..... 1<sup>ST</sup> DEFENDANT**

**THE LAND REGISTRAR ELGEYO MARAKWET ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

**Introduction**

1. The suit herein was initially filed by William Kiplagat Sawe against Francis K. Sawe. The initial Plaintiff and Defendant were brothers. The two have since died and were replaced by the current Plaintiff and Defendant who are son and daughter of the initial parties respectively. The Land Registrar, Elgeyo Marakwet County was introduced as second Defendant through a counter claim.
2. By an amended plaint dated 21<sup>st</sup> June, 2019, the Plaintiff sought the following reliefs against the Defendant;
  - a. A declaration that the Plaintiff is the owner of LR. NO. Irong/Sergoit/512 measuring approximately 2.6 acres.
  - b. Eviction order in terms of paragraph 6.
  - c. Costs of this suit and interest.
  - d. Any other or further relief this honourable court may deem fit to grant.
3. By an amended defence and counterclaim filed on 6<sup>th</sup> August, 2019, the 1<sup>st</sup> Defendant sought the following reliefs against the Plaintiff;



- a. An order directed at the 2<sup>nd</sup> Defendant ordering him to remove ID No. 3319282 from the title of William Kiplagat Sawe.
- b. A declaration that title to Irong/Sergoit/512 belongs to Francis K. Sawe who has resided thereon from 1969 to date.
- c. Costs of the suit and interest at court rates.
- d. Any other or further relief that this honourable court deems fit to grant.

### **Plaintiff's Case**

4. According to the written statement of William Kiplagat Sawe filed in court on 14<sup>th</sup> August, 2015, he purchased LR. No. Irong/Sergoit/512 (suit property) measuring 2.6 acres in the early 1970's. He leased the suit property to his brother Francis K. Sawe to enable him to raise school fees for his children. He later gave notice to his brother to vacate the suit property but he refused to do so. He stated that his brother had his own land at Kessek village in Elgeyo Marakwet County which land was purchased for him by their father Chepseba Sawe.

### **1<sup>st</sup> Defendant's Case**

5. According to the written statement of Francis Kipkosgei Sawe, the suit property was purchased by their father from one Mondal Kipkiki at Kshs.200/=. Their father had two wives. The first wife was called Soti and the second wife was called Kimoi. The second wife had two boys one of whom was called Busienei. Busienei died at a tender age. The second wife of their father took him in and he started living on the suit property which was left to him.
6. He stated that the Kessek village land was not purchased for him by his father as alleged by William Kiplagat Sawe. He stated that he is the one who purchased the land. DW1 Rael Saniego Mining who is a step sister of both William Kiplagat Sawe and Francis Kipkosgei Sawe stated that the suit property was purchased by their father in 1957 at Kshs.200/=. The purchase money was raised through sale of a bull belonging to her mother. The suit property was supposed to be inherited by her brother Busienei who unfortunately died. Francis Kipkosgei Sawe became part of their house thus finally inheriting the suit property.
7. DW1, further stated that William Kiplagat Sawe has no share in the suit property as her father assisted him to purchase land where he has settled. Her step brother and his family have been staying on the suit property since 1969.

### **Plaintiff's Submissions**

8. The Plaintiff filed his submissions dated 18<sup>th</sup> November, 2024. He reiterated the evidence adduced by the parties herein. He submitted that the Plaintiff had proved his case on a balance of probabilities in that he produced a title in his father's name and that the Defendant had failed to prove the allegations of fraud attributed to his father.
9. He relied on Section 24 of the [\*Land Registration Act\*](#) which states as follows;
  - a. the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and



- b. the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or incidents of the lease.
10. He further relied on Section 25 of the [Land Registration Act](#) which states as follows;
1. The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject—
    - a. to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and
    - b. to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register.
  2. Nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which the person is subject to as a trustee.
11. The Plaintiff further submitted that the title which his father obtained can only be defeated if grounds set out under Section 26 of the [Land Registration Act](#) are met. Section 26 of the [Land Registration Act](#) states as follows;
1. The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—
    - a. on the ground of fraud or misrepresentation to which the person is proved to be a party; or
    - b. where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.
  2. A certified copy of any registered instrument, signed by the Registrar and sealed with the Seal of the Registrar, shall be received in evidence in the same manner as the original.
12. The Plaintiff relied on the case of *Jane Muthini Matiliku - Vs- Veronica Makau* (2022) eKLR where Lady Justice Murigi ordered the Defendant to be evicted from LR. No. Ukia/Utaati/159 after finding that the Plaintiff had proved that she had title to the property and that the Defendant had encroached into the same when she had no title.

### **1<sup>st</sup> Defendant's Submissions**

13. The 1<sup>st</sup> Defendant filed submissions dated 6<sup>th</sup> November, 2024. He submitted that a certificate of title which is obtained through a corrupt scheme or fraudulently can be impeached. He relied on the cases of *Elija Makeri Nyangwara -Vs- Stephen Mungai Njuguna & another* (2013) eKLR and *Chemei Investments Limited -Vs- The Attorney General & Others Nairobi*, Petition No. 94 of 2005.



14. The 1<sup>st</sup> Defendant also relied on the case of Embakasi Properties Limited and another -Vs- Commissioner of Lands & another (2019) eKLR where the court stated as follows;

“Although it has been held time without end that the certificate of title is: “conclusive evidence that the person named therein as proprietor of the land is the absolute and indefeasible owner thereof,” it is equally true that ownership can only be challenged on the ground of fraud or misrepresentation to which the proprietor named is proved to be a party. See Section 23 of the repealed Registration of Titles Act. Section 26 of the [Land Registration Act, 2012](#) though not as emphatic as Section 23 aforesaid on the conclusive nature of ownership, confirms that the certificate is prima facie evidence that the person named as proprietor is the absolute and indefeasible owner. It adds that apart from encumbrances, easements, restrictions to which the title is subject, there is no guarantee of the title if it is acquired by fraud or misrepresentation or where it has been acquired “illegally, unprocedurally or through a corrupt scheme”.

15. The 1<sup>st</sup> Defendant submitted that the suit property was bequeathed to her father by her grandfather. She relied on the case of Kamene Ndolo -Vs- George Matata Ndolo (1996) eKLR where it was stated as follows;

“This court must, however, recognize and accept the position that under the provisions of Section 5 of the Act every adult Kenyan has an unfettered testamentary freedom to dispose of his or her property by will in any manner he or she sees fit.”

### **Analysis and Determination**

16. I have carefully considered the evidence adduced by the parties in this case as well as the submissions by the parties. The following are the issues which emerge for determination.
- a. Was the suit property purchased by William Kiplagat Sawe or his father Kiplagat Sawe alias Chebseba Sawe?
  - b. Was the suit property bequeathed to Francis Kipkosgei Sawe?
  - c. Did William Kiplagat Sawe obtain title to the suit property in a genuine way?
  - d. Are the Plaintiff and the 1<sup>st</sup> Defendant entitled to the respective prayers in the Complaint and Counterclaim respectively?
  - e. Which order should be made on costs.
17. There is no contention that the suit property is currently registered in the name of Kiplagat Sawe. The only issues for determination are as set out in paragraph 16 hereinabove.

### **A. Was the suit property purchased by William Kiplagat Sawe or his father Kiplagat Sawe alia Chebseba Sawe**

18. According to the witness statement of William Kiplagat Sawe who died before he could testify, he purchased the suit property in early 1970's. This evidence is contrary to the records from the green card and searches which show that the suit property was registered in the name of Kiplagat Sawe on 9<sup>th</sup> August, 1962. If it is true as William Kiplagat Sawe claims that he purchased the suit property in early 1970's, there is no way the suit property would have been registered on 9<sup>th</sup> August, 1962 before he purchased the same.



19. William Kiplagat Sawe did not state in his statement from whom he purchased the suit property. The administrator of the Estate of William Kipkemboi Sawe who is the current Plaintiff in his statement repeated what his late father had stated in his statement. He did not state from whom his father purchased the suit property. It is only in his testimony in court that he claimed that his late father purchased the suit property from Mondal. This witness had not been born when the purchase was done. He only picked this from the statement of her aunt Rael Saniego Mining who had a clear history of the purchase of the suit property.
20. DW1 Rael Saniego Mining who is a step sister to both William Kiplagat Sawe and Francis Kipkosgei Sawe testified that the suit property was purchased by their father from proceeds of sale of a bull from the house of her mother Kimoi. This witness knew the history of the purchase. The current Plaintiff knew nothing about the purchase as he had not been born. It is therefore clear that the suit property was purchased by Kiplagat Sawe alias Chebseba Sawe and not William Kiplagat Sawe.

**B. Was the suit property bequeathed to Francis Kipkosgei Sawe?**

21. The evidence of DW1 Rael Saniego Mining is that upon purchase of the suit property by her father, the same was supposed to be given to her brother Busienei but he died at a tender age. Her mother's house then decided to adopt him to their house despite the fact that he was from the house of Soti. He was thus given the land which he settled as from 1969. This witness was elderly and I found her testimony to be credible. She had no reason to side in favour of one of her step brothers against the other.
22. When a dispute arose between William Kiplagat Sawe and Francis Kipkosgei Sawe, there were family meetings held to resolve the same. The person who was taking minutes is DW3 Patrick Kiprop Sawe who is son to Arap Lagat the first born child of Elizabeth Kimoi from the second house of Kiplagat Sawe. DW2 Elizabeth Jepkemoi Kosgei, the current Defendant was present during the family meetings. The two witnesses stated on how the suit property was given to Francis Kipkosgei Sawe after the death of Busienei who was supposed to be given the same. The two stated on how William Kiplagat Sawe avoided the family meetings only to file this suit. I therefore find that the suit property was bequeathed to Francis Kipkosgei Sawe.

**C. Did William Kiplagat Sawe obtain title to the suit property in a genuine way?**

23. It is important to note that according to the register, the name of Kiplagat Sawe was entered there on 9<sup>th</sup> August, 1962. William Kiplagat Sawe collected title on 29<sup>th</sup> August, 2007. The title was collected by William Kiplagat Sawe who was not the owner of the suit property. The owner of the suit property had died on 15<sup>th</sup> August, 1979 aged 102 years. As at the time the owner of the suit property died, he had not been issued with an identity card. The title which was collected by William Kiplagat Sawe on 9<sup>th</sup> August, 2007 did not contain the ID number of the owner. It had no number of the land Registrar who signed it.
24. A restriction which had been put in place on 14<sup>th</sup> September, 2009 pending resolution of the dispute over the suit property was removed by the Land Registrar for unexplained reasons. The removal was to facilitate disposal of the suit property as per the evidence of the Defendant as contained in her further witness statement. The restriction was however restored when it was brought to the attention of the Land Registrar that the owner was deceased. The death certificate number of the owner was entered in the register. The attempt to remove the restriction is clear evidence that the land Registrar was involved in the corrupt scheme hatched by William Kiplagat Sawe.



25. There was no way the Land Registrar would have released title to William Kiplagat Sawe without bearing his ID number if indeed he was the owner of the suit property. It is clear that there was a corrupt scheme to release the title to William Kiplagat Sawe when the suit property did not belong to him.

**D. Are the Plaintiff and 1<sup>st</sup> Defendant entitled to the respective prayers in the Plaintiff and Counterclaim?**

26. From the analysis hereinabove, it is clear that the Plaintiff has failed to prove that he is entitled to any of the reliefs in the amended Plaintiff. The Defendant in the Counterclaim prayed for an order directing the 2<sup>nd</sup> Defendant to remove the ID card number of William Kiplagat Sawe from the title. This prayer cannot be granted. The title which was produced in court did not bear the ID card number of William Kiplagat Sawe. A court of law cannot give orders in vain. Consequently, prayer (a) in the counterclaim is not allowed.

**Disposition**

27. It is clear from the above analysis that the suit property is Irong/Sergoit/512 was bequeathed to Francis Kipkosgei Sawe who has resided on the same from 1969 to date. I therefore enter judgement in favour of the Plaintiff in the counterclaim against the Defendant in the counterclaim in the following terms;
- a. A declaration that title to Irong/Sergoit/512 belongs to Francis Kipkosgei Sawe.
  - b. The Plaintiff shall have costs of counterclaim.
  - c. As regards the Plaintiff's suit, the same is dismissed with costs to the Defendant.

**JUDGMENT DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MAKUENI THIS 23<sup>RD</sup> DAY OF JANUARY, 2025.**

**HON. E. O. OBAGA**

**JUDGE**

In The Presence Of:

Ms. Cherop for Mr. Kiplagat for Plaintiff

Mr. Chemwok for 1<sup>st</sup> Defendant

Court assistant Steve Musyoki

