



REPUBLIC OF KENYA



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**Cheptoo v Ngetich & 2 others (Environment and Land Appeal
E003 of 2025) [2025] KEELC 6520 (KLR) (30 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6520 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KABARNET
ENVIRONMENT AND LAND APPEAL E003 OF 2025**

**L WAITHAKA, J
SEPTEMBER 30, 2025**

BETWEEN

PAUL BARKEBO CHEPTOO APPELLANT

AND

REUBEN KIPKORIR NGETICH 1ST RESPONDENT

THE LAND REGISTRAR BARINGO DISTRICT 2ND RESPONDENT

THE HON. ATTORNEY GENERAL 3RD RESPONDENT

*(Being an Appeal from the Judgement of Hon. C. Ateya (PM) in
Kabarnet ELC No. E 014 of 2022 delivered on 30th September 2024)*

JUDGMENT

Introduction

1. By a plaint dated 19th April, 2022 and amended on 18th November, 2022 the plaintiff, now appellant, instituted a suit in the lower court to wit Kabarnet CMC ELC Case No. E014 of 2022 seeking judgment against the 1st defendant, now 1st respondent for: -
 - a. A permanent order of injunction restraining the 1st defendant, his agents, servants, assigns, employees and/or any other person acting on his behalf from entering, trespassing, interfering or forcefully evicting him or interfering with his peaceful occupation and cultivation of Land Parcel Number Baringo/Riwo/876 (hereafter referred to as the suit property);
 - b. A declaration that he (the plaintiff/appellant) is the lawful owner of the suit property;
 - c. A declaration that the title deed in possession of the 1st defendant is fictitious and not genuine and the same should be cancelled and declared as of no legal effect whatsoever;
 - d. Costs of the suit



- e. Interest at court rate.
 - f. Any other relief the court may deem fit and just to grant.
2. As can be discerned from the averments in the plaint, the appellant's suit was premised on the grounds that he is the registered proprietor of the suit property, having been registered as such on 28th December 1999; that he acquired the suit property by way of purchase and that on or about 3rd December 2019, the 1st respondent was registered as the proprietor of the suit property.
 3. Terming the registration of the 1st respondent as the proprietor of the suit property tainted with fraud and illegality and complaining that the 1st respondent had threatened to evict him from the suit property, the appellant filed the suit referred to herein above seeking the reliefs listed above.
 4. The 1st respondent filed a statement of defence and counterclaim dated 7th September, 2022 and amended on 28th September, 2022 in which he contended that he is the legal registered owner of the suit property; that the agreement pursuant to which the appellant acquired the suit property is none existent and that the appellant dealt with impostors. Further, that his father was the original owner of the suit property and he never sold or transferred the suit property to anyone other than himself.
 5. The 1st respondent acknowledged that the appellant had title to the suit property but contended that the appellant's title was acquired fraudulently upon transfer by a fraudster and was legally revoked by the Land Registrar upon discovery of the fraud.
 6. By way of counterclaim the 1st respondent sought judgment against the appellant for: -
 - a. An order of permanent injunction restraining the appellant by himself, his servants, agents from entering, trespassing, alienating, or interfering with the peaceful enjoyment of the suit property alternatively an order of eviction be issued against the appellant;
 - b. Appellant's case be dismissed with costs together with interest thereon on such rate as may be determined by the court;
 - c. A declaration that he, the 1st respondent is the rightful owner of the suit property and title deed in his name be affirmed as validly acquired;
 - d. Costs of the suit together with interest.
 7. The appellant filed a reply to defence and defence to counterclaim dated 18th November, 2022 in which he denied the allegations levelled against him and reiterated the averments in his plaint.
 8. When the case came up for hearing, the appellant availed a total of 8 witnesses himself included, while the 1st respondent and his father Kipngetich A. Chesang (D.W.2) led evidence in support of the 1st respondent's pleaded case. The Land Registrar also testified as DW3.
 9. Upon considering the case presented before her, the learned trial magistrate determined that the appellant had failed to prove his claim on a balance of probability and that the 1st respondent had presented evidence proving how his title came to be. Consequently, the learned trial magistrate dismissed the appellant's suit and allowed the 1st respondent's counterclaim. In so doing the learned trial magistrate inter alia observed/held: -

“...I have considered the evidence on record and the submissions filed. The main issue to be determined by the court is who between the plaintiff and the 1st Defendant has the genuine title thus is entitled to ownership of the land....



It is clear from the evidence that both the plaintiff and defendant are claiming the same parcel of land. It is trite law that there cannot be two titles over the same parcel of land. The law prohibits such scenarios and allows cancellation of title and rectification of the register. As stated above, cancellation of title can only be done where there is fraud or illegality.....

The plaintiff in his amended plaint pleaded fraud and illegality as follows: causing a fake title to be issued, deceiving the 2nd defendant to process the title deed in his names over a parcel of land he knew did not belong to him and transferring a parcel of land into his name without following the legitimate process. However, he did not discharge the burden of proving fraud to the required standard.

The plaintiff in his evidence stated that he bought land from one Reuben Kiplagat Chesang (P.W.2) vide an agreement dated 29/12/1999 and had title issued to him on 28/12/1999. The said Reuben is the one who processed the title. Reuben bought the land from one Isaac Chepergon Kandie in 1992 (PW3). They never had an agreement for the same over the land. Isaac claimed that he exchanged land with Francis Chesang because Francis had land in Kapkwang and had his parcel and Isaac's parcel registered in his name. That Francis was the one supposed to transfer the land to Reuben.

Francis testified as DW2 and stated that he got the land from his father and thereafter went to transfer the same to his son, the 1st Defendant. That he never exchanged the land with Isaac.

The defendant in his counterclaim pleaded fraud and illegality on the part of the plaintiff as follows: fraudulently procuring title and using the same illegally obtained title deed to transfer or sale the parcel to the plaintiff, that the plaintiff acquired ownership through corrupt scheme without involving the owner of the land, that the plaintiff purchased land without carrying out due diligence with the intention of ascertaining the owner of the land and acquiring title without execution of a consent and transfer from the owner of the land.

The evidence of the 1st defendant is that the land was transferred to him by his father. It was only when they went to effect the transfer and found the land had been registered in the name of one Reuben Chesang. This was in the year 2015. Reuben was summoned by the land registrar and failed to explain how the land came to be registered in his name but he failed to do so. Thereafter the title issued to Reuben was cancelled and the land was registered in the name of his father and later transferred to him.

The land registrar testified as DW3 and had the green card showing how the land was registered. She stated that the title issued to the plaintiff was not reflected on the green card and she therefore couldn't comment on its authenticity. She stated that their records indicate that the suit land was registered in the name of the 1st Defendant....

As already established, the laws don't allow for the existence of two titles over the same piece of land. There is only one parcel file for land and only one green card that indicated the history of ownership of any property.

The green card that was produced by the Land Registrar (DW3) doesn't recognize the existence of the title owned by the plaintiff. From the evidence presented before court, the plaintiff has not proved, on a balance of probability the legality of how he acquired his title.

The defendant on the other hand has produced evidence showing how his title came to be and the legal basis for the existence of the same.

Having analyzed the evidence as above, I do find that the plaintiff has failed to prove his claim on a balance of probability and his claim must fail. On the other hand, the defendant, now plaintiff, has presented evidence proving how his title came to be be..."



10. Dissatisfied with the decision of the learned trial magistrate, the appellant appealed to this court on the grounds that the learned trial magistrate erred by:
 - i. Dismissing his case without giving legally sound and justifiable reasons;
 - ii. By declaring that the 1st respondent is the rightful owner of the suit property when it was clear from the evidence on record that he, the appellant was the rightful owner of the suit property;
 - iii. Holding that the appellant's title was obtained fraudulently when fraud was neither pleaded nor proved by the respondent as required in law;
 - iv. Failing to take into consideration the legal provision under section 79(2) of the Land Registration Act that a Land Registrar has no power to cancel a title deed unless directed through an order of the court;
 - v. Delaying the delivery of the judgment from 31st May 2024 to 30th September 2024 and by delivering the judgment without giving notice to him and his advocate on record;
 - vi. Failing to consider the evidence of PW2 who cogently indicated that he sold the suit property to the appellant;
 - vii. Failing to consider and evaluate the evidence on record, the submissions and the authorities presented by him;
 - viii. Failing to consider the evidence of PW7, the Senior Chief Ewalel Location who held a meeting between him (appellant) and the 1st respondent which meeting unanimously found that the suit property belongs to the appellant;
 - ix. Being biased in favour of the 1st respondent thereby giving an erroneous judgment;
 - x. Failing to take into consideration the fact that the title deed held by him is genuine and that he is the absolute and indefeasible owner of the suit property;
 - xi. Giving a judgment without supporting it with any reasons.
11. The appellant prays that the judgment of the lower court be set aside and his appeal be allowed with costs.
12. Pursuant to directions given on 17th March 2025, the appeal was disposed of by way of written submissions.

Submissions

Appellant's submissions

13. In his submissions filed on 26th May, 2025 the appellant gives an overview of the cases urged by the parties before the lower court and identifies the issues for the court's determination as follows: -
 - i. Whether the title deed in his possession is genuine;
 - ii. Whether the title deed in his possession is tainted by fraud;
 - iii. Whether the correct procedure was followed in transferring the suit property to him;
 - iv. Whether a Land Registrar is allowed to cancel a title deed; and
 - v. Whether the 1st respondent deserved the prayers in his counterclaim.



Respondent's Submissions

14. In his submission's filed on 9th June 2025, the 1st respondent submits that the lower court rightly dismissed the appellant's claim and allowed the respondent's counterclaim over the suit property; that the appellant's title is tainted by fraud and irregularity in the transfer of the suit property to Reuben Kiplagat Chesang; that the appellant has failed to demonstrate any error of law or fact committed by the trial court and that the appeal lacks merit and should be dismissed.

Analysis and determination

15. In exercise of the duty vested in this court as a first appellate court I have reevaluated the evidence adduced before the lower court with a view of reaching my own conclusion on it. I have reminded myself that a first appellate court will not ordinarily interfere with findings of fact by the trial court unless they were based on no evidence at all, or were based on misapprehension of the evidence or unless it is demonstrated that the trial court acted upon wrong principles in reaching the finding. In that regard, see *Selle & Another vs. Associated Motor Boat Co. Ltd* (1968)E.A 123 and *Mwanasokoni vs. Kenya Bus Service Ltd* (1982-88)1 KAR and *Kiruga vs. Kiruga & Another* (1988)KLR 348.
16. As pointed out herein above, the appellant instituted the suit hereto challenging the title held by the 1st respondent on the ground that it was fraudulently or illegally acquired. In paragraph 11 of his amended plaint, the appellant pleaded as follows: -

“ 11. The plaintiff avers that the title deed of the 1st defendant is tainted with fraud and ought to be nullified and that his title deed is genuine for all intends and purposes.”

Particulars of fraud and/or illegality

- a. Causing a fake title deed to be issued in his name;
- b. Deceiving the 2nd defendant to process a title deed in his name on a parcel of land he knew did not belong to him;
- c. Colluding with the 1st defendant to have the title deed processed in his name;
- d. Transferring a parcel of land to his name without following the legitimate process. (Emphasis mine).

17. In paragraph 10 of his amended statement of defence and counterclaim, the 1st respondent acknowledged existence of the title deed held by the appellant but averred: -

“ The alleged title previously acquired by the plaintiff was fraudulently acquired upon transfer by a fraudster and the same was legally revoked by the land registrar upon discovery of the fraud”.

The 1st respondent in paragraph 6 of his counterclaim further pleaded that: -

“ The plaintiff in cohorts with the then land registrar and another appearing as the 2nd owner (Reuben Kiplagat Chesang) in the green card illegally transferred the said parcel to himself. That particulars of fraud and illegality are as enumerated below: -

- “a. Fraudulently procuring title and using the same illegally obtained title deed to transfer or sale the parcel to the plaintiff;



- b. that the plaintiff acquired ownership through a corrupt scheme without involving the owner of the land;
- c. that the plaintiff purchased land without carrying out due diligence with the intention of ascertaining the owner of the land;
- d. acquiring title without execution of consent and transfer from the owner of the land.”

Evidence

18. A review of the evidence adduced before the lower court shows that the suit property was registered in the name of the 1st respondent’s father, Francis Chemweitich Chesang, on 11th September, 1992. It was transferred to Reuben Kiplagat Chesang on 30th May, 1997 and a title deed issued to him in respect thereof on the same day. On the same day, (30th May 1997) an entry was registered in the green card showing that fraud was suspected in the transfer. On 5th July, 2016 Kipngetich A Chesang of ID No 0471903 (the 1st respondent’s father), registered a caution claiming beneficial interest to the suit property.
19. On 8th June, 2017 the caution was removed and the suit property registered in the name of Kipngetich A Chesang, formerly Francis Chemwetich Chesang (the 1st respondent’s father). On 3rd December 2019, Reuben Kipkorir Ngetich of ID No. 22597465 was registered as the proprietor of the suit property. Paul Barkebo Cheptoo (the appellant) filed a caution on 27th August 2021 to restrict dealings with the suit property.
20. During hearing, it emerged that the suit property was sold to the appellant by Reuben Kiplagat Chesang.

From the entries in the green card, it appears that the 2nd respondent (the Land Registrar), cancelled the registration effected in favour of Reuben Kiplagat Chesang on account of alleged fraud in the transfer of the land to him, in purported exercise of the powers conferred on her under section 79 of the [Land Registration Act](#), 2012.
21. The totality of the evidence adduced in the lower court also indicates that the appellant gained his interest to the suit property pursuant to the impugned registration of Reuben Kiplagat Chesang as the said Reuben Kiplagat Chesang sold the suit property to the plaintiff and surrendered the title deed to him aiding to issuance of a title deed to the plaintiff. Unfortunately, the green card produced in evidence does not capture the registration effected in favour of the appellant. Nevertheless, the evidence adduced before the lower court shows that the appellant had been in use and possession of the suit property from 1999, when he bought it to sometime in 2015 or thereabout when the 1st respondent and/or his father started laying a claim on the suit property.
22. The evidence adduced before the lower court further shows that the Land Registrar in purported exercise of the powers conferred on her under section 79(1)(2) of the [Land Registration Act](#) 2012, revoked/cancelled and/or rectified the entries entered in the green card concerning the registration of Reuben Kiplagat Chesang and caused the suit property to be registered in the name of Kipngetich A. Chesang. Later, a title deed was issued in respect of the suit property in favour of the 1st respondent on 3rd December 2019.
23. The action of the Land Registrar of rectification of the register for the suit property, on purported exercise of the powers conferred on her has been challenged by the appellant on among other grounds that it was done without following the legitimate process, that is, acquiring an order of the court



declaring the registration of the suit property in the name of Reuben Kiplagat Chesang fraudulent and directing him/her to cancel the title deed held in respect thereof and to rectify the title to reflect the name of the original owner. In that regard, the appellant has made reference to a litany of decided cases where it has been held that the Land Registrar has no power to cancel title to land and rectify land register on account of fraud. Some of the cases cited by the appellant in that regard are: -

- i. In Re Estate of Raphael Ngugi (deceased) (2022)e KLR where the court held “..it is clear that it is only the court that can cancel or amend where the court of of the view that registration has been obtained, made or omitted through fraud or mistake...”
- ii. Livingstone Kunini Ntutu vs-Minister for Lands & 4 others (2014)e KLR where it was held “...We are of the view that the 1st respondent’s decision was unlawful in the sense that it was made both in breach of the rules of natural justice and ultra vires his powers....Accordingly, the decision conveyed through the 2nd respondent and contained in Kenya gazette notice number 2934/2010 revoking the suit property ought to be quashed and the parties restored to their position before the impugned decision was made...”
- iii. Kuria Greens Limited vs. Registrar of Titles and Another 2011 e KLR where it was held:- “...the rectification as provided under section 79(2) of the Land Registration Act does not include the cancelling of the title of a registered person. I opine that the land registrar in threatening to cancel the ex parte applicant’s title as he did acted outside the scope of his mandate and he had no jurisdiction to do so...”
- iv. Republic vs. Chief Land Registrar & another ex parte Yosabia Kerubo Manyuwas (2018)e KLR where it was held:

“ ...the Land Registrar in cancelling the applicant’s title as he did, acted outside the scope of his mandate and had no jurisdiction to do so....”

24. Arising from the legal position espoused in the above cited authorities, the appellant submits that the 2nd respondent (Land Registrar), had no power to cancel his title deed as the only institution with power to cancel, amend or rectify a title deed, obtained through fraud is a court of law.
25. The appellant submits that the Land Registrar’s action of cancelling his title deed was ultra vires his or her powers hence null and void.
26. Whilst the appellant’s contention that the Land Registrar cancelled his title deed accords with the pleadings by the parties, it is worth noting that the evidence adduced before the court does not support the appellant’s contention that the Land Registrar cancelled his title. The evidence adduced before the trial court shows that the title/registration which the Land Registrar cancelled or rectified is the registration of Reuben Kiplagat Chesang pursuant to which the appellant acquired his interest in the suit property.
27. Be that as it may, cancellation of the registration of the said Reuben Kiplagat Chesang and reinstatement of Francis Chemwetich Chesang as the owner of the suit property and the subsequent transfer of the suit property, raises a question of law, that is whether the title deed held by the 1st respondent was procedurally acquired.
28. Having carefully reviewed the evidence adduced in this case and the applicable law, particularly section 79 and 80 of the Land Registration Act, 2012, in the circumstances of this case where the title held by the 1st respondent was acquired pursuant to purported rectification of the register of the suit property on account of suspected fraud, I find and hold that the title was acquired un procedurally as the 1st



- respondent and/or his father was required to challenge the registration of Reuben Kiplagat Chesang in a court with requisite jurisdiction to hear and determine his case concerning the alleged fraud and not to move the Land Registrar to rectify the register as he did.
29. Rectification of the register in the circumstances of this case had the effect of affecting the rights of the appellant, which rights he had acquired as a purchaser of the suit property from Reuben Kiplagat Chesang or his appointed beneficial owner of the property.
 30. Whereas the 1st respondent blamed the appellant for having failed to sue the persons who sold the suit property to him, it is the considered view of this court that the person who needed to include or join the persons who sold the land to the appellant including Reuben Kiplagat Chesang whose registration as a proprietor of the suit property, the Land Registrar un procedurally removed on his account or account of his predecessor in entitlement, is the 1st respondent. The only duty the appellant had was to demonstrate how he acquired interest in the suit property, which interest includes possession of the suit property, which he did.
 31. Upon review of the totality of the evidence adduced in this case, I find and hold that the appellant demonstrated how he acquired his interest in the suit property.
 32. Whilst the 1st respondent based his case on alleged fraud on the part of the appellant and/or the persons from whom the appellant acquired the suit property from, he never made the said persons parties to the suit. By failing to make the persons from whom the appellant acquired the suit property, particularly Reuben Kiplagat Chesang, a party to his counterclaim, the 1st respondent cannot be heard to say that he made out a case of fraud attributed to a none party to the suit.
 33. No evidence whatsoever was adduced capable of showing that the appellant was a party to the fraud, if any, committed by Reuben Kiplagat Chesang.
 34. If the entries in the green card are anything to go by, the alleged fraud in the transfer of the suit property to Reuben Kiplagat Chesang was discovered on 30th May, 1997. No action, whatsoever was taken by the 1st respondent and/or his father until sometime in 2015 (more than 18 years later, when the 1st respondent's father (D.W.2) wrote to the Land Registrar alleging that there was fraud in transfer of the suit property to Reuben Kiplagat Chesang. No explanation whatsoever was given by the 1st respondent or his father (D.W.2) why they took so long to take action arising from the otherwise known suspected fraud in the transfer of the suit property.
 35. There is indication that the suspected fraud was reported to the Directorate of Criminal Investigation for investigation. No evidence whatsoever was presented before the court concerning the outcome of the investigation, if any conducted by the police, concerning the alleged fraudulent transfer of the suit property to Reuben Kiplagat Chesang.
 36. In the absence of any evidence capable of proving that the suit property was fraudulently transferred to Reuben Kiplagat Chesang, other than the irregular or unlawful rectification of the register that was done by the 2nd respondent, there cannot be any basis of saying that there were two title deeds in respect of the suit property.
 37. Being of the view that had the learned trial magistrate addressed herself to the impugned rectification of register by the Land Registrar, she might have arrived at a different verdict, I find that the appellant has made a case for interference with her decision.
 38. I note that other than casting aspersions on the title deed held by the appellant, the Land Registrar (DW3) did not lead evidence to the effect that the title held by the appellant is not a genuine document issued by their office. The only issue arising from the title is that it was not captured in the green card.



Whilst the Land Registrar did not offer reasons or explanation as to why the title was not registered in the green card, the reason for failure to register it is inferable from the green card as it indicates that fraud was suspected in the transfer effected in favour of Reuben Kiplagat Chesang.

39. As pointed out herein above, no evidence was adduced capable of proving fraud against Reuben Kiplagat Chesang and none could have been legally proven against him without being made a party to the suit.
40. Reuben Kiplagat Chesang appeared in court and informed the court that he acquired the suit property by way of exchanging it with another parcel of land. Given the fact that no action was taken by the 1st respondent and his own father against the said Reuben Kiplagat Chesang for a long period of time despite knowledge of the alleged fraud in the transfer of the land, I am inclined to believe the account offered by Reuben concerning how he acquired the suit property.
41. The upshot of the foregoing is that I find the appeal herein to be merited and allow it as prayed. Consequently, I set aside the judgment of the lower court and substitute it with an order allowing the appellant's suit in the lower court and dismissing the 1st respondent's defence and counterclaim.
42. I also award the appellant the costs of this appeal.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KABARNET THIS 30TH DAY OF SEPTEMBER, 2025

L. N. WAITHAKA

JUDGE

Judgment delivered virtually in the presence of:-

Ms. Barasa holding brief for Mr. Mwaita for the Appellant

Mr. Chepkilot for the 1st Respondent

N/A for the 2nd & 3rd Respondents

Court Assistant; Christine

