



**Kwambai (Suing as the Legal Representative of the Estate of Kwambai Kipkereng) v Cheptarus
(Environment and Land Case 3 of 2022) [2025] KEELC 7018 (KLR) (7 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 7018 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ITEN
ENVIRONMENT AND LAND CASE 3 OF 2022**

L WAITHAKA, J

OCTOBER 7, 2025

BETWEEN

**RALPH CHERUIYOT KWAMBAI (SUING AS THE LEGAL REPRESENTATIVE
OF THE ESTATE OF KWAMBAI KIPKERENG) PLAINTIFF**

AND

MICHAEL LIMO CHEPTARUS DEFENDANT

JUDGMENT

Introduction

1. By a plaint dated 22nd August 2002 and amended on 22nd March 2019, Kwambai Kipkereng (now deceased and substituted with Ralph Cheruiyot Kwambai as his legal representative) instituted this suit seeking judgment against the defendant for:-
 - i. Delivery of title to this court and cancellation thereof, together with entries in land register with regard to land parcel Irong/Korkitony/174 (here in after referred to as the suit property) and the register to be rectified to show the late Kwambai Kipkereng as the owner thereof;
 - ii. A mandatory injunction to remove the defendant his agents, family and/or servants from the said parcel and/or an eviction order to issue;
 - iii. Mesne profits from 1985 to the time of eviction to be assessed by the court;
 - iv. Costs and interest.
2. The plaintiff accuses the defendant of having fraudulently caused to be subdivided the parcel of land known as Irong/Korkitony/139 belonging to him into Irong/Korkitony/173 and 174 and registered himself as owner of Irong/Korkitony/174.



3. The particulars of the pleaded fraud against the defendant are listed in paragraph 6 of the plaint as follows:-
 - a. Applying for, and obtaining consent to subdivide Irong/Korkitony/139 illegally and without the knowledge or consent of the deceased;
 - b. Representing himself as owner of Irong/Korkitony/139 when he knew that he was not the owner;
 - c. Creating two parcels from Irong/Korkitony/139 without knowledge or consent of the deceased;
 - d. Misleading the Land Control Board into granting the defendant consent to subdivide and transfer;
 - e. Obtaining representation as owner of 174 knowing that the land was not his;
 - f. Refusing to move to his parcel or parcel in which he had an equitable interest, that is to say, parcel, 138.
 - g. Fraudulently obtaining interest in 139 and obtaining title deed for 174.
 - h. Failing to disclose the fact that elders had as early as 1986 found that the defendant had no interest in 139.
4. Terming the defendant's actions complained of illegal trespass to land, the plaintiff complains that he has suffered and continues to suffer loss and prejudice as he has been denied use, occupation and/or possession of the suit property.
5. The plaintiff points out that there is another suit pending in court to wit, Eldoret CMCC No.1383 of 1999 between the defendant and himself and avers that the suit is liable to being struck out for want of jurisdiction on the part of the court.
6. On 16th November, 2008 parties to this suit and in Eldoret CMCC No. 1383 of 1999 by consent agreed that the defence filed in Eldoret CMCC No. 1383 of 1999 be deemed as the defence and counterclaim in this suit. The consent was adopted as an order of court on 16th November, 2008.
7. The defendant in his plaint filed in Eldoret CMCC No. 1383 of 1999 pleaded that he was the owner of parcel No.174 measuring 8 ½ acres and that on or about the year 1998, the defendant (now plaintiff) had trespassed into his parcel of land, 174 and built therein. Explaining that as a result of the defendant's (now plaintiff) trespass to his land, 174, he has suffered special and general damages, the plaintiff (defendant in the Counterclaim) seeks judgment against the plaintiff for:-
 - a. A declaration that the defendant (now plaintiff) by himself, his servants and/or agents are trespassers on Irong/Korkitony/174;
 - b. An order of eviction be issued against the defendant by himself, his servants and/or agents from Irong/Korkitony/174;
 - c. Special and general damages and an order of permanent injunction to restrain the defendant (now plaintiff) by himself, his servants and/or agents from continually trespassing, cultivating and/or grazing and/or erecting any structures on Irong/Korkitony/174
 - d. Interest thereon at court rate
 - e. Costs of the action.



Evidence

Plaintiff's case

8. When the matter came up for hearing, the plaintiff who testified as P.W.1, informed the court that the defendant is his nephew. He accused the defendant of taking his land. He stated that they had appeared before the elders who made an award . He produced the award as Pexbt 1. He further informed the court that he did not sign any documents to give the defendant his land parcel No. 139. He produced an application to the Land Control Board MFI-1, copy of green Card MFI-2 and prayed that the defendant be removed from the suit property.
9. PW2 Wycliff Kimaiyo Cheptarus, informed the court that the plaintiff is his uncle; that the defendant is his step-brother and that he knows land parcels 138 and 139; that parcel No. 138 is for Cheptarus Arap Kireng while parcel No. 139 is for Kwambai Kipkereng (the plaintiff); that the defendant lived in the land owned by the plaintiff when he was young; that the defendant wanted the plaintiff to share his land with him but the plaintiff refused and told him he should get land from his father; that the plaintiff and the defendant went to the elders who decided that the defendant should vacate the land owned by the plaintiff and that the defendant refused to vacate.
10. further informed the court that the defendant subdivided parcel 139 into 173 and 174. He could not tell how the defendant went to the Land Control Board. Upon being shown the application for Land Control Board consent to subdivide the land, he stated that it is signed yet the deceased did not know how to write (he signed documents by thumb printing them). He stated that parcel No 139 was subdivided into 173 and 174 in the name of the plaintiff and the defendant respectively. He could not recognize MFI 2. He stated that subdivision of parcel No. 139 was done fraudulently because the plaintiff does not know how to sign. He further informed the court that his father is the registered proprietor of parcel No. 138. He stated that the defendant should vacate Parcel No. 139 and claim parcel No. 138 which is family land.
11. Ralph Cheruiyot Kwambai, adopted the evidence of PW1 and produced the following documents: Death Certificate of P.W.1 as Pexbt 2; grant of letters of administration ad litem as Pexbt 3 and Court order dated 13th March, 2019 as Pexbt 19.
12. Marvin Aliech Onyango, Land Registrar Elgeyo Marakwet, produced the parcel file for Parcel No. 139. He informed the court that in 1968, the land belonged to Kwambai Arap Kipkereng (plaintiff); that it was closed on 3rd July 1985 on subdivision into Parcel No. 173 and Parcel No. 174; that Parcel No. 173 belongs to Kwambai Kipkereng and Parcel No. 174 to Michael Limo Cheptarus (defendant). He further informed the court that Parcel No. 174 was transferred on 3rd July 1985 to the defendant. He produced the green cards for Parcel Nos. 139, 173 and 174 as Pexbt 5(a), 5(b) and 5(c) respectively.

Defendant's case

13. The defendant, Michael Limo Cheptarus who testified as DW1, relied on his witness statement recorded on 26th March 2025 after it was adopted as his evidence in chief. In the statement, the defendant states that he is the lawful owner of the suit parcel, LR No.Irong/Korkitony 174 measuring approximately 17 acres; that the suit parcel was subdivided from 139 which had been fraudulently registered under the name of Kwambai Kipkereng and was measuring approximately 17 acres; that after subdivision of 139 into two equal parts of 8 ½ acres each, the plaintiff got Parcel No. 173 as per orders issued in Eldoret SPMC Case No. 96 of 2012 which resulted from the elders verdict over the same; that he was legally issued with title deed for Parcel No. 174 on 3rd July 1985; that he had been living on the suit parcel even before subdivision; that the plaintiff has been trespassing, constructing and/or



developing his parcel of land without his consent and that he has suffered great loss and damage due to interference from the plaintiff hence the plaintiff should be permanently restrained from his parcel of land. He further states that he deserves to be paid costs, interest, together with general damages as a result of the losses and damages he had been incurring.

14. Before court, he reiterated the averments in his witness statement and produced the title issued to him in respect of Parcel No. 174 as Dexbt 1. He denied the plaintiff's contention that he acquired the suit property fraudulently and urged the court to declare him the owner of the suit property and to order that the plaintiff be evicted from his land.
15. The defendant also relied on the documents contained on his list of documents dated 19th March, 2025 and filed on 20th March, 2025 after they were admitted in evidence. These are:-
 - i. Copy of title deed for Irong/Korkitony/174;
 - ii. Copy of court order issued in Eldoret SRM Land Case number 18 of 1984 dated 9th March, 1984;
 - iii. Copy of transfer form dated 1st July, 1985;
 - iv. Copy of Land Dispute Tribunal Proceedings dated 20th December, 1983;
 - v. Copy of application to withdraw caution;
 - vi. Copy of application for Land Control Board consent for subdivision of land registration number Irong/Korkitony//174 (Uasin Gishu)/24;
 - vii. Copy of application for Land Control Board consent for transfer dated 6th March, 1985;
 - viii. Copy of letter of consent for subdivision from Land Control Board;
 - ix. Copy of application for registration of mutation and transfer dated 3rd July, 1985;
 - x. Copies of photographs.
16. In cross examination, the defendant stated:-

“The plaintiff is my cousin. His father was called Kwambai. He was brought up in Irong/Korkitiny/139 which was registered in the name of the plaintiff's father. My father had his own land Irong/Korkitiny/138. My claim on parcel Irong/Korkitiny/174 was because I had also lived there. Subdivision was done in 1985 following a court order. There were two parcels 173 in the name of the plaintiff and 174 in my name. Although the plaintiff claims that I did not obtain the land in the proper manner and he did not give me any portion of the land, the minutes of the meeting by the elders and court order are on record that I obtained my portion through a court process. I did not sign any transfer form.”

17. In re-examination the defendant stated:-

“I obtained parcel No.174 through a court order. My father has his own land. I got land from Kwambai because I was brought up by the plaintiff's father on the suit property. Currently I reside in parcel number 174 and the plaintiff in 173.”

18. D.W.2 John Kimuge, relied on his statement recorded on 26th March, 2025 after it was adopted as his evidence in chief. The contents of the statement are that he has known the parties since their childhood; that he is well conversant with the case before court; that the suit property was originally Parcel No.



139 measuring approximately 17 acres; that the plaintiff and the defendant who are family members have been having a dispute over the suit property; that elders made a decision that Parcel No. 139 be divided equally between the plaintiff and the defendant each getting 8 ½ acres. He further stated that as a result, the plaintiff got a new parcel, 173 while Parcel No. 174 was transferred to the defendant; that the plaintiff's father had fraudulently transferred the entire parcel to himself without considering the defendant who is a family member; that there was no fraud committed by the defendant and that the suit property belongs to the defendant.

19. DW2 reiterated the contents of his statement before court. In cross examination, DW2 stated:-

“Both parties are from my clan. I know the plaintiff's father, Kwambai. I do not know the parcel number of the land before subdivision but it was registered in the 1980's in the name of Kwambai. The defendant's father had a separate parcel of land, No.138. I was there when subdivision of 139 took place. The resultant parcels were 173 and 174. The defendant resides on 174. The defendant was given the land (174) by his father Kiptarus Kipkereng.”

20. In re-examination, D.W.2 stated:-

“Parcel 173 belongs to the plaintiff but the land was initially in the name of his father. Before subdivision, parcel number 139 was in the name of Kwambai Kipkereng. Subdivision of Parcel No. 139 was ordered by the court which resulted into parcel 173 and 174.”

21. At close of hearing, parties filed submissions which I have read and considered.

Analysis and determination

22. From the pleadings, evidence and the submissions, I find the issue that arises for determination to be whether the plaintiff has proved his pleaded case against the defendant to the required standard of proof to warrant granting him the orders sought in his amended pleadings. Subject to the outcome of that issue, whether the defendant has proved his pleaded case to warrant him being granted the orders sought in his statement of defence and counterclaim.
23. On whether the plaintiff has proved his pleaded case against the defendant to the required standard of proof to warrant granting him the orders sought in his amended pleadings, the plaintiff in his submissions maintains that the plaintiff has proved the pleaded fraud in acquisition of the title deed held by the defendant and on account of the decision made by elders sometime in 1986 or thereabout and maintains that the suit property belongs to the plaintiff.
24. As pointed out herein above, the plaintiff instituted this suit claiming that the defendant acquired his interest in the suit property fraudulently. In paragraph 6 of the pleadings, he listed the particulars of fraud levelled against the defendant.
25. During hearing, the plaintiff and his witnesses asserted that the defendant acquired the suit property fraudulently as the plaintiff's father did not give him the land. They suspected that the consent to transfer the land was forged as the signature in it does not reflect how the plaintiff's deceased father used to sign documents (by thumb printing).
26. In his pleadings, the defendant denied the allegation that he acquired the suit property fraudulently and averred that he acquired it legally and procedurally through a court process.
27. During hearing, the defendant produced evidence which confirms that he indeed acquired the suit property through a court process. In that regard, he produced in evidence an award which was adopted by the court leading to subdivision and subsequent registration of the suit property in his name.



28. By dint of the provisions of Section 107 of the *Evidence Act*, the plaintiff was under a legal duty to prove his pleaded case against the defendant to the required standard of proof. In the circumstances of this case, where fraud was urged against the defendant, the plaintiff was required to prove his pleaded case against the defendant on a standard higher than on a balance of probabilities but lower than the standard of beyond reasonable doubt.
29. The evidence by the plaintiff does not support his pleaded case at all. The defendant totally controverted the alleged fraud in acquisition of the suit property by producing evidence showing that he acquired the suit property through a court process. In the circumstances, I do find that the plaintiff has failed to prove his pleaded case against the defendant and I dismiss his suit with costs to the defendant.
30. Regarding the defendant's counterclaim, I do find that the defendant has made up a case for being granted the orders sought in his counterclaim and I allow the counterclaim in terms of prayers (a), (b), c), (d) and (e).
31. Regarding the prayer for special damages, I decline to grant it as the pleaded special damages were not strictly proved as by law required.
32. Concerning the prayer for general damages, the plaintiff demonstrated that the plaintiff had been interfering with his use and possession of the suit property by trespassing into it. Cognizance of the fact that trespass to land is actionable per se, I award the defendant (plaintiff in the counterclaim) general damages of Kshs. 300,000/- with interest from the date of judgment until payment in full.
33. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT ITEN THIS 7TH DAY OF OCTOBER, 2025.

L. N. WAITHAKA

JUDGE

Judgment read virtually in the presence of;-

Ms Odwa for the Plaintiffs.

Ms Cherop h/b for Mr. Kiplagat for the Defendants.

Court Assistant; Ian

