



REPUBLIC OF KENYA



**Cheruiyot v Cheruiyot & 4 others (Environment & Land Case  
E012 of 2022) [2025] KEELC 227 (KLR) (21 January 2025) (Judgment)**

Neutral citation: [2025] KEELC 227 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ITEN  
ENVIRONMENT & LAND CASE E012 OF 2022**

**L WAITHAKA, J  
JANUARY 21, 2025**

**BETWEEN**

**TAPYOTIN SOTE CHERUIYOT ..... PLAINTIFF**

**AND**

**BARNABAS KIPLAGAT CHERUIYOT ..... 1<sup>ST</sup> DEFENDANT**

**BENJAMIN CHEMWOK CHERUIYOT ..... 2<sup>ND</sup> DEFENDANT**

**KENNETH CHERUIYOT ..... 3<sup>RD</sup> DEFENDANT**

**SILVANUS KIPRONO CHERUIYOT ..... 4<sup>TH</sup> DEFENDANT**

**WILSON MITEI ..... 5<sup>TH</sup> DEFENDANT**

**JUDGMENT**

**Introduction**

1. By a plaint dated 24<sup>th</sup> October 2022, the plaintiff herein, Tapyotin Sote Cheruiyot, seeks an order of injunction to restrain: -
  - a.
    - (i) The 1<sup>st</sup>, 2<sup>nd</sup> and the 3<sup>rd</sup> defendants from utilizing any portion of the parcel of land known as Lelan /Kaptalamwa/935 beyond the two acres they are entitled to until the plaintiff subdivides it and gives them their rightful shares to it;
    - (ii) The 4<sup>th</sup> defendant from trespassing into the plaintiff's household share of the parcel of land known as title No. Cherangany/Kakanyar/347 and Cherangany/Karanyar/348;
    - (iii) The 5<sup>th</sup> defendant and any other person deriving authority from him or whomsoever from trespassing into the plaintiff's parcel of land, title No. Lelan/Kaptalamwa/933.



- (b) Costs of the suit;
  - (c) Any other or further relief the court may deem just and expedient to grant.
2. As can be discerned from the pleadings filed in the suit and the evidence adduced by the parties in court, the suit properties relate to the estate of Chemitei Arap Maigut, which was administered by the plaintiff and the estate of the Cheruiyot Chemitei which is yet to be administered.

## **Evidence**

### **Plaintiff's case**

3. During the hearing, the plaintiff P.W.1, relied on her statement after it was adopted as her evidence in chief. She produced the documents listed in her list of documents dated 24th August 2022 as Pexbt 1 to 8.
4. In cross examination, she stated that she is the administratrix of the estate of her father in law comprised in Lelan/Kaptalamwa/935 (a subdivision of Lelan /Kaptalamwa/82). The parcel measures 56 acres. She stated that they sold 5 acres leaving 51 acres to be shared equally among the three households of her husband. She acknowledged that she holds the parcel in trust for husband's family. Currently, her household is the one in possession of the whole parcel of land but she intends to subdivide the parcel and share it equally among the three households (widows) of her husband.
5. She admitted that the 1<sup>st</sup> and the 2<sup>nd</sup> defendants, who are her children, are entitled to her share of the estate (the 17 acres that will devolve to her). She also admitted that the succession court has not decided on what shares the defendants will get.
6. She stated that she is not aware that the parcel of land known as Cherangany/Kapkany/332 is registered in her husband's name, Cheruiyot Chemitei. She stated that the 3<sup>rd</sup> household (3rd widow) of her husband and her children live in that parcel of land, 332.
7. She informed the court that parcels No. Cherangany /Kapkany/347 and 348 are registered in her name.
8. She stated that the 3<sup>rd</sup> widow of her husband (the 4<sup>th</sup> defendant's mother), was living in Cherangany/ Kapkanyar/45 before it was subdivided into parcels 332, 333 and 334 by her husband. After their husband passed on, the 2<sup>nd</sup> wife moved to parcel 334. She (plaintiff) was given parcel 333 way before her husband passed on but did not move there.
9. She stated that the sons of the second wife have moved to live in parcel 334 (originally 45) but she could not tell the size of land they occupy.
10. She stated that the 2<sup>nd</sup> wife was residing in land parcel Lelan/Kaptalamwa/251 before their husband passed on. The parcel was also subdivided into 3 parcels. Although the 3<sup>rd</sup> widow and she have shares there at, they have never lived there.
11. She informed the court that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants are the plaintiff's blood children; that the 4<sup>th</sup> defendant is a son to the 3<sup>rd</sup> widow, while the 5<sup>th</sup> defendant is a son to the 2<sup>nd</sup> widow.
12. Based on the foregoing evidence, the plaintiff urged the court to order that each widow moves to their respective parcels.



## **Defendants case**

13. D.W.1 Silvanus Kiprono Cheruiyot, the 4<sup>th</sup> defendant in the suit, relied on his statement recorded on 31st October 2023 after it was adopted as his evidence in chief. He informed the court that he has authority to plead on behalf of the other defendants; that the 1<sup>st</sup> and 2<sup>nd</sup> defendant are children of the plaintiff; that the parcel of land known as parcel 935 has not been subdivided among the 3 widows of his father; that the 1<sup>st</sup>, 2<sup>nd</sup> and the 3<sup>rd</sup> defendants live in parcel 935, while he lives in Cherangany/Kapkanyar/45.
14. D.W.1 further informed the court that he has lived in Cherangany/Kapkanyar/45 since he was a child (for over 40 years); that he does not know the resultant portion or portions of parcel number 45 he lives in and that he is not aware that parcel 45 was subdivided as they were not involved in the subdivision. He further informed the court that 6 children of the 2<sup>nd</sup> widow live in parcel number 45 and had lived there for 6 years.
15. He admitted that the plaintiff lives in parcel 935 and stated that none of her family members live in parcel number 45.
16. He confirmed the plaintiff's testimony to the effect that it is his father's second wife (widow) who lives in parcel number 251.
17. He denied the plaintiff's contention that he had trespassed into parcels number 347 and 348. Explaining he has all along known the parcels to be his father's land and that he has lived there all his life, he stated that he is not aware of any grant issued by the court stating how the three parcels belonging to the estate of his father were to be subdivided. He urged the court to dismiss the suit.
18. In cross examination, D.W.1 stated that his father, Cheruiyot Chemitei, had four wives; that he is not aware that his father had divided his property among his 3 wives; that he is not aware that his father took his three wives to the land control board and that the 1<sup>st</sup> and the 2<sup>nd</sup> wives took title deeds for their respective parcels.
19. D.W.1 further stated that he is not aware that the reason why his mother (the third widow) has no title deed for the three portions she was allocated is because she has not picked her title deeds. D.W.1 maintained that he is not aware of any succession cause filed for his father's estate.
20. D.W.1 acknowledged/admitted that the plaintiff had no business engaging them (his father's children, himself included) on how to subdivide his father's estate. He also admitted that their mothers were the right persons for the plaintiff or his father to engage while sharing his father's properties.
21. Concerning the alleged subdivision of parcel number 45, he stated that the surveyor never came to the ground to subdivide parcel No 45, where they lived.
22. He stated that they have never challenged how the three parcels were subdivided in court.
23. D.W.1 told the court that it would be unfair to remove him from parcels No.347 and 348.
24. In re-examination, D.W.1 stated that he has not occupied parcels number 347 and 348.
25. At close of hearing, parties filed submissions, which I have read and considered.

## **Analysis and determination**

26. It is common ground that the plaintiff, the defendants and other persons not before the court, are beneficiaries of the estate of Chemitei Arap Magut, in respect of which the plaintiff is the administratrix of



parcel No. Lelan/Kaptalamwa/935. It is also common ground that the plaintiff, who is the registered proprietor of the parcel of land known Lelan Kaptalamwa 935 measuring 51 acres or thereabout, holds the said parcel in trust for her household and in trust for the households of her two co-wives.

27. During hearing, the plaintiff acknowledged that her registration as proprietor of the parcel of land known as Lelan/Kaptalamwa/935 is subject to a trust in favour of her household and the households of her co-wives. The plaintiff informed the court that she is willing to divide the said property equally among her household and the households of her co-wives.
28. It is not indispute that the 1<sup>st</sup> and the 2<sup>nd</sup> defendants, by virtue of being sons of the plaintiff, are entitled to a share of their mother's portion. Through the suit herein, the plaintiff seeks to restrict the 1<sup>st</sup> and the 2<sup>nd</sup> defendants to use of the 2 acres each of her share of the parcel pending the distribution of the property.
29. The defendants are not agreeable to the plaintiff being granted such relief/order on the ground that their share of the said parcel is yet to be determined by the succession court. The defendants contend that this court is not the right forum to determine the issue of distribution of the estate of their grandfather comprised in the parcel of land in question, Lelan/Kaptalamwa/935.
30. I have carefully considered the rival arguments and positions taken by the parties. I have also considered the evidence adduced in court during trial.
31. Whereas the 1<sup>st</sup> and the 2<sup>nd</sup> defendants claim that they each occupy 5 acres of parcel Cherangany/Kapkanyar/45, they did not adduce any evidence capable of proving that fact. The plaintiff also failed to produce any evidence or basis for concluding that the 1<sup>st</sup> and 2<sup>nd</sup> defendants are entitled to 2 acres each of the parcel of land in question.
32. Whilst the plaintiff claims that the succession court has determined how the property was to be shared, no evidence capable of proving that fact was produced in court.
33. Noting that the issue of distribution of the parcel of land known as Lelan/Kaptalamwa/935 between the various beneficiaries of the estate is still pending in court, I agree with the defendants that the issue of subdivision of the said parcel should be addressed by the succession court and not this court.
34. With regard to the parcels known as Cherangany /Kakanyar/347, Cherangany/Karanyar/348 and Lelan /Kaptalamwa/933, the evidence adduced in court (Pexbt 6, 7 and 4 respectively) show that the plaintiff is the absolute registered proprietor of those parcels of land.
35. Unlike the parcel of land known as 935 which the defendants showed is subject of a trust in their favour, the defendants neither pleaded that the parcels known as Cherangany/Kakanyar/347, Cherangany/Karanyar/348 and Lelan/Kaptalamwa /933 are subject to a trust in their favour nor proved that they are entitled to a share in respect thereof.
36. By operation of the law, in particular Section 26 of the [Land Registration Act](#) 2012, this court is under a legal obligation to consider the plaintiff as the prima facie absolute owner of the said parcels of land. In that regard, see the said provision of the law which provides as follows:-

“26(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 party; or
- b. Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”

37. Whilst in the circumstances of this case the defendants have not demonstrated that the title deeds issued to the plaintiff in respect of the parcels of land known as Cherangany/Kakanyar/347, Cherangany/Karanyar/ 348 and Lelan/Kaptalamwa/933 are impeachable on any of the grounds contemplated in section 26 of the *Land Registration Act* 2012, they did demonstrate that the properties relate to the estate of their deceased father, which estate is yet to be administered.
38. The plaintiff both in her pleadings (plaint) and evidence, acknowledged that the properties relate to her deceased husband’s estate, which estate is yet to be administered.
39. Whilst the plaintiff claimed that the properties indicated in the plaint as belonging to the estate of her deceased husband were shared/distributed by her deceased husband during his life time amongst his wives, she was unable to prove that fact.
40. The totality of the evidence adduced in court shows that registration of the parcels of land known as Cherangany/Kakanyar/347, Cherangany/Karanyar/348 and Lelan/Kaptalamwa/933 relate to the estate of the plaintiff’s deceased husband. As such, there is a probability that the properties are subject of an overriding interest in favour of the defendants as beneficiaries of the estate of their father, Cheruiyot Chemitei. In that regard, see Section 28 of the *Land Registration Act*, 2012 which provides as follows:-

“Unless the contrary is expressed in the register, all registered land shall be subject to the following overriding interests as may for the time being subsist and affect the same, without there being noted on the register- c Trusts including customary trusts...”

41. There being evidence that the parcels of land known as Cherangany/Kakanyar/347, Cherangany/Karanyar/348 and Lelan/Kaptalamwa/933 emanated from the estate of Cheruiyot Chemitei, deceased, which estate is yet to be administered, I find and hold that occupation of those parcels by the beneficiaries of the estate, such as the defendants, is an overriding interest tied to that land, which interest does not require noting in the register of the suit property for it to be recognized and protected.
42. Cognizant that there are unresolved issues concerning administration of the estate of Cheruiyot Chemitei, comprised in the properties listed in the plaint, some of which allegedly yielded the parcels of land knowns Cherangany/Kakanyar/347, Cherangany/Karanyar/348 and Lelan/Kaptalamwa/933 upon subdivision and transfer and given that there are unresolved issues concerning entitlement to the estate of the plaintiff’s deceased husband, it is the considered view of this court that granting the orders sought may result in undesirable consequences. In the circumstances, I find and hold that this court is not the appropriate forum to determine the unresolved issues touching on the administration of the estate of Cheruiyot Chemitei, deceased.
43. The upshot of the foregoing is that the plaintiff has not made up a case for being granted the orders/reliefs sought.
44. The dispute before me being a family dispute, parties shall bear their own cost of the suit.
45. Orders accordingly.

**JUDGMENT DATED, SIGNED AND DELIVERED AT ITEN THIS 21<sup>ST</sup> DAY OF JANUARY, 2025.**



**L. N. WAITHAKA**

**JUDGE**

Judgment delivered virtually in the presence of:-

Mr. Chemwok for the plaintiff

Mr. Kenei for the defendant

Court Assistant: Christine

